CHAPTER 2

Dilemmas of Regulating Political Finance, with Special Reference to the Dutch Case

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Introduction: the costs of democracy

Money is power and the struggle for political power always has a financial aspect as well. The democratic principle, however, asks for specific criteria concerning the sources and the use of money. Pure fraud, for example, donating money to a party or a candidate in exchange for concrete political favours, is allowed nowhere in the world. But apart from that, criteria are rather different, depending – among other things – on the nature of the electoral system, conceptions of the state, the level of the rule of law, and the economic development of a country. It is, for example, difficult to demand a high degree of transparency of the finances of political parties in countries where politicians from opposition parties that receive financial support from foreign sources are not sure that disclosure of their sources will not be used to imprison them or worse, even when that kind of support was not formally forbidden. And, to give another example, in various poor countries a plea for grass roots financing (i.e. political parties and/or candidates receive small donations from many people) may be considered to be naïve, because some parties do not *receive* money from small people, but rather *give* them money or bread or milk during campaign rallies. This may be considered as vote buying, which is seen to be incompatible with campaign practices in well established democracies.

Therefore, when we speak about party finance in this chapter, we limit ourselves to western democracies where the rule of law is well established and free media exist, and that are affluent enough to allow for strict criteria with respect to political finance.

Although the costs of democracy (Heard, 1960) vary among western democracies, most of these democracies have introduced a new source of income for parties and/or candidates: public money. From about the mid-1960s, many countries started to grant state money to political parties (IDEA, 2003; Nassmacher, 2009; Van Biezen, 2010). Increased expenditure, mainly as a consequence of higher campaign costs, was hard to cover by less growing or even decreasing income from membership fees. The state came to the rescue.

West Germany was the first European country to introduce state subsidy of political parties (1967), but in that country a very principled reason was also behind this decision. Memories of the fact that Hitler's NSDAP in the interwar period had received enormous sums of money from some German enterprises convinced many people that a one-sided dependence of parties on donations from corporations should be prevented and donations by a democratically controlled state were to be preferred. The latter took place on a large scale, resulting in very high costs of democracy, also in comparison with the costs in for example the United States, Canada, Austria and the Netherlands (Nassmacher, 1982; Koole 1985; Cordes , 2002). Is is true that comparisons of real financial data between countries are notoriously difficult to make, but the relatively high costs of democracy in Germany (and other countries on the European continent for that matter) are to be explained by the fact that parties spend a lot of money not only on campaigns, but also on their permanent party organizations.

Thus, for a good understanding of political finance one has to distinguish between campaign costs and routine costs, as well as between expenditure by individual candidates and by party organizations. Combined with the specifics of the various electoral systems, these elements allow for great variation in the regimes of political finance between countries.

Variation, however, is not just the reflection of the technical features of political systems. Behind these technicalities, different ideological conceptions of the role of the state in democratic systems may also explain diversity among distinct regimes of political finance. Recently, various pleas have been made to treat political finance as the dependent variable: instead of looking for the consequences of specific forms of state regulation, the emphasis has shifted to the question why state regulation has taken these specific forms. Scarrow (2004) points to the importance of political strategies of political parties for the outcome of debates on political finance reform. Van Biezen (2010, 84) stresses the salience of more philosophical considerations: 'debates over political finance are essentially based on competing conceptions of democracy'. Koss (2010, 205) also emphasizes the need to treat public funding as a dependent variable, and he concludes that 'a consensus of the relevant parties is a necessary condition for the introduction and reform of state funding to political parties'. According to Koss, the consensus is often catalysed by a debate on corruption. The substance of that consensus, however, may vary as well.

This chapter explores the importance of ideological considerations for the variation in political finance regimes. A political agreement between the major political forces on public subsidy of political parties (and, more generally, on the regulation of the political financing of candidates and parties) may reflect either the dominant conception of the role of the state in a society or the compromise made between different conceptions. Lawmakers do not act in an ideological vacuum, and their regulatory work on political finance, be it in reaction to corruption scandals or to profound societal changes, is difficult to isolate from prevailing views on the role of the state. The approach in this chapter, therefore, differs from the analysis of the legal regulation of political parties from the perspective of competing conceptions of democracy (Hopkin, 2004; Katz in this volume), in that it starts from another level of abstraction: general views on the role of the state.

The next section presents two opposite general views on the role of the state which will be used to construct a typology of rationales of political finance by confronting these general views with the recent call for more transparency in the field of political finance. Based on this typology, the following section deals with dilemmas of state funding of political parties that lawmakers in modern democracies are faced with when trying to formulate legal regulations. The dilemmas of state funding are closely related to the dilemmas of the more general question of state regulation of political parties. The latter exist also in countries where public funding is hardly available. Therefore, although it concentrates on dilemmas of public funding of political parties, this section also includes some broader dilemmas of state regulation of parties and candidates where these can help us to understand the problems of state support for parties.

In the final section of this chapter, we will apply this typology and these dilemmas to the case of the new Dutch law on party finance.

