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Donations to political parties in the United Kingdom

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INTRODUCTION

The United Kingdom is a recent addition to the family of jurisdictions which require political parties to disclose details of donations they have received. The requirement was introduced by the Political Parties, Elections and Referendums Act 2000 which was passed in the wake of allegations of sleaze that engulfed the governing Conservative Party in the 1990s.¹ Before the implementation of the 2000 Act, the British system of party funding was one from which the State largely stood back. There was no disclosure (except that companies had to disclose donations to shareholders) and there were no donation controls (except that trade unions required the consent of their members to promote political objects).² In addition, there was only very limited direct public funding for the political parties (which was provided only to the Opposition parties and only to help them with parliamentary activities). And although there were spending limits, these applied only to candidates but not also to the national political parties (the main players and biggest spenders in general election campaigns).³ But much has changed, and British political parties have moved from being among the least to being among the most highly regulated political parties in the world. At the heart of the new regulatory framework is the duty of reporting and disclosure of donations introduced by the Political Parties, Elections and Referendums Act 2000.⁴

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¹ For background, see N Ghaleigh, 'Expenditure, Donations and Public Funding under the United Kingdom's *Political Parties, Elections and Referendums Act 2000 – And Beyond?*', in K D Ewing and S Issacaharoff, *Party Funding and Campaign Finance in Comparative Perspective* (2005), ch 3; See also K D Ewing, 'The Funding of Political Parties in Britain: Prospects for Reform' (1998) 7 *Griffith Law Review* 185.

² See respectively Companies Act 1985, s 235, and Trade Union and Labour Relations (Consolidation) Act 1992, ss 71 - 96 (previously Trade Union Act 1913, as amended by Trade Union Act 1984).

³ See K D Ewing, *The Funding of Political Parties in Britain* (CUP, 1987), chapters 4 and 5.

⁴ For a full account of the Act as a whole, see K D Ewing, 'Transparency, Accountability and Equality: The Political Parties, Elections and Referendums Act 2000' [2001] PL 542.

In this article we consider the impact of the new disclosure regime that was introduced in the United Kingdom in 2000. We begin by outlining the origins of and background to the legislation of 2000, and then consider the purposes of disclosure of donations. Here we suggest that the reporting and disclosure provisions of the legislation can be seen as having fundamentally an anti corruption rationale but that its anti corruption focus was quite limited.⁵ As a result it was never likely to address the systemic corruption of the British political system by donations of a size which are perhaps without precedent in contemporary liberal democracies. It does not follow from this, however, that more limited ambitions are incapable of being realised, though there may be a contradiction in tolerating corruption of process while seeking to stop the corruption of institutions and personnel. Having considered the purposes of reporting and disclosure, we then move to analyse the data that have been published under the legislation, before concluding with an assessment of the legislation. Here we consider whether the ambitions of the authors of the legislation of 2000 have been realised, and we consider how far the legislation has induced the parties to change their fund raising practices. We conclude with an account of some more recent proposals for further reform which were made in the wake of funding scandals that engulfed the governing Labour Party in 2001 and 2002 in particular.

THE POLITICS OF DISCLOSURE

Although the British system was largely unregulated before 2000, it was only relatively recently that the identity of donors to political parties became a significantly controversial issue. In the post war period life was reassuringly certain and simple: the Labour Party was funded mainly by trade unions; and the Conservative Party relied heavily on corporations.⁶ There was no secret about how much trade unions paid to the Labour Party which has published annual accounts since 1900.⁷ Although these did not list the names and amounts of donors, details of trade union political funds were published annually by the Chief Register of Friendly Societies (since

⁵ Other provisions of the Act had other objectives: the spending limits were designed mainly to promote electoral equality, though they too would indirectly reinforce the anti corruption rationale of the legislation. On the equality provisions see K D Ewing, 'Promoting Political Equality: Spending Limits in British Electoral Law' (2003) 2(4) *Election Law Journal* 499.

⁶ See M Pinto – Duschinsky, *British Political Finance 1830 – 1980* (American Enterprise Institute, 1981).

⁷ These were published as an appendix to the party's annual report. The Conservative Party did not publish accounts until the 1980s. But as the Conservative Party's fund raiser during much of the Thatcher years made clear, there was not much appetite for revealing too much: A McAlpine, Once a Jolly Bagman (Weidenfeld and Nicolson, 1997).

1913) and more recently by the Certification Officer for Trade Unions and Employers' Associations (since 1976).⁸ Larger unions paid more than smaller unions. Nor was there really much secrecy about the Conservative Party. Since 1967 companies had been required in a tit for tat measure to disclose to shareholders all political donations over £200 annually. It is true that there was no official collation or publication of this information which was a matter of company rather than electoral law. But organisations like the Labour Research Department regularly trawled the annual reports of companies on deposit in Companies House and published details of company donations to the Conservative Party and to other parties.⁹

This was never a very satisfactory arrangement, though it was adequate at the time. But it became wholly inadequate when the pattern of party funding began to change. In the 1990s the parties began to target rich individuals as a source of money. Although large donations had been given in the past, they had never been cultivated as a serious resource. In the case of the Conservative Party in particular it involved harvesting donations from foreign sources who had apparently little contact with the United Kingdom, raising questions about the motives of the donors. There was also concern that some of these donations were extremely large, amounting to £1 million or more.¹⁰ Quite why this development occurred is not easy to understand. Britain was (and remains) 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,¹¹ and (since 1954) a statutory ban on television advertising for political purposes.¹² Nevertheless a number of factors appeared to be responsible for the changing patterns of fund raising. Not the least is that the 1997 general election was especially competitive (with Labour having lost an unprecedented four elections in a row – in 1979, 1983, 1987 and 1992). It was make or break for Labour, and both the main parties were now involved in an arms race, there being no limit to

⁸ The Certification Officer is a statutory officer who is the government's regulator of trade unions.

⁹ These details were published in the monthly journal *Labour Research*. The LRD had no formal connection with the Labour Party but is an independent organisation funded by the Labour movement.

¹⁰ For an account of foreign donations, see Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, vol 1, Cm 4057 – 1 (1998), ch 5. The lack of transparency may have exaggerated the concerns.

¹¹ Representation of the People Act 1983, ss 75 and 76 (applying to candidates and third parties). See *Bowman v United Kingdom* (1998) 26 EHRR 1.

