



The Funding of Political Parties – The Trade Union Case for Reform



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A Report for TULO

by

Professor Keith Ewing

29 May 2006

THE FUNDING OF POLITICAL PARTIES – THE TRADE UNION CASE FOR REFORM

Contents

Chapter One	Introduction	4
Chapter Two	The Constant Challenge to Labour	6
Chapter Three	Trade Unions and Labour Party Organisation	9
Chapter Four	Donations to Political Parties	13
Chapter Five	Participation and Representation	16
Chapter Six	Funding the Conservative Party	19
Chapter Seven	The Practice in Other Countries	22
Chapter Eight	Conclusion	25



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Chapter One

Introduction

1.1 The party funding crisis that has engulfed British politics has produced an early response from the Conservatives. In a paper by Andrew Tyrie - endorsed by David Cameron ¹ - they propose a number of changes to the current arrangements. Specifically they plan a cap on individual donations of £50,000 and a cap on all 'corporate, institutional and trade union funding of £50,000 per annum', and in the long term an end to all corporate, institutional and trade union funding of parties. To make up for the loss of funds that this would entail, the Conservatives propose large scale public funding for the parties, with the creation of general election fund that would give the parties £1.20 for each vote received, and an additional 60 pence on an annual basis for every vote received at the previous general election. On the basis of the 2005 general election result, this would mean that the parties would have received c £32.5 million in May last year as well as another £16.25 million annually, with a cost to the taxpayer of just under £100 million in a four-year parliamentary cycle. This is in addition to the income tax relief for donations that is also proposed, alongside a matching fund scheme for non-taxpayers.

1.2 These proposals would have serious implications for the Labour Party, while creating and preserving a financial advantage for the Conservative Party. A matter of particular concern is that they overlook the nature and organisation of the Labour Party and the nature of its relationship with the trade union

movement. This is a relationship which is historic, symbiotic and organic: it cannot be reduced to a simple financial calculus. Along with the socialist societies, trade unions are members of the Labour Party and their affiliation fee is a membership fee, albeit one incorrectly referred to in some (though not all) legislation as a donation. The other concern is that the proposed contribution cap would greatly benefit the Conservatives over other parties. As will be seen in Chapter 4 below, Electoral Commission figures reveal that the Conservatives have many more personal and corporate donors than the Labour Party and that the value of these donations is much higher. Given that Labour still draws electoral strength from working families, it is perhaps inevitable that a donation cap of £50,000 would greatly benefit the Conservatives, representing a sum almost double the average annual salary.

1.3 In the pages that follow some of the wider issues about party funding reform are considered, as is the importance of the trade union link with the Labour Party, which has parallels in other countries. In chapter 2, the Conservative funding proposals are assessed against the background of earlier attempts by Conservative governments – in 1927 and 1984 - to weaken the link between trade unions and the Labour Party. In chapter 3, the implications of the Conservative proposals for the Labour Party are examined. If implemented, the proposals would require the Labour Party

to alter its nature, structure and membership, something never required of a political party in any modern democracy without its prior consent. In chapters 4 and 5, the trade union link with Labour is more fully considered: not only does it allow Labour to compete in elections on equal terms with the Conservatives, but it also draws millions of working people into the political process and provides a forum for their views to be heard. At a time when more people are turning their backs on party politics, this is a positive feature of the process of affiliation that ought not to be under-estimated.

1.4 Chapter 6 returns to the question of Conservative Party funding, and in particular the extent of their local funding. The scale of local funding of the Conservatives has been largely unknown, and information is now becoming available because of the information lodged on the Electoral Commission's website. Here it is revealed that in 2004 alone, 271 Conservative associations raised more than £17 million, when their candidates at the parliamentary election in the following year could spend somewhere in the region of only £10,000 each. It is thus inevitable that questions will now be asked about why local Conservative associations need to raise hundreds of thousands of pounds annually when there are such low limits on election spending. Some of these local associations benefited from the gifts of organisations such as the Midlands Industrial Council and Bearwood Corporate Services, but many did not. This information will direct attention to the local funding of the Conservatives in its entirety, and invite consideration of very tough controls in the form of local donation caps and spending limits in order to ensure a level playing field at elections.

1.5 One of the unintended consequences of the Conservative attack

on Labour is that a bright light will thus be shone on some of the Conservative party's most successful fund raising enterprises. It will be necessary to examine all aspects of party funding to ensure that there are no back-door ways of avoiding any new funding controls that may be put in place. Having examined the nature of the Conservative local funding in chapter 6, attention moves in chapter 7 to consider funding solutions adopted in other countries, from Canada and the United States to Sweden and Germany. Finally, in chapter 8 the focus of attention turns to some of the regulatory options for the United Kingdom. Any solution must respect the asymmetrical nature of party structure in Britain, it must not undermine diverse forms of political participation and representation, it must take full account of human rights obligations (such as the right to freedom of association), and it must ensure that the parties are adequately resourced for the duties they are required to perform. Any solution must also seek to ensure that the regulatory framework does not give any one party a partisan advantage over another.

It is repugnant to the feelings of all decent people . . . to use the power of a party majority in the House of Commons to force a division upon something which is designed solely to do political damage to their opponents about a controversial matter concerning the machinery of election and party administration

(Lord Hailsham, HC Debs, 15 December 1949, col 2990)

[I]t has become a well established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other.

(Winston Churchill, HC Debs, 16 February 1948, col 859)

¹ A Tyrie, *Clean Politics* (March 2006)

Chapter Two

The Constant Challenge to Labour

2.1 The Labour Party was born in 1900 as the Labour Representation Committee. Its original aim was clear and still relevant 100 years later – to represent the interests of working people in Parliament. As originally formed, Labour was a party composed only of affiliated organisations. These included trade unions, like those representing print workers, railway workers, engineering workers, gas workers, steel workers, textile workers and building labourers. They also included socialist societies, like the Fabian Society; and other political parties, such as the Independent Labour Party and the Social Democratic Federation. In those days it was not open to an individual to become a member of the Labour Party – that has only been possible since 1918 with the implementation of a new constitution drafted by Sidney Webb. But even before these great changes, the party nevertheless presented candidates for election to Parliament and local authorities, with growing success from 1906. 29 Labour MPs were elected at the general election that year, setting the Party on what was to be a meteoric rise.

