

Comparative Party Finance Reform: The Cases of France and Britain¹

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Abstract

In Britain, the *Political Parties, Elections and Referendums Act* has revolutionised the regulation of party finance after several half-hearted failures at attempted reform. In France, a series of high profile corruption scandals in the 1980s and 1990s provoked a bout of ‘legislative incontinence’ – resulting in over eight laws in seven years, which profoundly transformed the regime regulating party finance. The comparative analysis of reforms in each country presented here questions the utility of crude ‘constitutional engineering’ theories, and the notion of party system ‘cartelisation’ by major parties, neither of which offers a wholly convincing account of the paths of reform in Britain and France. It explores the use of new institutionalist theories as a comparative framework and concludes that these provide a cogent explanation for the alternative paths taken by each country with party finance regulation.

Key Words: party finance, constitutional reform, new institutionalism, Britain, France

Introduction

In Britain, until February 2001, when the *Political Parties, Elections and Referendums Act* 2000 came into force, the funding regime was still shaped by the *Corrupt and Illegal Practices (Prevention) Act* 1883. In France, in the first thirty years after the formation of the Fifth Republic, party funding had not been the subject of any legislative attention. In both cases, prior to reform, the funding regime was characterised by a distinctly laissez-faire approach, and an attachment to voluntarist values. Indeed, one initial hurdle to overcome in party funding reform was that parties in Britain and France were not even recognised as legal entities. In this article we explore the similarities and differences between the respective

reform processes in France and Britain. The desire to reform the regime regulating party finance in France provoked a bout of ‘legislative incontinence’ – resulting in over eight laws in seven years, whilst in Britain, there is just the *Political Parties, Elections and Referendums Act* 2000 to draw upon. We focus on comparing the initial French propositions with the British reforms, concentrating on a number of instruments of party funding reform, selected by the criteria of degree of significance and comparability.

Theoretical Framework

Our comparative analysis of party finance reform uses a most similar system design. Both France and Britain have broadly similar party systems. Moreover, party funding regimes in both countries have been characterised historically by a lack of regulation and a voluntary tradition of financing parties. As far as explaining the similarities and differences, various forms of the so-called new institutionalism arguably provide appropriate starting points. New institutionalism itself is fairly ill defined. Little consensus exists as to its form (Thelen & Steinmo, 1992: 2, 11). That may or may not matter. On the one hand, critics might argue that since few can agree on the scope of new institutionalism, then its utility may be marginal. Moreover, there may be danger in simply re-stating existing theories, and then describing them as a form of new institutionalism. On the other hand, whilst proponents of new institutionalism may differ in interpretations of scope, they are united by the fact that they acknowledge the importance of non-institutional models and seek to incorporate lessons from these into a less discrete interpretation of the importance of institutions. Broadly speaking, we adhere to the latter view. For this analysis we draw principally upon two variations of new institutionalism; *normative institutionalism* and *historical institutionalism*, as well as considering a variety of theories of institutional change. It is worth briefly outlining the principal aspects of these approaches.

Normative Institutionalism

The term 'institution' within this 'new' institutionalism is understood broadly, following Huntington (1968: 12), as 'a stable, recurring pattern of behaviour' (Goodin 1996: 22). March & Olsen (1984: 738) identify institutions as 'collections of standard operating procedures and structures that define and defend interests'. Normative institutionalism explicitly focuses on and takes account of the way in which institutions embody values. Although there is recognition of the interaction of institutions and individuals, and indeed of ideas, institutions and interests (Thelen & Steinmo 1992: 14, 23), normative institutionalism assumes that political institutions influence behaviour by shaping 'values, norms, interests, identities and beliefs' (March & Olsen 1989: 17). It is 'normative' in the sense that it sees norms and values as explanatory variables.

The means by which values impact upon behaviour is through the generation of norms, rules, understandings and routines that 'define appropriate actions' (March & Olsen 1984: 741; 1989: 21-6). This 'logic of appropriateness' can constrain and shape the behaviour of actors. Actors consider whether behaviour is consistent with the internal norms or value structure of the institution. Thus choice are constrained by what Peters calls 'the parameters established by the dominant institutional values.' (1999: 29) Institutions shape their own participants, by supplying 'systems of meaning' enabling institutions to express a 'logic of appropriateness'. Thus an 'institution defines a set of behavioural expectations for individuals in positions within the institution and then reinforces behaviour that is appropriate for the role and sanctions behaviour that is inappropriate.' (Peters 1999: 30) By such means can normative institutions 'enforce' values, and shape decisions. Decision-makers, for example, may come to share particular values regarding the roles of political parties and their relationship to the state.

All this appears at first sight very different from older views of institutionalism. Normative institutionalism depends more on human agency than structure, because the emphasis on the role of institutions and the transmission of norms places more emphasis upon how members of an institution behave. For March and Olson (1989: 118), 'decision-making styles 'presume an order based on history, obligation and reason'. Whilst it has the merit of capturing a greater range of those things that guide individual behaviour, it runs the risk of rendering the concept 'institution' too broad as to be meaningful. As Rothstein puts it 'if it means everything, then it means nothing.' (1996: 145; see also Peters 1996: 215) In other words, if institutions need not consist of any structures, then there may be a point at which institutionalism is not open to falsification.

