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# AN ENEMY TO DEMOCRACY?

## POLITICAL PARTY FINANCE AND CORRUPTION IN THE WEST

LAURENCE COCKCROFT AND ANNE-CHRISTINE WEGENER

*Co-authors of  
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## **AN ENEMY TO DEMOCRACY?**

### **POLITICAL PARTY FINANCE AND CORRUPTION IN THE WEST**

**Laurence Cockcroft and Anne-Christine Wegener**

**Are Europe and the US facing a crisis in political funding which undermines the basic tenets of liberal democracy? Does the lobbying industry, mainly supported by the corporate sector, really determine policy outcomes in both contexts? In both the US and Europe, well-targeted corporate funding is undermining democratic control. This, in turn, feeds into the widespread public belief that political parties and parliaments are corrupt<sup>i</sup>. The perception that power is sold and influence is bought undermines trust in the functioning of democratic institutions.**

#### **IS MONEY CONTROLLING POLITICS? RECENT CHANGES IN THE US**

There is nothing new in allegations that money is controlling politics. Cicero himself was a leading voice in 63 BC in seeking to reinforce and strengthen the Roman legislation which had originally been designed to control electoral expenditure in the Republic a century earlier. But attempts at expenditure controls on modern party finance have existed in some European countries<sup>ii</sup> since the mid nineteenth century and in the US since the Tillman Act of 1907<sup>iii</sup>. Two themes have always been central to this debate: first, should there be limits on what one such source (private or corporate) can contribute and second, to what extent do donors influence policy outcomes?

In the US the Tillman Act was followed by several attempts in the twentieth century to control both the level of expenditure by candidate and the number of candidates who could be supported, and even facilitated the possibility of public funding. The limits were ultimately defined in the Bipartisan Campaign Reform Act of 2002 ('McCain, Feingold'). But neither McCain himself (in his Presidential bid of 2008) nor Obama (in either of his campaigns) took advantage of the possibility of public funding provisions because it restricted the total amount a candidate could spend.

In 2010 the Supreme Court struck down all limits on corporate expenditure whether through 'Political Action Committees' (PACs) or directly to political parties. The decision left intact a restriction on the number of candidates one donor could support, but in 2014 this too was lifted. These changes re-opened an era in which both corporate money and individual donors could promote their policy agendas without restraint.

The Citizens United judgement opened the way for a big increase in campaign spending. Total expenditure on Congressional and Presidential campaigns rose from \$2.3 Bn in 2008 to \$3.7 Bn in 2012 – to nearly \$7 Bn in 2015/16 (with two thirds of this being generated by Congressional campaigns). Whilst Donald Trump had funded over half of his campaign costs by October 2016 himself, Hillary Clinton had been reliant on a wide range of donors often contributing indirectly through Political Action Committees (PACs) and entities with even greater discretionary spending – 'SuperPACs'. As a consequence candidate Trump suggested he would be less beholden to other people's 'big money' than Clinton would be.

#### THE ROLE OF THE LOBBYING INDUSTRY IN THE US: IS REFORM IMPOSSIBLE?

But the real test of the power of money in the Trump administration will rest in the lobbying industry and its interface with Congress. Nearly all big companies in the US who stand to benefit from concerted or solo lobbying have a budget which far exceeds their campaign contributions. From 2007-12 – in the aftermath of the financial crisis – the top five 'investors' in lobbying were GE (\$155.5 M), AT&T (\$99.4

M), Boeing (\$95.5), Lockheed Martin (\$84.1), and Koch Industries (\$64.5)<sup>iv</sup>. A total of 12,000 registered lobbyists – with a much larger army of consultants – ensure that these and similar levels of investment achieve their regulatory and legislative objectives. Many lobbyists are former Members of Congress (or their staffers) and, in the case of the House, may only have served for two years before moving to a higher paid post in the industry. However, in this case the task of helping members of the House to fund their next electoral campaign becomes a key part of their agenda.

In 2006 then Senator Obama, working with his later rival in the Presidential race, Sen John McCain, determined to break the grip of the lobbying industry, saying:

‘I intend to tell the corporate lobbyists that these days of setting the agendas in Washington are over, that they have not funded my campaigns, and that from my first day as President, I will launch the most sweeping ethics reform in US history’.

The consequent Honest Leadership and Open Government Act was intended to form the basis for a major reform. But in the struggle to develop and pass the Affordable Care Act, and to some extent in the development new regulatory norms for the finance industry - the President found that he had to rely on the existing lobbyists to ensure the passage of the relevant legislation.

