

PARTY FINANCE AND GOVERNMENT REGULATION
A COMPARATIVE ANALYSIS

by

Siegfried Magiera
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INTRODUCTION

Political parties and candidates need money for their activities. How to provide the necessary funds is a problem in most countries with a democratic system of freely competing political forces. Different approaches to a solution have been tried in the various countries, but no systematic study could be found which tried to evaluate the suggestions and experiments in a comparative way. Emphasis in this study was put on the situation in Germany and the United States where the problem of political finance has been in the center of legislative and court action in 1966. Evaluations made in other countries, especially in France, Great Britain and Japan, have been included, wherever possible, in order to show the variety of theoretical and practical solutions. The study was limited, however, by the availability of published material.

In Chapter I, the regular sources of party funds will be examined. Most generally, parties and candidates have to rely upon private sources, especially membership dues and contributions. Increasing electorate and modernization of propaganda techniques, however, have enlarged the financial burden. Private funds have often become insufficient, despite the parties' reliance on sometimes dubious and even illegal sources. Instead of broadening their financial base by winning a large number of small contributors, most parties have followed the easier way of securing the help of a few wealthy contributors.

Left to themselves, political parties often developed abuses and illegal practices in their financial activities. Many governments interfered by imposing legal restrictions. This problem will be discussed in Chapter II. In most countries, legislative safeguards include provisions against corruption. Limitations of contributions to and expenditures by parties and candidates, as well as requirements for the disclosure of financial activities, are prescribed in only a small number of countries.

In Chapter III, public subsidies to political parties and candidates will be evaluated. Most governments have taken over some political costs, mainly in connection with voter registration and poll administration. Some have gone further and helped the parties and candidates defray part of their costs for specific kinds of propaganda. Only a few countries have gone so far as to give general financial aid to the parties and candidates, either in the form of tax benefits or of direct subsidization. This kind of government support is heavily disputed, especially in Germany and the United States. Some suggestions seek a solution to the problem by combining private and public sources of political finance.

CHAPTER I

REGULAR PARTY FUNDS

Sources

Membership Dues

Membership dues are the soundest basis of party finance, at least in those countries where membership parties are traditional. The fact, however, is that no major party in the world is able to finance its activities from such dues. A study of eight countries in 1963 revealed that only the Social Democratic party of Germany could be called a "membership" party, if this meant a party which covers at least two-thirds of its normal, non-election year expenses by membership dues. On the average, the major parties with a dues-paying system can do so only to about twenty percent.¹

In some countries, parties are not organized on a basis of dues-paying members, as in France² or the United States³ where only the Socialist parties try to finance at least part of their expenses by regular dues of members. A plan to establish memberships at the local level which would share funds with the state and national levels, as suggested by Paul T. David⁴ could hardly be realized in an environment of such a tradition. Sustaining fund memberships of \$10 a year have only drawn 60,000 to 70,000 persons to each major party in the United States.⁵ This experiment was tried at the national level; an attempt at the local level with its closer relationship of party and followers

might have a more favorable result. It must be remembered, however, that American politics center around the candidates and are not so much party-oriented. This might be a major obstacle in the way toward a large dues-paying membership for American parties.

How difficult it is to change the tradition of a country with non-membership parties can be seen in Japan where, despite efforts to win dues-paying members, their number has remained very small.⁶ In the Philippines, with a generally very poor electorate, the situation is almost reversed. Not only do membership dues not exist, but the voters expect to receive money for their performance at the polls from the parties which are financed by business money.⁷ At the other end of the scale is Israel where in 1961 nearly one-third of the eligible voters and more than forty percent of the actual voters of the eight major parties were party members. Probably not more than two-thirds of them pay their dues, which are rather high. They average one-half percent of the gross wage or salary and reach one full monthly salary per year in the Communist party, but are often not sufficient to cover the regular annual party budget.⁸

In Great Britain⁹ and Australia,¹⁰ parties--with the exception of the Australian Country party--derive only a small part of their income from membership dues. The British Conservative party gets an uneconomic 27 cents a year from the great mass of its two to three million members, but an increase of this minimum amount might drive members away. The labor parties in both countries derive their main income from affiliation fees paid by the trade unions, not from individual members. The latter

situation is similar in all Mexican parties where membership is regarded as a by-product of joining one of the various functional groups, such as the National Peasants' Confederation or the Confederation of Mexican Workers. It is these groups which contribute to the income of the political parties.¹¹

German¹² and Italian¹³ parties have a system of individual, not group, membership. About thirteen percent of the electorate in Italy are party members, but even this low number includes "ghost members." Dues do not cover more than twenty percent of the party expenditures. The difference in the size of membership among German parties has its effects on the income derived from this source. In 1963, the Social Democratic party (SPD) had an income of \$3.5 million from its members, while the non-socialist parties derived a much smaller income from this source; the Christian Democrats (CDU), \$0.75 million; its sister party, the Christian Socialists (CSU), \$0.25 million; and the Free Democrats (FDP), \$0.35 million.¹⁴ The SPD had a membership of some 750,000, the CDU/CSU of some 340,000 and the FDP of some 80,000.¹⁵ The advantage of the Social Democrats is further increased by the fact that they have higher dues and are better disciplined than the other parties.¹⁶ The SPD receives the bulk of its income from membership dues which are paid regularly to 94 percent.¹⁷ In 1959, over 80 percent of the dues came from members of the lowest income brackets, up to \$75 monthly income.¹⁸ Though the record of the Social Democrats in the field of membership dues may be comparatively high--Pollock¹⁹ in the early 1930's called the SPD in this respect "the most remarkable party in the world"--the fact

is that the proportion of members to voters was not more than 6.6 percent in 1957²⁰ and 10 percent in 1928.²¹ The comparative figures for the bourgeois parties in 1957 were considerably lower: 2.3 percent for the CDU, 2.8 percent for the FDP.²² There may be various reasons for the financial dependence of the Social Democrats on their membership. One of them probably is the--at least original--foundation of the party on class solidarity and the later efforts to keep the membership large.²³

In summary, therefore, membership dues are only a small part of the income needed by the major democratic parties all over the world. Dues are insufficient for financing election campaigns as well as for covering the regular party budget. As will be seen later,²⁴ there remains only one way for the parties if they want to broaden their financial basis by winning a larger number of regular dues-paying members or of other small contributions: they will have to work harder and with more ingenuity.

Large Contributions

As their income from membership dues was too small, the parties had to look for other sources to finance their activities. In most countries, the easiest way to raise the necessary sums has been the appeal to a few rich individuals who can provide large amounts of money. The large contributions often have become the most important, but also the most controversial, source of party income. This source is so important because the parties generally have not succeeded in finding a working system of attracting a large number of small contributors; and it is controversial because it is regarded as favoring the few big givers and,

therefore, as undemocratic.²⁵ In countries with a party system divided between socialist and bourgeois parties, usually only the latter rely heavily on large contributions, but they often try to conceal the fact and sometimes attempt to broaden their subscription lists.

The problem of large contributions has been of special concern in the United States. Alexander Heard²⁶ in 1960 found that at the national level most money came from individuals contributing \$500 or more; at lower levels the number of such gifts was much smaller compared to gifts between \$100 and \$499. Heard²⁷ concluded that "Certainly the bulk of political money is supplied by a relatively small number of people." This observation is confirmed by the data collected in Florida after ten years of experience with a new law²⁸ which, in 1951, introduced stricter provisions for the disclosure of campaign contributions and expenditures. Most of the money came from the above \$250 category; the number of contributions of \$1,000 rose from 29 in 1952 to 360 in 1960; the number of contributions of \$50 or less declined from 14,330 in 1952 to 10,718 in 1960.²⁹

Evidence of this kind leads observers to the summary statement that large contributions still are the largest single source of party income. While such a conclusion is probably true for the situation in most countries and for most political parties, important exceptions can be observed. Herbert Alexander³⁰ gives a tabulation of the proportion of individual contributions of \$500 or more made to the Democratic and Republican parties at the national level between 1948 and 1964:

| National Level Committees | (year) | 1948 | 1952 | 1956 | 1960 | 1964 |
|------------------------------|--------|------|------|------|------|------|
| Democratic | (%) | 69 | 63 | 44 | 59 | 69 |
| Republican | (%) | 74 | 68 | 74 | 58 | 28 |

Most interesting is the trend for the Republican party. Up to 1956, this party relied on large contributions to nearly three-quarters of its income from individual contributions at the national level. The proportion sank to less than two-thirds and finally to less than one-third in the two most recent presidential election years of 1960 and 1964.

It can be concluded that large contributions by a relatively small number of contributors are the major source of party income, but that serious and successful attempts can be observed which are designed to reduce the proportion and influence of large contributions in favor of smaller sums.

Business and Labor

Business and labor have proved to be the best sources for large contributions to political parties, despite legal restrictions in some countries.³¹ In Japan, relatively few companies and economic associations make all the large contributions.³² The conservative parties have intimate connections with the business community and collect their campaign funds from corporate sources.³³ At least 90 percent of the income of the Liberal Democratic party is provided by businessmen. This does not quite lead to business domination, but to business dependence of the party.³⁴ Contributions from financial, industrial, commercial, and other economic institutions cover part of the income of the parties in Israel.³⁵

In the Philippines, despite legal prohibition, domestic and foreign business remain the major source of party funds.³⁶ Large business contributions to political parties are not unknown in French³⁷ and British³⁸ politics.

The non-socialist parties in Germany were already heavily dependent on business money in the Weimar Republic.³⁹ Hitler's party with the "big guns of German industrial interests behind"⁴⁰ was able to spend \$0.75 per vote, the Social Democrats only \$0.13. After the War, the bourgeois parties with their small dues-paying membership continued to rely on the traditional source of business money from the beginning of the Federal Republic. This, to a large degree, was true at least until the late 1950's, when a tax decision by the Constitutional Court made business contributions to political parties more expensive.⁴¹ Before the Court's decision, funds of the CDU and FDP were covered up to 80 and 90 percent by business money.⁴²

Business in Germany has developed a special form of political contributing. The money is given to the parties not by the corporations themselves, but mainly by associations which are formed by the corporations. In the Weimar Republic, the associations collected the money after the candidates for the party lists had been nominated by the parties.⁴³ Since the War, business money has been channeled mainly through the Sponsors' Associations (Foerderer-Gesellschaften) at the state level and the Civic Association (Staatsbuergerliche Vereinigung) at the federal level. Formally trade associations, the Sponsors' Associations collected the money from their members by determining the different amounts on the

basis of payroll figures or sales turnover. About half of all employers and two-thirds of all large corporations contributed. The success of the system was partly due to the fact that the payments to the associations meant protection from further solicitation by the parties.⁴⁴ Similar practices of organized business contributions to political parties have been undertaken by the Union of Economic Interests and other groups in France,⁴⁵ by various trade and economic associations in Japan,⁴⁶ and by organizations in Great Britain which have recently been developed for the purpose of collecting political contributions from industry.⁴⁷ The funds contributed to political parties by the different functional organizations in Mexico can also be included in this category.⁴⁸

In the United States, the restriction on contributions from business and labor has been a legal problem for more than half a century,⁴⁹ but parties still receive large amounts of money from these sources. Observations made under the new law in Florida show that the greatest amounts of money came from commercial and financial centers of the state.⁵⁰

Though Bernstein's⁵¹ statement that in West Europe political parties of the right are tied to business and political parties of the left are tied to labor is simplified, as Bernstein⁵² himself admits, the statement can be applied, with reservations, to most democratic countries in the world. One of the reservations is the practice of business firms which contribute to opposing parties. This can be observed in many countries such as the United States, Canada, Philippines, Japan, Denmark, and Uruguay.⁵³ This "two-party giving"--or, in countries with more than

two major parties, "multi-party giving"--has been condemned by Pollock⁵⁴ because the money is given in order to obtain favors from the winning side. Heard's⁵⁵ observation that two-party giving is "nothing but insurance" to many businessmen is no argument against Pollock's rejection. But Heard⁵⁶ also found that two-party giving can be based on a belief in the two-party system and can be compared to split-ticket voting when it is restricted to parties and not extended to opposing candidates. As far as the motives of the contributor are concerned, two-party giving can be as good or as bad as any other political contribution. As to the effect on the party system, it may be even less harmful because it helps to balance party strength or at least prevents preponderance of one side.

The dependence of the conservative parties on business has been demonstrated. Money from labor unions provides a large part of the socialist parties with the bulk of their income. In Australia, the Labor party covers 80 to 90 percent of its regular budget by the affiliated fees paid by the trade unions to the party's state branches.⁵⁷ In Great Britain, the unions which contribute 40 percent of the total Labor party income are the main financial backers of the party.⁵⁸ In 1954, the unions had 7.7 million members. Only 5.5 million of them were affiliated, through the unions, with the Labor party, but 6.8 million paid the political levy which goes into the party funds.⁵⁹

Legislation restricts labor contributions to political parties in the United States.⁶⁰ COPE, the AFL-CIO Committee on Political Education, has a fund consisting mainly of \$1 voluntary contributions by union members. In 1956, COPE collected over \$1 million. About half of

this money was spent by COPE, the rest by state unions for political activities involving parties, committees and candidates.⁶¹ In 1964, COPE spent about \$1 million.⁶² The unions try to influence the political process in various other ways which are left open by legal regulations.⁶³

In summary, Alexander Heard's observation on business money in politics can be extended to labor money; that business and labor "with interests directly affected by governmental action are highly sensitive politically."⁶⁴ Both share the most important role in financing the activities of political parties.

Other Sources

The high costs of their activities have forced the parties to look for new sources of money wherever they could find them. Rarely any potential source is neglected, and sometimes even illegal money finds its way into party funds.

Candidates who try to be elected to a public office by using a party's name and reputation are generally expected to pay their own way, in part or in full, and possibly to contribute to the general party funds. The amount depends on the importance of the office for which the candidate is running, on his own resources, and his desirability to the party, on the party's financial situation, and the degree of competition for the office. In Weimar Germany, the parties often selected wealthy candidates who were able to finance at least part of their own campaign;⁶⁵ today, candidates must share the campaign expenses.⁶⁶ About one-fourth of the candidates in France paid their campaigns and wealthy candidates spent large sums.⁶⁷

In various countries, party members in the parliament have to contribute a certain amount of their salary to their party's funds. In Australia, this money is a considerable potential source at the federal and state levels.⁶⁸ Diet members of the Japanese Liberal Democratic party probably provide 50 percent of their party's membership dues.⁶⁹ The practice was common in Weimar Germany where Social Democratic members of the Reichstag were assessed 20 percent of their allowances by their party, while the Communists had to pay as much as 40 percent.⁷⁰ The Social Democrats have continued this tradition after the War and demand 20 percent of the salary of their deputies in the Bundestag, as do the other parties.⁷¹ Between 1949 and 1959, levies paid by SPD party members in the various German parliaments provided from 5 to 14 percent of the total income of the party executive.⁷²

Assessment of public employees by political parties is practiced, especially in countries where the parties influence heavily the filling of government positions. In the United States, since the 1830's⁷³ the "spoils system" has enabled the systematic assessment of government officials at all levels. Contributions have generally ranged from 1 to 5 percent of the salary,⁷⁴ although figures up to 12 percent are also mentioned.⁷⁵ Restrictive legislation and the extension of the merit system have reduced the importance of this source of party income.⁷⁶ At the national level, the practice has almost disappeared, but at the state and local levels it still plays a role in all parts of the United States.⁷⁷ Heard⁷⁸ estimated the party income derived from office-holders at \$5 million to \$15 million in a presidential election year. In Puerto

Rico, before the introduction of the Election Fund Act of 1957⁷⁹ which provides for public subsidies of the political parties, dues or "quotas" collected from government employees, who were assessed a small percentage of their salaries, amounted to a considerable part of the governing Popular Democratic party's income. It is interesting to note that the party's leader, Luis Munoz Marin, defended this practice as being less dangerous than a reliance on large contributions by a few wealthy givers.⁸⁰

Contributions to political parties are not only made in cash. Other methods of giving are the provision of services and assistance to the parties. These include such means as giving, free of charge, space for party propaganda in newspapers, cars for transportation of voters on election day, or office staff for secretarial work. A practice developed by the socialist parties in many countries, e.g. in Germany, Great Britain, or the United States, has been the activation of volunteer workers for campaign and other party work. While in Germany volunteers have become more and more rare,⁸¹ Heard⁸² reports that in the United States volunteer labor is still mobilized at a large rate, without restricting his statement to any particular party. A frequent means used by the parties to keep the helpers at work is patronage, which enables the party to distribute public offices for loyal party services.

Another source of revenue for various parties is their involvement in commercial activities. In Germany, parties derive part of their income from publishing companies which they own, or they have investments in other business enterprises. This is especially true for the Social

Democratic party.⁸³ Individuals in Italy make indirect contributions to political parties by patronizing party activities or party-owned business firms.⁸⁴

One of the most successful methods of raising money for political parties is the organization of the various dinners, parties, picnics, and other entertainments by party committees at all levels. This practice has been developed to a high degree of perfection in the United States since the War, though it had already been known in the 19th century.⁸⁵ The advantage of the method is its adaptability and flexibility as to time, place, and attending persons. Ticket prices can be fixed at a rate between \$1 or \$10 to \$1,000 or more. Invitations can be sent and an environment of social pressure can be created which makes it difficult for a prospective "guest" to refuse the "invitation."⁸⁶ Often the sale of tickets for such an event is indistinguishable from political assessment.⁸⁷ Uncertainty about legal requirements as to the reporting of the names of the persons who purchase tickets has generally helped solicitation.⁸⁸ The "Tax Adjustment Act of 1966,"⁸⁹ however, has put some limitation on this kind of activity by prohibiting tax deductions for ticket purchases. Income from the dinners has been considerable. By the 1950's, political parties at the state level covered probably one-third of their total income from political dinners.⁹⁰ The \$500-a-plate dinner which the Republican Senatorial committee gave in 1965 for 800 guests in honor of Senator Dirksen may serve as an example. The net income was \$380,000, a sum large enough to cover the committee's activities for the year.⁹¹

Another practice, also very lucrative but also hampered by the "Tax Adjustment Act of 1966," has been the sale of advertising space in party publications at disproportionate rates. The cost per ad in the 1965 book of the Democratic party, Toward an Age of Greatness, was about twelve times higher than in a national magazine like Time when the circulation is taken into account.⁹² The net income from the book for the party was more than \$600,000.⁹³ The Republican party had netted about \$250,000 from their magazine, Congress--The Heartbeat of Government, in the previous year.⁹⁴ Similar practices have been observed in Germany where indirect contributions have been made by subscribing for party periodicals at a disproportionate rate and number of copies.⁹⁵

The importance of money which flows into party funds from the illegal sources of the "underworld," i.e. from law breakers in general and from organized crime in particular, is most difficult to estimate. Louise Overacker⁹⁶ in the early 1930's thought the amount was "considerable," especially in big cities and for local campaign funds. Heard,⁹⁷ in 1960, reported connections of politics and crime at the ward and precinct level. His guess was that contributions to party funds--not to be mixed up with graft and bribery of public officials--covered 15 percent of party expenditures at the state and local levels. The limited scope of "underworld" activities make these contributors generally seek only protection without an attempt at wider party dominance. A somewhat more dangerous situation was described by Levin,⁹⁸ in 1962, from evidence in Massachusetts, where candidates, especially when running for nomination, often needed the money from corrupt sources. Later, it was almost

impossible for them to change over to more respectable sources. Another corrupt source of political money is created in some countries by the habit of giving away government contracts under the assumption that the contractor will make a financial contribution to the party. Though it is often illegal for a government contractor to make any political contributions, regardless of a quid pro quo situation, the practice is still existent.⁹⁹

Conclusion

Political parties derive their income from various sources. In this first part only private money has been considered; public help will be treated below.¹⁰⁰ Each source is of different importance for the various political parties. Without regard to details, it can be concluded that no major party is able to finance its activities from membership dues. Most parties are dependent on large contributions which mainly come from business or labor. All other private sources are relatively insignificant, perhaps with the exception of political dinners in the United States; but the effect of the 1966 tax legislation on this latter source must be awaited. On the whole, private financing of political parties is in an unsatisfactory state.

Expenditures

High Political Costs

The parties' need for large amounts of money becomes evident from a look at their expenditures. Extension of suffrage and the introduction of modern technical facilities for propaganda are the main factors which

are responsible for the increase in political costs. Whether the costs have gone up only in their absolute amounts or also when considered in relation to the larger number of voters and the increasing level of living expenses is difficult to say as not all estimates differentiate between these two ways of computation. Often no comparisons with earlier years are made at all.

There exist wide differences in the amounts which have to be spent by the political parties in the various countries in order to get their candidates elected. In the Philippines, election expenditures made up 13 percent of the national budget in 1961. Total expenditures increased about 16 times from 1946 to 1961.¹⁰¹ In Germany, the annual amount needed by the major parties (CDU/CSU, SPD, and FDP) was estimated in 1965 at about \$17.5 million, or at about \$21 million if the costs of campaigning for the Bundestag elections were included.¹⁰² Election expenditures and costs per successful votes in Israel rise by geometrical progression.¹⁰³ In 1961, the expenditures of all parties for the Knesset elections were \$6.75 per eligible voter and over \$8 per actual voter; the cost per floating vote was estimated at \$33.¹⁰⁴ Per capita costs per elective office, given by Heard,¹⁰⁵ amount to 15 cents in the United States (1952), 16 cents in Great Britain, 25 cents in Germany (1957), 50 cents in Italy (1958), and \$5 in Israel (1955). Heidenheimer¹⁰⁶ designed an "Index of Expenditures" to measure the expenses which are necessary to cause a person to cast his vote. By relating total expenditures, number of votes cast, and the average hourly wage of industrial workers to each other, Heidenheimer made up the following table:

Index of Expenditures

| | | |
|---------------|-------------|------|
| Australia | (1958) | .45 |
| Great Britain | (1959) | .64 |
| Germany | (1961) | .95 |
| United States | (1960) | 1.12 |
| India | (1961) | 1.25 |
| Italy | (1958-1960) | 4.5 |
| Philippines | (1961) | 16. |
| Israel | (1960) | 20.5 |

General statements on election costs in the United States point out their continuous increase. More detailed surveys show that this is only partly true. Expenditures like the \$1.5 million spent for the campaign of Democratic Governor Shapp of Pennsylvania or the \$4.3 million spent for the election of Republican Governor Rockefeller of New York in 1966¹⁰⁷ are no exceptions; but more complete evaluations than such single incidents reveal a truer picture. The cost per vote cast in presidential elections has remained surprisingly constant for almost fifty years. It amounted to about 20 cents between 1912 and 1928, though the increase of living costs of about 40 percent during this period has not been taken into consideration.¹⁰⁸ The same amount was spent in the presidential election years 1952 and 1956.¹⁰⁹ According to Heard,¹¹⁰ campaign costs did not increase faster than living costs between 1940 and 1956. In the last decade, however, the costs per presidential vote have gone up sharply to 32 cents in 1960 and to 41 cents in 1964.¹¹¹ Though the relative increase of political costs may not have been quite so large

as is generally thought, the last two presidential elections have changed the picture somewhat, and the absolute amounts spent have been considerable at all times. Total expenditures in the United States on all political levels--federal, state and local--were estimated for 1952 at \$140 million, for 1956 at \$155 million, for 1960 at \$175 million, and for 1964 at \$200 million.¹¹² These are only the amounts spent for campaigns in presidential election years. No estimate was made as to the needs of the political parties in the years between these elections.