One concept in particular which we can usefully draw from normative institutionalism is the notion of 'optimality' – a concept based upon normative criteria of optimal design. In this case, talk of 'optimality' of party funding institutions is related to the normative institutions that are the political traditions in the particular democracies concerned. The voluntaristic tradition, for example, is one key normative institution. In a distinct but related sense, the processes of institutional reform which, in our cases, are driven by questions surrounding the ability of pre-existing institutional framework to 'deliver' political behaviour. Political behaviour is judged against (and found to be performing 'sub optimally' in relation to) democratic probity, fairness and transparency, concepts that are in themselves normative institutions. Such considerations implicitly rest upon a particular model of democracy, 'the appeal is, ultimately, to some larger moral code.... rooted in normative principles that are at the end of the day themselves independently defensible' (Goodin, 1996: 39).

Thus, from normative institutionalism, we can derive two hypotheses to predict the differences in reforms. First, we hypothesise that 'appropriate behaviour' will determine the form of regulation adopted. States where loophole seeking in party finance regulation (and

indeed more generally) is more commonplace will adopt a more strict regime; whilst states where the spirit of the law has been generally upheld will base compliance more upon trust of the parties and other relevant agents. Secondly, we hypothesise that normative traditions will shape the party-funding regime. Where there is a tradition of voluntarism, for example, this is likely to continue. Alternatively, where there is a tradition of the state intervening to aid a 'failing' institution, then that tradition will be repeated.

Historical Institutionalism

The key aspect of historical institutionalism is that choices are made early in the history of any policy or system and these initial policy choices determine subsequent decisions. These choices may be normative, of course. Yet, whilst some initial choices will be based upon normative values, others will not. A policy choice may, for example, originate as a result of expediency. The point remains, however, that regardless of subsequent structural choices, initial choices in a policy field will have an enduring impact – they will shape both the strategies and goals pursued by political actors (Thelen & Steinmo, 1992: 8). This may be referred to as path dependency. Policy evolution can occur, but developments are constrained by the formative period of the institution (Guy Peters, 1999: 65).

These constraints will also be influenced by historical preferences for certain ideas or core values. Here, institutions produce sets of ready solutions for policy problems, based upon enduring ideas. These contribute to limits on what are acceptable actions by governments or institutions. In many ways, this emphasis reveals the similarities between normative and historical institutionalist accounts – namely that core values, whether normatively driven or simple derived from organisational culture, provide constraints upon appropriate choices. Thus, attempts at institutional redesign are carried out against a backdrop of a set of past practices, which brings with it its own peculiar set of constraints and possibilities (Goodin 1996, 30). For this reason, in each case, we need to establish the historical context within which the reforms have taken place. From an historical institutionalist perspective, therefore,

we develop a further hypothesis to explain variation in party finance reforms – that reforms will be path-dependent, based upon existing policy options which are adjudged to have performed successfully.

Theories of Institutional Change

Whereas institutional analysis focuses on the constraints that institutions place upon the actions of actors, it is nevertheless the case that institutions do themselves change. If reform has occurred, we must consider the reasons for the failure of institutions to adequately constrain the actors. We must also consider whether reforms have been genuinely fundamental or a simply a modified version of existing practice. Hall (1993) considers such questions. He argues that reform can be considered as being either first, second or third order change. First order change is characterised as policy instrument settings being changed in the light of experience and new knowledge, whilst the overall goals and instruments of policy remain the same (Hall, 1993: 278). Second order changes are characterised by changes in both the instruments and settings of policy in the light of past experience, but where the overall goals remain constant (Hall, 1993: 279). Finally, third order change entails ‘simultaneous changes in all three components of policy: the instrument settings, the instruments themselves, and the hierarchy of goals behind policy’ (Hall, 1993: 279).

Our first theory of institutional change is intentional design by strategic agents. This is likely to occur when existing rules no longer serve the interests of dominant actors. Rooted in rational choice theory, this idea assumes that rational actors will design institutions to serve their own interests. Ideas about ‘constitutional engineering’ have been quite widely applied to electoral system reform (Sartori 1995; Taagepera & Shugart 1989) – rather less so to reforms in party funding regulations. The omission is curious, since such changes can have a profound effect on the relative strengths and advantages of particular parties. If constitutional engineering was to apply to party finance reform, we might consider whether existing

practices were serving the interests of the dominant parties. If not, we might assume that consensus would emerge over reform which would improve the dominant parties' situation. Alternatively, it might be that dominant actors would seek to improve their own interests, possibly at the expense of political rivals. Our hypothesis from this perspective therefore is that party finance reforms will be designed to primarily benefit either the ruling party at the time of their inception or dominant political parties in general.

A second theory of change is that change is evolutionary. As the political environment develops, selective mechanisms can lead to institutional change or survival. Our hypothesis here is that change in party finance regulation is driven principally by changes in the environment in which parties operate rather than being specific to concerns associated with party finance *per se*.

A third theory is that change may occur when rules no longer confer legitimacy. Thus, when the institution becomes discredited, then change, even fundamental change, is likely. This is especially likely to occur when there is significant disjuncture between the values professed by an institution and its actual behaviour, or between the values of society and the behaviour of that institution (Guy Peters, 1999: 34). Goodin identifies a 'trade-off between internal and external values' achieved through institutional design, when institutions function well internally, but fail to produce outcomes desired by the rest of society (1996: 36-8). The greater the disjuncture, the greater the chance of change. Alternatively, change may occur when existing rules are no longer functional, especially if practices in other countries present a viable alternative. Our hypothesis therefore is that an increase in political scandals associated with party finance will provide a spur for changes in regulation. Of course, what constitutes a scandal, will be linked to the 'logic of appropriateness' within each country.

