

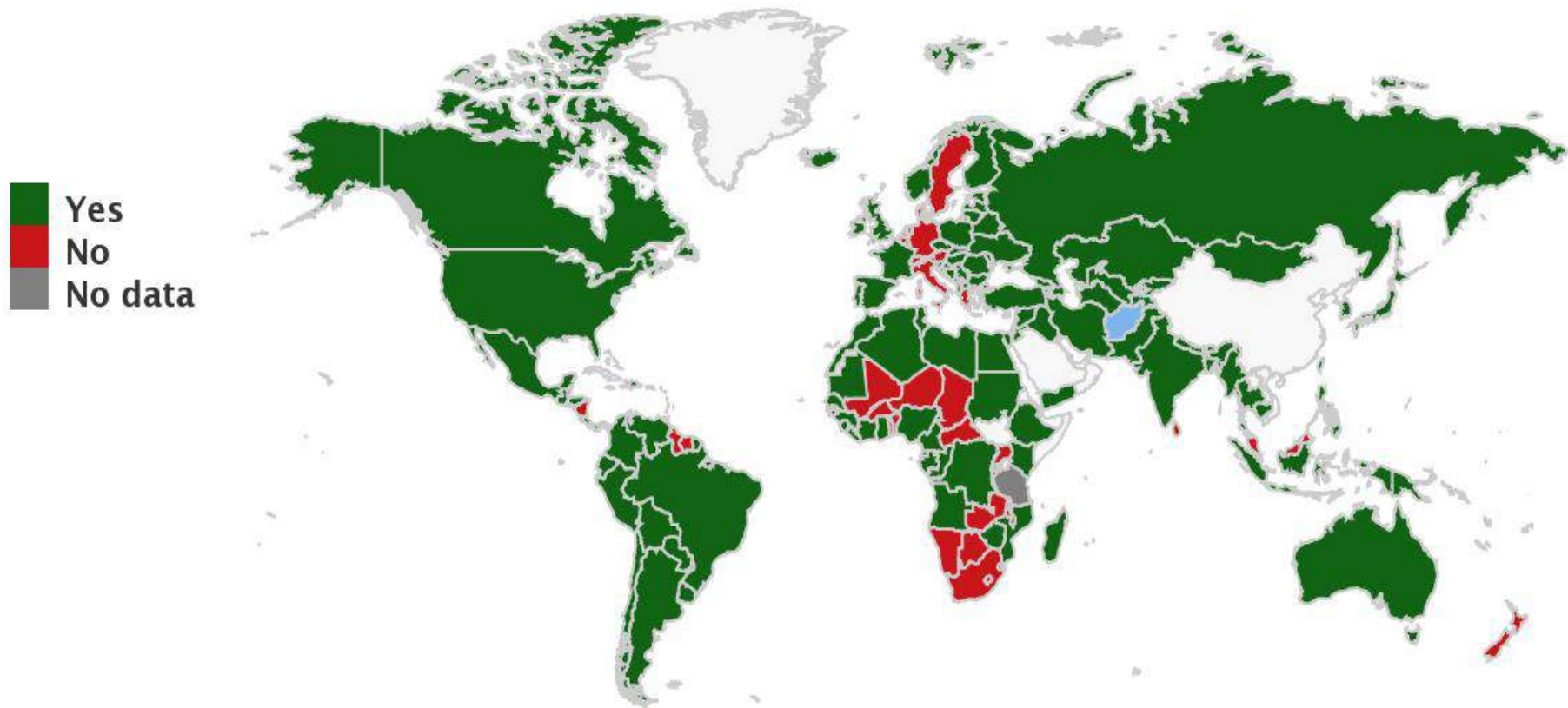


# The Threat of Corruption in New Zealand: A Cautionary Tale from the United States

Tim Kuhner, U. Auckland Faculty of Law  
SFO, 7 March 2019

1. Is there a ban on donations from foreign interests to political parties?

