



## Donations to Political Parties: Disclosure Regimes

### Executive Summary

- This paper discusses the regulation of donations to political parties. It compares New Zealand's donation disclosure regime with other OECD countries by reference to two competing views of disclosure rules – a preference for greater transparency or a preference for greater autonomy in the way funds are provided to political parties.
- The tension between these two positions is being exacerbated by a number of trends: the need for increasing amounts of money to resource political parties; increasing reliance on donations as a source of funds; documented cases of corruption linked to donations; declines in the levels of trust and confidence in the political process; and concerns about declining levels of voter participation.
- The possibility for donations to political parties to corrupt the political process is reinforced by the growing importance of wealthy donors who may see their contributions as a means of securing political influence.
- Trying to quantify corruption is difficult because corruption involves collusion – a cooperative venture in which those involved have both an interest in, and the resources, to keep it secret.
- Transparency International ranks New Zealand among the five countries with the lowest levels of perceived corruption.
- Within the specific context of campaign finance, three different standards of corruption are identified: quid pro quo deals; monetary influence; and distortion.
- When compared to several other OECD countries, New Zealand's disclosure regime is relatively modest in terms of regulations aimed at providing greater transparency.
- Of 25 OECD countries, eight (including New Zealand) have no prohibitions placed on who can donate to political parties.
- A large majority (68 percent) of OECD countries either completely ban anonymous donations or ban such donations above a certain threshold. New Zealand is one of eight OECD countries that allow anonymous donations regardless of size.
- Fifteen OECD countries, including New Zealand, do not impose any upper limit on the maximum amount that may be donated. Ten countries, including the United States, have imposed limits.
- The timely disclosure of information on donations may allow voters to act in an informed manner, and can help to alleviate the need for spending caps, bans on prohibited donors, or limits on donations.
- The challenge for any disclosure regime is to ensure sustainable democracy – balancing the needs of parties for sustainable financial resources with the wider public interest of avoiding undue influence in politics, limiting the potential for corruption, and ensuring the confidence of the public in the democratic system.

Although individual citizens voting in elections are at the heart of the democratic process, it is political parties which are the focus of the contest to form a government and shape public policies. For democratic competition to be free, fair, and equitable, all parties must have the capacity to provide voters with an informed choice. This capacity depends on an effective party organisation and administration, good research and analysis of the issues, and effective communication about party candidates and policies to mobilise citizens to vote. In turn, this capacity requires an important resource – money.

The 1986 New Zealand Royal Commission on the Electoral System stated that for the electoral process to be seen to be fair, and so that the voters may make informed judgements, it is important that the electorate is fully informed both about significant sources of political finance and about the uses to which it is put. The Commission also did not think it either fair or conducive to an informed electorate if wide discrepancies in access to resources mean some parties or groups are denied the chance to communicate their views effectively.<sup>2</sup>

This view is not universally held. An alternative approach is concerned less with the inequalities in the resources available to political parties than with emphasising the parties' freedom and autonomy to raise and spend money as they see fit. Consequently, this perspective argues for few restrictions on the financing of political parties and only limited disclosure of campaign donations and expenditure.

However, the tension between these two positions is becoming more obvious as a consequence of a number of trends being observed internationally: the need for increasing amounts of money to resource political parties; increasing reliance on donations from business and sector organisations; and a growing sense of unease among the voting public about the lack of transparency in the way financial support is provided to political parties. As a growing number of cases of corruption indicate, however, it is not just about the way inequalities in economic resources can be leveraged into political resources that are of concern. Equally important is defining where legitimate attempts to seek influence shade into illegitimate or corrupt attempts to buy influence and to sell it. Although these trends may only be incipient in New Zealand, it would be unreasonable to expect that this country can enjoy immunity from them.

This Background Note begins with a discussion of these trends to provide the context for the central theme of this paper – the regime regulating the financial resources political parties require to compete for political power. This discussion is followed by an examination of the meaning and extent of political corruption, drawing on international examples. The paper concludes by comparing New Zealand's political donation disclosure regime with those found in other OECD countries.

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<sup>1</sup> Stein Rokkan, 'Norway: Numerical Democracy and Corporate Pluralism,' in Robert A. Dahl (ed.), *Political Oppositions in Western Democracies*, New Haven, 1966, p. 105.

<sup>2</sup> The Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, 1986, p. 183.

## Increased need for money

Financial resources appear to be increasingly important for political parties. For example, in the United States, the average expenditure by a Senate winner went from US\$610,026 in 1976 to US\$4.5 million in 1994, a 637 percent increase.<sup>3</sup> The 2000 presidential contest between Al Gore and George W. Bush saw over US\$440 million raised, of which corporate interests donated US\$360 million.<sup>4</sup> In total, the 2000 congressional and presidential elections cost almost \$3 billion, up from \$2.2 billion in 1996 and \$1.8 billion in 1992.<sup>5</sup>

A number of trends are thought to be contributing to the increased amounts of money required for political campaigning. Firstly, increasing campaign costs are the result of the growing use of the media, especially television. Television is regarded as enabling, perhaps compelling, parties to “make universal appeals to voters rather than communicate through, and to, their core supporters.”<sup>6</sup> Although television time is expensive, it is so effective in reaching a mass audience that it generates pressure to compete on-air – pressure that “can lead to an ‘arms race’ in electoral spending.”<sup>7</sup>

## Politics as drama

Secondly, increasing demand for television time changes the nature of political competition – away from campaigns that have a generic focus on the issues to ones based on party image and the performance of party leaders. Television coverage is increasingly tending to dramatise, not analyse, policy issues and differences.<sup>8</sup> One well-known media presenter argues that

To draw an audience for politics on television these days you must make the program attractive, you must give it tension and a certain theatre. It must contain the possibility that anything could happen.<sup>9</sup>

One theatrical device used by television is to personalise policy positions through a focus on party leaders as combatants where on-screen performance matters – indeed, where it is sometimes measured. Good media performance, in turn, relies on the skills of expensive media professionals such as public relations experts, market researchers, advertising executives, media trainers, pollsters, stylists, and party press secretaries.

Thirdly, the growing professionalism and bureaucratisation of party organisations, linked internationally to the emergence of ‘cartel parties’, requires increased levels of funding.<sup>10</sup>

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<sup>3</sup> Archibald Cox, ‘Ethics, Campaign Finance, and Democracy’, *Society*, Vol. 35(3), 1998, p. 54.

<sup>4</sup> Common Cause, *Top Soft Money Donors*, Common Cause Organisation, <http://www.commoncause.org/laundromat/stat/topdonors99.htm>

<sup>5</sup> The Center for Responsive Politics, ‘Campaign Finance Reform: What’s the Issue?’, Center for Responsive Politics, December 2003. Available at: <http://www.opensecrets.org/news/campaignfinance/index.asp>

<sup>6</sup> Veronique Pujas, Martin Rhodes, ‘Party Finance and Political Scandal in Italy, Spain and France’, *West European Politics*, Vol. 22(3), 1999, p. 46.

<sup>7</sup> Such an arms race is unlikely in New Zealand since broadcasting expenditure by New Zealand political parties has been capped at \$2.08 million since 1990. Nevertheless, the cap does not remove a number of issues impinging on the electoral fairness in the way broadcasting resources are distributed among New Zealand’s political parties. See Andrew Geddis, ‘Reforming New Zealand’s Election Broadcasting Regime’, *Public Law Review*, Vol. 14(3), September 2003, p. 165.

<sup>8</sup> Wayne Hope, ‘Media and Political Process’, in R. Miller, (ed.), *New Zealand Government and Politics*, Oxford University Press, 2003, p. 338.

<sup>9</sup> P. Holmes, ‘You Can’t Teach Until you Entertain’, *Waikato Times*, 5 November, 1996, p. 6.

<sup>10</sup> Cartel parties are distinguished from ‘elite’, ‘mass’, and ‘catch-all’ party types. Within the context being discussed here, they are characterized by the employment of professional publicists and media experts and by campaigns which are capital-intensive, professional, and centralized. See Richard Katz, P. Mair, ‘Changing Models of Party Organisations and Party Democracy: The Emergence of the Cartel Party’, *Party Politics*, Vol. 1(1), 1995, pp. 5-28.

