

.....Money.....

.....Politics.....

.....& Democracy.....
Canada's Party Finance Reforms

..... Edited by
•• Lisa Young and Harold J. Jansen ••

MONEY, POLITICS, AND DEMOCRACY

Canada's Party Finance Reforms

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Reforming Party and Election Finance in Canada

LISA YOUNG AND HAROLD J. JANSEN

In December of 2008, an extraordinary political drama transfixed Canadians. The Liberal and New Democratic parties reached an agreement to form a coalition that would govern with the support of the Bloc Québécois after defeating the Conservative minority government that had been formed a few weeks earlier. Ultimately, the attempted coalition crumbled after Prime Minister Stephen Harper convinced Governor General Michaëlle Jean to prorogue Parliament, thus postponing the vote of non-confidence. Although the attempted coalition was generally considered constitutionally legitimate, many Canadians nevertheless objected to it on the grounds of popular sovereignty (Russell and Sossin 2009). Whatever the public might have concluded about the dramatic events in Ottawa, it was clear that the Liberal-NDP move was a sharp break from the way politics had been conducted in Canada. Although coalition governments are common elsewhere, Canadians had very little experience with them outside of times of national emergencies, such as the World Wars.

The trigger for this unprecedented episode in Canadian politics was an attempt by the Conservatives to eliminate the annual financial subsidy to political parties, ostensibly as part of the government's response to the economic crisis that unfolded in the fall of 2008. Although the opposition parties presented their coalition as driven by a more general lack of confidence in the direction of the government, there is little doubt that the changes to party finance were the impetus for the move. The elimination of the subsidy

would have been disastrous for the opposition parties in Parliament (and for the Green Party, which lent its support to the coalition as well). In practical terms, the opposition parties had little choice but to oppose the Conservatives' proposal.

This book examines the series of reforms to the laws governing political finance in Canada that led to this dramatic showdown. The chapters included in it seek to understand the reasons for the significant revisions to the legislation, and the ways in which these changes have affected the internal organization of political parties and the dynamics of inter-party competition. In one respect, the book is very much focused on understanding the new dynamics of party organization and competition in the Canadian case. But in a second respect, the book seeks to speak to a broader international audience interested in the patterns of reform to political finance and the implications of these rules for political parties as organizations and as electoral competitors.

Institutional Context and Party System

Canadian political institutions are fixed firmly within the Westminster political tradition, featuring a single member plurality electoral system and parliamentary government characterized by tight party discipline and a concentration of power in the office of the prime minister. These institutional characteristics are important context for understanding the Canadian experience with public funding and election finance reform in comparative perspective. Canada is unusual in its coupling of Westminster institutions with extensive public funding of its political parties at the national level. As a result, it offers an intriguing test of theoretical propositions derived from the experience of more consensual political systems that have experimented with the regulation of political finance.

The British tradition holds a view of political parties as appropriately private organizations. Gauja (2008) notes that in established democracies with Westminster constitutional traditions (Canada, Australia, New Zealand, and the United Kingdom), there is no mention of parties in constitutional documents. This absence reflects a dominant constitutional theory that sees political parties, with their socially divisive character, as essentially incompatible with liberal democratic traditions. The reticence to acknowledge parties as key players in these democracies has translated, in practical terms, into a relative reluctance to regulate the internal workings of parties or to offer them substantial financial support from the public purse. Over

time, this reluctance has conflicted with pressure to acknowledge the extensive role parties play in selecting candidates and structuring electoral competition, and the necessity of regulating these critical actors as part of broader efforts to prevent corruption and encourage transparency, accountability, and equitable electoral competition. As a result, the Westminster democracies have, to varying degrees, come to recognize political parties in law, register them, and regulate their financial dealings. Among the Westminster democracies, however, Canada stands out. Canada established legislation governing the registration of political parties in 1974, whereas the other Westminster systems did not follow until 1983 (Australia), 1993 (New Zealand), and 1998 (United Kingdom). Similarly, public funding of parties' electoral campaigns began in Canada in 1974 but only later (if at all) in the other Anglo-American systems. Because it couples Westminster institutions with a more continental propensity to regulate and fund political parties, Canada serves as a critical case for testing some of the propositions within the academic literature regarding the impact of regulation and public funding.