A typology of rationales of political finance regulation

In a famous judgment, the Canadian Supreme Court stressed the importance of underlying ideologies for the assessment of political finance regulation. In the case about limits on expenditures by third parties (Harper v. Canada, 2004) the Court concluded:

> "The Court's conception of electoral fairness as reflected in the foregoing principles is consistent with the egalitarian model of elections adopted by Parliament as an essential component of our democratic society. This model is premised on the notion that individuals should have an equal opportunity to participate in the electoral process. Under this model, wealth is the main obstacle to equal participation... Thus, the egalitarian model promotes an electoral process that requires the wealthy to be prevented from controlling the electoral process to the detriment of others with less economic power. The state can equalize participation in the electoral process in two ways... First, the State can provide a voice to those who might otherwise not be heard. The Act does so by reimbursing candidates and political parties and by providing broadcast time to political parties. Second, the State can restrict the voices which dominate the political discourse so that others may be heard as well. In Canada, electoral regulation has focussed on the latter by regulating electoral spending through comprehensive election finance provisions. These provisions seek to create a level playing field for those who wish to engage in the electoral discourse. This, in turn, enables voters to be better informed; no one voice is overwhelmed by another. In contrast, the libertarian model of elections favours an electoral process subject to as few restrictions as possible." (Supreme Court of Canada, 2004, s 62)

The different models of elections in this quotation correspond with broader conceptions of the state. These conceptions may be helpful in analysing the different approaches states take to regulating and financing political parties and candidates. Depending on the conception of the role of the state, the willingness to grant public money to parties will vary. In a *narrow conception*, the state serves only as the institution that is to provide basic goods (like internal and external security) that cannot be brought about without its help. In a *wider conception* the state must also act when goods that could be produced without the help of the state can be distributed more evenly only with its help. The first conception does not leave much room for limits and obligations posed on the citizens (therefore this model is sometimes refered to as the 'libertarian model'), while in the second view these limits and obligations are – up to a certain level – defended ('the egalitarian model'). The adherents to both conceptions will claim that their approach contributes most to a desired society. But while for the first the ideal society is determined by individual freedom, for the second freedom for all is predominant.[2] A long history of political philosophy lies behind these two conceptions (Hopkin, 2004; Feasby, 1999).[3] Their popularity changes over time and varies between different countries, and within countries between different political families. Essentially, it is an ideological debate that also impacts on the debate about public funding of parties and candidates.

In recent times, another theme has come to dominate the discussion on political finance: *transparency*. The nature of this theme is less ideological than the aforementioned views on the role of the state. This may be one of the reasons that the call for more transparency very often transcends or cuts trough ideological divisions.

This call is not limited to countries granting state subsidies to parties and candidates, and is increasingly being heard. In order to increase trust in the political system, democracies are more and more willing to introduce higher standards for the transparency of political finance. Accountability has become the international buzz word for good governance, and a high level of transparency is seen as a precondition, as well as a good thing in itself. The United Nations launched a Transparency & Accountability Initiative (UNTAI) in 2007 and International Transparency has become an influential NGO that critically assesses the level of transparency and corruption in many countries all over the world.

The increased attention given to transparency left its traces in the debate on political finance, although the demand for transparency is not new. The German constitution (basic law, 1949) prescribes that parties must publish information about their income and expenditure, as well as about their financial reserves.[4] Disclosure was the central element of the new Federal Campaign Act (FECA, 1971) in the United States. Donations of more than 200 dollars a year had to be made public. A few years later, the Canadian Elections Expenses Act (1974) set the treshold at 100 Canadian dollars (today: 200 dollars). In western Europe the disclosure treshold varies from 125 euros in Belgium to 10,000 euros in Germany (IDEA, 2012).

Even if one does not want to limit donations above a certain amount of money or to ban gifts from certain types of donor altogether, a high degree of transparency can be defended with the argument that in a democracy it is the voter who decides about the desirability of certain donations. To be able to make an informed decision, the voter needs to have reliable information about the financial resources of parties and candidates. Hence, the plea for as much transparency as possible.

The principle of transparency, however, cannot be easily categorized along the ideological dimension. Of course, transparency needs some action of the state (disclosure needs enforcement), but it can be combined with both a narrower and a wider conception of the state. This leads to a two-dimensional typology of political finance rationales:

	low level of transparency	*high level of transparency*
narrow conception of state	**1. closed libertarian** →	**2. open libertarian**
wider conception of state	**3. closed egalitarian** →	**4. open egalitarian**

Figure 1. Typology of political finance regimes

The dimension of state conceptions relates to the normative, ideological view that the state's role in enhancing fairness in electoral competition should be limited (narrow) or active (wider). The transparency dimension ranges from no transparency at all to full transparency. In recent decades, a general trend towards more transparency has been observed (the arrows in the figure), both in the narrower and the wider state conception. Theoretically, other shifts are possible as well, for example from the closed libertarian model towards the open egalitarian model. Countries without any form of state regulation of political finance may introduce transparency rules and egalitarian regulation at the same time, thus moving from regime 1 to regime 4. Another country may give up its efforts to reach a more egalitarian model of political finance, while introducing more transparency in order to let the voters judge, hence moving from regime 3 to regime 2. Countries can be ordered according to this typology, and a first effort will be made after we have described the most important reasons that are given for the introduction of public subsidies to parties and discussed some of the dilemmas lawmakers face in various western countries when dealing with regulations on state subsidy.

Reasons to introduce state subsidy to political parties

Public financing of political parties (and/or candidates) is now routine practice in many countries. The reasons lawmakers put forward to introduce state subsidy to parties are different, of course. Apart from the rather general reasoning that parties are instrumental in the formation of the political will in a democracy, and therefore deserve to receive money from the state, we will highlight some of the most frequently cited other reasons.

