Canadian Campaign Finance Reform in Comparative Perspective 2000-2011: An Exhausted Paradigm or Just a Cautionary Tale?

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Department of Political Science
University of Toronto

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Abstract

This thesis compares the public policies of campaign finance in Canada with those in the U.S. and the U.K. in the period 2000-2011. The majority of the Canadian literature on party finance demonstrates a belief in the efficacy and necessity of the enterprise. This dissertation suspends this disposition and offers a critical approach to the regulation of money in Canadian elections.

This thesis situates the discussion of party finance regulation in the context of contending models of democracy. Campaign finance rule changes are conceptualized within a new institutionalist framework. Changes in campaign finance rules are seen as changes in incentives and are seen to work in configurations, that is, interacting with existing formal and informal constraints. New institutionalism provides the avenue of inquiry into the position of political parties on the boundary of the public and private spheres and how campaign finance regulation may shift that boundary.
This thesis adopts a mixed-method approach, incorporating the results of 65 semi-structured interviews with academics and political practitioners with primary document research.

This thesis demonstrates that campaign finance rule changes interact with other electoral rules, types of parties and the nation’s historic institutions. The need to meld Quebec’s statist and civil-code traditions with Westminster democratic traditions, the introduction of the Charter of Rights and Freedoms and the role of subsequent court decisions, and the role of Elections Canada in its political finance oversight capacity, constitute major catalysts for Canadian party finance rule changes and for understanding the impact of rule changes.

Contrary to the majority of literature on campaign finance reform, this thesis demonstrates that there may be diminishing marginal returns to additional campaign finance regulations, at least in a mature democracy such as Canada. Campaign finance rules reveal preferences for different models of democracy. As such, they must be carefully monitored.
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Chapter 1  Campaign Finance: If It’s Meant to Change Things, Can It be Neutral Too?

“Debates over campaign finance law do not make for scintillating reading. In fact, several of my friends find the whole subject dull. I see their point, but it can become interesting when you see how the rules play a role in shaping who wins, and how they govern” (Malbin 2003, 4).

In the decade 2000-2010, the Canadian Parliament experimented extensively with its rules governing financing of political parties, candidates, leadership contests and the voice of non-party actors during election periods. In the Canadian general election of 2011, a major plank in the Conservative Party’s platform was its commitment to repeal or lower the tax-based subsidy to political parties, a policy that had been introduced by the Liberal government in 2004. At the outset of my research, the introduction of the subsidy appeared as a potential, key turning point in the nature of political parties in Canada and represented a radical change agent in the role of parties as mediators between state and society because of their new source of funding. Despite the apparent significance of the subsidy, the variation in party responses to the subsidy nevertheless continued to surprise as they unfolded during the period of my research. Political scientists frequently bemoan the difficulty of observing a ‘true’ experiment in the field. Canadian politics provided just such an opportunity in this period of just over 10 years on the subject of party finance. Some predictions formed at the early stages were completely overturned. However, the actions taken both by parties and political actors over the period confirmed my initial sense of the significance of the policy changes in the decade and proved most rewarding to study.

Parties are political institutions and institutions, by their very definition, are the very ‘glue’ that governs, holds together and organizes social interactions; as such, they tend to be durable and usually subject to incremental rather than rapid, significant change. Why then did such significant change occur in this decade and what have been the results?

This work builds on research by Canadian political science scholars such as Young (forthcoming, 2) who finds that despite the enormity of the decade’s changes, there is only
“modest evidence” suggesting that the new rules are “beneficial to the quality of Canadian democracy,” but little to suggest that their impact is negative. Despite the minimal positive impact, campaign finance rule changes are almost always referred to as ‘reforms,’ implying net positive benefits. Yet much of the Canadian political science literature continues to term Canadian parties ‘empty vessels’ (Cross and Young 2006) and advocates for further ‘reform’ (Seidle 2011). By contrast, Massicotte (2006, 177) calls for systematic and critical study of how campaign finance rule changes have actually worked and MacIvor (2006, 39) warns of potentially excessive regulation. Two ‘grandfathers’ in the study of campaign finance, Alexander (2005, 21) and Paltiel (1979, 15), have written that “Political finance reforms are not neutral . . . They change political institutions and processes” and that “So pressing did the need [for reform] appear that little thought was given to the effect of these measures on the shape of democratic politics” (Paltiel 1979, 15; italics added). It is thus imperative to examine not only effects on parties but on the wider polity.

Of the assessments of Canadian rule changes which have been undertaken, most have been conducted within the framework of the comparative parties literature, leaning heavily on comparisons with West European parties. However, as Nassmacher (1989, 2003, 2009) and others have observed, there are significant differences between parties and party finance in Europe versus North America. Fisher (2009, 17-18) argues that cartel theory is ‘fragile’ in its applicability to the U.K. and that “Britain remains something of an outlier compared with other European countries and . . . we continue to detect British exceptionalism.” As well, Young herself argued in 1998 that the specificity of Anglo-American political institutions might well limit the applicability of the European-based cartel model of parties. She cautioned that before undertaking state funding of political parties—a key feature of cartel theory—in Canada, there should be “careful empirical research” before such practices be ‘imported.’ Nevertheless Prime Minister Chrétien’s Liberal government did summarily introduce significant funding changes in 2003 without such research. Taken together, these arguments and data suggest that a new empirical, comparative approach which focuses on the Anglo-American model is needed. Indeed, Bird (2004, 7) writes that “good policy analysis is never institution-neutral, but must always be sensitive to the key features of the particular political institutions within which policy is formulated and implemented”; Nassmacher
reinforces this when, in 2009, he writes that there is a “shortage in comparative approaches” in the field of campaign finance.

This research therefore employs Canada as the primary case but employs the United States and the United Kingdom as ‘shadow’ cases because of the institutional and cultural similarities among these nations and because all three national governments have undertaken various campaign-finance related reforms in the period under question. The methodology is grounded in significant primary document research and the results of 65 interviews with elite political actors and scholars. This research design is especially appropriate to analyze the twin puzzles of why such significant rule changes were undertaken and what effects may be observed not only from the rule changes themselves but also from their enforcement and the new transaction costs entailed in complying with them. As Shepsle (1989, 135) argues, “Politics takes place in context, often formal and official . . . but often informal as well . . .” Therefore, the insights offered by current and former political actors and scholars should prove to be valuable in tracing the reasons and outcomes of campaign finance rule changes.

The theoretical framework for the investigation is that of new institutionalism. Political parties in Canada as well as in the U.S. and U.K. are institutions in the sense that they are rule-governed organisms which both shape political interaction and are shaped by the rules which constrain them. New institutionalism enables not only an examination of how and why political actors changed the rules but also provides a robust framework to evaluate the changed incentives and political choices that flow from rule changes. A new institutionalist framework also attempts to incorporate the real-world constraints of “imperfect enforcement and imperfect foresight of future contingencies” (Shepsle 1989, 140) which may trigger not only intended but unintended consequences, no matter how well-intentioned are the actors or the design. Finally, new institutionalism looks beyond the normative and seeks to identify patterns in outcomes and the distributional impacts of institutional changes.

Hypotheses tested include the following: 1) that ‘politics,’ as found in intra- and inter-party struggles over competitive advantage, not ‘public interest’ has constituted the political motivation for campaign finance changes; 2) that context matters, to wit, the effects
of campaign finance rule changes are strongly conditioned by the existing institutional framework; 3) that campaign finance rule changes have significant effects on the organization of political parties and further, are not neutral with respect to parties; 4) that the more independent the enforcement body overseeing campaign finance regime implementation the more influential it is in initiating policy and sustaining its interpretation of the legislation; and 5) that campaign finance rule changes, because they constitute changed incentives, also have direct and indirect effects on other civil society actors and their political expression and participation. The research indicates that there is considerable support for the first four hypotheses with only some evidence confirming the latter.

This chapter will focus on a review of the literature pertinent to campaign finance. Subsequent chapters will explicate the research design, the evolution of campaign finance in Canada and the shadow cases and then move into the findings and finally to the conclusions which may be drawn. I turn now to the literature.

The Roots of Campaign Finance: Democratic, Political Party and Citizenship Theory

The role of money in politics may be likened to the pain from a chronic illness: the pain makes the patient aware that he/she is alive but does not lessen the anxiety about the disorder nor does it forestall either a search for a cure or experimentation with alternative ‘therapies’. The ‘pain’ of money in politics is also evidence of democracy: money in politics is an unpublicized issue in totalitarian and authoritarian regimes. “Even in democracies, part of the political battle takes place in the dark . . . But these shady areas are limited, whereas in an autocracy everything is in the shadow . . . Democracies appear to be more divided than autocracies, but in fact, it is simply that one can see the divisions more easily . . .” (Duverger 1964, 151).

Money in politics is not merely a public policy issue in developing or emerging democracies: it is a public policy ‘problem’ in mature democracies also. It may be that the more secure and established a democracy becomes, the more intense becomes the search for a ‘cure.’ As Johns argues, it is the fact that “the establishment of liberal democratic institutions and the welfare and regulatory state has largely been achieved” that enable such
strong critiques of the deficiencies of its institutions (Johns 2002, 3). Egregious offences have for the most part been eliminated, norms emerge and are articulated against the undue influence of money and against the perception of undue influence. In contemporary society the problem of ‘money in politics’ can present itself in a host of ‘symptoms:’ misuse of allocated department budgets, minor and gross abuse of expense accounts, actual or perceived patronage, and last but not least, problems surround the raising of funds and spending of funds by political parties and candidates. While it appears that electorates frequently do not differentiate between these various uses—and misuses—of money in the political process, it is nevertheless necessary to limit the scope of this research and hence I focus on the latter: money related to parties and political actors. I draw on the historical record to trace the emergence of public control over campaign finance. However the focus is on the dynamic changes in political finance rules enacted by Canadian governments in the post-2000 period and parallel developments in the U.S. and the U.K. I exclude (with limited exceptions) the campaign finance regimes of provinces and territories in Canada or of states in the U.S. While recognizing that the provinces and states do act as ‘laboratories’ of public policy, it is national level trajectories, outcomes and comparisons that will be studied. Under the adopted rubric, I also exclude any consideration of the logistical costs of running elections.

The terms campaign finance, political finance and party finance will be used interchangeably. As both Gunlicks (1993) and Williams (2000) note, there are differences in usage of these terms, depending on whether a political system is party-centric or candidate-centric and whether contributions and spending are focused on the campaign or writ period or throughout the course of an electoral cycle, that is, between national elections. There are two reasons for using the terms interchangeably. The first is that financing of candidates, campaigns and parties in recent decades has moved from an election-period focus to a more electoral-cycle evaluation of party and candidate finance. The second is that parties, candidates and local organizations of national-level parties all play significant roles in each of these Anglo-American democracies.

Hopkin (2004, 628) argues that although “the issue of funding is central to the problems facing party democracy” yet “studies of political or party finance have tended to
develop separately from the mainstream parties literature, limiting their usefulness.” Hopkin (2004), Pinto-Duschinsky (2001, 2002), Fisher and Eisenstadt (2004) all point to the generally descriptive nature of many studies of political finance that have been done as well as the relative paucity of theory of political finance compared to other subfields although this has begun to change (for example, Scarrow 2004), particularly in Canada following major reforms in recent years. This observation is not intended to understate the usefulness of descriptive works since they are the precursors to theory development. However, given the centrality of parties to democracy, this is a somewhat surprising situation. Van Biezen (2008) also notes that there exists a “lack of mutual engagement” between democratic theorists and party scholars which is, at the very least, “regrettable” since political parties continue to be widely regarded as integral to democratic practice. Yet at the same time, both parties and electoral candidates are regarded with suspicion and perhaps aversion by the public at large. The probing and testing of democratic legitimacy and its boundaries not infrequently involve the subject of campaign finance. Yet campaign finance studies rarely identify the specific democratic theory underlying the analysis. To counteract this tendency, I begin with an heuristic which identifies two poles of democratic theory, despite the continuum of variation between the poles.

Hopkin (2004), Feasby (2006), Manfredi and Rush (2008), as well as others, identify these two poles of debate underlying notions of the appropriateness of political finance regimes: libertarian/liberal democratic and egalitarian/social democratic. Although this oversimplifies the debate considerably, it is sufficient for the purpose at hand. As Kleiman and Teles write, the foundation of liberal democratic thought is that “All government action involves coercion, if only the coercive use of the taxing power. Liberal principles therefore dictate that the state should intervene only where voluntary action produces suboptimal results” (Kleiman and Teles 2006, 624). Civil society plays a strong and independent role within the liberal democratic model, acting to secure citizens from the undue influence of the government. “It is self-directed and voluntary, and makes few collective moral or resource claims on other citizens. In other words, it exists apart from government and the state” (Johns 2002, 2). To summarize, civil society “names the space of uncoerced human association and also the set of relational networks—formed for the sake of family, faith, interest and ideology that fill this space” (Walzer 1992, 291).
Canadian political scientist C.B. Macpherson, writing in the 1950s and 1960s, began to articulate a vision of democracy “as the provision of resources and opportunities for the equal development of everyone’s truly human capacities” (Cunningham 2004). It was explicitly normative, rejected the primacy of ‘negative’ rights of freedom and freedom from coercion, as seen in the classic liberal democratic model, and offered a ‘positive’ definition of freedom as freedom to achieve self-realization and fulfillment. Morrice argues that Macpherson’s intent was to develop a “revision of liberal-democratic theory . . . that clearly owed a great deal to Marx” (Morrice 1994, 646). Macpherson specifically rejected notions of utility maximization by individuals and instead advocated a view of political (and social) life in which people need not compete against one another but rather co-operate. He envisioned a society whose “political system [would] be participatory, pyramidal, with representatives who are delegates, but without political parties” (Nelson 1984, 137; italics added). Inherent in this was a notion of citizens as participatory and while engaged, non-partisan. As Nelson argues (1984, 142), Macpherson’s work stands as an important contribution to the literature of participatory democracy.

The liberal democratic model of democracy came under attack by others such as Rawls. Rawls (1971, 1987) not only questioned the traditional liberal model of democracy in terms of its underlying values but also elevated the norm of justice or fairness over that of efficacy of parties and government. For example, he argued that “. . . it is necessary to prevent those with greater property and wealth, and the greater skills of organization which accompany them, from controlling the electoral process to their advantage” (Rawls 1987, 5). His work adumbrated entirely new approaches for evaluating democratic legitimacy and of evaluating the role of parties as representative institutions. Rawls also sketched out not only a money-neutral setting for elections but also an essentially party-less democracy marked by consensual, consultative decision-making by individuals. His work melded with notions of ‘substantive representation’ and egalitarian approaches as trends toward a more inclusive democracy (MacIvor 2006, 6). As Johns synthesizes, this vision of democracy seeks a democratic community through the following: increasing claims on the community in an increasing number of guises and ways; as an ethical idea; distributive or social justice in an increasing number of areas; its ideas “as a weapon to mediate the effects of the ideology of
individualism and self interest‖ (Johns 2002, 2). This vision of democracy forged by Macpherson, Rawls, Meisel and others, will be termed the egalitarian/participatory model.

These competing models of democracy are significant to the issue of campaign finance because embedded in each are specific ideas of representation, the role of parties, the role of the state (or bureaucracy) and changing definitions of citizenship. Each of these is significant to the debates involving the legitimacy of who pays for parties and what is expected for the ‘payment.’ Central to Rawlsian and egalitarian/participatory democracy is the notion that because the public benefits from the existence of political parties, the state may then claim them as a public asset and regulate them as such. Second is that Rawlsian and social democratic theories cite disengagement from political life—including lack of voting and party membership—in deficiencies of parties, electoral systems and other political institutions more generally rather than in characteristics of citizens themselves. Claims for ‘reforms’ to campaign finance then build on this basis.

Parties, in classic liberal democracy, were seen as essential to the life of democracy. Parties, in the Anglo-American liberal democratic tradition, are therefore viewed as the key linkage between the government or state, on one hand, and civil society on the other. Of crucial importance is that they were linked to the government by informal rules and constraints. They were funded by donations from individuals as well as businesses, unions and even those not considered to be part of the electorate—such as foreign donors. Both brokerage and ideological-mass parties, however, were seen as essentially civil society or non-government actors whose roles were to form the government.

Parties emerged in the U.K. and the U.S., and slightly later in Canada, as the voting franchise was extended. Political parties, as is characteristic of much of the Westminster parliamentary system, are rooted in tradition rather than in statute. As Courtney (1997, 355-356) writes, “Like trade unions in the early stages of their development, political parties in Canada have characteristically been looked upon as independent, private and voluntary associations . . .” aggregating individuals and groups thinking similarly about political or public issues. At the most rudimentary level, political parties function as a critical nexus between citizens and their government or the state. Into the twentieth century, political
parties, and the means of financing them, became increasingly institutionalized, in the sense of being “durable, rule-governed and part of the structure of democratic politics” (Ostrom, 1986).

Parties’ representative functions were seen as one of ‘trusteeship’: elected members voted not only on the basis of their constituents’ interests but also on the basis of the ‘common good’ or national interest. Amyot (2007, 492) captures this idea well:

Politics for classical liberals then, was not primarily about the struggle of conflicting interests, for the public interest was beyond particular concerns. Therefore, legislators were to be chosen for their . . . disinterestedness, rather than as delegates or representatives of their constituents” (original italics).

Parties in the U.K. (with the exception of the Labour party which gave specific voice to union interests), in the U.S., and later Canada, had relatively few members relative to their voting base, and were eclectic in their ideology, giving rise to the term ‘brokerage party’ (Meisel and Mendelsohn 2001, 165). Thorburn (2001, 150) explains that in this model,

Parties act as brokers creating images and policy mixes calculated to appeal to voters in the various regions of the country. These must attract financial as well as mass support, and focus on the various communities that might be attracted. Of course policy builds upon existing party images and ongoing support, so there are limits to how far a party can deviate (italics added).

Dawson (1963, 121-122), perhaps the premier champion of the centrality of political parties to Canadian democracy, roots his defence primarily in their activities and efficacy in arousing interest, educating for democracy, simplifying the task of the voter, providing leadership selection, constituting an alternative government-in-waiting and minimizing transitional delays following an election in which the incumbent party is ousted. Dawson and other liberal democratic scholars viewed political parties simultaneously as dependent and independent variables: dependent, in that their operating environment was given, but independent in that parties and actors were agents. Combined, parties and their actors were variables with significant power explaining the robustness of Canadian democracy. His view, along with that of Schattschneider (1942) in the U.S. and Jennings (1961) in the U.K., could be considered as the prevailing one until the mid-twentieth century.
Although still within the scope of liberal democracy, some European political parties—ideological, mass-membership based—as described by Duverger (1964), developed in markedly different ways than their counterparts in the Anglo-American liberal democratic mould. Duverger (1964) for example celebrated the mass party’s dependence on dues and subscription fees instead of “capitalist financing” by individual, corporate and union contributions. The European model of political parties viewed the representative function of parties differently: because of the primacy of ideology, parties were seen as replicating the intentions of voters and actualizing substantive representation. As well, the European model of parties developed alongside corporatist representation, in which representative processes are functional: business, union and government elites negotiate in closed sessions to achieve various policy solutions. In contrast to the liberal democratic notion that the government or bureaucracy provides merely an arena for debate, government in a corporatist system is a key player rather than a referee of the rules and secondly, there are formal, legal rules which bind the representatives rather than informal constraints. As Adams (2002, 20-21) states,

> The state plays a more active role not only in intermediation between groups but also in organizing, recognizing and identifying what groups are to be included in the policy and decision-making process. The corporatist model generally assumes a formal or legal system of relationships between the state and societal groups. This differs significantly from the pluralist model, which assumes an informal and segregated relationship between the state and interest groups; or the Marxist model, which assumes that the state mirrors the existing relationship between classes within the society; or the totalitarian variant, whereby the state totally controls all interest group activity (italics added).

Roughly in conjunction with emerging critiques of classic liberal democracy, the traditional role and value of parties in the three Anglo-American democracies began to be questioned. In 1950, the American Political Science Association sponsored a study, titled “Toward a More Responsible Two-Party System” (1950), which called for a new, more ideological, European-style model for American political parties: parties that put ideology before winning elections and forming government. Macpherson’s 1950s critique of liberal democracy and of traditional parties fits in here. His work introduced a new, normative and subjective way in which to evaluate democracy, a non-partisan ideal of citizenship and participation and lastly,
The rejection of partisanship is crucial. As Aucoin notes, liberal democratic views of parties “were based on an understanding of electoral democracy as essentially competitive and partisan and an appreciation of parties as the means to effective yet accountable representative government” whereas egalitarian/participatory authors, regard parties with “distrust and suspicion. They are too hierarchical, even oligarchical and elitist” (Aucoin 1993, 4). Or, as British scholar Jennings stated,

The most important part of Parliament is the Opposition in the House of Commons. The function of Parliament is not to govern but to criticize. Its criticism, too, is directed not so much towards a fundamental modification of the government’s policy as towards the education of public opinion. The government’s majority exists to support the government. The function of the Opposition is to secure a majority against the government at the next general election and thus to replace the government (Jennings 1947, 36).

The full import of these differing models of democracy is well described by Aucoin, Smith and Dinsdale, who write:

Indeed, those who urge the adoption of the processes of consensual, or deliberative, democracy eschew the rule of the majority as much as they disapprove of competitive party politics . . . Whatever the merits of a consensual style of politics, it must be conceded that a full consensual system that requires complete agreement gives everyone a veto . . . It changes the core rule of responsible government: instead of requiring a majority of elected representatives, a government would require unanimity to continue to govern. It would also entail an end to the formal opposition . . . The consensus model of deliberative democracy is not just a challenge to the core rule of responsible government, but an altogether different concept of political life (Aucoin, Smith and Dinsdale 2004, 80-81; italics added).

Whether partisanship is valued or denigrated is a key ingredient in how various campaign finance regimes are evaluated or indeed whether parties have any role to play.

Secondly, implicit in the alternatives to liberal democracy and their vision of a partisan-less society came a rejection of the ways in which classic liberal democratic parties were funded. Paltiel noted that in “advanced capitalist societies,” the role of parties differs according to the ‘vision’ of democracy. For liberal democratic pluralists, brokerage parties
assure “social peace and the stability of the political system,” while for neo-Marxists, “relative party autonomy and successful mediation reinforce the position of the hegemonic class and the reproduction of the social order (Paltiel 1996, 419). Marxist theory posits that there can be no ‘common good’ in a capitalist society’ and that there are only two fundamental, opposing interests, those who own the means of production and all others (Amyot 2007, 494). Thus, Marxist thought, which posited that governing elites could not represent the ‘masses’ of citizens, converged with the rise of participatory, deliberative and feminist critiques of classic liberal democracy and the functioning of its parties.

Meisel’s work in 1979 in which he coined the term “decline of parties” as well as his research on Canadian political participation can also be seen as reconceptualizing Canadian democratic thought and practice in light of representational norms. Nelson summarizes well the theoretical currents of the time. The work of Pateman (1970), Mishler (1979) and others of its genre argued that the democratic process should be introduced into the “major organizations of society, public and private” (Benello-Roussopoulos 1971, 4; Nelson 1984, 142). Further, Mishler proposed a “third way,” in which “representative democracy stands beside classical and elitist models,” “new vistas of participation” are opened, and where citizen participation, not efficacy, would constitute the norm of legitimacy (Nelson 1984, 144). The participatory democracy model prioritized citizens, not elected officials, in defining the common good and hence elected officials were to be merely conduits for articulating the demands of citizens. This restatement of democracy as a system of government in which legitimacy and hence political authority derived from citizen participation, not wise or informed trustees, is foundational to changing views of campaign finance. Theories of participatory democracy rest on certain critical assumptions: that in the classic liberal democratic model, there are unvoiced interests, that elected representatives cannot be trusted to voice and represent the common good and that political participation itself holds value independent of decisions reached.

By derivation from the work of the foregoing authors as well as others, government, parties, elected officials and party processes would increasingly be evaluated by representational and participatory standards, as opposed to earlier, instrumental standards. This represents a dialectical development in that it challenged notions of liberal democracy
which were foundational to Dawson’s assessment that political parties were essential and efficacious to Canadian democracy. Also critical to this debate—but seldom mentioned explicitly—is the notion that the classic liberal model, in which parties and elected officials held trustee positions for the electorate, would “defend the status quo, while the representative model would be open to innovation” (Nelson 1984, 145). Secondly, the elevation of participation as a normative standard was sharply at odds with the classic view in which participation was viewed as a choice and citizens were free not to engage in politics; hence political apathy, low voter turnout and other such indicators were not a substantive issue of concern (Nelson 1984, 144).

Bashevkin (1989, 1993) and other feminist authors such as Brodie and Jenson (1988) broadened Meisel’s critique of parties and their work can be seen as a continuation of the shift evident in the literature, from norms of efficacy to norms of equity and voice; and from the view embedded in liberal conceptions of democracy of the ability of competing interests to achieve a generalized public good to a more egalitarian version of democracy in which formulaic or what Bashevkin terms “substantive representation” is seen as necessary. Indeed, when she (Bashevkin 1985, 80) writes that “the representativeness of key political institutions, including political parties, is regarded as a sine qua non of democratic government,” it is with a specific notion of representation. This is the delegatory conception of the duties of an elected official and of a party, in which the expected role of elected officials was not ‘trusteeship’ but rather representation of a specific group in society. Implicit in these contrasts as well is the contested issue of whether a ‘common good,’ assumed in the liberal democratic model, even exists. The egalitarian/participatory model rejects the notion of a common good except as it is articulated by direct citizen input.

Changing notions of citizenship also play into the role of campaign finance in mature democracies. Graber (2006, 169) terms the liberal democratic citizen a “monitor citizen,” one who fulfills “normal tasks . . . namely, to develop reasonable opinions about the situation in question to guide their votes at election time; to discuss the situation with fellow citizens; and to provide verbal or material support to political activists who support a particular position.” However new norms of citizenship emerged in the literature in the 1970s with Verba and Nie for example, classifying citizens into six types, according to their
participation in political activities and contact with government. Their classification was the following: inactives; voting specialists; parochial participants; communalists; campaigners (voting and campaigning); complete activists (at least voting, campaigning, and community-related activity (Verba and Nie 1972, 77). Although contributing money to political parties or candidates was one of thirteen elements of “campaign participation” in their analysis, Verba and Nie, after noting correlation of contributing to other participatory acts, offer no further analysis of monetary contributions in their 1972 work. This treatment of contributing to political parties and candidates was not unique to these researchers and continues in the current literature. Verba and Nie, however, were not alone in downplaying if not denigrating the participatory act of giving to political campaigns. The title of West’s work in 1991 is indicative: Checkbook Democracy: How Money Corrupts Political Campaigns. Even more current work continues this pattern. Citizens in the Westheimer and Kahne (2004) typology, which is widely used in civics textbooks, are informed, purposeful or active: contributing to a political party or candidate is not listed as an act of citizenship.

To summarize to this point, it can be seen that significant challenges arose to political parties from new visions of democracy, the notion of ‘failing’ political parties, and the emergence of more valued forms of participation than contributing money. Despite these, Anglo-American political parties remained throughout the twentieth century as models of ‘voluntarism’ (Fisher 2009), highly dependent on volunteers and dependent on financing from a variety of sources. As well, the Anglo-American political parties varied in their reliance on funding by their partisan position: right-of-centre parties, including the Conservative parties in Canada and the U.K. and the Republican Party in the U.S. relied more heavily on monetary resources than their left-of-centre counterparts. The New Democratic Party in Canada, the Labour Party in the U.K. and the Democratic Party in the U.S. all relied more heavily on labour resources supplied mostly by their trade union affiliates and supporters (Fisher 1996; Pinto-Duschinsky 1993; Heard 1960). Hopkin (2004) and others substantiate the differences.

Regulation of money in elections emerged in the late 1800s as the franchise was expanded in Canada, the U.S. and the U.K. Initial concerns addressed coercive actions by candidates to attract votes: issues such as ‘treating’ and vote-buying as well as the use of
patronage appointments following elections by those elected. Patronage ranged from the granting of ‘plum’ positions in the bureaucracy to, more popularly in Canada, work contracted out by the central government. Early campaign finance scholarship was devoted almost exclusively to anti-corruption in the sense of preventing and punishing egregious and illegal acts—both by candidates as well as voters. The second theme is a tracing of political thought and culture in terms of what constituted ‘appropriate behaviour’ by elected political actors and their parties. As Scott writes, “only the rise of the modern nation-state, with its mass participation, broadly representative bodies, and elaborate civil service codes, signalled the transformation of the view of government office, and even kingship, from a private right into a public responsibility” (Scott 1989, 131). Locke’s *Second Treatise of Government* ([1689] 1980) is considered to be foundational to the development of a culture of public office or public responsibility (Greene & Shugarman 1997, 187). Locke writes that,

> When we say that public office is a public trust with fiduciary obligations we mean that elected representatives assume the role of trustees, with the duty of acting for the sole benefit of the citizens who elected them. And that, in turn, means they must not allow their decisions to be influenced by anything other than the welfare of the citizenry they have undertaken to serve.

“Official corruption” was generally defined as the use of public office—elected or otherwise—for private gain (for example, Banfield 1975) while citizen corruption generally took the form of attempting to extort favours from candidates in exchange for votes. Another wave of reforms in the 1880-1920 period in Canada as well as its counterparts led to the separation and non-politicization of the public service as separate from the partisan stance of the legislature. Ironically, the introduction of the secret ballot in voting by the U.K. in 1872, Canada in 1874 and the U.S. in 1892, and the concomitant decline of voting as a “public display of political identity amid pomp and celebration” (La Raja 2008, 20) may have contributed to the need for candidates and parties for greater funds for elections in order to mobilize voters (La Raja 2008, 20).

In the 1920s and 1930s, the focus of campaign finance turned to ethical concerns regarding the influence by large civil society actors such as unions and businesses in funding candidates, election campaigns and parties. While earlier reforms can be seen as cleaning up elections, progressive reformers of the 1920s rejected the notion “that the costs of democracy
would be paid for principally through these private, capitalistic institutions” (La Raja 2008, 19). La Raja documents that the Progressive approach was antipartisan—“Indeed, Progressive attempts to regulate money were part of an extensive effort to weaken the grip of political parties and not simply to address the problem of corruption in the narrow sense” (La Raja 2008, 19). As well, Progressive ideals demonstrated an “impulse to make politics more ‘educational’ rather than tied to an emotionally based party politics” (LaRaja 2008, 20). As a result, Progressivism also informed the regulation of radio—the ‘new media’ of the 1920s and 1930s—in election campaigns. Both Canada and the UK—each of which had nationalized radio networks—legislated the use of radio campaigning in the 1930s. Party machine politics in the U.S., the sale of peerages in the U.K. and a miscellany of factors in Canada drew the attention of legislators and the general public, resulting in another reform wave at the end of the 1920s. Parliament in Canada repealed and replaced earlier versions of the *Dominion Elections Act* in 1938, in part influenced by the egregious nature of the Beauharnois affair in Canada, in which the Beauharnois Corporation of Quebec had donated $700,000 to the Liberal Party in the 1930 national election (MacIvor 2005, 35). The Depression, World War II and defence issues surrounding the Cold War of the 1950s pushed concerns about campaign finance low on the priority list of issues to be addressed by national government.

The financing of political parties emerged as a public policy issue as evidenced by the Presidential Commission on Finance appointed by President Kennedy in 1960 and the Advisory Committee to Study Curtailment of Election Expenses (Barbeau Committee) formed by the Liberal minority government, led by Lester B. Pearson, in 1964. Of critical importance is that Alphonse Barbeau, the chair appointed by the Liberals, had also chaired the Liberal Party commission which had made the recommendations for campaign finance policy changes in Quebec (Seidle 1985, 115). The Quebec changes were revolutionary from the standpoint of liberal democratic theory: parties became regulated by the state and subsidized by taxes. The import of these changes will be discussed in Chapter 3. The Barbeau Committee studies and report (1966) made numerous recommendations and are considered to be among the first comparative works on campaign finance.
It was in the 1960s that “social scientists began to examine both party finance and political corruption phenomena on a less nation-bound and parochial basis” (Heidenheimer 2002, 763). Scholars working with the Barbeau Committee turned to Germany for lessons on party finance despite the dissimilarities of political parties, the electoral system, and the historic pattern of corporatist representation in Germany. German political parties and party finance came under intense scrutiny during this period, partly because, as Bennett (1996, 299) points out, there was a strong influence of “Europeanists working within (or trained in) American political science departments” at the time. As well, the post-war German constitution specifically named and regulated parties (Epstein 1982), in contrast to the unrecognized legal status of political parties in the Anglo-American parties of the time. This early example of policy learning from Germany has remained prominent in the literature despite the fact that the state-funded model of German political parties remained vulnerable to corruption (Saalfeld 2000; Moroff 2002; Blankenburg 2002).

Heidenheimer states that scholars of the period distinguished “rather sharply between, in the main, socially acceptable ways of financing political parties, and patterns of corruption” (Heidenheimer 2002, 764). This is a crucial point: ‘socially acceptable’ ways of financing political parties became a contested concept in the 1960s in part because of the seemingly explosive costs of television-related election expenses, in part as a response to the ‘responsible party’ critique and in part due to challenges to the pluralist conception of politics which accepted business, union and personal moneys supporting parties and candidates as “necessary and unavoidable” (Heidenheimer 2002, 774). At the crux of the conflict was, as Heidenheimer (2002, 774) writes, the financing of “those competitive party interests which have distinguished its way of welding capitalism and democracy.” Thus it was financing of parties by private sector actors—particularly businesses—that came to be regarded with suspicion. More bluntly, Marxist and class theorists, similar to the earlier progressivists, argued that political parties helped to “perpetuate the system of corporate capitalism by legitimizing the system in the eyes of the people” (Reiter 1987, 54). Brodie and Jenson (1988) argued that this was the case for Canada.

Substantive policy change began in 1966 in the U.S. when public funding of presidential general election campaigns was introduced. Canada’s party finance regime was
the next to change with formal recognition of political parties 1970: political parties were recognized in Canadian law, and were henceforth subject to both the law and regulation. Canada then passed significant legislation regulating party finance in 1974. While there was parallel activity addressing campaign finance in the U.S, the Federal Election Campaign Act in 1971 with amendments in 1974, content of the acts differed significantly between the two countries. Alexander observes that in this period, “Canada appears to have been most active in campaign finance reform, [while] the U.K. and U.S. also had problems [and] policy but not politics to support” legislative changes (Alexander 1979, 79).

However, campaign finance also took on symbolic value in the 1970s particularly as a result of the Watergate in the U.S. As Sorauf writes,

The tremors of Watergate were felt even in Canada. Explaining the passage of 1974 Election Expenses Act, two of the most authoritative scholars of Canadian campaign finance concluded: Public discussion of party finance and election spending had become much more widespread in Canada and was further stimulated by Watergate revelations, which began to excite public opinion of both sides of the American border. It is difficult to estimate how much events in the United States influenced the Canadian government, but it is clear there was a desire to act before public suspicion about party financial activities was heightened even further. Indeed Canadian and U.S. regulation of campaign finance still rest primarily on legislation passed in the aftermath of Watergate (Sorauf 1991, 8; Alexander 1979, 81-82).

The events of Watergate served to focus attention on the financing and use of power by political parties. The focus of reforms to money in politics which had originated as policies targeting bribery of politicians or bribery of voters now became focused on the role of private money per se in the financing of parties as well as money as a resource underpinning power.

Although debate regarding political finance was framed differently in Canada than in its counterparts, nevertheless two prevailing patterns of argument can be observed. Norms regarding the financing of candidacy and party had changed significantly: from an early reliance on wealthy donors to election campaigns and the legitimacy of such an approach, large donations to parties and elected officials for future campaigns now became anathema in Canada but to a lesser extent in the U.S. and the U.K. One pole of argument continued to
defend the use of contributions from individuals, business, unions and other actors, while large donations were condemned by others as a corrosive of democratic equality (Young, forthcoming). The titles of just two publications from this period give a flavour of the intense debate during the period: *Checkbook Democracy: How Money Corrupts Political Campaigns* (West, 1991) may be contrasted to *Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform* (Smith, 1996).

The 1980s in Canada witnessed the patriation of the Canadian constitution and passage of the *Charter of Rights and Freedoms* in 1982. As Cairns writes,

The *Charter* elevates the significance of citizenship as a dynamic political category in all the arenas in which civic roles can be played . . . The *Charter* [is] a democratizing instrument supportive of a participatory political culture. The Charter has taken root and is now part of the civic identity of many Canadians. Its successful grafting onto the Canadian constitutional order is attributable partly to . . . the weakening link with the United Kingdom that diminished support for parliamentary supremacy and an international rights culture given organizational expression by the United Nations (Cairns 1992, 15-16).

The majority Conservative government struck the Royal Commission on Electoral Reform and Party Finance in 1989 (the Lortie Commission), in part to examine the interlinkages between the *Charter* and Canadian political institutions. The commission focused on the theme of fairness. It commissioned numerous studies of campaign finance both in Canada and abroad and these have become part of the required library on political finance in Canada.

How fairness was defined, however, is critical. Pinto-Duschinsky (1981) had articulated one view of fairness:

*There is an obvious distinction between “equality” on the one hand and “fairness” or “justice” on the other hand.* It is reasonable to expect political parties that enjoy greater popular support to have healthier finances than those that have less support. One measure of a party’s appeal is the number of votes obtained, but popular participation takes other forms as well, for example, party membership and local party activity. A party that attracts a large number of individual members or activists can be expected to raise and spend more money than a party that does not.
If this is accepted, it follows that it is just and fair for a party to outspend its rivals, provided that its financial advantage derives from a large number of small donations and not from a small number of large ones. In order to establish that a system of financing political parties is unfair, it is necessary to show not only that a party has more money than its opponents but also that its superiority reflects the wealth and not the number or the enthusiasm of its followers (Pinto-Duschinsky 1981, 285, fn. 15; italics added).

In contrast, the commission chose a different conception of fairness, which is well articulated by Smith and Bakvis, where fairness “requires that the uneven distribution of resources that is characteristic of a market society not be directly imported into the electoral arena” (2000, 134; italics added). The commission explicitly recognized the symbolic value of campaign finance as a policy. As Gwyn (1962, 220) writes, “... no society can be really understood unless its ideals as well as its actual behavior are equally kept in mind.” Brooks similarly argues that policies, as the “institutional embodiments of choices” are important but that “it is a great mistake to ignore the words and symbols that are used to advocate and justify these choices” (Brooks 2006, 139).

Despite the rigorous study of the field of campaign finance in Canada, the U.S. and the U.K. in the final decade of the twentieth century, relatively little evolved in the way of theory, as Hopkin (2004) and Scarrow (2004) have noted. However, the publication of Katz’ and Mair’s work in 1995, modelling a ‘cartel’ theory of political parties and their financing, represents a paradigm shift in that it signalled not only a defence of party but a defence that rested on new reasoning and a way of merging the study of parties and their finance in a way not undertaken since Duverger (1964). A cartel, in classic economic terms, refers to a small group of firms that acts in concert to restrict industry output, stabilize or increase output prices and erect barriers to entry in order to prevent new competitors from entering the market. The cartel of Middle Eastern oil producers is a prime example of the paradigm. Katz and Mair (1995; 2009) adapted the term to refer to parties in the legislature which acted in concert to raise the barriers to entry of new parties and to protect the position of existing parties.

According to cartel theory, part of the strategy to ease the ‘cost’ of running a party was to introduce policies of state or tax-funded subsidies to party operations in order to stabilize party income, reduce the need for volunteers and enable parties to use expensive
media-driven campaigns. Cartel theory is descriptive and predictive rather than normative in that it predicts that existing parties will act collusively to legislate party finance laws that are collectively beneficial for all existing parties; it further predicts that cartel parties, because of their desire for an ‘easier road’ to financial stability other than trying to amass thousands of small donations, will choose to confer state funding on themselves. This reliance on tax-based funding and implicitly, on government coercion to gather the necessary taxes, is not, in contrast to liberal democratic theory, perceived as a threat; it is simply a fact. Another implication of cartel theory is that parties are more heavily regulated in a party system which acts collusively. Karvonen, in her study of legislation on party law, confirms this when she writes that,

Party law is primarily a prerequisite for regulation of public party subsidies and political finance regulation that has several different dimensions. One politically important ingredient is the fact that the introduction of legal frameworks tends to cement the existing party structures . . . Many would argue that regulation is in fact one important way in which the ‘cartel parties’ . . . work in concert to further their common interests.

In stable democracies, one would expect party legislation to be a means of preserving the status quo rather than an instrument of change. A main reason must be that those who control the legislation—the existing parties—have a common interest in resisting structural change (Karvonen 2007, 451; italics added).

It should be noted that Katz and Mair, in their original formulation of the theory in 1995, were examining western European democracies. However, also characteristic to West European democracies is the practice of corporatism. Corporatist representation emphasizes functional representation, by government, business and union actors and de-emphasizes the role of parties as representative vehicles. Corporatism de facto assumes co-operative, if not collusive, behaviour by elite representatives. By contrast, corporatism has never taken hold in Canada, the U.S. or the U.K. Meisel and Mendelsohn (2001, 168) contend that Canadian citizens have demonstrated not only declining acceptance of elite accommodation but “widespread rejection” of the practice. As well, all three countries have been marked by periods of populism which is the polar opposite of corporatism in that populism seeks the widest possible engagement of actors in public decision making and outright rejects elitism as a form of representation.
Building on cartel theory, Van Biezen (2004), studying European political parties, introduced the term “public utility” into current usage, following Epstein (1986), to describe those parties which are largely funded through the public purse. Here, a public utility is defined as “an agency performing a service in which the public has a special interest sufficient to justify governmental regulatory control, along with the extension of legal privileges, but not governmental ownership or management of all the agency’s activities” (Epstein 1986, 157). The term public utility implicitly emphasizes the ‘output’ of parties, for example voter mobilization and candidate recruitment, which Van Biezen argues are collective goods to society as a whole. As public goods, parties justifiably, in her view, rely on state funding. However, she also notes that already the increasing involvement of the state has led to “a transformation of parties from the traditionally voluntary private associations towards parties as public utilities” (2004, 701; italics added). Again, “public utility” for Van Biezen is a non-normative term although it is somewhat predictive in the way that cartel theory is. Parties may become estranged from their base since they become increasingly insulated from the signals normally transmitted by private sector donations: contributions rise with approval from the party’s base and fall when the party adopts policies that are not favoured by donors.

First, public utility theory assumes that although parties produced public goods while privately funded, they will continue to produce the same outputs even if they are funded by subsidies. This is a questionable assumption at best for European parties but even more so if it is applied to parties in the Anglo-American tradition (Young 1998) which are strongly rooted in the private sector and which have never lapsed into totalitarianism. As well, the collective goods provided by parties in Europe, which in the early post-war stage were seen as a crucial bulwark against the return of fascism and totalitarianism, may not be the same in the Anglo-American democracies. Hence state funding of parties, which may be seen as essential to collective welfare in democracies which have failed, may be irrelevant or even damaging to parties and democracies which have experienced a completely different historical experience. Lastly, given the unique role of electoral district associations in Canadian political parties (Courtney 1997; Carty and Eagles 2005; Cooke 2006), the impact of growing regulation on them and constraints on contributions to them must be studied
carefully. MacIvor (2006, 36) articulates her concern regarding the potential impact of the *Federal Accountability Act* on constituency associations.

Canadian parties have become more dependent on state financing in the 2000-2010 decade than their counterparts in the U.S. and U.K. There has also been more significant regulation of external competitive forces (for example, advertising by non-governmental actors during election campaigns). However, of greater import is that state financing in the cartel model was justified not just by the financial needs of parties but by the argument that the ‘output’ of political parties was a collective or public good.

Cartel theory has largely been rejected by Canadian scholars such as MacIvor (1996) and Young (1998) either as an adequate explanation either for the development of campaign finance laws in Canada or for actions of parties in general, although Carty and Cross (2006) argue that parties in the post-2003 period are “(modern) cartel parties.” Young, Sayers and Jansen test cartel theory’s prediction “that extensive reliance on the state for funding contributes to an erosion of parties’ capacity to link society and the state” and find only some evidence supporting the cartel argument (2007, 337; 352). More generally, cartel theory has been severely critiqued by authors such as Nassmacher (2009, 405) who argues that Katz and Mair “did not discover a new type of party. They just attached a catchy label to a process of changing emphasis in describing the fundamental role of parties.” Detterbeck (2005, 187-188) argues that cartel theory is “overloaded with assumptions” and proves more useful when institutional parameters and political traditions are taken into account. An appropriate analogy might be the following: it is said that in the Great Smoky Mountains in the U.S., one can predict rain falling and it will be true somewhere within the Great Smokies. Cartel theory is similarly overbroad: one can find some aspect of it wherever one looks at party behaviour. Secondly, change can be driven by more than simply collusive behaviour. As Olsen argues,

Change can be driven by explicit rules, pressures from institutional ideas that can never be fulfilled in practice, internal loss of faith in institutions and interpreters of appropriateness and by intra- and inter-institutional tensions between organizational and normative principles (Olsen 2007).

However, for the purpose of this research, which is to explore the reasons underlying the transformation of Canadian campaign finance and their outcomes on parties and democratic
practices, because of the theory’s prominence in the literature and because of the more statist orientation of Quebec since 1967 in its approach to party finance, it remains a useful heuristic.

To summarize, despite the fact that most Canadian scholars reject cartel theory as solid ground in understanding Canadian political party behaviour, nonetheless, cartel theory and its offspring, public utility theory, have been implicitly accepted in arguments for further regulation of political parties and their finances and for tax-funded subsidies to political parties. Young (forthcoming, 1) writes that in Canada, “rules governing money in politics have ceased to be designed solely to discourage corruption in favour of encouraging a broader range of democratic values . . . This approach requires that we consider party and election finance laws as being integral to the construction of democracy.” To wit, she is arguing that the issue of campaign finance is no longer about financing of candidates, parties and elections, but is rather about the production of public goods.

However, it is a stretch to infer, as do certain scholars (Smith and Bakvis 2000, 2002), that further regulation of party, candidate and third-party funding as well as state funding— inherent in both cartel and public utility theory—in democracies such as Canada’s will herald still further benefits to democracy despite minimal evidence of the benefits of already-enacted changes. Aucoin stands almost alone in his defence of Canadian political parties. Aucoin (1993) reviews recommendations of the commission from the standard of a more liberal democratic framework, which he states gained some traction in the literature in the early 1990s. Aucoin’s 1999 work defends Canadian political parties, not just on the grounds of efficacy, but also on representative grounds. Palda, in his 1995 work, Election Finance Regulation in Canada: A Critical Review, argues for the importance of examining the consequences of campaign finance rule changes. He suggests, for example, that there may be hidden public welfare costs of regulation of spending including possibly the illusion of lower election costs in more interventionist regimes as well as the possibility that stronger regulation may “leave the electorate poorly informed of their choices” (Palda 1995, 2).

Both Aucoin’s and Palda’s essays, while written from different theoretical perspectives, may be seen in line with the more general concern voiced by Cairns in his
classic 1995 “The Embedded State: State Society Relations in Canada.” As the title suggests, Cairns describes the growing intermingling of state and society: this is precisely the picture of Canada’s political parties at this moment, with the state becoming increasingly ‘embedded’ in their operations. Debate in the Canadian political science literature remained intense with ‘third party’ spending the focus for authors such as Palda (1995), Bakvis and Smith (1997), and Tanguay and Kay (1998). I follow the usage of the term ‘third party’, in the literature, to refer to all non-party and non-candidate activities designed to influence policy or political outcomes. Specifically, third party does not refer to a minority political party. In this practice, I follow that of Elections Canada and that of Issacharoff (2010, 120) who terms the American equivalents “tertiary actors.”

However, scepticism of campaign finance ‘reforms’ is scarcely voiced in the Canadian party finance literature. The literature, with rare exceptions, illustrates the dominance of a paradigm in which ongoing, additional regulation of campaign finance is perceived as the means to cure a variety of democratic and party failures. As Kuhn (1970, 175) defined it, a paradigm is a system of thought based on a constellation of beliefs, values, and techniques shared by members of a given community.

In 2000, Carty, Cross and Young (2000, 149) argued that there were “significant pressures for change to the regulatory regime . . . there is likely to be pressure from the public . . . for greater state regulation” of parties and Carty and Cross in 2006 continued to argue that Canadians were “demanding more participatory structures and practices” (Carty and Cross 2006, 101). Meisel and Mendelsohn (2001) and Carty (2006, 5) nevertheless acknowledge that the Canadian electorate still values parties. Indeed, public opinion surveys in Canada and elsewhere demonstrate that despite cynicism about partisanship and issues of mistrust, the electorate continues to indicate its belief in the necessity of political parties (see for example, Carty 2006, 5). Whether ‘demand’ exists is questionable. In all three nations results of public opinion surveys at first glance indicate public support of increasing regulation of campaign finance1 whereas more serious investigation indicates that public

1 In the Canadian Elections Study of 2000, for example, “80.7 per cent of respondents thought that ‘it is a good thing’ to limit the amount of money that individuals and groups (other than candidates and parties) can spend to
opinion on the subject is inconsistent. For example Primo (2002) demonstrates that while respondents agree with the notion of campaign finance regulation they also support First Amendment rights for businesses and unions. The Center for Competitive Politics (2010, 1) in a 2010 poll found that “[American] citizens hold complex views on money in politics;” while they are suspicious of corporate and group funding, a plurality oppose the imposition of criminal or civil penalties on individuals or groups for their engagement in political speech.

For the U.K., the Hansard Society (2010, 22) argues that “Public attitudes to politics and parliament are highly complex and rarely uniform” and a 2008 survey states that while dissatisfaction with standards of public conduct may indicate a “loss of confidence in the institutions of government and their occupants,” it could equally be a “reflection of a temporary national mood” (U.K. Committee on Standards in Public Life 2008, 11). Even if public opinion did favour regulation without reservation, this would not be equivalent to ‘demanding’ further regulation, which would require mobilization. Secondly, given citizen attitudes of mistrust in government prior to the introduction of the 2003 ‘reforms,’ one wonders whether further subsidization of parties via tax-based subsidies is likely to increase trust. Pinto-Duschinsky (2006) for example, cites “public hostility to the state funding of parties” in the U.K. Even sharp critics of political parties who have declared them ‘declining’ (Meisel 1979), ‘chameleon-like’ (Meisel and Mendelsohn 2001) or ‘empty’ (Cross and Young 2006) nevertheless concur with Fiorina’s assessment (1980) that “only way collective responsibility has ever existed, and can exist, given our institutions, is through the agency of the political party” (Fiorina 1980; italics added).

It is therefore crucial to probe further and more broadly into how the sweeping institutional changes in Canada 2000-2010 have affected not only the parties but also their interaction with other Canadian institutions and Canadian civil society. As Hofnung writes, 

*It should be kept in mind that one of the strongest arguments for adopting public funding was that adequate financial support from unbiased and neutral advertise their support for a party or a policy during an election campaign . . .”* (Elections Canada, Regulation of Election Activities by “Third Parties”: Overview and Statements by the Chief Electoral Officer, n.d., 6).
sources (the state) would free parties and candidates from over-dependence on organized or public interests who aspire to get easy and quick access to decision makers in return for their political contributions (1996, 13; italics added).

Andreoni (1993, 1317) nevertheless finds that the oft-hypothesized ‘neutrality’ of state or government funding remains a highly contested notion. As well, his work can be seen as the theoretical framework for findings by Andreoni (1993) and Massicotte (2006) that government funding may crowd out or partially crowd out private donations. Other authors (principally American and British) have posed questions that are not easily answered by the traditional party theorists. Will individuals and the electorate in general respond positively in terms of donations, attitudes and engagement to the changes in electoral finance or will individuals respond negatively because they perceive they are ‘already’ paying for parties through taxes? What, if any, are the societal costs to increased regulation and might new political finance laws introduce unexpected distortions? As Kleiman and Teles argue, greater state or government intervention may also have its limits. As they write,

Yet if the scope of potentially justifiable state actions should be broadened to take account of failures of civil society institutions and of individual rationality as well as market failures, it remains true that the scope of actually justified state actions will turn out to be a good deal narrower. Government is not, after all, a frictionless device for correcting for market or other failures. No one claims that it is. But applying this insight demands a step most policy analysts shy away from: comparing the efficiency of the institutions of voluntary choice, left to their own devices, with the efficiency of state action or with the efficiency of private action as modified by regulation” (Kleiman and Teles 2006, 625-626; italics added).

Alexander (2005) writes that no institutional change is neutral; moreover, as Olson (1965, 173) suggests, an “increase in collective goods and externalities can add to the amount of divisiveness and conflict in a society.” Therefore, the naming or categorization of political parties as ‘public utilities’ and hence their public funding may in and of itself lead to further societal conflict. Since monetary contributions to parties and candidates, along with volunteerism, have historically constituted a significant avenue of civil society involvement in Anglo-American political parties, we might expect that changes in campaign finance rules would have potentially wide-ranging effects on parties, society and individual citizens. It is critical therefore that as scholars, we explore carefully a broader range of outcomes—not
merely a select few—likely to result from an institutional change. Not to do so would be an “act of the crassest stupidity” (Laver and Shepsle 1996, 287). Thus, if we are to understand the events of the 2000-2010 period, Canada’s profound changes in political finance and their impact, we must turn to other theoretical models.

A Way Forward

I began by identifying twin puzzles: why did Canada experiment so widely with campaign finance reform in the decade 2000-2010—when there seemed to be no obvious, strong pressure for reform—and what have been the outcomes on parties and democratic practices. Canadian experiments in campaign finance—as well as those of its Anglo-American and West European democratic counterparts—can be seen as the attempt to choose from an array of institutions to supply desired political outputs. The puzzles being addressed here can be seen as subsets of what North (1990, 6) terms the “central puzzle of human history’ which is “to account for the widely divergent paths of historical change . . . What accounts for their widely disparate performance characteristics?” Heclo goes further: “Policy making is a form of collective puzzlement on society’s behalf; it entails both deciding and knowing” (Heclo 1974, 305).

Despite their emergence as “fundamentally extralegal (and) nongovernmental” or private actors (Aldrich 1995, 19), parties have gradually come to be seen as institutions, in the sense of being durable, rule-governed and part of political structure (Ostrom, 1986). Institutions, in traditional scholarship such as that by Jennings (1961) and Dawson (1963), were viewed as exogenous ‘political structures’ and were described in terms of attributes such as degree of competition, type of leadership and so on (Ostrom 1986, 4). This is true in Canada, as well as in my two referent examples, the U.S. and the U.K. However, what is critical is that although the early party theorists viewed parties as exogenous variables, indeed part of the ‘framework’ of democracy, current scholarship views parties as endogenous to the democratic system in which they are situated and as dynamic rather than static. As North writes,

Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence,
they structure incentives in human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve.

Both what organizations come into existence and how they evolve are fundamentally influenced by the institutional framework. In turn they influence how the institutional framework evolves (North 1990, 3; 5).

Whether seen through a liberal democratic or populist lens, political parties are institutions (rule governed and enduring) and endogenous in the sense that they cannot be understood apart from either their own historical context and dynamics or those of the political system as a whole. Parties, that is, can be understood only in relation to the polity, to the government and its institutions, and to the historical context of the times” (Aldrich 1995, 18-19).

Aldrich makes a further point: political parties are the “most malleable” (1995, 27) of institutions in the political sphere while Nassmacher argues that “The behavioural aspect of regulation and its impact on party activity, party competition and party structure is the core subject of political analysis” (Nassmacher 2009, 26).

Viewing institutions as endogenous variables is the hallmark of new institutionalist theory. Ostrom and Walker for example write that,

In a democratic society, problem-solving individuals craft their own institutions all the time. Individuals also participate in less fluid decision-making arrangements (elections to select representatives, for example). Elected representative may then engage in open, good faith attempts to solve a wide diversity of problems brought to them by their constituents . . . Incentives exist to create mechanisms whereby one set of individuals dominates others. Attempts to dominate and avoid being dominated increase the complexity of the processes by which new institutions are crafted (Ostrom and Walker 1997, 42).

New institutionalism also lends itself as a useful theoretical lens through which changes in campaign finance rules are seen as changes in incentives and rules are seen to work in configurations. Clift and Fisher (2004, 677) argue that “new institutionalist theories . . . provide a cogent explanation for the alternative paths taken by each country with party finance regulation.” Ewing and Issacharoff (2006, 6-7) argue for a highly contextualized understanding of the role of political finance and argue that although the ten (!) factors they delineate “may help to determine regulatory outcomes, it is clear that they operate in
different ways to produce different solutions in different jurisdictions.” As new institutionalist author Ostrom observes, “Rules rarely prescribe one and only one action or outcome” (Ostrom 1986, 6; italics added). Thus, a close examination of the effects of recent reforms in Canada with reference to its U.S. and U.K. counterparts should empower a contribution to a theory of political finance that can differentiate between contextualized and non-contextualized effects.

The extensive Canadian campaign finance reforms of 2000-2010 may be seen as a test of the malleability of political parties and as an exercise in problem-solving on a societal level which is, as Olson has demonstrated, a “collective action” problem. Olsen defines collective action problems as those situations in which an organization provides a benefit but one which is an “inseparable, generalized benefit.” Individuals or groups may not be excluded from the provision or existence of the benefit (Olson 1965, 14-15).

New institutionalism provides a second avenue of inquiry into the nature of political parties and their services as ‘public goods.’ The ‘benefits’ or ‘political services’ (Laver 1997, viii) provided by parties may be deemed as ‘public’ or ‘collective’ goods or services, defined as circumstances where “those who do not purchase or pay for any of the public or collective good cannot be excluded or kept from sharing in the consumption of the good, as they can where non-collective goods are concerned” (Olscon 1965, 14-15). Thus, with respect to the provision of public goods, parties are prone to the free-rider problem explicated by Olson (1965): members of the electorate, *neither contributing* to parties nor *volunteering* in routine party activities, cannot be excluded from the benefits provided by parties as organizations.

Bartolini and Mair (2001, 339-341) suggest that parties provide services of ‘political integration’ and ‘institutional integration.’ Authors such as Young (2005) have evaluated early effects of the Canadian finance regime change and have found little evidence that there has been a positive effect on the “political integration” services of representation, inclusion or participation. However, Bartolini and Maier suggest that it is necessary to look further. They argue that, “an emphasis on the role of parties within democratic institutions and procedures will likely lead us to a very different conclusion from one deriving from a focus on their representative role alone” (Bartolini and Mair 2001, 336). For these authors, a
‘weakening’ of parties leads to a diminished ability of the party in opposition to hold the government accountable. This is a particularly critical function in a Westminster democracy such as Canada’s. They argue that,

If the internal life and external activities of parties are regulated excessively by public law, for example, this will lead to their being redefined as public service agencies, with a corresponding weakening of their own internal organizational hierarchical order (Bartolini and Mair 2001, 340).

Further, Fisher points to van Biezen’s concern that “while public funding [of political parties] has been viewed as a solution . . . it may possess its own pitfalls, creating a clientelist relationship between governments and parties” (Fisher 2004, 620).

New institutionalism argues that actors respond to incentive structures. The work of Shepsle (1989) and Ostrom (1986) pertain to the case at hand. Ostrom writes that,

*Rules* are the means by which we intervene to change the structure of incentives in situations. Instead of viewing rules as directly affecting behavior, I view rules as directly affecting the structure of a situation in which actions are selected (1986, 6).

Seidle (2006) too, has stated, “When one looks at political financing and its further regulation, particularly in the case of Canada where the regulation is already extensive, it is important to take a holistic look and ask, if you turn one valve here, what might happen to the rest of the apparatus?” Seidle is thus reinforcing Olsen’s more theoretical statement that it is “relations among institutional characteristics, political agency, performance, institutional change and the wider social context of politics” which count (Olsen 2007, 2; italics added).

This approach also builds on the classic work of Epstein who conceives of parties as

*intervening* variables—dependent in the sense of being determined in their type and form by basic national circumstances, but in turn partly independent or determining with respect to matters like voting behaviour or electoral representation and to some of the circumstances like the constitutional arrangements which themselves helped to mold the parties (Epstein 1982, 8-9; italics added).

Of note is that Elections Canada, as the regulatory agency overseeing political finance, is itself an institution and therefore a critical variable. Kingdon (2003, 128; 102) suggests that bureaucrats may act as policy ‘entrepreneurs’ and further that the “process of
writing regulations is terribly important. It is a quasi-legislative function, and it is totally hidden from public view.” Scarrow (2004, 659) points particularly to the impact of certain non-legislative actors, particularly constitutional courts and investigative and regulatory commissions. Lastly, Simeon (1976, 549) argues that “bureaucratic agencies are central elements in the policy-making process, and no study of policy could ignore them.”

Finally, a new institutionalist framework is also relevant since it draws attention not only to the ‘successes’ attributable to a policy or rule change but also the ‘failures’ that may emerge. As Ostrom and Walker (1997, 36) state,

If the purpose of an analysis is to demonstrate how market institutions fail to provide optimal levels for a wide variety of goods and services, demonstrating market weakness or failure is relatively easy. Demonstrating the failure of one type of institution is not, however, equivalent to establishing the superiority of a second type of institution . . . The choice that citizens face is not between an imperfect market, on the one hand, and an all-powerful, all-knowing, and public-interest-seeking institution on the other. The choice is, rather, from among an array of institutions—all of which are subject to weaknesses and failures (italics added).

As well, DeLeon and Vogenbeck (2007, 5) argue that “to understand a problem, one must acknowledge its value components.” Rarely if ever in discussions of campaign finance are the trade-offs between competing values discussed explicitly. However as Duverger (1964, xi) notes, “Political decisions bring into play not only objective data but also value-j judgements about man and society . . . there is no totally ‘objective’ view of politics, because there is no totally objective politics.”

Political finance reforms thus can be can be seen as a significant ‘intervention’ in political behaviour, activity and attitudes by means of changing political funding rules. They may also be viewed as affecting the interaction of a number of institutions—the electoral system, the bureaucratic oversight of political parties vis-à-vis their compliance with campaign finance rules, the judiciary in its interpretation of such rules and so on. Young et al. (2005, 2007, 3), Lambert and Jansen (2007), Coletto (2009) and others have evaluated Canada’s 2004 reforms against party outcomes and against democratic audit standards. Campaign finance has increasingly come to be seen by political scientists as a vehicle to further democratize society by addressing inequities in access to monetary resources (Smith
and Bakvis 2002, 134; Young forthcoming, 1). Young (forthcoming, 28) herself states that by democratic audit standards, for example such measures as rates of participation, degrees of inclusion, parties’ responsiveness to the electorate, that it is difficult to argue that reforms . . . have made significant positive contributions . . .” It is therefore all the more important to broaden what is considered as ‘evidence’. Employing a long-term retrospective combined with in depth use of the Canadian case and two shadow cases brings a needed fresh and timely public policy perspective.

Hypotheses

Several hypotheses emerge from the foregoing analysis and the adopted new institutionalist and public policy framework.

1. In considering campaign finance as a field of public policy, rather than just the subject of comparative parties and elections, I hypothesize that the Kingdon (2003) model of public policy making, which grants a significant role to politics and political choices will prove to have greater explanatory value than that of the Heclo (1974) model of public policy which prioritizes the role of the state and of ideas. I expect intra- and inter-party partisanship to play a prominent role.

2. Following Pinto-Duschinsky (2001, 2002), Ostrom (1986; 1997) and Olsen (2007), context matters. I therefore hypothesize that when a significant institutional change, such as those of campaign finance rule, and passage of the Canadian Charter of Rights and Freedoms, occur, the types of changes and the effects of such rule changes are strongly conditioned by the existing framework of formal and informal constraints. As well, I argue that there exists a ‘logic of appropriateness’ (Olsen 2007) within a given set of institutions which alters the outcomes of certain policy mechanisms within the array of potential campaign finance rules. Although a policy ‘idea’ may be transferrable, its outcomes may not be predictable because of changed context.

3. New institutionalism suggests that rule changes are not neutral in their outcomes. Emerging from this premise, I hypothesize that despite the overt intent of recent campaign finance rule changes to ‘level the playing field’ for parties and candidates, the effects of rule changes are not neutral since they entail changes of unequal benefit to parties and imply the necessity of strategic response. While cartel and public utility theorists would expect parties to respond similarly, as though they were unitary actors, a new institutionalist, by comparison, would predict varying responses that do not necessarily produce a level playing field, because of the importance of individual factors and individual actors in responding to changed incentives. Also emerging from Ostrom’s principle (1986, 21) that rules work “configurationally rather than
separably,” I hypothesize therefore that each rule change produces significant effects on organizational behaviour of parties.

4. I hypothesize that, following Simeon (1976) and Kingdon (2003), the scope and structure of campaign finance rule changes is strongly conditioned by the type and leadership of bureaucratic oversight. I specifically test Scarrow’s prediction that the “more powerful and the more politically independent the body [constitutional courts, investigative and regulatory commissions] the more likely we are to find policies which appear to go against the financial interests of dominant parties” (Scarrow 2004, 659).

5. New institutionalism posits that changed incentives lead to changed behaviour and that the “study of rules involves multiple levels of analysis rather than a single level of analysis” (Ostrom 1986, 21). Shifts in the focus of campaign finance rules constitute not only changed incentives for political parties and candidates but also for others less directly linked to parties. I hypothesize therefore that campaign finance rule changes have significant direct and indirect impacts on civil society.

Conclusions

In sum, this dissertation examines why Canadian party finance legislation experienced such upheaval in the post-2000 period and how these changes have affected political parties directly and by administration through electoral agency oversight, other political institutions as well as civil society actors. Campaign finance rules constitute both the independent variable shaping responses as well as the dependent variable shaped by actors and parties. Campaign finance is

both a microcosm of that wider politics and an intricate political world of its own. It has its own well-defined actors and activity, its own regulatory environment, its own information and learning networks, and its own exchanges and marketplace (Sorauf 1991, 19).

Campaign finance as a field of study is at the intersection of liberal and social democratic theories; it is at the juncture of policy-driven versus political-driven theories of political parties; it is at the centre of norm-based versus rule-based political engagement. As Nassmacher writes, campaign finance generates “new behaviour among politicians, organisations, agencies and citizens” (Nassmacher 2009, 26). Lastly, as Wildavsky writes, “If, when readers thinks, ‘reform,’ they also think about changes in ‘what kind of government’ and ‘what kind of people,’ they will be on the right track” (Wildavsky 1992, 397). Public policy scholars have always insisted on evaluation yet the existing campaign
finance literature in Canada has focused primarily on ‘democratic audit’ and party system benchmarks rather than a broader view of outcomes. Lastly, this research is distinctly in the realist rather than normative camp and in contrast to much of the campaign finance literature, my work is rooted in a liberal democratic rather than a social democratic approach. Like Stoker, I focus on the realities of an “operating system of decision making rather than some far-off goal” (Stoker 2006a, 21-22).

Katzenstein\(^2\) states that there are “large, sloppy and unmanageable problems that occur in real life” which demand scholarly investigation, despite the fact that the variables involved do not fit into neat categories nor are the directional relationships between variables easy to measure. I contend that this is the quintessential description of the ‘problem’ and ‘puzzle’ of campaign finance: why did Canada experience such significant and frequent reform after 2000 and what have been the impacts of this period of instability? As Fisher (2004, 624) writes,

> As a result of recent regulatory changes, more comparative models are required to help us understand the paths taken by a variety of democracies... Clearly, party finance is but one of several critical areas of perfectability in transparent and representative government... party finance is a good starting point...”

Hence, scholarship into the effects of changes in campaign finance is crucial to the ongoing vitality of parties as intermediaries between state and society. It is even more so if Tanguay (2008, 179) is correct in his assessment that recent scholarship suggests that “political parties in contemporary liberal democracies are losing their capacity to penetrate society and mobilize citizens.” Thus, despite the “large” and “sloppy” nature that is intrinsic to issues of campaign finance and the problems of identifying causal relationships as noted above, we cannot afford to assume that even well-intentioned changes in campaign finance rules will necessarily be followed by beneficial results to parties or to democratic practices.

\(^2\)In an email dated July 5, 2010, Katzenstein told the author that he does not recall where he originally used this phrase. However, it is widely attributed to him. See for example Cohen (2009).
Finally, my research is expected to address the gap identified by Nassmacher (2009, 29) where he notes that most studies of political finance have continued to be “one-shot approaches only, because they do not combine long-term and cross-national comparisons.” Employing a long-term retrospective combined with in depth analysis of the Canadian case, the integration of two shadow cases into the analysis, and the careful treatment of political culture address three of the many concerns articulated by Nassmacher (2009, 20-29).

Plan of the Dissertation

The remainder of the dissertation is organized as follows. Chapter 2 explicates my research design as a deliberate and appropriate methodology to explore the hypotheses posed. Chapter 3 reviews political finance from the post-Confederation period until 2000 through a new institutionalist lens and incorporates insights from the interviews conducted. In Chapter 4, I explore the pursuit of equilibrium in party finance rules since 2000. Chapter 5 addresses the impact of the Canadian Charter of Rights and Freedoms and the role of the judiciary with regard to campaign finance. The focus of Chapter 6 is Canada’s national campaign finance enforcement structure and activities, with comparative reference to political finance administration (not election administration) in the U.S. and the U.K. In Chapter 7, I discuss the effects of recent campaign finance initiatives on political parties. In Chapter 8, I begin a preliminary investigation into effects on civil society and democratic practices. During the course of the research, I found how influential the status of Quebec was as a factor in campaign finance rule changes. Therefore, in Chapters 3, 4 and 7, I devote subsections to the issue-specific nature of Quebec. Throughout, several tables and charts provide critical information. In Chapter 9, I evaluate the findings; discuss commonalities among the three cases; investigate the implications of my findings and suggest a research agenda that would build on current scholarship in the field of campaign finance. I conclude with the way in which my findings may contribute to public policy lesson-drawing in the area of campaign finance.
Chapter 2 Research Design

“The problem of funding political parties and campaign expenses has preoccupied the Western democratic world for the past two decades . . . So pressing did the need appear that little thought was given to the effect of these measures on the shape of democratic politics” (Paltiel 1979, 15; emphasis added).

Introduction

Canada has moved away from a self-regulated, laissez-faire model of campaign finance more significantly than either the U.S. or the U.K. over the past four decades and particularly in the first decade of the millennium. Given the magnitude of the reforms, it is important and timely to investigate closely why such rapid institutional change occurred in the 2000-2010 period in Canada and what effects may be observed in terms of Canada’s political institutions, political actors and civil society. Thus while acknowledging the recent scholarship that has been conducted on the 2003 reforms from a democratic audit and parties perspective, my purpose is to introduce an explicitly liberal-democratic perspective and to cast a wider net for what is considered as ‘evidence,’ looking not only at responses by political parties and actors to change but also by responses by civil society actors. This addresses the concern articulated by Hopkin (2004) and Scarrow (2004) that campaign finance is too often disassociated from democratic theory and second, to invite substantive critique from those who disagree with this perspective. Secondly, I follow Daalder’s prescription:

If we want to do better, what should we do? First, we should seek to query the presence of possible, normative biases in the literature, and our own thought and writings . . . once we have faced possible biases . . . we must turn towards a full study of the empirical record . . . This should force us to give up many easy generalizations, and instead to grapple with very complex developments. If this will disillusion us of popular certainties, it will undoubtedly make for more realistic comparative insights (Daalder 2002, 55-56).

My research design employs an empirical, primarily qualitative, yet mixed-methods approach. The foundation is 65 one-hour, semi-structured interviews with elite actors. As well, I conduct extensive primary document research and draw on scholarship in the areas of
comparative political parties and electoral finance administration, public policy and new institutionalist thought which focuses on “relations among institutional characteristics, political agency, performance, institutional change and the wider social context of politics” (Olsen 2007, 2; italics added). The complexity of contemporary campaign finance rules daunts the hardiest of scholars and limits analysis and commentary from a wider audience than those specializing in the field. I seek to enable new scholarship in campaign finance via four innovations in its research design: first, use of a comparative perspective that focuses on the Canadian experience in the decade 2000-2010 with illustrative reference to the U.S. and U.K.; second, the choice of a mixed-method, empirical and qualitative research design that deconstructs the statistics of campaign finance and permits scholarship into the dynamics of campaign finance reform; third, a public policy analytical framework; fourth, a thematic analysis of Canadian campaign finance reforms in the past half-century captured in time lines and charts of data. This latter approach stands in contrast to the typical analysis which moves document-by-document and renders it difficult to identify recurring patterns.

In order to achieve maximum clarity, I proceed in this chapter to lay out the research design in detail so that methodological choices are transparent to the reader and will therefore move debate forward. I address comparative choices first, followed by those of case selection, qualitative methodology, and research protocol, all of which have a bearing on validity and reliability issues. Last, I consider potential weaknesses in the research design and ways in which I attempt to minimize and counter them.

Why a Comparative Study?

Epstein (1982, 340) writes tersely that “Having to limit observation to one nation is a decided analytical disadvantage.” Thus comparative political studies are crucial to developing political theory: what works with what qualifications? As Peters writes,

The real world of governing and politics is too important to permit social scientists to manipulate an institution here and a law there just to see what might happen . . . Reform are however, almost always based on an implicit, if not explicit, comparative analysis of government, and the institutions being advocated . . . appear to be associated with more successful governance in their own or in similar governments (Peters 1998, 1; italics added).
The benefits of the comparative political method are well-known, as are its potential downfall: the most apt case selection. As Peters (1998, 2) writes,

Within those real countries, occur the real, complex and convoluted sequences of events . . . On the other hand, the complexity of real political life means that variables come to the researcher in large bundles of factors that are almost inextricably intertwined. It is then up to the researcher to disentangle the sources of variance, to contextualize the findings, and to provide as useful a ‘story’ about politics as he or she can.

Although there is some disagreement on the dating, Bennett (1996, 299) argues that the “modern tradition of comparative public policy studies originated in the early 1970s” and roots the subfield in the work of authors Adams, Heclo and Heidenheimer’s comparative policy study published in 1975. In fact, Heidenheimer had published earlier works that provided a key link among the subfields of comparative inquiry, policy studies and political finance in his 1963 study of comparative political party finance and 1970 study of comparative political corruption. During the 1970s, Paltiel established a Canadian foothold in the emerging ‘triple-play’ of comparative, policy and political finance studies (1970, 1979). Since that time, comparativism has emerged both as a field and as a method of inquiry in political science scholarship generally as well as in specific subfields.

Canadian comparative studies of political phenomena have ebbed and flowed since Confederation. Siegfried ([1906] 1966), one of the earliest authors in this tradition, compared Canadian political party characteristics with those of their counterparts in Britain and the U.S., noting the influence of both these earlier democracies on Canadian parties (Tanguay 2008, 181) and the work of Canadian scholars, especially that of K.Z. Paltiel, is widely acknowledged as foundational in the study of comparative party and election finance (Tanguay 2008, 186). Transnational influences and comparisons, termed at the time as the “internationalization of public policy,” continued throughout the last three decades of the twentieth century, with the phenomenon of the “internationalization of public policy” defined as the “process by which various aspects of policy or policy making are influenced by factors outside national territorial boundaries” (Doern et al. 1996, 3). Overall in the first decade of the 2000 millennium, as White et al. note,
The introspective and sometimes insular style that informed Canadian political science for most of its history has given way to a deeper engagement with, and integration into, the theory and practice of comparative politics (White et al. 2008, vii).

Finally, Rose calls extracting universal themes from the study of a single country a “comparable if not ‘explicitly comparative’ technique.” He explains that “a study of a single country becomes an extroverted case study if it employs concepts that make it possible to derive generalizations that can be tested elsewhere” (Rose 1991, 454). Employment of the shadow cases can be seen as enabling the derivation of generalizations. In short, my work on comparative campaign finance fits well into this established body of scholarship.

**Why Canada, the U.S. and the U.K.?**

The focus is squarely on Canada because of the uniqueness and extensiveness of its campaign finance regime changes within the short period of one decade, 2000-2010 and also its cumulative record of extensive, ongoing ‘renovations’ of campaign finance rules. In the 2000-2010 decade, Canadian governments introduced limits on third-party or interest group spending within the writ period, lower (followed by zero) limits on contributions to parties and candidates by corporations and unions, lowered limits on personal contributions and restrictions on inter-party flows of funds. Of potentially greatest import was the introduction of quarterly, tax-based subsidies to political parties throughout the electoral cycle, not just during pre-election periods. This is a notable addition to previous, more limited reimbursements of election-related expenses.

An intricate examination of these changes is interesting but their significance and impact are, importantly, more readily made apparent by comparison with the U.S. and U.K. which also underwent changes in their respective political finance regimes. The U.S. and U.K. are employed as ‘shadow’ cases (Tarrow 2010, 240-241), a method which permits the focus to be on one nation with less exhaustive coverage of the comparators. King, Keohane and Verba (1994, 48) concur, stating that, “data need not be ‘symmetric’ . . . just so long as each is an observable consequence of our theory.” This methodology results in less confusion regarding details, while still permitting and enabling nuances of interpretation and wider
application of findings. Also, given that time and resources are limited, the study focuses on the two most analytically helpful shadow cases.

Historically, works on Canadian political institutions, such as that by R. M. Dawson in 1949, most frequently compared Canadian government and politics to those in the U.K. In the same year, 1949, Clokie, in an innovation for his time, performs what is an early comparative study of Canada, the U.S. and the U.K. and validates this three-nation comparison when he writes that:

In the case of Canada, where the major concepts of British constitutional government have been inherited, the chief external borrowing has been from the United States, which likewise has a basic British heritage. Canada’s constitutional system is thus a characteristic combination of British and American principles blended to suit Canadian circumstances (Clokie 1946, 39).

Epstein (1982) makes extensive use of the Canadian, British and U.S. cases in his investigation of political party cohesion. Although he points to Canada’s parliamentary system as differing significantly from the American separation-of-powers system, he also notes the similarities of the two countries, both of which are characterized by important “regional variations supporting a social as well as a structural federalism” (Epstein 1982, 330-331). Schwartz encourages the trend in policy research in which Canada and the U.S. are primary comparators because of “shared geography, a British heritage, democratic practices, and a multi-ethnic population often give rise to similar problems (Schwartz 1996, 17). LeDuc (2001) uses Canada, the U.K. and the U.S. in his three-country study of political party leadership selection. Colletto (2009, 2) argues that “Canada lies somewhere in between the United States and Britain in terms of the importance candidates play in constituency elections.” As well, despite their institutional and cultural differences, the three countries under study lay claim to more similarities than differences as Nevitte (1996), Wiseman (2007) and others have argued.

Thus, given that significant differences in the nature of political finance in mature democracies versus developing democracies and differences even among mature democracies have long been noted (Heidenheimer, 1970), it seems that a study of recent innovation in political finance requires a more selective sample of nations. The comparative
study of the Anglo-American democracies’ experience with campaign finance is marked by significant ebbs and flows over the past four decades. Huntington (1970, 496) analyzed the U.K., Australia, the United States and Canada and argues that “political corruption, however, appears to have been more extensive in the latter two countries than in the former, with Quebec perhaps being the most corrupt area in any of the four countries.” Nassmacher (1994) compared the use of “citizens’ cash” in the U.S. and Canada. Griner and Zovatto (2005) conducted an American-Canadian comparison as part of the two-country study funded by the Organization of American States. Hiebert (2006) has compared American and Canadian traditions of inter-linkages between campaign finance and interpretation of the principle of freedom of speech and expression. K.D. Ewing (2006) has led comparative legal scholarship of campaign finance among the Anglo-American democracies. Although each country has pursued control over campaign finance and the integrity its system via different means over the period, there has been a notable similarity in the intensity—if not the goals and strategy—of efforts in each nation in the decade under study to tackle perceived problems in this policy area. This research concerns itself principally with campaign finance; despite that fact that the media and, the general public tends to conflate campaign finance with expense account abuse and public spending irregularities.

In summary, the choice of Canada as the primary case, with the U.S. and U.K. as referent cases implements the logic that all three have first-past-the-post (FPTP) electoral systems, the U.K. and Canada share a parliamentary legacy, whereas Canada and the U.S. share the same British heritage, federal structure, and settler society frame of reference. Last, it should be noted that Canada, the U.K. and the U.S. each began the period under study 2000-2010 with significant international reputations for the strength and integrity of their campaign finance systems, relative to those elsewhere. Although each country has in the past decade has had to reckon with allegations and scandals concerning campaign finance and misspending by members of their respective national legislatures, nevertheless, there is a high level of transparency in the amount of publicly accessible documentation of campaign finance available. Although Australia is a further potential comparator, there is less written on its campaign finance and its inclusion would necessitate too much additional research to be included in this dissertation.
European countries were not selected because overall the political parties of Canada, the U.S. and the U.K. are more similar and differ markedly from their European counterparts. Although Duverger (1964) “regarded the European party, especially the socialist party, as a norm for the modern world,” Epstein (1982, 6; 354-355) early argued for differentiation between them and American parties. Epstein (1982, 59) likens the party systems of Canada, the U.S. and the U.K. in noting their two-party dominance, although he allows a definition of two-partyism “broad enough to include nations with substantial third or fourth parties.” More recently, Diamond and Gunther (2001, 4) argue that “all of the existing typologies of political parties were derived from studies of West European parties over the past century-and-a-half. Accordingly, they fail to capture important distinguishing features of parties in other parts of the world . . .