There is a clear case for describing the nexus between campaign finance, the lobbying industry and Congress as corrupt. It is not surprising that President Trump was able to capture public opinion with a commitment to ‘Drain that Swamp’, or that Hillary Clinton was perceived as stuck in the same swamp. But the first indications are that it is extremely unlikely that the Trump Administration will create a new era in which the nexus is broken. No less than four senior Goldman Sachs personnel have been appointed to key positions including Secretary to the Treasury (Stephen Mnuchin), Gary Cohn (Chair of the National Economic Council) and

Anthony Scaramucci and Steve Bannon as senior White House Advisers. The moral of the narrative so far is that political party finance and lobbying pays.

#### CORRUPTION IN EUROPE: FUNDING SCANDALS IN FRANCE AND THE UK

The position on political finance in Europe is different since nearly all EU member states – with the notable exception of Sweden – have limits either on fund raising or spending in the context of a parliamentary campaign. Whilst these have existed in the western states of the EU for many years, they were introduced in the ‘accession countries’ in 1990, following intensive discussion. In both cases corruption is a growing threat.

In the older EU member states the pressure to raise money for political parties surreptitiously has frequently undermined observance of the rules in place – and has necessitated their constant revision. For example, in France where there are no limits on campaign expenditure at national level, but quite tough ones at the level of the individual donor<sup>v</sup> the last ten years has seen a succession of funding scandals leading to the brief arrest of both ex Presidents Chirac and Sarkozy. The former was charged in 2011 with ‘diverting public funds and abusing public confidence’ during his time as Mayor of Paris by having 28 party activists on the Paris payroll paid by the State. He was found guilty but given a suspended sentence. The charges against Sarkozy have two strands – the first in relation to the apparent acceptance of a ‘donation’ of Euros 50 M from President Qaddafi of Libya in 2012, despite the fact that foreign donations are illegal in France, and the second in relation to receipt of large cash payments from the L’Oreal heiress Liliane Bettancourt. Although the case was ultimately dismissed it was of sufficient concern to Sarkozy to request confidential information from a magistrate about a wiretap placed on him by the police. A potential route around the ban on foreign donations was found by Marine Le Pen’s National Front which took a loan of Euros 9M from the Czech Russian Bank in Moscow in 2014<sup>vi</sup>. These cases have exposed continued disregard by political parties of the regulation of party finance in France and heightened the sense of cynicism amongst the public.

In the UK the last attempt at serious reform of political finance was also undermined by the use of loans to circumvent caps on donations. In 2000 the New Labour government led by Tony Blair introduced the Political Parties, Elections and Referendum Act which was designed to upgrade existing legislation and was modelled on Canadian legislation, at that time thought to be the best in the English speaking world. However, in 2006 the Party arranged for loans totalling £14 M from twelve wealthy individuals with uncertain repayment rates but nominally high interest rates. Of the twelve 'lenders' no less than four were being considered for seats in the House of Lords, prevented only by public outcry. However although this was a well-publicised case it was mirrored by a similar quantum of loans to the Conservative Party, nearly half of which was accounted for by two individuals, one of whom, Lord Ashcroft, was not resident in the UK for tax purposes. Public reaction against these well publicised arrangements was later to be reinforced by an expenses scandal involving more than half of the UK's MPs. Each of these cases built up a picture of a pattern of behaviour which was widely perceived as corrupt.

#### MORE SCANDALS: SPAIN AND ITALY

In Spain the 'Gurtel' construction industry scandal has served to give a sharp lift to Podemos, the radical party in part dedicated to fighting corruption. It created a vacuum in Spanish parliamentary politics for most of 2016. The core of the case involves Francisco Correa who for ten years prior to 2016 initiated construction deals with six regional governments which were designed to cream off funds to the ruling Peoples Party (PP). Some of these funds were held by the PP Treasurer, Luis Barcenas, in Switzerland and filtered out in payments which reached individual Cabinet members as well as the party coffers. In 2016 the Anti-Corruption Attorney General's Office laid charges against 41 defendants – most of whom are MPs – who face a possible combined sentence of 800 years in prison.

By 2014 the Spanish public had come to recognise that the democracy established in 1978 was riddled with corruption and that all parties had used corrupt funds to

finance their quest for power. This was confirmed in a report the next year by the Court of Auditors who found that in 2012 'all parties had committed tax fraud and other financial crimes' and that each of them had received very substantial unrecorded donations since 1995. In some ways the decline of standards in the political system was epitomised by the case of Rodrigo Rato, once a high flying Minister of Finance for the PP, and subsequently Managing Director of the IMF and later CEO of Bankia, a leading Spanish Bank. In 2016 Bankia was charged with 'alleged fraud, concealment of assets and money laundering'. Bankia was an amalgam of six regional savings banks and had close links to the PP, which had engineered its creation. These cases laid bare the intermingling of political goals and private financial gain, and – as voting in 2016 revealed – the public had grown increasingly disillusioned with this toxic mix.