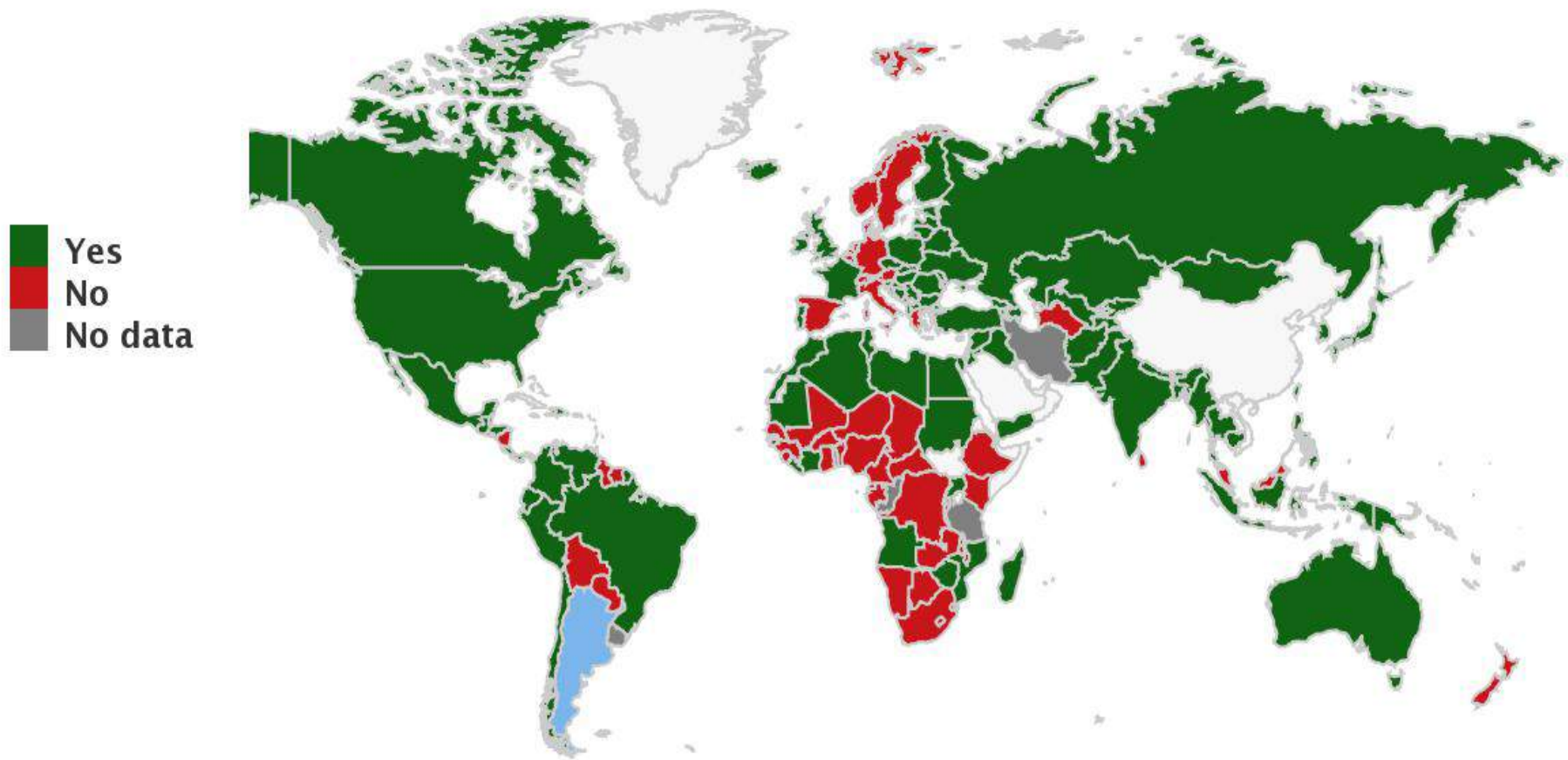
Political Finance Database – Bans and limits on private income



## 2. Is there a ban on donations from foreign interests to candidates?

2

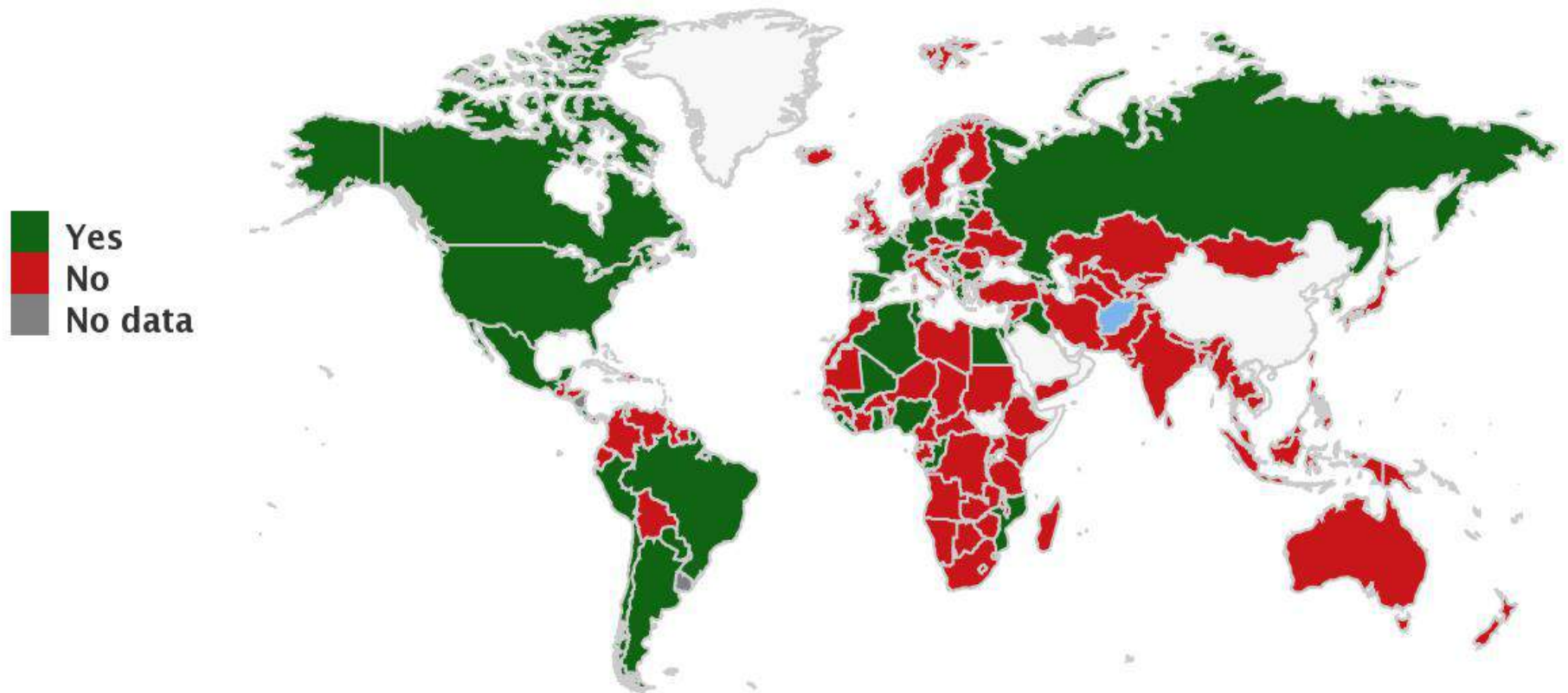
Political Finance Database – Bans and limits on private income