In 2004, a series of reforms to the Canada Elections Act further extended both the funding and regulation of political parties. These reforms coincided with an unusual period in Canadian electoral politics, interrupting a relatively stable two-and-a-half-party system characterized by the rotation of the Liberal and Progressive Conservative (PC) parties in office. The 1993 general election ushered in a decade of highly regionalized politics at the national level. In the 1993 electoral "earthquake," the PC Party was reduced from a majority government to only two seats in the House of Commons. Its base of support had effectively splintered to support three parties: the remnants of the PC Party, the sovereignist Bloc Québécois, and the western-based Reform Party (which later morphed into the Canadian Alliance). The electoral collapse of the PCs and the resulting regionalization of the party system benefited the Liberal Party, which was able to form a majority government with its support in Ontario and major urban centres elsewhere in the country (Johnston 2000). Having governed for a decade, by 2003 the Liberal Party had been damaged politically by a series of scandals and an internal struggle for the party's leadership. Nonetheless, by virtue of a seemingly popular new leader in Paul Martin and the ongoing fracture of the opposition parties, the Liberals appeared poised to continue their electoral domination. The unexpected merger late in 2003 of the Canadian Alliance and the Progressive Conservative Party into the Conservative Party, coupled

with the electoral fallout of the sponsorship scandal in Quebec, disrupted these plans, leaving Paul Martin's Liberals with only a minority of seats in the House of Commons after the 2004 federal election. Since 2004, Canada has been governed by a series of minority governments: first the Liberals from 2004-06, and then two consecutive Conservative minorities – from 2006-08 and then 2008 until the present. With the two right-of-centre parties merged into the Conservative Party, the Bloc Québécois still dominant in Quebec, and the Liberal Party struggling with ongoing internal leadership politics, electoral majorities have proved elusive.

As a consequence of these unsettled political conditions, our ability to understand the adaptation of actors to the new set of incentives in the system is curtailed. Canadian political parties have fought three general elections over a period that would normally have seen only two; the precarious minority status of the three governments since 2004 has required parties to maintain a constant state of electoral readiness, focusing their attention on electoral considerations to the exclusion of other issues. The Liberal Party has also had three leaders over the six-year period during which the new legislation has been in place. These unsettled electoral conditions may have led Canada's parties to adapt to the new finance rules differently than they would have under "normal" circumstances.

The Reforms

The reforms came into effect in 2004 but were first brought forward before the House of Commons as Bill C-24 in 2003, Liberal prime minister Jean Chrétien's last year in office. Leading a government beset with scandals, the prime minister introduced the bill as an element of a broader ethics package designed to defuse criticism of the governing party. The effects of this legislation have been amplified by further reforms to election finance introduced by Stephen Harper's Conservative government in 2006, under the rubric of the federal Accountability Act. In December of 2008, an effort to reverse part of the 2004 reforms almost led to the defeat of the Harper government.

Prior to the 2004 reforms, the regulatory regime governing Canadian parties and elections relied on disclosure of the size and source of contributions to discourage political corruption, and employed spending limits at the local and national level to encourage equitable competition and limit the demand for political contributions. Parties and candidates received significant state support via election expense rebates and tax credits for donations, but private funds constituted the dominant source of income for both parties and candidates.

The reforms introduced in 2004 and 2006 maintained these existing rules but added to them significant restrictions on the size and source of contributions and introduced extensive public funding and state regulation of party nomination and leadership contests. A summary is provided in Table 1.1. Under the new legislation, only individuals could contribute to national political parties, and the amount of this contribution would be limited to \$5,000. The Harper government's 2006 Accountability Act further reduced this to \$1,000 (indexed for inflation). The 2004 reforms allowed entities other than individuals – mainly corporations and unions – to contribute a maximum of \$1,000 per year to candidates or local associations; the 2006 Accountability Act eliminated this provision, making individuals the only legal contributors to any partisan entities at the federal level.

To replace parties' lost income, the 2004 reforms substantially increased the public funding available for political parties. First, there was an increase to rebates for candidates' and parties' election expenditures. Second, the reforms instituted a system of quarterly public funding for national political parties based on the number of votes the party won in the most recent election. The latter was a significant change from past provision of public funding to political parties. Taken together, the clear intention of the legislation was to make public funds the primary source of income for major political parties. The 2006 legislation did not affect the provision of public funding. The Conservative government attempted to eliminate the per-vote subsidy in 2008 but had to retreat in the face of the determined opposition of all of the other parties.

Finally, the 2004 reforms extended the scope of the regulatory regime beyond the affairs of national parties and the official election period to govern parties' nomination and leadership contests. Candidates both for a party nomination and a party's leadership became governed by the same limits on the size and source of contributions that applied to other registered entities, and candidates for a party nomination also became subject to spending limits in the nomination contest.

Why Reform?

