

Dilemmas for a Democratic Society: Comparative Regulation of Money and Politics

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A banner image showing a sunset sky with a silhouette of a statue on a pedestal in the foreground.

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The first problem, which the comparative analysis of political finance regulation faces, is the elaboration of a normative framework against which the great variety of party and campaign finance models is to be evaluated.¹ It will be argued that behind this variety of actual arrangements there are genuine dilemmas of principles of democratic governance – dilemmas which have not been fully resolved by contemporary democratic theory and practice.

In general, there are two dimensions in which the models of party and campaign finance may differ in important ways. The first one is ideological, and the second one – *institutional*. The ideological dimension captures the opposition between *libertarian* and *egalitarian* theories of politics and legitimacy, which have different requirements for the legal regulation of party and campaign finance.² One of the greatest divides between them is in relation to the issue of the role of money in politics. Libertarians usually argue that the unrestricted spending for political purposes of legitimately owned resources is a form of expression of the freedom of the person, and is an unalienable individual right in a liberal democracy.

In contrast, egalitarians claim that inequality of resources should play no role in politics or should be reduced as much as possible, to an extent ensuring only the preservation of a working system of government. Therefore, the former insist, for

¹ Karl-Heinz Nassmacher, 'Comparing Party and Campaign Finance in Western Democracies', in Herbert Alexander ed., *Comparative Political Finance in the 1980s*, Cambridge: Cambridge UP, 1989, p. 236. '...there is too little theory, based on suitable methodology.'

² I use the terms egalitarian and libertarian broadly: the first covers some liberal theories as well as theories of deliberative and participatory democracy; the second covers essentially neo-liberal and libertarian theories. The primary exponents of the libertarian view are Nozick and Hayek. In the egalitarian camp, John Rawls in *A Theory of Justice* has argued that the 'basic structure of society' should be elaborated under conditions in which inequality of resources and fortunes plays no role: the resulting rules reduce the role of money in politics. For a consistent liberal egalitarian view see also the work of Ronald Dworkin: for instance his 'Free Speech and the Dimensions of Democracy' in ed. E. Joshua Rosenkranz, *If Buckley Fell: A First Amendment Blueprint for Regulating Money in Politics*, The Century Foundation Press, New York, 1999.

instance, on the lack of restrictions on expenditure and contributions, market principles of access to the media, no public funding. The latter, the egalitarians, as a rule hold opposite views on all of these issues.

The institutional dimension concerns another normative debate, central to contemporary political science: the debate on the virtues of presidentialism and parliamentarism, and the related debate on the importance of strong and stable political parties for the functioning of democracy. Of course, not all aspects of these debates are relevant to political finance, but one of their constitutive themes is indispensable for any analysis of the issue. This is the generally inverse relationship between strong parties and strong presidentialism, on the one hand, and between strong parliamentary regime and weak parties on the other.³ In other words, presidential regimes tend to create a weak party system in which the political parties are hardly more than electoral alliances. In contrast, parliamentary government is, as a rule, based on a strong party system in which the parties along with their electoral functions have a broad array of educational and other societal functions. This difference is of great importance to the discussion of political finance since:

[a] look at any sample of Western (liberal) democracies necessarily leads the political scientist to realise that he or she is dealing with party democracy. Political parties emerge from the analysis as inevitable and indispensable 'instruments of democratic government.' Accepting this fact brings funding of political competition and party activity into the focus of scholarly evaluation.⁴

The role played by political parties in a given regime is crucial to the design of political finance rules. For example, public subsidies for parliamentary caucuses or for the general activities of parties between elections are usually co-related to or dependent on the existence of strong parties. The same is true of the tax deductibility of contributions to parties, campaign privileges (as free airtime and media space) given to parties, etc.

³ For the importance of political parties in political finance matters see Alexander Heard, *Costs of Democracy*, University of North Carolina Press, Chappel Hill, 1960, p. 12. 'Political parties function as connection organs joining government to the rest of society. They are the principal type of intermediate organisation that links the citizen and his specialised groups with the forums of government decision-making. As such, political parties provide complex and sensitive channels through which interests express themselves and seek representation in government... The processes of political finance constitute one set of mechanisms through which political representation is achieved.'

In the present paper, there will be no attempt to resolve the normative debates on the two dimensions outlined above. Rather, these dimensions will be used for the ‘mapping’ of the field of *political finance regulation*, and reducing the number of existing systems to a manageable number of generalised ‘models’ revealing specific normative and organisational features.

I. Four generalised models of political finance

Based on the discussion drawn in the previous section, it is possible to introduce four generalised models, which combine features from both the ideological and institutional dimensions of political finance. (See *Table 1.*) These are to be deemed as *ideal types* which could be approximated by existing models but never (or very rarely) coincide with them. Before starting to analyse the features of each of the models in detail, a few words about the typology in general are in place. Firstly, this is a typology of *political finance models*: it may be revealing of the rationale of a given political regime and its constitution *in general* but this might not be the case. For instance, libertarian political finance models may (in theory) coexist with developed welfare states having a strong egalitarian bias.

Secondly, the suggested definition of the ‘strength’ of political parties is broad and does not coincide with more precise political science definitions. ‘Strong parties’ for the purposes of this paper are considered parties which: a) participate in government or stand a chance of participating in the government of the country; b) enjoy institutional privileges distinguishing them from other non-profit organisations and enabling them to control the political and electoral process; c) control the legislative process, which cannot be bypassed by a directly elected executive; d) exist in the inter-electoral periods outside as well as inside parliament and the other elected bodies of power, and preserve a more or less stable relation to their parliamentary caucuses. This definition of the strength of parties is satisfied by most parliamentary regimes which govern *through* political parties; on the other hand, presidential regimes, where the parties could

⁴ Karl-Heinz Nassmacher, ‘Comparing Party and Campaign Finance in Western Democracies’, p. 233.

be loose electoral alliances, do not meet the conditions of the definition.⁵ This is evident in the US model, for instance, where the 'parties' hardly exist outside the bodies of power and except for electoral purposes. Even in Congress, as a rule, the borderline between the parties is rather loose and the emphasis is on individual members.⁶ In contrast, even non-institutionalised party systems in strong parliamentary regimes have 'strong' parties on my definition: this is so, because the parties there enjoy institutional privileges untypical of and unavailable in presidentialism.⁷

⁵ For a theory aiming to explain this fact see Matthew Soberg Shugart, 'The Inverse Relationship Between Party Strength and Executive Strength: A Theory of Politicians' Constitutional Choices' in *British Journal of Political Science*, 28, 1988, pp. 1-29. 'I argue that strong parties and strong executives are *alternative means* of providing structure to a policy-making process that, in a 'state of nature', would be prone to such instability that rank-and-file politicians could not accomplish anything.' p. 1.

⁶ Furthermore, after the election of the president, the party behind him has in practice no control on his decisions and policies (until time for re-election comes).

⁷ Gabor Toka, among others, has argued that the political parties in East Central Europe (especially, Hungary, Slovakia, the Czech Republic, and Poland) are non-institutionalised as are the party systems of these countries. These findings are based on his analysis of electoral volatility, age and organisational style of the parties, party fragmentation, stability of electoral institutions, the links between social groups and political parties, and the programmatic structuring. See Gabor Toka, 'Political Parties in East Central Europe', in *Consolidating the Third Wave Democracies*, eds. Larry Diamond, Marc F. Plattner, Yuh-han Chu, and Hung-mao Tien, The Johns Hopkins University Press, 1997, p. 93.

On my account, the four countries analysed by him have 'strong' parties, because all of them are governed through parties, the role of candidates and individual deputies is secondary to that of the parties, and – most importantly - the parties enjoy broad electoral and governmental institutional privileges. (Poland, before the introduction of the electoral threshold, was probably the most problematic case. With the limitation of the presidential powers by the 1997 constitution, however, the Polish model moved further towards the other Central European countries). The strength of the parties is especially evident in the Hungarian case of *rationalised parliamentarism* which is designed to strengthen party government in line with the German model. The strength of the parties in this region becomes obvious when they are compared to the parties in Russia, Ukraine and some other countries from the former USSR. Since the difference is not a matter of degree, I prefer to preserve the label 'strong' for the East Central European countries and the label 'weak' for the above-mentioned presidentialisms. Finally, I do not claim that these observations challenge in any way Toka's conclusion that the party systems in East Central Europe are *relatively* non-institutionalised in comparison with the western European party systems during the early years of their development.