A fourth theory draws on the idea of policy communities and institutional change. From this

perspective, a policy community may change if the resources that each actor possesses changes in value to other actors. This idea draws on the ideas of resource exchange pursued by Smith (1999). In the case of party finance, we may define a party finance community, consisting of parties and those that support them financially. If the resources of an actor within that community declines in relative importance, then the structure of that community may change. In addition, new actors may enter the policy community. Hall (1993), for example, argues that part of the explanation for the paradigm shift from Keynesianism to Monetarism in British economic policy was the growth in economic advice – specifically think-tanks and the media - from outside the conventional policy community. Thus, as ‘outside’ economic advice gained legitimacy, so the resources of existing actors – in this case the Treasury’s monopoly over economic advice – declined. As a result, policy and the institution changed. Our hypothesis here is that a change in the balance of resources between members of the political finance community will lead to changes in party finance regulation.

Background to Reform

France

French political finance in the Fifth Republic was characterised by a lack of regulation and a reliance on voluntary income. French parties, weakly embedded within civil society with comparatively low membership levels, were often dependent upon corrupt financing networks, channelled through their local elected officials. In the wake of corruption scandals, a rolling program of reforms began.

Lack of Regulation

De Gaulle’s famous suspicion of political parties, rooted in the Rousseauian suspicion of ‘intermediary’ interests, finds expression in the 1958 Fifth Republic constitution. Although recognised by article 4, parties’ activities were completely unregulated and simply unrecognised in law. Until 1988, no rules or laws existed regarding political finance, other

than that corporate funding was illegal for both recipient and donor. Such a legal vacuum presented, according to one commentary, an ‘open door to corruption’ (Miguet 1999).

Voluntary Income

A voluntaristic, laissez faire notion that political parties and candidates could rely on the private sector, or unregulated market forces, underpinned the political finance regime. State aids were accordingly minimal.² For many years, parties claimed³ to derive most of their funding from membership dues. Although never true, these claims became steadily less credible after the 1970s, given a combination of increased expenditure and declining and historically low membership (and attendant revenues).

Corruption Scandals

The 1980s saw an increasing number of high profile scandals.⁴ This increase in public concern was an essential catalyst in the reform process. There had been 29 party finance laws were proposed unsuccessfully between 1970 and 1988 (Doublet 1997: 60). By 1988, the number of political corruption scandals, how high up they went, and the degree of media attention afforded them generated the necessary political will. Reform was born out of a concern to fill the ‘vacuum’ as a means of tackling political corruption. The reform process began by offering an amnesty covering all prior dubious practices, thus drawing a ‘line in the sand’ under long-established, corrupt practices by politicians and parties.⁵ Thereafter, the rationale behind the reform process has evolved to plug gaps, close loopholes, and tackle unforeseen consequences, not least in a bid to stop political corruption scandals which were unfolding with increased intensity and regularity throughout the reform process.

Britain

Three principles have characterised British political finance in the past century: campaign spending ceilings, voluntarism in party income and a lack of regulation generally.

Campaign Spending

Prior to the 2000 Act, the principal act with regard to party and electoral finance was the Corrupt and Illegal Practices (Prevention) Act 1883. This was in part, a response to the perception that election expenditure had become excessive (Pinto-Duschinsky, 1981: 26). Importantly, the act established the principle of election spending ceilings at constituency level as a means of regulating party finance. In essence, there was concern that wealthy candidates could buy votes.

Voluntary Income

British party finance is based largely upon voluntary income. There have, however, been shifts over time in the composition of those that fund parties. Funding initially came largely from wealthy individuals. From the last war through to the 1990s, institutions (companies and trade unions) were the principal funders, whilst in the past ten years, there has been a partial re-birth of funding from individuals. Limited state assistance has been available. However, it has been at a considerably lower level than in other democracies and much of it concerned with electoral contests rather than the day to day running of parties. Moreover, there have been enduring reservations about state funding, prompted by fears of an ossification of the party system, the assumption that it would lead to membership decline and a principled commitment to voluntarism.

Lack of Regulation

Hitherto, British party finance was remarkably unregulated. Prior to 2000, there were no limits on income. Any political party could raise as much money as it chose from as many sources as it could solicit funds. Legislation on transparency was limited and applied only to institutional donations. From the 1970s, political finance was subject to periodic examination. However, with the exception of the introduction of financial aid for opposition parties in parliament, what distinguished these previous attempts from the new Act was their failure to implement

reform (Fisher, 2000). The election of a Labour government in 1997 meant however, that some reform was possible, the party having promised to re-examine the issue of party finance in its manifesto. Following this pledge, the Prime Minister instructed the Committee on Standards in Public Life (the Neill Committee) to examine the issue. The Committee reported in 1998 and all but one of the proposals were incorporated into the *Political Parties, Elections and Referendums Act* 2000.

Instruments and Mechanisms of Reforms

Donations

France

Caps were introduced in 1988 (and subsequently amended) to limit the amount any one company or individual could contribute to any one candidate. Donations to *parties* were not subject to this limitation, which was seen to advantage candidates of major parties vis-à-vis candidates of smaller, less resource rich parties. An ambiguity remained surrounding party financing from companies (Miguet 1999: 58-9).

Pierre Joxe, then Interior Minister and instigator of the 1990 legislation⁶ was frustrated in his efforts to keep business funding illegal by ‘realists’ (Joxe 1997). Business finance, hitherto been *de jure* illegal in France (although, *de facto* widespread), was legalised. In the 1993 elections, with veil surrounding corporate funding lifted, it became apparent that three quarters of all business funding to parties came from firms liable to bid for contracts with local authorities run by party politicians (Knapp & Wright, 2001: 398). However, in the wake of further scandals, the 1995 legislation made business funding illegal once more. Donations *from* parties *to* candidates are not regulated.