Ways of Spending

The size of the budget which the parties have at their disposal may vary to a large degree, but all parties have one goal in common: to win the highest possible number of voters for their ticket. Technical facilities and voter habits open and at the same time limit the potential means of propaganda. Heard¹¹³ found that parties, though they may have budgets of quite different sizes, spend their money in a very similar way. The factors which determine party expenditures vary from country to country and from campaign to campaign. Differences arise from the structure of the parties and the political system under which they operate.

For the United States, surveys in the late 1920's and early 1930's estimated that the parties spent between 35 and 55 percent of their funds on publicity, and between 15 and 40 percent on general administration.¹¹⁴ After the War, costs for the mass communication media have taken the first place in campaign budgets in countries where radio and television time is for sale. Reports made under the new Florida law show that in 1956 parties spent most money on television, printing, newspaper

advertising, radio, and paid workers, in this order.¹¹⁵ In the same year, parties in the United States as a whole spent 40 percent of their funds at the national level and 25 percent at the state level on television and radio propaganda.¹¹⁶ Station charges for political broadcasting totaled \$20 million in 1962, a year without presidential elections.¹¹⁷ Costs increased by almost 50 percent between 1956 and 1960.¹¹⁸ In Australia, parties, according to estimates, in 1963 spent 30 to 35 percent of their funds for radio and television time, 25 to 35 percent for newspaper advertising, and 20 to 30 percent for printing.¹¹⁹ Newspaper expenditures in Israel increased over 50 percent from 1959 to 1961.¹²⁰ Between 10 and 20 percent of all campaign expenditures were made on election day itself, mainly for hiring transportation for voters and for buying food for volunteer helpers.¹²¹ In the Philippines, it is customary for candidates to buy gifts for voters and even bribe them, though both are illegal; but the law is not enforced.¹²² Election day expenses are also high in the United States where Heard¹²³ estimated them at about 12 percent of total party expenditures and at 20 to 50 percent of local committee expenditures. It is also interesting to note how a highly organized party, such as the Social Democrats in Germany, spends its funds: two-thirds go into election propaganda and the rest into administration costs.¹²⁴

Inefficiencies

High expenditures often result from the fact that it is not known which means of propaganda are most effective. Campaign managers do not want to take any risk and spend as much as they can.¹²⁵ More than thirty

years ago, authors pointed out that much waste was involved in most political campaigns, amounting to 25 and 50 percent of the total expenditures.¹²⁶ There has been no change over the decades. According to Heard,¹²⁷ most political organizations in the United States are still inefficient and wasteful. The President's Commission¹²⁸ recommended research for increasing campaign efficiency and reducing campaign waste, as probably half of the campaign expenditures were wasted. Due to the inefficiency of their officials, many party committees hire news and advertising agencies to do campaign business for them. This practice may have a dangerous effect on party responsibility in cases where the larger part of the responsibility for a whole campaign is given to such an agency, as has already happened.¹²⁹

Conclusion

Election costs are high in all countries, and where parties maintain a permanent organization and activities in the time between elections they have to raise another large amount of money. The parties spend their money in different ways according to the situation in the campaign and the particular country. Their common goal, to attract voters, makes them use similar devices depending on tradition and technical progress. As no certainty exists about the efficiency of the various means of propaganda, all ways are exploited, and a waste of money is the result.

Broadening the Financial Base

Party Efforts

The essential need for a broader financial base of party support has been recognized over and over again, in the last years by Presidents Kennedy¹³⁰ and Johnson,¹³¹ and scholars in the field of political finance such as Herbert Alexander¹³² and--not so decidedly--Alexander Heard.¹³³ Realizing the danger of depending on large contributions, the parties have looked for other sources of income. Attempts have been made to solicit large sums of money from a larger number of small contributors. Tradition, lack of ingenuity, skill or energy, and easier access to other sources have proved to be major obstacles in the way of broadening the financial base of the political parties.

In Britain, attempts in this direction have not been too successful, because party efforts are weak and society does not consider political contributions as part of their responsibility.¹³⁴ Tradition in Japan regards fund-giving as a matter of group activity, not as an individual's obligation. Attempts to increase the number of small contributions have been little successful.¹³⁵ In addition, the law prohibits door-to-door soliciting.¹³⁶ In Germany, the blame is put on the "Anti-Parteien-Affekt," a sentiment against political parties allegedly existing in the population because of anti-democratic thinking in the Weimar Republic and bad experience with Hitler's party.¹³⁷

American parties have tried to enlarge the number of their financial supports for more than fifty years, with little success, however. In 1916, the Republicans sold sustaining memberships of \$10 per year; the

number of contributions increased. The Democrats developed the Jamieson plan under which 600,000 letters were sent out; these brought 300,000 contributions between 1916 and 1920. In 1920 and 1924, the Republicans launched personal solicitation drives for small contributions, similar to those of the Red Cross; the 1920 experiment was limited to contributions up to \$1,000. With the exception of the Republican plan in 1924 which had a measurable success, the experiments were too expensive to be called successful.¹³⁸ The best known attempt after the War to raise small contributions was the Ruml plan¹³⁹ in 1952. It was not successful, but not so much due to its general design as to the particular circumstances. Ruml, appointed finance chairman of the Democratic national committee, tried to stimulate \$5 contributions by handing out certificates with the help of the party's organizations in the states. The failure of the plan was mainly due to the lack of a working hierarchy in the party organization, by the reluctance of party officials in the states to take part because they feared a decrease of their own income from contributions, the late start of the plan, the fact that it was part of a losing campaign, and the inexperience of Ruml and his staff.¹⁴⁰ The attempt, however, showed that there was a need for such a campaign because it revealed that many people simply had not known how to give to a political party and that the parties were interested in such small contributions.¹⁴¹ The result of these and similar efforts has led to the opinion that the solicitation of small contributions is too difficult and costly in administration and therefore inadequate to help the parties' financial problems or even to become an alternative to the large

contributions. The question is, however, whether the experiments have been tried seriously enough and during a sufficiently long period of time to be conclusive. The Ruml plan revealed two major insufficiencies in the approach: defects in the party organization for this kind of solicitation and unfamiliarity of the population with political giving. It could well be that costs of administration are high only in the beginning as long as the population is not acquainted with contributions to political parties. Attempts must be made to escape the vicious circle: solicitations for small contributions are not made because of the high costs, and people do not make small contributions because they are not asked. Heard¹⁴² observed that contributors are often more interested also in other aspects of politics when compared with non-givers. Pollock,¹⁴³ already in the early 1930's, pointed out that the dues-paying members of the SPD in Germany, from their financial involvement, developed a closer attention to their party's affairs in general. Financial support and interest in politics are closely interrelated and affect each other. It is the parties' task to initiate this chain reaction. Even if such an attempt were not successful financially, the resulting activation of supporters would seem to be a rewarding effect in itself.

Some party efforts to collect small sums have had a better response. Between 1952 and 1956, the number of persons making political contributions rose from 3 to 8 million or from 4 to 10 percent. This increase in political giving was larger than that of other political activities.¹⁴⁴ The women's division of the Republican party tried a successful house-to-house canvass in the mid-1950's to raise dollar

contributions.¹⁴⁵ If the drive is conducted seriously, satisfactory results can be achieved. Hennepin County in Minnesota raised \$40,000 in 1958 and \$94,000 in 1960, though the goal for this year had been set at only \$60,000 by the Minnesota Republican finance committee; the state-wide goal was also exceeded in 1960.¹⁴⁶ In 1964, \$364,000 was collected from more than 60,000 givers.¹⁴⁷ The Democratic National Committee sells memberships for \$10 a year; between 1957 and 1960 about \$1 million was raised, \$400,000 in 1960 alone. Renewal rates reached up to 80 percent.¹⁴⁸ The same practice was started by the Republicans in 1962; income was \$70,000 in the first year, \$1.1 million in 1963, and \$1 million in the first half of 1964.¹⁴⁹ Appeals were made by mail using mailing lists which were partly bought or rented from business firms.¹⁵⁰ Mass solicitation, accompanied for the first time by direct mail and television appeals on a large scale, was made by the Republican party in 1960; 650,000 persons contributed, 560,000 of them less than \$100. A broadcasting appeal by two movie actors helped to collect \$2 million in five days.¹⁵¹ In 1964, a direct mail appeal of 15 million letters brought 380,000 replies; contributions amounted to \$5.8 million, costs to \$1 million.¹⁵² The following year, 3 million mail appeals resulted in contributions of \$1.7 million.¹⁵³ According to Billy Higgins, director of the Republican mail campaign, an advertising agency was given the responsibility of obtaining and preparing the mailing lists; 13 percent of the letters were successful but even one percent would pay the costs and be considered worthwhile.¹⁵⁴ In 1964, 32.4 percent of the Republican national and campaign income came from direct mail appeals; this was at

the same time the highest single kind of contributions.¹⁵⁵

It must be noted, however, that these data do not only represent contributions in small amounts; \$100 is a large sum for most people. Furthermore, these appeals were mostly undertaken at the national level, and it is not sure how they would work at lower levels. Recent experiments show that efforts by the parties, such as in Hennepin County¹⁵⁶ or in Alexandria,¹⁵⁷ or the direct mail appeals can have satisfactory results as far as response from the population is concerned and from a financial point of view. Large amounts in small sums can be raised effectively and economically. The basis for successful results, however, is seriousness, perseverance, and ingenuity on the parties' side.

Supra-Party Efforts

Efforts to develop and execute plans to activate citizens for political contributing have also been made on non-partisan and multi-partisan bases. The American Heritage Foundation had undertaken non-partisan registration-and-vote campaigns in the 1950's, before it included an appeal for political contributions in 1958. A public opinion survey revealed that more than 40 percent of the American adults had become aware of this new aspect of the campaign.¹⁵⁸ American business firms and labor unions whose participation in political financing is restricted by law make use of the device of non- and all-partisan drives to increase political activity among their workers, followers, and also outsiders. The drives are undertaken by single or combined efforts of corporations, unions, and civil groups. In mid-1963, American business founded the Business-Industry Political Action Committee (BIPAC) to

represent its viewpoint and support candidates.¹⁵⁹ Labor has had its Committee on Political Education (COPE) since 1955.¹⁶⁰ Similar efforts have been observed in other countries.¹⁶¹ The legal difficulties in the way of such activities will be discussed later.¹⁶²

Non- or all-partisan drives for registration, voting, and political contributing are often not so impartial as would be desirable. The appeal might well be favorable to one party only, if a group is activated which--from its background--will support a particular party. If the money is collected for one common fund, difficulties of allocating the shares among the parties arise. If the money is not given to the parties, administration problems come up.

The appearance of interested groups which try to influence the political course by financial contributions in the disguise of so-called "non-partisan" organizations is not new. In the United States of the 1920's it was such groups as the Anti-Saloon League.¹⁶³ Despite their limitation to the advocacy of a general policy since 1918, so-called non-partisan agencies have influenced British elections by money.¹⁶⁴ In Germany, "neutral" groups make propaganda for political parties by "parallel activities" (Parallelaktionen).¹⁶⁵ They play an important role and are effective because they pretend to be independent, but actually they support a particular party.¹⁶⁶ Volunteer limitations of party propaganda are thus made difficult because there is no efficient way to include the parallel activities in the agreement.¹⁶⁷

Various plans to increase the number of small contributions by non- and all-partisan efforts have been suggested. They try to make use

of situations in which the general public might easily be stimulated to contribute to a political fund. Parties could establish propaganda booths at fairs or other points where masses of people meet who have plenty of leisure time, and sell sustaining memberships and souvenirs.¹⁶⁸ The interest of many people in taking part in competitions could be used to introduce an "Informed Citizen" contest. Newspapers would publish the questions and people could take part with a small entrance fee. Half of the revenue could be used for prizes, the rest given to the parties. An entry fee of 50 cents would bring a yearly contribution of about \$60 million for the parties, if the contests were given weekly and about six million people took part each time.¹⁶⁹ Other forms of contests could include competitions between the parties, showing which gets the largest amount of small contributions between \$1 and \$10 in a limited period before election day;¹⁷⁰ or a popular sport like bowling could be used to set up citizens' teams which pay a small entry fee and compete against teams of politicians.¹⁷¹ Kilpatrick¹⁷² designed a plan which is intended to overcome the difficulties of mass solicitation by mail or personal canvassing. The idea is to avoid the psychological problem of mail appeals--where stimulus and action of giving are separated--and to diminish the high administration costs of personal solicitation. Supermarkets, banks, post offices, and other places frequented by many people would be used for a fund-raising drive over a short period before election day. Kilpatrick estimated the income at about \$40 million in one campaign of ten weeks, if only the three largest American food store chains participated and every shopper contributed five cents a week.

Though these plans may seem to hold little promise at the first glance, they might contain a solution to the problem of involving large numbers of people in political giving and of keeping the costs of administration low. The President's Commission¹⁷³ recommended Kilpatrick's plan for further consideration. Another kind of suggestion is to give the independent voter a chance to contribute to a fund which is used to present impartial political information.¹⁷⁴ Arrangements could be made similar to those found in Japan, where non-partisan committees sponsor public discussions among opposing candidates.¹⁷⁵

A successful all-partisan fund drive was undertaken by a door-to-door canvass in Alexandria, Minnesota, in 1956. A steering committee, consisting of one Republican, one Democrat, and one independent citizen, was set up and 65 solicitors sent out in pairs of different political denomination. The solicitors went out for several nights after the drive had been publicized in the press. On the average, 76 percent of the people contacted contributed from 8 cents to \$100, generally about \$1. Out of 1,000 people contacted, only 20 wished to give to a particular party; the rest gave to the common party fund which was divided among the parties according to the votes received in the previous election.¹⁷⁶ An editorial in the Kansas City Star estimated that, on a nationwide basis, the experiment would have brought some \$62 million.¹⁷⁷

Conclusion

Soliciting small amounts of money from large numbers of people can, therefore, be a successful way of broadening the financial base of political parties. The attempt can be made either by the parties

themselves or by other groups with a non- or all-partisan appeal. In the latter case, however, some kind of device seems to be necessary which would guarantee the impartial administration of the funds collected. Both ways, the partisan and the all- or non-partisan, should be tried in order to give party members as well as independent citizens an opportunity to contribute financially to a political cause. What is necessary, above all, is to make people acquainted with the idea that political contributions are part of the democratic system of government.

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CHAPTER II

LEGAL RESTRICTIONS

Introduction

Kinds of Legislation

The costs of politics require the investment of financial means. The observation that the amount of money spent and the way it is spent are able to influence the outcome of a campaign, at least in some cases, has led to the opinion that some legal regulation is necessary to protect the egalitarian principle of government.

The first legislation was directed against the corrupt use of money. It has been enacted since ancient times and can be found in most countries.¹

Later restrictions were imposed on certain kinds of political financing in general. This second kind of legislation, which is negative in character, has been prevalent in the Anglo-American system since the last part of the nineteenth century. Its underlying philosophy is that unregulated and undisclosed financing of political campaigns will lead to the corrupt use of money in elections and that, on the other hand, prohibition of certain sources, limitation of contributions and expenditures, and public disclosure will prevent the improper use of money in elections.² Therefore, present laws, especially in the United States, have four basic forms: they prohibit contributions from certain sources,

such as from business and labor, and impose ceilings on others, such as from individuals; they limit expenditures by parties and candidates, both as to type and amount; they protect public employees from soliciting; and they demand public disclosure of political funds.³ Similar laws partially exist in other countries, such as Japan,⁴ the Philippines,⁵ and France,⁶ etc.⁷

A third way of regulating political financing is the positive approach by which parties and candidates are encouraged and supported in their financial efforts. Legislation is sporadic and ranges from minor indirect subsidies, such as giving public halls for political rallies or granting tax benefits for political contributions, to open financial support in large amounts out of the public treasury. Details on this latter kind of legislation will be given in Chapter III; here, in Chapter II, the restrictive type of regulations will be examined.

Influence of Money on Politics

The usefulness of negative legal regulations, except for the laws against corruption, is heavily disputed. Two major points of controversy are the questions of whether money wins elections and whether contributors control the receivers of their money.

Despite a widely held popular belief that money determines the outcome of elections, studies show that no simple relationship exists between campaign expenditures and election results. Presidential elections in the United States between 1904 and 1928 were won by the party which spent the larger amount of money: from 51 to 75 percent of the combined direct expenditures made by the Republican and Democratic National

Committees. Between 1932 and 1948 the winning party spent less than the loser, from 49 to 35 percent.⁸ In Israel, it often happens that parties lose support despite an increase in their financial investments.⁹

Income and membership of the Socialist Party in Italy reach only one-third those of the Communists, but its voters amount to two-thirds.¹⁰

After the introduction of the new disclosure law in Florida, those candidates who reported highest expenditures have generally won, but this correlation has not been true for the candidates in the positions behind the winner.¹¹

Money, therefore, is only one factor which determines the outcome of a political campaign. Other factors, such as party loyalty, ethnic and religious background of the voters, the character of the issues, or the personality of the candidates, play also an important role. The impact of money on a campaign is difficult to estimate because none of the several influencing factors can be isolated. The only safe statement probably is that the importance of money increases as the other factors become more balanced, the race closer, and the office less conspicuous.

How far contributors try to influence the policy of those to whom they give is even more difficult to estimate. It probably depends to a high degree on the political culture of the particular country. Pollock¹² reported little or no suspicion in Britain that campaign contributions would influence policy, because public men were averse to it, the offices of fund collectors and party leaders were separated, and no governmental favors could be expected. On the other hand, Senator Neuberger¹³ from Oregon complained in 1956 that he had been offered substantial

contributions to his campaign with definite ties. Levin¹⁴ observed in Massachusetts that the amount of contributions tended to change according to the candidates' chances of winning and usually came in at the end of the campaign when the race was almost decided. Another factor determining the answer of this second question is the motivation of the particular contributor. Nobody gives away money without purpose and some expectations, but political contributions are not necessarily based on corrupt and illegal hopes. Interviews in North Carolina in 1952 revealed that political contributors are motivated by a genuine concern for a public policy as well as by the desire to gain some kind of special privilege.¹⁵

As the abuse of money in politics is possible, it can be concluded that some legal restrictions are necessary in this field. Temptation is too great and stakes are too important to leave the matter without control.

Corruption

Attempts to influence the outcome of elections by corruption, especially bribery, are as old as popular voting itself.¹⁶ The practice existed in ancient Greece and Rome, in the Middle Ages, and in modern times, in our culture as well as in others, such as the Japanese. Legal measures were introduced for prevention. In Rome, laws can be traced back to 432 B.C. In England, corrupt practices were offenses at common law. The first law against bribery and treating was passed in 1695, but effective legislation did not exist before the middle of the nineteenth century.¹⁷ In 1883, the first comprehensive law, the Corrupt and Illegal

Practices Prevention Act,¹⁸ was passed by the British parliament. It became the model for similar legislation in Japan, Canada, Australia, and the United States. The first federal statute relating to corruption in elections was adopted in the United States in 1870,¹⁹ but was repealed to a large extent in 1894.²⁰

Provisions against bribery in elections, at present, exist in constitutions, criminal or election codes of many countries, but often are also the only regulations of money in politics, e.g. Criminal Code of Germany, 1871/1953,²¹ sec. 107 through 108d. As a result, bribery in elections has disappeared in general. It must be added, however, that it is not always easy to distinguish between bribery and legitimate contributions, as money is transferred in both cases and motivations are hard to detect.²²

Limitations

To rule out bribery and other corrupt practices helped to remove the worst abuses of money in politics. The basic inequality of candidates and parties resulting from their different financial situations was not changed, however. The party of greater means continued to have an advantage over the other side by outspending it on a large scale. Even when the size of the funds was not the decisive factor in the outcome of the campaign, it often seemed to be so or the losing candidate at least tried to put the blame on it. To some people large contributions and expenditures of money in politics were suspicious as such, regardless of how the sums were used. The remedy was seen in a control of the large amounts of money flowing through the money chests of candidates and party

treasurers by imposing maximum limits on contributions and expenditures. This opinion gained strong support in several countries, especially in Great Britain and the United States at the end of the nineteenth century, but has also met with heavy opposition.

Contributions

In most countries, limitations on political contributions are not so far reaching as on expenditures. The general rule is that money from some sources is completely outlawed, while other sources are restricted to certain amounts.

Protection of public employees from political assessment by the party in power²³ was among the earliest concerns of legislative action. In the United States, the first federal act was passed in 1867.²⁴ Its provisions were extended by the Civil Service Reform (Pendleton) Act²⁵ in 1883 in which the basic regulation was laid down which is still valid. The Act prohibited the solicitation of campaign funds from federal employees by other federal employees and by all other persons on federal premises.²⁶ On the state level, New York and Pennsylvania made a beginning by enacting laws in 1883 which prohibited the solicitation and assessment of their officials; other states followed shortly.²⁷ In 1966, nineteen states had such provisions.²⁸ In general, this kind of legislation has proved to be successful.²⁹

Business and labor, as the two largest outside sources of political contributions, have been in the focus of restrictive legislation in many countries. In Puerto Rico, contributions of persons, corporations, and organizations were restricted by the 1957 law granting public

subsidies to political parties.³⁰ Contributions from corporations are prohibited in the Philippines.³¹ In recent years, the Japanese have-- rather unsuccessfully--tried to forbid "election," not "regular," contributions of corporations and unions.³² In Great Britain, no restrictions on contributions by individuals, corporations, or trade unions exist.³³ Trade union members, however, may "contract out," i.e. declare in writing that they do not want their dues to be used for political contributions.³⁴ Between 1927 and 1946, this legal clause had been changed into a "contracting in," meaning that union members had to give their express consent, if the union wanted to use their dues for political contributions.³⁵ "Contracting out" also exists in Norway, but only a few are opposed to these contributions, because local branches and not the more distant national unions decide upon the use of the dues.³⁶ Pollock³⁷ and Lewinsohn³⁸ mentioned a legal device to curb business used in some European countries such as Austria, Czechoslovakia, France and Poland. It was declared incompatible to be a deputy in parliament and, at the same time, to hold an official position in business. The combination had provided business with a direct representation in the legislature so that it needed no lobbyists and parliament had become an assembly of interest groups.³⁸

The most comprehensive legislation in regard to business and labor contributions has been enacted in the United States. The first federal law, the Tillman Act,³⁹ was passed in 1907. It prohibited contributions by national banks and corporations in elections of federal officers. These prohibitions were later included in the Federal Corrupt

Practices Act of 1925.⁴⁰ The regulation was extended to labor unions for a limited time by the War Labor Disputes (Smith-Connally) Act in 1943⁴¹ and made permanent in 1947 by the Labor-Management Relations (Taft-Hartley) Act.⁴² The present legal provisions on labor and business money in politics are found in 15 U.S. Code 79 (1)(h); 1964(=Public Utility Holding Companies); 18 U.S. Code 610, 611; 1964(=National Banks, Corporations, and Labor Organizations). Regulation in the states has followed the federal example. In 1966, thirty-three states had some kind of prohibition of contributions by corporations, but only five by labor unions.⁴³ The reason for preventing political contributions by business and labor was said to be the protection of minorities within the corporations and unions. There might be shareholders or union members who do not want to see their money go to party X but would prefer party Y or no party at all. The actual reason, however, especially in the case of labor unions, was the power which these groups can mobilize by means of their financial resources.⁴⁴ Large amounts of labor money had been contributed to influence politics, beginning with the presidential elections in 1936 when \$770,000 were given to the Democratic side.⁴⁵

Justification and practicability of the ban against business and labor contributions are heavily disputed. Some want to see the rigid prohibition removed from both business and labor; others only from labor, and still others support a tightening of the present regulations. A different treatment of labor and business would be justified, if these two economic groups were genuinely distinct as far as money in politics

is concerned. Supporters of the differentiation argument bring forward several points: (1) a labor union is an organized group with a broad range of traditionally political and economic activities, while a corporation has only the narrow economic goal of making a profit;⁴⁶ (2) if unions and corporations were treated equally, the latter would have an advantage as they enjoy a "political head start" by their domination of mass information media;⁴⁷ (3) as far as minority rights are concerned, their protection is better guaranteed in labor unions than in corporations;⁴⁸ and (4) it is easier for a stockholder to leave a corporation than for a union member to change his organization.⁴⁹

None of these arguments is sufficient for a differentiation between unions and corporations. If minority rights are not as well as protected in corporations as in unions, a law could be enacted guaranteeing a stronger voice to shareholders in the decision over political contributions, maybe according to the per head rather than the per share principle. That corporations have a head start over unions is questionable, because unions generally have parallel goals, while corporations in different economic branches compete with each other and may often have opposite views. The first argument brought forward by the supporters of a differentiation is the weakest one of all. Not the more or less wide range of union or corporate activities in general is important, but the narrow goal of both groups as far as financial contributions for political purposes is concerned: to gain economic privileges by influencing the political process. In this respect both interconnect their economic power with their political interest and are alike.⁵⁰ A

different treatment of political contributions by labor unions and business corporations, therefore, is not justified.

