Latin America Initiative
Foreign Policy at BROOKINGS

The Cost of Democracy: Campaign Finance Regulation in Latin America

KEVIN CASAS-ZAMORA AND DANIEL ZOVATTO[1]

POLICY BRIEF, JULY 2015

CAMPAIGN FINANCE: BETWEEN MOTHER'S MILK AND POISON

The use of economic resources is an essential ingredient for democratic competition. More than a malady of democracy—as it is often cast in public debate—campaign finance is part of the normal workings of democratic life. It is nonetheless indisputable that money is capable of inflicting significant distortions on the democratic process.

An unequal distribution of money has a direct bearing first and foremost on the ability of parties and candidates to effectively get their message out to voters. Secondly, money can create an unequal playing field, affording individuals and social groups with the economic wherewithal an unfair advantage in participating in elections and exerting their influence over candidates and parties. This is of critical importance for democracy. When political power is merely a mirror image of economic power, the principle of "one person, one vote" is rendered meaningless and democracy ceases to be an "alternative power system, which can be used to counterbalance the economic power."[2] Thirdly, the process of fundraising lends itself to quid pro quo arrangements between private contributors and public decisionmakers or, at least, creates the appearance of lasting conflicts of interests for decisionmakers.

When there is a failure to regulate money in the political process, or existing regulation is ineffectual, it can jeopardize the legitimacy of democratic processes and practices, as citizens will perceive that elections and governments fail to reflect their demands and interests. The famous quote by American politician Jesse "Big Daddy" Unruh, "money is the mother's milk of politics," only tells one side of the story. The fact of the matter is that the milk he speaks of contains poisonous elements, which must be purged or at least brought under control; otherwise, they will destroy the living organism of democracy.

These concerns are particularly relevant to Latin America. This is a region plagued by an astonishingly unequal income distribution, which gives rise to biases in democratic processes. It is also a region where organized crime has a major presence, transacts billions of dollars each year in illicit business, and has the potential to corrupt democratic institutions. Campaign finance regulation in Latin America is therefore crucial to the preservation of democracy in the region. Political actors in the region—for the most part—agree, and there has been a proliferation of efforts to regulate campaign finance over the past two decades. No matter how disappointing the outcome of those efforts has been, the proliferation itself is a sign of democratic development. Because Latin American democracies are much

[1] The authors wish to acknowledge the research support provided by Ileana Aguilar, Andrea Milla, Alejandro Urízar, and Stephania Sferra-Taladrid, as well as the useful comments provided by Claudio Fuentes, Pablo García Arabehety, Humberto de la Calle, Nydia Restrepo, Arturo Núñez, Luis Antonio Sobrado, Juan Ignacio García, Harold Trinkunas, and Emily Miller. Any errors and omissions are the responsibilities of the authors alone.

[2] Elmer E. Schattschneider, *The Semi-Sovereign People* (Fort Worth, TX: Harcourt Brace Jovanovich College Publishers, 1975 [1960]), 119.

more consolidated than democratic systems in other regions, they are in a position to address highly complex issues such as campaign finance regulation, which remains an unresolved item still lurking on the agenda of even the most developed democracies.

This policy brief is intended to take stock of three aspects of this subject: first, the risks to democracy in Latin America posed by campaign finance; second, existing regulatory instruments and preliminary lessons learned based on Latin American and international experiences; and, third, practical guidance for making regulation feasible and increasing its likelihood of success.

WHAT ARE THE RISKS? THE LATIN AMERICAN EXPERIENCE

As has been the case in other parts of the world, campaign finance-linked scandals have thrown Latin American governments into turmoil, debilitated political parties, and eroded the confidence of citizens in democratic institutions. The next sections explain the five different forms of the most serious and recurring risks in the region.

Spurious or illegal financing

Private financing is a legitimate and necessary tool for political parties and their candidates. However, the ability to raise private funds to finance political activities opens the door to a wide range of threats to democracy. The first and most serious is that the proceeds of criminal and unlawful activities are used for political purposes.

In Latin America, the greatest risk is that drug traffickers—and organized crime in general—infiltrate political bodies in order to buy impunity through campaign finance.[3] Examples of the penetration of drug traffickers into political campaigns are numerous, including the campaigns two decades ago of former presidents Jaime Paz Zamora of Bolivia, Ernesto Samper of Colombia, and Ernesto Pérez Balladares of Panama; the more recently uncovered close ties between paramilitary organizations and some Colombian political parties; and collusion between organized crime and local government in the states of Guerrero and Michoacán in Mexico.[4] These instances reflect only the most high profile side of a much more widespread and problematic phenomenon, which poses a particular risk in countries such as Mexico, Colombia, and Brazil, where large-scale campaigns for national office take place at the same time as fierce campaigns for local and state/departmental offices at the subnational level. It should also be noted that the processes of political decentralization, which have been widespread throughout most of the region, make it relatively easier for organized crime to capture political institutions. Moreover, there is the added incentive that the price tag of local election campaigns is generally lower.

Other examples of the wide range of questionable sources of campaign finance in Latin America include funding by paramilitary organizations of mayoral and congressional campaigns in Colombia; large-scale illegal financing operations by former president Fernando Collor de Mello in Brazil; illegal diversion of funds from the state oil

[3] An analysis of the relationship between campaign finance and corruption in Latin America can be found in Steven Griner and Daniel Zovatto, eds., *From Norms to Best Practices: The Challenge of Political Finance in Latin America* (San José, Costa Rica: Organization of American States [OAS]/International Institute for Democracy and Electoral Assistance [International IDEA], 2004), 299-302.

[4] In addition to the case studies included in Kevin Casas-Zamora, ed., *Dangerous Liaisons: Organized Crime and Political Finance in Latin America and Beyond* (Washington, DC, Brookings Institution Press, 2013), see René Mayorga, "El financiamiento de los partidos políticos en Bolivia," in *La Financiación de la Política en Iberoamérica*, ed. Pilar del Castillo and Daniel Zovatto (San José, Costa Rica: Instituto Interamericano de Derechos Humanos [IIDH]/Centro de Asesoría y Promoción Electoral [CAPEL], 1998), 35; David C. Jordan, *Drug Politics: Dirty Money and Democracies* (Norman: University of Oklahoma Press, 1999), 158-162; Mauricio Vargas, Jorge Lesmes, and Edgar Téllez, *El presidente que se iba a caer: Diario secreto de tres periodistas sobre el 8000* (Bogotá: Planeta, 1996); Kevin Casas-Zamora, "Financiamiento de campañas en Centroamérica y Panamá," Cuadernos de CAPEL no. 48 (2003), 46; "Drugs are back," *The Economist*, May 25, 1996; and "Well I never, says the president," *The Economist,* June 29, 1996.

company Petróleos Mexicanos to the campaign of the Institutional Revolutionary Party candidate in Mexico; the creation of parallel illicit financing structures within the National Action Party in Mexico in 2000; and the attempted secret transfer of $800,000 in cash packed into a briefcase from Venezuela to the campaign of President Cristina Fernández in Argentina.[5]

Buying influence and conflicts of interest

Even when the funding of party and campaign activities does not come from questionable sources or is not obtained through illegal means, it is clear that private contributions can undermine the interests of the public and, in extreme instances, "privatize" the public decisionmaking process. This depends on how large the contribution is, how transparently the contribution process is handled, and how much discretionary power public decisionmakers have, among other factors. As research in the United States, Costa Rica, and Uruguay has suggested, private contributions do facilitate contributors' access to decisionmakers, but do not necessarily condition the substance of decisions.[6] As laid out in the landmark U.S. Supreme Court case judgment in *Buckley v. Valeo*, 424 U.S. 1 (1976), private contributions may affect democratic processes not only because of the corrupt *quid pro quo* arrangements to which they give rise, but also because of the *appearance* of corruption they generate.[7]

Thus, it is no coincidence that construction companies in Brazil and Costa Rica and the lottery and sports betting licensee in Uruguay are major contributors to campaigns, as all of these businesses are heavily dependent on government contracts or regulation.[8] The case of the private media is even more consequential, as preferential rates are offered by media outlets to parties and candidates; in doing so, they become crucial—and possibly the largest—in-kind contributors in some countries of the region. The cases of Uruguay, Costa Rica, Guatemala, and Mexico have been thoroughly documented not only as potential breeding grounds for collusion between media owners and government officials in charge of regulating the broadcast spectrum, but also as glaring examples of unequal access to airtime provided to candidates and parties during campaigns.[9]