The 2004 reforms came as a surprise to observers, as there was little pressure on government to amend the existing rules. Appointed in 1988, the Royal Commission on Electoral Reform and Party Financing (RCERPF) had recommended changes to the regulation of third-party advertisers during election campaigns and alterations to the formula for reimbursement of election expenses but did not recommend adopting the Quebec system of

TABLE 1.1

Summary of regulation of party and election finance in Canada

Transparency

- Reporting names of all contributors over \$200, including contributions to nomination and leadership contestants
- Reporting party, candidate, nomination candidate, and leadership candidate election expenses
- Reporting contributions to registered third parties
- Reporting expenditures by registered third parties
- Reporting assets held by electoral district associations

Spending limits

- Candidates' election expenses (based on number of electors in district)
- Registered political parties' election expenses (based on number of candidates running for party)
- Registered third-party election expenses (\$3,666 in an electoral district; \$183,300 nationally)
- Candidate nomination expenses (20% of election spending limit for electoral district)

Public funding

- Political Contribution Tax Credit (75% credit on contributions up to \$400, sliding scale on larger contributions)
- Election expense reimbursements:
 - 60% for candidates winning at least 10% of popular vote
 - 50% for registered parties (winning 2% of national popular vote or 5% of vote in districts where the party ran candidates)
 - Per-vote quarterly allowance to registered political parties winning 2% of national popular vote or 5% of vote in districts where the party ran candidates

Contribution limits

- Only Canadian citizens/permanent residents can make political contributions, in the following amounts:
 - Maximum \$1,100/annum to each registered party
 - Maximum \$1,100/annum in total to various entities of each party (registered association, nomination contestants, candidates)
 - Maximum \$1,100/annum to each independent candidate in a particular election
 - Maximum \$1,100 in total to leadership contestants in a particular leadership contest
-

Note: All dollar amounts are indexed to inflation; they are adjusted annually.

financement populaire, which banned political contributions from any entity except an eligible voter. Instead, the commission concluded that "Canadian organizations with a stake in the political future of the country should not be prevented from supporting parties and candidates who share their policies and values, provided the public has full opportunity to be informed about these financial activities" (Canada, RCERPF 1991, 450). This view, although accepted by policy makers responding to the commission's report, was not widespread in Quebec, where the provincial legislation banning corporate and union contributions to parties and candidates has long received significant support. For most of its history, the Bloc Québécois, in fact, opted to adhere to the ban on corporate and union contributions in its own fundraising efforts. Beyond this, however, there was little pressure to amend Canada's regulatory framework for election finance. Given a relative absence of public concern and elite policy debate over the regulation of political finance, we are left with the question of why the reforms were adopted when they were.

Electoral law is unique in that the primary subjects of regulation – political parties and candidates – are themselves developing the rules for the next round of the game in which they will be players. Consequently, an extensive literature examining the patterns of change in election finance law has emerged. Self-interest inevitably comes into play in these explanations, although competing theoretical and empirical accounts suggest that self-interest of various actors plays out in different ways. In Chapters 2 and 4 of this volume, Justin Fisher and Richard Katz examine these competing theoretical accounts. Katz elaborates on the cartelization thesis, which holds that self-interested parties unable to raise sufficient funds from private sources conclude to use the resources of the state to support their functions (see Katz and Mair 1995). Fisher critiques this argument, holding that empirical evidence from several European countries refutes the contention that parties act largely as rational strategic agents; rather they are constrained by dominant norms and values framed by critical historical choices.

Although the institutionalist approach Fisher outlines does not help to account for the government's decision to reform electoral finance, it does offer insight into the choice of regulatory tools employed in the reforms. The decision to all but ban contributions from entities other than individuals and place limits on the size of these contributions largely replicated the regulatory regime of *financement populaire* introduced in Quebec in 1977. Quebec politicians were familiar with this regime, and many favoured its

use at the federal level. Likewise, the form of the public funding introduced in the legislation bore remarkable similarity to the formula for party reimbursements put forward by the RCERPF in 1991 (Canada, RCERPF 1991, 372). The fingerprints of the RCERPF report can also be found in the measures extending regulation to the nomination and leadership selection practices of the registered parties.

To provide a more convincing answer to the question of why the reforms were introduced in 2003, we must examine the patterns of partisan self-interest brought to bear on the reform process. In Katz and Mair's cartel model, extensive state finance is the product of major parties' collusion. In essence, parties agree to employ state resources to fulfil their financial needs, turning away from private sources of finance in favour of the state (Katz and Mair 1995). Examining the Canadian experience through this lens, one might argue that the major parties agreed to accept the loss of revenue from corporate and union contributors and large individual contributions in exchange for a relatively predictable and secure stream of income from the state.

Evidence of collusion in the Canadian experience is, however, incomplete. Although two of the smaller parliamentary parties (the NDP and the Bloc Québécois) supported the Liberals' legislation from the outset, two other parties (the Progressive Conservatives and the Canadian Alliance) opposed it. The Canadian Alliance, then the official opposition, was vocal in its criticism of the legislation, most particularly on the extensive provision of state funding. Canadian Alliance leader Stephen Harper argued that "the worst idea in the legislation is new direct stipends to parties themselves based on previous electoral performance. In this case not only would parties be isolated from the feelings they may have from their own former supporters, but frankly even people who never supported them would be asked to support the party, whether it be the Bloc Québécois or the NDP or ourselves" (Hansard, 11 February 2003).