Britain

No change was made regarding any limits on the size of donation. However, shareholders are now to be balloted prior to political donations being made by companies. This authority will be valid for four years and will provide the board of directors with discretion during that period to make donations up to a prescribed limit. This compares with the ten yearly ballots required of trade unions holding a political fund.

Disclosure & Transparency

France

The National Commission on Campaign Accounts and Political Finance (CNCCFP), established by the January 1990 Law, subjected the financial affairs of parties & elected officials to audit to increase 'financial transparency' surrounding party finances and donations (CNCCFP 1992, 9). The 1990 law represented a considerable tightening, as accounts submitted had to include 'even tacit' benefits (see below), and both direct and indirect 'in kind' payments to candidates from party or group (Doublet 1997, 64-5). This directly tackled a serious loophole of 1988. The legalisation of corporate funding in 1990 rendered overt those covert practices, which were as old as the political parties themselves in France. Arguably increased transparency has made such dubious practice harder to conceal.

Britain

Donations in excess of £5,000 nationally and £1,000 locally are now publicly declared. This includes 'in kind' payments. Anonymous donations to parties in excess of £200 are now prohibited, as are 'blind trusts'; trusts set up where the donor's identity is not known to the recipient.

Foreign Donations

In both countries, foreign donations have been banned. In France, foreign donations, direct or

indirect, from any state, person or organisation were banned in the 1988 law, whilst in Britain, the 2000 law permitted donations from only 'permissible sources' (for details, see Fisher, 2001: 136).

Campaign Spending Ceilings

France

After the 1988 legislation set the initial ceilings, covering the three months prior to the election, that coverage of ceilings was extended to 1 year in 1990. Whilst the second round presidential ceiling was raised in 1990, the parliamentary election ceiling was lowered in 1993. To prevent circumvention, it was imperative 'that all expenses of all campaigns should be retraced by the campaign account, including those incurred by persons or bodies other than the candidate. This is the origin of the notorious phrase of 'even tacit' consent of the candidate' (Joxe 1997: 14). Yet this phrase was removed in December 1994. Joxe (1997: 14) laments 'there is every reason to fear that the removal of this phrase was intended to render the ceiling inoperable'.

Britain

One of the 2000 act's most radical clauses was the limit upon campaign spending at a national level in general elections. Hitherto, only local campaign expenditure had been regulated. For the purposes of the Act, the campaign period was defined as the 365 days preceding polling day in a general election. Of all the regulations, this was most likely to attract loophole seeking. However, the Neill Committee's justification was to draw an analogy with speed limits. A 30mph speed limit will not prevent drivers travelling at 35mph, but it is likely to prevent speeds of 50mph.

State Funding

France

One of the most conspicuous aspects of the reforms in France has been the introduction and progressive scaling up of state funding of political parties, and departing from voluntaristic traditions. Prior to 1988, parties only received minimum support – for poster campaigns, and a limited amount of airtime. There was recognition, in the new legislation, that the market both could not, and perhaps should not, fulfil the role of funding political life. In 1988 the lump sum reimbursement of electoral expenses was extended, and provided for the first time public money proportionate to the number of seats won at election.

The 1990 laws revised state funding arrangements, which were now calculated in two ways, ensuring parties received (quite generous) public funding – not only at election times, but also for running costs between elections. Half the funding went to those parties represented in parliament, according to number of deputies, the other half went to those parties fielding candidates in 75+ constituencies at general elections – allocated pro rata according to number of votes polled in the first round of a general election.

When, following further scandals, business funding became illegal again in 1995, parties and candidates received a ‘compensatory’ increase in state funding. Yet even with this increase in public funding, the parties could still not balance their books. The financial difficulties encountered after imposition of the 1990 regulations (implicitly indicating previously high levels of illicit business funding) continued.

The guiding principles underpinning the increases in state funding were a desire for funding to reflect support for parties; balanced (particularly in the 1995 legislation) against a desire for ‘fairness’ to minor parties. Party funding should help small and emerging parties, to avoid

the ‘cartelisation’ problems associated with some state funding regimes (although, for a critique see Pierre et al, 2000). Financial ‘affirmative action’ was introduced, preventing extreme inequalities of expenditure between parties. Initially, there was a threshold of 5% on this funding, but this was ruled unconstitutional, discriminating against emerging political formations. Similar concerns informed the shift in eligibility from fielding candidates in 75 to 50 constituencies. Specific provisions to help emergent parties contained in the 1995 legislation were, in hindsight, perhaps not rigorous enough. State support was ‘limited’ to those parties which had raised 1m ff, a not inconsiderable sum, but there was no stipulation that the money must be in cheques, leaving its provenance completely unknowable. In theory, this money was supposed to come from at least 10,000 people (including 500 elected officials) from at least 30 départements, yet there was nothing to prevent these being merely names out of the phone book!

Indeed, even with the dimension of funding thought to benefit ‘established’ parties – relating to seats in parliament – ‘party’ proliferation and abuse was rife as a result of the creation of perverse incentives. Any ‘party’ could receive 290,000 ff per *député* – but it need only have one *député* to be an eligible party. As a result, Miguet notes, ‘a great many members of parliament ... created their own parties just to get public subsidies’ (1999: 72). In 1996, 165 ‘parties’ presented their accounts in a bid to receive state funding, a year earlier, the number had been 262, testament to attempts at opportunistic exploitation of the generosity of the party funding regime in France. The number of parties eligible for funding as a result of votes polled in parliamentary elections rose from 23 in 1997 to 32 in 2002.⁷

Britain

Although there were no proposals to extend state funding to levels that are comparable with other West European nations, there were two provisions, which do indicate that the principle of increased public funding has been more readily accepted. Firstly, following the recommendations

of the Neill Committee, ‘Short’ money was increased by a factor of 2.7 in 1999. Secondly, a Policy Development Fund was established, initially cash limited to £2 million per annum, to assist parties to engage more fully on policy development.