### 3. Is there a ban on corporate donations to political parties?

3

Political Finance Database – Bans and limits on private income

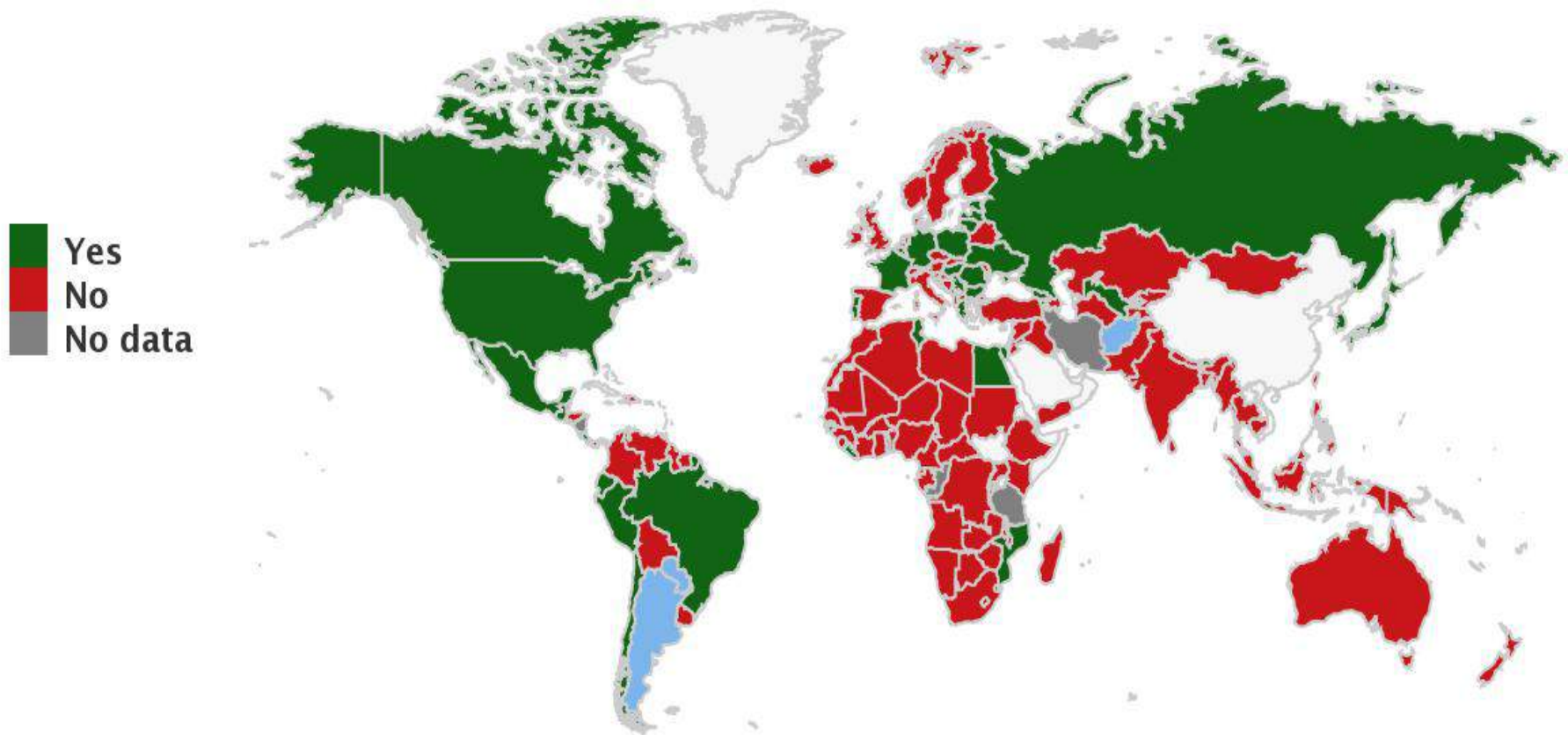




## 4. Is there a ban on corporate donations to candidates?

4