¹² The current restraints are to be found in the Communications Act 2003, s 319 - 321. For a strong defence of this measure, see Electoral Commission, *Party Political Broadcasts* (2003). See also *R v Radio Authority, ex parte Bul* [1995] 4 All ER 481, at p 495 (Kennedy J).

how much they could spend on national election campaigns.¹³ Spending in 1997 was more than 150% that incurred in 1992.¹⁴

But it was not only changing fund raising practices leading to a growing interest in who was donating and why that fuelled the campaign for reform. The other issue was the issue of sleaze, a word used to describe a culture of low grade corruption that afflicted British public life in the mid 1990s, as various instruments of self restraint evaporated in a culture of greed. The best known example of this was the cash for questions affair in which a number of Members of Parliament were found to have taken money in brown envelopes for asking questions in Parliament on behalf of a prominent businessman. There had always been an issue about kickbacks for political donations, but these were thought principally to take the form of personal political honours for the executives of companies that made the donations: political honours in the form of peerages (entitling the recipient to join the House of Lords, the second House of Parliament) or knighthoods (entitling the recipient to be styled ‘Sir’ and more importantly his wife to be styled ‘Lady’).¹⁵ This was a problem associated with Conservative governments,¹⁶ as was the more recent problem of large personal donations in a culture of secrecy. The latter in particular was exploited by the Labour Party when in opposition which succeeded in making political capital out of the situation. It did so not only by focussing public attention on the general issue of sleaze but by taking the initiative of publishing the names of all those who had donated more than £5,000 in the previous year.¹⁷

These latter reports concealed more than they revealed, most notably because they only listed the name and not the amount of the donation.¹⁸ Yet not only did the practice of voluntary disclosure serve to increase the discomfort of the Conservatives (forced to take a similar initiative in 1998), it also served to showcase the fact that the

¹³ See *R v Tronoh Mines Ltd* [1952] 1 All ER 697.

¹⁴ Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, above, ch 3.

¹⁵ The explicit purchase and sale of honours was a criminal offence: Honours (Prevention of Corruption) Act 1925.

¹⁶ This is partly because at that time the Labour Party did not receive corporate donations, and was the subject of sometimes hostile anti Labour election campaigns by corporate interests, most notably in 1959 when the iron and steel companies feared that they would be nationalised if Labour won the election in that year.

¹⁷ *Labour Party Report 1996*.

¹⁸ The information was also published 10 months after the end of the year in which the donations were made.

Labour Party now had a diverse funding base which included business people and media celebrities.¹⁹ But Labour's self - satisfaction was to backfire spectacularly. Shortly after it was elected to government in 1997 it was revealed that the Labour Party had received a donation of £1 million from the Formula 1 racing boss, Bernie Ecclestone. It was also revealed that the Labour Party was negotiating to land another donation of £1 million from the same source, and that Mr Ecclestone and his colleagues had had a meeting with Mr Blair (the Prime Minister) at 10 Downing Street (the Prime Minister's official residence and office). The meeting took place at a time that a ban on tobacco advertising in sport was being introduced and at a time when Formula 1 was contemplating a relocation from Britain to Malaysia because of the impending ban. Coincidentally, the government announced shortly after the meeting with Mr Ecclestone and his associates that although the tobacco ban in sport would continue, there would be an exemption for Formula 1. Much to the government's surprise and consternation, this coincidence of events gave rise to a political outcry as a result of what was then the biggest funding scandal in recent British political history.²⁰

The immediate effect of the Formula 1 scandal was to persuade the government to move with alacrity to implement its manifesto commitment to clean up political funding.²¹ The matter was referred in the first instance for independent examination by the Committee on Standards in Public Life which had been set up under a senior judge by the then Conservative government in 1994. This is a standing body concerned with ethical standards in public life, but whose terms of reference did not include the funding of political parties.²² These terms of reference were changed by Labour in 1998,²³ and a new chair – Sir Patrick Neill QC – was appointed to oversee

¹⁹ For a colourful account, see D Osler, *Labour Party PLC* (Mainstream Publishing, 2002).

²⁰ For details, see K D Ewing, 'The Disclosure of Political Donations in Britain', in K D Ewing and S Issacharoff, above, ch 4.

²¹ See generally on the reform process, L Klein, 'On the Brink of Reform: Political Party Funding in Britain' (1999) 31 *Case W Res J Int'l L* 1.

²² Its original terms of reference were: 'To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life': Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, above, p 256.

²³ Its terms of reference were extended: 'To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements': *ibid*.

the inquiry.²⁴ The Neill Committee made far reaching proposals in 100 recommendations to reform the funding of political parties,²⁵ and these were largely accepted by the government and implemented by the Political Parties, Elections and Referendums Act 2000. One of the key provisions was the requirement that parties report donations in excess of £5,000 to the Electoral Commission on a quarterly basis, and on a weekly basis during elections. But this did not end Labour's discomfiture, as funding scandal was piled upon funding scandal in 2000, 2001 and 2002. These involved allegations that Labour donors had access to the Prime Minister, that the Prime Minister intervened on behalf of one donor who was negotiating to buy a previously nationalised steel company in eastern Europe, and that a Labour donor had been awarded a government contract without normal procurement procedures having been followed.²⁶ None of these allegations was found to have substance; but they contributed nevertheless to a political climate polluted by the overwhelming stench of sleaze which owed much to the immaturity as well as the good judgment of the press.²⁷

THE PURPOSE OF DISCLOSURE

So just what is the purpose of disclosure? One answer is provided by the US Supreme Court in Buckley v Valeo,²⁸ where we find several rationales. One is the State's interest in the elimination of corruption; and another is the desire to ensure that electors are fully informed about the causes a party or candidate is likely to represent in government. But although these are strong and compelling reasons for disclosure, it is important to note that the prevention of corruption and the freedom to make an informed vote are not the only objectives of public policy in the area of party funding or campaign finance. Other relevant considerations include the need to ensure that parties and candidates are adequately funded or have adequate opportunities to promote their campaigns and other activities. Similarly, there is a

²⁴ Sir Patrick was also ennobled so that by the time the inquiry into the Funding of Political Parties began he had metamorphosed into Lord Neill of Bladen (now an independent member of the House of Lords).

²⁵ Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, Cm 4057 – 1 (1998). For a critique, see N S Ghaleigh, 'The Funding of Political Parties in the United Kingdom: The Case for Cherry-Picking' [1999] *Public Law* .

²⁶ See Ewing, note 3 above, for fuller details.

²⁷ In the last case (for the award of a contract to supply vaccines to deal with a possible terrorist threat), an investigation by the National Audit Office (the independent spending watchdog) revealed that the supplier had been recommended to officials before they had been made aware of the recommended supplier's donation to the Labour Party: Comptroller and Auditor General, *Procurement of Vaccines by the Department of Health*, HC 625 (2002- 2003) (9 April 2003).

²⁸ 424 US 1 (1976).

need to ensure that as many people as possible are encouraged or persuaded to support political parties.²⁹ A broadly based system of funding is an indicator of commitment and confidence in the electoral process, perhaps a greater indicator of the depth of that commitment and confidence than electoral turnout. Both indicators are at a worryingly low level in many liberal democracies.³⁰ The other issue to be reconciled is the need to respect what must now be called human rights, and in particular the individual's right to privacy. This becomes a concern for some if people are required by disclosure to identify their political beliefs.³¹ We return to consider some of these different objectives and also consider the effectiveness of disclosure as a weapon in the fight against corruption.

