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OPTION REPORTS

CAMPAIGN FINANCE

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on which version was used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

Campaign finance is an important topic in all democracies, but particularly in new democracies. By regulating fundraising sources and amounts, governments can limit the influence of special interest groups. We describe below the trends in campaign finance outlined in constitutions.

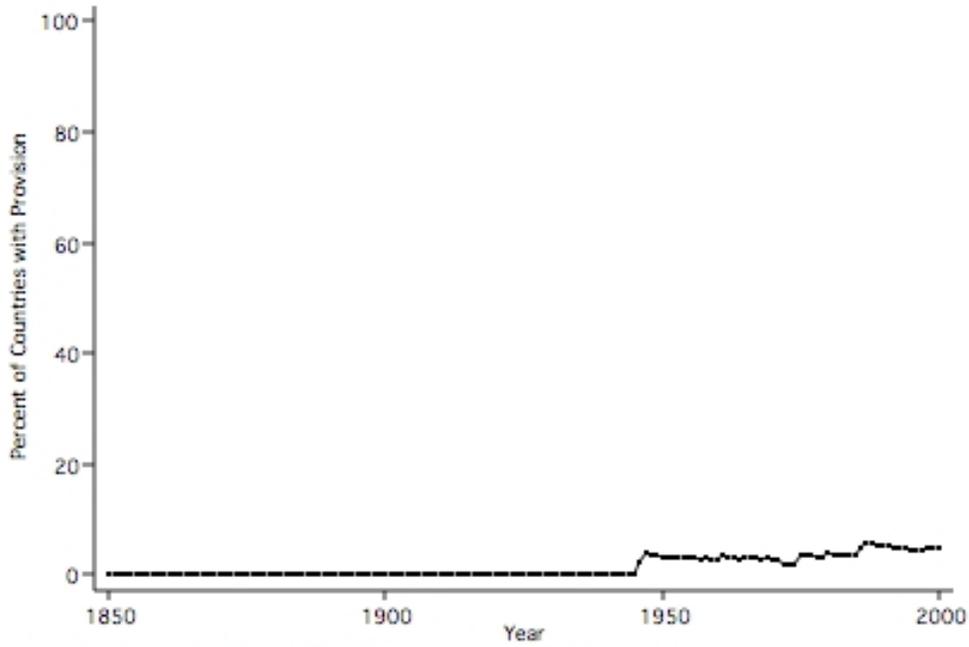
2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project sample includes 550 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

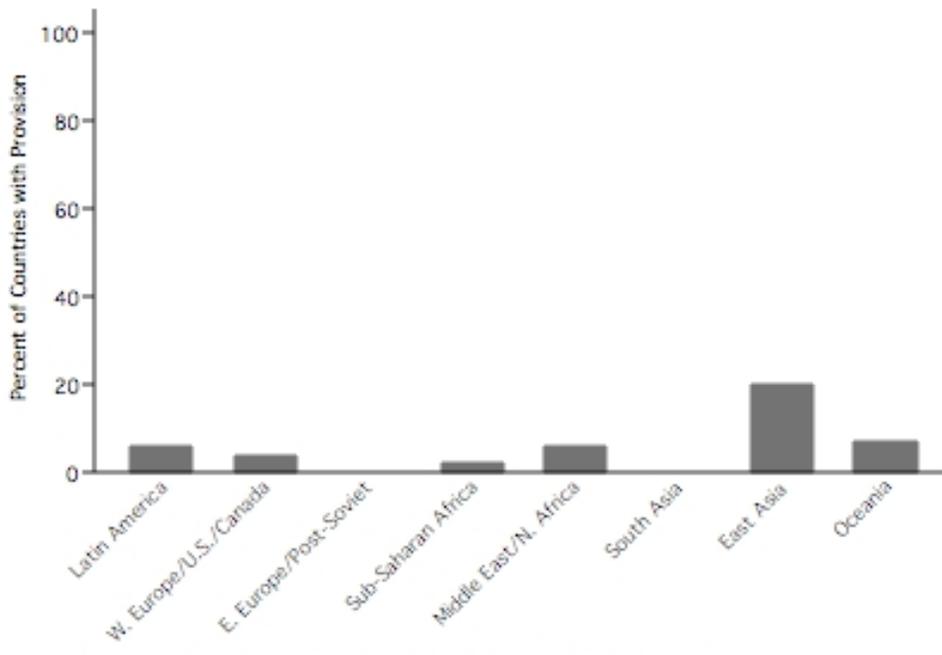
Overall, only 2.73% of constitutions in the sample impose limits on money used for campaigns. Figure 1 shows the percent of constitutions over time that impose limits on money used for campaigns, and demonstrates that incorporation of provisions on election financing into a constitution is a post-World War II phenomenon. The number of constitutions that impose limits on money used for campaigns has remained relatively constant in the second half of the 20th century. In 2000, only 5% of constitutions in force stipulated limits on campaign finance. Figure 2 shows the percent of constitutions that impose limits on money used for campaigns across regions. The figure indicates that the provision is most prevalent in East Asia, Oceania, and the Middle East, and least common in Sub-Saharan Africa and Western Europe.

