Common Law with Uncommon Regulations: the influence of legal tradition on campaign finance regimes

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University of San Francisco

Common Law with Uncommon Regulations:
the influence of legal tradition on campaign finance regimes

An honors thesis submitted in partial satisfaction
of the requirements for the distinction of
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in the International Studies Department
in the College of Arts and Science

By

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Bachelor of Arts in International Studies (BAIS)
Completed December 20, 2021

Approved by:

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Abstract

Americans spent $11.4 billion in their last federal election cycle but collectively, the United Kingdom and Canada only spent a little over $550 million in their last general elections. These three states have similarities in democratic governance, economic legacy, and common law legal system grouping but how did they become so separated in campaign finance regulations? Prior research in the field of international comparative campaign finance law is limited and primarily focuses on using political theories to describe the movement of laws towards deregulation or regulation. This research seeks to find what influences the creation, preservation, and deregulation of campaign finance laws in these affluent Western states. Focusing on legal tradition, this research analyses the historical, institutional, and cultural components of law and society in each respective state. In tandem, this research uses textual analysis to look at every legally binding federal campaign finance law and judicial decision for each state is studied to see how legal tradition has affected trends of regulation or deregulation throughout the decades. Through this framework, this study finds that legal tradition has influenced three unique outcomes for the level of regulation in each state’s election finance regime. The United States’ legal tradition has invested considerable power in the judiciary, which has severely limited American legislators' ability to regulate elections. This judicial intervention and the legal tradition surrounding its power has resulted in severe deregulation of election finance laws. In the United Kingdom, a legal tradition of parliamentary sovereignty, an unwritten constitution, and a legal history of comity between legislators and the judiciary has resulted in a series of regulatory statutes that have not been weakened by other constitutional actors. Lastly, Canada’s legal tradition tells a story of political adversarial gain with both written and unwritten constitutions, parliamentary sovereignty, and weakened judiciary that has culminated in a back and forth of regulated and deregulated laws based on the leading majority political party.

These states all operate in the common law system but if we look at them broadly in just that category of organization, we are unable to note the differences that have influenced diverging trends in regulating campaign finance regimes. This research is the first in the field of comparative campaign finance legal studies to emphasize the importance of analyzing the cultural, historical, and institutional factors of each respective state. Without this lens, we are
unable to understand law as a social phenomenon and how these campaign finance laws are a part of a bigger picture that has been in the making for decades. Without this all-encompassing view of legal tradition, there is no way to determine if a law will stand institutional interventions or the test of time.

Acknowledgments

I would like to express my profound gratitude towards my family and my chosen family for their continued support and encouragement during the time I spent writing this thesis. I would also like to thank Professor Fisher-Onar for creating an amazing learning environment that allowed my thesis to truly come to life. Finally, I would like to extend my gratitude to Professor McBride and Professor Zartner, who both continuously inspire me to reach new heights in my academic endeavors.
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Introduction

Americans spent $11.4 billion in their last federal election cycle but collectively, the United Kingdom and Canada only spent a little over $550 million in their last general elections (Electoral Commission, 2020; Nickel, 2021; Evers-Hillstrom, 2021). How did these three states, with shared histories and economic legacies, become so separated in campaign finance regulations? Larger than the GDP of Mongolia, the United States 2020 election cost represents the amount of money that individual donors, corporations, and other third parties were legally permitted to invest into influencing the successful win of their preferred political candidate (The World Bank, 2021). This number becomes jarring considering that in 2000, these three states spent less than $1 billion collectively on their federal campaign cycles. Two decades and more than a 1000% increase in campaign spending paint a picture of failed campaign finance regulations meant to keep elections fair and accessible to the ordinary citizen (Federal Election Commission, 2005; Elections Canada, 2021; Electoral Commission, 2022). The purpose of this study is to understand how these three states got to this point of deregulation, or kept regulations up, and the factors that influenced this process.

Campaign finance regulations are extremely important in supporting the shared goal in democracies of keeping political equity balanced, as it is an integral part of any democracy. However, countries that are progressively more prosperous, partnered with a free-market economy, face the rising risk of allowing the asymmetrical distribution of wealth to share a greater influence on the political process. The unequal distribution of wealth among a population, which all three states in this study share, results in individuals with more capital having the ability to utilize their right to effective political speech greater than their peers with lower capital. If democracy is built on political equity, this system begins to decay when access to political liberties is no longer uniform but favors the affluent of a state. If allowed to use their mass amounts of wealth in election cycles, deregulated elections can essentially allow a few groups of people to set the stage to secure their success at the polls.

Current scholarly literature around the phenomenon of campaign finance regulations singles out one country to paint a picture of the logistical and legal challenges one state faces

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1 Cost of election data was collected and then aggregated after converting all currencies to US$. Original cost numbers for each state were: United States $14.4 billion, Canada C$612 million, and the United Kingdom £50.1 million.
when legislating campaign finance reform. In the arena of comparative law, scholars have produced research on similar states but use political science theorems to describe the motivations of lawmakers in deregulations movements. But little scholarship exists on how the historical foundations of law and society culminate in this Western arena of election finance regimes. This comparative literature also frequently focuses on deregulation as an innately American feature, a pitfall that could prevent further research on deregulation outside of the United States.

In order to better understand the issue of deregulation in campaign finance laws, this study uses the United States, United Kingdom, and Canada to comparatively analyze the current state of campaign finance regulatory bodies in these Western powers. These three states are used for their similarities in democratic governance, economic legacy, and common law legal system grouping. This study focuses on how legal tradition, namely institutional attributions, has affected the deregulation of campaign finance regimes in these states. To study this deregulatory movement, this research analyzes the laws, judicial decisions, and institutional regulatory actions that have affected campaign finance regulatory regimes over the years as well as analyzing the unique legal traditions of each state. Based on these findings, I argue that historical, institutional, and cultural components of legal tradition have led to the birth and nurturing of deregulation trends in America while differing legal traditions of the United Kingdom and Canada have opened the path to greater regulations in campaign finance regimes.

**Literature Review**

This study positions itself in the ever-expanding field of comparative law literature supplemented by the vast works on campaign finance law that uses political science methodologies. This study builds on the subsection of comparative law scholarship that uses legal history and an emphasis on the socio-cultural aspects of law. Then, this study uses the limited and mostly dated literature on international legal comparative studies that focus on campaign finance laws to gather background information on previous studies on this topic. However, this exposes a gap in prior research that does not consider legal tradition and its impact on modern-day campaign finance regimes in their respective states. Finally, the topic of campaign finance regulations is ever-changing and as such, this study uses political science

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2 The identified main categories of legal systems include: common law systems, civil law systems, Islamic law systems, East Asian law systems, and mixed legal systems.
studies on campaign finance laws in order to gain a greater knowledge of the structure of such laws and regulatory bodies in order to properly analyze the strength of present-day regulations.

What We Can Learn From Political Science Literature

The bodies of literature on campaign finance are vast and complex. While the majority do not use a comparative law methodology to draw conclusions, they are nonetheless extremely useful in providing resources to understand dynamics of campaign finance that are, for the most part, unchanging in importance. This study will utilize prior scholarship in key areas to provide a foundation into the less researched comparative aspect of campaign finance laws. First, defining exactly what deregulation of campaign finance systems is of utmost importance. This research uses Boatright’s definition of deregulation as, “a reduction in legal constraints on private actors and a reduction of the role of government in making decisions or providing financial support” (Boatright, 2015). This definition also coincides with economic literature on the topic of deregulation (Sanderson, 2008; Rose, 2014; Jaeck & Kim, 2018). Using this framework, deregulation of campaign finance systems would be the act of removing established regulations or “rendering these activities more market-like” through legislation, judicial decisions, or other institutional legal bodies like rulings from the Federal Elections Committee in the United States that are legally binding on parties spending capital in elections cycles (Boatright, 2015). Legal studies methodologies also take into account that deregulation of campaign finance laws is relative to the respective state’s legal system and precise levels of how regulated a system is hard to measure (Boatright, 2015; Dwyre, 2015; Skahan, 2018). To aid in this quandary, prior research done by Hunker and then built upon by Wood produced effective matrices for evaluating the strength of a state’s campaign finance regulations. This study will use these matrices that use the position and authority of disclosure requirements, contribution limits, expenditure limits, and public funding vis-a-vis codified laws to help draw conclusions on the level of regulation a state possesses (Hunker, 2013; Wood, 2021).