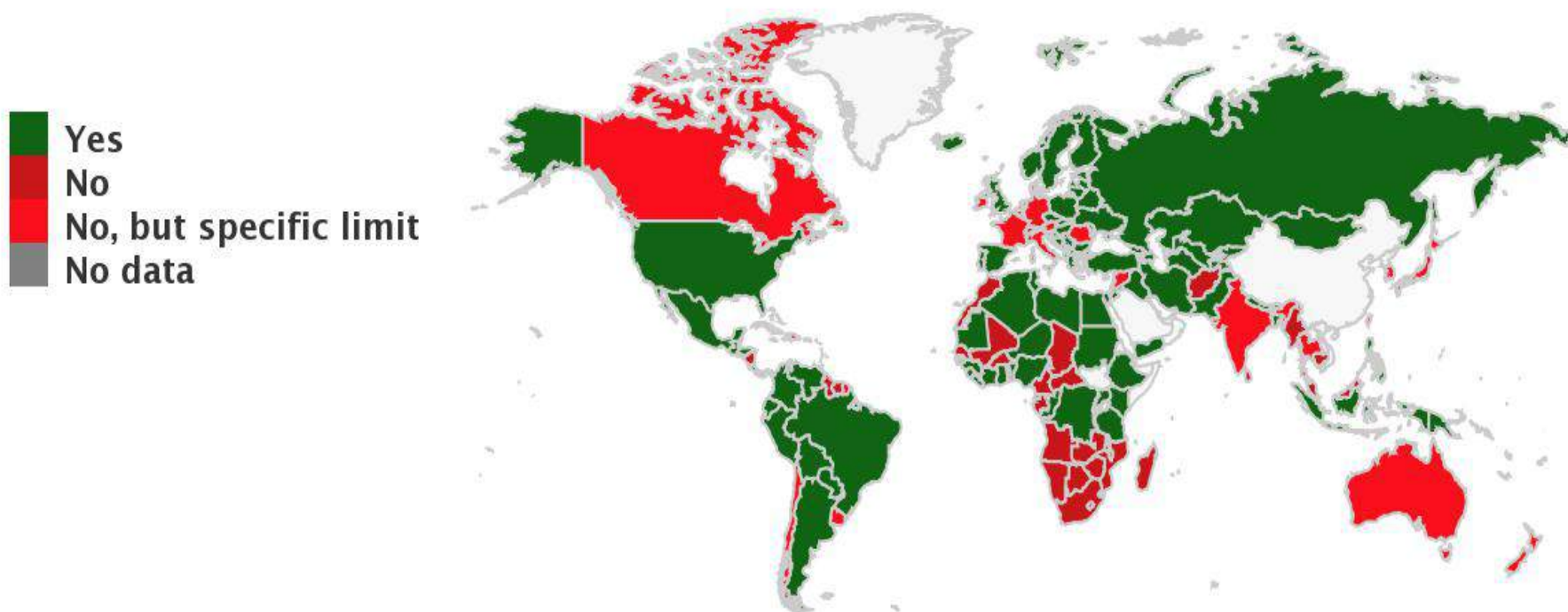
Political Finance Database – Bans and limits on private income



## 7. Is there a ban on anonymous donations to political parties?

5

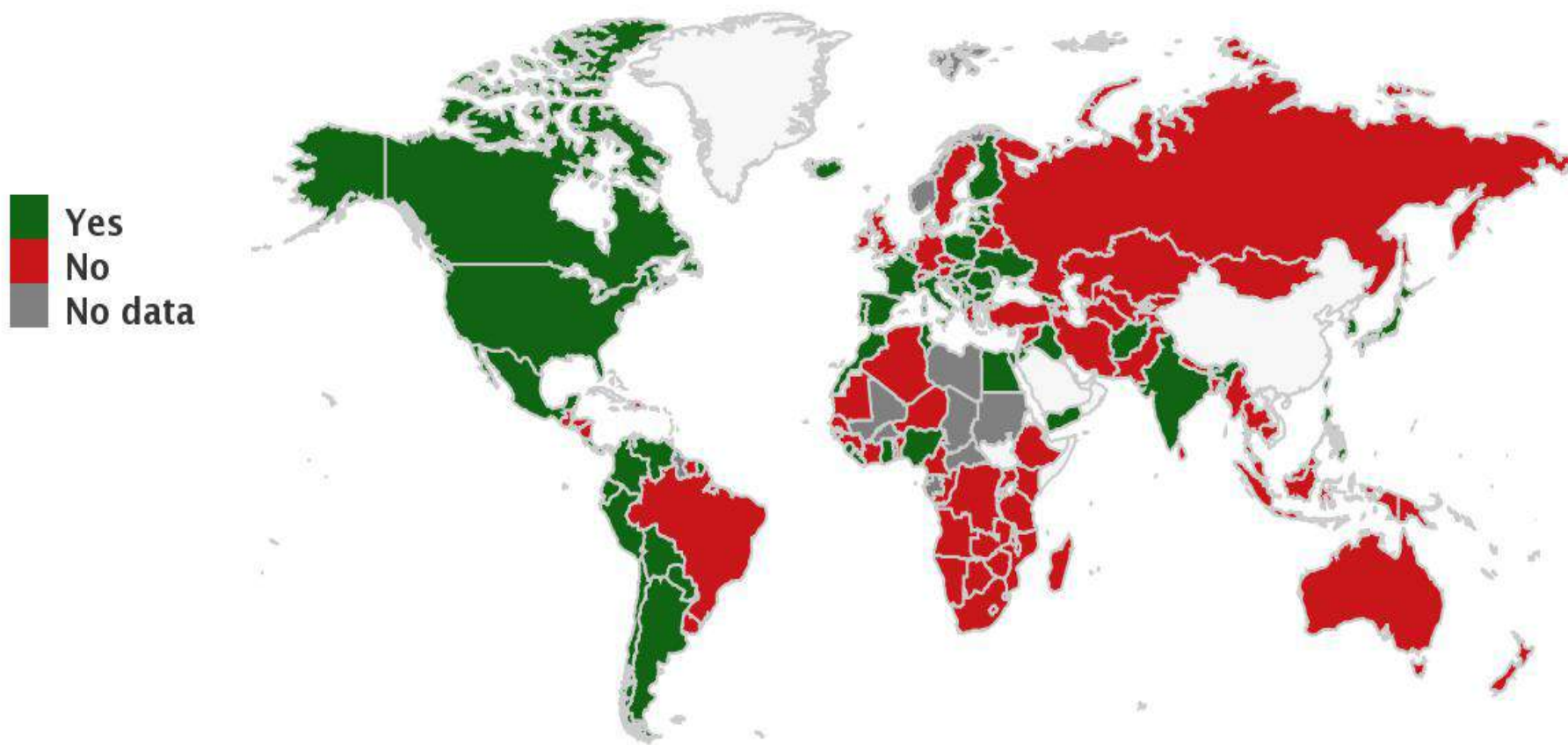
Political Finance Database – Bans and limits on private income