This answer still leaves open the second question, whether labor and business contributions should be banned or not. This question falls into a theoretical part, if such a prohibition is constitutional and democratic, and a practical part, if such a prohibition can be enforced. Political contributions by corporations have been prohibited for sixty years, by labor unions for more than twenty years, but the U. S. Supreme Court has always avoided the constitutional problem involved by a broad interpretation of the law.⁵¹ The constitutionality of sec. 610 of Title 18 of the U. S. Code is questionable with special regard to the right of free speech guaranteed in the First Amendment of the U. S. Constitution. There is no serious attempt to deny this right to corporations or labor unions,⁵² but the limits of the right are not certain. Freedom of speech in modern society is meaningful only if accompanied by the use of mass communication media. As these are expensive, the right of free speech must also imply the right to spend money for it. The expenditure of money as such, therefore, is no criterion for defining the limits of the freedom of speech. On the other hand, the right of free speech is to guarantee the expression and dissemination of opinion. This definitely means the right to make one's own opinion known, but not necessarily to give financial support to others so that they can make their opinion known. Therefore, expenditures made by corporations or labor unions to express their opinions are protected by the First Amendment, but not financial contributions made to political parties or

candidates.⁵³ This interpretation remains doubtful, however, as it can be argued that an opinion is either protected by the Constitution or not, and, if so, that it is irrelevant who enables its dissemination financially.

As often with problems of this kind where complex interests and powerful groups are involved, the answer cannot be found by a mere theoretical examination. Even if the above distinction were recognized, it would immediately create new questions. Would a union or corporation be allowed to express its own opinion in such a way as to support a particular party or candidate? As to the effect, there is hardly any difference whether a party or a candidate receives money so that they can express their opinions themselves or whether their opinion is expressed by others. The U. S. Congress enacted a very far-reaching prohibition of business and labor money in politics by using in sec. 610 such wide terms as "expenditures and contributions" and "in connection with." Lambert⁵⁴ goes so far as to declare the provision unconstitutional because of its vagueness. In its practical application the provision, as similar regulations in other countries, has been less harmful to corporations and labor unions. The degree of enforcement of a law often reflects the general opinion about its justification. Therefore, the effect of the regulations concerning business and labor contributions and expenditures must be examined next.

The majority of observers agree that sec. 610 has not limited political contributions by corporations and labor unions, but only changed the practices by which the money is channeled into the political process.

A careful analysis by the Office of the U. S. Attorney General revealed that between 1950 and 1956 out of 54 complaints received concerning sec. 610, 49 were investigated and 14 presented to a grand jury; for two an indictment was obtained and one actually brought to trial, but later acquitted.⁵⁵ Lambert,⁵⁶ in 1962, reported that no corporation has ever been successfully indicted under the provision in almost sixty years. The main reason is that the law, despite its sweeping prohibitions, has loopholes which are diligently used by the groups concerned. Corporations evade the law by giving extra high salaries or special bonuses to their executives with the expectation that these make political contributions. They furnish services "in kind," such as office equipment and staff, mailing lists, and the assistance of public relation firms or lawyers.⁵⁷ While these practices probably are in violation of sec. 610, this is less true for another type of support, the so-called educational activities, such as institutional advertising on political issues.⁵⁸

The American labor unions have tried to escape the legal ban by establishing so-called independent committees. As early as 1943, the year of the Smith-Connally Act,⁵⁹ the CIO set up a Political Action Committee (PAC).⁶⁰ The AFL followed in 1947 with a Labor's League for Political Education.⁶¹ With the merger of AFL and CIO, a joint Committee on Political Education (COPE) was founded in 1955.⁶² The courts have upheld the claim of these groups that they are independent of their unions and promoters of educational, not political, activities, and therefore are neither "labor organizations" nor make "contributions" to political parties and candidates within the meaning of sec. 610.⁶³

Business uses a similar device in the form of the National Association of Manufacturers, the Chamber of Commerce, the Business-Industry Political Action Committee (BIPAC), or the American Medical Association Political Activities Committee (AMPAC).⁶⁴ The classification of expenditures of these groups as "educational" leaves labor and business a possibility to use funds for political purposes. Difficult as the distinction between educational and political expenditures may be, the courts have agreed to it, probably because of the rigidity of the law and the serious conflicts with First Amendment rights which otherwise would arise.⁶⁵ In practice, the line has been drawn in such a way that activities, which are primarily directed at the members of the organization, are regarded as "educational," while those activities which are primarily directed at non-members are regarded as "political." It does not matter whether the action, when it is primarily directed at one group, accidentally reaches the other.⁶⁶ Another method which might be used in addition defines issue-oriented propaganda as "educational" and candidate- or party-oriented propaganda as "political." COPE has two funds, an educational and a political one. Only the first is made up of regular union fees; the second consists of small voluntary contributions by union members. Candidates or parties are supported only from this latter fund. There have been observed, however, some peculiar methods of collecting "voluntary" contributions. Two unions developed the practice, which was upheld by a U. S. District Court in Missouri, of asking their members if they wanted to contribute part of their regular dues to a political fund. Most of them did because no extra burden was

involved.⁶⁹ How difficult it is to decide which activities are educational and which political was demonstrated by a controversy between COPE Co-Director James L. McDevitt and Senator Goldwater (Arizona) about the publication of candidates' voting records.⁷⁰ Though many observers are critical of the value of the distinction and some consider it meaningless, under the present legislation it seems to be the only way to prevent serious constitutional problems and to fulfill the practical need for a flow of money from these two most powerful financial sources into the political process.

As long as large contributions play such an important role in financing the activities of political parties, the prohibition of political contributions by business and labor will be circumvented by those who need the money and by those who have it. Stricter enforcement of the present restrictive legislation, as recommended by the President's Commission and others,⁷¹ cannot be demanded and will not be effective before the parties have changed their financial basis. Doubts about the rigid prohibitions were expressed by Louise Overacker⁷² as early as 1946. With regard to the present practices and needs, a more realistic regulation would have to allow political contributions by labor unions and corporations;⁷³ whether under some restrictions will be discussed later.⁷⁴

A unique feature of the regulation of political finances is the restriction imposed on individual contributions in the United States. The Hatch Political Activities Acts of 1939⁷⁵ and of 1940⁷⁶ have limited the annual political contribution by an individual to an aggregate amount of not more than \$5,000 to or in behalf of any one federal candidate or

political committee.⁷⁷ Similar restrictions with limitations between \$1,000 and \$5,000 exist on the state level, but in 1966 only in seven states.⁷⁸ As with business and labor contributions, constitutional and practical questions arise. The constitutional problem is basically the same in both cases, with the difference that the limits on individual contributions seem large enough as to be undue restrictions, especially when viewed from the point of equal chances for each voter.⁷⁹ The regulation has not achieved, however (if this was ever intended by the makers of the Hatch Act),⁸⁰ to force individuals to contribute not more than \$5,000 a year to one candidate. The law does not prevent an individual from contributing the maximum amount to different committees even if they support the same candidate, or to have the family contribute money which comes out of his pocket.⁸¹ The more effective limit of the size of each individual political contribution is determined by the federal gift tax at \$3,000 a year.⁸² A table made up by Heard⁸³ clearly shows a clustering of large individual contributions at \$3,000. Political committees may feel less dependent on single givers because they cannot expect more than the legal maximum amount from them,⁸⁴ but candidates know very well who the big contributors are and that these are able to give more than the fixed amount to a candidate's campaign. In this respect, the Hatch Act has offered no improvement.

Limitations on contributions have not been successful, on the whole, if their purpose is to restrict some sources of political financing completely and others to certain maximum amounts. Though it is true that the legal provisions have "loopholes," it is doubtful whether the

situation would be different under stricter regulations. Reduction of large contributions must be accompanied by a simultaneous improvement of other sources of political financing, otherwise it will be a failure.

Expenditures

Limitations of expenditures are of two kinds. Candidates or parties can be restricted either by a fixed maximum amount of money which they are allowed to spend or by detailed regulations as to the purpose for which the funds can be used.

In Great Britain, legal limitations on total expenditures have existed since the enactment of the Corrupt and Illegal Practices Act of 1883. At present, the Representation of the People Act of 1918/49⁸⁵ restricts a candidate in an urban district to £450 and an additional 1.5 pennies per registered voter, 2 pennies in a rural district.⁸⁶ Furthermore, the candidate is limited to certain kinds of expenditures.⁸⁷ There are no restrictions on parties, however. A similar regulation exists in Australia.⁸⁸ Legal limits on amounts of campaign spending have also been introduced in Japan.⁸⁹ The sum was determined by dividing the number of registered voters by the number of representatives and by multiplying the result by about 1 cent (4 yen),⁹⁰ but is now fixed for all candidates at a flat \$2,800 (1 million yen).⁹¹ In addition, the candidates are restricted in their propaganda. Door-to-door canvassing of voters, gifts of food, drink or money, campaign parades and demonstrations are prohibited, and the candidates may give no more than sixty campaign speeches.⁹² In Israel, the Elections (Modes of Propaganda) Law of 1959 has imposed restrictions on the size of posters, entertainment

programs, exhibition of films, etc.⁹³ After high expenditures in the Italian elections of 1953, campaigns were shortened to six weeks before election day and posters limited in their size, number and location.⁹⁴ The Turkish Election of National Deputies Act of 1950 allows campaign posters during election periods only in designated places, with equal space allotted to parties and independent candidates (Art. 53). No posters or pamphlets may be distributed within two days before election day (Art. 56).⁹⁵ Detailed provisions as to posters and pamphlets exist in France. Each candidate is allowed two posters to proclaim his program, two other posters to announce his campaign rallies, one pamphlet may be sent out to each voter, and a number of ballots up to two times the number of registered voters plus 20 percent may also be sent out.⁹⁶ The size is prescribed and the law even prohibits the candidates to use white posters or posters with the colors of the national flag for distinction from government announcements.⁹⁷

In the United States, the legal emphasis lies more on fixing a maximum amount of expenditures than on restricting the purpose for which the money can be used. The first regulation was enacted by California and Missouri in 1893;⁹⁸ the first federal law dates back to 1911.⁹⁹ In 1966, thirty states had some limitations on expenditures. In twenty-one states, the limitations were imposed only on candidates but not on committees supporting them, which made the limits practically meaningless. Restrictions on the purpose of political expenditures existed in twenty-nine states.¹⁰⁰ Regulations of the latter kind are not contained in the federal law, but it limits candidates for the U. S. House of Representatives

to a maximum expenditure of \$5,000, candidates for the U. S. Senate to \$25,000,¹⁰¹ and political committees operating in more than one state to \$3 million.¹⁰²

Practical experience with the legal restrictions on expenditures has been different in the various countries. Observers of the British system have come to opposite conclusions. Louise Overacker,¹⁰³ in the early 1930's, called the program effective and reported that expenditures had been cut down as a result of the strict accountability of the candidates, but at the same time she pointed out the weakness of the law as it did not cover the parties. A sharp deduction of campaign costs was also observed by Harrison¹⁰⁴ in 1963, and Lucas¹⁰⁵ wrote in the mid-1950's that the system worked. On the other hand, Newman,¹⁰⁶ after a careful analysis in Great Britain, gave a very critical summary in 1957. Reported amounts of expenditures included only a small fraction of the actual expenditures because of the weakness of the law--compulsory reporting starts only a few weeks before election day--and its half-hearted enforcement. The last conviction took place in 1928, the last protest was filed in 1924; since then "gentlemen's agreements" have set the standards rather than official interpretation. A wide gap between legally allowable and actual expenditures exists in Japan.¹⁰⁷ A legislator estimated the money needed to be five or six times more than the legal limit.¹⁰⁸ "Ordinary" candidates, in 1960, spent \$14,000 (5 million yen), "top" candidates \$28,000 and \$56,000 (10 and 20 million yen).¹⁰⁹ The restriction of expenditures for certain purposes in Israel has led the parties only to spend huge sums in other ways, as the size of the

parties' election budgets indicates.¹¹⁰ Election expenditures in France, despite the detailed regulations mentioned above, escape any practical control.¹¹¹

Ceilings on expenditures imposed on candidates and political committees in the United States have never been an effective means, according to almost unanimous opinion of the experts, scientists as well as politicians. If ceilings are not thought to be worthless in general, the blame is usually put on the inadequate size of the limits which, fixed at a particular time, does not take into account the development of new campaign techniques and the rising cost of living.¹¹² While some states tried to adjust their regulations to the actual needs by raising the ceilings from time to time or by dropping them completely,¹¹³ no changes have been made in the federal law. The unrealistic and rigid limitations, as they are sometimes called, have led to a broad interpretation of the law and to a variety of practices which make the limits almost meaningless. Two major reasons are responsible for this situation. The maximum limitations are imposed on political committees, not on political parties,¹¹⁴ and not all political committees are covered.¹¹⁵ Furthermore, coverage of primary elections is rather incomplete.¹¹⁶ Since only political committees are restricted to the maximum amount of expenditures and not parties, as many political committees can be set up as the party desires, and each of them can spend up to the maximum amount of \$3 million. This has led to an increase in the number of committees, though the "proliferation" was not too great.¹¹⁷ Probably the reason simply is that the ceiling of \$3 million is not so easily reached

that a splitting up into subcommittees has often been necessary. Not the actual number of committees is important, however, but the fact that an additional committee can be created whenever the existing ones reach the legal ceiling. Furthermore, the federal law does not cover all committees supporting federal candidates, but only those committees and their subsidiaries which operate in two or more states. All state and local committees of a national party are excluded whether they support a federal candidate or not; branches of national committees are subject to the federal law, however. State and local committees may be subject to state laws, but these are often rather inefficient. Another weak point of the federal law is that it does not cover candidates for the office of president or vice-president, because not they but only their electors are legally candidates. Committees in their behalf are covered, however, but only after the nomination.¹¹⁸

This survey of several countries shows that, if special activities are limited or prohibited, the money is spent as effectively in other ways; and that, if ceilings are imposed, they are circumvented when they are too low, and meaningless when they are too high. No better results can be expected from voluntary actions of the parties themselves. The major parties in Germany, where no legal restrictions on expenditures exist, set up an agreement on the matter for the 1965 election campaign, but the limits were so high that they were hardly a restriction.¹¹⁹ On the whole, attempts to limit political expenditures have been as unsuccessful as those to restrict political contributions.

Reforms

Ceilings on political contributions and expenditures have frequently been debated in the U. S. Congress for the last decades. Several bills were introduced almost every year, especially in the Senate, committee hearings held, and reports made, but the bills rarely received floor action. Only in 1961 did the Senate pass a bill, but it died in the House. In general, the reform proposals suggested to raise the present ceilings, up to about \$50,000 for a candidate for the U. S. Senate, up to about \$12,500 or \$25,000 for a candidate for the U. S. House of Representatives, or to a considerably higher amount to be based on the number of votes received in the previous election, on the number of registered voters, or on the population and by multiplying the number by ten or twenty cents. Expenditures of national committees were also to be raised, from the present \$3 million to some \$10 or \$15 million.¹²⁰

While most legislators would like to retain limitations in principle and only raise the ceilings, the majority of political scientists are more inclined to abolish ceilings altogether.¹²¹ Several arguments are brought forward for the latter suggestion of which the most frequent and probably best one is that limitations cannot be enforced; furthermore, that the size of political contributions, if left alone, is a good indicator for the popular support of the party,¹²² that there is no fair way to determine the limits,¹²³ and that the ceilings would have to be revised continuously in order to remain adequate.¹²⁴ In the last years, reform proposals have begun to differentiate. The Florida law of 1951 abolished limits on expenditures but retained limits of \$1,000 per

year on individual contributions and prohibited contributions from some sources, such as horse and dog race enterprises, liquor business, and certain public utilities.¹²⁵ In 1962, Massachusetts followed suit and removed restrictions on expenditures, but not on contributions.¹²⁶ After the President's Commission,¹²⁷ in 1962, had reported that the "imposition of 'realistic ceilings' would only create a false impression of limitations," President Kennedy¹²⁸ suggested the removal of limitations upon receipts and expenditures. President Johnson's "Election Reform Act of 1966,"¹²⁹ however, would repeal only the ceilings on expenditures, but retain and improve those on contributions. Those who suggest that ceilings should be abolished, in part or as a whole, prefer a better system of reporting and publicizing political financing instead. The final consideration of the problem of legal ceilings on political contributions and expenditures, therefore, must be postponed until the system of public disclosure has been discussed.¹³⁰

Experience with restricting the purposes for which the money can be spent in France, Israel and Japan shows that candidates and parties comply with the law, but find sufficient other ways to spend large amounts of money.¹³¹ It is doubtful whether an extension of the list containing the restricted activities would improve the situation because the ways to spend the money for propaganda are too numerous. Furthermore, the tightening could force parties and candidates to evade the law, if they are too limited in their activities, as they do with ceilings which are too low. The same would probably be true if a positive list were made up which would allow the parties and candidates to use only certain

kinds of propaganda; such a plan would also prevent innovations in propaganda techniques.

Two other devices--shorter campaign periods and compulsory registration and voting--have been included in reform suggestions, but are not promising. Short campaign periods would handicap the newcomer and give additional advantage to the incumbent candidate who could start his propaganda before the beginning of the campaign under the disguise of his public position.¹³² A Florida experiment to shorten the campaign period revealed that the candidates only spent their money faster.¹³³ Compulsory registration and voting have saved the parties in Australia considerable costs, as they do not have to invest money for getting voters to the polls.¹³⁴ The problem, however, is that in many countries democratic tradition stands in the way of making the vote compulsory. In the United States, a simplification of registration procedures would already lower the costs for the parties.¹³⁵

The preceding discussion shows that a remedy for the problem of political financing cannot be found in legal restrictions, at least not alone.

Disclosure

The restriction of political parties and candidates to maximum sums which they can receive or spend and to certain purposes for which they can use their funds has not been the only attempt to regulate political financing. Another legal device is the public disclosure of financial transactions in which parties and candidates engage. The underlying philosophy of this approach is the idea that the publication of political

contributions and expenditures has a "cleansing and policing power"¹³⁶ which is even more effective than the imposition of ceilings. Effective publicity is regarded as a kind of automatic regulation which assures financial accountability and public confidence by increasing the political risk for sinister actions.¹³⁷ This belief and the unsatisfactory experience with limitations imposed on political contributions and expenditures have convinced observers, especially in the United States, that a system of public disclosure is superior to one of maximum ceilings. Therefore, they would like to see limitations repealed and substituted by effective publicity provisions.¹³⁸ Opponents point out that the public is too apathetic to be a realistic check and demand at least some additional limitations in the form of maximum amounts.¹³⁹

Experience in the United States

In the United States, federal regulations requiring publicity of political finance have existed for more than half a century, in the states since the end of the nineteenth century. The first national publicity law was passed in 1910.¹⁴⁰ The provisions were included in the Federal Corrupt Practices Act of 1925, after some amendments had been enacted in the preceding decade.¹⁴¹ The first state publicity law was enacted in 1890 by New York.¹⁴² In 1966, all but seven states required some disclosure of political funds.¹⁴³ Much more than in other countries with legal restrictions on political finance, compulsory publicity has been a major feature of the American attempt to promote fairness in the realm of political contributions and expenditures. Though the system has provided the American public with more information about political

finance than is available anywhere else,¹⁴⁴ it has not fulfilled the expectations of its promoters.¹⁴⁵ This is due to several deficiencies in the law. Despite some kind of legal regulation in forty-three states, this does not mean that all of these states require disclosure of contributions and expenditures from candidates and committees in primary and general elections, before and after election day. In 1966, all of these requirements existed in only ten states.¹⁴⁶

The federal law, as it is laid down, seems to be rather effective. Reports must be submitted under oath by political committees, candidates, and individuals, and are open to public inspection. In detail, political committees must have a treasurer who keeps a record of all receipts and expenditures which shows totals and also gives details as to name, address, and date, if a contribution is \$100 or more and an expenditure of \$10 or more. A report must be submitted to the Clerk of the U. S. House of Representatives every three months and a copy retained for two years. The January report must contain the totals for the previous calendar year. Additional reports are required between the fifteenth and tenth day and on the fifth day before an election.¹⁴⁷ Candidates for the U. S. Congress have to submit reports between the fifteenth and tenth day before and within thirty days after an election. The reports must state each contribution received and each expenditure made by the candidate or by other persons for him with his knowledge or consent.¹⁴⁸ Individuals making direct expenditures, i.e. not to a political committee, of \$50 or more in a calendar year in order to influence elections in two or more states must also file a report.¹⁴⁹ The deficiencies

of the law become more apparent when not only its positive requirements are presented, but also what it does not cover sufficiently. Like the provisions limiting contributions and expenditures, the regulations of publicity do not extend to candidates for president or vice-president, to committees operating in one state only--with the exception of branches of national committees--or to primary elections.¹⁵⁰

The most important inadequacy, however, is the failure of the law to assure genuine publicity of the reported information. In general, the required reports are submitted, but the receiving agencies do not have to do more than to preserve them for two years and to keep them open to the public.¹⁵¹ They have no power to check and reprimand insufficiencies. Interested people may look into the submitted statements, but this is inconvenient and useful results cannot be obtained without great effort. Access to the places where the reports are kept is allowed only during working hours, and data collection is made difficult.¹⁵² Even Senate committees must sometimes get special permission for photocopying from the Speaker of the House.¹⁵³ Information is often incomplete and unintelligible; above all, no standard form for the reports is required so that the statements are hardly comparable.¹⁵⁴

To improve the present system in the United States, not many changes are necessary, because most states have some basic provisions. A survey in 1952 showed that information was most valuable in those states which required reports of expenditures and contributions from candidates and committees, in primary and general elections, on a standard form under some government inspection and with a central depository.¹⁵⁵

Most reform proposals for the federal law include primary elections, presidential and vice-presidential candidates, and all committees supporting federal candidates. They also suggest a standard reporting form and a central federal repository which receives the reports and checks them as to their completeness.¹⁵⁶

Publication

At present, two states publish the reported information in official state summaries.¹⁵⁷ Oregon distributes a summary of 40 to 80 pages which contains a compilation of contributions and expenditures for each candidate and committee, for the primary, and the general election. Massachusetts prints data concerning primary and general election finance in a public document. Information is less detailed than in Oregon, but lists total amounts. Such a government publication seems to be necessary only as a basis for further evaluation by the press, because the mass media are better apt to reach the citizen.¹⁵⁸ Standardized party reports would probably be sufficient, however. At present, one of the most valuable sources of information is the hearings and reports made by Congressional committees. In Great Britain, the returning officer in each constituency has to publish a summary of the reports which are submitted to him, in at least two newspapers.¹⁵⁹ Pollock¹⁶⁰ observed that the public did not take great notice of the publication, but that it still put pressure on the candidates. The Home Office publishes financial accounts of candidates for Parliament in a paper called "Return of Election Expenses."¹⁶¹

Instead of having such summaries prepared by the government, they could be required from the political parties on an annual basis. In Kansas, accounts of state committees are audited annually by a certified public accountant and copies must be filed with the Secretary of State.¹⁶² The draft of a German party law of 1959¹⁶³ similarly requires each party to submit an annual account to the superintendent of federal elections after it has been audited by a certified public accountant (sec. 22). The superintendent has to publish the account and the remark of the public accountant in the bulletin of the federal government (sec. 22, 28). In sec. 23 through 26 the draft gives details as to the contents of the accounts and the way in which the parties must preserve and present the relevant data.