The example of Germany, already mentioned above, shows that events in the past strongly impacted upon the willingness to introduce state subsidies. As early as 1950, the professional organization of German lawyers advocated state subsidy to *fight undesirable influences on political parties*. It explicitly mentioned the important donations by corporations (like Thyssen, IG Farben, AEG and Siemens) to Adolf Hitler's NSDAP (Dragstra, 2008, 404). The idea was that state subsidy would make parties (and/or candidates) less inclined to look for other sources of income, that were considered to be undesirable, although not forbidden.

Fighting corruption is a second argument in favour of public funding (cf Koss, 2010). This is not the same as trying to prevent big donors influencing political decision making. As long as formal rules do not forbid donations from corporations or unions or rich individuals, such gifts do not fall into the category of corruption, except in cases of clear fraud (i.e. gifts in exchange to concrete political favours). The argument that public funds help to fight corruption is the following: parties are in permanent – and often increasing – need of money. Without enough help from the state, parties will be tempted to look for other resources, even if they are illegal, thus perverting the outcome of democratic elections. This kind of reasoning reveals a rather cynical, but in some cases no less realistic, view of the nature of parties: they would be prone to corruption if the financial need were high enough. Although a direct relationship between the level of corruption and the level of state funding is hard to assess (van Biezen, 2010, 70), it would be worth investigating whether this kind of reasoning is used more often in countries where the level of corruption is relatively high. In countries with a low level of corruption, the argument of introducing state subsidy to fight corruption is probably not very convincing. Political culture in these countries is likely to be one of 'rather bankrupt than corrupt'.

A specific problem linked to the problematic relationship between state funding and corruption is what I would call the *corruption paradox*. State funding is always accompanied by regulation, in some countries more than in others. The higher the level of formal regulation, the higher the chances of illegal practices. Rules that do not exist cannot be broken. Of course, various informal or moral rules may exist that can be broken, and corruption defined – by the World Bank – as '*the abuse of public office for private gain*' is not limited to cases in which formal rules are broken (sometimes formal rules can even be considered as tools for abuse of public office for private gains). What is meant here, however, is the idea that attempts to fight corruption by stricter regulation (possibly as a consequence of the introduction of state subsidy) may result in more cases of illegal practices. And illegal practices are generally conceived by the general public as corruption. To give an example: the political life of German chancellor Helmut Kohl was in serious trouble at the end of the 1990s, because he admitted to having received undeclared contributions for his party, but he refused to give the names of the donors. In his own words at the time:

> "These donors trusted me with this sum of money under the condition that they wouldn't be named. They were German citizens who had nothing to do with government decisions or policy in any sector. They wanted to help me. And I don't intend to reveal any names because I gave them my word."(Deutsche Welle, 2010).

Investigations followed, but the names of the donors and the exact amount of money remain unknown. The very refusal to disclose the names of the donors was against the law in Germany. If Kohl had been the prime minister in the Netherlands in the same period, a scandal might have arisen as well, but he could not have been accused of illegal practices, simply because the Dutch rules at the time did not contain an obligation to declare contributions.

A third reason for introducing state subsidy lies in the wish to *promote a level playing field* for all political parties and/or candidates (see also section 2). If resources are distributed unevenly between parties, state money may help to level out these differences. Perfect equality of political competition will never exist, but public money will at least make it possible for poorer parties to have a chance to reach the voters. This idea of fairness is reflected in the abovementioned judgment of the Canadian Supreme Court (Harper v. Canada, 2004), and was also an important reason for introducing public subsidy in the new Central and Eastern European democracies, immediately after the removal of the Iron Curtain. Without help from the state, the rich former Communist parties would have had a quasi-monopoly on the electoral market. Thus, state subsidies were meant to correct market failures (van Biezen and Kopecký, 2007). The same holds for various African countries where opposition parties have little financial power when the incumbent party has a majority position using state resources for its own benefit (Saffu, 2003).

Germany tried to go one step further. *Chancengleichheit* (equality of chances) has always been one of the main principles that guide German regulation of party finances, but in 1984 a very complicated system was introduced to compensate poorer parties for the fact that they would profit less from an increase in the tax deductibility of donations to parties. This system of *Chancenausgleich* (levelling of chances) was abolished again in 1992, because the German Constitutional Court ruled that it had created new inequalities, and hence was at odds with the principle of *Chancengleichheit* (Bundesverfassungsgericht, 1992, 264).

Dilemmas of regulating political finance in Western democracies

Decisions to introduce public subsidies and the accompanying regulation are further complicated by the effects lawmakers foresee or fear. State subsidy may have unwanted consequences, just like the absence of state subsidy. Not all of the possible unwanted consequences are guaranteed to take place. Uncertainty rules. State subsidy will indeed give parties more financial means, but will it – for example – also inevitably lead to the petrification of the party system? Even if this is not the case, legislators may not be sure about that or may have to reckon with possible allegations by political opponents that they intend to prevent new political parties from entering the electoral market. In other words, they are faced with dilemmas and they try to anticipate them. Thus, they are forced to concentrate on the possible effects of the intended legal measures, but in order to find a way out of the dilemmas they may rely on pre-existing ideological views. Here the recent scholarly emphasis on the independent variables (the reasons why specific types of political finance regimes emerge) meets the practical prominence legislators give to the dependent variables (possible effects of legal measures) when deliberating and deciding about political finance.

