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Political finance: state control and civil society monitoring

Modern politics face the challenge of reconciling the presence of money in politics with the risks it poses to democratic values and good governance. This U4 Brief describes the nature of common risks and challenges, and looks at avenues for mitigating the corruption-related problems with political funding.

As election day approached, Mayor Sullivan asked Paul for a significant contribution to support his re-election campaign. He had done so last time. And Paul's business with the city had surged during Sullivan's administration. Sullivan promised Paul's company would be rewarded for the support. Paul had no doubt about that. In fact, when facing problems with the administration in the past (for not abiding by the quality standards he had committed to in the contract he was awarded) a phone call to Sullivan's office sufficed to smooth out the problems. But this time Paul was doubtful about the elections. There was a realistic chance for the opposition to win. Therefore, he decided to support the opposition candidate, in addition to Sullivan. If cut off from the government contracts, his company could not survive. Since the sitting mayor would dislike double-crossing, Paul insisted with Sullivan's opponents to keep his donation off the books.

The street where Jane grew up had lacked water and electricity for as long as she could remember. While the city administration never really cared, in election years this scenario changed completely. Candidates regularly had streets paved and promised more improvements once elected. But that never occurred. The paving, however, did not last much longer than a year, and the situation would be the same the next election. Candidates also had pharmacists hand out medicine or physicians treat patients for free. If individuals or the private sector financed this, jobs and contracts would be provided after the election in compensation. And candidates who themselves had invested part of their own assets to win the election had miraculously become richer, forging a political career from one office to the next.

These two cases, albeit fictitious, are illustrative of common real practices related to political finance. However, political finance is a necessary feature of political competition and must not cause damage to democracy. Modern democracies require resources to finance campaigns and party organisations. To keep the system functioning, political parties ideally resort to the engagement of party activists and sympathisers. However, modern politics require a high degree of professionalism in management. Many services cannot be delivered by voluntary engagement. To cover the costs of running modern party organisations, recruiting and training new political leaders, and reaching out to voters in election campaigns, parties and candidates typically resort to considerable amounts of monetary and non-monetary resources.[1] Without these, free and informed competition would not be sustainable.

Risks stemming from money in politics

While money is required to foster political competition, its role in politics can undermine the tenets of democracy. Depending on where money comes from, how it is distributed and what it is spent on, it can turn from a blessing into a curse. Money can distort the electoral process as a result of the source and distribution of funds, the management of resources and expenses, as well as the motivation linked to donations.

Risk no. 1: Distorting competition between candidates

Where resources are unfairly distributed between candidates, the electoral contest may be distorted. Incumbent candidates may abuse state resources to fund their campaigns.

1 Political finance comes in a variety of partly overlapping currencies – the three most notable include government resources (unlawfully used to promote the re-election), financial support from private donors, and, as the third and most recent currency, political communication through media.

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This distorts political competition or ultimately blocks the process of democratic alternation of leadership. Candidates representing powerful economic interests may conduct sophisticated campaigns while their competitors who stand for less well-off constituencies are cut off from communication with voters. Resources for electoral competition may be pocketed by candidates, or campaign finance can be used as a channel for money laundering.

Risk no. 2: Diminishing the role of citizens

Political finance might also be looked at from the citizens' perspective. Campaign funds may be used for improper purposes like vote buying, thereby anaesthetising the critical role of voters. Both corporate donations and state resources can also crowd out the role citizens play in the political system. Individual citizens' campaign contributions, as an expression of political participation, can hardly compete with the substantial amounts of funding that private companies are able to provide. The political class might also be able to extract generous state funding for elections and parties without the knowledge and consent of the citizenry.

Risk no. 3: Mining integrity of representation

Political finance also has an impact on policy making once candidates take office. Private donors may require privileged treatment in return for donations. This could range from tax exemptions and other donor-friendly measures, to preferential treatment in public contracting processes. In countries where foreign contributions are allowed or occur *de facto*, political finance can have a distorting impact on foreign policy. As such, political finance potentially affects the direction and quality of public policies and whether these respond to broader collective or rather specific private interests. If money becomes a primary channel for buying influence, poor communities will find themselves at the loosing end. The direct impact of political finance on the behaviour of officeholders is of course often difficult to assess. But the suspicion of undue influence has an impact on the credibility of the system of representative democracy as damaging as a proven causal relationship.