## 9. Is there a ban on donations from corporations with government contracts to political parties?

6

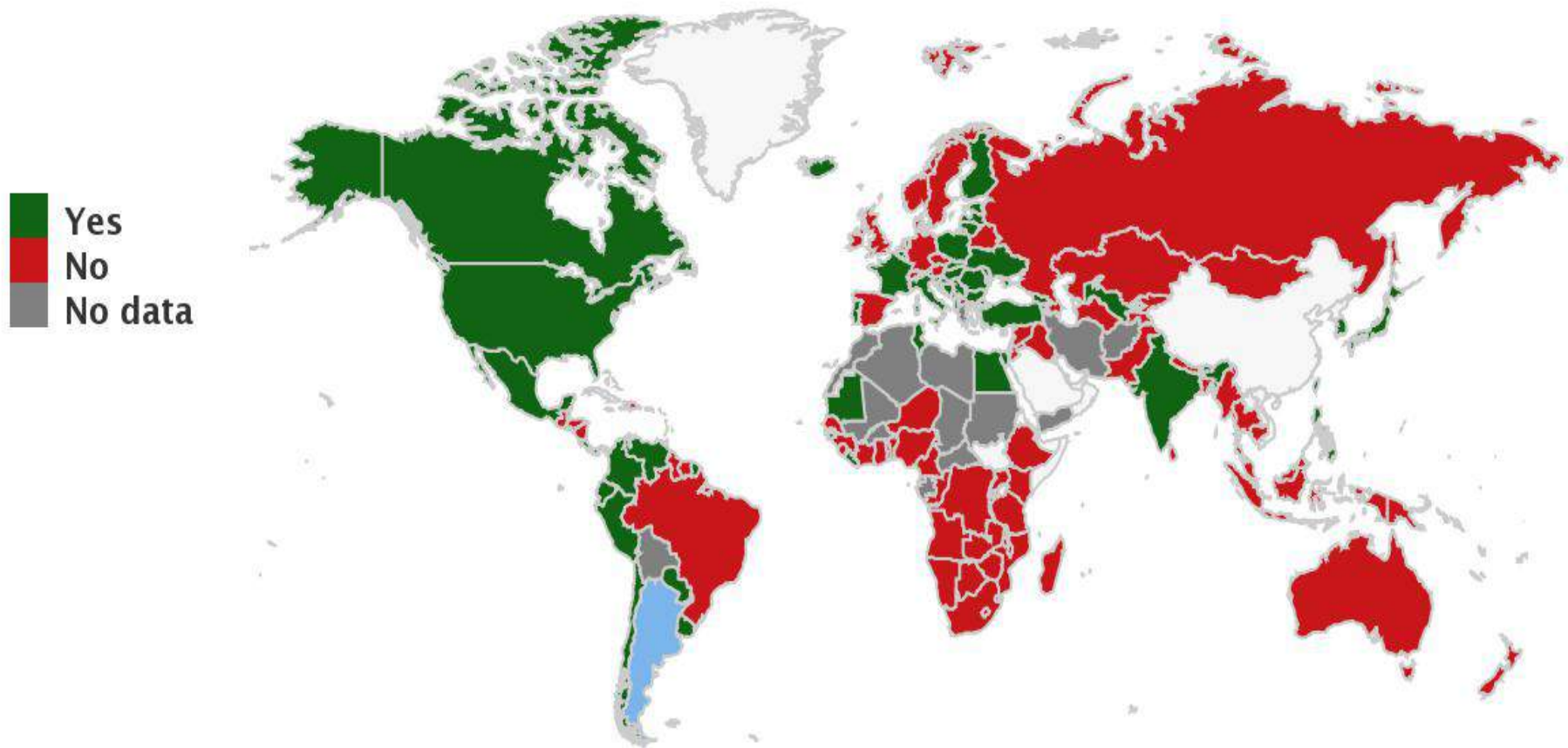
Political Finance Database – Bans and limits on private income