I recognize the significant influence of the model of German parties and the German campaign finance regime for studies conducted for the Barbeau Committee in 1964-1996 and for the Royal Commission on Electoral Reform and Political Finance (Lortie Commission) in 1989-1992. However, there are several reasons that the German model seems inappropriate. First, German parties have typically been mass-based, and like most mass-based parties (whether ideological or pragmatic ‘catch-all’), “have involved varying types of commitment to 1) socialism 2) nationalism or 3) religion” (Diamond and Gunther 2001, 16). Parties in Canada, the U.S. and U.K. cannot easily be seen in this light. Secondly, Heidenheimer (1970, 368) specifically contrasts the American with the German political system arguing for the existence of “such different political and legal traditions” between the two countries. Germany has historically had a civil-code based legal system (as has Quebec) compared to the common law tradition of Canada at the federal level, the U.S. and the U.K. As is well-known, code-based regimes are more law-oriented and common law regimes are precedent-based and tradition-based. Peters and Pierre (1998, 235) document other differences, when they write of the “significance of legality, hierarchy, and political control in the west European public administration tradition.” The same authors refer to the “stronger étatist tradition” than is present in the U.S. (Peters and Pierre 1998, 241) for example or in the U.K. Finally, Proeller and Schedler point to the opposing public administration traditions of continental Europe with those of the Anglo-American democracies (Proeller and Schedler 2005, 695-696).
As well, Germany in particular is well known for corporatist representation or elite political and economic co-operation. As Wilson (1990, 109) states, corporatism is distinguished by partnerships between government and specific societal actors, often business and labour, which are “recognized by the state [and] enjoy a monopoly on the effective representation of their interests.” Further, corporatist representation differs from pluralist representation, where multiple groups compete to represent a single interest and representation of an interest may change over time (Wilson 1990, 109). Paltiel (1979) noted the close correlation between public financing of political parties with democracies practicing corporatist representation. What is particularly relevant is that corporatism, according to Katzenstein (1984), provides resources to politically less powerful actors and compensates weaker players, which is not an historic feature of the majoritarian electoral systems. Corporatism is not significantly present in Canada (with the possible exception of Quebec), the U.S. or the U.K. and this absence is a distinct differentiating factor. In a subsequent chapter, I critique the Lortie Commission and others for inappropriately borrowing from the German model, without recognizing key differences, among which is the presence of corporatism.

Clift and Fisher (2004, 683) note three principles characterizing British political finance: “campaign spending ceilings, voluntarism in party income and a lack of regulation generally.” A history of voluntarism also characterizes the funding of political parties in the U.S. and Canada and this is in sharp contrast to the experience of parties in post-war Germany, where party subsidies were introduced in the 1950s, primarily to strengthen parties in view of the country’s fatal lapse from democratic principles under the development of the Nazi party in the pre-war period. Most recently, Nassmacher (2009, 25) states that “Regulation of political finance in Britain is closer to that in North America [than Western Europe], which emphasizes limiting both expenses and contributions.” Hopkin (2004) and Scarrow (2004) concur, arguing that because the Anglo-American pattern of party emergence differs sharply from that of Western European party development, models of campaign finance reform must be evaluated in a particular historical-institutional context. Scarrow (2004, 666) also argues that there are distinct differences between the “German tradition of cooperation [among parties] on political finance issues” and the U.K. which has a “stronger tradition of competition on political finance issues.”
Why Public Policy?

Scarrow (2004, 654) writes that despite the fact that “political finance is one of the most troublesome regulatory areas for electoral democracies” there are surprisingly few comparative propositions about the circumstances under which different types of regulatory regimes emerge, or about the consequences of these different approaches.” My methodology seeks first to import from public policy the identification of why certain policies came to fruition and the outcome of such policies; or in Simeon’s terse phrasing (1976, 552): “What difference do these [policy] changes make in what gets done, or for whom government serves?” Second, I adopt an evidence-based policy approach, which is “quintessentially a mode of policy making in which knowledge is itself an object of deliberate strategic planning and management [and] ‘better policy making’ is a function of better knowledge management” (Schneider and Ingram 2007, 550).

An evidence-based approach is a more contemporary version of ‘feedback,’ which as Kingdon (2003, 103) writes, comes through varying channels and may be categorized as a failure of implementation to “square with legislative or higher administrative intent,” the failure of a policy to meet stated goals, and lastly, the problem of unanticipated consequences. Without analysis of the ‘why’ and the ‘what happened,’ legislators and policy makers are destined to slip into the popular definition of insanity: doing the same things over and over yet expecting different results. Therefore, an empirical approach lends itself well to the task of analyzing why specific campaign finance measures have been adopted and how these measures have shaped democratic policies in Canada and the shadow cases selected. Moreover, as Skocpol (1986, 18) writes, it is “the juxtaposition of different nations’ approaches to a given policy area that allows relevant policy instruments to be highlighted …”

An evaluative framework further permits and encourages a more objective perspective than the narrower campaign finance literature which—particularly in Canada—is given to labeling all legislative change in political finance as ‘reform,’ in essence valuing rules, *ipso facto*, as unquestioned public goods. Prominent Canadian authors such as Bakvis (2006) and Carty (2006) continue to call for more intervention; Seidle (2011) offers justification for continuing public funding of parties while Jansen and Young (2011, 201)
argue that the “wholesale elimination of the quarterly allowance would be detrimental to electoral democracy.” There is little evidence of scepticism regarding the efficacy of the multiplicity of rule changes in Canada in the past decade and little evidence of the notion that there are grounds on which to defend political parties as either private-sector organisms or that their non-regulation may result in greater benefit to citizens than their greater regulation. Therefore, the comparative public policy approach employed here should yield a more nuanced evaluation. Specifically, I evaluate campaign finance from the perspective of two policy models, that of Heclo (1974), which emphasizes the role of the state, of experts and of ideas to that of Kingdon (2003), which differs in its emphasis on the role of politics in addition to the role of ideas in the specification of the policy problem and policy alternatives.

**Why Qualitative?**

The appropriateness of different genres of methodology to the research questions posed continues to be a major issue in political science. On the one hand is the goal of theory building which requires generalizing while, on the other, there is concern that both theory and policy that are developed are sensitive to critiques of blind ‘universalism’ and glossing over the complexities of time and place. This challenge can be seen in the Canadian scholarship of campaign finance, which as earlier noted has borrowed most frequently from the literature and experience of Germany, notwithstanding the many differences in institutions, culture and legal history.

A qualitative approach presents itself as being particularly appropriate in the study of campaign finance rule changes and their outcomes. Elman (2009, 1) writes that “The common shape we see in qualitative research is close engagement with subjects and cases, and data collection initiated at extremely short range. This approach produces thick, rich and heterogeneous data” (Elman 2009, 1). Dyson (2009, 46) argues that “Qualitative studies provide richness, context, and a validity check for the perhaps more reliable and replicable quantitative content analysis approaches.” Coppedge defines the term “thick” as “complex definitions developed iteratively through examination of a small realm of cases” (Ahram 2009, 6; Coppedge, 1999).
I also adopt a mixed-methods approach, developing for example, comparative time lines of campaign finance reform since the mid-1880s across the three cases. These time lines and charts appear as Tables 3.1 and 4.1. I thematically analyze Canadian campaign finance rules: this stands in contrast to the typical analysis which analyzes on a document-by-document basis, rendering it more difficult to identify shifts in public policy emphasis. I also examine in detail documentation available on the political finance enforcement agencies of Canada, the U.S. and the U.K. with regard to their involvement, advocacy and administration of the election finance regimes in their respective countries. This has been termed “soaking and poking” by Putnam who argues that this “immersion sharpens our intuitions and provides innumerable clues about how the institution fits together and how it adapts to its environment” (Putnam 1993, 12; italics added). These documents provide “innumerable clues” as well as rich context and background for interviews.

The foundation of this analysis is 65 one-hour, semi-structured interviews with elite actors. Sayers argues that, “In studying elections, contextualization is best accomplished by interviewing candidates, campaigners, party strategists, and journalists” (Sayers 1999, 13). Since this work is election-related, Sayers’ note about contextualization is significant. It validates the employment of interviews as data from which causal inferences about the usefulness of campaign finance public policy as a means to accomplish certain goals. Hammer and Wildavsky (1989, 57; italics added) argue that,

[When] a social scientist seeks to understand a process by talking to the people involved, the chances are they are using the open-ended, semi-structured interview . . . . Closed interviews have questions that are fixed . . . By contrast in the open-ended interview everything is provisional . . . Questions may be abandoned, altered, and tried again.

The limitations of interviews as a data collection technique are well-documented. Hammer and Wildavsky (1989) as well as Zuckerman (1996) point to the importance of establishing rapport with the respondent while maintaining neutrality, resisting attempts to be co-opted by the respondent, and being sensitive to ‘misinformation’ that may be contained in interview responses. Despite the downside potential, these problems can be—and were—addressed during the interviews conducted for this project. Among several antidotes suggested by Hammer and Wildavsky (1989, 57-101) that were used in the current project are the following: thorough preparation; written questions; becoming acquainted with the formal and informal aspects
of the organization and person’s role within it; ordering the questions of the interview to correspond with the respondent’s interest and expertise; providing a truthful explanation of my research; “presenting [my]self as interested in learning”; “understanding how the respondent is using particular terms and what assumptions he has about the question[s].”

Finally, neither qualitative nor quantitative methods are immune to pitfalls, in that in both methods, “we engage in the imperfect application of theoretical standards of inference to inherently imperfect research designs and empirical data” (King, Keohane and Verba 1994, 7). I follow the ‘rule’ that they develop, which is to carefully report on the processes and procedures of data creation and collection (King, Keohane and Verba 1994, 51). I increase the number of observations in order to reach reliable causal inferences. The number of participants—65—is large for an interview-based methodology but increases our confidence that findings cover a wide spectrum of perspectives.

Use of quantitative techniques to analyze national-level parties has largely been limited by the small-N problem, since only three to five parties field candidates across the country, a number too small to ensure reliability for statistical analysis, but recent work by Coletto, Jansen and Young (2009), Eagles and Coletto (2009) and others, which focus on candidates and electoral district associations have drawn on over 1,000 observations and have generated significant insights. Young (forthcoming, 28) uses aggregate data on Canadian voter turnout, number of donors and annual fundraising by parties and concludes that while “there is little evidence that the reforms have been damaging to the core democratic values of participation, inclusion and responsiveness,” then “an absence of unintended negative side-effects is perhaps sufficient to judge the reforms a success.” Quantitative study of party members, for example that conducted by Cross and Young (2004, 428), yields excellent information, but the authors discouragingly note that “Few Canadians belong to parties. Those do belong are not representative of the general electorate . . .”

Polling data are of little use in analyzing effects of campaign finance. Two primary data bases, Canadian Public Opinion Trends (CPOT) and the Canadian Election Studies (CES), pose more general questions and/or pose campaign finance-related questions on an irregular basis. The COPT posed a question regarding the issue of political money, that is, with regard to Gomery Commission/Sponsorship Scandal only in 2005 and 2006. The CES
has typically posed one to three questions regarding campaign finance—loosely defined—over the past several election cycles. The most specific occurred in 2000 when questions were posed regarding the public’s “right to know where political parties and candidates get their campaign funds from;” whether “parties and candidates should be allowed to spend as much as they want in a Federal election”; whether “people should be allowed to give as much money as they want to parties and candidates” (Canadian Election Study, Campaign Period Survey, 2000). Of those responding, 80.7 per cent thought it was a “good thing” to limit third party spending during an election campaign and 84.5 per cent thought it was a “good thing” for individuals and groups to disclose spending during an election campaign (Elections Canada n.d., 6). Although these are significant percentages, no alternatives, probes or ranking questions were included so that it is questionable to assume the strength of endorsement of controls.

The 2004 CES contained a section titled “Political Ethics” which posed specific questions testing voters’ knowledge and attitudes toward former Prime Minister Jean Chrétien, Prime Minister Paul Martin, the existence of corruption during the tenure of Chrétien and the likelihood of Martin’s knowledge of the scandal and his ability to “prevent this type of scandal from happening again” (Canadian Election Study, Campaign Period Questionnaire 2004). The 2006 CES study probed voter knowledge, using such questions as the “name of the judge who is heading the commission of inquiry into the sponsorship scandal;” “how honest each party leader is” and a ranking of the honesty of the leaders of the major contending parties. One item, adapted from the 2000 survey, was included: “The public has a right to know where political parties, candidates and local associations get their money” (Canadian Election Study, Campaign Period Questionnaire, 2004). The 2008 survey (Canadian Election Study, Campaign Period Questionnaire, 2008) did not pose any campaign finance or corruption-related questions. Thus no time series analysis can be fruitfully conducted given that only a few years of surveys provide relevant questions. Moreover, the main purpose of the Canadian Election Studies is to examine trends in voter choice and as valuable as that is, the questions and results do not lend themselves well to the current investigation.
However, these surveys did net some specific findings including, for example, evidence that “the sponsorship scandal was clearly a major factor in limiting the scope of the Liberals’ victory in 2004;” and the “damage wrought by the sponsorship scandal was not confined to the 2004 election” (Gidengil et al. 2009; 2, 7). Blais et al. (2005, 15-16) find “intriguing results” in their analysis of the 2004 survey results:

On the one hand, the overall level of political cynicism does not appear to have risen after the [Chrétien sponsorship] scandal. On the other hand, one’s prior views about politicians strongly affected how one perceived the scandal. The effect was pervasive . . . Our findings also support the view that reactions to a scandal depend to a great extent of one’s degree of attentiveness to politics . . . But it is perhaps the direct impact of information that is most striking in the sponsorship scandal . . . The least attentive were much more likely to believe that there was little corruption, most probably because they had hardly heard of the affair (Blais et al. 2005, 15-16).

These are indeed rich or ‘thick’ data and contributes to our understanding of Canadian electoral behaviour and to the effect of scandals on vote choice but do not take us very far in understanding the broader aggregate-level responses of parties, voters and other political actors to campaign finance rule changes per se.

Questions about trust, such as those developed by the World Values Survey, tend to measure in broad strokes rather than measuring detailed understanding or response to specific measures of campaign finance rule changes. Thus although it is accurate to state that public trust has apparently been declining for some time, this is characteristic of all the mature Western democracies (Nevitte 1996, 2002), whether there have been campaign finance reforms or not—and despite the structural details of existing campaign finance rules. As well, Crête, Pelletier and Couture (2006, 5) point out that indices of confidence include both “the moral aspect of confidence to the government (are people running the government crooked?) and the aspect related to the competence of this one (trust the government to do what is right?).” But as can be seen, these questions do not relate to the rules governing political money but rather to the people involved. As well, the same authors argue that studies of confidence in government must take account for both political and economic factors (Crête, Pelletier and Couture 2006, 15). Thus despite references to the declining trust in government mentioned by authors such as Meisel and Mendelsohn (2001), measures of
confidence are too broad to demonstrate the effect of a single factor such as a rule change in campaign finance may have on confidence or trust.

Finally, Kenny (2009, 511-512) refers to the “febrile nature of popular opinion” with regard to political money scandals and he argues that there is a “contradictory character of public expectations.” The Phillips Committee in the U.K. cited “inconsistent and contradictory” public views on the issue of state funding of political parties (Pinto-Duschinsky 2006). Of the few occasions when specific survey questions ask for agreement or disagreement with the idea of party reforms, seldom is the initial question followed by probing, prioritizing or trade-offs with the costs of such reforms. The effects of reforms may take a generation to show results in public opinion surveys while elite actors may be able to identify emerging trends.

Thus investigation into the research questions posed in this work demands alternative approaches. The value of a qualitative approach is particularly appropriate when the research project involves “the flow of ideas among people or the difference made by exceptional leadership” (King, Keohane and Verba 1994, 5; italics added).

Interview Protocol

The number of participants was selected with a view to having significant representation of two categories: 1) political science scholars and 2) political practitioners—elected, appointed or volunteers either with political parties or third parties. Participants speaking from a scholarly perspective grant the researcher “the opportunity to reflect on these experiences and put them into a broader theoretical perspective” (Greene & Shugarman 1997, vi). As Heard wrote in 1960, with respect to practitioners, “Politicians know what politicians do better than anyone else” (Heard 1960, vii). Greene and Shugarman (1997, vi) concur, adding that, without the experience of those in active politics, that is, those who have in the past coped with or are,

[Facing] the hope of electoral victory, the remorse of defeat, the feelings of intense partisanship, the extreme pressure to make your candidate look good at all costs—it would [be] difficult to analyse the relationship between ethics and politics from the perspective of participants in the political process.
These actors may be considered ‘elite’ in the sense that individuals of either group may be considered as “a minority group or stratum that exerts influence, authority, or decisive power.” Secondly, the minority status of those who are politically active is well documented. Cross and Young (2004, 430) for example estimate that “fewer than 2 percent of voters belonged to any of the five major federal parties in the Spring of 2000” which confirms Carty’s earlier finding (1991, 23). Aucoin (2005) writes that fewer than three percent of the population, or voters, or tax-filers donate to Canadian political parties. As well, “party managers and the leaders of the control groups within the parties are the elites” (Webster’s Third International Dictionary Online, s.v. “elite”). Interviewees include a former Canadian prime minister, Canadian senators, senior cabinet advisors, party activists and numerous scholars, both Canadian and international. The list of those interviewed is displayed in Table 2.1.

Respondents were chosen, first, on their familiarity with the topic in one of the countries under study as well as their ability to give first-hand accounts of the evolution of campaign finance. Lists were composed of: researchers for the Barbeau Committee Report of 1964 because these scholars had contributed to and witnessed the early stages of campaign finance reform in Canada and its evolution in the ensuring decades; researchers for the Lortie Commission for the same reason; members of local political (electoral district associations) units; prime ministers during whose tenure major campaign finance issues emerged; members of the Canadian Senate and House of Commons; fundraisers; government relations experts and present and former staff members to prime ministers. All possess what could be termed “on-the-ground” experience with election campaigns, issue advocacy, political party fundraising, spending and record-keeping. I also sought representation of women and regional variation among these elites. Scholars were approached based on their knowledge of political parties, political actors, the specific subfield of campaign finance and/or comparative finance. ‘Snowballing’ in which a participant or potential participant refers the researcher to another person of interest was also employed (Kingdon 2003; Babbie 2001). For example, a scholar/activist of the New Democratic Party referred me to a member of the party’s executive and to the party’s pre-eminent specialist on compliance with Elections Canada regulations, both of whom agreed to be interviewed. In another case, a party activist put me in touch with a former prime minister whom I subsequently interviewed.
Most respondents were willing to give approximately an hour for the interview although some were longer and a few were considerably shorter, per Zuckerman’s experience (1996, 268). The majority of interviews were conducted in person at conference sites, participant offices or at mutually convenient locations; the remainder were by telephone. In-person interviews were held in the cities of Toronto, Ottawa, Kingston, Montreal, Winnipeg, Calgary and Baltimore (U.S.). Interviews were conducted between May 2008 and October 2009. Participants from Canada, both scholarly and political, included representatives from (or those living in) the major geographic and linguistic regions of Canada and the following provinces: Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, Manitoba and Alberta. Political science scholars from abroad included those from the U.S., the U.K., Germany and Israel. Slightly fewer than half of those interviewed stated a formal affiliation with one of the five major parties (Conservative, Liberal, NDP, BQ or Green). All interviews were conducted in English. Approximately 35 individuals who were contacted declined to be interviewed, a rate below the 57 per cent experienced by Zuckerman (1996, 258). Reasons cited included the feeling of insufficient knowledge of campaign finance, time pressure and illness.

Every interview was preceded by considerable preparation by the investigator since a command of the background is essential in framing questions and further, is often interpreted by a participant as an indicator of the commitment of the researcher (Zuckerman 1996, 278-279). For my research, this included a search for biographical data and published work or speeches by each participant. As well, “the formal structure of the interview questions was retained in all interviews, even though the actual wording was adapted,” (Zuckerman 1996, 278-279) in this case, to the particular knowledge of the participant. Questions were prioritized according to the interests and expertise of the participant. In some instances this was because of time availability or because participants indicated that they had reached the end of their contribution.

At the outset of the interview, general questions regarding the participant’s personal experience and expertise with the issues at hand were posed. Rapport was sought in each case. Throughout each interview, I sought to be alert to new themes or aspects of campaign finance and its implications which the participant wanted to share. This of necessity involved
some deviations from the prepared list of questions. At the conclusion of each interview, I also gathered pertinent biographical, demographic information from each participant which will constitute the data for a future quantitative research project. As noted above, I followed up each interview with the type of feedback requested by the participant. I designed a database which kept track of the data and status of the interviews. This information and digital recordings of the interviews are now stored electronically in a secure location.

Participants were frank and incisive in their comments but qualified their statements carefully for the most part to avoid overstatement. Participants varied significantly in their party affiliation and their ideological approaches. Their insights were keen and ranged from the prosaic to the profound. Many permitted their comments to be used with full attribution although; in some cases, however, either the sensitive position of some of those interviewed or their organizational affiliation did not permit this. In following chapters, I draw together the evidence provided by the qualitative and quantitative data and explore in greater detail lessons learned for future public policy choices in the field of campaign finance.

This project received approval by the Office of Research Ethics, University of Toronto, on May 29, 2008 and has received annual renewals of approval since that time. Table 2.1 shows the list of those interviewed.

How Will Results Be Evaluated?

Young, Sayers and Jansen (2007, 335) investigated what they term the “major Canadian parties’ initial adaptation to the new regulatory regime” and cover the period 2004-2006. Benchmarks of social democracy have also been used but according to Young (forthcoming, 28) demonstrate no substantive benefit albeit ‘no harm.’ I therefore focus on results up to early 2011 and employ measures specifically grounded in a liberal democratic vision of democracy, for example the impact on parties marked by their strong civil society heritage and on the separation of state and civil society, as noted by Barber (1984, 117-118) who contends that “Strong democracy is consonant with—indeed it depends upon—the politics of conflict, the sociology of pluralism, and the separation of private and public realms of action.”
Following new institutionalism, I also evaluate the inter-institutional effects of changes in campaign finance rules. As well, public policies can be evaluated against process-based standards—standard operating procedures, rules and reporting (transparency measures) in place or against performance-based standards—norms, past performance, and outcomes—each of which must be operationalized. Procedural-based measures are by far the easier of the two to evaluate but I have chosen to emphasize outcomes—not procedures—since procedures alone may be ignored and may not include informal or unwritten practices that constitute an effective procedure. Last, I question participants regarding their views on how to judge the efficacy and effectiveness of changes in campaign finance and incorporate their views into my research. I seek to be attentive to the very few who have a ‘big picture’ view of the institutional changes wrought in Canada since 2000. How extensive are the waves and ripples of changes to campaign finance rules?

Conclusions

While numerous authors congratulate Canada’s innovations and path-breaking in campaign finance policies, it is not clear that the additional restrictions in campaign finance have created genuine benefits for candidates, parties, the party system, the electorate and civil society. Thus a fresh empirical look is warranted. My research is not a call for cynicism regarding campaign finance reform, nor its goals, but is rather an exercise in “critical rigour that is applied to other areas of analysis, not just theoretical rigour, but a thorough scrutiny of how the institutions and process work” (Grant 2009, 2). The value-added of my research is an empirical, policy approach which is expected to bring clarity to the dynamic of change and to the identification of impacts flowing from campaign finance reforms in Canada. The use of the U.S. and the U.K. as shadow cases will permit some generalization of the findings and will help identify specific contextual factors that may impede the ‘travel’ of campaign finance reform ideas among different settings.
### Chapter 2 Table

Table 2.1 List of Interviews

<table>
<thead>
<tr>
<th>Name</th>
<th>Reason for Inclusion</th>
</tr>
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<tbody>
<tr>
<td>Keith Archer</td>
<td>Scholar</td>
</tr>
<tr>
<td>Peter Aucoin</td>
<td>Research Director, Royal Commission on Electoral Reform and Party Finance; Scholar</td>
</tr>
<tr>
<td>Janet Azjenstat</td>
<td>Scholar</td>
</tr>
<tr>
<td>Samuel Azjenstat</td>
<td>Scholar</td>
</tr>
<tr>
<td>Vivian Barbot</td>
<td>Vice-President of Bloc Québécois Party; Former Bloc Québécois MP</td>
</tr>
<tr>
<td>Rob Boatright</td>
<td>Scholar</td>
</tr>
<tr>
<td>Ken Boessenkool</td>
<td>Former senior policy advisor to Stephen Harper; Party practitioner (Conservative); government relations</td>
</tr>
<tr>
<td>Ian Brodie</td>
<td>Executive Director of Conservative Party; Chief of Staff, Prime Minister Harper; Chief of Staff, Office of the Loyal Opposition; scholar</td>
</tr>
<tr>
<td>Mark Cameron</td>
<td>Prime Minister's Office (Conservative)</td>
</tr>
<tr>
<td>John Carpay</td>
<td>Director of not-for-profit</td>
</tr>
<tr>
<td>Sharon Carstairs</td>
<td>Senator; Former Liberal MP</td>
</tr>
<tr>
<td>Gerald Chipeur</td>
<td>Party practitioner; election law; (Conservative)</td>
</tr>
<tr>
<td>Duff Conacher</td>
<td>Director of not-for-profit</td>
</tr>
<tr>
<td>Joan Cook</td>
<td>Senator; Former Liberal MP</td>
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<tr>
<td>Anne Cools</td>
<td>Senator; former Liberal Party candidate</td>
</tr>
<tr>
<td>William Cross</td>
<td>Scholar</td>
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<tr>
<td>Brian Lee Crowley</td>
<td>Director of not-for-profit</td>
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<td>David Docherty</td>
<td>Scholar</td>
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<tr>
<td>Justin Fisher</td>
<td>Scholar</td>
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<td>Tom Flanagan</td>
<td>Scholar; Party practitioner (Conservative)</td>
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<td>William Gairdner</td>
<td>Scholar</td>
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<td>Solette Gelberg</td>
<td>Party practitioner; EDA Board (Conservative)</td>
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<td>Claude Genest</td>
<td>Deputy Director, Green Party</td>
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<td>Ross Haynes</td>
<td>Party practitioner (Conservative)</td>
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<td>Menachem Hofnung</td>
<td>Scholar</td>
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<tr>
<td>Katherine Hollinsworth</td>
<td>Staff member of not-for-profit</td>
</tr>
<tr>
<td>Harold Jansen</td>
<td>Scholar</td>
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<tr>
<td>William Johnson</td>
<td>Retired Journalist</td>
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<tr>
<td>Serge Joyal</td>
<td>Senator; Former Liberal MP</td>
</tr>
<tr>
<td>Name</td>
<td>Reason for Inclusion</td>
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<tr>
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<tr>
<td>Richard Katz</td>
<td>Scholar</td>
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<td>Tim Kennedy</td>
<td>Government relations</td>
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<td>Hans-Dieter Klingemann</td>
<td>Scholar</td>
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<td>Lisa Lambert</td>
<td>Scholar</td>
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<td>Pierre Lortie</td>
<td>Former Chair, Royal Commission on Electoral Reform and Party Finance</td>
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<tr>
<td>Robert MacDermid</td>
<td>Scholar</td>
</tr>
<tr>
<td>June MacDonald</td>
<td>Volunteer for not-for-profit</td>
</tr>
<tr>
<td>Christopher Manfredi</td>
<td>Scholar</td>
</tr>
<tr>
<td>Preston Manning</td>
<td>Former MP; founder, Reform Party of Canada; Founder of not-for-profit</td>
</tr>
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<td>Richard Marceau</td>
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Chapter 3  Patterns in Complexity: Party Finance Regulation Prior to 2000

“There has grown up—not limited entirely to one party . . . a class of men whose one purpose in life is to flourish at election times and see how much they can get out of the candidate . . . ” R.B. Bennett 1938, quoted in Norman Ward 1949.

Introduction

As demonstrated in Chapter 1, questions surrounding the financing of political parties and candidates have been an ongoing theme in Canadian politics and political science for more than a century. There exists a significant normative literature on what campaign finance policies ‘ought’ to work to strengthen parties in mature democracies and Canada has been at the forefront, among the three Anglo-American democracies under study, in introducing these ‘reforms’ or correctives. These corrective measures did not, however, occur in an institutional, cultural or legislative void. Instead, as Kingdon (2003) suggests, such changes are the cumulative result of problem identification, policy options and politics. Alexander, the ‘grandfather’ of the study of campaign finance, reiterated in 2005 that “Political finance reforms are not neutral. Instead they are used as instruments to achieve political goals. They change political institutions and processes, sometimes in unforeseen, and not always salutary, ways” (Alexander 2005, 21). Heard (1960) and Paltiel (1979, 15) wrote of the relative absence of attention to system-wide effects of campaign finance reforms “on the shape of democratic politics” and more recently, Seidle (2011, 37) has expressed similar concern.

Kingdon (2003, 223) argues that there are “patterns in complexity” and in this chapter, I seek to detect the patterns in why Canada has chosen the ‘less-travelled’ route, compared to the shadow cases, of regulating campaign finance more aggressively. Again, I use the terms ‘campaign finance’ or ‘party finance’ and ‘political finance’ interchangeably as the use of money for parties and candidates throughout the election cycle, not merely spending in the period following the writ, or announcement of an upcoming election. “Campaign finance” is the term most frequently used in Canada and the U.S.; “political
finance” is the term used most often in comparative works. I exclude consideration of state operational expenses for the running of elections. I make only brief references to the rules governing tax-paid, tax-subsidized or privileged access to broadcasting time allocated to parties and candidates during election periods because the influence of such policies in Canada and the U.K. (but not the U.S.) is a subject unto itself.

In line with new institutionalism, I pay particular attention to informal as well as formal constraints. New institutionalism suggests that 1) rule changes can be seen as constituting changed incentives for actors; 2) rule changes work in concert rather than individually; 3) rules may be seen as formal as well as informal constraints; 4) rule changes have both intended and unintended consequences.

This chapter is organized as follows. I begin with discussion of the emergence of political parties and the political culture surrounding parties, elections and candidates around the time of Confederation and then turn to waves of reform covering activities of candidates, parties, local associations and those of ‘third parties’ through the twentieth century with the goal of teasing out the array of factors that led to rule changes. Again, I use the term ‘third party’ to refer to interest groups or all non-party and non-candidate activities whose purpose is to influence policy or political outcomes through framing public debate, “lobbying and influence seeking” and expenditures to accomplish these goals (Baumgartner and Leech 1996, 521). Third parties may act on their own, directly engaging in political activities, or through hired agents or lobbyists. Specifically, third party does not refer to a minority political party.

Because of the profound effects of the Canadian Charter of Rights and Freedoms on political culture, institutions, and political finance, Chapter 5 is devoted to the judicial-legislative facet of campaign finance. As an aid to the reader, Table 3.1 tracks major events in political finance regulation in Canada, the U.S. and the U.K.

Confederation Campaign Finance: Understanding and Practices

As North (1990, 42-43) notes, “In the short run, culture defines the way individuals process and utilize information . . . Conventions are culture specific, as indeed are norms
Further, the ‘values’ literature of Nevitte (1996, 2002) and others demonstrates that ‘values’ or belief systems do influence choices and hence are relevant when we turn to examine how beliefs and functioning of early political parties shaped the rules which later emerged. Kirkpatrick (1981, 343) further legitimates such an approach when she writes that “visions of the good life are realized only through institutions” despite the fact that “any serious effort to identify the values present in the various institutions of a political system readily illuminates their multiplicity, diversity, interrelation and complexity” (Kirkpatrick 1981, 344; original italics). I adopt the following definition of political culture:

Political culture consists of the ideas, assumptions, values and beliefs that condition political actions. It affects the ways we use politics: the kinds of social problems we address and the solutions we attempt. For political culture serves as a filter or lens through which political actors view the world; it influences what they perceive as social problems and how they react to them (Bell 1992, 187).

The origin of the parties in Canada is crucial to the subject of campaign finance. Hopkin (2004) and Scarrow (2004), in the comparative literature of campaign finance, point out that the Anglo-American pattern of party emergence differs sharply from that of Western European party development and that advocacy for and models of campaign finance reform must be evaluated in historical-institutional context. Political parties and the means of financing them became increasingly institutionalized, in the sense of being durable, rule-governed and part of the structure of democratic politics (Ostrom, 1986) during the twentieth century. However, as theories of new institutionalism stress, “relations among institutional characteristics, political agency, performance, institutional change and the wider social context of politics” (Olsen 2007, 2; italics added) are critical when assessing the functioning of democracy.

Political parties, since their inception in Canada, as in the other Anglo-American democracies, have held unique status as intermediaries between society and the state: both to represent society to the state and to hold the state—or the government of the day—to accountable to society. Parties in Canada evolved in the early nineteenth century in what was then British North America, first as voluntary associations and gradually becoming more formalized as voter enfranchisement expanded. Political parties and campaign finance, moreover, reflected a Burkean conception of politics. According to Burke, a political party is
a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed . . . It is the business of the speculative philosopher to mark the proper ends of government. It is the business of the politician, who is the philosopher in action, to find out proper means towards those ends, and to employ them with effect (Burke 1770; italics added).

As Aucoin (1999, 71) writes,

The emergence of parliamentary political parties . . . was critical in the democratic struggle to secure responsible government . . . With the establishment of responsible government, as party government, parties were to be the means whereby citizens, however indirectly, could determine who formed their government . . . And, the emergence of the extra-parliamentary associations of these political parties in subsequent decades was meant to provide the principal avenue whereby citizens who did not offer themselves for elected office could participate in democratic governance beyond the electoral process.

Parties in Canada, the U.S. and the U.K. were largely self-regulating in the last two decades of the nineteenth century in matters of public finance. They were governed by a party’s sense of propriety, the threat of potential exposure and future electoral losses and—perhaps most important—community or cultural standards of what was expected and permissible. Private sources of funding were seen as critical to the independence of parties and were indeed almost unquestioned because electoral candidates often funded their election campaigns out of their own pockets. As Mrs. Cadwallader, a character in Eliot’s novel of mid-nineteenth century Britain states, “I thought the most expensive hobby in the world was standing for Parliament” (Eliot [1871-72] 1994, 299). Candidates in early elections were almost always local notables and hence were well-known; this constrained the need to advertise or to raise funds as did the norm of self-financing. As Gwyn notes, “[British] politicians actually became ashamed to admit that they accepted sinecures or pensions . . .” (Gwyn 1962, 220). What irony in light of contemporary debates about salaries and expense accounts of elected officials!

It was expected that candidates finance themselves since it made the job of local volunteers so much easier. As the demand for funds in local campaigns evolved, often the central party provided the money required. Additionally, the propriety of self-funding of election campaigns was consistent with what Gwyn (1962, 218) terms an ideal of “gratuitous
public service” in which even the idea of wages for Parliamentarians was hotly opposed in Britain as well as in Canada. He writes of British politics, that “to understand the appeal of the idea of gratuitous service, one must bear in mind that its champions could hardly imagine public spiritedness in its absence” and that despite the fact that this was no doubt an idealized notion, it was nevertheless an “operative ideal” and one which “has had no small influence in shaping the character of British political behaviour” (Gwyn 1962, 218-219). As late as 1945, McCallum and Readman (1945, 73) observed that “entering Parliament is not an avenue to wealth; it is a more suitable medium for spending than acquiring wealth.”

This was no less true in Canada at that time than of Britain. Paltiel (1970) has suggested that the practice of political party finance may be governed by voluntary, normative or statutory structures: the first two refer to political and social values and constraints, the latter to formal regulation. As Bagehot states, “We have to frame such tacit rules, to establish such ruling but unenacted customs” (Bagehot [1872] 1936, 275). For example, disclosure of contributions to political parties or candidates was opposed, for many years, on the following principles, as testified to the Barbeau Committee:

Disclosure is an invasion of privacy, and a breach of the principle of the secret ballot, since a person would be presumed normally to vote for the candidate or party he supported financially . . . the publication of a donor’s contribution could subject him to embarrassment from his associates, his employer, and adherents of other political parties . . . a person should be protected from these consequences on the same grounds as are used to support the secret ballot” (Barbeau Committee Report 1966, 53).

For several decades following Confederation, parties and elected members were governed by voluntary and normative structures. They were funded and organized by individual and corporate donors as well as by unions. For unions, electoral campaigns represented a means to advance ideology and the interests of their constituents or ‘workers.’ Businesses donated for a variety of reasons: to gain visibility with local candidates and parties in order to obtain government contracts in either the short or long term, to ensure stability in government which lowered risk and hence the cost of borrowing and lastly, to influence policy. There was thus self interest but there was also the notion of what is today known as ‘corporate social responsibility:’ companies (and their directors and owners) owed their nation support in elections; donating was seen as an act of citizenship. Banks generally
gave to the two major parties roughly equivalent amounts (Senator David Smith). Disclosure of donors was not an issue in Canada. Canadian prime minister Sir John A. Macdonald used “secret” funds; American John D. Rockefeller Jr. provided “steady income” for Prime Ministers W.L. Mackenzie King, John G. Diefenbaker and Lester B. Pearson; and Canadian parties had received funds from “foreign businesses, trade unions, party organizations and governmental bodies” (Paltiel 1981, 145; 149; 151).

Thus, in the political culture of the time, self-funding and private donations—within certain societal standards—constituted the ‘cost’ of peace, order and government, the classic trilogy of ideals set out in the Constitution Act of 1867. As well, in the early period of Canadian nation-building, patronage was considered ‘essential,’ just as it was in the U.S., since patronage often provided jobs for as well as services for “masses of people—often immigrants—still at the political economic margins” (Heidenheimer, Johnston and LeVine 1989, 214). Meisel underscores the importance of political culture. He writes: “For, while political parties influence in some measure shape the evolving value system, they are even more profoundly shaped by it” (Meisel 1975, 24-25; italics added). Bell’s and Meisel’s insights are thus complementary: political culture “affects the ways we use politics: the kinds of social problems we address and the solutions we attempt. For political culture serves as a filter or lens . . .” (Bell 1992, 187). Thus norms of the time, or informal constraints, in the language of new institutionalism, expected self-restraint on the part of elected officials and ‘punished’ behaviours that were seen as violating this expectation. The embedded values during this period were not only those of public service but also party autonomy and the innate value of competition not only in the election per se but also in attracting funds. Palda describes a competitive political system as one in which “the threat of being unseated is great enough to keep the ruler honest and attentive to the needs of constituents” (Palda 1995, 14) and this is echoed elsewhere by Dahl (1956, 132) and Hopkin: “the non-wealthy majority can punish elite parties for their slavish obedience to contributors by voting for alternatives, ensuring that a much broader range of interests will have leverage over policy making (2004, 637).

Moreover, profound confidence in the power of the press in exposing patterns of illicit campaign finance and effectively constraining not only the actual offender but the
would-be offender was a standard characteristic and following British tradition (Gwyn 1970, 400), the “improper gathering of money, it was felt, should not be something subject in itself to legal action. The electorate was the proper judge of the propriety of the collecting process” (Barbeau Committee Report 1966, 15). A positive flow of funds to a party was seen as self-validating of the party itself, its legitimacy and its role in Canadian democracy. Citing the work of Meyer and Rowan (1977), Olsen (2007, 8) argues that legitimacy “depends not only on showing that actions accomplish appropriate objectives, but also that actors behave in accordance with appropriate procedures ingrained in a culture.”

As well, there was a certain pragmatism evidenced in this period: it was expected that politicians would have to be carefully watched because of the temptation of the flow of money over which they had power. Conversely, however, elected members were aware that they were subject to manipulation by self-interested behaviour on the part of the electorate and it was openly recognized that the electorate thought it was not untoward to leverage votes for what new institutionalism terms “substantive benefits.” In 1903, one Canadian Member of Parliament stated in the House that:

> Down in my part of the country we have the most moral people to be found in the world; but when an election comes around, they regard it as a splendid holiday . . . They size up each candidate for what they can get out of him, and they generally run it up to the limit (Canadian Parliamentary Debates 1903, p. 13616, quoted in Norman Ward, 1949).

The actual prevalence of political corruption at that time is difficult to ascertain. However, ‘macing’ and ‘toll-gating’ (MacIvor 2005, 35), that is, forced contributions by members of the civil service or what is termed contemporaneously as kick-backs were prevalent. In Canada prior to Confederation in 1867, four provinces had anti-corruption laws. In 1867, therefore, the four founding provinces “agreed on a definition of corrupt practice: it included the giving and receiving of bribes, whether of money, employment, or anything else; the real or threatened use of violence; ‘treating’ or the “accelerated” provision of alcohol to electors during the writ period; (im)personation; and in some cases payment for the hauling of voters to the polls” (Ward 1949, 74-77). However, it was not merely candidates who acted improperly by contemporary standards. Gwyn (1970, 393) writes that in the U.K. for example, “voters who accepted bribes felt no shame about their actions. It was not that they
were less law-abiding . . . but simply that they could not see anything very wrong about selling their votes.” The new Assembly of the province of Canada had a general committee of elections (Ward 1949, 74) and Notman, the Clerk of the House of Commons, published a 167-page handbook on what was termed ‘controverted elections’ in 1867, the year of Confederation. As Notman wrote,

*A controverted election has always been of great importance and interest to the Constituency affected, to the Ministry, to Legislators and to the political world at large; how necessary then that it be conducted lawfully, equitably, impartially and seriously* (Notman 1867, 1).

Thus it was electoral irregularities that first drew concern of legislators. For example, because early elections stretched over six weeks, candidates could lose in one riding and go on to run again in another riding; Sir John A. Macdonald, Canada’s first prime minister, was a candidate in three ridings in one early post-Confederation election (Elections Canada, A History of the Vote in Canada 2007). In the U.K., elections until 1918 ran from two to four weeks (Fisher 1996, 4). The *Dominion Elections Act* in 1874 and amendments in 1891 and 1908 effected rules for elections, a limited level of disclosure of donations to candidates, some control of patronage, buying of votes and other egregious behaviours. ³ Both major parties, Conservative (1874, 1920; 1930) and Liberal (1908), initiated legislation while in government. As Ward (1949, 78) suggests, the process of investigating election practices was “cumbersome,” “unfair” and “inefficient” as opposed to careless or malevolent. The question of agency was an issue even at this early stage: “a member [of Parliament] literally did not know when he might find his seat in the Commons threatened by an act committed by somebody of whom he had never heard” (Ward 1949, 78). Hence early election reforms were established for legislators to save themselves individually and collectively from such consequences. Pragmatism was the rule of the day: had some formal restrictions not been introduced, there would have been a scarcity of candidates, drying up of funding, and further public opprobrium via the press.

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³ For a fascinating discussion of post-Confederation election practices—and malpractices—see Ward (1949).
It seems clear that it was scandals (Carty, Cross and Young 2000, 132) rather than endemic corruption that were targeted in this first era of Canadian campaign finance. DeLeon highlights this difference when he defines political scandals which are “isolated incidents that violate political norms and public expectations” (DeLeon 1993, 207; italics added) and political corruption as something which

is not an isolated event, but rather a continued, concerted conspiracy—a series or network of scandals in some cases . . . in which the purpose is to get around the government’s rules and canons of expected behaviour (DeLeon 1993, 25; italics added).

However, the media—in any era—employ the terms scandals and corruption more loosely. By 1921, in Canada, the number of investigations into ‘controverted’ seats (which had peaked at more than one-third of the seats in the House of Commons) had declined significantly and Ward (1949, 84) argues that since Confederation there had been “an enormous change in the attitude of members, parties, and the public towards improper manipulation of any part of the electoral machinery.” Carty (2000, 132) concurs, noting that “the excesses of the post-Confederation period were generally avoided from the 1920s on.” Electoral candidates and party leaders were no longer expected to be self-financing; instead, fundraising through networks of individuals emerged. What Gwyn notes for the U.K. is applicable also to Canada and the U.S.: “as the tendency towards a levelling of wealth continues, all parties have themselves shouldered to an increasing extent the expenses of electoral organization and campaigns formerly carried by the candidates” (Gwyn 1962, 232).

The first two decades of the 1900s brought further changes and revealed a shifting focus of intent: from that of candidates and parties buying influence of voters to that of monied interests buying access and power to elected officials. A 1908 amendment to the Dominion Elections Act had prohibited corporate contributions to candidates but did not recognize the existence of political parties and ignored contributions to them. In 1920 the prohibition on contributions to candidates was extended to unions and other associations, again with no recognition of parties. Parliament repealed the ban on corporate and union donations in 1930 following “sustained opposition” by the Labour and Canadian Commonwealth Foundation (CCF) minority parties, primarily those financed by trade unions (Carty et al. 2000, 131; MacIvor 2005, 35). Enforcement was limited and as MacIvor (2005,
35) writes, the “initiative of individual citizens to investigate and pursue infractions” continued to be the primary source of constraint and enforcement. It must be noted too that voters were not entirely innocent. As the Honourable R. B. Bennett in 1938 declared,

There has grown up—not limited entirely to one party . . . a class of men whose one purpose in life is to flourish at election times and see how much they can get out of the candidate and the use they can put it to for the purpose of prostituting the electorate . . . (Ward 1949, 86).

After 1930, sporadic attempts to further regulate campaign finance can be tracked in parliamentary debates, including a 1938 bill that sought to limit candidates’ election expenditures (Ward 1949, 86). Although there were occasional campaign finance scandals as well as ongoing parliamentary committee discussions on campaign finance through the next several decades, no major further change to the Canadian campaign finance regime was proposed until Parliament struck the Barbeau Committee in 1964 to study campaign finance.

The U.S. and the U.K.

Timing of Canadian reforms occurred in a pattern that resembled that in the U.S. and the U.K., although standards of ‘appropriateness’ and ‘legitimacy’ differed among the three democracies, and in Canada, differed widely by region. Table 3.1 demonstrates the synchronicity of these Anglo-American democracies in their efforts to achieve not only clean elections and clean administration or civil services—at least compared to earlier standards and practices. From the 1970s onward, Canada initiated significantly more revisions to its political finance laws than did either the U.S. or U.K. and witnessed greater frequency of court decisions affecting campaign finance than did the U.S. As seen in the table, the U.S. passed the Pendleton Act in 1883 while the U.K. passed the Corrupt Practices Act of 1883, regulating the use of money in elections. In conjunction with campaign finance laws, professionalization of the civil service occurred and this in and of itself also addressed some of the most egregious misuses of public power. Gwyn (1970, 403) makes the important observation that it was the expansion of the franchise, improved detection and punishment of bribery and

a revolution in the outlook of the mass of the people . . . which gradually transformed their role in the government of the nation from a relatively passive to a relatively active one. In this mental transformation, so significant
for an understanding of all aspects of modern politics, lay a powerful force for bringing electoral corruption, and the huge expense it occasioned, to an end . . . The voter began to value his suffrage as a lever of political power rather than as a privilege for picking the candidate’s pocket [and] corruption became outmoded . . .

King (1989, 247) concurs, adding that,

The development of a concerted move to wipe out corruption started after the 1867 Reform Act . . . This movement was responsible for the legislation attacking corruption. More importantly, it was responsible for its vigorous enforcement. By the turn of the century, then, the new political style had become the normative one used in English elections. Corruption was almost extinguished.”

As can be seen in Table 3.1, reforms of the 1920s and 1930s also marked the politics of the U.S. Campaign finance in the U.S. was shaped by legislation such as the Tillman Act of 1907, the Publicity Act of 1910, the Supreme Court decision in Newberry v. United States in 1917 and the Federal Corrupt Practices Act of 1925 which remained as the primary piece of legislation governing U.S. national campaign finance until the 1970s. In the U.K. the early twentieth century witnessed several attempts by Parliament to regulate election-related misuses of funds or prevention of corruption and abuse of power. The use of trade union member funds to support political candidates became an issue in 1909, resulting in the House of Lords’ Osborne decision which restricted trade unions’ donations to political party candidates. Home Secretary Winston Churchill introduced a Trade Union Bill in 1911 (passed in 1913) whose object was “to steer a middle course” in which

A trade union might set up a special fund for political purposes if a majority of its members voting so decided. Dissenting minorities were protected by a right to ‘contract out’ of the obligation of contributing to the fund . . . (Gwyn 1962, 198-199).

The goal of reforms in Canada, the U.S. and the U.K. in the 1900-1940 period continued to focus on practices which earlier had been accepted but were now seen as egregious: for example, in Canada, it was the 1930s Beauharnois scandal, in the U.S. ‘machine politics,’ and in the U.K., the sale of peerages in exchange for party donations (Pattie and Johnston 2007, 265). Increasingly, attention was turning to the perceived power
of unions but more particularly to large businesses in influencing both pre-election and post-election practices.

The progressive period of politics and of campaign finance political reforms has been well-documented by Ward in Canada (1949), Hohenstein (2007) and La Raja (2008) in the U.S. as well as by Ewing (1987), Pinto-Duschinsky (1994) and others in the U.K. However, there are some key features of the Progressive vision which are significant because they shaped campaign finance discourse for decades to come. As Hohenstein writes, as late as 1896,

the majority of Americans accepted [the] alliance between political parties and national businesses . . . in 1907, reformers would challenge the consequences for democracy of the aggregate power of corporate wealth in elections . . . Renewing traditional conceptions of corruption as coercion . . . Progressive era reformers again turned to the law to challenge the ever-changing meaning of corruption . . . This new coterie of progressive reformers contended that an activist national government was essential to curb the power of national corporations in elections (Hohenstein 2007, 61-63).

There are several points of note in this passage: evolving norms regarding business funding parties and candidates; the perceived need for an ‘activist’ national government; and new meanings of ‘corruption.’ For Progressives, “funds acquired and spent in excess of the needs for campaigns were corrupt and illegitimate expenditures” (Hohenstein 2007, 66; italics added). Corruption thus acquired a much looser and more subjective definition than quid pro quo transactions. Progressives believed election campaigns should be characterized by “honest campaign literature and an intellectual campaign,” by voters who were informed intellectually but not emotionally swayed by campaigns and finally, by voters who were non-partisan (Hohenstein 2007, 60-65). La Raja terms this change as one “from an era of partisan spectacle to that of education politics” (2008, 33). Progressivism sought the “ideal of the common good, to be attained rationally and systematically through public policies by an informed electorate” (Hohenstein 2007, 65) and sought to “establish new norms for how citizens made political choices. Nothing could be as antithetical to the Progressive spirit as to cast a vote based on some material reward or emotionally laden appeal” (La Raja 2008, 35; italics added). U.S. populism was “received sympathetically,” particularly in western Canada, as the Lortie Commission wrote, but was adapted as described below.
The U.S populist movement appealed to the individualist values that have dominated U.S. political culture . . . In contrast, Canadian populists adapted the theories and instruments of direct democracy to the more collectivist values that have been pre- eminent in Canada’s political culture” (Lortie Commission 1991, Vol. 1, 231-232).

During this period, Canada and the U.K. both introduced state monopolies of radio broadcasting (the Canadian Broadcasting Corporation and the British Broadcasting Network, respectively) and the provision of ‘free’ time to political parties during the writ period.

Further, Progressivists framed the debate surrounding party finance in new terms. “Reformers redefined the difference between corruption and what they considered the excessive use of money in elections . . . [they] contended that funds acquired and spent in excess of the needs for campaigns of education were corrupt and illegitimate expenditures” (Hohenstein 2007, 65-66; italics added). This is a key shift in discourse and political culture of all three nations regarding political finance: illegitimate practices were not seen as limited to outright vote-buying but rather came to be understood as “excessive money” in a nomination, primary or election campaign. The last few days of an election campaign ‘ought’, according to the Progressives, to be dedicated to calm reflection of issues rather than voters being subjected to ongoing partisan appeals. Second, the struggle for clean elections also highlighted differing opinions about political parties. For Progressives, parties were vehicles to attain the common good and hence should be subject to regulation, whereas opponents argued for the private nature of political parties. Hohenstein writes that,

Although they shaped public policy, most Americans considered party institutions and processes wholly private affairs. Political parties did not grant universal membership and they constantly emphasized that active organization, not voting, was how one came to belong. Political parties, like clubs or churches, freely possessed the right to determine their own membership, nominate party candidates, choose their leaders, and frame party platforms (Hohenstein 2007, 79; italics added).

While there was growing acceptance of regulation by the government, there was no doubt that political parties were considered to be ‘private’ and comparable to other voluntary activities, motivated either by altruism or material benefits such as recognition, access to power, and so on. Political parties in this tradition were the sine qua non of political engagement. It should be noted also that in this period, the primacy of political parties as
intermediaries between the government and society remained relatively unchallenged; ‘third parties,’ apart from unions and corporations were rare although the first American political action committee was organized in 1943 (Hohenstein 2007, 13).

The Progressive era in Canada emerged in the early twentieth century, reached its peak in the 1920s with a federal progressive party and numerous provincial progressive parties and subsequently declined in the 1930s as a major movement. During this period Canada, as well as the shadow cases, witnessed rising contention regarding the role of unions and corporations as actors in election campaigns, party finance, nomination and candidacy contests. Legislators faced two dilemmas: were unions the equivalent of businesses in spite of the coercion to become members of a union in order to work (closed shops per the 1945 Rand arbitration ruling in Canada, the 1935 Wagner Act in the U.S., for example) whereas involvement in a small or large business was non-coerced? Secondly, were unions “functionally unlike corporations” because they were organized around social goals or, were labour unions, “essentially like corporations, in terms of their power, influence and ability, to spend the dues of their members for political purposes?” (Hohenstein 2007, 158-159). The critical role of businesses and unions in elections would in future continue to be some of the mostly hotly contested aspects of election finance in all three nations. Because of the Great Depression, World War II, the Korean War, the Cold War and other such significant events which preoccupied national legislatures, there was a relative absence of legislative activity or study in the three nations from the mid-1930s to the early 1960s.

To summarize, the importance of this early-twentieth century period for Canadian regulation of campaign finance is that, like its counterparts,

These preliminary approaches [in the U.S.] to regulating money in politics marked future boundaries for reforms and inaugurated patterns of response from the regulatory community . . . Political actors adapted in ways that are now institutionalized through candidate campaign committees, political action committees, and party structures (La Raja 2008, 37).

These ‘boundaries for reforms’ and ‘patterns of response’ are clearly the work of contemporary norms as constraints on behaviour and as incentives to make changes in the rules pertaining to campaign finance. With few exceptions, it can be said that the regulation of campaign finance in Canada, the U.S. and the U.K. was additive over this period: more
rules were added with few or none removed. Finally, Pal writes that until the mid-1960s, most government actors accepted “the classical liberal ideology that the voluntary sector must remain insulated from government pressures and enticements” (Pal 1999a, 279; italics added).

1960: Harbinger of Change

However, it was the costs associated with new technology—television and the use of air travel to campaign—next drew legislative study. Against allegations of ‘excessive’ costs of elections because of these transformations, Heard’s work, The Cost of Democracy, published in 1960, constitutes the primary contrarian view. He argued, for example, that the assumptions that American politics were more costly than elsewhere and that costs were rising unchecked produced the conclusion that campaign costs were ‘too high.’ Heard argued that, “The conclusion implied that somebody knew how high they should be . . . And the assumptions themselves were of dubious validity” (Heard 1960, 371-372). He further suggested that earlier legislative attempts to control campaign expenditures proved ineffective not simply because of the “machinations of perverse and ingenious men” (Heard 1960, 371) but rather because campaign finance laws had “seldom acknowledged adequately the inherent financial needs of the electoral system” (1960, 9; italics added) and moreover, that the “origin and stakes of the debate are the social and economic advantages that accompany political power” (Heard 1960, 211). In 1960 President Kennedy appointed the Commission on Election Costs, of which Heard was the chair and Herbert Alexander, the executive director. La Raja attributes the new commission to Democratic Party debts which stood at $27 million (in 2004 dollars), the sensitivity of Kennedy who was wealthy himself, Kennedy’s reliance on public popularity to bring him into office and his fear that “routinely court[ing] big money” would undermine his popularity (La Raja 2008, 67).

In Canada, the first harbinger of change came with the striking of the Committee to Study Curtailment of Election Expenditures (Barbeau Committee) by the governing Liberal Party in 1964. The proximate causes were twofold. First, rising expenses associated with new technology (Smith and Bakvis 2000, 6) and second, the drained party coffers of the victorious Liberal Party headed by Prime Minister Pearson (MacIvor 2005, 35); in essence, the same reasons as in the U.S. Paltiel (1966, 3), in his contribution to the committee, states
explicitly that his work is a “gloss” on Heard’s statement that the “study of money in politics necessarily probes the organization of society in its relationship to the functions and actions of government” (Heard 1960, 4). While the mandate of the committee was to advise on election expenses, the committee expanded its mandate to include the raising of funds (Barbeau Committee Report 1966, 5-6).

The Barbeau Committee’s report represents the start of the systematic literature on campaign finance in Canada and laid much of the intellectual foundation for later works in that its major contributors were political science scholars such as Meisel, K.Z. Paltiel, Michael Stein, Vickers and Whitaker. In retrospect the committee’s report was remarkably prescient of increasing concern about not corruption per se but the role of large donations by the wealthy and by organized interests. Its concerns were not conceptualized as fairness but rather what might be termed the ‘appropriateness’ or ‘ethic’ of financing that derived from capitalism (Paltiel 1966, 3). Indeed, the Secretary of State, announcing the establishment of the committee stated that election expenditures constituted “a complex problem which affects the very basis of our democratic system” (Barbeau Committee Report 1966, 5). Such a dramatic statement demonstrates a significant shift in values and political culture from earlier periods where scandal and concern about propriety were more evident triggers of change to a new concern regarding the general sources of funding. As its report stated, the authors were:

convinced . . . that the use of money is essential in the democratic process . . . The sums are essential expenditures incurred in informing the public. It may be alleged that political expenditures do not always meet the aim of informing the elector and one may criticize the wrong or foolish use of money by parties or candidates; but one cannot dispense with the use itself (Barbeau Committee Report 1966, 29).

The Barbeau Committee strongly endorsed a ban on groups other than political parties—now known as third parties in Canada—from activities during the writ period because, it argued, “without such restrictions any efforts to limit and control election expenditure would come to nothing” (Barbeau Committee Report 1966, 50). The committee wrote,
No groups or bodies other than registered parties and nominated candidates be permitted to purchase radio and television time, or to use paid advertising in newspapers, periodicals, or direct mailing, posters or billboards in support of, or opposition to, any party or candidate, from the date of the issuance of the election writ until the day after polling day (Barbeau Committee Report 1966, 50; italics added).

In coming to this conclusion, the Barbeau Committee relied on the example of the U.S. where, it adjudged, ad hoc committees made limitation on expenditures “meaningless” (Barbeau Committee Report 1966, 50), neglecting to include in its reasoning the particular features of U.S. political institutions. Among such features are the separation of powers and the ability of members of Congress to introduce legislation which makes individual members more identifiable and encourages more candidate spending; the extraordinary length of party nomination contests and presidential election campaigns; and the greater frequency of House elections, which are biennial and finally, the existence of the U.S. First Amendment and the legal climate surrounding First Amendment rights which had no legal equivalent (albeit a common law one) in Canada.

The committee stated that “it had no desire to stifle the actions of such groups in their day-to-day activities” (Barbeau Committee Report 1966, 50) and hence did not express an opinion on what today is termed issue advocacy. However, their recommendation to muzzle speech of either a partisan or issue nature by any individual or group other than a political party or candidate during an election campaign was a remarkable departure from Canadian tradition up to this time. Although no immediate legislation followed its publication, the committee’s investigation itself served notice that the relatively unquestioned status and contribution of political parties and other groups to democratic well-being no longer obtained. One of its authors did, however, argue that the new partial party subsidy in Quebec placed the Quebec provincial parties in a much stronger financial position vis-à-vis the federal parties, thereby “tending to undermine the role which our national parties have played in the maintenance of traditional Canadian federalism” (Paltiel 1966, 6). More generally, this consideration of an inter-institutional effect generated by a change in party finance was significant and will, I argue, prove to be prescient of continuing changes in campaign finance since that time.
However, the Barbeau Committee failed in its recommendations to recognize the “inherent needs” of Canadian political parties and campaigns: first, for example, the widely dispersed Canadian population, the need to educate post-war waves of immigrants from repressive regimes on the value of voting and participation as part of citizenship; the differing organizational features of Canadian political parties and their interaction with federalism. Second, comparisons between the institutional and political culture contexts of Canada and the U.S. and the U.K.—the historical institutional referents for Canada were notably absent. Third, in retrospect it seems that politicians, the press and certain political science scholars may have fallen into what Trent (2008, 27) terms “the trap of linear projections.” Although Beer (1956) and Heard (1960) acknowledged that actual dollars spent on television had risen significantly, for them, it was not clear that expenditures, adjusted for inflation or purchasing power, had risen in relative terms. Yet there appears to have been little or no contrarian logic voiced in Canada: that although parties had relied and perhaps even over-relied on television, trends both then and now have “a nasty habit of folding in on themselves and halting or reversing their tendency once they become too strong or dominant” (Trent 2008, 27). This point is of particular importance. The 1960s was also the decade in which alternative means of political expression emerged: university campus sit-ins and demonstrations; anti-war pop music; disruptions of political conventions and new demands on political parties. It is entirely possible that the surge in campaign costs in the 1960s and 1970s was experimentation with television both as a means of reaching voters as well as a strategic response by parties to changing political and national cultures.

The Barbeau Committee approved of the party law and of the subsidies in the West German system although its final report did note that “no enabling legislation” had been passed from the time of the German Basic Law (Constitution) in 1949 which stipulated disclosure by parties of their sources of funds and that only a “loose, undetailed report” of expenditures was required despite the presence of subsidies (Barbeau Committee Report 1966, 121). The committee presumably expected that the ideas of not only party law but also of subsidies could ‘travel’ to Canada despite the enormous differences already noted. There was by contrast, the presumption that whatever excesses existed—or were perceived as such—in the American system of politics would inevitably travel to Canada. This presumption prevailed despite the differences between the constitutional structures: in
Canada, party-centred election campaigns, a party-dominated Parliament, ‘responsible’
government with strong party discipline; in the U.S., the separation of powers, the ability of
members of the American Congress to introduce legislation and to vote independently of
their party, the overall candidate-centred rather than party-centered electoral process in the
U.S., primary elections, and so on (Epstein 1982; 1986).

There was very little in the press or in the literature opposing or critiquing the
recommendations of either the Barbeau Committee or the House of Commons Committee on
Election Expenses (Chappell Committee) which held sessions in 1971. The latter committee
went further in its recommendations on third-party spending during the writ period,
recommending that third parties be prohibited from issue advocacy and from direct or
indirect expenditures during the writ period (Elections Canada 2000a, 1). Parliament
introduced the registration of political parties in 1970 legislation but would not enact further
recommendations of the Barbeau Committee until 1974.


The ‘first era’ of Canadian campaign finance closed with passage of the 1970 Canada
Elections Act. The most important finance-related impact of the act was the registration of
political parties which also was the first recommendation of the Barbeau Committee to be
implemented. Explicit legal recognition of parties opened the way for regulation of party, as
opposed to purely candidate, campaign finance activities, introduced the doctrine of agency
and rendered political parties justiciable. Recognition of parties was also a means of holding
them accountable for use of public money in their operations, specifically for reimbursement
of expenses. This act is crucial for the purposes of Canadian campaign finance because all
subsequent legislative activity regarding national-level party finance and intra-party finance
hinges on the legal recognition of parties.

Canada was the first Anglo-American democracy to register parties at the national
level. In the U.S., “As legal entities, political parties in the United States are sui generis” and

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4 The work of Seidle and Ewing is foundational to this section.
are “generally created and given legal standing by specific legislation at the state level.” The U.S. the U.K. did not recognize parties until 1998. Again, it needs to be remembered that parties evolved as voluntary associations and that the Anglo-American democracies are based on common law rather than civil code. As the Canadian Supreme Court justices stated in a 2008 judgment, “The common law has long been viewed as a law of liberty. Should we move away from that tradition, which is still part of the ethos of our legal system and of our democracy? I doubt that [the issue before us] should lead us to depart from the common law tradition of freedom by changing the common law itself to restrict the freedoms protected by the constitution under s. 8 of the Charter (R. v. Kang-Brown, 2008 at 12).While countries such as Germany formally recognized parties earlier and in its post-war constitution, this practice may be seen as an aberration from that of the Anglo-American democracies which had not succumbed to totalitarian or authoritarian regimes before or during World War II. As well, Aucoin stated in his interview that Germany had adopted state financing because of the excesses of scandals in that country: state financing had been adopted out of necessity. Further, as Fisher and Eisenstadt (2004, fn. 1) point out, the British political system is one of the cleanest in the world, and represents a tradition of regulation that owes more to trust than rules. Fisher, in our interview, stated to that the U.K. had a ‘culture of obeying the law’ and that in consequence, the U.K. had experienced relatively little corruption compared to European democracies.

In 1974 Parliament passed the Election Expenses Act, the first comprehensive reform of campaign finance in more than a half-century. Among the many issues addressed, the act included provisions to prohibit third party spending which specifically endorsed or opposed a candidate or a party during the writ period. It permitted third party spending during the writ if such expenditures were linked to a specific public policy and evidenced ‘good faith’ on the part of the spender (Elections Canada 2000a, 2), that is, that it was not intentionally coordinated with a specific party or candidate. It also introduced partial reimbursement of election expenses.

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5 Richard Katz, e-mail message to author, January 19, 2011.
A reasonable question to pose here is: why 1974? It is evident from the foregoing that campaign finance had, at the very least, been on the ‘back-burner’ of policy agenda for approximately a decade. No major scandal erupted during this period in Canadian politics hence corruption in domestic, national-level politics was not the cause. Kingdon’s ‘problem identification’ and ‘policy alternatives’ had occurred: thus ‘political opportunities’ were needed (Kingdon 2003). Four such factors can be suggested. The first is the nature of the Liberal Party at the time and its minority government status. Franks (1985, 11) notes that the Trudeau government was marked by its “attempt to create a much greater policy activism on the part of the federal government.” Trudeau had campaigned in the 1968 election on the themes of “participatory democracy” and a “just society” (Clarkson 1975, 74); therefore, implementing the Barbeau Committee’s recommendations constituted a relatively low-risk means of satisfying this campaign promise and of maintaining support of the New Democratic Party in the House of Commons where the Liberals held only a minority of seats. Proctor, former executive director of the NDP, argued in his interview that campaign reform in 1974 was the cost of maintaining NDP support in the House of Commons: specifically, the NDP extracted a promise of campaign finance legislation and the purchase of Petro-Canada by the Liberals in exchange for voting with the minority Liberal government and sustaining it in power. For the Liberals, introducing campaign finance legislation in 1973 was a means of curtailing campaign money for all parties and therefore purchase of media time for parties in opposition. Thus, the beginning of campaign finance in Canada, limits on election expenses, was not introduced for ‘public interest’ or the ‘common good’ but rather for partisan reasons on the part of the Liberals and NDP. It was evidently not cartel-like in its purpose of entrenching the established parties, but rather was as a means of heading off further electoral challenges by the Conservative and New Democratic parties.

Second, the parliamentary action in 1974 is in large part attributable to the influence of the Watergate scandal in the U.S. and heavy press coverage of the surrounding events both in the Canadian press and in cross-border television and radio broadcasts (Seidle and Paltiel 1981, 229; 232). The Watergate scandal which convulsed American politics from 1972-1974 came to symbolize all that was wrong with campaign finance in the U.S. and, via demonstration effect, all that must or might be wrong with Canadian political finance. Frequent references to the influence of Watergate on the reform of campaign finance in
1970s are evident throughout the Canadian literature. The Watergate episode brought to the forefront two long-standing issues in Canadian politics. The first was alarm that Canada was growing generally more dependent on the U.S. in matters of politics, economics and culture (Meisel 1975, 22). Anti-Americanism—and fear of Canadian culture being subsumed in that of the U.S.—both of which had been articulated in the 1950s, 1960s and 1970s became very subtly entrenched in discussions of political institutions, parties and campaign finance reform. Meisel (1975, 23) describes the American value system as presenting a “highly confused picture” with bedrock values of honesty and decency, yet on the other hand upholding a “society in which influence-peddling . . . perversion of the prescribed procedures of administering justice . . . have become not yet the norm but so widespread and commonplace as no longer to astonish . . .”

Third, however, ‘problem definition’ of possible campaign finance scandal merged with a specific aspect of Canadian culture: fear that Canadian political campaigns were coming to resemble those of the U.S. too closely. Fletcher writes, for example, that there had occurred in Canada “an emulation effect, with political parties borrowing campaign techniques and reporters press practices from the United States” (Fletcher 1975, 248) and this was looked upon askance. As Fletcher wrote in 1975, “Canadians are often more aware of American issues than of Canadian issues” and the “inescapable proximity of the United States has also been a major influence on the Canadian mass media system” (Fletcher 1975, 247-248). Meisel’s assessment was more polemical: that rising costs and political contributions from “large corporate donors who are the members, imitators, and hangers-on of North America’s military-industrial complex” had “assisted the penetration of the Canadian consciousness by the lowest common denominator in American culture” (Meisel 1975, 24). “Trudeaumania,” a media-led cult following of then-candidate Trudeau in 1968 had parlayed fears of American-style, candidate-oriented campaigning swamping Canada’s more party-oriented and party-mediated political campaigns. There was thus an implicit determination to develop a system of campaign finance that would be distinctively different from that found in the U.S. even though the assumption was that the problems were, if not the same, at least similar.
Quebec

Fourth, the innovations in campaign finance introduced in Quebec in 1963 acted as a model for federal reforms. This is of particular significance since the development in Canada which overshadowed all others in the years following 1960 was the Quiet Revolution in Quebec. A focus of the Liberal Party in Quebec and later, the Parti Québécois, was to correct the perception and actuality of political corruption in the province. Paltiel (1970, 125) points to electoral finance reform as part of the provincial Liberal Party’s 1960 election platform and passage of the Quebec Election Act in 1963. As he notes, the weakening of the Union Nationale provincial party which had held power since 1936, and the death of its leaders, Duplessis and Sauvé, provided political space for the Liberal Party to recapture power and moreover, the issue of eliminating corruption was one on which the Liberal Party could differentiate itself from the earlier governing party. The Parti Québécois, following its establishment in 1968 and its stated purpose to separate Quebec from the rest of Canadian Confederation, met great difficulty in raising funds from businesses and unions. Hence it adopted “financement populaire” or solicitation of numerous small donations rather than relying on large donations. In 1977, it “imposed its system on all Quebec parties” (Angell 2001, 256-257). Angell however points out that “financement populaire” was more name than substance; government funding of the Parti Québécois increased significantly following 1977 (Angell 2001, 258). As Professor Louis Massicotte stated in his interview, what was a necessity for the Parti Québécois became a virtue and thereby provided an exemplar for Canada’s national government. However, there was an additional factor for the Parti Québécois: the traditional means of financing parties—that of contributions by individuals, businesses and unions, was implicitly an Anglophone phenomenon; by insisting on state subsidization of parties, the Parti Québécois was further differentiating itself from the existing political parties. State funding in essence was a tool to ‘brand’ the Parti Québécois as a new party.

Most specifically, Paltiel (1966, 6) states that “The ‘quiet revolution’ in Quebec has led to the establishment of a partial state subsidy system which, while ostensibly aimed at removing the abuse-ridden party finance devices of the Taschereau-Duplessis era, has in effect put the provincial parties and notably the Quebec parties in an independent position...
vis-à-vis the federal parties and their financial supporters.” The symbiotic financial relationship of the federal and provincial wings of the Liberal Party began to unravel at this point.

The Barbeau Committee noted with approval the changes to the Quebec model of campaign finance apparently without reflecting on the asymmetry between levels of corruption in Quebec politics versus that of the rest of Canada and without linking the reforms to the partisan objectives of the reforms by the provincial Liberal Party. It is also germane that the Quebec government, in the early 1960s, began to emulate the French socialist model of state and policy. Quebec’s adoption of state funding of political parties in this decade may be seen as part of this pattern. As Ewing notes, “the idea that political parties should be funded by the State is one associated with the north European social democracies which pioneered it in the 1950s and 1960s” (Ewing 2006, 5). Another crucial point was also ignored: that Quebec law, like that of France, was code-based as opposed to the common law-based legal system of the national government and other provinces. Heidenheimer, Johnston and LeVine (1989a, 67) argue the importance of this difference:

Whereas the Continental code-law countries could easily remodel their legal systems through the adoption of comprehensive codes, norms in the English-speaking countries had to be operationalized in terms of a more complex sequence of legislative and judicial acts and precedents.

Senator Segal and another respondent who wanted anonymity argued that because Quebec law is based on the civil code rather than the common law there has been greater reliance on legal approaches to campaign finance in Canada than in Britain.

Finally, while the Barbeau Committee did comparative work on political attitudes, it did not formally recognize relative and substantive differences in political culture or mores—that is, informal constraints—in its final report (with the exception of enforcement) but did recognize their potential impact (Barbeau Committee Report 1966, 116; Studies 1966, vii). A brief review of some of the differences between Quebec (and to some extent the eastern provinces in general) found in the Barbeau studies is relevant here. Paltiel (1966, 17), for example, noted the following:
East of the Ottawa River, constituency election expenses tend to be higher; the exchange of cash, liquor and other considerations for votes tends to be more prevalent. Constituency campaign workers to the East (and here Quebec and the Atlantic provinces should be included together) appear preponderantly to be paid in contrast to constituency workers West of the Ottawa River. Furthermore, very little by way of constituency campaign funds tends to be raised at the local level East of the Ottawa River . . . West of the Ottawa River, volunteer work is more common and in rural Western Canada constituency campaign costs are considerably lower than in the rural East.

Meisel and Van Loon (1966, 48; 62; 64; 66) reported that the survey of attitudes toward political parties and election finance found evidence that “attitudes toward party politics differ fairly substantially between English- and French-speaking Canada.” Quebec respondents demonstrated much more resistance to the idea of giving to political parties (74.7 per cent) than respondents in for example, Ontario (56.3 per cent) but were comparable to those in the Maritime provinces which averaged 74.0 per cent, and higher than the average Western Canadian respondent (52.2 per cent). As well, attitudes toward campaign finance issues varied by language, with the following differences between francophone and anglophone respondents, respectively: much lower awareness of party fundraising; lower propensity to donate to parties; much stronger resistance to party appeals for financial aid; lower level of opposition to public subsidies (17.7 per cent versus 26.0 per cent); lower support for disclosure of donations (40.1 per cent versus 54.6 per cent) and so on.

The committee did conclude that campaign finance regulation by informal means worked effectively in Switzerland, with its effectiveness there linked to the “cohesiveness of the society . . . and on the general political norms and attitudes of the electorate” but the committee deemed it unlikely that such an informal system could be transferred to another society (Barbeau Committee Report 1966, 85). Despite its work on national and intra-Canadian variations, the final report focussed only on the legalities surrounding contributions, expenditures and reporting in Canada and elsewhere. Much confidence was placed in the Barbeau Committee report on the salubrious effects of further regulation. Subsequent studies in campaign finance through the rest of the decade followed this pattern, for example Paltiel’s praise of Quebec’s law-based regime (1970). Louis Massicotte, however, considers political culture significant in his review of the Quebec model of campaign finance. He writes that,
Electoral politics in Quebec have been traditionally considered quite corrupt. . . [and] such practices survived well into the 1950s, under Premier Duplessis, giving the Province an embarrassing reputation . . . Francophones were then much poorer than the Canadian average and many were inclined to see the electoral process as an opportunity for improving their lot rather than to express their will (Massicotte 2006, 154-155).

During interviews, Thorburn, Katz, Murray and Louis Massicotte and others argued that because of the significance of Quebec in Canadian politics, the model of campaign finance adopted by the Parti Québécois (and then by the party when in power) continued to influence political finance at the national level. Others, for example Rae and Nayman, suggested that while Ontario campaign finance practices in the 1970s informed those adopted by the federal government, there was no accompanying reification of its finance regime as occurred with the Quebec model. Paltiel (1970) praised the new Quebec campaign finance regime, writing in 1970 that “in contrast to its former reputation as the province with the most scandal-ridden and corrupt electoral system, it can now boast the most advanced laws in Canada.” What must be noted here is that Paltiel is assessing the regime by process-based rather than outcome-based standards: it had laws as opposed to informal constraints and by inference the laws would be more significant than restraints. Intervenors to the Royal Commission did bring forward certain critiques of the Quebec model, for example that experience in Quebec demonstrated that the system was no longer “financement populaire” because fund-raising events provided access to cabinet ministers. In addition, it was reported that 80 per cent of the Quebec population no longer supported the concept of “financement populaire” because “it had been unsuccessful” (Lortie Commission 1991, Vol. 4, 71). No scholarly critiques of the Quebec model emerged until that of Massicotte in 2006, who finds evidence of ongoing and widespread corrupt practices, and who casts considerable doubt on the actual efficacy of the Quebec model. To summarize, events and campaign finance policies adopted both at the party and at the government level in Quebec are foundational to an analysis of Canadian federal campaign finance and will be analyzed in greater detail in Chapter 7.

Following the 1974 Election Expenses Act, Parliament passed amendments to the Canada Elections Act in 1977 regarding inter-election party registration. However, the major event of this period was passage of the Canadian Charter of Rights and Freedoms in 1982.
The significance of its passage for many policy areas cannot be overstated and this is no less true of the policy field of campaign finance. Passage of the 1982 *Canadian Charter of Rights and Freedoms* further served to bring to the fore concerns about the equity and inclusiveness afforded by Canadian political finance law and practice. Because of the landmark significance of the *Charter* with regard to political finance, Chapter 5 is devoted to its impact and to increasing judicial review of campaign finance issues. However two impacts must be noted here. First, the *Charter* rendered the *Canada Elections Act* subject to *Charter* challenges. Second, it established not only new law but new norms which would inform future study of Canadian campaign finance.

**The Royal Commission on Electoral Reform and Party Financing (Lortie Commission)**

However, the 1988 election also served as a *political* catalyst to policy change: the Mulroney Conservative government came under attack and its legitimacy was questioned by both the media and in the academic press as having had ‘unfair’ advantage due to third-party spending. A second factor in the ‘problem definition’ stage of the policy process concerned the election of 1988, in which the main election issue was the ratification of a free trade agreement with the United States. Interest group spending—or third party spending as it is termed in Canada—soared because of the nature of the issue. Spending by business groups in favour of free trade was sharply criticized in the literature and authors such as Smith and Bakvis (2000; 2002) who contended that in Canadian elections the notion of fairness necessitated a move away from a ‘marketplace’ conception of electoral politics.

Thus, striking a royal commission in 1989—a time-tested Canadian practice for addressing contentious issues—can be seen as a strategic move to address public concerns about the fairness of the electoral process. The Conservative majority government, led by Prime Minister Brian Mulroney, appointed Pierre Lortie, a Quebec lawyer businessman and previous Vice Chair of Canada’s National Advisory board on Science and Technology to chair the Royal Commission on Electoral Reform and Political Finance (Lortie Commission). The other commissioners were Pierre W. Fortier and Robert T. Gabor, Conservative Party activists; William Knight, NDP MP; and Lucie Pépin, Liberal MP and former Chair of the Canadian Advisory Committee on the Status of Women; two others were appointed but
withdrew before completion of the report. The commission’s mandate was to inquire and report on the “appropriate principles and process that should govern the election of members of the House of Commons and the financing of political parties and of candidates’ campaigns” was the commission’s mandate (Lortie Commission 1991, Vol. 1, 3). Just as the Barbeau Committee had done, the Lortie Commission in fact expanded its mandate when it investigated and made recommendations for non-writ period campaign finances and for third party spending.

Overall, the Lortie Commission “decided at the outset to interpret its general mandate broadly” (Aucoin 1993, 1; italics added). The final report of the commission reiterates frequently that ‘fairness’ was the overriding goal which guided the commission’s work. Smith and Bakvis (2000, 12) argue that the commission employed “the most comprehensive account of the fairness concept.” Seidle, the Senior Research Co-ordinator of the commission’s studies, observed in our interview that the commission used the principle of ‘fairness’ in “some creative ways;” further, ‘fairness’ was chosen as the over-riding principle because the commission wanted to investigate third party spending and “it would have been hard [to do that] based on transparency.” Ewing (2006, 9) concurs with this view. It is crucial to note that had the commission interpreted its mandate as balancing the twin needs for ‘freedom and democracy,’ the language of the Charter, its perceived mandate would not likely have extended to recommendation of third-party spending controls which inevitably bump up against freedom of expression concerns. Although mention is made of the importance of freedom of expression (Lortie Commission 1991, Vol. 1, 15; 328), the over-riding use of fairness as the principle and the frequency of the term’s usage make it clear that fairness was to be the pass-fail standard.

However Kirkpatrick, among others, contends that in a democratic polity that “No single value is absolute and none has absolute priority” (1981, 347). She further contends that there are “pitfalls of trying to maximize one value in one institution without adequate appreciation of the consequences for other values expressed in other institutions such as parties, legislatures, cabinets, and stable governments” (Kirkpatrick 1981, 340). Thus at the outset, we should expect to find, ironically, inequities that emerge from the commission’s
recommendations because of the adoption of the single, absolute measure of fairness. Fairness—or any other ‘pure’ principle, as Kirkpatrick (1981, 341) notes,

leads almost inevitably to devaluation of the real, as actual regimes to fail to measure up... [because] actual institutions never very closely resemble ideas—being too complex, too varied, too multifunctional, too unpredictable and uncontrollable—they never conform to ideals or analytical constructs... The practice of measuring actual institutions against abstract norms... leads to the conclusion that the institution is faulty rather than to re-examination of the standard.