Additionally, in the case of New Zealand, the MMP electoral system has placed political parties centre stage.<sup>11</sup> Not only does MMP tend to increase total campaign expenditure – since there are more parties contesting elections – but MMP may also mean that parties need to increase their individual campaign expenditure in a more crowded and competitive party environment. In this climate, where a government is likely to be dependent on the support of one or more small political parties, MMP may give those that provide financial resources to the smaller parties an opportunity to exercise considerable, perhaps undue, influence.<sup>12</sup>

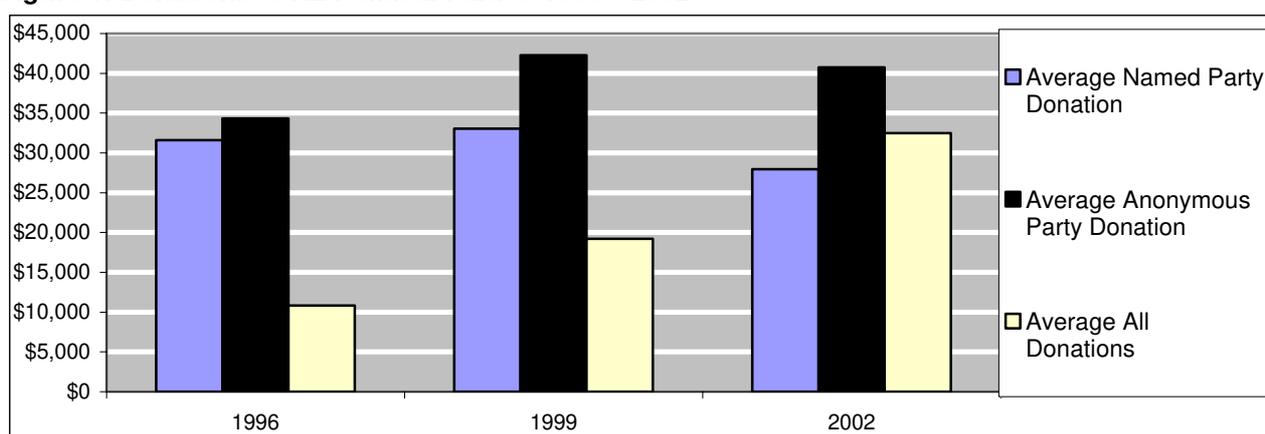
## Funding mix

Such developments indicate why political parties and their election campaigns require increasing amounts of money. This would not be problematic if political parties continued to receive their funding from a traditional mix of sources: the parties' own fund-raising efforts and membership fees; voluntary donations from individuals and organisations (such as companies and trade unions); state funding either directly or indirectly (such as the general administration of the electoral system and paying for broadcasting time). This mix makes a political party less reliant on a single source of funding.

In some political systems, however, the traditional mix of sources of party funds is changing. In those cases where there are both declining levels of party membership as well as limited public funding of political parties, parties are at risk of becoming increasingly reliant on ever-larger donations to fund their activities.

For example, party membership figures in New Zealand do reveal ongoing declines. While about 5.3 percent of the voting age population were members of a political party in 1996, this declined to 4.9 percent in 1999 and to 3.5 percent in 2002.<sup>13</sup> Although New Zealand's limited disclosure regime limits the analysis of donations, Figure 1 shows that the average *reported* donation to New Zealand political parties, from both anonymous and named donors, increased 200 per cent between 1996 and 2002 – from \$10,828 to \$32,478.<sup>14</sup>

**Figure 1: Donations to NZ Political Parties 1996 – 2002**



**Source:** Electoral Commission, 2003

<sup>11</sup> Margaret Wilson, 'Political Parties and Participation', in A. Simpson, (ed.), *The Constitutional Implications of MMP*, Victoria University of Wellington, 1998, p. 169.

<sup>12</sup> Geddis, 2003, p. 165.

<sup>13</sup> Electoral Commission, 'Submission to The Justice and Electoral Committee on its Inquiry into the 2002 General Election', INQ/GE/EC/12.

<sup>14</sup> The validity of this trend is constrained by the fact that only donations above \$10,000 need to be disclosed. The total amount of donations actually received by New Zealand political parties is therefore unknown.

The most common (and generous) source of donations tends to be industrial interests – either business or union – that are likely to benefit from or be harmed by politicians’ decisions. Studies of the political systems in France and Italy show that political parties there have lost their ideological focus and have come to be dominated by “business-politicians”.<sup>15</sup>

Increased campaign and television costs, declining party membership, and the growing importance of wealthy donors are developments that may encourage those donating large sums of money to see their contributions as a means of securing political influence. These trends reinforce the possibility for donations to political parties to corrupt the political process by further enabling inequalities in economic resources to be leveraged into political gain. As Transparency International notes:

A spate of scandals related to the funding of political parties and politicians demonstrates only too well that where there is power and influence to be gained, there is also money to corrupt. As the cost of political campaigning rises, payments to political parties to influence political decision-making are also on the rise. This is a dangerous trend that undermines democratic institutions.<sup>16</sup>

How  
much  
corruption?

Yet, to what extent are these trends resulting in corruption? Trying to quantify corruption is difficult because corruption involves collusion – essentially a cooperative venture in which those involved have both an interest in, and the resources, to keep it secret. There are few empirical indicators that enable corruption within a country to be assessed let alone allowing cross-country comparisons to be made.

Even where there is hard empirical data, problems remain. For example, during 1992 and 1993, over 400 members of Italy’s parliament, including four former prime ministers, were investigated on corruption charges. A total of five thousand politicians and businessmen were actually arrested.<sup>17</sup> Nevertheless, comparing the number of prosecutions for corruption may not reveal the extent of corruption but simply the effectiveness of anti-corruption legislation, or the ability of prosecutors and the media to expose corrupt practices.

Not surprisingly, corruption is cited as the classic example of a phenomenon that is not quantifiable since there cannot be statistics on that, which by its very nature, is concealed.<sup>18</sup>

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<sup>15</sup> Donatella Della Porta, ‘Actors in Corruption: Business Politicians in Italy’, *International Social Science Journal*, Vol. 48(3), 1996.

<sup>16</sup> Paul Lashmar, ‘West Europe and North America’, in Robin Hodess, Jessie Banfield, Toby Wolfe, (eds.), *Global Corruption Report 2001*, Transparency International, Berlin, 2001, p. 144. Available at: <http://www.globalcorruptionreport.org/gcr2001.shtml>

<sup>17</sup> Moshe Major, ‘Feeling the Heat? Anticorruption Mechanisms in Comparative Perspective’, *Governance*, Vol. 17(1), January 2004, p. 13.

<sup>18</sup> F. Galtung, ‘Overview’, in Robin Hodess, Jessie Banfield, Toby Wolfe, (eds.), *Global Corruption Report 2001*, Transparency International, Berlin, 2001, p. 224.

## Corruption surveys

One solution to this problem has been to use cross-national surveys to assess corruption levels in society generally – either by sampling the public at large, or by sampling business and industry executives, or some other defined group. Some corruption surveys are conducted by groups providing commercial services to the business sector on the risks of doing business in a country – for example, those undertaken by the Political and Economic Risk Consultancy<sup>19</sup>, Political Risk Services<sup>20</sup>, and the Economist Intelligence Unit.<sup>21</sup> Other corruption surveys are conducted by non-profit groups interested in upholding standards of democracy, such as Freedom House<sup>22</sup> and Transparency International.<sup>23</sup>

New Zealand tends to rate highly in international surveys of the latter type that seek to measure levels of corruption. In its last three annual surveys, for example, Transparency International has ranked New Zealand among the five countries with the highest aggregate corruption score indicating very low levels of perceived corruption. Table 1 shows that in the 2003 survey New Zealand ranked third equal with Denmark, behind only Finland and Iceland.

**Table 1: Corruptions Perceptions Index (CPI) Selected Countries 2001 - 2003**

COUNTRY	CPI 2001	CPI 2002	CPI 2003	Rank 2003
Finland	9.9	9.7	9.7	1
Iceland	9.2	9.4	9.6	2
Denmark	9.5	9.5	9.5	3=
<b>New Zealand</b>	<b>9.4</b>	<b>9.5</b>	<b>9.5</b>	<b>3=</b>
Singapore	9.2	9.3	9.4	5
Sweden	9.0	9.3	9.3	6
Netherlands	8.8	9.0	8.9	7
Australia	8.5	8.6	8.8	8=
Norway	8.6	8.5	8.8	8=
Switzerland	8.4	8.5	8.8	8=

**Note:** The CPI score relates to subjective perceptions about the degree of corruption as seen by business people and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).