The current state of political science literature in the field of election finance uses several theoretical approaches to analyze and describe the trend of campaign finance regulation in a particular state. It is important to note here that these literatures tend to use these theories to describe one single state and rarely do they engage in comparative work across borders. These political science theories include cartel, party advantage, normative institutionalism, elite
discourse, and growing out of the system theory (Naßmacher, 2006; Scarrow, 2004; Dalton, 2007; La Raja, 2008; Franz, 2012; Boatright, 2015). For example, the Cartel theory was created by German political scientist Karl-Heinz Naßmacher. In this highly popularized theory, political scientists explain how campaign finance systems become more regulated as a result of public financing of campaigns allowing for the provision of funds to be more widely available to those in dominant parties. With this theory, political parties form ‘cartels’ and seek to further regulate political finance in order to cement their position in the political system (Naßmacher, 2006; Katz and Mair, 2018). While these theories offer an informative framework for understanding and analyzing the state of contemporary campaign finance regulations, they do not connect these understandings to legal tradition or historical foundations. This limits their ability to describe past movements and trends as well as limits political theorists to analyzing specific groupings of states. For example, the Cartel theory does not aid in explaining the American campaign finance system because they do not have a public financing system as prominent as some European states. These theories also explain why a state’s regulation might be in a certain position but do not offer research on how a state got to this position and what historical, cultural, or institutional factors might have led to these outcomes in regulatory strength.

**International Comparative Law Literature’s Role**

This study adds to the growing body of literature that emerged in the community of legal comparatists in the 1970s, emphasizing culture in the form of law and society studies (Weber et al., 1968; Friedman, 1969; Ehrmann, 1976; Obiora, 1998; Fletcher, 1988). Situating this study in the diverse field of comparative law allows this research to use methods and theories of comparative law, legal history, and socio-legal studies in order to analyze the complex legal nature of campaign finance laws.

Focusing on an international comparative legal studies approach to evaluate the historical influences on modern campaign finance regulations, this research takes notes from prior work on the subject of comparative law by notable international legal comparatists like Cotterrell, Zartner, Glenn, and Örücü. These works have carved out a space in academic authorship for an emphasis on comparative law that focuses on social and cultural understandings of law as the cornerstone of society, separating itself from research that uses an ideology of comparing substantive laws without much background. This study builds off of Örücü’s prior research of
mixing the methodologies of legal history and comparative law in an “effort to offer an understanding of, and an explanation for, the development of the law and to help justify future legal development utilizing law reform through the use of foreign models…” (Harding & Örücü, 2002; Cotterrell, 2019).

Borrowing from the expanding field of socio-legal comparative research, this study focuses particularly on the concept of legal tradition which encompasses legal culture as well as institutional attributions. The term ‘legal tradition’ has been used for decades, especially in Western thought, in order to separate and group legal systems. In recent decades, research has evolved to include culture as a part of a state’s legal tradition (Riles, 2019). This study uses Zartner’s definition of legal tradition as “the set of deeply rooted, historically conditioned attitudes about the nature of law, the role of law in society and the polity and the proper organization and operation of the legal system in existence within a state” (Zartner, 2014). Using this definition allows for the term ‘legal tradition’ to be an all-encompassing term that includes legal culture. Depending on the community, legal tradition can be based on judicial decisions (like in common law systems) or it may be based heavily on religious beliefs (like Islamic law systems). Legal tradition is much more than legal institutions, “it also encompasses the legal culture, which develops within a state based on the historical foundations of the law and the society's perceptions about the appropriate role of the rule of law” (Zartner, 2012). Koszowski helps define culture and tradition in legal anthropology as a set of “convictions, beliefs, principles, precepts, or values lasting in time and ascribable to a specific community or society” (Koszowski, 2014). Although some scholars disagree with combining legal tradition with culture in the fear it poses epistemological conflicts (Glenn, 2004) further research argues that there is no such conflict and uses legal tradition as an all-encompassing feature of systems, cultures, traditions, styles, mentalities, and families of law (Hoecke, 2006; Varga, 2007; Husa, 2012; Koszowski, 2014; Cotterrell, 2019).

The Gap in Research

The bodies of literature that use an international comparative legal focus on evaluating campaign finance laws are extremely limited. In the last two decades, there have only been three publications that use this methodology (Hunker, 2013; Skahan, 2018; Ringhand, 2020). Most notably, Hunker and Ringhand’s study only uses the case studies of the United States and the
United Kingdom while Skahan also adds Australia to their study. While these studies evaluate the strength of current regulation and recent deregulatory movements, they each rely on political theories to describe the movement of laws towards deregulation or regulation. This has created a niche in the field that leaves out the socio-cultural aspect of how legal tradition shapes institutional, judicial, and legislative actions towards a state's body of campaign finance laws. This study will address this niche while simultaneously adding to the available literature that defines legal tradition with an emphasis on culture and legal history in order to understand how states adopted deregulated political campaigns today. These lessons will also give foresight into the future of campaign finance regulations and possible trends to come out of these Western common law states.

**Methodology**

This study uses the textual and historical analysis of campaign finance laws in the United States, United Kingdom, and Canada as the basis for its exploration into the topic. This methodology was used because law has an inherent written significance, and this methodology allows this study to find how these campaign finance laws connect to a broader social, political, and cultural context. For each respective state, campaign finance laws are defined as any piece of legislation, judicial ruling, or institutional rules that were legally binding on individuals or groups participating in a political campaign. For example, in the United States, this includes laws enacted by congressional bodies, presidential executive orders, legally binding rulings or precedents from judicial courts as well as rules and guidance from the Federal Elections Commission. This study collects and analyzes all currently available campaign finance laws in each respective state that were actively legally binding at the time of this study (June 2021). This methodology and strategy of collecting data is especially important in the field of campaign finance laws because of the volatility of these regulations that face continuous review and deconstruction. It is also important to note here that this study focuses on national or federal campaign finance laws in these states. For example, research was only conducted on laws and regulations that concern national elections in Canada but does not include provincial laws that are binding on local elections. To hone the scope of this study, national laws are studied in order to make a comparative study of three states more contained and relevant.
It is important to note that I am approaching this topic of campaign finance regulations with a critical lens. Some scholars debate whether spending capital on political campaigns is a part of free speech rights, and while this article does not study the link between residual rights and uses of wealth, this article does support the view that democratic political campaigns should have the goal of maintaining political equity and access to these democratic processes should be equal. Positioning this work within the interdisciplinary field of international comparative legal studies allows for data collection from multiple states in order to limit biases to one particular state.

The United States, United Kingdom, and Canada were chosen for this study because of their similarities in democratic governance, economic legacy, and common law legal system grouping. Most importantly, this study looks in-depth into legal tradition, and because of this, it was vital to maintain that each state be a part of the same legal system in order to make any comparisons worth drawing conclusions from. In a comparative study, the goal is to keep as many of the independent variables similar in order to draw conclusions that are relevant and accurate to each state. The three states chosen are a part of the common law tradition. This provides a foundation for comparisons to be made as each of the states share a common historical legal beginning from law that was developed and disseminated by the British. This also allows for similar textual analysis of the same sources as common law systems are generally uncodified and rely on judicial precedent.