The primary objective of the Lortie Commission was “fairness.” The strategy to achieve this was as follows:

• to employ a ‘best practices’ approach used in other Western democracies to ensure workability of recommendations;
• to foster consensus among the commissioners themselves;
• to formulate objectives rooted in ‘ideal characteristics of electoral democracy;’
• to report before the next election, expected to be in 1992-1993 (Aucoin 1993, 1-2).

Numerous studies were ed, including those authored by Bashevkin, Brodie, Carty, Hiebert, Jenson, Seidle, Stanbury, Young, and others who have since become prominent Canadian political scientists. The commission also took the unusual step (for a Canadian royal commission) of not just reporting but also drafting legislation that incorporated all of its recommendations.

The comparative methodology of the commission is also of significance. Following the example of the Barbeau Committee, the commission referred extensively to the election financing models of Germany, Quebec and the United States. The German regime of political finance continued to be examined and held up as a model, despite numerous political finance scandals, such as that of the ongoing, undeclared contributions to parties by the Flick industrial group of companies (Blankenburg et al. 1989; Heidenheimer 2002; Moroff 2002, 689). It is no small irony that as Gunlicks (1993, 12) and others have pointed out, that in the U.K., “There are no tax incentives for donations... no or few scandals regarding party finance. Germany has generous public funding, significant tax benefits, and scandals!”
Respondents offered several reasons for the continuing admiration and use of the German experience in campaign finance. The most common was that following World War II, Germany had written parties into its new constitution to avoid replication of Nazi totalitarianism. By contrast, the role of parties in Westminster democracies was custom and norm-based. A second reason was the observation that state-financed policy foundations in Germany were seen as leading to more ‘responsible parties,’ but as Rose notes, “advocates of reform often concentrate on a specially attractive feature of a foreign example and ignore other elements that are also necessary and often unattractive or impractical” (Rose 2000, 638). In this instance, Blankenburg et al. had already written in 1989 that, “Thus, both in quantitative as well as qualitative respects, the size of German comprehensive state financing became unique among Western democracies” (1989, 920) but also that “party financing has become the central arena of corruption in the Federal Republic of Germany” (Blankenburg et al. 1989, 915; italics added). A third reason is more pragmatic: there existed a significant body of English-language party literature written by German scholars who were familiar with the system, as Young stated in her interview.

What is notable here is that an American-style model of competition was clearly rejected. The commission stated that “We have seen the consequences of the U.S. electoral experience with no restraints” (Lortie Commission 1991, Vol. 1, 15-16)—and it did not like the results. The commission failed to view higher levels of election spending by both political parties and interest groups in American politics as deriving from institutional differences between the Canadian and American systems, where, for example, the American constitutional separation of powers “has always been conducive to a more candidate-centred pattern of electoral politics than those which follow the Westminster model” (Stanbury 1996, 407) and where, therefore, election spending is less mediated by party and more expensive than in Canada. Some of the reasons for higher spending levels in the U.S., which were not recognized by the commission, are the separation of powers and the ability of individual congress persons to introduce policy. The U.S. system leads to far higher aggregate costs since candidates must spend heavily to develop a strong, personal ‘brand’ for voters and a reputation to propel their legislative initiatives. By contrast, in the Canadian system, constitutional limits permit only the government to introduce money bills and although non-money private member bills are frequently introduced, very few pass. The Canadian party-
centred system is inherently ‘cheaper’ for candidates to run since it is the party—and possibly the leader—not the individual candidate, that is the ‘brand.’

Like the Barbeau Committee, the Lortie Commission’s reports and studies did not explicitly recognize the potential interactions between existing institutional frameworks: legal, legislative, representational and informal. While highlighting the shortcomings of the American system, the commission failed to weigh the international reputations of American and British democracies both of which had fewer restrictions on party finance or on third party spending yet retained enormous influence and standing as mature, legitimate democracies. One chapter only was devoted to the U.K.—and one chapter to Germany—but none to other Westminster democracies which have less rigorous and less intrusive regimes of campaign finance than does Canada. Thus, the commission ignored those models of campaign finance in mature democracies which had less intervention than Canada’s and referred principally to jurisdictions—Germany and Quebec—where greater intervention had been in place for some time. Only greater intervention was viewed by the commission as a ‘best practice’ or ‘fair.’ The Lortie Commission tabled its report in the Canadian House of Commons in 1991. The commission’s report was the foundation stone in identifying and defining the policy ‘problem’ of money in Canadian politics and it advocated extensive reform of campaign or election finance. A number of its recommendations were rooted in the changed legal climate flowing from the adoption of the Canadian Charter of Rights and Freedoms and from challenges to existing legislation under the Charter. The commission advocated extensive reforms on a number of fronts: contribution and spending limits at the riding or electoral district association (EDA) level and at the party level; subsidies; third-party spending limits; more extensive disclosure, to name the most prominent. To be left untouched were regulations for nomination and leadership contests and trust funds established to ensure an annual income stream for parties. Commission chair Lortie (1993, 7), following the publication of the official report, stated that “a reasonable balance must be struck between the continuing principles of fairness and freedom of speech.” However this attempt to balance is not nearly as prominent as the focus on fairness.

The commission was committed to the centrality of parties—and indeed stated this—but was simultaneously trying, on the one hand, to meld the ‘best’ of social democracy,
which compromises party primacy with corporatist and group representation with, on the other hand, the ‘best’ of liberal democracy which focuses on the fairness of individuals and as Ajzenstat argues, is intentionally “colour blind” in the sense of extending equal rights to all regardless of interests or identity. In seeking to encapsulate the “ideal characteristics” of electoral democracy, however, the commission failed to explicitly articulate the ideological roots of its recommendations, Quebec’s avowed social democratic post-1960 tradition, Canada’s Westminster institutional framework and the variance between Canada and its comparators in the normative cultures prevailing in each nation.

As Aucoin (1993, 3) states, the “politics of electoral reform will obviously pit reformers against those who favour the status quo.” Although Lortie, the commission chair and Aucoin, the Research Director for the commission, jointly articulated that the commission defended the presence and necessity of political parties in Canadian democracy, it may also be said that the recommendations of the commission fundamentally altered the shared understanding of the purposes and functions of political parties in Canada. The Lortie Commission’s recommendations buttressed a new vision of parties as vehicles of redistribution of monetary resources among political actors. The report emphasized parties’ potential for inclusion and representation and the necessity of subsidizing parties via the public purse. The Lortie Commission, in its report, chose not to refer to the social democratic, deliberative theory of democracy that underlay its new vision of parties nor to consider the inter-institutional consequences of such a move. While the commission did investigate campaign finance closely, it did not really look at campaign finance “as an institutional feature of our political system that has an important bearing on how the other institutions act” as Archer noted in our interview. The commission favoured a more left-liberal vision of numeric representation, in which parliamentarians should mirror the social and ethnic characteristics of their constituents in order to be considered legitimate. Further, although the commission recommended the retention of Canada’s first-past-the-post electoral system (Lortie Commission 1991, Vol. 1, 10), it did so with a number of caveats.

What seems to be a reasonable inference is that the while the commission did not want to take the significant step of recommending proportional representation (PR)—which was outside its mandate—yet its conclusions nevertheless moved Canada away from the
classic liberal democratic model and the Westminster first-past-the-post electoral regime. For example, in recommending further restrictions on spending by political parties, candidates and third parties (interest groups), the commission distanced itself from the notion of Burkean trustee-type representation by parliamentarians. It also chose to downplay the shift from the liberal democratic understanding of parties which situates them strongly in the private rather than public sphere and understands that private financing of parties is a valuable, alternative avenue of holding parties to accountable to the public interest. While acknowledging that “Politics is inherently adversarial” (Lortie Commission 1991, Vol. 1, 11) and that a “competitive party system is an essential complement to the institutions of government” (Lortie Commission 1991, Vol. 1, 11), the commission articulated its purpose as helping to “reduce the systemic or structural barriers to candidacy without compromising the elements that constitute its strengths” (Lortie Commission 1991, Vol. 1, 8). *Ipso facto*, the commission accepted the presence of widespread inequity in the prevailing system. The commission also argued that existing rules for reimbursement of expenses for parties and candidates discriminated against small parties and might contribute to “unwarranted rigidity in the Canadian party system” and recommended that future expense reimbursement be based on vote share rather than the existing a percentage-of-expenditures formula (Lortie Commission Vol. 1, 365; 368), arguing that changes would result in greater fairness.

The commission concluded that financing constituted a structural barrier despite widespread agreement that EDAs or riding associations in Canada historically held more power than in most other democracies (with the possible exception of the U.K.), were thus considerably more ‘democratic’ and decentralized than in other democracies. As recently as 1993 Stanbury (1993, 102) argued that “the national offices of all parties know very little about the financial operations” of its constituency offices. Instead of testimony to the democratic, autonomous condition this granted the EDAs, Stanbury sees lack of national control as a limitation. The commission endorsed tighter controls on intra-party and constituency concerns that could easily be argued to be disruptive of the “local democracy” or “localism” (Smith 1985) of the Canadian party system (Aucoin 1993, 5-6). Aucoin suggests that the commission’s recommendations sought to “nationalize the parties” by advocating greater control of the local constituency associations via standardization of party
standards and practices and “fostering the role of the national party in establishing codes of ethics for the management of the party” (Aucoin 1993, 6).

The commission delineated both a policy ‘problem’ and policy ‘alternatives’ but it was not until approximately 18 months later, following review by a parliamentary committee (Hawkes) and debate in the House and Senate, with consultation with the Chief Electoral Officer (Elections Canada 2007), that the Conservative majority government introduced a bill to Parliament. Although this 18-month delay could be attributed to lack of will on the part of the Conservatives, a more likely reason is that the country was embroiled in a constitutional debate centred on attempts to alter the 1982 constitution. An earlier attempt (Meech Lake Accord) in 1987 had failed and thus resolution of some sort was anxiously sought. The prime minister and premiers signed the Charlottetown Accord in August 1992 but the Accord was rejected in a nation-wide referendum in October 1992. As well, there existed at this time an unsettled policy atmosphere due to turnover in party leaders. Prime Minister Mulroney announced his retirement from politics in February 1993 with Kim Campbell succeeding him as prime minister and leader of the Conservative Party from June 1993 until November 1993.

Thus, Parliament in 1993 passed Bill C-114, amendments to the Canada Elections Act, many of which stemmed from the Lortie Commission report. Amendments included a provision that third parties could not exceed a spending limit of $1000 per electoral district or $150,000 nation-wide in partisan spending; no limit was placed on spending of third parties on issue advocacy or public policy. Amendments also prohibited contributions to any political actor, including third parties, by non-Canadians, that is non-Canadian citizens, corporations, associations, trade unions, political parties or foreign governments. It extended voting rights to individuals incarcerated in prison for less than two years, those with mental disabilities, and Canadians living and working abroad. The following issues were not addressed in the legislation: ceilings on contributions to political parties, candidates or electoral district associations (EDAs) because “compelling evidence of undue influence being gained through large contributions was lacking,” the commission had implementation concerns, and because it trusted that its recommendations on spending limits and disclosure “would be sufficient to maintain the confidence of the public in the electoral system” (Chief
Electoral Officer 2001, 91; italics added). Many of the amendments in 1993 and those to follow later in the decade corresponded fairly closely to the commission’s recommendations.

Events of the 1993 election raise doubt as to whether the commission’s concerns that the Canadian political finance regime (before the 1993 amendments) overly constricted small parties and lesser known candidates were in fact well-founded. The early 1990s witnessed the emergence of four new political parties on the national stage—the Reform Party of Canada, the Bloc Québécois, the National Party and the Natural Law Party—and the 1993 election had a record number of parties—fourteen—contesting the election. It does not seem, therefore, that there were significant barriers to entry. Each party ran more than 50 candidates nationally, with 50 candidates constituting the statutory minimum to qualify as a party. In order to run, a candidate deposit needed to be $1000 (an increase from $200 earlier). The election concluded with a Liberal majority and the near-extinction of the Conservative Party. Carty has deemed this the ‘failure’ of the Canadian party system and Seidle (2011, 42) that the deposit of $1000 per candidate, or $50,000 for a movement to qualify as a party and be eligible for expense reimbursement, among other benefits, was too high a benchmark to require of candidates and parties. However, the situation did not apparently constitute a disincentive for at least the 14 contending parties, a considerable number of alternatives for voter representation. In contrast to Carty’s view that the 1993 election results constituted ‘failure of the party system’, the emergence of new parties may also be seen as the strength, vitality and responsiveness of the Canadian party system and finance regime. All of these parties emerged with specific demands and policy alternatives for representation and for accountability. The Reform Party in particular built a grass roots foundation of thousands of small donations.

However, following the 1993 election, a private member’s bill led to yet further reform in 1996. MP McClelland objected to the $712,722 expense reimbursement to the Natural Law Party of Canada, a marginal party which had run a tongue-in-cheek advertisement featuring a yogic flyer with magic powers for eliminating government debt (Seidle 2011, 42). MPs and Senators were concerned about possible runaway reimbursement costs because of the record number of parties contesting the 1993 election. As mentioned
earlier, fourteen parties registered for participation and eight political parties were eligible for, and received, reimbursement of election expenditures following the election.

Further alteration to the electoral landscape came in October 1996, with Bill C-63 which shortened the election or writ period from 47 to 36 days (prior to 1982 the writ had been 60 days, then 50, then 47; Elections Canada 2002, 55); and introduced a permanent voters’ list, among other provisions, while Bill C-243, a private member’s bill (an unusual circumstance in Canada), changed the threshold for political parties to become eligible for election expense reimbursement. The previous standard (set in 1983) for expense reimbursement was that to qualify for reimbursement a party had to spend at least ten per cent of its election expenses limit (Seidle 2011, 42) and if it did so would be reimbursed for 50 per cent of its election expenditures. The new standard was based solely on the number of votes, either two per cent of the “valid votes cast nationally, or at least five per cent of the votes cast in the electoral districts in which it had run candidates” (Carty 2002, 140-141).

While several of its provisions did not directly affect campaign finance, they nevertheless affected Canadian democratic practice and indirectly the functioning of parties and electoral spending as well as changes to the administration of and rules governing changes in electoral boundaries. Considered individually, these seem to be relatively minor adjustments: however, as new institutionalism suggests, rules work configurationally rather than separately and hence it is worthwhile to test this in this instance.

The earlier construction of an electors’ list by enumeration served a purpose more significant than mere administration: the door-to-door enumeration raised awareness of a coming election or referendum in the electorate. Its intrinsic value and contribution to political interest, political knowledge and awareness of political parties is difficult to estimate but authors such as Black (2005) argue that enumeration did stimulate political knowledge. In addition, the move to a permanent voters’ list deprived electoral district associations of one of their functions, that of recruiting enumerators. Second, Senator Smith and others interviewed argued that recruiting enumerators had been performed by the parties and that this recruitment process had acted as an entrée into political activity for new immigrants particularly. The effect of a shortened electoral period may also favour the incumbent party and elected members who already possess ‘name value’ to the electorate.
The combined effect of a shortened election period and limitations on election spending by national parties and local associations has not been assessed in the literature. It is not implausible that some of the decline in voter turnout and interest in political parties in the past decade may be unintended consequences of these ‘administrative’ changes in electoral law.

The growing influence in American national elections of ‘soft money,’—that is, money raised to directly or indirectly influence elections but is outside the purview of the Federal Election Commission—played a key role in fears regarding the growth of its closest equivalent, termed ‘third party spending’ in Canada (Hiebert 2006) during the 1990s. The terms ‘soft money’ and ‘third party spending’ are not, however, directly equivalent terms. As Sorauf writes, the term ‘soft money’ is one of “epic imprecision,” not only because of its alleged use in influencing an election, but also because of the way in which it is raised by recruiters or intermediaries of the agents themselves, who include “candidates, even presidential candidates, or PACs [political action committees] or party committees, themselves subject to the limits and requirements of the FECA [Federal Election Campaign Act]” (Sorauf 1991, 147). By contrast, ‘hard money’ is “money that meets all of the litmus tests of the FECA and is thus available for spending in the campaigns governed by the FECA” (Sorauf 1991, 147). Despite the fact that there is ‘play’ between the terms ‘soft money’ and ‘third party spending,’ the problems associated with ‘soft money’ are often linked to third party expenditures in Canada.

Bakvis and Smith (1997, fn.5) note that there continued to be disagreement, even among advocates of spending limits, on what absolute value those ceilings should be for either individuals or groups. Despite the amount of ‘finessing’ of campaign finance that had already occurred, Lortie, the former chair of the Lortie Commission, wrote in 1997 (1997, 25), that the existing regime which exempted third parties from spending limits was “inherently unstable.” Indeed, ‘failure’ of party and critiques of even the most recent campaign finance reforms by authors such as Bashevkin (1998) and Tanguay and Kay (1998) retained their force and shaped policy alternatives. Policy alternatives without exception favoured greater intervention in the life of parties and civil society and almost uniformly distrusted the ability of Canadian politics and Canadian political parties to deliver
“democracy.” Although contrary views were raised in Parliamentary and Committee debates, these cautionary views did not make their way into the legislation of the times.

Shadow Cases: The U.S. and U.K.

Despite a federal commission on campaign finance in 1960, reform “languished” after President Kennedy’s death (La Raja 2008, 67). Congress in 1966 did implement public funding of presidential general election campaigns and in the Revenue Act of 1970 introduced a tax checkoff, in which citizens “could check a box on their tax forms authorizing the federal government to use one of their tax dollars to finance presidential campaigns in the general election” (La Raja 2008, 257 fn. 22). Policy ideas generated by the 1960 commission were revisited and Congress passed the Federal Elections Campaign Act (FECA) of 1971. Significant amendments to FECA were passed in 1974, with Watergate, according to many but not all accounts, providing the tipping point for the 1974 reforms. As Alexander (1979, 75) notes, as serious as the Watergate scandal was, interest groups favouring campaign finance reform “exploited the scandal dramatically.” Alexander (1979, 86) notes that President Ford (Republican) had only “reluctantly signed the 1974 and 1976 amendments.” FECA of 1971 and its amendments represented the first attempt at an all-inclusive, integrated system of regulation for congressional and presidential campaigns (Sorauf 1991, 8).

FECA clauses covered an enormous landscape of issues: the first of these was the establishment of the Federal Election Commission, the first national oversight body of campaign finance in U.S. history; disclosure of candidate donations over $100; limits for Senate and House candidates based on the number of voters in their constituency; a spending limit ($10,000,000) on presidential primary contenders. Successful nominees in the two major parties, Democratic and Republican, would receive $20,000,000 with minor party candidates receiving a ‘pro rata’ share. A minor party was defined as receiving between 5 and 25 per cent of the vote. Regulations on spending by political committees were introduced as were limits on the amount of self-funding allowed for certain candidates: $50,000 for a presidential candidate; $35,000 for a vice-presidential candidate; $35,000 for a Senator and $25,000 for a House candidate. Third parties, defined as individuals spending more than
$100 for a candidate but independent of the candidate’s campaign, were required to disclose their contribution.

Overall “FECA enshrined the candidate-centered system by institutionalizing the role of candidates and PACs [political action committees] in statute. Paradoxically, in ignoring political parties, the law opened opportunities for parties to adapt to the new campaign environment” (La Raja 2008, 77; italics added). La Raja also argues that FECA represented the outworking of “Progressive norms—individualist, voluntary, and antipartisan—were woven into the electoral fabric. Donors preferred contributing to favoured candidate and issue groups rather than political parties. National parties possessed relatively few incentives—material, solidary, or purposive—to attract prospective donors” (La Raja 2008, 144-145). Following FECA, Alexander (1979, 77) wrote in 1979 that what was needed was “limited goals . . . rather than the far-reaching and now unattainable goals envisioned in 1974.”

U.S. campaign finance in the period 1970-2000 was also shaped by the contentious decision by the Supreme Court in *Buckley v. Valeo* in 1976. In the decision, the Court addressed election-related expenditures by non-party actors (the equivalent of Canadian third parties). It “upheld contribution limits because they served a vital public interest in protecting against corruption but overturned the expenditure limits because they imposed greater restrictions on free speech and the potential for corruption was less clear” (La Raja 2008, 77). However, it also determined that spending limits by non-party actors were violations of the First Amendment. Most succinctly, the majority opinion noted ironically that,

> Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline (*Buckley v. Valeo*, n. 18).

It also rejected the notion that regulating dollars spent on advertising is the same as regulating “decibels from a sound truck,” determining that,

> This comparison underscores a fundamental misconception. The decibel restriction upheld in *Kovacs limited the manner* of operating a sound truck, *but not the extent of its proper use*. By contrast, the Act's dollar ceilings restrict the extent of the reasonable use of virtually every means of communicating information (*Buckley v. Valeo*, n. 17).
The latter half of the 1970s, the 1980s and the 1990s witnessed initiatives by President Carter (Democrat) as well as by Congress and individual members of the House and Senate to further amend national campaign finance rules—but no further legislation. While both parties were nominally committed to reform, the Democrats were relatively rich in labour resources while the Republicans were relatively rich in monetary resources. Neither side was willing to compromise and yield a competitive advantage to the other party. As a result, no new legislation emerged until the Bipartisan Campaign Reform Act (BCRA) of 2002. And, as Gunlicks (1993, 7-8) argues, there exists “widespread opposition to public financing” in the U.S. and a political culture that is characterized by “attitudes generally hostile to taxes and big government.”

In the U.K., Fisher (1996) notes a period of relative stability for parties and political finance in the U.K. following World War II. Pattie and Johnston (2007, 253) suggest that in the “late 1950s and early 1960s, the national political culture was deferential, but civic. Political activity was high by international standards” and they point to voter turnout, pride in the political system and other measures. Important policy issues for most of the 1960-1980 period were intense labour turmoil and economic decline; political finance, by contrast, paled in significance. There was a failed attempt in 1968 to register political parties (as had been done in Canada in 1970). Political finance came to the fore in the 1970s and the U.K. Parliament appointed the Houghton Committee on Financial Aid to Parties; its report recommended funding for opposition parties as well as other emoluments for parties (Fisher 1996). The U.K. Parliament passed legislation in 1975, funding opposition parties in the House of Commons, using on a formula of seat share and votes in the 1974 election. This funding, termed ‘Short Money’ has been regularly updated since then (U.K. House of Commons Library 2010, 9). Substantive legislation occurred in the 1983 Representation of the People Act in 1983 which structured some candidate spending and in 1998 the Registration of Political Parties Act.

Three major government inquiries occurred in the 1990s: the 1993 House of Commons Home Affairs Committee Inquiry into The Funding of Political Parties; the establishment in 1994 of the Committee on Standards in Public Life, an advisory body that reports directly to the cabinet rather than Parliament required to report annually; and the
Neill Report, the committee’s fifth report in 1998, dedicated to the subject of political finance. Parliament in 1996 introduced funding for opposition parties, termed ‘Cranborne Money’ in the House of Lords. The Labour Party, in its 1997 election platform, committed to disclosure of contributions above a certain minimum. The newly-elected Labour government was forced to act on it quickly because shortly after the election, the party was involved in “a sleaze scandal from which it has never really recovered” that involving its actions on behalf of Formula One, following a £1 million contribution from Ecclestone, one of its executives (Ewing 2006, 58-59). The majority Labour Party government referred the issue of party funding to the Committee on Standards in Public Life and its subsequent report (Neill Report), in 1997-1998, argued for a drastic overhaul in political party finance, with no fewer than 100 recommendations (Ewing 2006, 59). A bill retaining many of the recommendations was introduced into Parliament in 1999 and became the Political Parties, Elections and Referendums Act (PPERA) 2000.

Conclusions: What are the ‘Patterns in Complexity’?

Until 1970, the campaign finance regimes of the three cases under study experienced reforms in approximately the same decades. Although Canada and the U.S., but not the U.K., passed major pieces of federal legislation in the 1970s, the regimes increasingly diverged from this point onward. In contrast to Scott’s finding (2006) that in general Canadian public policy in the 1975-2000 period was noted for a greater move toward privatization, campaign finance policy in Canada went in the opposite direction. Pal (2000, 33) also describes Canada as a country with a history of “reluctant reform” yet this characterization does not hold true for Canadian practice either on its own or in comparison to that of the shadow cases. What created this ‘outlier status’ in Canada?

Courtney (2008, 5-6) suggests that several factors have influenced Canadian electoral reforms since Confederation, including changing social values, interest groups advocacy on behalf of reform, demonstration effect of provincial reforms, reaction to problems, an increasingly statist approach to problem-solving, the availability of technology and the prompting provided by Supreme Court decisions. Using this rubric for campaign finance, in all three nations, societal values changed (Nevitte 1996, 2002); there was interest group advocacy; “modelling of reforms” occurred, but to a much greater extent in Canada.
Technology was available to all. Reaction to ‘problems’ was significantly more pronounced in Canada with significantly more legislation than in the shadow cases; and a more statist approach adopted than in the U.S. or U.K. The role of Supreme Court decisions will be discussed in Chapter 5.

Turning to the shadow cases, in the U.K. there seems to have existed both formal and informal constraints which constituted pushback against reform ideas. First, for example, Ewing and Ghaleigh (2006, 3) note that the U.K. had been a country “in which it was not easy to spend vast sums of money in elections, largely because there have been (since 1883) tight spending limits on parliamentary candidates and since 1954 a statutory ban on television advertising for political purposes.” The Communications Act of 2003, s. 319-321, represents the most recent legislation on this subject and Ewing (2003, 500) notes that the “ban applies not only to political parties but also to other political organizations and purposes.” Gay (2001, 245) and Ware (1996, 294) concur with Ewing and Ghaleigh’s assessment, noting that in the U.K., elections to the Commons has been considered “as a series of contests between individual candidates, rather than a battle between national party organisations.” This tradition, or informal constraint, meant that elections were affairs to be publicized and scrutinized locally, not nationally, and as Ware argues, this rendered elections in the U.K. “relatively inexpensive” (Ware 1996, 294). Second, parties in the U.K. have been recognized as more valuable than in Canada where the acceptance of parties as failed (Meisel 1979), antiquated “nineteenth century solutions” (Carty 2002, 745) and “empty vessels” (Cross and Young 2006) has prevailed. Second, a 1998 U.K. report was “at pains to point out that parties have different structures based on different histories and that the state should avoid trying to normalising these” (Fisher 2009, 7). There is no similar explicit recognition of party differences in Canadian studies in which authors have recommended specific reforms; that is, there is an unwarranted assumption that parties will either rise together or fall together in their response. While it can certainly be argued that ability to respond should not be the concern of legislators, there is no parallel to the concern in the U.K. that campaign finance rules may ‘normalise’ or straitjacket parties in a way that may be detrimental to the vibrancy and electoral surprises of a dynamic democracy.
Third, there has existed in the U.K. a strong cultural constraint defending parties. For example, Fisher and Eisenstadt (2004, 2) argue that ceilings on contributions have traditionally been rejected in the U.K. because they were seen as an “infringement on liberty” based on two rationales. The first is that secrecy of donations is like the secrecy of one’s ballot:

Privacy in donations is as fundamental a right when giving to political parties as when giving to any other charitable organisation. What individuals do with their own money is entirely a matter for them and is not of legitimate interest to either inquisitive journalists, political opponents, or even the State. To reveal a name would be a breach of a donor’s right to privacy, although of course if he wished to disclose his identity, he was at liberty to do so (U.K. Home Affairs Select Committee 1992-93, par 80).

The second is a recognition and respect for party autonomy and for parties as strategic actors. For parties, a Conservative Party treasurer stated that the “Conservative Central Office is not a charity dedicated to helping the sick and suffering” and that disclosure would represent “the height of folly” in exposing how a party “manages its resources, or, indeed, how large, or how small these resources are at any time” (McAlpine 1997, 229). While the U.K. adopted more statist, interventionist policies in other areas in the post-War period and was generally sympathetic to ideas from the left (Fisher 1996, 11), this tendency did not extend to the regulation of parties. Thatcher and the Conservative majority governments she led continued to protect the U.K.’s historic policies. Thatcher personified liberal democracy, limits on the role of government and veneration of Westminster parliamentary government. Fisher (2009, 9) notes overall that “historical precedent provided a constraint” on U.K. parties pursuing the types of campaign finance policy seen in European democracies and that “there have been no substantiated scandals on the scale witnessed in other democracies” notwithstanding “periodic concerns about the probity of party finance.” To summarize, Ghaleigh (2006, 41; 53; 55) argues that a particular culture ‘immunized’ the U.K. from major party funding scandals, strongly resisted party subsidies, and relied on social norms and ad hoc legal reforms, rather than comprehensive reforms prior to 2000. Since there was no substantive change until 1998 it must be concluded that these factors were sufficient to resist changing the existing patterns of party finance.
In the U.S., First Amendment protection of free speech and free expression has been defined as covering expenditures to publicize speech of individuals, parties, candidates and so on. Congressional debates, policy debates and court decisions all reference not only the First Amendment but also Federalist Papers. Canadian debates demonstrate few historical referents, with the exception of the Charter passed in 1982. As well, the separation of powers in the U.S. has contributed to less overall federal intervention into campaign finance since there exist a multiplicity of actors who are contending at each national election whereas Canadian elections, even in contrast to their U.K. Westminster counterparts, have relatively few. Finally, neither Congress nor the Supreme Court has concluded that inequity of resources constitutes, *ipso facto*, corruption or undue influence.

Turning to Canada, the first point of note is that the theme of equity is more apparent than the themes of efficacy or historicity. Critiques of parties based on their representational failings, and hence failure of legitimacy, assumed precedence as opposed to consideration of party finance in light of the inherent needs of parties, the ability of parties to form stable governments, or finally, the possibility that costs of elections were rising as a necessary response to changing cultural and politico-cultural factors. Heard’s acute perspective on campaign finance remained ignored in principle and indeed rejected in practice. He writes that:

As such, political parties provide complex and sensitive channels through which interests express themselves and seek representation in government . . . But they serve not solely as relay pipes for political pressures; they act also as sieves separating consequential issues from those which are dispensable and arbitrating among conflicting claims . . . The processes of political finance constitute one set of mechanisms through which political representation is achieved (Heard 1960, 11-12; italics added).

Second, Canadian legislation through the twentieth century demonstrates a much greater acceptance of the idea of parties as public entities rather than private organizations. Canadian parties became justiciable in 1970: this in itself permitted greater legal regulation by Canadian courts and again reinforced the notion of their public rather than private, voluntarist nature governed by contract law. As discussed earlier, twentieth-century scholars such as Dawson (1963) identified the benefit supplied by parliamentary democracy as efficient, representative government. Funding was supplied by private, or non-state actors,
including the candidate himself, family and friends as well as businesses, and later unions. Parliamentary and American democracies were seen as indelibly linked to capitalism. However with the emergence of the post-1950s debates on the nature of democracy, the role of parties and the elevation of representation as a measure of effectiveness, so-called ‘private’ financing of parties and candidates came under heavy fire as a means of oppressing minority identities and aspirations. Calls for more ‘neutral’ financing—that is, tax-based subsidization—of parties and politics attracted increasing attention.

However, as Ostrom writes, state involvement of this nature is typically restricted (in classical liberal thought) to ‘public’ goods. As Ostrom and Walker argue,

Pure public goods have been considered the paradigm case for the necessity of the state. The state is viewed as the vehicle necessary to select and provide the ‘proper’ outcome as opposed to that which would occur without the state. On the other hand, the problems of providing public goods, regardless of scope, are not so obviously solved by a state (Ostrom and Walker 1997, 35-36).

Therefore the justification of state financing of parties and candidates—of any sort or of any scope—required the redesignation of the outputs of parties as public goods rather than merely as ‘positive externalities,’ that is, by-products of party activity. This reframing of political party ‘outputs’ as ‘public’ rather than ‘private’ issues is crucial to the story of how campaign finance regulation has evolved in the late twentieth and into the twenty-first century in Canada and elsewhere. However, as Ostrom (1997, 40) points out, “one difficulty is that theorists are not always clear about what ‘the’ good that was being accessed or appropriated is,” and I argue that the evidence will demonstrate the correctness of her statement with regard to party finance. Ostrom points to a way out of this difficulty: recognizing that ‘public’ goods are both a facility (political parties or campaign finance rules) and a flow of services (service to constituents by elected members).

This redesignation required first that the valued outputs of party shifted from those of effective governance and accountability, to the valuing of such outputs as participation, inclusion and substantive representation. Secondly, the redesignation of party outputs to public goods also required the assessment that they were ‘underproduced.’ Thus, the literature of “party failure” is critical to opening discourse suggestive of and welcoming of state involvement in the financing and regulation of parties. The failure of parties was
identified with their ‘suboptimal’ provision of such public goods as recruitment of leadership, aggregation of public opinion, and voter education; but more importantly the extent to which publics engaged in politics (per Verba and Nie 1972, for example) and their ability to achieve substantive representation (Bashevkin 1989; 1993). The outputs of political parties thus came to be regarded as “public goods” that is, goods which are underprovided or are ‘suboptimal’ from the perspective of the group (Ostrom 1997, 35).

Also of consequence in the last quarter-century or so were claims that what had previously been considered ‘private’ were now to be considered as ‘public.’ Among those advocating such a shift, were Habermas ([1962] 1989) who “not only distinguish[ed] normatively between the private and the public; he also redefine[ed] them, especially the public sphere, in ways that express a concern for the conditions of democratic citizenship and rational deliberation” (Wolfe 1997, 185). Given that the “distinction between ‘public’ and ‘private’ has been a central and characteristic preoccupation of Western thought since classical antiquity” and that the “public/private distinction stands out as one of the ‘grand dichotomies’ of Western thought” (Weintraub 1997, 1), it is outside the scope of this work to do more than begin to integrate the issue into the question of funding political parties and electoral campaigns. However, political parties do stand at the juxtaposition of these two spheres and political finance rules constitute a significant determinant of the boundary conditions.

For the purpose at hand, Weintraub’s definition (1997, 5) is most apposite. He argues that the ‘private’ can be contrasted with the ‘public’ in the following two ways: “What is hidden or withdrawn versus what is open, revealed or accessible; [and] what is individual, or pertains only to an individual, versus what is collective, or affects the interests of a collectivity of individuals.” With respect to political finance, both criteria come into play: sources of political finance were, for many decades following Confederation, ‘hidden,’ or undisclosed. The defence of this practice was principled: secrecy regarding donations was regarded as equivalent to the secrecy of one’s ballot. It was argued before the Barbeau Committee that the act of donating was not equivalent to the act of secret balloting but instead was merely “an attempt to influence the votes or opinions of others, and [was] thus a public act” (Barbeau Committee Report 1966, 53-54). The Committee accepted this
reconceptualization (and its inherent cynicism) in concluding that disclosure of contributions by candidates should be retained and extended to political parties (Barbeau Committee Report 1966, 54). Second, the reconception of political party ‘outputs’ as ‘public goods’ meant that what had previously been considered ‘private’ or pertaining to subunits of the polity, came to be considered as ‘collective goods’ and hence at least in part subject to the power of the state to regulate them and ‘supply’ them indirectly through parties.

This redesignation of the outputs of parties as ‘public goods’ is one of the outstanding patterns in the complexity of Canadian campaign finance in recent decades. Its significance will be seen in events and legislation in the decade 2000-2010 where the ‘public good’ nature of campaign finance will be recognized explicitly—and defined in various ways—and used as a benchmark for evaluating campaign finance legislation in scholarship by Seidle (2011), Cross and Crysler (2011) and others. While Cross and Crysler (2011, 168) state that the public-private argument “has been won by those who see parties as public instruments,” this is overstating the case. Moreover, because the issue has not been addressed with sufficient directness, it may be seen as demonstrative of Paltiel’s prescient comment nearly 30 years ago that “little thought was given to the effect of these measures [that is, political finance measures] on the shape of democratic politics” (Paltiel 1979, 15) and of Alexander’s more recent assessment that

Political finance reforms are not neutral . . . The electoral process continues to present a classic case of conflict between the democratic ideal of full public dialogue in free elections and the conditions of an economic marketplace (Alexander 2005, 21; italics added).

It can be seen that the study of campaign finance, above the level of arcane detail, is a window into formal and informal relationships within a polity. Changes in campaign finance laws reflect societal and academic currents of thought and perspective. Campaign finance laws are instrumental but also intrinsically symbolic (Fisher and Eisenstadt 2004, 623) and as such are freighted with often unarticulated meaning. As Banfield suggests,

In governmental organization the costs of preventing or reducing corruption are not balanced against the gains with a view to finding an optimal investment. Instead corruption is thought of (when it comes under notice) as something that must be eliminated no matter what the cost (Banfield, 1975).
Thus, campaign finance rules both posit and embody norms and values of official behaviour and are rarely if ever are evaluated in terms of their absolute or relative cost. Further, they restructure what has come to be called “political opportunity structures”: the relationships of government to civil service, third parties (or non-governmental organizations) to political parties; the state to political parties; political parties and democratic practice.

Duverger (1964) early pointed out that funding was a significant factor in comparing political parties. However, even more importantly, the rules of campaign finance help to define parties in their role as mediators between state and society and, further, carry implications for what we identify as ‘state’ versus ‘society.’ These are not small concerns for democracies, particularly since a series of seemingly small changes in campaign finance rules may, by their additive nature, nevertheless culminate in a major shift of the boundary between the public and private spheres. Over the course of the following chapters, I explore the nature of changes in political finance rules in relation to their effect on the permeable boundary between the public and private spheres.
### Chapter 3 Table

#### Table 3.1 Comparative Timeline of Political Finance in Canada, the U.S. and the U.K. 1850-2010

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<td>1873 - <em>Controverted Elections Act</em></td>
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<td>1883 - <em>Corrupt and Illegal Practices (Prevention) Act</em></td>
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<td>1913 - <em>House of Lords decision in Osborne</em></td>
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<td>1916 - <em>Prevention of Corruption Act</em></td>
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<td>1960 - Commission on Election Costs</td>
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<td>1983 - <em>Canada Elections Act</em> (Amendments)</td>
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<td>2003 - McConnell v. FEC</td>
<td>2000 - Political Parties, Elections and Referendums Act (PPERA) - establishment of Electoral Commission and other electoral activities</td>
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<td>2010 - Citizens United v. Federal Election Commission</td>
<td>2010 - Constitutional Reform and Governance Act</td>
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* This table is intended to be a guide to major events; it is not intended to be an exhaustive list.
Chapter 4  Pursuit of a New Equilibrium: Party Finance Since 2000

“Political finance is a restless issue in politics . . .”

(Rose 1984, xxxii).

Introduction

In light of the already extensive changes to party finance that had occurred in Canada, Carty, Cross and Young, writing in 2000, argued that “as long as the parties in Parliament disagree on the fundamentals of electoral reform, it is unlikely that we will soon see major changes to the system” (2000, 153). This prediction failed, reinforcing Rose’s observation that “No forecast about party politics . . . can confidently assume that all other conditions will remain unaltered” (Rose 1984, 185).

In fact, the decade was to witness further activity in campaign finance not only in Canada but in the U.S. and U.K. as well. Convergence among the three nations in their legislatures’ interest in campaign finance, but not its substance, will be demonstrated in this chapter. The Canadian Parliament introduced new legislation on party finance and other matters in 2000, 2003 and 2006. As well, in both Canada and the U.S., lower and superior courts have issued significant decisions shaping party finance in the same period. These reforms are not mere tinkering or window-dressing. Ghaleigh (2006, 35) for example argues the PPERA effected radical transformation for campaigning and political parties in the U.K. with “practically every aspect of the giving to, spending by and accountability of, political actors has undergone (often significant) revision.” Similarly, Briffault (2006, 191) writes that the Bipartisan Campaign Reform Act (BCRA) of 2002 in the U.S. is the “most significant change in federal campaign finance law in nearly thirty years.” Similar assessments have been made of the changes introduced by the Canadian Parliament. An observer unfamiliar with elections in these three nations could be forgiven for assuming the worst: that recent national electoral contests had been rife with fraud and corruption or at the very least, that the legislation of campaign finance had been neglected for a prolonged period of time. In fact, neither of these assumptions would be accurate, since as Courtney (2008, 4) writes “. . .
for the most part the level of probity in the financing of politics in Canada has been high,” confirming Aucoin’s 2005 assessment.

But in that case, what accounts for the spate of transformative legislation in this time period? Is it merely that once a reform is enacted, it establishes its own momentum? Good (2007, 247) writes, with respect to Canadian budget reforms, that each “reform is a reaction, occasionally an over-reaction to the failures of the previous reform. Yesterday’s reforms become today’s practices, and today’s practices can become tomorrow’s problems.” Is this a recurring pattern in the case of campaign finance reforms?

This chapter traces the sequencing of legislative moves in the post-2000 period and analyzes the reforms from a new institutionalist perspective. Judicial decisions affecting campaign finance practice are discussed in Chapter 5 and the intersection of campaign finance, parties and Elections Canada is discussed in Chapter 6.

In order to place events of the recent past into context, Table 4.1 displays major acts, amendments and court decisions in Canada since 1867 and indicates the government party and prime minister under whose tenure such acts were passed. The historical flow that this chart provides is crucial to understanding how initiatives in the 2000-2011 period ‘fit’ or ‘did not fit’ with historical precedents.

**Events of the 2000-2011 Period**

The House of Commons Standing Committee on Procedure and House Affairs (1998, 3) reported in June, 1998, suggesting that “in view of all the work that had been done, the issue of electoral reform should be treated as a priority.” It is of particular note that it was not scandal nor corruption nor undue influence of money that drove the legislation. It was the “amount of work” that had been done. This is surely a curious reason to introduce wide-ranging legislation. Few respondents commented on the motivations behind the 2000 rule change which prohibited third party advertising during the writ period of national elections. Of those who did, a number assumed that the Liberal Party introduced this legislation as a further implementation of Lortie Commission recommendations. One, however, commented that a faction within the Liberal Party had a ‘personal issue’ with regard to third-party
spending during election campaigns since the Liberal Party government was at the time in a lawsuit against the National Citizens Coalition about that group’s spending during the previous election.

Thus, the majority Liberal government in June, 1999, introduced a bill which died on the Order Paper, but was re-introduced as Bill C-26 in October 1999 and passed on February 8, 2000. The intent of Bill C-2 in 2000 was to replace the existing version of the Canada Elections Act, repeal the Dominion Controverted Elections Act (1874), the Corrupt Practices Inquiries Act (1876) and the Disfranchising Act (1894) and add certain of their provisions added to the new Act. The final version was lengthy and contained 577 clauses. The bill and the act built on the Lortie Commission’s critical role in the 1990s in “problem definition” and “policy alternatives” and its advocacy for greater regulation overall for greater coding or formalization—written rather than informal constraints on campaign finance in Canada.

What was new in the Canada Elections Act of 2000? Provisions were wide-ranging but only those of consequence to political finance will be noted. The act included new regulations governing candidate spending,7 the publication of addresses (not only names) of contributors donating more than $200 (rather than $100), audited reports by political parties of ‘trust funds’ or assets, identifying contributors, statements of loans and security on such loans, and reporting details of transfer of funds from the registered party’s trust fund to candidates and EDAs.

The new act also stipulated that a political party must nominate candidates in at least 50 EDAs to obtain and then retain ‘registered’ party status. While this may seem a somewhat pedantic issue, ‘registration’ confers certain benefits on a party, that is, the right of candidates to issue tax receipts for contributions made outside the election period (for

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6 There is a Bill C-2 (Amendments to the Canada Elections Act) in 2000 and Bill C-2 (Federal Accountability Act) in 2006.

7 Candidates would henceforth need to appoint an official agent before incurring any electoral campaign expense. The significance is that expenses incurred before such an appointment would not be eligible for possible reimbursement. As well, candidates previously were reimbursed their nomination deposit depending on the number of votes received but Bill C-2 dropped the percentage of vote required and allowed refunding if full reporting requirement were met.
example in leadership or nomination contests), to transfer unspent election funds to the party and to list their party affiliation on the ballot. A political party seeking registration must also have at least 100 members and must appoint a leader, a chief agent and an auditor.

Pursuant to the *Canadian Elections Act*, party expenses were to be reimbursed based on either five per cent of the vote in a specific riding (electoral district) or two per cent of the national popular vote in order to qualify; candidate expenses would be partially reimbursed if the candidate were elected or received at least 15 per cent of the vote in his or her electoral district. Although the five major parties (Liberal, Progressive Conservative, NDP, Canadian Alliance and Bloc Québécois (BQ)) received reimbursement, the Canadian Action, Christian Heritage, Communist, Green, Marijuana, Marxist-Leninist and Natural Law parties failed to surpass the necessary vote threshold. To place some of this in context, in the 2000 Canadian federal election, parties spent “$35 million in the aggregate and were reimbursed $7.7 million; candidates spent a gross amount of $38 million, of which $16 million were reimbursed” (Alexander 2005, 18). Free and reduced cost broadcasting time as well as indirect state funding, that is tax credits against political donations under the *Income Tax Act*, provided a further subsidy for individual contributions. There is, by contrast, no comparable tax credit in either the U.S. or the U.K.

The new act represents a significant turning point in legislative control of third-party spending. Bill C-2 defined ‘third parties’ as a ‘person or group other than a candidate, a registered party, or its electoral district association;’ introduced a registration of third parties who spend more than $500 on election advertising during the writ period; and limited spending by third parties to $3,000 per electoral district association (EDA) or $150,000 nationally during election periods.8 Third parties also were prohibited from issuing tax receipts or from receiving reimbursement for election-related expenses. The new *Canada Elections Act* also required a blackout of election advertising (not including internet or

8 By contrast, the United States federal limits on ‘hard’ money (that is, partisan rather than issue advocacy) from individuals stood at: $2000 per candidate per election; $5000 per political action committee; $25,000 per party committee. The Bipartisan Campaign Reform Act (BCRA) of 2002 raised the total donation on individual donations to parties, candidates and political action committees (PACs) from $25,000 per year to $95,000 in a two-year election cycle (Alexander 2005, 12).
pamphlets, billboards, posters and banners) and a blackout of the publication of election surveys on polling day, prior to close of all polls, and prohibited entrance and exit polls on election day. The regulatory scheme regarding access to broadcast time by parties during the writ period was revised. The Chief Electoral Officer was to appoint a broadcasting arbitrator who would convene meetings of all party representatives to consult on the allocation of broadcast time. Factors to be included in the decision were the percentage of seats held by the parties, percentage of the popular vote captured in the previous election and the provision of a maximum of 39 minutes of ‘free time’ to a new party. Each registered party continued to be able to purchase up to 6.5 hours of prime time for election advertising at the lowest prevailing commercial rate; unchanged was that no tax-paid minutes and no guarantee of low-cost time would be provided to candidates.

A general election was held in November, 2000, in which the Chrétien Liberal Party won a majority of seats for a third time. Brooks notes that the election was notable for the following:

As the 2000 Canadian election campaign showed, any suggestions that Canada is becoming or could become “Americanized” is certain to sound alarm bells . . . Canadian elections continue to be opportunities for political leaders and their parties to proclaim loudly Canada’s distinctiveness and resolve to chart its own political course, independent of its great neighbour to the south (Brooks 2006, 163).

Also influential in the election and the first few years of the decade were four specific scandals which had emerged in Canada, each of which contributed to the ‘political’ motivation for further campaign finance reforms. The Royal Canadian Mounted Police (RCMP) in 1995 launched an investigation which came to be known as the Airbus Affair, in which it was alleged that Prime Minister Brian Mulroney and members of the government had accepted secret commissions in exchange for the purchase of Airbus jets by Air Canada, a crown corporation. The second erupted in the early Chrétien-led Liberal majority governments: ‘Shawinigate’ involved the prime minister’s financial holding in a golf club dating back to 1988, the sale of his shares at an inflated price and Chrétien’s personal intervention, while prime minister, on behalf of the purchaser with the president of a major bank to secure financing to buy out Chrétien’s share. The third scandal, which became
known as the HRDC affair, involved the inability of the responsible minister to account for approximately one billion dollars in public money. Although Good (2007) demonstrates that there was no patronage or malfeasance, the case raised public ire and suspicion regarding the use of tax dollars.

Of even greater influence on subsequent events was a program begun by the Liberal Party in 1996 and run until either 2000 (when it was officially suspended) or 2004 (when an Auditor-General’s report was published). The Liberal government, under Chrétien’s leadership, paid out several million dollars in government contracts to Quebec-based advertising firms, the most prominent of which was Groupaction. These agencies employed Liberal Party employees or fundraisers on their payroll but did little or no work on the ‘contracts’ awarded by the federal government. In turn, Groupaction and its president, Jean Brault ‘donated’ significant sums back to “the ruling [Liberal] party without being identified as the source” (MacIvor 2005, 37). Thus employees of Groupaction made donations to the Liberal Party and were then reimbursed for the donation from company funds (MacIvor 2005, 38), in clear violation of Canadian campaign finance law in place since 1974. In fact, the Auditor-General found that up to $100 million of the $250 million in the ‘advertising’ contracts awarded to Quebec firms could not be substantiated. The scale of this scandal led to the firing of the then-responsible minister, Alfonso Gagliano, the firings of senior civil servants, charges and convictions of fraud. Even before the Auditor-General’s 2004 report, however, concerns about bid-rigging had been raised by a senior civil servant and an internal Ministry of Public Works audit had identified irregularities in the awarding of contracts. Perhaps most damaging however was the allegation by a whistle-blower that the Prime Minister’s Office had been directly involved with the illegal and unethical practices for an extended period of time.

‘Ethics in government’ became a theme for Prime Minister Chrétien who in May, 2002 announced the launch of an Eight Point Action Plan on ethics; one month later he reiterated his government’s intention; and in September 2002 placed ethics reform in his Speech from the Throne at the opening of the second session of the 37th Parliament (Library of Parliament 2003, 1). He is also on record as having stated in 2002 that, “A prime minister has a unique duty to preserve the integrity of the office. It is not about power. It is about

However, even the wide-ranging nature of C-24 was unable to staunch the blood flowing as a result of the Auditor-General’s report, which was published February 10, 2004. In it, the Auditor-General quantified the extent of the third and most significant scandal in Prime Minister Chrétien’s long-running Liberal majority government. The sponsorship scandal may be seen as the decade-shaping event in Canadian domestic politics and in campaign finance more specifically. It would be difficult to overstate the impact of the sponsorship scandal: the scandal highlighted the interweaving of campaign finance issues, public sector professionalism, ethics and trust factors, all ‘hot’ topics in the discourse of governance that had emerged during the previous two decades. It may have triggered the 2004 federal election. It also cast a long shadow on Prime Minister Chrétien’s personal reputation, renewed long-existing suspicions of general impropriety in Quebec politics and significantly exacerbated tensions within the Liberal Party. Chrétien’s push for Bill C-24 was, for example, termed “as dumb as a bag of hammers” by Stephen LeDrew, the president of the Liberal Party (Young 2004, 8). Although a power feud between Prime Minister Chrétien and Finance Minister Paul Martin, the heir-apparent of the Liberal party, had become evident in the 1990s and then had become more prominent following the 2000 election, the sponsorship scandal and Bill C-24 induced perhaps more acrimony within the Liberal Party than had ever occurred previously.

The motivation of Prime Minister Chrétien in introducing Bill C-24 and the content of the legislation itself came into question: was it public-spirited concern or was it self-interest? It is important to address these questions as part of policy research on political finance since they speak to the issue of how parties respond to reforms. As Duverger several decades ago argued, the internal organizational structure and culture of a political party ‘matters’ and it particularly ‘matters’ as political parties become increasingly regulated and may in fact be the overriding factor predicting their response to reforms (1964, 104).
Several of those interviewed vigorously addressed the question “Why?” Most argued that Prime Minister Chrétien had not been known for legislative innovation. Thus, for some, Bill C-24 represented an institutional legacy for Chrétien himself and as a means to distance both himself and the Liberal Party from what would be near-certain condemnation when more details of the sponsorship scandal emerged. Katz, in our interview, offered the most colourful description of the decision to proceed with Bill C-24:

I think with regard to the Liberals, the question is in part, “Did they shoot themselves in the foot because otherwise the bullet was going to hit rather higher?” . . . Technically the scandal hadn’t hit the papers but you can’t imagine that the Liberals didn’t know it was coming.

Addressing ‘campaign finance’ as an issue could also be construed as Chrétien’s way of addressing the ‘democratic deficit,’ a summary term capturing public cynicism about politics, falling voter turnout and a host of other factors indicating voter disengagement in the mature democracies. As one interviewee stated,

Chrétien brought in serious, serious campaign finance reform to address the negative publicity around the [Liberal] Party. He also wanted the party of perceived cleanliness, the Conservative Party, to support those measures. So, he brought in measures that were largely supported by the then Alliance Party.

Robson, in our interview, suggested that Chrétien’s purpose was to remove campaign finance as an election issue. As Young (2005, 14) suggests, the new provisions and amendments of Bill C-24 as “part of the government’s ‘ethics package’ . . . were presumably intended as a pre-emptive reform that would subsequently allow the government to argue that it had acted decisively to prevent the kinds of unsavoury practices that have since been revealed at the Gomery Inquiry.” Robson cited the example of Enoch Powell in the U.K. who defended a failed housing policy, as follows: “You misunderstand the purpose of the Act. The purpose of the Act was to remove housing as an election issue.”

Some interviewees argued that Chrétien wanted to purge specifically the Quebec wing of the Liberal Party from its too-close, clientelist relationships with business interests and rid it of shady fund-raising practices, thereby strengthening the Liberal position in Quebec against the BQ. Not least, however, many of those interviewed argued that in squeezing corporate donations, Chrétien would also handicap Paul Martin’s campaign to
become his successor as leader of the Liberal Party. In Senator Smith’s words, this was not the primary motivation but would have been “icing on the cake” for Chrétien. Denis supported this view, arguing that the fact Chrétien had not introduced the legislation until his last day in office suggested that ‘punishment’ to Paul Martin’s campaign was perhaps the most significant. Docherty concurred, noting that “Chrétien almost had to call an election to get his own members to pass the bill,” while Jansen observed that “from all accounts, C-24 was largely dreamed up by Chrétien and the people around him.” Several respondents also addressed why the vote-based subsidy was set at the level chosen. Conacher and others who commented, speculated that either the Liberal Party or the bureaucracy quantified the party’s dependence on corporate donations and then tried to calculate the subsidy accordingly.

Docherty and Katz both argued that party finance was a reasonably easy ‘fix’ to address the democratic deficit—or—for Chrétien and the Liberal Party to be able to claim they had addressed it. Katz for example stated that,

> It just seems easier to fix problems by changing institutions, than by changing the underlying causes and that is not just party reform, but electoral reform, finance reform . . . In the legal sphere, it’s easier to pass a law than it is to change culture or behaviour.

To summarize, evidence points to the fact that the 2003-2004 legislation was not undertaken for ‘public interest’ motivations. Faulty reasons may nevertheless lead to ‘good outcomes.’ As Thorburn argued, it is therefore necessary to turn away from motivations to evaluate the consequences—either intended or ‘by-products’ as he termed them. This will be done in Chapters 7 and 8.

2003: Bill C-24 *Act to Amend the Canada Elections Act and the Income Tax Act (Political Financing)*

Despite the complexity of the bill, the bill nevertheless was approved speedily by the House of Commons and the Senate, received Royal Assent on June 19, 2003 and came into force January 1, 2004. Even in view of the overhaul of election finance of Bill C-2 in 2000, Bill C-24 was termed “the most significant reform to Canada’s electoral and campaign finance laws” since 1974 (Library of Parliament 2003, 1).
Bill C-24 was much more comprehensive in scope than earlier measures and also represented an attempt to merge concerns about party finance and ethics in the public service, precisely the issues at stake in the sponsorship scandal. Prior to 2003, reforms and policies regarding lobbying of government personnel, conflicts of interest and other ethical matters for the civil service had had their own trajectory. The ostensible purposes of Bill C-24 were in fact similar to those of earlier pieces of legislation. At the most general level, the intent was to “reinvigorate the political system,” address “perceptions of undue influence and alleged scandals,” “restore public confidence in the electoral system and the democratic process” and “enhance fairness and transparency”(Library of Parliament 2003, 1; 11). At the other extreme, the bill has been deemed as “highly complex” and “very technical” (Library of Parliament 2003, 3).

To place Bill C-24 in a theoretical context, campaign finance rules can be seen as controlling the supply-side of finance—contributions, subsidies and reimbursements—or the demand side of finance—controls on funds required by the party, the candidate and/or the electoral district association and the provision of ‘free’ or tax-subsidized advertising minutes. Certain regulations may be considered as neutral, vis-à-vis money, but non-neutral with regard to concerns surrounding issues of privacy and freedom of expression. Earlier iterations of campaign finance rules in Canada—primarily those rooted in the 1974 legislation—contained limited disclosure (of spending but not contributions) but primarily sought to limit the demand side through limits on registered party and candidate spending and though the provision of a guaranteed number of ‘free’ or tax-subsidized minutes of television broadcasting and price control of the cost of additional advertising minutes for the national parties but not for individual candidates or the electoral district associations of each party. Control over access to television was possible primarily because there existed only two nation-wide television networks at the time: the Canadian Broadcasting Corporation (CBC), a crown corporation, and CTV, a privately-owned business. The 1974 legislation was supply-side regulation only in two provisions: the introduction of income tax credits for political contributions, as a means to “encourage greater public involvement in election and party financing, by providing an incentive for individuals to contribute to the political process” (Elections Canada 2003, 1) and post-election reimbursements to qualifying parties and candidates.
By contrast, Bill C-24 was clearly aimed at altering the supply of money to the parties and candidates. Absolute ceilings on contributions were perhaps the most dramatic feature. The intention was that, for the most part, parties and candidates would henceforth be funded almost exclusively by individuals. Individuals were prohibited from donating more than C$10,000 annually (in election and non-election years) to any combination of the party, EDA, candidates or nomination contestants. Accompanying this measure was a more generous tax credit: instead of a tax credit of 75 per cent on $200, it would be a credit of 75 per cent on $400 with a maximum credit of $650. However, no tax credit applied to donations of more than $1250. By contrast, corporations and trade unions were prohibited from donating to the central party or to leadership candidates at all and could donate no more than $1000 annually to a combination of EDAs, candidates or nomination contestants.

In order to compensate for the loss of corporate and union donations, Bill C-24 also introduced quarterly allowances to registered parties, a further supply-side feature. Registered parties that received either two per cent of the national vote or five per cent in the EDAs where candidates had been run would receive a remittance based on $1.50 per vote per year (37.5 cents per quarter), inflation adjusted annually. Reimbursement of election expenses to parties rose from 22.5 per cent to 50 per cent (the same as for candidates) and the definition of ‘election expenses’ was expanded to include “election surveys or other surveys or research during an election period.” Concomitant with the inclusion of survey expenses, the spending limit for parties rose from 62 cents per elector to 70 cents per elector.

Provisions of Bill C-24 also reached down into EDA activities. The local associations of political parties in Canada have historically been recognized for their independence and vitality, particularly in candidate-selection contests which had heretofore been free of federal regulation, although there was, at the time, some regulation of EDA activities in seven provinces (Elections Canada 2003, 3). Pursuant to Bill C-24, however, EDAs would need to be registered in order to accept contributions, to file annual returns of contributions and expenses (in all years, not just election years), and to report transfers to or from the central party or other candidates.
Further, Bill C-24 also sought to regulate a significantly broader range of activities at both the national and local levels and this can be seen in the titles of the 1974 and 2003 acts. The 1974 legislation was expressly titled “Election Expenses Act” whereas the short-hand name of the 2003 legislation was “Political Financing.” Thus, at the local level, spending to earn the nomination in an EDA, which had never before been regulated, was now set at a maximum of 50 per cent of amount spent by the candidate in the previous general election. As well, candidates spending more than $500 in nomination campaigns would need to report contributions and expenses within a specified period following the contest. At the national level, party leadership contests had not previously been regulated but candidates would now be required to submit an initial report at the time of registering as a leadership candidate with further reporting required throughout the leadership campaign and following.

Bill C-24 strengthened enforcement provisions through stiff penalties, up to and including prison terms. Accountability of the official agent of each EDA is the centrepiece of this aspect of political finance. Each candidate must appoint an official agent to be responsible for finance and administration of the campaign and this is in addition to the official agent for the party, who has an ongoing function throughout the election cycle, not merely the campaign periods (Elections Canada 2008, 3). The penalty for inadvertent violation of the Act is a fine of $1000 and/or three months in prison; the penalty for the agent who “knowingly conceals” improper transactions is up to $5000 and/or five years in prison; the penalty for the party involved is a fine of up to $25000 and possible deregistration and liquidation (MacIvor 2005, 36). Facets of the bill can also be seen as direct responses to the Supreme Court ruling in Figueroa and as more detailed implementation of the Lortie Commission’s recommendations—even going beyond such recommendations—to control election spending by both parties and candidates.

Aucoin argued in 2005 that “At present there is no major challenge to the regime, even as newly amended.” However, he nevertheless cautioned that “current public attitudes . . . do not bode well for public support of the public funding provisions of the regime, even though these provisions clearly diminish the prospects of undue influence in the political system” (Aucoin 2005, 8; italics added). Events of 2006 would upset the forecast of ‘no major challenge.’ But, as Harold Wilson once stated, “A week is a long time in politics.”
The Election of 2004

Paul Martin won the leadership of the Liberal party in November 2003 and took office as the prime minister at that time. In January 2004, Bill C-24 or the Act to Amend the Canada Elections Act and the Income Tax Act (Political Financing) came into effect and the damning Auditor-General’s report was released. Prime Minister Paul Martin in February 2004 announced the formation of a commission of inquiry into the sponsorship affair under the leadership of Justice Gomery. Despite the ostensibly arms-length nature of the commission, the Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission) was accused of both partisanship and of playing into the hands of Paul Martin as a tool to rid the party of pro-Chrétien activists. Although public hearings did not begin until the fall of 2004, the results of a 2002 inquiry were publicized in April 2004 and the Royal Canadian Mounted Police arrested two key figures, Jean Breault of Groupaction and Charles Guite, a senior civil servant, in early May 2004.

Despite the Liberal majority in the House of Commons, Prime Minister Martin on May 24, 2004, chose to call an election for June 28. It is widely presumed that this call represented an attempt to distance Martin from the actions of his predecessor and to re-establish a clear mandate for the Liberal Party. However, the Liberals won only 135 of 308 seats in the House of Commons, forming the first Liberal minority government since 1974 and the first minority government of any type in almost 25 years. Even aside from the overhang of the scandal, the 2004 election stands as a turning point. It was the first election in which the left-of-centre Liberal party was confronted by a united right-of-centre party in more than a decade and it was the first election to be contested under the new rules. It was unsurprising that the sponsorship scandal was writ large throughout the campaign. However, the enormous influence of the scandal also makes it difficult to evaluate patterns in the financing of the parties and candidates. As Young (2004, 8) suggests, the “calling of an election so soon after the new funding arrangements came into place has made it difficult to discern the impact of the new regulations [but] there are already indications that [they] too will have profound implications for the conduct of elections and the nature of party organization in Canada.”
The minority Liberal government fell to a non-confidence vote introduced by the Conservative opposition on November 28, 2005. The Conservative Party of Canada made political finance one of the major planks of its platform, framing the issue as accountability. Despite the fact that the sponsorship scandal continued to dog the Liberal Party of Canada, neither its platform, nor that of the separatist Bloc Québécois addressed political finance. The New Democratic Party and the Green Party proposed specific reforms to leadership contests and the prohibition of all union and corporate contributions, respectively (Library of Parliament 2006, 8). The election was held January 23, 2006 and introduced a Conservative minority government led by Prime Minister Stephen Harper. The Gomery Commission tabled its final report on February 1, 2006, exonerating both former Prime Minister Chrétien and former Prime Minister Martin.

2006: Bill C-2 Act to Amend the Canada Elections Act and the Income Tax Act (Federal Accountability Act)

Despite the “sweeping changes” of Bill C-24 (Eagles and Coletto 2008, 1) in 2003-2004, 2006 heralded still more. The Conservative minority government introduced Bill C-2, an Act to Amend the Canada Elections Act & the Income Tax Act (Federal Accountability Act) (FAA) in the House of Commons on April 11, 2006, three months after the election. The overt intent of the legislation was to make good on the Conservative Party platform of accountability. There was, however, scepticism—just as there had been with Prime Minister Chrétien’s introduction of Bill C-24 in 2003—whether there existed other reasons for the Harper-led Conservative Party. It was well known that the Liberals had been unable, whether for reasons of intra-party quarrelling or other reasons, to respond to the challenge of replacing its corporate donor base that had been decimated by 2004. Thus there was a suspicion that the Conservative Party may have been acting ultimately in its own best interest by completely eliminating corporate donations, thereby strategically disabling the Liberal Party over the long-term.

There was significant variance in the responses of those interviewed regarding the reasoning behind the FAA. Respondents identifying themselves as Conservative adherents saw the 2006 act as a fulfillment of a major plank in the policy platform of the Conservative Party. The party and its candidates had focussed on integrity in government as a major plank
in its platform; the 2006 initiatives were consistent with the party’s ideology of less government and were consistent with the party’s Reform Party roots which had long advocated and practiced financing through small donations from individuals and which largely eschewed large corporate donations. Conservative adherents did, however, directly acknowledge that it was strategically significant as well for the party to prohibit contributions by business and labour since the Conservatives had at the time a considerable advantage in terms of a base of small donors. By contrast, self-identified Liberal respondents described the 2006 act in colourful language, beginning with ‘disgraceful.’ Many referred to the relatively short lead-in time before the act became law; Senator Cools (who has no current party affiliation) highlighted that both the 2004 and 2006 changes “came before the House as done deals and I would have loved to have had more involvement in seeing how they evolved . . . because maybe a better way could have been found to deliver this.”

To summarize, both the literature and the respondents confirmed that the Political Financing Act of 2004 was not primarily about correcting the “iniquities of politicians” (Heard 1960, 1) in general. Instead, the act represents an example of what Heard asserted in 1960: “Certainly some of the legislation could only have as its function the symbolic expiation of sin,” which in 2004 was that of Chrétien and the Liberal party. By contrast, respondents were divided in their views on the 2006 legislation. Some suggested that there was partisan motivation on the part of the Conservative Party in introducing both new terms for leadership campaigns and prohibition of union and corporate donations at the same time, while others argued that limits and disclosure leadership financing had in essence been long identified as a ‘policy problem’ in the literature. Overall, however, it is safe to conclude that at the very least, partisanship, either intra-party or inter-party was a significant factor in both sets of reforms.

Provisions of the Federal Accountability Act (FAA)

The FAA was as wide-ranging as the Political Financing Act of 2003-2004. Just as the Senate had played a major role in shaping of the 2004 legislation, it also held lengthy hearings (14 days) and introduced significant amendments, only some of which were accepted by the House of Commons in its 8 days of debate.
The 2006 FAA represents an historic attempt to bring together in one package of legislation the challenges facing the integrity of governance as a whole. Its scope is breathtaking. It introduced new acts and new offices, specifically, a *Conflict of Interest Act*; a Director of Public Prosecutions;\(^9\) a Public Appointments Commission; a Commissioner of Lobbying; and a Procurement Ombudsman. Bill C-2 introduced amendments to the following acts: *Access to Information Act; Public Servants Disclosure Protection Act; Privacy Act; Auditor General Act; Department of Public Works and Government Services Act;* the *Financial Administration Act*. Although each of these is significant in its own right, none will be addressed further because the focus of this research is political money.

The act also significantly amended the *Lobbyists Registration Act (LRA)*,\(^10\) renaming it the *Lobbying Act (LA)* to reflect broader functions and in order to implement numerous recommendations of the Gomery Commission. The primary change was one of purpose: whereas the LRA sought to *monitor* the activities of lobbyists via registration the new *Lobbying Act* seeks to *regulate* such activities; so numerous were the implementation issues that the act did not come into force until July 2, 2008. Amendments include such provisions as the prohibition of contingency fees for lobbyists; a substantially expanded list of what are termed “Designated Public Office Holders” (DPOH) in addition to the earlier list of “Public Office Holders” (POH); the requirement of an *initial* return following a communication (telephone calls, meetings, emails, and so on; a *monthly* return by registered lobbyists if there has occurred “prescribed communications” with a DPOH; a report by a consulting lobbyist if he/she arranges a meeting and is paid for that function; lastly, a five-year prohibition on lobbying activities after holding a DPOH position in government. Further, the *Lobbying Act* introduced the Officer of Parliament position of Commissioner of Lobbying (replacing the earlier Registrar of Lobbying) who has the power to maintain the lobbyist registration, educate the public on lobbying and investigate violations under both the act and the

\(^9\) Prosecutions under the Criminal Code of Canada would continue to be the jurisdiction of the provinces; the Director of Public Prosecutions (DPP) would prosecute federal statutes, for example the *Financial Administration Act* (Library of Parliament 2006, 39). Bill C-2 also extends the time limit for the DPP to initiate a prosecution from the time at which the Chief Electoral Officer became aware of a possible violation of finance rules.

\(^10\) For an excellent summary and analysis of the *LRA*, see Rush (1994).
Lobbyists’ Code of Conduct, which is not a statute, but is complementary to the act (Office of the Commissioner of Lobbying of Canada, 2011). Again, congruent with the new purpose of the amendments—regulation rather than monitoring—there are stiff consequences for violation of the act. Failure to file a return or knowingly submitting a false return carries a fine of up to $200,000 and/or imprisonment for up to two years following conviction, while contravention of any other part of the LA or its regulations is punishable with a fine of up to $50,000.

Amendments to the Canada Elections Act with regard to political financing and enforcement were wide-ranging and are described and analyzed in detail as follows. Three amendments to the Parliament of Canada Act regulate ‘benefits from certain trusts’ (clause 99) with the intent of strictly limiting the use of trust funds “not established by a relative” or “family-established trusts” for “nomination, leadership or election campaign purposes” (Library of Parliament 2006, 17) of a Member of Parliament. The Conflict of Interest and Ethics Commissioner has the power to terminate a trust and/or to prohibit fund dispersal from a trust for the purposes of nomination, candidacy or electoral campaign. The more general regulation of trust funds also featured prominently in Bill C-2. A trust fund is understood to be a source of funds not stemming from current contributions, allowances or reimbursements and had been identified by Stanbury (1993), for example, as representing a threat to the campaign finance regime. In fact, it is unclear that trust funds have used in recent times or outside Quebec. Stanbury (1993, 102) states that Liberal Prime Ministers Laurier, King, Pearson and St. Laurent benefited from trust funds created by anonymous donors; a $300,000 fund for a Quebec-based judge, Claude Wagner, in 1972 was created as an inducement for him to run for the Conservatives; and a trust fund established for Liberal Party leader John Turner in 1984 refunded money soon after its establishment. The Conservatives in the 2006 campaigned on this issue because “political financing through these vehicles lacked transparency and amounted to a hidden source of funding that could be used to avoid the rules governing political financing” (Library of Parliament 2006, 20). However, regulating trust funds may have been merely a ‘straw man’ or in fact an indirect way of further regulating undue practices in one specific province. In fact, many of those interviewed argued that the only trust fund of which they were aware was that of Ianno, an Ontario Liberal Party MP.
Aside from the limitations on Members of Parliament, the act also regulated the flow of goods and services and money among “political entities” (Library of Parliament 2006, 21) that is, registered parties, unregistered and registered EDAs and candidates and others. Permitted transfers will be discussed in Chapter 7. Restrictions on the supply of money can be seen in new, lowered contribution limits, where a contribution is defined as both ‘monetary’ and ‘non-monetary.’ Table 4.2 indicates the dramatic shift from no limits on size of contributions prior to 2004, to relatively low limits introduced by the 2004 legislation, to prohibition on all but individual donations in 2006.

Bill C-2 (2006) also addresses the issues of loans to political entities. Unpaid loans (over six months following the writ) had been regulated by the 2000 legislation but not loans in general. Bill C-2 permits loans to parties, candidates, EDAs, nomination and leadership contests but are subject to reporting requirements. Loans must be reported in the financial returns of all political entities but are not considered as contributions unless they remain unpaid after a specified time, per Table 4.3. Loan repayment would become a significant issue for Liberal Party leadership candidates following the party’s leadership race in 2006.

The Chief Electoral Officer may grant one extension of the loan repayment period, if the officer considers that there are reasonable grounds for extension. If an unpaid loans remain at the end of the extension, application can be made to a federal court judge for a successive extension. Failure to pay by a nomination contestant, leadership contestant or candidate is considered an offence. Failure to pay by a party or EDA is not an offence.

The 2006 FAA came into force at staggered dates throughout 2007 and 2008 and thus began to affect the ability of all the encompassed ‘political entities’ to build their financial coffers in anticipation of an election. The act also introduced fixed dates for elections, which despite the fact that certain provinces had already adopted this policy, was still an innovation at the federal level for a parliamentary democracy such as Canada’s. In Westminster democracies, the governing party must hold the confidence of the House of Commons and the fixed dates may be guaranteed only by a party with a majority of seats. Given that the Conservatives held a minority, all parties had to be on guard lest the government fall to a non-confidence vote.
The Liberal Party, in 2006, was the first to hold a leadership convention under the new rules, to wit, lowered contribution limits to candidates but still permitting loans. Of particular consequence in retrospect was that there were nine contenders and the party ran its convention in its usual, congress-style way, which was very costly. Following the convention, there were massive, outstanding loans. Flanagan suggested that Liberal candidates had exploited the loan opportunity, some of them “recklessly. Stéphane Dion borrowed $750,000 . . . without having any idea of how he would pay it back . . . In the case of Dion, he borrowed $350,000 from one person.” Senator Paul Massicotte attributed the large debts to the emotional hype of a leadership campaign which leads candidates to overspend. Others presumed that the Conservative Party had deliberately introduced this policy in order to create chaos in the Liberal Party, expecting that it would not alter its leadership process even with the new rules in place. Many, however—even those affiliated with the Liberal Party—contended that the candidate debts and the Liberal Party’s decision to proceed with an old-style leadership contest despite the new rules were simply more evidence of the party’s disorganization and overall inability to adjust to a changing environment. As Young noted, “I have lost track of how many national directors there have been in the Liberal Party.”

These and other conflicts centred on the new regulations of 2004 and 2006 as well as party practices in the elections of these years, will be examined in Chapters 6 and 7.

**Political Events of 2008-2010**

Two further events in 2008 further substantiate the significance of the consequential nature of campaign finance reforms since 2000. Prime Minister Harper requested and was granted a dissolution of Parliament by the Governor General, who called an election for October 14, 2008, despite the fact that an amendment to the *Canada Elections Act* had stated that the next election would not occur until October 19, 2009. This action was highly contentious and cannot be addressed in its entirety here; the 2009 decision of the Federal Court in *Conacher v. Canada (Prime Minister)* summarizes the issues. What is significant for the purposes of my research is that, as noted above, the Liberal Party remained in significant debt due to the fall-off in corporate donations and the decline in contributions by even its top donor group. As an *Ottawa Citizen* (2008) article noted,
Whatever the *Federal Accountability Act* did for ethics in election fundraising, the political effect was clear: it eliminated the fundraising advantage the Liberals had long enjoyed with their big donors and gave the Tories, with their populist approach to fundraising, a clear advantage heading into this year’s election (McGregor, “Turning the Screw,” 2008).

Fundraising in the post-2006 environment was critical for all parties. The quarterly allowances for parties introduced in 2003 played a crucial role: although the Green Party had won no seats in either the 2004 or the 2006 election, it collected almost C$2 million in allowances due to its share of the popular vote in the 2006 election. This enabled the Greens to mount a nation-wide campaign. Similarly, the Liberal Party survived principally because of allowances, since it had seen its average donation drop approximately 30 per cent from 2004 to 2007, contrasted to slight declines of one to two per cent for the Conservatives, NDP, Greens and BQ. Further analysis of party finance will follow in subsequent chapters. Sayers and Young (2004, 3) early noted that,

> The new rules may well have helped revive the fortunes of the separatist BQ. It received virtually no corporate or union financing in the past and lost nothing under the new rules. Deeply divided and in poor financial shape in the year leading up to the election, the enormous increase in its funding was all directed at campaigning in Quebec, allowing it to take full advantage of the Liberal government’s problems in that province stemming from a funding scandal.

Also controversial in the 2008 election was the inclusion of Green Party leader Elizabeth May in the televised party leader debate. Inclusion is not statute-based (as is the allocation of free and reduced-cost broadcast time), but rather is convention-based, with the major television networks making a final decision. Inclusion in the debates, prior to the 2008 election, was predicated on a party having a minimum of one seat in the House of Commons. Although May had pushed for inclusion in the televised debates in previous elections, based on her party’s vote share (rather than share of seats), she had not been part of the event. May persuaded a Liberal MP to change party allegiance and represent the Greens in August of 2008. May was therefore included in the debate.

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Following the election, which brought another Conservative minority government, Prime Minister Harper delivered an economic ‘update’ to the Canadian House of Commons in November 2008. In it, he stated the government’s intention to reduce the amount of the subsidy (paid quarterly) to political parties in its upcoming budget. Whether Mr. Harper included this as a philosophical issue, because he was on record as having opposed the subsidies, whether it was a politically strategic move to cripple the finances of the other parties, whether it was simply to ‘flush out’ suspected strategic manoeuvrings by the Liberal and NDP parties or whether it was indeed part of the overall package of cutting spending is not known. As well, a former PMO staffer noted that just as Chrétien had used the 2003-2004 legislation to send a signal to voters that scandals were a thing of the past for the Liberal Party, Harper used the 2008 economic statement to send a signal to voters that “politics is a game for individuals and citizens, not for corporate interests and not for union interests and that seemed to go in that general scheme of the Federal Accountability Act.” As Lortie, the former Commission chair observed, the 2008 Conservative budget initiative to end subsidies “was the only change . . . that really got the juices flowing” of the contending parties in Parliament. One significant note is that no respondent suggested that either the 2006 or 2008 measures had been introduced because of infighting within the Conservative Party. However, this feature (in combination with a move to change unemployment insurance) unleashed a firestorm in the House of Commons.

Given the clear damage that the Liberal Party has sustained over the decade in terms of either its finances or its seat-share in Parliament, respondents were asked how the Liberal Party might respond. Senator Smith suggested a private member’s bill—always less conspicuous than one introduced by the government and indeed the only one available to the non-governing party—could be used. This strategy was in fact adopted with the introduction of Bill S-236 in the 40th Parliament by Dennis Dawson, a Liberal Senator. Bill S-236 would have extended the definition of "election expenses" to include advertising expenses in the three-month period prior to the writ being dropped. Dawson argued that this was necessary under a regime of fixed election dates because the incumbent party had potentially more

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12 “Public funding of political parties is progressive,” Vancouver Sun, December 12, 2008.
resources at its disposal. As he stated, “Now that all parties know, at least in theory, when the next election will take place, they can begin campaigning months ahead. Therefore, spending limits for the election period are irrelevant if there are no limits placed on the parties in the weeks before the election is called” (Canada, Senate Debates, May 28, 2009). The bill however died on the Order Paper at the end of the session.

A second initiative which may interact with the current political finance regime is a different private member’s bill, Bill C-12, An Act to Amend the Constitution Act, 1867 (Democratic Representation), introduced in April, 2010 by Conservative MP Stephen Fletcher, Minister of State for Democratic Reform. The bill seeks to establish a greater number of seats in the House of Commons for provinces whose population has grown since the 2001 census, namely, Alberta, British Columbia and Ontario. However, in conjunction with rules governing the vote-based subsidy, it could easily mean a reshifting of the subsidy among the existing parties or a greater impetus for regional parties. This will be discussed further in Chapter 7.

Shadow Cases: The U.S. and the U.K.

In the U.S. the late 1990s witnessed a number of congressional committee hearings on the subject of campaign finance. Bills were brought to the floor but not passed. However, a swelling tide of pressure, in part due to the Enron scandal, led to the passage of the Bipartisan Campaign Reform Act (BCRA) of 2002. La Raja (2008, 4) and McGerr (1986) argue that campaign finance regulation had, over time, emerged as a means of “transforming democratic politics from partisan expressions of loyalty into a more individualized, rational, ‘educational,’ and nonpartisan form of political participation.” As La Raja documents, the Democratic Party, just prior to passage of the BCRA, had three motives for pushing for reform. The first was internal: the existence of a powerful faction within the party that vociferously advocated for greater regulation—activists who were “professionals and ‘idea elites.’” Second was the fact that support for major campaign finance reform among donors to the Democratic party moved from 54 per cent in 2000 to 63 per cent in 2002 (La Raja 2008, 109). Third, the Democrats favoured reform for partisan reasons since the “prohibitionist approach to reform was entirely consistent with its electoral strengths.” The Democratic Party had long before ‘outsourced’ election activity (Heard 1960) to unions and
advocacy groups; and “sectional, ethnic, and ideological divisions in the party [had] traditionally encouraged congressional candidates to campaign independently from the party, certainly more so than Republicans. While the soft money ban would take away party funds, it would not prevent the wealthy from donating millions to non-party committees” (La Raja 2008, 111). By contrast, a majority of Republicans did not favour the BCRA because the Republican Party had historically been more centralized than the Democratic and its party structure enabled it to raise money effectively through the party. Senator McCain, a Republican, co-sponsored the bill, possibly as an attempt to clear his own name which had been implicated in the Keating Five scandal in 1988, in which a large soft money donor had sought regulatory concessions, and possibly as a way to differentiate himself in his bid for the presidency (La Raja 2008, 79; Dwyre and Farrar-Myers 2001, 36). Despite the bipartisan label, the congressional vote for the BCRA was on party lines.