Serious inequity in electoral processes

While it would be foolish to claim that a candidate's or a party's war chest in and of itself can determine the results of an election, it is obvious that an empty war chest can be a significant barrier to entry into an electoral process. Moreover, a grossly unequal distribution of resources can create the appearance of unfairness, which can affect the legitimacy of an election outcome. The region is fraught with examples of uneven playing fields, ranging from the wide disparity between the financing of

---

[5] Barbara Geddes and Artur Ribeiro-Neto, "Institutional Sources of Corruption in Brazil," *Third World Quarterly* 13, no. 4 (1992), 646; Maria D'Alva Kinzo, "Funding Parties and Elections in Brazil," in *Funding Democratization,* ed. Peter Burnell and Alan Ware (Manchester, UK: Manchester University Press, 1998), 135; Lorenzo Córdova and Ciro Murayama, *Elecciones, Dinero y Corrupción: Pemexgate y Amigos de Fox* (Mexico City: Cal y Arena, 2006); "El 'Pemexgate', una novela de no-ficción," *Proceso*, October 13, 2002; "Caso maletín: cuatro detenidos en EE. UU.," *BBC Mundo*, December 13, 2007; "Maletín: apuntan al gobierno venezolano," *BBC Mundo*, October 17, 2008; and "Conviction in Spy Case Over Cash-Filled Suitcase," *New York Times*, November 3, 2008. The case of President Fernández in Argentina involves a longstanding malady in the region: the funding of parties or candidates by foreign governments, ranging from the former Soviet Union to Taiwan. In this regard, see the case study analysis of Uruguay and Costa Rica in Kevin Casas-Zamora, *Paying for Democracy: Political Finance and State Funding for Parties* (Colchester, UK: European Consortium for Political Research, 2005).

[6] Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven, CT: Yale University Press, 1992), 164-171; and Casas-Zamora, *Paying for Democracy*, 226.

[7] See the full text of the decision in Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, Trevor Potter, and Frank J. Sorauf, eds., *Campaign Finance Reform: A Sourcebook* (Washington, DC: Brookings Institution Press, 1997): 67-77.

[8] Kinzo, "Funding Parties," 130-131; and Casas-Zamora, *Paying for Democracy*, 137-181.

[9] Casas-Zamora, *Paying for Democracy,* 137-140, 181-183; Transparency International, *Global Corruption Report – 2004* (London: Pluto Press, 2004), 49-50; Pablo Arredondo Ramírez, "Los medios de comunicación y la contienda electoral," *Renglones*, no. 46 (August-November 2000); and Rodolfo Gómez Castellanos, *Mercadotecnia política: Uso y abuso en los procesos electorales* (Mexico City: Universidad Autónoma de Baja California, 2006), 103-108.

left-wing candidates and that of more conservative parties documented in countries such as Mexico, Uruguay, or Costa Rica, to the extreme case of the 1990 presidential election in Peru where candidate Mario Vargas Llosa outspent by a factor of 56 to 1 the campaign of opponent Alberto Fujimori.[10]

The most serious cases occur when economic inequity is coupled with the use of public resources to favor the incumbent party or its candidate. This can range from the most subtle and not readily detectable methods—such as preferentially directing the placement of advertising paid for by state entities toward media outlets that provide favorable coverage—to more blatant methods that are usually legally prohibited in democratic systems. Even though opposition parties throughout most of the region routinely claim that these ploys are being used, recent presidential elections and referenda in Venezuela as well as the 2006 presidential race in Mexico show that such charges that are far from groundless.[11]

None of this bodes well for democracy. However, some of the previously cited cases also convey that disparities in resources are not necessarily decisive in terms of electoral outcomes: disparities did not keep Fujimori from winning in Peru, nor did they prevent the rise in the polls and eventual victories of the Frente Amplio in Uruguay starting in 2004, nor did they stand in the way of the victory of the Citizen Action Party in the 2014 elections in Costa Rica, and nor did they prevent the Party of the Democratic Revolution in Mexico from accumulating a substantial share of the vote in 2006 and 2012. The availability of economic resources is just one of many variables that account election outcomes. It is also key to note that campaign spending yields decreasing marginal returns, which in some instances can even turn negative.[12]

Additionally, the inequity in the distribution of economic resources is different from the cost of election campaigns, though the latter is often associated with the former. The high cost of campaigns can pose a significant barrier to entry in an electoral contest. However, the frequent assertion that the cost of electoral campaigns in the region is prohibitive and is on the rise without any end in sight is not only empirically suspect, but in some instances may simply signify more competitive elections, where more contenders have been able

[10] Francisco Miró Quesada, "Financiamiento de partidos políticos y las campañas electorales en el Perú," in del Castillo and Zovatto, *La Financiación de la Política en Iberoamérica*, 481.

[11] The use and abuse of public resources in elections by those in power is a widespread phenomenon throughout the developing world, though its degree and form varies greatly from country to country. In authoritarian and semi-authoritarian contexts, unlimited access to public resources by those who hold power is often the defining characteristic of campaign finance and the fundamental obstacle to a level playing field in electoral contests. See, for example, case studies of Egypt and Russia: Amr Hashem Rabie, "Financing Egyptian Political Parties" (paper presented at the Political Integrity Conference organized by the Al Ahram Center for Political and Strategic Studies, Cairo, Egypt, January 12-13, 2008); Dina Ammar, "Public Funding of Political Parties: The Case of Egypt" (document written for the Political Integrity Conference organized by the Al Ahram Center for Political and Strategic Studies, Cairo, Egypt, January 12-13, 2008); and "Russian election lacked 'freedom,' monitor says," *Washington Post*, March 4, 2008. In all countries, obvious and considerable difficulties stand in the way of researching campaign finance irregularities, yet this certainly does not negate its existence. Regarding the case of Venezuela, see European Union, *European Union Election Observation Mission, Final Report, Parliamentary Elections, Venezuela 2005*, http://www.eods.eu/library/FR%20VENEZUELA%202005_en.pdf; European Union, *European Union Election Observation Mission, Final Report, Presidential Elections, Venezuela 2006*, http://eeas.europa.eu/eueom/pdf/missions/moe_ue_venezuela_2006_final_eng.pdf; and "Exigen ley que regule uso de recursos públicos en campaña," *El Universal* (Caracas), February 21, 2009. In the case of Mexico, the use of certain social programs by the government and the actions of President Vicente Fox during the 2006 campaign were very controversial. Tribunal Federal Electoral de México, *Dictamen relativo al cómputo final de la elección de presidente de los Estados Unidos Mexicanos, Declaración de validez de la elección y de presidente electo*, September 5, 2006; Mexico City, 158-217, http://www.te.gob.mx/documentacion/publicaciones/informes/dictamen.pdf; Lorenzo Córdova "La reforma electoral de 2007-2008: Reporte ejecutivo" (unpublished paper, 2008), 6; and Andrés Valdez Zepeda, "México en su encrucijada: Un análisis de la elección presidencial del 2006," *Contratexto digital* (University of Lima, Peru) 4, no. 5 (2006).

[12] Regarding decreasing marginal returns of campaign spending, see W. P. Welch, "The Effectiveness of Expenditures in State Legislative Races," *American Political Quarterly* 4 (July 1976); and Gary Jacobson, "Money and Votes Reconsidered: Congressional Elections, 1972-1982," *Public Choice* 47, no. 1 (1985). Peru in 1990 stands as a glaring example of this. In a context of acute national crisis and with a virtually collapsed party system, each additional dollar spent by Vargas Llosa's campaign served to imprint in the minds of voters the image that his candidacy was more of the same, exactly the message spread by the "insurgent" Fujimori campaign. Mario Vargas Llosa, *El Pez en el Agua* (Madrid: Alfaguara, 2005).

to gain access to adequate funding in order to effectively compete.[13] The 1996 electoral reform in Mexico, which helped provide opposition party access to an exceptionally generous public subsidy, stands as a reminder that a more equitable distribution of electoral resources can make quite a difference in the quality of democratic competition.[14] Mexico's experience with deeply entrenched rule by the Institutional Revolutionary Party prior to the 2000 transition election suggests that the prospects for alternation in power can hinge precisely on the opposition's ability to spend significant amounts of money. The growing cost of election campaigning, in and of itself, is therefore not a sign of a democratic malady. Poor distribution of economic resources among the contenders in an electoral process, on the other hand, almost always is.