State Subvention and the Status Quo

In democratic systems, political parties through their representatives in parliament decide about laws, including laws on the state funding of parties.[5] This makes them vulnerable to accusations that they (too) easily decide on tax-payers' money for their own interests. Popular criticism of political parties often includes the alleged self-serving attitude of politicians and parties. Almost everywhere in the world, parties figure high on the lists of institutions that are perceived by the ordinary citizens to be corrupt (Transparency International (2007). Public subsidy for parties easily fits into this rather cynical view, even if state subvention itself is not corruption. Although individual politicians are not necessarily considered to enrich themselves, their parties are sometimes accused of 'legal theft' by using public money to subsidize their own organizations.

Apart from this popular – no to say populist – idea that parties and politicians tend to enrich themselves with tax money coming from 'hardworking citizens', a more general argument against state subsidy is often put forward: the danger of petrification of the party system (f.e. Alexander and Shiratori, eds, 1994; Pinto-Duschinski, 2001). State money may have the effect of preserving the status quo, which is difficult to reconcile with the ideal of equality (between old and new parties). This argument has been further developed in the thesis of the cartel party (Katz and Mair, 1995). The most discriminatory feature of the cartel party is the high dependence on public subsidies. If public funding is allocated in favour of incumbent and larger parties, it may become less easy for new and small parties to be successful in the political arena. Although the term 'cartel' suggest a conscious conspiracy among the larger incumbent parties to serve themselves to the detriment of the outsiders, which is hard to prove (Koole, 1996), the possibility of the suggested petrifying effect (or 'cartellization') cannot be excluded, although it has not been proven as yet. Legislators wishing to avoid accusations of serving only the established parties will have to look for conditions of state subsidy to parties that minimize this alleged effect.

Equality of Chances and the Freedom of Speech

As stated above, *Chancengleigheit* (equality of chances) is an important principle for German political finance. Under other labels (level playing field, fairness, equality), it also exists in other countries. In this respect, state activism by way of public subsidies or regulations about spending and expenditure limits is defended as a way to improve the fairness of political competition and the proper working of an electoral market.

Sometimes the equality of chances for parties is accompanied by the equality of chances for citizens. The introduction of direct subsidies to parties in Germany was the result of this combination. Not very long after tax deductablity of donations to parties had been introduced in 1954, the German Constitutional Court observed conflict with the principle of Chancengleicheit, because parties with rich members would profit more from this opportunity than parties with less wel-to-do people among their members, but also because the equality of citizens was at stake. The tax deductability of donations would give individuals with a higher income a greater say in politics than poorer people. This ruling led to an effort to introduce direct and general state subsidies to parties. Again, the Constitutional Court proved to be an obstacle. According to the Court, general subsidies are at odds with another principle, that of *Staatsfreiheit* (autonomy of parties). But it also ruled that the state is allowed to introduce state subsidy (on the basis of *Chancengleichheit*) to give relief from the specific costs of election campaigns, since those costs are directly related to the free and fair elections that are prescribed in the German constitution. The result was the *Parteiengezetz* (party law) of 1967.

In 1992, in yet another ruling, the Court changed its position and decided that state money was allowed not only to fight the costs of campaigns (*Wahlkampfkostenerstattung*), but also to be used by parties for general purposes, while at the same time the tax deductabilty of donations was abolished (Bundesverfassungsgericht, 1992).

In the United States and Canada, a completely different debate took place around the principle of equality of chances. In the USA the Federal Election Campagn Act (FECA) dealt not only with transparency, but also with the principle of fairness. After the Watergate affair (1972) limits on campaign expenditure were considered to be an adquate instrument to create a more level playing field. But the Supreme Court, in a famous judgment (Buckley v. Valeo - 1976), ruled differently. Limits on expenditure were seen to impose too great restraints on the freedom of speech. Spending money is a form of speech; important limits on it violate the First Amendment and are thus unconstitutional. The Supreme Court considered the idea of 'equality' in this respect 'wholly foreign to the First Amendment' (Persily, 2006).

The debate in Canada centred around the same dilemma, but with a different result. Expenditure limits in order to improve equality of chances also collided with the principle of speech, but in 2004 the Canadian Supreme Court – as we have seen above – accepted a more egalitarian view on political finance. Thus, while in Canada and Germany the principle of equality of chances (for both parties and citizens) leads the debate on political finance, in the USA freedom of speech is paramount.

Transparency and Privacy

The call for more transparency is not uncontested. The main argument against a high degree of openness is the donors' right to privacy. Does one have the right to do good by stealth? When exactly does the public interest in the disclosure of financial sources outweigh the individual's right to privacy? As stated above, in Canada and the United States, the individual right to privacy with respect to donations is limited. In Germany, on the other hand, the threshold above which donations must be disclosed is rather high.

The recent trend towards more transparency is clearly visible in some Scandinavian countries. Traditionally, in Sweden and Norway there was great resistance against the obligation to disclose donations (Van Dijk, 2009, 14-17). The right to privacy was strengthened by yet another argument: the autonomy of parties (see also the next section). The state was to refrain from any interference with the internal affairs of parties; even an obligation to account publicly for the way the very high state subsidies are spent was considered to infringe the organizational freedom of parties. In 2002, after much hesitation, in both countries independent committees of experts were set up. As a result, the transparency of political finance was put high on the political agenda. In Sweden this has not yet resulted in obligations to disclose donations above 20,000 SEK (ca 1,800 Euro) as the Swedish committee suggested; in Norway all donations above 30,000 NOK (approx 3,300 Euro) at the national level, 20,000 NOK (2,200 Euro) at county council level and 10,000 NOK (1,100 euro) at the local level have to be disclosed (Greco, 2009). The Swedish and Norwegian examples show that the transparency argument has gained salience over time, but this does not mean that all arguments against it have disappeared. In Norway, the importance of the autonomy of parties continues to be stressed, there are no conditions for how state subsidy is to be spent by the recipients.