Table 1. Four generalised models of political finance

Ideological dimension/ Institutional dimension	Libertarian	Egalitarian
Presidentialism Weak parties	Libertarian-presidential model: US	Egalitarian-presidential model: Russia
Parliamentarism Strong parties	Libertarian-parliamentary model: UK until 2000	Egalitarian-parliamentary model: Continental Europe, Central Eastern Europe ⁸

In the ensuing analysis of each of these models, the focus is, first, on their most typical political finance features, second, the most common problems associated with them, and third, some background characteristics of the regime, which make the existence of a particular political finance model possible.

2. Libertarian-presidential model

The rationale of the 'libertarian-presidential' model requires weakening of the political parties and strengthening of the position of individual candidates, on the one hand, together with the legitimisation of generally unrestricted influence of financially strong actors (natural persons and legal persons, including corporations) in the electoral process, on the other.

In terms of political finance, these general goals could be achieved in a variety of ways. Four groups of party finance instruments and rules which have a bearing on the institutionalisation of the libertarian-presidential model will be discussed below: expenditure and contribution limits, public funding and tax deductibility of donations, media campaign regulation, and disclosure and enforcement mechanisms. Not all of the suggested (groups of) instruments have equally strong impact on the logic of the model, of course. In the analysis, there are references to the US model of campaign finance as

⁸ For a general overview of the models of political finance in Central and Eastern Europe see Daniel Smilov, 'Introduction: Party Funding, Campaign Finance and Corruption in Eastern Europe' in Daniel Smilov and Jurij Toplak (eds.), *Political Finance and Corruption in Eastern Europe: The Transition Period*, Ashgate, 2007, pp. 2-9.

institutionalised under the *Buckley v. Valeo*⁹ decision of the Supreme Court. (Some of the most recent attempts at reforming the model – namely the abolition of ‘soft money’ and the restrictions on issue advertising - are not fully taken into account for the sake of simplicity. Presented in this way, the US model comes sufficiently close to the ideal type.)

Expenditure and contribution limits

The libertarian-presidential model requires no or very lax contribution *limits*. This is true both of donations by individuals and donations by legal persons. Moreover, in principle, there should be no restrictions on corporate funding.

Expenditure limits on individual candidates are not legitimate on this model, although they may be imposed on electoral alliances in order to restrict the role of political parties in the electoral process. On the other hand, there should be no restrictions on ‘independent’ (in the sense of not coordinated with the candidate) spending by individuals and legal persons, both in support of particular candidates, and of ideas and policies.

Another major feature of this model is that it, as a rule, stimulates contributions and fund-raising *during* electoral campaigns, and discourages fundraising between elections. This result could be achieved by the requirement for the opening of special bank accounts for fund-raising during campaigns, which are to be closed after the elections. There could be also a prohibition or a restriction on the usage of funds raised before the election by the electoral alliances (committees) supporting the candidate: also, there may be restrictions on the amount of money contributed by a party to its candidate during the campaign.¹⁰ The rationale behind these rules is to reduce the advantages of having a political party structure, existing between elections. The rational

⁹ 424 U.S. 1 (1976).

¹⁰ For an analysis of the relationship between American political parties and their candidates during (state) elections see Jeffrey M. Stonecash and Sara E. Keith, ‘Maintaining a Political Party, Providing and Withdrawing Party Campaign Funds’, in *Party Politics*, Volume 2, Number 3, pp. 313-328. The authors argue that the major function of the ‘legislative electoral funds’ run by the political parties plays an important role in the elections. As their argument goes, however, the efforts of the political parties are concentrated largely in close-race districts. Furthermore, incumbency is a major factor determining the policy of the party. Overall, in my opinion, their findings confirm the central place of candidates in the American electoral system.

strategy of fund-raising on this model is by creating flexible, *ad hoc* committees which are active during the campaign and cease to exist after it finishes.

As said above, the US model of political finance (at the federal level) comes close to the *ideal type*. The ban on corporate donations is probably the most important difference between them; however, the existence of PACs and the longstanding problem of “soft money” to a large extent make the evasion of this restriction possible. The imposition of restrictions on contributions to candidates in the US is also against the general rationale of the libertarian-presidential model. The argument behind this imposition in the US context, however, is largely libertarian: while, the constitutional justices in *Buckley v. Valeo* accepted the legitimacy of the lack of restrictions from the viewpoint of the Equal Protection Clause, they allowed the restrictions to stand because of their potential to prevent corruption. This could be interpreted as an *ad hoc* solution meant to allay public criticism in the wake of the Watergate scandal rather than as an egalitarian feature deeply grounded in the logic of the regime.

Public funding and tax deductibility of donations

The libertarian-presidential model does not require the existence of public funding. On the contrary, public funding, as an equalising mechanism, is deemed illegitimate. However, modest public funding in a limited number of cases is possible but only in order to meet the challenges of skyrocketing campaign costs or to reduce the possibilities of corruption: its equalising effect cannot be the major reason for introduction. If public funding is nevertheless introduced, as in the case of the US presidential elections, three provisos should obtain:

- 1) public funding should concern only individuals and never political parties;
- 2) it should be given exclusively for electoral purposes and not for the maintenance costs of political parties;
- 3) it should be done on the individual basis (for example through the mechanism of personal tax check-offs), which give a choice to the tax payer to earmark a certain amount of money for the purposes of public funding of candidates. After that, the money collected in this way is distributed by the state among the candidates. The distribution is to be done on the principle of

the 'matching funds', which takes into account the fund-raising potential of the particular candidate. Thus, the mechanisms of public funding take heed of the general libertarian concern about the freedom of the individual to decide what to do with his or her own resources.

As far as tax deductibility of donations is concerned, which (in part) is a form of indirect public funding, again several solutions are possible. In the first place, libertarian-presidentialism is suspicious of all forms of public funding and, therefore, may well do without tax-deductibility. If this cannot be avoided in view of rising expenditure, tax-deductibility could be allowed provided that it concerns only individual candidates and not political parties and is available only for donations during campaigns and for electoral purposes.

The US model of political finance again comes close to the ideal type. The scheme for public funding matches the principles described above. The same is true of the imposition of an overall expenditure limit for candidates in presidential races, who have accepted public funding. Again, in the US this is a measure aiming at the curbing of campaign costs, rather than an equality-seeking device. In any event, however, this exception could hardly change the general character of the model.

Media campaign rules

It is an essential feature of this model that it provides only for *market* access to the media. Free airtime, for instance, goes against its logic; the same is true of imposing restrictions on the amount of media advertising. This feature of the model makes it extremely expensive for the political actors, and contributes to the 'professionalisation' and 'marketisation' of electoral campaigns. Rising costs are not typical only of libertarian-presidential models; however, their rationale makes the trend much more visible. Furthermore, the opportunities for 'independent spending' on the advertising of ideas of general public concern, which is typical of the discussed model, makes skyrocketing campaign costs an endemic problem. In respect of media campaign regulation, the US model almost coincides with the ideal type.¹¹

¹¹ The media market is the main area where the libertarian principle 'money is speech' obtains in the US. For an insightful analysis of this rather exceptional (in comparative perspective) insistence on market

Disclosure and enforcement

In general, there are at least two legal approaches to disclosure, consistent with the libertarian-presidential model. In the first place, campaign contributions and expenditure may be deemed as a private matter for the citizens, not requiring significant forms of public disclosure at all. However, this view hardly squares with the ideas of 'transparent government'; moreover, electing people to the bodies of state power is difficult to be deemed a private matter. Therefore, the initial reluctance to introduce disclosure rules, typical of the libertarian attitude, has been gradually replaced by a more moderate stance, allowing for the introduction of carefully drafted disclosure rules, concerning essentially the following areas of political finance:

- 1) campaign expenditure of individual candidates;
- 2) donations by natural and legal persons to individual candidates during elections.

Thus, careful monitoring of campaign expenditure and contributions is not inconsistent with the libertarian-presidential model. Once the legitimacy of using one's own resources in electoral activities is recognised, the disclosure of information on expenditure and contributions is not damaging to the candidate and his or her sponsor.

As far as enforcement is concerned, a successfully institutionalised libertarian-presidential model would require strong enforcement instruments in the following areas. Firstly, if some forms of public funding are considered legitimate, they would be accompanied by rigorous disclosure and monitoring mechanisms: this is dictated by the general mistrust of the model towards forms of public support, which are deemed to create possibilities of abusing public funds. The same would concern forms of tax deductibility of donations. Secondly, if forms of disclosure are provided for, the model will presuppose their strict enforcement. And finally, if there are some restrictions on the amount of donations to individual candidates (meant to reduce the opportunities for corruption) the model would require successful enforcement of these restrictions. Presidential-libertarianism is consistent also with lax enforcement mechanisms of such

principles in political communication see Frederick Schauer and Richard H. Pildes, 'Electoral Exceptionalism' in *If Buckley Fell*, op. cit., p. 103.

type of restrictions, however: the US campaign practice shows that the limits on contributions (especially corporate contributions through PACs or “soft money”) are very difficult to enforce.