# 10. Is there a ban on donations from corporations with government contracts to candidates?

7

Political Finance Database – Bans and limits on private income

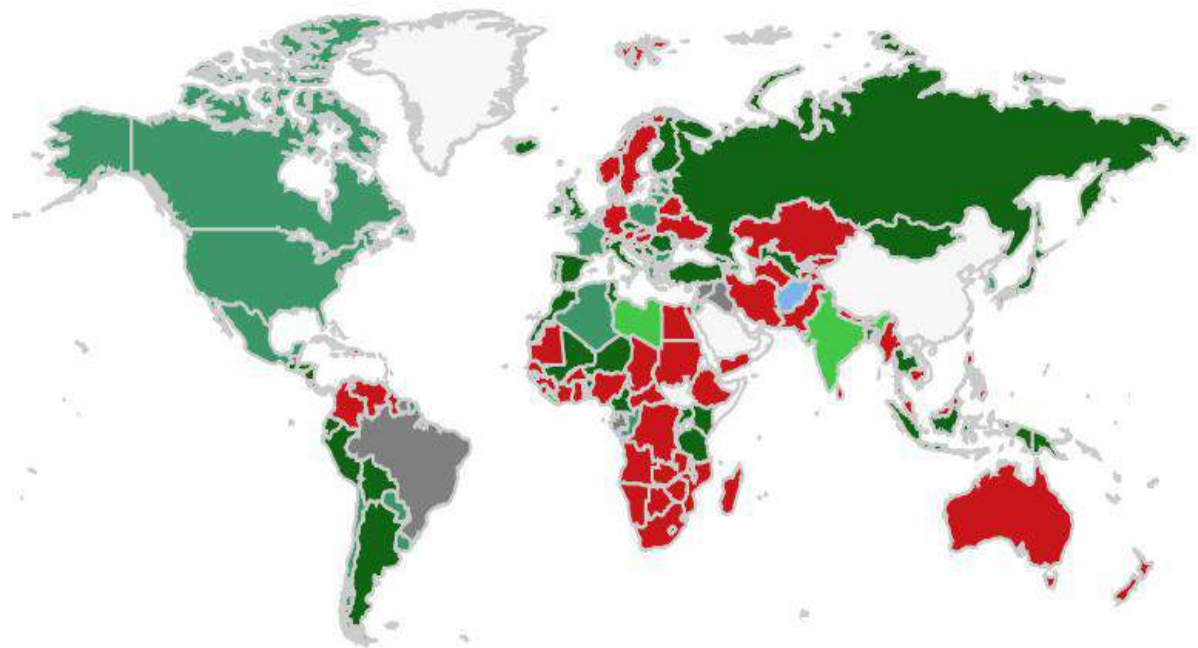
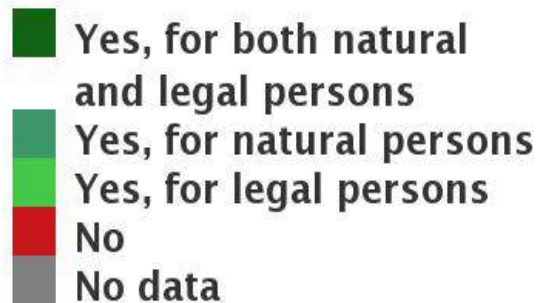




## 16. Is there a limit on the amount a donor can contribute to a political party over a time period (not election specific)?

8

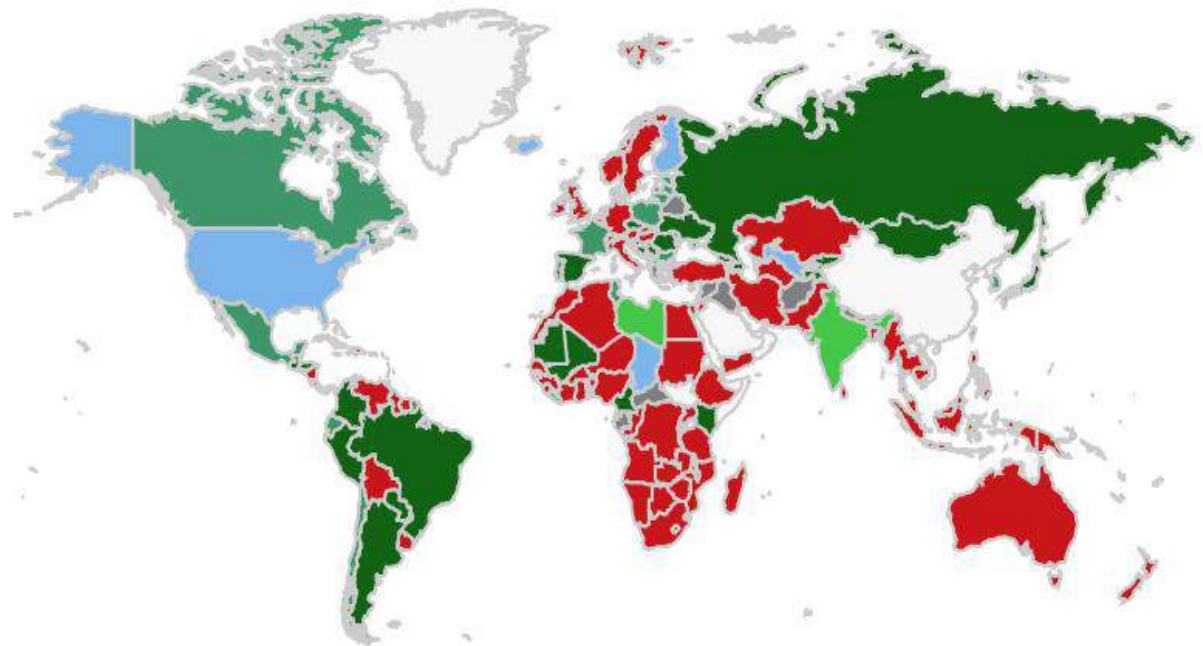
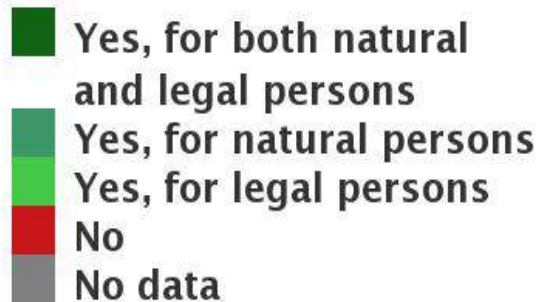
Political Finance Database – Bans and limits on private income