State Regulation and the Freedom of Organization

All the above mentioned dilemmas touch upon the more general question of how compatible state regulation is with the autonomy of political parties. The Swedish and Norwegian hesitation in accepting rules on transparency comes close to the German principle of *Staatsfreiheit* (freedom from the state), which was the main argument for the Constitutional Court initially forbidding the introduction of general subsidies to political parties. In the North American continent, however, the autonomy of political parties does not figure prominently in the debate on political finance. Regulations on political finance are geared more to individual candidates than to party organizations.

Nevertheless, in all countries the state plays a steering role vis-à-vis political party organizations. Each electoral system has a profound impact on how parties organize. The debate, therefore, is not about *whether* the state has the right to influence parties, but about the *quantity* and the *domain* of influence. States need to have regulations on how general elections are organized; this is fairly uncontroversial. Every democracy has an electoral law. The contents of that law and of other regulations concerning candidates and parties, however, is often at the heart of political discussions, because it concerns the distribution of power.

The simple statement that 'free and fair elections' form the core feature of democracies in itself bears the seeds of many political quarrels. Free from the state? But is the state not needed to ensure fair elections? A special *Declaration on criteria for free and fair elections* issued by the Inter Parliamentary Union in 1994 holds that the state should be active on both fields. On the one hand, 'states should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation', and on the other hand 'in order that elections shall be fair, states should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.' (IPU, 1994) What exactly is meant by 'reasonable opportunities'? Is a (financial) level playing field necessary for "reasonable opportunities" to exist? The answer to this question is the quintessence of the debate on political finance.

As said, states always have a certain steering influence on the functioning of political parties, especially through electoral laws. But a consensus exists that this influence ought to be limited to the party *organization* (although of course not unconstrained), and not extended to the party *orientation*. Norway, which has always put great emphasis on the autonomy of parties, has now accepted some regulation relating to transparency, but on the condition that the freedom of orientation remains unchallenged, not only with respect to ideology and policy, but also in terms of control over the goals for which state subsidy is used.

In Germany, the concept of *Staatsfreiheit* remains very important, but its interpretation has changed over time. Before 1992, it mainly addressed the principle that the state should not intervene in the free formation of the political will. In 1992, the Constitutional Court used a broader interpretation. Parties need to be *staatsfern* (at distance from the state) and *bürgernah* (close to the citizens). As a consequence, parties must rely on citizens for a considerable part of their income, and state subsidy to them may not exceed the income of the party from all other sources. The Court's new vision has been interpreted as 'an obligation to ensure the anchoring of parties in society'.[6] Especially in Germany, where parties receive an enormous amount of money from the state, this new interpretation of the concept of *Staatsfreiheit* was not unexpected. Table 1 give an impression of the relatively high level of German (and Austrian) public subsidy.

Table 1: Direct public subsidies to political parties in selected European countries, 2008*

Country	**Total amount of state subsidy (in euros)**	**Number of inhabitants**	**Amount per capita (in euros)**
Germany	477,000,000	82,369,548	5.79
Austria	41,46,233	8,205,533	5.11
Belgium	19,85,560	10,403,951	1.89
France	74,22,853	62,150,775	1.20
Ireland	5,609,962	4,156,119	1.35
The Netherlands	15,446,167	16,645,000	0.93
United Kingdom	2,256,594	60,943,912	0.04

** Including subsidies for election campaigns and for ancillary organizations.*
Source: Lucardie, Voerman and Van Zonneveld (2010), 16. See also: Algemene Rekenkamer (2011), 21.

The information in this section about rules on political finance in various countries allows us tentavively to place those coutries in order according to the typology mentioned in figure 1: the United States in quadrant 2 ('open libertarian' regime); Norway and Sweden in quadrant 3 (closed egalitarian), although Norway has recently moved towards 4 (open egalitarian); Canada and Germany in quadrant 4. Of course, positions within a quadrant can also vary and change over time. A more detailed analysis of the Dutch situation may illustrate this. It will also show that a debate characterized at first sight by pragmatic argument is dominated by rather ideological orientations when inspected more closely.

A new Dutch law on political finance

The new Dutch law on party finance (*Wet Financiering Politieke Partijen* - Wfpp), which replaces the 1999 law on state subsidy to political parties (*Wet subsidiëring politieke partijen* – Wspp), deals with both state subsidies and the transparency of party finances. With the new law the Dutch government also responded to the very critical report of the Group of States against Corruption (GRECO, 2008), part of the Council of Europe, on the Dutch regulation on the transparency of party funding. The 1999 law was considered to be powerless with respect to enforcing the transparency of party finances. It took a rather long time before the new law was introduced into parliament, which in a sense reflects the traditional unwillingness in the Netherlands to regulate the life of political parties.