Weaknesses of the libertarian-presidential model: pluralistic clientelism and sky-rocketing prices of politics

In this section, the most common weaknesses of the libertarian-presidential model are outlined, based on observations from the US campaign practice and the general rationale of the ideal type. In the first place, it is obvious that this model of political finance creates a strong bias towards rich candidates and candidates supported by rich sponsors. This is, however, a critique, which is external to the logic of the model, because it challenges its fundamental libertarian assumptions: therefore, the focus will be on some internal weaknesses of the regime, which are present even if its first principles are accepted.

An important ‘internal’ weakness of the regime is that it creates dependencies between candidates and big business, which provide a fertile ground for corruption and clientelism.¹² This has been a major problem in the US, where contribution limits have been introduced in order to prevent (in part) such developments. However, the contribution limits do not address one of the most likely causes of the specific clientelistic tendencies, enhanced by the model. This is the relative neglect of political parties and the central role accorded to individual candidates: politics becomes a matter of forming coalitions of individual congressmen or members of state legislatures on particular issues, or establishing close relations with elected state officials.¹³ This is done

¹² Abraham S. Eisenstadt, ‘Political Corruption in American History’, in *Political Corruption, A Handbook*, eds. Arnold J. Heidenheimer, Michael Johnston, and Victor T. LeVine, Transaction Publishers, London, New Brunswick, 1990. ‘Almost from the beginning, the business of America was entrepreneurship and the business of entrepreneurship was self-promotion... What promoted the entrepreneurial ethos also promoted the tendency to political corruption... [T]he growth of American society generated forces that undid the restraints upon entrepreneurship and that, in consequence, the tendencies to political corruption were enhanced...’p. 549.

¹³ The patterns of American corruption are most revealing of the informal ways of making politics in the United States. In one of the most notorious Chicago cases of corruption ‘the citizens found in the course of a recent six-year period that there was scarcely a single state or city elective office where the incumbent was not on the take. The governor took \$300,000 from the racetrack interests. The secretary of state took from so many donors that his apartment overflowed with payoff envelopes... State legislators, metropolitan district commissioners and appointed officials were shown to have formed

most successfully by flexible lobby and pressure groups, targeting congressmen and other elected politicians. Thus, the neglect of political parties as ideological mediators between civil society and the power structures together with the libertarian belief in 'money is speech' may help create a favourable environment for a specific form of clientelism, which we could call *pluralistic clientelism*.

The major feature of this phenomenon is the diversity of temporary clientelistic relationships between candidates for governmental office and office holders, on the one hand, and corporations and wealthy donors, on the other, through the mediation of lobbies, pressure groups, and more *ad hoc* forms of pressure and support, like PACs. The plurality of such relationships cancels out the effect of the individual dependencies, which is the basis of one of the standard forms of legitimation of such forms of government advanced by social choice and pluralistic theorists. The canceling out of pluralistic dependencies happens over time and at the level of the regime as a whole, however, which does not guarantee against widespread and strong *temporary* dependencies of important political actors on corporate interests.

Another internal weakness, which has been already referred to, is the escalation of the price of campaigning which the model facilitates. The major reason for this seems to be the market access to the media: since media advertising amounts to around 80% of the price of modern campaigning, it is obvious that the model is related to possibilities of regular increase of campaign costs.¹⁴ In order to tackle this development, the US legislators have decided to provide public funding for presidential candidates tied with total expenditure restrictions. In doing this, they have partly deviated from the logic of libertarian presidentialism, as already discussed. Currently, there are also debates on the introduction of free airtime: if this becomes reality, it will provide grounds for reconsideration of the US model as an exponent of libertarian-presidentialism. As the model has operated over most of the last forty years, however,

numerous syndicates to take and distribute bribes. Thus in one five-year period alone, several hundred public officials were convicted in more than 100 individual cases.' Arnold J. Heidenheimer, *Problems of Comparing American Political Corruption*, in *Political Corruption: A Handbook*, p. 579.

¹⁴ Nicholas J. O'Shaughnessy, *The Phenomenon of Political Marketing*, Macmillan: London, pp. 78-79.

'Television constitutes the greatest expense in any political campaign. Expenditure on television advertising by candidates continues to rise and quite often up to 90 per cent of the candidate's advertising budget goes on television... The high cost of television advertising (competing of course with commercial products) is the principle reason for the dynamic fund-raising activities...'

the exceptions only confirm the predominant validity of the general logic of the ideal type.

Finally, the libertarian-presidential model, as institutionalized in the US, has proven prone to enforcement failures of restrictions on (corporate) contributions. A variety of ways of circumventing these restrictions are well documented. Most of these concern the creation of PACs and 'soft money' through which essentially corporate money finds its way into politics. Other forms involve 'independent spending' which challenges the reporting requirements: there is a general problem in defining spending 'on behalf of the candidate,' or 'authorised by the candidate', and related problem to 'issue advertising'. The enforcement of contribution limits and the spending by third parties have become probably the most serious problems in the American context.

Background political and constitutional conditions

Arguably, the libertarian-presidential model is possible only in pluralistic, affluent societies in which resources are dispersed among a diversity of social groups. This background allows for the cancelling-out of the effects of the individual clientelistic relationships, which the model facilitates. If this is not the case, these clientelistic relationships could cluster around dominant social groups, enjoying superior financial resources. The pluralist legitimation of the model will be damaged, and conditions for a grand-scale government capture and corruption could emerge. The evidence from the US campaign and political finance practice shows that such dangers are not unfounded, although the US society meets the pluralist test to a very large extent.

Another general condition making the libertarian-presidential model possible is the existence of a strong civil society not only in financial terms but also in terms of organisation and awareness of the public interest. This is especially important in view of the weakness of the model in enforcing contribution and expenditure restrictions of any kind, as well as its (original) reluctance to allow for disclosure mechanisms. Without public pressure in support of the strict enforcement of these mechanisms, most of them probably would be disregarded on a regular basis. This is evident from the American experience which needed Watergate and the establishment of strong and independent

public pressure groups (Common Cause¹⁵) for the introduction of effective contribution limits, disclosure requirements and generally, enforceable laws.¹⁶ Although the existence of a strong and independent civil society would facilitate any model of political finance, it is particularly important for the libertarian-presidential model, because the diversity of individual clientelistic relationships makes any form of administrative centralised control inefficient.

3. Libertarian-parliamentary model

The libertarian-parliamentary model of political finance combines libertarian ideology with strong party government. Therefore, the two major goals behind its institutional design are strengthening of the party system and securing of opportunities for the exercise of political influence through legitimately owned (financial) resources. Again, the achievement of these purposes is possible in a variety of institutional ways. The analysis below uses references to the British model of party and campaign finance before its major revision following the Neill Committee Report in 2000.¹⁷

Limits on contributions and expenditure

The libertarian ideology of this model makes it incompatible with contribution and expenditure restrictions. However, as in the previous case, compromises of the libertarian logic are possible if they serve purposes in the institutional dimension of political finance *i.e.* if they help strengthen the position of political parties in the general constitutional structure. Thus, in the UK, until 2000 there were limits on the expenditure of individual candidates in the single-member districts, but there were no limits of the total expenditure of and donations to political parties. This clearly made the position of parties more favourable vis-à-vis individual candidates. Thus, despite the majoritarian character of the electoral system, the bias was in favour of the parties

¹⁵ See www.commoncause.org

¹⁶ Abraham S. Eisenstadt, *op. cit.* p. 553. 'Watergate had of course major consequences... Reforms were called for and they were made. Measures were taken to curb the imperial presidency. Campaign finance laws were almost universally enacted. Legislators were put under stricter ethical codes. It is too early to say just how far this neoprogressive movement will go...'

¹⁷ For the logic of the reforms of 2000 in the UK see the Fifth Report of the Committee on Standards in Public Life: The Funding of Political Parties in the United Kingdom, Volume 1: Report Cm 4057-I, 1998, pp. 1-14.

rather than of the individual candidates.¹⁸ Political parties are in control of the electoral process: the election of individual candidates depends much more on the appeal of the political party in general, rather than on their campaign efforts in the districts.¹⁹

The strong party system, typical of the libertarian-parliamentary model, has other important effects on the legal regulation of contributions and expenditure. In the first place, the lack of restrictions on corporate funding, which is in line with the libertarian logic, creates possibilities of *institutionalisation and corporativisation* of partisan politics when combined with strong party structure. The major parliamentary political parties *monopolise* the basic sources of financial support from civil society. The leftist parties form institutional relations with trade unions and organised labour, while the rightist parties rectify their traditional relations with big business. This trend has been evident in the UK until the 1990s, where, the two major parties had been financed mainly through institutional sources, and managed to restrict the access of other political actors to them: as a rule, the 'third' parties in the British party system have relied on incidental financial support and lacked the institutionalised funding mechanisms of Labour and the Conservatives.