**Source:** Transparency International 2003, *Corruption Perceptions Index*  
<http://www.transparency.org/cpi/2003/cpi2003.en.html>

Although the wealthier countries are perceived to be least corrupt, they are not immune to high levels of corruption. For example, Transparency International sees some European countries, such as Greece and Italy, as cause for concern. Moreover, in a survey conducted by Gallup International, as part of Transparency International's Global Corruption Barometer, people in 75 percent of the countries surveyed listed the elimination of corruption from political parties as their highest

<sup>19</sup> Political and Risk Consultancy, 'Corruption in Asia in 2001', *Asian Intelligence Issue*, No. 579, March 2001, <http://www.asiarisk.com/lib10.html>

<sup>20</sup> <http://www.prsgroup.com/>

<sup>21</sup> <http://www.eiu.com/>

<sup>22</sup> <http://www.freedomhouse.org/>

<sup>23</sup> <http://www.transparency.org/>

priority. When asked to choose which sector of society they would first eliminate corruption from, about 40 percent of respondents in Canada, Finland, Germany, Ireland, the UK, and the USA said “political parties”.<sup>24</sup>

Thus, even though Table 1 shows that Finns perceive very low levels of corruption within their country, the Gallup survey also shows that 40 percent rate eliminating corruption from political parties as their first priority.

Such discrepancies in survey results can arise due to differences in survey methodologies – variation in sample sizes, differences in question wording, and the coding and weightings applied to responses. Perhaps more importantly, the CPI survey data relies on the perceptions of the business and political communities to assess corruption. Such perceptions will tend to be informed by the world views of business and development interests that may differ markedly from those held by the general public. In any event, all corruption surveys rely on subjective perceptions rather than on real phenomena, making it difficult to assess what the ‘real’ level of corruption may be in any one country.

## Defining corruption

A second approach to assessing corruption is therefore concerned less with aggregate measures and index scores than with defining and illustrating the range of corrupt practices found in political life by reference to specific cases. Allegations and instances of corruption in the financing of political parties are numerous. Media items dealing with alleged corruption in Ecuador, Italy, France, South Korea, the Philippines, Russia, Kenya, Venezuela, and Georgia appeared in just one month in just one magazine alone.<sup>25</sup>

As with quantifying corruption, defining corruption is problematic. What is corruption in some political cultures may simply be seen as normal political practice in others. Pacific Islanders, for example, tend to find Western definitions of corruption unconvincing when viewed from the perspective of societies in which communal dependence, kinship ties, and reciprocity are important and where customary gift giving is traditional practice.<sup>26</sup>

The most widely used definition of corruption is the abuse of public office for private gain. This definition is rather broad because it can include a range of practices – bribery, extortion, fraud, trafficking, embezzlement, nepotism, patronage, and cronyism.

## Corruption as collusion

More helpfully, using a micro-economic approach, corruption can be seen as “a cooperative outcome in games involving three or more players, where two (or more) players can collude at the expense of a third party.”<sup>27</sup> The focus on collusion helps to distinguish corruption from simple fraud, embezzlement, or extortion that only involves the illegal attempts of one party to gain advantage over another.

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<sup>24</sup> Transparency International, *Transparency International Global Corruption Barometer*, Transparency International, 3 July 2003, p. 2.

<sup>25</sup> See, for example: The Economist, ‘A Bad, Bad Trip in Quito: Ecuador’s Government. A Row over Drug Money Tarnishes the President’, *The Economist*, Vol. 369(8352), Nov. 29, 2003, p. 35; The Economist, ‘One Down; The Trials of Italy’s Prime Minister: A Verdict on Cesare Previti, a Close Berlusconi Associate’, *The Economist*, Vol. 369(8352), Nov. 29, 2003, p. 48; The Economist, ‘Playing Dirty; Philippines. Election Campaign in the Philippines’, *The Economist*, Vol. 369(8351), Nov. 22, 2003, p. 40; The Economist, ‘Elfs and Dwarfs; French Corruption. The Last Verdict in the Elf Trials’, *The Economist*, Vol. 369(8350), Nov. 15, p. 50.

<sup>26</sup> Mark Findlay, ‘The Pacific’, in Michael Griffin (ed.), *Global Corruption Report 2003*, Transparency International, Berlin, 2003, p.115. Available at:

[http://www.globalcorruptionreport.org/download/gcr2003/12\\_Pacific\\_\(Findlay\).pdf](http://www.globalcorruptionreport.org/download/gcr2003/12_Pacific_(Findlay).pdf)

<sup>27</sup> Roger Bowles, ‘Corruption’, School of Social Sciences University of Bath, 1999, p. 463.

<http://allserv.rug.ac.be/~gdegeest/8500book.pdf>

## Corruption as quid pro quo deals

Within the specific context of donations to political parties (campaign finance), Burke argues that three different definitions or “standards” of corruption have been “jumbled together in the corpus of campaign finance law”: ‘quid pro quo’, ‘monetary influence’, and ‘distortion’.<sup>28</sup>

Burke’s quid pro quo standard defines corruption as officeholders taking money from the donors in exchange for some action. The examples listed below include bribery, vote buying, and the awarding of contracts. Essentially, both parties are colluding in an explicit deal, with both sides acknowledging that a trade is being made. In this vein, the United States Supreme Court defined corruption as occurring when elected officials are

influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial quid pro quo: dollars for political favors.<sup>29</sup>

## Abuse of public office for personal gain

The German company, Flick, illustrates corruption defined in this way – the abuse of public office for private gain. Two German ministers were implicated in a corruption scandal when the Flick company attempted to avoid about DM1 billion in taxes on the sale of a block of Daimler-Benz shares. Following the granting of a tax exemption to the company by the Minister of Economy, (after the company reinvested the share profits in a way that benefited the national economy), the Ministers both received large sums of money from the Flick company.<sup>30</sup>

In France the biggest corruption case to reach the French courts concerned the French oil company Elf-Aquitane, previously state-owned and now privatised. The former chairman of the company, Loik le Floch-Prigent, before being jailed for five years, claimed that Elf was used as a slush fund for rewarding allies of the French state – apparently, a longstanding system approved by presidents.<sup>31</sup> An employee of Elf-Aquitane was paid more than £6.5m to persuade her then lover, Roland Dumas, the Foreign Office Minister under the Mitterrand presidency, to approve the (controversial) 1991 sale of six French-built frigates to Taiwan. Charged with the misuse of public funds, Dumas was sentenced to six months in prison and a fine of US\$130,000. About US\$350 million of the oil company’s funds were reportedly diverted for corrupt practices.<sup>32</sup>

## Vote Buying

Another area of corruption defined as quid pro quo deals is money for votes. In the United States, three dairy cooperatives, interested in maintaining dairy subsidies, made political contributions of various sizes to members of Congress. All Congress members who had received more than \$30,000 voted for the dairy subsidy at the high level. Almost all (97 percent) members who received from \$20,000 to \$30,000 voted for the high level subsidy, as did 81 percent of members who received from \$10,000 to \$20,000 in political donations.

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<sup>28</sup> Thomas F. Burke, ‘The Concept Of Corruption In Campaign Finance Law’, *Constitutional Commentary*, Vol. 14, Spring 1997, p. 131.

<sup>29</sup> US Supreme Court, *Federal Election Commission v National Conservative Political Action Committee*, 470, US 480 (1985). Case available at:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&navby=case&vol=470&invol=480&friend=oyez>

<sup>30</sup> Ulrich von Alemann, ‘Party Finance, Party Donations and Corruption Working Paper: The German Case’, Transparency International, Berlin, 2000. Available at:

[http://www.transparency.org/working\\_papers/country/german\\_paper.html](http://www.transparency.org/working_papers/country/german_paper.html)

<sup>31</sup> The Dominion-Post, ‘Jail for Corrupt Oil Boss’, *Dominion-Post*, November 14, 2003.

<sup>32</sup> Lashmar, 2001, p. 139.