Situation in Germany and Japan

At present, the German parties are not required to disclose their finances. According to Art. 21, sec. 1, subsec. 4 of the Basic Law of 1949, political parties "must publicly account for the sources of their funds," but in sec. 3 of the same article it says that "details will be regulated by federal legislation." The general opinion is that without a comprehensive party law the provision about public accountability is isolated and cannot meaningfully be enforced.¹⁶⁴ On a voluntary basis, the Social Democratic party publishes annual reports of its financial situation.¹⁶⁵ In Japan, the "Political Fund Registration Law" requires the political parties to report contributions and expenditures. The reports understate the amounts, however, and do not reflect the accurate picture. Factions within the Conservative party have set up

organizations with innocuous titles for the purpose of collecting additional political funds.¹⁶⁶

Financial Agent

Publicity of political contributions and expenditures is meaningful only if completeness is assured. All money spent for political purposes must be reported. Statements filed by candidates and political committees would not reflect a complete picture, if other persons made additional direct expenditures on behalf of a candidate or a party. A device to concentrate responsibility of political finance in a few hands was first introduced by the British law in the form of the fiscal agent. Persons who want to support the election campaign of a candidate must give their aid to the candidate or his agent; they are not allowed to spend it directly.¹⁶⁷ The candidate may name himself as his agent, but then is subject to stricter regulations.¹⁶⁸ The principle has been adopted by several American states, such as Florida, Massachusetts, New Hampshire, and New Jersey.¹⁶⁹ A survey of political scientists and former U. S. Senators, taken by the McClellan Senate committee¹⁷⁰ in 1956, showed that a large majority were in favor of the agent system. Proposals to concentrate financial activities of political committees in the person of one treasurer have appeared in several Congressional bills, such as S.604 introduced by Senator Long of Missouri in 1961,¹⁷¹ S.1623 by Senator Gore of Tennessee in 1961,¹⁷² President Johnson's "Election Reform Act 1966,"¹⁷³ and S.2541, sec. 201(a),¹⁷⁴ the only bill which received a committee hearing in the Senate in 1966. The American "model" law in regard to the agent principle is the Florida law of 1951.¹⁷⁵ Each

candidate must appoint a campaign treasurer and designate a campaign depository in order to qualify.¹⁷⁶ All money and things of value contributed to or expended on behalf of the candidate must go through the hands of the treasurer.¹⁷⁷ Last-minute and post-election contributions are prohibited as well as campaign indebtedness.¹⁷⁸ Reports must be filed before and after election day.¹⁷⁹ Up to 1962 more than 95 percent of the total contributions and expenditures in each campaign were reported prior to election day.¹⁸⁰

Constitutional Problems

Statutes which prohibit expenditures on behalf of a candidate, unless authorized by the candidate or his campaign treasurer, have met with opposition or at least doubts on constitutional grounds.¹⁸¹ In 1916 the Supreme Court of Wisconsin¹⁸² declared a similar provision unconstitutional as violating the right of free speech. The Florida Supreme Court¹⁸³ in 1953 upheld the agent provision of the 1951 law as a constitutional exercise of the police power of the state. To avoid the constitutional difficulties and not to curb interested persons from political participation, suggestions have been made to allow political committees which are not authorized by a candidate to support his campaign under the express statement of this fact¹⁸⁴ and to subject them to a maximum amount of expenditures.¹⁸⁵ The express statement is to protect the candidate, whose reputation and interest are at stake, from unwelcome supporters.¹⁸⁶ Another proposal is to oblige the treasurer to accept any aid, if it comes from a legally permitted source.¹⁸⁷ An alternative to the authorization system is a plan under which political committees can

be formed and act freely with the sole requirement of registering with a government official before they start their activities.¹⁸⁸ The obligation to register may be limited to groups which expect to raise and spend a certain minimum amount of money per year or per election campaign.¹⁸⁹ The registration system would avoid conflict with constitutional rights and insure complete freedom of political activity. To protect the candidates, the registered groups could be required to state whether they have his consent.

The constitutionality of publicity laws is also questioned in the wider sense that disclosure of the names of contributors is an invasion of privacy and the secrecy of the ballot. In 1950, a special committee of the Norwegian Storting came to the latter conclusion, since it was generally assumed that the contributor to a party is also its voter.¹⁹⁰ The Federal Government of Germany, in the draft of the party law of 1959,¹⁹¹ suggested a disclosure of contributions according to general categories but not according to the names of the individual contributors (sec. 23). The government, giving the reasons, left open the question whether the disclosure of individual contributions violated the secrecy of the ballot and based its argument, instead, on Art. 5 of the Basic Law. This provision guarantees the freedom of expression which includes the freedom of holding back one's opinion. The freedom of expression is "limited by the provisions of the general laws" (Art. 5, sec. 2). A law requiring the publicity of the names of individual political contributors is not such a general law, according to the Federal Government.¹⁹² The U. S. Supreme Court has not yet been confronted with the problem.

The secrecy of the ballot is no argument against disclosure of contributors' names, because this device covers up only the political conviction of the voter, while it is assured that each of the persons acting under the protection exercises the same influence--one man, one vote. The secrecy of political contributions, however, would cover up quite different potential powers and help to transfer the financial inequality from the economic into the political area, thus distorting the--at least assumed--equality of all citizens as to political rights. All citizens have only one vote to cast, but not all have the same amount of money to throw into the political process. Contributions can be kept secret only if financial equality is guaranteed in the political field, as, e.g., the tax assignment plan¹⁹³ tries to do. The secrecy of political contributions, therefore, is not comparable to the secrecy of the ballot.

As to the constitutional right of free expression, the problem can only be solved by balancing the individual's right to keep his political opinion to himself and the interest of society to know the persons who influence politics by money. By way of a compromise, contributors could be required to disclose their names if they spend an aggregate sum of a certain minimum amount per year or per election campaign.¹⁹⁴ The inconveniences for contributors from publicity requirements should not be minimized. Heard¹⁹⁵ reported of "harassment by the press and exploitation by the opposition"; twenty percent of the contributions of \$100 or more were made under false names, because the givers feared reprisals.¹⁹⁶ On the other hand, it should not be forgotten that everyone who expresses

a political opinion has to face public criticism. In a way, a financial contribution can be regarded as the expression of a political opinion, as it is an attempt to influence the political course.

Usefulness of Disclosure

In addition to these problems, some practical questions as to the usefulness of public disclosure have been raised. The idea of public disclosure is that publicity leaves the final judgment on candidates and their financial support to the voters where it belongs.¹⁹⁷ It is doubtful, however, whether the public can exercise an actual check. Despite the new law in Florida which is thought to belong to the best of its kind, campaign expenditures and large contributions have risen in the state continuously, and the candidate with the highest expenditures has generally been successful.¹⁹⁸ Large expenditures may, in the eyes of the public, reflect better fund-raising ability and greater popularity of the candidate, and not necessarily irregularities or unfair head start of wealth.¹⁹⁹ Publicity laws bring, at best, contributions and expenditures to the daylight, but are hardly an effective means of cutting down the size of contributions and expenditures. In order to promote the desired effort of political parties to increase the number of small contributions, a public disclosure law should be combined with ceilings on contributions and expenditures.

Enforcement

Enforcement of the laws regulating political finance has been weak in almost every country. The unsuccessful attempts to restrict the

influence of money and big givers in such countries as Israel, Japan or the Philippines have already been discussed.²⁰⁰ Enforcement in Great Britain seems to be efficient, in general, though some doubts have been expressed.²⁰¹

In the United States, the enforcement machinery is regarded unanimously as the weakest part of the regulation of political finance. Only about one-third of the states require an official inspection of the received statements or a report of violations to the prosecuting official.²⁰² But even these provisions do not often lead to legal actions against offenders because of difficulties in finding evidence and showing willful violations of the law.²⁰³ On the federal level, the situation is not better. Enforcement is practically non-existent, because the agencies receiving the reports are not charged with any other task than to preserve them for two years.²⁰⁴ No other public office has to check the statements and report violations. The Justice Department has never prosecuted anyone for not complying with the Federal Corrupt Practices Act, though violations were revealed by the Press.²⁰⁵ The Attorney General is reluctant to enforce this inadequate law.²⁰⁶ The policy of the Justice Department is to wait for reports of violations by the receiving agencies, the Clerk of the U. S. House and the Secretary of the U. S. Senate, but these have never submitted such information.²⁰⁷ Congress itself has taken action twice, in 1927-28, against two elected Senators who were refused their seats because of excessive spending in their campaigns.²⁰⁸

In the absence of effective public enforcement, action depends mainly on the initiative of rival candidates or committees, and

citizens.²⁰⁹ Court action against corrupt practices can be demanded by a group of five private citizens in Massachusetts,²¹⁰ but since the enactment of the provision in 1946, no case has come up.²¹¹ No private citizen can be expected to spend his time and money on such an intricate matter as the control of political finances. Candidates and committees are rarely interested in a prosecution, either because their own record is not perfectly clean or because they do not want to be a "bad loser."²¹²

In general, clear violations of the law are rare, since provisions are wide enough to stay within the letter of the statute.²¹³ The present attitude which does not show much respect for the laws of political finance and regards violations as trivial offenses is mainly due to the wide interpretation of the statutes and the little attention given to them by the law-enforcing officials.²¹⁴ From experience in Oregon²¹⁵ and Maine,²¹⁶ where an adequate law with sufficient penalties has been carefully enforced, it becomes evident that satisfactory reports can be obtained. What seems necessary, above all, is to fix the responsibility for enforcing the statute on definite agencies which check, report, and prosecute violations. Without proper enforcement which guarantees prompt and certain punishment of violators, even the best law is meaningless. Basis for an efficient enforcement, on the other hand, is only a law with realistic restrictions.

FOOTNOTES

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⁴Ike, Japanese Politics, pp. 200-201; Scalapino and Masumi, Parties and Politics in Contemporary Japan, pp. 88-89, 102-103.

⁵Wurfel, "The Philippines," Comparative Studies in Political Finance, pp. 762-764.

⁶Charnay, Le Suffrage Politique en France, pp. 507-528.

⁷Ibid., pp. 578-579.

⁸Heard, The Costs of Democracy, pp. 17-18.

⁹Gutmann, "Israel," Comparative Studies in Political Finance, p. 716.

¹⁰Passigli, "Italy," Comparative Studies in Political Finance, p. 735.

¹¹Roady, "Ten Years of Florida's 'Who Gave It--Who Got It' Law," p. 435.

¹²Pollock, Money and Politics Abroad, pp. 116-117.

¹³Richard L. Neuberger, "Federal Funds for Party Cooffers," The Christian Century, LXXIII (January 25, 1956), 106.

¹⁴Levin, The Compleat Politician, pp. 238-239.

¹⁵Heard, op. cit., pp. 69-72.

¹⁶Overacker, Money in Elections, p. 18.

¹⁷Ibid., pp. 5-18.

¹⁸46, 47 Vict., c. 51.

¹⁹16 Stat. 140.

²⁰28 Stat. 36.

²¹Reichsgesetzblatt, p. 127; Bundesgesetzblatt I, p. 1083.

²²Heard, op. cit., p. 85.

²³Cf. ante, pp. 13-14.

²⁴14 Stat. 430.

²⁵22 Stat. 403.

²⁶Present Regulation in 5 U. S. Code 118k, 118o, 633; 18 U. S. Code 602, 603, 607; 1964.

²⁷Alexander and Denny, op. cit., p. 5; Jo Desha Lucas, "The Strength of Ten: Three Quarters of a Century of Purity in Election Finance," 51 Northwestern Univ. Law Review (January-February, 1957), pp. 676-677.

²⁸Alexander and Denny, ibid., p. 13.

²⁹Cf. ante, pp. 13-14.

³⁰16.607 Laws of Puerto Rico Ann., 1959 Supp.

³¹Wurfel, op. cit., p. 764.

³²Soukup, "Japan," Comparative Studies in Political Finance, pp. 751-752.

³³Newman, "Money and Election Laws in Britain--Guide for America?" p. 590.

³⁴Trade Unions Act, 1913 (2, 3 Geo. 5, c. 30, s. 5).

³⁵Trade Disputes and Trade Unions Act, 1927 (17, 18 Geo. 5, c. 22, s. 4); 1946 (9, 10 Geo. 6, c. 52).

³⁶Heidenheimer, "Comparative Party Finance," p. 803.

³⁷Lewinsohn, Das Geld in der Politik, pp. 97, 252; Pollock, op. cit., pp. 261, 318.

³⁸Lewinsohn, ibid., pp. 93, 97.

³⁹34 Stat. 864.

⁴⁰43 Stat. 1070.

⁴¹57 Stat. 163.

⁴²61 Stat. 136.

⁴³Alexander and Denny, op. cit., pp. 3, 13.

⁴⁴Heard, op. cit., p. 190; Martin Lobel, "Federal Control of Campaign Contributions," 51 Minn. Law Review (November, 1966), p. 34; Joseph Tanenhaus, "Organized Labor's Political Spending: The Law and Its Consequences," The Journal of Politics, XVI (August, 1954), 441.

⁴⁵Joseph E. Kallenbach, "The Taft-Hartley Act and Union Political Contributions and Expenditures," 33 Minn. Law Review (December, 1948), p. 2.

⁴⁶Jeremiah D. Lambert, "Corporate Political Spending and Campaign Finance," 40 New York Univ. Law Review (December, 1965), p. 1052.

⁴⁷Robert A. Bicks and Howard I. Friedman, "Regulation of Federal Election Finance: A Case of Misguided Morality," 28 New York Law Review (May, 1953), p. 993, n. 88.

⁴⁸Ibid.

⁴⁹Lambert, op. cit., p. 1051.

⁵⁰Tanenhaus, op. cit., pp. 467-468.

⁵¹Donald B. King, "Corporate Political Spending and the First Amendment," 23 Univ. of Pittsburgh Law Review (June, 1962), p. 847; Lambert, op. cit., pp. 1041-1049; Lobel, op. cit., pp. 34-35.

⁵²King, op. cit., pp. 854-855.

⁵³Kallenbach, op. cit., pp. 20-21; King, op. cit., p. 864; Neuberger, U. S. Congress, Senate, McClellan Committee, Hearings 1956-57, p. 1241.

⁵⁴Lambert, op. cit., p. 1063.

⁵⁵Warren Olney III, Asst. Attorney General, Criminal Division, Testimony, U. S. Congress, Senate, Gore Committee, Hearings 1956, p. 424; Statistical Report by Department of Justice, Criminal Division, U. S. Congress, ibid., Exhibit 27, p. 562.

⁵⁶Lambert, op. cit., p. 1041.

⁵⁷Heard, op. cit., pp. 133-134; Lambert, op. cit., p. 1039; Peirce, "Financing our Parties," p. 33.

⁵⁸Heard, op. cit., pp. 132-133; Lambert, loc. cit.

⁵⁹Cf. ante, p. 48.

⁶⁰Overacker, Presidential Campaign Funds, p. 57.

⁶¹Austin Ranney and Willmoore Kendall, Democracy and the American Party System (New York: Harcourt, Brace, and Co., 1956), p. 374.

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⁶³Ranney and Kendall, loc. cit.

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⁶⁵William Goodman, The Two-Party System in the United States (Princeton, N. J.: D. Van Nostrand Co., Third Edition, 1964), p. 556; Tanenhaus, op. cit., p. 470.

⁶⁶Lobel, op. cit., p. 35; Joseph L. Rauh, Jr., "Legality of Union Political Expenditures," 34 Southern California Law Review (Winter, 1961), p. 160.

⁶⁷Jack Kroll and James L. McDevitt, Co-Directors of COPE, Testimony, U. S. Congress, House, Special Committee to Investigate Campaign Expenditures, Hearings 1956, p. 62.

⁶⁸Ibid., p. 52.

⁶⁹Rauh, op. cit., p. 154.

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⁷¹Heard, op. cit., p. 469; U. S. President's Commission on Campaign Costs, Financing Presidential Campaigns, Report, p. 6.

⁷²Overacker, Presidential Campaign Funds, p. 69.

⁷³Goodman, loc. cit.; "Disclosure as a Legislative Device," Note, 76 Harvard Law Review (April, 1963), p. 1273.

⁷⁴Cf. post, pp. 73-74.

⁷⁵53 Stat. 1147.

⁷⁶54 Stat. 767.

⁷⁷Now 18 U. S. Code 608(a); 1964.

⁷⁸Alexander and Denny, op. cit., p. 12.

⁷⁹Lobel, op. cit., p. 24.

⁸⁰Heard, op. cit., pp. 347-348.

⁸¹Alexander and Denny, op. cit., p. 11; Heard, op. cit., p. 347; Charles Michelson, The Ghost Talks (New York: G. P. Putnam's Sons, 1944), p. 207; Richard L. Neuberger, "It Costs Too Much to Run for Office," The New York Times Magazine, April 11, 1948, p. 59; Overacker, Presidential Campaign Funds, pp. 33, 36; Pincus, "The Fight Over Money," pp. 71-72.

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⁸³Heard, op. cit., p. 349.

⁸⁴Ibid., p. 348.

⁸⁵7, 8 Geo. 5, c. 64; 12-14 Geo. 6, c. 68.

⁸⁶12-14 Geo. 6, c. 68, s. 64.

⁸⁷Ibid., s. 88.

⁸⁸Louise Overacker, The Australian Party System (New Haven: Yale University Press, 1952), pp. 282-283.

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⁹¹Charnay, op. cit., p. 581, n. 2.

⁹²Scalapino and Masumi, op. cit., p. 102.

⁹³Gutmann, op. cit., p. 708.

⁹⁴Passigli, op. cit., p. 723.

⁹⁵Helen Miller Davis, Constitutions, Electoral Laws, Treaties of the States in the Near and Middle East (Durham, N. C.: Duke University Press, Second Edition, 1953), pp. 478-479.

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⁹⁷Ibid., p. 520.

⁹⁸Heard, op. cit., p. 350.

- ⁹⁹37 Stat. 25.
- ¹⁰⁰Alexander and Denny, op. cit., pp. 11-12.
- ¹⁰¹2 U. S. Code 248; 1964.
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- ¹⁰³Overacker, Money in Elections, pp. 221-226.
- ¹⁰⁴Harrison, "Britain," Comparative Studies in Political Finance, p. 680.
- ¹⁰⁵Lucas, op. cit., p. 678.
- ¹⁰⁶Newman, op. cit., pp. 585-589.
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- ¹¹¹Charnay, op. cit., p. 576.
- ¹¹²Herbert E. Alexander, "Paying the Politics Bill," National Civic Review, LIII (March, 1964), 118; U. S. President's Commission on Campaign Costs, Report, p. 3.
- ¹¹³Lucas, op. cit., pp. 683-686; "Disclosure as a Legislative Device," pp. 1289-1290.
- ¹¹⁴2 U. S. Code 242, 244; 18 U. S. Code 609; 1964.
- ¹¹⁵2 U. S. Code 241(c); 18 U. S. Code 591; 1964.
- ¹¹⁶Cf. post, pp. 121-122.
- ¹¹⁷Heard, op. cit., pp. 353-354.
- ¹¹⁸2 U. S. Code 241; 18 U. S. Code 591; 1964.
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- ¹²⁰Congress and the Nation, 1945-1964 (Washington, D. C.: Congressional Quarterly Service, 1965), p. 1537; U. S. Congress, Senate, McClellan Committee, Report 1957, p. 239.

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169 99.161 (3) Fla. Stat. Ann., 1960; 55.4 Mass. Gen. Laws Ann., 1966 Supp.; 70.8 N. H. Rev. Stat. Ann., 1965 Supp.; 19.40 N. J. Stat. Ann., 1964.

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- 184^{G.} Theodore Mitau, "Selected Aspects of Centralized and Decentralized Control Over Campaign Finance: A Commentary on S. 636," 23 The Univ. of Chicago Law Review (Summer, 1956), p. 633; S. 1623, sec. 202 (Sen. Gore, Tenn.), U. S. Congress, Senate, Committee on Rules and Administration, Subcommittee on Privileges and Elections, Hearings 1961, p. 21.
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- 200^{Cf. ante, pp. 47, 58-59.}
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- 202^{Alexander and Denny, op. cit., p. 13.}
- 203^{Ibid., p. 14.}
- 204^{2 U. S. Code 247 (c); 1964.}

²⁰⁵Congress and the Nation (1945-1964), Political Contributions and Campaign Spending, p. 1537; Cong. Quarterly, Weekly Report, 1966, p. 247.

²⁰⁶Lobel, op. cit., p. 49.

²⁰⁷Congress and the Nation, loc. cit.; Cong. Quarterly, loc. cit.

²⁰⁸Congress and the Nation, ibid.; U. S. Constitution, Art. 1, sec. 3, subsec. 7.

²⁰⁹Odegard, American Politics, p. 687.

²¹⁰55.25 Mass. Gen. Laws Ann., 1958.

²¹¹Alexander and Denny, op. cit., p. 14.

²¹²Alexander and Denny, ibid.; Charnay, op. cit., pp. 577-578.

²¹³Bicks and Friedman, op. cit., p. 991.

²¹⁴U. S. President's Commission on Campaign Finance, Report, p. 21.

²¹⁵Pollock, Party Campaign Funds, p. 253.

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CHAPTER III

PUBLIC SUBSIDIES

Support of Specific Political Cost

Governments have not only restricted the use of money in politics, but also tried to help the parties defray their costs. Political parties are a connecting link between the private sphere of the citizen and the public area of government, with activities extending into both. General opinion in most countries is that the parties should be reimbursed for costs which they incur when performing public tasks, but that they should spend their own money when being engaged in private party work. The demarcation line between public and private activities of political parties is difficult to draw and depends on personal opinion and traditional background in the particular country.