[Table 1 About Here]

Theoretical Interpretation

French reforms

Normative approaches offer more explanatory purchase over French reforms than does historical institutionalism. The *status quo ante* had, by 1988, demonstrated its inability to ‘deliver’ corruption free political finance. Public confidence in the political system had been undermined, and the trust-based voluntarist institutions no longer appeared viable. The ‘failure’ of prior traditions and institutions of French political finance, led to a significant reform (both greatly increased regulation, and a massive scaling up of state funding). There is a parallel ‘failure’ of historical institutionalism to account for these changes, since historical institutions did little to constrain the path of reform chosen by policy-makers.

Normative institutionalism fares rather better in accounting for French reforms. The norms underpinning party finance have shifted away from a voluntarism that underpinned the laissez-faire attitude between 1958 and 1988. The ‘Rousseauian’ tradition imbued in French political culture a suspicion of parties as intermediary institutions in part explains the voluntarist tradition, the marginality of parties to the 1958 constitution, and the ensuing ‘legal vacuum’. *These* values, regarding the roles of political parties and their relationship to the state, *were* undermined, and failed to constrain decision-makers. However, other normative institutions within French political traditions powerfully shaped the path of reform.

The reform process after 1988 reflected a rebalancing in the relative importance of elements of the French republican tradition. *Laissez faire*'s failure to deliver 'external' legitimacy beckoned a response from the powerful *etatiste* dimension of the French Republican tradition. This presupposes a preponderant role for the state in shaping French politics and society according to republican values (see Hazareesingh 1994, Chs. 3 & 6). Thus where 'weak' civil society had failed, the 'strong' French state stepped in, both to regulate political finance, and to provide state funding. This statist solution to societal problems is in keeping with deep-rooted norms of French political culture, prevalent, for example, in the field of industrial relations (Milner, 1998).

Thus, whilst at the level of mechanism to deliver goals, there was significant change, at the level of the ultimate goals of the party funding regime, there was continuity. The 'higher' normative institution of the French model of party democracy endured. Although regarded with some suspicion, and, as noted above, relatively weakly embedded in civil society, a widespread consensus remained regarding the centrality of parties to a functional French democracy. The means to deliver a competitive party-based liberal democracy shifted from a *laissez-faire* to an *etatiste* approach, but the goal was to deliver freely competitive political parties. French parties remained voluntary organisations, albeit now underwritten by significant state funding, and subject to greater regulation.

French normative traditions also help explain the enforcement of rules. A partially politicised and often subservient judiciary has long been a feature of the French Republican tradition (Knapp & Wright, 2001: 380-4). These norms, although recently challenged by increased judicial activism, have characterised electoral judges enforcement of the rules-based political finance regime. An elastic get-out clause, added to the statute book in 1996, allowed judges to pardon all contraventions of the spending limits and electoral rules where the 'good faith' of the defendant can be established. This came in the wake of a series of cases of 'offenders' in

municipal elections being ‘let off’. These developments meant that, ‘financial irregularity is no longer systematically sanctioned’ (Doublet: 1997: 77).

The French case, though, although demonstrating some significant continuities, is perhaps more characterised by institutional change. Consequently, this needs to be located within frameworks of change. Several of the theories outlined above are of some use in accounting for change in France. Institutional redesign by strategic agents is of some use in explaining the early reforms, for example in relation to the establishment of a party funding system which rewards parliamentarians, and within which the major parties within the system seem to gain relative to smaller parties. Perhaps the best example is Balladur’s rewriting of the rules prior to his 1995 presidential campaign.⁸ One could also point to parties creating a ‘clean slate’— allowing them to remain in power, despite dubious practices, as well as (initially), legalising corporate funding following earlier widespread abuse of the law. Moreover, actors have been able to insert intentional laxity into latter stages of reform to limit impact on certain behaviour patterns, the best example perhaps being the initial inclusion, and subsequent exclusion, of ‘even tacitly’ agreed financial support within the spending ceilings. The succession of new laws gave the impression of parties tackling the problem of party finance, whilst creating a regulatory framework which left sufficient loopholes for parties and candidates to exploit.

However, this theory of institutional change has little explanatory purchase over developments in the field of spending ceilings and disclosure, and corporate donations (illegal again after 1995). Katz & Mair’s ‘Cartel Party’ thesis sees augmenting of party funding as the advancing inter-penetration of party and state; ‘the state ... becomes an institutionalised structure of support, sustaining insiders and excluding outsiders’ (1995: 16). This is at variance with the evidence regarding the evolution of state funding and political parties in the 1990s.⁹ Despite an increase in public funding, certain ‘insider’ parties encountered enhanced

financial difficulties. Furthermore, *contra* Katz & Mair's cartel thesis, specific provision to foster the development of small, emerging political currents and movements has been written into French party funding laws.