Disclosure and Corruption

Disclosure has been introduced in the United Kingdom mainly as an anti corruption measure, though we are not so vulgar as to use the word corruption in modern public debate, perhaps because of the debilitating effect on public discussion of English libel law. We prefer to say that it is designed to improve standards in public life, carefully overlooking the fact that these standards need to be improved only because they are corrupt or have been corrupted. In this sense dealing with corruption and raising standards in public life are synonyms. But what is meant by corruption and improper pressure? It is at this point that we encounter the indeterminacy of political science where there is no agreed definition or understanding of the term, with each attempt at a definition found to be as inconclusive of the last.³² We are thus thrown back on a linguistic rather than a scientific definition. The former emphasises that corruption is a word that implies a sense of debasement and one that also implies a scale of offence with a thick or general meaning at one end of the scale, and a thin or narrow meaning at the other end. It is also one that applies in different contexts and involves many different potential actors. But even the adoption of a linguistic definition is not without difficulty, as there are many different linguistic definitions. But one that best

²⁹ Issacaroff and Karlan point to another related concern which is the need to channel the money to parties and candidates and not to third parties. See S Issacharoff and P S Karlen, 'The Hydraulics of Campaign Finance Reform' (1999) 77 *Texas Law Review* 1707.

³⁰ The latter is a serious concern in number of countries. Turnout in the British general election in 2005 was only 61% of those registered, with the government having a mandate from only 36% of those voting.

³¹ This was a concern raised by the Conservative Party in its evidence to the Neill Committee above. It is also a view argued forcefully by the Conservative Party's then bagman: A McAlpine, above.

³² See O Kurer, 'Corruption: An Alternative Approach to its Definition and Assessment' (2005) 53 *Political Studies* 222.

captures the foregoing features of the term is the *Chambers Dictionary* which defines corrupt in the following manner: ‘to make putrid, to taint, to debase, to spoil, to destroy the purity of, to pervert’, as well as ‘to bribe’. We wish to make it clear, however, that that by adopting the language of corruption we are not claiming or implying directly or by innuendo that in the British system money by way of political donations is being given by anyone with the intention of receiving favours or that favours are returned for money by way of political donations received.

Within this linguistic construct, the term corruption has two aspects. One is the what or whom (the targets of corruption), and the other is the how (the means of corruption). In the context of donations to political parties, the most straightforward (and thinnest or most narrow) meaning of corruption is bribery. But that is not our concern. As Rose – Ackerman has pointed out:

‘even entirely legal contributions from wealthy interests are a source of concern. The worry is favoritism. Groups that give funds to elected officials expect help in the legislative process. They may also expect special treatment on individual problems in dealing with the bureaucracy or in seeking contracts and concessions. If the interests of such groups or individuals conflict with those of the general public, this undermines democratic values’.³³

It was this concern that appears to have informed the disclosure regime in the British legislation, and the Neill Committee in particular.³⁴ That is to say, a thicker concept of corruption which includes donations which have the effect of enhancing the likelihood of a benefit being conferred on an individual, or which provide the donor with an opportunity to influence a decision or to promote his or her personal interests. However, in developing its proposals for regulatory reform, the Neill Committee appeared expressly to eschew a still thicker conception of corruption. This is one which is based on the corruption of process rather than the corruption of institutions or personnel. Such a conception that would see large donations as being inherently corrupting, because of their impact on one of the first principles of democratic self government. This is the principle of political equality (including the right to equality

³³ S Rose-Ackerman, *Corruption and Government* (CUP, 1999), p 133.

³⁴ Committee on Standards in Public Life, above, para 4.32.

of influence) reflected in the modern franchise.³⁵ Although the Neill Committee appeared simultaneously relaxed and uneasy about large donations,³⁶ it also expressed the view that ‘[i]f a party becomes over-dependent on a particular source, that is its own affair, provided its dependence is a matter of public knowledge’.³⁷

Disclosure and Informed Choice

But although corruption is part of the reason for disclosure, it is not the whole reason. The existence of other reasons is revealed in part by the fact that disclosure is applied equally to all political parties. This would be consistent with disclosure being required as a way of exposing the generally corrupting impact of large donations (that is to say where the concept of corruption in its thickest sense is used). But that is not the case in the United Kingdom where the principal corruption rationale is the more instrumental corruption of government, where rewards are made for payments received. Yet if that is the reason for disclosure, it is not clear why we require disclosure from political parties which have no chance of ever forming the government, or indeed of ever having a candidate elected to public office. In these cases it is difficult to see what the corruption argument is, unless it is an argument based on corruption of party. But this would be a very weak form of corruption in the case of parties with no hope of election (and where the party may simply be the alter ego of an obsessive individual). Indeed in these cases there is a strong claim that disclosure conflicts with other objectives of a regulatory strategy, in this case respect for human rights and specifically the right to privacy.³⁸ If there is no serious corruption rationale associated with donations to political parties which have no chance of forming government, the only public interest in requiring disclosure is that electors are entitled to know who is backing the parties who are fielding candidates in the contest.

Further evidence that corruption is thus not the only objective of disclosure is provided in part by the timing at which disclosure is required. Ordinarily in the United Kingdom the legislation requires disclosure of £5,000 donations to take place

³⁵ See also Kurer, above.

³⁶ Committee on Standards in Public Life, above, para 6.7.

³⁷ *ibid.*

³⁸ It may also conflict with the need to ensure that parties are well funded if the only way a new or special interest party to get off the ground is to rely on the wealth of a rich benefactor. There are a number of parties which in the past (the Referendum Party) and which to this day (the Pro-Life Alliance) are so dependent.

every three months.³⁹ There is nothing exceptional about this: timely disclosure would be consistent with an anti – corruption rationale. But disclosure must also take place every week during an election campaign,⁴⁰ this being necessary on the ground that the information is urgently needed at an election time. This is because it ‘may have a bearing on the response of other potential donors and it may impact upon voters’ intentions’.⁴¹ So here we have an explicit acknowledgement that the purpose of disclosure is the arming of electors and others with information that may need to make a decision (for whom to vote and to whom to donate). But although important, this is an inadequately considered rationale, and it is one which is incompletely implemented. Thus, the obligation to disclose donations on a weekly basis during an election campaign applies only to the political parties: there is no corresponding obligation on the candidates, the people against whose name the electors place their crosses. Although there is a duty on the part of candidates to disclose the identity of donors, this applies only in a post election return,⁴² by which time it is too late for the elector whose decision would be influenced by the company the candidates keep. It also denies the local press the opportunity to expose donors and to raise questions about their motives.

Corruption and the Effectiveness of Disclosure

Although there is (in our view correctly) a general unreflecting acceptance of the benefits of disclosure, there is nevertheless cause for some hesitation, for two reasons. In the first place, disclosure on its own cannot be effective to deal with corruption. It is trite to point out that disclosure deals with only one form of corruption – the corruption through parties and candidates; it does not close off other avenues which involve the corruption of officials, or other ways of reaching the political classes. As an anti corruption device, disclosure of donations to political parties thus has to be part of a general anti corruption strategy that tackles all the vulnerable points of the political system. Otherwise the problem may simply be displaced. But it is also trite to point out that there may be more effective ways of dealing with the corruption which disclosure is designed to prevent. The root cause of the problem (so far as political party corruption is concerned) is the need that the parties have for money. This suggests that if corruption is the real concern then the main anti corruption

³⁹ Political Parties, Elections and Referendums Act 2000, s 62.