The institutionalisation of relationships of parties with civil society was combined in the UK with efforts to do this in accordance with the libertarian ideology. This was especially evident in the pressure exercised by the Thatcher government over the trade unions to adopt the contracting-out principle, and the principle of regular renewal of the

¹⁸ Khayyam Zev Paltiel, 'Campaign Finance: Contrasting Practice and Reform', in *Democracy at the Polls*, p. 161. '[T]he United Kingdom has imposed drastic restriction on the election spending of local candidates... Australia and New Zealand have followed the British model in this regard... However, the sad fact is that these systems have led to increasing evasion because of the lack of realism in the amounts permitted to be spent and because of the anachronistic refusal to face up to the role of parties in the election process.' Of course, the restriction on candidates' expenditure is hardly able to achieve the effect of shifting the emphasis towards the parties alone: in the British case, for instance, the whole electoral and government system is designed to produce this effect. Nevertheless, the contribution of party finance is important in the articulation of the trend.

¹⁹ For a recent study of the relationship between the general spending of parties, their spending in the single-member districts, and the spending by individual candidates see R. J. Johnston and C. J. Pattie, 'The Impact of Spending on Party Constituency Campaigns at Recent British General Elections', in *Party Politics*, Volume 1, Number 2, pp. 261-273. The authors challenge 'the conventional wisdom that [party spending in single-member district] is largely ritualistic, having no substantial impact on election result.' They show that party spending in the districts is related to better electoral results and that parties usually spend on marginal seats. This conclusion, however, does not affect the core of my claim, that the parties are the most important actors in British elections.

authorisation given by members to the trade-union governing bodies to levy fees for political purposes.²⁰

Another characteristic, typical of the libertarian-parliamentary model, is the lack of any restrictions on donations to political parties between electoral campaigns combined with the lack of institutional incentives for contributors during elections. These two solutions make possible the accumulation of financial resources by the parties before the campaign starts, and the unrestricted usage of these resources during the campaign. This policy reveals an attitude different from those in the presidential regimes: the parties here are deemed not only as electoral alliances, but as stable institutions which need resources for its survival during elections, and especially when in opposition.²¹

Public funding and tax-deductibility of donations

The libertarian-parliamentary model does not require public funding and rejects it as an instrument of equalising of the electoral chances of the contestants. The lack of public funding concerns both individual candidates and political parties, although there may be some minor public benefits to political parties, in order to stress their dominant position in the regime as a whole. The British case, until the reforms of 2000, had stuck firmly to a lack of public funding: there were only some forms of in-kind support (the most important is free broadcasting time), which could hardly change the overall evaluation of the model.

As far as tax-deductibility of donations is concerned, as an indirect form of public funding, it is generally incompatible with the libertarian rationale of the regime. The British model illustrates this attitude by depriving both parties and individual candidates

²⁰ Khayyam Zev Paltiel, *op. cit.* p. 160. 'Direct contributions to parties and candidates from trade unions... are restricted as in the UK, where members can choose to contract out of their share of affiliation dues to the Labour party.'

²¹ The spending pattern of the British parties is revealing of this feature. 'The emphasis... is on the publicity and advertising in the run-up to the formal election period and on strong central and local organisations... The central organisations of the two principal British parties spend the bulk of their funds on organisation, intraparty communication, publicity, and research: it has been estimated by Richard Rose that the Conservative party devotes only about one-eighth of its expenditures to electoral preparations and campaigning; similar proportions hold true for the constituency expenditures of the major parties.' *Ibid.*, pp. 140-141. See also Richard Rose, *The Problem of Party Government*, London: Pelican Books, 1976, pp. 213-214.

of any tax or customs benefits. This is not necessary for all libertarian-parliamentary models, however. There could be, in principle, tax-benefits for donations to parties (especially represented in parliament) in order to stress the superior position of the parties in the regime as a whole. This could be combined with individual check-off schemes, giving opportunities for individual choice (in line with the American experience).

Media campaign rules

The libertarian rationale of the model requires market access to the media. The strictness of this requirement is modified by its parliamentary logic, however, which gives possibilities of privileging (parliamentary represented) political parties. This is well illustrated by the British case, where the major parties are given free airtime. This privilege is available during electoral campaigns as well as between elections, which is especially beneficial to opposition parties. The availability of free airtime, however, should be combined with possibilities for buying extra time and media space, in order to facilitate a more open competition, in financial terms, required by the libertarian rationale of the regime. In this respect, the British case exhibits a major deviation from the model, by banning paid political advertisements in the electronic media.

Disclosure and enforcement

The disclosure rules, according to the logic of the libertarian-parliamentary ideal type, serve the purpose of encouraging donations to parties. Thus there are much more detailed procedures on disclosure of individual candidates' funding and expenditure, than on party finances. This is demonstrated by the British model from the discussed period (until 2000) where the principle of *electoral agent* ensured very good reporting of donations and expenditure as far as candidates were concerned.²² On the other hand, there were no disclosure mechanisms concerning general party funding and electoral expenditure. In principle, however, libertarian-parliamentary models are possible with

²² 'Many reporting procedures are restricted to the official campaign period, as in the United Kingdom and older members of the English-speaking Commonwealth except Canada; these countries, too, generally ignore the existence of parties and place the legal onus only on candidates at the local level.' Khayyam Zev Paltiel, *op. cit.* p. 158.

stricter disclosure rules concerning political parties. The lack of disclosure mechanisms in the British context, although very revealing of the general ideology behind the model, was one of the major signs of its 19th century character, and one of the most serious reason for its reconsideration in 2000.

The enforcement mechanisms of the libertarian-parliamentary model are centred on the control of individual candidates' funding and expenditure. There is virtually no institutionalised control over the finances of the political parties. As illustrated by the British case, the control over the amounts and sources of party funding was left to the press and academic scholars in terms of disclosure, and to the public opinion and respect to conventions of party politics in terms of enforcement.²³ Only in 2000 the model was changed with the introduction of an enforcement body – an independent electoral commission.

Generally, the libertarian-parliamentary model creates fewer problems of enforcement, simply because it provides fewer restrictions than the other models: there are virtually no restrictions on party expenditure and funding, no tax-deductibility and forms of public funding, and no serious disclosure mechanisms.

Weaknesses of the libertarian-parliamentary model

There are three major weaknesses related to this form of regulating political finance: corporativistic tendencies, lack of transparency in relation to party funding and expenditure, opportunities for governmental favouritism. The tendencies of corporativisation of public life were already referred to. The 'rigid' British party structure, enforced by the model of party finance, has dominated political competition and has to a certain degree "frozen" the public sphere along political ideological lines. In order to rely on stable financial support from civil society, the two major political parties in British context, and especially before the 1990s, created various forms of institutionalised relationships with civil society (trade unions, industrial unions, employers, etc.). The goal of these relationships was to monopolise the private

²³ A case in point was the publication in the press about the acceptance in 1997 by the Labour party of a donation by the owner of Formula One, who was directly involved with tobacco advertising. In the same time, the Labour party rallied against tobacco advertising in the public media: this conflict of commitments

resources for themselves and to avoid efficient competition from other parties. Although recent developments have decreased the level of institutionalisation, this scheme of political funding seems conducive to a degree of corporativisation of political life, and to diminished political pluralism.

The lack of transparency concerning the funding of parties is a weakness more directly attributable to the model. The lack of adequate disclosure instruments may be compensated for by journalistic investigations and inquisitive academic research, but these substitutes are not always entirely satisfactory.

Finally, arguably tendencies of governmental favouritism are typical of all parliamentary models with strong parties. The British model has not avoided this danger: giving knighthoods in return for party sponsorship and appointing people to QUANGO offices are just some of the forms of favouritism that the model has demonstrated. Nevertheless, the possibilities of favouritism in this model, as we shall see, are more limited than in the egalitarian-parliamentary models. This is partly because the libertarian logic is in principle incompatible with the use of the state as an instrument of improving the (financial) standing of political parties in order to achieve equality. Thus, the libertarian principles of legitimation in party finance create some internal restraints in the actors in relation to the use of state instruments for private political purposes.²⁴ The egalitarian rationale, on the other hand, considers the state an instrument of equalisation and is much less effective in creating similar 'internal' restrictions in the attitudes of the political actors.