The Growth of Labour

2.2 Although rooted in the trade union movement and although still committed to the political representation of working people, the Labour Party has grown to become a party of government. The first Labour government was formed with trade union support in 1923 and although it was (inevitably) short-lived (having fewer seats than the Conservative Opposition and relying on the support of the declining Liberal

Party), it was nevertheless an extraordinary achievement to have come so far so quickly. The second Labour government (1929 – 1931) was equally ill-fated, and it was not until after the second world war that the country elected its first majority Labour government, again with trade union support. The Labour government of 1945 – 1951 was one of the great reforming governments in British history, its greatest legacy for working people being a free and universal National Health Service, to which trade unions remain unequivocally committed.

2.3 The position of the Labour Party has been consolidated since 1951. The Party formed government in the 1960s under the leadership of Harold Wilson (1964 – 1970), and in the 1970s under the leadership of Harold Wilson (1974 – 1976) and James Callaghan (1976 – 1979). The trade unions supported and sustained the Party through the long years of the Thatcher and Major administrations and worked hard with other party members for the return of a Labour government in 1997. Trade unions have warmly welcomed many of the achievements of the Labour governments since 1997 – the increased investment in health and education underlines the importance of effective political representation of working people, as does the raft of new legislation designed to redress the balance of power in the workplace, notably the national minimum wage. Although these achievements are tinged with a disappointment that they have not gone further, there would have been

no statutory minimum wage without a Labour government.

The Challenge to Labour

2.4 Throughout its history the Labour Party has faced constant attacks by its political opponents, and it has had to change its rules and practices as a result. As early as 1909 a House of Lords dominated by hostile judges held that it was unlawful for trade unions to affiliate to the Party, on the ground that there was no power to do so in the trade union legislation then in force ². In those days trade unions effectively could operate only under licence from the State. The law was changed by a Bill first introduced by Winston Churchill (then a Liberal minister) which became the Trade Union Act 1913. This permitted trade unions to renew their affiliation to the Party, provided they held a ballot of their members to adopt political objects, set up a political fund for the purpose of financing political objects, and allowed members to contract out of paying the political levy. They also had to undertake not to discriminate against members who refused to pay the political levy. No other organisations engaged in political activity at this time to support the other two parties were subject to conditions of this kind, nor were the other parties at the time subject to any regulation of their sources of funding.

2.5 Since then the attack on Labour has come not from hostile judges but from hostile governments. In 1925 the then Conservative Minister of Labour made clear his government's intentions in a Cabinet paper produced in advance

of fresh restrictions introduced in 1927, when trade unionists supporting Labour were required to contract in to the political levy rather than contract out -

The real point we have to decide is this. Do we wish to attack Trade Unions as such or do we not? . . . the major part of the outcry against the political levy is not motivated by a burning indignation for the trade unionist, who is forced to subscribe to the furtherance of socialist principles which he abhors. It is based on a desire to hit the [Labour] party through their pocket. . . . What I submit is that at least we should not delude ourselves as to our intentions ³.

Although the law was changed back in 1946, a fresh round of attack was mounted by the Conservative government in 1984. Mrs Thatcher had expressed the view that she would be 'immensely pleased' if 'the trade unions were not a part of the Labour Party' ⁴. Having attacked trade unions industrially, the aim now was also to attack politically. Thus, the mandatory political fund ballots which were introduced in 1984 were hailed by The Times which saw their purpose as being 'the political one of quickening the decline of the Labour Party, and perhaps also assisting the realignment of the left' ⁵. But like the 1927 Act before them, these measures did not have the desired effect. There have now been three rounds of ballots (mid 1980s, mid 1990s and the mid 2000s), and in each case trade union members have voting overwhelmingly to retain their political funds.

² *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87

³ This document is fully considered in K D Ewing, *Trade Unions, the Labour Party and the Law – A Study of the Trade Union Act 1913* (1982)

⁴ *The Observer*, 1 May 1983

⁵ *The Times*, 13 August 1983

The Over – Regulation of Trade Unions
 In June 2002, the Better Regulation Task Force raised a number of concerns about the unreasonable burdens on trade unions, including the legislation on political fund ballots. In the words of the Task Force –

The [Trade Union and Labour Relations (Consolidation) Act 1992] requires trade unions which maintain political funds to ballot their members every ten years to determine the continued operation of such funds. Given that trade union members can opt out of the political fund and that there is legislation in place governing the funding of political parties, which identifies the political expenditure of individual unions, is it still valid to ask trade unions to ballot all their members every ten years? The conditions which apply to these ballots, including the adoption of lengthy and complex rules for the holding of each ballot, are as strict as those applying in union elections. This makes the political fund ballots very costly both financially and in terms of resources.

Conclusion

2.6 After two failed attempts to undermine the Labour Party by challenging the link with the unions, it appeared that the Conservative Party now accepted the organisation and structure of the Labour Party. In its evidence to the Neill Committee in 1998, the Conservatives conceded that the ‘question of trade union funding of parties’ was no longer ‘a matter of direct concern to the Conservative Party’, which now recognised ‘the historic ties that bind the trade union movement with the Labour Party’. This acceptance appears, however, to have been short-lived, with the most recent Conservative funding proposals – which do not appear to be the result of any formal approval by Conservative Party members – representing a fresh challenge to the Labour Party. In the following chapter we examine just how the Conservative funding proposals would undermine the constitutional structure of the Labour Party, and do so in a manner which is much more direct than the measures introduced in 1927 and 1984.

‘The Conservative Party does not believe that it is illegitimate for the trade union movement to provide support for political parties’.