How have regulations addressed these risks in the past?

Countries with a long democratic tradition have established different sets of regulations. These are typically designed to prevent the abuse of government resources to remain in office and the damage to democracy caused by large private donations, while ensuring fairness in how the media influences political competition, and building independent control agencies.

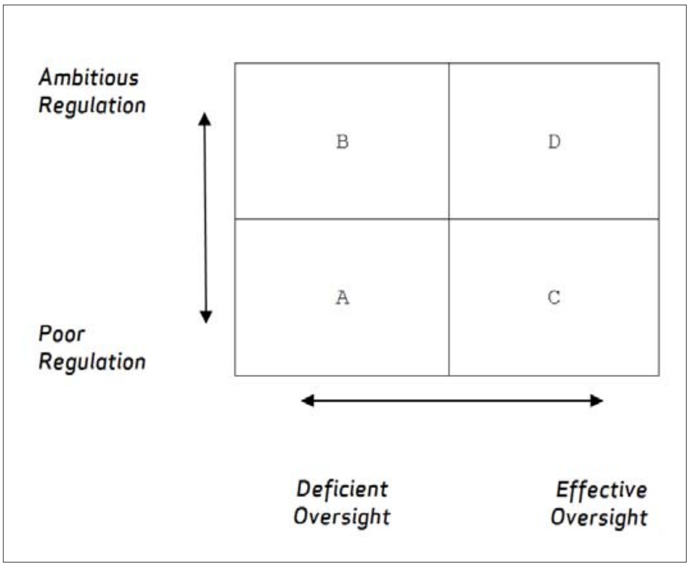
Abuse of state resources

Abuse of state resources has been tackled by prohibiting the unilateral use of these, by building an independent civil service and, more recently, by introducing specific regulations constraining the spending leeway of governments during election campaigns. The latter includes specific rules on public procurement, employment of civil servants, government advertising in election years,[2] and general rules on fiscal responsibility.[3] In addition, many countries with a presidential regime have limited consecutive re-election of the government in power.[4] All these measures have not fully eliminated the abuse of state resources, which continues to distort elections in many countries. To some extent, the advantage of officeholders is considered inevitable and private campaign contributions are considered a necessary means to counterbalance any such advantage. In fact, in countries dominated by government parties, private donations are often the only way to allow smaller parties to gain presence.

Regulating private money

The role of private money, considered often as a prerequisite for – as well as a risk to – democracy, has been addressed by different regulatory tools, including bans and limits on private finance, exclusion of undesirable sources, levelling the amount of private donations and/or limiting the connection between candidates and donors. Similarly, some countries have set ceilings on the overall amount of campaign costs, which immediately helps level the playing field, and has collateral effects on other aspects of campaign finance. In countries where some kind of regulation concerning the role of private resources is in place, these regulations vary from timid to more ambitious. At the same time, the ability of state control to effectively force parties and donors into abiding by these rules varies widely. A main challenge of reforming political finance regimes is to develop sound regulations to minimise the above-mentioned stemming from private donations. When moving from scenario A to D (graph 1), many countries get trapped in ineffective regulations due to a lack of effective oversight (scenario B, e.g. Argentina). Another risk is a deadlock of poor regulation due to lack of

Graph 1: Regulating political finance and performance of state oversight



2 See e.g. the New Zealand Auditor-General's report on Government and Parliamentary Publicity and Advertising, June 2005. Similar concerns have been brought forward in Australia. In Canada, the civil society organisation Democracy Watch has raised the issue and requests regulation: http://www.dwatch.ca

3 The following countries have introduced fiscal responsibility laws: New Zealand, Sweden, Bulgaria, Estonia, Poland, United Kingdom, Euro Area, Argentina, Chile, Peru, Brazil, Colombia, Ecuador, India, and Venezuela (Kopits, 2007).

4 In a few countries (Mexico, Costa Rica) this rule extends to the Legislature.

political will to reform (scenario C, e.g. Brazil). Both unrestrained influence of money on politics and a rule representing a mere facade cause political cynicism among citizens.