By studying these particular states, this research will uncover trends and historical reasons for campaign finance deregulation or further regulation in three common law Western powers. Therefore, this research should not be applied broadly to other states that have different, but still rich and diverse, legal and cultural backgrounds. Lastly, by focusing on common law legal systems, this study does not support the notion that this legal system is superior to others.

Discussion

The remainder of this article will provide an in-depth discussion surrounding the effects and influences of the legal tradition on campaign finance laws in each respective state. In order to accomplish this, it is paramount that each respective state’s legal history and cultural attributions to the behavior surrounding law itself be summarized in order to understand the
long-lasting outcomes of legal tradition. As previously defined, legal tradition is the culmination of historically conditioned attitudes about the role of law in society and how these attitudes affect rules and institutional responses to issues and events. As such, this critical reflection of legal history and culture supports the idea that law is a social phenomenon.

This section will be devoted to summarizing the legal tradition of each respective state with an emphasis on factors that provide a direct correlation to campaign finance law and their vulnerability in legal institutions. For each state, it will first provide a brief legal background on the origins of their legal tradition. It will then go on to provide a consolidated and brief history of campaign finance laws in each country. This information will be used to understand the “Findings” section which will talk about the culmination of historical legal tradition’s influence on present-day campaign finance reform.

While this section will not be able to cover the entirety of each state’s legal history, it will include all relevant factors that have led to changes in campaign finance laws and regulatory bodies throughout the decades of their existence.

The Legal Tradition of the United Kingdom

In this exploration into legal tradition, starting with the United Kingdom is important as England laid the foundation for the common law system. This all dates back to 1066 AD, when the Prince of England controlled Normandy after much time of combat. Not wanting to leave Normandy in fear that England would lose its grasp on the territory, the prince put officials in charge of England. During this time, England was comprised of many different rural communities and villages that all handled legal matters differently within their respective territories (Daniels, 2011). In hopes to centralize their kingdom, these English officials surveyed the legal norms of these varying communities and common laws became codified. To further centralize the rule of law, officials traveled around the country in order to hear different legal disputes. These judges were made up of a circuit that applied the laws in order to prevent discrepancies (Gonzalez, 2019). These common laws spread around the world as England colonized different regions and seeded these laws imposing a legal system on states such as the United States and Canada (Daniels, 2011).

The United Kingdom has a rich and long legal history that has resulted in the current legal system that governs the rule of law. For most common law states, legal comparatists tend to
look at the constitution that established the powers of the government in a respective region, but the United Kingdom has no written constitution. Unlike states like Canada and the United States, the United Kingdom had no deliberate act of state creation through the ratification of a canonical document (Goldsworthy, 2010). Instead, the United Kingdom is defined by an ‘unwritten constitution’ which is a combination of “statutory enactments, judicial decisions, constitutional conventions, and institutional functions” (Edlin, 2016). Being one of the oldest Western legal systems, it is vital that this section takes a closer look at the legal history of the United Kingdom in order to show how current views of the rule of law and its institutions have developed into a rich legal tradition.

Up until the sixteenth century, the history of English laws and governing bodies is clouded by the lack of written records on the thought process of legislators. We do know that early documents like the *Magna Carta*, *Leges*, *Mirror of Justices*, and *Modus Tenendi Parliamentum* created the early forms of a written constitution for the United Kingdom and have even been called the “ancient constitutions” (Greenberg, 2001). Up until modern times, the kingdom of England was ruled by three powers: the monarchy, parliament, and the courts (Hanson, 1970). Throughout the early legal history of England, it has depicted English law as the product of royal authority. The *Britton*, known as one the earliest summaries of the law of England (circa the thirteenth century), noted that English law was the King’s law, and the judges were his servants (Tubbs, 2000). The power of the monarchy was immense but also trickled down to the parliament as the representatives of society, this can be seen as the beginning of a shift towards parliamentary sovereignty over the rule of courts. This is supported throughout history with events such as the 1388 trial of Richard II’s treason as the Lords declared that a crime so serious must be taken to the parliament instead of the judicial courts for a ruling (Wilkinson, 1952). This is compounded when in 1454, the judges noted that the ultimate knowledge of law “belongs to the Lords of Parliament, and not to the justices” (Chrimes, 1936).

Over time, England’s parliament began to take more power as the sovereign legal authority in the United Kingdom. During the eighteenth and nineteenth centuries, the political theory of parliamentary sovereignty emerged in legal thought (Burgess, 1992; Greenberg, 2001). This theory understood the acts of parliament as not derived from customary law but as intrinsic in nature and authority. In the eighteenth century, William Blackstone, an influential professor of English law and judge, wrote that the legislature was created by “an original contract, either
express or implied,” entered into by “the general consent and fundamental act of the society” (Blackstone, 1897). The power of the parliament that superseded the power of parallel branches of government was ultimately displayed when Henry VIII could not voluntarily abdicate himself of the crown without an act of parliament enabling him (Dwight, 1992; Hale, 1976).

This rich and long legal history tells the story of a slow but steady takeover of the United Kingdom’s Parliament. This parliamentary sovereignty is one of the defining features of modern English legal tradition. Custom is what binds and gives power to Parliament’s moral authority that is continued to be respected by the judiciary today (Edlin, 2016). The United Kingdom Parliament’s legislative sovereignty does not derive from judge-made law and therefore cannot be entirely limited by the exercise of judicial power (Austin, 1998; Perry, 2006). In the case of the United Kingdom's unwritten constitution, this parliamentary sovereignty gives great influence on the Parliament to ultimately determine the function of the Constitution as its power cannot be superseded in most cases (Goldsworthy, 2001). This also means that the United Kingdom’s legal tradition does not include constitutional rights as without a written constitution, they may be altered by Parliament at any time through ordinary legislation (Leyland, 2016).

This legal tradition is built on the historical stability of the United Kingdom’s legal system and constitutional system. This series of stability and custom contributes to the legal culture of trust in the rule of law and its governing authorities. This can be contrasted with the American legal tradition that highlights the mistrust in governments and its use of extensive checks and balances for each branch of government. The strong stability of the United Kingdom’s Parliament has been able to continue into the present day because of the “reluctance of English courts to refer to legal constraints on Parliament’s authority” (Perry, 2006). This can be further referenced in Dicey’s modern articulation of the two core principles of the United Kingdom's constitution:

“Two features have at all times since the Norman Conquest characterised the political institutions of England. The first of these features is the omnipotence or undisputed supremacy throughout the whole country of the central government… [This] supremacy has now passed into that sovereignty of Parliament… The second of these features, which is closely connected with the first, is the rule or supremacy of law” (Dicey, 1915)
In addition to the historical, cultural, and institutional framework outlined above, Table 1.1 outlines the campaign finance laws of the United Kingdom that act as binding rules on campaigns for national political elections. Table 1.1 showcases how this state’s legal tradition has resulted in the enactment of several pieces of legislation from parliament that aim to regulate their election finance system. The following provides all legally binding rules that concern election finance policy up until July of 2021.

<table>
<thead>
<tr>
<th>Year</th>
<th>Law/ Court Case</th>
<th>Major Election Finance Policy Change</th>
<th>Deregulatory or Regulatory?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1883</td>
<td>Corrupt and Illegal Practices Prevention Act</td>
<td>Criminalized bribes to voters; standardized the amount of money that could spend on elections; standardized what election funds could be spent on</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2000</td>
<td>Political Parties, Elections, and Referendums Act</td>
<td>Regular declaration of donations; a ban on foreign donations; limits on national election campaign expenditure; a standardization of the starting point for the regulation of candidate election expenditure</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2006</td>
<td>Electoral Administration Bill</td>
<td>Closed the loan loophole campaigns were using to get around financial declaration requirements</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2009</td>
<td>Political Parties and Elections Act</td>
<td>Required individual donors to provide UK residency; required individual donations in excess of £7,500 to declare that the donation is from a person (rather than a third party); implemented two campaign periods which increased spending limits overall; raised minimum reporting thresholds for donations to parties</td>
<td>Mostly regulatory; increasing spending limits &amp; raising reporting thresholds can be seen as deregulatory from previous</td>
</tr>
</tbody>
</table>

3 The Elections Bill of 2021 was introduced to the House of Common on July 5, 2021 but has yet to be voted on and is therefore not law and will not be included in this table.