Weakening of parties and party systems

A functional democracy requires a stable party system that is not overly fragmented and is characterized by a unifying as opposed to a polarizing dynamic. It also calls for institutionalized parties which are capable of continually nurturing the political process and being more than just election campaign machines. These requirements are particularly important in the presidential systems prevalent throughout the region, which show a marked propensity for conflict between branches of government when party systems are highly fragmented.[15] Even though campaign finance does not determine the volatility, structure, or degree of polarization of a party system, campaign finance regulation can be utilized to create incentives that affect the behavior of political actors and can have a decisive effect on the institutionalization and consolidation of political parties as enduring entities.

Current trends in the institutionalization and consolidation of political parties in the region do not bode well. Looking at the evolution of political party systems in 17 Latin American countries from 1990 to 2010, we find an increase in the number of effective parties in 10 of the 17 countries.[16] Moreover, election volatility in the region continues to be comparatively quite high, reaching astoundingly high levels in countries such as Peru and Guatemala, which have very fragile party systems.[17] With the possible exceptions of the Mexican parties and a few isolated examples in other countries (such as the Frente Amplio in Uruguay, the Alianza Republicana Nacionalista and the Frente Farabundo Martí para la Liberación Nacional in El Salvador, and the Democratic Revolutionary Party in Panama), levels of institutionalization of political parties are also extremely low, even in consolidated democracies such as Costa Rica, Uruguay, and Chile.[18]

Colombia and Mexico warrant special explanation. In the case of Colombia, it is very possible that extremely lax rules on access to public financing—which even allowed access for candidates nominated by social movements or a "significant" group of citizens—contributed to the virtual demise of the Colombian political party system in the 1990s; however, the party system was partially restored as a result of the 2003 electoral reform and

[13] Casas-Zamora, *Paying for Democracy,* 111-117 and 159-162. See also Michael Pinto-Duschinsky, "Financing Politics: A Global View," *Journal of Democracy* 13, no. 4 (October 2002); and Stephen Ansolabehere, Alan Gerber, and James M. Snyder, "Corruption and the Growth of Campaign Spending," in *A User's Guide to Campaign Finance Reform*, ed. Gerald C. Lubenow (Oxford: Rowman & Littlefield Publishers, 2001).

[14] Giovanni Sartori, *Partidos y Sistemas de Partidos* (Madrid: Alianza Editorial, 1991); and José Woldenberg, Ricardo Becerra, and Pedro Salazar, "El modelo de financiación de los partidos políticos en México" in del Castillo and Zovatto, *La Financiación de la Política en Iberoamérica*.

[15] See the analysis on the party system in Latin America in J. Mark Payne, Daniel Zovatto G., and Mercedes Mateo Diaz, *La Política Importa. Democracia y Desarrollo en América Latina*. (Washington, DC: Inter-American Development Bank/International IDEA, 2006), 165-196.

[16] Authors' tally based on official figures and the methodology of Marku Laakso and Rein Taagepera, "Effective Number of Parties: A Measure with Application to Western Europe," *Comparative Political Studies* 12, no. 1 (April 1979).

[17] Raúl Madrid, "Ethnic Cleavages and Electoral Volatility in Latin America and the Caribbean," *Comparative Politics* 38 (October 2005). Also see data in Payne et al., *La Política Importa,* 183.

[18] For additional detail, see Scott Mainwaring and Timothy Scully, "Introduction: Party Systems in Latin America," in *Building Democratic Institutions: Party Systems in Latin America*, ed. Scott Mainwaring and Timothy Scully (Stanford, CA: Stanford University Press, 1995); and Casas-Zamora, *Paying for Democracy,* 14.

the 2011 political party reform efforts.[19] The Mexican experience is suggestive of the powerful effect that non-election related subsidies can have on the institutional consolidation of parties, as the law has established a sizeable government subsidy to cover permanent party activities even in non-election years. Following its relatively recent democratic transition, Mexico today has perhaps the most robust parties in the entire region, characterized by permanence and the ability to run strong campaigns at all levels of government.

Loss of confidence in campaign finance regulation

The effects of faulty campaign finance regulation can be as negative as the absence of regulation, because any effort to regulate tends to raise the expectation that new rules will at least be capable of keeping the worst abuses at bay. Failed reforms leave an aftertaste of disillusion and cynicism, which become stumbling blocks to new attempts at regulation.

Unfortunately, examples abound of poorly designed or unfunded reforms, rendering their successful implementation impossible. The introduction in 1996 of transparency rules for private campaign finance in Costa Rica stands as a telling example of the effects of an ill-advised regulatory framework. The lack of an explicit mandate for election officials to verify the accounting books of parties and campaign structures, as well as the failure to clearly identify who is responsible for violations of the rules, left the Costa Rican law crippled from the start in its ability to regulate abuses in campaign finance. The law was exposed as ineffectual in the 2002 presidential campaign, which was fraught with varying irregularities that affected all major parties.[20] It eventually led in 2009 to the approval of an ambitious reform of the Costa Rican Electoral Code that significantly strengthened existing controls.[21]

Similarly, in Argentina the implementation of a 2002 campaign finance reform was left in the hands of a group of only 24 federal judges—in a country of 40 million inhabitants with a federal system and competitive local elections at all levels of government. Unsurprisingly, the judges were too few in number to effectively enforce the detailed provisions of the law. In the run-up to the 2003 presidential election, the winning candidate reported publicly that his campaign expenditure had amounted to $1, which seriously undermined the credibility of the law.[22]

In contrast, Mexico stands as an example of how well-designed legislation—combined with stronger institutional controls, a well-funded mandate, and an iron-clad political will to punish violators—can lead to credible enforcement of the provisions of the law that is then is capable of clamping down on some of the worse abuses in campaign finance.[23]

---

[19] Humberto de la Calle, "Financiación de los partidos políticos y las campañas electorales en Colombia," in del Castillo and Zovatto, *La Financiación de la Política en Iberoamérica*, 106-111. Regarding the 2003 electoral reform and its effects, see Juan Carlos Rodríguez Raga and Felipe Botero, "Ordenando el caos: Elecciones legislativas y reforma electoral en Colombia," *Revista de Ciencia Política* (Pontificia Universidad Católica de Chile) 26, no. 1 (2006). Regarding the 2011 electoral reform, see Margarita Batlle and José Ricardo Puyana, "El nivel de nacionalización del sistema de partidos colombiano: Una mirada a partir de las elecciones legislativas de 2010," *Colombia Internacional* 74 (2011), 27-57.

[20] Kevin Casas-Zamora, "Regulando el financiamiento político en Costa Rica: Algunas reflexiones prácticas," in *Modernización del Estado Costarricense*, ed. Mimi Prado (San José, Costa Rica: Centro Internacional para el Desarrollo Humano/Fundación Konrad Adenauer, 2004), 240-244.

[21] Based on the 2009 reform, the Supreme Electoral Court (TSE) is supposed to regulate, enforce finance rules (Article 12 Electoral Code), and order audits when necessary (Article 121 Electoral Code). Audits conducted in past years are posted on the webpage of the TSE, as are other documents produced in the verification process. "Elecciones/Información Sobre Financiamiento de Partidos Políticos," Tribunal Supremo de Elecciones, República de Costa Rica, accessed on June 23, 2015, http://www.tse.go.cr/financiamiento_partidos.htm. Additionally, the TSE-issued Regulations on Party Financing in October 2009 created the Department of Financing as part of the Office of Electoral Registry, which exercises control duties over campaign finance. Tribunal Supremo de Elecciones, Reglamento sobre el financiamiento de los partidos politicos, Decreto No. 17-2009, October 15, 2009, http://www.tse.go.cr/pdf/normativa/financiamientodelospartidospoliticos.pdf.

[22] Delia Ferreira Rubio, "El control del financiamiento de los partidos en Argentina: ¿Qué cambió con la nueva ley?," Working Paper Series no. 292 (Universidad del CEMA, 2005), 10-11; and Delia Ferreira Rubio, "Financiamiento de los partidos políticos en Argentina" (presentation given at the seminar Comparative Political Party Finance Legislation, Montevideo, Uruguay, November 27-28, 2007).

[23] Jesús Orozco, "Financiamiento y fiscalización de los partidos políticos en México," in *Reforma de los Partidos Políticos en Chile*, ed. Arturo Fontaine, Cristián Larroulet, Jorge Navarrete, and Ignacio Walker (Santiago, Chile: United Nations Development Programme/Centro de Estudios Puúblicos/Libertad y Desarrollo/Corporación de Estudios para Latinoamérica, 2008).