Public subsidies

Public subsidies and regulations guaranteeing free access to services have been a widely cultivated approach for supporting parties in organising political competition and limiting dependence on private funds. However, in most counties the amount of public resources has not been able to effectively replace the role of private money. And even countries spending considerable amounts of public resources to fund parties and campaigns have not been spared from scandals. The Flick Scandal in Germany and the Seat Scandal in Spain unveiled that high public subsidies could at best mitigate, but not ban, the risk of influencing political decisions by political donations.

The media's role in political competition

The regulation of media has been at the heart of many reforms, focusing on the different roles of media as a channel of information and a carrier of campaign ads. While some countries trust freedom and pluralism to produce a balanced role of media in political competition, others opt for regulation, establishing rules for a balanced approach in election campaigns. Regulation of its role in political competition ranges from guaranteeing access to advertising for political proselytism, levelling the playing field by regulating the space and price for ads, to providing free radio and TV time. Since TV ads are one of the most expensive items of modern election campaigns, free airtime as a form of indirect public subsidy has played an important role in reducing the costs of, and the pressure to fundraise for, political campaigns.[5]

State agencies controlling political finance

Finally, countries have regulatory state control bodies, often autonomous agencies, vested with the power to investigate and impose sanctions. Controlling political finance is a relatively recent practice, and even in established democracies, after a century of political finance regulation, the role of independent and effective state oversight has received recognition only in recent decades.[6] While many independent regulatory agencies were installed to guarantee free and fair elections by managing the electoral process,[7] new agencies now often receive the additional task of monitoring the financial background of elections. Independence, technical preparation for the job, sufficient resource allocation, as well as ample legal investigative and sanctioning capacity are prerequisites for achieving this task.

5 Countries that provide significant free airtime during elections in combination with a ban on paid advertising are Brazil, Chile, Mexico and Colombia.

6 In the United States, the Federal Election Commission was introduced only in 1975.

7 In Central American countries like Guatemala and Panama, the process of redemocratisation started with the building of independent electoral agencies.

State control and social oversight

While political finance regulations have till now very much focused on the regulatory capacity of laws and state oversight bodies, social oversight has recently gained growing relevance. In many countries, social control has developed into an institution by its own right in recent decades. The efforts of civil society organisations (CSO) and the press to engage in the issue bear on different origins. First, organisations involved in electoral observation have enlarged their scope of attention. Recognising that campaign finance is a vital aspect for assessing whether elections are free and fair, international and national election observers have dedicated more attention to this. Still, the focus is basically on the impact on the electoral process, neglecting the aspect of political finance between elections. In addition, organisations dedicated to corruption control have discovered that many corrupt deals originate from campaign finance schemes. The central question for these organisations ought to be the post electoral favours triggered by donations. However, in practice, electoral and post-electoral risks linked to political finance are intertwined.

What do civil society organisations do? The scope of civil society organisations' work in the area of political finance has been documented recently.[8] Examples of activities include voter education activities, whereby voters are alerted to the long-term costs of vote buying and other forms of manipulating the electorate. An additional category of activities focuses on informing voters about candidates and parties in general, and if possible, political finance. In countries where official data is scarce, CSOs resort to collecting this data themselves. In other countries, they analyse, translate and disseminate data on candidates in general and on election finance.

Apart from informing voters, a handful of CSOs work with parties, donors and state agencies. In Peru and Colombia, CSOs have engaged in training political parties to abide by political finance laws. In Brazil and Chile, non-governmental actors have developed special projects informing corporate donors about their rights and duties in campaign finance. International initiatives have also called on companies to apply transparency standards regardless of the national law. There are also efforts to convince candidates to voluntarily disclose information on campaign finance.

Two fields of additional monitoring efforts concern the role of media in elections and the use of government resources. Media monitoring, either focusing on political advertising or on balanced journalism, can reveal important aspects of resource allocation, while equally shedding light on the question of media neutrality.

Regarding abuse of government resources, this has always been part of election monitoring efforts, focusing on the use of official vehicles and mobilisation of servants in election campaigns. However, recently, the focus of such observation has been broadened to include monitoring the use of government advertising for political purposes.

8 Transparency International: Corruption fighters' tool kit. Civil society experiences and emerging strategies, Berlin, 2002; Open Society Justice Initiative: Monitoring Election Campaign Finance. A Handbook for NGOs. New York, 2005.