La Raja pays particular attention to linkages between the BCRA and public opinion. He notes first, that “Americans have overwhelmingly favoured new laws to restrict political donations, with a clear majority supporting ‘campaign finance reform’ when asked in the abstract” (La Raja 2008, 114). However, based on Gallup polls covering 1998-2007, La Raja (2008, 114) reports that of those surveyed, less than one per cent ranked campaign finance as among the top two policy issues to be addressed by the President or Congress. Even in view of the Enron scandal in 2002, support for campaign finance laws increased from 65 per cent just prior to the scandal to 72 percent and yet “support for restricting soft money declined slightly from 76 per cent favouring limits . . . to 69 per cent after the scandal” (LaRaja 2008, 114). He notes other conflicting data drawn from public opinion surveys. It is questionable, based on his and others’ findings in the U.S., whether campaign finance reforms do in fact positively affect trust in institutions. As Rodney Smith writes, however:

Unfortunately the word reform has become a public-relations tool. It has become a convenient label that can be slapped on any proposal in order to claim the moral high ground. Too often reform is used as a packaging device: reform is good; all opponents of reform are bad. When the press repeatedly frames the issue of campaign finance in terms of ‘reform,’ it shifts the argument away from substance and toward symbolism. This tactic suppresses serious debate (Smith 2006, 176).
Rinner (2010, 2) argues that the 2008 presidential election challenged reform views of campaign finance in that,

record amounts of money flowed into campaign war chests but . . . [these] did not deter even small donations; citizens with little previous connection to democratic politics offered small money donations in record amounts . . . ; political money, rather than hindering or discouraging participation . . . instead allowed citizens to express their support and association in small but meaningful quantities.

In the U.K.,13 the Political Parties, Elections and Referendums Act (PPERA) of 2000 established the first comprehensive regulatory regime at the national level for political parties. Throughout the previous century, candidate spending had been strictly controlled but political parties per se had not been required to disclose or report sources of income or expenditure; there was no defined pre-writ vs. writ period for an election campaign at the national level; parties differed in their internal financial practices. The 2000 act was the culmination of Conservative and Labour initiatives to investigate a number of scandals including foreign donations to the Conservative party, cash offered to MPs for the posing of sensitive questions in Question Time and other allegations of sleaze (Grant 2005, 84). The Committee on Standards in Public Life, first under Lord Nolan during the Conservative government and then under Lord Neill following the election of a Labour government in 1997, examined specific scandals and also made recommendations. The PPERA of 2000 was the enactment of 98 of 100 recommendations of the Neill report. Key items in the PPERA were: the creation of The Electoral Commission (UKEC); quarterly reporting of donations and expenditures in non-election periods and weekly during elections; disclosure of contributions over £5,000 nationally or £1,000 locally; party spending at the national level capped during a defined election period as 365 days prior to polling day. (An exception was made for the 2001 election since the legislation did not come into force until four months before the election.) Some recommendations were left unaddressed: while the Neill Committee had recommended ceilings on contributions and tax deductibility for certain levels of political contributions, neither were included in the PPERA. Grant attributes the

13 Work by Grant (2005) and Fisher (2009) is foundational to this discussion.
Labour government’s refusal to accept tax deductibility to its fear that such a provision would “help its opponents far more than itself” (Grant 2005, 84).

Despite this vigorous policy of 2000, campaign finance became, if possible, an even more dynamic field in the U.K. in the ensuing decade. As Fisher (2009, 10) notes, increased disclosure mandated by the PPERA of 2000 “actually contributed to public disquiet about party finance.” The UKEC examined in detail tax-based funding of parties in 2003. Successive reports by the UKEC, hearings by the Constitutional Affairs Select Committee (CASC), the Committee on Standards in Public Life (CSPL) chaired by Hayden Phillips (appointed by Labour), ‘green’ and ‘white’ policy papers and public consultations constituted some of the government initiatives. Research by prominent non-governmental organizations such as the Joseph Rowntree Charitable Trust, which funds civic projects, and the Jury Team, a group dedicated to institutional transparency and accessibility to elections, led to the Power report (2006) and the Jury Report (2009), respectively. The Council of Europe, Group of States against Corruption published evaluations of UK party finance (2008). All of the above contributed to both ‘problem definition’ and policy ‘options.’ As the Phillips report put it, “the public want change” and “there is an emerging consensus on the way forward if the main parties are prepared to adjust some of their preferred positions in the interest of an agreement” (Phillips 2007, 1; italics added). Partisan positions on party finance had not died: the Conservatives wanted to preserve the voluntarist nature of political parties and to preserve remaining privacy of donors while Labour favoured greater intervention and moves toward public funding. Phillips’ committee, interestingly, consulted actively with Canadian, American and Australian officials; the report specifically mentions assistance from Canada’s Chief Electoral Officer, the Executive Director of the New York City Campaign Finance Board, a FEC Commissioner and representatives from the Australian Election Commission (Phillips 2007, 6).

The 2009 Political Parties and Elections Act (PPEA) of 2009 adopted several of the recommendations, including greater powers for the Electoral Commission, increase in public funding, new penalties for non-compliance in finance reporting, among others. The issue of restoring trust in the U.K.’s political institutions and actors was of paramount importance to
parliamentarians even as they faced sharp critiques about abuse of their expenses. As well, the Phillips report stated that the goal of new election finance policy should be a

system that is—and is seen to be—fair . . . A fair system will remove the suggestion that influence is being bought and it will address the perception that victory in elections can be determined by a profligate campaign rather than by an informed judgement by the electorate of a party’s policies and competence to govern. But a fair solution needs to take account of the nature of our political parties: their history and traditions, their structure and the character of their support base . . . the guiding principle should be fairness (Phillips 2007, 2; italics added).

Just as the Lortie Commission in Canada had stressed fairness, almost two decades later, the goal of U.K. campaign finance policy has shifted in the same manner. Fisher (2009, 10) argues that the post-2000 transparency reforms were “driven of 2007 and 2008 were not ‘genuine’ scandals in that they represented ‘reporting irregularities’ rather than the ‘desire to seek personal material gain.’ The year 2010 witnessed passage of the Constitutional Reform and Governance Act, a measure addressing trust and democratic governance concerns. This act was not directed at party or campaign finance per se but rather included measures to address the MPs’ ‘expenses scandal’ that had emerged in the previous few years.

Further reasons for U.K. party finance reforms are noted by Ewing (2006), Fisher and others who document that Britain’s governing Labour Party, led by Prime Minister Tony Blair, was committed to democratic reform including possible constitutional changes and enjoyed a large parliamentary majority. A report by the Council of Europe (2008, 23) suggests that ongoing political finance reform in Britain is “triggered by concerns to consolidate the fundamental values of the present political system.” Last, Ghaleigh (2006, 45) points to challenges to the U.K. regime of campaign finance arising from the European Court of Human Rights.

Is There Evidence of Policy Learning?

Lastly, it is important to consider, in total, reasons for the campaign finance rule changes that have occurred since 2000 in all three countries. Katz best summarized the argument of many respondents: “Campaign finance reforms are always going to be driven by domestic factors.” However many went further and made specific, insightful comments
about the significance of each nation’s political culture and its particular history of election finance. From a theoretical standpoint, these respondents addressed the issues of how national political culture and institutions interact, how political institutions themselves interact (new institutionalism) and whether recent reforms have demonstrated path dependence in the choice of policy instruments.

Klingemann commented that following the fall of communism, there had been a growing inclination to “experiment with institutions.” Pinto-Duschinsky suggested something similar, that within the Council of Europe, public funding of parties had “become a norm.” Because of the U.K.’s increasing integration with the European Union and its Parliament, this has had specific effects on the U.K. Hofnung specified that, “We know what works” and in this, he subsumed spending and contribution controls as well as public funding. Pinto-Duschinsky (2002), Scarrow (2004), Hopkin (2004), Casas-Zamora (2005) and others have also documented the trend of ‘fixing’ political finance worldwide throughout the 1990s, partly because of the ‘third wave’ of democratization and the emerging field of governance studies. Respondents confirmed this also. Kennedy, a government relations consultant, argued that there were pressures emanating from business to reduce political contributions even before 2003. Numerous transnational corporations became much more reluctant to give to political parties even where it was legal to do so; there was far greater risk to their reputation to give than not to give. Hence boards and officers formed corporate policies that prohibited political contributions of any type. Specific corporate examples mentioned, by those interviewed, included Shell, Conoco, Chevron and Pepsico. Additionally, authors such as Peters and Pierre (1998) among others, document the emergence of ‘governance’ as a policy field, with governance “implying the use of a wider repertoire of instruments than might be used by a more traditional public sector” (1998, 227).

As well, Docherty has written of the ‘democratic deficit’ in Canada and in our interview commented that throughout the 1990s and into the new decade, there had occurred a rising tide of public and intellectual discourse regarding the ‘democratic deficit,’ as cited by numerous reports in the U.K., such as those published by the Power Inquiry (2006) and the Jury Team (2009). A menu of institutional reforms to address the deficit was presented and debated in academic journals and the media. In Canada, the reforms most publicized
were those of Senate reform, more widespread use of referendums, the introduction of proportional representation to replace the first-past-the-post electoral system and further, ongoing reform of the financing of political parties. However, the ‘easiest’ fix was that of campaign finance since, as Aldrich (1995) and Whitaker (1977, xxiv) have argued, parties are the most “malleable” of political institutions and are “highly adaptive” institutions.

There is little evidence that Canada has adopted or adapted policies from the U.K. Young suggested that one reason for this is that Canada had institutionalized, that is, legally recognized the existence its parties in 1970 while Britain did not do so until 2000 with the PPERA. Hence there was little in the way of formal law to observe and practice. Aucoin concurred that for the Lortie Commission, “Britain really had nothing to teach us.” Lortie also pointed to the fact that in the U.K., “access to the media was guaranteed more or less at no cost” and that it was clearly infeasible in Canada to try to mandate the national newspapers to ‘give’ pages to the political parties. As with prior rounds, Canadian policy dialogue and outcomes in 2000, 2004 and 2006 demonstrated little if any adoption of British standards or practices. However, this observation does not shed light on why the informal and unwritten practices of British institutions were not more closely observed by Canadian civil servants, Elections Canada or parliamentary committees. Former Prime Minister Paul Martin addressed this puzzle succinctly in our interview:

Let me conjecture. Most of our traditions have been inherited from the United Kingdom. They are at the root of many our actions. However, many of our influences since World War II have come from the U.S. As a result, here in Canada, we have an amalgam of the two but quite clearly the major influence has been our own experience within our own borders. All of this has carried over into the area of campaign finance.

A number of respondents argued that both the U.S. and U.K. are known for the defence of their historic political institutions—American and British exceptionalism, respectively—and hence generally do not borrow from abroad. As comparative parties scholar Katz noted ironically,

In the U.S. of course we are ideologically opposed to thinking that anybody else, anywhere in the world ever had a good idea . . . But I think [policies] like campaign regulation are going to be driven by domestic politics everywhere.
The democracy-promoting industry clearly thinks that there are somehow best practices, which we could discover [and] they ought to be adopted.

Fisher confirmed that for the most part, this was also true of the U.K.

In the American literature, there exist few comparisons with Canada or the U.K., perhaps because of the demonstration effect provided by 50 states each experimenting with its own set of campaign finance laws. It is also possible that because the U.S. is a presidential rather than a parliamentary system and because a greater part of national elections in the U.S. is legislated by individual states that there have been fewer incentives to look abroad to the British unitary system or to Canadian election and campaign finance regimes which are the domain of the national rather than provincial (or sub-national) governments. One exception to this is a study undertaken by the Organization for American States in 2005, chaired by Alexander, which explicitly compared Canadian and American campaign finance.

By contrast, the U.K. has in the past decade looked to Canada—but not to the U.S.—for ideas regarding campaign finance. The absence of adoption of American ideas in the field of campaign finance by the U.K. is remarkable in light of Rose’s observation that,

Where one looks for lessons depends on the problem at hand and the reputation that countries have in dealing with it. A country with a reputation for ‘best practice’ in a given policy area attracts visitors from abroad . . . Psychological geography is particularly important in Britain . . . British policy-makers prefer to look across the oceans to the United States, Canada, Australia or New Zealand. Notwithstanding many major institutional differences, the United States is most often the source of lessons for Britain. This is a tribute to the English-language media’s power to diffuse ideas . . . (Rose 2000, 635).

Aucoin pointed out that the 2000 U.K. campaign finance reforms are “based almost entirely on the Canadian system. They essentially took our system and adapted it . . . I mean the Brits never like to admit that they model anything on anybody, right? But it’s all there and our

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14 As of 2011, fourteen states, since 1996, have legislated “direct public financing to candidates. An additional ten states provide minimal public financing to candidates and/or political parties” (Common Cause 2007). “Clean elections” or “fair elections” are terms used to describe initiatives to introduce or enhance partial or complete tax-funded financing of candidates and elections.
references are in some of their earlier papers.” The 2007 Neill Committee looked expressly at Canadian experience in its considerations. Fisher also commented that despite the fact that the U.K. may have had some reluctance in looking to Canadian experience since, “Although Canada is a long established democracy like the U.K., it nevertheless is younger in relative terms.

The importance of historical legacy, variously referred to by respondents as the influence of institutions or the role of political culture, was prominent throughout the interviews. Culture has been defined as the transmission from one generation to the next, via teaching and imitation, of knowledge, values, and other factors that influence behaviour. Culture provides a language-based conceptual framework for encoding and interpreting the information that the senses are presenting to the brain . . . (Boyd and Richerson 1985, 2).

As North argues, what is important in analyzing institutional change—in the present case, the change in political finance rules—is “the way that the cultural filter provides continuity so that the informal solution to exchange problems in the past carries over into the present and makes those informal constraints important sources of continuity in long-run societal change” (North 1990, 37). Additionally, he writes that there is a “tension between altered formal rules and the persisting informal constraints produc[ing] outcomes that have important implications” for the way change occurs (North 1990, 45). This is substantiated by Peters and Pierre who argue that,

reform strategies are embedded in systems of norms and administrative practices and therefore reform strategies are shaped more by what already exists than by the desired model of public administration (Peters and Pierre 1998, 224).

Fisher, for example, suggested that Britain’s political culture was a significant factor in its absence of formal regulation of political parties in that U.K. institutions had historically relied relatively more on trust and less on rules. Although allowing that response to the abuse of expense allowances by U.K. parliamentarians was leading to a more rule-base approach, Fisher maintained that expense scandals were fundamentally a different issue than party funding scandals. Fisher concurred with the Neill Report, when he stated that the U.K. has
had a “culture of obeying the spirit of the law” with respect to party funding, in direct contrast to other European countries . . . The upshot of that is that certain policies flow from that . . . There’s a greater emphasis on self-regulation.” A different aspect of culture was noted by Aucoin, who stated that,

The British don’t like using the law. [Canada] has put a lot more into law . . . in part because we had a federal constitution that was written into law. But very early on, we decided not to use the prerogative power but to put the prerogative power into law. [Canadians] develop law [because] we needed it around the constitution. I think we needed it around the civil service. The British were able to do it [avoid using the law] by having a sufficiently strong culture and elitist approach to that matter.

Murphy and Jansen both concluded that “much of what was done [in 2004] was a “solution in search of a problem;” “there was no good public policy justification;” Young, for example, expressed the view that the 2004 change of lowering contribution limits from $5000 to $1000 was “unfortunate . . . [because] a $5000 donation does not buy you influence or access in any meaningful sense . . . There was no good reason for doing it. There’s no good public policy justification for it. It was purely designed for partisan advantage. And I hate to see parties meddling with these laws for those reasons.” Denis and many others argued also for a partisan interpretation, affirming Young’s view that $1000 is not going to have ‘undue’ influence. Boatright, a comparative Canada-U.S. scholar, like La Raja, argues that the 2002 BCRA was the result of “a few politicians” who identified campaign finance as a ‘problem’ and said, “See, we’re dealing with this problem.” Boatright’s perspective was that ideas of campaign finance reforms “had percolated throughout the 1990s. At least in the U.S. case, the McCain-Feingold law sort of gradually inched closer and closer to passing and then with the Enron scandal, it pushed it over the edge. It looked like Congress was doing something . . .”

Of significant importance is that only one respondent—Katz, one of the co-authors of the cartel theory—argued that the cartel-like, collusive behaviour by the parties explained Canadian campaign finance rule changes in either 2004 or 2006, while only Manfredi suggested that cartel-like behaviour may have been responsible for the 2000 changes to third-party spending. Respondents who addressed this topic stated that the policy initiative was taken by the governing Liberals and advanced without prior cross-party consultation.
Docherty, concurring with Jansen, argued that the legislation was ‘idiosyncratic’ to Chrétien as a person.

Thus, the Canadian ‘reforms’ can be interpreted as the actions of an individual politician, acting in his own personal interests in terms of legacy and reputation as well as acting on the interests of his party at the provincial level and at the federal level. This is not to say, however, that the resulting campaign finance framework was not in the public interest. For example, national legislation that would also sweep up actual problems and perception problems in the Quebec Liberal Party may be interpreted as sustaining Chrétien’s federalist view of Canada and strengthening the position of the party nationally against the sovereigntist Bloc Québécois and provincially against the Parti Québécois. Fisher suggested a similar interpretation of U.K. campaign finance reform, which has been less partisan than in Canada, arguing that parties almost take on ‘hair shirts’—to protect their reputation in a way that “just doesn’t fit with the sort of generalized notion of the big parties getting together and excluding the small ones.”

It therefore becomes legitimate to question the appropriateness and extent of the legislation. Did Canadian political finance really need the draconian features contained in Bill C-24? Was the legislation in effect a case of ‘overkill,’ and might it therefore have a perverse effect on democratic practice? Rather than offering the potential of increasing public trust and decreasing cynicism, the extensiveness of the legislation may have unintentionally extended and reinforced public perceptions of the extent of the ‘problem’ of campaign finance in Canada. Was there a “logic of appropriateness” (Olsen 2007), or a fit with existing institutions, on which the legislation was modelled? Underhill, in evaluating the work of earlier political scientists, argues that authors such as Siegfried and Lipset “... did not assume that Canadian reality fit the same frameworks that had been developed in other countries” (Underhill 1966; italics added). But had this valuable lesson been lost in the case of campaign finance? Applying the ‘logic of appropriateness’ to the public policy of campaign finance, is the Canadian case as similar to West Germany as has been assumed, by the Barbeau Committee and the Lortie Commission, for example? Conversely, have the dangers of American-style electioneering been overstated given the differing institutional and political cultures between the U.S. and Canada?
Conclusions

The decade 2000-2010 witnessed significant activity in campaign finance not only in Canada but in its closest cultural and institutional neighbours: the U.S. and the U.K. Despite significant change in the legislative environment in each nation, no equilibrium appears to have been reached. Problem definition and the articulation of policy alternatives in Canada evolved in a cumulative process through work by the Lortie Commission, Elections Canada, the Supreme Court of Canada and debates both in the House and the Senate. Alternative policy ideas in the literature were proposed by such authors as Cross and Young (2006), MacIvor (2006), Seidle (2011) and others, all advocating a progressivist, egalitarian view of participation and political engagement. Most notably, Canada was the only nation of the triad to significantly expand tax-funded subsidization of its national parties through quarterly subsidies. In summary, institutional changes in the post-2004 period significantly extended the role of the state in regulating almost every aspect of political party operations and in regulating speech, via expenditures of civil society. Here, by the state, I employ Stepan’s definitions:

The state must be considered as more than the ‘government’. It is the continuous administrative, legal, bureaucratic and coercive systems that attempt not only to structure relations between civil society and public authority in a polity but also to structure many crucial relationships within civil society as well (Stepan 1978, xii).

The U.K. continued its Cranborne and Short grants to opposition parties in both chambers of Parliament and introduced policy development grants in 2002, a sum of £2 million to be divided among the parties (Grant 2005, 77). While the U.S. continued its matching of funding in presidential primaries, neither was extended and in fact the matching grant was rejected by both George W. Bush and by Barack Obama in their election races (although not in the primaries). In Canada’s counterparts, the U.S. and the U.K. there occurred a similar convergence of problem definition—in part driven by domestic factors and in part by supra-national trends—and policy alternatives. However partisanship, either intra-party or inter-party as well as the governing party’s minority or majority status in its legislature, was a significant factor shaping the timing of legislative change.
In the U.K., however, there was greater divergence in the identification of the ‘problem.’ Instead of advocacy for greater institutional reform of parties and campaign finance, such as those proposed by the Power Report, financed by the Rowntree Foundation, there can be seen an alternative definition of the ‘democratic deficit’ as lying within the citizenry itself rather than its institutions. As U.K. scholars Bale, Taggart and Webb argue, the heart of the democratic deficit argument is the conception of a “sclerotic system which has failed to keep pace with social change and which is run by elites disconnected from those they are supposed to serve,” an unhappiness with politics in Britain and an “ambivalence about representative politics per se” (Bale, Taggart and Webb 2006, 195). The authors write that arguments which target representative institutions such as political parties which must change, rest on several faulty assumptions, the first of which is “too strong a causal relationship between institutional and behavioural and attitudinal change”; the assumption that “ordinary people” who are not politically active (and who may over-report their desire to be active because of the desire to be socially acceptable) have a “pent-up democratic energy” waiting to be let out (Bale, Taggart and Webb 2006, 196), if only institutions are changed.

Thus, in contrast to the Canadian experience where the ‘problem’ has been identified as political parties and the campaign finance framework, Bale, Taggart and Webb and others argue that there are alternative reasons for the oft-noted characteristics of low political trust, low voter turnout and so on. This divergence in scholarly opinion has meant that there have been more ‘policy alternatives’ on the table than in Canada. Again, policy alternatives, while widely sought, nevertheless are constrained, at least in part, by both formal and informal institutions of the U.K.: its traditional common-law rather than civil code tradition; its reliance on curbing spending rather than contributions. Thus, despite the relative absence of a written legislative or constitutional role for parties, candidates and local associations, the strength of the U.K.’s political traditions for parties, which can be seen as informal constraints, has meant that, just as Peters and Pierre have argued, that political finance ‘reforms’ in the U.K. have been much less experimental than in Canada. Passage of the PPERA and the PPEA both were achieved under majority governments led by the Labour Party which had long endorsed greater intervention in campaign finance. The comprehensiveness of both pieces of legislation and the establishment of a national electoral commission represent a significant break from the U.K.’s traditional approaches.
In the U.S., the primary, ongoing problem that continues to the present, was the increasingly active role of actors spending ‘soft money,’ that is, the money that was previously unregulated by federal campaign finance law. A second problem was how to engender more widespread participation in the electoral process via campaign finance laws. However, problem specification and policy alternatives were couched in historic terms and were constrained by the tension between First Amendment protections of free expression on one hand, and the notion that inequality of wealth—and hence campaign financing—represented ipso facto ‘corruption’ in the electoral arena. The U.S. case illustrates that campaign finance regulation continued to rely on curbs on contributions and transparency as opposed to curbs on spending. While the BCRA of 2002 was passed by a majority of Democrats and Republicans, it was not bi-partisan in the sense of each party in its entirety ‘buying into’ the concept of BCRA. Hence traditional partisan interests cannot be said to have been ‘put to bed.’

In summary, as new institutionalist scholar Olsen suggests, there has been a ‘logic of appropriateness’ in the changes seen in all three nations, where appropriateness is change that proceeds “according to the institutionalized practices of a collectivity” and has ‘matched’ new political finance frameworks with behaviour and context (Olsen 2007, 2-3). As Olsen argues, “Change can be driven by explicit rules, pressures from institutional ideas . . . internal loss of faith in institutions and interpreters of appropriateness and by intra-and inter-institutional tensions between organizational and normative principles” (Olsen 2007, 10). The evidence in this chapter rejects an autonomous role for historical institutions, but rather melds the influence of the historical institutional framework with political agency and contextual factors. My investigation also lends credence to the new institutionalist perspective that institutional change is endogenous and local in nature.

As Courtney writes, to

reform a political institution has a pleasant ring to it. It conveys improvement, progress, and an ultimately fairer and more democratic political system for all citizens. Yet not all political institutions are amenable to being reformed being reformed in a fashion that the great majority of citizens would want. Nor do all reforms once implemented necessarily spell improvement and progress (2001, 257; italics added).
Table 4.1 Canada 1867-2010 Major Acts, Amendments and Court Decisions Affecting Federal Campaign Finance

<table>
<thead>
<tr>
<th>Year</th>
<th>Bill</th>
<th>Name of Act</th>
<th>Party and Standing</th>
<th>Prime Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>1873</td>
<td></td>
<td><em>Controverted Elections Act</em></td>
<td>Liberal</td>
<td>Alexander Mackenzie</td>
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<tr>
<td>1874</td>
<td></td>
<td><em>Dominion Elections Act</em></td>
<td>Conservative</td>
<td>Sir John A. Macdonald</td>
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<td>1891</td>
<td></td>
<td><em>Dominion Elections Act</em>-amendments</td>
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<td>1908</td>
<td></td>
<td><em>Dominion Elections Act</em>-amendments</td>
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<tr>
<td>1920</td>
<td></td>
<td><em>Dominion Elections Act</em>-amendments; establishment of Chief Electoral Officer; centralization of financial and logistical control of federal elections</td>
<td>Unionist</td>
<td>Sir Robert L. Borden</td>
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<tr>
<td>1929</td>
<td></td>
<td><em>Dominion Elections Act</em> -amendments</td>
<td>Liberal</td>
<td>Mackenzie King</td>
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<tr>
<td>1938</td>
<td></td>
<td><em>Dominion Elections Act</em> -repeal and replacement; Definition of corrupt practices; official agent required</td>
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<tr>
<td>1948</td>
<td></td>
<td><em>Dominion Elections Act</em> -amendments</td>
<td>Liberal</td>
<td>Mackenzie King</td>
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<tr>
<td>1964</td>
<td></td>
<td>Barbeau Committee on Election Expenses commissioned</td>
<td>Liberal minority</td>
<td>Lester B. Pearson</td>
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<tr>
<td>1966</td>
<td></td>
<td>Barbeau Committee Report</td>
<td>Liberal minority</td>
<td>Lester B. Pearson</td>
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<tr>
<td>1970</td>
<td>C-215</td>
<td><em>Canada Elections Act</em></td>
<td>Liberal majority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>1971</td>
<td></td>
<td>House of Commons Committee on Election Expenses (Chappell Committee)</td>
<td>Liberal majority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>1974</td>
<td>C-203</td>
<td><em>Election Expenses Act</em> (including third party spending); assignment of political finance oversight to Elections Canada</td>
<td>Liberal minority</td>
<td>Pierre Trudeau</td>
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<tr>
<td></td>
<td></td>
<td><em>Broadcasting Act</em> -amendments</td>
<td>Liberal minority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>1977</td>
<td>C-5</td>
<td><em>Canada Elections Act</em> -amendments; redefinition of election expenses</td>
<td>Liberal minority</td>
<td>Pierre Trudeau</td>
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<td></td>
<td>C-33</td>
<td><em>Canada Elections Act, Election Expenses Act</em> -amendments</td>
<td>Liberal minority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>Year</td>
<td>Bill</td>
<td>Name of Act</td>
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<tr>
<td>1982</td>
<td></td>
<td><em>Canadian Charter of Rights and Freedoms</em></td>
<td>Liberal majority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>1982</td>
<td>C-43</td>
<td><em>Access to Information Act and the Privacy Act</em></td>
<td>Liberal majority</td>
<td>Pierre Trudeau</td>
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<td></td>
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<td>Established Information Commissioner and Privacy Commissioner</td>
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<td>1983</td>
<td>C-169</td>
<td><em>Canada Elections Act</em> -amendments (including third party spending)</td>
<td>Liberal majority</td>
<td>Pierre Trudeau</td>
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<tr>
<td>1984</td>
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<td><em>National Citizens Coalition Inc v. Canada (Attorney General)</em>; *</td>
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<td>Alberta Court of Queen’s Bench</td>
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<td>1986</td>
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<td><em>R. v. Oakes</em>; <em>Supreme Court of Canada</em></td>
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<td>1988</td>
<td>C-82</td>
<td><em>Lobbyists Registration Act</em></td>
<td>Conservative majority</td>
<td>Brian Mulroney</td>
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<tr>
<td>1991</td>
<td></td>
<td><em>Lobbyists Registration Act</em></td>
<td>Conservative majority</td>
<td>Brian Mulroney</td>
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<tr>
<td>1993</td>
<td>C-114</td>
<td><em>Canada Elections Act</em> -amendments (including third party spending)</td>
<td>Liberal majority</td>
<td>Jean Chrétien</td>
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<td>1995</td>
<td></td>
<td><em>Reform Party of Canada et al. v. Canada</em>; Alberta Court of Appeal</td>
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<td>1996</td>
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<td><em>Barrette v. Canada (Attorney General)</em>; Quebec Superior Court.</td>
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<td>1996</td>
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<td><em>Lobbyists Registration Act</em>-amendment</td>
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<td>1996</td>
<td></td>
<td><em>Somerville v. Canada (Attorney General)</em>; <em>Alberta Court of Appeal</em></td>
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<tr>
<td>1996</td>
<td>C-63</td>
<td><em>Canada Elections Act</em> -amendments; (permanent voters' list, 36 not 47 day campaign period)</td>
<td>Liberal majority</td>
<td>Jean Chrétien</td>
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<tr>
<td>1996</td>
<td>C-243</td>
<td><em>Canada Elections Act</em> -amendments; Private Member's Bill; (Reimbursement of Election Expenses)</td>
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<td>1997</td>
<td></td>
<td><em>Libman v. Quebec</em>; <em>Supreme Court of Canada</em></td>
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<td>1999</td>
<td></td>
<td><em>Longley v. Minister of National Revenue</em>; British Columbia Supreme Court</td>
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<td></td>
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<tr>
<td>Year</td>
<td>Bill</td>
<td>Name of Act</td>
<td>Party and Standing</td>
<td>Prime Minister</td>
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<tr>
<td>2000</td>
<td>C-2</td>
<td><em>Canada Elections Act</em>-amendments (including third party spending)</td>
<td>Liberal majority</td>
<td>Jean Chrétien</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td><em>Figueroa v. Canada (Attorney General); Supreme Court of Canada</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>C-2</td>
<td><em>Canada Elections Act</em>-amendments</td>
<td>Liberal majority</td>
<td>Jean Chrétien</td>
</tr>
<tr>
<td>2003</td>
<td>C-24</td>
<td><em>Act to Amend the Canada Elections Act &amp; the Income Tax Act (Political Financing)</em></td>
<td>Liberal majority</td>
<td>Jean Chrétien/Paul Martin</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td><em>Commissioner of Canada Elections v. National Citizens Coalition: Ontario Court of Justice; (failure to register as third party)</em></td>
<td></td>
<td></td>
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<tr>
<td>2004</td>
<td></td>
<td><em>Harper v. Canada (Attorney General);</em> Supreme Court of Canada*</td>
<td></td>
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<tr>
<td>2006</td>
<td>C-2</td>
<td><em>Act to Amend the Canada Elections Act &amp; the Income Tax Act (Federal Accountability Act); Conflict of Interest Act; Access to Information Act; Public Servants Disclosure Act; Auditor General Act; The Lobbyists Registration Act</em></td>
<td>Conservative minority</td>
<td>Stephen Harper</td>
</tr>
<tr>
<td>2007</td>
<td></td>
<td><em>Longley v. Canada (Attorney General); Ontario Court of Appeal</em></td>
<td></td>
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<tr>
<td>2008</td>
<td></td>
<td><em>R. v. Kang Brown; Supreme Court of Canada</em></td>
<td>Conservative minority</td>
<td>Stephen Harper</td>
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<tr>
<td>2009</td>
<td></td>
<td><em>Conservative Fund v. Chief Electoral Officer of Canada;</em> Ontario Superior Court of Justice</td>
<td></td>
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<tr>
<td>2010</td>
<td></td>
<td><em>Bill C-12: An Act to Amend the Constitution Act, 1867 (Democratic Representation)</em></td>
<td>Conservative minority</td>
<td>Stephen Harper</td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td><em>Campbell v. Canada (Chief Electoral Officer); Federal Court</em></td>
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<tr>
<td>2010</td>
<td></td>
<td><em>Canada (Chief Electoral Office) v. Callaghan; Federal Court</em></td>
<td></td>
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<tr>
<td>2010</td>
<td></td>
<td><em>Conservative Fund v. Canada (Chief Electoral Officer);</em> Ontario Court of Appeal*</td>
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</tbody>
</table>

*There are three cases involving the National Citizens Coalition: 1984 NCC itself; 1993-1996 Somerville was President of the NCC; 2001-4 Harper was President of the NCC at the inception of the case; 2003 Commissioner of Canada Elections prosecuted the NCC for failing to register as a third party in the 2000 election.

NB: This table does not include acts, amendments or court decisions regarding issues other than campaign finance.
Table 4.2 Canada: Annual Contribution Limits to Parties, EDAs and Political Actors

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1. Parties, EDAs, candidates, nomination contests of the same political party</td>
<td>No limit</td>
<td>$5,000 in total to party, EDA, candidate, nomination contest of the same political party</td>
<td>$1000* in total to party, EDA, candidate, nomination contest of the same political party</td>
</tr>
<tr>
<td>2. Independent candidates</td>
<td>No limit</td>
<td>$5,000</td>
<td>$1,000*</td>
</tr>
<tr>
<td>3. Leadership contestants of a political party</td>
<td>No limit</td>
<td>$5,000</td>
<td>$1,000*</td>
</tr>
<tr>
<td>From unions or corporations (individually owned, privately or publicly-held) to:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Parties</td>
<td>No limit</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>2. EDAs, candidates, or nomination contestants</td>
<td>No limit</td>
<td>$1,000 in total</td>
<td>$0</td>
</tr>
<tr>
<td>3. Independent candidates</td>
<td>No limit</td>
<td>$1,000</td>
<td>$0</td>
</tr>
<tr>
<td>4. Leadership contestants of a political party</td>
<td>No limit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Set at $1000 per Federal Accountability Act, 2006 with adjustment factor; for the years 2007-2011 limit set at $1100.
Table 4.3  Canada: Allowable Loan Repayment Period for Political Actors per Canada Elections Act, 2006

<table>
<thead>
<tr>
<th>Actor</th>
<th>Repayment Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political party</td>
<td>6 months following due date of claim</td>
</tr>
<tr>
<td>Leadership contestant</td>
<td>18 months following leadership contest</td>
</tr>
<tr>
<td>Registered EDA</td>
<td>6 months following due date of claim</td>
</tr>
<tr>
<td>Nomination contestant</td>
<td>4 months following polling day</td>
</tr>
</tbody>
</table>
Chapter 5  The *Charter*, the Judiciary and Campaign Finance

“The Charter’s guarantees of fundamental freedoms and democratic rights opened the door for tests of the constitutionality of several provisions of the Canada Elections Act; as a result, the Courts became a significant source of change in electoral law over this period” (Young forthcoming, 3).

Introduction

Scarrow (2004, 659) has argued that political finance regimes are shaped by the “impact of certain non-legislative actors, particularly constitutional courts and investigative and regulatory commissions” and she hypothesizes that the “more powerful and the more politically independent the body, the more likely we are to find policies which appear to go against the financial interests of dominant parties.” This is a particularly compelling argument when viewed from a new institutionalist perspective which more generally argues that there are significant inter-institutional effects when rule changes occur. The purpose of this chapter therefore is to examine the Canadian experience with campaign finance rule changes in their possible interaction with Canadian constitutional documents and their interpretation by the Canadian courts and to test this experience against Scarrow’s hypothesis and argument.

The years preceding the 1982 passage of the *Canadian Charter of Rights and Freedoms (Charter)* were fraught with controversy over issue definition and problem-framing in the field of campaign finance in Canada. However, as a new institution and indeed the third ‘pillar’ of Canadian democracy, alongside federalism and parliamentary government, the *Charter* served to render the field of campaign finance even more contentious. As Feasby (2006), Ewing (2006), MacIvor (2004) and Manfredi and Rush (2008) and others state, the new constitutionalism introduced by the *Charter* is integral to an understanding of legislation, jurisprudence and formal government inquiry regarding campaign finance in subsequent decades. The backdrop and overarching authority of the *Charter* are critical to the debate on the scope and impact of campaign finance law. Where
Charter provisions specifically intersect with campaign finance is in a series of ‘dialogues’ between the courts and the national legislature on such issues as equality under the Charter, access, a meaningful vote and the very definition of political party.

In this chapter, I first evaluate Young’s claim (forthcoming, 3) that the “Courts became a significant source of change in electoral law over this period.” I review the wide-reaching implications of the Charter, which have been closely documented elsewhere, and then proceed to trace the way in which Charter considerations have influenced the course of campaign finance policy since 1982. I specifically deal with court decisions on the constitutionality of the definition of election expenses, the definition of political party and of restrictions on third party spending. Again, I compare and contrast the Canadian experience with that of the U.S. I do not consider the interplay between the courts and Parliament in the U.K. in the post-2000 period for the following reason: the passage of comprehensive campaign finance legislation occurred only in 2000 and there has been almost no litigation in domestic courts. Some has emerged from the necessity of reconciling U.K. practice with that of the E.U., specifically the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, which concerns political advertising. The European Court of Human Rights (ECHR) found in Bowman v. The United Kingdom (1998), a case involving U.K. law on advertising during the writ period, that the plaintiff’s rights to free expression had been violated, under Article 10. Ghaleigh (2006, 45) expects future constitutional challenges to the U.K. campaign finance regime.

Emerging from this chapter is evidence that the judiciary has had an equally formative influence on political party law and finance as has Parliament in the decade 2000-2010 and even longer when the role of the courts is considered in shaping the institutional environment for third party spending and activity during the writ period. The Canadian Charter of Rights and Freedoms constitutes the lodestone for Canadian courts, more so than has either the common law or the institutional practices developed since the pre-Confederation period. Earlier Canadian court decisions in campaign finance cases manifest a greater acceptance of notions of substantive rather than representative democracy than do more recent decisions. By contrast, the U.S. Supreme Court justices have remained more
resistant to accepting at face value the notion that inequality of resources is either a necessary
or sufficient condition to demonstrate inequality for voters.

The *Charter* as a Defining Moment

Cairns (1991) argues that the *Charter* served to mobilize political debate in Canada
along new dimensions and with new potency. In subsequent years, this has been borne out in
several ways. The Library of Parliament (2002, 2) states that: “On the whole, the democratic
rights of Canadians were considered to be relatively well protected before the *Charter* . . .
Nonetheless, the [court] decisions handed down affect the basic way in which we govern
ourselves, and our conception of what a democracy should be.” The enactment of the
*Charter* has been described as “breathtaking in scope” and fundamentally effecting “a re-
ordering of the balance of power between the courts and elected legislatures” (Meehan 2006,
1-2). Chief Justice McLaughlin has written: “The bottom line is clear—the *Charter*’s
introduction of guarantees for individual rights and freedoms means that the courts have no
choice but to grapple with a whole range of issues . . . many of them involving social and
moral questions of profound importance and difficulty” (*RJR Macdonald v. Canada (AG)*
[1995] at 332). Her comments apply no less to the contested policy arena of campaign and
party finance.

It is generally accepted, as well, that “judicial activism has increased markedly since
the *Charter* was enacted” and that the Supreme Court of Canada (SCC) “has since moved
from restricting state infringement of individual rights to affirmative judicial remedies”
(Meehan 2006, 5). Thus while the *Charter* would serve as the foundation for future litigation,
the role of the judiciary was enhanced. Tushnet, a comparative constitutional scholar, has
recently written that parliamentary sovereignty is antithetical to strong judicial review, which
he characterizes as prevailing in the U.S. and Canada. Strong judicial review “insists that the
courts’ reasonable constitutional interpretations prevail over the legislatures’ reasonable
ones. Courts exercise strong-form judicial review when their interpretive judgments are final
and unrevisable” (Tushnet 2008, 21). By contrast, within the parliamentary supremacy
tradition, he contends that “political parties that competed for power in regular and
reasonably fair elections placed some limits on what those currently holding power could get
away with. Power-holders were expected to be drawn from social elites who had normative
commitments to exercising power only with limits . . . The normative constraints on power-holders decayed over the course of the twentieth century” (Tushnet 2008, 19; italics added). The concept of judicial activism in Canada and the U.S. is an ongoing field unto itself and will not be considered further here. Whether Tushnet is correct or not in his argument that strong judicial review is antithetical to parliamentary supremacy—a point of some contention—his insight into the profound change in tradition and the ‘decay’ of normative constraints are both germane.

Third, it is widely argued that inherent in Charter cases is a clash of visions of democracy or a ‘clash of constitutionalisms’: Bateman (1998, 6). Bateman asserts that,

In the enduring tension between liberty and equality, liberal constitutionalism exalts liberty, affirming the formal equality of persons before the law . . . [and] is premised on the notion that the state, while necessary and in some cases even good, is the single greatest threat to human liberty and needs to be restrained from the excesses both of its officers and of the democratic majorities electing them (Bateman 1998, 7).

By contrast, there has emerged a countering egalitarian vision of democracy (as discussed in Chapter 1) where

a positive, substantive freedom to be achieved by a constitution whose protections are triggered not by the nature of the actor violating rights but by the particular interest violated by oppression wherever it is experienced . . . (Bateman 1998, 12).

In this vision, an aggressive role for the state is not to be feared but welcomed. De Montigny (1985, 589) demonstrates this when he argues that state inaction to correct a perceived inequality is “in reality, an active choice amongst competing values, such as economic efficiency or some form of liberty, at the expense of equality.” As Bateman (1998, 11-1) notes, and what is particularly significant for the topic at hand, egalitarian theorists and practitioners have been “merciless in their attack on the public-private distinction” and see the state as “no singular, unique antagonist” in its force. Thus, there is no longer a “major reason for upholding the public-private distinction [and it] evaporates into thin air . . . State inaction is tacit approval of the prevailing order. There is no neutrality . . .” (Bateman 1998, 12).
To summarize, then, a view which privileges the notion of equality (however defined) over freedom from coercion, does challenge the traditional conception of political parties as private, civil-society or non-state actors, holding the state to account and limiting its power. It further critiques the notion that political parties are unique in their intermediary status between society and state such a distinction is superficial and anti-democratic. Lastly, an egalitarian view is foundational for campaign finance reformers who suggest that private contributions to political parties and candidates pose an endemic threat to equality. How the courts of Canada and U.S. have dealt with these competing visions of democracy and the role of the state are crucial in decisions regarding campaign finance.

Ewing further posits that the Charter is not “simply a factor to be considered in the shaping future reform, it has in fact created the need for further reform” (Ewing 1992, 127; italics added). Smith and Bakvis (2000, 16) concur that “the architecture of the Charter must be kept in view” when examining jurisprudence on campaign finance-related issues. The Charter thus permitted and necessitated the reframing and repositioning of campaign finance legislation and norms. Ewing (1992, 150-151) concisely sets out the dilemma for campaign finance posed in most cases adjudicated under Charter provisions. After determining that a case merits a Charter application, a court must then determine whether, for example, a breach of Section 2(d) which protects the right to freedom of association is justified by Section 1 which provides that the rights guaranteed by the Charter are subject to ‘such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’ Integral to such deliberations are such issues as whether the state is viewed as an oppressive or liberating force; whether constitutional rights may be prioritized (equality versus freedom); and finally whether equality is understood as “equality of impact” (voting) or equality of influence (deliberative equality) (Feasby 2006, 253; fn. 52).

Finally, the 1986 SCC decision in R. v. Oakes proved to be critical not only in general for Charter challenges but specifically in later cases involving campaign finance. In the decision, although the court articulated that the purpose of the Charter was to ensure that Canadian society was to be “free and democratic,” the court also went on to elucidate what has become known as the “Oakes test”: the conditions under which the court could and would abridge some freedoms on behalf of others. The Oakes test, briefly, holds that to
establish that a limit or infringement of a right or freedom (for example, free speech) is justified under a piece of legislation, the onus is on the Crown to demonstrate that:

- There must be a pressing and substantial objective
- The means must be proportional
- The means must be rationally connected to the objective
- There must be minimal impairment of rights
- There must be proportionality between the infringement and objective.

However, Bateman, among others, argues that the *Oakes* test is not consistently applied but instead the SCC varies “the stringency of the *Oakes* test according to the nature of the legislation at issue” (Bateman 1998, 16).

Not only was the *Charter* a major institutional innovation for Canada, it ushered in a new period of judicial review and the potential for new conflict in the field of campaign finance. As Ewing notes, prior to the *Charter*, legal issues surrounding campaign finance “were slower to evolve in Canada which approached regulation with greater emphasis on the need to regulate expenditures rather than contributions” (Ewing 2006, 9). In the post-*Charter* era, Canadian campaign finance critiques became successively more rights-based and oriented toward assessment of campaign finance based on democratic criteria of equity and representation. Following the *Charter*, both lower and superior courts in Canada have adjudicated policies of the equality of party access to broadcast advertising; appropriate limits on third party spending and the definition of political parties and their role in providing equal representation. I turn now to these. I incorporate both data from primary sources and highlights from the interviews conducted. I employ subheadings in this section to guide the reader.

**Campaign-Finance Related Court Decisions in the *Charter* Era**

**Third Party Spending**

Despite differences in the constitutional framework between Canada and the U.S., court decisions in the latter have strongly influenced those in Canada. The Barbeau Committee in 1966 wrote that in the U.S., the “scope of permissible legislation at both the federal and state levels is circumscribed by *First Amendment* guarantees of freedom of
speech and press, particularly in regard to the regulation of certain activities outside the conventional framework of partisan campaigning” (Barbeau Committee Report 1966, 145). This is still the case. One of the most influential U.S. cases has been the 1976 Supreme Court decision in *Buckley v. Valeo* case which challenged FECA limits on third party spending. It will be recalled that certain 1974 amendments to FECA were passed to address issues of corruption that had arisen as a result of Watergate. It is intriguing to note that while Watergate is widely acknowledged in the literature as a proximate cause for U.S. reforms in the 1970s, the illegality of Watergate did not involve the illegal use of money but rather the illegal use of powers. In its decision in *Buckley v. Valeo*, the U.S. Supreme Court struck down FECA limitations on third party spending (and hence contributions to third parties). The court differentiated between contributions to political parties and candidates from third party spending. It argued that while contribution limits to political parties and candidates were legitimate in that they could be seen as serving Congress’ purpose of preventing either *quid pro quo* corruption, or the appearance of corruption, in influencing elected officials. By contrast, “spending by third parties or candidates presented no such *quid pro quo* opportunities, and therefore, limits to such spending could not be sustained” (Manfredi and Rush 2008, 91).

What is key for the purpose at hand is the court’s refusal to accept that inequality of money spent by third parties was either a necessary or sufficient condition to prove corruption or inequality. Thus, the court held that “the equalization of speech and influence was not a valid constitutional end in itself” and that the desire of Congress to “level the playing field was insufficient to justify dampening political discussion by restricting political spending” (Manfredi and Rush 2008, 92-93). The decision has been characterized as narrow and oppositional to egalitarian democracy by critics such as Feasby (2006), MacIvor (2004) and Hiebert (2006). They assert that the decision defended free speech at the expense of political equality. However, when read carefully, the court clearly did consider equality but based its decision on a wider basis than simply the availability of money. It weighed carefully the position of minority parties, (s. 433) stating, for example, that “Democracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues” (*Buckley v. Valeo* 1976, n. 55) and that “Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under
the *First Amendment* than the discussion of political policy generally or advocacy of the passage or defeat of legislation” (*Buckley v. Valeo* 1976, “Expenditures”). “The influence of the *Buckley* decision has been wide ranging in both Canadian and American politics and in court decisions” (La Raja 2008, 130; Hiebert 2006, 288).

Roughly simultaneous in Canada, in 1974, the spending of third parties during the writ period had been restricted. The Chief Electoral Officer, in testimony before the Standing Committee on Privileges and Elections, defended the 1974 restrictions by stating that “Any single-issue group or pressure group could still promote its own platform . . . as long as in so doing it was not promoting or opposing directly, by naming him, the candidate or a political party” (Ewing 1992, 137). The 1974 act specifically permitted a ‘good faith’ defence for third parties which inadvertently contravened the law. The Liberal government in 1983 introduced Bill C-169 which prohibited any individual or group other than a candidate or a registered political party—a “third party”—from “incurring expenses to promote the election of a candidate or oppose the election of a political party except when authorized” (Elections Canada n.d. “Regulation of Election Activities”, 1) during the writ period. The bill and ensuing act revoked the good faith defence because of “concerns” that it “undermined the effectiveness of the election expenses limits” (Elections Canada n.d. “Regulation of Election Activities”, 1).

In 1983, a non-profit organization, the National Citizens Coalition, challenged the 1983 law as limiting its freedom of association and its freedom of expression, under the Charter, in *National Citizens’ Coalition Inc. v. Attorney-General of Canada* (1984). The government argued that “the spending limits on candidates and political parties were necessary ‘to ensure a level of equality amongst all participants in federal elections and that the controls under challenge were in turn necessary to protect the spending limits from being undermined by third parties’” (Ewing 1992, 139). The Alberta Court of Queen’s Bench heard the challenge and determined that while contribution limits did not violate the Charter, spending limits did. The court referred to the U. S. Supreme Court decision in the 1976 *Buckley v. Valeo* case in drawing what has been termed a ‘bright line’ between express advocacy, which names an individual or party, and ‘issue advocacy’ which does not. In parallel with its U.S. counterpart, the Alberta court in *National Citizens Coalition* defended
the principle of freedom of expression, noting that “freedom of expression is said by many to be one of the most significant freedoms in a democratic society since the political structure depends on free debate of ideas and opinion” (Ewing 1992, 140). Although Prime Minister Trudeau defended the 1983 legislation (and thereby opposed the Alberta Court’s decision) in the House of Commons in January, 1984 (Ewing 1992, 141), no legislative action was taken by his government and no appeal was made. The Alberta decision attained national status and federal third party spending limits were held in abeyance for the rest of the decade.

The 1988 election, in which the primary campaign issue centred on whether Canada should enter into a free trade agreement with the United States, served as the stimulus for further debate. Third party spending figured prominently in the campaign: for the most part, business interests favoured the agreement whereas labour interests did not. Partly in response to the furor following the election, which delivered a majority government to the pro-free trade Conservative Party, Prime Minister Brian Mulroney in November 1989 appointed the Lortie Commission to investigate electoral reform and party finance, as noted in Chapter 3, where its mandate and recommendations were discussed.

One of the primary tasks of the commission, struck in 1989, was how to reconcile Canadian campaign finance law and praxis with the Charter of Rights and Freedoms and subsequent court decisions, particularly in light of the Oakes test. For example, Aucoin (who was Director of Research for the Lortie Commission) stated in his interview that,

In terms of the Charter, we realized very early on that . . . everything in the election laws is subject to challenge in one fashion or another. [For example] the chapters dealing with the distribution of the vote had to meet both the constitutional test in the old sense and the constitutional sense in terms of the Charter. And the spending limits, clearly, had to do that . . . the spending limits for parties but also third parties. It wasn’t just that we assumed that they would be challenged; it was obvious that both affected rights and this is where the question of balance would come in, if you were trying to pursue fairness at the same time.

15 For an excellent review of the National Citizens’ Coalition case and the interaction between the courts and the Charter on the subject of campaign finance, see K. D. Ewing (1992).
Aucoin also pointed to the new legal ‘atmosphere’ launched by the Charter. In comparison to the U.S. where election finance litigation was common, the Lortie Commission was unable to identify one Canadian lawyer specializing in election law and discovered that there were “virtually no political scientists who studied election law as a major part of this specialty . . . In the U.S., you could bring hundreds, thousands [of them] together.” Other participants observed that political actors had been surprised that more Charter challenges of campaign finance had not been mounted in the years since 1982.

As discussed in Chapter 3, amendments to the Canada Election Act were passed in the spring of 1993, many of which were those recommended by the commission: these included new regulations on third party spending during the writ period, a new definition of election expenses and a variety of other measures. The validity of the electoral expense limit and of taxpayer funding of election expense reimbursement were the first to be challenged. In 1994, Payette, a defeated new Democratic Party candidate from Quebec, challenged the CEA on grounds that making reimbursement of electoral expenses contingent on receiving 15 per cent of the vote “violated the right to freedom of expression in section 2(b) of the Charter, the right to vote in section 3 of the Charter, and the equality rights in section 15(1) of the Charter” (Feasby 2006, 256). In the case, named after Barette, the official agent for Payette, Barrette v. Canada (1994 at 178), the trial judge found that the purpose of the 15 per cent threshold was to discourage the proliferation of candidates and parties that were “ephemeral, marginal, frivolous or insignificant” and that the 15 per cent vote threshold contravened section 3 of the Charter because “it denied candidates ‘equal opportunity’ which . . . is ‘essential to fairness in elections’” (Feasby 2006, 257). On appeal, the Court of Appeal majority accepted that the government’s purpose of the 15 per cent threshold was one which would discourage the proliferation of parties and candidates unable to attract an important following but rejected the notion that inherent in this that there was any discriminatory purpose or effect within the meaning of section 15 of the Charter. Unsuccessful candidates who do not obtain at least 15 per cent of the valid votes cast are not, in my view, a “discrete and insular minority”. Nor are they a ‘disadvantaged group in society . . . If the 15 per cent discriminates against them, such discrimination is not based on any analogous ground. For the same reasons, the 15 per cent threshold involves no prohibited
discrimination against voters who, if they are more fully informed, might vote differently (Barrette at 628).

A different issue, that of taxpayer cost of funding election expenses, was addressed also. Justice McCarthy, writing the appeal decision, argued that given there was no infringement of Section 15 of the Charter, he declined to undertake an analysis of potential Section 1 infringement, which involved the state objective. However, Justice Mailhot did so and concluded that given the “government’s limited financial resources . . . [it] is justified in limiting the access to a reimbursement to candidates who receive a certain amount of support from the voters” (Barrette at 632). Feasby (2006, 257), while noting that “Courts have recognized that Parliament must make choices between competing social objectives when allocating finite financial resources”, nevertheless rejects cost containment as “a state objective unworthy of overriding citizens’ democratic rights” since, in his opinion, spending limits in themselves control ‘runaway costs.’ Yet what Feasby ignores, or rejects, in his argument is that public subsidies and expense reimbursement, from a classic liberal democratic view, inherently trample on the democratic rights of citizens because of the coercion involved to raising taxes to pay for such subsidies and reimbursements.

Last, any decreases in the vote threshold de facto blur the difference between interest groups and political parties and deny that political parties are indeed, in the words of the Lortie Commission, ‘primary’ political organizations. Having once rejected a 15 per cent threshold, this line of reasoning could lead to a zero threshold, thus validating the right of a candidate to election expense reimbursement even if such a candidate or party were a fringe actor (Barrette at 178, quoted in Feasby 2006, 257). To summarize, the court had begun to address issues of equality embedded in election expense reimbursement.

Broadcasting Time

A different challenge to the 1993 legislation was mounted with regard to limits on the purchase and provision of broadcasting time during the 47-day writ period. The Reform Party in 1993 challenged the CEA, arguing that provisions providing access by political parties to tax-subsidized access to broadcasting time during election periods and the prohibition on purchase of broadcast time outside the statutory framework discriminated against emerging parties and “prevented them mitigating the impact of the discrimination”
(Feasby 2006, 261-263). The lower court ruling was appealed and the case was not decided by the Alberta Court of Appeal until 1995. Historically, the *Canada Elections Act* (1970) and the *Broadcasting Act* (1974) together, in their various iterations, required national television and radio networks to provide a certain number of minutes, at a low rate, to political parties for election advertising and to reserve a certain number of minutes free time for political parties during the election period. The same two acts also prohibit political parties from purchasing extra time. Moreover, ‘free’ broadcast time does not count as an election expense and is not included when Elections Canada calculates party spending limits. Thus, denial or limitation of access to ‘free’ broadcast time automatically raised the costs of new parties and could push them beyond expenditure limits in seeking to spread their message. As well, because the ‘free’ broadcast time was allocated approximately on the retrospective basis of number of seats in the House, the Reform Party asserted that it discriminated against the emergence of new parties in their attempt to reach the electorate during the writ period.

The access of new parties to ‘free’ broadcasting time had not posed a significant problem because, in elections prior to 1993, Canada had an essentially three-party system. The Liberal, Progressive Conservative and New Democratic parties dominated the electoral landscape and hence allocation decisions for broadcast time were, if not simple, at leastlimited in number. However, the emergence of the Reform Party, Natural Law Party of Canada and Bloc Québécois parties and the near-annihilation of the Progressive Conservative Party in the 1993 election rendered broadcasting allocation decisions more difficult. Access to broadcast time is particularly problematic in Westminster democracies in which elections may be called at any time by a majority government or forced on a minority government. Because of this short notice, it is not possible for parties to book broadcast time far in advance. This factor, in conjunction with the unusually short writ period, leads inescapably to the conclusion that government allocations and adjudications of broadcast time have the potential to significantly skew information available to the electorate. Whether allocating broadcast time based on bureaucratic fiat is more ‘neutral’ either towards parties or towards the public’s need for information, as opposed to reliance on Adam Smith’s ‘invisible hand of the market’ to allocate the scarce resource of time in the writ period, remains open to debate.
Feasby documents the case well (2006, 263). The government argued that the legislation, in summary, “was designed to mitigate the distorting effects of wealth on the political process” (Feasby 2006, 263-264). The Alberta Court of Appeal in its 1995 *Reform Party et al. v. Canada* decision held that while the prohibition on the purchase of broadcast time *did infringe* the Charter right to freedom of expression, the provisions providing for the reservation and allocation of broadcast time *did not violate* either sections 2(b) or 3 of the *Charter*, based on the government’s argument that allocation of free time and the prohibition on purchasing extra time were fundamental to the “availability of broadcast time to political parties during federal election campaigns and the control of costs” (*Reform Party* at 386). The plaintiffs chose not to appeal the decision. Finally, the majority decision also concluded that “equal allocation of these limited [broadcasting] resources is not feasible . . . While other voices and interests have the right to be heard, lesser access to the free and purchasable time . . . is a reasonable and proportionate response to the problem” (*Reform* at 387).

**Third Party Spending (again)**

Another challenge to the 1993 legislation followed. Somerville, the President of the National Citizens’ Coalition, in *Somerville v. Canada* (1996), challenged the amendment which had re-introduced a limit of $1000 on advertising by third parties during the 47-day election period. Both trial and appellate courts in Alberta found that these provisions violated three Charter rights: section 2(b), freedom of expression; section 2(d) freedom of association; and section 3, the right to vote. The courts found that because third parties were prevented from combining their resources, their freedom of association to inform voters was violated. The case was not appealed. However, in 1997, the Supreme Court of Canada (SCC) decision in *Libman v. Quebec* (1997) critiqued the reasoning of the Alberta Court of Appeal and found that limitation of third party spending was a legitimate policy objective. While it held that Quebec regulations on third party spending (which had restricted third party actors to working with one of two committees on the referendum) were too restrictive, the SCC nevertheless held that “in pursuit of a fair political process the legislature may limit the ability of private wealth to dominate discourse” (Elections Canada n.d., 1; Feasby 2006, 248).
Parliament responded to this decision in September 2000, by amending the *Canada Elections Act* via Bill C-2. It is important to note that in the intervening period, Parliament had also shortened the writ period to 36 days. A summary of the new third-party provisions is as follows: a limit of $150,000 may be spent nationally by a third party during the writ, with a maximum of $3,000 per constituency. Third parties were required to identify themselves in election advertising; were prohibited from splitting into two or more fragments and from acting in collusion. Finally, the legislation required that third parties be registered if their election expenses exceeded $500 and report the following to Elections Canada after an election: election advertising expenses; time and place of the broadcast or publication; details of contributions received in the six month period prior to the writ; and the names and addresses of all contributors of more than $200. Parliament’s ostensible purpose was to ensure that third parties would have similar reporting requirements relative to those of political parties (Library of Parliament 2002, 19). (Interestingly and of future importance, the legislation did not identify the internet, although it was an emerging medium at the time.) However, the move to further restrict third party activity during and before the writ can also be interpreted as self-protective behaviour on the part of the majority government, and possibly as cartel-like, to the extent that other parties in the House of Commons voted for it.

The first general election following passage the amended *Canadian Elections Act* occurred on November 27, 2000 and was the first election in which independent expenditures were regulated. A new challenge followed hard on the heels of the election.

The National Citizens’ Coalition (NCC), led by Stephen Harper, challenged the new legislation, asserting that s. 323(1) and (3), s. 350-360 and s. 362 of the *Canada Elections Act* infringed s. 2(b), 2(d) of the *Charter*. The trial judge and the Court of Appeal found—albeit for different reasons—that s. 350 and s. 351 of the *Canada Elections Act* were unconstitutional, and the Court of Appeal also struck down s. 323, 352-357, 359-360 and s. 362. While this case was worked its way through the appeal stages, the relevant sections of

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16 This case represents the third challenge by the National Citizens’ Coalition: in 1985, the NCC was the plaintiff; in 1993-1996, Somerville, the President of the NCC was named as plaintiff; in the 2000-2004 case, Harper, then the President of the NCC (and later to become Prime Minister) was the plaintiff. There is also a fourth case, launched by the Commissioner of Canada Elections against the NCC for failure to register as a third party, which was decided in 2003. See Table 4.1.
the Canada Elections Act regarding third-party spending were held in abeyance by Elections Canada. The Chief Electoral Officer appeared as an intervenor during the hearing of the case at the SCC. The Supreme Court of Canada issued its decision in Harper v. Canada (henceforth Harper) in May 2004. The nine-member court ruled unanimously that ss. 323 and 352-360 (covering limits on third party advertising, registration and reporting) of the Canada Elections Act were constitutional. A minority of three justices declared s. 350, which covers the limits on third party spending limits, to be unconstitutional.

Because of the critical nature of the finding and the reasons on which it was based, I quote extensively. The majority wrote that:

The current third party election advertising regime is Parliament’s response to this Court’s decision in Libman. In promoting the equal dissemination of points of view by limiting the election advertising of third parties who are influential participants in the electoral process, the overarching objective of the spending limits is electoral fairness. This egalitarian model of elections seeks to create a level playing field for those who wish to engage in the electoral discourse . . . The Court of Appeal erred in considering the provisions on third party spending limits globally. While the regime is internally coherent, its constituent parts stand on their own and the constitutionality of each set of provisions must be considered separately (Harper page 3; italics added).

It is crucial to probe some of the reasoning of the majority and that of the dissenting judges since the arguments speak to the evidentiary standard, and hence legitimacy, of the public policy in question—that of limiting spending in public deliberation—in the critical 36-day period prior to election day. Statements in both the majority and minority opinions demonstrate the unease of the justices in dealing with limits on third parties spending, as the following examples show:

- “the difficulty in measuring” effects (Harper, page 3);
- “the incursion essentially denies effective free expression and far surpasses what is required to meet the perceived threat that citizen speech will drown out other political discourse” (Harper at 2; italics added);
- “Comparative statistics underline the meagreness of the [spending] limits” (Harper at 8; italics added);
- “The Attorney General has offered no evidence to support a connection between the limits on citizen spending and electoral fairness. However reason or logic may establish the requisite causal link . . .” (Harper at 29; italics added);
• “the dangers posed [by the Attorney General] are wholly hypothetical” (*Harper* at 34);

• “...nothing in the evidence suggests that a virtual ban on citizen communication through effective advertising is required to avoid the hypothetical evils of inequality, a misinformed public and loss of public confidence in the system” (*Harper* at 39);

• “Given the unproven and speculative nature of the danger the limits are said to address, the possible benefits conferred by the law are illusory. The smaller the danger, the less the benefit conferred” (*Harper* at 41).

• “The problem here is that the draconian nature of the infringement—to effectively deprive all those who do not or cannot speak through political parties of their voice during an election period—overshoots the perceived danger. Even recognizing that the ‘tailoring process seldom admits of perfection’... and according Parliament a healthy measure of deference, we are left with the fact that nothing in the evidence suggests that a virtual ban on citizen communication through effective advertising is required to avoid the hypothetical evils of inequality, a misinformed public and loss of public confidence (*Harper* at 39).

Several points are of note. First, the court determined that the campaign finance regime is internally coherent; however, in deciding that each of the constituent parts must stand alone and must be separately tested constitutionally is an extremely high bar—and possibly an impossible one—for any comprehensive piece of legislation. An appropriate analogy might be the following: if the ‘constituent part’ test were to be applied to the Canadian judicial system, then presumably the ‘constituent part’ of appointing justices rather than electing them would fail the SCC’s test. Second, the misgivings of the court are significant with regard to the factual basis of linking third party spending to harm. Third, the court’s reference to the dangers of a misinformed public as a result of limits on third party spending bring to mind the U.S. Court’s similar concern in its 1976 *Buckley v. Valeo* decision.

Fourth are the comparative references made by the court. The court compared the prohibitions for third parties against the privileges of the Chief Electoral Officer. For example, the court referred to the Chief Electoral Officer who had testified that Elections Canada used national media to communicate messages, at a cost of $425,000 for a one-time full page advertisement; the court noted that the “Chief Electoral Officer would have been unable to communicate this important change... were he subject—as are other Canadians—to the national expenditure limit of $150,000 imposed by law” (*Harper* at 10). The court also
made reference to the ‘right to receive information’ enshrined in the *Universal Declaration of Human Rights* (1948, clause 71) and the *International Covenant on Civil and Political Rights* (1976, clause 47) and also made reference to the American ‘right to receive information,’ in its verbatim quotation of Justice Marshall and of Justice Pell who argued that “speech without effective communication is not speech but an idle monologue in the wilderness” (*Harper* at 20). Finally, the SCC made reference to limits on spending in the U.K. which it cited approvingly as more generous.

Despite these profound misgivings, the SCC nevertheless upheld the restrictions on third-party spending, reasoning that “[O]n balance, the contextual factors favour a deferential approach to Parliament in determining whether the third party advertising expense limits are demonstrably justified in a free and democratic society” (*Harper* 2004 at 88). It is crucial to the decision that the SCC accepted that Parliament had adopted an egalitarian, deliberative vision rather than a representative vision of democracy (*Harper* at 63). But in fact, the court stated that “The current third party election advertising regime is Parliament’s response to this Court’s decision in *Libman* . . . Thus broadly speaking, the third party election advertising regime is consistent with an egalitarian conception of elections and the principles *endorsed by this Court in Libman*” (*Harper* at 63; italics added). This, however, represents circular reasoning. It is not clear that Parliament has indeed adopted an egalitarian model; nor that an egalitarian model necessarily must include the current limit on free speech which the Court itself characterized as ‘draconian’ (*Harper* at 39) and ‘severe’ (*Harper* at 35); nor finally that Parliament, to the extent that the laws enacted are consistent with egalitarianism, was not in fact prompted by the Supreme Court itself in *Libman*.

Despite the fact that the SCC upheld the limits on third party spending, Hiebert views the Canadian court as coming “alarmingly close” to the decision in *Buckley v. Valeo*. She argues that trial and appellate court judges gave “primacy to negative liberty—the ability to advertise without being subject to strict spending—without considering the effects this has on citizens’ equality” (*Hiebert* 2006, 287-288). She further argues that the lower court judges failed to acknowledge the normative concerns expressed by the Lortie Commission regarding the fairness of spending during election periods and that they erred in insisting on proof of
harm (Hiebert 2006, 283). Hiebert (2006) argues, in summary, that there is “more at stake than an unfettered right to advertise.”

Hiebert’s assessment is harsh and seems to underestimate the skills of lower court judges. Further, she fails to acknowledge the informal constraint existing in Canada—the anti-American component of Canada’s cultural identity—which can scarcely be absent, at least in the background, in judicial balancing of free speech versus equality issues. This sensitivity to American influence was demonstrated, for example, in a publicized case of the Canadian Human Rights Commission (CHRC) in 2008. In an article in the Edmonton Sun, Gunter reported that the CHRC lead investigator, in answer to the question, "What value do you give freedom of speech when you investigate one of these complaints?" replied, "Freedom of speech is an American concept, so I don't give it any value. It's not my job to give value to an American concept" (Gunter 2008). Although this may be an exceptionally blatant example, it nevertheless serves notice of Canadian wariness of mimicking ‘American’ values despite the fact that freedom of speech is a universal democratic tenet. The arguments outlined in the foregoing demonstrate that the lower as well as superior court justices were well aware that there was more at stake than “an unfettered right to advertise” and indeed the concerns addressed in the dissenting opinions in Harper and Figueroa demonstrate this.

Chief Justice McLaughlin, as well as Justices Binnie and Major, dissented from the majority opinion in Harper. In essence the dissenting opinion in Harper maintained that the Attorney General had failed to present evidence of the corrupting effect of wealth and this had “lent credence to the argument that the legislation is an overreaction to a non-existent problem” (Harper 2004, par 34). This is indeed a sharp rebuke: while it does not refute the government’s intent to equalize the opportunities for meaningful expression, the dissenting justices found that, contrary to the egalitarian premise that the existence of wealth challenged equality, in fact, no evidence had been provided to support the claim that “wealthy Canadians are posed to hijack this country’s election process” (Harper 2004, par 34).

The Supreme Court of Canada and Figueroa v. Canada

The Communist Party of Canada (CPC) and its leader Michael Figueroa, following the 1993 election, challenged the existing Canada Elections Act. The CPC’s challenge arose
from three facets of the CEA: first, the fact that because it had failed to field 50 candidates in the 1993 election, it therefore would be automatically deregistered and its assets turned over to Revenue Canada. Second, because it had not fielded 50 candidates, the CPC had not been listed as a party identifier after its candidates’ name on the ballot. Third, because the CPC had failed to attract 15 per cent of the votes in the election, candidates’ deposits were not refundable. The CPC argued that these provisions of the *Canada Elections Act* constituted a violation of s. 3 of the *Charter*. As MacIvor (2004, 13) writes, the government’s defence in part argued that the Communist Party had been able to field “more than 50 candidates in the elections between 1974 and 1993 . . . that [Communist Party] candidates had been able to issue tax receipts for donations in each campaign period” and finally that that despite its nonregistered status in 1993 and 1997 had been able to reregister. For the government, therefore, the 50-candidate benchmark had clearly not provided a barrier for most of the period in question or in the period following the *Charter*. The case proved to be a tortuous one. Although the trial judge held that the 50-candidate threshold was inconsistent with s. 3 of the *Canadian Charter of Rights and Freedoms*, the Court of Appeal declared the reverse, with one exception. The Court of Appeal held that the inability of candidates of non-registered parties to identify party affiliation on the ballot was an infringement of the *Charter*.

The case reached the Supreme Court in 2002 and constitutes the first political finance case adjudicated by the Supreme Court that did *not* involve third-party expenditures to the *Canada Elections Act*. The case, *Figueroa v. Canada (Attorney General)* 2003 SCC 37 (henceforth *Figueroa*), resulted in a 6-3 split decision by the SCC\(^\text{17}\) which ruled in favour of the plaintiff. The SCC struck down three sections of the *Canada Elections Act* in its decision, handed down in November, 2003. The majority decision considered first what the meaning of the *Charter*’s section 3 which states: “[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.” Justice Iacobucci, writing the majority decision, reviewed prior cases in which the court had determined that the interpretation of the ‘right to vote’ was

\(^{17}\) The majority opinion represents Justices McLoughlin, Iacobucci, Major, Bastarache, Binnie and Arbour; the dissenting opinion represents Justices Gonthier, LeBel and Deschamps.
to be construed in a generous rather than legalistic manner, that the right to vote is “not
equality of voting power per se but the right to ‘effective representation’,” and therefore, that
“Defining s. 3 with reference to the right of each citizen to meaningful participation in the
electoral process, best reflects the capacity of individual participation in the electoral process
to enhance the quality of democracy in this country” (Figueroa at 20, 23, 27). Also crucial to
the court’s decision was that,

freedom of expression is a crucial aspect of the democratic commitment . . .
that all persons are equally deserving of respect and dignity [and] the state
therefore cannot act to hinder or condemn a political view without to some
extent harming the openness of Canadian democracy . . . It thus follows that
participation in the electoral process has an intrinsic value independent of its
impact upon the actual outcome of elections (Figueroa, par 28-29).

It is here that the court insists that the value of participation per se, and hence a more
egalitarian, deliberative vision of democracy, has been adopted by Parliament. As well,
Justice Iacobucci, writing for the majority, writes that while

certain aspects of our current electoral system encourage the aggregation of
political preferences, [he] did not believe that this aspect of the current
electoral system is to be elevated to constitutional status . . . [T]he fact that
our current electoral system reflects certain political values does not mean that
those values are embedded in the Charter, or that it is appropriate to balance
those values against the right of each citizen to play a meaningful role in the
electoral process (Figueroa at 37).

In summary, the court struck down sections 24(2), 24(3) and 28(2) of the Canada
Elections Act, declaring that the 50-candidate threshold infringed s. 3 of the Charter and that
the infringement was not ‘reasonable or demonstrably justified in a free and democratic
society’ (Figueroa, 94). However, the dissenting opinion is crucial because it recognizes the
importance of Canadian political traditions. In it, Justice LeBel writes that,

In my opinion, the sole determinative question at the infringement stage of the
analysis cannot be whether the impugned measure “interferes with the
capacity of individual citizens to play a meaningful role in the electoral
process” (Iacobucci J., at. 38). Framing the question in this way understates
the complexity of effective representation and meaningful participation. Such
multifaceted concepts cannot be reduced to the purely individual aspects of
political participation, but rather comprise a number of intertwined and often
opposed principles. Indeed, as Iacobucci J. himself observes at para. 36, “the
mere fact that the legislation . . . restricts the capacity of a citizen to participate in the electoral process” is not enough to establish a violation of s. 3 (Figueroa at 96; italics added).

Applying that contextual and historical approach to the facts of this case leads to the conclusion that the legislation does further significant democratic values. The challenged provisions form part of the scheme in the Canada Elections Act, R.S.C. 1985, c. E-2, for the formal legal recognition and regulation of political parties. This scheme enhances the effectiveness of the party system which, in turn, is an important component of our democratic form of government. The requirement of nominating 50 candidates tends to benefit parties with a broad appeal, thus encouraging cohesiveness and the aggregation of political will. The importance of these values, deeply rooted as they are in Canadian political culture, is evidenced by their place in our history and existing institutions (Figueroa at 98).

Justice LeBel further writes that “it is not only the strictly individual aspects of participation” which matter (at 101); that section 3 of the Charter “must be interpreted in harmony with our political traditions” (at 102); that “not every government measure with an adverse impact on participation renders it meaningless” (at 103); that the “right to vote is the citizen’s entitlement to an opportunity to vote in fair elections” (at 104); and finally that “voter parity is one of the factors” but not the exclusive factor on which the judgement hinges (at 108).

It is important, too, to give due attention to the context within which democratic rights are exercised and to the history of Canadian political institutions. In my view, s. 3 must be interpreted in harmony with our political traditions. A purely individualistic approach is difficult to reconcile with the characteristic values of Canadian politics. For this reason, an analysis focussing strictly on the individual aspects of the right appears to depart from the approach this Court adopted in . . . 1991 . . . where the context of our tradition and established political practices was recognized as a source of the meaning of the rights enshrined in s. 3 (Figueroa at 102).

To summarize, the majority decision in Figueroa embraces a vision of democracy that prioritizes representation above other democratic values and it embraces a particular view of political parties. Justice Iacobucci writes that, “It is my conclusion that the ability of a political party to make a valuable contribution to the electoral process is not dependent upon its capacity to offer the electorate a genuine ‘government option’” and that the value of a political party is its enhancement of the “meaningfulness of individual participation . . .”
and *not* the ability to govern (*Figueroa* at 39; italics added). This view does not balance the varying scholarly definitions of political parties; it does not take into account the particular role of parties in Westminster democracies; lastly it does not take into consideration Canada’s tradition of brokerage parties which have represented and mediated societal cleavages in an intra-party rather than inter-party manner. All these factors are significant markers of parties as Canadian political institutions, yet are not taken into account by Justice Iacobucci.

The introduction of a lower threshold of vote share and the dropping of seat-share in the calculation of a party’s allowance moves the Canadian electoral system closer to proportionality and away from its majoritarian system, with the court’s implicit support. The decision is a harbinger for further blurring between parties and interest groups. The decision potentially legitimates subsidizing a political group’s expenditure, simply on the basis of whether it can attract *any* votes. This is of great import: Massicotte (2006, 177) suggests for example, that an interest group or entrepreneurial politician may seek to become a registered party neither to govern nor to engage long-term in political activity but merely to acquire public funds to finance an otherwise unpopular cause. While democracy extends—and should extend—the right to expression to many groups, whether taxpayers ought to be required to subsidize them in the electoral process is quite another. How far the court’s acceptance of a state role in extending financial benefits to small groups qua parties remains to be seen. It specifically did not include in its consideration the preference given to mainstream parties of access to broadcasting privileges.

The court allowed Parliament 12 months to bring campaign finance legislation into compliance. As a result, the government, as discussed in Chapter 4, introduced Bill C-3 in February 2004; among its provisions, were new reporting and organizational requirements and criminal penalties to deter entities from falsely claiming party status. No cases regarding campaign finance have reached the SCC since *Figueroa*. Before turning to the impact of the foregoing decisions on campaign finance in Canada, I turn briefly to parallel developments in the U.S.
Following the passage of FECA and the *Buckley v. Valeo* case in the 1970s, the concept of money in electoral contests became increasingly viewed with opprobrium: court decisions and dissenting opinions are rife with conflict over the issue. For example, in *Austin v. Michigan* (1990), the majority opinion of the Supreme Court argued that it was the “corrosive and distorting effects of immense aggregations of wealth” which concerned them (*Austin 1990, 678*) Dissenting justices, by contrast, found that “[u]nder this mode of analysis, virtually anything the Court deems politically undesirable can be turned into political corruption—by simply describing its effects as politically ‘corrosive,’ which is close enough to ‘corruptive’ to qualify” (*Austin 1990, 659-660*). Burke (2002, 650-651) points out that this broader conception of corruption is “no longer tied to the conduct of the officeholder, but instead concerns the power of the corporate spender in the political marketplace.” This is a distinctive change in substantive meaning of the word corruption which borrows not only from Rawls but from progressive ideology. The dissenting opinion also critiques the majority opinion because it “conflated the relatively uncontroversial ideal of disinterested public service with the far more problematic ideal of ‘undistorted’ campaign finance” (Burke 2002, 652; italics added). This conceptual blurring is potent in that it suggests that inequality of financial resources among political actors is in itself a ‘distortion’ and represents inequity.

Spending in the U.S. by what is known in Canada as ‘third parties’ has proliferated in elections in the 2000-2010 period, led by innovations in fundraising on the internet, first by Howard Dean in 2000 and most recently by Barak Obama in the 2008 election. I pause here to briefly describe the variety of organizations in the U.S. which are considered as ‘third parties.’” Political action committees emerged, for the most part, following the *Buckley* decision although labour unions had used them prior to FECA (La Raja 2008, 221). Dating from the early twentieth century, U.S. corporations, unions or interest groups could not use treasury funds “to make direct contributions to candidates or independent expenditures that expressly advocate[d] the election of defeat of a candidate, through any form of media, in connection with certain qualified federal elections make contributions to political campaigns directly from their treasuries” (*Citizens United v. FEC 2010, B*). Therefore, when
corporations and unions engaged in political campaigns, they contributed to political action committees (PACs).

In 2002, BCRA s. 203 further prohibited the use of treasury funds to fund “any electioneering communication” where electioneering communication is defined as “‘any broadcast, cable, or satellite communication’ that ‘refers to a clearly identified candidate for Federal office’ and is made within 30 days of a primary or 60 days of a general election” (Citizens United v. FEC 2010, B). PACs may spend any amount of money in a candidate campaign as long as the expenditures are not coordinated with those of the candidate. Contributions by individuals to PACs have been limited to $5,000 per individual per year (with no inflation indexing) with other limits applying to multi-candidate PACs and other variations.

Another category of interest group is the 501(c), named after the section of the United States Revenue Code. 501(c) organizations cover 28 categories of organization and afford these organizations specialized tax status, exempting them from certain federal taxes. The most significant category of 501(c), for the purposes of campaign finance, is the ‘527 organization’. Political action committees (PACs) and candidate-support committees are covered under federal election law and hence are termed ‘hard’ money. By contrast, contributions to and expenditures by 527’s, which “run advertisements, register voters, or help turn out voters” (Magleby 2009, 73), are termed ‘soft’ money, in that they are not covered by federal campaign finance law. Again, to preserve their special tax status, 527’s must not co-ordinate their activities with the campaign of a specific candidate or party. La Raja (2008, 219-220 summarizes the effects of the BCRA: “To be sure, the BCRA requires greater disclosure of political money previously, but the goal of transparency is undermined by incentives to finance campaigns outside the party campaign structure . . . Regrettably, the party no longer serves as the convening umbrella organization for political campaigns.” La Raja (2008) meticulously documents a host of unexpected—and for parties—negative outcomes in terms of the balance of political parties versus independent groups.