Introducing adequate and effective legislation to regulate the role of money in political activity in Latin America is an imperative, and the region has received more than its fair share of warnings about these five risks. The following section details various regulatory instruments and looks at the tentative lessons learned from international experiences.

A COMPARATIVE LOOK AT EXPERIENCES WITH REGULATION INSTRUMENTS

The role of money in democratic political activity can be regulated using a broad range of legal instruments, the presence and combination of which shape the political finance system.[24] A political finance system is the set of rules regulating the essential flow of economic resources into and out of the political system. It is the regulatory framework under which all parties and candidates can act lawfully to obtain and spend economic resources for their activities, and under which individuals and legal entities—both public and private—can legally finance those activities. Additionally, the system provides for the legal instruments to oversee and enforce that regulatory framework.

Contrary to popular belief, Latin American countries have a longstanding tradition of campaign finance regulation. Moreover, these countries have been trailblazers in the adoption of direct subsidies to political parties and candidates, as exemplified by Uruguay (1928), Costa Rica (1956), and Argentina (1961). The return of democracy to the region has led to a growing interest in this subject area and, in turn, many regulation efforts have materialized.[25]

Legal instruments regulating campaign finance can be grouped into five categories, which are outlined in the following sections.

Regulating the sources of finance

This category includes instruments that regulate the flow of economic resources into political activities by either controlling or prohibiting the use of some sources of financing, while encouraging the use of other sources. The target source of most controls is private political contributions. Almost all democracies restrict the use of at least some types of private contributions, though levels of restriction vary from country to country. While some countries (Greece, for example) simply set limits on the contribution amount, in most modern democracies, an absolute ban is in effect on certain sources of financing. Limits on individual contributions in different parts of the world range from meager amounts in some countries to around $200,000 per year in Japan. Bans are generally targeted toward foreign contributions—prohibited in dozens of countries—and some types of corporate contributions, typically state enterprises or private firms acting under state-awarded contracts or licenses.

The regulatory situation in Latin America is consistent with global trends. Practically all Latin American countries have introduced a ban on certain sources of financing and the vast majority has set limits on contribution amounts. Some of the most commonly adopted bans are aimed at contributions by foreign governments, institutions, or individuals (present in most countries with the notable exception of El Salvador[26]), government

[24] The information set forth in this section has been extensively fleshed out in Casas-Zamora, *Paying for Democracy*, 16-60, and in the Political Finance Database of International IDEA which covers campaing finance systems in nearly 180 countries.

[25] Extensive comparative analysis of campaign financing rules in Latin America can be found in del Castillo and Zovatto, *La Financiación de la Política en Iberoamérica*; Manuel Carrillo, Alonso Lujambio, Carlos Navarro, and Daniel Zovatto, coord., *Dinero y Contienda Político-Electoral: Reto de la Democracia* (Mexico City: Fondo de Cultura Económica, 2003); Griner and Zovatto, *From Norms to Best Practices*; Daniel Zovatto, "Dinero y Política en América Latina," *Foreign Affairs en español* 5, no. 4 (2005); and Daniel Zovatto, "El financiamiento electoral: subvenciones y gastos," in *Tratado de Derecho Electoral Comparado de América Latina*, ed. Dieter Nohlen, Daniel Zovatto, Jesús Orozco, and José Thompson (Mexico City: Fondo de Cultura Económica, 2007).

contractors (for example, Argentina and Bolivia), anonymous sources (more than half of the countries, including, for example, Costa Rica, Honduras, and Mexico), and legal entities (Argentina, Honduras, Mexico, Paraguay, and Costa Rica, among others). Additionally, Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guatemala, Mexico, Paraguay, Peru, and Uruguay have introduced limits on the amount individuals can contribute.

Such restrictions on private sources of financing aim to minimize opportunities for powerful or controversial contributors to buy influence. As is the case with other regulatory measures of a restrictive nature, limits on contributions pose significant enforcement problems, requiring an extensive reporting and auditing system of the resources used by parties and candidates. This has proven a difficult requirement even in the most developed democracies.[27]

Additionally, excessively stringent limits on contributions can lead to unintended consequences. Draconian measures banning private contributions in their entirety, such as those in France prior to 1988 and in India from 1969 to 1985, had the unintended effect of incentivizing nontransparent funding practices.[28] Therefore, it is unsurprising that many democracies, particularly in western Europe, are reluctant to establish comprehensive controls over contributions, opting instead to restrict the financial weight of private contributors by other means, such as through a generous public campaign finance system, by shortening the length of the official campaign period, and by severely restricting campaign advertising.

Public funding of parties and candidates

Not only can a public campaign finance system restrict the flow of money into politics, but it can also actively intervene by providing public money, goods, or services to candidates and parties. In fact, state subsidies are by far the most common instrument used in present day systems. The term "state financing" encompasses three basic categories of subsidy: *direct* subsidies (public funds disbursed to parties and candidates through a statutory procedure), *indirect* subsidies (in-kind subsidies, such as access to state-owned media), or *specific* subsidies (funds provided to organizations connected to the parties or controlled by them, such as congressional caucuses or party research institutes).

The use of direct subsidies is currently the main trend in campaign finance. Since the early adoption of this model in Uruguay in 1928, and over the past four decades in particular, direct subsidies have been introduced in more than 50 countries. With the establishment in 2003 of direct subsidies under Peruvian and Chilean legislation, a substantial majority of countries in the region now provides state-funded campaign finance.[29] Today, the only exceptions are Venezuela and Bolivia.

---

[26] The case of El Salvador requires further clarification. The reform of February 2013 banned contributions from anonymous, foreign, professional association, and trade union sources. The reform was legally in force during the elections of February 2014, but there is no evidence that it was enforced. In September 2014, however, the Constitutional Chamber of the Supreme Court declared unconsitutional Chapter IV, Title VI—the chapter setting forth the reforms pertaining to private funding. Asamblea Legislativa de El Salvador, Ley de Partidos Políticos, Decreto no. 307, February 14, 2013, http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-partidos-politicos.

[27] Regarding obstacles faced by the U.S. Federal Elections Commission to enforce contribution caps introduced under the Federal Election Commission Act of 1974, see Kenneth A. Gross, "The Enforcement of Campaign Finance Rules: A System in Search of Reform," in *Campaign Finance Reform: A Sourcebook*, ed. Anthony Corrado et al. (Washington, DC: Bookings Institution Press, 1997); Federal Election Commission, *Annual Report 1997 (*Washington, DC: Federal Election Commission, 1998), 31-34; and Sorauf, *Inside Campaign Finance,* 185.

[28] Ruth Levush, coord., *Campaign Financing of National Elections in Foreign Countries* (Washington, DC: Law Library of Congress, 1991), 90-92; and Pierre Avril, "Regulation of Political Finance in France," in *Comparative Political Finance Among the Democracies*, ed. Herbert Alexander and Rei Shiratori (Boulder, CO: Westview Press, 1994), 85-89.

[29] In the case of Peru, the Political Parties Law no. 28.094 establishes the right to direct subsidies and sets forth the procedure for its calculation and distribution (Article 29). However, the third transitory provision of this law makes the state contribution contingent upon budget availability, so in practice, parties have not yet received direct subsidies. Ley de Partidos Políticos, no. 28.094, http://www.web.onpe.gob.pe/modEscaparate/downloads/L-0082.pdf; and Fernando Tuesta Soldevilla, "El financiamiento de los partidos políticos en Perú," in *Financiamiento de los Partidos Políticos en América Latina,* ed. Daniel Zovatto and Pablo Gutiérrez (Mexico City: OAS/International IDEA/Universidad Nacional Autónoma de México, 2011), 454.

Despite their widespread adoption, state subsidies were not introduced without controversy, which has arisen not only because of their cost to taxpayers, but also because of the uncertainty regarding their effects.[30] Proponents of state financing routinely emphasize its importance in reducing the dependence of political actors on large private contributions, as well as its ability to create a level playing field for a variety of candidates and to bolster the institutionalization of party organizations. To the contrary, detractors have claimed that state financing is ineffective as a tool to isolate political actors from purchased influence. It has been also been argued that state financing tends to favor established parties and contributes to parties' financial dependence on the state by relieving their need to increase their paid membership rolls. Public financing remains a topic of debate as it is an extraordinarily heterogeneous instrument whose effects cannot easily be generalized.[31]

While there are many possible ways to set up a direct public subsidy system, there are four core questions the system must address:

- Which political actors will be the recipients of the subsidy?
- What periodicity will govern disbursements, i.e., over what period of time and how frequently will funds be disbursed?
- What barriers to access and rules of allocation will be adopted?
- Who will set the subsidy amount and how will it be provided?