The Conservative Party’s Evidence to the Committee on Standards in Public Life (1997)

Chapter 3 Trade Unions and Labour Party Organisation

3.1 The Labour Party is one of a family of democratic socialist/social democratic parties found in most western countries. Some (such as the Australian Labor Party) are organised on the same basis as the Labour Party with individual and affiliated members. Some (such as the Social Democratic Party in Germany) are organised on different principles with individual members only. Organisational form reflects historical development: in some countries trade unions were established before the party and helped to give birth to the party. In other countries the party was formed before the trade unions and it was the party that helped to give birth to the unions. But in all cases the same common theme runs through these different organisations that shelter under the banner of the Socialist International, that common theme being the close relationship that exists between the political and industrial wings of the organised Labour movement ⁶.

Trade Unions Affiliated to the Labour Party in 2006

AMICUS	Musicians’ Union
ASLEF	NACODS
BECTU	NUM
BFAWU	TGWU
CATU	TSSA
COMMUNITY	UCATT
CWU	UNISON
GMB	USDAW
Loom Overlookers	

⁶ For a fuller examination of the issues in this chapter, see K D Ewing, *Trade, Unions, the Labour Party and Political Funding* (Catalyst, 2002)

Trade Unions and Labour Party Structure

3.2 The Labour Party is unique among the major British political parties in the sense that it is an organisation of individuals and organisations. The former are arranged in constituency labour parties, while the latter are affiliated trade unions, socialist societies and political parties. Although organisations affiliate to the party on the basis of the number of relevant members of the organisation, nevertheless it is the organisation (and not its individual members) which is the member of the party. It is thus the organisation that is admitted to the party, which may resign from the party, and which may be expelled from the party. Each affiliated trade union has taken a democratic decision to join the Labour Party, based upon a majority vote of the representative delegates at the union's national conference. These decisions are subject to challenge, so unions frequently have to vote to maintain the affiliation, and again a majority decision is required. There are now 17 trade unions affiliated to the Labour Party, which is many fewer than in the past, reflecting the tendency of trade unions to merge in recent years.

3.3 The level of affiliation to the Labour Party at national level is decided by the affiliated member, but is limited by the number of union members who contribute to the political fund. Affiliation costs £3 per year per member. Trade Union regions and local branches also affiliate to the Labour Party at regional and Constituency Labour Party (CLP) levels respectively. At a regional level, and in Scotland and Wales, unions send delegates to regional Labour Party conferences and elect representatives on the Regional Board of the Labour Party. At constituency level, local union branches affiliate to CLPs at a rate of £6

per 100 members per year. This entitles the union branch to send a delegate to the CLP's General Committee, to submit resolutions, and to make nominations for candidates for the Parliamentary candidacy of that constituency. Members of affiliated organisations may also join the Party in their individual capacity, and individual members of the Party are encouraged to join an appropriate trade union if they have not already done so.

Political Parties and Socialist Societies Affiliated to the Labour Party

Co-operative Party
Christian Socialist Movement
Fabian Society
Jewish Labour Movement
Labour Campaign for Lesbian & Gay Rights
Society of Labour Lawyers
Labour Disabled Members' Group
Labour Housing Group
Labour Irish Society
Labour Students
National Union of Labour and Socialist Clubs
Scientists for Labour
Socialist Education Association
Socialist Health Association
Socialist Environmental Research Association

Constitutional Integration

3.4 Under the federal structure of the Labour Party, trade unions – as affiliated members - are constitutionally integrated into all aspects of Party organisation. Trade unions are directly represented on the National Executive Committee (NEC) of the party, the body responsible for providing its strategic direction. In addition to the 12 seats formally held by trade unionists, other positions on the NEC – such as Party Treasurer - may also be held by a trade unionist. Policy-making in the Party is now conducted by a rolling programme of consultation through policy forums, policy commissions and the National Policy Forum. Trade unions have an opportunity to participate in all of these processes and are guaranteed 30 of the 183 places on the National Policy Forum, a body which meets to consider and agree policy documents before presentation to the Labour Party Conference, the sovereign body within the Party. Affiliated organisations have 50% of the votes at Conference, allocated on the basis of affiliation levels, with larger unions affiliating more members and having more votes than smaller unions with fewer members.

3.5 In addition to the foregoing, trade unions are a key element in the electoral college arrangements for the election of party leader and deputy leader, along with the CLPs and the Parliamentary Labour Party. Under the current arrangements for election of the party leader and deputy leader, the parliamentary labour party, constituency labour parties and affiliated organisations each have one third of the votes. In these elections, affiliated trade unions have to conduct a postal ballot of all their members in the relevant area in

order to decide the proportions in which their votes are cast. If one union's members decide by 60% to back one candidate, that candidate receives 60% of that union's vote, ensuring that all union members can participate and that each individual member's vote counts. In this way the Labour Party constitution ensures that members of affiliated organisations have the right to participate in a major decision affecting the Party, provided they pay the political levy of their union. It is not necessary for this purpose for the trade unionist to be a member of the Labour Party in his or her own right.

Trade Unions and the Labour Party - Working Together
Trade unions are not just embedded in the structure of the Labour Party: trade union members also work with the Party. Much of this work is now co-ordinated by the Trade Union and Labour Party Liaison Organisation (TULO), established in 1994. TULO is distinguished from several forerunner organizations as a more formal body, while it also serves the dual purposes of not only co-ordinating trade union support for the Labour Party at election time, but also of acting as an ongoing channel of communication between the Party and its union members.

Every affiliated union automatically becomes a member of the National TULO, and its General Secretary is entitled to sit on the National TULO Committee, if he or she is an individual member of the Labour Party. The Committee is jointly chaired by a member from the union side (currently Tony Dubbins) and the Labour Party Chair (currently Hazel Blears). The other members of TULO include the Leader, Deputy Leader and General Secretary of the Labour Party, the Chair of the Labour Party NEC, and representatives of the Trade Union Groups of Labour MPs and MEPs.

TULO nationally and locally co-ordinated considerable support to the Party from affiliated trade unions at the general election in 2005. The main role of affiliated trade unions was to contact their own members – first to encourage them to vote, and also to urge them to support the Labour candidate. Affiliated trade unions encouraged hundreds of their members to volunteer to help the Labour Party. TULO is registered under the Political Parties, Elections and Referendums Act 2000 as a Labour Party accounting unit.