Election Costs

In most countries, the state at first took over voter registration and poll administration, mainly in order to safeguard elections against irregularities which had occurred under party control. State administration of registration and voting prevails in Europe, while in most of the United States the parties have to invest their funds to get the citizens out to register and vote.¹ Other heavy burdens on American parties and candidates are the costs for poll watchers in order to assure a fair election,² for recounts in order to clarify close elections, and for the transition period between election and inauguration day of public

officials.³ These are thought to be proper state functions and, therefore, should be paid from government funds as is done with other election costs.⁴ In Norway, which has a convention system, the state even pays travel and subsistence expenses of delegates to county and area conventions.⁵ In principle, agreement exists almost everywhere that the state has to pay for election costs; differences arise only about the range of these costs.

Propaganda Costs

Several countries have gone beyond the reimbursement or assumption of the costs for voter registration and poll administration. They help the parties defray part of their costs for specific means and facilities of propaganda. A greater help for the public administration of elections than for the private propaganda of the parties is the state support of the costs of sending out sample ballots. This device makes citizens acquainted with the voting procedures but not with the views of the parties or candidates. Some American states print and distribute sample ballots, three--California, Nevada, New Jersey--mail them to the voters, and twelve have them publicized in newspapers (1966).⁶ In Great Britain, an official poll card is sent out to inform the voters of their election number and polling station.⁷ A similar notification is distributed to each eligible voter in Germany.⁸ In France, the state reimburses the costs of paper and printing of the ballots which each candidate is allowed to send out,⁹ if he gets more than five percent of the votes cast.¹⁰

Of more direct help are public subsidies for some other activities. In Great Britain, candidates may use public halls for their political rallies at nominal charges.¹¹ Local authorities in France,¹² Israel,¹³ and Turkey¹⁴ put up special billboards to be used for election posters. It should be noted that these provisions, at the same time, limit the parties and candidates to put their posters in the designated places so that the regulation is also restrictive.¹⁵ In addition, the French government reimburses the costs of paper and printing, and putting up of the posters, if the candidate receives more than five percent of the votes cast.¹⁶ In Japan, the candidates are given a specific number of posters by the government. In addition, the government pays a small newspaper advertisement for each candidate.¹⁷ A similar practice exists in some American states which publicize lists of candidates, ballot issues, or constitutional amendments in the press.¹⁸

Another important aid is the subsidization of costs for postage. In Great Britain, candidates can send one letter free to each voter.¹⁹ In Japan, each candidate is given a specific number of postcards which he can send out to the voters.²⁰ The French government supports the costs of sending out the legally permitted number of circulars and ballots.²¹ Granting a franking privilege to all candidates is recommended in the United States, because the free use of postal service by members of Congress gives the incumbent candidate a considerable advantage over his opponent, even though the incumbent may not use the franking privilege for campaign propaganda.²²

To make the voters acquainted with the candidates and issues, some governments subsidize election pamphlets. In France, the government,

besides bearing the costs of sending out the circulars, reimburses the costs of paper and printing, if the candidate gets more than five percent of the votes cast.²³ A free brochure, containing information about the candidates and their points of view, is distributed to the eligible voters in Japan.²⁴ Several American states distributed election pamphlets to the electorate at government expense, but most of them repealed this institution. At present, only Oregon, which also had been the first state to adopt the practice in 1907, publishes an election pamphlet.²⁵ Opinion as to the usefulness of such a comprehensive booklet, containing information about all candidates and issues, is diverse. The material was often monotonous in its presentation; parties and candidates did not make great use of the device, partly because of the costs, partly because the voters did not seem to read the pamphlets, and the parties had to use other campaign literature.²⁶ On the other hand, Senator Maurine Neuberger²⁷ of Oregon reported that the voters found the pamphlets a useful publication. The reason why most states abolished the device, nevertheless, was probably its cost to the states, though the costs did not amount to large sums, e.g. in North Dakota, up to five cents, in Oregon up to fourteen cents per voter.²⁸

At the present stage of propaganda techniques, the most important aid which the state can give to parties and candidates is the subsidizing of broadcasts. In those countries where radio and television are run by the government or are organized as semi-public institutions, the parties and candidates are generally granted a certain amount of free time during election campaigns. This is the case in Australia,²⁹ France,³⁰ Germany,³¹

Great Britain,³² Israel,³³ Japan,³⁴ Norway,³⁵ and Turkey.³⁶ In some of these countries, where the possibility exists to buy program time, parties and candidates are prohibited to buy additional time, as, e.g., in Great Britain³⁷ and Japan.³⁸ In the United States with its system of commercial stations, the political parties and candidates have to buy broadcasting time. The sharply rising costs of this item in the party budgets³⁹ have led to several proposals in order to improve the financial situation for parties and candidates. The alternatives are (1) that the government pays for the political broadcasts of the parties and candidates, (2) that the stations provide free time for a certain amount of political broadcasts, and (3) that they sell political broadcast time at a reduced rate. At present the stations can charge for political broadcasts as much as for other commercial programs but not more.⁴⁰ In effect it amounts to more, as political broadcast time is bought for the short campaign periods and does not benefit from the more favorable long term contracts,⁴¹ but the broadcasting industry has made available five-minute periods for political programs at a special rate.⁴² The demand for free time is based on the argument that broadcasters benefit from the use of the "public airways" and therefore should pay the public back by granting free time for political broadcasts.⁴³ Though it cannot be denied that the broadcasting stations should be charged for the particular position which is granted to them by the license, it is not quite understandable why they should pay their "tax" in the form of free time to political parties and candidates, i.e. to a specific group of people and not to the public in general (=the government). There are other

organizations working in the public interest, such as charitable groups or the government agencies themselves, which could claim the same right to free broadcasting time, if it were granted to political parties or candidates. On the other hand, there are services, such as railway and air transport or telecommunications which are similarly licensed and to which the same argument for free service could be applied. If these services are regulated on a commercial basis, the principle should be maintained in respect to everyone who wants to make use of them. The allocation of free time or any other free service is applicable only to those institutions which are run by the government or on a semi-public basis. The same principle is true in regard to the demand for reduced rates, because lesser rates are nothing but partially free time.

The only proper way in a country with a commercial broadcasting system is to impose a license fee on the broadcasters as a compensation for the permission to use the "public airways." Independently the government can buy broadcasting time for the benefit of political parties and candidates. Plans for reimbursing political parties for radio and television expenditures were introduced in several Congressional bills, such as S.227 (1961) by Senator Mansfield of Montana or S.1555 (1961) by Senator Maurine Neuberger of Oregon. The problem is different with regard to Educational Television (ETV) stations which are subsidized by government funds. From these stations reduced rates for political broadcasts could and should be required,⁴⁴ but many American states have banned political programs from ETV stations altogether.⁴⁵ Only Wisconsin has a non-commercial radio network which is financed by the state and

provides free time for political broadcasts.⁴⁶ The question of allocating a just time to the various parties will be discussed later.⁴⁷

Conclusion

Government assumption or support of specific political activities has the advantage that it can be limited to economically determinable amounts⁴⁸ and subjected to a rather effective control. A danger, however, is that parties and candidates use the government aid only in addition to their ordinary expenditures and enlarge their propaganda activities further. This, in the end, would not serve the purpose of improving the situation of the side with the lesser financial means because the gap between the rich and the poor candidates and parties would remain. Parallel to the government subsidies, therefore, limitations should be imposed, such as allowing no or only a certain maximum amount of additional broadcasting time, posters, pamphlets, newspaper advertisements, etc. The limited effect of the latter restrictions must be remembered, however.⁴⁹

General Financial Aid

Subsidization of specific propaganda activities is of rather limited help to political parties. Their wide range of tasks for which they need large funds has made the parties try to get broader financial assistance from their governments in the form of payments without restrictions to certain purposes. Development has been slow so far and different in the various countries.

Tax Money

One way to make government funds available for party purposes without special legislation has been the contribution of private money to political parties, part of which could be claimed as a tax deduction. With respect to this practice, plans and devices for and against tax benefits for political contributions have been developed. Supporters argue that the tax plans would (1) stimulate more and smaller contributions, because (a) part of the contribution could be claimed as a tax deduction and (b) the official government approval would make political contributions more respectable and comparable to charitable contributions, and (2) leave the decision as to the recipient of the partly public money to the individual citizen. Major arguments against a tax benefit for political contributions are (1) that private groups, such as political parties, should not be given general government funds at all, (2) that the difficulties of administration and control are too great, and (3) that the system favors wealthy contributors.

Tax deductible contributions were a major source of income for the German parties, especially the CDU/CSU and the FDP, for several years in the mid-1950's because the Sponsor Societies and the Civic Associations⁵⁰ could claim a tax relief for donations to political parties.⁵¹ The Constitutional Court, however, declared the practice unconstitutional in two decisions. The first was brought to the Court by a party which was excluded from the benefit of tax deductible contributions, because a legal provision for the application of the income tax law restricted such contributions to parties which were represented in a

parliament. The Constitutional Court declared the provision unconstitutional as violating the principle of equal treatment laid down in Article 3 of the Basic Law.⁵² Tax deductions for political contributions continued to be possible, if all parties benefited to an equal degree. In its second decision, however, the Constitutional Court declared all tax deductions for political purposes void. The Court argued that it was true that the law treated all parties alike in a formal way and, therefore, was in agreement with the letter of Art. 3 Basic Law; but that in its actual effects the law favored the parties with wealthy followers who paid higher taxes. As there was a considerable difference in this respect among the German parties--CDU/CSU and FDP with rich supporters on the one hand, SPD with less well-to-do adherents on the other hand--the law discriminated against the Social Democrats who had called for the court action. As violating the equality clause in Art. 3 of the Basic Law, the Constitutional Court declared the provisions which permitted tax deductible contributions to political parties unconstitutional.⁵³ The practical result was that the income of the CDU/CSU and the FDP from contributions by the Sponsor Associations dropped from 70 percent in 1958 to 20 and 28 percent in 1963.⁵⁴

In the United States, tax deductions for political purposes are possible only to a small extent. The Federal Code of Internal Revenue grants deductions for charitable but not for political contributions.⁵⁵ Only expenses incurred by corporations in impartial drives for registration, voting, and political contributions among their employees and the public are tax deductible, according to an authorization by the Internal

Revenue Service in 1962.⁵⁶ Until 1966, it had been a popular practice for many taxpayers to deduct as business expenses the costs of advertisements in party publications and of tickets for fund-raising dinners and other party functions.⁵⁷ This practice was brought to an end by the "Tax Adjustment Act of 1966,"⁵⁸ which in its third title prohibits a tax deduction for expenses for advertising and admission to events, if the proceeds benefit a political party or candidates. The deduction rate of 48 percent had enabled corporations to charge the taxpayer for almost half of the costs for such contributions. The effect of the law will be noticed especially by state committees, many of which derived the larger part of their income from advertisements in their publications and from political dinners.

Some states, such as Minnesota (1955), California (1957), Missouri (1961), and Hawaii (1963), have enacted provisions granting tax deductions for small political contributions up to \$50 or \$100, made in primary and/or general elections. In 1966, some nineteen states had income tax laws adjustable for such a regulation.⁵⁹ Since 1955, when the first of these laws was passed in Minnesota, a number of bills with similar proposals have been introduced in Congress.⁶⁰ The President's Commission in 1962 recommended a tax deduction up to \$1,000 per year and a tax credit system as alternatives for an experimental period over two presidential campaigns.⁶¹ Following this recommendation, President Kennedy sent bills to Congress in 1962 and 1963.⁶² President Johnson in his "Election Reform Act 1966" dropped the proposal for a tax credit and suggested only a tax deduction up to \$100.⁶³ In the states, the provisions

on tax deductions for political contributions have existed for a rather short period and the benefits are not large because of the comparatively low state tax rates so that definite conclusions, especially in regard to a federal system, cannot be drawn from the state experience.

Discussion of the tax plans has remained mostly theoretical. A tax deduction for political contributions would run parallel to the present system of tax deductions for charitable gifts, which would simplify adaptation for administration and public. On the other hand, the system benefits wealthy citizens due to the sliding scale of tax rates. Even if all citizens were restricted to a certain absolute amount, e.g. \$100 per year, a contribution made by someone in a high tax bracket would contain a larger government subsidy than a contribution made by someone in a lower tax bracket, not to speak of those citizens who do not owe any tax at all. The device of the sliding tax rates, introduced for a balancing of the public financial burdens among citizens of different income, would have the reverse effect in the area of political contributions.⁶⁴ Such a result is incompatible with the fundamental "one man-one vote" principle of the democratic doctrine which requires basic equality of all citizens as to their political rights. Furthermore, it is doubtful whether a tax deduction would achieve its main purpose, the stimulation of a large number of small contributions. For the big contributors a deduction of \$100 is of little importance, as they give more money anyway. People with low income, however, do not itemize their deductions in general, because the so-called standard deduction has more advantages for them. The savings which could be made

by deducting a political contribution of \$10 or \$20 would be so small that a change from the standard to an itemized deduction would not be profitable. To avoid the latter consequence, President Johnson's "Election Reform Act 1966" would allow the proposed deduction in addition to the standard deduction and not limited to those who itemize their deductions.⁶⁵ Nevertheless, the problem of unequal treatment as a result of the different tax brackets remains.

The same argument which speaks against a general tax deduction for political contributions can be brought forward against a special plan which would allow political candidates and officials to deduct certain personal costs, incurred in campaigns or office, as expenses, comparable to tax deductible costs in other professions. The underlying idea is that politics are to candidates what business is to other people. The federal law does not offer such a possibility.⁶⁶ Minnesota allows certain candidates and party officials a deduction of personal costs from their gross income up to a specified limit.⁶⁷ The main argument against this device is that it privileges the wealthy person.

In order to prevent the unequal treatment of contributions which would be caused by a tax deduction system, and to stimulate small contributions, suggestions have been made for a tax credit plan.⁶⁸ While the tax deduction is an allowance taken from the gross income before computation of the tax liability, the tax credit is taken from the liability itself so that every taxpayer is granted an equal benefit regardless of the tax bracket.⁶⁹ The result of an unmodified tax credit plan, however, is that the taxpayer does not bring any sacrifice out of his own pocket,

but only designates a political party or candidate as the recipient of a part of the tax he owes, up to the legal maximum. Therefore, most plans suggest a tax credit up to a maximum amount constituting only one-half of the total contribution; the other half must be paid by the contributor out of his own money. In general, the proposals would give a 50 percent tax credit up to a maximum of \$10 a year.⁷⁰ The advantage of such a credit over a tax deduction is that persons with a small income could benefit from it without itemizing their deductions; furthermore, the part paid by the government in form of the tax benefit would be a constant amount for all contributors. People owing no tax or an amount less than the permitted maximum credit would not profit, however. About one-third of all persons over 18 years in the United States paid no federal tax in 1966, according to estimates;⁷¹ in Germany, the number is about the same, one-third of all eligible voters.⁷² The annual revenue loss resulting from such a tax credit system was estimated at some \$30 million by the U. S. Treasury Department in 1961.⁷³ While, on the whole, the credit scheme is preferable to the deduction plan, both have some difficulties in common for which no satisfactory solutions have been found yet. In 1965, only 33 states had an individual income tax.⁷⁴ The tax benefit could be abused by a collusion between the contributor and the receiving party or candidate. The taxpayer would comply with the legal requirements, i.e. pay formally his own share in addition to the tax benefit but get his share refunded by the party or candidate, so that the political contribution would not cost him anything. Simple safeguards are not foolproof, while tighter controls are cumbersome and a

hindrance to mass solicitation, as the various receipt, stamp, apportionment and postal money order plans show.⁷⁵ The problem becomes more complicated if it is to be kept secret to whom the contribution is made. Furthermore, difficulties arise as to a just allocation of the funds among the prospective recipients.⁷⁶

Another method which is designed to overcome the weaknesses of the deduction and credit systems is the tax assignment plan. The President's Commission⁷⁷ in 1962 and Brink⁷⁸ in 1963 suggested that each taxpayer should be authorized to assign one-half percent of his income tax liability to the political party of his choice. These proposals, however, like the deduction system, were incongruent with the principle of equal treatment because of the different amount of tax owed by the contributors. Some years earlier, in 1959, Shannon⁷⁹ had publicized a plan according to which each taxpayer could designate one dollar of his income tax to the party of his choice; the money of those who did not choose a party was to go into a fund for impartial political education. This assignment idea is underlying the only tax plan which has been enacted into law by the U. S. Congress. In the last days of the 89th Congress, the "Presidential Election Campaign Fund Act of 1966"⁸⁰ was passed as the result of S.3496, a bill introduced by Senator Russell B. Long, Democrat of Louisiana, on June 15, 1966.⁸¹ The Act, actually a "rider" on the Foreign Investors Tax Bill,⁸² authorizes every taxpayer, other than a non-resident alien, to designate one dollar of his federal income tax liability to be paid into the Presidential Election Campaign Fund (sec. 6096[a]). This can be done with respect to any taxable year

beginning after December 31, 1966 (sec. 6096[c]). Eligible for payments out of the Fund are political parties whose presidential candidate received 15 million or more popular votes at the preceding election. Each of these parties is entitled to an equal share of a sum which is computed by multiplying the total presidential votes for these parties by \$1 but only insofar as the share surpasses \$5 million (sec. 303[c][2]). Parties whose presidential candidate received more than 5 million but less than 15 million popular votes at the preceding presidential election are entitled to the payment of a sum which is computed by multiplying the number of votes in excess of 5 million by \$1 (ibid., [b]). Payments shall not be made before September 1 of the election year (ibid., [c]), and not in excess of the actual expenses incurred by the party (sec. 303 [3]). The Comptroller General determines the number of votes received without being subject to review (ibid., [4]). An Advisory Board of two members representing each party receiving 15 million popular votes or more and three additional members, selected by the first two members, assists the Comptroller General (sec. 304).

Discussion of the Long plan, which was enacted somewhat surprisingly without formal hearings, except for a short debate in the Senate Finance Committee,⁸³ has been vivid in Congress and among the interested public. In favor of the plan it has been said (1) that it assures the principle of "one man-one vote"; (2) that it diminishes the dependence of the parties on large contributions and special interests; (3) that it enlarges the base of party finance; (4) that parties will be better able to plan ahead because they can count on a steady income; (5) that the

plan will assure more accurate reporting as the parties have less reason to hide their financial sources; (6) that the method is less rigid than other government subsidies because it leaves the decision in the voters' hands; and (7) that the act of contributing will stimulate the political interest of the citizens in general.⁸⁴ On the other hand, opponents of the plan point out (1) that it does not try to prevent the influence of outside assistance; (2) that it does not provide any help for other elective offices; (3) that it does not cover nomination campaigns; (4) that the minimum of 5 million popular votes in two elections discriminates against small parties; (5) that the control of the funds given to the parties is insufficient; (6) that the reported expenses of both major parties together were about \$30 million at the national level in 1964 but that these two parties will get approximately \$30 million each for the 1968 presidential campaign; (7) that the limit of \$3 million imposed on political committees by the Corrupt Practices Act is incompatible with such large subsidies; (8) that the power of the parties at the national level will increase tremendously and distort the traditional party structure; (9) that it is constitutionally questionable whether a private individual can be authorized to appropriate government funds; and (10) that the plan forces citizens, if they want to take advantage of it, to give to all the parties instead of to the party of their choice.⁸⁵

It must be remembered that the Long plan, in order to be acceptable at all, had to be the result of compromises, achieved by adapting it to demands from quite opposite directions. The Act is nothing less and nothing more than the first attempt of a large scale public

subsidization of parties and candidates at the federal level in the political history of the United States, a country with a long tradition of private financing. Viewed in this light, the statute is far-reaching, despite its weaknesses. Most of the arguments brought forward in favor of and against the tax assignment plan can be used for and against public support of political parties in general and will be discussed later. At this point only those problems will be considered which pertain directly to the tax assignment scheme.

The control which is exercised by the citizens when they decide to assign their dollar to the Campaign Fund ("pro" arguments [6] and [7]) is a double-edged sword, because the annual tax assignment may have the effect of a popular referendum, which reflects a rather distorted picture as contributors and voters are not identical. Only those people can assign money who owe a net federal income tax of at least one dollar (sec. 6096[a]), but an estimated one-third of all Americans over 18 years do not pay any federal income tax.⁸⁶ As to the weaknesses of the plan, the question whether the appropriation of government funds by private individuals is constitutional ("con" argument [9]) is not too serious, according to government lawyers.⁸⁷ This problem was already presented in the second tax case before the German Constitutional Court.⁸⁸ According to the Long plan, the citizen is given the very limited possibility of deciding whether the fixed amount of one dollar of his tax liability is to go into the general tax fund of the government or into a special government--not private--fund. The actual appropriation is made by a government agency, the Secretary of the Treasury (sec. 303[c][1]). The fact that the

taxpayer must assign his dollar to an all-party fund and, therefore, is forced to give to parties he may not want to support ("con" argument [10]) is defended as being a "voluntary contribution for good government" rather than a subsidization of a particular political group.⁸⁹ To offer the taxpayer a choice of designating a particular party would have complicated the constitutional issue. Furthermore the equal treatment of the two major parties was probably the only way to get the consent from both sides. The just and proper distribution of the public funds belongs to the most difficult problems in the area of government aid to parties and candidates.⁹⁰

General Government Funds

The support of political parties and candidates from general government funds for other than specific propaganda purposes is a relatively new form of political financing in Western democracies, though suggestions by influential persons have been made since the beginning of the century.

Theodore Roosevelt⁹¹ was the first American president who, in 1907, recommended ample appropriations of government funds to the great national parties for proper and legitimate expenses. After World War II, Presidents Truman, Eisenhower, and Kennedy, as well as presidential candidates Dewey, Stevenson, and Nixon supported similar ideas.⁹² The most fervent advocate in the U. S. Senate was the late Senator Richard L. Neuberger, Democrat of Oregon. In Weimar Germany, foreign minister Gustav Stresemann recommended a reimbursement of political parties for their election costs in order to make them independent of capitalistic

ideas and influence.⁹³ Experiments, except for an unsuccessful attempt in Colorado in 1909/10, date back less than twenty years. Center of the development has been Latin America since the late 1940's, while large scale public subsidies are rare in other parts of the Western world. An exception was Germany for a short period between 1959 and 1966.

A Colorado statute of 1909⁹⁴ provided for a public subsidization of political parties amounting to 25 cents per vote cast for the party's nominee of governor at the preceding election. One-half of the money was to be given to the state committee of the party, the rest to the lower levels. Private contributions were prohibited, but the candidates could spend their own funds up to an amount equal to 40 percent of the annual salary of the office contested. In the following year, however, the law was declared unconstitutional by the Colorado Supreme Court.⁹⁵ A week later it was superseded by an election law and, in 1921, expressly repealed by the legislature.⁹⁶ The law was not too promising, especially as it did not provide for help to new parties, for penalties in case of non-compliance, or for primary elections. Furthermore, 25 cents per vote were probably inadequate without additional funds from private contributions, and the number of votes in the previous election doubtful as a standard for determining the amount of government aid to each party.⁹⁷ No other attempts have been made in the United States at the federal or state levels, though bills were introduced; e.g. S.3242 by Senator Richard Neuberger of Oregon in 1956 suggesting a government subsidy of 15 to 20 cents per vote, or S.1555 by Senator Maurine Neuberger of Oregon in 1961, suggesting a 5 cent subsidy per vote.