4 The 1998 court case, Bowman v. United Kingdom is not included in Table 1.1 because its ruling was based on the European Convention on Human Rights. Either way, the Supreme court held that campaign spending limits were permitted based on the charter, so there were no major election finance policy changes.
The Legal Tradition of the United States of America

The American legal system is a descendant of institutions and ideas that arose in early England. The legal history of the United States starts to deviate heavily and form as its own as the struggle to succeed from the control of Great Britain began (Friedman, 2019). The American Revolution, to this day, lays the foundation for American society’s shared perceptions on the role of law and how it interacts with political institutions such as elections. The first evidence of this can be found in the American constitution. This constitution cements the common law system as its legal system with features like adversarial courts and judicial precedent. The American constitution grounds its authority not on a monarch but on ideas of freedom and individual rights. The founders of the American legal system took heavily from the Enlightenment era and focused on creating a civil system that protected individual rights such as ideas of liberty and property (Grossberg, 1988; Howe, 1989). These early ideas that were conceptualized and later codified into the American constitution and subsequent bill of rights, established the early foundation of American legal culture. These legal documents had the shared emphasis and aim of creating a society that protected the interests of the individual rather than other legal traditions that focus on the community (Rogoff, 1997).

The American constitution holds an almost holy symbol status in a legal and cultural context of American society (Grey, 1984). This framing document continues to have far reaching power over the branches of government and the judicial actions courts can take which correlates to modern society’s continuing view on the importance of this legal document. The constitution has gone through few major changes and hasn’t had an amendment in over three decades. Its historical struggle through the American Revolution to be ratified is indicative of the language used to write the constitution (Shain, 2018). The document is premised on the idea that the
government cannot be trusted due to the difficulties in gaining adequate representation during English rule. To ensure individual rights and the ideas of life, liberty, and property were maintained, the Founding Fathers enshrined protections in the constitution that have far reaching implications for today’s laws. For example, the Founders feared that Congress would seek to enlarge their power and use it to silence political minorities. Because of this, they enshrined overarching protections for the right of free speech, protecting it from legislative manipulation (Hunker, 2013).

This mistrust in government continues to be displayed in American legal tradition with considerable checks and balances from all branches of government. Particularly, this legal tradition fosters an increasingly competitive struggle between Congress and the courts as a further restraint on legislator’s power (Stone, 1936). This legal tradition includes extremely strong powers of review for the judiciary. This has led to the courts, most importantly the Supreme Court, to assert themselves in legal battles concerning legislation from Congress or presidential actions, especially in cases concerning campaign finance laws. This allows the Supreme Court to deem language in legislation or entire bills as unconstitutional, essentially weakening the legislation’s legal authority. This legal tradition not only emphasizes judicial review but also binds the courts to the doctrine of *stare decisis*, the legal principle of binding precedent, which has the ability to constrain further legislation on a specific issue area (Chafetz, 2012; Zartner, 2013).

The Executive, Legislative, and Judicial branches of the United States are affected by the power struggle that is the continuation of this shared legal tradition. This legal tradition highlights the historical, cultural, and institutional attributions that have modern influences on the creation and further deregulation of campaign finance laws in the United States. Below, Table 1.2 outlines the laws and many judicial rulings that have had a major impact on election finance policy in the United States. Table 1.2 is evidence of the strength of judiciary in American legal tradition and highlights the deregulatory nature of American judicial rulings on campaign finance structures created by the legislature.
<table>
<thead>
<tr>
<th>Year</th>
<th>Law/ Court Case</th>
<th>Major Election Finance Policy Change</th>
<th>Deregulatory or Regulatory?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1907</td>
<td>Tillman Act</td>
<td>Prohibited monetary contributions to political campaigns by corporations and banks.</td>
<td>Regulatory</td>
</tr>
<tr>
<td>1916</td>
<td>United States v. U.S. Brewers’ Association</td>
<td>Upheld the constitutionality of the Tillman Act.</td>
<td>No change</td>
</tr>
<tr>
<td>1939</td>
<td>Hatch Act</td>
<td>Prohibited civil service employees from engaging in forms of political activity.</td>
<td>Regulatory</td>
</tr>
<tr>
<td>1947</td>
<td>Taft-Hartley Act</td>
<td>Requires unions to disclose their financial and political activities.</td>
<td>Regulatory</td>
</tr>
<tr>
<td>1971</td>
<td>Federal Election Campaign Act (FECA)</td>
<td>Imposed restrictions on the amount of monetary contributions that could be made to political candidates; mandated the disclosure of contributions and expenditures in political campaigns; outright ban on corporate and union contractions to campaigns.</td>
<td>Regulatory</td>
</tr>
<tr>
<td>1976</td>
<td>Buckley v. Valeo</td>
<td>The Supreme Court held that limits on election spending in FECA were unconstitutional.</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>1986</td>
<td>Federal Election Commission v. Massachusetts Citizens for Life, Inc</td>
<td>The Supreme Court ruled that the prohibition on corporate expenditures is unconditional</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2002</td>
<td>Bipartisan Campaign Reform Act (BCRA)</td>
<td>Amended previous legislation to prevent ‘soft money’ funding to political parties that were used to circumvent FECA contribution limits.</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2007</td>
<td>Federal Election Commission v. Wisconsin Right to Life</td>
<td>The Supreme Court held that issue ads may not be banned in the time frame before a federal election.</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2008</td>
<td>Davis v. Federal Election</td>
<td>The Supreme Court held that multiple sections of the BCRA that concerned public funding and limiting self-financed</td>
<td>Deregulatory</td>
</tr>
</tbody>
</table>

There are more than 18 court cases in active litigation involving the Federal Election Commission that are not included on Table 1.2 because they have yet to be decided and thus, do not offer any binding precedent.
<table>
<thead>
<tr>
<th>Year</th>
<th>Case</th>
<th>Description</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>Citizens United v. Federal Election Commission</td>
<td>The Supreme Court held that the free speech clause of the First Amendment prohibits the government from restricting independent expenditures for political campaigns by corporations, nonprofit corporations, labor unions, and other associations.</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2010</td>
<td>SpeechNow.org v. Federal Election Commission</td>
<td>The Court of Appeals for the District of Columbia Circuit held that FECA’s limits on individual contributions violated the First Amendment; removed contribution limits on independent expenditures.</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2012</td>
<td>American Tradition Partnership v. Bullock</td>
<td>The Supreme Court upheld the findings in Citizens United v. Federal Election Commission and extended protections for political speech by reversing the Supreme Court of Montana’s decision</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2014</td>
<td>McCutcheon et al. v. Federal Election Commission</td>
<td>The Supreme Court held that aggregate limits on the amount an individual could contribute to federal candidates in a two-year period was unconstitutional.</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2016</td>
<td>Van Hollen v. Federal Election Commission</td>
<td>The Court of Appeals for the District of Columbia upheld previous interpretation that the FEC had the authority to define contributors.</td>
<td>No change</td>
</tr>
<tr>
<td>2021</td>
<td>Americans for Prosperity Foundation v. Rodriguez</td>
<td>The Supreme Court struck down a statute requiring charities to reveal donors to political campaigns.</td>
<td>Deregulatory</td>
</tr>
</tbody>
</table>

**The Legal Tradition of Canada**

As seen above, the common law tradition has developed in different ways in the United Kingdom and United States because of the uniqueness and diversification of their respective legal histories and cultures. The English legal tradition advocates for a traditional model of parliamentary sovereignty to maintain the protection of individual rights while the American legal tradition favors the model of judicial review with additional constitutional checks. These two options represent both ends of the spectrum in the common law tradition. On one end of the

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6 McConnell v. Federal Election Commission is not included in Table 1.2 because it’s decision was completely thrown out by Citizens United v. Federal Election Commission
spectrum is the United Kingdom’s model of parliamentary sovereignty while at the other end is American judicial review. Canada’s legal tradition places the state right in the middle of these two divergent states. Recently, Canada, along with a few other common law jurisdictions like New Zealand, have adopted hybrid models of governance (Edlin, 2016). This model allows for the courts to have a responsibility to protect individual rights without forgetting the principle of parliamentary sovereignty. This ‘middle way’ also extends to their constitution as it is made up of written and *lex non scripta*, or unwritten law (Walters, 2001).