Regarding the first question, in most countries the recipient of direct subsidies is the central structure of political parties. Only a few countries (for example, Belgium, Taiwan, and the United States) do not follow this model. In other cases (for example, Australia, Canada, Austria, and Sweden), subnational organs of the parties receive subsidies directly, which in some instances are exceptionally generous.[32] Direct state support to presidential candidates is much less common, although it is provided in places like France, Uruguay, and the United States.

Subsidies can be provided on a permanent/ongoing basis, or only during election years. Permanent funding for parties enables them to support a variety of non-election activities, in particular, the expansion and maintenance of the party structure. In many instances, both election-year and off-election year subsidies coexist. While almost all democracies in western Europe provide permanent financing to parties, in the democracies of North and South America, election year financing is still the most common method. In Latin America, however, there is a growing acceptance of permanent public financing for the purpose of institutional development and party strengthening, including activities such as research, education, and training of party officers. This is the case in Argentina, Brazil, Colombia, Ecuador, Costa Rica, Mexico, Panama, Paraguay, Peru, and Uruguay, among others.

The disbursement timing of election year subsidies also varies significantly. This can be of considerable importance, as subsidies provided exclusively in a post-election period can pose an insurmountable

---

[30] Irrespective of how state financing systems are set up, they are very unpopular throughout the world, except perhaps in the United States. For a review of this topic drawing on survey data from several European countries, particularly Poland, see Marcin Walecki, *Money and Politics in Poland* (Warsaw: Institute of Public Affairs, 2005), 253-259.

[31] Casas-Zamora, *Paying for Democracy*, 16-60.

[32] Wolfgang Müller, "The Development of Austrian Party Organizations in the Post-War Period," in *How Parties Organize: Change and Adaptation in Party Organizations in Western Democracies*, ed. Richard S. Katz and Peter Mair (London: Sage, 1994), 54-55; Karl-Heinz Nassmacher, "Political Finance in West Central Europe: Austria, Germany, Switzerland," in *Foundations for Democracy: Approaches to Comparative Political Finance*, ed. Karl-Heinz Nassmacher (Baden-Baden, Germany: Nomos, 2001), 103; Gudrun Klee, "Financing Parties and Elections in Small European Democracies: Austria and Sweden," in *Campaign and Party Finance in North America and Western Europe*, ed. Arthur Gunlicks (Boulder, CO: Westview Press, 1993), 183-189; and Gullan Gidlund and Ruud Koole, "Political Finance in the North of Europe: The Netherlands and Sweden," in Nassmacher, *Foundations for Democracy*, 123.

obstacle to newly formed parties, which tend to have fewer financial resources available to them or a lesser ability to borrow during the campaign. In some countries, public subsidies operate as post-election reimbursement of expenses (for example, Australia) while in others, full access to the subsidy is permitted prior to the election (for example, the United States). In other countries, such as Spain, both options are mixed. There is no standard pattern of election-year funding disbursement in Latin America. In Nicaragua, for example, only post-election payments are provided while in Argentina, funding is exclusively given prior to elections. Most other countries have adopted a combination of pre- and post-election disbursements.

Globally, almost all countries that grant direct subsidies have introduced some kind of barrier to access in order to remove incentives for the proliferation of candidates and parties. Often the barrier to access involves reaching a certain level of parliamentary representation in the previous election (such as Finland), but may also involve an absolute number of votes (for example, Denmark and Portugal), or a certain percentage of votes (for example, Germany and Nicaragua), or a combination of seats and votes (such as Sweden and Costa Rica). Other countries have introduced different thresholds for each type of subsidy (for example, Austria and Colombia). The total absence of barriers is less common and is usually limited to a few specific subsidies.

In Latin America, a wide majority of countries with public subsidy systems (except for Chile and El Salvador) have established some sort of legal barrier to accessing to public financing for political activities. Those barriers range from extremely lenient requirements, such as Honduras with a minimum requirement of 10,000 votes obtained, to relatively high ones, such as Brazil where the requirement is to have obtained 5 percent of the vote in the previous elections for the Chamber of Deputies.

Once the realm of direct subsidy recipients is defined, the rules of allocation are applied. Most countries allocate direct subsidies proportionally, based on the percentage of votes or seats won in the prior election (for example, Finland, Sweden, Belgium, Greece, and—in Latin America—Chile, El Salvador, Guatemala, Honduras, Uruguay [votes], Nicaragua, and Paraguay [votes and seats]).

However, many other systems have opted to allocate funds under rules aimed at absolute equality among recipients, typically entailing disbursement of an equal portion of the subsidy to all beneficiaries, as is the case in Israel and many countries in Latin America (Argentina, Brazil, Colombia, Ecuador, Mexico, Panama, Peru, Dominican Republic, and Costa Rica [but only the portion that is disbursed prior to the election]). In other cases, such as Canada and France, a fixed reimbursement amount is set for election expenses, which makes the distribution of the subsidy independent from poll results. In other countries, such as Germany and the United States, proportional or quasi-proportional allocation of subsidies has been replaced by other interesting mechanisms such as matching grants—the disbursement of public funds proportional to the capacity of the parties (Germany) or of the presidential candidates (United States) to attract small individual contributions.[33]

In all countries, the task of setting the subsidy amount is left up to the legislative body. Accordingly, most countries have preferred to formally write the rules for computation of the subsidy into law in order to prevent political manipulation or unchecked increases. Some countries do this by setting an amount to be paid for each seat or vote (for example, Italy and Honduras), or simply by tasking a non-partisan entity with setting the total amount of the subsidy (for example, Mexico and Israel).

[33] In Germany, each party receives a subsidy of 38 percent of the amount it manages to raise in membership dues and individual contributions of less than €3,300. In the primary election process, presidential candidates in the United States can opt for public matching funds for the first $250 of each private contribution raised.

While the methods used to set state subsidy amounts vary widely, the actual subsidy amounts vary even more so, as shown in Table 1. This point is relevant because whatever the intended effect of direct subsidies may be, state support must, as a minimum requirement, be commensurate with the costs of political activity. If public subsidies are to make any discernable difference, a certain "critical mass" must be reached, otherwise state financing becomes merely a token gesture. In Latin America, subsidy amounts range from the rather generous—with Mexico being the most extravagant case—to paltry amounts, such as those once given in Guatemala, which beyond any doubt are incapable of making a difference in the political process.

Table 1. Annual direct state subsidies per registered voter in 25 democracies (circa 1990s)

Country	U.S. Dollars	Years*
Austria	16.5	1995-1998
France	14.9	1995-1996
Sweden	12.1	1999
Israel	11.2	1996-1998
Mexico	3.3	1997-1999
Dominican Republic	3.2	2000
Japan	2.8	1995-1999
Germany	2.0	1995-1998
Australia	1.9	1996-1998
Panama	1.8	1999-2004
Uruguay	1.7	1999-2004
Costa Rica	1.6	2002-2006
Spain	1.6	1998-2000
Italy	1.4	1999-2001
Nicaragua	1.2	2001-2006
Portugal	1.0	1995-1996
Bolivia	0.6	1997-2002
El Salvador	0.5	1999-2004
Holland	0.4	1999
Honduras	0.2	2001-2005
United States	0.2	1992-1996
Canada	0.2	1993-1997
Denmark	0.2	1988-1990
Ecuador	0.2	1995-1997
Guatemala	0.02	1999-2003

Note: * Includes one election year for all countries except Sweden and Holland. In these cases, however, the parties do not receive additional subsidies during the election year.

Sources: Casas-Zamora, "Financiamiento de campañas"; and Casas-Zamora, *Paying for Democracy*.

Indirect and specific subsidies modestly complement direct subsidies. Aside from the almost universal practice of providing institutional support (e.g., funding for staff) to members of Congress or Parliament—a practice that can only partially be regarded as support to political parties *strictu sensu*—other forms of indirect subsidy warrant mention: preferential or free use of public services, tax exemptions for political contributions, and free advertising on state-owned media. Free use of the postal service in order to contact voters is also very common throughout the world (for example, Austria, Finland, France, Italy, Japan, and the United Kingdom). In many other cases, such as Canada, France, Germany, Holland, Taiwan, Chile, and Mexico, tax exemptions have been created to incentivize campaign contributions and related transparency. In some instances, this is specifically targeted to promote small contributions (such as in Canada and Germany). Lastly, free access to state-owned media is a widespread practice in Western Europe and, more recently, in other regions.