Conclusion

3.6 The Conservative proposals for party funding reform are a direct challenge to the existing structure of the Labour Party

- They fail to take account of the fact that trade unions are members of the Party with rights of membership based on the size of their affiliation, which in turn will be based on the number of trade unionists contributing to the political fund of their union
- It would be impossible to operate the current system of affiliation as provided in the Labour Party constitution under the constraints of a statutory maximum £50, 000, and it would be absurd if a large union like UNISON could affiliate only on the same basis as very small unions
- The constitution of the Labour Party would be fatally undermined as a result, affecting representation at Conference and on the National Policy Forum, the election of Leader and Deputy Leader, the composition of the NEC, party structure at regional and constituency level, and the selection of parliamentary candidates

Any reform which has these consequences, whether intentional or unintentional, trespasses beyond the legitimate boundaries of the State. The principle of freedom of association means that political parties must be free to determine their own membership structures without interference from the State, provided the arrangements in question are open, transparent and democratic.

Chapter Four

Donations to Political Parties

4.1 Through their relationship with the Labour Party trade unions and their members have made a bigger contribution to the democratic process in Britain than any other organisations or any other group of people. Since 1900 the trade union contribution has been consistent, reliable and unwavering. It has been used to sustain Her Majesty's Opposition more often than it has been used to sustain Her Majesty's Government. Without trade union funding of the Labour Party, there would be a great financial imbalance between the two main parties, even in recent years despite the funding base of the Labour Party having expanded. The nature of this imbalance is clearly demonstrated by the account in this chapter, which is based upon the information made available by the Electoral Commission under the Political Parties, Elections and Referendums Act 2000. Although this does not give a full account of the relative financial position of the parties (because it does not tell us about national donations below £5000 or local donations below £1000), it is nevertheless indicative of their relative strength ⁷.

Donations to the Labour Party

4.2 In the electoral cycle from 2001 to 2005, the Labour Party received 4,438 donations which totalled £65,980,846. For this purpose the term donation is used to include affiliation fees: the Political Parties, Elections and Referendums Act 2000 does not distinguish membership fees from

election and other donations which may be made to a party. The great bulk of this income came from trade unions, with trade union affiliation fees and donations accounting for £42,187,613 of the total donation income of the party, this representing 64% of the total. (Of this sum, the great bulk was provided by way of affiliation fees.) Trade unions are thus the largest source of income to the party, though clearly the extent of the Party's dependence on trade union money is reduced if loans are taken into account as well as donations. The recorded donations to the Labour Party from trade unions thus include various forms of financial and in-kind contributions (including affiliation fees) and indeed well over a half of the donations to the party in the period from 2001 to 2005 were from trade unions. Many of these were from union branches to CLPs, as well as to head office in the shape of affiliation fees and election donations.

4.3 Large personal donations are a second major source of Labour Party funding, though they come a long way behind trade union funding. For present purposes a large personal donation is one that alone or in aggregate with other donations from the same source exceeds £100,000 (though clearly there are donations from a small number of people well in excess of £100,000, with one donor contributing £6.5 million over the four year period). Between 2001 and 2005 large personal donations as defined amounted to £16.8

⁷ This chapter draws freely on K D Ewing and N S Ghaleigh, 'Donations to Political Parties in the United Kingdom', www.democratic.audit.anu.edu.au where some of the issues are more fully considered.

million, this representing 25% of the Labour Party's donation income. Of this £16.8 million, some £13.5 million was provided by just 16 people. Yet if large personal donations fall a long way behind trade union support for the party, corporate contributions are even further behind, despite the popular perception that Labour is now a party of business. Between 2001 and 2005 the Labour Party received 405 donations from companies, amounting to £3,029,804, or 4.6% of the Party's donation income. Only one cash donation was for more than £100,000 and indeed all but 6 cash donations from companies were for £25,000 or less, though the aggregate donations of one company came to £727,172. One donation in kind exceeded £100,000, though the aggregate donations of KPMG amounted to £225,000.

Donations to the Conservative Party

4.4 Conservative Party funding sources are predictably very different, with no trade union funding. Between 2001 and 2005 the Conservatives raised some £58,679,862 by way of donations in excess of £5000 nationally or £1000 locally. This sum was generated by 2,775 donations. The largest source of donation income was large personal donations, with some £18.25 million being provided by donations from private sources in excess of £100,000, this accounting for 31.5% of the Party's central donation income. As in the case of the Labour Party a lot of this money was provided by a few sources with 8 people providing £11.8 million. Apart from personal donations, a second source of Conservative Party income was donations from the State under schemes such as the Short and Cranborne schemes for Opposition parties and the policy development grant which is divided up amongst all the parliamentary

parties. Of the £58,679,862 raised by the Conservatives by way of donations from 2001 to 2005, some £16,739,555 was provided from public funds, this accounting for 29% of the party's donation income. The party which historically has been most opposed to State funding has thus relied on the State for more than a quarter of its donation income, and in the past has allegedly used the money for non – parliamentary activities, as the schemes require.

4.5 The third source of funding of the Conservatives is from companies. Although the Conservatives claim that 'corporate donors have disappeared', 'scared away by transparency requirements' and by 'a growth in shareholder activism', the Conservatives in fact raised £12,050,562 from 823 corporate sources, this representing some 20.4% of Conservative Party donations. Apart from having more than twice as many corporate donors than Labour, the average value of a Conservative Party corporate donation was twice as much, at £14,642 rather than £7,481. Two Conservative corporate donors gave £1 million or more (in one case by means of three separate donations in aggregate), while another 34 companies gave between £100,001 and £350,000 either as one off donations or in the form of separate donations in aggregate. Additionally, large sums are received by the Conservatives from donors such as the Carlton Club Political Committee, the Scottish Business Group Focus and the Midland Industrial Council. Another significant player to emerge in recent years is Bearwood Corporate Services whose activities we return to in chapter 6.