Key Supreme Court decisions followed passage of the BCRA. The decisions in McConnell v. Federal Election Commission (2003), the Federal Election Commission v.
Wisconsin Right to Life (2007) and the Citizens’ United v. Federal Election Commission (2010) triggered sharp debate regarding the integrity of the campaign finance regime in the U.S. In McConnell v FEC, the court determined that “a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” in contrast to FEC’s argument that “any ad covered by s. 203 that includes ‘an appeal to citizens to contact their elected representative’ is the ‘functional equivalent’ of an ad saying defeat or elect that candidate” (FEC v. Wisconsin Right to Life 2008, 15-17). Charges that court decisions had emasculated the rigour of campaign finance laws in the U.S. became frequent. Issacharoff in 2006, for example, wrote that the SCC decision in McConnell v FEC carried forward “the central and unreconciled tensions in this entire area of law” (Issacharoff 2006, 185) The aptness of Issacharoff’s statement continues with new challenges to campaign finance laws.

Citizens United is a non-profit organization which developed a film about Hillary Clinton in her bid to become presidential candidate for the Democratic Party; the documentary was released in theatres and on DVD. Citizens United wanted to distribute it through video-on-demand and advertise it on broadcast and cable television. Because individuals would be buying the video, it would hence be ‘pulled’ into the market rather than ‘pushed’ as advertising. However it was fearful of contravening the BCRA s. 441b ban on corporate-funded independent expenditures during the election period (Citizens United 2010, 3). As the majority in Citizens United (2010, 16) writes, “This Court is confronted with conflicting lines of precedent: a pre- Austin line forbidding speech restrictions based on the speaker’s corporate identity and a post- Austin line permitting them. Neither Austin’s anti-distortion rationale nor the Government’s other justifications support §441b’s restrictions.” The court ruled in favour of Citizens United.

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18 As well, SpeechNow.org v. FEC, which was ruled on by the United States Court of Appeals for the District of Columbia, determined that because of the Supreme Court decision in Citizens’ United, that SpeechNow was obligated only by reporting and organizational requirements for PACs, not contribution limits. SpeechNow had appealed to the FEC in 2008 for special status since it sought only individual contributions not organizational ones. PACs such as SpeechNow which make exclusively ‘independent’ expenditures, are not bound by the $5000 individual contribution limit which governs most PACs (SpeechNow.org v. FEC 2010).
Several lines of argument by the court are critical since they act as a backdrop against which to examine Canadian court decisions. First, the court specifically referred to changing technologies and the increasing difficulty of sustaining distinctions between one form of communication versus others. They state:

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers . . . In addition, no serious reliance issues are at stake . . . Austin, 494 U.S. 652, should be and now is overruled. We return to the principle established in Buckley and Bellotti that the Government may not suppress political speech based on the speaker’s corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations (Citizens United 2010, 23-24).

Second, the court did not accept that the interests of corporations necessarily oppose the common good. As the court stated, “Corporations, like individuals, do not have monolithic views. On certain topics Corporations may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials (Citizens United 2010, 23). Third, the court in Citizens United rejected the claim that unequal contributions “necessarily lead to corruption, the appearance of corruption or result in the electorate losing faith in American democracy” (Citizens United 2010, 21; italics added). Fourth, the court determined that if the purpose of Congress had been to protect dissenting shareholders from “being compelled to fund corporate speech,”” then “it would not have banned corporate speech in only certain media within 30 or 60 days before an election”. Conversely, if Congress’ purpose had been to limit corporate speech in only the period 30 or 60 days before an election, then the statute involved was over-inclusive because it “covers all corporations, including those with one shareholder,” that is, an individual (Citizens’ United 2010, 22). Fifth, the court quoted from Davis v. Federal Election Commission (2008), in which the majority wrote that,

Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives . . . and it is a dangerous business for Congress to use the election laws to influence the voters’ choices” (Davis v. FEC 2009; slip op., at 16; italics added).
Last, the court also found that s. 441 of the BCRA illegitimately exempted media corporations from its coverage. As the court noted,

Our Nation’s speech dynamic is changing, and informative voices should not have to circumvent onerous. Restrictions to exercise their First Amendment rights . . . S. 441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds . . . The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech” (Citizens United 2010, 23).

The majority view in Citizens United, expressed by Justice Kennedy, stated that,

When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted sources he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves (Citizens United 2010, 19).

The minority opinion, by contrast, argued that the “distinction between corporate and human speakers is significant” (Citizens United 2010, dissenting opinion, 2; 28).

What is significant for comparative purposes, is that U.S. court decisions in issues of campaign finance are considerably more unambiguous in their analysis of whether the existence of wealth per se and disparities of wealth ipso facto constitute corruption and hence the possibility of corrupting electoral outcomes. The First Amendment acts as a considerable brake and benchmark against which to measure legislation which directly or indirectly involves First Amendment rights. Canadian courts have no equivalent ‘brake’ like the First Amendment with which they must contend. Although the Charter includes ‘freedom and equality’, the justices, in the cases reviewed, view Charter equality provisions as the only ‘brake’ with which they contend. As one author has contended, “What occurs in Charter adjudication is that the Supreme Court uses its discretion to employ one principle rather than another, thereby conferring constitutional status on the privileged principle” (Manfredi 1993, 215). Canadian court decisions have for the most part elided the links between justice, fairness and wealth, whereas U.S. courts have chosen to deal with the subject head-on. This is particularly evident in Harper where, despite profound misgivings regarding the evidence
that inequality of wealth *ipso facto* is also inequality in the *Charter* sense, the court nevertheless accepted the view that it did.

These arguments are crucial not only with regard to American jurisprudence and party finance. They also encapsulate similar debates in Canada and the U.S. as to how broad the notion of corruption is and whether the mere existence of differential resources and their use in electoral campaigns constitutes ‘injustice’ and ‘inequity’ or corruption, either *quid pro quo* or the ‘appearance of corruption’. The contemporary debate harkens back to the Progressivist contention that inequality of resources in electoral contests and ‘excessive’ use of money was not merely unjust but possibly corrupt. The debate also tests the limits of those who argue that to the extent that third party spending leads to the ‘appearance’ of corruption, such expenditures also then lead to lack of confidence in democracy and hence contribute to the ‘democratic deficit.’ As Burke (2002, 659) summarizes, the dissenting opinion in *Austin* (1990) was sceptical of the notion that inequality in campaign finance would necessarily lead to such a pessimistic outcome. As the court wrote, while “inequality in campaign finance may be troubling to some American citizens . . . would they really consider this an issue of corruption?”

In a decision rendered in 2009, the U.S. Supreme Court rejected the argument that inequality of resources, qua independent expenditures, is necessarily corrupt. The following statement is perhaps the most concise framing of the issue.

This Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy (*Caperton v. A. T. Massey Coal Co.* 556 (2009) distinguished; 40–45).

Although this may seem to be a definitive statement, Rinner (2010, 5) concludes that the “goal of promoting equality through campaign regulation has gained only limited support from the Supreme Court . . . The question, then, is how far the anticorruption rationale may be leveraged to advance substantive equality norms.” By contrast, the SCC has accepted the goal of promoting equality through campaign finance regulation even in the face of data which it found unconvincing.
Impact of the Charter and the Judicial Decisions

Scholars as well as practitioners consider the Figueroa decision to be a landmark decision. As MacIvor (2004, 18-19) summarizes, there are several outstanding questions among which are whether the ‘automatic benefits’ of party status will be extended to allocation of ‘free’ broadcast time and whether the vote thresholds contained in the 2004 revisions will be challenged. She suggests that the court’s decision was a ‘favourable omen’ for small parties and in particular for the cause of proportional representation reforms to Canada’s electoral system (MacIvor 2004, 19). While cautious about the Figueroa decision in terms of its positive impact on Canada’s political ‘malaise’, she argues that there is “reason to expect a more vigorous and engaged electorate, and a closer relationship between civil society and the state” (MacIvor 2004, 19). This expectation will be examined more closely in Chapter 8.

Recent U.S. court decisions also reveal concern by the justices regarding the use of traditional campaign finance law to cover the use of the internet. The concern, for example, in SpeechNow v. FEC (District Court) centred on whether internet messages, which are selected or ‘pulled’ by the user indeed constitute ‘advertising’ in contrast to advertising via traditional media which is ‘pushed’. A second distinctive considered is that traditional media cannot be ‘avoided’ if one is reading a newspaper. The Supreme Court of Canada has not yet addressed this issue (although the Canada Elections Act 2000, s. 319d makes mention of the Internet). Court challenges on the subject of the ‘cost’ of an internet election message, if it is created and distributed by a ‘volunteer’, could be classed as third-party ‘advertising’ even if the party or candidate has not contracted for it. Is the cost to be the volunteer’s time or the effectiveness of the internet piece, particularly if it goes ‘viral’ and either confers a tremendous benefit or wreaks havoc on a campaign? Small (2009) begins to address these concerns but concludes that to this point, the law and the courts have tried to force the issue of electoral internet advertising into the existing political finance framework rather than seek to develop a new model.

Manfredi and Rush (2008) analyze Canadian and American high court decisions regarding electoral processes, one of which is campaign finance. They find, in contrast to
Feasby (2006) who has argued that the Canadian court has embraced egalitarian democracy, that the Canadian court, and specifically Chief Justice Beverley McLaughlin, is evidencing more concern regarding conflicts between adjudicating equality rights versus freedom of association issues. While the court articulated the egalitarian theory of democracy clearly in Harper, and despite the court’s reference to Parliament’s adoption of egalitarian democracy, the evidence is insufficient to declare that either the Supreme Court or Parliament has indeed ‘adopted’ the egalitarian model in its entirety. While it is accurate to state that Parliament has expressed its interest in ‘levelling the playing field’ that is not necessarily a complete endorsement of egalitarian democracy. ‘Levelling the playing field’ may indeed partially resolve itself via the use of the internet for purposes of ‘access’ and ‘equality’ to electoral contests.

In summary, Charter provisions for equality have proved extremely thorny both to the government in developing campaign finance legislation and to the court in evaluating competing definitions of equality and testing legislation against various clauses of the Charter. Comparative legal scholarship and comparative campaign finance scholarship are intensely divided on whether the SCC has sustained an egalitarian vision of democracy (Feasby 2006 and MacIvor 2004, for example) or a more classic, liberal vision of democracy (Manfredi and Rush 2008). In Harper, the court stated that

The Court’s conception of electoral fairness . . . is consistent with the egalitarian model of elections adopted by Parliament . . . This model is premised on the notion that individuals should have an equal opportunity to participate in the electoral process. Under this model, wealth is the main obstacle to equal participation . . . (Harper 2004, note 3).

This is a clear demonstration of Rawlsian democratic theory which posits that that inequities in wealth will eventually “enable those better situated to exercise a larger influence over the development of legislation” (Rawls 1971, 225). Feasby (2006, 250; 266) notes correctly that the egalitarian model sanctions (and does not inherently distrust) state activity in inviting it to even out opportunities for public expression. Indeed, the majority decision in Harper stated that “the State can provide a voice to those who might not otherwise be heard” and “the State can restrict the voices which dominate the political discourse . . .” (Harper 2004, 62). While Feasby (2006, 266) considers the Harper decision to be evidence that the SCC is “clearly
committed to the egalitarian model of election regulation,” this may be overstating the matter.

Of significance to my research project is the difficulty with which court decisions have had in reconciling Westminster parliamentary tradition with both the exact wording of the Charter and of interpretations of how notions of ‘equality’ and a ‘meaningful vote’ should play out. In the cases examined above, it is not clear that the majority opinions have, at least in their written judgments, considered the role of informal traditions and constraints in reaching terms of equality for Canadians. While the court has been careful in its deference to contemporary Parliament, its decisions on parties lack historic context and fail to demonstrate an appreciation of parliamentary traditions, whose measures that, even if self-serving, nevertheless introduced equality measures in the field of campaign finance relatively early. As well, the court has chosen not to recognize the brokerage nature of Canadian political parties and their crucial role in mediating national conflicts. Katz was concerned about the narrow definition of political parties adopted by the SCC in Figueroa. As he stated,

Elections do two things. One, is they allow people to choose representatives and the other that they allow people to choose governments. The Supreme Court decision virtually ignored the second in favour entirely of the first.

Figueroa represents a rejection of parliamentary democracy and the notion of trustee representation which Burke stated as follows.

Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good . . . You choose a member indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of parliament (Burke [1770] 1999, Vol. 3, 25).

Thus, the trusteeship role of elected members, the constituency services of members, the brokerage role of parties in representing regional and social cleavages, and the role of parties in the majoritarian parliamentarian system were seemingly set aside despite the reputation of the Canadian campaign finance regime and Canadian democracy as among the most admired in the world (Alexander 2005). This disconnection between the court’s view of Canadian democracy and that of external actors is jarring. While the court’s role is to interpret legislation, rather than speculate on the nature of political parties, the court has indeed moved
into defining its understanding of what a political party is and does as seen in its decisions in *Figueroa* and *Harper*.

The *Figueroa* decision may be considered as an example of strong judicial review in that no options or ‘conversation’ with the legislature were left open. This is particularly important in the consideration of whether political parties are situated—either normatively or practically—in the public or private spheres. As Tushnet writes, regarding strong judicial review,

> Often the critical concern . . . is that it infuses a large domain of private life with constitutional norms, in a way that is inconsistent with the very idea that the domain is private. The thick statutory regulation of private life, often in the service of, if not necessarily compelled by, constitutional norms, means that private life is already not *that* private (Tushnet 2008, 208; original italics).

The Supreme Court of Canada has not directly addressed the issue of public versus private in its deliberations on campaign finance cases as it has in cases concerning social welfare or health where, as Tushnet (2008, 202) argues, the court “repeatedly emphasizes the importance of sustaining a private domain” and seeks to avoid a situation in which the court decisions would “‘strangle the operation of society and . . . ‘diminish the area of freedom within which individuals can act’” (Tushnet 2008, 202; *McKinney v. University of Guelph* 1990 at 262). If the SCC were to import this type of reasoning into future campaign finance cases, then there could be movement toward the value placed on Canada’s historic institutions by the dissenting justices in *Figueroa*.

Of those interviewed, relatively few commented on this intricate dance between the Canadian Parliament and judiciary. For Manfredi, the Canadian Parliament had demonstrated cartel-like behaviour in 2000 in its passage of limitations on third-party spending during the writ period since

> Political parties, of different political orientations, can agree that the one thing they have in common is the desire to erect barriers to entrance . . . Campaign advertising restrictions, by non-participants, in the election [period] is one way of doing that.
Manfredi therefore appreciated that in the *Figueroa* decision, the SCC exhibited “the germs of an acceptance of the incumbent lock-up thesis, the notion that electoral rules lock incumbents into power.” Should incumbent lock-up prove to be an outcome of the 2004 quarterly subsidies to parties, this fact must be taken into effect as a factor pushing the system away from a level playing field. As Manfredi stated,

> One has to be very sceptical about motives and not just take it at face value that these rules are being done to perfect the integrity of the process; to make the process more fair, to equalize the process. I think you can’t take politics out of politics.

On the whole, Manfredi concluded that the inherent challenge in the regulation of campaign finance is that,

> In order for our political system to work properly, we need strong political parties. So, the question is, what’s the line between privileging political parties *per se* [versus] privileging political parties who happen to have been successful in elections . . . And so the rules that existed very much, very much protected existing political parties . . . But they made it very difficult for new political parties to get going. I think the balance that you have to have is between protecting political parties as an institution and in fact; protecting political parties as an institution probably means having a set of rules that maximizes the ability of other political parties to enter the game.

The position of the SCC and in particular, Madam Justice McLaughlin’s apparently evolving position toward greater weight being given to freedom of speech and expression concerns was noted with approval by Johnson, a retired journalist, and Manfredi also. Nicholls was alarmed by the trend evidenced in court decisions where in contrast to a former standard of actual harm, the court had more recently been disposed to permit restrictions of speech based on ‘apprehension of harm’. With regards to the *Figueroa* decision, opinions varied, with Chipeur noting first of all that in his opinion, “Judges always believe politicians have more power than they actually have. They think government parties are powerful but it’s the bureaucracy, not the parties.” Young, an academic, and Carstairs, a senator, both argued that the Supreme Court’s decision in *Figueroa* to reduce ‘registered’ party status to parties with only two seats in the House of Commons had “gone too far”. As Young stated, while 50 seats may have been too high, two was definitely too low and for Senator Carstairs, two seats denoted an interest group, not a party. By contrast, Docherty, while noting that it
was ironic that it was the Communist Party—a non-democratic advocate—which had brought the question of registered party status to a head at the SCC, nevertheless argued that the Figueroa decision was good for Canadian democracy. Cross pointed out that U.S. governments have been “hampered by the Bill of Rights and First Amendment in terms of trying a lot of [policies] which Canadian courts have allowed our legislatures to do.”

Senator Joyal was not alone in expressing his belief that there is still room for Charter challenges while another participant wondered whether a Charter-proof campaign finance policy could even be devised. Joyal stated that if the subsidy were cut or eliminated, as proposed by Prime Minister Harper in 2008, and the ceiling on contributions were maintained, that would constitute a breach of section three of the Charter. His reasoning was as follows:

You cannot put limits on the freedom of expression of Canadians in the area of democratic rights, like giving the money for whatever you want. If I want to give five thousand dollars to the Humane Society of Canada because I like the pets or make a will and give everything I own to the support of that cause, I’m free to do it. But when it comes to a political party, I cannot do it. And my democratic right is that I’m protected by the Constitution to participate freely in the election. So, if you expropriate the rights of Canadians, by putting such . . . [an] outrageous limit of a thousand dollars then you cannot at the same time, not compensate for it. And, if I can make a parallel, it’s the famous case of Chaoulli (an access to health care SCC case) in its relation to the public health care system. The court’s reasoning was as follows: “If you prevent the private sector from offering the service that the public sector is offering, you cannot also limit the rights of Canadians to [pay for and] receive those services to a point where you negate, in fact, the care.” And that’s what the court has said.

Conclusions

Aldrich (1995) characterizes political parties as the most ‘malleable’ of political institutions. In the language of new institutionalism, parties as institutions have historically been shaped by informal practices and understandings; therefore, the shift toward increasingly formalized rules governing parties and third parties has taken on new significance. The Lortie Commission referred to the “administrative law tradition in the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms” (Vol. 1, 494). The evidence in this chapter confirms that this administrative law tradition has become
increasingly important in the intervening period and that interpretation by the courts has interacted with Canadian campaign finance law in significant ways. The evidence also substantiates Young’s assertion that the “Courts have become central players” in political finance (2004, 6). The SCC has shaped the notion of ‘equality,’ of a ‘meaningful vote’ and has therefore triggered new legislation in the field of campaign finance but has shaped its implementation. This Canadian experience parallels that of the U.S. where Magleby (2000, 1) writes that, “Because the interpretation of campaign finance rules influences the way our democracy functions, the Supreme Court and FEC’s actions have distinctly affected our democratic campaign environment.”

In contrast to the U.S., however, Canadian courts, in the cases examined, do uphold more restrictions on speech and expression and specifically those which discriminate on the basis of the identity of the speaker. With the exception of Manfredi and Rush (2008) who, as earlier noted, detect a recent trend in the SCC giving greater weight to freedom of speech considerations, the evidence for the most part speaks to greater constraints on speech with a view to levelling the playing field. Although the SCC did recognize that,

The ability to speak in one’s own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present her views for public consumption and attempt to persuade her fellow citizens (Harper 2004 at 20),

it nevertheless failed to follow through on this by enlarging the sphere in which citizens and groups of citizens who wish to express partisan opinions or critiques during the writ period may spend more than $150,000 in total. The ‘gag law’, as it was termed by participant Nicholls, is triggered only by ‘spending’ by a third party and essentially is composed of a message that is ‘pushed’ toward the electorate by its creator or funder. However third party messages, blogs and videos which go ‘viral’ and hence may disturb the current ‘level playing field’, are not subject to the restrictions on third parties. The SCC in Harper did not articulate any sense that its support of third party spending limits would likely stand only until a challenge by a third party itself. It failed to appreciate, as did the U.S. Supreme Court, in Citizens’ United (2010, 23-24), that technological change in communication methods counselled against “upholding a law that restricts political speech in certain media or by certain speakers.”
Despite the Charter’s twin emphases on freedom and equality, the SCC, for the most part has emphasized a Rawlsian definition of justice, the legitimacy of prioritizing liberal values and has implicitly upheld the notion that any inequality of wealth represents a threat to voter equality and voice. In so doing, the court has also implicitly endorsed a shrinkage of the private sphere and has rejected the notion that political parties and political expression may exist in the private sphere and in that sphere still contribute to voice and equality without state restriction on speech. As well, the court has, particularly in Figueroa, accepted a limited view of political parties as agents of representation rather than ability—or purpose—to govern, to oppose the government of the day, to hold it and the bureaucracy to account, inherent principles of parliamentary democracy and classic liberal democracy. In all these ways, the court has shaped the form and impact of Canada’s political finance framework.

A reading of the literature, and the decisions of the court regarding parties and political finance, in conjunction with the comments of those interviewed, thus leads to a confirmation of Scarrow’s argument that constitutional courts have influenced the shape of political finance. By contrast, the evidence of this chapter does not sustain her argument, which presupposes the existence of a cartel-like party system, that court decisions will necessarily go against the interests of the dominant parties. However, the evidence does support the new institutionalist prediction that,

Changing institutions imposes transactions costs of this sort on the participants. The transactions costs include not only those devoted to decision-making, but also those required to enforce the procedures of the new regime and for individuals to adapt to the new procedures (Shepsle 1989, 144).

Finally, if Senator Joyal’s perspective is correct, then we will continue to see more court challenges. Whether the court will continue to justify its decisions from an egalitarian-democratic perspective, as Feasby (2006) argues, or whether it will adopt a more liberal-democratic perspective, in line with Manfredi and Rush (2008), remains to be seen.
Chapter 6  Elections Canada: It’s Not Just the Rules, It’s the Enforcement

Essentially, the relationship between elected and non-elected officials, and the rules and protocols governing that relationship, address a crucial aspect of democratic governance (Bakvis 2006, 1).

Introduction

Canada, since 2000, has experienced significant institutional changes in party or political finance. Nassmacher writes that, in the field of political finance, “Enforcement agencies and public opinion may change the handling of a programme and the interrelation among its elements” (Nassmacher 2009, 26). Scarrow (2004, 659) concurs, arguing that political finance regimes are shaped by the “impact of certain non-legislative actors, particularly constitutional courts and investigative and regulatory commissions.” Has Elections Canada played a ‘crucial’ role in implementing new complexities in political finance rules?

Canada, in contrast to the U.S. and U.K., has had national oversight of elections since 1920. While the initial purview of Elections Canada (EC) was to administer national elections and enforce the *Dominion Elections Act*, through the decades its mandate has broadened to include oversight and prosecution of offences under the *Canada Elections Act* with regard to campaign finance. It is only the latter role of Elections Canada—that of its involvement with campaign finance, not its administration of elections—that is the subject of this chapter.¹⁹

Comparative study of political finance is still under-studied and under-theorized (Pinto-Duschinsky 2001, 2002; Hopkin 2004) and therefore, as a subset, comparative study of the oversight of political finance administration can best be characterized as being in its

¹⁹ I thank Audrey Nowack, Senior Counsel, Legal Services Directorate, Elections Canada and Bradley Smith, Professor of Law, Capital University and former FEC chair, for clarifying my understanding and terminology regarding legal procedures mentioned in this chapter. Any errors are, of course, mine.
infancy. New institutionalism suggests that it is both formal and informal relationships among institutional actors that shape outcomes. Simeon, in a seminal article on public policy pointed to the need for investigating the difference that policy changes actually make in “what gets done, or for whom government serves” (Simeon 1976, 552). Similarly, comparative scholar Richard Rose argues that, “Models of governing are not to be valued in the abstract. They should be endorsed on the basis of what they do and do not produce” (Rose 1984, 157). Emerging from these comparative policy scholars therefore is an emphasis on the empirical and pragmatic outcomes. Other strands of political thought also support the argument that enforcement of policy matters. As Brooks and others recognize, there exists a policy discourse within a particular policy field. He defines this discourse as an “unfolding tapestry of words and symbols that structures thinking and action . . . the capacity to influence this discourse is more than half the battle . . .” (Brooks 1993, 15). Brooks therefore points to the importance of actors in a policy discourse.

The central hypothesis of this dissertation is that, as new institutionalism suggests, new rules provide incentives for behavioural and structural changes and rules work in configurations not in isolation. As Olsen (2007, 2) writes, “Relations among institutional characteristics, political agency, performance, institutional changes and the wider social context of politics” all matter. The role of political finance oversight is therefore central to my research questions of how changes in campaign finance influence both political parties and democratic practices.

In this chapter I examine the Canadian case in light of recent theory of electoral administration; and in terms of the institutional traditions of political finance oversight, the structure and powers of Elections Canada compared to its counterparts in the U.S. and U.K., and recent cases engaging Elections Canada and political parties. I conclude with assessments of Elections Canada’s role in political finance, emerging both from primary documents and from participant observations. I take up Paltiel’s challenge implicit in his observation that “So pressing did the need [for reform] appear that little thought was given to the effect of these measures on the shape of democratic politics” (Paltiel 1979, 15; italics added). I conclude with assessments of Elections Canada’s role in political finance, emerging both from primary documents and from participant observations.
Theory of Election Administration

Because the study of comparative political finance oversight is just emerging, I employ recent work by Boda (2006, 15) on the comparative study of election administration in *established democracies*, which, he argues, demand a different type of inquiry than do election administrations in new or emerging democracies. As is well known, the three nations under study are considered to be mature democracies and their election commissions have developed and retained significant reputations for clean elections, notwithstanding the Gore-Bush controversy of 2000 (Ghaleigh 2006; 55; Alexander 2005). Boda (2006, 5) lays out a typology of election administrations. According to his typology, election administrations may be one of three types: 1) administrations which operate within the civil service (lowest level of independence); 2) administrations which rest within a government department but a supervisory body, reporting to an all-party committee, oversees its work (intermediate-level of independence); 3) administrations which have complete fiscal and administrative autonomy, reporting only annually to the elected government” (highest level of independence). He also writes that despite the fact that independence has “become viewed widely by scholars and practitioners as the principal driver behind improving the quality of election administration” Boda (2006, 4), there are nevertheless costs and benefits to each type. Again, it must be remembered that he is investigating only cases in mature democracies.

Extending this typology, one can hypothesize first, that for political finance oversight—as opposed to election administration—the most independent commissions will have the greatest impact on party operations following a change of party law because there are so few constraints regulating their activities, whereas commissions which integrate party members in their operations or commissions which act interdependently with other bodies will have their decision-making regarding parties circumscribed. Second, variance among agencies in their investigatory and prosecutorial discretion regarding election finance is also expected to mediate the impact of party laws on nominees, candidates, national parties and local political units. Third, the more wide-ranging the reforms or rule changes, the more expansive the regulatory commission’s role will be. Fourth, the more intervention, the more likely the commission is to be charged with partisanship in its decision-making.
Origin and Structure of Political Finance Oversight

The Canadian Parliament established an electoral commission to conduct and monitor elections in 1920; this commission is now Elections Canada. The 1920 Act also established the role of what is now termed the Chief Electoral Officer (CEO). The CEO is one of eight officers of Parliament (not the government) and is appointed by Resolution of the House of Commons. The unusually independent status of the Chief Electoral Officer, as an Officer of Parliament, is noted by Aucoin who observes that,

In the Canadian tradition—a tradition that is *not* shared fully by other Westminster systems—these agents or officers of Parliament are deemed to be ‘independent,’ that is, not subject to direction or control by MPs . . . One could almost say that MPs [Members of Parliament] have agreed to ‘contract-out’ the duty of Parliament to hold ministers and officials to account to their Parliamentary agents (Aucoin 2006, 5).

Thomas, in studying the overall role and accountability of Canadian officers of Parliament has argued that they “are bureaucracies in their own right and they possess significant authority and influence within the policy and administrative processes of government” (Thomas 2003, 288). He argues that the “informing and assessing functions” of officers of Parliament “represents another source of influence” (Thomas 2003, 295). Finally, he suggests five features, which determine the independence of an officer of Parliament: the initial *mandate* and changes thereto since inception; *provisions* respecting appointment, tenure and removal of the officer; processes for deciding *budgets and staffing*; reporting *requirements* and whether *performance is monitored*; freedom of the officer to *identify issues for study* and ability to compel information. Let us turn to the record.

The original role of the CEO was oversight of elections and of such acts as the *Canada Elections Act* and *Controverted Elections Act* which governed electoral irregularities. In contemplating a future political finance regime, the Barbeau Committee report (1966, 58) recommended separating the roles of election administration (Chief Electoral Officer) and political finance (Registrar of Election and Political Finance). However, this did not occur and in 1974, the role of the Chief Electoral Officer was extended to include administration and enforcement of the *Canada Elections Act* relating to political finance. The 1974 act created the position of a Commissioner of Canada Elections who was
and continues to be not only selected by the CEO but also reports to the CEO. Only if both the CEO and commissioner reported independently could they be considered completely separate. The commissioner’s enforcement tasks initially covered only the election expenses provisions of the act; in 1977 this oversight was extended to all provisions of the act; powers of the commissioner were changed in 2000 and the commissioner role was again changed in the 2006 legislation. Functionally, the CEO continues to administer the act, including political finance, with the commissioner enforcing the act. The commissioner thus reports to Parliament via the CEO. Aucoin (2005, 12) notes that the separation of administrative matters (the Chief Electoral Officer) and enforcement issues (the Commissioner of Canada Elections) is considered “especially critical in terms of public confidence in the integrity of the regime.” The CEO also has the power to appoint a Broadcasting Arbitrator whose responsibilities include the allocation of ‘free’ or tax-paid television and radio broadcast time during elections as well as arbitration of disputes involving the purchase of advertising time (Elections Canada “Role and Structure” 2010, 1-3).

Regarding provisions of tenure, of eight officers of Parliament, all have fixed terms of appointment with the exception of the CEO who holds office until 65 years of age unless removed for cause by the Governor General on address of the House of Commons and Senate (Elections Canada “Compendium” 2008, 18). Only six individuals have held the position since the formation of agency. Although the Lortie Commission in 1991-1992 recommended a seven-member Canada Elections Commission to be appointed by a two-thirds vote of the House of Commons for five-year terms, this recommendation has never been carried out. Since 1999, there has been an advisory committee comprised of registered political parties and officials from Elections Canada, whose purpose is to “share information, foster good working relationships and resolve administrative issues that do not require legislative change but that may have an impact on parties and candidates” (Elections Canada “Performance Report” 1999, 15). No reports of this committee’s activities are available online nor are there details of the frequency of meetings; therefore, the actual role and influence of the advisory committee is difficult to establish.

The Canada Elections Act of 2000 sets out the mandate of the Chief Electoral Officer and staff in several paragraphs, in parts 2 and 21. Elections Canada described its objectives
as three-fold in its 1999-2000 Estimates report (1999-2000; 1): to “deliver federal elections and referendums that maintain the integrity of the electoral process . . . ; to achieve and maintain a state of readiness to deliver electoral events . . . [and] to provide information, advice and support on electoral matters . . .” By 2009, the agency described its mandate as follows: election readiness (which includes the actual administration of general elections and by-elections); administration of political financing; monitoring compliance and enforcing electoral legislation; voter education and information programs; support to independent commissions regarding federal electoral district boundaries; studies on alternative voting methods. Its five-year plan states objectives as trust, accessibility and engagement. Trust is currently being operationalized as training to political entities and engagement as a study of youth electoral engagement and the structure and mandate of the Advisory Committee of Political Parties (Elections Canada, “Performance Report” 2008-2009, 2; 5).

Elections Canada submits annual performance reports and budgeting requests and a special report following each general election. These are reviewed by Parliament. The actual financial resources and staffing of Elections Canada since 1989 will be reviewed below in comparative context. The figures, however, reveal significant growth and confirm Thomas’ argument that “the risk that governments will underfund parliamentary agencies or deny them flexibility in staffing matters so as to stifle their criticism can be exaggerated” (Thomas 2003, 302). Thomas also argues that “In practice, parliamentary attention to such reports is mixed at best. Most reports never undergo thorough review” (Thomas 2003, 302).

Thomas also suggests an examination of the ability of the officer to study and compel information. The Lortie Commission in 1991 noted that the CEO had “adopted the practice of issuing guidelines for candidates, political parties and agents” although the act at the time contained no such provision for that to occur. The commission pointed out that despite the fact that “electoral law is fundamental to the rights of citizens and participants in the electoral process” there was nevertheless “no process to submit proposed guidelines to public scrutiny and consultation.” The commission also noted the authority of the guidelines:

The guidelines have also been relevant to enforcement: they specifically state that adherence to them will protect candidates and parties from legal action (Lortie Commission 1991, Vol. 1, 153).
Stanbury, a contributor to the commission, also warned in an independent work of the danger inherent in the position of Canada’s Chief Electoral Officer because of his power via the issuance of *Guidelines*, which Stanbury argued should be submitted to Cabinet and approved by the committee of cabinet which examines new regulations and other forms of subordinate legislation . . . surely no official should, in effect, be able to “make law” without the authority of either the Cabinet (Government of the day) or Parliament (Stanbury 1993, 110).

Kingdon (2003, 128; 102) has observed that “the process of writing regulations is terribly important. It is a quasi-legislative function, and it is totally hidden from view.” Elections Canada’s process of writing political finance regulations is ‘hidden from view’ and its reasoning is disclosed more in challenges to such regulations than by other means. This will be further assessed with respect to recent cases later in the chapter.

Thomas (2003) also suggests examining the ability of the agency to identify issues for study. Throughout the 1990s, Elections Canada not only studied issues but advocated vigorously on behalf of them. Black (2005, 167), for example, assigns “pivotal roles” to both Elections Canada and then-CEO Kingsley in the advocacy for and the transition from an enumeration-based to a register-based voter list. He argues that “Elections Canada and the chief electoral officer [were] key and proactive elements that deserve most of the credit for the advent of a register.” The agency not only took advantage of opportunities within an evolving context of electoral reform . . . but it then greatly facilitated its adoption by employing an effective selling strategy . . .”

Jean Pierre Kingsley, the Chief Electoral Officer, in his report following the thirty-sixth general election held in June, 1997, argued that “It is essential to fill the gaps in our electoral legislation . . . Certain elements of party and election financing continue to be unregulated by the Act . . . There is a need to empower the Chief Electoral Officer . . .” (Elections Canada 1997, 3; italics added). He also stated that it was part of Election Canada’s strategic plan “to support parliamentary efforts to revise electoral legislation as a top priority,” that Elections Canada had played “an increasingly important role in electoral reform in recent years” and that it had chosen to “initiate dialogue and assist Parliament”
The Chief Electoral Officer played a key role in recommending further curtailment of third party spending, making recommendations in 1979, 1980, 1983 and 1997 (Elections Canada 2000a; 2, 4). The 2000 *Canada Elections Act*, paragraphs 534-535, empower the Chief Electoral Officer to make recommendations that “in his or her opinion, are desirable for the better administration” of the act and to bring forward matters that “he or she considers should be brought to the attention of the House of Commons.”

However, given the dual role of the Chief Electoral Officer over both election administration and political finance, this confers an extensive mandate to recommend the reshaping of political party activity. In conjunction with this is the CEO’s position as an officer of Parliament. As Savoie, in an article in the *Globe and Mail* (May 16, 2008), has written,

> Opposition parties view officers of Parliament as their natural allies and do not want to challenge them, let alone hold them to account. Best to let them wander wherever they want, in the hope that they will uncover a situation embarrassing to the government. Meanwhile, the prime minister, ministers and even MPs on the government side, should they question their work, are immediately taken to task by opposition MPs and the media for tampering with their independence. . . . *It is no exaggeration to say that what an officer of Parliament writes is often taken as gospel* (italics added).

Kingsley’s advocacy on behalf of greater regulation if not intrusion into the life of political parties and of civil society expression during elections campaigns, to say nothing of an enhanced role for Elections Canada, and for role of Chief Electoral Officer, suggest a lack of appreciation of the historic civil society role of parties and of civil society, in general, in Canadian parliamentary democracy. Even accounting for the importance of the recommendations of the Lortie Commission in the early 1990s, one wonders if Parliament would have acted as aggressively in circumscribing third party activity in 2000 without the almost ceaseless advocacy and warnings of “gaps” in the legislation by Elections Canada. This evidence suggests as well that the administration of Elections Canada has in the past and may continue to be overly influenced by the single actor at its helm. Webb (2002, 445) suggests that “professional bureaucrats are especially conscious of the need for the state to fulfil certain domestic and international functions, and consequently pressurize the
government in their role as ‘institutional guardians’ of these responsibilities . . .” Chipeur, a participant who represented the Reform Party in its 1993 challenge, argued that “Elections Canada is now a protagonist” in political finance.

Because CEOs may serve at their discretion up to the age 65, their policy stance outlasts changes in government. Again, while this removes the CEO from the hurly-burly of electoral politics, it also may serve to institutionalize the policy agenda of a given CEO. Several interview respondents referred to the personal power and agenda-setting force of CEO Jean-Pierre Kingsley during his 17-year tenure at Elections Canada. Docherty, for example, recalled that Kingsley, in his public appearances, frequently boasted of his power to unseat parliamentarians for violations of political finance regulations; another stated that “Kingsley arrogated to himself the power to determine who sits in the House” and that this power of the CEO was contrary to the historic principle of parliamentary government, in which the legislature held this responsibility. Kingsley resigned from his position in December 2006. The Conservative government put forward Marc Mayrand as his successor; the House of Commons voted unanimously in his favour as it had for Kingsley.

Advocacy has continued under Mayrand’s watch. The agency’s report on the 2008 election recommended certain limited adjustments (Elections Canada 2010; 1, 13) but again reiterated that “the current regime does not in all cases achieve its primary goal of making candidates’ financial transactions fully transparent” (Elections Canada 2010, 16). Elections Canada, in recommending further action on regulation, defends its recommendations by the use of such phrases as “registration and reporting requirements are not unknown in Canada” (Elections Canada 2003, 3), an accurate statement but one which seemingly is used to justify yet more regulation; electoral district association reporting was “considered to be a black hole” (Elections Canada 2010, 6); revisions are usually referred to as “in order to give effect to Parliament’s intent” (Elections Canada 2010, 9); “Elections Canada is of the opinion that this was not Parliament’s intent” (Elections Canada 2010, 12). In Third Party Spending, Elections Canada, under ‘continuing debate,’ mentions only four points made by critics of the U.S. regime but makes no reference to arguments by defenders (Elections Canada 2000a, 10). In 2009, Elections Canada (Performance Report 2008-2009, 14), while stating that it could implement only “limited administrative initiatives,” committed to reviewing the
legislation with a view to reducing the regulatory burden while maintaining ‘transparency and fairness’. This commitment to reviewing the regulatory burden is the first that could be found in my review of 15 years of Elections Canada documents. From the foregoing, it seems that Elections Canada represents a classic example of Amyot’s argument that “bureaucrats are now intruding on the traditional functions of parties” (2007, 501).

Interview respondents were questioned on their views of Elections Canada. Two comments stood out. Canadian scholar Archer summarized:

I guess I would view Elections Canada as being an advocate of certain kinds of reforms within our federal system . . . My sense is that Elections Canada’s mandate itself has expanded in part due to the personality of the people in the position, particularly Mr. Kingsley. Although my sense is that Marc Mayrand also has pretty strong views about where he thinks the election administration should go. And also, it’s part of the function of the agency itself. So, it is charged with advising Parliament on improvements to election administration and it actively has been carrying that out (italics added).

Docherty supported this view:

I don’t have any empirical evidence for this but I think that Elections Canada was very much driven by the personality of the Chief Electoral Officer [Kingsley]. And I think that Mayrand will actually be better in the sense that there will be less personality driving Elections Canada and more an interpretation of the statutes, which is probably a better thing.

Elections Canada’s advocacy can thus be seen as a key factor in the streams of both problem-identification and policy-specification and as a contributing factor to the pace of campaign finance reform and to its increasingly interventionist nature. However, Mayrand, the current CEO, concedes that,

On the other hand, it is evident that the regime has become increasingly onerous with each new set of reforms. It generates costs and inefficiencies for both the political entities and Elections Canada without really ensuring that the objectives of the Act are achieved. This suggests a need to reduce the regulatory burden while preserving the underlying values of integrity and transparency (Elections Canada 2010, 35).

This is, to the author’s knowledge, Elections Canada’s first published recommendations for simplifying Canada’s campaign finance regime. However the same report makes no fewer
than 50 recommendations for further reform and closing of ‘loopholes’ in the *Canada Elections Act*. One of the primary recommendations is that Elections Canada should be given separate auditing powers over the parties. Currently, the parties’ election expenses and financial transactions are audited by independent auditors who submit the parties’ returns and claims for reimbursement to Elections Canada. Given the independent audit, the current law does not require filing of all the backup documents. A second recommendation is that Elections Canada be given the power to request further documentation. However both Liberal and Conservative parties are contesting this move with three separate arguments. Arnold, Liberal Party Senior Director of Regulatory Compliance and Administration, argues that “By taking the audit function ‘in house,’ Elections Canada is removing its own objectivity and ability to act as the overseer and second check on the auditor” (*The Hill Times*, Nov. 8, 2010). The Conservatives objected on grounds that Elections Canada would be duplicating the independent audits. Third is the argument that the current independent audit is equivalent to the audited statement provided shareholders in a company and thus should be considered sufficient. An alternative to Elections Canada’s increased role would be to require the parties’ auditors to ensure political financing rules were followed. The House of Commons Procedure and House Affairs Committee held several meetings in October and November 2010 to discuss them with no specific outcome.

**Comparative Structures**

In order to compare the position of the Chief Electoral Officer and Elections Canada to their counterparts in the U.S. and U.K. I continue to use Thomas’ five factor typology. In the U.S. and U.K. what is noteworthy is that each national legislature created an agency *specifically for the purpose of political finance administration*. Prior to the establishment of the Federal Election Commission (FEC) in 1974 (via an amendment to the 1972 FECA), allegations of campaign finance statute violations had been investigated by a House committee. The FEC is comprised of six voting members, appointed by the president and approved by the Senate, each serving staggered six-year terms. The Chair may not serve more than two years. FEC commissioners are evenly balanced between representatives of the Republican and Democratic parties. There is no attempt made in the U.S. to represent minority parties. The FEC has jurisdiction over the financing of campaigns for the U.S.
The FEC’s overall mandate includes: administering the public financing of Presidential campaigns; public disclosure of funds raised and spent to influence federal elections; writing of “suitable rules and regulations”; enforcing the restrictions on contributions and expenditures made to influence federal elections; and acting as a national clearinghouse for information (FEC 2004a; FECA 1974 s. 437). If one idealizes a “pure” political finance administration excluding all other responsibilities, the FEC would be closest to this model, although the current UK model comes very close.

In the U.K., the House of Commons since 1604, had taken “to itself the right of deciding disputed elections” (Gwyn 1970, fn. 33). Attempts to create a national commission to oversee political finance and elections had been considered as early as 1842, but had been rejected on two grounds: that the government should not “throw upon the public the charge of investigating matters of personal rather than public concern” (Gwyn 1970, 400); and that transferring costs of challenging an opponent’s campaign finance practices from that of a private matter to a public one, would, instead of leading to greater probity of Members of Parliament, be used for partisan purposes. There would hence be a constant menace to the sitting Member returned by perfectly honest means . . .

*Party feeling*, inseparable from an Election contest, and *not the hatred of corruption*, may lead to a very general system of vexatious petitioning if there be no risk of expense in conducting the Inquiry (Gwyn 1970, 400; italics added).

Additionally, U.K. elections were presumed to be periodic and hence not requiring a full-time staff complement or agency (Boda 2006, 2). There was regulation of political finance only at the candidate and local level and prior to 2000, British political parties (as opposed to candidates) had not been required to report sources of contributions, expenditures, and there were differing standards: “the accounting years parties used differed, and there was no defined period for an election campaign as there was at the constituency level” Grant (2005, 76). Parties themselves were expected to be responsive to the electorate and to the aggressive British press and hence to curb practices and offences which could lead to their upset in the next election. Overall, the U.K. had what Boda (2006) and others describe as an institutional history of *interdependence* in election administration, involving the civil service, Parliament
and the parties themselves. The 1998 Neill Committee (on Standards in Public Life) report recommended a full-time and fiscally independent electoral commission and this was accomplished in the 2000 PPERA, at which time the U.K. Parliament established the first national level of political finance oversight, the Electoral Commission (UKEC). The UKEC, in addition to its role in political finance, administers referendums, but not elections, as does Elections Canada. For purposes of this chapter, reference will be made only to the Electoral Commission’s roles and responsibilities with regard to English general elections and not its role regarding elections to the devolved jurisdictions of Wales, Scotland or Ireland or to the European Parliament or to referendums.

The act creating the UKEC specified that the agency was to be comprised of nine or ten commissioners four of whom were to be persons nominated by a ‘qualifying’ political party, that is, a party having two current Members of Parliament or having had two elected members as of the most recent election. The commission may not have more than two commissioners who have been nominated by the same political party nor may the chair of the Commission be such a ‘nominated’ commissioner (PPEA 2009, Ch. 12. S. 5). The term of a commissioner was fixed at ten consecutive years. Commissioners, to ensure “unquestionable” political impartiality (Grant 2005, 85), per the PPERA, were not to have been ‘in politics’ in the most ten-year period prior to their nomination (Ghaleigh 2006, 43). However this ten-year qualification led to problems of unfamiliarity with the system (Ghaleigh 2006, 43) and the PPEA of 2009 addressed this lack of political experience by lowering the non-political qualifying period to five years. The UKEC, as regulator of UK party and election finance, interprets its mandate as: promoting integrity and transparency, “enhancing public confidence”, “avoiding disproportionate regulatory burdens on political parties”, “managing the regulations in a way that acknowledges the volunteer nature of key officers . . .” (UKEC Regulation of Party and Election Finances, n.d.).

To summarize to this point, Elections Canada is the oldest agency, has the widest remit in that it administers both elections and political finance and has the greatest operational independence. Further, its head appoints the Commissioner of investigations, retains the chair of the advisory committee, a position which generally denotes control of the agenda, has a potential decades-long term in office and has investigation and enforcement
powers. Its reporting and budgeting exercises are similar to those of the FEC and UKEC. Elections Canada can be seen as an exemplar of the third, most-independent model in Boda’s trilogy. While this independence has and continues to be invaluable in Elections Canada’s oversight of elections, it may be of less value in terms of oversight of political finance.

By contrast, the FEC has the narrowest remit: political finance oversight exclusively: no jurisdiction over media, no responsibility for administering elections, ballots or encouraging voter interest, registration or voter turnout. The UKEC holds the mid position. Similar to Elections Canada, the UKEC’s mandate covers the revising of electoral boundaries, encouraging voter registration and voter turnout and advising the government on electoral issues. The UKEC and Elections Canada also are responsible for the allocation and monitoring of broadcast time that is provided free of charge to parties, and in the case of Canada, additional subsidized time for political broadcasts. In 2010, the U.K. public experienced its first-ever televised leaders’ debate, which included leaders of the three main parties (Conservative, Labour and Liberal) and was broadcast on three networks.

All three commissions place a high priority on helping candidates and committees understand and voluntarily comply with the law. Each has extensive websites as well, documenting not only their own activities but also publicizing mandatory reports of parties, candidates and other actors in election activities. Each country’s election agency submits budgetary requests to its respective legislature and files performance reports annually. All contain a remarkable amount of data, revealing the sheer scope of the enterprises undertaken. Performance benchmarks vary considerably among the agencies. Specific ones for Elections Canada include such measures as turnaround time for complaints, ratio of complaints resolved to complaints filed, and survey evidence regarding trust in the electoral system (Elections Canada “Performance Report” 2009, 10). Measures used by the FEC include the number of transactions processed; median days required to process reports; and a standard that 99 per cent of documents filed with it are available online within 48 hours (FEC 2004, 15). Timeliness of investigation and median number of days from complaint to resolution are also benchmarks. Performance benchmarks for the UKEC have evolved since its inception in 2009. As of 2009, the agency used survey measures of confidence in the effectiveness of the
UKEC and, like the FEC, has a performance target of completing 90 per cent of case reviews within 90 days (UKEC Investigations n.d.)

Table 6.1 shows spending for the three commissions. No statistical breakdown for the cost of political finance oversight is provided by Elections Canada. Instead, it lumps together “electoral event delivery, political financing, and compliance and enforcement” as a category (Elections Canada “Performance Report” 2009, 4). Spending in election years is indicated with asterisks, because of the surge in financing required in such years. It should also be noted that administration expenses can vary depending on the number of by-elections in a given year; these costs are marginal variations, however, given the overall size of Elections Canada’s budget.

While allowing for the much wider mandate of Elections Canada, relative to its counterparts in the U.S. and the U.K., the size of Elections Canada is still significant, especially given the population differential among the three countries: Canada at 34.3 million (Statistics Canada 2011); the U.S. at 311.8 million (U.S. Census Bureau) and the U.K. at 62.3 million (U.K. Office for National Statistics 2011), and hence the size of the electorates in each nation.

A comparison of spending across electoral commissions is invalid since their mandates vary significantly. What may be compared, however, is the progression over the period 2000-2010 in each agency’s staffing and budget. Elections Canada’s budget has increased ten-fold (in part due to a broadening of its roles per amendments), the UKEC’s budget has tripled in the period 2001-2010 (2001 was its first full year of operation); the FEC’s budget has increased by more than 50 per cent in the same period. Each agency notes in its annual reports the tight constraints under which it is operating and the ongoing need for large-scale capital investments in information technology to keep up with their mandates. The FEC requested an additional $750,000 in additional funding simply to adjust to changes mandated by the BCRA. Operations of the UKEC have cost significantly more than was anticipated but costs have been contained and the UKEC relinquished its anticipated role in voter education and participation drives because of cost concerns.
Table 6.2 shows full-time staff (or full-time equivalents) at each of the commissions.
Data are not available for every year in the sequence since the number of employees is not
stated in each year’s annual reports at any of the agencies. Nevertheless, the number of full-
time employees or equivalents at Elections Canada has grown significantly over the period
indicated and confirms the level of in-house staff and resources available to Elections
Canada.

General of Canada); averaged 225 in the period 1995-1999; climbed to 375 in 2004-2005 and
reached 487 in 2008-2009 (Elections Canada Performance Reports 1997-2009), the most
Electoral Officer indicates, with regard to the Office of the Commissioner of Canada
Elections, that it had “strengthened its investigative capacity by rebuilding and expanding the
resources of its investigative team,” but it does not specify whether this is for political
finance or electoral event compliance. At that time, the report noted that it had capacity
“sufficient to handle complex investigations as well as less complex matters” and that it had
been able to close more investigations as a result (Elections Canada Role and Structure 2010,
2). Staffing at FEC has expanded due to the need to administer new regulations flowing from
the BCRA; the number of staff stood at 357 in 2001, subsequently rose to 375 in 2001 and
has held at that level up to and including 2009. Staffing at the UKEC is significantly less
than at Elections Canada or the FEC. In summary, Elections Canada has demonstrated
significant success as a political actor, as demonstrated in the growth of its budget and
staffing.

Discretionary Powers

Elections Canada, the FEC and the UKEC differ in their powers of investigation and
prosecution, following the finding of an offence under the respective acts they administer. At
Elections Canada, from 1974-1999, the Commissioner of Canada Elections had only one
option subsequent to finding a violation of the Canada Elections Act: to prosecute via the
criminal justice system, since all violations, regardless of their nature, were criminal
offences. Because of this lack of discretion, the courts demonstrated an “apparent reluctance
to treat all infringements of the Act as criminal offences [and] respondents found guilty are
often merely fined or conditionally discharged” (Parliament Bill C-2, Background n.d., 31; 33). The 2000 legislation completely replaced the earlier Canada Elections Act. Several sections of the act cover enforcement issues. However, not included in the act, was a fundamental recommendation of the Lortie Commission: that in the “institutional design of the commission must be such that the adjudicative and prosecuting functions are not confused, nor should they compromise procedural fairness and natural justice” (Lortie Commission 1991, Vol. 1, 494). In fact, while technically the work of the Commissioner of Canada Elections is separate from that of the Chief Electoral Officer, the Commissioner still reports to the CEO and the CEO must approve of all prosecutions.

Prior to 2000, the Commissioner of Canada Elections needed to request the RCMP to obtain a search warrant. The 2000 CEA conferred on the Commissioner access to the search warrant process, rather than requesting the search warrant via the RCMP. Thus since 2000, the Commissioner of Canada Elections may “institute a prosecution if he or she believes on reasonable grounds that an offence has been committed and “is of the view that the public interest justifies it”; authorization for the commissioner to enter into compliance agreements but not issue compliance orders for offending parties. Compliance agreements are voluntary, public agreements to rectify and ensure compliance with the Act while compliance orders, on the other hand, would have permitted the Commissioner to deal unilaterally with a problem (Parliament of Canada Bill C-2 Background, n.d., 34).

The commissioner determines what investigations of suspected offences will occur and how they will be prosecuted. Offences are classified as those which are regulatory offences (that is, relatively small, administrative offences) versus those in which there is deemed or suspected to be a mens rea component, that is, a component of wilful (rather than inadvertent) violation of the act. The difference between these two categories relate to not only the intent but also the evidence necessary to prove them in court and the defences available to the person or group charged. Finally, conviction of a mens rea offence means criminal sanctions which may result in a fine, or more importantly, a prison term of up to five years. Penalties are specified in the Canada Elections Act in s. 500. Fines are on the order of $1,000-$5,000 with two exceptions: $25,000 for a broadcasting offence and for third parties, up to five times the amount by which the third party exceeded the election
advertising expense limit in question. The commissioner has latitude depending on the “nature and gravity of the contravention; the record, if any, of contravention; the confidence of the public in the electoral process; the desirability of achieving compliance through remedial, rather than punitive, measures; the cost of enforcement; fairness to the person in contravention; and any public interest that the Commission considers relevant” (Parliament of Canada Bill C-2 Background, n.d., 34).

The 2006 *Federal Accountability Act* was part of a package of new acts and amendments to other acts. Two are of substance here. Prior to 2006, the commissioner had engaged private law firms to prosecute offences of the CEA on his behalf. Part of the 2006 act was a new *Director of Public Prosecutions Act*, creating a position of that name. Another part of the 2006 act amended the *Canada Elections Act*, section 511 which gave the Commissioner of Canada Elections a new power. As a result, the commissioner now has the power but not the obligation to refer matters to the Director of Public Prosecutions (DPP) to proceed. Thus, the commissioner’s role is to be investigatory while that of the DPP is to formally prosecute. The intent of this separation of functions was to “ensure that prosecutions under federal law operate independently of the Attorney General of Canada and the political process” (Treasury Board 2006). MacIvor (2006, 39) critiques this arrangement because of the commissioner’s retention of the “decision to open an investigation and the discretion to withhold the results of any such investigation from the DPP.” This is correct but is perhaps not the most important point of note. The separation of investigation from prosecution powers is fairly normal, since it limits the power of a regulatory agency such as Elections Canada to regulate, rather than prosecute. Of more significance is that the commissioner has such latitude in determining whether to prosecute. On one hand, this is beneficial because it may encourage early ‘resolution’ (without resorting to formal prosecution but ‘resolution’ which may occur because the accused complies in order to avoid a costly process of contesting the charge). On the other hand, this discretionary power allows him to determine not to prosecute in cases which the public might think it is merited. Compliance agreements and a sentencing digest are published on the EC website. Other than that, no information on investigations or decisions of the commissioner are on public record. Overall levels of compliance have risen, with a consequent decline in the number of compliance agreements reached: the high was 46 in 2002; in the five-year period ending
2009 only 26 in total were completed. Of the few that involved spending above the allowed limit, the amounts of overspending were insignificant: between $2000 and $4500 (Elections Canada Commissioner of Canada Elections 2011).

In the U.S., investigations by the FEC are largely driven by complaints filed. When received, Office of the General Counsel (OGC) investigates matters with ‘probable cause’ and determine whether there is sufficient evidence to meet the ‘minimal requirement’ for further investigation. The Office of the General Counsel may then refer the case to the FEC commissioners, recommending enforcement measures. In such a case, the FEC notifies the alleged offender; at this point, the case is termed a Matter Under Review (MUR) and is posted on the FEC website. Following the response, the OGC again evaluates whether there is ‘reason to believe’ that a violation has occurred. The OGC has the power to request and subpoena documents, review them, interview and depose witnesses and conduct settlements known as ‘conciliation’ agreements (FEC 2005, 13). When FEC commissioners meet, they may dismiss the matter for various reasons, including, but not limited to, because they believe there is insufficient evidence or because they disagree with the interpretation of the statute adopted by FEC staff. Four of six commissioners must vote to take any action; where the FEC finds wilful violation of campaign finance laws, the FEC may either continue the investigation or refer the case to the Department of Justice for criminal prosecution. With rare exceptions, the FEC “does not have the power to unilaterally impose a fine” (Brutsch and Farr 2009). The median penalty in 2004 stood at $21,000 versus $7,500 in 1995 (FEC 2005, 15).

Like Elections Canada, FEC has latitude in drawing the map of campaign finance law through regulation developments, as it did following the BCRA of 2002. Also of significance is that since BCRA, the congressional sponsors of the bill sued the FEC, challenging 19 FEC regulations of BCRA, on grounds that the FEC regulations did not follow the law, the intention of Congress and so on. Federal Court Judge Kollar-Kotelly ruled against 15 of the challenged regulations, on grounds that “the FEC has failed to follow the correct

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20 Bradley Smith, telephone communication with author, January 12, 2011.
administrative proceedings, it hadn’t given adequate notice, it hadn’t properly explained its reasoning . . . or that substantively they were wrong . . .” (Brookings Institution 2005, 20).

This situation is of particular interest on three fronts. First, it has been argued that the composition of the FEC led initially to regulations that “in the views of the sponsors gutted much of what they had attempted to do,” and second, to a ‘narrow approach’ to rulemaking regarding BCRA (Brookings 2005, 19; 25). Third, as Potter, a former FEC chair states, “It’s fairly difficult to get an administrative agency rule overturned in court because the courts defer to the agency unless they are clearly wrong, so to throw out 15 of 19 was fairly dramatic” (Brookings Institution 2005, 20). In total, this incident demonstrates the power of the FEC, as administrator of campaign finance legislation, to shape the power and scope of legislation; it also demonstrates that there has been clear judicial restraint on the power of the FEC as an administrative agency.

The FEC also issues ‘advisory opinions’ which act as legally binding guidance (FEC 2005, 10) in ensuing cases of the same or similar nature. In contrast to the practice of Elections Canada, the FEC releases details regarding the votes of individual commissioners about whether to pursue an investigation, identities of complainants and respondents. However, despite the amount of data, Franz (2009, 1) writes that,

There is little empirical work examining systematically the enforcement behaviour of the Federal Electoral Commission. We know very little about the scope of penalties levied by the FEC, its ability to overcome a 3-3 partisan Commissioner balance, or its approach to regulating the same campaigns and candidates that fund the commission and determine its makeup.

Franz’ research, which examines 747 FEC MUR decisions over the period 1996-2004 and finds, for example, that the FEC is “most overtly contentious in cases initiated by national parties, in cases involving incumbents and national parties as respondents, and when the final action is to find reason to believe a violation occurred but to take no action” (Franz 2009, 6). As well, Franz’ work shows that the agency follows through most consistently on matters undertaken from its own discoveries, that its fines are large and that the commissioners “almost never deadlock” (Franz 2009, 8; FEC 2005; 16). He suggests that there is some evidence supporting a hypothesis of respondent bias by FEC, that is,
Democratic commissioners are more likely to object in enforcement cases initiated by Republicans and vice versa. He also finds that national parties are not censured or penalized as significantly as are political action committees or other ‘third parties’ in British and Canadian terminology. However, he interprets the evidence as indicating that the national parties or committees are better and more efficient campaigners, that is, “knowing best the rules of the game” compared to other political actors (Franz 2009, 7). Franz concludes that there is a compelling argument . . . that any regulatory control in the area of elections should be subject to serious restrictions of power” reasoning that if a “non-elected bureaucrat wields significant powers in this area (one meant to scare candidates into compliance), it might create more problems than it solves (Franz 2009, 8).

While recognizing the strong critiques of the FEC, Franz nevertheless argues that ‘dissatisfaction’ with FEC does not necessarily legitimate demands for stronger regulatory powers for the FEC. Franz does suggest an intriguing, unique option: that FEC have returned to it the power to conduct random audits of political parties (2009, 9). This would keep political actors ‘on their toes’ yet conserve FEC resources to be used in serious investigations rather than in frivolous or politically motivated complaints. This option has never been considered for Elections Canada.

In the U.K., its commission may investigate if it “reasonably suspects the law has been broken” or where the commission needs to follow up non-compliance. The UKEC, like it counterparts, publishes guidance on achieving compliance with and avoiding offences. There may be summary conviction or conviction on indictment with regard to offences (PPERA s. 147; 148; 150; Schedule 20). A criminal penalty may be levied for failure to submit a proper statement of accounts and the Secretary of State has discretionary powers regarding the size of penalty (PPERA 2000, s. 133). Failure to submit documents to the commission carries penalties ranging from £500 to £5000 depending on the lateness of the submission.

During the committee stage of the bill leading to the PPEA of 2009, the commission argued that it had inadequate investigatory powers, for example where the commission
“reasonably suspects the law has been broken” or where the commission needs to follow up non-compliance with requests for information. In keeping with British tradition, there was considerable caution evidenced by Parliament regarding the new powers to be granted. Hence the UKEC, in a memorandum, stated that it would use these new powers “only . . . where it is reasonable and proportionate to do so” (UKEC 2009, 8; 11; original italics) and only on the conditions about the existence of “credible information . . . not merely assertion of or speculation” about non-compliance or evidence of the “public interest” (UKEC 2009, 8). The PPEA of 2009 (c. 12 Schedule 1) introduced new powers for the UKEC, which had been recommended by three House of Commons committees and by the commission itself (UKEC 2009, 2). The act also requires the commission to publish an annual report indicating its use of its new powers. Since passage of the 2009 PPEA, therefore, the UKEC has a wider range of civil penalties and may refer cases to the Crown Prosecution Service (UKEC 2009, 10; 28). The UKEC established its disclosure policy only in June 200921 and since that time has published summaries of two investigations, one into contributions to the Liberal Democrats (UKEC Investigation/5th Avenue Partners 2010) and one into the Conservative Party (UKEC Investigation/Bearwood Corporate Services 2009). The UKEC noted that its “current powers do not allow it to require anyone to attend an interview” and that party officers and staff in one of the two cases had denied to be interviewed.

In July 2009, the UKEC opened a public consultation on the topic of its future enforcement policies. It proposed the development of a

risk assessment profile of each registered party, and of those party accounting units and other regulated organisations (such as campaigning third parties) . . . These profiles will give an overview of the regulatory risk that each organisation appears to be exposed to, relative to the other organisations we regulate. We do not propose to develop profiles of regulated individuals, such as holders of elective office (UKEC 2009c, 11; original italics).

There is a dual purpose to these risk profiles, according to the UKEC: to create ‘risk profiles’ in order to assess the likelihood that regulated units are experiencing difficulties in

21 Matthew Franks, Enforcement Case Worker, Party and Election Finance, UKEC stated that publication had begun at the time noted. e-mail message to author, July 23, 2010.
compliance and to assess “the impact that such problems could have on the public’s view of the integrity and transparency of political financing” (UKEC 2009c, 11). Although the UKEC in July 2010 reported that the overall response to its proposals was “supportive” (UKEC 2010, 1), it pulled back on risk-profiling because of several concerns expressed: fear that publication of risk profiles could lead to a ‘league-table’ of high-risk parties; concern that the risk profile should not include accounting units; fear that a formal risk rating would deter parties from seeking advice from the commission in case the request would affect their risk rating (UKEC 2010, 4). Throughout, the voluntary nature of UK political parties is referred to repeatedly with a view that enforcement not be overly onerous for volunteers.

This example demonstrates that the UKEC is much more limited than Elections Canada in its negotiations with political parties and other actors. For example, the UKEC decided to risk-profile only to the level of “larger accounting units of parties” rather than extending it to the local level; it also circumscribed its discretionary powers to instances where the “evidential test for the existence of a breach [of the law] is met, the Commission will always proceed with the sanctioning process” (UKEC 2010, 7; italics added).

**Canadian Cases**

The previous chapter documented political finance cases which had reached the Supreme Court of Canada in the 2000-2010 period. Elections Canada or the CEO, as head of the agency, variously appeared as intervenor, defendant or plaintiff in these cases. Certain cases in which Elections Canada chose not to prosecute as well as some which it has chosen to prosecute must also be examined.

Despite the well-publicized nature of the Chrétien-Liberal Party “Shawinigate” political finance scandal, MacIvor (2006, 39) notes that it is “inexplicable” that the Commissioner of Canada Elections did not initiate his own investigation into these “well-publicized and apparently intentional infractions” of the act which he is tasked with enforcing. A second case in which Elections Canada chose not to investigate or to publish its findings was one involving the Bloc Québécois. A third and more recent case involves an egregious offence listed in the sentencing digest on the website of Elections Canada is that of Wajid Khan, a Liberal candidate in the Toronto area in the federal election of 2004, who won
the seat for Mississauga-Streetsville (and was subsequently re-elected in 2006). Khan was found to have spent $109,111 in his campaign, significantly over the $77,923 limit for his EDA; he was fined $500. Mr. Khan’s business, Dufferin Mazda, had paid $89,388 of his expenses (contrary to subsection 438(4) of the act) and was fined $2000. The Mississauga-Streetsville Liberal EDA had loaned $42,300 to Mr. Khan’s campaign, which was legal; the illegality arose from the fact that it was not repaid within the allowable time period; the EDA was fined $400 (Elections Canada website, Sentencing Digest). No indication is given on the Elections Canada website regarding repayment of the loans. However, Elections Canada did de-register the EDA in December, 2006 because of failure to file financial returns for both 2004 and 2005, as reported in the Ottawa Citizen, January 15, 2007. Khan retained his seat in the House of Commons. What is significant is not the small size of the fines—these are part of the CEA—but rather that Elections Canada did not seemingly find mens rea or sufficient evidence to prosecute Khan.

There was a notable flurry in the press regarding activities by the Bloc Québécois (BQ) regarding its ‘in-and-out’ procedures with regard to donations prior to the 2004 election. On April 1, 2003, the National Post newspaper reported that the BQ had briefed its organizers and candidates prior to the 2000 election on ways to increase the party’s federal reimbursements for election expenses. Although Quebec parties, in contrast to those of other provinces, had a tradition of paying campaign staff (Meisel and Van Loon 1966), the BQ plan in 2003 essentially was the payment to previously unpaid volunteers, their spouses or companies, for ‘work’ on the BQ campaign or ‘work’ on election day; these same people then ‘contributed’ the money back to the BQ. The plan, according to an article in the National Post, generated invoices “for campaign expenses that would otherwise not have been generated . . . As well, BQ organizers and supporters received a federal tax credit of up to $500 for their donation to the candidate” (McIntosh 2003). The party also, in advance of the election, set spending targets for candidates in order to be able to anticipate the amount of reimbursements following the election that would serve as part of the party’s cash flow. Other media (Calgary Herald, April 2, 2003) identified more than $300,000 in receipts (and hence $150,000 in refunds) in ‘La Méthode ‘In and Out’, the name used by the BQ itself for this practice. According to an article by McIntosh (National Post, April 2, 2003), Chief Electoral Officer Kingsley stated that the “methods were legal, but violated the spirit of the
law” while BQ leader Duceppe dismissed the idea of repaying the money. Elections Canada provides no information on why the commissioner decided not to proceed with an investigation.

In May 2007, two official agents for candidates of the Conservative Party sued Elections Canada for its refusal to certify certain advertising expenses they had incurred in 2006 and which would therefore affect reimbursement of their declared election expenses. During the 2006 election period, the Conservative Party national office had developed generic television ads. These were then sold to the local candidate, the local candidate’s name was added and this was submitted by the candidates to Elections Canada as a candidate expense rather than as a national party expense. Chief Electoral Officer Marc Mayrand ruled in 2007 that the ads were not candidate expenses because the candidates had not ‘incurred’ them.

In January 2009, investigators on behalf of the commissioner applied for and were granted a search warrant to seize documents at the office of the Conservative Party of Canada. This was to determine whether, from Elections Canada’s view, the Conservative Party had exceeded its election expenses limit under sections 497(1)(1) and 497 (3)(g) of the Canada Elections Act in selling the above advertisements to their participating candidates in the 2006 election. Elections Canada investigators, accompanied by the Royal Canadian Mounted Police (RCMP), took possession of documents at the party’s Ottawa office in April 2008. Since the media were present at the time of the RCMP search, it would appear that information had been leaked. This use of the RCMP by Elections Canada in an investigation is highly unusual, if not unprecedented (MacIvor 2006, 38), and was widely publicized. As the Commissioner of the RCMP testified to the Lortie Commission in 1990, the transfer of investigative functions to a ‘civilian body’ was recommended in order to “reduce the unnecessary embarrassment to individuals who are now the subject of police investigations when in fact their infractions may be of a regulatory nature” (Lortie Commission 1991, Vol. 1, 488). The use of the RCMP in this investigation therefore automatically conferred on Elections Canada a certain moral authority. Chipeur stated that the use of the RCMP in a civil issue was in fact illegal.
The CEO argued at the hearing (not trial) of *Callaghan v. Canada (Chief Electoral Officer)* [henceforth *Callaghan*], in Federal Court in January 2010 that the content of the ads was not what was at issue: rather it was whether the national party had ‘imposed’ costs for the ads on the candidates.\(^{22}\) Further, part of the evidence presented to court indicated that both the Liberal Party and NDP had *used the same strategy for producing and allocating costs* in the 2006 election (*Callaghan* par 166; 172). Thus it appears that it was the scale, not the *per se* exercise which merited prosecution, in the view of the CEO. Federal Court of Canada Justice Martineau ruled *against* Elections Canada in January 2010. However, because this was a test case involving only two of 65 candidates who participated in the regional media buying campaign, Mr. Justice Martineau chose not to rule on all the candidates involved since he reasoned that the situation for each candidate might differ.

Elections Canada reported that as of January 2010 the investigation had cost $1.3 million to August 2009, as published by *The Hill Times* (Naumetz, January 25, 2010). Elections Canada appealed the decision. However, on February 25, 2011, the Commissioner of Canada Elections, without waiting for the appeal decision, filed charges against the Conservative Party, Conservative Fund, former Conservative Party campaign manager, Douglas Finley, Irving Gerstein, a fundraiser for the party, and two staff members of the party alleging *mens rea* or wilful intent as well as proving a “materially false and misleading statement” with regard to these same advertising expenditures (Elections Canada, Commissioner of Canada Elections 2011). Supporting the notion that the commissioner and the CEO may becoming more enmeshed in electoral politics was the strong possibility of a spring election. Otherwise, it is difficult to explain the urgency of the Commissioner’s laying of charges while the case was still on appeal.

A close reading of the decision rendered in the hearing yields substantial insight into Elections Canada’s role. Elections Canada, when it certifies or approves claimed expenses, issues “no reasons, no explanation and no context” (*Callaghan* par 74). Therefore, the judge ruled in part that as long as the requirements of s. 465 of the *Canada Elections Act* are met,

\(^{22}\) While the case is generally referred to as *Callaghan v. Canada (Chief Electoral Officer)*, the case is cited as *Campbell v. Canada (Chief Electoral Officer)* 2010 FC 43 because Callaghan was the official agent for Robert Campbell, the candidate.
the agency has no discretion to exclude from certification expenses actually incurred. Justice Martineau quoted from an earlier decision which referred to the importance of ensuring that the impartiality of the Chief Electoral Officer “is not unnecessarily compromised . . . by enacting a regime that would call upon the Chief Electoral Officer to make judgment calls on how a political party is conducting its internal affairs or spending its funds” (Callaghan par 100). Even more importantly, Justice Martineau writes that

Parliament has expressed no clear intention in the Act to empower the CEO to play a general regulatory or supervisory role in the creation or enforcement of rules regarding the financing of electoral campaigns or the conduct of participants. At present, the CEO has not been given the power by Parliament to fill gaps in the Act” (Callaghan par 101; italics added).

Justice Martineau further found that Elections Canada’s refusal to certify the candidate advertising expenses in question contradicted the agency’s handbooks or guides up to and including the 2006 edition, which was all that was available at the time of the 2006 election (Callaghan par 131). He found that the agency had attempted to “ex post facto add new grounds of refusal after making the impugned decisions” (Callaghan par 182).

According to Elections Canada’s submissions, it “suspected” (Callaghan par 191) that the Conservative Party had designed the regional media buy to circumvent the rules governing the national party’s total campaign spending and requested that the hearsay evidence it had accumulated be considered as evidence. The judge refused to accommodate this request on the basis that ‘suspicion’ of a sham was insufficient reason to refuse certification. Justice Martineau also considered two similar cases, those of the NDP and the Liberal Party, which had undertaken similar practices in the 2006 election yet Elections Canada had not challenged them (Callaghan par 166, 172).

Finally, Justice Martineau also observed that “the CEO does not possess a relative expertise over the court in interpreting the financial provisions contained in part 18 of the [Canada Elections Act]”; [and] “No deference should be shown to the respondent or any other elections Canada personnel with respect to the interpretation of the Act” (Callaghan par 72, 76; italics added). He deemed the differing positions adopted by Elections Canada as well as the Conservative Party as ‘extreme’ (Callaghan par 97). In a close reading, therefore it appears that this was a decisive loss for Elections Canada.
However, on February 28, 2011, the Federal Court of Appeal ruled in favour of the Chief Electoral Officer and granted costs also. While a detailed analysis of the decision in Canada (Chief Electoral Officer) v. Callaghan (2011 FCA 74) would be too extensive, some of the relevant points are the following. The respondents argued for a narrower interpretation of the role of the CEO, based on a 2005 decision in Stevens v. Conservative Party of Canada.

The appeal decision states that there is an “apparent attractiveness to the Respondents’ arguments” and the differences between various sections in the CEA “may suggest that Parliament intended to confer a more limited role on the CEO under subsection 465(1).” The decision goes on to say, “However, it would be a mistake, in our opinion, to attach determinative significance to what might be regarded as a rather subtle difference.” The court also rejected the applicability of the Stevens case and went on to state that the CEO has “residual statutory powers . . .” although the decision admits that there is a “subjective aspect” as to whether the CEO is “satisfied” (at 35; 54; 65; 80) with the expense reports. The respondents argued, by contrast, that subsection 465(1) of the act states merely that, “on receipt of the documents” the CEO “shall provide . . . a certificate” for reimbursement, not that he may only provide a certificate if satisfied (at 47). Finally, the court agreed with the CEO that parties must allocate shared costs between the national party and the EDAs based on something other than “the amount the candidate was willing and able to pay” (at 112; 116). The Conservative Party announced its intention to appeal the decision to the Supreme Court of Canada, according to an article published in the Toronto Star (MacCharles, March 2, 2011).

Many of those interviewed were unaware of these cases and of those who were, few felt confident about commenting. Aucoin was an exception. He was sharply critical of the Conservative Party, which he saw as deliberately contravening a spending law that had been set up in a particular way, everybody knows what it means . . . and that you don’t mix [allocation of expenses] in the way in which the Tories did. I think also the rhetoric around that was interesting: other people did it, therefore we did it . . . That’s when public confidence or the culture is breaking down . . . That seems to me a culture issue . . . But as soon as the rules get black and white then it seems to me you’ll get the American phenomenon, because lawyers can do anything they want with these words . . .
There are many who would agree with Aucoin’s interpretation of the situation. However, the case nevertheless speaks to the power of the Chief Electoral Officer with his “residual powers” and the court’s willingness to accept his interpretation of the powers granted to him. Overall, this challenge to the role of the Chief Electoral Officer therefore has reinforced his power to interpret the act in very fine measure and to influence internal party operations to a significant extent.

There has been yet a third legal action involving the Elections Canada and the Conservative Party, the *Conservative Fund Canada v. Chief Electoral Officer of Canada*(ON. S.C). This case involves a dispute centring on whether the Goods and Services Tax (GST) is a qualified ‘election expense’ under the *Canada Elections Act*: that is, whether expense reimbursement (50 per cent) should be based on the gross amount of election expense, including GST, or on the net election expense, excluding GST. The definition of ‘expense’ including or excluding GST had never, to this point, been challenged. The Conservative Party, subsequent to the 2004 and 2006 elections, had its expenses report to Elections Canada for partial reimbursement, provided for under s. 422 of the act. Included in its expenses was its GST paid for these expenses, hence qualifying it for a larger refund than had the expenses been listed excluding the GST paid. At issue is that under a different act, the *Excise Tax Act* (ETA), there is also a provision for GST relief for qualifying non-profit organizations (QNPOs). To qualify, an organization must derive at least 40 per cent of its income from government. Some political parties qualify as QNPOs, one of which is the Conservative Party whose QNPO status was determined in March 2007. Because of this, the party would receive a GST rebate retroactive to January 2004 from the Canada Revenue Agency. At stake was $600,000 in public funds (*Conservative Fund Canada v. Canada (Elections)* (ONCA) par 1).

The Conservative Party (no other parties) applied to the Chief Electoral Officer to submit corrected general election expenses returns for both the 2004 and 2006 elections,

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23 This case and the appeal are confusing because of the names of the courts involved. The initial case was tried at the Ontario Superior Court of Justice (ON. S.C.) in 2009. The appeal was heard and decided by the Ontario Court of Appeal (ONCA) in 2010.
lowering its claimed expenses by the amount of the GST to be rebated by the Canada Revenue Agency. In effect, the party claimed that were Elections Canada not to accept corrected returns, the party would receive a double payment or reimbursement for its GST payments, once from Elections Canada as a political party and once from the Receiver General as a QNPO. The CEO refused to accept the revisions, that is, that the expense reimbursement should be based on election expenses, net of GST. The significance of this challenge is the size of reimbursement to be expected and delivered to a political party. If Elections Canada accepted the Conservative Party’s definition of election expenses, this would mean that the expense reimbursements to other parties which were also QNPOs would have to be clawed back or at least would be lower in the future. Such a clawback would result in serious cash flow problems to parties other than the Conservatives, which at the time (and since) have been more successful in raising funds. The Liberal Party, for example, took out loans to run the 2008 election campaign, loans that were “reportedly obtained by using the promise of more government funds as collateral,” according to McGregor, writing in The Ottawa Citizen (November 29, 2008). According to the CEO, therefore, were the QNPO argument of the Conservative Party adopted, it would have the “effect of increasing the amount the party can spend” and hence would violate “Parliament’s intent to maintain a level political playing field” (at 96, 98).

Conservative Fund Canada v. Canada (Elections) (ON. S.C.) was tried at the Ontario Superior Court and in October 2009, Justice Wilton-Siegel ruled against Elections Canada. The following quotations are taken from his decision in the case. He rejected the CEO’s position that ruling in favour of the Conservative Party would violate the ‘integrity’ of spending limits. Key points are as follows:

The Chief Electoral Officer says that the [Conservative Party’s] interpretation therefore benefits the five largest political parties and correspondingly disadvantages the remaining smaller parties who could not qualify for QNPO status (Conservative Fund Canada v. Canada (Elections) (ON. SC.) at 73).

Justice Wilton-Siegel rejected this argument, reasoning that while the CEO had argued that the “integrity of spending limits” was at issue, he concluded for two reasons that,
There is no evidence of a Parliamentary intention that section 429 should be interpreted in a manner that flies in the face of the plain meaning of that provision in order to further the policy of creating such a ‘level playing field’ among political parties in Canada’ (at 74).

First, the [Canada Elections] Act “does not always give supremacy to the policy of a ‘level playing field among political parties. In particular, the funding provisions of the Act are not informed by the policy of a ‘level playing field’” (at 75; italics added).

The Act “expressly differentiates between parties that qualify for quarterly allowance payments and those that do not . . . Significantly, it is this very distinction that, as a practical matter, also determines which political parties are eligible to apply to receive QNPO status” (at 76).

Second, the circumstances giving rise to this application raise another important policy consideration that was previously accepted by the CEO in the interpretation of the Act . . . the policy consideration of preventing political parties from being unjustly enriched or receiving a double subsidy is also directed toward ensuring a ‘level playing field’ for political parties although in respect of the funding regime under section 435 rather than in respect of the spending limits under section 422 (at 77).

Finally, Justice Wilton-Siegel considered at length the question as to whether Parliament’s intent to ‘level the playing field’ accorded with the CEO’s interpretation. As Nassmacher (2009, 336) writes, the ‘level playing field’ analogy does not completely transfer from sports to politics since candidates and parties will always have “different amount of cash at their disposal.” This point is significant since the Chief Electoral Officer uses the term ‘level playing field’ frequently. Justice Wilton-Siegel cited, as follows, a letter from the Chief Electoral Officer part of Elections Canada’s submission in the case.