Subsidized party use of the media deserves particular mention with regard to Latin America. Indeed, the most important form of indirect subsidy in the region is the granting of free access to state-owned and/or private media to parties and candidates. This benefit is used in much of the region (except for Venezuela [which lacks any type of public subsidy], Costa Rica, and Honduras, for example), with free access to state-owned media almost always granted during the official campaign season.[34] Only in Brazil, Colombia, Mexico, Panama, and Peru does election legislation specify that party access to the media is of a permanent nature. In some cases (Argentina, Brazil, Chile, Mexico, and Ecuador), access to a free-of-charge advertising "slot" in the media coexists with a ban on the purchase of additional advertising space on television and radio.[35] In the other cases, however, the

[34] An analysis of parties' access to the media in Latin America can be found in Griner and Zovatto, *From Norms to Best Practices*, 314-319.

[35] Brazil prohibits campaign advertising on television, granting instead free daily airtime to parties. However, it is possible to contract airtime or space for campaign ads with radio broadcasters, cable TV, and the print media. In the case of Mexico, political parties can gain access to radio and television only through public airtime slots. The National Electoral Institute is the only authority empowered to administer the airtime, and in the event it deems the time insufficient, it can take the necessary measures to extend it.

"slot" made available by the state does not preclude privately contracting advertising space or airtime.

Because indirect subsidies are paid in-kind, it is difficult to establish their value. It must be noted, however, that in Latin America indirect subsidies tend not to be very useful to political actors. The ineffectiveness of tax collection systems in the region renders the effects of tax benefits almost worthless. Additionally, access to the state-owned media, particularly to television, tends to be irrelevant in light of the small viewership these broadcasters generally command throughout the region.

What exactly do we know about the effects of public funding of parties and candidates? The answer to this question is complex, in light of the wide diversity of existing subsidy mechanisms and the surrounding institutional structures that condition their effects. Notwithstanding, three conclusions can be drawn:

1. The effect of public subsidies on controlling questionable campaign finance practices is quite limited. The experiences of Canada and almost all of western Europe suggest that public subsidies can effectively help reduce the weight of large private contributions in party financing; however, this is due to a complex combination of institutional and regulatory instruments (shortened campaign seasons, restrictions on campaign advertising, tax incentives for small contributions, et cetera), rather than merely the availability and generosity of public subsidies. Furthermore, there is a long list of countries—including Israel, France, Spain, Italy, Austria, and Germany—where overly generous subsidy systems have entirely failed to prevent serious irregularities in campaign finance.[36]
2. Public funding can, and usually does, have an equalizing effect on electoral competition. There is no evidence, despite claims by some critics, that public funding tends to ossify the party system. On the contrary, available information suggests that subsidy systems tend to favor small parties and that, in some instances, they are decisive in enabling parties and candidates without close ties to business to compete. In Latin America in particular, public funding is often the only way to even out the disproportionate weight a small group of business donors may have on party financing.[37]
3. When subsidies are given to parties and, particularly when disbursements are made on an annual basis, public funding can make a notable difference in the growth and robustness of party structures. Even though the institutionalization of party bureaucracies has been criticized in some developed countries as a sign of weakening the power of members vis-à-vis the party leadership, in the majority of Latin American democracies, strengthening party structures is a systemic need of utmost importance.

Nonetheless, it must be emphasized that these are merely trends. How subsidy systems actually play out is wholly contingent upon their design, economic significance, and connection to the electoral system and, more broadly, to the institutional framework in which democratic contests unfold.

Election spending regulation

This section discusses rules that establish general caps on campaign spending by parties and candidates, limits and bans on specific items such as

---

[36] "European politics plagued by funding scandals," *The Guardian*, December 4, 1999; Verena Blechinger and Karl-Heinz Nassmacher, "Political Finance in Non-Western Democracies: Japan and Israel," in Nassmacher, *Foundations for Democracy*, 178-180; Juan Luis Galiardo and Carlos Berbell, *Filesa: Las Tramas del Dinero Negro en la Política* (Madrid: Temas de Hoy, 1995); Martin Rhodes, "Financing Party Politics in Italy: A Case of Systemic Corruption," *West European Politics* 20, no. 1 (January 1997); Veronique Pujas and Martin Rhodes, "Party Finance and Political Scandal in Latin Europe," Working Paper RSC No. 98/10 (European University Institute, Robert Schuman Centre, 1998); and Peter Pulzer, "Votes and Resources: Political Finance in Germany," *German Politics and Society* 19, no.1 (Spring 2001), 31-32.

[37] Casas-Zamora, "Financiamiento de campañas"; and Casas-Zamora, *Paying for Democracy*.

campaign advertising, and limits placed on the length of campaigns.

Overall spending limits or caps are uncommon in democracies. This is a consequence of the significant regulatory and practical issues associated with them. Experience with overall caps is mixed at best. Even the most successful cases—such as Great Britain and Canada, where limits have been strictly applied and are generally recognized as positive—show some complex dilemmas with respect to implementation. In Great Britain, per voting-district spending caps gradually lost relevance as parties increased nationwide spending; however, this was eventually reined in by legislation.[38] In Canada, election spending by outside third parties, with the intent to influence election outcomes, has proven to be very complex to regulate despite the high profile role that such monies have played in certain elections.[39] In almost every other instance, overall spending caps have been ineffectual for different reasons, ranging from a lack of clarity in the legal definition of a campaign expenditure, to the introduction of excessively low caps, to weak enforcement mechanisms, to certain electoral systems that can create strong incentives to increase spending (such as those that encourage intra-party spending). In Spain, caps were too high to be of any use for a long time; in other countries such as Australia, Colombia, India, Israel, Russia, South Korea, Ukraine, and the United States (1925 to 1974), caps were consistently ignored by political actors.[40]

Other campaign finance systems have focused restrictions on especially high-profile and costly areas, such as campaign advertising. Almost all democracies in western Europe prohibit the purchase of television airtime for campaign ads, granting instead free advertising slots to parties in the state-owned media. As was explained earlier, this option has been adopted in various forms in some Latin American countries (Argentina, Brazil, Chile, Mexico, and Ecuador).[41]

While this solution has been generally recognized as an effective way to cut campaign costs and relieve economic pressure on parties, the general feasibility of this model is questionable. In order for it to work, it needs a powerful state-owned communications agency—which is not very common outside of western Europe—as well as the existence of a political party-centered electoral contest to keep advertising from breaking up into an avalanche of individual messages, as has been evidenced in systems with a more individual candidate-centered model. But perhaps most importantly, it is unclear whether this model is effective at preserving a level playing field in elections. As is the case with overall spending caps, limits on advertising can turn into unfair protection for the incumbent party and a significant obstacle for the opposition, particularly when the ruling party continues to enjoy unlimited access to state media.

Financial transparency regulation

The fourth category of rules involves the obligation of political parties, candidates, and other political actors to report the sources and/or use of their economic resources to public authorities. Such rules also include provisions establishing whether the information is subject to audits and if it must be released publicly.

---

[38] A national spending cap first went into effect in the 2001 general election.

[39] Keith D. Ewing, *Money, Politics and Law: A Study of Electoral Campaign Finance Reform in Canada* (Oxford: Clarendon Press, 1993), 220-225; William T. Stanbury, "Financing Federal Politics in Canada in an Era of Reform," in Gunlicks, *Campaign and Party Finance*, 97-99; and Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Volume 1* (Canada: Royal Commission on Electoral Reform and Party Financing, 1991), 327-328. According to the Canada Elections Act, outside third parties may spend up to C$150,000 on advertising in general elections (Article 350). *Canada Elections Act*, S.C. 2000, c. 9, http://www.elections.ca/content.aspx?section=res&dir=loi/fel/cea&document=part17&lang=e#sec349.

[40] Emilio Pajares-Montolío, *La Financiación de las Elecciones* (Madrid: Congreso de los Diputados, 1998), 137-145; Ruth Levush, *Campaign Financing of National Elections in Foreign Countries,* 89, 126, 155; Chan Wook Park, "Financing Political Parties in South Korea: 1988-1991,"in Alexander and Shiratori, *Comparative Political Finance*, 181-182; Fernando Cepeda-Ulloa, *Financiación de Campañas Políticas* (Bogotá: Editorial Ariel, 1997), 94-97; and Marcin Walecki, "Political Finance in Central Eastern Europe" in Nassmacher, *Foundations for Democracy*, 410.