To explain this path, we must first look at the unique legal history of the state. Though much shorter than the United Kingdom’s, this state offers an interesting legal system influenced greatly by their past. During the age of exploration and colonization, the French laid claim to areas in Canada in the 1530s (Greer, 2019). However, in 1763 France ceded the territory of Canada to England through the Treaty of Paris. Here, the British gained control of Canada but with a large French population in what is now Quebec. This population respected the French civil law tradition. In order to guarantee a smooth transition to English imperial rule, the British parliament enacted the Quebec Act (Tierney, 2011; Jukier, 2018). This seminal moment in Canadian legal history marked the beginning of its bifurality7 as the bill dictated the application of French law in private matters in Quebec (Brierley, 1992). It is important to note here that this bifurcation is only applicable to the province of Quebec’s private law disputes and is therefore subjugated to the supreme rule of the federal common law system (Jukier, 2018). Because of this, civil law tradition is not used to decide federal campaign laws but this event is still pivotal in Canadian legal history, and as such, important to include to provide context to the fluidity of their constitution in comparison to the United States’ Constitution.

The constitutional development for the state of Canada has been a long process that marks its uniqueness from the independence movement of other British colonies like the United States. In 1867, the British and Canadian parliament passed the British North America Act which allowed Canada to become a self-governing entity within the British Empire (Mezey, 1983). This act marks the beginning of what we know as “Canada” and acted as the ruling constitution of the land. However, this act did not establish Canada as fully independent; rather the United Kingdom

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7 Canadian bifurality refers to the coexistence of civil law and the common law in Canada. This legal instrument allows laws to be applied to different legal systems (i.e bifural legislation). The legislation enacted by the national Parliament is bifurcal and must be applied to the civil law system of Quebec as well as the common law provinces.
retained legislative control over Canada (Schneiderman, 1998). This included the need for the British parliament to enact any changes to the Canadian constitution. This constitution went through nineteen amendments by the British Parliament, collectively known as the Constitution Acts of 1867 to 1982 (Smith, 1995). Full control over the constitution wasn’t granted to Canada until the dual passage of the Canada Act 1982 in Parliament of the United Kingdom and Canada. All this culminated into the Constitution Act of 1982, which patriated the prior constitutional acts into Canada’s own. The Canadian Constitution of 1982 is now the supreme law of Canada and makes any laws inconsistent with its provision unconstitutional (Mezey, 1983). This act outlines the system of government and the civil rights of individuals. It is a culmination of various codified acts dating all the way back to 1689 and treaties between the English Crown and indigenous people of Canada. The Canadian Constitution borrowed features from the United Kingdom's legal tradition by including unwritten features as a part of the supreme law. This includes “any unwritten principles or British common law norms considered fundamental by the courts" (Walters, 2001).

This long journey of the integration of mixed systems and a still recent influence from British institutions has all culminated in a hybrid legal tradition that still uses principles of parliamentary sovereignty paired with courts that serve to protect individual rights. In modern Canada, the government is both a constitutional monarchy and a federal parliamentary democracy, although Canada’s monarchy is legally distinct with no political role. For the federal system, Canada has a bicameral parliamentary legislature that includes the House of Commons and the Senate (Tierney, 2011). In this system, there is no strict separation between the executive and legislative parliament. Instead, the separation of powers focuses on the judiciary with powers of judicial review that can invalidate laws deemed unconstitutional (according to the written and unwritten constitution). All courts are bound by decisions by the Supreme Court of Canada (Edlin, 2016).

This unique legal history culminates in a constitutionalism and legal system that is fluid and not as concretely interpreted as their American and English counterparts. The legal tradition of Canada details a state that is still actively answering questions about the role and power of its judiciary, the extent of their constitutional responsibilities for legal institutions, and continuously avoiding potential pitfalls of two diverging legal systems of civil and common law. This comes together to ultimately affect the creation and further development of campaign finance laws in
Canada. Below, Table 1.3 details all legislation action and judicial adjustments to laws that concern campaign finance policy.

<table>
<thead>
<tr>
<th>Year</th>
<th>Law/ Court Case</th>
<th>Major Election Finance Policy Change</th>
<th>Deregulatory or Regulatory?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Canada Elections Act</td>
<td>Requires all broadcasters make 6.5 hours of advertising for political parties; requires all CRTC licensed radio/TV networks allocate free time for election broadcasts;</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2003</td>
<td>Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act</td>
<td>Restricted contributions to Canadian citizens and permanent residents; Increased public funding for campaigns with a direct per-vote subsidy; made the maximum contribution from an individual in a year five thousand Canadian dollars</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2004</td>
<td>Harper v Canada (AG)</td>
<td>Ruled that Canada Elections Act's spending limits on third party election advertising did violate one section of the Canadian Charter of Rights and Freedoms but was just then justified under another section</td>
<td>No Change (Canada Elections Act upheld)</td>
</tr>
<tr>
<td>2006</td>
<td>Accountability Act</td>
<td>Decrease contribution limit from $5000 to $1000; ban on union and corporate contributions</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2008</td>
<td>Fiscal Update</td>
<td>Eliminated per-vote subsidy</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2011</td>
<td>Keeping Canada’s Economy and Jobs Growing Act</td>
<td>Phased out per-vote subsidy by 2016</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2014</td>
<td>Fair Elections Act</td>
<td>Increase spending limit by exempting fund raising; increase contribution limit to $1500</td>
<td>Deregulatory</td>
</tr>
<tr>
<td>2018</td>
<td>Election Modernization Act</td>
<td>Grants the office of Commissioner of Canada Elections the authority to impose fines and file charges; establishes reporting requirements for third parties; establishes a spending limit for third parties during the pre-wit period prior to the start of the election campaign season</td>
<td>Regulatory</td>
</tr>
<tr>
<td>2021</td>
<td>Canadian Constitution Foundation v. Canada (Attorney General)</td>
<td>Struck down provision in Canada Elections Act that prohibited the publication of false news by electoral candidates</td>
<td>Deregulatory</td>
</tr>
</tbody>
</table>
Findings

After understanding the history of each state’s legal tradition, we can use the qualities of each respective legal tradition to show how it has influenced the creation, preservation, and deregulation of these rules with an emphasis on institutional attributions. This will include focusing on legal history qualities like the constitutionalism of a state, how parliamentary sovereignty affects regulations, and how each state’s legal culture has played a role in formulating the legality of campaign finance regimes. To supplement these arguments, the recent history of campaign laws will be analyzed to see the influence of legal tradition in today’s policies. Showing the implications of legal traditions will all culminate to tackle the question brought up recently in scholarship if deregulation is an American phenomenon or if it is truly a Western trend in these countries. It will also address how these three common law states took such drastically different paths in regulating or deregulating their campaign finance systems.