In Italy the need to escape from the grip of organised crime in local and regional politics has been a constant theme of the last century. Although success has ebbed and flowed various mafia groups - the Cosa Nostra in Sicily, the N'drangheta in Calabria and the Camorra in Naples - remain powerful entities in their home base, and often (particularly with the N'drangheta) well outside it. The key to the financial power of the mafia is the ability to cream profits from construction and other government contracts either directly (through a mafia owned company winning the contract) or indirectly through steering the contract to a close ally. In each of these cases control of – or a very high level of influence on - the regional political system is paramount. The Cosa Nostra has always been particularly important to would-be prime ministers trying to form a national government since Sicily accounts for ten per cent of seats in the national Chamber of Deputies.

It is a remarkable fact that three of Italy's longest standing Prime Ministers since 1945 have handled – at arms' length - some form of relationship with one or other mafia groups. The links between Andreotti, seven times Prime Minister between 1972 and 1992, and Cosa Nostra, were explored in three court cases commanding huge public interest. Bettino Craxi (in office from 1983-87) fled to Tunisia before the Court could reach a verdict on his raising of illegal funds, and Silvio Berlusconi (three

times in office from 1994-2011) was represented in court more than 30 times on charges which included links with the mafia. In 2013 the National Court of Auditors was to conclude that during Berlusconi's time in office all political parties had raised a total of Euros 2.2 Bn from state sources – or Euros 160 M per year – but that only Euros 579M could be verified as spent, implying a net surplus to the parties that was not accounted for of Euros 1.67 Billion.

In the five years since Berlusconi left the Prime Minister's office the operations of several mafia groups with close political connections have been sustained though partly exposed. In 2014 the police struck against mafia type organisations in Calabria, Umbria and Rome. Those under investigation included the former Mayor of Rome, Gianni Alemanno. The then Prime Minister Matteo Renzi promised that the 'corrupt would be forced to repay everything, right to the last cent' but such a commitment has yet to be honoured. In fact, partly in reaction against this exposure, the Mayoralty of Rome was won in 2016 by Virginia Raggi, on behalf of the Five Star Movement, who campaigned against corruption. However, the Mayor was soon obliged to dismiss her Treasurer because of her reputed long standing links to the 'eco-mafia' which she was supposed to be cleaning up.

Not surprisingly, public disillusion with a political system which has so often harboured elements of corruption is high. It has laid the basis for the success of the Five Star Movement but the consolidation of this into a system which can address corruption has yet to be achieved.

#### GERMANY: A POSITIVE MODEL?

The one major country in Western Europe in which real progress in controlling corruption in political finance has been achieved is Germany. The progress made to the current relatively corruption-free state started from a low base. In the 1990s the ruling CDU party, led by Helmut Kohl, became involved in a party funding scandal that involved undeclared contributions by an arms dealer to party slush funds. The resultant funds, aggregated with those from other sources, amounted to DM 17M by

1990, and the issue attracted huge public scorn when it was uncovered in 1999. Not much later the opposition party SDP was found to have participated in a corrupt construction deal involving a waste disposal plant in Cologne. The impact of these scandals on public opinion was very high and the Bundestag passed the Political Parties Act in 2004. The legislation did not place limits on total donations or expenditure and did not ban donations from either companies or Trades Unions, but it did offer judicious expansion of public funding provided that this was limited to one third of a party's total income. Overall this has, so far, led to a party funding system without major scandals.

There has seldom been greater enthusiasm felt and displayed for the virtues of liberal democracy than by the states of 'eastern Europe' after the collapse of the Soviet empire. Their enthusiasm was well fed by 'western' organisations who felt themselves to the successful products of liberal democracy. The OSCE, the Council of Europe and the EU itself were all involved in this process and contributed to the 'Copenhagen Document' of 1990 which laid down the acceptable ground rules for a functioning and free parliamentary system. By 1993 the Council of Europe had produced detailed recommendations on how to avoid electoral corruption with proposed caps on expenditure and limits to corporate funding<sup>vii</sup>. Versions of these rules were widely accepted in the 'Visegrad countries' (joining in 2004) and at a minimum banned both foreign and anonymous contributions, but allowed some levels of state funding for parties which had crossed a threshold of membership or seats won in the first electoral round.

But in the last decade the intention and integrity of these regulations have been significantly eroded, mainly as a result of the consolidation of power around narrow economic and financial interests. This has been particularly acute in the case of Hungary where the ruling Fidesz party, led by Victor Orban, has openly rejected conventional parliamentary liberalism. Through the forced sale of privatised assets in the media, banks and telecoms, Fidesz paved the way for economic power to be vested in oligarchs close to the government. In 2016 in Poland the 'Law and Justice' Party was drawing closer to the Hungarian model. After his election as President in

2015 Jaroslav Kaczynski quickly re-asserted control over both the Constitutional Court and the publicly funded media, causing massive street protests.