It is also noteworthy that the policy objectives behind the [political finance] spending limits is to provide a level playing field for political parties. This level playing field would be compromised if those parties that are qualifying non-profit organizations for the purposes of the ETA were able to reduce the amount of incurred election expenses by deducting the amount they expect to receive by way of a GST rebate. In effect, this would mean that these parties would have a higher spending limit even though they may have purchased the same quantity and kinds of goods and services as competing parties. To accept that the rebate offered under the ETA can serve to reduce reported election expenses would also undermine the policy need for certainty, transparency and finality in the reporting of election expenses (Conservative Fund Canada v. Canada (Elections) (ON. SC.) at 27).
In conclusion, Justice Wilton-Siegel rejected Elections Canada’s position and ruled in favour of the Conservative Party. Elections Canada appealed the decision and on appeal, Elections Canada won the case in December 2010. The following citations are from the decision in the appeal case, *Conservative Fund Canada v. The Chief Electoral Officer of Canada* (ONCA).

The Appeals court decision cited both *Figueroa* and *Harper* and stated that “there is no debate over the fact that Parliament has adopted what I have previously referred to as an egalitarian model of elections as an essential component of our democracy” (at 83). The court determined that, first, whether Generally Accepting Accounting Principles (GAAP) applied to the definition of election expenses in the *Canada Elections Act* was “pivotal” (at 56) in the debate. The Conservative Party argued that, based on GAAP principles, expenses should exclude the GST. Elections Canada did not oppose this interpretation of GAAP principles. It argued instead that the *Canada Elections Act* sections in question were not subject to GAAP principles. This is a surprising, if not convoluted, argument by Elections Canada since the Office of the Auditor General of Canada (2010, Introduction) states that it uses GAAP principles in its audits of Canadian government operations. Additionally, GAAP principles are accepted worldwide and permit standardized reporting and understanding of financial records.

The Court of Appeal ruled in favour of Elections Canada, reversing the Superior Court’s decision. Justices of the Court of Appeal held that election expenses did not have to be reported to Elections Canada based on Generally Accepted Accounting Principles and hence net of GST (at 57) and disagreed with the Conservative Party’s argument that differing reporting requirements for annual financial transactions returns and general expenses returns “would unduly affect the maintenance of a political party’s books and the complexity of the required audits” (at 106, 107).

Despite the level of detail in these cases, they are important in demonstrating the power of the Chief Electoral Officer as an actor in ‘pushing the envelope’ in the interpretation of the act. In these cases, the CEO does not defer in any way to the party position, despite the fact that not only the Conservative Party but also the NDP and Liberal Party were in the same QNPO position. The moral authority of Elections Canada, which has
carried over from its expertise and reputation in administering elections, is also problematic because it endows Elections Canada with the presumption that it is always correct. For example, Senator David Smith stated that, “The independent Elections Canada concluded that [the Conservative Party] had knowingly broken the law” (italics added). As well as its bureaucratic autonomy, Elections Canada, as a single agency headed by the Chief Electoral Officer, holds multiple roles in investigating, levying fines and prosecuting potential violations. While these roles are technically separated between the Chief Electoral Officer and the Commissioner of Canada Elections, the latter is nevertheless a subordinate to the CEO. Senator Joyal stated that he would like to see the potentially conflicting roles of Elections Canada separated.

A final instance worth attention is an outstanding violation of the CEA which has not been prosecuted. The 2006 Federal Accountability Act specified repayment of loans taken out by candidates running for the leadership of their party within 18 months of their election. The Liberal Party, in 2006 was the first to hold a leadership convention under the new rules. It held a traditional—and costly, under the new rules—leadership campaign and convention. Leadership candidates took out significant loans and following the convention, found it difficult to raise the amounts needed to repay loans. Following the leadership contest, the 11 candidates owed a total of $3,932,700, with indebtedness for Stéphane Dion, the new leader, standing at $850,000; $777,000 for Michael Ignatieff, second-place finisher; and $222,000 for Bob Rae, third-place finisher, according to a Canadian Press newswire of March 12, 2008 (“Bob Rae”). By March 2008, only two leadership candidates (Rae and Bennett) had repaid their loans and only because of the Liberal Party had refunded the $50,000 deposits each had paid. Elections Canada in fact had ruled that this intra-party movement of funds was illegal but Rae appealed and the court permitted the refunds to the 11 leadership contenders, according to a Canadian Press newswire, dated March 12, 2008. Elections Canada had earlier extended the repayment schedule of Belinda Stronach, a Conservative leadership challenger. However, in the case of the Liberal leadership candidates, it seems that Elections Canada has acted in an unduly generous manner.

Leadership candidates with outstanding debt are not permitted to pay the debts for their own campaign; if the debt is ‘forgiven’ by the lender, then this would count as ‘income’
and would place the candidate (and no doubt the lenders) in the position of having exceeded the legal contribution limit. Also, it is illegal for a registered party to help a leadership contestant pay off his or her debts. The Chief Electoral Officer, per the *Canada Elections Act*, granted one extension of the legal repayment period and the Ontario Superior Court of Justice granted an extension to each of six contestants to December 31, 2011 and in one case, to June 30, 2012. As of midyear 2011, there were still seven contestants with outstanding debt from the 2006 leadership contest. What will happen if these debts remain unpaid at the expiration of the court-granted extension period is unknown. One existing but unused remedy is that the CEO may determine who is eligible to sit in the House of Commons. Use of this power would be close to unprecedented; it would address only those sitting members who were not in compliance with the act but would not address those who do not hold a seat in the House of Commons but who still have unpaid debts.

In the foregoing cases, what can be seen is an increasing and inherent level of conflict between political parties and political actors, on one hand, and Elections Canada on the other hand, in the administration of ever more specific political finance laws and regulations. Are compliance agreements genuine or are they merely rollovers by the persons or parties being investigated because they have limited resources which they do not wish to spend on legal action? Massicotte wrote in 2003 that over “the previous two decades, litigation has become a growing industry within Elections Canada” (2003, 10). It is clear that this is ongoing trend. What is troubling as well is the cost of contesting an Elections Canada decision through the courts. The U.S. Supreme Court has explicitly recognized the cost of litigating:

> The regulatory scheme at issue may not be a prior restraint in the strict sense. However, *given its complexity and the deference courts show to administrative determinations*, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. *The restrictions thus function as the equivalent of a prior restraint*, giving the FEC power analogous to the type of government practices that the *First Amendment* was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke

[24] Howard Saunders, Elections Canada Political Finance unit, in e-mail communications to author, June 28 and 29, 2011 and interim reports by contestants on the Elections Canada website.
the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated (Citizens United v. FEC 2010, Pp. 12–20; italics added).

The litigation costs to parties in contesting charges and rulings by the CEO or the Commissioner of Canada Elections has yet to be taken into account in Canada and as such, affords a certain protection to Elections Canada, given its substantial budget.

Participant Observations

Aucoin, former director of research for the Lortie Commission, commented that the level of detail in the current Canada Elections Act resembles that of the Income Tax Act and that it is this level of detail that constrains Elections Canada’s ability to administer the act with a light touch. Archer exemplified the opinions of almost all respondents when he pointed out that although Elections Canada had generally performed its administrative roles with “nimbleness,” electoral administrations in general, as they contend with political finance, now face issues “which may have some political implications” or test perceptions of the agency’s impartiality. Senator Segal, for example, while supporting the necessity of prosecutorial discretion for Elections Canada, also expressed concern about the potential of Elections Canada using this power selectively. Should EC determine whether to prosecute because of an issue of scale or size, as in the case of the Conservative Party, or for violation of the statute regardless of scale (UKEC 2010, 7) as is practiced in the UK? When asked their opinion on why EC had not pursued the BQ contribution ‘irregularities’, few were able to offer a response. Senator Carstairs speculated that perhaps Elections Canada may not have pursued the Bloc Québécois in its in-and-out contribution ‘irregularities’ because the BQ is a regional party. If this were correct, then Elections Canada would not be acting in such a way as to ‘level the playing field’ between parties.

Perhaps the most startling description of the current Canadian political financing regime came from Senator Joyal, a former Liberal Member of Parliament from Quebec, who stated, albeit with hyperbole, that in his opinion, Canadian parties have become “extensions of the bureaucracy of Elections Canada.” The Senator had voiced this concern in hearings prior to passage of Bill C-2. Senator Cools also observed a movement in power away from political parties to Elections Canada and other ‘experts.’ Party practitioners concurred that
Elections Canada was delving more into internal party operations than ever before. Senator Joyal concurred when he stated that the officers of Elections Canada are not immune to public pressure and political gain and as a result “will always be suspected of supporting the party that opposes the Government’s views or [those of] the predominant parties.” Lastly, Senator Joyal, in our interview, posed the acute question:

If the course Canada has taken on political finance—regulating donations, spending, third party action as well as significant state subsides—represents such a great solution . . . why are we the only country in the world that has found it? Doesn’t that preoccupy you a little?

Conclusions

This chapter began with the proposition that “Enforcement agencies and public opinion may change the handling of a programme and the interrelation among its elements” (Nassmacher 2009, 26). By definition, an agency overseeing campaign finance acts as a significant intermediary amongst a democracy’s parts, particularly because its decisions affect political parties, long considered the nexus of state and society. New institutionalism suggests that rules act as incentives or disincentives and that behavioural responses will be adopted by actors affected by changes. From this chapter emerges evidence that confirms Nassmacher’s statement. This chapter has focused on the ways political finance oversight operates in Canada and in two shadow cases, the U.S. and the U.K., three historic Anglo-American democracies which continue to struggle to specify not only what are the appropriate goals of political finance in their respective nations but also how to operationalize those goals through a combination of policy instruments. A number of conclusions can be drawn.

First, what is apparent is that each country’s national framework of reporting and disclosure has been strengthened; each has significantly ‘upped the bar’ in the past decade. The U.K. and Canada have experienced more legislative activity in the past decade than has the U.S. and this is one reason that funding and staffing of their respective electoral commissions has expanded so significantly. Although the FEC has had only marginal increases in its annual budgets, it has nevertheless used these resources to achieve an extremely high level of timeliness in public disclosure of political finance documents.
Second, the role of the election commissions in all three countries cannot be understood as either a fully independent or fully dependent variable. However, the degree of independence held by Elections Canada with regard to political finance oversight is unnecessary to the task at hand. Thomas (2000), in his work on officers of Parliament, poses the question: independence for what purpose? While officer of Parliament status is, in my opinion, necessary for election administration oversight, it is not obvious why a term of office that extends to age 65, the power that accompanies that longevity, and the lack of accountability to the parties themselves, as is the case in the U.S. and the U.K. is a necessary condition for the political finance functions. Additionally, although the Commissioner of Canada Elections is in theory an independent position, in actuality, the CEO has the power to appoint that position and to determine whether to proceed with an investigation recommended by the Commissioner. Finally, the reputation that Elections Canada has developed over time because of Canada’s record of clean elections automatically confers on the CEO and his decisions regarding political finance a certain moral authority—whether justified or not—in challenges to political finance laws and regulations, at least as reported in the press. This can only work to further cynicism about political parties and their operations, which are poorly understood by the Canadian public.

Each tranche of legislation has spurred the necessity of creating dozens—if not hundreds—of on-the-ground rules to operationalize the legislation. Inherent in these is always the issue of ‘fairness’ and whether a new rule will disproportionately affect the ‘chances’ or opportunities of one set of political actors vis-à-vis another. Added to this is the substantive issue of discretionary investigatory and prosecutorial powers. Moreover, Elections Canada can be seen as a strong and skilled actor in advocating for greater intervention in party finance, more so than the UKEC which has recently exercised some advisory capacity, and even more than the FEC which has a relatively small advisory role. In summary, electoral oversight may be ‘created’ by the legislature, but the individuals in that oversight capacity may learn to engage independently and in opposition to the parties in the legislature. It can shape political context. Finally, budget and staffing figures suggest that the cost of political finance oversight may be unknown—as is the case in Canada, because the costs are not broken out—or may rise rapidly, as they have in the U.K.
Elections Canada, in comparison to the FEC and the UKEC, is not only the most independent of the three commissions relative to its legislature, its CEO has the greatest amount of discretionary power. In particular, the CEO of Elections Canada has taken a strong role in advocating further controls, has sought intervenor status in certain court cases, and has enlarged the regulatory span of Elections Canada via his interpretation of what Parliament has meant by ‘levelling the playing field.’ What has been termed ‘regulatory creep’ has occurred at Elections Canada. Elections Canada’s historic role was to consider ‘fairness’ as a primarily a responsibility to individuals. Elections Canada, as demonstrated, has attempted to take on the task not only of interpreting the meaning of a ‘levelling the playing field’ with regards to individuals but more recently to manage the playing field among political parties. In doing so, Elections Canada represents a leviathan in comparison to any one of the national parties, in terms of its annual budget, its legal resources and the predictability of its budget.

Third, the evidence confirms that campaign finance rule administration is strongly conditioned by the type and leadership of the oversight agency and offers at least partial confirmation of Scarrow’s hypothesis that “the more powerful and the more politically independent the body, the more likely we are to find policies which appear to go against the financial interests of dominant parties” (Scarrow 2004, 659). Justice Martineau’s carefully worded rebuke in Callaghan that Parliament had not conferred on the CEO an empowerment to “play a general regulatory or supervisory role in the creation of enforcement of rules” or the “power by Parliament to fill gaps in the Act” demonstrates a new concern by the court regarding overreach by the CEO. It appears that the CEO is at the very least zealous—which is admirable—in his defence of the integrity of political finance in Canada. However, with a less sympathetic reading, the CEO’s actions may reveal a determination to ‘power-trip’ over parties and to read into the act powers that would diminish a party’s ability to use its available funds strategically within the short, 36-day writ period. Elections Canada, as a bureaucracy, will almost inevitably be at odds with parties which ideologically favour a smaller size of government. In Canada, this conflict has perhaps been magnified by the fact that the party which favours smaller government, the Conservatives, has also become the party with the greatest financial resources. With regard to the GST-QNPO issue, what the CEO understands as a ‘level playing field’ may be a misapprehension that his duty is to
minimize the differences between parties in their financial resources, with little appreciation for the fact that candidates and parties do act strategically to gain power, with whatever resources are available. Members, donors and volunteers expect the party and candidates to use resources to maximize the likelihood of its winning an election.

However, just as Elections Canada and its chief executive may not work as a unitary actor, the same may be said of the parties. In various interviews, a number of participants suggested that Prime Minister Harper’s personal views or ideology may also play a role in the Conservative Party’s conflict with Elections Canada. As one respondent put it, the “current difference of opinion between CEO Marc Mayrand and Prime Minister Harper, the Conservative Party leader is a direct follow-up to this prior situation [between the NCC and Elections Canada].”

Fourth, despite the best intentions of placing political finance under the administration of Elections Canada, which already oversaw election administration, this may not be the optimal solution. Canada and Elections Canada have earned a significant international reputation for well-run elections. Elections Canada’s reputation may become besmirched because of its perceived partisanship in the oversight of political finance. As well, because of Elections Canada’s reputation and budget, it represents a juggernaut compared to Canada’s individual political parties in the resources it can bring to bear in investigations and litigation, and because of the carryover in its reputation from election administration, common presumption is that it is Elections Canada who is ‘right’ and the parties who are ‘wrong’. This particular problem is aggravated further by the fact that the head of Elections Canada is an Officer of Parliament. This scarcely can be termed a ‘level playing field’ between the commission and the parties. It yet further confirms Nassmacher’s proposition that “Enforcement agencies and public opinion may change the handling of a programme and the interrelation among its elements” (Nassmacher 2009, 26). In the case of Elections Canada, it is not just its power as an enforcement agency but the power of its chief executive, as an Officer of Parliament, to shape public opinion with little fear of challenge. The age-old questions remains, “Who will guard the guardians?”
Fifth, because the act governing campaign finance is highly codified and rigid, it appears that the electoral commission may compensate for that rigidity in its choice of initiating and following through on investigations. Elections Canada, for example, admitted that it was the scale of the Conservative regional media buy program—not its uniqueness—that acted as the trigger for its refusal to certify the expenses. It was also the scale of the Conservative Party in the QNPO issue—not its uniqueness—that drew fire. While the agency should not be denied the necessity of prioritizing cases and using its funding to the best possible advantage, this freedom nonetheless invites accusations of partisan ‘punishment’ for those cases selected. It is expected that just as the judicial right to docket selection has proved controversial, so too will this discretion for political finance oversight.

In summary, Elections Canada enjoys significant power relative to political parties, candidates and leaders, partly deriving from the authority earned and gained by Elections Canada since 1920 over election administration. This authority in election administration then was transferred to its role in political finance and stands in sharp contrast to the ever-fluid organization of political parties. In contrast, there is less of a power disparity between political finance oversight and political parties in the two shadow cases. Political finance oversight in the U.S. was explicitly structured as independent of election administration (fundamentally because the states administer federal elections). Political finance oversight in the U.K. is a relatively recent phenomenon and since the UKEC merges only referendum (not election) administration and political finance oversight, it therefore has a narrower mandate than that of Elections Canada. In addition, it has no prior derived power and status as does Elections Canada. Finally, the purpose of Elections Canada oversight was originally the protection of individual voters and the integrity of elections: the role of parties and the relative strength of parties is a debatable part of its mission. While Elections Canada may be sensitive to the role of parties—and indeed it has shown this in its endorsement of lightening the current regulatory burden—nevertheless its structure does not impel it to do so. By contrast, the explicit incorporation of political parties into the FEC and UKEC requires each of these agencies to engage in greater justification of their regulatory activities toward political parties. While some may argue that Elections Canada’s power is necessary to counter the self-protective tendencies of political parties as a group, the evidence of cartel-like behaviour of federal political parties in Canada is minimal, as demonstrated by MacIvor (1996) and
Young (1998). As one observer stated, if Canadian parties form a cartel, it has been a spectacularly ineffective one given the powers removed or ceded from them in the past decade.

In the next chapter I investigate in more detail the impact of campaign finance rule changes on other Canadian political institutions.
## Chapter 6 Tables


<table>
<thead>
<tr>
<th>Year</th>
<th>Canada (Elections Canada) Expenditures C$/Year (in millions)</th>
<th>U.S. (FEC) Spending US$/Year (in millions)</th>
<th>U.K. (UKEC) Appropriation UK£/Year (in millions)</th>
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<td>n.a.***</td>
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* General Election Year, Canada; ** Presidential Election, U.S.; ***General Election, U.K.; **** 1989 Report of the Auditor General of Canada; ***** Apr 20, 2002 FEC requested extra $750,000 to cope with the new administrative burden of the BCRA Letter from David M. Mason, Chair, to Vice-President Richard Cheney.

Statistical sources: Elections Canada, FEC, UKEC. Year ends vary across countries.
Table 6.2  Staffing of Electoral Commissions: Canada, U.S. and U.K., 1988-2011

<table>
<thead>
<tr>
<th>Year</th>
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<td>2004-2005</td>
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<tr>
<td>2010-2011</td>
<td></td>
<td>375</td>
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Statistical sources: Elections Canada, FEC, UKEC. Year ends vary across countries.

Note: Annual reports of the commissions vary in their coverage from year to year; number of employees is not stated in each report.
Chapter 7  
Campaign Finance Rule Changes and  
Canada’s Parties: The Myth of Neutrality

*It is easier to say what you do not want than what you do want* (Honourable Jack Straw, M.P. 2006, 7).

*Political finance reforms are not neutral. Instead they are used as instruments to achieve political goals* (Alexander 2005, 21).

Introduction

Previous chapters have documented the set of informal and formal institutions that emerged in Canada following its Confederation in 1867, making Canada the third oldest, continuous democracy in the world. Among these are its brokerage parties whose local units have held autonomous status and have contributed to ‘local’ democracy because of their independence from the national office in nominating contestants. Brokerage parties emerged from and interact with Canada’s majoritarian electoral system, federalism and regionalism and these parties have brokered contesting interests through such strategies as representation of regional cleavages via cabinet selection practices and the adoption of campaign platforms more noted for their pragmatism than their ideology. Given the historic primacy of parties and these inter-institutional linkages, it is critical to now evaluate the effect of campaign finance rule changes—particularly the introduction of quarterly subsidies—on parties, EDAs, federalism and the challenges of Quebec’s distinctive status within Canadian Confederation.

As new institutionalism suggests, there are insights to be gained from examining the changed incentives for political actors and this approach is advocated by Nassmacher (2009, 26) who writes that the “behavioural aspect of regulation and its impact on party activity, party competition and party structure is the core subject of political analysis.” Advocates of institutional reform as a partial or complete antidote to the democratic ‘deficit’ view the use of campaign finance regulation and public tax-paid subsidies as a necessity in the evolution of parties and useful in introducing a hypothesized ‘neutrality’ into national party finance vis-à-vis dependency on civil society monetary contributions. However, it is important to investigate at a more disaggregated level: what are the politics of subsidies and what is the
impact of not only subsidies but other campaign finance arrangements on other key Canadian institutions and political debates?

In this chapter, I document effects on parties and political actors and interactions between Canada’s campaign finance regulatory framework with other political institutions. At the core level of empirical findings, participants, despite their wide ranging views and normative democratic stands, demonstrate unease with several aspects of Canada’s current campaign finance regime as they relate to political parties. Ceilings on contributions by individuals, prohibition on union and business donations and of greatest significance, the tax-funded subsidy to parties have resulted in enormous upheaval in Canadian politics and results that can only with naiveté may be termed ‘reforms,’ ‘neutrality’ and certainly not equilibrium. They may be here to stay or to go: either way, they have interacted with existing Canadian institutions in ways inconceivable even a decade ago.

What Outcomes Do We ‘Count’ and What Do They Mean?

What we count indicates what is of normative importance to us, either in a positive or negative sense. Attributed to Max DePree is the aphorism, “The first task of leadership is to define reality.” How we define current reality also moves us along to the questions of, “What do we want more of?” and “How do we get there?”

In reporting the insights of interview respondents, I attempt to make explicit the perspective employed. Certain respondents evaluated campaign finance reform in terms of the number of rules in place, in essence, a procedural approach adopted by international bodies such as the Group of States Against Corruption (GRECO) and the Organization for Economic Cooperation and Development (OECD). Thorburn gave limited endorsement to this approach. In his words, “We look at the United States, which of course is a horror story when it comes [campaign finance]. So we feel very accomplished in comparison with them. But on the other hand, if you look at Europe it’s a more mixed story . . . Britain isn’t all that bad either. I think Germany looks pretty good too.” However, as Thorburn conceded, this begs the question of what practices are relevant and which can be applied in Canada. Conacher, of Democracy Watch, uses a procedures-based evaluation in his media releases and defended the practice in his interview comments, as do many scholars of campaign
finance in comparing frameworks in newly emerging democracies (Pinto-Duschinsky 2001, 2002). Conacher looks at “how many loopholes” are left. However, by this measure, one which Anechiarico and Jacobs (1996) term the ‘absolute integrity’ approach, campaign finance rule changes can never be deemed ‘effective’ either in terms of parties or actors. Politics and election results are—desirably, from most perspectives—dynamic but often bring not only unexpected strategies into play but also surprising outcomes. The existence of rules and even strong enforcement do not preclude the strategic use of resources in the space that is ‘unstructured’ or loosely defined.

Again, while the number of rules and the coverage of campaign finance rules are appealing means of evaluation—simply because they are measurable—they ignore prior history of the actors, informal, non-legal or unwritten constraints and incentives and contextual factors which ‘counting the rules’ cannot take into account. As Courtney cautions, any policy affecting Canadian political parties must be examined carefully to

ensure that the institutional capacity demonstrated by Canada’s centrist, accommodative parties . . . is not sacrificed [because] coalitions of interests have been built within Canadian parties rather than between them . . . If because of different incentives offered . . . Canadian parties were to forego pan-Canadian, broadly based vote-maximizing strategies in favour of narrower regional or linguistic appeals, the locus of the principal coalition-building exercise would almost certainly change (Courtney 1997, 28; italics added).

I therefore turn away from ‘counting the rules’ to the observable implications—other than rules and rule coverage—which my research has uncovered.

Politics of Campaign Finance and Parties

The importance of local political associations, ridings, or electoral district associations as they are termed in Canadian law has long been noted. Smith in 1987 argued that over time, “British parties demonstrated an independence from local control and influence unknown in Canada” (Smith 1987, 51) and Aucoin argued the same (1999, 86). Their independence in nominating and selecting candidates has been an integral part of anti-elitist tendencies in Canada given that overall, there has been little central direction in the picking of ‘lists’ as there have been in Western European democracies. Cross in 2006 argued
that “candidate nomination is such an important part of Canadian democracy that it cannot be
justifiably viewed as an internal matter of interests to parties only . . . the parties either
cannot or are not willing to effectively regulate these contests and ensure they are governed
by generally acceptable democratic norms” (Cross 2006, 191). Arguments such as these
suggest that citizens and party members are incapable of continuing—on their own—to
conduct and evaluate candidate selection; suggest an absence of confidence in the very
citizen engagement processes said to be desirable; and mask what is meant by ‘generally
acceptable democratic norms’. If the party-list selection of candidates in PR systems is
generally acceptable then surely citizen engagement in candidate selection via local
associations should be equally acceptable and unregulated. Ellis and Woolstencroft (2006,
68) found that in the 2006 election “about 70 per cent of the [Conservative Party] candidates
had no previous candidacies or party-office incumbency with either of the founding
streams.” This freshness of candidates speaks as a democratic norm in which candidates are
not merely insiders or known to the party. Eagles et al. support this point when they find that
“there was not an enormous or general problem in the experience of local nominations that
necessitated the extension of the regulatory umbrella to encompass this pre-campaign
activity” (Eagles et al. 2005, 14; italics added). They confoundingly argue, however, that the
extension of regulation to EDA nomination contests is legitimate because “in a minority of
cases these intra-party campaigns can become quite heated” (Eagles et al. 2005, 14). Why
“heated” should be a source of concern is mysterious except if Eagles is implicitly adopting a
progressive stance on participation: that politics and participation should be rational rather
than emotional and that any kind of internal strife is somehow ‘undemocratic’ or ‘impolite’.
Competition at the intra-party level and locally should be interpreted as indication that EDAs
are not moribund.

Respondents confirmed findings by Young et al. that post-2004 campaign finance
rule changes have provided a stimulus to centralization within the parties and have
contributed to a transformation of EDAs from loosely-knit, voluntarist organizations to units
formally recognized by the law with formal, legal obligations. Seidle commented that the
Lortie Commission had recommended the registration of EDAs as a necessary step toward
more transparency in intra-party funding. Transparency has indubitably been strengthened
with annual reports by EDAs in non-election periods and more frequent reporting during election periods.

Eagles and Coletto (2008, 1) find that the 2004 amendments “profoundly” affected the status of EDAs in Canada: prior to the 2004 legislation, EDAs had been run on a voluntarist, autonomous basis; after the 2004 amendments, they became subject to regulation in terms of reporting and “were integrated in the overall regulatory apparatus that applies to all levels of party organization” (Eagles and Coletto 2008, 1). Figure 7.1 illustrates the degree to which intra-party finances are now controlled and underscores the accuracy of Eagles’ and Coletto’s conclusions.

While Eagles and Coletto conclude merely that “there is every likelihood that the relations between EDAs and higher levels of party organization will continue to evolve, in part at least as a response to the new transparency in party finances” (Eagles and Coletto 2008, 13), there is more to be said. Jansen observed that rule changes had effectively institutionalized EDAs in terms of making them more accountable to the national party organization. In the post-reform period, there is now a much greater risk to a national party’s reputation if one candidate or one EDA even reports the allocation of expenses incorrectly. If this is reported in the press, even if the allocation is later proved to have been unintentional, reputational damage may be intense.

Transparency in political finance can be seen as crucial in terms of countering corruption and possibly in terms of reassuring the public but on this latter measure, there is conflicting evidence as to whether more information indeed reassures. There is, however, little evidence to suggest that ‘corruption’ existed on any measurable scale prior to the 2004 amendments—and this assessment was confirmed by almost every participant, by both scholars and practitioners alike. What transparency may have first accomplished, however, is an undermining of an EDA’s autonomy. When an EDA had resources of its own—which it did not necessarily disclose to the national headquarters—it had means to hold the central party accountable to local priorities. EDAs have lost a significant part of this counterweight. Second, because the quarterly subsidy is awarded to a party’s national office, it has had a doubly-reinforcing effect of centralizing power at party headquarters. As Pennings, a former
candidate, noted, an alternative to restore some balance in the central office-EDA power relationship would be to send the quarterly subsidy exclusively to the EDAs; in his opinion, this would render the national party more accountable to its EDAs, would render the parties more “organic,” and would “change the nature of the internal dynamics of political parties” for the better.

A third outcome flows from the sanctions for incorrect reporting. Despite the fact that criminal sanctions are specified only for mens rea, or wilful misreporting, this apparently is not well understood at the EDA level. It is the threat more than the frequency of criminal sanctions and the uncertainty as to what standard of proof Elections Canada will use to determine “wilful” that are the disincentives. Senator Segal noted that:

> There is a long government tradition [in Canada] of criminalizing what you don’t want. It is harming volunteering . . . What criminalizing offences does is make it harder to get competent people to volunteer as agents. In Canada, we have created a virtual circle—there is tougher reporting, therefore it’s tougher to get volunteers, that leads to higher costs, more party bureaucracy and diminished volunteering.

Thus while criminalizing an activity is a symbolic gesture meant to convey that Parliament takes seriously the offence, in a voluntarist setting such as an EDA, it nevertheless restricts the pool of volunteers for an EDA. Numerous respondents commented that it was much harder to attract volunteers to the position of official agent for an EDA or for a candidate because of the possibility of a criminal sentence for inaccurate reporting.

Aside from the disincentive of criminal sanctions, the current regulatory burden poses a different disincentive. A former candidate expressed it well:

> We’ve made the law very complex and cumbersome, in terms of the [relationships] between the national and provincial parties. For most conscientious people . . . the only way to navigate that is to be an insider of the system . . . so you’ve discouraged outsiders from participation simply by the regulatory burden that requires specialist knowledge.

Thus despite the intent of the 2004 measures to introduce greater transparency via more detailed reporting relationships, the level and intricacy of reporting have had inadvertent results. The level of reporting detail, according to some EDA activist-respondents, has led to
first, more supervision of EDA activity by the central office and to each EDA needing a “little corporate bureaucracy and so it’s been difficult for some parties, ours included, to maintain a viable EDA . . . all this bureaucracy has made politics less fun . . . [it] removes the voter further and further away from the political.”

Nayman, an NDP member and Canadian chartered accountant specializing in candidate and EDA returns to Elections Canada, as well as other respondents, cited examples of the difficulty of compliance. The federal act terms an ‘election expense’ to be all items used during the campaign to elect a candidate or to work against any other candidate. If 1,000 signs are purchased by a candidate, 900 are used but 100 are not then the cost of 900 represents a campaign expense for the candidate; since 100 were purchased but not ‘used,’ the cost of the 100 cannot be expensed but must be transferred to the EDA as an asset. By contrast, Ontario regulations term an election ‘expense’ those items purchased during the course of the campaign regardless of whether they are ‘used.’ Because local associations of a given party typically act for both federal and provincial candidates, the confusion as to ownership of resources and expensing under federal and provincial rules can be considerable.

Another example of expense difficulties was given by a respondent who had run for office in a federal election. An expenditure made by this person’s EDA had straddled an election date and was still under contention between the EDA and Elections Canada three years following the election. In this particular case, the respondent noted that “a lack of goodwill” had developed on the part of the EDA that interacted with Elections Canada’s “deathly slow” response rate. While the Canada Elections Act specifies timeliness in reporting to Elections Canada, there are no such standards applied to Elections Canada’s accountability to stakeholders, as the UKEC has, nor does Elections Canada publish its response times, as does the FEC. Another factor that creates stress for the official agent and executive of EDAs in Canada is the issue of managing cash flow over the short 36-day period of a Canadian election. While the official agent can anticipate the amount of election expense reimbursement, the agent cannot predict when it will be received. A different factor but not of less significance has been the importance of an EDA’s finances during the period of two successive minority governments, elected in 2006 and 2008. There have also been several by-elections in the same period.
On the contribution side, there is also complexity of reporting and in Canada, the increasingly small sums that must be accounted for. Nayman and Wilkinson spoke to the difficulty of determining the allowable ‘contribution’ for events such as silent auctions; fundraising events where rules may differ as to what constitutes an expense, for example whether it is the cost of the entire event or just the meal which was ‘benefit’ to the attendee. The rules governing such costs were meant to avoid the perception of undue influence of big businesses or unions underwriting the cost of black-tie fundraising events for potential donors but the preponderance of fundraising events have tended to be casual, low-cost barbeque type or events in a member’s home which were funded out-of-pocket by the host, the candidate, party or EDA. Fundraisers of this type must now be paid for by attendees since contribution limits cover both money and goods and services, such as the cost of one’s home in hosting an event. As one EDA officer expressed it, Canadians for the most part are not used to having to pay to attend political fundraisers (except for black-tie events) and thus the new ruling which distinguishes between paying for the ‘benefit’ received yet nevertheless being asked to donate acts as a disincentive to potential attendees and donors of party events. Additionally, the EDA and candidate must receipt any cash donation over $25; by contrast, UK rules permit cash donations of up to £250 (just under $400) before requiring a receipt. Record-keeping down to contributions as small as $25 seems excessive in the search to avoid ‘undue influence’ and seems also to be a waste of valuable volunteer time.

Other complications for potential donors issue from other aspects. There are differing rules for contribution limits at the federal and provincial level, for example. Individuals may not recall whether a donation was to the candidate, EDA, provincial association or national party and may inadvertently violate either the federal or provincial law. Or, an individual may give a donation at the beginning of the year but may send in another donation in the event of an election later in the year. These errors must be caught by the official agents before completing Elections Canada returns. Ultimately, the contributor will discover the error at the time of submitting his/her income tax return in the following year. Should there be contributions in excess of the legal limit, the excess amount will not qualify for tax exemption. Louis Massicotte summarized the situation as follows: “The federal system today is horrifyingly complicated.”
Aside from the new complexity of duties of the official agents for both candidate and EDA, there are other negative outcomes for voluntarism under the current finance regime. Prior to the reforms, each of the parties conducted informal, on-the-job training for official agents. Elections Canada is now actively conducting training for official agents. The level of campaign finance reforms demands a higher level of training; however it also speaks to the removal of expertise and responsibility away from the voluntarist and independent characteristics of in-house party training. While tacit information may still be passed along informally, the official involvement of Elections Canada paid staff diminishes the importance and urgency of internally organizing for this function. Respondents such as Wilkinson, an official agent for the Conservative Party, confirmed that ongoing rule changes (not necessarily their complexity) have led to continued professionalization of party activity in order to keep abreast of and onside ongoing regulations.

The case before the courts (see Chapter 6) probing the use of advertising developed by the Conservative central office sold to Conservative EDAs, is essentially probing the legitimate limits of central party-EDA/candidate relationships, in this case the definition of which entity ‘incurred’ the expense. It is also probing the efficient use of party resources: must each candidate or EDA develop its own advertising rather than have the central party bear the cost of developing an ad and then personalizing it for a candidate? While the intent of the regulation was to prevent large intra-party flows of money from contravening the rules, again there has been an unintended consequence. Although Karvonen (2007, 439) writes that party finance laws don’t “aim at general regulation of parties,” it appears that they increasingly do so, at least in Canada.

Several participants, including Senator Smith and MP Rae, also spoke of the difficulty in attracting qualified candidates either for leadership or for candidacy at the EDA level under current rules. There is no room to attract ‘early money’ to launch even minimal awareness of the identity of the candidate. Another objection was that the low limit on contributions would exacerbate the ‘insider problem’ already existent within parties: that only those who were already known would be able to gain traction in a nomination or leadership race. Low contribution levels of $1100 to a candidate and $1100 to an EDA or party in a given year mean that it is increasingly difficult for contenders to raise the
necessary funds. Although the allowable spending during the campaign is also limited by law, there are nevertheless gearing-up costs when the writ is dropped. At this point, it is the incumbent and EDA who are well placed. As has proved to be the case in the U.S., the “fundraising advantage of incumbents is often cumulative” (Bailey et al. 2000, 11). This may particularly be the case when a minority government loses the confidence of the House of Commons and a snap election is called. Inter-EDA loans—which are not currently regulated—may be significant in assisting an EDA (and hence a candidate) in which the candidate is not an incumbent, is not well known or where the party-on-the ground is weak. As well, an EDA may not have a candidate in place if a snap election is called. In these cases it is extremely difficult to raise small amounts of money quickly after the writ is dropped. Although an EDA may take out a loan, most loans require a guarantor of some sort and members of the EDA may be reluctant to take on personal liability for the sake of the party or candidate.

However, each party differs somewhat. Within the Conservative Party, 100 per cent of a donation to the local candidate or EDA is retained at the local level; by contrast 90 per cent of a donation to the central party is kept by the party and 10 per cent is sent to the constituency. Marceau and Barbot stated that in the BQ, there was an internal agreement that whatever was raised at the constituency level stayed with the EDA.

The contribution limit on individual donations and the prohibition of union and business donations may have had a positive effect on EDAs, however. Gelberg, a long-time Conservative EDA activist suggested that there had been a democratizing effect of limiting contributions to $1100. As she stated, “There are a lot of people who want to be well thought of socially in the community. If they can afford to give you $1100 they go to the top of the list, whereas in days gone by [$1100] didn’t mean much.” Senator Cook also favoured the current rules because “They make parties more dependent on more individuals . . . The current legislation forces parties to go into the field and get out to voters.” While these are optimistic statements, the evidence, as shown in Table 7.1, is that only the Conservative Party has raised sufficient funds to keep its ratio of government funding to total funding under 1:1; that is, government funding is less than its private funding sources.
Overall, however, the 2004 and 2006 regulations represent a cumulative disincentive to the creation and sustaining of strong and autonomous EDAs. This is of particular importance since, as Carty (2002, 745) points out, EDAs, as an organizational unit, have historically been difficult to hold together and yet they have been crucial to democracy at the grass-roots level in Canada. Comments by participants support the notion of fragility of EDAs. Senator Smith, a former MP and Solberg, a former MP and federal minister, spoke to this fragility referring to the difficulty of “establishing riding associations that don’t fly apart on a whim,” the risk of ‘hostile takeovers’ of EDAs close to election times and finally, establishing a critical size for EDAs,

so that they can’t easily be overtaken by somebody who . . . does not do your party any favours . . . I remember when the Reform Party went through [this]. You’d have small riding associations taken over by someone who’s a bit of a demigod and he [or she] would say outlandish things. It gets into the paper and then it’s a mess.

Given this seemingly inherent level of difficulty in sustaining EDAs, any potential disincentive effects of campaign finance regulation, however unintentional, must be taken into consideration.

Turning to the party level, one of the most outstanding effects of the 2006 legislation has been the impact on leadership campaigns. While there is no doubt greater transparency in the funding of leadership races, there have been detrimental effects for the Liberal Party in particular. Liberal Party leadership contests are delegate-based and costly when compared to the style of leadership contest used by other Canadian parties. One long-term prominent Liberal suggested that there will never be another ‘traditional,’ delegate-based Liberal convention because it is too costly under the current regime. The question raised by this situation is whether the spending and contribution limits for leadership contests are in fact viable for the long term in order to attract candidates who are neither averse to the risk of long-term liabilities or who do not possess a network of friends, family or others who will quickly support their leadership bid.

In early summer 2010, there were frequent media reports regarding a possible merger between the Liberal Party and the NDP, with one prominent reason being given: Ignatieff,
the current leader of the Liberal party could not rally contributions and the Liberal Party, with its already outstanding leadership debts and expensive delegate-style leadership selection process, did not have funds to mount a new leadership campaign. Although this merger did not occur, fragile finances curbed the Liberal Party’s appetite, or at least its ability to mount a strong electoral contest, curbed its aggression as the Opposition Party and forced it to collaborate more closely with the NDP, the third ranking party in the House of Commons. As well, despite a well-publicized 2010 campaign by Ignatieff, the Liberal Party leader, donations to the party in the first quarter of 2011 were far behind those to the Conservatives (Elections Canada 2011). Following the May, 2011 election, which resulted in the Liberal Party’s loss of 33 seats in the House of Commons, loss of Official Opposition status, and the loss of the seat held by Ignatieff, Ignatieff stepped down as leader and MP Rae took over as interim leader. The party cannot afford its party’s traditional delegate-style leadership convention. Therefore, the party, according to an article by Weese in The Sunday Sun on June 19, 2011, held a convention by teleconference, voting by phone to change the party’s constitution in order to defer a leadership convention until 2013 and to choose Rae, a former leadership contestant, as interim leader.

This example serves to demonstrate the significantly intrusive effect of just one aspect of Canada’s current campaign finance framework on intra-party and inter-party relationships. In the larger picture, this may not be all bad. While the Liberal Party adopted a convention-style leadership campaign several decades ago in order to address critiques that its previous leadership selection process was too elite-based, the caucus-selection method of leadership means that the party leader is more subject to the ongoing approval and cooperation of the party caucus and hence may mean greater accountability of the executive. The Liberal Party’s financial problems cannot all be attributed to changes in campaign finance rules. The primary effects of the rule changes have been through the inclusion of leadership campaigns in the regulatory framework, the low ceiling on individual contributions and the low ceiling followed by the prohibition of contributions by corporations. However, these effects have been exacerbated by the party’s overall failure to define its policy stance, to differentiate itself from its competitors and to choose a compelling leader. As well, respondents noted that the Liberal Party had underestimated the competitive edge in fundraising that its governing party status for so many years had conferred on it,
confirming findings by Carty, Cross and Young (2000, 145). Liberal MP and former Liberal Party leader, Dion, following the 2011 election, was reported as stating that "the party needs as much time as possible to rebuild the party, a task he said would be both ‘monumental’ and ‘colossal’," according to Weese of The Sunday Sun (June 19, 2011). Former Prime Minister Chrétien and former leader of the Liberal Party publicly urged the new Conservative government to retain the subsidy, according to the CBC, May 9, 2011.

There are still other implications flowing from the 2004 and 2006 rule changes on the national parties, depending on their internal organization as situated in Canada’s federal structure. Smith and Orr (2005, 1), for example, find some evidence for “contingent effects” on state parties following a change in U.S. federal campaign finance law. Although many respondents expressed optimism that the lower limits on personal contributions would act as a democratic stimulus in bringing in greater numbers of small donations (all, of course, under the current $1100 indexed amount), there has been tremendous variation among the parties in accomplishing this. The Conservative and Green parties, because of their centralized ‘ownership’ of donor and membership lists, used for communicating, solicitation of votes and contributions (among other reasons), have been more effective in generating support from individual donors. By contrast, several respondents spoke to the high level of contention between the national Liberal Party and its provincial counterparts over the use of lists. Two scholars, Flanagan and Archer, noted that the Liberal Party had “bad lists and inconsistent definitions of membership” that significantly handicapped the party’s ability to communicate effectively. Archer stated that although the party had huge lists, successful mass communication requires that the party have “big pools of names and . . . a clean list . . . to maximize efficiency.” He pointed to the example of New Brunswick Liberal Party where, on joining the party, the individual becomes a ‘lifetime member;’ this significantly hampered the national party’s ability to identify active, current members. By contrast, for the NDP, historically, a person joined a provincial wing of the party and automatically became a member of the national party. Because the membership lists have been retained by the provincial wing, Proctor noted that this had “been a bit of a barrier to the national party being able to communicate effectively with its members on an individual basis;” Archer did not know how effectively the NDP had been able to overcome that barrier.
Inter-Party Disparities

Of significant importance to most all of those interviewed was the increasing disparity among the national parties in terms of their revenues. Figure 7.2 and Figure 7.3 display sources of funds for the five major parties, by year and by party, respectively. The subsidy’s effect as a source of funding for parties is overwhelming, at least until 2008. It can be seen in Figure 7.2 that the four major parties, except the Conservatives, in 2008 derived over 60 per cent of their income from the subsidy. Figure 7.3 shows that the subsidy has moved tax dollars as a source of funding from under 20 per cent in 2000 to triple that in 2008. (The Green Party did not exist in 2000). Table 7.1 shows the raw data on which the charts are based.

Those interviewed, almost without exception, offered impartial analysis despite their personal partisan connections. Conservative strength in raising funds was attributed to: the ideology of the party which has historically relied on small donations and favours a smaller role for government; the membership base which is more oriented toward contributing; and the party’s internal unity, both in terms of leadership and organization. Finally, those interviewed pointed to the party’s position as the governing party, a factor long noted as favourable to raising funds (Carty, Cross and Young 2000, 145). Jansen referred to the populist, small donor base of the Reform Party wing of the Conservatives. The Conservative Party’s ability to build its base and its strength in attracting a preponderance of small contributions were noted admiringly by a number of participants. As Young noted, “The Conservatives, I think, have remained entirely connected to civil society via their fundraising campaign. Now, is it the kind of rich democratic kind of connection that the theorists of the mass party would like to see? No. It’s direct mail.”

However, there was a concern voiced by participants that attempts to attract individual donors may be leading to increasingly polarized and distinct party platforms. Cross was not alone in arguing that that it is party ideology and the identity of a leader that drive contributions. Ironically, one of the chief criticisms of Canadian political parties raised in the literature has been their centrist-tending party platforms which have been the essence of their success in brokering disparate Canadian interests over the long term. However, there is some discomfiture among campaign finance reform advocates who now see distinctive
platforms developed by the parties as a threat. Former Liberal leadership contestant (and now interim leader) Rae, for example, attributed Conservative Party success neither to its organizational strength nor to its membership base but rather to its “anger-driven, hair-shirt” view of politics. In Rae’s view, the Liberal Party’s claim to be the party of the centre was unable to draw out intense partisans and their monetary donations. Rae’s reasoning does not appear persuasive given the multitude of strengths of the Conservative Party and the donor base attracted by the Green Party even before it ran candidates in almost every riding in the 2004 election. However, the issue of issue polarization of the parties reappeared in discussions of the impact of the party subsidies introduced in 2004.

The increasing disparity in resources between the Liberal and Conservative parties following the reforms was a central point in the interviews. Almost all participants addressed the almost incomprehensible inability of the Liberal Party to respond to the changes in campaign finance. This strategic ‘lagging’ was attributed to a number of factors: not only the internal organizational structure of the party but also the continuing shadow or overhang of the party’s misuse of funds in the 1990s and 2000s and the inability of the party to unite the Chrétien-Martin factions under a strong leader.

The particular ‘culture’ and ‘values’ of the Liberal Party as explanatory factors in its decline relative to the Conservative Party were explicated in different ways by participants in this study. First, the Liberal Party is known as a party that has attracted immigrant voters, unused to parties that rely on individual donations and volunteer work. Donating and volunteering hours to a party presumably brings to mind the undesirable notion of giving to a repressive government or state. A second aspect of culture frequently noted was the decades-long dependence on corporate donations rather than a cultivation of individual donors. Third has been the party’s inability either to grasp or overcome the taint owing to the scandals generated over the long term the party had held power. MacDermid observed that prior to the 2004 changes “corruption [attributed to the Liberal Party] created a ‘capital strike’ by corporate contributors” so that the party was in an already weakened financial condition before the ceiling on corporate donations and then the ban on corporate donations became law. Finally, Quist, a former candidate and Director of Operations in the Official Leader’s Office (OLO), and others suggested that Chrétien and the executive director of the party at
the time did not account for its former incumbency power in attracting donations. The problems of the Liberal Party speak to the inherent difficulty in adapting a party’s culture to new campaign finance rules and the elusiveness in achieving inter-party parity or a ‘level playing field.’ Thorburn posed the issue as follows: “Who knows what’s going to happen to the Liberal Party in the next while? I don’t want to write insurance for that one.”

However, participants noted that not only the internal culture of the Liberal Party had created problems for the party. A number pointed to the fact that the Conservative Party’s donor base was more attuned to a smaller role for government and hence was more likely to donate to a party because of its dislike for government funding of many sorts. This ‘values’ difference of Conservative Party supporters has been an inherent advantage for the party. As one participant wryly noted “People join the Conservative Party to give and join the Liberal Party to get.”

Neither the NDP nor the Green Party has an ideological or cultural problem with more tax-based funding for political parties. As will be recalled from Chapter 3, the NDP extracted the original limitation on election expenditures from the government led by Trudeau in exchange for supporting the Liberal minority government. For the NDP, Proctor, MacDermid and others spoke to the ‘distancing’ that had already been occurring between the national party and its institutionalist links with union funding prior to 2004. Thus the 2004 cap on union donations was not a severe blow to the party although the 2006 ban has posed more of a challenge to fundraising to the NDP. As Proctor, former executive director of the NDP, put it, “We believe that there should be public financing available to parties . . . Could we have survived without it? Absolutely, yes . . . but we just think that there should be public funds involved for political parties.” Participants were asked to comment on the response of these parties to campaign finance rule changes. Most described the Greens as having demonstrated a strong strategic response to the introduction of the vote-based subsidy. The Greens’ decision to run a candidate in every EDA was ascribed to the vision of then-leader Jim Harris who saw the subsidy as a further move in the transformation from movement to party. Barbot, Vice-President of the BQ, stated simply that for her party, “It would be bad if we didn’t have that money [from the subsidy].” She defended the vote-share distribution of the subsidy because the money is “following the will of the people who voted for us.”
To conclude, the foregoing demonstrates that party response in Canada has been intriguingly varied. Despite the professed intent of the 2004 and 2006 reforms to ‘level the playing field,’ party positions have not been levelled, and in fact have diverged, despite the introduction of the subsidy. Rachlis stated that, “The curious part is the party that did the least to respond to [2004 reforms] was the party that introduced them. The Liberals did nothing because of extraordinarily weak leadership.” Intra-party wrangling within the Liberal Party has confounded the best intentions of the reforms.

Expenditure Ceilings for Parties, Candidates and EDAs and Canada’s 36-Day Writ

A different interaction between Canada’s post-2000 campaign finance rules with other parts of the electoral system may be seen in the regime’s interaction with the country’s adoption of a shortened election period of 36 days from the earlier 47 days. Spending limits are fixed in relation to the number of constituents in a riding and for Canada’s largest riding of 170,000 potential voters, it stands at just over $100,000. But, as Malbin (2009) notes, the inherent problem of expenditure limits is that they are “fixed, or pegged to a non-political cost index, while the context is changing.” Brodie, former executive director of the Conservative Party and Chief of Staff to Prime Minister Harper, spoke to the extreme variation in campaign finance costs depending on the season in which the election is called. The 2006 election occurred in January: the 36 days preceding the election fell mainly in December, a month in which advertising costs for television and radio are historically low. By contrast, the 2008 election was held in October, with the pre-election period falling in September, a seasonally expensive period for advertising. Were the writ period longer, advertising could be staged more cost-effectively. A different aspect of spending limits, to which Brodie referred, is that between the 2006 and 2008 elections, fuel costs soared so that costs for moving the leader and his entourage . . . went through the roof. My best guess is that the cost of the Conservative plane and the NDP plane (they both used the same planes) went up $1.2 million from the previous campaign . . . The only place that comes from is $1.2 million out of voter contact.
The outcome here is that fuel costs effectively reduced the amount of advertising and personal appearances possible for the candidates at the probable cost of political information available for the electorate.

Yet another impact of the 36-day writ, which was adopted to protect the-then incumbent Liberal government, under the guise of curtailing costs, but perhaps for partisan advantage, is that EDAs and candidates find it extremely difficult not only to find immediate funds but also to ramp up a fully-functioning volunteer network in such a short period of time. As one respondent noted, “Canadians are not aware of the volume of volunteer hours that go into political parties. If we had to pay for them . . .!” Liberal and Conservative participants addressed the difficulty posed to parties by the 36-day writ, in conjunction with spending and donor limits. Of particular note is that the shortness of the writ in combination with parties needing funds and volunteers make it difficult to implement a strategic plan, attract large numbers of volunteers, organize an effective working team and ramp up the logistics within such a tight time frame. However, some participants disagreed with this perspective, arguing that longer campaigns meant, among other factors, more spending and the spectre of ‘constant campaigning,’ as they perceived it to occur in the U.S.

Many participants commented on the difference of scale of spending in elections by Canadian candidates versus their counterparts in the U.S. Given the expenditure limits under the CEA which are tied to the number of voters in an electoral district, on average, a candidate will spend approximately $70,000-80,000 and typically, a party can spend up to about $18 million. Four points were made frequently by those interviewed and the following give a flavour. Quist noted anecdotally that an American had said to him that in contrast to $70,000 for an entire MP election, “We’ll raise that in one night and spend one hundred times that.” Murphy spoke for many when he stated, “We have an extraordinarily limited amount of money in our system.” There are two ‘envelopes’ of contribution, totalling $2200 in a year where there is both an election and a leadership contest. By contrast, in the 2008 U.S. election,

An individual could contribute up to $2,300 per candidate per election (meaning $4,600 total if one gives to the same candidate in a primary and a general election), plus a maximum of $28,500 to a national party. Taking
account of the possibility of supporting multiple candidates in different races and of the stand-alone caps, an individual could give up to $108,200 over two years to candidates and PACs (Dorf 2009).

Klingemann offered yet another insight that cross-national comparisons of spending frequently do not take into account how much it actually costs to “get a government” given the nation’s geography, population density, media coverage and independence and so on. For Genest of the Green Party, and many others, differences in political culture between the U.S. and Canada argue against any convergence in amount spent on elections and act as an informal constraint on Canadian electoral contests. As he stated,

In my opinion because you only have two parties in the U.S., you have no choice but to rally and galvanize around one alternative. I think by virtue of having four or five or however many parties, dissipates the attention span.

And in my opinion what the Americans did spectacularly well in the last election was to engage. The most fatuous of platitudes, “Yes we can,” was to engage. People cried . . . I was crying [when Obama won].

The drama of it, elections are really a super bowl for the States. Scores, statistics, graphics, it’s a sporting event. And we [Canadians] are not like that here and that’s probably a good thing. But at the same time, because we don’t have a hyperbolic and overdrive kind of campaign, we’ve really lost the interest of everybody.

Canada adopted fixed election dates in 2006, with the next scheduled for 2009. However, Prime Minister Harper called an election in 2008, stating his reason as the House having lost confidence in his Conservative minority government. Critics argued that the Conservative government move, which if not illegal, was considered by many to be inappropriate, was in fact a strategic move by the Conservative Party because of its superior financial strength compared to that of the Liberal Party, the Official Opposition. Flanagan suggested that there will continue to be ongoing inter-institutional effects between campaign finance rules and fixed election dates. Specifically, he predicted that there will be a tendency for campaign activities to migrate into the pre-writ period. At the moment that’s not regulated by law, it’s only limited by [a party’s] fundraising capacity . . . I think the incentives are going to be overwhelming for the parties to try and make use of the pre-writ period. Parties always follow incentives and pre-writ campaigning will be effective. Experience will show that parties that make use of a pre-writ campaign will do better and
other parties will imitate them—they will have to . . . So then you’ll probably have demands for Elections Canada to start regulating pre-writ activities too.

To summarize to this point, the post-2000 Canada’s campaign finance regime introduced since 2000 can be seen to have thrown candidates, leaders, the parties and the EDAs into a maelstrom of adjustments, flowing from new reporting requirements, rules governing leadership contests, and the stripping away of corporate and union funding. Party activity at the EDA level has suffered, according to many of those interviewed. Given the historic importance of Canada’s EDAs in the ‘big scheme’ of political party activity, too little attention was paid to their uniqueness. The combination of the potentially speedy onset of a general election with the relative shortness of the writ period have magnified the consequences of low contribution ceilings and low expense ceilings on candidates and EDAs. In theoretical discussions of the effects of changing campaign finance rules, the overwhelming focus has been on the party system and inter-party effects. By contrast, the voluntarist nature of Canadian EDAs in particular as well as of candidate campaigns means that these organizations are highly sensitive to any barriers placed in the way of attracting volunteers and hence members.

The Vote-Based Subsidy

The 2004 introduction of a vote-based subsidy at the national level in Canada can be seen as a rare, significant institutional change in electoral politics. As introduced in 2004, the subsidy was set at $1.75 per vote on an annual basis, subject to an annual indexation for inflation. It has since risen to $2.04 as of yearend 2010. Hence the post-2004 experience is a unique window into two phenomena: how a new instrument, tax-funded subsidies, changes the interactions among component parts of Canada’s democracy and how easily a campaign finance instrument may be transferred to a new institutional context. The effects, as noted in recent literature, and by participants, are many-faceted and will be analyzed sequentially. I am not attributing all changes in Canadian electoral politics since 2004 to the introduction of subsidies. However, because the subsidy represents such a significant departure from Canada’s prior experience, the existence of the subsidy must at least be considered as a contributing factor. As Jansen stated with regard to the 2004 legislation:
Let’s look at Bill C-24 . . . There are so many confounding variables that have messed up what would have been a really neat causal chain. It’s real life getting in the way of good political science!

The Subsidy and the Electoral System

One of the commonalities shared by Canada, the U.S. and the U.K. is the first-past-the-post (FPTP), majoritarian electoral system, in contrast to the practice of most West European democracies where party subsidies have been employed most extensively. The effects of FTPT on party systems have been extensively explored in the literature, for example by Cairns (1968). Two of its most notable effects are however, first, the pressure toward a smaller number of parties than under proportional representation (PR) electoral systems and second, the frequent imbalance between a party’s vote share and its seat share in the legislature. In Canada, campaign finance interacts with the electoral system in both aspects.

It should be noted that the intent of the subsidy, according to most respondents, had not been greater proportionality. As noted in Chapter 4, the prompting for the subsidy seems entirely related to the interests of Chrétien either in leaving an institutional legacy or in trumping his opponents in the party. Senator Smith, among others, was emphatic in his denial that the subsidy was a “backdoor route” to proportional representation, because as he stated “there have only ever been two parties that have formed national governments . . . and neither of those parties wants to go proportional” at least in the House of Commons. There is, according to this viewpoint, no political will to move to formal proportional representation in the House.

Nevertheless, because the quarterly subsidy to a party is based on the party’s national vote share in the most recent election—rather than seat share, the traditional counting block in majoritarian systems—the subsidy has introduced greater proportionality into Canada’s electoral system than had existed previously. The measure of proportionality introduced by the subsidy formula represents a movement toward PR and away from Canada’s historic electoral regime in which parties were responsible, themselves, for attracting sufficient resources to sustain themselves. As well, Aucoin and Smith (1997) argue that PR fails to meet the claims that it introduces greater ‘equality,’ specifically with regard to forming
governments, when it is introduced into a parliamentary democracy. Although electorates in several provinces have rejected proposals to alter the FPTP electoral system, the merits of moving to PR are still hotly debated among political elites, with a survey, reported in 2008, showing a marked preponderance of scholars favouring “varieties of proportionality” (Bogaards 2008, 61). Thus, the Canadian literature, almost without exception, celebrates the subsidy because it introduces proportionality, and in this view, moderates the influence of Canada’s electoral system. It is unclear, however, that the Canadian public supports this notion, given the Conservative Party’s attaining majority status in the 2011 election, with removal of the subsidy as a major policy in its election platform. Jansen also pointed out that the subsidy has a positive, albeit indirect, moving Canada’s electoral regime toward proportionality because “it helps to sustain and increase the visibility of the Green Party, which is a major advocate of electoral reforms.” Aucoin and Smith (1997, 32), evaluating proposals to integrate proportional representation into Canada’s electoral system have written that

We need to proceed with a realistic understanding of the political dynamics inherent in the formation of governments within the parliamentary system under PR . . . We need to be reminded that there is more to representative government within the parliamentary system than the elections of members to parliament, whatever electoral system is used.

Their conclusion is more than apt with regard to Canada’s experiments with campaign finance.

Thus, the extent to which the per vote subsidy has introduced proportionality is not insignificant, not only because there has been such prolonged debate over the disparities between percentage of vote and percentage of seats in the House of Commons, but also because the potential advantages of proportional representation (PR) have long been noted by Cairns (1968), for example, but also more recently by Bashevkin, LeDuc, Docherty and others. A move to proportional representation has been seen by these authors as a significant factor in addressing the ‘democratic deficit,’ raising turnout rates and generally re-engaging the public in political issues. As Docherty noted, changing the House of Commons, the Senate, the electoral system or the way judges are appointed are difficult political processes. By contrast, changing campaign finance represents an “easier fix” and a way for a political
leader or party to be seen as “dealing” with democratic reform. He also pointed to the fact that the 2003 Supreme Court decision in *Figueroa*, overturning the 50-candidate requirement for party registration, had introduced proportionality into the electoral system. The decision forced Parliament to respond by lowering the number of candidates required for registration from 50 to 2. Smaller parties therefore benefited by having to run fewer candidates but were still able to receive reimbursement of election expenses and to issue receipts for income tax purposes. As Docherty argued, it is very doubtful that Parliament would have acted on its own accord to grant these privileges to smaller parties: although Docherty does not see Canadian parties as a cartel, he does see them as acting strategically in their own best interests.

To the extent that the subsidy has introduced proportionality to the Canadian electoral system, those interviewed were sharply divided as to whether this was in fact more democratic and beneficial given the political culture and historical context of Canadian democracy. Thorburn’s comments are representative of those seeing the subsidy-induced proportionality as beneficial in that Canada was “moving in a democratizing direction” since the subsidy, in his opinion, was tending to even out the biases associated with FPTP. To him and others of this view, the subsidy represented merely a substitution of tax-based funding in lieu of corporate and union contributions as well as large individual donations: there were no ideological consequences *per se*. Others cast their arguments somewhat differently, preferring the vote-share basis of the subsidy to a seat-share basis, the traditional arbiter of power in an FPTP system, which would have reinforced existing disparities. For June Macdonald, of Fair Vote Canada, an advocacy group devoted to proportional representation, the tax-based subsidy is a step towards PR and hence is welcome. She argued that the subsidy would encourage strategic voting and hence greater democracy: although a vote for the Green Party doesn’t “count politically, the vote does count financially.” Finally, Conacher, another third party actor, also endorsed the vote-share basis of the subsidy because it is the only proportional part of our political system, our vote counting system . . . And that’s why it’s democratic to have some of it because our first past the post system rips off some of the parties . . . So [each party] should have some money.
A minority of respondents questioned how ‘democratic’ the subsidy could be considered since the Green Party had received a subsidy without winning any seats. Ajzenstat, as a scholar of liberal democracy, defends brokerage parties as a means of “representing a wide spectrum of people who supposedly are not represented.” She expressed concern that the vote-based subsidy is leading Canada toward a system of corporatist representation and is going to work in the direction of fragmentation. It’s going to give you greater difficulty in Parliament getting all these interests represented the way party structures generally work to get them represented. Much, much better to have the parties thinking that they have to go out and look for the people who are not yet being represented instead of paying these people to form some party of their own.

She continued in her defence of brokerage parties:

One thing we must never do is to adopt some form of corporatism . . . This is so antithetical to the founding principles of parliamentary government . . . [In the parliamentary tradition] the Member of Parliament represents all the people in the riding regardless of party. Not only that, but in the British tradition, he or she represents the whole of Canada—there’s [actually] double representation . . . Our guide always should be the older parliamentary tradition . . .

Respondents’ views seemed to vary with their direct electoral experience and with their support for interest accommodation and conflict resolution within parties—the brokerage model—or for conflict resolution between parties—the ideological model of parties—and emblematic of proportional representation. Support for the subsidy varied only somewhat with party identification of the participant.

A number of participants objected to the existence of the subsidy on principle: supporting a political party, for Crowley, the director of a not-for-profit organization, is an “issue of conscience and the use of compulsory taxation to fund political parties, many of which individual tax payers can be in disagreement, is morally difficult to defend.” Viewing the subsidy as an issue of conscience is one which has not been addressed by cartel or public utility theory. When considered in this light, the use of a tax-funded subsidy as a policy instrument poses a possible challenge to the principle of freedom of association and rights such as those laid out in documents such as the International Covenant on Civil and Political
Rights (ICCPR), ratified by Canada in 1976, which states that all ratifying nations covenant “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . political or other opinion” (ICCPR 2002, article 2). In a somewhat parallel situation, the European Court of Human Rights in its 1998 decision in *Bowman v. U.K.*, struck down the long-standing U.K. ban on political advertising as a violation of the European Convention on Human Rights. U.K. governments have refused to alter legislation.

Many respondents feared “ossification” of Canadian political parties because of their maturity and reliance on tax-based rather than civil society funding (Katz and Mair 1995, 1996). This ‘ossification’ was operationalized in different ways by respondents. Cross argued that ties to civil society were one measure and this will be examined in the next chapter. Ossification meant attrition in individual donors, for others, a fear that parties would be less willing to innovate in public policies; and finally, for some third party actors, it was a fear that guaranteed funding would slow responsiveness by parties to emerging interests and issues. Flanagan, a scholar and Conservative Party activist, stated that he did not think that the subsidy at its current level posed danger of ossification:

The system we have now federally for the big parties—and I include the NDP here because although they’re not as big as the other two, they still aspire to run campaigns across the country. So for real national parties that are actually electing members, the subsidies at a level that they allow you to keep your party alive year to year . . . Subsidies don’t give you enough to run your campaigns . . . Except for the Bloc, the other parties are working harder than ever to raise money and they find it necessary to do so . . . They still have to go out and raise the money. So that’s on the pro side. On the other side, subsidies may have the effect of keeping parties alive that should die . . . that might be a sign that the party has outlived its usefulness.

However, others scholars suggested otherwise. Cross and Jansen, for example, although not disparaging public funding *per se*, stated a desire to see the subsidy based on a more ‘dynamic’ formula rather than merely seat share in the past election, with Cross suggesting a matching formula, that is, tax-funded dollars matching or proportionate to private contributions raised. As Cross stated, given the “huge hurdle and obstacle that our electoral system imposes on something like the Greens, if they’re still able to get five/six percent of the vote [and get a subsidy because of those votes], then more power to them and
they deserve that money.” MacDermid, from a left-of-centre point of view, stated that “the subsidies [at the current level] are good but excessive . . . Parties don’t have an incentive to listen to people.”

Preston Manning, founder of the right-of-centre Reform Party and former leader of the Opposition, while supporting the ban on union and corporate donations, nevertheless had the following concern:

I prefer that parties not be funded from the public purse because once they are, the incentive to have to sell themselves to the public and be accountable to the public is blunted. I mean when you have to go out and get the money and you have to persuade people that they have to support you, it has an effect on you. I think it has a good effect from a democratic standpoint (speaker’s italics).

Thus, Manning’s and McDermid’s concern centred on the effect of the subsidy in lessening a party’s ties with individuals and civil society while for Gairdner, guaranteed funding was likely to induce passivity on the part of the electorate, rather than motivating it, since the subsidy ‘relieves’ citizens of the responsibility to engage politically via donations and potentially, the donation of volunteer time. Yet another director of a not-for-profit, Robson of the C.D. Howe Institute, argued that:

There’s a very basic conflict of interest if the State is regulating the vehicles of democratic representation. So, I would be on the side of those who would argue that there ought to be a very light regulatory hand there. Otherwise, it’s very easy for the incumbents to use this kind of machinery to shut out potential challengers.

Some respondents tolerated the subsidy from a sheer pragmatic point of view: elections are not free, union and corporate donations have been eliminated so there is no choice. Jansen observed that the introduction of the subsidy has indirectly stimulated support for electoral system change: the subsidy has stimulated the growth of Green Party, which is a major advocate of proportional representation. Flanagan simply observed,

I’m not certain where I stand on the subsidy system. I certainly understand the argument that political parties are in the business of providing a collective good . . . it costs money. I’m not necessarily opposed to the subsidy argument. There are still incentives to go out and get money.
Murray, a left-of-centre activist and NDP member, spoke for several respondents who feared not ossification of parties but rather a polarization of ideologies in their attempt to get contributions and to get votes and hence the subsidy:

One of the things I think you will see—and the Conservatives were faster to adopt this and more but it has potential for all parties—is that I think you will see an increase in parties taking positions on particular issues, not so much because of national importance but because they view them as positions helpful to motivate a donor base.

Another concern voiced about subsidy was the actual level at which it was set. Apart from the fact that annual indexation for inflation is more than most wage-earners receive and that such indexation does not force the parties to curtail costs or implement efficiencies, there are other concerns. Cross, as noted above, would be more comfortable with a matching policy, the goal of which is generally to reduce party and candidate reliance on private donations but nonetheless to leave incentives in place for the parties to stay close to the interests of constituents and electors at large. Former Prime Minister Paul Martin stated that he favoured “a combination of state support and public donations with reasonable limits. The problem is not over-regulation but rather the limits. The current ceiling [for donations] is too low. Effectively, for $1100, you can give to only one MP out of a total of 308. The fact is many involved Canadians will want to give to give to more than one candidate.” Predictions were mixed regarding the future dependence of parties on the subsidy. Senator Carstair’s comments typify support for the subsidy:

I think you’ll see much more dependency on the public purse. I don’t necessarily think that’s a bad thing . . . I have a bias towards proportional representation, although I suspect . . . it’s not going to go anywhere in any particular hurry . . . I don’t think minority governments are necessarily bad other than for the number of elections they seem to cause.

Because of the subsidy’s contribution to the strength of the Green Party and the Bloc Québécois participants in the 2008 election, those interviewed were asked 1) to what extent, if any, the introduction of the subsidy was linked to the fact that the past three Canadian general elections of 2004, 2006 and 2008 resulted in minority governments and 2) regardless of their response to question one, whether in their opinion the subsidy would lead to more frequent minority governments in the future. Most, but not all, participants rejected a link
between the introduction of subsidies with the string of three minority governments in 2004, 2006 and 2008, but it seems to me that there is a persuasive case that they are related. Pennings, for example, argued that since the subsidy effectively financed minority parties, that minority governments would be a de facto consequence since these minority parties would continue to split the vote for the three major national parties. Flanagan offered a more nuanced perspective:

This is really speculative because the new system hasn’t been going long enough but it seems that the new financial system may tend to yield swings that are much smaller and you get multiple parties kept in power by subsidies . . . So we may end up with an immobilism of very small changes from election to election. Things seem to be tending that way now . . . I think the funding has potential implications that probably nobody thought about (italics added).

Before turning to the actual results of the 2011 election, one further consideration is a-propos. A useful counterfactual is to consider what might have been the outcomes of these elections had there been either no vote-based subsidy or a subsidy based on a formula that matched the subsidy to donations. The Green Party responded to the subsidy by determining to run candidates in every electoral district in the 2004 election, reasoning that by doing so, there was a high probability that the party would poll five per cent of national votes and hence be eligible for the subsidy. This strategy has been documented by authors such as Jansen and Lambert and was substantiated by interview participants. Had the subsidy not motivated the Greens to act in this manner, it is quite possible that a different seat outcome in the House of Commons might have occurred in the elections of 2004, 2006 and 2008, with a small shift in votes in a given district leading to more seats for one of the larger parties. This scenario would most likely apply to the BQ.

However, the 2011 election results not only overturned predictions of continuing the run of minority governments but also the likelihood that the subsidy will be unchanged from its current format, given that the Conservative Party has opposed the subsidy. In the 2011 election, the Greens chose a different strategy than it had employed in previous elections: it focussed significant resources in the electoral district in which Elizabeth May, its leader was a candidate, in order to ensure that she would win a seat in the House. The strategy was successful in electing May; however, the number of votes cast for the Green Party dropped
over 35 per cent from the level of the 2008 election, which will mean a drop in its subsidy revenue.

As to the future, the lowered number of seats required to become a registered party contributes yet another variable in that the availability of the subsidy may attract social movements to attempt a conversion into becoming political parties: again, in a different form the notion of representation being taken to very small units of identity, a fear that Ajzenstat expressed and was noted earlier. Macdonald, of Fair Vote Canada, stated that her organization had discussed the matter informally but nothing had come of it. A senior political staffer stated that in his opinion, he could not see any people on the horizon that would do that . . . [With] politics being an expression of the public will, would it never happen? Well, I can’t say that. I can’t see any contenders on the horizon.

As well, experienced party practitioners pointed to the logistical challenge of building a network of effective EDAs and secondly the necessity of a movement’s ideology being sufficiently encompassing to attract five per cent of the votes across the country. Proctor, of the NDP, observed that the 19 parties contesting the 2008 election did represent an increase of seven parties since the 2004 election. He stated that while there has not yet been a trend toward social movements coalescing into political parties, they may indeed do so in the future because “they’re all saying, ‘We deserve some money too, right? It just shouldn’t be the big guys that are getting allowances, it should be us.’” Elections Canada data seem to confirm this: 11 parties had registered in the 2000-2008 period while 19 were registered in 2010 and 19 ran candidates in the 2011 election (Elections Canada “Registered Political Parties” 2010, 1; “Preliminary Results” 2011). Thus, it seems unlikely that the existence of the subsidy combined with the lower number of seats required for registration will in the near future attract a conversion of social movements into political parties. However, it is quite conceivable that a regionally-based organization could capture the five per cent of the national vote and/or achieve two seats in the House of Commons, the minimum requirements to remain a registered political party.

Yet another inter-institutional effect may be observed if seats are added in the House of Commons, as proposed by the Conservative minority government, per Bill C-12,
introduced in Parliament on April 1, 2010. The bill proposed an increase of 30 more seats in Parliament, all of them representing citizens in Alberta, British Columbia and Ontario, the fastest growing provinces since 2001, the date of the last census. (Results of the 2011 census are not complete). The bill reached second reading in March, 2011 but died on the order paper when the general election was called. The bill was of considerable consequence since all parties were aware of the political backlash from the BQ and from provinces whose influence would diminish if the redistricting should occur. As a private member’s bill, it also served as a ‘trial balloon’ for the minority government. Following the May, 2011 general election, which saw the election of a majority Conservative government, the first Speech from the Throne, delivered by Governor General David Johnston stated the government’s intention to “restore fair representation in the House of Commons” but gave no further information as to proposed legislation. Again, the implication here is that more seats per province, combined with the existence of the subsidy would mean a greater likelihood of regional parties, a breakdown of brokerage parties and perhaps chronic minority governments. The interaction between lowering the number of seats for party eligibility to two (Figueroa) and the per-vote subsidy based on five per cent of the vote in a single electoral district seems likely to motivate more single-issue candidates at the expense of deliberation within brokerage parties and the success of Canadian parties.

Among other effects, this means a proliferation of choices for the voter. In the abstract, this seems like an innocuous and perhaps beneficial outcome. However, research on how consumers react to choice demonstrates that when faced with several choices, rather than fewer, consumers often withdraw because of uncertainty (Schwartz, 2004). While the scope of my research precludes more consideration of the applicability of the ‘consumer choice’ model to voting choice, the possible aptness of the analogy is interesting since as he documents, “default” choices are less prevalent, the array of information sources may be overwhelming to many, and the existence of multiple options has at least three effects: decisions require more effort, they make mistakes more likely and make “psychological consequences of mistakes more severe” (Schwarz 2004, 38; 32;74). These are troublesome possibilities, given Canada’s known ‘floating’ partisanship and legitimate concerns about voter turnout. For the moment, however, these potential problems are in abeyance, given the
choices made by Canadian voters in the 2011 election, in which the preponderance of vote share was again garnered by the major parties.

Quebec

The importance of the subsidy to the Bloc Québécois is manifest: the subsidy constituted 88 per cent of its revenues in 2008 (see Table 7.1). As Bickerton and Gagnon noted in 2004, a financially stable BQ challenges a key component of Liberal political hegemony in the past—a solid and unassailable Quebec base—which is missing and seems unlikely to be recovered in the near future. The BQ has become the wild card of Canadian party politics. By competing for the allegiance of Quebec’s francophone voters, it may stand in the way of another long period of Liberal hegemony” (Bickerton and Gagnon 2004, 257).

Marceau, a former BQ Member of Parliament, concurred with this observation by Bickerton and Gagnon, although he cautioned that the 88 per cent figure of 2008 may have changed in the intervening period. Referring to the 2008 election, he stated that “It was the first election since 1988 when the debate was not on Quebec status within or without Canada. It was a clear left versus right debate with the Bloc mobilizing the anti-Harper vote.” Basically, the Bloc’s campaign, according to Marceau was, “We’ve got to beat Harper, he’s the hard right, he doesn’t represent our values; if you want to vote for Quebec values you vote for the Bloc, even if you’re a federalist or a Liberal.” All of the Liberal Party’s weakness in Quebec cannot be attributed to the subsidy of the BQ. As Marceau pointed out, the Liberal Party had not won a majority of seats in Quebec in the past five elections: thus, the subsidy to the BQ has represented more of an accelerating force in favour of the BQ’s winning seats in Quebec, rather than its source.

The stability of funding that the subsidy yielded to the Bloc Québécois, prior to the 2011 election, has had other consequences. I deal with these in order. First, the governing Liberal Party introduced the $1.74 annual subsidy per vote, apparently due to internal calculations by the party as the rough equivalent it required to offset the private sector donations—primarily business-generated—on which it had previously relied and on the assumption that a party in general was running a national campaign. Proctor of the NDP,
representing many respondents, argued against subsidizing the BQ at the same level as the national parties because the party runs only a regional campaign and hence its costs are much lower. Senator Paul Massicotte noted the disparity between the BQ’s subsidy and its expenses in this way:

> You have a regional party which covers one province and it gets a lot, a lot of money that’s rightfully owed to them. But from a media promotion sense, they have concentrated fully, fully on one province. So therefore, you’ve got the Bloc at election time . . . their leader is very, very visible in the media because he’s there all the time. Meanwhile for the federal Liberal and Conservative parties, their leadership is scattered all over the country, so it’s a tough battle for them. All their money is allocated over thirteen territories. The [BQ] leader is always in that province, he’s on the media every night. That is a significant disadvantage [for the other parties].”

Yet another respondent phrased it as, the subsidy makes it “pretty cushy for a party that campaigns in 75 ridings and wins 50-odd of these seats, and gets eight percent of the [national] popular vote.”

More fundamental objections were also raised. Even for those who accepted the notion of a subsidy, there were nevertheless significant objections to the legitimacy of using tax dollars to fund the BQ which is sovereigntist-separatist, non-national in its focus and has little interest in national issues unless they directly affect the Quebec electorate. The existence of the BQ as a regional party, even if not secessionist, means that the BQ does not meet the trustee notion of representation, that is, with a clear view to serving not only their constituents, but the common good or national interest. Those who objected because of this did recognize that the BQ was receiving funds only in relation to its votes in Quebec, but argued that the subsidy was derived from general taxation and hence was inconsistent with Canadian unity. Crowley, director of a not-for-profit organization, succinctly stated one argument of opponents to the vote-based subsidy:

> In a system in which the taxpayer is essentially subsidizing political parties you are falsifying, in my view, the true strength for those parties and the demand for that party . . . I think the aspect of the party subsidization system that most people find offensive [is that] we have created a system in which a political party that has absolutely no pretentions to want to govern Canada, the Bloc Québécois, its raison d’être is to dismantle Canada. It doesn’t run candidates and has no intention of running candidates anywhere except within
Quebec. So, it’s not just a regional party but a party dedicated to the destruction of Canada and it gets a political subsidy from taxpayers in other parts of the country for its essentially disloyal activities. I’m kind of speechless!

Limits on the general applicability of the subsidy to any party because of its ideology are troubling because of liberal democratic principles. On the other hand, should a party, with ideology and platform antithetical to the Canadian Charter of Rights and Freedoms organize, and win either five per cent of the vote or two seats in the House of Commons, it would be eligible for the subsidy, and that too is a troubling spectre. It is a slippery slope for a democratic state to refuse to legitimize certain parties but it is not unprecedented, as in West Germany, which has prohibited the revival of the Nazi Party. However, to refuse to subsidize is not an issue of the same magnitude. These fundamental questions do not arise, or do not have the same implications when parties must rely exclusively on private funding, but they are inherent to the ‘public utility’ model of funding.

A number of respondents saw no inherent illogic in subsidizing the BQ. Rae, of the Liberal Party, rejected the notion that the subsidy was unfairly supporting the BQ, arguing that that subsidizing the BQ was “no more illogical than paying BQ [MPs] salaries.” Barbot, Vice-President of the Bloc Québécois and Marceau, a former BQ MP, stated that the BQ did not see anything paradoxical in receiving federal money in subsidies and yet trying to hold the government to account since, “In a democracy . . . it’s not only political parties but research departments [are] paid for by the state. It gives opposition parties the means in Parliament to do its job.” Why the BQ has not used its subsidy funding base as a means to reach out to voters (as the Conservative Party has) is of more than passing interest. Finally, Docherty stated, “I fully expect to see some increase in regional parties. I think we’ll start to see parties increasingly regionalize their focus.” If parties indeed adopt this strategy to minimize the cost advantage of the BQ then it is likely that one of the major strengths of the Canadian parties, their brokerage function, will dissipate.