Background conditions

If a strong and pluralistic civil society is a crucial condition for the successful institutionalisation and application of the libertarian-presidential model, the libertarian-parliamentary one requires as a *conditio sine qua non* the existence of an independent

was attacked in the press and as a result the money was given back to the sponsor. This 'informal' way of controlling public funding is hardly always so efficient, however.

²⁴ The libertarian ideology is not incompatible with all forms of corruption, however. 'Referring to indictments of prominent Reagan administration officials, Richard Neustadt has argued that Republican appointees bring with them a disdain for government that translates into lack of respect for intricate conflict of interest rules.' Arnold Heidenheimer, *op. cit.* p. 584. It still could be argued that while libertarianism is compatible with *individual* corruption, it is ideologically less compatible with policies turning the political parties into rentseeking institutions relying on their access to state power.

public administration, independent public media, and *homogenous*, consensus-based society. The independence of the public administration and media is necessary to counter the corporatist tendencies enhanced by the model: if it is not in place, the possibilities of systematic governmental favouritism will be quite realistic and difficult to avoid. Every new government would try to use the state apparatus to promote the interests of its corporate sponsors and supporters to an extent threatening the legitimacy of the regime as a whole. The libertarian ideology is hardly a sufficient deterrent to such developments.

The homogeneity of society is necessary in view of the divisive effects which a rigid, corporatist party system may have. If there is no widespread consensus on major societal issues, the alternation of different parties in power may be accompanied by public dissent, confrontation and strong delegitimation. This observation is in line with Lijphart's idea that the Westminster majoritarian form of government is possible only against the background of a homogeneous society: the libertarian-parliamentary model of political finance enhances the trends typical of majoritarianism and therefore requires similar background conditions.²⁵

4. Egalitarian-parliamentary model

The rationale of the egalitarian parliamentary model requires the simultaneous strengthening of the party system and party government, and the usage of the state as an equalising instrument in the financial competition between the *major* (parliamentary represented) parties.

This model is of special importance for the continental European countries, where, it is by far the dominant one. Its impact on Central Eastern Europe is also considerable. The political finance models, which come closest to this ideal type, are the models of the Nordic countries (Sweden, Norway, Finland, Denmark) and Quebec. The most influential in comparative perspective, however, is by far the German one, although it deviates in some important aspects from the ideal type.

²⁵ Arend Lijphart *Democracies: Patterns of Majoritarian and Consensus Government in Twenty One Countries*, New Haven, Yale UP, 1984.

Limits on donations and expenditure

The egalitarian ideology behind this ideal type views inequalities in resources and personal wealth as damaging to the political process, and seeks ways of bracketing them out of party politics and political campaigning. One of the ways of doing this is to impose restrictions on the amounts and sources of contributions. In Quebec and France, for instance, corporate funding is prohibited and there are strict limits on the amounts of contributions by natural persons. Another instrument capable of achieving similar results is the imposition of total expenditure limits, which prevent the escalation of campaign costs, on the one hand, and equalise the chances of the major contenders, on the other. The egalitarian-parliamentary ideal type uses these two instruments in combination, although there might be deviations from them both. Thus, in Germany, there are no restrictions on corporate donations and no restrictions on donations in general. However, the percentage of contributions and donations in the total budgets of the major parties in Germany has been (for the better part of the post war period) around 10-15% (and around 30% for the Free Democrats) – the rest of the party budgets was covered by state subsidies. This fact points to a major feature of the egalitarian models of legal regulation of political finance: they try to make public funding the dominant source of support for the political parties and to reduce the importance of corporate and private donations.

The parliamentary logic of the model is more congruent with the lack of restrictions or disadvantages for donations between elections: since the parties have high maintenance costs they need funding not only for campaigning. Also, on this model, there are no advantages attached to donations to individual candidates rather than to political parties. On the contrary, it is more consistent with the general logic of the model if contributions to political parties are connected with special benefits (like tax exemptions) while the donations to candidates are not. This will stress the fact that the parties are in control of the electoral process and will diminish the importance of the individual candidates.

The UK model after the reforms of 2000 could be interpreted also as a parliamentary-egalitarian model, since there were significant expenditure limits imposed on the political parties, with the aim to reduce the cost of the campaigns and to level

the playing field. Together with the existing forms of significant in-kind public support, such as the free airtime on national TV, and the ban on the buying of paid airtime of national electronic media, the expenditure limits determine the more egalitarian nature of the new UK model.

Public funding and tax-deductibility of donations

The most characteristic feature of the egalitarian-parliamentary model, however, is the availability of diverse forms of public funding for political parties. The central form of public funding is the general grant for the maintenance of a political party throughout the year.²⁶ This form of funding reveals the importance of the parties as permanently existing 'organs' of democratic government. A special feature of this form of funding is that, as a rule, it is related to very strict qualifying requirements. While, generally, parliamentary representation is the major criterion of eligibility, some models having electoral thresholds introduce forms of funding for parties not represented in the legislature. The German experience, as well as the practice of some of the Nordic countries is a case in point.

The second main form of public funding concerns participation in elections. It may be given to both individual candidates and political parties or only to the political parties in PR systems. In both cases, however, the parties are in control of the electoral process and do not allow the focus to shift to individual candidates: this may be done through a variety of ways concerning essentially the rules on the nomination of individual candidates in the single-member districts.

The third form of public funding is a grant given to the parliamentary caucuses of the political parties. In addition to a direct grant, some political parties (in Germany, for instance) have developed the practice of assessing their MPs through the deduction of a percentage of their annual remuneration for the party coffers: an extreme case in this respect, was the French Communist party which took the whole remuneration of its deputies in the National Assembly and gave them in return the annual salary of a skilled worker. These practices reveal the control political parties exercise over individual

candidates in the egalitarian-parliamentary models. This could hardly be interpreted only as a result of the PR electoral system: both Germany and France, which have a strong majoritarian element in their electoral laws, have developed similar practices. This shows that the strength of the position of the political parties is a result of a variety of factors: the political finance model is definitely one of the major factors among them.

As far as the indirect forms of public funding are concerned, the most controversial by far have been the possibilities for tax benefits or tax deductibility of donations. Partly because of its high taxes, Germany has proven the central example of this practice, both in terms of its importance for the party system, and the controversy and scandals it has caused.²⁷ Similar forms, however, have been introduced in Canada, together with a very elaborate scheme of encouragement of small-size donations by private individuals: this model reveals the egalitarian-parliamentary rationale in its best, in my view.

Along with the major forms of direct and indirect public funding, 'a plethora of indirect, public grants to the parties and the affiliated structures has evolved.'²⁸ In the context of Sweden, for instance, these have been webs 'of smaller direct grants at different levels, side by side with the 'ordinary' public subsidies. Further, indirect financial assistance from the business sector to some bourgeois parties has grown considerably...'²⁹

The most famous example of large-scale indirect forms of public funding, however, has been again Germany and the countries mostly influenced by its model (Austria, the Netherlands³⁰). This is done mainly through considerable state funding for 'political foundations' attached to the major (parliamentary represented) parties. This instrument of public assistance is especially important in view of the special, quasi 'state-

²⁶ Khayyam Zev Paltiel, *op. cit.* p. 163. '[I]n the case of Norway, Denmark, Sweden, and Finland [the annual public grant] constitutes the principal assistance to the parties, especially in the latter two countries, which include substantial sums for organisational maintenance...'

²⁷ Erhard Blankenburg, Rainer Staudhammer, and Heinz Steinert, *Political Scandals and Corruption Issues in West Germany*, in *Political Corruption: A Handbook*, p. 915. 'Party financing has become a central arena of corruption in the Federal Republic of Germany.'

²⁸ Gullan Gidlund, *Conclusions: The nature of public financing in the Nordic states*, in *The Public Purse and Political Parties*, Matti Wiberg, ed., The Finish Political Science Associations, 1991, p. 184.

²⁹ *Ibid.*

³⁰ For general information on the Dutch model of political finance and the role of the research institutes see Ruud A. Koole, *Dutch Political Parties: Money and the Message*, in ... p. 120.

agency' role attributed to political parties by the egalitarian-parliamentary model. This role has important educational, political will-formation, and other broader societal aspects and functions.