⁴⁰ *ibid*, s 63.

⁴¹ Committee on Standards in Public Life, *above*, para 4.58.

⁴² Representation of the People Act 1983, s 81.

strategies should be based on reducing the demand for money and on providing alternative sources of money. The former points to the need for spending limits of the kind which operate in Canada and the United Kingdom to restrict how much parties and candidates may spend on their campaigns. In the United Kingdom this goes so far as to ban the use of paid television and radio advertising. The latter points to the need for some form of State or public assistance, whether in cash (such as annual subventions to the parties by the State) or in kind (such as the provision of free broadcasting time,⁴³ free mail shots to voters, the free use of public buildings by candidates at election time).⁴⁴ But in order to be effective in reducing the demand for money these strategies must be devised in such a way as to ensure that the parties have enough to meet their needs and that there are no loopholes capable of exploitation by those looking for a competitive advantage.

The other aspect of disclosure that needs rehearsing is that it may be counter – productive. This is because it may expose corruption, in the thicker sense of the term as defined above. In other words it may reveal a heavy dependence of the political parties on large corporate and personal donations, and a deep penetration of the political system by the rich and powerful. Yet the levels of corruption exposed may be deemed acceptable, or as less unacceptable than the alternatives, which would involve the funding of the political parties by the State, seen by some as the involuntary conscription of the unwilling taxpayer. Related to this is the danger that if it is effectively complied with and monitored, disclosure may discourage people from making donations in a society which is suspicious of the links between money and power. In these circumstances the parties are driven into the arms of fewer and fewer large donors who are prepared to tolerate the adverse publicity and the prurient interest in their affairs. Not only does this dependency reinforce the risk of corrupting tendencies, but it also destroys other goals that disclosure is designed to promote. It could create a disincentive rather than an incentive to donate, thereby undermining the ambition that political parties should be funded by a broad base of electors. In turn that undermines the ambition that political parties should have enough money to fund their campaigns and their other activities, unless other sources of money can be provided. We thus have a curious paradox: a device designed to

⁴³ On the problems of allocating free time between political parties at an election, see *R (BBC) v Pro-Life Alliance* [2004] 1 AC 185.

⁴⁴ But for a warning of the dangers of over-regulation, see S Issacharoff and P S Karlen, above.

whet the public appetite for democracy may simply harvest food for further indigestion.⁴⁵ It exposes a form of corruption of the political process which is not the target of the legislation, and which the political system is institutionally unable to address.⁴⁶

THE PRACTICE OF DISCLOSURE

As the Political Parties, Elections and Referendums Act came into force less than a year before the General Election of 2001, the disclosure data it generated told us relatively little about the nature party funding in that election. The data set was incomplete, and the parties and other participants were still moving up a relatively steep learning curve in terms of familiarity with the legislation. Since then, a General Election (May 2005) has been concluded, as have Scottish Parliament Elections (May 2003), European Parliament elections (June 2004) and numerous local government elections and referendums. A full electoral cycle has been completed and we are for the first time placed to examine the data yielded by the new disclosure regime. Under the new legal regime, quarterly reports disclosing the income of registered political parties have been published by the Electoral Commission since February 2001. For present purposes, all quarterly reports from that date until 31 March 2005 have been scrutinised, as well as the five pre-election reports dating from 5 April 2001 to 5 May 2005. Cumulatively, the Electoral Commission registers reveal that a total of £148.2 million was donated to all political parties. Of these, the largest single beneficiary was the Labour Party which received more donations and more money, though the average Labour Party donation appears to be smaller than the average donation to the Conservatives, but larger than that to the Liberal Democrats. In the period studied, the Labour Party received 4,438 donations, which totalled £65,980,846.96; the Conservative Party received 2,775 donations, totalling £58,679,862.00; and the 1,580 donations to the Liberal Democrats totalled £13,667,746.84. Thus, the average donation to the Labour Party was £14,867, the Conservatives £21,146, and the Liberal Democrats £8,650.

The Labour Party

It will be no great surprise that the bulk of the Labour Party's income derives from

⁴⁵ See Postscript.

⁴⁶ As we shall see the institutional limitations may relate to the nature, structure and organisation of the political parties themselves, forms which may have emerged in order to enhance popular engagement with and participation in the political process.

trade union sources. Given the historic link between the two, any other result would be a surprise. Indeed, it should be noted that the degree of dependence of the Labour Party on the labour movement has lessened, due in no small part by the concerted attempts of the former to seek funds from private donors, whether individual or institutional. Nonetheless, of the £65,980,846.96 donated to the Labour Party, £42,187,613.60 derived from trade unions sources, accounting for 64% of donation income. The bulk of trade union funds were donation by the so-called ‘big four’ unions, as follows:

Donor	Cash (£)	Non Cash (£)
UNISON (public service union)	7,817,372.17	50,135.00
GMB (general workers’ union)	5,791,367.96	133,083.00
TGWU (transport workers’ union)	6,052,711.81	9,749.27
AMICUS ⁴⁷ (manufacturing workers’ union)	10,173,969.69	15,676
Total	29,835,421.63	208,643.27
Total ‘Big Four’ Donations	30,044,064.90	

The total number of donations from each of these unions was 339, 368, 219, and 618 respectively, many of these from union branches to constituency labour parties, as well as head office affiliation fees and election donations. Other large union donors included the CWU (communication workers) and USDAW (shopworkers). But between them the four large unions accounted for 45% of the Labour Party’s donation

⁴⁷ This includes donations by the two constituent unions (AEEU and MSF) prior to the amalgamation to create AMICUS in 2002.

income.

As noted above, the near total financial reliance of the Labour Party upon the labour movement has long since passed. In large part, this is due to concerted efforts by the Labour Party to woo large personal donations from wealthy individuals.⁴⁸ It nonetheless remains the case that the Labour Party receives fewer large personal donations than the Conservative Party, although that gap appears to be shrinking. In the period under review, Labour received eleven donations in excess of £250,001 from five people:

Donor	Date	Donation (£)
Lord Sainsbury	13.01.02	2,000,000
Lord Paul Hamlyn	20.12.02	500,000
Lord Sainsbury	01.03.03	2,500,000
Mr William Haughey	05.12.03	330,000
Lord Paul Hamlyn	19.12.03	500,000
Sir Christopher Ondaatje	19.12.03	1,000,000
Lord Paul Drayson	17.06.04	505,000
Mr William Haughey	12.11.04	330,000
Lord Paul Drayson	21.12.04	500,000
Sir Christopher Ondaatje	27.12.04	500,000
Lord Sainsbury	10.03.05	2,000,000
Total		10,665,000

In addition to the above, another eleven individuals gave fourteen donations of between £100,001 and £250,000, as follows:

