Michael Pinto-Duschinsky—written evidence (TUP0031)

President, Research Committee on Political Finance and Political Corruption,

International Political Science Association

1. This memorandum is presented in a personal capacity.

2. The author is an academic specialist on political finance. He appeared as a witness before the Committee on Standards in Public Life in its two inquiries into the funding of political parties in the UK in 1998 and 2010-11, was a consultant to the Committee in 2006-7 (on electoral administration) and (on political finance) in 2011. He has been a consultant also to multiple governments and international organisations on the topic, including most recently the Canadian Government, OECD and the Commonwealth Secretariat and previously to the European Union, Council of Europe, and the International Foundation for Electoral Systems. In the UK, he was an expert witness in a major political finance case on behalf of the Labour Party. A list of publications is available on request. In 2011-12, he was a member of the UK Commission on a Bill of Rights.

THE 2011 REPORT OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

3. Whereas the report of the Standards Committee in 1998 (the Fifth Report) commanded general agreement within the Committee itself and was then largely implemented by the incumbent Labour Government, the later report of 2011 was the subject of dissent both from the Labour and the Conservative representatives on the Committee (Margaret Beckett MP and Oliver Heald MP). In any case, as the current Chair of the CSPL Lord Bew, pointed out in the House of Lords, the passage of time since the report was researched in 2010-11 means that further empirical research is now needed.

4. Therefore, while the 2011 CSPL report deserves careful attention, it may reasonably be argued that - taken as a whole - it is not necessarily an adequate point of departure for ongoing discussions about a desirable package reforms of political finance. Certainly, it ought not to be thought of as an agreed formula. It is equally desirable to revisit the Committee's 1998 report and, in particular, the recommendation to provide incentives for small donations to political parties.

5. As part of its research in 2010-11, the CSPL carried out an exercised that modelled possible effects of different levels of donation cap on party incomes. The findings of such an exercise depend heavily on the assumptions fed into the model. These assumptions are themselves subject to considerable dispute.[See APPENDIX 1 below.] As I pointed out in a paper the CSPL commissioned from me on INTERNATIONAL COMPARISONS, research in the USA has indicated less damage to party income from donation caps than assumed both by the inquiry by Sir Hayden Phillips and by the 2011 report of the CSPL..

6. Among several areas of current dispute, two things are widely agreed:

(A) It is far more desirable for parties and candidates to raise funds through a very large number of small donations than through a small number of very large ones. (B) Pressures on party funds result to a considerable extent from their low and (in the medium term) steeply declining memberships.

7. Insofar as very large donations are - in my opinion, rightly - seen as undesirable, a cap on the size of permitted donations has been proposed as one legal remedy. There are considerable practical difficulties in enforcing donations caps. Moreover, if such caps apply to gifts to political parties and candidates alone, the likely effect is to divert big political gifts into new channels but not to eliminate them. Following the passage of PPERA in 2000, we may already be seeing the diversion of political money from parties to what may be seen as off-shore islands of parties: politically-oriented think tanks, lobbying and the political press.

This reality does not necessarily destroy the case for donation caps but it weakens it. Another way to encourage parties to raise money in small packets from a large number of donors is to provide legal incentives for small gifts. These may take the form of tax relief, tax credits or matching grants. As mentioned in Paragraph 4 above, we need only to look back to the 1998 report of the Committee on Standards to see detailed discussions about the topic.

8. Concerning state financial aid for the routine expenditures of parties, the overwhelming evidence is that it is seen by members of the public in most countries as undesirable but is predictably advocated by politicians and party professionals. Arguments for and against such state aid are fierce, complex and unresolved. Public subsidies are now commonplace internationally but their effects (for example on lessening corrupt practices and "policy capture") are uncertain; some subsidies have been eliminated in Canada, Italy and a few other countries. In any case,the current Government's stated opposition to public funding (expressed by the Prime Minister to the Committee on Standards in Public Life) means that state aid to parties in the form of routine grants appears to be off the table of discussion.