By comparison, of those Congress members who received minor contributions (\$1 to \$2,500), only about a third voted for the higher subsidy, as did 23 percent of those who received no dairy industry money.<sup>33</sup>

The effect of the special interest money seems plain whether one infers that it bought votes in Congress or that it made the difference in congressional elections in an age when the key factor is usually the ability to outspend one's opponent in buying skilled campaign managers, pollsters, "packagers" and television spots.<sup>34</sup>

## Contract bribes

Another area where there is potential for quid pro quo deals is in the awarding of public sector contracts to private sector firms, such as in large-scale civil engineering projects. Here, 'political factors' can override the traditional criteria employed to evaluate such projects, such as tender price or track record. In Italy until 1993, for example, in the contracting of major public works, entrepreneurs were known to pay pre-established percentages of the project's value as bribes to the political parties.<sup>35</sup> Specialised "party cashiers" had the job of managing the collection of bribes and the distribution of construction contracts. Such people generally had no official government job but were the ones that business people turned to if they had a problem dealing with the government. They collected bribes on behalf of the party, keeping some share of the gains for themselves.<sup>36</sup>

Currently, there are concerns about the awarding of no-bid or closed-bid contracts in Iraq to oil-service companies such as Halliburton and Bechtel. For example, more than US\$2.3 billion has been awarded to Kellogg, Brown, and Root (KBR), a subsidiary of Halliburton, and whose CEO between 1995 and 2000 was Vice President Dick Cheney.<sup>37</sup> Between 1999 and 2002, KBR and Bechtel donated US\$1.44 million in 'soft-money' campaign contributions to the Republicans.<sup>38</sup> According to Democratic Congressman Henry Waxman:

There is growing evidence that favored contractors like Halliburton and Bechtel are getting sweetheart deals that are costing the taxpayer a bundle but delivering scant results.<sup>39</sup>

In April 2003, the General Accounting Office, the investigative arm of Congress, announced it would launch an investigation into the methods used to award contracts to rebuild Iraq.

More indirect and subtle ways of abusing public office shade into what is sometimes labelled 'sleaze'. The claim by politicians that they are pursuing the public interest, for example, is likely to be discounted by the public if they maintain consultancies or attract sponsorship in areas in which they have a personal interest. Attempts to counter sleaze have seen the UK's Committee on

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<sup>33</sup> Cox, 1998, p. 57.

<sup>34</sup> Cox, 1998, p. 57.

<sup>35</sup> Veronique Pujas, Martin Rhodes, 1999, p. 46.

<sup>36</sup> Donatella Della Porta, 1996.

<sup>37</sup> Cheney continues to receive between US\$180,000 and US\$1 million annually in deferred compensation – a fact that has prompted members of Congress to ask whether this demonstrates Cheney's continuing financial interest in the company.

<sup>38</sup> The Center for Responsive Politics, 2003, 'Rebuilding Iraq – The Contractors', Center for Responsive Politics, available at: [http://www.opensecrets.org/news/rebuilding\\_iraq/index.asp](http://www.opensecrets.org/news/rebuilding_iraq/index.asp) Although US law has prohibited corporations from contributing any money to federal campaigns since 1907, soft money – contributions to designated "non-federal" accounts of the national political parties – enables corporations (and others) to evade both donation limits and the bans placed on corporate donors. See Common Cause Organisation at <http://www.commoncause.org/laundromat/faq.cfm - what>

<sup>39</sup> M. Beelman, 2003, 'Winning Contractors: U.S. Contractors Reap the Windfalls of Post-war Reconstruction', Center for Public Integrity, <http://www.publicintegrity.org/wow/report.aspx?aid=65>

Standards in Public Life argue for greater disclosure of the outside interests of British Members of Parliament.<sup>40</sup>

## The 'monetary influence' standard of corruption

A second definition of corruption uses a standard of monetary influence. This standard defines corruption more broadly. Even if no explicit deal is made between donor and politician, this standard defines as corrupt elected representatives who perform their public duties with monetary considerations in mind. The US Supreme Court has acknowledged this interpretation when it said corruption should be understood

not only as quid pro quo agreements, but also as undue influence on an officeholder's judgment, and the appearance of such influence."<sup>41</sup>

Examples of illegal campaign donations and influence on the policy agenda illustrate this standard.

## Illegal donations

Concerned that German industry was instrumental in the rise to power of Hitler and his Nazi party, Article 21 of the 1949 German Constitution stipulated that "Parties . . . must account to the public for the sources of their funds". More detailed regulations were set out in the 1967 Law on Political Parties.<sup>42</sup> Despite this, there are cases of attempts to use money to influence German political parties.

During the 1980s it was revealed that Eberhard von Brauchitsch, the top executive manager in the Flick company, had illegally donated (in the form of cash in plain envelopes) over DM 25 million to selected parties in the German Bundestag. Most of the money went to either the CDU/CSU or to the FDP, a small party with ties to industry and commerce. These illegal donations were justified by von Brauchitsch as a way of "cultivating the political landscape".<sup>43</sup>

More recently, Helmut Kohl, the former German leader of the CDU and former Chancellor of the Federal Republic, admitted violating the party law by operating clandestine bank accounts – some of them in foreign countries – and personally receiving about DM2 million in donations not publicised in the party's statements of account. Kohl denied that his political decisions were affected by these illegal donations, but he refused to identify the donors. Later court cases indicated that donations were made by arms industry lobbyist Karlheinz Schreiber and the Thyssen company.

In 1999 the German Bundestag appointed a committee to investigate questions involving: the sale and shipment of 36 German tanks to Saudi Arabia in 1991; the privatisation and restructuring of the Leuna oil refinery; the sale of the Minol chain of gas stations; the consignment of planes to airlines in Canada and Thailand by the Deutsche Airbus GmbH; and the shipment of MBB helicopters to the Canadian coast guard in the second half of the 1980s. Although Kohl was not prosecuted, he was forced to pay a US\$142,000 fine and had to resign as honorary chairman of the Christian Democratic Union (CDU).<sup>44</sup>

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<sup>40</sup> Aileen Walker, 'The Political Parties, Elections and Referendums Bill: Donations', Research Paper 00/2, House of Commons Library, 7 January 2000. Available at: <http://www.parliament.uk/commons/lib/research/rp2000/rp00-002.pdf>

<sup>41</sup> US Supreme Court, *Federal Election Commission v Colorado Federal Republican Campaign Committee*, 533 US 431 (2001). Available at: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=533&invol=431>

<sup>42</sup> von Alemann, 2000.

<sup>43</sup> von Alemann, 2000.

<sup>44</sup> von Alemann, 2000.

The former Governor of California, Jerry Brown, notes that corruption does not even have to involve illegal activity.

The corruption I speak of is not legally defined as a felony – at least not yet – but rather is the current method of paying for American elections. You take money from the richest and best connected 1 percent to get elected and then pretend that this does not affect your judgment.<sup>45</sup>

An illustration of legal activity that could be regarded as demonstrating the monetary influence standard of corruption is Enron. Between 1989 and its collapse, the United States energy company made political donations of US\$5.95 million, of which 74 percent went to the Republican Party. Enron also donated US\$623,000 to President George W. Bush's campaign – a donation greater than President Bush received from any other single campaign source. Subsequently, 17 policies that Enron advocated were incorporated in the White House energy plan (including trading in energy derivatives).<sup>46</sup> Following allegations of Enron's close connections with policy-makers in the Bush administration, the investigative branch of Congress filed a lawsuit in February 2002 demanding records from the administration's energy task force to determine whether campaign donors such as Enron had exerted a disproportionate influence over President Bush's energy policy.<sup>47</sup>

## Corruption as 'distortion'

A final standard of corruption is based on representatives 'distorting' the views, or the interests, of those they represent. Depending on one's view of representation, representatives should either: vote *to* reflect the views of their constituents (based on a view of the representative as a delegate); or representatives should vote, as Edmund Burke suggested, *in* the best, or public good, interests of their constituents. In reality, representatives (as individuals or parties), adopt policy positions based on some mix of the two views of representation.

Thus, corruption occurs when representatives fail to reflect either what their constituents want or their own vision of what the public good dictates in favour of the policy positions of those who make significant donations to their campaign. Campaign contributions corrupt (distort) the role of the representative to the extent that they shift policy positions away from those mandated by constituents and the public at elections.

This standard of corruption is best illustrated by the buying and selling of access. To the extent that elected representatives are able to wield influence over the legislative agenda and process, they are legitimate lobbying targets for interest groups. However, when interest groups buy, and decision-makers sell, access – either to the policy agenda or to policy outcomes – they are involved in a corrupt practice. Both are colluding to advance the interests of some groups at the expense of others, or at the expense of the public good of all constituents.

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<sup>45</sup> Edmund G. Brown Jr., 'Campaign Contributions Have Corrupted the Political Process', in Charles P. Cozic (ed.), *Politicians and Ethics*, Greenhaven Press, 1996.

<sup>46</sup> Roland Rich, 'Restraint and Enforcement – the Enron Lesson', Centre for Democratic Institutions, Australian National University, Unpublished Paper Presented to Corpus Christi College, Oxford 16-21 March 2002.