Finally, the egalitarian-parliamentary model is compatible with another form of public support to political parties: tax or customs benefits for their companies and firms. This form of public support has proven to be very controversial, however, and has become the target of gross and systematic abuse. Usually, the political parties are allowed to run companies which serve the purposes of their political activities (like publishing houses, radio stations, newspapers, etc.). In some countries the political parties have developed a large web of their own firms and enterprises which undoubtedly are an important source of income (the communist parties in France and Italy, for instance).³¹ This trend is especially important for Israel, where the political parties control big financial empires including chains of enterprises and the famous *kibbutz* farms and settlements. The very fact that the state tolerates such large-scale party business activities, in my view, may be considered a form of state support, even without the availability of tax or customs benefits.

Media regulation

The rules of political advertising in the mass media, typical of the egalitarian-parliamentary model, are meant to equalise the chances of the major parties represented in the legislature by providing free airtime and space in the publicly owned media and by restricting the buying of additional airtime and space. As already mentioned, campaign expenditure is the most costly part of any election: therefore, the restriction of the possibilities for the political parties of entering the mass media market is a major concern for the egalitarian-parliamentary ideal type.

Another important aspect of media regulation on this model is that free airtime and space should be made available to the major political parties not only during campaigns but between elections as well. This is in line with the broader societal functions which the political parties are entrusted with.

³¹ Khayyam Zev Paltiel, *op. cit.* p. 140.

There are numerous ways in which free or subsidised access to the public media can be secured for the political parties. All the mechanisms, however, rely on some forms of eligibility requirements, which usually favour parliamentary represented parties. This is done either by directly excluding the smaller parties from the free airtime quota or by giving them considerably less time (on the basis of the share of the vote or the number of seats they control in the chamber). Other forms of discrimination may concern the timing of the party presentation: in some systems (Bulgaria, for instance) the parliamentary represented parties have separate 'debates' on the public national TV stations.

Campaigning in the press could be much less regulated in comparison to advertising in the electronic media, on the discussed model. This is generally because of the much greater deregulation of the printed media market, and the lesser influence which publicly owned publications have in it. On the other hand, TV and radio have generally replaced the printed press as the major stage of political battles, although the role of the latter should by no means be underestimated.

Disclosure and enforcement

The egalitarian-parliamentary model tends to view the political parties as quasi state agencies: therefore, as a rule, it insists on a high degree of transparency in party finance matters. The model should require regular financial reports on the financial standing and expenditure of the parties. The reports should cover the amount and the sources of donations as well as detailed breakdowns of the expenditure: these reports should be published in the press in order to ensure maximum transparency. The same rules should apply to individual candidates during campaigns.

The enforcement mechanisms of the egalitarian-parliamentary model of regulation of political finance face serious difficulties. This is so because of the variety of restrictions on contributions and expenditures it requires, the allocation of considerable public funds to the political parties, and the possibilities of tax-deductibility of donations and other tax or customs privileges. There are three major options of enforcement instruments: a) criminalisation of certain types of behaviour and respective judicialisation of the enforcement process; b) administrative sanctions in cases of minor offences; c)

'internal' enforcement measures; for instance, withholding of public support in cases of violation.

The first type of enforcement measures is especially effective in cases of gross violations of contribution, tax-deductibility and customs-exemption rules. Administrative sanctions are to be applied in cases of minor violations of the expenditure, reporting and disclosure rules. The third form of enforcement mechanisms is the most interesting from a political finance point of view. The most effective instrument of enforcement seems to be the stripping of an elected candidate or a whole political party of its mandate in case of gross violations of the funding and expenditure rules. Of course, this could hardly be done by another body but a high court of law: therefore, the procedure could be described as a judicialised one. Withholding of public support in case of offences against the reporting and expenditure rules is also an effective deterrent, as already mentioned. Similar penalties may be imposed by suspending the free access to the public media, the public support for the parliamentary caucuses of the parties or their foundations.

Weaknesses of the model

The weaknesses of the egalitarian-parliamentary model are mainly in two directions: firstly, its enforcement mechanism is very problematic in terms of complexity and costs; secondly, the model tends to 'etatise' the political parties, and detach them from their basis in civil society.

The enforcement weakness, as already mentioned, is related to the complex forms of expenditure and contribution restrictions the model requires, as well as the possibilities of various tax exemptions of donations and party business activities. The problems are not only in terms of the pure number of possibilities of violating the laws, however. More importantly, the doctrine of the political parties as quasi state agencies, endorsed by the model, makes the control over their activities especially difficult. This is largely a separation of powers issue: in a parliamentary regime, in practice, there is no separation of powers between the legislative and the executive branch. Since they are, as a rule, both dominated by one and the same party, and, as a whole, are under the permanent control of the major parties, it is not very likely that the administration and

the parliamentary committees would exercise effective supervision over party finance. In the common case, there would be a cross-party consensus in favour of keeping the public eye away from party coffers. The only suitable candidate for the task of enforcing party finance law is the judiciary: however, in the parliamentary regimes of continental Europe, the judiciary has been traditionally deferential to the legislature and reluctant to involve in *politicised* cases. The most important challenger against these traditions, the German Federal Constitutional Court, has fought a fierce battle against the consolidated opposition of parties of the whole political spectrum.³² Only since relatively recently has the judiciary in both Italy and France been able to challenge the party dominance in the matters of party finance: in both countries this resulted in enormous public scandals and attempts for party finance reform. Thus the major cause for the enforcement problems of the egalitarian-parliamentary model has been the quasi state agency character of the major political parties, which together with their control over the administration and legislature, has ensured relative impunity for the political parties in party finance matters.

The second weakness of the model has already been mentioned on several occasions: the 'etatist' of the major political parties. From a democratic point of view, this challenges the idea of the political party as a mediator between the state and civil society. This is not the only negative consequence of the phenomenon, however. The 'etatist' of political parties is related to considerable opportunities for party and governmental favouritism. The most distinctive feature of favouritism is that the parties use the apparatus of the state in order to grant (illegal) benefits to organisations and corporations in return for financial and material support. There are a variety of ways in which this could be done, but probably the most typical ones are the following two. Firstly, in Italy, until quite recently one of the major sources of funding of political parties, along with the public subsidies, were the 'kickbacks in return for public-works contracts.'³³ The extent of the practice, as revealed by the scandals of the early 1990s,

³² See the discussion of the jurisprudence of the German Federal Constitutional Court on party funding in Donald Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, Durham: Duke UP, 1997.

³³ Herbert E. Alexander and Rei Shiratori, *Introduction, Comparative Finance among the Democracies*, ed. Herbert E. Alexander and Rei Shiratori, Westview Press, 1994, p. 3. 'The inquiry, called 'Operation Clean Hands,' has claimed the lives of seven high ranking officials, including a former minister who committed

outraged the public, which led to the abolition of the public funding altogether in a referendum on April 19, 1993.³⁴ The practice had enjoyed a cross-party consensus: very elaborate informal rules of 'fair distribution' of the profit (on the basis of the number of seats held by each party in the local legislatures) have been used. The second case in point comes from Germany, where the Flick scandal (and the more recent Kohl scandal) 'provided a glimpse into a vast network of illegal corporate payments to the three major parties, often through tax-free 'donations' to dummy charities.'³⁵ The general features of the two cases are almost identical: 'cross-party consensus' (explicit in Italy, implicit in Germany) among the major parties on the acceptability of the practice, forms of illegal payments to the parties, delivery of public goods to private companies under preferential conditions (here the German case is more ambiguous since the charges of influence peddling have remained *judicially* unproven; this is hardly necessary to prove the point I am making, however).

The *favouritism* typical of the egalitarian-parliamentary model is different both from the *institutionalised corporativism* of the libertarian-parliamentary model and the *pluralistic clientelism* of the libertarian-presidential model. The difference is in the open attempts to use the state and the state apparatus as an instrument of equalisation of the electoral and political chances of the major parties, which in certain cases verges on, and transgresses into illegality. In contrast with the libertarian-parliamentary model, here the major parties *need not* form institutional corporativist relations with their sponsors from civil society: in a sense, the parties can draw funds from all companies and organisations in society, irrespective of their political affiliation on an *ad hoc* basis. This was well illustrated by both the German case, and the Italian case, where party affiliations hardly mattered at all.

suicide after being formally notified that they were under investigation for violating laws on party financing. So far, 1,500 politicians-including two former prime ministers-and businessmen have been imprisoned or interrogated, and six Government ministers and four heads of major political parties have resigned their posts. The money value of projects involved in kickbacks and bribes has been estimated to be some \$193 billion. The cost to the taxpayer in the last decade is estimated at \$20 billion, the amount by which state contracts were inflated to cover bribes. In a move to protect Italy, its President, Oscar Luigi Scalfaro, said the scandals threatened the state.' Ibid. pp. 3-4.

³⁴ Ibid.