TRADE UNION POLITICAL FUNDS

9. The regulation of the political funds of trade unions in the UK has been a distinct, peculiarly British concern for over a century with repeated changes from "contracting out" to "contracting in" to "contracting out" once again (for Great Britain but not for Northern Ireland) and now, as proposed, back to "contracting in". [For regulations concerning trade union political donations abroad, see the author's 2011 CSPL paper INTERNATIONAL COMPARISONS.]

10. On the merits, there is much for the view that administrative procedures should not lead to union members contributing by default to a party they do not support. Moreover, the possible introduction of donation caps puts the contracting in/out issue in a new context and increases the case for "contracting in" in the interests of trade unions themselves. As the CSPL accepted in its 2011 report, there would be a strong case for regarding donations to a union political fund collected by the current system of "contracting out" as a single block donation and subject as such to the cap. If the cap were set at £10,000 a year, a union could not exceed this even if it had, say, 250,000 members contributing £3 each. By

contrast, if each union member contracted in, each donation could then reasonable be considered as a separate donation.

(For clarity, it should be noted that the term "contracting in" may bear two separate meanings: (1) contracting in to paying into the political levy fund, (2) contracting to any payment from that fund to a political party. It was in the latter of these two senses that CSPL spoke of "contracting in" in its 2011 report.)

11. Concerning the likely impact of a change to "contracting in" to trade union political levy funds, this is hard to predict since it would depend to a considerable extent on responses (at present unknown) to the change. Obviously, one might expect a drop in the numbers paying into political levy funds. In response, some unions might then increase the per-member payment rate or might direct a higher proportion of their political levy funds to the Labour Party.

12. Apart from the merits or defects of "contracting in" versus "contracting out", the Committee to which this memorandum is being presented has raised a broader question which is itself highly significant. Should a governing party introduce legislation that attacks (or appears to attack) a significant funding base of an opposing party? To what extent should the main parties strive to reach mutual agreement on the inevitably contentious rules concerning political funding? In setting out the questions it wishes to examine, the Committee refers to a "convention" that agreement been parties is obtained for changes in political financing laws.

13. In past correspondence with the CSPL as its consultant, I have stressed that political consensus is highly desirable when it comes to party funding reform. There are three limits to this. First, that may be a danger in some circumstances of mutual back-scratching by politicians. Victorious parties may be tempted to cushion the funds of their opponents in the hope that these opponents will be equally kind in the event of a future electoral victory. Second, there may be a public interest that is different from that of the parties. Third, there may be genuine differences of principle and judgement that cannot be resolved.

14. Over the past half century, there has been a mixture of partisan measures (attacks by Labour governments on corporate political donations in 1967 and 2000 and restrictions by Margaret Thatcher's Conservative administration on trade union political funds) and occasional cross party concessions on political finance legislation (for example in 1983 by the Conservatives on the size of election deposits and by Labour in 2009 on triggering of candidates' election expenses). This background suggests that cross party agreement is highly desirable but is not subject to a full blown constitutional convention.

15. By contrast, the Bill under discussion is subject to the Salisbury Convention since "contracting in" was a manifesto commitment of the current Government.

APPENDIX 1

Modelling of effects of donation caps on party incomes.

Extract from paper by Michael Pinto-Duschinsky on INTERNATIONAL COMPARISONS commissioned by the Committee on Standards in Public Life, August 2011

TABLE 14
Contribution limits in fourteen countries (in Pounds Sterling)