<sup>47</sup> Phyllis Dininio and Frank Anechiarico, 'North America', in Michael Griffin (ed.), *Global Corruption Report 2003*, Transparency International, Berlin, 2003, p.79.

## Buying and selling access

Political analysts have long agreed that access is *the* principal goal of most interest groups, and lobbyists have always recognised that access is the key to persuasion.<sup>48</sup> There is also general agreement that access is what donations to political parties most often buy – the opportunity to present information, explain a political position, or argue a case on a given issue. Some see few problems with this. In the United States, for example, officials of political action committees are adamant that all they get for their investment is access to congressional representatives – a chance to “tell their story”.<sup>49</sup> Others are concerned that not all political positions, or “stories” will be aired in such an environment, nor that access is all that donors get. A survey of US business executives conducted by the Committee for Economic Development found that some donors admit that their donations are made in the hopes of special treatment in legislative or regulatory matters.<sup>50</sup>

In Australia, the Millennium Forum, a fundraising body set up by the Liberal Party in New South Wales, has been described as offering “extraordinarily regular and frequent access to Mr Howard and his ministers, depending on how much donors pay to become ‘sponsors’ of the NSW Liberals.”<sup>51</sup> Sponsorship deals begin from A\$10,000, although the top Millennium Forum sponsor has been the accounting firm Deloitte Touche Tohmatsu, which signed up for a two and a half year deal in 1999 for A\$175,000 a year, or A\$437,500 in total.

In 2001, the Forum scheduled 13 functions at Deloitte's Sydney offices, many of which were attended by senior ministers. While the Liberal Party has disclosed Deloitte's Millennium Fund contribution, the company itself does not believe it made a donation. A Deloitte spokesperson commented: “We certainly don't view it as a donation. It's a sponsorship. In the past we have viewed it as a marketing expense.”<sup>52</sup>

Fundraising dinners are also said to provide opportunities to buy political access. In 2002, the Victorian ALP held a Premier and Cabinet Dinner with seats being offered at a price of A\$1,100 each. Companies buying entire tables were able to choose which Minister they would like to dine with.<sup>53</sup>

The New Zealand situation is less clear. Mike Williams is reported as indicating that donors never talk about gaining access or policy concessions in exchange for their cash. On the other hand, Selwyn Cushing is reported as saying that access is very much “part of the play”. Those making large donations have an expectation that their contributions will get them a foot in the door to present a case, even if the recipients have made it clear there should be no expectations of favours. One corporate chairman notes that “there are people out there who give tens of thousands, if not into the hundreds of thousands, who possibly have more influence as a result of that.”<sup>54</sup>

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<sup>48</sup> David Austen-Smith, ‘Campaign Contributions and Access’, *American Political Science Review*, Vol. 89(3), 1995, p. 566.

<sup>49</sup> Austen-Smith, 1995, p. 566.

<sup>50</sup> Keith Ewing, ‘Corruption in Party Financing: The Case for Global Standards’, in Robin Hodess, Jessie Banfield, Toby Wolfe, (eds.), *Global Corruption Report 2001*, Transparency International, Berlin, 2001, p. 188.

<sup>51</sup> Emiliya Mychasuk and Pilita Clark, ‘Howard and his Team Rented by the Hour’, *Sydney Morning Herald*, Sydney, 13 June, 2001, p. 1.

<sup>52</sup> Mychasuk and Clark, 2001.

<sup>53</sup> Richard Baker, ‘Food, Wine and a Minister for \$1100’, *The Age*, 14 December, 2002, p. 6.

<sup>54</sup> Fran O’Sullivan, Vernon Small, ‘The Cost of Democracy’, *New Zealand Herald*, 29 June, 2002.

Selling or buying access to politicians may not be seen by some as corruption or even influence peddling, but simply as a way of providing a service to constituents or responding to constituent concerns.

Others, however, do express concern that access to decision-makers based on a criterion of wealth undermines the promise of democracy – that all share equally in political power.<sup>55</sup> The concern is that the search for funds may induce politicians to listen more to those who give to their campaigns than to those who vote for them, or for their party.<sup>56</sup>

Buying and selling access itself changes the very basis of our political system. No one would tolerate a legal system in which the judge heard only the evidence and arguments of one side. Why should the Congress be different?<sup>57</sup>

## The impacts of corruption

A number of commentators link a range of corrupt practices with negative public opinion about the democratic process. Several surveys show that citizens in many democracies have little faith in the political process – that it is not particularly open to public participation, that it is not receptive to their views, or that lobbyists are thought to have replaced representatives as the primary political actors.<sup>58</sup> A 1992 American poll found that 75 percent of the registered likely voters agreed that “Congress is largely owned by special interest groups”, while 85 percent agreed that “special interest money buys the loyalty of candidates”.<sup>59</sup> A 1997 Gallup survey found that 77 percent of respondents said elected officials in Washington are influenced by pressure from contributors – only 19 percent thought officials were influenced by the best interests of the country.<sup>60</sup>

## Declining trust

The NZ Study of Values data shows not only similar levels of distrust of government but increased distrust over time. Between 1989 and 1998 the proportion of survey respondents who thought that “this country is run by a few big interests” increased from 54 percent to 70 percent. The proportion expressing “no confidence at all” in government doubled from 11 percent in 1985 to 22 percent in 1998. In the 1998 survey 27 percent had “no confidence at all” in Parliament, while 34 percent had “no confidence at all” in political parties. In a 2004 survey, nearly a third of respondents had little trust in Parliament.<sup>61</sup> The Values survey also reported that over 10 percent of respondents believed that most, or almost all, public officials are engaged in bribe taking or corruption.<sup>62</sup> When given a list of 25 professions and asked to rate those they trusted the most, New Zealanders ranked “politicians” at number 25.<sup>63</sup>

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<sup>55</sup> Joo-Cheong Tham, ‘The Normalisation of Corporate Contributions to Political Parties: A Threat to Democracy’, Democratic Audit of Australia, Research School of Social Sciences, Australian National University, 2003. Available at: <http://democratic.audit.anu.edu.au/>

<sup>56</sup> Karl-Heinz Nassmacher, ‘Introduction: Political Parties, Funding and Democracy’, in Reginald Austin, Maja Tjernström, (eds.), *Funding of Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance (IDEA), 2003, p. 6. Available at: [http://www.idea.int/publications/funding\\_parties/index.cfm](http://www.idea.int/publications/funding_parties/index.cfm)

<sup>57</sup> Cox, 1998, p. 60.

<sup>58</sup> Michael Johnston, ‘Disengaging from Democracy’, *International Social Attitudes: The 10th BSA Report*. Aldershot, Dartmouth, 1993.

<sup>59</sup> Cox, 1998, p. 60.

<sup>60</sup> Michael Johnston, *Votes, Money, and Good Politics: The Ground Rules of American Political Finance*, Department of Political Science, Colgate University, NY, 1998, p. 4. Available at: <http://departments.colgate.edu/polisci/papers/mjohnston/originals/ceptext.pdf>

<sup>61</sup> N. Smith, ‘Politicians Fail to Inspire... Yet Again’, *National Business Review*, May 21, 2004, p. 16.

<sup>62</sup> P. Perry and A. Webster, *New Zealand Politics at the Turn of the Millennium: Attitudes and Values about Politics and Government*, Auckland, Alpha Publications, 1999, pp. 44-47.

<sup>63</sup> Mark Stevens, ‘Who Kiwis Trust the Most’, *The Dominion Post*, 28 November, 2002, p. 4.