Financial support to political parties in Latin America has been provided by statutes in Argentina, Uruguay, Costa Rica, and Mexico.⁹⁸ One of the most complete regulations was enacted by the Commonwealth of Puerto Rico in 1957. The "Election Fund Act"⁹⁹ established an Election Fund in the Commonwealth Treasury from which each principal political party may draw a basic annual amount up to \$75,000 in non-election years, and up to \$150,000 in election years. Originally, the parties could defer unspent amounts from non-election years to the election year without limit;¹⁰⁰ a 1958 amendment restricted the amount which can be accumulated for later years to 50 percent of the annual allotment in non-election years.¹⁰¹ During the first years under the new law, all three major parties spent more money than they were able to draw from the Election Fund. The Statehood Republican party relied on its rich supporters; the Popular Democratic party again solicited among government employees, thus violating at least the spirit of the law; the Independence party ran into serious financial difficulties.¹⁰² In a 1964 amendment, it was attempted to overcome the deficiencies by enlarging the government subsidies and by tightening the reporting requirements and the provisions prohibiting the solicitation of government employees.¹⁰³ The additional funds are appropriated for the first time according to the parties' strength, while the original funds of \$75,000 and \$150,000 are still distributed equally to all principal parties.¹⁰⁴ On the whole, the Puerto Rico experiment has shown that it is possible to enact a working system of government subsidies to political parties.¹⁰⁵

Without real precedence in either Germany itself or in other European countries, the German parties started to appropriate government

funds for their activities in the late 1950's.¹⁰⁶ The practice advanced so far that in 1965 the government payments out of federal and state funds covered some 60 percent of the expenditures of the major parties.¹⁰⁷ In its decision of July 19, 1966,¹⁰⁸ the Constitutional Court set an end to the general subsidization of political parties by declaring unconstitutional the provision in the federal law which appropriated the money to the parties.

The financial situation, especially of the non-socialist parties, had deteriorated in the late 1950's after the second decision of the Constitutional Court on tax deductions for political contributions¹⁰⁹ and the change of the Social Democrats away from nationalization plans in their Bad Godesberg program of 1959.¹¹⁰ The former heavy reliance on business money left the CDU/CSU and the FDP in a precarious financial situation when these sources dried up. The SPD was better off as it had its large membership, its commercial enterprises, the labor unions and the money refunded as compensation for its losses in the Hitler era.¹¹¹ In the beginning it was, therefore, the bourgeois parties which pushed for a public subsidization, but the SPD accepted its share in order not to suffer a disadvantage, and later opposed only to the extent, not the principle, of the public party support.¹¹² Besides the practical need for funds, the parties used a constitutional argument which they derived from the second tax decision of the Constitutional Court and in which the Court in a kind of obiter dictum¹¹³ had said that government aid for elections and also for the political parties which carried through such elections was permissible, since elections were a public duty and

the parties had a constitutionally decisive role in the discharge of this duty. This argument was mainly based on Art. 21 of the Basic Law according to which "the political parties participate in the forming of the political will of the people" (sec. 1, subsec. 1). Not only politicians agreed, but also political scientists and government lawyers.¹¹⁴ Besides the points pertaining to the particular situation in Germany, also more general arguments were brought forward.

One of the most interesting aspects of the development in Germany, on the federal as well as on the lower levels of government, is the tremendous increase of the public support to the parties, once the initial obstacles had been removed. In 1959, the federal budget provided \$1.25 million for the "support of the political education work of the parties." In 1962, the payments were increased to \$5 million without restriction to political education work, and three years later, to \$9.5 million.¹¹⁵ This was an increase of 760 percent in six years.¹¹⁶ In five of the eleven states, a similar development of direct subsidization took place with amounts between some \$40,000 in Lower Saxony and \$1 million in Northrhine-Westphalia in 1965.¹¹⁷ In addition, the parties profited from sums which were appropriated to their parliamentary fractions (groups) and to their parliamentarians by the federal and all state governments, and from funds out of local budgets.¹¹⁸ Direct subsidies and sums given to parliamentary fractions by the federal and state governments totaled more than \$8 million in 1962, more than \$9 million in 1963, and more than \$14 million in 1965.¹¹⁹ The amount per eligible voter in 1965 was some 25 cents federal money and some 10 cents state

money.¹²⁰ The money was distributed in different ways, e.g. twenty percent of the federal funds were divided equally among the parties in the Bundestag, the rest according to party strength,¹²¹ with the exception that all funds--federal, state and local--were restricted to parties which were represented in the respective parliaments.¹²² A most critical point was the control of the sums given away. Regulations provided for some check, often by the president of the court of account, but their practical effect was that the public remained uninformed of eventual irregularities, though the parties tried to avoid scandals.¹²³

The Constitutional Court based its decision of July 19, 1966, on a fundamental interpretation of the essential nature of political parties in the modern federal party state.¹²⁴ The Court distinguished between the two spheres of the private citizen with his organizations and of the government with its official agencies. The political parties, as other groups formed by citizens to influence public opinion, belong to the private sphere in which it must be guaranteed that opinions are formed in a free, open, and unregulated way.¹²⁵ Parties are not quasi-government organizations. The government can, however, intervene in the democratic process of the free formation of public opinion and public will, but only when justified by a constitutionally legitimate reason.¹²⁶ For an interference with this process by government subsidization of political parties, which would interconnect the parties with the official sphere of government agencies and deliver them to government welfare, no special and constitutionally justified reason was evident.¹²⁷ The Court took back its farther reaching opinion expressed in the obiter dictum of

of the second tax decision.¹²⁸ One exception permitted by the court-- the reimbursement of election costs--will be discussed later.¹²⁹

Arguments for and against Public Subsidies

Despite little experience with public subsidies in most countries, discussion about the question whether political parties should receive payments out of government funds has been vivid. Political financing is crucial in a democratic country because politics cost money. Modern diversified society must be informed and educated continuously and campaigning is expensive. Membership and the number of small contributors are insignificant, dependence on large givers is considered as a danger, and even this source is often insufficient. Public subsidies are seen as the only possibility to escape the difficulties. On the other hand, a dependence on the state is regarded as even a greater evil. As the way in which parties and candidates collect and spend their funds has an impact on policy makers and their wide range of activities, arguments for and against public subsidies comprise not only their influence on parties and candidates but also on voters and the whole government structure as well.

Parties and Candidates

The difficulties which the parties encounter in financing their activities from private sources, their reliance on a few and sometimes even disrespectful contributors, the irregular flow of those funds, and the inequality in regard to financial means among the parties have convinced many observers that a public subsidization of parties and

candidates would bring more stability and justice into the political process. In a democracy no citizen can be forced to become a contributing member of a political party, large contributors may expect rewards, and the financial power of a party does not necessarily reflect the size of its popular support, if it has its followers among the poor. Differences among candidates in character and ideas are natural, but differences in money is thought to be an undemocratic element in politics.¹³⁰ The advocates of public subsidies maintain that government funds will create an opportunity for a more equal start of parties and candidates as far as their financial means are concerned.

As an argument against government subventions, it is brought forward that political parties are private associations; but there are other private activities, such as sciences, arts, or agriculture, which are publicly subsidized. On the other hand, it is said that political parties perform public functions and therefore should be paid from public funds. This opinion prevailed in Germany nourished by Art. 21 of the Basic Law and its interpretation by the Constitutional Court in its second tax decision. In its 1966 decision the Court, however, clarified that Art. 21 cannot be interpreted as giving the political parties a right to government subsidies.¹³¹ The parties are associations formed by private individuals and groups and competing for the power in the state. They do not exercise public authority and are not part of the government apparatus, even when they take part in public activities, especially in elections.¹³² Political parties are important in the formulation of public opinion and public will, but they are not the only

private groups trying to influence this process. A one-sided and strong support of political parties by government funds would distort the distribution of potential influence among these diverse groups in modern pluralistic society. Some stability is necessary for the performance of party work and it depends on a regular income. Financial insurance in the form of extensive public aid, however, is opposed to the dynamic nature of political parties which includes the risk of failure.¹³³ This does not completely exclude public subsidies, but the center of the financial resources of political parties must be in the private sector.¹³⁴

An argument closely connected is that the parties, if they are certain to receive their income from the government, become apathetic in their efforts of recruiting new members and enlarging the number of small contributors.¹³⁵ On the other hand, potential contributors do not feel that the parties need private help and become unwilling to support them.¹³⁶ A vicious circle is initiated which leads to larger public aid and to smaller private support. Tax plans are thought to show a way for government funds without the consequence of party and contributor apathy, because they allow and make necessary private initiative and party efforts.

A public subsidization effects the power structure within the parties. In many parties which depend on private contributions, especially in the two major American parties and the Social Democratic party of Germany, the money flows upward from the lower levels to the national organization. This is achieved either by imposing quotas, i.e. shares assigned to the lower levels, or by demanding a certain percentage of

income of the lower levels.¹³⁷ It is not disputed that the public support will inverse the flow of money within the parties and lead to a power concentration at the higher party level when the money is given to the national organization and distributed by it. An alternative is that the government payments are simultaneously made to the national, state, and local levels of the party organizations.¹³⁸ Different opinions are held as to the desirability of such a concentration effect, however. Those in favor of the concentration maintain that it will enhance party discipline and enable the parties to pursue a straightforward and responsible line of policy. This argument is voiced especially in the United States where it is often regretted that politics are centered around candidates rather than parties and that parties frequently resemble temporary coalitions of diverse interests, rather than coherent political groups. Candidates often have their own private fund-raising committees originating in their nomination campaigns, and the Hatch Act with its insufficient ceilings on contributions and expenditures in regard to political committees has greatly influenced the tendency of decentralizing political financing.¹³⁹ Opponents of such a concentration point out that it leads to a bureaucratization of the parties and to their isolation from members and voters. Candidates will become dangerously dependent on the good will of the party managers, as can already be seen in Great Britain where, without the help of public subsidies, the prime minister can threaten uncooperative Members of Parliament with a dissolution of the House and the determination of new elections which many candidates cannot afford without the party's financial support.

One of the most difficult problems of public finance of political parties is the just distribution of the funds among the potential recipients. A way must be found that allows defining which political group is eligible to receive a share out of the public funds distributed to "political parties." Loose requirements favor the creation of splinter groups; strict requirements discriminate against small parties. To find the golden middle is a matter of viewpoint and practical experience. Those approving a two-party system set a high minimum which a political party has to reach before it qualifies for public aid; those who prefer a more diversified party picture are more lenient. Most practical attempts require a rather high number of popular votes, registered voters, or petitions. In France, reimbursement of political costs are made to those candidates who get more than five percent of the votes cast.¹⁴⁰ In Japan, each candidate is eligible for the aid provided by government.¹⁴¹ To become a candidate is not difficult: the applicant must be a native-born Japanese of at least 25 years of age, file simple election papers, and deposit about \$280 (100,000 yen) which is refunded if he gets one-fifth of the average vote per elective office cast in his district.¹⁴² In Great Britain, a nomination is not valid unless a sum of £100 is deposited for the candidate; the amount is forfeited if the candidate does not poll more than one-eighth of the total vote for all candidates.¹⁴³ Payments out of the election fund in Puerto Rico are made to the "principal" political parties, i.e. duly registered parties which received at least ten percent of the vote for governor in the preceding general elections.¹⁴⁴ Furthermore, the funds are restricted to those

principal parties which "have participated in a general election in all election precincts of Puerto Rico and as a result of which preserved their status of principal parties and gained representation in the Legislature."¹⁴⁵ The minimum limits laid down in the Presidential Election Campaign Fund Act of 1966 are high and must be seen in the light of the American preference for the two-party system. Third parties have to get five million popular votes in two consecutive presidential elections and are eligible for funds only as a result of votes above the five million minimum.¹⁴⁶ Critics regard this minimum requirement, which was raised by a Conference Committee from 1.5 million votes in the original bill,¹⁴⁷ as discriminating against minor parties,¹⁴⁸ and Senator Long of Louisiana suggested an amendment which would let the minor parties share the Fund already in the first election in which they receive more than five million votes.¹⁴⁹ In Germany, only those parties represented in the parliaments received public subsidies.¹⁵⁰ According to the Federal Election Code of 1956--state statutes are similar--this meant that a party had to get at least five percent of all list votes or three candidates elected by a simple majority in three of the 259 single-member constituencies (sec. 6, subsec. 4). In its 1966 decision, the Constitutional Court stated that this limit was too high as a minimum qualification for government aid because, if applied twice (in elections and for financing) the effect of the so-called five-percent provision would be doubled and minor parties practically banned from Parliament.¹⁵¹ Suggestions in the United States call for a high minimum. Paul Douglas,¹⁵² in 1954, demanded at least ten percent of the total vote; as did Senator Richard Neuberger's bill,

S.3242 in 1956.¹⁵³ The President's Commission and most bills in the 89th Congress wanted to restrict public subsidies to parties whose candidate for president or vice-president was at least on ten state ballots.¹⁵⁴ Rose's¹⁵⁵ plan to pay the candidates instead of the parties would avoid the difficulty of defining which groups are eligible but would not solve the problem of which candidates qualify for government aid. Besides, the system would be difficult to apply in countries with proportional representation.

Closely connected with the question of how to define the recipients of the public subsidies is the problem of finding a just standard according to which the funds are distributed among the potential recipients. The choice is between equal shares to all eligible groups, proportionate shares according to their strength, or a combination of the two principles. Essentially, it is a problem of equal treatment, which means that the government must treat equal things, and only equal things, equal. The question is whether all parties are equal because they seek representation in government or unequal because they have different support in the population. Democratic theory requires that the citizen decides upon the distribution of government power for which the different political groups compete in a continuous struggle. From time to time the ever-changing power distribution is fixed by an election; but it must be assured that the outcome reflects the power distribution in the population at that time. The difference of party strength, which is created by the popular process, is essential for the democratic government structure, and must not be covered up or distorted by government interference.

Public subsidies are not to make political parties equal in strength, but to give political parties an opportunity to become equal.¹⁵⁶ Government aid given equally to all (eligible) parties regardless of their support in the population, therefore, violates the principle of equal treatment, as it discriminates against the larger parties. It cannot be denied, however, that sometimes, especially when the major parties are of almost equal strength, it is the only way of getting a statute enacted, as was probably the case with the American Presidential Election Fund Act of 1966. In Puerto Rico, the principle of equal shares, introduced by the 1957 law, was substituted for a mixed system by the 1964 amendment.¹⁵⁷ A combination method also existed on the federal level in Germany.¹⁵⁸ As far as equal shares in these combination plans are concerned, the same objections can be raised against them as against the equal distribution method in general.

Plans to distribute the funds according to party strength met with the difficulty of finding a device of measuring party strength. The number of votes cast in the previous election is considered as not flexible enough.¹⁵⁹ Nevertheless, most enacted regulations applied this method, such as the Colorado statute of 1909,¹⁶⁰ the American Presidential Election Campaign Fund Act of 1966,¹⁶¹ and also the all-partisan experiment in Alexandria.¹⁶² The German regulation had the further disadvantage that a fixed amount of money, determined by the legislature, was distributed to the parties represented in the parliament. Shifts took place only in the amounts assigned to each parliamentary fraction, but not in the absolute sum according to the voter participation in the

elections.¹⁶³ To base the payments on the votes cast in the current election is preferable. It is done with the reimbursements to candidates in France,¹⁶⁴ but involves greatest administrative problems if applied to large scale public subsidies. The parties would need the money during the campaign rather than after election day, and advance payments would be necessary, but difficult to estimate, especially for new parties and after a considerable change in policies. The number of party members as a base is an uncertain standard, since it is difficult to distinguish between genuine and false members. An artificial increase in membership was tried by groups who qualified for grants under the Federal Youth Plan in Germany.¹⁶⁵ Furthermore, non-membership parties would be at a disadvantage.

An ideal method of distributing government funds cannot be found; some deny that there exists any just way.¹⁶⁶ Practical experience with the distribution of government aid has been made in the area of broadcasting in many countries, but this does not reveal the golden rule either. Italy,¹⁶⁷ Japan,¹⁶⁸ and Norway¹⁶⁹ give equal time to all parties. In Norway, parties are assigned twenty minutes each on consecutive nights during election campaigns; in addition, all parties join in a two-and-one-half hour discussion program.¹⁷⁰ Parties in Turkey are eligible for a maximum broadcasting time of ten minutes daily if they nominate candidates in at least five constituencies, and of up to twenty minutes if they nominate candidates in at least twenty constituencies.¹⁷¹ In France, special decrees permit "national" parties, i.e. parties which nominate more than 75 candidates in parliamentary elections, to use the state-owned

broadcasting stations for two programs of five to ten minutes each, one over radio, the other over television.¹⁷² Time in Great Britain is divided according to party strength, e.g. television time was given to the three major parties in a ratio of 95:95:25 in 1959.¹⁷³ In Israel, parties receive broadcasting time according to their strength in the outgoing Knesset.¹⁷⁴ The Constitutional Court of Germany has decided that no party may completely be excluded from the benefit of broadcasting time, if it takes part in elections within the range of the station, but that a differentiation according to party strength is permissible.¹⁷⁵ The stations assign the time mainly on the basis of the preceding elections.¹⁷⁶ This was also recommended in the draft of the party law of 1959.¹⁷⁷ In the United States, where broadcasting stations are mostly in private hands, the law obliges broadcasters only to give legally qualified candidates equal opportunities to opposing candidates, but broadcasters may choose to give no time to any candidate.¹⁷⁸ This leads to the unfortunate situation that even major party candidates are not offered free time, though the stations would like to present them to the public, because minor party candidates must be given equal time despite little interest for them among the audience. Commercial broadcasters cannot afford, however, unattractive programs; for presidential and vice-presidential candidates, section 315(a) of the Federal Communications Act, therefore, was suspended by federal law¹⁷⁹ for the 1960 campaign so that special programs could be run only for the two major party candidates. This practice was not repeated, however, though it was recommended by the President's Commission and others.¹⁸⁰

The Constitutional Court of Germany, in order to overcome the difficulties in finding a just standard of distribution, decided not to recommend one single criterion as a basis for the assignment of broadcasting time, but to suggest the combination of a number of factors. This method is not easily applicable, but gives a better starting point for further theoretical evaluation, and the final elaboration of a working formula. In detail, the criteria suggested by the Court are the previous election result, the party's length of existence, the size of its membership and organization, its representation in parliament, and its participation in the executive branch of government.¹⁸¹

Advocates of tax plans point out that their device bypasses the intricate problem of allocating the funds, because the total sum to be distributed and the shares given to the particular parties are determined by the individual taxpayers.¹⁸²

Financing their nomination campaigns is for many American candidates more difficult than to obtain funds for the general election race. While for the general election campaign the candidate can expect some help from his party, the organization rarely assists candidates in their efforts for nomination, because it does not want to disappoint any potential contributors to its general election fund by taking sides in the inner-party struggle for nomination.¹⁸³ The Presidential Election Campaign Fund Act of 1966 was criticized for not covering preconvention costs, but supporters pointed out that the tax funds would set free money for contributions to nomination campaigns.¹⁸⁴ They also regarded the Act as a mere beginning, and Senator Long of Louisiana later suggested a

government subsidy of 50 cents per vote to the winning candidate in the presidential preference primary.¹⁸⁵ This, however, would discriminate against minor party candidates; a better suggestion is to reimburse all candidates who poll a certain minimum percentage in the primaries.¹⁸⁶

The situation of the primary candidate is further endangered by the incomplete regulation of the nominating process in the corrupt practices acts. An amendment to the first national publicity law of 1910 passed in the following year¹⁸⁷ extended the original law to cover the expenditures of U. S. Representatives and Senators in their nomination campaigns. In 1921, the U. S. Supreme Court¹⁸⁸ invalidated the publicity law as far as it regulated the primary elections of Senators, without making it clear whether primaries in general were to be regarded as substantially different from general elections and thus not subject to the same rules.¹⁸⁹ After the Court, in 1935,¹⁹⁰ had declared that primaries were private party affairs, it began to change this opinion in 1941.¹⁹¹ Finally, in 1944, the Court¹⁹² reversed its 1935 decision and ruled that parties and general elections were a single instrumentality for the choice of officers. Though it is doubtful whether Congress was ever barred from passing primary legislation by the Supreme Court's opinion (maybe with the exception of a few years after the 1935 case), corrupt practices laws cover only general elections.¹⁹³ This leaves a large loophole, especially in the so-called one-party constituencies where elections are decided in the primary race. One exception, however, exists: activities of national banks, corporations, and labor unions in regard to political financing are covered in primary as well as in

general elections.¹⁹⁴ Most Congressional bills include nominations into corrupt practices legislation, e.g. President Johnson's Election Reform Act 1966,¹⁹⁵ but not S.2541, the bill which received a Senate committee hearing in 1966.¹⁹⁶ In summary, it can be said that any regulation of political financing in the general elections must include the nominating process.