Donor	Date	Donation
Alan Sugar	09.06.01	200,000
Lakshmi Mittal	28.06.01	125,000
Sir Ronald Cohen	14.02.02	200,000
Bill Kenwright	13.06.02	200,000

⁴⁸ See *The Guardian*, 2 December 2004 (G2)

Sir Ronald Cohen	17.02.03	250,000
Sir David Garrard	23.05.03	200,000
Sir Ronald Cohen	12.05.04	250,000
Ms. Denise Gleeson	23.08.04	119,967
Sir Sigmund Sternberg	05.11.05	101,384
Mr William Bollinger	14.01.05	250,000
Mr Nigel Doughty	10.02.05	250,000
Mr Derek Tullett	16.03.05	200,000
Mr Jon Aisbitt	13.04.05	250,000
Sir Ronald Cohen	26.04.05	250,000
Total		2,846,351

On the basis of these figures, during the relevant period the Labour Party relied on only 16 people for almost a quarter of its donation income. And if trade union donations are removed from the equation, this select group accounted for more than a half of donation income. This, however, is not the end of the story. If we also take into account those donors whose contributions over the period total £100,000 *in aggregate*, a further twenty one donors emerge, contributing £3.32m. This category of donations accounts for 5% of donation income and 14% of donation income if trade union income is excluded. The cumulative total for all high value donations (defined as donations above £100,000, or donations from a single source which, over the period, aggregate to over £100,000) is £16.8m. It follows therefore that large private donations account for 25% of Labour donations income, although that figure rises dramatically to 71% of donations if those of trade unions are filtered out. In any event, it is clear that the ability to attract large donations from wealthy individuals is no longer the exclusive preserve of the Conservative Party. Whether this is a fact to be celebrated is a different matter altogether.

The remaining issue revealed by the Electoral Commission's disclosure reports relates to corporate funding. Here the evidence suggests that claims of Labour dependence on corporate money are greatly exaggerated. It is of course the case that almost all of the high value donors contributing to the analysis above made their money in business, but as PPERA makes clear, there is a difference between corporate donations and donations from private individuals, with each operating under

a very different regulatory framework.⁴⁹ According to the Electoral Commission, the Labour Party has received 405 donations from companies, this yielding £3,029,804.63, which represents 4.6% of the Labour Party's donation income. In comparison to the scale of donation given by individuals, the average business donation to Labour is a relatively modest £7,481. Only one cash donation was over £100,000, and only one in kind (respectively, Sterling Capitol Plc., £160,000 and the Video Meeting Company, £131,930). Further, all but six cash donations were £25,000 or less – two of which were donations of £30,000 from Manchester Airport which had to be returned because the donor had no authority to make them. Taking aggregate corporate contributions into account does not significantly alter the picture, adding as it does only KPMG's seven non cash donations of £225,000 and TBWA's mixed donations of £727,172. Although sizable, neither alters the fact that corporate money has a decidedly tertiary role in Labour's income streams. Indeed, in considerable contrast to its position vis-à-vis individual donors, Labour's reliance of corporate money is slim indeed, and as we shall see, the position relating to the Conservative Party is very different.

The Conservative Party

For obvious reasons, donations to opposition parties are never likely to be as newsworthy as donations to the governing party. Nonetheless, the perception of the Conservative's reliance on the largess of a single donor (Lord Ashcroft) and the questions raised about the Conservative nominated peers in 2004 indicates that the Opposition parties are not immune from scrutiny and criticism. (More recently, revelations that as much as half of the Liberal Democrats' donation income issues from a single individual has proved to be one of the major post-election talking points.⁵⁰) For much of the post-1997 period, there seemed to be a crisis in the opposition parties insofar as it seemed that they had fallen badly behind Labour in their fund raising capacities and as such lagged badly behind Labour in terms of financial security. Labour's traditional base of trade union has weathered well, providing financial security by way of a large and reliable income stream. This has remained true despite strategic attempts by the Conservative governments of the 1980s both to undermine the trade union movement generally and by more discrete

⁴⁹ Ghaleigh, op cit n.1.

⁵⁰ *The Guardian*, 27 May 2005.

obstacles to their donating to political parties.⁵¹ To the extent that such measures sought to undermine the financial link between the Labour Party and trade unions, they have largely failed (although affiliated union membership is in steady, if gradual, decline). The Conservatives' comparable sources of funding was of course corporate and large personal donations. To these must now be added the State.

Between February 2001 and May 2005 the Conservative Party received 2,775 donations, which is significantly less than Labour's 4,438, though more than Labour's 1,795 donations if trade union donations are deducted from the total. The first striking feature of Conservative funding is the party's heavy reliance on the State. Of the £58,679,862 in donations reported by the Conservative Party, some £16,739,555.49 were in the form of public funds, such as Short money⁵² and Policy Development Grants.⁵³ Accordingly, the party most strongly opposed to State funding depends on public funds for over a quarter (29%) of its donation income. The other feature of Conservative Party funding is that it is more heavily dependent on large donations than the Labour Party. The average Conservative Party donation is £21,146. In the period under review, the Conservatives received eleven donations in excess of £250,001, as follows:

Donor	Date	Donation (£)
Mr John Wheeler	03.05.01	2,450,000
Sir Paul Getty	11.06.01	5,000,000
Mr John Wheeler	27.11.03	504,000
Mr George Magan	24.02.04	400,000
Mr Maurice Bennett	16.07.04	450,000
Ms. Ruth Beardmore	05.11.04	396,409.55
Mr George Magan	23.12.04	325,417.64
Mr Maurice Bennett	04.01.05	500,000
Mr Joseph C Bamford	05.01.05	1,000,000

⁵¹ *Trade Union and Labour Relations (Consolidation) Act 1992* requires that ballots be undertaken every 10 years for the continuance of trade unions' political fund.

⁵² Named after Edward Short, the government minister that introduced it, this is money given to opposition parties to assist them in the conduct of their parliamentary duties by way of enhanced research and staffing etc. Introduced in 1975, the quantum of Short money was tripled by the Labour government in 1998.

⁵³ This scheme, introduced by Political Parties, Elections and Referendums Act 2000, s.12, annually distributes £2m to parties to enable policy development.

Ms. Diana Van Neivelt Price	01.03.05	440,000
Sir Tom Cowie	15.04.05	400,000

Total **11,865,827.19**

In terms of very large donations (that is, single donations over £250,000), there is rough parity between the two major parties, both in terms of number of donations (both, eleven) and their combined value (an extra £1m for the Conservatives).