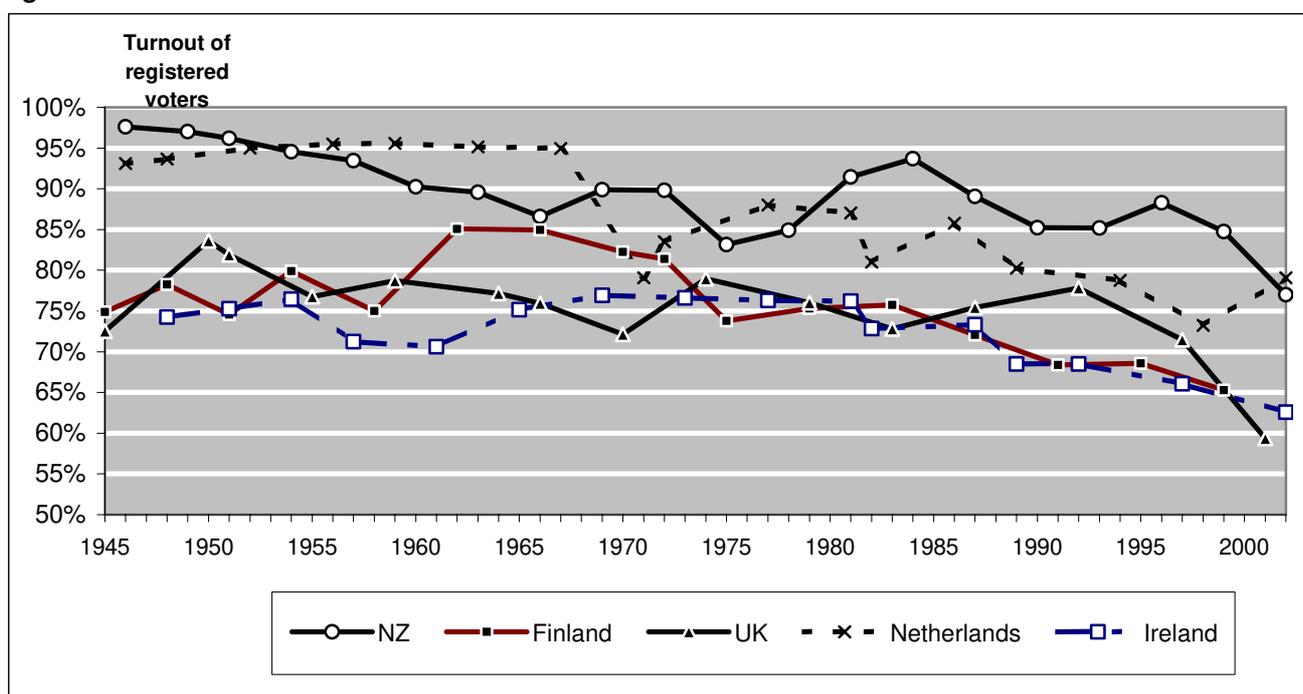
Such opinions and survey findings do not mean that corruption is actually occurring. But whether such perceptions have any basis in reality or not, they nevertheless are considered to have real consequences.

When money and lobbyists are seen to govern, men and women drop out of the political process; they take no interest and cease to vote.<sup>64</sup>

## Declining turnout

Over the last 30 years voter participation in elections held in free countries has slowly declined – from an average of 74 percent in the 1970s to 71 percent in the 1990s.<sup>65</sup> Figure 2 shows declining levels of participation in national elections for five OECD countries. For example, turnout (defined as the percentage of registered voters who cast a vote) is declining in the Netherlands, Finland, Ireland and the UK. On average, the number of those voting in these countries has decreased 12 percent between 1945 and 2002. New Zealand's turnout has declined by over 20 percent over this period – from 98 percent in 1946 to 77 percent in 2002.

**Figure 2: Voter Turnout in Selected OECD Nations 1945 - 2002**



**Source:** Transparency International, *Voter Turnout - A Global Survey*  
[http://www.idea.int/vt/survey/voter\\_turnout4.cfm](http://www.idea.int/vt/survey/voter_turnout4.cfm)

Although it is difficult to empirically link declining voter turnout with perceptions of, or levels of, corruption, there is increasing acceptance that corruption is a key explanation for growing voter apathy and cynicism in advanced democracies, and poor economic and political development in emerging democracies. The New Zealand State Services Commission notes that the 'dignity' of government appears to have deteriorated in the public's mind, with trust in institutions closely correlated with the public's perception of ethical behaviour by government.<sup>66</sup>

<sup>64</sup> Cox, 1998, p. 59.

<sup>65</sup> IDEA, *Voter Turnout – A Global Survey*, International Institute for Democracy and Electoral Assistance. Available at: [http://www.idea.int/vt/survey/voter\\_turnout4.cfm](http://www.idea.int/vt/survey/voter_turnout4.cfm)

<sup>66</sup> C. Barnes, D. Gill, *Declining Government Performance?: Why Citizens Don't Trust Government*, State Services Commission, Working paper No. 9, 2000, p. 18.

In its annual report for the year ended June 2003, the Electoral Commission links the lack of transparency in New Zealand's donation disclosure regime to the levels of public confidence in the electoral system.

The high disclosure threshold and the ability of donors to make large donations anonymously ... reduce the degree of transparency which the disclosure regime is intended to promote and thereby undermine public confidence in the integrity of the disclosure system.<sup>67</sup>

## Solutions

In response to these issues – documented cases of corruption, declines in the levels of trust and confidence in the political process, and concerns about declining levels of voter participation – the domestic regulation of the financing of political parties is re-emerging on the political agenda of several countries.

Although politicians have sought to demonstrate some sensitivity to public concern and rebuild greater credibility in their political party machines, countries have not adopted a uniform approach to the regulation of party finances.

In general, the type of regulatory regime adopted reflects the assumptions of two competing democratic perspectives. The first perspective emphasises the freedom and autonomy of individual donors and political parties, while the second sees a need for greater transparency.

## The autonomy of political parties

The autonomy perspective views political parties as voluntary associations and therefore entitled to privacy in the way they conduct their financial affairs and organisation. Autonomy and privacy imply a preference for very few constraints on party fund-raising and expenditure. In its most formal guise, the perspective assumes that voters are rational citizens who are able to choose freely at election time, regardless of the amounts spent on advertising by competing political parties. Relaxing this assumption to reflect real-world conditions (and the premise of the entire advertising industry), the approach accepts that voters are not completely immune to the way issues and candidates are presented by the mass media, interest groups, and party election campaigns.

However, rather than accepting Rokkan's view that resources decide voting outcomes, the perspective argues that there is a variety of competing forces at work that serve to balance the influences on the voter. Although there may be doubts that real competition is possible when some parties are able to monopolise resources, the autonomy perspective argues that there should be very few restrictions placed on the financing of political parties. Because parties are seen as voluntary organisations and individuals are seen as expressing their right of freedom of speech by making donations, the regulation of campaign donations and expenditure is seen as unjustified in the absence of any direct evidence of harm.

A report by the British House of Commons Committee on Standards in Public Life (the Neill Committee) summarised some of the arguments against disclosure: that it would restrict the freedom to "do good by stealth" (for example, donors being targeted by other causes if donor identities are revealed); a donor's standing in their capacity as a public figure or civil servant could be compromised; and a business dependent upon public contracts could be harmed if its donations to political parties were identified.<sup>68</sup>

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<sup>67</sup> Electoral Commission, *Annual Report*, Electoral Commission, 2003, p. 20.

<sup>68</sup> Aileen Walker, 'The Political Parties, Elections and Referendums Bill: Donations', Research Paper 00/2, House of Commons Library, 7 January 2000.

## The transparency view

The transparency perspective, on the other hand, regards free choice as dependent on informed choice. Voters may be the best judge of their own interests but this judgement requires having enough information – including information on the fund raising and expenditure activities of political parties. The perspective is also of the view that political parties which receive public funding and which are part of the public political life of a country can hardly be regarded as private organisations. New Zealand's Justice and Electorate Committee noted that

making a substantial donation to a political party is not the same as making a contribution to a charity or other such private association. We think transparency in election funding is an important principle and the law should be substantially improved.<sup>69</sup>

According to the UK Neil Committee, the advantages of greater transparency are: the public and the media know who is financing each political party; rumour and suspicion wither; the possibility of secret influence over ministers or policy is greatly diminished; public confidence in the probity of the political process is raised.<sup>70</sup> To be most effective, disclosure and transparency provisions need to ensure that information is available to the voter (and the media) before, rather than after, elections. They also require an independent media and vigilance on the part of individual voters.

The transparency approach therefore sees few reasons why a political party should not disclose its activities and operate in as transparent a way as possible.

Elements of both the autonomy and transparency perspectives can be seen in the United States Federal Election Campaign Act (FECA), enacted in 1971 to regulate presidential and congressional campaigns. The Watergate scandal prompted several amendments to the FECA in 1974 including overall limits on campaign contributions and spending. However, several amendments were overturned by the US Supreme Court in *Buckley v Valeo* (1976) on the grounds that they were unconstitutional. The Court reaffirmed the autonomy of parties by stating that *campaign spending* was so necessary for speech to occur that it warranted the same protection as speech itself, enshrined in the First Amendment of the Constitution.