³⁵ Ibid. p. 7. 'Although the defendants were acquitted of the principal charges of bribery and influence-peddling, the scandal eroded popular trust in West Germany's three established parties and contributed to the rise of the Green Party.'

In contrast with the pluralistic clientelism of the libertarian-presidential model, the favouritism of the egalitarian-parliamentary ideal type permeates the highest level of power and is able, in case of a scandal, to rock the whole political establishment of a country, as was the case in Italy and Germany. This is so because of the centralised character of the practice, which is in fact controlled and directed by the elite of the major parties. Although there are constantly individual scandals of corruption in the US (sometimes concerning even the president) the 'pluralistic' nature of the clientelism there could never allow for the revelation of concerted, organised efforts of favouritism *at once*, reaching all levels of political power. In this sense, even Watergate was a case of incidental, although outrageous, violations of funding rules, from a political finance point of view. Thus, the structure of scandals and the possibilities of corruption in the three already discussed models differ from one another in very significant respects.

Background conditions

Independent judiciary combined with the availability of constitutional review is vital for the success of the model. This is so because otherwise the major political parties, controlling the executive and the legislature, will remain unchecked, and most probably will indulge into widespread favouritism, political extortion, and toll-gating. The practice of the Nordic countries speaks against this prediction: the lack of constitutional review there has not led to corruption of the model.³⁶ This demonstrates, in my mind, that widespread consensus on the role of political parties and a high degree of societal awareness of and concern for the public good could be an efficient substitute of the judiciary as an enforcer of party finance rules in those models. These conditions seem too culture- and context-dependent, however, and could easily limit the successful application of the model to the Nordic countries. On the other hand, it has proven more or less successful in countries where these extremely favourable conditions are not in place, but an active judiciary has taken enforcement in their hands: Germany and France come to mind. The creation of independent judiciary and the establishment of activist high courts is by no means an easier task than the strict enforcement of party

finance rules, however: especially, in parliamentary regimes, where the separation of powers is always problematic.

Finally, the egalitarian-parliamentary model of political finance seems applicable both to societies with a very high degree of consensus and homogeneity, like the Nordic countries, and more cleavage-ridden societies as the countries from Central and Southern Europe. Of course, the model has faced much more serious problems of enforcement in the second case, but still, it has been by far the dominant, not in the last place, because of their parliamentary regimes. This success of the model in societies with entrenched cleavages is partly explainable by the opportunities it gives for a 'fair' distribution of resources among the major, ideologically opposed parties (and thus social groups) irrespective of the financial potential of each of them. As it became clear, the state apparatus is the crucial variable in this equation.

5. Egalitarian-presidential model

This is the last model in the suggested scheme: the two major goals which it tries to achieve are equalising of the chances of candidates and parties in presidential and legislative elections, and diminishing the role of political parties in comparison with individual candidates.

This model describes well the *legal framework* of the Russian political finance rules, although the practice developed under these rules deviates significantly from an orthodox interpretation of the ideal type.³⁷

Limits on expenditure and contributions

The egalitarian ideology behind the model requires the imposition of strict limitations on expenditure and contributions. There could be different nuances in the rules for individual candidates and political parties, however, in order to make the candidates

³⁶ Gullan Gidlund, *op. cit.* p. 174. 'Without idealising the situation, it cannot be said that the Nordic states have been affected by scandals concerning political corruption or credibility crises of the same magnitude as have occurred in the USA, Germany and Japan.'

³⁷ For a description of the Russian model in its formative years (1993-2002) see Jeff Gleisner, 'Party Funding in Russia' in Daniel Smilov and Jurij Toplak, *Political Finance and Corruption in Eastern Europe: The Transition Period*, *op. cit.* p. 143. See also Daniel Smilov, 'Structural Corruption of Party-Funding Models: Governmental Favoritism in Bulgaria and Russia' in Stephen Kotkin and Andras Sajo (eds.), *Political Corruption in Transition: A Sceptic's Handbook*, CEU Press, Budapest, 2002, p. 327.

dominant in the electoral process, and diminish the relative weight of the parties as a whole. For instance, there could be a restriction on the use of resources accumulated before the start of the electoral campaign, which clearly disfavours the established political parties and stimulates the establishment of *ad hoc* electoral alliances and committees behind individual candidates. This mechanism may be strengthened by providing tax-exemptions for contributions to candidates and parties *during* the electoral campaign combined with no tax-benefits for donations to the political parties between elections.

The Russian regulation of party finance in the second half of the 1990s featured numerous mechanisms designed to put parliamentary parties at a disadvantage vis-à-vis individual candidates and *ad hoc* electoral alliances. This was explained by the general fear of President Yeltsin of the Duma – the lower chamber of the Russian legislature – which he saw as a bastion of the opposition. Therefore, the goal of the regulation was to weaken party representation in the Duma, and to create opportunities for flexible coalitions among individual deputies in support of legislation sponsored by the president.

Public funding and tax-deductibility

Public funding for candidates and for the electoral activities of political parties is an essential feature of the egalitarian presidential model. It is, however, not consistent with substantial public support for the *maintenance of political parties* between elections.

The provision of generous public support during campaigns, on this model, should be administered in such a way as to reduce the advantages an established party might have in the electoral race. This is done essentially through the eligibility requirements, which should be rather loose, so that not only established parties receive public subsidies but a wide range of electoral associations and *ad hoc* coalitions. The Russian system of nomination of candidates in the single-member districts, and of registration of party lists in the proportional part of the election in the 1990s, even did not use the word ‘political party’: the political parties were lumped together with a variety of ‘public associations’ (like political movements and other non-profit organisations) all of which could become eligible to receive public funds.

Public funding, on the discussed model, should not be organised on the basis of individual tax check-offs as in the libertarian models: the funds could be appropriated directly from the budget without leaving opportunities for individual opting-out.

The possibilities of tax-deductibility of donations should also discriminate between individual candidates and parties. As already argued, only donations for electoral purposes during the campaigns should be allowed. All forms of tax-deductibility and exemptions concerning the maintenance of parties are inconsistent with the logic of the model.

Along with the financial support, the egalitarian-presidential model allows for a wide array of in-kind support for candidates, and to a lesser extent to parties in electoral campaigns: these could include the covering of transport expenses, providing of venues for meetings and other events for free, etc.

The only form of direct public support, which is consistent with the model and is in favour of the political parties is the provision of funding for parliamentary caucuses. Since the electoral law in these models is likely to produce a fragmented legislature with a significant number of 'independent' candidates, the support for caucuses actually may be beneficial not only to the big parties but also to electoral alliances and other more temporary associations, which manage to exercise some form of control over their deputies. Also, this provision may lead to significant post-electoral restructuring of the parliamentary groups, having in mind the possibility of forming new alliances with independent members.

Media campaign rules

The egalitarian logic of the model requires the provision of substantial public support for political advertising in the media. This should be done, however, again with the idea to restrict the influence of big parties. In the first place, such an effect could be achieved by providing free media time and space in the publicly owned mass media only during election campaigns. Secondly, the eligibility requirements for free access should be liberal as to allow not only established parties to qualify. For instance, the number of seats controlled by a party in the legislature should not be a factor in the allocation of time. The same should be true of the percentage of votes won in the last elections. The

only criteria to matter should treat all potential contenders as equals: for instance, the collection of a certain number of signatures in support of a party in advance of registration.³⁸

Disclosure and enforcement

From an egalitarian point of view, disclosure rules should be quite rigorous in order to ensure transparency and possibilities of restriction of expenses and donations to candidates. Since the presidential form of egalitarianism is centred on public support for individual candidates in elections, the focus of the disclosure rules is also on their funding and expenditure. The Russian case well illustrates the point by envisaging quite detailed rules of reporting and disclosure of information on the expenditure and funding of candidates during electoral campaigns. In the Russian context, the same is true of the reporting requirements for electoral alliances (including political parties) during campaigns: in sharp contrast with these provisions, however, there are no rules on disclosure of party funding and expenditure between elections, except for the vague requirement for 'annual reports' which for a long time remained no more than a recommendation.

A specific form of disclosure, which the egalitarian-presidential model requires, concerns the publicising of the financial standing of individual candidates before elections (especially in the presidential race). Together with restrictions on the usage of his or her private funds, this provision is meant to disadvantage financially strong candidates.

As it may be anticipated, the enforcement mechanism of the discussed ideal type is focused mainly on the rules concerning public funding, expenditure and contributions to parties and especially to candidates during the electoral campaign. For the inter-election period the rules are rather vague and, in practice, unenforceable. As far as the campaign regulation is concerned, the most effective enforcement mechanism is the possibility of invalidating the election of a candidate in cases of gross violations. The second most important mechanism is the imposition of penal sanctions; a much less

³⁸ The Russian electoral law provides a good demonstration of this strategy: there, as it will be argued, every election begins 'anew', without any significant formal privileges for any of the successful previous contenders.

effective instrument are the administrative penalties, unless they are set at levels able to ensure deterring effect.