Dutch parties and constitutional law

In the constitution of The Netherlands, political parties are still not mentioned, notwithstanding the fact that in recent decades a 'hidden process of codification' has taken place (Koole, 1992). As well as the electoral law, all kind of formal stipulations were introduced, resulting in the aforementioned law on state subsidy for political parties (1999), but parties continue not to be mentioned in the Constitution. Several attempts have been made to change this situation. In 1954, for example, an official commission set up by the government concluded in its report that the absence of political parties in the Dutch constitution was an 'anomaly', and therefore 'the image of the Dutch political system in de Constitution is not real'. (*Eindrapport,* 1954, 55). The government, however, did not adopt the idea of repairing this 'anomaly'.

The traditional reluctance to give the state a more than minimal role when dealing with political parties is due to the long term predominance of protestant political ideas current in Dutch politics (including the parties ARP and CHU, which merged into the Christian Democratic Appeal in 1980). The protestant conception of the state (called 'sovereignty in its own circle') was one in which the state was only one among other 'circles' in society, albeit a special one. These circles were to stay aloof from each other as much as possible, thus granting each other as much freedom as possible. Even in 1982, Donner, an influential and eminent lawyer with an ARP background, said in this respect, 'Let us postpone official recognition of political parties as long as possible, because by nature law implicates regulation; and he who regulates also introduces limitations'

(Koole, 1992, 216). Liberals, who in general argue for a low level of state interference in societal matters, sided with this protestant reluctance.

Notwithstanding this predominant attitude, the Dutch parties have become subject to a growing set of legal stipulations. Of course, the electoral law has always had an important impact on the way parties organize themselves. As in other countries, the organizational structure of political parties generally reflects the way elections are organized. The local party chapter deals with elections to the municipal council, the regional party body with the provincial elections, and the national party organs with the national and (since 1979) the direct elections for the European parliament. The proportional electoral system (PR list system) equally has an important impact on how parties prepare for elections. In the electoral law, however, the term 'political party' is not used. Instead, the law mentions 'political groupings' next to individual candidates. By avoiding explicit mention of the term 'political party', the Dutch legislator allows non-party individuals to participate in elections by presenting their own lists of candidates; thus guaranteeing an open electoral system. At the local level, these personals lists are presented regularly, although they constitute a minority of the lists of candidates. At the supra-local level almost all lists of candidates are presented by parties, and not by individuals. One rather recent and well-known exception was the List Pim Fortuyn (LPF) during the national elections of 2002, when Pim Fortuyn was ousted from his party Leefbaar Nederland and immediately afterwards presented his own list for the impending elections.

Apart from the electoral law, other formal regulations impact on Dutch political parties. As early as in 1954 donations to political parties were tax deductible, since parties came to be considered as registered charities or 'institutions for the public good'. The rules on associations in the Civil Law also apply to political parties. Almost all parties are formally associations. That was also the case before 1989 when a change in the Electoral Law stipulated that henceforth parties could use their names or acronyms on the ballots sheets only of they were associations by law. As early as in the 1930s, political parties were allotted free time on the radio; since 1957 this has equally been true for (public) televisison. And from the 1970s state subsidy was given to political parties at the national level only, and destined for specific purposes: research institutes, educational institutes and youth organizations. All parties represented in Parliament were entitled to receive state subsidy, consisting of a fixed amount plus an amount that depended on the number of parliamentary seats. In order to receive these goal-oriented subsidies, special foundations had to be set up.

At the time, direct subsidy to political parties was still a bridge too far, because of the dominant view that the state should remain at a distance from the functioning of parties. Paradoxically, activities that had hitherto been carried out within the framework of the parties themselves were now taken care of by these affiliated foundations. Only money to fight the production costs of radio and television programmes in the free time on the public channels allotted to parties was given directly to parties.

In 1999 the Law on State Subsidy to Political Parties (Wspp) was introduced. The law introduced a basis in formal law for subsidies for research, educational work and youth programmes. The 1999 law introduced some changes. From 1999 onwards the subsidies were given directly to the parties. They continued to exist at the national level only and remained goal-oriented, but the list of goals was broadened somewhat (now also including: the maintenance of contacts with sister parties outside the Netherlands, information to party members, etc). Campaign spending was still explicitly excluded from state subsidy, for two reasons: 1. the risk of continual demands for extra subsidy because campaign spending tends to rise incessantly; 2. the state should stay aloof from the direct struggle for power at elections, and should concentrate on supporting other ways to reinforce the intermediary position of political parties (for example. subsidies for more specific goals). In 2004, however, this reasoning was abandoned, and from then on state subsidy could also be spent on election campaigns. In the same year the total amount of state subsidy to all political parties was raised from 10 million euros to 15 million euros.

From the very start, the 1999 law was critized for its vagueness in terms of transparency and enforcement. Various efforts were made to draft a new law. As stated before, the Greco report of the Council of Europe in 2008 put pressure on this process. In February 2011 the Netherlands Court of Auditors critized the Dutch government for being very slow in implementing the proposals suggested in the Greco report (Algemene Rekenkamer, 2011). Later that year a proposal for the new law on party finance (*Wet Financiering Politieke Partijen* - Wfpp) was submitted to the Dutch parliament. The new law was adopted by the Senate in March 2013.