The Conservatives also received 13 cash donations of between £100,001 and £250,000 from nine people, as follows:

Donor	Date	Donation (£)
Mr Robert Fleming	15.05.01	206,000
Mr Roderick Fleming	15.05.01	200,000
Mr Leonard Steinberg	03.01.02	110,000
Sir Stanley Kalms	04.03.02	120,500
Sir Stanley Kalms	24.06.02	160,000
Dr Hans Rausing	01.07.04	198,000
Mr John Wheeler	02.07.04	236,000.90
Mr Robert Edmiston	10.09.04	250,000
Mr Frederick Catlin	22.10.04	150,000
Mr John Wheeler	22.12.04	200,000
Dr Hans Rausing	21.02.05	145,000
Mr John Wheeler	10.03.05	190,000
Mr Michale E Slade	23.03.05	102,000
Total		2,267,500.90

There were also two donations in kind (travel) by Corin Graeff (£128,353) and Edward Haughey (£119,816) accounting for another £248,169. Total donations from these ten people thus amounted to £2,515,670.78. Overall then, the total sum that the Conservatives received in high value donations was £14,381,497.97, deriving from

just ten people and representing 35% of all donations from private sources. This compares with a figure of 25% for Labour. As with Labour however, attention must be paid to donations amounting to £100,000 plus, *in aggregate*. An additional £3.87m was raised from the aggregate donations of 31 donors, raising the Conservatives' reliance on large donations to 43% of donation income from private sources.

Apart from the heavy reliance of the Conservative Party on the State and the heavy dependence on large personal donations, the Conservative Party also receives more donations from companies than does the Labour Party, and these donations are of a significantly higher average value (£14,642) than the comparable donations to Labour (£7,481). 823 corporate donations yielded £12,050,562.21. Of these donations, five were over £250,001:

Donor	Date	Donation (£)
Norbrook Laboratories	02.04.01	1,000,000
IIR Ltd	26.03.02	520,000
IIR Ltd	31.12.04	267,500
Intercapital Private Group Ltd	14.01.05	350,000
IIR Ltd	30.03.05	303,720.89
Total		2,441,220.89

In addition to the foregoing, another 12 company donations of between £100,001 and £250,000 were made to the Conservative Party, the combined value of which was £1,868,615.85. More significant is that category of large, aggregated, donations. In the period under review, 21 companies each gave a number of donations which flew below the £100,000 radar, but when aggregated, were above it. In total, donations of this sort amounted to £3.73m. Twenty three corporations thus accounted for 67% (£8,044,000) of the total amount of company donations received by the Conservative party, and company donations in total accounted for 29% of all their private donations. High value (in excess of £100,000) company donations thus account for £4,309,836.74, and the Conservatives rely on companies for approximately 10% of their private donations (£41,940,306.51). Additional high value donations were received from unincorporated associations such as the Carlton Club Political Committee, the Scottish Business Group Focus on Scotland and the

Midlands Industrial Council which collectively donated in excess of £1.16m.⁵⁴

A notable feature of these returns are the activities of Bearwood Corporate Services. In the first quarter of 2005 – a period in which it was an open secret that a General Election would be held on May 5th – Bearwood donated £284,279.50 in 35 separate cash donations to 33 local Conservative constituency parties, all of which were earmarked as marginal seats. To individual candidates, such donations largely covered the bulk of their campaigning period costs in one fell swoop. Individual candidates would be freed from concerns about raising sufficient funds and the effort of having to do so. In total, the company donated £574,679.49. This suggests a new strategy on the part of donors (of which there is other evidence) which is to direct money to candidates rather than only to the party centrally. It also reveals a problem with the disclosure rules, for these donors of significant aggregate sums may not always be easily identifiable, with the name of the donor concealing as much as it reveals, even though the practice is perfectly lawful and even though there is no intention to be anything other than fully transparent. Thus, although not apparent from the record, Bearwood Corporate Services is reported in the press to be closely linked to Lord Ashcroft, the former Conservative Treasurer, a matter which is considered by some to be relevant information. In the absence of media reports, this connection would remain obscure.⁵⁵ (Lord Ashcroft had previously made substantial donations to the Conservative Party, prior to the new disclosure regime came into force.) Also notable is the conduct of the Midlands Industrial Council, an unincorporated association of ‘Tory businessmen’ which provided 26 donations amounting to £590,602.37, of which £349,000 was donated to Conservative Central Office and the balance to local parties. A further £55,000 was donated during the election reporting period.

The Liberal Democratic Party

The Liberal Democrats received 1580 donations in the period under review, raising £13,667,746.84. Of these donations, slightly more than one quarter (£3,847,546.70) took the form of donations from public funds. Up until the start of 2005, the Liberal

⁵⁴ If company and personal donations are combined, we find that the Conservatives relied on 43 such donations in excess of £100,001 to provide £26.3 million of their donations from private sources, representing 63% of their total private donation income. Without public funding and donations in excess of £100,000, the Conservatives would have been required to finance their operations (including a General Election and a European election) since 2001 with donations of less than £16 million.

⁵⁵ *The Guardian*, 24 May 2005.

Democrats had a greater degree of reliance on public funds – some 38%. As we shall see, a series of large donations from a single source radically altered their income profile prior to the General Election of 2005. A total of £9,130,199.39 was provided by 1,291 cash donations, with another 190 donations in kind providing £549,026.95. The average cash donation to the Liberal Democrats was £7,072 – again, at the start of 2005, that figure would have been a relatively modest £4,303. The party received only two private cash donations in excess of £50,000, of which one was a bequest.

Donor	Date	Donation (£)
Mr A H Wilkinson	24.08.04	100,000
Mr S Forecast (bequest)	19.02.04	175,251.26
Total		275,251.26

Donations which in aggregate totalled £50,000+ were also significant to the Liberal Democrats, as follows:

Donor	Aggregate Donation (£)
Mrs L Featherstone	57,744.23 (30 donations (13 non cash))
Lord Jacobs	183,928 (13 donations (1 during election))
Mr D Jukes	50,000 (1 donation, 1 bequest)
Mrs M B Kulvietis	50,000 (4 donations)
Enid Lakeman	73,000 (2 donations, 1 bequest)
Mr B Roper	67,188 (6 donations (1 of £50,000))
Mrs M Roper	54,000 (2 donations (1 of £50,000))
Evelyn Strasburger	50,000 (1 donation)

Paul Strasburger	50,000 (1 donation)
Mrs I Sutton	69,213.90 (1 donation, 1 bequest)
Mr A Wilkinson	42,000 (5 donations)
Mr P Yeldon	94,669.60 (9 donations (1 of £40,000))
Total	783,999.50

The Liberal Democrats also received three donations from the trade union UNISON totalling £93,441.41 and further aggregate donations of £50,000+ from the Liberal Democrat Balls 2001, 2002, 2004 totalling £146,712.15 (5 donations).