Conclusion

4.6 The information provided by the Electoral Commission reveals very clearly the political consequences of the Conservatives funding proposals. If implemented these proposals would benefit the Conservative in three ways.

- First and most obviously, the proposed limit on trade union affiliation fees and other contributions to £50,000 in total from each union would mean that the Labour Party would be able to raise annually a total of only about £800,000 from its main source of funding, compared to a current minimum of approximately £8 million per year in affiliation fees alone. The proposal would reduce trade union funding of Labour from £42 million in the last electoral cycle to only £3 million
- Secondly, the proposal that personal and corporate donations should be capped at £50,000 would be disproportionately to the benefit of the Conservatives.

o The Conservatives have three times more personal donors than Labour (hardly surprising as donations are defined as payments in excess of £5,000). Between 2001 and 2005 the Conservatives had 2,193 individual donors Labour Party had 779 individual donors.

o The Conservatives also have twice as many company donors than Labour, donating on average twice as much as Labour's corporate donors, figures that could be expected to balloon were the Conservatives ever to get back into government.

- Thirdly, on information currently available the Conservatives would benefit from their proposal for tax relief for political donations; because they have more donors, the greater would be the windfall, even if the tax relief is capped to reward small donations.

Between 2001 and 2005, the Labour Party had 726 individual donations of up to £75,000, amounting to a total of £4.3 million. In the same period the Conservatives had 2,149 individual donations, amounting to a total of £14.4 million.

Chapter 5

Participation and Representation

5.1 Democracy depends on the ability of everyone to participate in the process of self – government, and on the understanding of those who do participate that they will be fully represented in the process. Forms of participation and representation necessarily vary as different groups within the community find different ways to express their different views. Such diversity needs to be acknowledged and encouraged, especially at a time when there is a crisis of democratic engagement, reflected not only in electoral turnout (with only 3 in 5 electors voting in 2005), but also in declining party memberships. In developing proposals for party funding reform, it is essential to not to ignore the significant and important contribution that trade unions make to the democratic process (both in this country and elsewhere), nor to diminish the role of trade unionists in oiling the democratic machine.

Participation in the Political Process

5.2 Trade union affiliation to the Labour Party provides an opportunity for working people collectively to participate in the democratic process, albeit with a long spoon in some cases. At the present time almost 2.5 million workers are affiliated through their unions to the Party. Although these 2.5 million workers are only indirectly associated with the Party, this is a process which is nevertheless based on both collective and individual consent.

- There is collective consent as a result of the legal changes introduced by the Thatcher government in 1984: trade unions must ballot their members

individually by post every ten years for authority to maintain their political funds. Every union affiliated to the Labour Party which has conducted a political fund ballot since 1984 has voted in favour of maintaining the fund. The most recent round of ballots in 2003 – 2004 saw all affiliated unions return large majorities of between 67% and 96% in favour of keeping their political fund.

- There is individual consent in the sense that every member of every trade union which has a political fund has the right not to contribute to the fund. Trade union members who ‘contract out’ of the political levy have a right not to suffer discrimination or disadvantage as a result and to complain to the Certification Officer if the political fund rules are broken. No official body – from the Donovan Royal Commission in 1968 to the Neill Committee in 1998 - has found any evidence of any mistreatment of or discrimination against any trade union member who did not want to support Labour Party affiliation.

Public Funding and the Principle of Consent

The process of trade union affiliation has great advantages over the Conservative proposals for State funding of political parties. Under the Conservative proposals no one will ask the taxpayers collectively every ten years if they support the use of their money to fund political parties; nor will taxpayers have the right to contract out of any obligation to fund political parties by the State.

5.3 Trade union members who pay the political levy have the right to participate in the political work of their union, through union branches, through regional committees and through national conferences. These conferences are the sovereign policy-making bodies of most unions, to which the leadership of the union (itself democratically elected by direct election every 5 years) is normally required to respond. Policy developed democratically in these ways will be taken forward to the Labour Party, where unions individually and collectively will represent the views of their members by seeking to have their own policies adopted through the democratic procedures of the Party. In recent years trade unions have made important contributions to Labour Party policy, by carrying forward into the Labour Party policy-making machinery their own policies on a national minimum wage, working conditions, and the two tier work force in the National Health Service. But trade union conferences have not only been concerned with workers’ rights and have played a part in developing Party policy on matters as diverse as devolution, civil liberties, and constitutional reform. Trade unions have also spoken out about the war in Iraq.

Political Representation

5.4 Trade union affiliation to the Labour Party also provides an opportunity for working people collectively to be represented in the democratic process. Indeed this was the reason for the creation of the party in 1900 - to promote ‘working class opinion to be represented in the House of Commons by men (sic) sympathetic with the aims and demands of the Labour movement’. The need for such representation is obvious. Other interests have easy access to government – foreign capital which has to be attracted and encouraged to stay in this country (as increasingly does British based capital); as well as newspaper proprietors who have the ear of governments of all

persuasions, with all political parties apparently desperate for their electoral approval. On their own, working people have no platform and no influence – it is only by acting collectively in the political arena – as in the workplace - that their views can be heard. Affiliation to the Labour Party provides one way by which this can be done, enabling working people through their trade unions to voice their concerns directly in what has become one of the country’s major political parties.

5.5 The practice of trade union affiliation provides different kinds of opportunities for the political representation of working people. Local trade union branches that are affiliated to a Constituency Labour Party are able to make nominations for the position of prospective Parliamentary candidate, and trade union delegates – like all delegates on the CLP’s General Committee - are able to participate in the shortlisting process. This enables trade union branches, if they wish, to give some support to candidates from a trade union background, and to help ensure that short-listed candidates understand issues affecting trade unions and their members. However, as the final selection is determined by the votes of the individual Labour Party members in the constituency, trade unions have no direct influence on the outcome. An important role is also performed by the Trade Union Group of Labour MPs, which represents all members of Parliament who are members of trade unions affiliated to the Labour Party. The Group has regular meetings throughout the year giving members the opportunity to discuss and debate trade union issues, and seeks to bridge the gap between unions and MPs.