Constitutionalism and Judicial Effect on Campaign Finance Regulations

As discussed above, each of these states have unique constitutions, some written, some unwritten, or in the case of Canada, both. When discussing constitutionalism here, I am referencing how these articles or customs have resulted in a strict, or in some cases not so strict, adherence to the separation of powers within a state, the hierarchy of sources of law, and how that has affected constitutional actors’ authority and power. These three states represent extremely varying views on constitutional principles and organizational choices for legal institutions that have profound impacts on campaign finance laws.

In America, campaign finance legislation has rarely enjoyed an unreserved constitutional acceptance (Hunker, 2013). Legal culture in America is heavily influenced by the historical significance of the American Constitution. Providing that this document enshrined the power of strong judicial review, the question of how far Congress’s actual authority extends to regulate elections is a point of constant contention throughout the long campaign finance legal history. Relying on a written constitution of this nature has led the citizens and legal institutions of America to have inherent distrust and wariness when grappling with election finance reform (Shain, 2018). This can be seen as far back as 1916 with court cases like United States v. U.S. Brewers’ Association that challenged the 1907 Tillman Act (see Table 1.2). As Table 1.2
visualizes, American campaign finance laws have been repeatedly strengthened by legislation but then continually narrowed and deregulated by judicial interventions. This has been a direct result of the state’s legal tradition. The writers of the American Constitution intentionally permitted the shared powers amongst different branches of government. This means that each constitutional actor has a degree of influence over the legal activities of its neighboring branch. These mechanisms were built out of the shared mistrust of public officials and have now resulted in a system where the constitutional provisions are so strong, the judiciary has the power to thwart legislation all together. This becomes increasingly contentious when other constitutional factors are taken into place like constitutional rights in America.

As aforementioned, the American Founders were inspired by the Enlightenment Era and increasingly believed that public officials were prone to corruption. Therefore, they created a governmental system that had both external and internal checks on the authority of public institutions. One of these checks included enshrining certain political liberties into the constitution that were indispensable for American democracy. In doing so, the Supreme Court of the United States has been highly sensitive in regard to these rights such as the First Amendment in cases regarding election finance (Dembitskiy, 2015). For example, in Buckley v. Valeo the court barred forms of expenditure limits that had been regulated in the Federal Election Campaign Act (FECA) of 1971. The court held that individual expenditure limits, which were designed in FECA as a safeguard against corruption and encouragement of political equity, was a curtailment of free speech. This theme continues with Davis v. Federal Election Commission, Citizens United v. Federal Election Commission, and SpeechNow.org v. Federal Election Commission all ruling that prior regulatory laws were in violation of First Amendment rights and subsequently, removed language from the bill that restricted political actors and contributors. This has resulted in a far more deregulated election finance system (Gaughan, 2016).

The consequences of judicial actions have been paramount in the deregulation of campaign finance laws in America. Table 1.2 documents the numerous occasions that Congress has used their constitutional powers to enact campaign finance reforms. Each time a bill like this is passed, it is faced with numerous court cases that challenge its constitutionality. In America, these reforms are passed in large legislative packages partly due to continued infighting between a dual party system. Because of this, a campaign finance bill has many regulations that help support different regulatory actions in one single package. When the judiciary narrows or just
completely strikes down a piece of legislation in a package, this often leads to these laws being severely undermined. As a result, there have been many cases where the court’s actions in eliminating language out of a bill leaves it open to loopholes and gaps in regulation. The courts are not concerned with the entirety of the bill or its cohesiveness, just the segments brought forth by the case. This has led to the repeated exploitation of these loopholes by disproportionately wealthy corporations and third parties (Dwyre, 2015; Gaughan, 2016).

The strong American judicial system also enshrines the principle of judicial precedent. This precedence has had far reaching implications for how American legislators can continue to regulate campaigns in the future. As mentioned before, campaign finance regulations consist of four mechanisms as laid out by Hunker, “disclosure requirements, contribution limits, expenditure limits, and public funding” (Hunker, 2013). This framework has been hindered by judicial opinions over the years when we take into consideration the court’s view on individual constitutional rights. The court has prohibited expenditure limits and has made public funding programs in America extremely limited due to the wide legal powers given to judges when interpreting the constitution like the First Amendment. For instance, the Supreme Court has ruled that expenditure limits are a restriction on free speech and political activity (Citizens United v. Federal Election Commission, 2010). They have also ruled that the appearance of corruption in US election finance procedures do not justify spending caps on expenditures (Buckley v. Valeo, 1976). This has led to the narrowing of laws that restrict political candidates and third-party organizations to spend an unlimited amount of funds through super PACs (Dwyre, 2015; Boatright, 2015; Sheth, 2019). Public funding frameworks have also been deregulated because of the Supreme Court’s rulings that prevent congress from capping personal expenditures which makes public funding severely diminished because it can’t necessarily compete with an independently wealthy candidate. The Courts have also prevented the legislature from prohibiting a candidate from using private funds as well as preventing public funding frameworks to continue to match funds once the candidate has surpassed a threshold (Davis v. Federal Election Commission, 2008). The power of the American judiciary, that is empowered by the strong constitutionalism of the state’s legal tradition, has resulted in the deregulatory movement we see today in America.

In contrast, the United Kingdom differs from the legal tradition of the United States. Having an unwritten constitution and a custom of strong parliamentary sovereignty, this has
given the legislature the power to determine the function of the constitution. Unlike the American legislators, Parliament at any time may alter any 'constitutional rights' through ordinary legislation. The United Kingdom does not have a Bill of Rights that enshrines an individual's political liberties. Instead, these rights are defined by the Parliament, who have the authority to change its stance on the application of these liberties as majorities change (Goldsworthy, 2010; Eldin, 2016). In other words, a right like free speech in the United States is not an inherent right under United Kingdom law as it only exists where statues and common law rules do not restrict it. This presents an entirely different case when compared to the legal tradition of the United States where judicial review uses the constitutional amendments to thwart election finance legislation from Congress. Instead, the United Kingdom court’s jurisdiction of judicial review is just supervisory. This means that the judiciary checks that public officials and legislators are acting in accordance with rules or statutes that Parliament has passed. In this sense, the checks and balances that overflow out of the American legal tradition are replaced in the English legal tradition with the principle of the rule of law. In other words, the rule of law acts as a leash for public institutions and encourages them to obey the customs of their legal history (Leyland, 2016).

This “supervisory” role the English judiciary has does not mean it can’t act when Parliament oversteps their bounds. The judicial branch has the power to review legislation only if the infringement on liberties is not justifiable due to an important competing public interest (Ringhand, 2020). As you can see in Table 1.1, these powers to hold legislation back are used rarely by the judiciary. This has to do with the strong legal culture that has been cultivated during the United Kingdom’s long legal history, as previously discussed above. There is a strong cultural value of comity between courts and Parliament. I agree with Professor Dawn Oliver when he points to this relationship as culminating from the “generally high level of trust in British society” (Oliver, 2006). This trust is evident when looking at the mechanisms for checks and balances, as it relies on the self-constraint amongst public offices in order to avoid overreach of the legislature. This can help explain why the United Kingdom and the United States have been so divergent in their reaction to campaign finance reforms. On one hand, the United Kingdom has had a slow steady rollout of election finance regulations that are enacted with an aura of trust in public officials. On the other hand, the American legal tradition is premised on the mistrust of the government and the judiciary uses these constitutional articles to upend
legislation. The result of this comparison reveals that the British judiciary automatically
presumes Parliament did not infringe upon the rule of law (continuing to maintain its traditional
relationship) while the American judiciary innately responds on the side of caution in order to
control the power of the congressional legislature. We can especially see this nature and its effect
on the deregulation of election finance laws when juxtaposing Tables 1.1 and 1.2 with each other.
Table 1.2 has an overwhelming amount of judicial involvement in campaign finance regulations
while the United Kingdom’s Table 1.1 has none.