Tax-based subsidization of parties has enormous symbolic significance in Quebec. Louis Massicotte reviewed several factors. First, as will be recalled from Chapter 3, Quebec politics, prior to 1960, were rife with various forms of (well-publicized) corruption and the overweening influence of certain Anglophone-run industries such as pharmaceuticals in
Second, the Parti Québécois adopted a tax-subsidized model of campaign finance because the province has historically been more statist in its orientation and the party correctly judged voters would not protest; and it was unlikely that business would support a nationalist party and Lévesque of the provincial Parti Québécois (PQ) did not want to become a “tool of the unions.” There was yet a further symbolic issue: union and corporate donations were associated with “Anglo” political parties. As Massicotte stated in his interview, the PQ made virtue out of necessity with regard to party and candidate funding. This of course is not the first time a Canadian party has made recourse to this strategy, as Cooke (2006, 3) recounts of the CCF, the precursor to the NDP. Nevertheless, the PQ’s adoption of subsidies was therefore a strategic manoeuvre in that it enabled the PQ to differentiate itself from the provincial Liberal Party, which relied on private sector contributions. Further, by allowing only individual donations (rather than corporate or union), the PQ appealed to the “public sector-based middle class who were well-paid relative to the private sector.” As Marceau summarized, the BQ supports state funding “partly for ideological reasons, and partly because they see themselves as heir to René Lévesque’s heritage and the PQ model” of state funding.

In view of these historical and symbolic factors, it is unsurprising that Prime Minister Harper’s proposal in the autumn of 2008 to eliminate the subsidy raised a firestorm of protest from the BQ. To reintroduce even a modicum of business or union money in the funding of parties, candidates and EDAs threatens the BQ’s position in Quebec. To lower or eliminate the subsidy immediately invokes the spectre of so-called ‘anglophone’ versus ‘francophone’ models of campaign finance, invites critique from the BQ and inadvertently boosts the reputation of the BQ as a party that does not ‘rely’ on private funding as do its competitors. As Louis Massicotte noted, “The parliamentary crisis of 2008 demonstrates that the parties have discovered the dangers of relying on state money. It can be squeezed . . .” by the party in power. If, as is likely given its majority government, the Conservative Party lowers or

25 As Professor Thorburn graciously noted, “Quebec reforms are not so impressive because the politicians have found ways around them. Rather typical of Quebec politics [which have] a little bit of a reputation, perhaps well-earned, for getting around obvious details of difficulty.” The checkered history of Quebec politics was alluded to by several participants.
eliminates the subsidy in parliamentary sessions following the 2011 election, this ‘squeezing’ will play out in full.

Even if the subsidy were to remain unchanged, the shift in vote share in the 2011 election will alter the picture dramatically within Quebec. In 2011, Quebec votes were distributed as follows. The BQ won 889,788 votes (a drop of almost 40 per cent from 2008), compared to 627,650 for the Conservatives; 538,417 for the Liberal Party; and 1,628,484 for the NDP (Elections Canada). This compares to 2008 votes earned as follows: BQ, 1,379,991; Conservatives, 784,996; Liberals, 860,449; NDP, 441,098 (Elections Canada). Thus the BQ’s new premier competitive force is the NDP rather than the Liberal Party, for which the popular vote share dropped yet again. Secondly, the BQ’s subsidy, as its predominant source of income, will shrink by almost 40 per cent.

However, there is evidence of a different inter-institutional effect of the national subsidy of the BQ. Because the BQ’s finances had been in such good condition, prior to the 2011 election, various respondents voiced the concern that the subsidy was indirectly subsidizing the PQ and hence inadvertently affecting provincial elections. Although the BQ is formally separate from its provincial counterpart, the Parti Québécois (PQ), the parties are closely linked through informal ties, a relative anomaly among Canada’s federal and provincial parties (Bird 2004, 17). Three comments by Quebec-based respondents are of particular note. Lortie questioned, “Why should the Canadian government finance the Bloc Québécois . . . which has so much money that it can finance the Parti Québécois?”; Louis Massicotte stated there is “heavy traffic” between the BQ and PQ caucuses; Senator Joyal termed the flow of money and influence from the BQ to the PQ an “‘osmotic phenomenon’ whereby the nucleus of the heart of their support is financed through federal money . . . There’s no question that [the subsidy] has had an impact on helping the Parti Québécois to make its case and to move forward with its program. Everyone who is in the field knows about it.”
Conclusions

The conclusions drawn at this stage are done with caution because of the dynamism of Canadian politics in the 2000-2011 period. In drawing this chapter to a close, I follow the practice of Aucoin (1999, 99) who has written in a particular critique that,

Nothing in the foregoing should be viewed as necessarily as defence of the party status quo . . . Rather, my intention has been to provide an analysis of the dynamics both inherent in and . . . extant in our own political circumstances. As the same time, I have sought to show how the dominant critiques of our praxis too often miss the mark in understanding these dynamics and circumstances.

First, findings confirm the quantitative results of researchers such as Coletto, Jansen and Young (2009) that Canadian parties have been revolutionized within because of finance rule changes and extends their findings to argue that rule changes have revolutionized inter-party standings as well.

Second, the invocation of the terms ‘fairness’ and ‘level playing field’ at every hand makes objective analysis difficult, as has the Supreme Court’s insistence that each component part be considered on its own, as discussed in Chapter 5. Issacharoff (2010, 142) refers to the “elusive levelling aspiration of equality of all individuals in privately funded campaigns.” However, as the post-2004 period demonstrates, this “elusive levelling aspiration of equality” also dogs publicly financed political finance systems like Canada’s, which has been increasingly state-funded. The myth of neutrality lives on.

Stoker (2006a, 161) argues that “revisability is an important principle of institutional design.” However, the problem is that once changed, campaign finance rules may be difficult to revise, if the houses of the Legislature are divided, if there exists a minority government or if the party in power is highly dependent on a subsidy. Even with a majority, the governing party takes a substantial risk in passing the legislation that it may be ‘punished’ by electors in the following election, if the changes are perceived as ‘unfair’ or retaliatory in nature. Although rule changes to Canadian political finance framework have been undertaken in steps, and with careful reference to previous studies, there have nevertheless been significant unanticipated consequences because of interaction with other facets of Canada’s democratic
institutions. If parties act together in Parliament to make changes, they are accused of cartel-like behaviour. If a party acts alone, as the Liberal Party did in 2003-2004 and the Conservative Party did in 2006 and proposed to do in 2008, it is accused of misusing the campaign finance framework for its own self-interest.

To the extent that the subsidy has extended the proportionality of Canada’s electoral regime, the Canadian experience since 2004 can be seen as an innovation in adapting an electoral system. As Bale, Taggart & Webb (2006, 203) note, experimenting with an electoral system means that,

> We should not do so under the misapprehension that turning to other models of democracy will somehow rid politics of its conflicts and compromises, its deals and disappointments and, inevitably, its winners and losers . . . But not always getting what you want comes with the territory.

Bogaards (2008, 62) concurs and finds that the most innovative electoral designs new democracies have come from political practitioners not scholars who, for the most part, “have behaved like supermarket customers rather than engineers.”

Moving to a vote-based subsidy specifically, and more generally, to tax-based funding, has not led to inter-party equality. The subsidy has not led to ‘neutrality’ of politics or greater non-partisanship. Neither has the subsidy, in its proportionality, led to equilibrium in the party system. Most recently, independent candidates are now demanding ‘equality’ with the parties. Further, it is not clear that voters have benefited. Because the subsidy is tied to the party’s vote share in the previous election, the electorate does not necessarily benefit when a party fails to address new policy concerns and issues with the vigour tax-payers expect. Additionally, when the lagging formula on which the subsidy is based is combined with the ceiling limit of $150,000 on third party advertising during the 36-day writ (and on contributions to third parties in the six-month period prior to the writ), it is not clear how these policies serve to level the playing field in terms of voter knowledge or serve to promote party responsiveness to emerging issues. When viewed in this light, Canada’s campaign finance regime is entrenching institutional rigidity not responsiveness. As well, the fact that the subsidy now constitutes over 50 per cent of revenue for all parties except the Conservatives validates the suggestion posed by Fisher that public funding “may possess its
own pitfalls, creating a clientelist relationship between governments and parties” (Fisher 2004, 620). While clientelism often carries with it the connotation of corruption, it may alternately refer, as Stokes (1995) uses the term, to a dependent relationship between actors with differing levels of power and resources. Supporting this usage of the term, is the fact that no party except the Conservative Party has dared to challenge an Elections Canada decision—or has been able to afford to—so that Canada’s current parties are not only financially dependent, they have to some extent fallen prey to ‘regulatory capture’ by Elections Canada.

While necessarily addressing issues of this nature, the terms ‘fairness’ and ‘levelling the playing field’ have nevertheless been invoked by too many actors and hence mask the self-interested or ideological intentions of the speaker or writer. As Van Biezen (2010, 84) writes, “One of the key challenges for both scholars of political finance and policy-makers and advisors . . . lies in the elucidation of the implicit normative assumptions on which their perspectives are premised.” This state of affairs has served to make policy evaluation even more difficult. Campaign finance rule changes, as experienced in Canada in the post-2000 period, have embodied many of the objectives of progressives and have attempted to address the often severe critiques of the Canadian party and electoral system. To the extent to which campaign finance rule changes have attempted to achieve ‘fairness,’ which has been interpreted by Smith and Bakvis, among others, as prohibiting the importation of competition from the marketplace to the electoral arena, they have largely failed to do so. Increasingly attractive is the proposal set forth by Crowley:

It comes back to the issue . . . how bad were the parties before they got the public subsidy? I mean it’s a non-sensible argument to say, “Well, we’ve created the conditions in which you can’t possibly raise enough money to do your job and that proves that you need a public subsidy.” What that proves is that you want political parties to be dependent on the State, so you have cut off their potential sources of other support. I personally think that the only issue that really matters, with respect to political parties, is not how much money they get from different sources but whether or not the sources of money are publicly disclosed (italics added).

Former Prime Minister Paul Martin, Senator Paul Massicotte and Pierre Lortie and many other respondents spoke to the never-ending need to consider systemic balance rather
than the constituent-part standard enunciated by the Supreme Court. Systemic balance for these speakers meant balance among the component parts, that is, parties, the electoral system and so on. There is a different balance also which needs to be taken into account: the balance between civil society funding of parties (via interested individuals, businesses, unions and others), which carries an associated threat to party and policy integrity on the one hand, contrasted with the greater certainty of tax-funded cash flow from the subsidy between elections, which carries with it the threat of ossification of parties and less responsiveness to the electorate between elections. In Young’s words, and her views represent those of several respondents,

I think that there is a danger in going too far in funding the parties. I think there is a danger in going too far in regulating them. All of these things on balance . . . I think that any time the State gets too involved in defining what is a legitimate political party, we probably are in dangerous territory . . . All things in balance.

The data presented in the table and figures at the end of the chapter suggest strongly that party finance laws and their judicial interpretation have had unanticipated consequences for parties and other civil society actors. If progressive goals of engaged but non-partisan citizenship are the test of the efficacy of campaign finance regulation, then the data indicate that this has not been achieved. Despite the doubt expressed by democratic theorists and progressivists about the relevance and ‘worth’ of parties and partisanship (Van Biezen and Saward 2008, 27) to the democratic process, partisanship continues to be prevalent. Parties and their leaders have responded strategically to new incentives. Aucoin, Research Director of the Lortie Commission, suggested that it indeed is not “just rules” that count but whether the ‘spirit of the rules’ was acting as a curb on questionable practices. Fisher (2004; 2009) has documented the “trust over rules” approach that has predominated in the U.K. As desirable as Aucoin’s ideal is, Canada has largely rejected a ‘spirit of the law’ or norm-based approach and instead has adopted rule-based governance of money in politics. Canadian experience has thus far demonstrated that it is very, very difficult to blend both a normative and a rule-based approach: norms and oversight by an active media and third party investigations have been discarded as insufficient. There are consequences to the rule-based approach and not all of them are positive; nor does the evidence in this chapter suggest that
such a rule-based approach represents a general improvement or in fact have been ‘reforms’ either in the sense of superior outcomes or in fact the outcomes suggested by the literature.

While ‘fairness’ was prioritized by the Lortie Commission, Seidle, Senior Research Co-ordinator of the commission, suggested that the royal commission had used the term ‘creatively’ in order to justify its investigation into third party spending but would have been hard-pressed to do so if it had cast its vision on a balancing of democratic values such as freedom and fairness. Seidle recommended ‘integrity’ of the campaign finance regime as a legitimate benchmark while former prime Minister Paul Martin, representing several participants, spoke for need to examine systemic balance in Canada’s institutional matrix. As normatively desirable as each of these outcomes might be, there is still the difficulty of operationalizing them.

Depending on how the goal of fairness is operationalized determines whether this goal can be determined to have been achieved or not. The pursuit of fairness has not equalized the power of the parties; policies undertaken have not eliminated “the marketplace” of political activity. It is too soon to determine the impact of relative changes in taxation for political donations and charitable donations as well as the impact of these changes on the health of parties, charitable organizations and not-for-profits. However, there does appear to be some risk that charitable donations will be shifted in favour of political parties. Many of those interviewed indicated very clearly that with the arrival of the quarterly-based subsidy, greater accountability by EDAs, candidates and nominees held the significant potential of negatively impacting the volunteer base of parties.

I conclude with Louis Massicotte’s astute and challenging observation which he wrote in 2005 and reiterated in our interview:

Finally, we should never forget that elections are instruments of choice, that the electorate remains free to produce outcomes with which, in our wisdom, we might disagree. Prescribing specific outcomes in the end smacks of arrogance . . . Freedom implies the right to arrive at outcomes of which the powers-that-be—wherever they sit—may not approve (Massicotte 2005, 188).
Chapter 7 Tables and Figures

Table 7.1 Canada Tax-Based Funding of Political Parties as a Percentage of Total Funding 2000 and 2008 (Amounts are $,000)

<table>
<thead>
<tr>
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<th>2000</th>
<th>2008</th>
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<tr>
<td></td>
<td>Private Contributions</td>
<td>Private Contributions</td>
</tr>
<tr>
<td></td>
<td>Government Reimbursable Expenses</td>
<td>Government Reimbursable Expenses</td>
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<tr>
<td></td>
<td>Direct Government Subsidy</td>
<td>Direct Government Subsidy</td>
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<tr>
<td></td>
<td>Total of Government Funding</td>
<td>Total of Government Funding</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Ratio of Government to Private Contributions</td>
</tr>
<tr>
<td>BQ</td>
<td>$2,260</td>
<td>$404</td>
</tr>
<tr>
<td>Reform / Conservative</td>
<td>$13,652</td>
<td>$3,043</td>
</tr>
<tr>
<td>Liberal</td>
<td>$12,525</td>
<td>$2,809</td>
</tr>
<tr>
<td>NDP</td>
<td>$8,970</td>
<td>$1,423</td>
</tr>
<tr>
<td>Green</td>
<td>$137</td>
<td>$0</td>
</tr>
</tbody>
</table>

Source: Elections Canada: Election Expenses and Reimbursements, by Registered Parties; Registered Parties Financial Returns; Quarterly Allowances to the Registered Political Parties

Note: 2008 was the most recent general election year for which data are available.
Figure 7.1 Canada: Permitted Transfers of Money, Goods and Services Among Political Entities of the Same Party per *Canada Elections Act* 2006


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**Figure 7.1**

- **Party**
  - Distinct spending limit
  - Contributions
  - Transfers $, Goods and Services
  - No transfer of expenses

- **Elections Canada**
  - Prevention – Monitoring
  - Enforcement
  - No transfer of expenses
  - Stop

- **Candidate**
  - Distinct spending limit
  - Contributions
  - Transfers $, Goods and Services
  - Stop

- **EDAs**
  - Spending limit (N/A)
  - Contributions
  - Transfers $, Goods and Services
  - No transfer of expenses
  - Stop
Figure 7.2 Tax-Based Funding of Political Parties as a Percentage of Total Funding in 2000 and 2008, by Year

Note: 2008 was the most recent general election year for which data are available.

Source: Elections Canada: Election Expenses and Reimbursements, by Registered Parties; Registered Parties Financial Returns; Quarterly Allowances to the Registered Political Parties
Figure 7.3 Tax-Based Funding of Political Parties as a Percentage of Total Funding in 2000 and 2008, by Party

Note: 2008 was the most recent general election year for which data are available

Source: Elections Canada: Election Expenses and Reimbursements, by Registered Parties; Registered Parties Financial Returns; Quarterly Allowances to the Registered Political Parties.
Chapter 8  Campaign Finance Rules: Shaping Civil Society as well as Parties

Strong democracy rests on the idea of a self-governing community of citizens who are united less by homogeneous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or their good nature. Strong democracy is consonant with—indeed it depends upon—the politics of conflict, the sociology of pluralism, and the separation of private and public realms of action (Barber 1984, 117-118).

Introduction

Campaign finance reform has, for the past half-century, held the allure of an elixir to Canadian scholars and practitioners alike. For those who have seen systemic ‘unfairness’ or undue influence in politics, spending limits and contribution limits offered an antidote. For those who have suspected insider machinations, disclosure of donor amounts and identity, disclosure of inter-party and intra-party financial transactions have beckoned. For those who have seen exclusion, regulation of candidate nominations, leadership contests, lowering of barriers to entry in the form of party registration and expense reimbursement have appeared as the ‘answer’. For those who have seen excessive influence by business and labour, ceilings on contributions have offered a way out of the perceived morass. For those who have seen money as the primary resource determining electoral success, shrinking the overall supply of money to parties and candidates has been the focus. For those grappling with declining levels of trust, greater regulation of party finance and the use of subsidies has seemed the way forward to greater trust and hence to a more participatory form of politics.

In sum, greater regulation of campaign finance has stood as the paradigmatic approach to addressing many of the challenges facing Canadian democracy. The campaign finance regime in Canada came to embody all of these features by 2006, in particular with the rule changes of 2004 and 2006. From a public policy perspective, it is unlikely that any set of policies in any field could meet expectations of the above sort given “imperfect
foresight of future contingencies‖ Shepsle (1989, 40). Despite the intervening years since the Barbeau Committee, there has been remarkably little reckoning as to how the accumulation of rules governing Canadian political finance and engagement may have or already has shaped civil society. Seidle (2006) is one who has argued that, “It is important to take an holistic look and ask, ‘if you turn one valve here, what might happen to the rest of the apparatus?’”

I tackle this issue, recognizing at the outset, that it is an enormous question and heavily value-laden—just as Duverger argued, when he wrote that “there is no totally ‘objective’ view of politics, because there is no objective politics” (1964, xi). Therefore, the goals of this chapter are modest. I build on new institutionalist thought which argues that “Institutional change shapes the way societies evolve”; that the “study of rules involves multiple levels of analysis”; and finally that “Rules rarely prescribe one and only one action or outcome” (North 1990, 3; Ostrom 1986, 21; 6). This does not mean that I seek to identify only ‘negative outcomes’ or instances of ‘state failure’—for that is surely easy to do, just as it is relatively easy to identify instances of ‘market failure’. I adopt the approach of LeDuc who states that “That elections do have consequences might be taken as an assumption. But the question of what those consequences are, and how precisely they can be measured, requires some further exploration” (LeDuc 1996, 345; italics added).

Choosing to investigate some outcomes, of necessity, means ignoring others or giving them merely a ‘light’ touch. My choices of outcomes are rooted in evaluation measurements proposed by those interviewed and those relatively untreated in the literature. Using alternative benchmarks to those employed by democratic audit scholars, I nevertheless reach the same tentative conclusions as do they: despite the extent of regulation of political finance in Canada, the infringement on freedom of expression and the deep-seated discourse on equality, it is difficult to justify current levels of intervention in the name of ‘democracy.’

Shaping Civil Society and Citizenship

Setting aside Marxist interpretations, both liberal democratic and social/participatory democratic theorists see a role for civil society—albeit that each group sees different shape, size of and role for civil society. For the purpose at hand, recall Walzer’s definition (1992,
276: civil society “names the space of uncoerced human association and also the set of relational networks—formed for the sake of family, faith, interest and ideology that fill this space.” I adopt Phillips’ approach (2004, 325), in which she does not analyze civil society but instead uses the term as a useful ‘umbrella’. 26 Finally, as Nassmacher has argued, “enforcement agencies and public opinion may change the handling of a programme and the interrelation among its elements” (Nassmacher 2009, 26; italics added). At the very least, among “its elements” are citizens or individuals.

The notions of civil society and citizenship intersect critically in differing notions of democracy. Citizens in the social/participatory model are to be personally active in deliberating and refusing to accept the more ‘invisible’ role of participating in representative forms of government. By contrast, liberal democrats Klingemann and Ajzenstat argued in their interviews, respectively, that high levels of participation are not necessarily associated with democracy and that the “strongest statement that a liberal democracy can make is that a citizen doesn’t have to participate. There is no moral worth in participation.”

The Barbeau Committee in 1966 expressed a social democratic notion of civil society, captured in some of the following statements. The Barbeau Committee noted ‘positive goals’ of its proposed reforms of campaign finance. Among its ideas were the following: that the “disclosure of funds and their sources seems to the committee to be indispensable if the electorate is to have confidence in the democratic system” (Barbeau Committee Report 1966, 35); “contributing to the generally unfavourable light in which political finance is held has been the fact that donations to campaign funds are not recognized as legitimate deduction under the income tax law” (Barbeau Committee Report 1966, 46). Finally, “The Committee finds a paradox in the public’s passive tolerance of the dangers inherent in financing political parties by a relatively few large donors” (Barbeau Committee Report 1966, 46). All of these observations may be captured under the terms political affect and trust: the Barbeau Committee was firm in its belief that campaign finance

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26 I do not, however, adopt Phillips’ definition of civil society as the “space not taken up by the state or the market” because the ‘market’ or productive activity provides financing and leverage for non-state as well as state actors.
reforms would lead to both, as was the Lortie Commission in the early 1990s, which stressed fairness and integrity in the campaign finance regime as motivation for trust and hence participation. This appreciation, acceptance or optimism of the social role of campaign finance stands in stark contrast to the experience of the U.S. where Malbin (2008, 1) observes that,

> For one-third of a century, federal campaign finance debates have been stuck in a corruption rut... Rather than focus on corruption prevention, research and policy should move to such positive goals as increasing electoral competition, candidate emergence and promoting equality through small donors and volunteers.

**Civil Society: Citizens and Engagement**

The role of trust in assessing ‘democracy’ is neatly captured in the following:

> Trust is widely asserted to be a necessary precondition for good government and a good society; trust is deemed essential because it breeds legitimacy and therefore facilitates a greater willingness among the public to abide by the decisions made by politicians (Hansard Society 2010, 5).

In essence, trust should lead to deference to or acceptance of the ‘decisions made by politicians.’ Public trust and public affect have been frequently operationalized as turnout. Higher trust and confidence are thought to be manifested in higher turnout rates. As well, interview participants suggested that measures of affect such as turnout and trust could be used to evaluate the ‘effects on democratic practice’ as mentioned by Paltiel (1979, 15). Participants were not naïve, however, in their suggestion to try to use measures of trust as an indication of how and whether campaign finance had shaped democratic practices for the better. Respondents recognized clearly that ‘trust’ is an elusive concept to operationalize.

> It is often argued that falling voter turnout rates are evidence of declines in public trust and that, conversely, institutional reforms should lead to greater trust and have a positive impact on turnout rates. The data in Table 8.1 do not confirm this hypothesis, at least for the case of campaign finance as institutional reform.

> If significantly tighter campaign finance rules, as institutional reforms, had led to greater trust, as operationalized in turnout rates, turnout in Canadian elections should have
been significantly higher than in the shadow cases, yet this has not occurred. In contrast to expectations—if not the theory—of campaign finance regulatory advocates, electoral turnout rates in Canada are not demonstrably different than those in either the U.S. or the U.K. where, as demonstrated in earlier chapters, campaign finance rules are significantly less stringent. Setting aside U.S. turnout rates, which have for some time been lower than those in Canada, Canadian turnout rates were higher only in the 2000-2001 election. Turnout in the 2006 Canadian general election stood at 64.7 per cent, the second highest rate since the 1992 general election, declined to 58.8 per cent in the 2008 election and rose to 61.4 per cent in the 2011 election. This mixed pattern leads to the conclusion that defence of tighter campaign finance legislation based on a hypothesized increase of trust, at least operationalized as turnout, needs to be much more cautious. As numerous authors, such as Blais (2003) and others, have demonstrated, the number of factors driving turnout is multiple, which suggests that using measures of turnout to demonstrate dissatisfaction with political parties and to justify institutional reforms of the Canadian campaign finance regime have been ill-founded.

A different operationalization of trust has occurred through the use of public opinion surveys. I do not review these here because the consensus, which has been well documented by Nevitte in Canada for the industrialized democracies using World Values Survey data (1996, 2002), the Power Inquiry (2006) for the U.K. and multiple sources for the U.S., demonstrate declines in public trust. This is significant since Canadian experiments with campaign finance disclosure, limits on large donations by citizens, limits on third-party spending and advertising and introduction of public subsidies were all supposed to lead to greater trust. Yet a different operationalization of trust is perception of corruption, that is, trust and perception of corruption are hypothesized to be negatively correlated. If reforms to campaign finance are undertaken, they should be followed, in theory, by a decline in perception of corruption. Table 8.2 compares the perception of corruption in Canada as well as in the two shadow cases in 2009.

It can be seen that Americans’ perception of corruption, on the 1-5 scale, is higher in every category than that of Canadians or British. Comparing only Canada and the U.K., perception of corruption is not markedly different (overall scores of 3.2 versus 3.3). On a
percentage basis of those surveyed, perception of corruption in political parties was higher than that in the U.S. but comparable to that in the U.K., despite Canada’s strict regime. Similarly, despite prohibition on business and union donations to political parties, suspicion of business stood higher in Canada than in either the U.S. or U.K., by a significant percentage. Finally, the 2009 Transparency International Index demonstrates that even though only two per cent of Canadians surveyed have paid a bribe in the previous year, 72 per cent think that ‘current government’s’ actions to fight corruption are ineffective, compared to 63 per cent in the U.S. but only 39 per cent in the U.K. (Transparency International 2009).

What these figures demonstrate is that trust in government may be based more in the political culture of a given nation, may be highly localized and may not be susceptible to change via institutional reform, qua parties, at least in the form of changes in campaign finance. As well, many respondents supported the notion that culture in general has been running in a direction away from participation over the last several decades (per Putnam 1992; 2000, for example) and this too limits the effectiveness of campaign finance rule changes as a possible antidote. As Aucoin writes,

Over the past two decades there has been a significant decline in public respect, trust and confidence . . . and a significant increase in public suspicion of the undue influence in the political process on the part of political-finance contributors. These two developments illustrate the limited extent to which even a well-designed and administered regime can counter broader and more persuasive influences on public opinion and political culture (Aucoin 2005, 8; italics added).

In the period since Aucoin wrote this, his observations stand unchallenged. Mann (1997, 331) echoes this for the U.S.

The American public has grown cynical over campaigns and elections, in part because of the overblown rhetoric of “reformers,” mismatched expectations, and a flawed sense of the possible . . .

Aucoin also puts his finger on one of the paradoxes of campaign finance reform: public trust is not a reliable indicator to evaluate the success or failure because there are “increased public expectations of what constitute appropriate behaviour” (Aucoin 2005, 8). The Hansard Society study (2010) seconds Aucoin. Thus the measuring stick of what level of
behaviour is appropriate seems to be constantly evolving. The problem of campaign finance policy-making is thus akin to the problem of designing highways: no matter how future traffic is forecast, knowledge that the highway will be built draws more traffic, so that when the highway is complete, it will still be under capacity for the traffic generated since the planning stage. In a similar way, campaign finance rules will not eliminate strategic use of resources by parties nor will a certain regime ever keep completely abreast of changing technology and or other factors which may be employed by parties to differentiate themselves in order to win elections and/or advance their policy agenda.

Studies of trust in U.K. democracy are particularly explicit. First, Russell (2009, 1) argues that the lack of trust in politics “has more to do with the prevailing consumer culture (and competitive media) than it [does] with constitutional reform.” A Hansard Society study observes that

Marketisation of politics and the culture of consumerism it feeds off damages politics and politicians. Levels of satisfaction and confidence are linked to the fuelling of public expectations about politics and politicians. The more people know about politics the more it fails to meet their hopes and expectations. There is no silver bullet for tackling public distrust and disengagement with politics (Hansard Society 2010, 2; italics added).

Thus, public knowledge about politics may be inversely linked, rather than directly linked, to public trust. The more they know about political finance, for example, the less confident they may be. The greater the disclosure, the more cynical the public may become. How familiar the Canadian public is with campaign finance reforms is unknown, since, to my knowledge, no publicly available surveys have been conducted in Canada on knowledge of political finance in the past decade. However, there has been widespread media coverage of the introduction of the subsidy in 2004 and its proposed revocation in 2008 and again during the 2011 election campaign. Fisher pointed to a potentially different logic in public response. As he suggested, the multiplicity of campaign finance rules may itself be stimulating public mistrust: the public may be questioning, “Why are such rules are required if politicians are honest?” Third, the vote-based subsidy introduced in 2004 has increased the reliance of Canadian political parties on funds provided by the state and ultimately by taxpayers, leading to a greater embeddedness of parties in the Canadian state and hence increasingly to the
status of political parties and their outputs as ‘collective’ goods. Olson early suggested that “An increase in collective goods can add to divisiveness and conflict in a society” (Olson 1965, 1973; italics added). Among participants, a number felt that the use of tax dollars to subsidize parties without the explicit consent of voters could well have contributed to cynicism.

Again, this insight echoes that of Ghaleigh (2006, 55) who writes that the U.K. public has ongoing “serious concerns” “as regards the present expenditure limits . . . the absence of donation caps and the occasionally unseemly contributions,” arguing that, “the very same popular hostility to public vice that objects to millionaire donations is the self same attitude that rejects the public purse making an ever greater contribution.” It may be therefore, that tighter campaign finance controls and other measures introduced, such as public subsidies may act in the opposite direction to that posited by reform advocates. For example, as Mann (1997) has suggested, campaign finance reforms—to the point that they are actually known by citizens—may unduly raise expectations of what can be achieved, reinforcing Fisher’s observation, noted earlier. As Anechiarico and Jacobs (1996) argue, the use of campaign finance reform has led to a pursuit of ‘absolute integrity’, the cost of which makes government less effective and hence more open to public cynicism. They quote a politician who stated that, “It’s more important to look honest than to get anything done” Anechiarico and Jacobs 1996, 149). The possibility that the pursuit of ‘absolute integrity’ may not pay off in citizen trust was earlier suggested by Banfield, who writes that

In governmental organization the costs of preventing or reducing corruption are not balanced against the gains with a view to finding an optimal investment. Instead corruption is thought of (when it comes under notice) as something that must be eliminated no matter what the cost (Banfield, 1975, 599).

As the Hansard Society report also observes, “Declining levels of [public] satisfaction and influence generally appear linked to a pervasive perception that decisions are now made by distant, unaccountable institutions . . .” (Hansard Society 2010, 13). To summarize, because “declines in political trust may reflect a convergence of causes rather than a single explanation,” (Dalton 2004, 17), it is imprudent for students of campaign finance reform to rely on declining levels of trust to justify institutional reform such as greater state
involvement in campaign finance. Counterfactually, it must also be stated that Nevitte’s work demonstrating the convergence in falling levels of trust in government among the advanced industrial democracies applies not only in those democracies which have relatively little public financing, such as the U.S. and U.K., but also those, like Germany, which have for decades had greater state funding of parties (Nevitte 1996, 2002).

There is yet to be considered the role of surveys as a measure of the public’s attitudes toward campaign finance rule changes. The Barbeau Committee commissioned a survey of Canadian attitudes on campaign finance and the results showed that for subsidies, 29.8 per cent favoured total subsidization of parties, 23.7 per cent favoured no subsidization, and 37.5 per cent favoured ‘partial’ subsidization (Barbeau Committee Studies 1966, 114). Further, the authors found that “the further west one goes the less likely the respondents are to favour subsidization” (Barbeau Committee Studies 1966, 115). No similar, direct questions such as these have been asked of Canadians in some considerable time. Although the Canadian Election Studies have posed some questions regarding trust in Chrétien, for example, they have not been followed up by probing or qualifying questions. There is thus little publicly available survey data on whether the public supports the subsidies and other measures introduced in the past decade. However, one Conservative Party participant stated that its private data indicated the following:

I mean everything that we have seen from polling, to our focus group stuff, tells us that in general (now we’re talking about party finance from the public purse) that Canadians don’t like it. They don’t like the idea of their tax dollars going to fund federal political parties. So, even when the Prime Minister withdrew it from the initiative [in November 2008], you’ll notice that he did not say we won’t try this again.

For the U.S., Primo finds that “public has favoured reform, but it has been inconsistent in its preferences and has assigned campaign finance reform a lower priority . . . Trust in government is not linked to campaign funding” (Primo 2002, 208). Primo also demonstrates that for the U.S., “with respect to public sentiment toward particular [campaign finance] policy proposals, the data are so muddled that extensive analysis is infeasible” (Primo 2002, 211). For example, “a question regarding public financing of campaigns can result in vastly different responses depending on whether the term *publicly funded* or
taxpayer funded is used . . .” (Primo 2002, 211). Finally, Primo cites evidence that the “public seems to favour almost any reform simply in the name of reform.” The Center for Competitive Politics (2010) has found that American citizens in fact support First Amendment rights for corporations, unions and not-for-profit actors despite their cynicism about money in finance.

For the U.K., Grant (2005, 87-88) cites a 2003 poll which suggests considerable antipathy to the idea of state funding: . . . three-quarters of respondents thought that it was better that parties should be financed by their own fundraising rather than be subsidised by the public purse, while only 7 per cent supported the idea of them being totally funded by the taxpayer.

Pattie and Johnston cite survey evidence indicating that while the U.K. public may not trust politicians, they are also not in favour of tax-funding of political parties: only 26 per cent of voters “felt parties should be funded ‘mainly from public taxes,’” whereas 58 per cent (despite their reservations about the current system) felt the system of party finance should stay as it is now” (Pattie and Johnston 2007, 266).

The usefulness of survey evidence has of course long been in contention on such complex concepts as trust. As Heidenheimer (1989, 577) argued, even in the late 1950s, a period of relative normality and fairly stabilized concepts among both elites and masses . . . What such a survey [about campaign finance] would have shown would have depended very much on how questions were asked and responses translated (Heidenheimer 1989, 577).

A number of participants made observations about the usefulness of survey evidence with respect to campaign finance. Fisher observed that there was “too much weight on public evaluations” concurring with Boatright, who observed that, Most people don’t understand campaign finance law. And every time you ask people, “Should this system be reformed?” they say, “Oh, yes definitely.” But then, when reforms come along, they don’t really notice any big change or if they do notice that the reforms passed they get frustrated.

Despite the relatively early introduction and rigorous enforcement of campaign finance rules by successive Canadian governments, in the hope, as expressed by the Lortie Commission, that campaign reforms would lead to greater trust and engagement, the
Canadian experience suggests that trust and satisfaction with government may chronically lag or fail to meet the expectations which have accompanied reforms. The Canadian case may well be the crucial case since Canada has more continuously ‘reformed’ its campaign finance regime than either of the shadow cases, with Alexander (2005), characterizing the Canadian regime as ‘severe,’ in contrast to that in the U.S.. The Canadian experience with campaign finance reforms’ ‘failure to meet expectations’ of course does not mean that everywhere and at all times this relationship will obtain. However, in the advanced Anglo-American democracies, it may well be that using campaign finance reform as a policy tool to raise public trust is a policy of diminishing marginal returns and that increased fine-tuning of these respective campaign finance regimes may lead only asymptotically toward ‘absolute’ integrity and greater public trust. More generally, to the extent that experience with campaign finance reform can be seen as a microcosmic example of institutional reform in general, the above leads to the very distinct possibility that institutional reforms may not lead to more positive democratic practices from the point of view of trust and participation.

Yet another factor may stymie the use of objective indicators such as turnout or surveys of trust. Wilkinson, an official agent for the Conservative Party in Ontario, pointed out that in Canadian elections, “leadership still matters—it isn’t just ideas and platforms.” Supporting this argument are the findings of Gidengil et al. (2009), who found that,

The damage wrought by the sponsorship scandal was not confined to the 2004 election. In 2006, the probability of voting Liberal was 35 points lower among voters who were very angry about the scandal, believed that there had been a lot of corruption under the Chrétien Liberals, judged Martin’s handling of the scandal negatively and lacked confidence in his ability to prevent future scandals (Gidengil et al. 2009, 7).

Blais et al. (2005, 3) concur, stating that, “Far less is known, however, about the cognitive, emotional and normative underpinnings of voters’ attitudes towards a ‘big scandal’.”

The U.K. general election of May 2010 brought the issue of trust-based politics to the fore and the quality of leadership as contributing, or taking away from, citizen trust. The Economist’s Bagehot (2010), at the time of the 2010 U.K. general election, described an ‘underlying shift’ or:
The rise of what can glibly be described as personality politics, but might equally and less judgmentally be called trust-based politics . . . More than in previous campaigns, it seems, Britons want to know who, precisely, is asking for their vote . . . Besides the smothering impact of the expenses affair, that disjuncture may reflect a widespread conviction that government is essentially managerial; that the choice is between people rather than ideologues . . . In 2010 personality and trust are not distractions from the issues: they are the issue. Partly as a result, this campaign is uniquely presidential and intensely local.

To summarize, the use of trust as an indicator of either public desire for further campaign finance reform or as evidence demonstrating success or failure of such reform is unreliable.

Let us now turn to measures of engagement, beginning with the number of volunteer hours devoted to politics and estimates of political knowledge. Again, trust as manifested by engagement, has been a desired outcome of campaign finance reform in Canada, whether one accepts the purported relationship or not. The Canadian Centre for Philanthropy has reported intermittently on volunteer activities since 1997. The 1997 and 2000 surveys do not pose any questions relating to volunteering in political life. However, in 2004, participation in advocacy or political groups for the population aged 15 and older stood at five per cent; the 2007 report indicates three per cent of immigrants and two per cent of Canadian-born, over the age of fifteen, volunteered with “law, advocacy and politics” groups. While one can argue that there is no statistical difference between these two rates of volunteerism (and the report does not evaluate the significance factor), there is little to be gleaned here for either proponents or critics of further campaign finance reform. If there has been a rise in confidence, and hence volunteerism, it is not evident in these broad-based statistics.

The literature on engagement (for example Milner 2002) argues that greater political knowledge is a sign of engagement and participants concurred that knowledge about campaign finance should rise with greater disclosure. However, Docherty argued that there is no publicly available data indicating what Canadians know about political financing and subsidies and hence it is necessary to turn to the observations of participants. Several, including Senator Cools, doubted that Canadians know what the process of financing political parties is. As she described it, campaign finance is an ‘arcane’ topic. Knowledge of
political finance in the Canadian electorate was deemed to be rudimentary at best. For Barbot of the BQ, “People are mixed up” about political finance rules. Fisher agreed, stating that among the public, there is “an element of confusion which is not helped by the sort of lumping together under media reporting” of ‘money in politics’ issues. Respondents varied in their response as to whether political knowledge on the part of the electorate had suffered because of tight constraints on spending in Canada. Several, including Senator Joyal, Solberg, Manning and Cross argued that “democracy costs money.” The media play a role in the public’s lack of understanding of political finance. Fisher, for example, noted that there is significant confusion between categories of ‘political money’ in the view of the electorate: whether ‘political money’ refers to federal, provincial or municipal levels; whether it involves the government or bureaucracy; the parties, candidates or EDAs or an almost infinite variation of these components. Klingemann and Manfredi stated, respectively, “We know from a long series of research results that it is not the richest that win the elections . . . and there is no clear causal connection between the dollars you spend and electoral outcomes.” Kenny (2009) concurs with these observations for the U.K. If the assessments by participants are correct regarding the absence of knowledge of political finance, and whether spending in fact alters outcomes, it is unlikely that campaign finance reform, as an institutional change will alter this to any significant extent. As Joyal stated, a political party may say, “We have done it. We have cleaned things up. But that’s not the way to do it. It is an educational process—a development of shared values.”

At the heart of the debate regarding political knowledge as an indicator of engagement, however, are severely opposed notions about the extent to which citizens want to know or are willing to devote time to know about political issues. Graber, for example, exemplifies the liberal democratic view that the “need for citizen alertness is cyclical; it is greater in times of crisis and less at other times. People who normally ignore much of the political news flock to the media during crises” (Graber 2006, 175). By contrast, social democrat/participatory democratic theorists envision a citizenry that is continuously engaged and interested in politics of some sort and that low participation rates demonstrate failure of institutions. Some respondents argued that a more informed public, on the subject of party finance, was precisely the goal of the 2008 economic statement by Prime Minister Harper. By announcing the removal of subsidies, he alerted the public to the existence and
importance of the vote-based subsidy to the opposition party and minority parties in the House. Assuming this is correct, the hyperbolic reaction of the Liberals, BQ, NDP and Green parties almost guaranteed that the issue of campaign finance came before Canadians in a way not heretofore known. Thus, future research may reveal that the subject of campaign finance, relatively ignored in the Canadian media until the 2008-2010 period, but publicized by Prime Minister Harper in 2008, may play a future, but as yet unknown role in stimulating or depressing political knowledge.

I now turn to monetary contributions as an indicator of engagement. The Barbeau Committee held that “One has not only a right to contribute to the party of one’s choice, but a duty in the pursuit of which an elector should be encouraged rather than restricted;” “Contributing to the generally unfavourable light in which political finance is held has been the fact that donations to campaign funds are not recognized as legitimate deduction under the income tax law” (Barbeau Committee Report 1966, 48; 46). The Lortie Commission in 1991 stated that, “We recommend that . . . no restriction as to size or source of political contribution be initiated, and all individuals, corporations, trade unions and organizations be encouraged to support the political party of their choice” (1991, Vol. 4., 70). Three observations are germane: first, the official position of the two bodies was that individual donations be encouraged. Second, the Barbeau Committee viewed income tax deductibility of political donations as legitimizing them vis-à-vis charitable donations. Third, neither body investigated the notion, put forward in 1947 in the U.K., that it was the “overall level of taxation,” in its lowering of discretionary income, which may act as a disincentive to donations to political parties and actors (McCallum and Readman 1947, 73).

There are several issues at play here. First, there is a symbolic issue. Widespread citizen or individual donations to parties, EDAs and candidates epitomize the model of a dues-paying financial base of old-style European mass parties; a broad donor base also legitimizes the claim that such dues-paying is more ‘democratic’ than the financing of elite parties, which have been financed by a relatively small numerical base of donors (Hopkin 2004, 639). In fact, argues Hopkin, the “experience of mass parties in power suggests that in fact the fee-paying grassroots are ‘suckered’; they contribute financially to the maintenance
of parties in exchange for a negligible individual influence over policy-making” (Hopkin 2004, 639).

The allure of a massive donor base remains at the heart of both participatory models of democracy and of the mass model of political parties. Participatory theories of democracy prioritize citizen involvement, for its own sake, both as a means of governing but also of developing “human potential” and the “virtue of the citizen”; further, participation, in this paradigm is “essential to ‘true’ democratic equality” (Katz 1997, 68-70). Participatory democratic theories, like progressive theories of campaign finance, therefore disparage funding of parties by large donations by the relatively few as demonstrative of oppressive, elitist behaviour and as evidence of a lack of ‘democracy’. By contrast, for liberal democratic advocates, “democratically funded” has more of a sense of consent by the donors; political equality means an equal right and freedom either to give or not to give and has implications for both the ceilings imposed on individual donations and whether citizens are to be ‘motivated’ by special tax treatment for political donations.

Thus, large political donations “may reflect intensity of preference rather than disproportionate wealth” (Hopkin 2004, 643). Pinto-Duschinsky concurs and argues as well that that ‘equality’ may be achieved by a party which has garnered greater financial contributions, provided that “its financial advantage derives from a large number of small donations and not from a small number of large ones” (Pinto-Duschinsky 1981, 285, fn. 15). The issue disputed is not just the size of donations, however, but also the influence (and in some cases, perception of undue influence) of donors of large amounts on policy-makers, and most fundamentally, on the existence of disparities in income that make such large donations possible. A full discussion of these issues cannot be undertaken here but the high stakes in framing the discourse of campaign finance policy change should not be understated.

There is a cultural issue also. The historical record in Canada, the U.S. and the U.K. does not demonstrate a large proportion of citizens donating. Nassmacher in 1994 found that one or two per cent of the population gives to political parties. Aucoin, writing in 2005, observes that “By international standards . . . the Canadian experience, at least over the past
two decades, is one of a very limited number of substantial contributions to parties or candidates” (Aucoin 2005, 8). Nassmacher writes that,

> Participation by way of financial giving is not widespread, even in affluent societies . . . As long as the democratic elite remains relatively open to any individual who claims access, and as long as people can exercise the liberty to drop out of donating or participating and have the opportunity to replace elites, elitism does not endanger representative democracy. Within the democratic elite there is change and competition as well as hierarchy (Nassmacher 2003, 6; italics added).

Klingemann, in our interview, concurred with Nassmacher that it is the openness of an elite that matters. As Klingemann argued, the problem lies with aggregation: it is not necessarily the same individuals who constitute the small per cent who give over time or who vote in successive elections. Ansolobehere et al. (2003) find that in the U.S., “campaign giving is a normal good, dependent upon income, and campaign contributions as a percent of GDP have not risen appreciably in over 100 years: if anything, they have probably fallen.” No similar study is available for Canada. This problem of aggregation also intersects with aspects of political culture. A 2009 study in the U.K. reported that

> The great majority of people do not want to give money to a political party. They may support it at an election but they are not even prepared to give it annually the cash equivalent of the cost of a DVD . . . (Jury Report 2009, 1).

Several participants, among them Manning, Young and Chipeur, suggested that the level of individual donations could be the measure of success of Canadian campaign finance rule changes. In the words of the latter, “Have the reforms engendered an “organic desire on the part of Canadians to participate?” Although political contributions by individuals were frequently derided as ‘chequebook democracy’ in the literature of the 1970s and 1980s, small donations (usually considered as those in the $1000 range in the U.S., but considerably lower in Canada), particularly those gleaned from internet connections, have come to be seen as significantly ‘democratic.’ Many participants referred to the success of Obama in the 2008 presidential election in this regard. In Thorburn’s words: “Donations [since Obama] are not looked upon as bribery anymore . . .” Given that individual contributions to political parties are now more respected as democratic acts and are lauded as ‘grassroots democracy’, have
changes in campaign finance rule changes enhanced trust and encouraged more individual donations?

Table 8.3 shows political contributions by source, as published by Elections Canada. No further breakdowns of data are available. Little can be gleaned in terms of response of donors to rule changes for individual donors: specifically, the lowered ceilings for individual donors. The number of donors peaked in 2000, slid and then recovered in 2004, and then declined again. The dollar value of donations by individuals, however, doubled from 1999 to 2007. The years 2000-2007 were relatively stable in terms of the economy and the severe recession of 2008 had not yet occurred. Two policy changes are relevant: while the permissible donation ceiling dropped, a higher tax credit for the first $200 of a political donation was implemented in the same period. The evidence is therefore inconclusive: the increase in donations is a positive sign but can be attributed to trust or to rational tax-planning, or both.

Once again, however, there are several potential factors at play which may be affecting political contributions. Some participants suggested that having ‘given’ to political parties through taxes paid might deter additional, discretionary amounts. Another deterrent effect may arise from the possibility that tax-based funding of parties—to the extent to which it is known by the electorate—may in fact unduly raise citizens’ expectations of non-partisan behaviour and if that is not forthcoming, greater distrust or cynicism will lead to lower donations. As Seidle expressed the matter to the Standing Senate Committee on Legal and Constitutional Affairs:

I think a real question is to be asked about the public reaction to further increasing public funding . . . We need to be modest when we draw a link between the likelihood that confidence in political institutions and politicians is going to rise is we somehow get political financing right . . . We need to be modest about the linkage between those two things (Seidle 2006, 8; 9).

Contributions to political parties and candidates in the U.S. and U.K. are not subject to any tax credit or special tax status. By contrast, the practice of using tax credits to stimulate wide-spread political giving has been in place for some time in Canada but was changed in the post-2000 period and donation limits to parties were lowered in the same
period. There were two implicit assumptions: first, that while the ‘average’ Canadian has historically contributed little in terms of money to politics, the reforms passed would lead to changes and second, that Canadians would view tax-based funding as more neutral, more credible and hence would be more likely to donate to ‘cleaner’ parties.

Contributions by citizens may be both directly and indirectly affected by campaign finance rule changes as an example of institutional change. As North writes,

Institutional constraints include both what individuals are prohibited from doing and, sometimes, under what conditions some individuals are permitted to undertake certain activities. As defined here, they therefore are the framework within which human interaction takes place (North 1990, 4).

Several of those interviewed expressed moderate to severe concern that the current ceilings on personal donations are too low and scepticism that “if we change the rules, political parties will adjust in admirable ways and all of a sudden . . . there will be tens of thousands if not hundreds of thousands of people giving to our political process.” By contrast, as Nicholls and many other argued, contributions of money and labour all depend on the intensity, depend on how much the public is paying attention, it depends on how ideological you are, it all depends on how much you want to play the game. And that’s hard to quantify. And it’s hard to compare with other goods and services. It’s not like you can plot it in a supply and demand graph.

Seidle compared the federal limits with those of a few select provinces, some of whose ceilings on contribution are considerably higher and he further observed the inaptness of lower ceilings at the federal than provincial levels given that national constituencies are considerably larger than provincial ones, with the exception of Ontario (Seidle 2006, 5).

Two other factors must be addressed. First, the complexity of rules governing donations to political parties versus charitable foundations and the differing regulations federally versus provincially may act as disincentives for donating politically. In 2005, Alexander (2005, 17) argues, in a comparative perspective, that Canadian

Contribution and spending limits are much more severe than those in the U.S. . . . These contribution limits allow considerably less private money into the
system than do the U.S. contribution limits. Canada has not had a history of soft money or other means than direct hard contributions (italics added).

Alexander (2005, 17), in a further comparison, referring to tax treatment of individual contributions to political parties, states that the “complicated formula [in Canada] compares with no United States tax credit under current law.” Second, the possibility that tax credits for political donations might displace charitable contributions has not been examined in the Canadian literature. A tax credit for political donations was introduced in Canada in 1974, as recommended by the Barbeau Committee in 1966. Senator Cools spoke of the concern that the Trudeau administration had at the time, that the tax credit on political donations would diminish charitable giving. However, as subsequent campaign finance rule changes were made, this policy impact has not been addressed. Incentives of this nature not only are intended to ‘reward’ engagement and engender more of the activity but also to “encourage diverse, often sharply conflicting, activities and viewpoints” (Bob Jones University v. United States 1983). By contrast, it must be noted that political donations in the U.K. are not eligible for any tax deduction or tax credit although charitable donations are. Similarly, in the U.S., there is no federal tax deduction for any political contribution but contributions to registered charitable organizations are tax-deductible expenses.

The use of a tax benefit is generally regarded as the least intrusive form of public support of a particular activity. However, there are conflicting ideas on its usefulness. Some concern was expressed by participants that because Canadians were now supporting political parties through the tax-based subsidy, that there would be some “crowding out” (Andreoni 1993) of individual donations. A Canadian lawyer raises the issue that,

The tax deduction subsidy also costs Canadian taxpayers far more than the $30 million cost of the per-vote subsidy. Perhaps worst of all, the tax deduction subsidy with its 75-per-cent tax deduction creates an incentive to donate to parties rather than charities (Betts, Letter to the editor, Canadian Lawyer, April 2010).
The difference in tax treatment of a contribution to a charity versus a political contribution follows. Donations to charity are treated as follows. For the first $200 of donations, the federal income tax credit is 15 per cent; above $200 the tax credit is 29 per cent (including provincial income tax credits) on donations valued at up to 75 per cent of annual net income. These credits reduce the cost, or price, of giving. If individuals are sensitive to the price of giving, the credits should increase donation. By contrast, on political donations of up to $400, the tax credit is 75 per cent; from $400 to $750, the tax credit is 50 per cent; $750 to $1275, 33.3 per cent; over $1275, a maximum of $650.

Whether in fact citizens view charitable and political donations in the same light was questioned by individuals. A number of participants suggested that Canadians see giving to charities in Canada as ‘good,’ giving to politics as ‘bad.’ Haynes, Boatright and Senator Smith all pointed to the differing ethos of giving in the United States versus Canada and this has been substantiated by comparisons of charitable donations over several years published by the Fraser Institute (Gainer, Lammam and Veldhuis 2010, for example). I could not find, in my research, any work conducted in Canada as to the possible migration of donations from charitable giving to political giving. While it is well documented that there is considerable overlap between Canadians who to give to charities and those who donate to political causes (Canadian Centre for Philanthropy 2007), little research has been conducted on the possible migration of donor funds from charities to political parties, although some has been conducted on the related topic of the effect of charitable tax status financing Canadian interest groups (Webb 2000).

Robson noted that not all donors or taxpayers make calculations such as this in determining how to allocate donations. However he pointed to another tradeoff implicit in a tax credit for money donated to a political organization. He noted that,

It’s not at all clear that every person thinks in those terms, calculating tradeoffs all the time. And yet when it comes to predicting peoples’ behaviour

27 Webb (2000) provides a good overview of the evolution of charitable tax law in Canada; legal limitations on those organizations holding charitable status on their ability to engage in political activities and still retain charitable status; and a brief comparison among Canada, the U.S. and the U.K. policies on these matters.
in the aggregate, it’s astonishing how responsive to incentives people are. So I have to think that the extent to which there is this subsidy to donations of money to political parties would incline people to donate money instead of to donate their time.

Thus, tax credits against contributions may act as a disincentive for people to donate time to political organizations. Recent studies of philanthropy in the U.S. have found that donors do indeed make tradeoffs (Brody and Tyler 2009) but these analyses have largely been confined to the study of charitable donations, rather than looking at possible migration of contributions from one category to another.

A final factor in the campaign finance rule regime is the disclosure of donor information. While advocates of ‘sunshine’ laws favour disclosure laws because it is possible to trace the origin of contributions, there are possible disincentive effects relating to donors wishing to protect information about their personal financial status and perhaps more importantly their association with a particular political party. Canadians (per LeDuc) are notoriously fickle—and secretive—about their political affiliations. The possibility of harassment in the workplace or within a social or ethnic minority in ‘going against the flow’ is impossible to determine. It is quite possible that the extensive Canadian disclosure regime could be challenged under the Charter as a violation of privacy.

Whether in fact political donations in Canada would ever reach the same percentages as in the U.S. is questionable given differences in party and institutional practices. Thorburn, for example stated that Canadians don’t have a

predilection to give to anybody really. Our contributions to charities are pathetic compared to the American. It’s partly . . . political culture . . . So the amount of change on the political culture of [Canada] is not great but still there is some . . . Is there anything more effective?

Boatright spoke for many when he argued that there seems to be a

different logic in giving to the party than giving to a candidate. It’s this sort of dynamic that I’ve never quite understood. Canadian parties are supposed to be personality based in the sense that the leader basically calls the shots for the party. But none of the people in charge of the parties really seem to be these commanding figures that would get people particularly excited . . . From an American perspective, none of the party leaders in Canada are truly exciting
people . . . You can imagine that if somebody who had a personality like Trudeau were to lead a party, there would probably be a surge in donations.

Participants—across all parties and all backgrounds—doubted that Canada would ever see an outpouring of donations such as was witnessed first in the Howard Dean and then the Barack Obama campaigns. Obama’s charisma, the public’s hatred of President Bush and the symbolic nature of Obama’s candidacy as the first black presidential candidate for a mainstream party, were the drivers of public donations, according to participants. Senator Smith argued that for Canadians to develop new habits of contributing to parties and candidates would “need a Barack.” Boatright made the important comment that Presidential-elect Obama was able to “leverage small contributions into a sense of community.” There is no such observable, comparable effect of the ceiling on individual donations in Canada.

Genest, of the Green Party, stated that

I don’t think we’re ever going to see the two years on the campaign trail, American style . . . And I think by virtue of [Canada’s] having four or five or however many parties . . . dissipated the attention span of the electorate.

However, there is the possibility that Canadian parties and candidates may specifically engage or target less affluent Canadians who traditionally have not given to political causes. This has yet to be investigated in Canada but in the U.S., Malbin (2008) finds that in a study of two states which have tax credits or refunds on political donations, there is a strong endorsement by both incumbents and challengers in one state with only incumbents agreeing that seeking donations from less affluent citizens has shaped fundraising. If this is occurring in Canada, then it has the potential of engaging a broader cross-section of the electorate. In the U.S., the BCRA doubled the amount individuals could give, which made internet fundraising that much more advantageous. Manning also noted that

Social networking thing gives you a whole other tool for raising money and for raising these large amounts of money from small numbers of people. So, they’re kind of compatible with that direction of the election financing laws. I think to try to keep on top of regulating fundraising through the internet is proving extremely difficult [just as it is] to regulate any kind of commerce and transactions . . . I’m just not sure how that’s all going to work out. And probably the less . . . you try to shape and constrain it probably the better. I’m just not sure how you would.
Civil Society: Business and Unions

The *Political Financing Act* of 2004 lowered ceilings on business and union contributions to Canadian political parties and entities to $5000 annually and the *Federal Accountability Act* of 2006 prohibited altogether such contributions. These changes therefore represent a unique opportunity to investigate possible outcomes of such a significant institutional change. While the 2002 BCRA in the U.S. prohibited ‘soft money’ contributions by business and unions, there are other vehicles, principally political action committees and ‘527’ organizations, through which business and unions can contribute or withhold support for parties or issue advocacy. There is no comparable means to do so in Canada. It is therefore very challenging to identify how businesses and unions have responded to changes in the CEA because there is no publicly-available ‘money-trail’ to follow as there is in the U.S. (Boatright 2009).

Unions and corporations have traditionally been considered part of civil society, with their assets and activities somewhat regulated by the state but their activities, like that of charities and foundations, but overall, have not been considered as ‘state actors.’ Historically in Canada, as well as in the U.K., campaign finance law has treated business and union activity on an equivalent basis in terms of their ability to donate to political parties or campaigns. However, because campaign finance rules govern exclusively monetary resources, some indirect privileging of political parties supported by unions has occurred. Cooke, La Raja, Hohenstein, Fisher and others all document that the federal NDP in Canada, the Democratic Party in the U.S. and the Labour Party in the U.K. have all benefited from union labour in political campaigns and the ready-made mobilization inherent in union organization, while each national right of centre party, to wit, the Conservative Party in Canada and the U.K. and the Republican Party in the U.S., has historically benefited from monetary contributions by business.

Ghaleigh (2006, 51) argues that,

A principled defence of the continuation of unrestricted institutional donations can be fashioned from the notion that donations ought to represent the desire of individuals to support a political actor of their choice. Trade unions being representative, voluntary, members’ organisations . . . and under the new
regime of shareholder consent, a similar argument can be fashioned for public companies’ contributions. This being so, the limits which apply to the contributions of private individuals need not properly apply to institutional donors.

This argument is hotly contested by those who see in business an antithetical force to democracy. It is of some significance therefore, that the Canadian Labour Congress stated to the Lortie Commission that,

We recommend that . . . no restriction as to size or source of political contribution be initiated, and all individuals, corporations, trade unions and organizations be encouraged to support eh political party of their choice” (Lortie Commission 1991-1992, Vol. 4, 70).

Several participants, among them Aucoin and Senator Segal, argued that the current prohibition on business and union donations (as well as the ceiling on individual donations), is too constraining for electoral politics to be truly dynamic; although the 2011 election of a majority government came as a surprise to many, it may have been an aberration. Respondents who had been fundraisers for the major parties, which included Senators Carstairs, Smith, Massicotte and others such as Murphy, former Chief of Staff to Prime Minister Paul Martin, and Rachlis, currently a government relations consultant, stated that a donation as large as $100,000 before 2004 was extremely rare, and that corporate donations in Canada had rarely exceeded $75,000 per year per party; most corporate donors and especially Canadian banks typically had supported the two main parties, with roughly 60 per cent of their total contribution going to the governing party and the remainder to the party in opposition. Rachlis argued that “probably both the large federal parties benefited more from the overall corporate community feeling it was something they ought to do.”

This stands in marked contrast to the sums received by parties or candidates in the U.S. or U.K., where donations commonly range in the hundreds of thousands as reported officially or in the media. Lortie, who chaired the commission, concurred with Aucoin as did Rachlis and Chipeur. Rachlis, speaking for many, stated that,

It never was the case that you could influence governments by giving money to politicians. You know, it might have been true seventy-five years ago. But it hasn’t been the case to any significant extent, probably since the ‘60s . . . Governments simply aren’t in a position, they aren’t able to make policy or
regulations or procurement decision based on who their friends are, primarily because elected politicians don’t make those decisions. I mean for better or worse, most of what governments do is driven by and controlled by civil servants. Politicians are in a sense advisors.

Well, there’s no question that the old style of lobbying, and by old style I mean prior to . . . maybe 1970. Trudeau, for one reason or another, looks like the dividing line. The old style was, you had people who were active politically, probably at a local level, maybe they were financial, maybe they were fundraisers or they simply made large donations, and they would call up a friend to find out something or try to advance some position. And there was a view at the time that, which I think is a natural carry over from the business community, where if you want something done, you speak to the person in charge . . . you get in touch with the minister or even better the Prime Minister. And politicians generally tend to be extroverts. Their success depends on getting to know people and being friendly and whatever. And so, some of them fall naturally into meeting lots of people and going to dinners and lunches . . . There was always a kind of view that if you want to get really close to the government, go play golf with the minister. They were always happy to do it, you know, but I don’t think it ever got anybody anything.

As well, several participants noted that the influence of business or unions on government had never been as significant as in the U.S. where proportionately, political appointments are more broadly-based and run deeper into the bureaucracy than in Canada. Aucoin, like Lortie, stated that the Royal Commission did not recommend limits or bans on corporate and union contributions because,

We didn’t think that there was evidence of serious corruption in the Canadian case and I think that’s true today. I mean it’s still true, if you look at the Shawinigate and all of that. That’s not big money, that’s piddly money. It’s always the little businessman, who thinks that if he gives you five or ten grand he’s going to have access to Cabinet secrets. If you look around the world, most of the big scandals [regarding political finance] tend to be piddly corporations [that] don’t worry about their reputations. And so people who had a lot of money didn’t want to give it because they didn’t want to be tainted by it. We didn’t see a problem with ‘big money’ in that sense, in part, because we thought that the big money was transparent.

Table 8.3 documents political contributions by businesses to political entities, in the period in which they were permissible. Comparative figures are not available for unions because they are not-for-profit, pay no federal income tax and hence no aggregate data on their political contributions are available for Canada.
Referring to Table 8.3, the amounts donated represent sums donated at all levels of government: national, provincial and local. The data indicate that the number of corporate donors has fallen from 514,000 in 2000 to 256,000 in 2008-2009 while the value of corporate donations has fallen from $900,000 to $300,000 in the same period. Overall, this implies that business donors continue to contribute to provincial and municipal politics but in very small amounts. This is clearly a dramatic shrinkage but also indicates the relatively nominal sums in total that corporate contributions constituted in the period following 1989 and confirms the accuracy of comments made by participants.

Whether all of this decline can be attributed to the ban on contributions is questionable. Senator Cook argued that political parties might have suffered intensely from a withdrawal of corporate funding due to the economic turmoil of the 2004-2010 period. This would suggest that some of the decline would have occurred without the ban; however it seems unlikely that this assessment is significant, given the historic patterns of corporate contributions that continued throughout other recessions. Chipeur, Senator Massicotte and Boatright observed that corporations “loved” the introduction of limits and bans on political donations because they were no longer required to contribute to politics and also because they were removed from the negative publicity which invariably followed a corporate donation.

Fisher spoke to the U.K. experience: that although prior to 2000 there had been no restriction on business or labour contributions to parties, business donations and practices toward political parties had already begun to change before the PPERA was implemented in 2000. He argued that from the late 1980s, new avenues for corporate influence emerged; corporate structures changed in such a way that that the chair of a corporation could no longer donate corporate funds to a political party to which he was sympathetic; and finally, the growth of transnational ownership of corporations which avoided “overt backing of a specific party in one jurisdiction because damage there can [harm] them in another jurisdiction.” One respondent, in government relations, argued the same for Canada, stating that,
Canadian phenomenon. It’s much more of an international movement . . . I think corporate reputations are much more sensitive to funding politicians . . . There’s even resistance for these companies buying tables at political dinners.

While acknowledging that an EDA or a candidate for that EDA with a single, primary business employer was vulnerable to influence by donations from that employer, they argued that for the most part, businesses, particularly banks, had tended to give because of a sense of corporate citizenship in Canadian democracy and to sustain the democratic process via the major parties. Lortie has always advocated against bans and low limits on institutional donations to political parties because such policies are ‘unpoliceable.’ As such, enacting “laws that people will not respect, that’s how you lose trust.” Referring to the limits of 2004 and then the ban on in 2006, he stated that

clearly it’s not a direction I think they should have taken . . . At the end of the day, it costs so much money to run a campaign and unless government imposes, by legislation, a requirement that electronic and print media need to provide the time and space, free of charge, then it’s going to cost a lot of money to run a campaign, especially a national or provincial campaign. So a lot of the people arguing about campaign finance seem to pretend that elections should not cost money: they do cost money.

Aucoin similarly argued that business contributions had been recently been limited and then banned for merely symbolic reasons, arguing that “Canadians have come to believe that we elect our Prime Minister directly . . . it’s an American influence.” Murphy, former Chief of Staff to Prime Minister Paul Martin, also argued that “much of what was done [in 2004 and 2006] was a solution in search of a problem.”

By contrast, two directors of not-for-profit organizations argued they were not uncomfortable with caps on institutional donations. Robson, of the C.D. Howe Institute, stated that in his view,

There is a real agency problem with businesses and unions making donations because it’s not their money in a very significant sense. It’s not at all clear that the owners of a business, the shareholders or the individual people that are represented by a union should have their money diverted in this way . . . There’s an agency issue here. Why would the business or the union be better able to direct its charitable or political contributions than the members on their own? Is there some benefit to aggregating it that way? . . . You know, to cap
individual contributions does concern me a good deal more than banning institutional contributions.

Crowley, of the Atlantic Market Studies Institute, also stated that he did not object to placing limits on corporate and union donations so that “they cannot overspend relative to individuals [and] falsify the debate.”

Migration of Donations?

Participants were asked how unions and businesses were now expressing their interests to government, given that they could no longer donate directly to parties. Despite the fact that Canadian, U.S. and U.K. governments have tended to regulate—or not regulate—business and union monetary contributions in a parallel fashion, participants resoundingly argued that unions and business had always acted in different ways politically and therefore responded in a differentiated manner. Crowley pointed out that unions and business have varied in their response to the ban on contributions, just as they have varied historically in their support of certain parties and in their strategic activities. Young et al. (2005) also find evidence of variation.

Young et al. argue that “elimination of the financial ties between unions and the NDP has not, however, led to a complete severing of the relationship. Rather, the party and the labour movement are working to restructure the relationship, so that it works within the confines of the new regulatory framework” (2005, 18). Because contributions of labour are, under the provisions of the 2004 and 2006 acts, now considered to be ‘donations’ in kind and must be valued, Young et al. note that “Labour volunteers in NDP election campaigns must now do so during their spare time . . .” Some participants, including MacDermid and Proctor, suggested union donations and union labour which previously went largely to the NDP or the BQ may now be migrating to other levels of government. Proctor endorsed this notion, suggesting that that Canadian unions have turned their attention to engage and influence municipal elections and election campaigning. As well, several participants stated that unions were doing more intensive internal political communication with their members. These responses by the NDP reflect its historic strength in “labour intensive method of electioneering” (Cooke 2006, 13) or what Heard (1960) termed ‘outsourcing’ by the Democratic Party in the U.S.
Fisher argued that businesses and unions in the U.K. have in fact turned to other means of influence and other avenues of influence. He cited the case of British unions which have found lobbying at the European Union level a “terrifically effective method of delivering success in particular policy areas.” However, to the extent that such migration has occurred, and the evidence is mainly anecdotal, it is not clear that changes in campaign finance rules or public sentiment were the causal factor. Fisher cited the British Labour Party’s distancing itself from direct union support, as part of its strategy to engage a wider cross-section of the electorate. Since the Canadian NDP has also sought this distancing, it may be that the 2004 and 2006 reforms merely accelerated a process that was already underway. Grant, in a comparison of American-U.K. party responses to further regulation, finds that political contributions following the BCRA of 2002 stimulated the growth of ‘527’ organizations, with the preponderance of such organizations sympathetic to the Democratic Party; the largest twelve 527s were sympathetic to Democratic presidential hopeful, John Kerry (Grant 2005, 83).

Historically, Heard (1960) observed that the greater restrictions on the role of money in politics, the more privileged become non-monetary resources and networking. This can take a number of forms: better on-the-ground mobilization, networking among social movements or business groups, or lobbying. Although third party expenditures and activities have often been considered a different field of study than lobbying, they are more intricately linked than perhaps evident at first glance. Ethics legislation is an umbrella term that encompasses attempts to raise the integrity of actions in the public square, to raise trust generally and hence is inclusive of political finance, third party activity and lobbying; the Federal Accountability Act in 2006 is an example. Thus, at least brief consideration must be given here because lobbying is a possible substitute, rather than complement, for ‘third party’ expenditures. As well, the term ‘third parties’ covers an enormous landscape of possible actors, including for-profit and not-for-profit actors.

I first examine examples of alternative third party activities by both unions and business that were given by participants. Boatright observed that,

Canadian unions seem as though they are much more aggressive mobilizing members and everything they can right up until the writ is issued. They have
become much more aggressive at mobilizing members, doing internal communications and funding all sorts of coalition type organizations.

Segal concurred that unions are voicing their interests via policy organizations, for example the Public Policy Forum and the Rideau Centre, which is supported by the Canadian Union of Public Employees, while business “is giving to places like the Chamber of Commerce.” Overall, respondents confirmed findings by Boatright who concluded in his study of Canadian and American interest group activity that “Unions are more likely to push money into the political system than are business groups or advocacy organizations;” and that Canadian and American union strategies have differed because of much higher union density in Canada than in the U.S., citing Canadian union density at 30.8 per cent compared with American union density of 12.5 per cent in the U.S. (Boatright 2009, 2; 28).

Businesses have responded differently than unions, according to participants, most of whom argued that business, to the extent that it is a single category, was simply relieved that corporate reputations were no longer at stake in donating to parties or candidates. Crowley believes that for Canadian corporations, their former national-level contributions to political parties and candidates just disappeared into other budgets. No, to be perfectly clear, I don’t think they have sought new ways to influence. They have always been present and always will be present in national capitals with their lobbies and . . . where they have economic interests at stake.

Whether lobbying has in fact increased is difficult to evaluate. Lobbying activities have been regulated in Canada at the federal level since 1986 (Lobbyists Registration Act), with amendments in 1996 and 2004. In 2006, the Lobbying Act amended earlier versions of the act and introduced new features, some of which came into effect July 2, 2008. Lobbyists are defined as “individuals who are paid to communicate with public office holders in an attempt to influence government decisions.” The act also defines ‘public office holders.’ Registered lobbyists must report fifteen days after a month-end in which specified activities has occurred. An offence under the act carries a penalty of up to $200,000 and possible prohibition from lobbying for a period of two years. Chari, Murphy and Hogan (2007) construct an index for comparatively examining the regulation of lobbying in various jurisdictions. Scores vary between zero and 100 with 100 designating the ‘best’ or tightest
legislation. On this scale, Canadian federal law scores 45; American federal law 36; German federal law 17; and E.U. Parliamentary law 17 (Chari, Murphy and Hogan 2007, 426). While more legislation should not be confused with effective regulation, this index is nevertheless revealing: the Canadian regime is significantly more restrictive than the comparators.

Annual registrations of lobbyists rose from 6,994 in 2005-2006 to 11,200 in 2008-2009. Thus, active registrations have risen from 1407 in March 2001 to 2954 in March 2010 to 4139 in February 2011, although volume varies considerably on a month-to-month basis, according to a study of lobbying by the Alberta government (Alberta Government Services 2001) and to annual reports by the federal Office of the Commissioner of Lobbying. Whether this in fact represents more lobbying, or simply more reporting of lobbying, cannot be stated with certainty. More qualified views by participants were also expressed. As some put it, law firms have historically offered informal lobbying services but officially renamed them as ‘lobbies’ or ‘government services’ to stay within the Lobbying Act of 2006, some parts of which did not come into force until 2008. By contrast, a senior cabinet advisor, as well as Rachlis, for example, argued that due to increased regulation of lobbying in Canada and oversight of civil servants in their relationships with lobbies and interest groups that the increased use of lobbying by business was extremely unlikely.

Fisher and Katz both argued that “the evidence is that [business] will spend money politically in other ways, typically on targeted lobbying, for example, which is more likely to deliver the goods and is less prone to the free rider effect” and “money is almost like forces of nature like water, which you can channel but you can’t turn off.” Boatright, Joyal, Denis and others concurred that more lobbying was occurring. A senior political advisor stated that,

We have a steady flow of lobbyists through this office but there are now very strictly limited terms on which these people meet with us. I meet with very, very few anymore . . . [Formerly] I would meet with some but, you know the old days are gone . . . Political staffers here on the Hill literally take their career in their hands when they accept tickets or when they are seen at concerts with lobbyists and stuff like that. And you know of all the threats uttered by various chiefs of staff . . . Your relationships with lobbyists serve as grounds for dismissal if they were improperly done . . .

We have to declare all our interactions. Lobbyists have to declare who they’ve met with and so we are encouraged, within an inch of our lives, to go over that
list to make sure that it is accurate, that the topics are there. If there’s any economic benefit that comes from that, we need to declare. So that has changed the way that business is done.

Participants were therefore sharply divided on whether business, unions or other ‘third parties’ were growing more active in the Canadian political process and specifically with regard to lobbying or in spending outside the writ period. Segal observed that he felt that “more money is going to special interest groups” and referred to former party leader Robert Stanfield who had forecast in 1975 “that as political parties are reduced in salience and relevance, lobbies increase.” Robson, of the C.D. Howe Institute, disagreed and stated that despite the ban on union and business donations to parties and their political entities, he had not witnessed an increase in third party activity. Pennings differed on this. He gave an example from Ontario politics, that of Working Families, an association that closely associated and reliant on funding from at least eight unions of public sector and private sector employees, a relationship substantiated by media articles (Benzie, *FT Magazine* 2007; Benzie and Ferguson, *Toronto Star*, 2007). Working Families has, according to Pennings, very actively supported the McGuinty government and the labour law changes [enacted by the McGuinty government] were sort of seen as their quid pro quo for what they did. They were seen as instrumental in terms of the ground level organization . . . The other aspect is that it isn’t just finances. It’s also active organization—on the ground organization—that perhaps is even more effective than finances.

There was no consensus among participants whether the amount of lobbying occurring in Canada—as an alternative vehicle to monetary donations—had in fact risen since 2006. A second alternative avenue to effect influence at the federal level is to seek the appointment of like-minded individuals to influential positions in the bureaucracy, crown corporations and the like. None of this is traceable, however.

**Civil Society: Third Parties and Advertising**

To review briefly, the Barbeau Committee report recommended that no group other than political parties and candidates be permitted to buy media time, advertise or otherwise explicitly advocate for a party or candidate during the writ period—that is, ‘express advocacy’ as it was termed in *Buckley v. Valeo* in 1976. The report also explicitly noted that
it did not recommend prohibiting ‘issue advocacy.’ The 1974 *Canada Elections Act* prohibited such express advocacy during the writ period but allowed a ‘good faith defence’ for inadvertent violations. Amendments in 1983 removed this defence. The Lortie Commission’s report in 1991-1992 advocated further intervention into third-party spending because of its deliberately broad interpretation of its mandate: casting the ‘vision’ of the commission as ‘fairness’ provided an almost impregnable rationale for its foray into the realm of free expression, a tenet of traditional liberal democratic theory. The commission was unequivocal in its statements:

> The assumption here is that justice as fairness . . . must temper the unbridled exercise of individual rights and freedoms . . . fairness may justifiably restrict certain freedoms . . .; Fairness is thus the central value that must inform electoral laws . . .”(Lortie Commission 1991, Vol. 1, 13; 322).

The commission therefore advocated maximum ‘election’ expenditures of only $1000 by individuals and groups (Lortie Commission 1991, Vol. 1, 350-356) and defended such a limit as allowing “meaningful freedom of expression” and as enabling individuals and groups to “engage in a significant amount of election activity” (Lortie Commission 1991, Vol. 1, 353; original italics). The commission extensively justified such restrictions on the basis that *internal* communications within unions, corporations and other organizations would remain unobstructed and that its proposals represented “the least restrictive way of limiting freedom of expression while promoting the objective of fairness” (Lortie Commission 1991, Vol.1, 353; 355). This is, at the very least, a controversial argument.

The domestic policy community, including such authors as Stanbury (1996), Hiebert (1998), and the Chief Electoral Officer also advocated for further circumscription of third party activity during the writ, the latter arguing it necessary to “fill the gaps in our electoral legislation” (Elections Canada 2003, 2) and deeming the position of third party expenditures vis-à-vis party expenditures “an anomaly” (Elections Canada 2004, 3). The 2000 *Canada Elections Act* required registration of third parties spending in excess of $500, identification of all contributions in excess of $200 in the six-month period *prior to the writ* and formal reporting by third parties for advertising expenditures in excess of $5,000. The act also restricted third party advertising in total during the writ period to $150,000 nationally or
$3,000 per electoral district (subject to an inflationary index). The 2000 regulations remain in place as of 2011.

Table 8.4 compares regulation of Canadian and U.K. regimes for third party spending which are more comparable than those of Canada with the U.S. The U.K. permits not only issue advertising but also advertising for or against a particular candidate, an activity that is prohibited for third parties in Canada. Second, the nation-wide limit on spending by an individual third party in a Canadian general election is $150,000 (plus annual adjustment factor) whereas in the U.K., the nationwide limit is £793,500, or approximately $1,230,000, just short of ten times the Canadian limit. Even allowing for differing populations this is a staggering difference. In the U.K., the Electoral Commission reported spending of £2.2 million (£1.7 million in 2005) by third parties versus £32 million (£42 million in 2005) by 43 political parties in the one-year regulated period prior to the May 2010 election (UKEC ―Parties‖, 2010).

By contrast, in the U.S., a political action committee can make independent expenditures of up to $5000 to a federal candidate in the primary and another $5000 in the general election as long as these expenditures are not co-ordinated with the candidate’s own spending. PACs gave $311 million to Democrats newly incumbent versus PAC giving of $168 million to Republicans (Magleby 2009, 71). Section 527 organizations, which ―run advertisements, register voters, or help turn out voters,‖ gave $258 million in the 2008 election, a decline from $424 million in the 2004 election cycle (Magleby 2009, 73). A Section 527 group may also have an associated PAC. As Magleby documents, ―unions show up frequently in the 2007-08 list of the top 24 Section 527 spenders.” Total spending by the top five 527s stood at $89 million in 2007-08 with 77 per cent spent by four groups with pro-Democratic interests (such as the Service Employees International Union and Emily’s List) and 23 per cent by one Republican-oriented group, American Solutions Winning the Future (Magleby 2009, 87). The Democratic and Republican National Committees could spend up to $19.1 million in co-ordination with their respective presidential candidates. Lastly, 501(c) organizations are an alternative means to Section 527s, in to influence policy and federal elections via non-electioneering or non-specific ads. Spending by 501(c) organizations is estimated at $196 million, probably three times as much as in 2004 and “If Democratic-
oriented 527s dominated the soft money system in 2004, then 501(c)s in 2008 have evened the partisan balance (Campaign Finance Institute 2009a).

Third parties who want to publicize an issue may choose to make their expenditures or campaigns in the pre-writ period. This, according to most participants, did not constitute a pragmatic option. Aucoin stated that he did not think that third party spending outside the writ had grown significantly because “in part, that’s the Canadian culture still holding people back.” As Pennings and Senator Carstairs and others argued, pre-writ spending simply was ineffective and did not capture public attention. As Carstairs put it, “It has been my view that advertising spent in pre-writ periods is virtually useless.” Carstairs’ observation fits well with Graber’s argument that “The need for citizen alertness is cyclical; it is greater in times of crisis and less at other times. People who normally ignore much of the political news flock to the media during crises” (Graber 2006, 175). While technically a third party may solicit contributions in the six-month period prior to the writ, in a period of minority government, the restriction on pre-writ contributions effectively means that no contributions can be sought because of the uncertainty of when there may be a vote of non-confidence, bringing down the government. This restriction, at the very least, is a considerable curb on freedom of association.

Overall, when third party advertising limits are considered along with the prohibition on union and business to donations to political parties, there has been a significant tightening of free expression in Canada. Boatright summarized the current status of Canadian third party spending as “definitely pro-party and anti-interest group” and argued that interest groups effectively cannot do anything during election season now. If you’re a group that genuinely wants to introduce an issue that parties are not talking about, there’s not really much you can do. So . . . I feel like the Canadian laws have gone a little bit too far in silencing groups. The U.S. law . . . has limited to some extent what groups are able to do during an election, but that has more to do with where the group’s money is coming from.