Trade Unions and the Challenge for the Labour Party

One challenge for the Labour Party how to increase the number of affiliated trade unions, with the failure to attract new affiliates a source of major concern. Another challenge is how to convince more trade unionists to become individual members of the Party, and how to encourage more trade unionists to seek political office within the Party and on behalf of the Party.

Conclusion

5.6 The case for the Labour Party – trade union link is simple and straightforward – it promotes political participation and it facilitates political representation. At a time when voter turnout and party membership are at an all time low, we are not in a position to be prescriptive about the ways in which people engage with political parties, even if party structure and organisation were the legitimate concern of the State (which they are not). Rather than being viewed with suspicion and distrust, the Labour Party – trade union link provides a form of political engagement that needs to be encouraged, in the sense that political parties need to broaden the base of their appeal by working with community and other organisations to draw them and their members into the political mainstream. Paradoxically perhaps, it is the structure of the Labour Party that provides the model for the future, with political parties engaging in different ways with individuals and organisations in the recruitment of members, the development of policy, and the engagement of the public. It seems likely that only diversity of organisational form will foster and encourage greater participation in the affairs of political parties.

Chapter 6 Funding the Conservative Party

6.1 In the previous chapter it was argued that trade union political action is important because it provides opportunities for political participation and political representation. But there is another reason why it is important, and this is its contribution to ensuring electoral choice on the one hand and meaningful electoral competition on the other. Quite simply and as we saw in chapter 4, without trade union funding of the Labour Party the Conservative Party would have a huge financial advantage over all their rivals combined, as they previously had in earlier days. But if anything, the figures in chapter 4 greatly under-estimate the impact of the Conservative Party's proposals. This is because they deal only with overall donation income and do not take full account of the funding of the parties at local level. The 2000 Act is now revealing what Conservative Central office accounts so long concealed, namely that there are vast sums of money raised by the party at constituency level. The information yielded by the Electoral Commission shows that while the Labour Party raises the bulk of its money nationally, the Conservative Party raises as much locally as it does centrally, a state of affairs with significant regulatory implications.

Local Funding

6.2 Information about Conservative funding locally is now available because constituency parties (and other accounting units) must now submit accounts to the Electoral Commission in any year in which their turnover exceeds £25,000. In 2004 (the year of the last complete submissions), 271 Constituency Associations (or accounting units as they

are known legally) raised so much money that they were required to submit returns, while only 54 Liberal Democrat Constituency Associations and as few as 28 Constituency Labour Parties were required to do so. What this means in financial terms is startling. In 2004, the Conservative accounting units raised c £17 million, in addition to the £20 million raised by the party nationally. In this case the accounting units included not only the 271 constituency associations but also a small number of regional and other organisations. The Liberal Democrat accounting units in contrast raised c £7.9 million in addition to the £5 million raised by the party nationally. In this case the accounting units included not only the 54 constituency associations but also 17 regional and other organisations. In contrast to both the Conservatives and Liberal Democrats, the amount raised by Labour Party accounting units is rather modest. In 2004 the 28 CLPs raised some £1 million, while 5 other accounting units (the Scottish and Welsh parties and TULO) raised just under another £1 million. This was in addition to the c£30 million which the Labour Party raised nationally.

6.3 These figures do not give a complete account of local fund-raising, being confined only to those accounting units which are required to submit annual returns to the Electoral Commission. They do indicate, however, that although the Conservative Party raises less than the Labour Party nationally, its overall income is likely to be higher with as much being raised locally as centrally, though some account would have to be made for the possibility of transfers from local to

national funds, the precise nature of which is unclear from party national accounts. They also indicate that some of these parties are very wealthy and raise considerable sums of money, with 30 each raising more than £100,000 annually.

For example in 2004 the City of London and Westminster CA raised £360,000, Kensington and Chelsea CA raised £285,435, Aylesbury raised £265,153, South West Surrey raised £200,029, Chichester raised £177,655, Wealden £170,025, Reigate £169,119, Surrey Heath £154,400, Folkestone raised £153,430, and North Oxfordshire raised £139,771

In other words, the Conservative Party has more associations with an annual turnover in excess of £100,000 than the Labour Party has CLPs submitting annual returns. The best performing CLPs are Ipswich and Norwich with £76,728 and £75,224 respectively.

A Funding Loophole

6.4 It is impossible to speculate why it is necessary for the City of London and Westminster CA to raise over £1 million in a parliamentary cycle when a parliamentary candidate can spend only somewhere in the region of £10,000. But whatever the reason it is clear that any contribution cap proposed by the Conservatives would have to apply to local donations as well as to donations to parties nationally. This would be all the more compelling in view of the practice of some donors to target their donations on local associations rather than on the party nationally, or as well as on the party nationally. Two very clear examples of such donors are Bearwood Corporate Services and the Midlands Industrial Council. The former has made 135 donations totalling £938,471 mainly to

Conservative Associations, with £40,000 being donated to Hammersmith and Fulham and £34,986 being donated to South Thanet. The Midlands Industrial Council has also made donations in excess of £500,000 to a number of Conservative Associations.

6.5 These developments clearly have serious implications for the Conservative proposals for a cap on contributions to political parties. As already pointed out a cap of £50,000 which applied also to trade union contributions to the Labour Party would operate to the partisan advantage of the Conservative Party. That advantage would be compounded if the Conservatives were free to continue to raise vast sums of money locally. It would thus be necessary not only to have a much lower contribution cap – somewhere in the region of £5,000 to a party nationally - but also a local cap as well. If there were no local cap, it would be easy for any national cap to be evaded by large local donations that were then transferred to the party nationally. In these circumstances – in light of the huge advantage enjoyed by the Conservatives locally and in the interests of creating a level playing field – it would be necessary to impose a local cap of somewhere in the region of £1,000 with a ban on internal party transfers (as is the case in Canada). This means that an individual could donate up to £5,000 annually and could choose to give it all to the Party nationally or a portion of it to Constituency Associations (though no more than £1,000 to any single association).