It is in terms of corporate donations that the Liberal Democrats' disclosure record is remarkable, totalling £5,403,041.16, the overwhelming majority of which derived from a single source in the three months prior to the General Election of 2005. Donations between £100,000 and £250,000 are as follows:

Donor	Date	Donation (£)
Alpha Healthcare Limited	03.05.05	100,000
5 th Avenue Partners Ltd	10.02.05	100,000
Joseph Rowntree Reform Trust	30.06.01	207,300
	14.11.02	125,000
	06.01.03	125,000
	02.04.03	125,000
	03.07.03	125,000
	11.10.03	125,000
	05.01.04	125,000
	02.04.04	125,000
	02.07.04	125,000
	08.10.04	250,000
	05.01.05	250,000

5 th Avenue Partners Ltd	25.02.05	151,000
Total		2,058,300

A further three company donations were made in excess of £250,001:

Carrousel Capital Ltd	21.03.05	275,000
5 th Avenue Partners Ltd	22.03.05	1,536,064.80
5 th Avenue Partners Ltd	30.03.05	632,000
Total		2,443,064.80

Finally, donations which in aggregate amounted to £50,000+ were as follows:

Donor	Aggregate Donation (£)
Alpha Healthcare Ltd	10,000 (1 donation)
Carrousel Capital Ltd	15,000 (1 donation)
Hereford Liberal Club Ltd	61,755.50 (22 donations, incl 12 non cash)
Joseph Rowntree Reform Trust	8,561.80 (6 donations)
KPMG	163,068 (5 non cash donations)
Total	258,385.30
Overall total	4,759,732.10

These twenty donations account for 88% of all company donations and 34% of total donation income. They account for almost half of donation income from private sources (48%).

Almost half of the value of company donations came from a single source – 5th Avenue Partners Ltd (£2,419,064.80). The Joseph Rowntree Reform Trust (although

it uses a corporate form is not an commercial organisation but rather a private trust founded on a confectionary fortune dedicated to funding social policy research) provided a further £1,715,861.80, and Carrousel Capital Ltd a further £290,000. These three entities alone account for 80% (£4,299,926.60) of all company donations to the Liberal Democrats. When these donations are considered in light of total donations to the Liberal Democrats, the three companies account for more than 30% of all donation income and 44% of all donation income from private sources. 5th Avenue Partners Ltd alone accounts for 18% of total donation income and 25% of donation income from private sources. 5th Avenue Partners gave £2.4m in the first quarter of 2005 out of £4,164,970 given in total in the first quarter to the party. The company itself was only incorporated on 15 March 2004 and was bought from its previous owners on 11 August 2004, six months before the first donation. There are no available accounts presently at Companies House and the Director, Michael Brown, is resident overseas. Although this was a highly controversial and embarrassing donation for the Party, it nevertheless helped the Liberal Democrats to close the funding gap with the other two parties. The Liberal Democrats raised £4,164,970.51 from 193 donations in the first quarter of 2005 in the run up to the General Election compared to just £181,751.83 from 42 donations in the same period before the 2001 General Election. This compares with £8m for the Conservatives (£8,050,707.12 from 401 donations) and £9.1m for Labour (£9,144,704 from 494 donations).

POLITICS, PURPOSE AND PRACTICE: ANALYSIS AND ASSESSMENT

What do these data tell us about the impact of the disclosure regime? The first and most obvious point is that they reveal that the legislation has not been effective in eliminating extremely large donations from the political process. Private donations of more than £250,000 account for about a sixth of Labour Party donation income and more than a quarter of Conservative Party donation income (if State subsidies are excluded). Indeed it is possible that the legislation has made the parties even more dependent on a smaller number of large donors. In the case of the Labour Party c £11 million (a sixth of its donation income) has been provided by just 5 individuals. The second and equally obvious point is that although the Conservatives are heavily dependent on corporations, corporate giving is nevertheless quite limited, and is now considerably less than trade union contributions to the Labour Party. It is tempting to speculate that the relative absence of corporate donations is due to the requirement

introduced in 2000 that companies may donate only with the approval of their shareholders. But although these requirements may initially have had a chilling effect, it appears to be the case that company political donations had already declined steeply as companies had largely fallen out with the Conservative Party. With the abandonment by Labour of a socialist programme, there was less cause for companies to make significant donations to the Conservative Party, and there was a growing concern on the part of some businesses that the issue of political donations was a controversial one they were best to avoid.⁵⁶

Yet there is no sense of urgency about these trends and no sense that there is a continuing problem. It appears to be enough that the donations are in the public domain, available for comment and investigation. In this sense the statutory disclosure rules may simultaneously expose and legitimise very large donations, and serve to increase our tolerance threshold about the acceptability of private money in public affairs. It remains the case nevertheless that large donors have opportunities that are not available to less well heeled or politically disinclined individuals, and that these opportunities arise only by virtue of their donation or prospective donation. The Labour Party's fund-raiser has acknowledged publicly that he introduces prospective donors to the Prime Minister (in the latter's capacity as party leader),⁵⁷ and it is known that those who buy tickets for gala dinners can normally expect to be graced by the presence of senior politicians at their table. Other parties quite openly sell access to senior politicians, with the level of access determined by the amount of the donation. In 2001 the Conservative party wrote to selected electors shortly before the general election soliciting donations and inviting them to join one of a number of 'clubs'. For a donation of £10,000 it would be possible to join the Renaissance Forum. 'the most prestigious of our donor clubs'. This would enable the donor to 'meet face to face, prominent decision makers, opinion formers, leading members of the Conservative front – bench and senior Party officials at small and exclusive dinners', including an event at which the Party leader would be guest of honour.⁵⁸

⁵⁶ See for example, *The Independent*, 20 May 2002 (business calls for State funding)

⁵⁷ *The Guardian*, 2 December 2004 (G2)

⁵⁸ Recent Renaissance Club events were said to include a dinner with Lady Thatcher, a dinner with the US Ambassador, and a dinner with Michael Ancram QC MP. Donors to the Front Bench Club had to make do with talks by Archie Norman MP, Francis Maude MP, and Michael Portillo MP.

So if the disclosure regime reminds us that the integrity of the political process is challenged by large donations to political parties, does it also serve to promote the objectives of its authors, namely the elimination by the risk of exposure to corruption, in the sense of improper influence? Before responding to that question, it has to be acknowledged that there is something of a contradiction at play here which makes the statutory objectives infinitely more difficult to achieve. The contradiction lies in the difficulty in controlling improper influence by donations which may give rise to an appearance or a danger of corruption, yet which are accepted as legitimate.⁵⁹ It is perhaps unsurprising that this tangling of wires should lead to allegations that donors have been able to secure benefits for their donations. These include both commercial benefits and personal honours. Yet it is impossible to prove cause and effect – that a donor received a benefit or an honour because of his or her donation. But it is nevertheless possible to point to the coincidence of donation and personal honour and personal benefit, even if the circumstances of the latter in particular are shown to be no more than coincidental.⁶⁰ Thus although there have been three particularly controversial donations (Desmond, Mittal and Drayson), it has been asserted robustly that the decisions were taken in accordance with pre-determined procedures. In at least one of these cases an investigation by an independent and respected source was unable to establish any impropriety; indeed quite the opposite.