# 18. Is there a limit on the amount a donor can contribute to a political party in relation to an election?

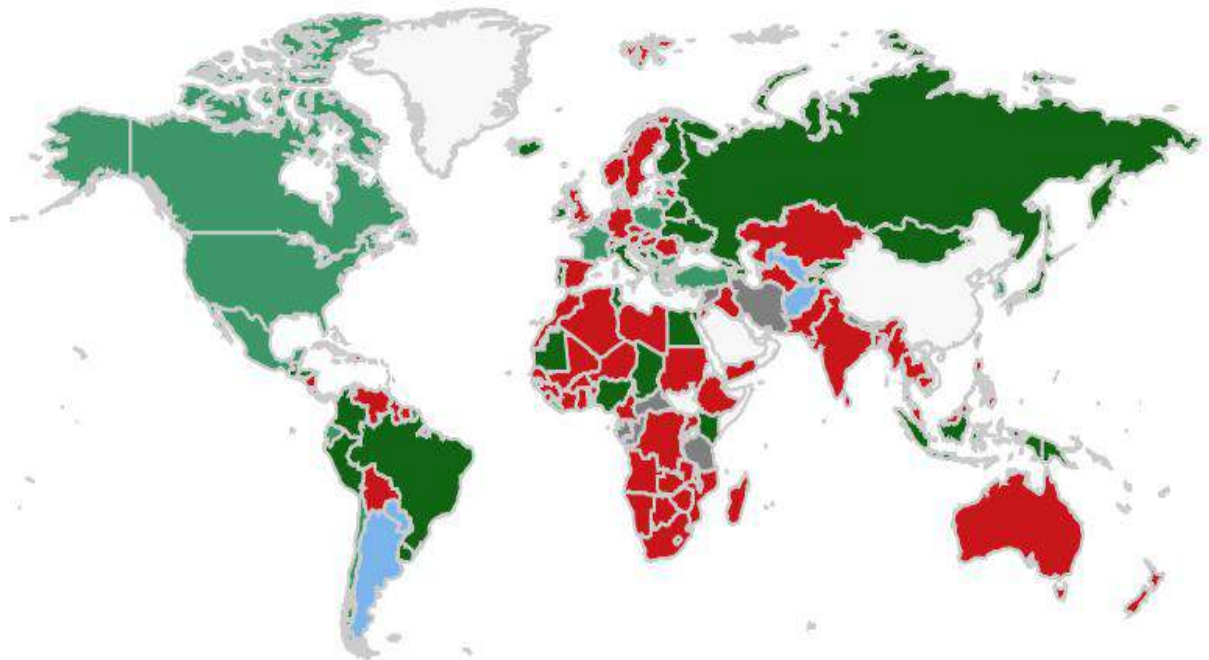
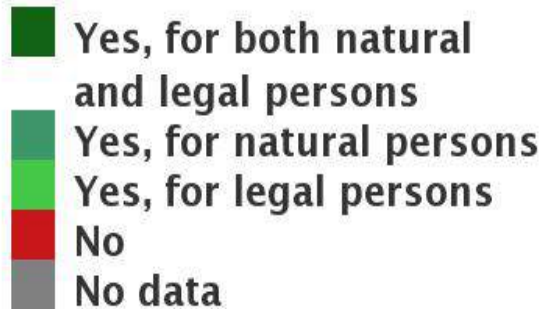
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Political Finance Database – Bans and limits on private income