Although vociferous in its opposition, the Canadian Alliance was in a position to reap the benefits of the legislation without paying any political cost that might be associated with supporting it. The governing Liberals had signalled that they would use their majority in the House of Commons to ensure that the legislation passed, so the Canadian Alliance could achieve both revenue maximization and electoral economy simultaneously, gaining any electoral benefits to be won by criticizing the turn to the state for funding without refusing the new source of revenue.

Because the notion of collusion is not entirely satisfactory for explaining the 2004 reforms, we turn our attention to the financial and electoral self-interest of the governing party. As presented by the Liberal government, the new electoral finance rules were a high-minded effort to enhance public confidence in the integrity of the electoral system by taking corporate and union contributors out of the process. Addressing the House of Commons, then-prime minister Jean Chrétien proclaimed that this legislation would “address the perception that money talks, that big companies and big unions have too much influence on politics, a bill that will reduce cynicism about politics and politicians, a bill that is tough but fair” (Hansard, 11 February 2003). Although the prime minister and other Liberals were careful to deny the reality of corporate influence over public policy making, they placed considerable emphasis on the importance of correcting a perception that political contributions bought influence for donors. In this account, public funding was incidental: a means of compensating parties for lost income. In fact, as the legislation moved through committee, the formula for funding was adjusted from \$1.50/vote to \$1.75/vote to ensure that the Liberal Party would be adequately compensated (Clark 2003, A4).

Stephen Harper, then Leader of the Opposition, suggested in the House of Commons that the legislation was motivated at least partially by a “need to deal with the bank debts of the Liberal Party itself” (Hansard, 11 February 2003). At the end of 2002, the Liberal Party reported total liabilities of over \$2.7 million, offset by just under \$1.4 million in assets, leaving the party with net liabilities of some \$1.3 million (Federal Liberal Agency of Canada 2003). This was reduced substantially in 2003, when the party’s leadership convention and related fundraising (including the last round of fundraising from corporate donors) left the party with \$4.6 million in assets, against \$5.1 million in liabilities, for a net liability of just over \$0.5 million. In short, this level of indebtedness was in all probability manageable for the party, particularly given that it was poised to elect a new leader with extensive corporate ties and capacity to fundraise. This renders improbable the notion that narrow pecuniary self-interest drove the reforms.

More probable is Harper’s allegation that the legislation was motivated “by internal Liberal politics and needs: the need of the Prime Minister to whitewash various scandals from his record before he retires” (Hansard, 11 February 2003). The amendments to the Canada Elections Act were included as part of a broader ethics package introduced by the government after several scandals emerged. The incidents in question did not pertain to

election finance; rather, they related to untendered contracts and other similar issues (see Greene 2006). More significant politically than these incidents was the sponsorship scandal, which was slowly being revealed by journalists. The full details of the sponsorship scandal did not become public knowledge until the Gomery Commission's hearings in 2004. Presumably, however, the prime minister and his advisers were aware of at least the general outlines of what had gone on in Quebec and were introducing amendments to the Canada Elections Act in a pre-emptive effort to respond to allegations that would later emerge.

When the Gomery Commission thoroughly investigated the sponsorship program and individuals associated with it, it discovered that individuals associated with the Quebec wing of the Liberal Party of Canada were successfully soliciting significant contributions from companies and individuals in receipt of lucrative sponsorship contracts from the federal government. Referring to these transactions as “kickbacks,” Justice Gomery concluded that “the LPCQ [Liberal Party of Canada (Quebec)] as an institution cannot escape responsibility for the misconduct of its officers and representatives. Two successive Executive Directors were directly involved in illegal campaign financing and many of its workers accepted cash payments for their services when they should have known that such payments were in violation of the *Canada Elections Act*” (Commission of Inquiry 2005, 435). The reforms that the Liberals proposed to the Canada Elections Act did not directly address all of the improper activities outlined in the Gomery report. Certainly, banning corporate contributions would prevent party officials from requesting contributions directly from companies receiving lucrative government contracts. The reforms said nothing about the other illegal activities, such as cash-stuffed envelopes being delivered to party representatives and illegal payments being made to campaign workers, reported by witnesses appearing before the Gomery Commission. The legislation did, however, serve to signal the government's commitment to increasing public confidence in the regulatory system.

The Impact of State Funding

At the heart of the 2004 reforms was the replacement of parties' revenues from corporate, union, and large individual donors with extensive state funding. A core question that links many of the chapters in this volume is the question of how public funding has – and might – affect party organization and electoral competition in the context of a Westminster system. As public