The notion of institutional change as a result of shifts within the policy community is to some extent useful in analysing changes in the approach to business funding. A distinction should be made between the nominal and real funding communities prior to 1988. Although nominally, parties claimed that membership was predominant within their funding communities, in reality 'occult' sources of funds, predominantly from business donors, were highly significant. This makes the precise 'resource allocation' within the policy community difficult to establish conclusively. Due to this opacity, we cannot discern whether fundamental shifts in resources within the community prior to 1988 were the causes of change. However, this seems unlikely, given that pre-existing arrangements appeared functional to actors and the 'internal' values (Goodin 1996: 36) of that system were accepted by all actors. The changing the composition of the funding community was then more *effect* than *cause* of the 1990 reform, which, by explicitly recognising its true nature, was able to bring it within the state's regulatory framework. Thereafter, there *was* a conscious effort to reshape the party finance 'policy community' in France – both by excluding business donors from this, since their previously preponderant role within the community was deemed 'sub-optimal', and also by expanding the state's funding and regulatory role, empowering the state within the funding policy community.¹⁰

Perhaps the most convincing theory of institutional change in the French context is the failure of institutions to confer legitimacy. The notion of 'optimality' is useful here – the institutional design was guided by a notion of party democracy. The intentions of groups and individuals driving the *re*design of institutions, since the context of reform was public debate over concerns about standards in public life, concentrating on issues of transparency, equity and

democratic probity. The context of financial scandals embroiling all the main parties is crucial to understanding the reforms. Notions of the ‘optimal’ set of party funding arrangements, laying emphasis on transparency and disclosure, and upon the importance of a ‘fair’ level playing field of party competition, underpin moves such as the establishment of spending ceilings, and of the CNCCFP to oversee their observance.

British Reforms

An examination of the key British reforms suggests first, the utility of both the normative and historical approaches. First, the principle of campaign ceilings has been maintained. The decision to adopt national campaign ceilings has an historical precedent, local campaign ceilings having been in place in 1883. Then, they were introduced partly through concerns about excessive election expenditure as well as concerns regarding the ability of wealthy candidates to gain political advantage. In the 2000 legislation, the use of this technique at national level to address virtually identical concerns was echoed. National ceilings were introduced because of a concern with the spending *arm's race*, and as a means by which the putative impact of differential party wealth upon electoral outcomes could be tempered.¹¹ From the viewpoint of the historical institutionalism, therefore, we can argue that the initial design to counteract perceived problems of electoral inequality has been repeated. Spending limits have been adopted rather than other means of equalising electoral contests, such as state funding. Thus, historical precedent provided a constraint on other possible policy options on the basis that it has been seen to work relatively well at local level.

Normative institutionalism also fits well. First, it is clear that the values of voluntarism in party finance have been maintained, despite a modest extension of state funding. The Neill Committee and the government rejected extensive state funding largely on grounds of principle – namely that the taxpayer should not be obliged to fund parties with whom he does not agree. In addition, there was a view that state funding would have the effect of reducing

civic engagement and that the adoption of national expenditure ceilings would reduce the need for state assistance. The government took its opposition to state funding even further. It rejected the Neill Committee's recommendation for tax relief on political donations, since this would be a kind of *state funding by stealth*, as such monies would normally go to the Treasury. Arguably, this reflects a 'logic of appropriateness' in terms of the most politically acceptable means of funding political parties. A second key normative value is also apparent with regard to donations. Whilst some new restrictions have emerged, the principle that anyone can give as much as they choose is maintained. Calls to limit the size of donations were resisted at that time, though since 2001, these calls have grown louder (Fisher, 2002b).

Normative traditions in Britain also help explain enforcement of the new legislation. On the one hand, the degree of regulation and therefore enforcement goes well beyond what was previously permissible. However, where France uses the courts to regulate, the principal institution in Britain is a quasi-judicial Electoral Commission. Moreover, the Neill Committee's report makes a tacit admission that watertight legislation is virtually impossible in drawing the analogy between loophole seeking and speed limits. Thus, whilst parties are clearly now subject to greater regulation, the implicit value of trust remains.

Notwithstanding these examples of institutional continuity however, there has nevertheless been some significant institutional change. Consequently, this needs to be located within frameworks of change. Several of the theories outlined above would seem to fit with the evidence from Britain. First, the notion of institutional design by strategic agents has some resonance. On the one hand, it would be difficult to argue that the new legislation has been designed to damage political opponents. In only one area could one argue that the impact is differential – the requirement for shareholder ballots, which may impact upon Conservative income disproportionately. By the same token, however, spending limits may be seen as having been more of a hindrance to Labour, since at the time it was the wealthier of the two

main parties (Fisher, 2001). Indeed, the limits reduce the differential between the two main parties and the Liberal Democrats (though on the evidence of the 2001 election, at least, that differential remains significant). However, one could argue that the legislation serves the interests of dominant parties, since there has been an increase in state funding which will nonetheless be directed at parties with seats in Parliament. Thus, the financial situation of dominant parties will improve, albeit modestly and the continued emphasis on voluntarism, may in one sense preserve the dominant position of the principal parties.

The evolutionary theory of institutional change is also instructive. The environment in which parties operate is changing: election campaigning is more sophisticated, more long-term and there are now many more elections in which parties compete. Consequently, parties have greater need for income and therefore are likely to seek funds from a wider variety of sources. This may cause disquiet, especially if donations are large. Consequently, the requirement to declare donations (as a mechanism to discourage corruption); national spending limits (as a mechanism to suppress the need for income) and limited state funding (as a means of ring-fencing money for non-campaign activities) are all evidence of institutional changes in response to evolutionary changes in parties' funding requirements.