The new law on party finance (Wfpp)

The new law is a combination of a subsidy law and a transparency law.[7] Especially, with respect to transparency, the new law includes somewhat stricter regulation. The main new elements of the law are: donations from both natural persons and legal entities to political parties, their affiliated organizations and/or individual candidates above 4,500 euro have to be made public; in-kind donations are subject to the same rule; a stronger regime of sanctions is imposed, including administrative fines of up to 25,000 euro; and political parties that enter parliament for the first time may use their state subsidy to pay for campaigns costs incurred before entering parliament. With respect to transparency and enforcement, the new law is more precise compared with the former one. But the Council of Europe will probably remain critical, because no independent enforcement agency is introduced (enforcement will remain the responsibility of the Ministry of Home Affairs, although an 'independent' committee of experts will be set up to advise the minister); no annual limits ('ceilings') for receiving gifts from the same donor are included in the law; and the new law only deals with political parties at the national level, leaving much room for the circumvention of rules via sub-national party branches.[8]

This modest result in terms of legislative progress contrasts with the eulogy on political parties in the explanatory notes to the bill. The reasons for granting public subsidy to political parties are worded as follows:

> 'Political parties are an essential and necessary condition for the functioning of democracy. They form the bridge between political decision-making and the citizens… A well functioning political party adds to a stable democracy. A future without political parties is difficult to imagine. Political parties voice the wishes and opinions of the populace, and – for the benefit of political decision-making – they integrally weigh distinct and often contradictory wishes and interests. They inform and stimulate voters to go to the ballot box in a well informed way, and they take care of the education of party members. The recruitment and selection for political functions is a special responsibility of political parties. The activities of political parties are done in the democratic interest. Because of these reasons the government furnishes subsidy to political parties'.[9]

Notwithstanding this appraisal, the Dutch goverment was faced with dilemmas. More far-reaching proposals like caps on donations, a lower threshold above which donations have to be made public, or the inclusion of sub-national party organs in the law did not reach the bill. The government explicitly refers to a dilemma between the completeness and consistency of the law on the one hand and its feasibility on the other.[10]

The argument of feasibility is often linked to the argument of avoiding too much red tape for parties. This reasoning was also useful to overcome ideological differences between several parties in parliament. For example: while the conservative-liberal VVD warmly agreed with the absence of caps on donations and with the general striving for a low administrative burden for the parties, the social-democrat PvdA wanted an annual cap on donations of 50,000 euro and a prohibition on gifts from abroad. The VVD clearly adhered to a narrow conception of state and the PvdA to a wider one. Common ground was found in the goal of more transparency.

One party, the PVV, clearly objected to the striving for more transparency. The party takes a 'closed libertarian' perspective on party finance and perceives the bill as an 'anti-PVV law', especially drafted to deprive the party of sources of income.[11] The PVV fears losing donors both from abroad (the United States especially) and in the Netherlands if their names are to be disclosed. The earliest proposals to sharpen the 1999 law in terms of transparency, however, were drafted long before the PVV was founded in 2005. And the irony of history is that it was the governmental coalition of the CDA and the VVD, which in a special construction was supported by the PVV, that finally sent the bill to parliament in April 2011. The bill, however, was no part of the governmental deal with the PVV, and therefore the CDA and VVD felt free to seek support from other parties for this proposal. That is why they stressed the importance of transparency (which is acceptable to all parties except the PVV), while at the same time staying as much as possible within the dominant paradigm of reluctance to intervene in party matters, which marries so well the ideological views of the CDA and the VVD. Parties with a wider conception of state were disappointed by the limited scope of the changes made by the law, but supported the adoption of the new law in order to avoid the continued existence of the much criticized 1999 law.

According to the government, the wish to increase the transparency of private financing of political parties was at the basis of the drafting of the new law in order to serve 'the purity of political decision making'.[12] When explicitly asked why this new law did not take into consideration the principle of equality, the minister answered in 2012 that the government had not opted for promoting a level playing field, because it considered transparency 'at this moment' to be sufficient and adequate: transparency makes it possible for a political party to be held accountable and it will possibly have a moderating impact on the size of a donation. Five years after its introduction an evaluation of the new law will take place, which will also go into the question of big donations, and eventually lead to changes in the law.[13] During the final debate in the Senate in February 2013, the new minister positively answered the question whether the principle of equality would be taken explicitly into consideration during this evaluation.[14]

Conclusion

Governments are confronted with dilemmas when introducing rules on party finance. Public subsidy to political parties and the wish for more transparency of political finance have considerably broadened state regulation of political parties. However, the intended goals of state measures are almost always linked to the possibility of unintended consequences of such measures. The resulting dilemmas confront lawmakers and courts with choices between, for example, giving state subsidy to existing parties and avoiding the preservation of the status quo, between transparency and privacy, between equality of chances and the freedom of speech, or between state regulation and the freedom of organization. The particular history of the legal treatment of political parties in a specific country reveals a dominant (ideological) view that impacts on the content of the choices to be made. These choices are to a large extent path-dependent, but developments such as decline in party membership, changing power relations within a country or growing international pressure for more transparency may influence decisions on party finance. Thus, the political finance regime in a specific country may change as well.

In this chapter particular attention was paid to the Dutch case. The Dutch tradition of aversion to state interference with political parties is still visible in the decisions of government and parliament on whether and how to regulate parties. Nevertheless, a gradual codification of Dutch political parties has taken place, although the Dutch constitution still ignores their existence. Also recently this process of codification was visible in the drafting of the new bill on political finance (Wfpp). When positioned in the typology of political finance regimes presented earlier in this chapter, the political finance regime of the Netherlands has consequently changed.