Voters

Opponents of public subsidies to political parties are afraid that the interest of the population in donating to parties and candidates will further decline with the introduction and growth of government funds, as contributors will think that parties do not really need their money. This happened in Germany where government subsidies increased by some 760 percent between 1959 and 1965¹⁹⁷ and contributions from the industry to non-socialist parties sank to about one-third in 1963 from the 1959 level.¹⁹⁸ Such a development is the more regrettable as contributors are often more involved in other forms of political activities than non-contributing individuals.¹⁹⁹ The tax plans, including the Presidential Election Campaign Fund Act of 1966, avoid this difficulty by giving the public a decisive role in the distribution of the public subsidies.²⁰⁰ Another disadvantage of subventions out of general government funds is that each citizen is practically forced to contribute to parties or candidates who are not his choice, and he may favor political groups which are not eligible for the funds.²⁰¹ The answer to this argument is a just system of distribution whose difficulties have already been discussed.²⁰² The problem can be avoided by the

tax deduction or credit plans, but was not solved by the Presidential Election Campaign Fund Act of 1966.²⁰³ On the other hand, the supporters of public subsidies point out that the payment of money to parties and candidates, either out of general government funds or in the form of a tax assignment plan with a low and fixed amount, grant every citizen an equal voice in the matter of political finance.²⁰⁴ This is, however, not quite true for the Presidential Election Campaign Fund Act of 1966 as a minimum income tax liability of \$1 is required.²⁰⁵

Government Structure

In countries with a federal government structure, like Germany or the United States, a further difficulty arises from the different legislative competence on the national and state levels. The 1966 decision of the German Constitutional Court²⁰⁶ voided only the federal law which provided public subsidies for the political parties, not similar provisions in the states. Menzel draws the conclusion that the states cannot continue with their practices, because the decision of the Constitutional Court is founded on the general nature of political parties in relation to a constitutional government; furthermore, that the so-called homogeneity provision of Art. 28 Basic Law as well as the need for an effective enforcement of a federal regulation oblige the states to a similar legislation.²⁰⁷

The effects of different requirements in federal and state laws can be observed from the corrupt practices acts in the United States. The rule still is that Congress has no general power over state and local elections, though various exceptions exist, e.g. in 18 U. S. Code

607, 608, 612; 15 U. S. Code 79(1)(h); 1964. This opinion is reflected in several decisions of the U. S. Supreme Court.²⁰⁸ Especially unfortunate and responsible for the little success of the laws is that state and local political committees are not covered by the reporting requirements, even when they support federal candidates.²⁰⁹ Lobel²¹⁰ suggested that it probably was not so much the protection of state rights which caused this exception as the desire to leave the finances of local committees, the main supporters of Congressmen, undisclosed. Observers agree that no efficient regulation can be achieved without covering all financial sources of federal candidates. President Johnson's Election Reform Act 1966 supported an extension of reporting requirements,²¹¹ but S.2541, the bill considered in a Senate committee, did not.²¹² As to public subsidies, it has been suggested that the states introduce plans parallel to federal provisions in order to avoid a vertical division of the party system into a rich federal and poor state and local branches.²¹³ Otherwise, as was noticed by Menzel for Germany, the system would not work effectively and evasions of the law would be inevitable. An extension of the Presidential Election Campaign Fund Act of 1966 to the state level was recommended in the Congressional debates,²¹⁴ though this would involve some difficulties as only 33 states had individual income tax laws in 1965.²¹⁵

A further problem, inherent in every democratic government, is the danger which arises from the rule of the majority. The way of distributing the funds is determined by the party or parties in power which can manipulate the flow of money in such a direction that the parties out of

power are put at a disadvantage. If these parties are dependent on the government subsidies, their situation becomes precarious. The practice in Germany where only parties represented in the parliaments were eligible as recipients, or the American Presidential Election Campaign Fund Act of 1966 with its high minimum requirements²¹⁷ serve as examples. In 1962, the German FDP was "punished" for dissenting with its larger coalition partner, the CDU/CSU, by a change of the distribution mode.²¹⁸

Incumbents in the United States are frequently opposed to a change of the present statutes. They have the advantage of indirect government aid, such as office staff, free air travel, franking and telecommunication privileges.²¹⁹ Direct public subsidies would give them additional help, but the disadvantage involved is thought to be greater. Many potential rivals, nowadays, shrink back from challenging incumbents who are well known and backed by their official position. The costs of "building up" a new man are tremendous and to raise private funds is difficult for a newcomer. Direct public subsidies would assure at least one strong opponent in every election race, even for those incumbents who have rarely been challenged so far.²²⁰

Advantages from its official connections are also drawn by the party in power. In Italy, the state-owned newspapers and broadcasting stations favor the government parties.²²¹ The situation is better in countries with a federal structure where different parties hold the majority at the federal and state levels, e.g. in Germany. Another source of aid to the party in power are the, often secret, funds appropriated to government agencies for official government propaganda, which in practice is hardly distinguishable from party propaganda.²²²

Control of Funds

After discussing the arguments brought forward in favor of and against public subsidies, some remarks must be added about their proper control and safeguards. Adequate devices are necessary so that the funds are used only for the intended purposes. First of all, an absolute maximum amount of money for political subventions could be fixed in the government budget in order to assure their adjustment to other government expenditures. The protection granted by this safeguard is questionable, however, as can be seen from the experience in Germany²²³ and Puerto Rico.²²⁴ What the government can afford and what the parties need cannot exactly be determined and remains a matter of arbitrary discretion. "L'appétit vient en mangeant" seems to be a favorable principle.²²⁵

Another possibility to prevent the abuse of government funds is to restrict them for certain purposes. This device seems to work, if the purposes are defined in detail, e.g. in France, Israel or Turkey.²²⁶ In Germany, the government funds had initially been designated for the "political education work" of the parties;²²⁷ but this restriction was dropped a few years later because the parties needed the funds for their general party work.²²⁸ The limitation to political education work had frequently been criticized as a misleading label.²²⁹ The 1965 SPD draft of a party law, which did not recommend general party subventions, provided for government aid to political parties for "civic education."²³⁰ As has been done in the United States,²³¹ the Constitutional Court and experts in Germany pointed out that no valid distinction can be made between the political and educational work of parties. In order to

prevent an evasion of the prohibition of general public subsidies, the Constitutional Court also declared unconstitutional government funds for the "political education work" of the parties.²³²

Prevention of abuse, furthermore, requires proper administration of the funds. The Presidential Election Campaign Fund Act of 1966 puts the control into the hands of the Comptroller General and an Advisory Board of party representatives.²³³ The law has been criticized for not providing adequate means of control,²³⁴ and it is questionable if the authorities will perform their tasks adequately without legal guidelines. It remains to be seen how the control system will work in practice. The inadequate control of the funds in Germany has already been pointed out.²³⁵ Lobel²³⁶ suggested tightening the American Act of 1966 by having the Comptroller General pay the parties' bills directly to the seller upon certification instead of giving the money to the parties. Experience in Puerto Rico shows that the device works well there.²³⁷

If public subsidies are to serve not only as an additional source of income for the parties, but also as a means of reforming the present methods of party financing, some regulations must be enacted about private contributions. Though a complete prohibition would seriously affect the big givers, several reasons speak against such a radical proceeding. Practical experience shows the impossibility of outlawing all contributions without a tremendous display of control which is adverse to the free political process; the constitutional justification is doubtful in regard to the right of free opinion and expression; desirable initiative of private individuals to take part in political activities

would be diminished; and to defray all party expenditures could be too heavy a burden on the government budget. The Colorado law of 1909 did prohibit all private contributions;²³⁸ the German parties were only concerned about an additional source of income which they saw in public subsidies;²³⁹ the Presidential Election Campaign Fund Act of 1966 does not regulate outside contributions for which it was criticized,²⁴⁰ but provisions were planned for a later date.²⁴¹ The Puerto Rico law forbids all direct and indirect private contributions above \$400 a year and above \$600 in an election year.²⁴² Similar restrictions have been recommended by political experts in the United States.²⁴³

Compromises

Matching Incentives

One of the strongest objections to direct public subsidies is caused by the fear that political organizations would lose their interest in soliciting and private contributors their interest in giving. Though the present situation of private party finance is unsatisfactory,²⁴⁴ direct government subsidies would not improve this way of political financing, which is the most suitable and desirable under a democratic government. Tax plans offer an incentive for party and individual initiative, but have the disadvantage of not treating all citizens as equal, either because of the tax rate (deduction plan) or because of the large number of voters who do not owe a net tax. Furthermore, the yearly tax payment would resemble a popular referendum incompatible with the principle of elections at a fixed interval.²⁴⁵ As a superior device "matching

incentive" plans have been suggested which make the payment of public subsidies dependent on the amount of private donations the political parties are able to raise. This device was recommended by the President's Commission²⁴⁶ in 1962 as a possibility of supporting political parties, if improvement of private financing were not sufficient.

According to the plan, political committees raise private contributions of small amounts, up to about \$10 per person per year. The committee deposits the money raised with the U. S. Treasury where the money is matched by a like sum from appropriations. This combined total is available to the committee for authorized types of expenditures. Payments are made by government checks directly to the sellers of goods and services; no cash is given to the committee.²⁴⁷ This plan has been supported by President Kennedy and by political scientists, among them Herbert Alexander.²⁴⁸

In Germany, where government subventions generally are given according to the principle that considerable amounts have to be contributed from the recipients' own funds, the statutes providing for public subsidies to the political parties have never imposed such a stipulation upon the latter.²⁴⁹ The draft of a party law of 1964 by the CDU/CSU and FDP, however, introduced a kind of "matching incentive" device in sections 23 and 24.²⁵⁰ Besides the distribution of direct subsidies to the parties represented in the parliaments (sec. 20-22), all parties which received at least 0.5 percent of all list votes or won at least one constituency by simple majority would be eligible for funds by the "matching incentive" plan. The federal government would issue contribution

bonds (Spendengutscheine) to eligible parties according to the number of list votes received at the preceding election. They could sell the bonds at face value to supporters who in turn could redeem the bonds at 40 percent of their face value from the government. The total redeemable value of all bonds would be fixed at 20 cents multiplied by the number of eligible voters. The plan has several serious weaknesses. The redemption of a certain percentage of a donation discriminates against contributors of small sums, though not quite as much as tax deductions where the effect is increased by the sliding tax scale. The existing inequality of donors is supported by the government refund and parties with big givers are better off.²⁵¹ A fair system could be achieved if the absolute amount of each contribution were fixed at a sum which could easily be afforded by all citizens, as was suggested by the President's Commission. The limitation of the total value of the funds in the CDU/CSU-FDP plan, however, may lead to further injustice when all bonds are sold so that some contributors could not make use of the 40 percent redemption.²⁵² A total limit of the matching sum in the plan of the President's Commission, if fixed equally upon all committees, could not violate the principle of equal treatment. Each committee would be eligible for the same support, while it would not make a difference to an individual contributor whether his donation was matched or not, as he would pay an absolute amount up to the small maximum limit. The plan of the President's Commission also has the advantage of a better control over the funds, because the parties would not get the cash but only the right to arrange payments for authorized costs from their deposits. The CDU/CSU-FDP plan

is not only open to misuse by the parties when they spend the money, but also enables collusion between party and contributor at government cost; the party could sell the bond at a lower price than the face value to the supporter.²⁵³

Campaign and Regular Expenditures

Another plan which combines private party funds and government subsidies was suggested in the 1966 decision of the German Constitutional Court. Though the Court declared unconstitutional a general party support from government funds,²⁵⁴ it said that it was admissible to refund the parties for the "necessary costs of a reasonable election campaign."²⁵⁵ This exception has been attacked as being inconsistent with the reasons given for the prohibition of government funds for general party work,²⁵⁶ because all party activities, regular year round as well as campaign work, are directed toward the same goal.²⁵⁷ Supporters of the Court's decision differentiate between the parties in their year round work as "mouth-piece" of the people or "pre-formers" of the political will and the parties in election campaigns as instruments for forming the highest offices of government, in the legislative assembly.²⁵⁸ The first opinion seems to be more appropriate in regard to the role of political parties in the modern party state where parties and officials are in a continuous state of campaigning.²⁵⁹ This can be observed in countries where laws try to distinguish between "regular" and "election" activities. Under the present form of legislation the problem mainly arises in connection with statutes requiring the limitation of political expenditures of the reporting of political finances. In Japan, "election" but not

"regular" political expenditures are limited by law; the distinction is considered unrealistic.²⁶⁰ The British law requires candidates to report during election campaigns but does not define when the campaign begins.²⁶¹ The courts have decided particular cases without giving general guidelines.²⁶² In practice, a candidate does not report before he has expressly asked to vote for him.²⁶³

To regard political parties as an entity with the same characteristics in regular and campaign activities does not mean that the compromise suggested by the German Constitutional Court must be rejected. If political parties are considered as private organizations which must support themselves from their own private sources, there is no reason why they should not receive government aid in exceptional situations. Parties are important in modern democratic government at all times, but they are indispensable during election periods. The Constitutional Court correctly stated that the government is not obligated to take the risk of failure from the parties. On the other hand, experience has shown that no modern party can live on private sources alone, at least under present legislation.²⁶⁴ Though public opinion and public will in a pluralistic society are formed by the parties and by other private groups, it must be taken into consideration that the other groups are often financed in a way which is not recommendable for political parties, viz. by a few wealthy individuals or groups of a single interest. Parties must not only be competitive among each other but against outside groups as well. A restriction of propaganda, therefore, is advisable only to a certain degree in order not to create a dangerous vacuum which would be filled by less desirable elements.

This means that public aid to political parties is justified as long as the parties are not able to raise sufficient means from private sources. Government subsidies to political parties, like subventions to other private groups, must be of a temporary nature, helping the parties to develop a sound basis of private support. So far the attempts of the parties have not proven that sufficient private money cannot be raised if efforts were increased.²⁶⁵ Such a transitional help seems to be justified in Germany where the parties, after the obiter dictum of the Constitutional Court in its second tax decision, had some right to be confident about receiving government money permanently.²⁶⁶ The best way to plan the transitional period would be a matching incentive device in which the share borne by the government would be fairly large in the beginning but gradually reduced in favor of a larger private portion, until the government aid would be dropped. The German parties after the 1966 decision of the Constitutional Court, however, have pleaded for a permanent and guaranteed minimum income for their election campaigns without dependence on private efforts. Suggestions are made to distribute about 60 cents multiplied by the number of eligible voters over a four-year period among the parties at the national level which received at least 2.5 percent of all list votes;²⁶⁷ Plate had recommended one percent.²⁶⁸ The total sum within a four-year period would amount to some \$24 million as compared to \$38 million under the voided federal law of 1965.²⁶⁹ The states are inclined to refund some 40 cents per valid vote cast.²⁷⁰ Suggestions have also been made to amend the Basic Law in order to enable a general party financing from government funds after all.²⁷¹

Whether such an amendment would be constitutional remains doubtful, as the Constitutional Court did not base its decision on a particular article of the Basic Law but on the general nature and position of the political parties within a constitutional government.²⁷²

FOOTNOTES

26. ¹Alexander and Denny, Regulation of Political Finance, pp. 25-
- ²Shannon, W. V., Money and Politics, p. 40.
- ³Alexander and Denny, op. cit., p. 32.
- ⁴Alexander and Denny, ibid.; Shannon, W. V., loc. cit.;
U. S. President's Commission on Campaign Costs, Financing Presidential Campaigns, Report, p. 6.
- ⁵Shannon, J. B., Money and Politics, p. 80.
- ⁶Alexander and Denny, op. cit., pp. 21-22.
- ⁷Harrison, "Britain," Comparative Studies in Political Finance, p. 681.
- ⁸Bundeswahlordnung, 1965 (Bundesgesetzblatt I, p. 240), sec. 17.
- ⁹Cf. ante, p. 57.
- ¹⁰Charnay, Le Suffrage Politique en France, p. 564.
- ¹¹12-14 Geo. 6, c. 68, s. 82, 83.
- ¹²Charnay, op. cit., pp. 515-516.
- ¹³Gutmann, "Israel," Comparative Studies in Political Finance, p. 715.
- ¹⁴Election of National Deputies Act, 1950, Art. 53 (Davis, Constitutions, Electoral Laws, Treaties of the States in the Near and Middle East, p. 478).
- ¹⁵Cf. ante, p. 56.
- ¹⁶Charnay, op. cit., p. 564.
- ¹⁷Scalapino and Masumi, Parties and Politics in Contemporary Japan, p. 103; Soukup, "Japan," Comparative Studies in Political Finance, p. 741.
- ¹⁸Alexander and Denny, op. cit., p. 22.
- ¹⁹12-14 Geo. 6, c. 68, s. 79.

²⁰Douglas, Ethics in Government, p. 84; Scalapino and Masumi, loc. cit.; Soukup, loc. cit.

²¹Charnay, loc. cit.; cf. ante, p. 57.

²²Letter of the Post Office Department of January 4, 1961, U. S. Congress, Senate, Committee on Rules and Administration, Subcommittee on Privileges and Elections, Hearings 1961, pp. 105-106; cf. post, p. 125.

²³Charnay, loc. cit.

²⁴Scalapino and Masumi, loc. cit.; Soukup, loc. cit.

²⁵Alexander and Denny, op. cit., pp. 21-22; William L. Josslin, "Oregon Educates Its Voters," National Municipal Review, XXXII (January, 1943), 373-376.

²⁶Alexander and Denny, loc. cit.; Overacker, Money in Elections, pp. 367-371; Pollock, Party Campaign Funds, pp. 104-106.

²⁷Sen. M. Neuberger (Oreg.), U. S. Congress, Senate, Committee on Rules and Administration, Subcommittee on Privileges and Elections, Hearings 1961, p. 82.

²⁸Heard, The Costs of Democracy, p. 439; Pollock, op. cit., p. 106.

²⁹Hughes, "Australia," Comparative Studies in Political Finance, p. 659.

³⁰Charnay, op. cit., p. 530.

³¹Duebber and Braunthal, "West Germany," Comparative Studies in Political Finance, p. 786, n. 7.

³²Harrison, op. cit., p. 682.

³³Gutmann, op. cit., p. 715.

³⁴Scalapino and Masumi, op. cit., p. 103; Soukup, op. cit., p. 741.

³⁵Shannon, J. B., op. cit., p. 67.

³⁶Election of National Deputies Act, 1950, Art. 45 (Davis, op. cit., p. 477).

³⁷Harrison, loc. cit.

³⁸Scalapino and Masumi, loc. cit.; Soukup, loc. cit.

³⁹Cf. ante, p. 21.

⁴⁰47 U. S. Code 315(b); 1964.

⁴¹Sen. Monroney (Okla.), U. S. Congress, Senate, Committee on Commerce, Subcommittee on Communications, Hearings 1963, p. 46.

⁴²Joseph A. McDonald, Treasurer, National Broadcasting System, Testimony, U. S. Congress, Senate, Gore Committee, Hearings 1956, p. 103; Richard S. Salant, Vice President, Columbia Broadcasting System, Inc., Testimony, U. S. Congress, ibid., p. 125.

⁴³Douglas, op. cit., pp. 82-83; Heard, op. cit., p. 440; Jack Kroll and James L. McDevitt, Co-Directors of COPE, Testimony, U. S. Congress, House, Special Committee to Investigate Campaign Expenditures, Hearings 1956, p. 27; Survey of Sixteen Selected Political Scientists, U. S. Congress, Senate, McClellan Committee, Report 1957, p. 135.

⁴⁴U. S. President's Commission on Campaign Costs, Report, p. 27.

⁴⁵Alexander and Denny, op. cit., p. 28.

⁴⁶Ibid.

⁴⁷Cf. post, pp. 118-119.

⁴⁸Charnay, op. cit., p. 564, n. 2.

⁴⁹Cf. ante, pp. 62-63.

⁵⁰Cf. ante, pp. 9-10.

⁵¹Duebber and Braunthal, op. cit., p. 778; Ellwein, Das Regierungssystem der BRD, p. 85; Johnson, State Finance for Political Parties in Western Germany, p. 284; Plate, Parteifinanzierung und Grundgesetz, p. 111.

⁵²Henke, Das Recht der politischen Parteien, p. 194; Plate, ibid.

⁵³Duebber and Braunthal, loc. cit.; Henke, ibid.; Johnson, loc. cit.; Plate, ibid., 113.

⁵⁴Johnson, ibid.; Plate, pp. 50-51.

⁵⁵26 U. S. Code 162(b), 170; 1964.

⁵⁶U. S. Office of Internal Revenue, Internal Revenue Bulletin, Sept. 24, 1962, pp. 7-10.

⁵⁷Cf. ante, p. 15.

⁵⁸PL 89-368 = 80 Stat. 67.

⁵⁹Alexander and Denny, op. cit., pp. 24-25.

⁶⁰Lobel, "Federal Control of Campaign Contributions," p. 53, nn. 314-316.

⁶¹U. S. President's Commission on Campaign Costs, Report, pp. 4, 13-16; cf. post, pp. 98-100.

⁶²"LBJ Election Law Proposals Surprise, Delight Reformers," Congressional Quarterly, Weekly Report, XXIV (January 21, 1966), p. 246.

⁶³U. S. President, Election Reform Act 1966, p. 695; S. 3435, sec. 401, Cong. Rec., Daily Ed., June 1, 1966, p. 11367.

⁶⁴Plate, loc. cit.

⁶⁵U. S. President, loc. cit.

⁶⁶McDonald v. Commissioner, 323 U. S. 57, 1944; Lambert, Corporate Political Spending and Campaign Finance, pp. 1066-1068; Ellen A. Peters, "Political Campaign Financing: Incentives for Small Contributions," 18 Louisiana Law Review (April, 1958), p. 423.

⁶⁷290.09 (1) Minn. Stat., 1957.

⁶⁸Herbert E. Alexander, Tax Incentives for Political Contributions (Princeton, N. J.: Citizens' Research Foundation, 1961), pp. 16, 18-20; Lobel, op. cit., p. 55; U. S. President's Commission on Campaign Costs, pp. 4, 13-16.

⁶⁹Alexander, ibid., pp. 15-16.

⁷⁰Alexander, ibid., p. 19; Dan Brink, "A Tax Refund Check for Political Contributions," Money for Politics: A Miscellany of Ideas, ed. by Herbert E. Alexander (Princeton, N. J.: Citizens' Research Foundation, 1963), p. 38; John P. Roche and Leonard W. Levy, Parties and Pressure Groups (New York: Harcourt, Brace, and World, Inc., 1964), p. 112; S. 2541, U. S. Congress, Senate, Committee on Rules and Administration, Report 1966, p. 15; U. S. President's Commission on Campaign Costs, p. 4.

⁷¹Sen. Long (La.), U. S. Congress, Senate, Committee on Finance, Hearings 1966, p. 14.

⁷²Plate, op. cit., p. 115.

⁷³From a Letter by Stanley S. Surrey, Asst. Secretary of the Treasury, of February 28, 1961, U. S. Congress, Senate, Committee on Rules and Administration, Subcommittee on Privileges and Elections, Hearings 1961, p. 114.

⁷⁴The Council of State Governments, The Book of the States, 1966-1967, Vol. 16 (Chicago: The Council of State Governments, 1966), p. 203.

⁷⁵Alexander, op. cit., pp. 37-55; Heard, op. cit., pp. 451-454; Peters, op. cit., p. 430.

⁷⁶Cf. post, pp. 114-119.

⁷⁷U. S. President's Commission on Campaign Costs, p. 34.

⁷⁸Dan Brink, "A Tax Assignment-Subsidy Plan," Money for Politics: A Miscellany of Ideas, ed. by Herbert E. Alexander (Princeton, N. J.: Citizens' Research Foundation, 1963), p. 42.

⁷⁹Shannon, J. B., op. cit., pp. 93-94.

⁸⁰PL 89-809 = 80 Stat. 1539, Title III.

⁸¹Cong. Rec., Daily Ed., June 15, 1966, p. 12530.

⁸²PL 89-809 = 80 Stat. 1539.

⁸³U. S. Congress, Senate, Committee on Finance, Hearings 1966, pp. 8-27.

⁸⁴"A Dollar per Taxpayer," Editorial, The New York Times, Oct. 21, 1966, p. 40; Lobel, op. cit., p. 59; Sen. Long (La.), Cong. Rec., Daily Ed., June 15, 1966, p. 12530, U. S. Congress, Senate, Committee on Finance, Hearings 1966, p. 9; Sen. Morton (Ky.) and Sen. Williams (Del.), U. S. Congress, ibid., p. 27.

⁸⁵"A Dollar per Taxpayer," ibid.; ". . . and a Bad Signing," Editorial, The New York Times, Nov. 15, 1966, p. 46; Nona Brown, "A Checkoff for Politics," The New York Times, October 30, 1966, p. 4; "Check-Off for Campaigns," Editorial, The New York Times, Oct. 24, 1966, p. 38; Rep. Curtis, Cong. Rec., Daily Ed., Oct. 20, 1966, p. 27094; Sen. Gore, ibid., Oct. 22, 1966, pp. 27600-1; Jerry Landauer, "Taxpayer Financed Politics: A Hasty Step," The Wallstreet Journal, Nov. 17, 1966, p. 12; Sen. Murphy, Cong. Rec., Daily Ed., Oct. 22, 1966, p. 27582; "Ruin of a Tax Bill," Editorial, The New York Times, Oct. 27, 1966, p. 46; Sen. Scott, Cong. Rec., Daily Ed., Feb. 1, 1967, p. S1235; Rep. Watson, ibid., Oct. 20, 1966, p. 27093.