A third theory of change, whereby change occurs when rules no longer confer legitimacy is similarly instructive. There is ample evidence to suggest that during the 1980s and 1990s, as with the more general questions of sleaze, that party finance arrangements came under increasing pressure (Fisher, 1994, 1997, 2000). Concerns about large donations and funding from overseas together with perennial concerns over the possibility of reciprocity arising from trade union and corporate donations, meant that disjuncture was seemingly occurring between the values of society and the behaviour of parties. This culminated in the Ecclestone affair in late 1997. Existing rules on donations were lax, but the apparent increasing willingness of parties to exploit what was technically legal meant that the disjuncture grew and the existing

institution became increasingly illegitimate. In addition, whilst arrangements in other comparable nations were not perfect, they did appear to offer viable alternatives to British funding arrangements. As a consequence, the new Act introduced a range of measures to address this disjuncture, including declaration of donations, a ban on foreign donations and clear rules regarding accounting procedures.

A fourth theory of change pertains to changes in the resource balance within communities as precursors to institutional change. We may highlight five such changes. First, the willingness of companies to fund parties appears to have waned. Secondly, the relative importance of trade union income to the Labour Party has declined. Thirdly, the importance of individual donations, especially large ones, has increased. Fourthly, new sources of advice raised the question of institutional reform. The media focussed heavily on the ‘problem’ of party finance, whilst the establishment of the Committee on Standards in Public Life provided a further source of legitimate advice, especially given its notable success in reforming other aspects of British political life (Fisher, 2002a). Finally, within the party finance community, Labour assumed government, whilst the Conservatives lost badly. All of these changes to the community are significant. Individual donations present parties with different streams of income, but are sources which may be less long-term, and which may be in need of regulation, since none previously existed. In the case of the parties, the shifting balance of political power meant that change was more likely, since the Conservatives had resisted change as late as 1994, despite many of the other prompts for institutional change being apparent. Labour, by way of contrast, had made a manifesto pledge on regulating party finance. In the case of new members of the community, the establishment and success of the Committee on Standards in Public Life made it very difficult to resist the proposed reforms.

Conclusions

An initial striking similarity between the cases is the lack of regulation prior to recent reform

– both political finance communities had remained in this sense largely unchanged for a considerable time. What is interesting is the different ‘paths’ taken. We will conclude by asking, to what extent has our understandings of these processes of party funding reform been added to by employing theories and concepts derived from a ‘new institutionalist’ perspective?

Historical institutionalism is highly relevant in the British case, less so in France. Normative institutionalism, however, is important in both cases. The importance of pre-existing values to constitutional reform processes has been demonstrated, albeit in very different ways. In Britain, the enduring resilience of the voluntarist tradition has been amply demonstrated. In France the *etatiste* tradition can be invoked to explain the path chosen. The notion of a ‘logic of appropriateness’ has also been useful – both in terms of the operation of institutions and also in understanding the behaviour of actors within them. The distinctive logics of appropriateness in each case closely mirrors the ‘trust versus rules’ distinction we made in relation to enforcement. In France, the norms – or logic of appropriateness of actors within the system tended to involve ‘occult’ funding loophole seeking. This led to a rules based, judicial approach. In the British case, on the other hand, the logic of appropriateness tended not to involve loophole seeking. This informs the choice of a more trust based, and only quasi-judicial approach.

The use of both normative and historical institutionalism also helps us evaluate the extent of policy change with reference to Hall’s (1993) typology. It seems fair to conclude that Britain has experienced second-order change. Clearly, reforms have been greater than first-order change, which involves simply making changes to the settings of policy instruments. Rather, the instruments of policy were altered in response to past experience, though the overall policy goals remained the same. Thus, in Britain, whilst dissatisfaction with existing practices partly prompted reform such as restrictions on donations and spending caps, the goals

remained the same – parties remained principally voluntary organisations.

France is a more radical shift, but in Hall's terms still second order change. In addition to second order changes in the form of spending caps and donation limitations, progressive scaling up of state funding (particularly after the outlawing of business funding) represents a more fundamental shift from a *laissez-faire* to an *etatiste* approach. All major parties in France are today dependent on the state, which provides in excess of 50% of all the party income of all major parties (Knapp, 2002: 127). However, whilst at the level of mechanisms and policy instruments to deliver goals, there was dramatic change, at the 'higher' level of the ultimate goals of the party funding regime - freely competitive party-based liberal democracy - there was continuity. Parties remain voluntary organisations, and measures have been introduced to maintain their private sources of funding. Indeed, loopholes in ceiling limits have been created to positively encourage such financing.

The theories of institutional change have different degrees of relevance. Critically, however, intentional design by purely rational actors does not seem convincing, since in both cases 'insider' parties have not enhanced their position significantly vis-à-vis outsiders, and tighter disclosure and transparency regulations impose considerable costs upon parties. Thus, the rational choice framework here appears of little value, since evidence of actors being guided by purely rational incentives is at best limited.

However, if we conceptualise the intentions of our purposive agents as not being purely self-regarding, but guided by some notion of optimal party democracy, the evidence fits the theory rather better. Measures relating to provision for smaller parties in France, for example, have been guided by a need for fairness in party competition. In Britain, there has been a limited view of the more level playing field. In both cases, the centrality of *transparency* to an optimal party funding regime has strongly influenced the reform process. Here the idea of a

disjuncture between ‘internal’ values of institutions and ‘external’ values of wider society usefully explains the impetus for funding reform in the context of sleaze and scandals. The need to enhance the democratic probity of party funding arrangements was central to the ‘optimal’ notion of party democracy guiding the process.

In conclusion, this article has demonstrated that new institutionalism (or at least some forms of it) provides a persuasive framework for analysis of party finance reform. The focus of much work on constitutional engineering is too narrowly focussed. We are not hostile to the use of rational choice theory (far from it) – rather we argue simply that it does not provide a convincing explanation for institutional change in these examples. Thus, we may characterise the reforms enacted of political finance in Britain and France as, ‘the deliberate interventions of purposive goal-seeking agents’ (Goodin, 1996:25). In the light of these findings, we argue that the notion of constitutional engineering should be conceived more widely, and analysts should extend their gaze to include the instruments, mechanisms and consequences of party funding regimes.