Although there was thus no direct evidence of corruption, these controversies nevertheless rocked the government in the way that the Ecclestone case had done before. They led the Labour Party to introduce new funding rules for the vetting of donations. A Statement for Donors was adopted in 2002 whereby it is declared that donors to the Labour Party provide support because they are broadly committed to the Aims and Values of the Labour Party, and accept that they provide this support 'without seeking personal or commercial advancement or advantage for themselves or others'. The Statement also makes clear that 'by supporting the Labour Party with donations, it is understood that this should not of itself disadvantage anyone, whether personally or in terms of business activities'. In addition to this new Statement, another important initiative is the setting up of a new fund-raising committee to 'have oversight in the area of major donors'. This has been referred to in the press as an

⁵⁹ A good parallel here is the rule against bias in administrative law: it is not enough that justice is done; it must also be seen to be done. See H W R Wade and C F Forsyth, *Administrative Law* (9th ed, OUP, 2004), ch 13

⁶⁰ Comptroller and Auditor General, *Procurement of Vaccines by the Department of Health*, above

ethics committee, and is expressly stated by Labour to be designed to build on the legislation. But the problem with this is that the Statement of Donors does not otherwise include any ethical principles to regulate who is or is not an appropriate source of money. (This was controversial in view of Labour's acceptance in 2001 of a large donation from Richard Desmond). The other problem is that the oversight committee includes the party's fund-raiser, the person whose work presumably it is the responsibility of the Committee to oversee.⁶¹

It is difficult to see how the contradiction at the heart of the British system can be satisfactorily accommodated: how simultaneously to tolerate (indeed welcome) large donations yet to eliminate any suspicion that these donations undermine the integrity of the political classes or the political system itself. Or - in other words - how simultaneously to condemn corruption of personnel and institutions, while tolerating corruption of process. But it is not only at the level of principle that mixed messages are conveyed by the legislation. Similar confusion exists in its practical implementation. Thus while the Labour Party has adopted a new Statement for Donors, the government has abolished the Political Honours Scrutiny Committee.⁶² This is a Committee which had previously vetted nominations for personal honours to ensure that decisions were not proposed as a reward for political donations.⁶³ There is no suggestion that the government abolished the Committee because it was ineffective – attention has been drawn to an alleged coincidence that all million pound donors to Labour since 1997 have been ennobled or knighted if they had not been already at the time the donation was made.⁶⁴ If the contradiction cannot be accommodated, the only way by which it could be resolved would be by addressing the challenge to the integrity of British political life which is associated with large personal donations of up to £5 million. This points to the need for more sophisticated political integrity strategies which focus on the legitimacy of large personal donations, alternative sources of funding, and the spending options available to the parties. This would suggest a greater role for State funding to relieve the parties of the pressure to chase after large donors as well as a further reduction in permissible spending.

⁶¹ For a fuller account, see K D Ewing, 'The Disclosure of Political Donations in Britain', in K D Ewing and S Issacaharoff, *Party Funding and Campaign Finance in Comparative Perspective*, above, ch 4. For an account of the Committee in operation, see *The Sunday Times*, 19 March 2006.

⁶² *The Sunday Times*, 12 June 2005; *The Guardian* 13 June 2005.

⁶³ For an account of the Committee's work, see Committee on Standards in Public Life, above, ch 14.

⁶⁴ *The Sunday Times*, 15 January 2006.

CONCLUSION

The disclosure regime has not stopped large donations to the political parties and it has not removed concern about donations as something to which party leaderships respond. British political parties continue to receive donations on a scale without precedent elsewhere in the developed world. The disclosure regime is effective to the extent that it reveals these features of the system, and it may have some impact on the behaviour of some donors who are reluctant to be the subject of press investigation and reporting. Although party bagmen report growing difficulties in harvesting donations, this is to be seen in the context of a sharp decline in levels of party membership and traditional forms of political engagement. The disclosure regime may have helped to moderate the conduct of the parties, though there are only a few known examples of donations being declined by them. Yet the campaign for further reform appears to have reached an impasse. The Electoral Commission recently considered *inter alia* whether a cap ought not be set on donations to political parties.⁶⁵ In order for such a step to diminish reliance on high value donors, it would have to be set at a relatively low level – say £10,000 to £50,000. One certain impact of such a step, as is clear from the foregoing, is that political parties would be starved of funds, and would be unable financially to perform their constitutional functions. In those circumstances it would be up to the state to fill the breach. However, the desirability of yet further public funding for parties is far from clear. While the Electoral Commission's own research, both qualitative and quantitative, has indicated that there is much anxiety surrounding large donations, that same research has revealed even greater hostility to extending public support for parties.

Until very recently both the main parties are against contribution caps, though the Conservatives appear to have changed their mind in the light of the scandal referred to in the postscript and the Labour leadership is wobbling. But herein lies another problem. Such an initiative would founder on the quirks of British party structure. The Labour Party is an organisation of individual members and affiliated trade unions (which are members of the Party in their organisational capacity, admitted and expelled as such). It would be impossible to cap donations – if a donation were to include a trade union affiliation fee as is currently the case for disclosure purposes -

⁶⁵ *The Funding of Political Parties* (Electoral Commission, London, 2004).

without undermining the freedom of political parties to determine their own internal structures.⁶⁶ In any event it is worth recalling that trade unions represent huge numbers of individuals, and that in order to contribute to political parties, trade unions are required by legislation to ballot their members for authority to establish political funds. These funds must be financed by a separate political levy of the members, any of whom may 'opt out' of the obligation to contribute. If our concern then is with the democratic credentials of the process, trade union donations under the present scheme are not a problem, being nothing more than the aggregations of very small donations from a very large number of individuals. Indeed, as a mechanism of promoting participatory democracy, the role of trade unions in the party funding process is as beneficial as it is venerable. The overriding need of the parties may well be to reduce their dependence on large donations, and this may well point to a greater role of the State in underwriting some of the costs incurred by political parties. However, the precise means by which this is achieved must be carefully assessed. It is a pill that would have to be very heavily sweetened before being administered to the taxpayer.

POSTSCRIPT

Since this paper was written and the since the meeting at ANU, the British government has been embroiled in another funding scandal of great consequence. It has transpired that the Labour Party solicited loans of up to £14 million from a number of prominent businessmen in the period before the general election in 2005.⁶⁷ Loans are not subject to the transparency requirements of the Political Parties, Elections and Referendums Act 2000: there is no obligation to disclose them, no matter the amount. In some cases the loans were made by people who were subsequently nominated by the Prime Minister for a seat in the House of Lords, and in several cases the nominations were blocked by the House of Lords Appointments Commission. This gave rise to serious allegations of loans for honours, fuelling concern that donors (and now lenders) to political parties enjoyed disproportionate chances of elevation to the red benches of the House of Lords. It was already the case that all million pound donors to Labour since 2001 coincidentally have been given a political honour of some kind (peerage or knighthood). The government has embarked upon another round of party funding reform, reinforcing the aphorism that

⁶⁶ For a full examination of this issue, see K D Ewing, *Trade Unions, the Labour Party and Political Funding* (Catalyst, 2002).

⁶⁷ The affair is well covered by *The Sunday Times*, 19 March 2006.

regulation creates loopholes; loopholes will be exploited; exploitation leads to further regulation; further regulation leads to further loopholes; and so on. The affair reveals again the need to control the influence of big money in politics but also the difficulties of doing so.