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- ⁹²U. S. President, Letter of May 29, 1962, p. 949.
- ⁹³Pollock, Money and Politics Abroad, p. 259.
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- ⁹⁵John S. Bottomly, "Corrupt Practices in Political Campaigns," 30 Boston Law Review (June, 1950), p. 380, n. 186; Pollock, Party Campaign Funds, p. 90, n. 48.
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- ⁹⁷Pollock, op. cit., pp. 90-94.
- ⁹⁸Heard, op. cit., pp. 431-432; Eberhard Menzel, "Staatliche Parteifinanzierung und moderner Parteienstaat," Sonderdruck aus Die Oeffentliche Verwaltung 17-18, 1966, p. 18.
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- ¹⁰⁰Sec. 2c (Wells, Government Financing of Political Parties in Puerto Rico, p. 36).
- ¹⁰¹16.602(c) Laws of Puerto Rico Ann., 1959 Supp.
- ¹⁰²Wells, op. cit., pp. 25-29.
- ¹⁰³Henry Wells, "Paying for Elections," National Civic Review, LIII (November, 1964), p. 542.
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- ¹⁰⁵Heard, op. cit., p. 434; Sen. Long (La.), U. S. Congress, Committee on Finance, Hearings 1966, p. 13.
- ¹⁰⁶Menzel, op. cit., pp. 1-3; Plate, op. cit., p. 51.
- ¹⁰⁷Johnson, op. cit., p. 290.

¹⁰⁸2 BvF 1/65, Juristische Schulung VI (October, 1966), p. 413.

¹⁰⁹Cf. ante, p. 95.

¹¹⁰Johnson, op. cit., p. 285; Menzel, op. cit., p. 2.

¹¹¹Burgbacher, Germany, Deutscher Bundestag, Verhandlungen, 4. Wahlperiode, Stenographische Berichte, Band 55, p. 5758; Menzel, loc. cit.; cf. ante, pp. 14-15.

¹¹²Ellwein, op. cit., p. 87; Johnson, loc. cit.; Schmitt-Vockenhausen, Germany, op. cit., p. 5755.

¹¹³Menzel, op. cit., pp. 10-11; but Peter Haeberle, "Unmittelbare staatliche Parteifinanzierung unter dem Grundgesetz," Juristische Schulung, VII (February, 1967), p. 65.

¹¹⁴For a list of advocates and opponents, cf. Menzel, op. cit., pp. 6-10.

¹¹⁵Duebber and Braunthal, op. cit., p. 784; Johnson, op. cit., p. 281; Menzel, op. cit., p. 3; Plate, op. cit., pp. 52-57.

¹¹⁶Menzel, ibid.

¹¹⁷Menzel, ibid., p. 4; Plate, op. cit., p. 57.

¹¹⁸Johnson, loc. cit.; Menzel, ibid.; Plate, ibid., pp. 52-57.

¹¹⁹Menzel, ibid., p. 5; Plate, ibid., p. 57.

¹²⁰Plate, ibid.

¹²¹Johnson, op. cit., p. 282; Menzel, op. cit., p. 6; Plate, ibid., p. 67.

¹²²Menzel, ibid.; Plate, ibid.

¹²³Johnson, op. cit., p. 283; Menzel, ibid., p. 5; Plate, ibid., p. 84.

¹²⁴Menzel, ibid., p. 10.

¹²⁵Ibid., p. 12.

¹²⁶Juristische Schulung VI (October, 1966), p. 413.

¹²⁷Menzel, loc. cit.

¹²⁸Ibid., pp. 10-11.

- ¹²⁹Cf. post, pp. 131-134.
- ¹³⁰Neuberger, "Federal Funds for Party Coffers," p. 106.
- ¹³¹Cf. ante, pp. 107-108.
- ¹³²Cf. post, pp. 131-132.
- ¹³³Henke, op. cit., p. 196; Menzel, op. cit., p. 13.
- ¹³⁴Cf. post, pp. 132-133.
- ¹³⁵Ellwein, op. cit., p. 87; Johnson, op. cit., p. 291.
- ¹³⁶Cf. post, pp. 122-123.
- ¹³⁷Chalmers, The Social Democratic Party of Germany, p. 235; Heard, The Costs of Democracy, pp. 14, 289.
- ¹³⁸Eschenburg, Probleme der modernen Parteifinanzierung, p. 43.
- ¹³⁹Heard, op. cit., pp. 223, 354; Lobel, "Federal Control of Campaign Contributions," p. 5.
- ¹⁴⁰Cf. ante, pp. 88-90.
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- ¹⁵⁰Cf. ante, p. 109.
- ¹⁵¹Menzel, op. cit., p. 14.
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- ¹⁵³Sec. 2(1).
- ¹⁵⁴Lobel, op. cit., p. 56.
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- ¹⁵⁶Henke, op. cit., p. 189.
- ¹⁵⁷Cf. ante, p. 106.
- ¹⁵⁸Cf. ante, p. 109.
- ¹⁵⁹Ellwein, op. cit., p. 87; Eschenburg, op. cit., p. 35; Henke, p. 195; Johnson, op. cit., p. 291; Menzel, op. cit., p. 10; Plate, op. cit., p. 68.
- ¹⁶⁰Cf. ante, p. 105.
- ¹⁶¹Cf. ante, p. 101.
- ¹⁶²Cf. ante, p. 30.
- ¹⁶³Menzel, op. cit., p. 3.
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- ¹⁶⁵Menzel, op. cit., p. 8.
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- 192 Smith v. Allwright, 321 U. S. 649.
- 193 2 U. S. Code 241(a); 18 U. S. Code 591; 1964.

¹⁹⁴18 U. S. Code 610; also 15 U. S. Code 79(1)(h); 1964.

¹⁹⁵U. S. President, Election Reform Act 1966, p. 694; S. 3435, sec. 101(a), Cong. Rec., Daily Ed., June 1, 1966, p. 11365.

¹⁹⁶U. S. Congress, Senate, Committee on Rules and Administration, Report 1966, pp. 7-8.

¹⁹⁷Cf. ante, p. 108.

¹⁹⁸Cf. ante, p. 95.

¹⁹⁹Cf. ante, p. 25.

²⁰⁰Cf. ante, p. 100.

²⁰¹Goodman, op. cit., p. 555.

²⁰²Cf. ante, pp. 114-120.

²⁰³Cf. ante, p. 104.

²⁰⁴Sen. Long (La.), Cong. Rec., Daily Ed., June 15, 1966, p. 12530; ibid., June 30, p. 14194; Oct. 12, p. 25334.

²⁰⁵Cf. ante, p. 100.

²⁰⁶Cf. ante, p. 107.

²⁰⁷Menzel, op. cit., p. 16.

²⁰⁸Lobel, op. cit., p. 20.

²⁰⁹2 U. S. Code 241(c); 18 U. S. Code 591; 1964.

²¹⁰Lobel, op. cit., p. 23.

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²¹²U. S. Congress, Senate, Committee on Rules and Administration, Report 1966, p. 15.

²¹³Alexander, Tax Incentives for Political Contributions, p. 24.

²¹⁴Sen. Long (La.), Cong. Rec., Daily Ed., June 30, 1966, p. 14195.

²¹⁵The Council of State Governments, The Book of the States, 1966-1967, p. 203.

²¹⁶Cf. ante, p. 109.

²¹⁷Cf. ante, p. 100.

²¹⁸Duebber and Braunthal, op. cit., p. 785.

²¹⁹Heard, op. cit., p. 437; Lobel, op. cit., pp. 16-17.

²²⁰Landauer, "Taxpayer Financed Politics: A Hasty Step," p. 12; Sen. Long (La.), U. S. Congress, Senate, Committee on Finance, Hearings 1966, p. 36; Sen. Pastore (R. I.), U. S. Congress, Senate, Committee on Commerce, Subcommittee on Communications, Hearings 1963, p. 48.

²²¹Passigli, op. cit., p. 731.

²²²Duebber and Braunthal, op. cit., p. 786; Eschenburg, op. cit., pp. 36-39.

²²³Cf. ante, pp. 108-109.

²²⁴Cf. ante, p. 106.

²²⁵Menzel, op. cit., p. 3.

²²⁶Cf. ante, p. 57.

²²⁷Cf. ante, p. 108.

²²⁸Duebber and Braunthal, op. cit., p. 784; Menzel, loc. cit.

²²⁹Menzel, ibid., p. 8.

²³⁰Germany, Parteiengesetz SPD 1965, Sec. 16 (Plate, op. cit., p. 130).

²³¹Cf. ante, pp. 52-54.

²³²Menzel, op. cit., p. 13.

²³³Cf. ante, p. 101.

²³⁴Cf. ante, p. 102.

²³⁵Cf. ante, p. 109.

²³⁶Lobel, op. cit., p. 60; also Herbert E. Alexander, "A Matching Incentive Plan," Money for Politics: A Miscellany of Ideas, ed. by Herbert E. Alexander (Princeton, N. J.: Citizens' Research Foundation, 1963), p. 40; Alexander and Denny, Regulation of Political Finance, p. 31; U. S. President's Commission on Campaign Costs, p. 32.

²³⁷16.603(c) Laws of Puerto Rico Ann., 1959 Supp.; Wells, Government Financing of Political Parties in Puerto Rico, p. 19; U. S. President's Commission, ibid.

²³⁸Cf. ante, p. 105.

²³⁹Menzel, op. cit., p. 7.

²⁴⁰Cf. ante, p. 102.

²⁴¹Sen. Long (La.), Cong. Rec., Daily Ed., Oct. 12, 1966, p. 25335; Cong. Quarterly, Weekly Report, 1966, p. 3097.

²⁴²16.607 Laws of Puerto Rico Ann., 1959 Supp.

²⁴³Alexander and Denny, op. cit., p. 29; Neuberger, "Federal Funds for Party Coffers," p. 106; U. S. President, Message to the Senate, Dec. 3, 1907, p. 778.

²⁴⁴Cf. ante, Chapter I, pp. 3-31.

²⁴⁵Cf. ante, p. 103.

²⁴⁶U. S. President's Commission on Campaign Costs, p. 7.

²⁴⁷Ibid., pp. 30-32.

²⁴⁸Alexander, "A Matching Incentive Plan," p. 11; Alexander and Denny, op. cit., pp. 30-31; Roche and Levy, op. cit., p. 114; Stern, op. cit., p. 47; U. S. President, Letter of May 29, 1962, p. 949.

²⁴⁹Schmitt-Vockenhausen, Germany, Deutscher Bundestag, Verhandlungen, 4. Wahlperiode, Stenographische Berichte, Band 55, p. 5756.

²⁵⁰Germany, Parteiengesetz CDU/CSU u. FDP 1964 (Plate, op. cit., p. 128).

²⁵¹Plate, ibid., p. 117.

²⁵²Ibid., p. 118.

²⁵³Cf. ante, p. 99.

²⁵⁴Cf. ante, p. 107.

²⁵⁵Juristische Schulung VI (October, 1966), p. 414.

²⁵⁶Cf. ante, pp. 109-110.

²⁵⁷Haeberle, op. cit., p. 68.

²⁵⁸Menzel, op. cit., p. 13.

²⁵⁹Sen. Hickey (Wyo.) and Sen. Mansfield (Mont.), U. S. Congress, Senate, Committee on Rules and Administration, Subcommittee on Privileges and Elections, Hearings 1961, p. 48.

²⁶⁰Soukup, op. cit., p. 740.

²⁶¹12-14 Geo. 6, c. 68, s. 69, 70.

²⁶²Pollock, Money and Politics Abroad, pp. 178-181.

²⁶³Newman, op. cit., p. 585, n. 8.

²⁶⁴Cf. ante, Chapters I and II, pp. 3-31, 41-75.

²⁶⁵Cf. ante, pp. 25-27.

²⁶⁶Menzel, op. cit., p. 15.

²⁶⁷Robert Strobel, "Griff in das Staatssaekel," Die Zeit (Hamburg), United States Edition, February 7, 1967, p. 5.

²⁶⁸Plate, op. cit., p. 77.

²⁶⁹Strobel, loc. cit.

²⁷⁰"States propose refund of only 1.50 Marks," The German Tribune (Hamburg), March 4, 1967 (From Die Welt [Hamburg], February 22, 1967), p. 4.

²⁷¹Strobel, loc. cit.

²⁷²Cf. ante, pp. 109-110.

CONCLUSION

Regular Party Funds

Private financing of the major political parties in Western democratic countries is insufficient or in an unsatisfactory state. Costs of campaigning and of regular party activities are high and continue to rise due to extended suffrage and new propaganda techniques. The parties have not developed adequate and sound methods of financing their activities. Instead of broadening their financial base by winning larger numbers of members and small contributors, they rely on the more convenient source of money from a few wealthy givers, mainly connected with business and labor. The neglect of careful research regarding the most effective techniques of propaganda has led to waste of campaign funds. Efforts of the American Republican party, such as direct mail pleas and mass solicitation by press and broadcasting appeals, have shown that a large number of small contributions can be raised. The ultimate object of the political parties must be the broadening of their financial base by encouraging larger parts of the population to give to party funds. So far, the parties have not proven that this goal cannot be reached, if efforts are persistent and ingenious enough. Promising plans, such as the one suggested by Kilpatrick, must still be evaluated.

Legal Restrictions

Some form of government interference is necessary to ensure fairness in political finance. First of all, parties must be required

to disclose their financial activities. Experience in some American states has shown that laws can be successful (1) when they cover nominations and elections, all elective offices, all candidates and committees, and contributions as well as expenditures, (2) when reports are submitted before and after nominations as well as elections, and a financial agent is responsible for the entire committee, and (3) when reports are made on a standard form and deposited and inspected at a government agency which has the obligation to demand completeness of the reports. In addition, parties should be required to submit annual financial accounts which give detailed and standardized information and are certified by a public accountant. All material should be open to the public; but, except for a short summary statement, the government should leave publication to the private news media.

Disclosure alone is not a sufficient restriction. The public may regard large contributions and expenditures as a sign of popularity of the candidate or the party rather than an attempt at improper influence on the political process. Furthermore, the parties might not feel any desire to increase their appeal to smaller contributors or to improve wasteful propaganda methods. Some limitations, therefore, should be imposed. The complete prohibition of contributions from some sources, such as business and labor in the United States, has proven impossible to enforce. It omits the strong desire of these powerful financial sources to influence the political course which seems to be justifiable, at least at the present stage of political finance. Maximum limits of contributions which a person could make to a candidate, committee, or party per year or campaign should be set.

The amount must reflect present practices, desirability, and possibility of enforcement. No contributions should be permitted within the last few days before election day and thereafter. Proper safeguards must ensure that no contributor can give more than the maximum amount to any one candidate, committee, or party. Tax benefits and similar legal incentives should be tried in order to channel business and labor money into all-partisan and non-partisan activities, such as sponsoring debates among candidates, campaigns for voting participation, and voter information.

To avoid a conflict with the provisions on contributions, no maximum ceilings should be imposed on the total sum of money a candidate, committee, or party may receive or expend. Detailed limitations should be enacted, however, restricting certain methods of propaganda, such as broadcasting time, the number of posters, pamphlets and newspaper advertisements. These restrictions can easily be controlled, but may be ineffective insofar as parties might divert the flow of their funds into other propaganda techniques. These other means of propaganda might prove, however, to be comparatively inefficient, if the most important methods are restricted and the parties might decide not to use them to a large extent. The list of limitations can also be adapted to the technical development from time to time.

Most important is the fact that the provisions regarding disclosure and limitations be strictly enforced. Basis for a successful enforcement of the law is its "enforceability." The provisions must be regarded as reasonable by the public and not overburden the enforcement personnel. The parties need ample room to develop new ideas; a narrow

regulation of their financial matters would be opposed to the political tasks of the parties. Limitations of contributions are observed under the new law in Florida, restriction of selected methods of propaganda works in France, and meaningful disclosure of party finance has been achieved in some American states. The central problem is to find a proper balance of the restrictive legal measures for the particular country; but there is no reason to believe that this is impossible.

Public Subsidies

Without any financial help from the government, the financial situation of many political parties would be precarious, especially in those countries where the parties have received government funds already. Although financing the political parties from private sources seems to be the most adequate way and should remain the ultimate goal of reform, it would be unrealistic to deny the parties all government aid at present. Parties do not only compete among each other but also have to defend their ideas and position against powerful interest and pressure groups which try to influence the electorate.

Some forms of government assistance, such as granting public halls for campaign rallies, putting up billboards for posters, and providing broadcasting time, would be relatively inexpensive and easy to control. Public halls already exist; the parties could be charged a nominal fee as in Great Britain. The billboards could be rented for commercial advertising at other than campaign periods. Providing broadcasting time would be more expensive but not amount to extraordinary sums because of the rather low saturation point of political programs.

Therefore, even in those countries where the government would have to buy the time from commercial stations, costs would be reasonable, especially when the government tried to get a discount for buying large quantities of time. Furthermore, this kind of government aid has the advantage that it can be combined with restrictive measures, such as allowing the parties no or only a limited number of additional posters, broadcasts, etc. Other forms of selected public assistance, such as granting a franking privilege, distributing voter pamphlets, or paying for a newspaper advertisement, could also be taken into consideration and combined with restrictions. Questions, however, arise as to the selection of newspapers--choice of the party?--and to the effectiveness of the voter pamphlets whose success has been different in the various American states.

Easy control and limitation of selected public aid gives it an advantage over general financial assistance by the government in the form of monetary assistance. Tax plans preserve the initiative of parties and voters, because the amounts of money are determined by an annual decision of the taxpayer. The deduction plan, however, must be rejected because of the unequal treatment of the rich and the poor. The credit plan avoids this weakness but voters who do not owe a net tax (about one-third in Germany and the United States) cannot benefit from it. The same is true for the assignment plan which has the further disadvantage of not demanding any personal sacrifice from the taxpayer. The taxpayer only diverts money which he already owes to the government to a special fund. He need not add money from his own funds as under the

deduction and credit plans. The American Presidential Election Campaign Fund Act of 1966, furthermore, leaves the voter no choice as to the recipient of his dollar--the major parties get an equal share--and it omits proper means of control.* An additional weakness of all tax plans is that the annual decision of the taxpayers might be regarded as a popular referendum though it would represent only a distorted picture of voter opinion.

Subsidies from general government funds in the form of monetary payments are the least recommendable of all public aid. In favor of such subsidies it can be said that the parties need a steady flow of income for a continuous and meaningful planning and that the parties must become independent of the few wealthy and influential contributors. The same result, however, can be achieved by the less far-reaching aid for selected propaganda methods, by some restrictive legislation, and by increased party efforts in fund-raising. Arguments against direct government payments are more numerous and bear more weight. The technical problem of a fair distribution of the funds among the parties is difficult but not crucial, as adequate methods of distribution have been found for other government subsidies. A combination plan with emphasis on voter support and size as well as stability of party organization provides for a solution. Possible centralization and bureaucratization of the parties is another danger, which could be decreased, however, by giving the funds not only to the top of the party organization but to the

*See note at p. 158 below.

different levels. Moreover, in many parties decisions are already made by the highest party officials so that government funds would hardly change the situation. In other parties, such as the dispersed American parties, a concentration of party forces is often regarded as welcome. It is also to be questioned whether enforcement of democratic practices within the parties can be achieved by financial regulations or is not rather the task of a general party reform.

More serious are some other problems. How should candidates who run for nomination, especially in the American primary elections, be supported? A refund of expenses to a candidate who polled a certain percentage of the total vote seems to be most proper. But how can the amount of a justified refund be determined: actual expenditures, according to voter turnout or eligible voters, a fixed sum? Public assistance to selected methods of propaganda, such as posters, leaflets, or broadcasts, seems to be preferable. The actual use of these means by the candidates can be better determined and controlled. As requirement for the participation in the public subsidies, a number of signatures of voters or party members could be prescribed.

The decisive argument against direct payments out of government funds to political parties is that the actual need of funds cannot be estimated by an objective standard. Experience in Germany and Puerto Rico has shown that the parties are inclined to raise the public subsidies continuously and that there is no way of stopping the increase short of "full coverage" of party expenditures, whereby "full coverage" is a purely subjective term. This process is not so much the result of

succeeding voluntary decisions made by the politicians in the annual discussions upon the government and party budgets, but becomes a development with a life of its own once it has been initiated. The reason is that the process is a part of a vicious circle independent of political control. The parties hold private funds insufficient and accept government subsidies. This causes contributors to think that the parties do not need their help any longer and they decrease or stop their donations. On the other hand, the parties, instead of strengthening their efforts for private help, become discouraged and rely more and more on public funds. Finally, parties and voters lose interest in each other. This can happen especially when a method is used under which a fixed amount of money is distributed among the parties according to their strength in parliament, as in Germany and Puerto Rico. The danger is diminished when the total amount distributed is dependent on voter participation or size of party organization. Even under the system of a fixed total amount of government payments some parties may be interested in a high voter turnout, if the number of their adherents is disproportionately high among the non-voters. This fact, however, has become less significant among the modern mass parties with their broad and inclusive appeals. The role of the party is to be a mediator between the citizen and his government. Direct monetary payments endanger this role, as the parties--independent of the voters' financial support--may disregard the voters' opinions and demands. Such a development would not only be contrary to the justification of political parties for democratic government, but a threat to democracy in general. Present dependence on a few

wealthy contributors would be exchanged for a situation which is equally undesirable: isolation of parties from their followers. The potential danger is a sufficient reason to reject this form of public subsidies.

Only under exceptional circumstances should such government aid be permitted. This was true for Germany when the Constitutional Court in its 1966 decision held direct government payments to political parties unconstitutional after it had declared in an earlier decision (although in a kind of obiter dictum) that these payments were possible. The payments should be limited to a certain period and distributed under proper safeguards. Given in the form of a matching incentive plan, they should have the purpose of helping the parties develop a broader financial base of private sources. In the beginning, the government portion could be larger than the amount of the private contributions with which the parties must match the government money. The government share should continuously decline, while the amount of the matching private contributions should proportionately be increased until the public payments could be discontinued. A maximum limit of the government money available for matching purposes could be set in the government budget and portions be assigned to the parties or their committees. A maximum limit could also be fixed for the size of each individual private contribution. Payments by the government should not be made to the parties directly but only to those who provide the parties with goods and services.

In summary, it can be said (1) that parties should finance their activities from large numbers of small contributions, (2) that some limitations should be imposed on private contributions, (3) that parties

should be restricted in certain methods of propaganda and be required to fully disclose their financial activities, and (4) that the government may take into consideration public assistance to certain selected methods of propaganda and, under exceptional circumstances, direct monetary payments for a limited period in the form of a matching incentive plan.

Reform of party finance is necessary, but it must be realized that a radical change from private to public sources may only be a temporary improvement ending up in an even greater crisis, while a well balanced combination of private initiative and public assistance presents a way to a more permanent solution.

Attempts in the Senate to repeal the Presidential Election Campaign Fund Act of 1966 ended in a compromise after several weeks of debate. Extraneous riders to a House passed tax bill (HR 6950) had been introduced, especially by Senators Gore of Tennessee and Williams of Delaware, in order to remove the 1966 Act. The main argument against the Act was the insufficiency of safeguards governing the distribution of the campaign funds. Strong opposition to a repeal by Senator Long of Louisiana, however, prevented final action until May 9, 1967, when the Senate rejected a motion for repeal of the Campaign Fund Act by Senators Gore and Williams but adopted a compromise suggested by Senator Mansfield of Montana. The compromise leaves inoperative the money-collecting and money-disbursing features of the Act unless Congress decides on guidelines for handling the funds. According to Senator Long, it will be difficult, however, to enact any legislation which would revive the subsidy plan. (For background of the Senate debates see Congressional Quarterly, Weekly Report, vol. XXV [1967], no. 13 through no. 18 [March 31, p. 498; April 7, p. 507; April 14, p. 584; April 21, p. 623; April 28, pp. 657-660, May 5, p. 697]. For final vote on May 9, 1967, see Kansas City Times, May 10, 1967, pp. 1, 6.)

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