In relation to constitutions, Canada’s legal tradition can be seen as a middle ground
between the United States and the United Kingdom who have vastly different powers invested
into their judiciary. The Canadian Supreme Court has a limited policy-making role in relation to
legislation that is more similar to the United Kingdom’s legal tradition. This is a result of a few
factors. First, the ambiguous nature of the 1960 Canadian Bill of Rights empowers the courts as a
“simple statutory instrument” (Jukier, 2018). This lack of constitutional supremacy is a
significant hindrance to their power of judicial review considering their constitution is made up
of unwritten and written articles. Then the Canadian Constitution of 1982 enshrined the 1960
Bill of Rights and made it the highest law of the land. The position of the judiciary in this state
that practiced parliamentary sovereignty was still never completely clarified, giving the Canadian
courts hesitancy when questioning the power of the legislature (Mezey, 1983; Jukier, 2018). As
Table 1.3 displays, there has been a very limited number of court cases that have used the power
of judicial review in order to restrain campaign finance laws. The legal tradition of Canada as
mentioned above can explain this hesitancy to act. First, the Canadian legal system has not yet
completely fleshed out the intricacies of the competing interests of parliamentary sovereignty
and the role of courts in its mix of written and unwritten constitutions (Walters, 2001; Young
2015). Second, the Canadian federal structure has been inundated by internal dissension with the
issue of Quebec’s civil law tradition. Federal courts and the Canadian Supreme Court have had
waves of unification efforts followed by diversification movements in order to rectify the
incompatibilities of the federal common law system and Quebec’s civil law tradition. Because of
this, the Courts have been more hesitant of imposing its will on legislative enactments (Jukier,
2018). These factors have all led to only a few judicial interventions that stalled campaign
finance laws unlike the United States. In this regard, Canada’s campaign finance laws have been
influenced much more by the parliamentary sovereignty principle that will be discussed further next.

**Parliamentary Sovereignty’s Effect on Campaign Finance Regulations**

Another factor of legal tradition that has greatly influenced the creation, preservation, and further possible deregulation of election campaign finance laws has been the principle of parliamentary sovereignty in the United Kingdom and Canada. These two states diverge on how strict they conform to this principle with each state having several waves of reform throughout recent decades. Nonetheless, the legal importance parliamentary sovereignty plays in influencing the creation and subsequent legal action around campaign finance laws is immense. In comparison, this is also a divergent theme from American legal tradition and will help to explain how these three states have taken such different approaches to election finance regulations even though all three share similar qualities in the common law tradition and economic prosperity.

As discussed above, the United Kingdom’s Parliament has almost no legal limitations on its legislative actions. This is a result of the unwritten constitution including no other constitutional actor to review the validity of its laws passed. Dicey explains this in his famous book, *Introduction to the Law of the Constitution*, as Parliament having under the English constitution, “the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament” (Dicey, 1915). Above it was found that this has immense consequences on the judiciary, but it also has a large impact on how English Parliament creates, preserves, and continues to regulate campaign finance laws. Parliamentary sovereignty in the United Kingdom implicates that the Parliament is unable to bind its political successors (Hunker, 2013). Parliament has no legal limitation; therefore, anytime a piece of legislation is passed encompassing election finance reform, it cannot remain legally beholden to future or past majorities. This begins to snowball as this also implicates that Parliament is unable to entrench legislation like the American Bill of Rights. Consequently, whenever a future legislation is passed, any act or statute that comes into conflict with new legislation is repealed (Fisher, 2015). This is shown to affect campaign finance legislation as illustrated in Table 1.1 by the very fact that there are no judicial interventions in campaign finance legislation at all that have become binding law.
Parliamentary sovereignty in the United Kingdom has allowed the legislative branch to completely dominate the creation and future changes of campaign finance laws. This legal tradition has created a system where only one constitutional actor is involved in policy crafting which has had positive effects in the effort to regulate elections more. Table 1.1 lists all the laws concerning changes in election finance rules and consequently, all of these laws are considered regulatory. This is because the Parliament uses a “stop-go”\(^8\) approach when addressing campaign finance legislation (Fisher, 2015). Each one of the laws included in the table were originally inspired by government reports that endorsed recommendations to Parliament after years of research. For example, the Political Parties and Elections Act of 2009 followed suggestions that were outlined in the Hayden Philips Review. This review was commissioned in 2006 by Prime Minister Tony Blair in response to concerns of political parties bypassing disclosure rules by taking loans and then expanded the review to look at all aspects of party funding (Potter and Tavits, 2015). Although this approach hasn’t always been successful in furthering regulations, it has rarely resulted in elections being deregulated. Without the sharp judicial intervention that a state like the United States faces, the United Kingdom is able to craft coherent and cohesive election finance legislation without interjections that weaken and create loopholes. In this regard, the United Kingdom’s legal tradition has inspired strong parliamentary sovereignty that has led to an easier system to regulate campaigns in. The history of legislation also demonstrates how the English Parliament continues to hold vast discretion over the state’s federal election finance laws. This can be further demonstrated in Table 1.1, as the United Kingdom has maintained a regulated system of election finance. This is in sharp contrast to the United States, where Congress has lost a significant chunk of their power to the judiciary and has resulted in regulations that are weakened.

Like the United Kingdom, parliamentary sovereignty in Canada has played a significant role in creating and maintaining campaign finance laws. Unlike the United Kingdom, it has largely been used in a back-and-forth struggle to regulate then further deregulate past laws. As Table 1.3 illustrates, there are a series of legislative initiatives that made regulatory movements to restrict campaign spending but then were followed with years of deregulation from Canadian

\(^8\) Term used by Justin Fisher, adapted from “stop-go economics”, explains how the English Parliament has a tendency to enact an election finance law then wait until government sponsored reviews are performed to see where the weaknesses in the law are. Fisher makes the conclusion that this approach results in few and more spread out campaign finance laws.
Parliament. This divergence from the United Kingdom’s legislative record is a direct result of partisan electoral self-interest. Canada has a single-member plurality electoral system and has a legal tradition of single party rule as opposed to a coalition government. Canada has four major political parties; the Conservatives, the Liberals, the New Democrats, and the Bloc Québecois (Jansen and Young, 2011). Evidence of this electoral self-interest principle can be found in the legal history of campaign finance laws. First, the Liberal Party of Canada introduced one of the most generous frameworks for public funding of election campaigns paired with limits on the size and sources of political contributions (see Table 1.3). Out of all three states researched in this study, these laws were by far the most cohesive and regulatory pieces of legislation. Then, the three subsequent laws passed by the next majority of Parliament, the Conservative Party of Canada, sought to deregulate the system (see Table 1.3).

These changes in election finance legislation were all influenced by the political majorities in power at the time of the ratification of each respective law. And as such, each bill passed made sure to benefit the majority in power while attempting to disenfranchise other political parties. For example, when the Conservative Party came to power in 2004, they quickly passed the Accountability Act. This piece of legislation banned all corporate and union contributions as well as limit contribution caps from C$5,000 to C$1,000 (see Table 1.3). This had a disproportionate effect on the Liberal Party as they had historically relied on maximum-sized contributions from corporate elites (Young, 2015). To further disenfranchise other political parties, the Conservative Party got rid of the per-vote public funding scheme. It appears this was intended to benefit the Conservative Party as they had a competitive position in translating public popularity into small donations from individuals (Jansen and Young, 2011). This increased partisan electoral self-interest gain for the Conservative Party and is consistent with the electoral economy model: “a party will act to maximize its electoral success under competitive conditions rather than simply to maximize revenue” (Young, 2015; Jaeck and Kim, 2018). Here, the hybrid system that Canada’s legal tradition has created has left the majority of the legislative power in the hands of a dueling Parliament while the courts lack enough constitutional power to intervene with legislation that is created to disenfranchise other political parties. Unique from the other two states, this parliamentary sovereignty with little court oversight has backfired as each new majority comes to power and rewrites legislation for their gain without the checks and balances of other constitutional actors. This has resulted in
undeterminable campaign finance trends as the Canadian system of governance allows for continued back and forth on the issue of regulating election finance systems. It is important to note that each of these three states suffers from the political realities of electoral self-gain interfering with election finance laws. But in the case of the United Kingdom and the United States, this infighting between political opposites usually results in inaction on legislative issues. In the case of Canada’s legal tradition, institutional attributions have resulted in electoral self-gain being able to completely rewrite election finance legislation every other election as seen in Table 1.3.