Conclusion

6.6 If steps were to be taken to break the link between trade unions and the Labour Party, this would have important consequences for the need to maintain a level playing field at elections. As a result it would have other regulatory implications for a contribution cap. If such a cap is to be introduced it would have to be set at a level well below that proposed by the Conservatives. A cap of £50,000 annually is very high by international standards and it would be necessary to contemplate a cap at a level which was within the means of a significant number rather than only a few electors. It would also be necessary to impose a cap on contributions locally and to impose restrictions on intra – party transfers to avoid abuse and loopholes. Such a measure could have far - reaching consequences for Conservative Party activity at local level and would almost certainly lead to a significant decline in the income of constituency associations.

Chapter Seven

The Practice in Other Countries

7.1 As already pointed out, Britain is not the only country with a trade union based political party. Nor is it the only country to have been engulfed by party funding controversy. In dealing with these scandals countries have a range of options at their disposal – whether to focus on transparency, whether to impose contribution caps, whether to impose spending limits, or whether to introduce or enhance public funding for parties. There is in fact no single solution adopted by leading democracies. Germany has placed its faith in transparency, self restraint and public funding (on a large scale); the United States has placed its faith in transparency and contribution limits (with spending limits having been struck down by the Supreme Court as being unconstitutional)⁸, and Canada has placed its faith in a combination of transparency, contribution limits, spending limits and public funding. It is an important feature of regulation, however, that it does not operate in a vacuum and that it must to some extent be guided by the nature and structure of party organisation in a particular country. One reason why regulatory frameworks are different is because political parties are different.

Contribution Limits

7.2 Contribution limits exist in a number of countries, notably the United States where the law was revised by the Bipartisan Campaign Finance Reform Act of 2002. Under the present law

individuals can donate to candidates \$2,000 per election and to national parties \$25,000 annually. An additional \$10,000 can be donated annually to a State party's federal account. There is also an overall limit of \$95,000 in aggregate on how much an individual can donate in a two-year cycle. Additional flat rate limits apply also to political action committees which were set up to navigate the notional ban on corporate and trade union contributions, and are now an important means by which companies make donations to candidates and parties in federal elections. The first political action committee was established by trade unions in 1943 and by 2000 there were 3,907 such organisations, with over 1,500 representing corporate interests and only 317 representing labor unions. Political action committees also engage in large-scale independent expenditure for or against parties and candidates, and are an inevitable consequence of a system that limits donations. If donors are unable to support candidates directly, it is naïve to think that their money will not be used in other ways.

7.3 Contribution limits are also to be found in a number of European countries, including France where only donations from individuals are permitted, but where donations to candidates are subject to a cap of c £5,000 and donations to political parties to a cap of c £7,000⁹. There are no limits on how much parties may give to candidates, and

the needs of the parties are met by generous (by British standards) public subsidies. Other countries where contribution caps are to be found include Spain and Italy. In other countries, however, there are no contribution limits. This is true of Germany, Sweden, Australia and New Zealand. For obvious and compelling reasons, it is a feature of countries where there is a strong Labour Party with affiliated membership (Australia, New Zealand, Sweden), though the absence of contribution limits is not unique to such countries (Germany), and it remains true of those countries where the nature of the relationship has changed (Sweden). It is nonetheless the case, however, that a statutory contribution cap is a difficult strategy to embrace in a jurisdiction with a diverse internal party structures in which certain political parties (as in the case of the British Labour Party and the Australian Labor Party) consist of both individual and organisational members of different sizes.

Public Funding

7.4 Another strategy for dealing with large donations is substantial public funding or State support for the parties to reduce the need for and the dependence on large private donations. So far as countries with State funding are concerned, the nature of the dependence on the State varies from country to country. In Spain it is estimated that as much as 80% of party funds are provided from public sources, whereas in Germany by law public funding may not account for more than 50% of party funds. But despite this legal restriction in Germany, the total amount of public funding distributed to the parties which qualify may be as much as 133 million annually. The money is distributed under a formula based partly on votes

cast in favour of the party or its candidates in recent elections, and partly on the total number of members in the party. Public funding also operates in Sweden, where the scheme is made up of two major parts: the first is to support the general activities of the parties, and the second is to support the activities of the members of the Riksdag and the party groups in the Riksdag. The former stands at SEK 164 million, and the latter SEK 172 million, or c £26 million in total. Although the amount of money made available to the parties in Sweden is thus significantly smaller than in Germany, it is significantly higher in terms of population density.

7.5 Unlike in Germany, public funding in Sweden is allocated principally on the basis of seats won by rather than votes cast in favour of those political parties which qualify. Similarly, there is no allocation based on the number of party members. In Sweden, as in Germany, however, there is no restriction on how the money may be used for the purposes of the party – party autonomy means that it is for the party itself to decide how best to spend the money. Germany and Sweden have been joined recently by Canada as a country that has now embraced public funding on a large scale. Since 1974, the Canadian federal parties have been able to issue income tax receipts to donors enabling these donors to claim an income tax credit. This facility has recently been extended to small parties following a decision of the Supreme Court of Canada¹⁰. The Canadian parties have also been entitled to a partial reimbursement of election expenses, as have parliamentary candidates. In 2004 a major reform saw the introduction of very tight contribution limits, so that individuals may donate annually no more than \$5,000 in total to

⁸ *Buckley v Valeo*, 424 US 1 (1976)

⁹ See *K D Ewing and N S Ghaleigh, 'The Funding of Political Parties', Submission to the Constitutional Affairs Committee*, 10 April 2006, on which this chapter draws.

¹⁰ *Figuroa v Canada (Attorney General)* [2003] 1 SCR 912

a party (nationally and locally), with companies and trade unions each permitted to give a total of only \$1,000 annually, with none of the \$1,000 to go to the party nationally. To make up for the loss of funding qualifying parties receive annually \$1.75 for every vote received at the immediately preceding federal election, the money paid out on a quarterly basis. This is in addition to the existing forms of public funding in place.