[41] Ecuador, Nicaragua and, indirectly, Costa Rica, have also introduced some limits on campaign advertising in print media.

These regulations vary considerably from one country to another. Generally speaking, it is usually political parties rather than individual candidates that are required to file financial statements on both day-to-day and campaign activities, disclosing their sources of financing as well as detailing spending. A trusted authority must also audit this information. Under the regulations of all countries in Latin America, except for El Salvador, political parties are obligated to periodically report their finances, while individual candidates are required to do so in only a few countries (Brazil, Colombia, Chile, Panama, Uruguay, and Venezuela). In most instances, the supreme electoral authority has been placed in charge of exercising oversight and control over party financing. The Mexican experience is of particular interest in this regard, as the National Electoral Institute actually has the authority to compel parties to keep a single accounting ledger, and is also empowered to conduct on-site, random audits or verification visits during official campaign periods; these are powers of which this body has availed itself extensively.

Requirements pertaining to public disclosure of information are much less clear in the region. Though several countries (including Argentina, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Peru, and, partially, Panama) require the public release of audit findings on the candidates' and parties' accounting records, in the rest of the region that information is not necessarily disclosed publicly and does not enter the public debate.

Transparency rules are designed to shed light on the sources of support provided to parties and candidates, as well as on their compliance with campaign finance legislation. While disclosure of this information may have an intrinsic value for democracy, the rules of transparency also play a decisive role in the success of other measures of campaign finance regulation, such as spending and contribution limits. Spending caps can only be successful when an effective reporting and disclosure system for party and candidate finances is in place.

Transparency rules are the cornerstone of political campaign finance regulation in many countries, particularly in the United States. Nevertheless, enforcement of these provisions is not immune from acute regulatory and operational dilemmas. On the one hand, these rules call for the public release of key information on the inner workings of political organizations and therefore involve a certain level of state control over them. On the other hand, these rules reflect the notion that political parties are quasi-public entities rather than private organizations, and that the benefits to society in releasing the sources of financial support to political actors far outweigh the right to protection of the privacy of contributors. Protecting privacy is a particularly sensitive concern in democracies that have only recently left behind an authoritarian past with the fear of government harassment still fresh in the minds of many political actors.[42]

System of sanctions

This section addresses penalties for the potential violation of limits, bans, and obligations discussed in the previous four sections. Worldwide, fines are by far the most common form of sanction; in some places, such as Mexico and Israel, they have been used with exceptional severity.[43] Often such fines

[42] This issue has been discussed, for example, in Chile, Panama, and many parts of Central and Eastern Europe. Salvador Valdés Prieto, coord., "Proposiciones sobre el financiamiento de la actividad política," *Estudios Políticos* no.78 (October 2000), 420-437; *La Prensa Panamá* (Panama City), July 22, 1995; *El Panamá América* (Panama City), August 14, 2001; and Walecki, "Political Finance," 413-414.

[43] After the 2000 election in Mexico, the Institutional Revolutionary Party, National Action Party, and Green Party of Mexico were fined the equivalent of $100 million, $35 million, and $18 million, respectively, for serious campaign financing irregularities. Arturo Núñez, "Análisis comparativo sobre financiamiento de campañas y partidos políticos en México" (paper presented at the Campaign Financing Workshop organized by the OAS and International IDEA, San José, Costa Rica, August 8-9, 2003), 11; and Orozco, "Financiamiento y fiscalización," 364. In January 2000, the Labor Party of Israel was fined $3.5 million for accepting illegal contributions. Fines of hundreds of thousands of dollars are common in Israel. Blechinger and Nassmacher, "Political Finance in Non-Western Democracies," 178; and Menachem Hofnung (professor, Department of Political Science, Hebrew University, Jerusalem, former member of the Executive Committee of the Meretz Party [Israel]), interview, Mexico City, June 7, 2001. The case of Chile also warrants mention. In the past three national elections, particularly in municipal contests, there have been fines imposed on several hundred candidates.

are contingent upon party acceptance of public subsidies. In many countries, public subsidies have become an essential tool to ensure compliance with other campaign finance regulations.

Various types of campaign finance irregularities, such as filing late or incomplete reports, are penalized by withholding state subsidies, as is the case in Austria, Germany, Spain, and Portugal, among others. In practically all Latin American countries (with the exception of the Dominican Republic), fines have been established to bolster campaign finance controls, while the withholding of state subsidies as a coercive mechanism is less common.[44]

Even though many campaign finance laws and regulations include jail sentences as sanctions, such sentences are the exception rather than the rule and, generally speaking, are usually only used in cases where there is a longstanding history of mishandling of party finances.[45]

With sanctions, "avoiding the mistake of *over-regulation* or '*criminalizing*' politics" is necessary, according to Steven Griner and Daniel Zovatto.[46] The imposition of excessively harsh sanctions has proven to have ambiguous and, in some instances, counterproductive effects. If even the most minor offenses trigger serious punishments, the authorities in charge of applying them may become reluctant to do so. In countries such as Australia, where the law mandates criminal proceedings to punish campaign finance violations, electoral authorities have tended to rely instead on approaches targeted toward repairing the damage caused by non-compliance.[47] Likewise, the application of devastating punishments for electoral law infringements—such as disqualification for politicians who break the law (for example, in France and India) or the immediate dissolution of a party when it violates the legislation (for example, in Senegal)—has almost always been avoided due to the potentially serious political consequences.[48]

The Latin American experience is a case in point. Even though the election laws of 23 countries of the region establish criminal sanctions for contributors or candidates who break campaign finance laws, the actual application of sanctions has practically been negligible, except for perhaps in Mexico.[49] The experience of Central American countries, where not a single criminal or electoral sentence for matters of campaign finance has been issued—despite the high number of gross violations of oversight legislation—serves to confirm this phenomenon.[50]

Without an effective system of sanctions ranging from traditional fines to criminal punishments, the rules of campaign finance will never be anything more than a set of good intentions.[51]

---

[44] The latest reform in 2004 of the Guatemalan law allows administrative and criminal penalties, but fails to provide a clear definition of the scope of the law. This has limited the actual application of the penalties by the electoral body.

[45] Blechinger and Nassmacher, "Political Finance in Non-Western Democracies"; and Hofnung, interview.

[46] Griner and Zovatto, *From Norms to Best Practices*, 325.

[47] Dima Amr and Rainer Lisowski, "Political Finance in Old Dominions: Australia and Canada," in Nassmacher, *Foundations for Democracy*; and Bill Gray (former member of the Electoral Commission of Australia), interview, Mexico City, June 6, 2001. In the United States, compulsory training of campaign officials is often used as an alternative measure to fines for violations of campaign finance rules. For violations of the Federal Election Campaign Act, the Federal Elections Commission has introduced a process of alternative dispute resolution (ADR) which, in its own words, "is a series of constructive and efficient procedures for resolving disputes through the mutual consent of the parties involved." ADR encourages parties to enter into negotiations which swiftly lead to a settlement. Among other things, this enables the parties and the authorities to avoid the high costs and tensions typically associated with the traditional mechanisms of law enforcement. Federal Election Commission, "Alternative Dispute Resolution Program," updated February 2010, http://www.fec.gov/em/adr.shtml.

[48] Ruud Koole, "Political Finance in Western Europe: Britain and France," in Nassmacher, *Foundations for Democracy,* 89; Randhir Jain (professor, Department of Political Science, University of Dehli, India), interview, Mexico City, July 6, 2001; and El Hadj Mbodj (professor, Department of Law, Cheikh Anta Diop University, Senegal), interview, Mexico City, June 8, 2001. However, in France some cases have arisen in which the credentials of elected officials have been nullified as a result of violations of campaign financing laws. Santiago González-Varas, *La Financiación de los Partidos Políticos* (Madrid: Dykinson, 1995), 171-172; and Yves-Marie Doublet, *L'Argent et la Politique en France* (Paris: Ed. Economica, 1997), 48-50.

[49] Griner and Zovatto, *From Norms to Best Practices,* 367.

[50] Casas-Zamora, "Financiamiento de campañas."

[51] Griner and Zovatto, *From Norms to Best Practices,* 325.