As figure 2 shows, the adoption of the new Dutch law on party finance (NL 2013) indicates that the Netherlands has moved in the direction of a more open regime of party finance, while hardly changing its intermediary position between an egalitarian and a libertarian regime of political finance. Pressure from the Council of Europe (Greco) helped to push the Dutch government in that direction, although the steps taken will probably not fully satisfy the Council.[15] The refusal of the government to consider the

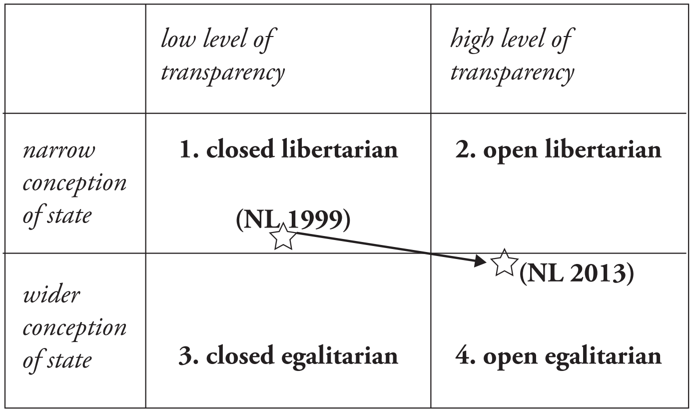

Figure 2. Typology of political finance regimes: position of the Netherlands

new law not only as a vehicle to promote transparency, but also as an instrument to advance a more level playing field in Dutch political finance corresponds to the abovementioned tradition. But the choices made by Dutch lawmakers with respect to the dilemmas of regulating political finance reveal the ideological centrist position between a narrower and a wider conception of state. State subsidy is given to all parties represented in parliament proportionally to the number of seats they hold, but with a slight advantage for smaller parties due to a fixed basis amount of subsidy. And the allocation of free time on radio and television on the public channels is equal for all parties, irrespective of their size. These measures reflect an egalitarian approach. On the other hand, the new law does not introduce caps on donations, while these donations are at the same time tax-deductable, thus revealing a libertarian perspective. Although the latter corresponds with the traditional reluctance of the Dutch state to interfere with political parties, the former shows that path dependency is not complete. This is equally true for the transparency dimension. The predominance of the philosophy of 'sovereignty within one's own circle' had already declined somewhat with the introduction of state subsidies in the 1970s. The new law takes an important further step: the obligatory disclosure of donations and its enforcement. But again this development stops at a rather centrist position: the disclosure threshold is relatively high (indicating the enduring importance of the argument of privacy), and the new rules do not (yet?) apply to the sub-national level. These results demonstrate the compromisory character of the Dutch political finance regime, which – after all – comes as no surprise in a country long known for its consensus-seeking political system.

Notes

1 Thanks to Ingrid van Biezen and Hans-Martien ten Napel; to the participants in the panel on *Regulating Party Finance* at the IPSA/ECPR Joint Conference, University of Sao Paolo, Brazil, February 16-19, 2011; and to the participants in the symposium on *Political Parties and Public Law: The Netherlands in Comparative Perspective*, Leiden, 25 June 2010, for their valuable comments on earlier drafts of this chapter.

2 Nassmacher (2001, 14) speaks about 'Political Funds between Freedom and Equality'.

3 Feasby (1999), following John Rawls, makes a distinction between 'equality of liberty' and 'absolute liberty': 'equality of liberty may be achieved by limiting the freedoms of the wealthy,' and 'this may be achieved only through State action', but this state interference 'must not impose any undue burdens on the various political groups in society and must affect them all in an equitable manner'. Thanks to Tanja van Dijk for showing me this last reference (Van Dijk, 2009, 22).

4 '*Die Parteien (…) müssen über die Herkunft und Verwendung ihrer Mittel sowie über ihr Vermögen öffentlich Rechenschaft geben'* art 21.1 German Constitution (*Grundgesetz*).

5 Note that state funding must be clearly distinguished from the practice of incumbent parties in some countries of using state money and state functions for their own organization and their own people. Corruption and patronage are illegal, or at least informal, practices that must not be confused with state subsidy based on formally adopted laws.

6 '*Gebot zur Sicherung der Verankerung der Parteien in der Gesellschafft'*, Schwartmann, as cited in Dragstra (2008, 354).

7 Wet financiering politieke partijen. *Staatsblad*, 2013, nr 93 (Wet van 7 maart 2013, houdende regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen).

8 Pressure from the Lower House in parliament resulted in the insertion into the law of a stipulation that parties that participate in national, regional and/or local elections must have internal rules on (the transparency of) donations (art. 34). These rules have to be made public, and also apply to the subnational party chapters. However, in December 2013 the minister announced to erase this stipulation, because the administrative burdens for the parties would be too high.

9 *Proceedings of Dutch parliament*, 32752, nr 3 (*Memorie van Toelichting*, 27 April 2011), p1 (my translation – RK).

10 *Proceedings of Dutch parliament*, 32752, nr 7 (*Nota naar aanleiding van het verslag*, 26 oktober 2011).
11 *De Volkskrant* (Dutch newspaper), 27 January, 2012.
12 *Proceedings of Dutch parliament*, 32752, C, p. 2, 13 July 2012.
13 *Ibidem*.
14 *Proceedings of Dutch Parliament*, 32752, nr 18, p. 2 (26 February 2013).
15 *Financiëel Dagblad* (Dutch newspaper), 17 juli 2012: 'Financiering partijen nog niet transparant'.

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