Weaknesses of the model

The major weakness of the model is the enforcement mechanism, on the one hand, and the bias towards the presidential institution, on the other. The latter weakness is by far the more important and determines to a large extent the former. This is so since the egalitarian-presidential model relies heavily on the state apparatus for the equalisation of the chances of the major candidates. Since the state apparatus is under the control of the president, the potential for bias is always in place: when a conflict between the two branches of power arises, and when the balance between them is tilted towards the presidency, the domination over the state apparatus becomes a crucial asset in terms of political finance. This has been shown by the Russian case, where the president faces a very weak legislature, which cannot be an effective check to his administration. Against this general background, the enforcement of the egalitarian-presidential model of political finance becomes largely impossible. Numerous ways of evading restrictions on contributions, expenditure, and media regulation occur, which give a decisive advantage to candidates and parties enjoying presidential support. As a result, even relatively straightforward rules are bent, and in certain cases openly disregarded.

Thus, the egalitarian-presidential model is prone to yet another, different from the already discussed, form of clientelistic favouritism. Typical of this form is the clustering of corporate interest around the presidential administration. In the Russian context, President Yeltsin has used this 'direct access' of the presidency to the business elite in order to circumvent the political parties and to further curtail their power. Instead of government by parties, the president, it seems, preferred to govern by 'clans' consisting of big corporations, figures from the regional administrations, and members of the presidential entourage: separation of powers consisted in the ability of the president to balance between the clans and not to allow one of them to take over the government of the country as a whole. The developments under President Putin followed a similar logic, the only difference was the total Presidential domination over the oligarchs, which came to substitute Yeltsin's balancing act. Medvedev's presidency is

in its early days, but it seems that he will follow Putin's model, which has already proven very detrimental to political competition and pluralism in Russia.

The form of clientelistic favouritism, typical of the Russian model of egalitarian presidentialism, could be labelled 'clanism' for the purposes of this paper, following the term coined by Virginie Coulloudon.³⁹ It allows for a huge concentration of power around the presidency, but is exposed to very realistic possibilities of delegitimation, because its stability depends largely on the popularity of the president. For the purposes of political finance, clanism also has enormous consequences: it gives an opportunity for the incumbent president and the parties close to him to massively outspend and outperform their opponents in elections, which, in practice, is disastrous to the original egalitarian logic behind the ideal type.

Background conditions

The major condition for the successful application of an egalitarian-presidential model is a power balance between the legislature and the presidency in terms of sharing of prerogatives, and control and supervision over the state administration. This is determined by the crucial role of the state apparatus in equalising the chances of the candidates and political actors: the enforcement of the electoral law would prove impossible if the administration is biased in favour of the president and unaccountable to the legislature. Another background condition facilitating the model is independent judiciary and the availability of constitutional review. However, these are hardly independent variables: the Russian experience shows that if there is a constitutionally omnipotent president, the likelihood of a complacent and deferential judiciary is very high.

What kind of societal structure facilitates the egalitarian-presidential model of political finance? Since the present conclusions are based largely on the evidence of the Russian model, the generalisations could be only very tentative. Nevertheless, it could be argued that the model might work against the background of weak, non-established civil society lacking any major cleavages and divides. The Russian society nowadays

³⁹ Virginie Coulloudon, 'The Criminalisation of Russia's Political Elite' in *East European Constitutional Review*, Volume 6, Number 4, Fall 1997, p. 73.

exhibits this feature: despite the huge disproportion in the distribution of wealth the greatest part of the population is still rather equal from an economic point of view. Also, despite the enormous ethnic, cultural and religious diversity on the territory of the Russian Federation, there are no 'cleavages' which run through the society as a whole: the various local cleavages cancel out each other at the federal level. The emphasis on generous public funding of individual candidates and electoral associations gives an expression of all these local cleavages. On the other hand, the rules restricting the strengthening of the political parties in the Duma reflect the lack of major societal divides. The further differentiation of the Russian society and the gradual establishment of financially strong middle-classes might provide another challenge to the rationale of the model.⁴⁰

6. Conclusions and the future of political money

The proposed map of political finance arrangements is a useful tool regarding the past of the regulation political money. It helps the understanding of the logic of complex legal frameworks elaborated in the period after the Second World War and refreshed after the fall of the Berlin wall in 1989. But is this map a helpful instrument of navigation for the future? Two considerations cast doubt on such a conclusion.

First, the demise of the grand ideologies leads to the dilution of the line between egalitarian and libertarian frames of thought. At the time of writing – autumn 2008 - the neoliberal market fundamentalism is in a serious trouble, which will definitely weaken the position of free marketeers and defenders of the 'money is speech' principle in the field of political finance. Egalitarians also had their difficult moments in the beginning of the 1990s, which led to major reforms of the existing leftist parties and ideologies. Since then, 'third way' eclecticism has been in fashion, eclecticism which has probably fatally undermined the very distinction between left and right. The overall result of these events is ideological indeterminacy in regard to key political questions. For instance, should the state interfere to mitigate the impact of socio-economic inequalities in

⁴⁰ If the political parties manage to become mass parties with deep roots and extensive networks in civil society, the model will be no longer sustainable. This is shown also by the evolution of the French semi-presidentialism towards more or less conventional parliamentarism with the increase of the role of the political parties.

political representation and competition? On the one hand, there seems to be a growing consensus (especially in Europe) that this should be the case.⁴¹ On the other hand, however, politics is more and more dominated by extremely wealthy politicians (Berlusconi in Italy), former tsars (Simeon II in Bulgaria) and oligarchs and their cronies (in much of the former Soviet Union). In general, the influence of big money in politics has hardly reduced over the last two decades, even if it has not led to the direct election of extremely wealthy candidates in public positions.

Secondly, the suggested models of political finance will probably have less and less relevance in the future because of some deep changes in the representative infrastructure of liberal democracy. In short, the role of political parties is becoming more and more ambiguous. The programmatic character of the parties is increasingly a feature of the past: populist players with eclectic mixtures of charisma, skillful PR and very light ideological baggage are more and more successful, as illustrated by the countries of Central Eastern Europe.⁴² In general, there is a certain 'presidentialisation' of the political process, in which persons and individual candidates become more important than stable socially-rooted organisations and party structures.⁴³

⁴¹ See for instance the recommendation of the Council of Europe on political finance regulation: *Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and electoral campaigns*.

⁴² See Grigorij Meseznikov, Olga Gyarfasova, and Daniel Smilov (eds.), *Populist Politics and Liberal Democracy in Central and Eastern Europe*, IPA, Bratislava, 2008.

⁴³ Jonathan Mendilow ('Public Party Funding and the Schemes of Mice and Men', in *Party Politics*, Vol 2., No. 3, 1996, pp. 329-354) has advanced several challenging hypotheses about the role of the media and the effects of public funding. In the first place, he argues that the increasing reliance on mass media communication has placed an ever-stronger emphasis on the central party organisations, and more importantly, on the *personalities* of the leaders.

This, coupled with the de-emphasising of programmatic elements for fear of alienating segments of the electorate, gave rise to a situation where the number of appeals the individual voter was exposed to stood in inverse proportion to the controversial contents the appeal communicated. The effect was compounded by the consequences of the growing professionalisation of the campaigns: the ever-increasing level of visualisation and the use of sophisticated gimmickry...

Thus, paradoxically, the growing influence of the mass media instead of strengthening public discussion, tends to reduce it in terms of substance: politics is becoming largely a matter of *personalities* rather than ideas, programmes and principles. In the Israeli context:

[in] 1981 the personal attributes of leaders played a negligible part in electoral propaganda. In 1984 a shift was already noticeable;... by 1988 Peres's personal attributes featured prominently in the propaganda of both major parties, and in 1992 the personality issue dominated the campaign to such a degree that the Labour party officially changed its title to 'Labour Under Rabin'.

Probably it is too early to tell whether these two trends are permanent or are just temporary aberrations from well-known ideological and institutional patterns. In any event, if they are here to stay – which in my understanding is the more likely scenario – we will need new conceptual tools to make sense of the brave new political reality. It will be hardly useful, if we are content to say that all we see is more eclecticism and the blurring of the dividing lines between the already known models. The intellectual value of such a statement would be the same as to say that we have no idea what is actually going on.

Significantly, a change in the law mandates that as of the 1996 elections the prime minister will be directly elected by public vote.