In comparison to the United Kingdom’s long legal tradition, Canada's legal tradition is still trying to refine itself. The United Kingdom possesses stability in regulating their parliamentary sovereignty that is based on the legal cultural foundations of trust and also by the fact that the parliament is largely monitored by the public perception of the institution (Hunker, 2013; Edlin, 2016). Because of these factors, parliamentary sovereignty has had a drastically different effect on campaign finance laws between the United Kingdom and Canada. This can also be observed with the infighting of Quebec’s civil law system versus the federally recognized common law system in Canada (Jukier, 2018). With this comes the courts’ continued debates on whether the unwritten constitution is more powerful than the more defined written constitution (Walters, 2001). This further complicates the judiciary’s power and its role in the Canadian legal system. Consequently, the Canadian judicial system has not had nearly as much time when compared to the United Kingdom to address these quandaries that have been brought about by the fluidity of Canadian legal tradition. This has resulted in further complications when reforming election finance laws and as displayed in Table 1.3, which has culminated in both regulatory and deregulatory trends throughout the decades.

Conclusion

The United States, United Kingdom and Canada all provide a unique insight on how legal tradition can affect present-day legal reforms. First, how strict a state’s adherence to a constitution has drastically influenced campaign finance reforms. In America, this strong idolization of the American Constitution has resulted in campaign finance legislation coming into conflict with historical ideas of governance. The analysis of the legal culture of America
shows us that the historical development of the Constitution and its Founder’s mistrust of
government officials has been maintained through the years resulting in a strong judiciary that
has been wary of election finance reform. This culture led to the formation of the three branches
of government and has now resulted in a system where the constitutional provisions are so
strong, the judiciary has the power to thwart major campaign finance legislation that has been
ratified by Congress. This has included the judiciary ruling that expenditure limits, limits on
corporate or union contributions, limits on self-financing, and laws that mandate the transparency
of donations are all unconstitutional. This has severely limited what American legislators have
the right to regulate and has restricted public funding frameworks that were designed to make the
system more accessible. Following Hunker’s prior research, campaign finance regulations
consist of four mechanisms; disclosure requirements, contribution limits, expenditure limits and
public funding (Hunker, 2013). With this in mind, this research into legal tradition has shown
that the judiciary in America has severely limited or completely banned 3 of the 4 mechanisms of
successful regulation. In addition, the legal tradition of America also provides a strong
foundation for judicial precedent. With this accounted for, Table 1.2 shows the severe trend of
deregulating campaign finance reforms in America.

In stunning contrast, the legal tradition of the United Kingdom and Canada show how a
legal system with an unwritten constitution and parliamentary sovereignty can result in a state
with more legislative power. Although these two states use this power differently, they both share
a common thread - little to no interference from the judiciary. The United Kingdom’s Parliament
has the legislative power to determine the function of the constitution, and as such, is left with
little pushback from the judiciary. This is also affected by the strong legal culture that has been
cultivated during the United Kingdom’s long legal history that included the value of comity
between courts and Parliament. This has paved the way for the English Parliament to enact
several sweeping campaign finance regulations that have successfully implemented individual
and party expenditure limits, disclosure requirements, and public funding schemes. Without
judicial interference, these laws have been able to maintain strength throughout the decades,
unlike American regulations that have had language decidedly thrown out by the Supreme Court
of the United States. The United Kingdom’s Parliament has almost no legal limitations when it
comes to legislative actions and paired with their extensive legal history and culture, has allowed
one constitutional actor to craft policy with a high level of trust in British society. As Table 1.1
visualizes, this has culminated in a series of regulatory statutes that have determined a trend that is purely regulatory.

Finally, the analysis of campaign finance laws and legal tradition in Canada tells a story of political adversarial gain in a hybrid model of governance. With both written and unwritten constitutions, the judiciary has been granted limited policy-making roles without forgetting the principle of parliamentary sovereignty. The ambiguous nature of their constitutional provisions and the lack of a legal culture of constitutional supremacy has led the courts to be viewed as a simple statutory instrument. Canada’s legal tradition also includes the principle of parliamentary sovereignty but has resulted in a different outcome than the United Kingdom’s success. This power in the legislature has been used in a back-and-forth struggle to establish strong regulatory frameworks than to later deregulate past laws. This is a result of partisan electoral self-interest gain and as Table 1.3 suggests, the Canadian system is inundated with it. Partisan electoral self-interest can be seen in both the United States and the United Kingdom, but this infighting usually results in campaign finance laws not being passed. The difference here is that Canada's legal tradition includes a single-member plurality electoral system that has a tradition of single-party rule as opposed to a coalition government. This allows singular parties to pass legislation with the power of parliamentary sovereignty. This paired with weakened powers of the judiciary has resulted in campaign finance laws being passed with favoritism towards the majority party. As Table 1.3 depicts, this has made Canada’s regulatory trend increasingly hard to determine. It is unclear if Canada will remain on a path of stronger regulations or if that will change with the next election. With this accounted for, this research can conclude that there is no overarching Western trend in deregulating campaign finance laws.

These states all operate in the common law system but if we look at them broadly in just that category of organization, we are unable to note the differences that have influenced diverging trends in regulating campaign finance regimes. This research is the first in the field of comparative campaign finance legal studies to emphasize the importance of analyzing the cultural, historical, and institutional factors of each respective state. Without this lens, we are unable to understand law as a social phenomenon and how these campaign finance laws are a part of a bigger picture that has been in the making for decades. Up until now, prior research has focused on comparing election finance laws on their textual substance and then explaining the political motivations of each law. Without appreciating the legal tradition of each state, this...
one-dimensional approach to analyzing campaign finance laws fails to envision the entirety of influences on the creation, preservation, and further deregulation of these laws. Politics do not operate in a vacuum and this research proves that historical, cultural, and institutional factors have played immense roles in determining the strength and longevity of election finance regulations.

This research has far-reaching implications for the field of election finance. This field is increasingly important in supporting the shared goal in democracies of keeping political equity balanced. These three Western countries have prosperous economies but partnered with a free-market, deregulated campaign finance regimes run the risk of allowing the asymmetrical distribution of wealth to share a greater influence on the political process. This research has concluded that the United States is facing a severe trend of deregulation that has been largely influenced by its legal tradition. But, unlike other scholarship in the field, this research has also indicated that this struggle is apparent in other countries like Canada but also has been overcome in states like the United Kingdom. By studying these three states, it is evident that the common law system holds great potential for the regulation of campaign finance systems. With the knowledge of historical, cultural, and institutional influences, laws and regulations may be developed with a greater sense of the bigger picture. This may allow laws to pass over the pitfalls of judicial review, electoral self-interest gain, or the complexities of parliamentary sovereignty. A state’s constitutional actors are products of their societies, and as such, if we don’t understand the historical and cultural attributions, we can’t understand the institutions that dictate these laws. Without this all-encompassing view of legal tradition, there is no way to determine if a law will stand institutional interventions or the test of time.
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