

CLOSING THE LOOPHOLES

by Michael Pinto-Duschinsky



ENFORCING CAMPAIGN FINANCE LAWS IS A KEY TO DEMOCRACY PROMOTION

Hardly a month goes by without a new law in some country to regulate the funding of political parties or election campaigns. Laws frequently concern the disclosure of political donations (the subject of a forthcoming manual by the

United States Agency for International Development, prepared with help from IFES). Other regulations frequently concern contributions from foreign donors, limits on permitted campaign spending, or limits on the total which may be given by any single donor. Legislation commonly provides for different types of subsidies to parties and candidates.

However, democracy-promotion organizations such as IFES must provide training and technical assistance to help ensure that laws about campaign financing are implemented. It was at a seminar run by IFES in Moscow that I was first challenged on the issue of lack of enforcement of these laws. Professor Koliushin, a member of the Central Election Commission of the Russian Federation, asked me: "Can you give any example from the Western countries of the imprisonment of a politician for failure to obey political finance laws?" It was largely as a result of Professor Koliushin's provocative remark that I decided to look into matters. Basically, the Russian professor was quite right.

TOO MUCH LAW, TOO LITTLE ENFORCEMENT

Laws are one thing; whether they are followed is quite a different matter. In country after country, those investigating political financing receive the warning that laws are a dead letter or are honored in the breach. The difficulty of ensuring that regulations are effective is illustrated by the most basic type of rules: those concerning disclosure. According to a recent study by USAID, 60 percent of 118 countries surveyed have regulations requiring the public disclosure of at least some of the financial accounts of parties or candidates. Yet scholars of political funding have almost exhausted the vocabulary of contempt in describing the ineffectiveness of these rules.

According to an expert employed by the French National Assembly, "the published statistics of party finances

contained in official accounts—in France as elsewhere—are works of fiction." In Italy, honest disclosure "hardly ever happens." In Japan, published accounts "are just the tip of the iceberg." In South Korea, too, the parties' reports on their expenses for routine operations and electoral campaigning "expose only the tip of the iceberg." In Taiwan, "it is difficult to monitor the situation when many contributions may be in cash." In Britain, regarding reported expenditures on campaigns by parliamentary candidates, "the abuse in some cases is on a quite breathtaking scale." In the United States, the disclosure rules surrounding political contributions are "a joke."

Politicians have become skilled in finding potential loopholes in the drafting and application of legal measures to regulate political finance. Evidence for this is the series of unending "reforms of reforms" that have taken place in a number of countries, including France, the United States, Italy and Germany. The desirable scope of political finance regulations and subsidies is bound to remain a subject of debate. There is little doubt, however, that all too often laws express objectives (such as transparency of political donations) without considering in sufficient detail how to implement those objectives. There is, in short, too much law and too little enforcement.

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It is dangerous to assume that the problems of political financing are amenable to simple legislative remedies. There should be more stress on the enforcement of a few key laws such as those on disclosure, and less on the creation of an ever-expanding universe of dead-letter rules.

IFES hopes to apply its holistic methodological approach to these complex issues to make a lasting contribution to this relatively new field of law. With one eye focused on the law itself and the other on enforcing it fairly and effectively, IFES will help policymakers and reformers to find the right solutions to the never-ending task of making democracy and the rule of law work. **E**

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