Harada (2006, 164) quotes Elizabeth May of the Green Party as asking: “Where’s that voice in an election campaign? It’s not going to come from non-governmental organizations because they’re silenced.” Pennings argued that there have been anti-democratic effects because
The political system belongs to the political parties. And we have not found an effective way to engage others. So when it comes to third parties, I’m very negative on our system . . . I think what it really has done is it has focussed all the power and the emphasis on the parties and we have seen politics as belonging to the political parties as opposed to the public square.

Nicholls argued a similar point:

Election gag laws actually prohibit people from participation in the democratic process. It restricts people’s ability to have their voices heard. Basically it is a monopoly of political parties and professional politicians on election debate.

Finally, Johnson, a retired journalist observed that,

In our society an individual alone is helpless in politics. So, the only way ordinary people can have an influence in politics is by association; it can be in political parties, which is the main [option], but political parties are not infallible.

So, on principle and in general, I’m against the restrictions. I agree with the minority opinion of Chief Justice Beverly McLaughlin . . . I feel very strongly that that this country by our laws really does not respect the minimum acceptable standard in a free and democratic society of freedom of speech and freedom of association.

One final challenge to Canada’s curbs on third party expenditure is internet publication, which does not fit clearly into what constitutes ‘advertising’ during an election period. Small (2009) documents differences between the U.S. and Canadian regimes in how each define political advertising but also in how they interact with spending and valuing of ‘donation’ of intellect and expression. For example, since third party activities are exposed through reporting ‘expenditures,’ methods of valuing of an internet ‘comment’, blog or video are increasingly being probed. Is it a volunteer activity? Should its value be predicated on its success? Should its value be based on the professional skill of the internet contributor? Finally, there is a question of how a political party or candidate can refute false allegations made on the internet. Writing about scandals in particular, Kenny (2009, 507) has argued that in the U.K., “None of the parties has control over how this information is presented. As each day of revelations passes, party managers have little idea about which bits of information will emerge next.” More generally, Scheufele (2007, 2) states that not only is the internet a “powerful fundraising tool” it is also a “very unpredictable communication tool”.
Conclusions

The purpose of this chapter has been to identify and qualify the impact of post-2000 campaign finance rules in Canada on Canadian democratic practices and to use the experience of the U.S. and U.K. as a means to place these in context. Despite continuing strong advocacy on behalf of further regulation by numerous authors and actors, the Canadian case can be seen as an instance where “theory sprints ahead of practice,” according to Lenihan of the Public Policy Forum (Pacquet 1999, 75).

Despite the significant level of regulation of Canadian party, candidate, leadership and third parties, and lobbying, there has been little response in terms of trust operationalized as turnout, monetary contributions, volunteering or political knowledge. This is particularly true when Canadian practices are compared with those of the U.S. and the U.K. where regulation has had a lighter touch. Knowledge in the electorate of political finance was deemed to be rudimentary at best with Fisher, for example, noting that there is significant confusion between categories of ‘political money’ in the view of the electorate: news or scandals regarding party finance versus member expenses are not differentiated by the public. As charts 8.1 and 8.2 indicated, there has been little positive movement in either voter turnout or improvement in perception of corruption in the decade 2000-2010. Whether these measures would have shown improvement without the legislative measures taken or whether further declines would have been registered without the legislative measures taken cannot be determined.

Participants demonstrated sharply differing notions of how campaign finance rule changes, as an institutional reform, could affect trust and participation. Cameron stated that,

But again, I think it’s probably hard to separate the results of campaign finance reform from other kinds of phenomenon in society. And we’re kind of moving from a political culture based on, you know, grassroots organization in the church basement to on-line activism where it’s less direct contact, you know, more you just click and send your fifty dollars to the candidate or cause of your choice. So, we’re changing the way that politics is done and I think campaign finance legislation has a lot less influence on that than broader social trends.
Ajzenstat, Joyal, Crowley and many others argued that “Society is running is the direction of mistrust” and that because trust conflates “a myriad of factors,” that the use of trust as an indicator of either desire for reform of campaign finance or as an indicator of success or failure was limited. Manning, however, doubts the effectiveness of institutional changes as a means of stimulating more ‘democracy.’ As he stated:

I’m a great believer in democratic reform and getting people more involved and committed to the democratic process. But I don’t think you get there by these mechanistic changes in the process . . . [The Canadian electorate] is not interested in the mechanics of it . . . Changes don’t drive interest; it’s the other way around.

As well, the role of the party leader and the candidate were critical. As Proctor noted, his former constituents would say to him, “I don’t trust the system but I trust you.” Gairdner observed that although the electorate may not have detailed knowledge of political finance, “Publics are not ignorant about people telling the truth and they’re not ignorant about people trying to fool them.”

Participants, including Wilkinson and Cameron, pointed to the symbolic nature of the post-2000 reforms and the role of the media in perpetrating ideas of widespread corruption. As the latter noted,

So, the abuse draws attention but the solution doesn’t. There are many, many things done under the Federal Accountability Act to increase public confidence in government. Many of them were justified but, I think, it was more the symbolism that the government was going to deal with the cronyism between advertising companies and the government and the lobbyists and so on, in some way. [Voters] haven’t paid a lot of attention to the solution; they paid attention to the problem.

The most discernible difference between Canada and the two shadow cases is the much greater suspicion and control of both third party spending and what are considered to be ‘large’ donations that has occurred in Canada not only earlier than in its two counterparts but also much more extensively. As Beer argued in his 1956 comparison of the U.S. and U.K., the “profit motive is under such a cloud [in the U.K.] as would be inconceivable in the United States” (Beer 1956, 19). What he noted for the U.K. could have been said of Canada also. Canadian fear of ‘becoming American’ in terms of spending in electoral contests and
partisan spending by its interest groups redounds through reports of the Barbeau Committee, the Lortie Commission, Elections Canada and in work by authors such as Hiebert (2006).

Within Canadian civil society, unions have demonstrated a more consistent response, according to participants, than has business, with donations migrating to electoral contests in other jurisdictions, concerted use of volunteer labour—either genuine or ‘required’ volunteering—and internal communications. By contrast, business response to lowered ceilings on donations and then their prohibition in 2006 has been more ambiguous, with some inconclusive evidence of more lobbying. However, decline of formal business engagement with parties and candidates cannot be entirely attributed to campaign finance rule donations since business donations to political actors came under more scrutiny in the 1990s as international norms surrounding business activities in politics changed and governance studies emerged.

The role of the Barbeau Committee and the Lortie Commission cannot be overstated in their recommendations to limit third party activity. However, the commission made three highly debatable assumptions: first, that third-party spending in the 1988 election constituted part of a trajectory rather than standing as an outlier; second, that the spending of money in an election contest inherently demonstrated systemic unfairness rather than the essential openness of the system; third, that third parties in Canada would inevitably act as do their American counterparts. The fear of ‘becoming like the U.S.’ thus has continued to shape Canadian campaign finance. As Axworthy, author of one study for the commission and former Principal Secretary to Prime Minister Trudeau stated, in testimony to the Lortie Commission, “The value of examining the American experience lies in seeing the future, and in this case the future doesn’t work” (Lortie Commission 1991, Vol. 4, 164). While this observation did not characterize all of the commission nor its findings, the anti-American impetus underlying much of Canada’s campaign finance regime cannot be ignored.

Institutional as well as cultural differences still matter. As Beer in 1956 argued, differences between the U.S. and U.K. in ‘pressure group’ activity and tolerance of it, depended on first, institutional differences one of which was the “discipline of British parties and the centralized power of cabinet government” and second, the “changing context of
culture and political structure” within which pressure groups or third parties “continuously interact” (Beer 1956, 2). As Beer argued, “British custom has always been far more tolerant than American of the legislator who is intimately connected with outside interests” (Beer 1956, 6).\(^{28}\) By contrast, he argued that the power of the individual legislator and the legislature in general in the U.S. (in contrast to Westminster cabinet government) meant that “greater power to exert pressure is linked up with greater power to act . . . It is no wonder that [American] pressure politics is so much noisier and less tidy today than Britain’s” (Beer 1956, 9). Thus there were strong institutional and cultural bulwarks in the U.S. and U.K. which have proved more highly resistant to change than those obtaining in Canada.

Just as importantly, “Informal constraints matter. We need to know much more about culturally derived norms of behaviour and how they interact with formal rules to get better answers to such issues” (North 1990, 140). This chapter has suggested ways in which political culture and culture more generally may interact and methodology to test for interactions between campaign finance reform and political culture.

Institutional theories of transforming political culture offer such significant promise: greater trust, greater engagement, greater voice, substantive representation and so on. By contrast, non-institutional theories of participation depend on characteristics of the electorate to drive participation. Many participants, however—of all parties and of all ideological leanings—made comments such as the following about Canadians’ views and interest in politics: “people have so little sense of responsibility;” “Canadians don’t want to take ownership;” political knowledge is “often superficial;” and “people want a free ride.” Thus my review of a wide variety of responses to Canadian institutional reforms confirms those of Young (forthcoming, 28) who employs social democratic audit criteria and finds little to substantiate that campaign finance reform, as experienced in Canada, represents an antidote to declining rates of participation, degrees of inclusion or parties’ responsiveness to the electorate, at least in the case of Canada.

\(^{28}\) Beer quotes Winston Churchill as having stated “We [Members of Parliament] are not supposed to be an assembly of gentlemen who have no interests of any kind and no associations of any kind. That is ridiculous. That might happen in Heaven, but not, happily, here” (Beer 1956, 6).
As Mann has so eloquently written,

*After all, regulating democracy is a bit like running with the bulls in Pamplona. Try as you might to impose order, chaos reigns* (Mann 1997, 331; italics added).
## Chapter 8 Tables

### Table 8.1 Voter Turnout in General Elections: Canada, U.S., and U.K. 1960-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Canada (VAP)</th>
<th>U.S. (VAP)</th>
<th>U.S. (VEP)**</th>
<th>U.K.</th>
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<td>79.2%</td>
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<td>74.8%</td>
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</tr>
<tr>
<td>1978</td>
<td></td>
<td>60.9%</td>
<td>60.1%</td>
<td></td>
</tr>
<tr>
<td>1979</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1980</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td></td>
<td>64.7%</td>
<td>61.4%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Canada (VAP)</th>
<th>U.S. (VAP)</th>
<th>U.S. (VEP)**</th>
<th>U.K.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td></td>
<td>75.3%</td>
<td>50.1%</td>
<td>75.3%</td>
</tr>
<tr>
<td>1987</td>
<td></td>
<td>75.3%</td>
<td>52.8%</td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td></td>
<td>75.3%</td>
<td>52.8%</td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>75.3%</td>
<td>52.8%</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td></td>
<td>75.3%</td>
<td>52.8%</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td></td>
<td>75.3%</td>
<td>52.8%</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td></td>
<td>71.8%</td>
<td>55.1%</td>
<td>77.7%</td>
</tr>
<tr>
<td>1993</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
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<tr>
<td>1995</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
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<td>1996</td>
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<td>69.6%</td>
<td>58.1%</td>
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<td>1997</td>
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<td>69.6%</td>
<td>58.1%</td>
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<td>1998</td>
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<td>69.6%</td>
<td>58.1%</td>
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<td>1999</td>
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<td>69.6%</td>
<td>58.1%</td>
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<td>2000</td>
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<td>69.6%</td>
<td>58.1%</td>
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<tr>
<td>2001</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
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<tr>
<td>2002</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
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<tr>
<td>2003</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
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<tr>
<td>2004</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
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<tr>
<td>2005</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
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<tr>
<td>2006</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td>69.6%</td>
<td>58.1%</td>
<td></td>
</tr>
</tbody>
</table>

* National turnout rate among voting age population; ** National turnout rate among those eligible to vote (VEP)

Table 8.2 Perception of Corruption: Canada, U.S. and U.K. 2009

To what extent do you perceive the following institutions in this country to be affected by corruption?

(1: not at all corrupt, 5: extremely corrupt)

<table>
<thead>
<tr>
<th></th>
<th>Political Parties</th>
<th>Parliament/Legislature</th>
<th>Business/Private</th>
<th>Media</th>
<th>Civil Servants</th>
<th>Judiciary</th>
<th>Average Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>3.5</td>
<td>3.2</td>
<td>3.4</td>
<td>3.1</td>
<td>3.1</td>
<td>2.7</td>
<td>3.2</td>
</tr>
<tr>
<td>U.S.</td>
<td>4</td>
<td>3.9</td>
<td>3.7</td>
<td>3.7</td>
<td>3.7</td>
<td>3.2</td>
<td>3.7</td>
</tr>
<tr>
<td>U.K.</td>
<td>3.6</td>
<td>3.3</td>
<td>3.5</td>
<td>3.5</td>
<td>3.2</td>
<td>2.8</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Range: Singapore: 2.2; Uganda: 3.2; Zambia: 3.2; Liberia: 3.7; Thailand: 3.3; Ukraine: 4.3

Which of these six sectors/organizations would you consider to be the most affected by corruption?

<table>
<thead>
<tr>
<th></th>
<th>Political Parties</th>
<th>Parliament/Legislature</th>
<th>Business/Private</th>
<th>Media</th>
<th>Civil Servants</th>
<th>Judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>30%</td>
<td>12%</td>
<td>32%</td>
<td>8%</td>
<td>13%</td>
<td>5%</td>
</tr>
<tr>
<td>U.S.</td>
<td>20%</td>
<td>30%</td>
<td>22%</td>
<td>13%</td>
<td>13%</td>
<td>2%</td>
</tr>
<tr>
<td>U.K</td>
<td>30%</td>
<td>14%</td>
<td>27%</td>
<td>15%</td>
<td>10%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: Transparency International, Global Corruption Barometer, 2009; based on the average scores of 6 surveys in Canada, 6 surveys in the U.K., and 8 surveys in the U.S.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Contributions</th>
<th>Value of Contributions (in $ thousands)</th>
<th>Corporations (in $millions)</th>
<th>Individuals (in $millions)</th>
<th>Rounded Total (in $millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>181,712</td>
<td>30,186</td>
<td>1.266</td>
<td>9.096</td>
<td>10.362</td>
</tr>
<tr>
<td>1990</td>
<td>281,433</td>
<td>34,306</td>
<td>0.649</td>
<td>10.565</td>
<td>11.214</td>
</tr>
<tr>
<td>1991</td>
<td>210,347</td>
<td>33,445</td>
<td>0.576</td>
<td>10.920</td>
<td>11.496</td>
</tr>
<tr>
<td>1992</td>
<td>206,665</td>
<td>33,125</td>
<td>0.597</td>
<td>10.241</td>
<td>10.838</td>
</tr>
<tr>
<td>1993</td>
<td>383,320</td>
<td>96,003</td>
<td>1.044</td>
<td>19.590</td>
<td>20.634</td>
</tr>
<tr>
<td>1994</td>
<td>176,823</td>
<td>33,560</td>
<td>0.947</td>
<td>9.192</td>
<td>10.139</td>
</tr>
<tr>
<td>1995</td>
<td>184,369</td>
<td>37,631</td>
<td>0.591</td>
<td>9.945</td>
<td>10.536</td>
</tr>
<tr>
<td>1996</td>
<td>203,533</td>
<td>41,658</td>
<td>0.528</td>
<td>10.300</td>
<td>10.828</td>
</tr>
<tr>
<td>1997</td>
<td>338,951</td>
<td>93,955</td>
<td>0.680</td>
<td>15.400</td>
<td>16.080</td>
</tr>
<tr>
<td>1998</td>
<td>173,304</td>
<td>31,935</td>
<td>0.647</td>
<td>9.735</td>
<td>10.382</td>
</tr>
<tr>
<td>1999</td>
<td>168,369</td>
<td>34,194</td>
<td>0.509</td>
<td>10.439</td>
<td>10.948</td>
</tr>
<tr>
<td>2000</td>
<td>513,935</td>
<td>98,492</td>
<td>0.926</td>
<td>19.922</td>
<td>20.848</td>
</tr>
<tr>
<td>2001</td>
<td>105,447</td>
<td>31,540</td>
<td>0.875</td>
<td>8.802</td>
<td>9.677</td>
</tr>
<tr>
<td>2002</td>
<td>167,971</td>
<td>30,440</td>
<td>0.499</td>
<td>10.104</td>
<td>10.603</td>
</tr>
<tr>
<td>2003</td>
<td>162,395</td>
<td>48,389</td>
<td>0.617</td>
<td>12.112</td>
<td>12.729</td>
</tr>
<tr>
<td>2004</td>
<td>335,006</td>
<td>58,085</td>
<td>1.004</td>
<td>22.024</td>
<td>23.028</td>
</tr>
<tr>
<td>2005</td>
<td>344,874</td>
<td>61,670</td>
<td>0.721</td>
<td>25.421</td>
<td>26.142</td>
</tr>
<tr>
<td>2006</td>
<td>290,888</td>
<td>59,365</td>
<td>0.882</td>
<td>24.274</td>
<td>25.156</td>
</tr>
<tr>
<td>2007</td>
<td>258,521</td>
<td>39,625</td>
<td>0.315</td>
<td>20.495</td>
<td>20.810</td>
</tr>
</tbody>
</table>


Note: Data vary from report to report because of revisions. All dollar amounts are Canadian dollars.
Table 8.4 Regulation of Third Party Spending: Canada and U.K., 2010

**Canada**

<table>
<thead>
<tr>
<th>Terminology</th>
<th>Third parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>Expenditures or advertising that &quot;a reasonable person&quot; would see as promoting or opposing one more specific candidate or party;</td>
</tr>
<tr>
<td></td>
<td>Intended to influence how an elector might vote, by promoting or opposing a registered party or the election of a candidate, including a message that takes a position on an issue with which a registered party or candidate is associated</td>
</tr>
<tr>
<td>Registration</td>
<td>Mandatory if spending exceeds $500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Per EDA</th>
<th>Unions</th>
<th>Nation-wide</th>
<th>Business</th>
<th>Individual</th>
<th>Not-for-Profit</th>
<th>Charitable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit in General Election</td>
<td>$3,828*</td>
<td>0</td>
<td>$188,250*</td>
<td>0</td>
<td>$150,000*</td>
<td>$150,000*</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting</th>
<th>Return due within 4 months of election day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulated Period</td>
<td>Six months prior to election</td>
</tr>
<tr>
<td>Donor Controls</td>
<td>Must come from permissible donor; Covers all donations over $200</td>
</tr>
</tbody>
</table>

* Includes annual inflation adjustment; the CEA specifies $3,000 per EDA; $150,000 nationwide. If advertising opposes a candidate, no more than $3,828 per electoral district; if opposing a party or an issue, maximum $188,250 nationwide. Amounts are for year ending March 31, 2011.

**United Kingdom**

<table>
<thead>
<tr>
<th>Terminology</th>
<th>Non-party campaigners or third parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>Individuals or organization other than political parties or candidates who/which campaign at an election; may campaign for or against individual candidates or parties or issues</td>
</tr>
<tr>
<td>Registration</td>
<td>Mandatory if spending over £10,000 in England; over £5,000 in Scotland, Wales or Northern Ireland</td>
</tr>
<tr>
<td></td>
<td>No returns; no control on donations or loans.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>For or Against Candidate</th>
<th>For or Against Party or Issue</th>
<th>National Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit in General Election</td>
<td>£500</td>
<td>£10,000 in England; £ 5,000 in Scotland, Wales or Northern Ireland</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting</th>
<th>Return due within 3 months for expenditure under £250,000; within 6 months if expenditure over £250,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulated Period</td>
<td>365 days prior to election day</td>
</tr>
<tr>
<td>Donor Controls</td>
<td>Must come from permissible donor; covers all donations over £200; Examples: Individual on U.K. electoral register; U.K.-registered company incorporated in the E.U.; trade union. Maximum donation to third party: £1,000,000</td>
</tr>
</tbody>
</table>

**Other limits apply at European Parliamentary elections or local elections**

***U.K. House of Commons Library (2008, 2).**

Sources: Elections Canada; Electoral Commission (UKEC)
Chapter 9  Canadian Campaign Finance Reform: A Cautionary Tale, Not a Failed Paradigm

There are only perfect ideals and imperfect institutions (Kirkpatrick 1981, 337).

Introduction

It is time to weigh the evidence. This dissertation set out to investigate the problematic role of money in politics and its increasing visibility as a public policy issue. In order to provide boundaries on the investigation, I chose to focus on the role of money in political parties and political contests. The prevailing view in the Canadian literature has been that parties had failed as institutions of democracy despite the fact that political parties have figured prominently in the success and stability of Canadian democracy for almost 150 years. Parties in the past half-century have been relentlessly targeted as ‘failing’ and needing ‘reform’ via the regulation of their income, spending and activities both internal and external. Was further constraint on parties the only way forward or perhaps, was it, as the old aphorism has it, that familiarity had bred contempt? In Rosenblum’s words, there seemed to exist an historic, “plain disproportion between a record of relentless, ferocious opposition to parties and moral disdain for partisans, on the one hand, and reticence, bordering on silence when it comes to defending parties, on the other” (Rosenblum 2008, 3-4).

The reform of Canadian campaign finance ‘exploded’ in the post-2000 period. At the outset, Canada appeared as an outlier in terms of activity in campaign finance as a policy field but in fact the U.S. and the U.K. also experienced significant party finance reforms in the same period although they were less frequent and less wide-ranging. Thus, the inclusion of referent cases became important because of the coincident timing, the current trend toward comparativism in the study of Canadian political phenomena and the stronger basis on which to generalize. As someone has quipped, “Someone who knows one country only knows no country.” What seems to be ‘normal’ on the basis of one nation’s experience may become less so in comparison.

A final factor contributed to the focussing of my research. The German model of party finance, and particularly the public subsidy of parties, has stood as a major referent in
Canadian work on campaign finance. Yet the ongoing usefulness of the German model of party subsidies invited study because of significant differences in historical institutional and cultural patterns. Could ‘reforms’ to party finance really be transferred this easily between differing contexts? A final flag was that cartel theory, prominent in explaining behaviour of Western European parties had been, if not rejected, at least cautiously applied as a model of Canadian party organization and behaviour, yet its offspring, public utility theory underlay the acceptance of public subsidy of parties in the Canadian literature. Combining this inapplicability of cartel theory to Anglo-American democratic practice with the common historical and cultural legacy of the three countries confirmed the selection of the U.S. and U.K. as appropriate comparators.

Weighing the evidence means of course selecting the evidence. Extensive scholarship on the potentially beneficial effects of campaign finance rules had already occurred, yet there was a relative absence of empirical testing of the basic assumptions. As well, work by Young, who employs social democratic audit criteria, finds little evidence of public benefit (Young forthcoming, 28). Therefore I have sought, both in theory and in measurable criteria, to approach the question of evidence from an alternative, liberal democratic perspective. Suggestions by the scholars and the politically experienced who were interviewed drove the selection of criteria. In the remainder of this chapter, I first return to the hypotheses to assess their validity and adaptability for future research. Second, I assess intervening variables that, as noted by Jansen and Young in our interviews, bedevil the identification of straightforward causal linkages between campaign finance rule changes and their effects on democratic practices. Third, I look at implications of my findings, not so that we can identify black-and-white ‘success’ or ‘failure’ but rather so that we recognize explicitly the range of acceptable outcomes. In doing so, I take the not-inconsiderable risk of suggesting that adopting certain practices of U.S. campaign finance practice is not inimical to Canadians’ best interests. Finally, I conclude with thoughts about the “subtle art of creating finance legislation” (Smith 2005, 250) for indeed it is an art and not a science.

Tests of Hypotheses

Hypothesis one posited that the Kingdon model (2003) of policy change provides a superior explanatory model to the Heclo model in accounting for the reasons and the ways in
which campaign policy change has occurred. It will be recalled that the Kingdon model assigns key roles to problem identification, specification of policy alternatives and politics. By contrast, the Heclo model (1974, 305) assigns the state a primary role where the state “collectively puzzles” on society’s behalf and where the role of experts and their ideas are central to policy making. The significant difference between these models is the role of politics: in Kingdon’s model it is present, in Heclo’s it is relatively absent. The findings strongly confirm the first hypothesis. Politics has been the ultimate catalyst for change. This is not to dismiss the role of ideas or the role of experts, who have been key, as demonstrated in the review of the literature, the analysis of the role of Elections Canada and so on. However, without political factors and political actors, the ideas may well have remained moribund. Ideas of democracy, parties and citizenship in the electoral process can be seen as paramount. Notions of liberal democracy, foundational to which was the idea of a strong voluntary or non-state sphere of society, held sway until challenges arose from political theorists who foresaw party-less democracy. Rawlsian and Marxist-feminist critiques of liberal democracy prioritized citizen deliberation and engagement as the new *sine qua non* of realizing progressive notions of legitimation of democracy as a process via the benchmarks of citizen engagement, non-partisanship and mirror representation. Perhaps distorting, but nevertheless compelling, the “private is public” call for democratization in all institutions, including the workplace and the home, held a certain allure and put those who would speak for the validity of a private sphere on the defensive.

Campaign finance reform ‘waves’ in the late nineteenth and early twentieth century in all three nations addressed foundational problems of patronage in the civil service and eliminated egregious forms of bribery and extortion of elected officials and voters alike. Problem identification and timing again were similar in the 1960s-1970s period. The common factor was the upward drive in costs. Politics, in the form of the Watergate scandal, brought abuse of power to the forefront as a policy problem and political issue in the U.S., with spill over into Canadian politics and a fear that Canadian politics and election contests would overly mimic those in the U.S. Yet only Canada took the first step, via the legal recognition of parties in 1970. Governments in neither the U.K. nor the U.S. moved to do so. Another political factor—a minority government—facilitated or triggered the 1974 reforms in Canada. Additionally, Canadian reforms in 1974 and through the 1980s and 1990s laid a
completely different foundation for future reform than did those in the U.S. The Canadian Parliament, in actions unthinkable in the U.S. because of the First Amendment, passed restrictions on campaign spending and third party spending. By contrast, the Federal Election Campaign Act (FECA) in the U.S. sought to limit contributions.

Why this divergence and why was this move to codify norms in Canada more pronounced than in either of the shadow cases? The evidence suggests that historic reliance on common law, an unwritten Constitution in the U.K. and trust-based approaches (Fisher 2009) prevailed over law-based approaches. As Bagehot ([1872] 1936, 275) observed, one of the successes and tasks of the U.K. Parliament was to “frame such tacit rules, to establish such ruling but unenacted customs.” In the U.S., this was matched by the strength of First Amendment rights to speech and expression and the institutional tradition that parties were registered in the states rather than at the federal level. As well, would-be reformers in Canada had softer ground to till: claiming political parties as ‘public assets’ in service to the cause of Canadian unity was more easily accomplished due to the fragility of the Canadian state in the 1960s-1990s, Charter debates and the threat of Quebec secession, and the example of the Quebec campaign finance model. Neither the U.S. nor U.K., despite racial tensions in the former and severe economic restraints in the latter, posed such a threat to civil society or the private sphere. We can see even at this point that Heclo’s explanatory policy model breaks down—while experts and ideas have played a significant role in the policies adopted in the Canadian campaign finance field, they are by no means the only factors. Thus in the 1970s, the emergence of politics, in the general sense, and the emergence of informal and formal constraints, constituted further factors of significance impelling the diverging paths of Canada and its counterparts in campaign finance.

The politics of national unity acted as a catalyst to campaign finance reform and shaped the Canadian campaign finance regime in particular ways. As a newer democracy than its two counterparts and without either a revolutionary past or a well-articulated allegiance to historic traditions, Canada faced the ongoing challenge of melding the differences between Quebec’s historic, statist, and civil code traditions with the liberal, unwritten and common-law tradition inherited from the U.K. The statist tradition of Quebec also intermingled with a renewed statism in the literature which argued that the state and its
representatives were actors more than background: variables, not parameters. The state and the bureaucracy were regarded as largely beneficent actors (Heclo 1974; Skocpol 1986). Thus, the Canadian federal government took a first step toward policies that aligned national-level campaign finance rules with those adopted in Quebec, in part due to the threat to Canadian identity posed by the separatist movement and in part due to the perceived necessity of adopting policies that would strengthen the Canadian union. The evidence suggests that the lead of the Parti Québécois in rejecting union and business funding and the campaign finance model adopted by Quebec were foundational in influencing the Canadian government to adopt a rule-based model of campaign finance. This rule-based regime diverged significantly from the informally constrained model of earlier decades and from the ongoing norm-based model of the U.S. and the trust-based model of the U.K. Canadian governments and its two study commissions on political finance, failed to recognize—or chose not to recognize explicitly—the diminished role for civil society that was implicit in both recommendations and legislation passed. By contrast, the U.K. and U.S. governments demonstrated a far greater attachment, if you will, to both a norm-based campaign finance regime and to greater freedom for civil society to engage with political parties. This was mirrored in both American and U.K. political science literature which afforded a more pronounced role for civil society. As well, the ability of powerful interests in American civil society to engage in political contests via PACs and other such organizations, and the example of that practice, was deemed threatening by many Canadian observers, including the authors of the Barbeau Committee report and of the Lortie Commission report.

The fear of Canadian electoral contests becoming “too American” built on earlier anti-Americanism and became thematic in the decades to follow. The Barbeau Committee and Lortie Commission studies continued the theme of Canadian authors such as Grant and Macpherson who, in large part, asserted Canadian national identity in a “not-American” manner. Numerous articles in the literature continued this pattern, raising the spectre of Canadian electoral contests becoming “like those of the U.S.” The ongoing repetitiveness of this fear serves to underscore its importance in driving Canadian reforms in a direction away from that taken or enabled by U.S. legislation. This tradition has not run its course, with Young (forthcoming, 29) referring to the “corrosive impacts we have seen in the American experience” of campaign finance. A significant percentage of those interviewed also referred
to the U.S. experience: by contrast, the U.K. was not mentioned spontaneously. However, the writings of Canadian political theorists and scholars were influential in a different way as well. Macpherson, in explicitly rejecting capitalism and as he termed it, ‘capitalist-funded’ political parties, the implicit adoption of Duverger’s elevation of the mass-funding model of European political parties and Meisel’s scathing denunciation of corporate donations to parties provided the backdrop and ongoing legitimation of campaign finance as a tool to ‘wean’ parties from private-sector funding and move them towards a more ‘mass-based’ and tax-funded model.

In the post-2000 era, campaign finance reforms in Canada were driven by a different set of forces than those in the U.S. or U.K. Reforms in the post-2000 period must thus be seen against the landscape of prior reforms, institutional history and other, specific national characteristics or events. The changes introduced by the Liberal, Chrétien-led government in 2000 and 2004 and the Conservative, Harper-led government in 2006 cannot be termed ‘policy-making’ in the sense that Heclo (1974) defined policy making as a “form of collective puzzlement on society’s behalf.” The changes occurred abruptly and, as the evidence in Chapter 4 and 7 demonstrated, were driven by self-interest and intra-party interests in the case of 2004, or in 2006, by ideas of the party or the leader, or as a strategic initiative. By contrast, changes in the U.S. addressed the ‘problem’ of 1990s scandals and, despite the bipartisan title of the 2002 act, represented less of bipartisan ‘feeling’ than bipartisan pragmatism. In the U.K., political decisions by the governing Labour party to move away from its reliance on union funding combined with specification of reform of party finance as a means to acknowledge and address falling levels of public confidence in U.K. politics.

Finally, partisan politics in Canada came to be disparaged in the Canadian parties literature to a much greater extent than was the case in the U.S. and U.K. literatures; the edginess of partisanship did not fit well with the fragility of Canadian politics throughout the period and partisanship seemed somehow out-of-step with the multiculturalist policies adopted by the Canadian government in the 1970s. As a renowned party activist and constitutional scholar Senator Eugene Forsey wrote in 1985, “The one thing you can’t do in Canadian public discussion is mention names; you may come, in the New England phrase,
‘as nigh to it as a pig’s snout is to his squeal,’ but you mustn’t mention names” (1985, 198). Simone Chambers, a political theorist, concurs when she writes that in the late twentieth century period, “Difference is something to be gotten past” (2003, 321). Although antipartyism (Gidengil et al. 2001; Rosenblum 2008) was not unique to Canada, antipartyism in Canada converged with other specific features of Canadian politics to act as incentives to the way in which campaign finance rules were shaped and the outcomes they would have.

These findings also serve to confirm the validity of Hypothesis two: that, in consonance with new institutionalism, the existing framework of formal and informal constraints strongly conditioned the types of campaign finance rule changes adopted in Canada and its counterparts. In Canada, had there been no prior restraint on third-party speech, the encroachment on free speech in 2000 would have seemed egregious and would likely have provoked more protest. Had there been a stronger, historical defence of third-party spending in Canada, there would have been a greater outcry in response to limiting and then eliminating business and union spending in 2006 and 2008. As demonstrated in Chapter 5, while U.S. governments and courts have vigorously sought to protect electoral contests from undue outside influence via political action committees, 501(c)s, 527 organizations and so on, the level of influence tolerated is far broader than it is in Canada. Spending limits for third parties, as discussed in Chapter 8, are also far more generous in the U.K. Additionally, other informal and formal constraints existed in the U.S. and the U.K. which restrained governments there from intruding into party organizations and procedures as much as has occurred in Canada.

The post-2000 federal reforms in Canada have rendered national elections and parties more regulated at both national and local levels (provincial politics being regulated at the provincial rather than federal level); have rendered party leadership and candidate contests at least as regulated as those in the U.S., and the monetary contributions of even individuals to be much more circumscribed than in the two referent cases. The informal constraints of a voluntarist tradition in the U.K., its historical preference for unwritten traditions or policies rather than written democracy-related documents and a greater latitude granted to politicians in representing interests all contributed to a different style of campaign finance regime change in the post-2000 period than that in Canada. The U.K. model emphasized reporting
and transparency and ongoing limits (although considerably higher than Canada’s) on
candidate expenditure rather than on contributions. In the U.S., *First Amendment*
defences in combination with a greater tolerance for free enterprise, the courts’ ongoing unwillingness to
equilibrated unevenness in resources with either inequality in electoral access or with
corruption *per se*, and the relative absence of significant minority parties, shaped the
Bipartisan Campaign Reform Act of 2002 in a particular way.

Hypothesis three posited that rule changes are not neutral in their outcomes, that
parties, contrary to cartel theory, would respond variably rather than uniformly and rule
changes would work in configuration rather than in isolation. The evidence of Chapter 7
provides plentiful evidence confirming hypothesis three. The insights of those interviewed,
many of whom were past or current party practitioners, spoke to the extensive variation in
response by Canadian political parties, to the subsidy, to the prohibition on union and
business donations and to the limits on individual donations. Innovation and strategic
response marked the Conservative, Green and New Democratic and Bloc Québécois parties
as each sought in different ways to adapt to the new guidelines. The Liberal Party stood in
marked contrast: its succession of leaders; of executive directors; of fund-raising strategies;
the overhang of its scandals; its ‘internecine battles’; and lastly the diffused nature of
ownership of membership lists within the party established it as an outlier in its inability to
adapt to the changed environment. As well, the ideologies of the parties, with respect to the
legitimacy of relying on public funding and the political culture of the respective parties, also
influenced outcomes. Flanagan and Young, as well as others, made reference to the donor
base of the Conservative Party being more attuned to (and practised with) the notion of
donating not only to charities but to political organizations as well.

Hypothesis four, in line with emerging campaign finance theory but also with public
policy and public administration theory, posited that the type and leadership of bureaucratic
oversight or enforcement shapes the scope and structure of campaign finance rule changes.
The evidence strongly confirms this hypothesis with notably different outcomes flowing
from the origin, structure, reporting mechanisms, advocacy role and other functions among
the three examples of enforcement agencies investigated. However, the evidence only
partially confirms Scarrow’s prediction that the “more powerful and the more politically
independent the body [constitutional courts, investigative and regulatory commissions] the more likely we are to find policies which appear to go against the financial interests of dominant parties” (Scarrow 2004, 659). Because of the non-cartel like nature of political parties in Canada, the U.S. and U.K., the ‘financial interests of the dominant parties’ do not constitute a uniform feature; rather, there is variation among the parties in their ‘financial interests’. For the U.S. and U.K., Scarrow’s prediction would necessarily mean that the two dominant parties in each system would both have to suffer adverse consequences. For the U.K., the 2010 election yielded a minority and then a coalition government, a clear break with the British tradition. However no account interprets this electoral result as stemming from the rule changes that the U.K. has experienced. In the U.S., there is little evidence to suggest that either the Democrats or Republicans have ‘suffered’ disproportionately as a result of decisions by either the Federal Election Commission or the Supreme Court.

In Canada, the independence inherent in the officer of Parliament role of the Chief Electoral Officer has strengthened the campaign finance regime and shaped Elections Canada’s role as an agency dedicated to outcomes, not strictly to administering Canadian campaign finance rules. Elections Canada’s main objection to the Conservative Party’s challenge in the QNPO (qualified non-profit organization) case—was that, if it accepted the party’s definition of election expenses excluding GST (goods and services tax) payments, which was in accordance with the federal government’s use of GAAP (generally accepted accounting principles), the outcome would be that the “level playing field would be compromised” (Conservative Fund Canada v. Canada (Elections) (ON. SC.) at 27). My investigation does not substantiate that either the Federal Election Commission or the U.K. Electoral Commission views its role as adjudicating and interpreting, not shaping outcomes.

In Chapter 6 we saw that, in contrast to the situation in the U.S. or U.K., where new agencies of enforcement were created to administer political finance laws, administration of the original restrictions on political finance was placed under the aegis of Elections Canada, a long-established agency. Its successful advocacy for enlargement of restrictions on political finance, its ability to selectively prosecute infringements (as opposed to the UKEC’s declaration that it would pursue all infringements), as well as its authority derived from its dexterous handling of election administration have together resulted in an exceptionally
strong enforcement agency. Its financial resources dwarf those of any of the parties, taken singly or together. This situation stands in sharp contrast to that of the U.K. where, for example, its newly-created commission has recommended that its original mandate to conduct voter education be retracted and where the commission has proved to be sensitive to, but has not capitulated to, the positions of parties in parliamentary democracy. This is similar to the U.S., where the FEC’s performance has long been subject to intense scrutiny.

More broadly, the implication is that, just as Boda (2006) finds for election administration, “independence is not a panacea.” Thomas (2003) argues that the bigger question is independence for what purpose. It is not clear from the Canadian case that the insulation of Elections Canada from parties, with respect to its role in campaign finance oversight, has yielded greater effectiveness than the greater accountability to parties demonstrated in the shadow cases. As well, the evidence indicates that Elections Canada, unique among the three agencies, has been a primary actor shaping campaign finance discourse. This activity has been legitimated by Elections Canada’s prior position as a neutral arbiter of election administration and has been enabled by its sizeable budget. As Brooks (1993, 15) states, the “capacity to influence [policy] discourse is more than half the battle . . .” (Brooks 1993, 15). We, as policy investigators, have no knowledge of how much the administration of Canada’s campaign finance regime costs: these costs are subsumed under the category of ‘Electoral Readiness’ which includes election administration preparation. It seems more than apposite to argue that Elections Canada should break down its costs to facilitate more detailed analysis and assessment of its operations with regard to enforcement of Canada’s campaign finance regime. It may also be time to trim Elections Canada’s significant advocacy role in issues of political finance (not election administration). Instead of continuing to advocate for further constraints, I ask, as does Smith, is there no combination of laws that is not “badly broken and in need of repair?” (Smith 2009, 4).

Finally, as I expected with respect to Hypothesis five, context matters. The Latin origin of context is “weaving together” and the importance of context is amply demonstrated not only in the inter-institutional effects of campaign finance rules with rules governing the length of the Canadian writ and with income tax rules, governing tax credits and deductibility of contributions to various organizations, but also in terms of federalism, the
Charter, and Canada’s Westminster heritage. Additionally, Canada’s political culture influences both the type of campaign finance rules which will be adopted and also the way outcomes play out. However, I do not mean to imply that there are no generalizations which may apply elsewhere. Instead, what the evidence argues is first, that actors—political, citizen or other—do respond to incentives and constraints but the way in which they respond is shaped by both formal and informal constraints and second, that outcomes must analyzed at multiple levels.

Institutional changes, such as the introduction of the subsidy to political parties, and the prohibition on union and business expenditures, thus do not necessarily lead to a single, predictable outcome. As new institutionalism suggests, the evidence of my research underscores the importance of the network of institutions into which the ‘reforms’ or changes are inserted. As I demonstrated in Chapters 5, 6 and 7, the Charter and its interpretation have all significantly influenced campaign finance. Problem specification in the field of parties and political actors became super-charged following the passage of the Charter, a factor absent in both of the referent cases. While the Charter specified twin goals of freedom and equality, the evidence emanating from Chapter 5 on the role of the Charter and the courts and Chapter 6 on Elections Canada, demonstrate the priority granted to the value of equality in the legislation of party finance over the value of freedom. This has not come without cost: there is value in what Kirkpatrick states, although she does so in polemic fashion. She states that, “A single-minded effort to maximize political equality in the adoption of policies . . . would likewise lead to the destruction of democracy by destroying leadership and liberty” and further that “No single value is absolute and none has absolute priority” (Kirkpatrick 1981, 340; 347). This balancing of the twin goals of the Charter—freedom and democracy—has been relatively absent in the literature and in the legislation. The Charter—and the specific interpretations handed down by the SCC—have facilitated challenges to the definition of registered party per Figueroa and the acceptability of the severe constraints on third party spending (relative to those in the U.S. or U.K.). Additionally, the existence of the Charter has tested the limits of drafting campaign finance legislation that is sufficiently robust to resist challenges based in the Charter.
The evidence, on first reading, suggested that the election of three minority governments in Canada in 2004, 2006 and 2008 was markedly related to the court decision in *Figueroa* decision in 2003, which lowered the benchmark for party registration and party status, and to the introduction of the subsidy and limitation (followed by prohibition) on union and business donations. The *Figueroa* decision extended the potential capacity of minority parties, by lowering the benchmarks for party registration and hence the ability to issue tax receipts, acquire expense reimbursement and have the party name listed on the ballot. The 2006 ban on union and business donations, in a complementary manner, eliminated access by parties to large donations. The accumulation of these factors thus offered minority parties the opportunity to compete on a more ‘level playing field’ than in earlier elections.

However, with a more nuanced reading, there is also the possibility that the succession of three minority governments is simply evidence of a transitional period from one campaign finance ‘regime’ to another and that campaign finance changes assisted in or propelled events in an extraordinary time of ‘sorting out’ within the Canadian electorate. As Heard (1960, 427) stated, an election campaign and its events are the one occasion that presses citizens to address themselves to the totality of their government . . . the political campaign asks him to think in larger categories of public concern . . . consciously or subconsciously they themselves decide what things are most important to them.

If this were a transition period, the question then became, how long would the ‘transition’ last? The strength of the NDP and the BQ and their ability to run effective contests in the three elections of 2004, 2006 and 2008 elections cannot be completely explained without the presence of the subsidy. The subsidy contributed to but did not fully explain the Liberal Party’s performance since, as Pammett and Dornan (2006) find, the sponsorship scandal was still uppermost in voter minds in the 2006 election. However, it is quite possible that the Liberal Party could still have garnered business donations if the business community (presuming there is a ‘community’ of interest) had relented from its punishment of the party. By contrast, the existence of the subsidy was used strategically by the Conservative Party as its ‘bread-and-butter’ and it went on to successful fund-raising drives which drew in small donors, much like the Obama campaign. Although it could be
argued that the nearness of power in 2004 might have been sufficient to galvanize the Conservatives to greater fundraising, it seems unlikely that this alone could have afforded the financial advantage now possessed by the Conservative Party relative to the Liberal Party.

If there was such a transition period, it effectively ended with the 2011 general election. The 2011 Canadian general election, in which voters awarded the Conservative Party a majority, and the NDP the status of Official Opposition, found minority parties in just that state—a minority of the vote. The three major parties (Conservative, Liberal and NDP) won 89.1 per cent of the popular vote; the BQ 6.0 per cent; the Greens 3.9 per cent; and all other fourteen competing parties, just 1.0 per cent (Elections Canada “Preliminary Results” 2011). Thus, although the Figueroa decision, taken together with the ban on union and corporate donations and the tax-based subsidy, no doubt strengthened the potential position of minority parties, other, powerful factors were evident. The Conservative Party demonstrated that even within a highly confined set of rules, without large contributions, and with limits on spending and transfers, it was nevertheless possible for a Canadian political party to gain a significant financial advantage over its competitors. The NDP’s success seems to have been rooted in the personal charisma of Jack Layton, its leader, its strength in Quebec due both to its appeal as a preferred federalist party over the Liberals and finally, to the BQ’s ‘coasting’ approach to raising funds to supplement its subsidy. The catastrophic decline of the Liberal Party in the 2011 election, similar in magnitude to the fall of the Conservatives in the 1993 general election, reflected several factors, including leadership, inability to differentiate itself from other parties and the dismal state of its finances.

However, not least is the potent factor of political culture in the 2011 election. The Canadian preference for majority governments and less frequent elections, or ‘strong, stable’ government, was evident in several polls cited by news media as early as 2009 (Russell 2009; CBC 2009) and as well in the writ period in 2011 (Misener 2011; Bryden 2011). Canadians’ preference for a majority government—either Conservative or Liberal, as also indicated in the polls—underscores what LeDuc and many others have found, that Canadians are indeed floating partisans and seem to be pragmatists, rather than ideologues, when it comes to voting. Thus, despite the ‘availability’ of more precise types of representation characteristic of minority parties, the majority of Canadians rejected these alternatives in
favour of the large parties. Again, this demonstrates the power of political culture in mitigating the effects of campaign finance ‘reforms’ adopted elsewhere, the power of affective ties to certain institutions (Olsen 2007, 4-5), and the limits on transferring policy ideas from one context to another.

Turning to more general inferences, Van Biezen (2008) blithely states that voluntarist parties are a nineteenth-century phenomenon: this may fit well in societies where parties have fallen to totalitarianism or where corporatist representation, if not the norm, has been well-accepted and well-integrated. This is not the case for Canada or the shadow cases. Canadians specifically rejected elitist accommodation and problem solving in the 1990s in constitutional debates and more recently have rejected initiatives to move away from first-past-the-post systems in several provinces. It is far from clear that citizens of Canada see proportionality, or representation of specific interests, in its electoral regime as a ‘reform’ or benefit, yet proportionality is what the subsidy is accomplishing by subsidizing parties via the formula based on vote share rather than seat share, the key component of FPTP systems. As well, the subsidy enables parties to survive, if not flourish, without compelling them to relate to their voter base and attract contributions. Contributions act as a confirming factor that parties are acting in line with voter interests; absent them, a key signal to parties is missing—as the current position of the Liberal Party indicates.

Many of those interviewed argued that money follows party policies, it does not lead them. What signal, between elections, will take the place of the pressure of cash flow if a subsidy such as the one introduced in Canada in 2004 is employed elsewhere? The vulnerability and reliance of all the national parties, with the exception of the Conservatives, on the provision of the subsidy, meant that the direction of change was, as Clift and Fisher (2004) predicted, toward that of a dependency of the parties on the largesse of tax-funded financing and deference of parties toward the bureaucracy—in the Canadian case, Elections Canada—in its role of interpreting political finance legislation. This represented a break from the traditional, Westminster position of parties holding the state, or bureaucracy, to account. As well, the historic brokerage function of political parties in Canada may be threatened by the post-2000 changes. If parties choose to focus more regionally in order to gain vote share in future elections, then the inter-regional brokerage function will dissipate if not disappear.
To summarize to this point, hypotheses two and three predicated that the transfer from one jurisdiction to another, of various campaign finance policy mechanisms, is limited by a ‘logic of appropriateness’ in terms of fitting into existing institutional frameworks, where, “To act appropriately is to proceed according to the institutionalized practices of a collectivity . . .,” among other factors (Olsen 2007, 3). The evidence partially confirms these hypotheses. The introduction of the tax-funded subsidy and the prohibition on business and union donations constituted ‘illogical’ change for Canada, based on the historic institutions and the historic position of civil society in the three Anglo-American democracies. I suggest that their adoption in Canada would not have occurred had there not existed a predilection towards them, rooted in the experience and political identity and differentiation (or branding) adopted by the PQ and then the BQ. However, the Conservative Party won the 2011 election with a majority and one of its key policies was to revoke or reduce the subsidy. While there were no doubt several factors at play, it is noteworthy that Canadians did not object to the proposed return to voluntarist, private funding of political parties in sufficient numbers to signal their opposition to such a ‘re-reform.’ This suggests that the subsidy and the ban on business and union donations were considered less, rather more, appropriate by Canadians.

Stoker (2006a, 161) argues that a key factor in institutional design is the principle of revisability and Olsen (2007, 12) summarizes new institutionalism’s tenets that institutional adaptation is “less continuous and precise than assumed by standard equilibrium models;” that policy learning is “myopic and meandering, rather than optimizing;” and that democratic systems “work comparatively well because their political orders are not well integrated.” The introduction of the subsidy in 2003 and its possible elimination following the 2011 election may be classic instances of all three tenets and the importance of maintaining revisability in campaign finance, something that is easier to achieve under a majority government and a non-cartel party system. The Canadian example of changes to campaign finance demonstrates that it is therefore of the utmost importance that in attempting to transfer or import campaign finance rules from a different national context that the existing configuration of institutions and representation be taken into account. Campaign finance rule changes may have highly significant and unanticipated consequences when placed in context and interact not only with other institutional features but also political culture and identity.
Further, their additive nature suggests that their impact is more widespread than is suggested by consideration of each change on its own.

Hypothesis three posited that campaign finance rules trigger significant effects on the organizational behaviour of parties. The evidence strongly confirms this hypothesis and negates the idea that parties respond as a collective with unitary interests. The fortunes of the parties have diverged widely as have their organizational and strategic choices. Bélanger and Godbout (2009) attribute the merger of the Alliance and Progressive Conservative parties to the prospect of the 2004 reforms; several respondents attributed the Green Party’s decision to run candidates in all electoral districts to the 2004 introduction of subsidies; and Cross and MacDermid in their interviews attributed the decision by the NDP to accept the donation of an office building from the Canadian Labour Congress in 2003 as a move in anticipation of the lowered ceiling on union contributions. The BQ, because of its regional base and the associated lower campaign costs has benefitted disproportionately more, financially, than the other parties from the subsidy. Despite this advantage, the BQ nevertheless suffered enormous losses in the 2011 election. The Liberal Party, as confirmed by those interviewed, has attempted numerous strategies in the period following 2004, including changes in party leaders, in fundraising strategies, and in mode of leadership selection. The failure of the Liberal Party to adapt to the new environment cannot be attributed, as noted above, entirely to the changed legislation in 2004 and 2006 because of the pre-existing conditions of the Liberal Party scandals. It is difficult to conceptualize a counterfactual, since in fact the existence of the scandals, as participants argued, at least in part stimulated Chrétien’s decision to introduce the 2004 changes. However, let us try. Without the overhang of the scandal, could the Liberal Party have responded in the way the Conservative Party or its other opponents have? This seems unlikely, given the party’s specific membership issues, the type of member it has attracted and its historic reliance on corporate or large personal contributions rather than small contributions from a wide donor base.

To summarize, the prior organizational structure, pre-existing donor patterns, the ideology and geographical base, as well as leadership of parties, all matter in their response to campaign finance rule changes of the magnitude Canada has witnessed. By contrast, the rule changes in the U.S. and the U.K. shifted resource allocation among the parties and
within civil society or third party actors but parties in those nations have not demonstrated the highly disparate responses and outcomes witnessed in Canada. This is perhaps because there has been a greater logic of appropriateness in the reforms adopted by governments in the shadow cases. In the U.S., the evidence suggests that while the 1970s Federal Election Campaign Act (FECA) led to more activity and fund-raising for the Democrats, the 2002 Bipartisan Campaign Reform Act (BCRA) had the same (and therefore offsetting) effect for the Republicans. While minority party or independent candidates have figured in presidential elections their presence seems unrelated to the passage of either set of reforms and conversely, their absence means that fewer party effects need to be taken into account in developing campaign finance policies. In the U.K., although the 2000 Political Parties, Elections and Referendums Act (PPERA) and the 2009 Political Parties and Elections Act (PPEA) represented a break with the historic traditions of electoral contests being local affairs, the national regulations adopted and the enforcement agency style adopted demonstrate a greater ‘logic of appropriateness’ with existing institutions and political culture preferences than have Canadian policy changes.

Canadian reforms of 2004 and 2006 produced yet other behavioural changes by parties, which confirm hypothesis two and affirm the tenet of new institutionalism that responses to institutional change must be analyzed at multiple levels. The rule changes have undermined the significant autonomy of electoral district associations, a celebrated feature of Canadian parties, not only making them more subject to regulation by Elections Canada, but also to oversight by their national party offices, given the intricate level of detail now required by campaign finance law and the reputational (if not other) consequences of perceived or real violations of the act. Although not new, the criminalization of violations of the Canada Elections Act deemed wilful by Elections Canada was indicated by respondents as a disincentive for volunteers and as an incentive to further professionalization of the task of official agent for electoral district associations and candidates. On the other hand, the ceiling on individual donations may act in favour of greater volunteerism at the local level since, as more than one respondent noted, a contribution of approximately $1100, the current maximum, yields the donor the selective benefit of being more highly visible to the candidate and the party. Before this ceiling, a bigger contribution was required to earn this reputational benefit. As well, if one follows the precept that “where your treasure is, there your heart will
be also,‖ 29 then interest and engagement will follow the contribution. Even if there were no causal relation, surveys of volunteerism indicate a strong correlation between giving of time and money. If this were to be the outcome, then this clearly is favourable from any view of democracy.

If Canadian parties are to be prevented from becoming more dependent on subsidies (and hence the state), and more bureaucratized, then either the government must, as the Conservatives have indicated it will, eliminate or lower the subsidy, accompanied by either higher ceilings on personal contributions and/or afford opportunities for businesses and unions to contribute to parties. A higher ceiling on individual contributions is also congruent with the changing view of money as a participatory vehicle. As noted, much of the party and democracy literature derided the view that giving was an important expression of engagement in the latter half of the twentieth century. However, this is starting to give way to a re-evaluation of the legitimacy of donations, starting with the demonstration effect of the 2000 Dean campaign and the 2008 Obama campaigns in drawing in large numbers of small donors and, according to some, creating a sense of democratic community. As well, it was not clear, according to many participants, that the low ceiling on personal contributions did not communicate the false message that politicians could be ‘bought’ for a sum as low as $1100—little more than the cost of a wide-screen television or a one-week vacation in the sun. The low limits on contributions by citizens may also be inconsistent with, for example, initiatives to engage candidates from minority groups who may need the extra ‘push’ that money can provide, as argued by proponents of EMILY (Early Money is Like Yeast), the American political action committee.

Hypothesis five posited, on the basis of new institutionalism, that the shifts in campaign finance rules constitute changed incentives for not only the parties as organizations but for other organizational and individual actors. Specifically, I expected that campaign finance rule changes would have significant and detrimental direct and indirect effects on civil society. A critical finding was the shrinkage or ‘available space’ of civil society that is

unregulated by the government of the day or the bureaucracy during the campaign and in the period preceding it. From a liberal democratic viewpoint, the shrinkage of Canadian civil society’s role in financing political parties and of speaking through third parties on partisan issues during the campaign/writ period is of critical importance to the democratic process. Advocates for continuing and greater regulation of campaign finance have relied on the argument that more money equals more voice and *ipso facto* constitutes inequality between actors and parties, underlies unjust elections, and is therefore a causal factor in public cynicism and hence the democratic deficit. Following this argument, the interests of the wealthiest players must necessarily be at odds with the interests of the electorate at large and second, the financial resources available to a party trump any other factor or combination of factors such as leadership, policy, reputation, communication or organizational strategy. The evidence of my investigation suggests that this argument is too simplistic and relies too heavily on a dichotomous structure: the ‘people’ versus unions or versus business. The suspicion that any business or union donation necessarily represents ‘undue influence’ and that citizens are unable to identify whether a third party organization is ‘buying influence’, seems to be an under-valuation of the ability of citizens, given the high level of transparency in Canada governing contributions to parties and the vigilance of Canadian media.

Canadian civil society, at least represented by third parties, has in my research, and in comparison to civil society in the U.S. or U.K., demonstrably the smallest opportunity to become involved in certain aspects of politics. It has the lowest ceilings on individual contributions, a prohibition on union and business financial engagement, and severe circumscription of the voice of third parties during and before the writ period. Despite these controls, there is no available evidence from either the work of earlier writers in the social democratic tradition or from my work based in a liberal democratic critique that demonstrates the validity of these constraints or their usefulness as a policy tool to regain trust and engagement via ‘levelling the playing field.’

The early reforms had concrete goals to eliminate corruption in the electoral process and produced measurable, positive outcomes. As reform of campaign finance in Canada has moved away from concrete goals to more intangible goals such as fairness and a ‘level playing field’, policy benefits have become much harder to identify, suggesting that there
may be a diminishing marginal return to campaign finance reform in a mature democracy, once certain benchmarks have been achieved. My research also indicates that the use of an institutional policy change, to wit, campaign finance as it has been practiced in Canada, is too heavy-handed a tool to address the policy goal of greater fairness. As someone has quipped, “If all you have is a hammer, every problem you see is a nail.” In the absence of other, more complex approaches that would likely require constitutional changes, the use of campaign finance seemed like a ‘handy tool’ to address issues of representational equity—which are more than valid in their own right—but do not seem to be susceptible to amelioration through campaign finance rule changes. Changes in campaign finance rules had the additional attraction that the government of the day could change them unilaterally.

As well, changes to campaign finance rules appear superficially to embody democratic values such as fairness and avoidance of even the perception of undue influence. This hypothesized purity however is not in fact an incontestable virtue of regulation of campaign finance reform as public policy. What is the appropriate test for effectiveness? I suggest that it is not perception of undue influence, which has been the test, but rather a test of “high likelihood of serious harm” (Greenawalt 2006, 429). The searches for absolute integrity and for absolute fairness, while laudable, may contain the seeds of their own destruction if the cost is a continual, measurable shrinkage of civil society and weakened political parties.

We need to recall the ‘failure of party’ literature which emerged early in Canada and which has rarely been challenged. Aucoin’s 1999 defence of parties as effective governance institutions and representational vehicles stands almost alone in the literature. Mair (1993, 131) argued as early as 1993 that scholars had mistakenly devoted “almost all [their] attention to questions of how parties fail, or how they are in crisis, or how they are passé.” Rosenblum continues this line of reasoning, writing that antipartyism is characterized by the “supreme value placed on integrity, and the identification of [partisan] division with alienation—a falling off from original unity” (2008, 27). As she suggests, the argument that parties negatively affect participation is a “ubiquitous lament and a justification offered for virtually every proposed regulation and reform . . . Proven or not—and there is no compelling empirical evidence I am aware of—the presumed connection between major
party conduct and abstention [in voting] has become a commonplace of political science and political punditry” (Rosenblum 2008, 276-277). Thorburn (2001, 154), for example, suggested that “general disenchantment with parties may be remediable” with more transparency, accountability, honesty, less partisanship and ‘serious’ policy debate but there is no confirmation that post-2000 policies of transparency and accountability, given the level already achieved in Canada prior to 2000, have led to positive outcomes.

It has been argued that public cynicism might be higher if campaign finance policies such as have been adopted in Canada had not occurred. However, the absence of data does not permit even this conclusion since there is little published evidence to indicate how much Canadians either know about the transparency laws or that such transparency leads to trust rather than more cynicism, as suggested by the literature and by some of those interviewed. This is not to suggest that transparency is not a worthy goal of governance or that insistence on more publicly available data does not promote greater integrity: far from it. However, we must not either confuse general benefits with specific benefits or ‘cross-subsidize’ the validity of a transparency policy with a potential benefit (increased trust and engagement) that seems unlikely to occur.

Unlike the American and U.K. parties and election literature, the Canadian party literature has demonstrated less openness to the idea that it is personal culpability of individual citizens or failure of civic education rather than the failure of parties as institutions that is at the root of the problem. These alternative explanations for non-engagement challenge the narrative of those who advocate further financial ‘starving,’ as Rosenblum characterizes it, of parties, candidates and leaders. The policy ‘problem’ in Canada has been identified as one of institutional failure: that is, failure of parties as institutions to perform adequately. The evidence in my research, however, suggests that correctives applied have cumulatively rendered parties less able to perform their crucial roles: representation, holding the government to account and exploring policy options through ‘regulated rivalry’ (Rosenblum 2008, 456). Aucoin (1999, 101) argued that anti-partyism and anti-partisanship is a “politics that . . . reduces the likelihood of capable men and women, who are otherwise public spirited, participating in what is deemed to be a demeaning process and . . . encourages alienated citizens to seek recourse in anti-party populist movements.” Rosenblum
echoes this when she writes that, “parties are a principal source of creativity . . . Through parties, interests and opinions are organized and brought into opposition, their consequences are drawn out . . . Someone must organize Mill’s serious conflict of opposing reasons . . . party rivalry is constitutive. It ‘stages the battle’” (Rosenblum 2008, 456-457). Or, as Mair (1993, 131) put it, “Parties continue to matter” and the “obliteration of much of what was distinctive about party as a mode of interest representation . . . and other forms of interest representation” has come with a cost.

For Canadians as a whole, the constraints placed on parties and political actors have not seemingly engendered either greater affect, engagement and hence legitimacy for the system but neither do they seem to have impinged on certain activities. At the aggregate level, the number of individual political donors dropped in half from 2000 to 2007, while the total value of political contributions rose in the period 2000 to 2005, but subsequently dropped in 2006 and 2007, the most recent years for which figures are available. While some of these shifts might be attributable to the reforms of 2004 and 2006, they may also be due to economic factors. Nevertheless, the shift, over the long term, from reliance on large corporate and union donations to small, individual donations is remarkable. There are no disaggregated statistics to demonstrate whether and how the identity of donors is shifting. Although the Liberal Party introduced the subsidy and prohibited corporate and union donations and lost power in subsequent two elections and official opposition status in the 2011 election, there are too many other variables involved to attribute the party’s electoral losses (and inability to attract donations) to the introduction of the subsidy. From a different perspective, Canadians generally are less sceptical of government intervention and subsidies than are their American counterparts. The Barbeau Committee in 1966 reported that the Canadians surveyed did not ideologically reject the notion of at least partial public funding of parties. While the New Democratic Party, in consonance with its social democratic roots, has over many years asserted the democratic necessity (or perhaps the partisan interest, since it has always lagged the Conservatives or Liberals in fundraising) of state funding for parties as producers of public benefits, this notion has been challenged in the U.S. While President Obama rejected public funding during the election (although not in the primary), he and his supporters argued that the multiplicity of small donors was the functional equivalent of ‘public’ or tax-financed funding since the widespread donor base did not manifest a single,
predominant interest. If this argument resonates with the American public in the future, it may also gain traction in Canada, because of the political culture spillover effects between the two nations.

As demonstrated throughout my research, and that of others before me, a desire to differentiate Canada from the U.S. has been a significant component not only of Canada’s cultural identity but also of its political culture. The influence of media stories and the scholarly literature regarding the expenditures of American political candidates, parties and third party actors—and scandals—can scarcely be overstated and they were referred to repeatedly by both the Barbeau Committee and Lortie Commission reports. Canadian court decisions have also referred to American jurisprudence. In retrospect, a surprising number of participants contributed, without prompting, a comparison with the U.S., indicating that U.S. campaign finance laws and practices continue to provide a strong backdrop to assessments of the Canadian system. The ever-present fear of Canadian political campaigns taking on the contours and vociferous tone of American political contests has informed almost every aspect of Canada’s regulation of parties, candidates and third party actors. However, a combination of a demonstration effect from the Obama campaign, an admiration for the interest invoked, and the emergence of social networking as a political strategy and vehicle for expression and participation may change this. Many of those surveyed wished for an ‘Obama-effect’ in Canadian politics—one that stirred the imagination, the pocketbook and voter turnout—but also one that had none of the perceived negatives of American politics.

What is also unique about the Canadian approach to campaign finance is the use of tax credits to stimulate political donations. The Barbeau Committee recommended a tax credit for political donations in order to legitimate such donations and put them on a level playing field with charitable donations. Whether the legitimation tactic has worked has not, to my knowledge, been examined. Although the original calculation of the 1974 tax credit for political donations took into account the level of tax credit for charitable donations and was structured so as not to bias donations away from charities, this is no longer the case. If citizens act rationally (even approximately), then the higher tax credit for political donations relative to that for charitable donations may deter donations to charities. Given the high value Canadian place on such organizations (as evidenced by their time and volunteer hours), the
preferential treatment for political donations may indirectly and negatively affect such civil society vehicles.

Further, the increased regulation in 2000 of third party activity during the writ period in Canada, which is triggered by expenditure over $500, appears in stark contrast to the larger playing field and legitimacy afforded third parties in the U.K., which has a similar constitutional structure, and even more so when contrasted with the U.S. Even discounting the U.S. experience, the difference in toleration and acceptance of third party activity between Canada and the U.K. presents a fascinating thought experiment. Although the U.K. government banned political advertising in the media in the 1950s, the counterweight has been continuing permissiveness in third party activity. Why Canadian governments have adopted—and why Canadians have tolerated—such a circumscribed role for third party actors can only be speculated on at this point but surely affords a wide scope for future research. The fragility of Canadian identity and the specific tension emanating from constitutional struggles and the issue of Quebec sovereignty may have rendered Canadians conflict-averse. As well, the Supreme Court of Canada has afforded an enlarged space to equality concerns rather than freedom of expression concerns, at least until recently; this stands in marked contrast to its American counterpart which is keenly aware of the influence of the First Amendment on any regulation of campaign finance that intersects freedom of expression issues. In the U.K., political culture and constitutionalist traditions have entrenched and legitimized a greater role for civil society and have acted as constraints on policies, such as those adopted in Canada that have afforded a relatively small space for partisan spending by third party actors. As Jennings noted in 1961,

> The strength and stability of the voluntary associations are part of the strength and stability of the British Constitution. They make Britain one of the most highly organised countries in the world, a very large part of the organisation being outside the political field (Jennings 1961, 235).

The legitimacy of third parties never really recovered following the 1988 Canadian general election which was fought largely on free-trade policy and the expenditures of third parties. This delegitimation of third party expenditures has continued, despite findings by Tanguay and Kay (1998) and others that the influence of third party spending was more of a non-issue or a “mouse that roared,” as these authors term it, rather than a substantive issue in
the 1988 electoral outcome. But will third party spending laws continue to be a necessary feature of a campaign finance regime, given the advent of blogging, viral ads and so on which may trigger no more ‘expenditure’ than an individual’s time and expertise, neither of which is likely to be declared, regardless of the benefit to a specific candidate or party?

Small’s work (2009) on regulating elections in the ‘digital age’ is a welcome initiation to this field. Although study of the voluntary sector (Brock and Banting 2003; Phillips 2004) has surged in the past two decades, most research has been devoted not to their voice in political affairs, but rather to the services provided by the organizations in that sphere. This is a deficiency that needs to be addressed.

Advocacy of more campaign finance regulation than already exists in Canada must therefore be seen as evidence of anti-partyism and hence implicit opposition to classic liberal democracies, in which parties feature prominently. Party-less democracy is a characteristic of all utopian communities, as Rosenblum notes, where the “absence of political institutions is the ideal. Where there is true unity, no coercion or constraint is necessary. Political authority, even the most rational or democratic, is evidence of conflict” (Rosenblum 2008, 27). By contrast, in permitting and enabling flourishing civil-society-based, voluntarist parties, liberal democracy is, with all its faults, nevertheless successful in the rigorous setting out of alternatives and in regulating rivalry. Civil society voices and parties may be noisy, fractious and even threatening. That does not mean that they are without value in democracy. Money raised from civil society, with fewer strictures, strengthens political parties and their ability to place alternatives before citizens and those who choose to vote.

Critics may argue that my conclusions will lead to complacency or ‘smugness’ about the role of parties or the problem of the democratic deficit, a typical charge by those who want to see radical, institutional change. Beetham’s writing is typical of this genre: in his democratic audit work, he posits that there exists “an inertial tendency in social and political systems towards oligarchy and inequality unless it is actively resisted” and that the “work of democratization is never finished and that established democracies are as much in need of critical assessment as developing ones” (Beetham 1999, 568-569). While agreeing with him in principle that the work of democratization is never finished, I nevertheless take issue with his reasoning and methodology. With regard to the former, it is not always institutional
deficiencies that are the cause. With regard to the latter, the critical assessment that he suggests rarely takes into account either what is in fact working or whether it may be citizen choice to stay unaffiliated or disengaged politically (McHugh 2006).

The first decade of the twenty-first century has witnessed a gradual severing of Canadian parties from their base in the pre-2000 period, the time in which they relied on active, independently-funded and manned voices of citizens and civil society to either form the government or hold it to account. Of greater concern is the threat posed by increasing levels of reliance on tax-funded subsidies. In mature democracies where parties have been increasingly funded by the state, notably in western Europe, party membership and voter turnout continue to decline. Thus, the public utility model, that of tax-supported parties rather than civil society-supported parties is of questionable ‘utility’ in the quest for democratization. While acknowledging the essential need for transparency if public funding is involved, that is not the same as regulation. As McDonald and Samples (2006, 290) argue, “We should also keep in mind that any large change in politics or society that slowly emerges is likely to have several causes. That reality should temper the way we evaluate reforms.”

A few further points must be made in summing up. Institutional changes of necessity involve the articulation of values and this is significantly true for the case of campaign finance. Campaign finance appears superficially as a merely instrumental means of achieving ‘clean elections.’ However, this is deceptive. In fact, campaign finance retains a high level of symbolism: what is permitted and prohibited are boundary markers demonstrating existing and changing norms. As the Parti Québécois demonstrated, campaign finance rules can serve to delineate party identity in a highly charged political contest. In the U.S., campaign finance rules embody First Amendment protections of free expression. In the U.K. the relative informality of campaign finance until 2000—remaining informal relative to Canada still—is emblematic both of the unwritten constitutionalism of the U.K. and the normative value placed on voluntarism. Campaign finance rules also serve to declare the aspirations of a nation: equality and freedom. How these values of equality and freedom are articulated in campaign finance debates depends on context. The symbolism implicit in campaign finance may render certain types of revision extremely difficult. Political fortunes and the
government of a nation may rise or fall depending on the shape of campaign finance, as recent Canadian experience has shown. Stoker (2006) argues that revisability is a principal virtue in institutional design and this may be the signal, unique quality to which campaign finance theorists and practitioners should adhere in mature democracies. Canada ended up with a regulatory system that might be termed the envy of those who advocate the use of institutional change to address issues of trust, non-engagement and inequality of access to resources and the evidence suggests, counter-intuitively, that these experiments have occurred because of partisanship, not in spite of it.

Campaign finance reform is a latent issue and takes on the contours of contemporary political debates: it has variously been employed to ‘clean up politics,’ to achieve equality as defined in particular ways, to advance an anti-capitalist view of parties and to withdraw responsibility for political contests from parties themselves. As we have also seen, campaign finance reform in the past two decades has been shaped by global discourse on issues of governance and transparency. Campaign finance will continue to be a ‘restless’ issue, as Rose termed it (1994). As Caldwell (2006, 388 fn. 5) has written, “In some markets, underlying conditions change so frequently that the whole notion of adjustment to an equilibrium is problematical.” These seem most apt descriptions of campaign finance in dynamic democracies.

Despite the aversion by some authors to the notion that electoral contests are market-like in their competitiveness, the contest for power remains under either first-past-the-post or PR systems. It is the locus and timing of the contest that moves. In Westminster systems, the ‘market’ for power unfolds prior to the general election, first within parties for leadership and then for seats in the legislature. In corporatist, coalition governments, the contest for key cabinet posts follows the election. The 2010 coalition election in Belgium which has yet to produce a government for over a year following the general election is a potent example of this. Canadians rejected the prospect of a fourth minority government in 2011.

I believe that one reason for the increasing pace of change in the field of campaign finance is that the informality of norms governing political contests until the 1970s meant that this informality itself dealt with changes. While Ewing (2006, 41) bemoaned this
informality of U.K. law as a “ragbag of rules, of disparate provenance and varying degrees of utility and partiality,” nevertheless this informal regime had underpinned the significant overall success of democracy in the U.K. However, with the increasing codification of campaign finance rules, there is less flexibility for this to occur organically. Each set of changed circumstances demands rule changes. Increasing codification of campaign finance rules in itself represents one of the hallmarks of contemporary campaign finance literature: in the absence of recognized common values to act as regulators of political discourse, we have been forced to codify some levels of expectations.

However, there are costs to increasing codification, many of them nearly invisible. The proliferation of campaign finance rules may inadvertently signal to citizens that there is more to distrust than previously thought. From a different perspective, several of those interviewed decried the practice of certain politicians of running right up to the edge of a campaign finance limit and violating the ‘spirit’ of campaign finance laws. However, I submit that we may not be able to have both the best of a norm-driven regime and the best of a rule-driven campaign finance regime. An analogy might be the following: if the highway speed limit is 100 kph, up to 100 kph remains legal and driving at the speed limit does not represent a violation of the law nor does it violate the ‘spirit’ of the law. Similarly then, in a political finance regime, contributing up to the maximum or spending up to the maximum does not necessarily represent non-compliance with the ‘spirit’ of the law.

The Bigger Picture

The larger lessons to be gleaned are many. First, it can be seen from the foregoing that ‘problem definition’ has varied significantly among the three countries under study and, over time, it has been increasingly difficult to define and quantify outcomes. The relatively objective criteria in the late nineteenth-early twentieth century period, for both problem definition and adjudging outcomes, have evolved into to increasingly subjective criteria in the late twentieth-early twenty-first century, involving notions of equality and the labelling of inequality in election contests as illegitimate and, in some quarters, as corruption in the sense of undue influence or even the appearance of undue influence.
Second, Canada has achieved a campaign finance regime in the post-2000 period that, despite—or perhaps because of—partisan influence, embodies ‘positive’ or affirmative public goals articulated by commentators such as Malbin (2008, 7) who advocates for a move to ‘positive’ goals for campaign finance in the U.S., characterized by increased electoral competition, candidate emergence and greater equality and participation of citizens through encouraging small donors. Malbin argues that, at least in the U.S., there has been “little or no definitive research . . . conducted on the list of affirmative goals associated rhetorically with campaign finance policy” (Malbin 2008, 8). Yet the changes to the Canadian regulatory regime may be seen in just this light since changes have included limits on individual contributions, expenses, leadership, candidacy, intra-party flows of money, reimbursement of deposits, 50 per cent of approved expenditures, and so on. The candidates in the Canadian 2011 election may well have demonstrated an unprecedented level of diversity. To the extent that this can be attributed to campaign finance rule change, as institutional change, it is a positive outcome.

However, there is reason to be sceptical, for example, regarding the claim that current prohibitions on inter-party transfers of funds are necessary to the integrity of the process and to its fairness. In fact, citizens in relatively poor ridings may receive a democratic bonus if candidates in those ridings are supported by funds transferred from other EDAs or the national party. The institutional changes have embedded in them the values of egalitarianism and participatory democracy, yet the potential benefits are not as clear cut as claimed nor have the changes been demonstrated to have ‘succeeded,’ either in terms of social democratic audit standards or by measures I have used which are based on liberal democratic criteria.

The Canadian experience, where campaign finance reform has both been more continuous in the pre-2000 period and more abrupt in the post-2000 period than in the comparative cases, has not demonstrated the efficacy of political finance reform as a means to revitalize democratic practices or to address the proclaimed deficiencies of parties. As a means to restructure politics and political discourse toward a more level playing field, campaign finance reform shows relatively little promise, at least in terms of a mature democracy such as Canada’s. While campaign finance ‘reform’ has a pleasant ring to it and represents an avenue of institutional but yet non-constitutional and hence more convenient
change, more ‘downstream’ analysis is crucial. It is not that campaign finance rules are irrelevant to democratic legitimacy but rather that, based on my research, the ‘democratic benefits’ of campaign finance rule changes become increasingly elusive the more mature the democracy—at least those of the Anglo-American genre. In the words of Peters and Pierre, “No reform is likely to be universal; instead reform must be matched carefully with the needs and the traditions of the larger political system” (Peters and Pierre 1998, 241).

Third, “Rules are the means by which we intervene to change the structure of incentives in situations” (Ostrom 1986, 6). They do not in and of themselves change attitudes, beliefs, choices and behaviours. My work suggests that political culture, far from being a residual category, is extremely resilient to change and must be taken into account at the outset of advocacy for institutional change. The issue of campaign finance is illustrative and illuminative of many contemporary political debates: not only those surrounding the role of money in politics generally but also those involving the expected roles for parties, citizens, types of citizen engagement, the trust in and utility of civil society as a necessary or merely convenient aspect of democracy and, finally, sources of democratic legitimacy. If suggested barometers of legitimacy such as trust and turnout have not proved amenable to change via campaign finance qua institutional change, then perhaps we need to turn to respecify the problem—that legitimacy may come via other means such as economic prosperity, social mobility or the overall institutional setting rather than each of its component parts being evaluated separately. Campaign finance concerns not only parties and specifically political actors but has wider societal impacts.

Critics will argue that I place too much emphasis on the benign nature of civil society and the benefits of parties independently valued and financed by citizens or civil society actors. By contrast, I would argue that in the specific instance of campaign finance and political parties, the greater threat comes from overly constraining political parties and their candidates and cutting them off from the ‘instant feedback’ provided by a vigorous civil society and monetary contributions. As Bagehot ([1872] 1936, 287) observed,

In a country fit for Parliamentary institutions, the partisanship of members of the legislature never comes in manifest opposition to the plain interest of the nation; if it did, the nation being (as are all nations capable of Parliamentary
institutions) constantly attentive to public affairs, would inflict on them the maximum Parliamentary penalty at the next election, and at many future elections. It would break their career.

Throughout, although recognizing its defeats and that there continues to be inequity that rankles and must be addressed, I make no apology for holding up the best of liberal democracy, via its cultural norms and the institutions which have served many—although not all—for such an extended period and which have enabled the growth and influence of the great social movements in the last half-century. It is because of the very flexibility of the institutions of liberal democracy that attention must be drawn to the possibility that our expectations, demands and circumscription of them may in fact make them less accommodating to and less able to meet the future needs of its citizens.

In seeking to do this, I have addressed two of the key deficiencies noted in the literature: the need for an explicit conversation between political theory and campaign finance and the need for empirical testing. I have sought relentlessly to link theories and practices of campaign finance with theories of democracy and to demonstrate the way in which alternative policy choices may be considered following or rejecting a ‘logic of appropriateness.’ My findings suggest, as Pal has written, that “The point is not that Canada organizes its political discourse badly, only that its past practices have contemporary consequences” (Pal 1999, 280).

Fourth, the use of alternative public policy models meant that I was able to ‘step outside the box’ of the comparative parties and elections literature and to consider a wider range of evidence than previously undertaken. I have thus extended the use evidence-based measurement, an innovation in other policy fields, into the field of campaign finance and introduced new tests of appropriateness. In so doing, analysis of campaign finance should be more amenable to a broader spectrum of analysis and that should extend the boundaries of the inquiry.

Fifth, in conceptualizing campaign finance reform as a search for legitimacy via institutional reform, my work opens a wider path to engaging new scholarship. Specifically, my work invites engagement with comparative theorists and practitioners of civil society, parties, public policy and governance. Future research could fruitfully address some issues
on which I was able only to touch briefly. Specifically, investigation of the notion of migration of funds from the federal to the provincial levels of parties; migration of funds between political and charitable organizations; migration of business and union influence away from political parties and into other avenues of influence all hold potential in assessing how political finance regulation actually works. A second avenue of investigation would posit that in mature, open and growing democracies, economic or cultural factors may influence regime legitimacy as much or more than individual institutional features.

Finally, to my knowledge, despite the wave of research on civil society in the past two decades, there has been little comparative research undertaken on the ‘ethos’ of giving and volunteering and how that intersects with the way in which political parties and representation more generally are funded. As well, since models of campaign finance intersect with types of party system and the number of parties in a given system, there is room to adapt theoretical and empirical work, from other fields, on the implications of proliferation of choice in modes of representation. Work by Schwartz (2004) in psychology and Kahneman and Tversky (2000) in behavioural economics represent two such opportunities.

In drawing to a close, there are lessons to be learned from the Canadian ‘experiment’. Campaign finance reforms, in mature democracies, seem to be of limited usefulness in generating greater political legitimacy. One can of course argue that without them, the situation could be worse. But this is scarcely empirical science. The impact of campaign finance reforms is strongly conditioned by existing institutions and political culture and, in the case of Canada, political identity and differentiation. Those who would transfer campaign finance policy ideas must, unlike the past, also consider the ways in which the policy has failed in the host country. There is no ‘smorgasbord’ in public policy: we cannot pick only the ‘good’ results and ignore the ‘bad’. Symbolism may interfere with ‘good’ policy. Revising a campaign finance regime may take years—unless there is a significant political trigger. Finally, because campaign finance rules cross-cut so many areas of political and non-political life, it behooves its students to cast a wide net in considering both positive and negative outcomes and to continue to articulate clearly the theoretical implications of choices made. The ‘problem’ of campaign finance is not one that can be solved once-for-all but
neither are the possible approaches limited. The ‘problem’ is that we must correctly specify the problem, adhere to the principles of transparency with which we adjure parties, and above all, to limit the claims which we make for policy alternatives.
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