There are similarities in the Czech Republic: following election of Milos Zeman as President in 2013, several oligarchs who had backed him strengthened their position. The most conspicuous of these was Andrej Babis, owner of the MAFRA media group, and reputed to be the second most wealthy individual in the country, who had founded Zeman's ANO party in 2011. He was invited by Zeman after the election of 2014 to take on the posts of Minister of Finance and Deputy Prime Minister. In the eyes of many Czechs this created a sense of a regime in which wealth was very close to power. A more sinister impression was left by the publicity surrounding a close Presidential adviser, Martin Nejedly, who had incurred a debt of \$1.4M in 2013. In 2015 Lukoil paid the whole of the debt and Nejedly retained his office next to that of the President.

The processes at work in the Visegrad countries indicate that the electoral process will be skewed in favour of the incumbent parties not only through their ability to access financial resources from both the state and the superwealthy close to government but also by their control of the media and the justice systems. This is a different and potentially more complex kind of control than that which is maintained by political finance in the systems of the western countries of the EU, but it is certainly corrupt in the sense of cementing the position of a small elite able to control policy outcomes.

#### BRUSSELS: THE LOBBYISTS' PARADISE?

Nearly 10,000 lobbyists in Brussels ensure that in the EU as a whole the lobbying 'industry' is well developed both in its interaction with the European Commission and the European Parliament. However the interface between the industry and elected politicians is significantly different to the US and is not closely connected with campaign finance. The expenditure by companies and trade associations on lobbying itself is nevertheless on a scale comparable to the US. In 2012 the

pharmaceutical industry spent Euros 40M on lobbying and in 2013 the financial lobby spent Euros 120M.

The power to influence outcomes in the EU system rests to a considerable extent on the role which corporate lobbyists can play in 'expert' and 'public consultation' committees. This role is extensive and frequently includes participation in the drafting of Directives and legislation. There is strong evidence to show that decisions relating to financial regulation, tobacco packaging, food safety, the reduction of 'red tape' and mandatory impact assessments on fracking have all been heavily influenced by corporate interests. In these cases the relative roles of elected representatives and corporate interests is skewed towards the latter and needs to be reversed - an issue which civil society needs to keep under constant review.

Although there are very significant differences between political finance and corruption in the US and the EU, the underlying questions are very serious for the future of democratic systems. The US experience – where significant attempts at regulation have effectively been set aside – is not promising. Opportunities to avoid the pitfalls of campaign finance through state funding were not adopted by President Obama and his earlier bi-partisan attempt to reform lobbying has effectively failed. It remains doubtful whether the incoming administration will look at the issue of party finance, A reversion to the sound principles embodied in earlier legislation, with a much greater emphasis on donor transparency, will depend on a deep seated popular reaction against the excesses which may occur under the new administration or its successors. To restore public confidence in the system, not only the lobbying industry but the links with campaign finance need to be addressed simultaneously.

In Europe the question is whether the good practice embodied in the regulations covering party finance will be observed and made effective. This will not be achieved in a context where Prime Ministers, Presidents and party chairmen are seen to be actively engaged in sanctioning corrupt funding as in the cases discussed here. Without the revitalisation of good practice in these areas, the levels of public distrust

in the system will escalate. The lobbying process at the EU level, although largely disconnected to political finance, needs to be divorced from 'expert' committees, e.g. by drastically reducing the influence of lobbying groups and corporate interests in expert committees.

The populism which drove politics in the US in 2016 placed corruption right at the front of the US national agenda. There can be no mistake that corruption played its most explicitly political role since Watergate. In Europe public discourse has been slow to attribute the rise in populism to pervasive corruption, but the facts discussed here show how necessary it is to recognise this. The rise of nationalism linked to concepts of the case for the 'illiberal state' are too big a challenge for the issue to be ignored, and undermines efforts to keep populist tendencies of the far left and far right at bay.

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The authors of this paper are the co-authors of the book *Unmasked: Corruption in the West* (London and New York: I.B. Tauris, 2017).

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<sup>i</sup> E.g. Global Corruption Barometer, Transparency International, Berlin 2013, and Public Integrity and Trust in Europe, Hertie School of Governance, Berlin 2015.

<sup>ii</sup> In the UK the first rules governing electoral expenses were introduced in 1854.

<sup>iii</sup> The first attempt (by President Teddy Roosevelt) to control corporate money in politics.

<sup>iv</sup> Influence Explorer, Sunlight Foundation and Open Secrets, Washington DC, 2013.

<sup>v</sup> Euros 7500 per candidate

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<sup>vi</sup> Though it was refused one of Euros 27M in 2016.

<sup>vii</sup> Council of Europe, “Recommendations of the Committee of Ministers on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,” 2003.