Figure 1. Percent of Constitutions That Impose Limits on Money Used for Campaigns by Year (N=550)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 2. Percent of Constitutions That Impose Limits on Money Used for Campaigns in 2000 by Region (N=191)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

4. NOTES ON ATYPICAL CASES

Some constitutions specify that the law shall establish regulations on the financing of political parties (e.g. Ecuador 1998, Portugal 2004); others specify limits imposed on campaign financing (e.g. Chile 2005); and finally some constitutions indicate the institution that has the authority to regulate in this matter (e.g. Bhutan 2005).

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The Election Commission shall fix a ceiling for the total expenditure that may be incurred by political parties and candidates taking part in elections to the National Assembly.

- *Bhutan 2005, Article 16.2*

The foreign financing of political parties is forbidden, unless an exceptional derogation has been granted by the law. Any financing likely to conflict with national independence or sovereignty is prohibited.

The law determines and organizes the sources of financing for political parties.

- *Burundi 2004, Article 83*

...Political parties may not intervene in any activities other than those specific to them nor have any privilege or monopoly on citizen participation; the list of its members must be registered with the electoral service of the State, which shall keep a copy of it that shall be accessible to the members of the respective party; its accounting shall be public; the sources of its financing may not come from money, goods, donations or credits of foreign origin; its statutes must contemplate rules ensuring an effective internal democracy. An organic constitutional law shall regulate other matters that concern them and the penalties that are to be applied for the breach of its rules, which may include their dissolution.

Associations, movements, organizations or groups of people that pursue or carry out activities of political parties without conforming to the aforementioned rules are illicit and will be sanctioned in accordance with the above-mentioned organic constitutional law...

- *Chile 2005, Article 19.15*

The State will contribute to the financing of parties and political movements with legal personality, in accordance with the law. The election campaigns conducted by parties and political movements with legal personality and by relevant citizen groups which put candidates on the ballot will be financed by state resources through the system of reimbursement of campaign expenses based on the number of votes obtained.

The law will determine the percentage of votes necessary to qualify for the right to such financing.

The expenses which parties, movements or candidates may incur in election campaigns, and the maximum amount of private contributions may also be limited in accordance with the law.

In the campaigns for the election of the President of the Republic, the candidates of those parties, movements and relevant citizen groups whose electoral bids comply with the requirements of seriousness determined by the prescribed law will have access to a maximum of radio and television advertising and institutional space paid for by the State. In the elections following the entry into force of this Legislative Act, violations of the campaign spending limits will, if duly proved, be sanctioned with the loss of the mandate or public office. The law will determine the other effects resulting from the violation of this provision. Parties, movements and candidates shall publicly account for the amount, the sources and the use of their funds.

Paragraph

The annual financing of parties and political movements with legal personality will rise, at a minimum, to two point seven (2.7) times that contributed in the year 2003, maintaining its value over time.

The amount of campaign financing of parties and political movements with legal personality will be, at the least, three (3) times that contributed in the 1999-2002 period in constant pesos of 2003. This includes the transportation costs on election day and the cost of postal franchises currently financed.

Internal or popular ballots of parties and movements that choose this mechanism will receive financing through the system of reimbursement on the basis of the number of votes obtained, maintaining for such purpose the value in constant pesos in force at the time of approval of the present Legislative Act.