Conclusion

7.6 It is a feature of countries where there is a labour based political party that regulation takes forms other than contribution limits. This is because a contribution limit that applies to such parties would unfairly undermine not only their funding but also their organisation and structure. One country which contradicts this trend is Canada where the NDP was created by trade unions in 1961 as the political wing of the organised labour movement, funded and supported by the Canadian unions. However, the NDP is a relatively minor party in Canadian federal politics and has never formed the government, though it has been in government in a number of provinces where political funding regimes are different. More importantly, the campaign to introduce contribution limits was one that enjoyed the support of both the NDP and the unions for tactical reasons. In the Canadian context it suited both for the Party to be less associated in the public mind with organised labour – an association which in this country is a source of strength rather than weakness. And it suited the unions for the Party to be funded by the taxpayer so that they were able to use their resources for other political campaigns both during and between elections. But it is an initiative that has not been without difficulty.

Chapter Eight Conclusion

8.1 The recent controversy about loans to political parties requires a serious political response. But that response should be non-partisan in nature and should avoid giving one party an advantage over the others. It should also respect the asymmetrical nature of our political parties - asymmetrical in the sense that they have different membership arrangements, different organisational structures, and different financial provisions. The attack – intentional or not - on trade union funding of the Labour Party is particularly unwarranted and unjustified: the link between unions and the Labour Party is a long standing feature of the British system of government, it provides opportunities for political participation and representation, it is highly regulated (indeed over- regulated), and it is open and transparent. Although the nature of the British party system makes regulation difficult to impose, there are nevertheless a number of steps that now need to be considered, in addition to the government's welcome announcement to bring commercial loans fully within the scope of the transparency regime introduced in 2001.

8.2 TULO acknowledges that there are now calls for a limit on cash donations and loans from rich individuals. If the weight of public opinion is in favour of such a limit, then there should be careful consideration about this can best be achieved and the need to ensure that it does not undermine the principle of affiliated membership by trade unions and socialist societies to the Labour Party. There are two options that could be

explored:

- One option would be legislation, with a 'one size fits all' solution being imposed on all the parties. If this approach is adopted and a limit is to be imposed by law, it should be set at a level that is within the reach of every citizen. A cap of £50,000 is far too high and well exceeds the limits of other countries where there are contribution caps. There would also have to be a tight limit applying to local donations to stop any back door breach of the law.
- A more subtle option would be one in which the parties are required by law to set their own limit. Such an approach would allow different parties to set different limits to reflect their different membership structures. The Conservatives would have to accept the legitimacy of the trade union link, and the Labour Party would have to accept the legitimacy of other parties setting a higher limit for personal contributions.

Although the latter option would have the benefit of flexibility, there would be concerns about any such limit being respected by the parties, especially in the heat of an election. As a result, a number of safeguards would have to be put in place, and in particular the parties would have to agree to the limit being legally enforceable and robustly policed by the Electoral Commission, empowered to order the return of any donation received by a party in breach of its own limit and to impose a penalty on any party breaking its own rules.

8.3 Secondly, there is a need for further spending limits, to reduce the demand for money and the opportunities to spend it. The current limits for parties are too high, as reflected by the fact that the parties are unable to raise enough money to get even close to the legal maximum – the limits do not seriously regulate the behaviour of the parties. Moreover, the publication of the spending returns of the parties for the 2005 election gave rise to widespread public disquiet about the trivialisation of politics and the capacity of the parties to waste money. Although the parties clearly need to spend significant sums of money to convey their message to the electorate, the case for adopting the recommendations of the Electoral Commission in 2004 seems irresistible. The Commission proposed that spending limits should be set at £15 million¹¹, and there may be a case for an even lower cap. But quite apart from the national spending limits, there is a case also for addressing local election expenditure with so much money now being channelled by donors into local party funds. There is a need for an election spending cap on both candidates and their local parties, which should apply not just from the date of the dissolution of Parliament but in the same way that the cap applies to national spending. That is to say for the 12 months immediately preceding the election.

8.4 Thirdly, there is a case for a greater State support (though not public funding), particularly if large personal donations are to be consigned to the past. Parties need money not just for campaigns, but also to maintain premises, to develop policy, to service members, to employ staff, and to hold conferences. It is difficult to contemplate asking the taxpayer to pay for

the parties, particularly in view of public resistance to state funding and also in view of the adverse publicity generated by the recent general election returns. But on the other hand, there is a strong case for exploring greater forms of support following the examples of the Short and Cranborne money and free postal facilities at elections.

- With this in mind, there is an argument for looking at how the State could support activities which would be of direct benefit to the elector and to the taxpayer. This would involve support for more rigorous policy development, for underpinning the cost of internal party democracy, and for training officials and candidates. There is also a case for helping the parties meet the costs incurred in complying with the regulatory burden imposed by legislation.
- Any such additional support would have to be based on parallel initiatives which create incentives for parties to recruit members, promote democratic structures within parties, and draw money from other budgets currently used to support the political process. Any additional support should also require the parties in receipt of support to take effective steps to promote gender and ethnic equality in the selection of candidates for all public office.

8.5 Although there can be no justification of public funding without accountability and no suggestion that public money could be used to create bloated party bureaucracies, there are nevertheless a number of steps that ought to be taken to address the current funding crisis, in addition to the changes already proposed

by the government to bring loans within the regulatory framework. But these steps must be based on a recognition of the proper and legitimate role of political parties in the democratic process. They must also be based on an acceptance of the diversity of party organisation which means that trade unions and socialist societies are - first and foremost - members of the Labour Party in their organisational capacities. They are not donors in the way that companies and rich individuals are donors to political parties. Trade unions neither caused nor contributed to the current funding crisis and it is intolerable that they should be caught in the crossfire. At a time when party politics are disintegrating sensible people must ask about the wisdom of forcibly cutting off some 2.5 million people who support the Labour Party year in year out with small voluntary contributions. As already indicated, this is the model for the future which needs to be strengthened and extended.