COUNTRY	LIMITS
Israel (2009)	- 178 per household to a party (non election year) - 356 per household to a party (election year) - 1,780 from a household to a primary election candidate (up to 5,340 in total to different candidates) - 7,120 to a candidate in a prime ministerial primary or primary for party chair. - 8,900 from foreign donors to primary election candidates
Belgium (2009)	- 438 each to parties and candidates up to a total of 21,014 per annum
Canada (2011)	- Up to 706 to a particular registered party - Up to 706 to the registered association, nomination contestants and candidates of a particular registered party - Up to 706 to an independent candidate - Up to 706 to contestants in a particular leadership contest - Third party election advertising: up to 1,925
USA (2011)	- An individual may give up to 1,522 to each candidate or candidate committee per election. See also Table 13
Iceland (2008)	- 2,178 (plus membership subscription of up to 727)
Ireland (2009)	- 2,223 to an elected representative or candidate - 5,559 to a party
Greece (2010)	- 2,627 to a candidate - 13,134 to a party (plus donations in kind plus membership subscriptions)
France (2009)	- 4,028 (or 20% of the permitted campaign spending limit) to a candidate - 6,567 per annum to agents of the same party or group or organisations dependent on it (plus membership subscriptions)
Poland (2008)	- To a presidential candidate from an individual 4,295 - To a presidential candidate from a "legal person" (company or union) 28,631 - To a party from an individual 4,581
Spain (2009)	- To an election campaign 5,250 - To a party 87,558 per annum - To a party foundation 131,337 per annum

Cyprus (2011)	- 7,005 from an individual to a party -17,510 from a limited liability company - 26,267 from a company listed on the stock exchange

Portugal (2010)	- To a party: 9,325 -To an election campaign 22,380
Latvia (2008)	- 19,963
Japan (2004)	- Individuals: up to 110,709 to parties and political fund organisations - Companies and unions: up to 554,046 to political parties and political fund organisations - Companies and unions: up to 276,719 to fund raising organisations

SOURCES: GRECO, except for Israel: Levush 2009; Japan: Ejima 2006, 138-139; USA: as for Table 13,. NOTE: currency conversion rates as of 30 July 2011.

How does the introduction of legal restrictions on donations affect party budgets? The director of the US Campaign Finance Institute, Michael Malbin, has argued that American experience indicates that they do not necessarily lead to a fall in party incomes. For example, when the McCain-Feingold Act of 2002 (the Bipartisan Campaign reform Act) stopped national parties from collecting "soft money", they were able to recoup the shortfall:

> When the McCain-Feingold law banned unlimited soft money to the national parties, everyone predicted the parties would end up with less money. But then the parties turned their attention to small donors and replaced all of the money they had lost."
> [Evidence to the Illinois Reform commission, 2009,
> http://www.cfinst.org/Press/PReleases/
> 09-03-17/Malbin_Testifies_In_Illinois_on_Contribution_Limits.aspx.]

In a report jointly published in 2010 by the Campaign Finance Institute, the American Enterprise Institute and The Brookings Institution, the authors presented the same case:

> [P]rior to the adoption of the Bipartisan Campaign Reform Act (BCRA) in 2002, national party committees could accept unlimited soft money contributions, which were the source of about half of the national committee's [sic.] funding ($496 million) [GBP] in the 2002 election cycle. in response to BCRA's ban on soft-money contributions, the parties had to focus on limited hard money contributions and especially emphasized the solicitation of small contributions as a means of replacing the sums formerly received in soft money sources. As a result, the parties added hundreds of thousands of new small donors to their rolls, and raised as much money through limited contributions in 2004 and 2006 as they had raised in hard and soft money combined in 2002 and 2002. (Corrado et. al. 2010, 35.)

These findings from the USA are relevant to the United Kingdom. A central argument of the review of party funding conducted in 2006-2007 by Sir Hayden Phillips was that the introduction of a donation cap would produce such a large shortfall in party incomes in Britain that it would need to be accompanied by a considerable amount of state aid if the parties were to be able to carry out their functions. Phillips' assumptions seem to have been unduly pessimistic and may have reflected a desire to justify the case for state aid. (See Phillips 2006, 5 and 46-48.) Modelling exercises such as those which appeared in Phillips' report are worth no more than the assumptions on which they are based and all too easily may be expressions of bias.

12 February 2016