- *Colombia 2005, Article 109*

The law shall set limits on electoral expenditures. Political parties, movements, organizations and independent candidates shall surrender information to the Supreme Electoral Tribunal on the amount, origin and destination of resources used in electoral campaigns.

Electoral publicity may only be transmitted through the collective mass media during the forty-five days before the date ending the electoral campaign.

The law shall sanction noncompliance with these dispositions.

- *Ecuador 1998, Article 116*

Political parties are entitled to receive financial support by the State for their electoral and operating expenses, as specified by law. A law shall specify the guarantees of transparency concerning electoral expenses and financial management in general of political parties, Members of Parliament, parliamentary candidates and candidates for all degrees of local government. A law shall impose the maximum limit of electoral expenses, may prohibit certain types of pre-electoral promotion and shall specify the conditions under which violation of the relevant provisions constitutes grounds for forfeiture of parliamentary office on the initiative of the special organ of the following section. The audit of the electoral expenses of political parties and parliamentary candidates is carried out by a special organ which is established also with the participation of senior judicial functionaries, as specified by law. A law may also extend these regulations to candidates for other offices held through election.

- *Greece 2002, Article 29.2*

Any citizen or citizens, political party association or organization, being of Liberian nationality or origin, shall have the right to contribute to the funds or election expenses of any political party or candidate; provided that corporate and business organizations and labor unions shall be excluded from making and contribution to the funds or expenses of any political party. The Legislature shall by law prescribe the guidelines under which such contributions may be made and the maximum amount which may be contributed.

- *Liberia 1986, Article 82.a*

The law shall guarantee that the national political parties hold the elements necessary to conduct all their activities equitably. Thus, they shall have the right to permanently use the means of social communication in accordance with the rules and procedures established by law. In addition, the law shall provide rules for the financing of political parties and their electoral campaigns, ensuring that public resources and funding prevail over those of private origin.

Public financing for political parties that maintain their registration (*registro*) after each election will consist of the amounts destined to sustain their permanent ordinary activities and those needed to secure votes during the elections and will be granted in accordance with the following and with what the law provides:

a) Public financing to support their ordinary permanent activities will be fixed annually, applying the minimum campaign costs as calculated by the Superior Directive Organ of the Federal Electoral Institute (*Organo Superior de Dirección del Instituto Federal Electoral*), the number of Senators and Deputies to be elected, the number of political parties with representation in the chambers of the Congress of the Union, and the duration of the electoral campaigns. Thirty percent (30%) of the total resulting from the previous calculation will be equitably distributed among all the political parties, and the remaining seventy percent (70%) will be distributed among them in accordance with the percentage of votes that they obtained in the immediately preceding election of deputies.

b) Public financing for the activities related to seeking votes during electoral processes shall be equivalent to the amount that each political party is entitled to for its ordinary activities during that year, and

c) A percentage of the political parties' annual expenditures for activities in the areas of education, training, socioeconomic and political research, as well as editorial work, shall be reimbursed to the parties.

The law shall set the criteria to determine limits for the political parties' expenditures in their electoral campaigns; establish the maximum financial amounts that their supporters

(*simpatizantes*) may contribute to them, and the procedures for the control and vigilance over the origin and use of all resources in their possession, and likewise shall provide sanctions for noncompliance with these provisions.

- *Mexico 2003, Article 41.II*

INTEGRITY OF POLITICAL PARTIES.

(1) An Organic law shall make provision—

... (e) limiting the amount of contributions that such a party or organization may receive from any source or sources;

- *Papua New Guinea 1991, Article 129.1.e*

The Commission on Elections shall exercise the following powers and functions:

...

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

- *Philippines 1986, Article 9.c.2.5*

The law shall establish regulations on the financing of political parties, specifically in relation to the requirements and limits of public financing, as well as requirement of publicity relating to their property and accounts.

- *Portugal 2004, Article 51.6*

...Political parties that receive material assistance from foreign States, international organizations and real persons and legal entities that are not of Turkish nationality are dissolved permanently...

- *Turkey 2002, Article 69*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[ELECTFIN]-Are there any provisions for limits on money used for campaigns?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Provide details if "yes". If the text specifies that the law shall establish regulations on the limits of financing, please code "yes" and make comment.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.