The relationship between state control and social control has complementarities, but also competition and asynchronies. Complementarities prevail where civil society organisations report misbehaviour, thus providing input to state control agencies, given the limited capacity of state agencies to monitor extensively what happens on the ground. This channel of information is vital where peer review between parties comes to a halt due to a pact of mutual protection among political contenders. Contrariwise, social oversight depends on state control agencies. For social control to happen efficiently, data on political finance needs to be disclosed to the public. Depending on the law and on how state control agencies implement these rules, CSOs themselves can enhance their role by ensuring that this information reaches the public.

	State control	*Social oversight*
Role	Guarantee compliance with the law	Empower citizens to support or reject parties Oversee state control
Criteria	Law and regulations	Standards of behaviour accepted by society
Powers	Investigative and sanction misbehaviour	Uncover and denounce unacceptable political finance links
Weakness	Depending on reporting of misbehaviour Poor performance	Depending on disclosure Lacking awareness of political finance
Sanctions	Political, civil, criminal sanctions	Protest and withdraw support
Corrupt links between donations and favours	Hard to prove causal link	Reasonable doubt suffices for withdrawal of political support
Reform debate	Technical expertise	Defending the public interest

A key role of state agencies is guaranteeing compliance with the law by involving different actors in the process of political finance. This includes detecting transgressions, investigating the facts and sanctioning misbehaviour. The remaining challenge is that often laws on political finance are too weak to prevent corruption, and state agencies' powers to act are limited.

Social oversight follows a different logic. Besides reporting misbehaviour to state agencies, social control aims to empower citizens to sanction political actors by withdrawing support and manifesting discontent. Such empowerment requires informing citizens about political finance during the electoral process. However, the legal framework for such disclosure is still limited in most countries where the law does not require concomitant rendering of accounts. Therefore, informing citizens may require independent data gathering by non-governmental organisations, or translating public data into an accessible format. Empowering the citizenry also requires shaping social norms to achieve a better understanding of what is acceptable behaviour. While state control is bound to the laws in place, social control may develop different behavioural standards. A party accepting lawful political contributions from a particular industry (e.g. timber, weapons, polluting industries) in contradiction with the declared political priority (conservation, disarmament, and environment) may be punished by the voter for this contradiction. This is an opportunity and a challenge for social oversight.

When assessing the corruption risks of political donations influencing elected officeholders, state agencies face the challenge of providing proof for the causal link between a political donation and a favour rendered. This connection is difficult to establish. First, private donations *per se* are mostly legal and, unlike bribes, the transfer itself does not provide evidence for a corrupt deal. Second, time gaps between campaign contributions and a future favours from elected officeholders make it difficult to establish causal links between both actions. Finally, elected officeholders have wide discretionary powers, and are not legally obliged to give reasons for their decisions and answer to their voters. These factors make it hard to prove that the motivation for a given decision results from a campaign contribution rather than a public interest rationale.

Again, social control operates on a different logic. A reasonable doubt about the causal connection between donations and retributions might be sufficient to activate mechanisms of social sanctions. Since officeholders are answerable to the citizenry, CSOs have a vital role in providing evidence on how campaign finance might be linked to decisions by officeholders. A large donation by a company in combination with an increased share of public contracts can well be sufficient for voters to withdraw support from the government.

CSOs also have a vital role in remedying the effects of legal shortcomings and weak state controls. If the state fails to guarantee a rule of law, CSOs often take on a *control-of-controllers* role. E.g. confronting state agencies when parties and candidates provide flawed data may force the former into adopting a more proactive stance. State control is often activated by criticism from civil society.

Equally, CSO's are fundamental in promoting democratic standards during legal reforms. Political parties working on political finance legislation, are effectively regulating their own activities, which is a conflict of interest situation. Thus, the voice of independent experts, academia, technical expertise, and CSOs defending public interest is vital to the debate on reforming political finance laws and regulations.

Social control and control by state agencies are interdependent spheres when it comes to transparency. Only a strong state agency can enforce reporting and disclosure requirements. This includes collecting such information from parties and candidates, verifying its accuracy and guaranteeing disclosure to the public in a user-friendly manner. The press and civil society can collect information and confront oversight bodies with data. But this intermittent process cannot substitute the role of state agencies in collecting comprehensive datasets and scrutinising as well as sanctioning non-compliance with the law. Hence, state control and civil society require mutual support in areas where their roles are intertwined, while in other areas recognising their complementarity.

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