A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.<sup>71</sup>

On the other hand, the Supreme Court ruled that because donations had less of the character of speech than campaign spending, they warranted less protection. Limiting political contributions would not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues. Further, because donations have the potential to influence the conduct of representatives, the government has a compelling interest in controlling corruption.

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<sup>69</sup> Justice and Electorate Committee, *Report of the Justice and Electorate Committee Inquiry into the 2002 General Election*, Forty-seventh Parliament, March 2004, p. 23.

Available at: <http://www.clerk.parliament.govt.nz/Content/SelectCommitteeReports/i7a.pdf>

<sup>70</sup> Aileen Walker, 2000.

<sup>71</sup> US Supreme Court, *Buckley v. Valeo*, 424 US. 1 (1976), available at:

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?friend=oyez&navby=case&court=us&vol=424&invol=1>

It is unnecessary to look beyond the Act's primary purpose – to limit the actuality and appearance of corruption resulting from large individual financial contributions – in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation. To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.<sup>72</sup>

## The New Zealand situation in comparative perspective

By comparison, the New Zealand approach, in terms of regulation, is almost the opposite of American concerns and practice. It allows both greater autonomy in the regulation of campaign *donations* and imposes more control on campaign *expenditures* than is to be found in the United States.

In New Zealand, the Electoral Commission is responsible for, among other things, supervising registered parties' financial disclosure. The Electoral Commission has statutory independence and, (in practice), has upheld relevant electoral regulations in an independent, effective, and fair manner.

Nevertheless, when compared to those of several other OECD countries, New Zealand's disclosure regime is relatively modest in terms of regulations aimed at providing greater transparency. Table 2 summarises these regulations, each of which is discussed in turn.<sup>73</sup>

Of the 25 OECD countries shown in Table 2, eight (including New Zealand) have no prohibitions placed on who can donate to political parties. On the other hand, over two-thirds of these OECD countries prohibit donations to political parties from some or all of corporate, trade union, government contractors, foreign, or anonymous sources.

## Prohibited donors

The logic behind a ban on foreign donations – either from foreign governments or multinational corporations – is to prevent national sovereignty from being undermined and to uphold the principle of democratic self-determination.

Bans on corporate and trade union donations appear to rest on a similar logic – entities that do not have voting rights are not seen as entitled to use their money to influence political decisions. The United States, for example, prohibited corporate donors in 1907 and extended the ban to labour unions in 1943. In those countries where such donors are not prohibited, there is the possibility that they exert influence by either contributing or withholding large donations as tacit approval or disapproval of government policies. Given the increasingly high cost of running a professional political party organisation and engaging in (long) election campaigns, such indirect means of influence may not be insignificant.

However, a possible consequence of prohibiting certain donors, particularly corporate donors, is to make political parties excessively dependent on public funding. Even where such donors are prohibited, corporate and industry sector interests may be able to circumvent a ban by buying access to decision-makers at fund-raising events (see above), by contributing through blind trusts (see below), or by making individual donations.

<sup>72</sup> US Supreme Court, *Buckley v. Valeo*, 424 US. 1 (1976).

<sup>73</sup> Country data for the table was compiled from Reginald Austin, Maja Tjernström, (eds.), *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance (IDEA), 2003. Available at: [http://www.idea.int/publications/funding\\_parties/matrix.pdf](http://www.idea.int/publications/funding_parties/matrix.pdf)

**Table 2: Disclosure Regimes for Donations to Political Parties in Selected OECD Countries**

Country	Prohibited donors	Anonymous Donations Prohibited (above threshold)	Donations Disclosed by Political Parties (above threshold)	Maximum donation allowed
Australia	None	Yes (\$A 1,000)	\$A 1,500	No maximum
Austria	None	No	No disclosure	No maximum
Belgium	Corporate donors Government contractors	Yes (EUR 125)	EUR 125	EUR 2000
Canada	Anonymous donors Foreign donors	Yes	All donations	No maximum
Czech Republic	Anonymous donors Corporate donors Government contractors Foreign donors	Yes	All donations	No maximum
Denmark	None	No	DKR 20,000	No maximum
Finland	None	No	No disclosure	No maximum
France	Corporate / trade union donors Government contractors Foreign donors	Yes (EUR 150)	All donations	EUR 4600
Germany	Foreign donors (ex EU) Charities / NGOs	Yes (EUR 500)	All donations	No maximum
Hungary	Anonymous donors Corporate donors Government contractors	Yes	All donations	No maximum
Iceland	Foreign donors	No	No disclosure	No maximum
Ireland	Foreign donors	Yes (EUR 100)	EUR 5079	EUR 6349
Italy	Government contractors	No	EUR 6197	EUR 10329
Japan	Limits on corporate donors Foreign donors	Yes (JPY 1,000)	JPY 50,000	20,000,000 (individuals)
Mexico	Anonymous donors Corporate donors Government contractors Foreign donors	Yes	All donations	0.05% of total party funding
Netherlands	Limits on corporate donors	Yes (EUR 4,400)	US\$4,444	No maximum
<b>New Zealand</b>	<b>None</b>	<b>No</b>	<b>NZ\$10,000</b>	No maximum
Norway	None	No	NOK 20,000	No maximum
Poland	Anonymous donors Corporate / union donors Foreign donors	Yes	No data	15 x min monthly wage
Portugal	Anonymous donors (above limit) Corporate donors Trade union donors Government contractors Foreign donors	Yes (EUR 175,000)	EUR 350	EUR 10,500
Spain	Government contractors	Yes (5% of public funding)	All donations	EUR 55,000
Sweden	None	No	No disclosure	No maximum
Switzerland	None	No	No disclosure	No maximum
UK	Foreign donors	Yes (£UK 200)	£UK 5,000	No maximum
USA	Corporate donors Trade union donors Government contractors Foreign donors	Yes (\$100 (cash); US\$200)	US\$200	US\$25,000 (Individuals) PACs No maximum

**Source:**

International Institute for Democracy and Electoral Assistance (IDEA), 2003.

## Anonymous donors

Others see few problems with the type of donor, but argue for the identity of such donors to be disclosed.

Donations to political parties - whether from trade unions in the case of Labour or businesses in the case of National - are a legitimate part of the democratic process. Many firms make a point of being even-handed, donating equally to both major parties. Suspicion naturally arises, however, when donations are made under the table. That can have a corrosive effect on public confidence in the integrity of the political system, inevitably giving rise to speculation that favours and deals may have been called for in return.<sup>74</sup>

An alternative approach, therefore, is to prohibit very few donors, but to make donations visible to the public by completely prohibiting anonymous donations, or by limiting the amount anonymous donors can contribute. Mandatory disclosure of the identity of donors is believed to allow voters to judge for themselves whether the large-scale financial donations made to political parties have an influence on the party and over the party's representatives in Parliament.<sup>75</sup>

If large amounts come from vested interests – whether these are big corporations, trade unions or any other organisation seeking influence – the voters should know. Those who pay the piper may not always call the tune, but you can bet the piper will treat them with respect.<sup>76</sup>

## Donation disclosure threshold

New Zealand is one of nine OECD countries that allow anonymous donations regardless of size. While New Zealand's electoral law allows voters to see that the political parties are raising large amounts of money, it does not allow them to identify those making anonymous donations. As can be seen from the trend in Figure 1 (page 4), not only is the average anonymous donation made to political parties in New Zealand greater than those from named donors, but the gap between the two is widening.

Over three-quarters of the 25 OECD countries shown in Table 2 require their political parties to make some disclosure of the donations made to them. Seven countries require *all* donations to be disclosed, while a further 12 set a monetary threshold above which donations must be declared. Included in this latter group is New Zealand which requires political parties to disclose all donations above a threshold of \$10,000. However, while all *amounts* above \$10,000 must be reported, the names and addresses of those donating in excess of this sum need only be reported if they are known – where they are not known, they can simply be listed as 'anonymous'. In effect, New Zealand's disclosure threshold is limited to providing information on the donation, not the donor.

By contrast, two thirds (64 percent) of the OECD countries shown in Table 2 either completely ban anonymous donations or ban such donations above a certain threshold. The United States, for example, bans any anonymous donation above \$200, although individuals are able to contribute up to a maximum of US\$25,000 as long as the identity of the donor is disclosed. The US Supreme Court argued that

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<sup>74</sup> The Editor, 'Unsavory Echoes of Watergate Slush Funds', *The Evening Post*, 20 May, 2002, p. 8.

<sup>75</sup> Andrew Geddis 'Hide Behind the Targets, in Front of All the People We Serve', *Public Law Review*, Vol. 12, March 2001, p. 59.