Table 1
Instruments and Mechanisms of Reforms

	France	Britain
Donations	<ul style="list-style-type: none"> • 1988 Law – Tax relief on donations to candidates, limited to 20,000ff (€3,049) by individuals, 50,000ff (€7,622) by organisations. Ambiguity over legality of corporate donations to companies. • 1990 Law – Corporate donations legalised. Ceilings on both individual and corporate donations - Parties were entitled to receive 50,000ff (€7,622) from individuals, and 500,000ff (€76,225) from corporate bodies per year. • 1995 – Corporate donations made illegal once more 	<ul style="list-style-type: none"> • No limit on donation size. • Shareholders to be balloted prior to corporate donations being made.
Disclosure & Transparency	<ul style="list-style-type: none"> • Detailed annual accounts and donations declared to new National Commission on Campaign Accounts and Political Finance (CNCCFP) and published. Compelled revealing the identity of donors. • Declaration of ‘tacit’ donations introduced in 1990 to tackle loopholes of 1988 act • ‘Tacit’ donations subsequently excluded in 1994 	<ul style="list-style-type: none"> • Donations in excess of £5,000 (€7,509) nationally and £1,000 (€1,502) now regularly declared to new Electoral Commission • Declaration includes ‘in kind’ payments. • Anonymous donations effectively banned
Foreign Donations	<ul style="list-style-type: none"> • Foreign donations banned in 1988 	<ul style="list-style-type: none"> • Foreign Donations banned
Campaign Spending Ceilings	<ul style="list-style-type: none"> • 1988 Law – spending ceilings established for legislative (500,000ff [€76,225] per candidate) and presidential (120m ff [€18.3m], rising to 140m [€21.3m] in the 2nd ballot) elections. Campaign defined as 3 months before election • 1990 Law – campaign period extended to one year. Raised 2nd round presidential ceiling to 160m ff (€24.4m). • 1993 Law – Assemblée nationale ceilings revised (500,000 > 250,000ff [€72,225 > €38,112] per candidate plus 1ff [€0.15] per inhabitant – average total 350,000ff [€53,357]) 	<ul style="list-style-type: none"> • National campaign spending limits set (£30,000 [€45,051] per contested constituency) – previously only constituency limits • Campaign period defined as 365 days before election • Spending limits for Westminster and non-Westminster elections
State Funding	<ul style="list-style-type: none"> • All funding subject to condition of submitting accounts • 1988 Law – Lump sum reimbursement of electoral expenses extended significantly - calculated proportionate to seats won at election. (5% threshold) • 1990 Law – Calculation of state funding changed. Half to parties in parliament (relative to number of deputies - each worth 290,000 ff [€44,210] per year), half to parties fielding more than 75 candidates (each vote worth 11.9 ff [€1.8] per year). • Subsequently reduced to 50 constituencies; 5% threshold ruled unconstitutional • 1995 – ‘compensatory’ increase in state funding when business funding made illegal once more. Electoral expenses reimbursed rose from 5% to 50% of the ceiling on expenditure. 	<ul style="list-style-type: none"> • Limited increase in state funding – remains modest in comparison • Increase in parliamentary support (‘Short’ money) • Establishment of Policy Development Fund

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Notes

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- 2 Principally, reimbursement of printing costs for election campaigns (ballot papers, circulars, deposits)– if passed 5% vote threshold; Parliamentary funding (aides, parliamentarians budgets); and provision for political broadcasts.
- 3 In the French case, unreliability of both claims and evidence regarding party membership levels, and secrecy surrounding party finance have made claims impossible to verify
- 4 Examples include the Luchaire affair, where contracts for arms to Iran between 1982 and 1986 (the defence minister ‘overlooked’ arms sales restrictions) were traded for donations to PS coffers from arms firms. In another example, Christian Nucci, then Minister for co-operation, set up ‘Carrefour du developpement’ in 1983, an association supposedly providing African aid, into which he diverted massive sums, for himself as well as his campaign funds.
- 5 This has been less than successful, as significant financing scandals have continued to emerge after the reforms in the 1990s. See for example ‘Alain Juppé vedette du procès des emplois fictifs du RPR’ *Le Monde* 29.09.03.
- 6 The most rigorous and stringent package passed in the ‘legislative incontinence’ of the late 80s and 90s – which were subsequently ‘loosened’ in key respects.
- 7 *Libération* 8th June 2002.
- 8 When Prime Minister, Balladur, in his presidential bid in 1995, promoted an amendment enabling the creation of campaign support committees, similar to parties (and thus exempt from restrictions on donations to candidates). Balladur’s campaign drew benefit from 98 such committees.(Doublet 1999, 74).
- 9 Katz & Mair’s thesis posits that the ‘inter-penetration of party and state’ and ‘collusion and co-operation between ostensible competitors’ (1995: 17) allows insider parties to ‘minimise the consequences of competition within the cartel, and protect themselves from the consequences of electoral dissatisfaction’ (1995: 23). Despite generous state funding, French governmental parties were very severely affected by electoral defeats. The PS after 1993 (whose annual state subsidy plummeted from 167m ff to 90m), and the RPR after 1997 (whose funding fell by 50m ff) were forced into serious belt-tightening.
- 10 Withdrawal or suspension of state funding, for example, became a powerful sanction against malfeasance.
- 11 Although as Fisher (1999) has found, the evidence to suggest enhanced national performance as a result of increased spending is not compelling.