However, comparative experience suggests that having a graduated, varied and, most importantly, credible system of sanctions in place is more important than the severity of the punishments.

NEXT STEPS: PROPOSALS FOR REFORM

To address the various risks facing Latin American democracies in the field of campaign finance, some of the following regulatory instruments may be in order. None of these suggestions is uncontroversial. Moreover, this list of proposals is clearly not a monolithic package that should be adopted in its entirety. On the contrary, experience suggests that reform should proceed gradually by testing out successive approaches that prioritize the most urgently needed changes with the broadest political consensus.

a) **Greater control over private funding**, with bans mostly on anonymous contributions, financing from foreign sources, and contributions from legal entities (e.g., corporations, trade unions, and nongovernmental organizations).

b) **A public subsidy system to ensure fair access for parties and candidates to adequate funding to finance their regular day-to-day operations and campaigns**. For this purpose, the following measures should be taken:

- Create reasonable barriers to subsidy access. These should be careful not to fragment the party system into multiple smaller parties or make it excessively difficult to obtain public funding for minority and emerging parties.
- Establish rules on the periodicity of state subsidy payments so they are disbursed in installments over the course of the electoral cycle and funding is partially targeted to party research and member training.
- Set rules for partial yet substantial payment of election subsidies in advance, backed by guarantees of compliance from the recipient parties and candidates, to ensure first-time parties and candidates can gain access to the subsidies.
- Provide limited subsidies for parties' internal (primary) elections, particularly when procedures for open voting by the general electorate are involved.
- Establish rules for the distribution of subsidies, which combine:
    - Equal allocation of a portion of the funding among all eligible recipients;
    - Proportional allocation of some of the funds, based on votes won or distribution of seats; and
    - Allocation of a portion of the subsidy using a matching grant system based on efforts by parties and candidates to raise smaller contributions of a certain amount.

c) **Adoption of controls to keep campaign spending from skyrocketing**, such as:

- Limits on the length of the official campaign season, particularly the period for political advertising;
- Caps on advertising in the media by parties and candidates; and
- Facilitating airtime for advertising on public and private television for political parties, making sure that at least some of the airtime is divided equally among contenders. Those advertising spaces should be awarded free-of-charge by the media or otherwise can be acquired by the electoral authority and then made available to the parties.

d) **Establishing mechanisms of accountability, transparency, and disclosure of the financial management of parties and candidates**, through measures such as:

- Making mandatory for all parties and at all election levels the figure of the "electoral agent," i.e., an identifiable chief financial officer of the campaign, entrusted with the observance of campaign regulations;

- Establishing the obligation of political parties to periodically report their income to the election authority (or competent authority on the subject), including in-kind contributions (except for volunteer work);
- Legally requiring the media to disclose rates and discounts granted to all political parties and candidates; and
- Expressly granting the electoral authority (or competent authority on the subject) the legal power to audit the financial statements of parties and candidates. This includes:
    - The power to conduct any activities that may be required to establish the accuracy of their content, including carrying out random on-site inspection visits and audits of financial reports filed; and
    - The power to bring forward investigation proceedings should any violation of regulations be detected.
- Strengthening the human and material resources of the bodies in charge of overseeing campaign finance;
- Explicitly establishing the public nature of campaign finance information and, accordingly, creating mechanisms by which the press and the public can access the financial statements filed by parties and candidates as well as the findings of audits conducted by the electoral authority (or the competent authority on the subject); and
- Publicizing via the Internet and in at least one nationally circulated daily newspaper a list of the main sources of income of every party and candidate and the findings of the audit reports issued by the electoral authority.

e) **Establishing a graduated system of sanctions for the chief financial officers of political parties in the event of any violations of the rules in force**. That system should include:

- Withholding of state subsidies;
- Establishing fines and prison sentences for the chief financial officers and authorities of the parties; and
- Dissolution of the party or removal from office of officials elected by popular vote as punishment for repeated and exceptionally serious violations.

The adoption of campaign finance reforms is often a minefield in which the best intentions may backfire in a myriad of ways (for some preliminary lessons on the process of introducing campaign finance regulations, see Text Box 1). Whichever reforms are adopted, the most crucial element is that they be backed by the resources required for strict implementation, the willingness to review them when their inevitable shortcomings crop up, and a realistic understanding that no campaign finance system—no matter how sophisticated—is capable in and of itself of guaranteeing the absolute integrity and transparency of political activity.

Text Box 1: Campaign finance reform lessons

If campaign finance regulatory efforts are to achieve even modest success, political actors must observe some basic rules.

1. Ask the right questions

The serious risks to democracy set forth in the first section of this paper should serve as guidelines for almost any effort to regulate campaign finance. The questions to ask include:

- How to minimize the risk of questionable financing sources infiltrating parties and campaigns?
- How to minimize the risk of conflicts of interest arising for decision makers or, when such conflicts arise, the risk of them going undetected by citizens or the press?
- How to minimize the risk of the abuse of public resources for electoral purposes by government authorities?
- How to ensure that a sufficiently diverse group of parties or candidates has an opportunity to get their message to the voters?
- How to ensure that campaign finance regulation contributes to party institutionalization rather than to party system instability?
- How to ensure that campaign finance legislation is effectively implemented?

2. Ask whether the foundations are in place

Campaign finance regulation and investigation requires solid electoral oversight institutions and accountability bodies, in addition to parties with a minimum level of institutionalization and a savvy, diligent, and independent press that is protected from political intimidation.

3. Question the conventional wisdom

Much of the conventional wisdom should be closely re-examined, such as the notion that the cost of election campaigns is rising scandalously; that television is responsible for these skyrocketing costs; that election results are determined by campaign finance; that major public policies are the result of political contributions; that private contributions are regularly used to buy policy decisions; and that when a political contributor receives a benefit, it is the result of a quid pro quo arrangement stemming from the contribution. Campaign finance reformers should view such widespread beliefs in the field with a measure of skepticism.

4. Make the most out of crises

Attempts to comprehensively overhaul the rules of campaign finance are rarely undertaken preemptively. Experience has shown that such reforms are almost always the result of scandals and crises that place the issue at the center of political debate. Crisis is the mother of reform (or at least its midwife) and the closest ally of those who are genuinely interested in improving existing regulations.

5. Legislate with a long-term view, but review periodically

If crises can trigger reform, they should not exclusively define the substance thereof. Although crises can spur regulatory efforts, crafting sound policies requires a future-focused approach, geared toward generating a set of clear and stable rules of the game. Adjustments will be unavoidable. Because of this, campaign finance regulation is known in Germany as the "unending legislation." Every reformer must be keenly aware of the tentative nature of his or her efforts and of the need to periodically review legislation.

6. Pay attention to the interaction of regulatory instruments and the institutional environment

Every campaign finance regulatory framework faces a great deal of variation and is linked to a broader normative environment that conditions its effects. It is crucial to pay attention to the combination of rules and norms in order to better predict the effects of campaign finance regulation.

7. Be moderate

While effective enforcement is critical for campaign finance laws, regulatory medicine must be carefully administered. History has not looked kindly on attempts to introduce draconian rules in regulating campaign finance. Spending caps, for example, have proven to be difficult to enforce and now have a long track record of failures in countries ranging from the United States to Japan.

8. Seek partners and build consensus

Campaign finance reform is not just a technical problem, but also a political one. Reformers must tackle two tasks: building broad coalitions to put pressure on the beneficiaries of the status quo—typically the established parties—while also engaging all political parties in crafting reform.

9. Adequately fund the reform

Every effective campaign finance regulatory system must include the necessary economic, human, and legal resources to be properly implemented. This point is particularly relevant in Latin America, where it is often believed that actual change will come about just by introducing new legislation.

10. Be realistic

It is reasonable to expect that well designed and properly implemented regulations can significantly reduce the most questionable practices in campaign finance which jeopardize democracy. Nonetheless, it is unrealistic and counterproductive to believe that the introduction of these regulations will be capable of eradicating, once and for all, the maladies of campaign finance.

THE AUTHORS

Kevin Casas-Zamora is a nonresident senior fellow at the Brookings Institution. Previously, he was second vice president and minister of national planning and economic policy of Costa Rica, as well as secretary for political affairs at the Organization of American States.

Daniel Zovatto is a nonresident senior fellow at the Brookings Institution and the regional director for Latin America and the Caribbean at International IDEA. He is also a member of the International Advisory Council of Latinobarómetro and the Editorial Council of the magazine *Foreign Affairs en Español*.