<sup>76</sup> Sunday Star Times, 'Voters Need to Know the Piper', *Sunday Star Times*, 19 May, 2002, p. 6.

If voters do not know who has contributed financially to a politician's success, they cannot monitor his performance in office to see whether he has been improperly influenced or to hold him accountable. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return.<sup>77</sup>

On the other hand, regulations that require the disclosure of donor identity are seen by some as also not without risk. Fogg notes that in some emerging or unstable democracies there may be high risks of harassment of those who are donors to opposition parties, or parties representing minority concerns.<sup>78</sup> Even in developed democracies such as New Zealand, disclosing the identity of donors may risk exposing the donor's political commitments in a way that may be potentially embarrassing or disadvantageous. Indeed, one explanation for the high level of anonymous funding of political parties in New Zealand is that those donors who have to deal with the government are cautious about revealing the financial support they provide to opposition parties.<sup>79</sup>

## Blind trusts

This may be part of the rationale for the channelling of donations through so-called 'blind trusts' or 'front groups'. Typically, a trust will combine donations from identifiable donors before making a single donation to a political party. Under New Zealand regulations, it is only the trust itself that has to be disclosed (identified) to the Electoral Commission as the donor, allowing the identity of those individuals or organisations that actually donated the money to the trust to remain anonymous – at least to the public, although not necessarily to the political party itself.

While such arrangements are perfectly legal under New Zealand law, the chief executive of the Electoral Commission has described the ability of parties to receive significant anonymous donations as “subverting” the objective for which the disclosure regime was established – which was to add transparency to that area of party funding.<sup>80</sup> The UK's Neil Committee also notes:

The dominant feature of blind trusts is that the beneficiaries purportedly do not know who contributed to them, so eliminating a possible means of buying influence. The Committee rejects the very concept of such blind trusts as being inconsistent with the principles of openness and accountability. Moreover, there must be considerable doubt whether they ensure anonymity. While we do not impugn the integrity of those who administer such funds, the cynical will always be ready to conclude that a donor can easily let it be known to the beneficiary that he or she has made a substantial contribution to the relevant blind trust. Accordingly, the Committee recommends that blind trusts should be prohibited.<sup>81</sup>

## Maximum limits

A further issue is whether there is any maximum limit on the amount donors may contribute to political parties. Fifteen OECD countries, including New Zealand, do not impose any upper limit on the maximum amount that may be donated. Ten countries, including the United States, have imposed limits. The US Supreme Court, in affirming the constitutionality of donation limits, noted that

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<sup>77</sup> US Supreme Court, *Buckley v. Valeo*, 424 US. 1 (1976), 67-68.

<sup>78</sup> Karen Fogg, 'Paying for Parties – Choices for Democrats', Centre for Democratic Institutions, Australian National University, Public Lecture to the Australian Senate, 12 August, 2003.

<sup>79</sup> Graeme Speden, "'Anonymous' Political Contributions Strain Credulity', *The Independent*, 16 June, 1999, p. 15.

<sup>80</sup> New Zealand Newspapers Association, 'Watchdog Studies ACT Fund Report', *Stuff*, 23 April, 2001.

<sup>81</sup> Aileen Walker, 2000, p. 25.

Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.<sup>82</sup>

Here, as with other aspects of disclosure regimes, countries have seen the spirit of the law, if not the letter, circumvented. The United States, for example, has seen the use of Political Action Committees (PACs) to partially circumvent some of the regulations governing individual donors. Originally created to allow ordinary citizens to pool their resources (to become significant players in the political finance process), PACs were quickly organised as a vehicle to allow corporate, trade union, issue, and lobby group donors to indirectly contribute to election campaigns. Donations from PACs are now seen by some as legalised bribes – to the extent that those candidates eager to demonstrate their integrity (their independence from special interest money), now pledge to reject PAC contributions.<sup>83</sup>

## The 'hydraulic' nature of money

The abuse of the PAC system provides opponents of the further regulation of political disclosure with an example of the 'hydraulic' or fluid nature of money in politics.<sup>84</sup> That is, money, like water, is thought to be always able to circumvent the barriers (regulations) placed in its way. This rationale has been expressed by some political actors in New Zealand.

The ACT member cannot recommend changes that may inhibit donations. They sound good but will reward only the cunning. They will quickly find new loopholes. The bold simply ignore the law. Such laws handicap candidates and parties without insider political specialists or experienced lawyers to thread their way through the regulatory maze.<sup>85</sup>

The hydraulic metaphor thus suggests that little can be done – since no matter how the laws regulating the financial resources of political parties change, they will make almost no difference. A related argument is to concede that laws do make some difference to the behaviour of political actors but that the differences are unpredictable and often unintended. For example, requiring the disclosure of the identity of donors may result in the need for increased public funding of political parties as contributions from wealthy donors dry up.

Other commentators argue that the fact that there will always be those who seek maximum freedom for themselves within the law – through loopholes or otherwise – does not by itself indicate a sign of a law's failure.

Laws do "make a difference." They alter the costs and benefits of certain paths of action, making some choices more likely and others less so. Some people and organizations will indeed try to find a way around the new rules. But people and organizations are not made of water. Therefore, some will

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<sup>82</sup> US Supreme Court, *Buckley v. Valeo*, 424 US. 1 (1976), available at: <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?friend=oyez&navby=case&court=us&vol=424&invol=1>

<sup>83</sup> Michael Johnston, 2000.

<sup>84</sup> Samuel Issacharoff and Pamela Karlan, 'The Hydraulics of Campaign Finance Reform', *Texas Law Review*, Vol. 77, 1999.

<sup>85</sup> Justice and Electoral Committee, 'ACT Minority View', in *Report of the Justice and Electoral Committee Inquiry into the 2002 General Election*, Forty-seventh Parliament, March 2004, p. 29.

be better positioned than others to shift. A law regulating money in politics will constrain some givers and spenders more than others, some candidates more than others, and some kinds of party activities more than others. Some of the law's consequences may not now be foreseen. Over time ... adaptations will lead to new problems that in turn may call for new legislation.<sup>86</sup>

## Timing of disclosure of donations

A final issue is the timing of disclosure – the deadline by which donations to political parties must be disclosed. It is thought that in order for voters to act in an informed manner, they need to have information on the financing of political parties prior to election day. Disclosing financial data up to a year after an election may not be best practice. For the information to be relevant to the voters' overall evaluation of parties and candidates, it must be disclosed at such a time that researchers, the media, or interest groups have enough time to assess its significance. If such disclosure is timely, it can help to alleviate the need for spending caps, bans on prohibited donors, or limits on donations. This does, however, require greater vigilance on the part of the media, individual voters, and others such as non-governmental organisations, citizen watchdogs, academics and so on.

New Zealand's disclosure rules require parties to report to the Electoral Commission by April of the year following that in which donations (exceeding \$10,000) were received. Parties' returns of donations have to be audited and the Commission must make returns and auditors' reports available for public inspection. In effect, a donation made in May, before a general election in November, will not be disclosed to public scrutiny until April the following year.

By contrast, the United Kingdom requires disclosure of donations every week for the 30 days preceding an election. In the United States, donations must be disclosed 12 days prior to election day for all donations received up to 20 days before the election.

## Conclusion

In New Zealand, as in most democracies, political parties face increasing demands for funds to support their organisational and campaign activities. These demands are exacerbating the tension between calls for greater transparency in the use of political funds and calls to preserve the autonomy and privacy of political parties and individuals. The challenge is to ensure sustainable democracy – balancing the needs of parties for sustainable financial resources with the wider public interest of avoiding undue influence in politics, limiting the potential for corruption, and ensuring the confidence of the public in the democratic system.

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<sup>86</sup> Michael J. Malbin, 'Thinking about Reform', in Michael J. Malbin (ed.), *Life after Reform: When The Bipartisan Campaign Reform Act Meets Politics*, Rowman & Littlefield Publishers, 2003, p. 3. Available at: [http://www.cfinst.org/studies/bcrabook/pdf/LifeAfterReform\\_ch1.pdf](http://www.cfinst.org/studies/bcrabook/pdf/LifeAfterReform_ch1.pdf)

Suggestions  
for further  
reading /  
links

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John Wilson,  
Research Analyst  
Law and Government  
Parliamentary Library

For more information, contact John at 04 471 9358  
or email: [john.wilson@parliament.govt.nz](mailto:john.wilson@parliament.govt.nz)

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