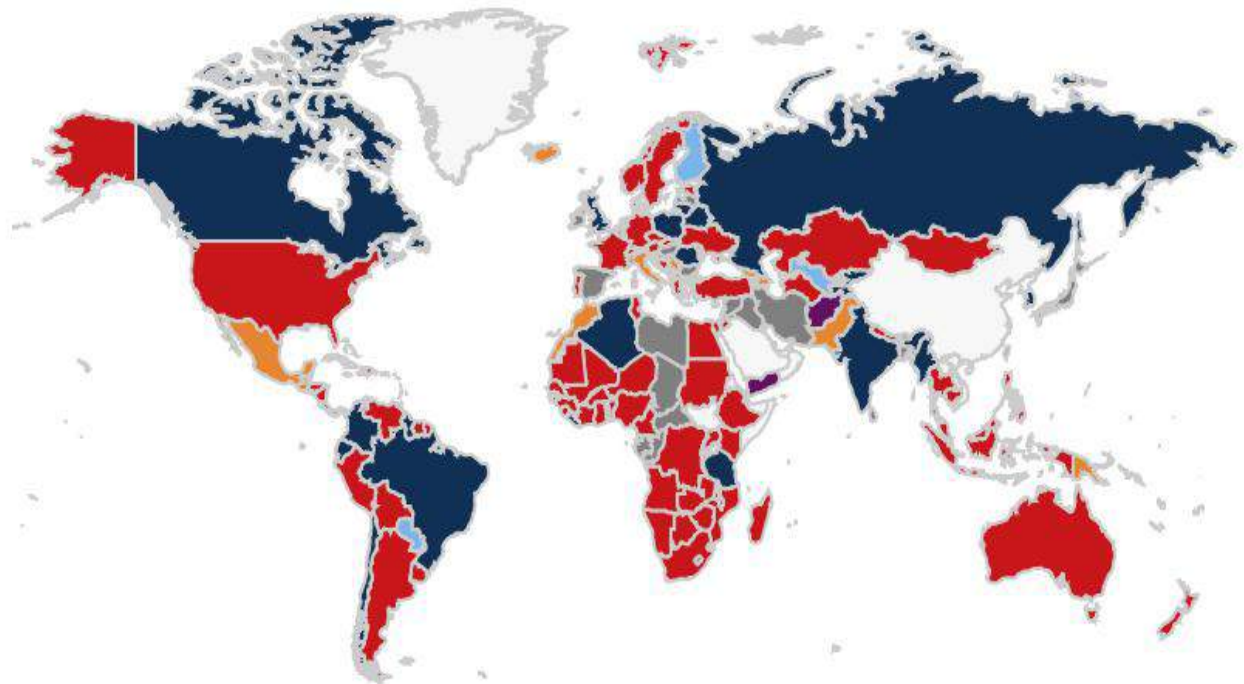
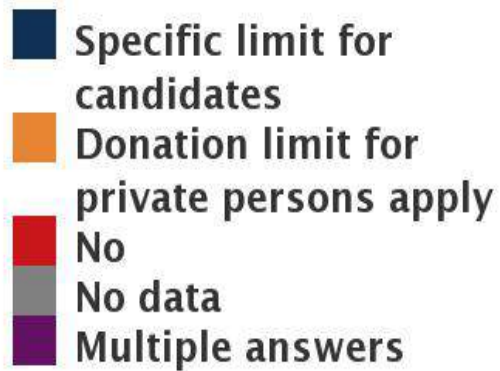
## 20. Is there a limit on the amount a donor can contribute to a candidate? 10

Political Finance Database – Bans and limits on private income



## 22. Is there a limit on the amount a candidate can contribute to their own election campaign? 11

Political Finance Database – Bans and limits on private income

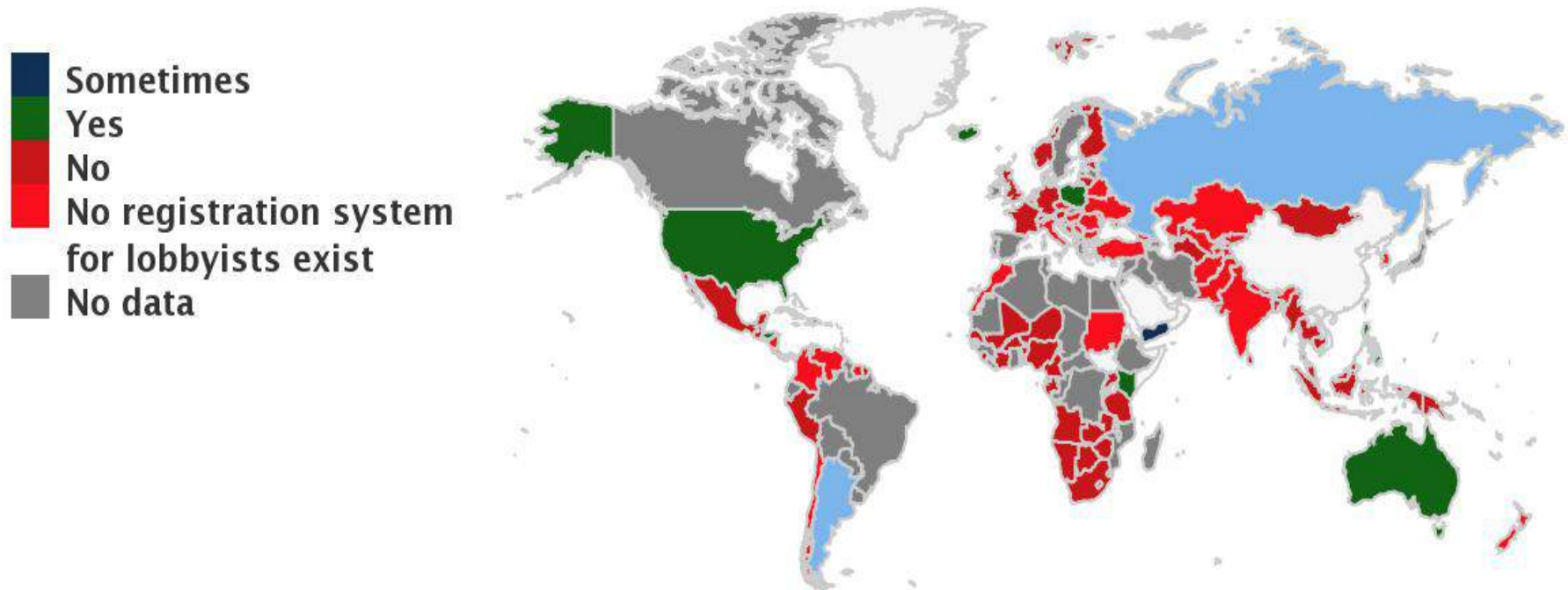




## 54. Do lobbying entities have to disclose information on contributions to political parties or candidates?

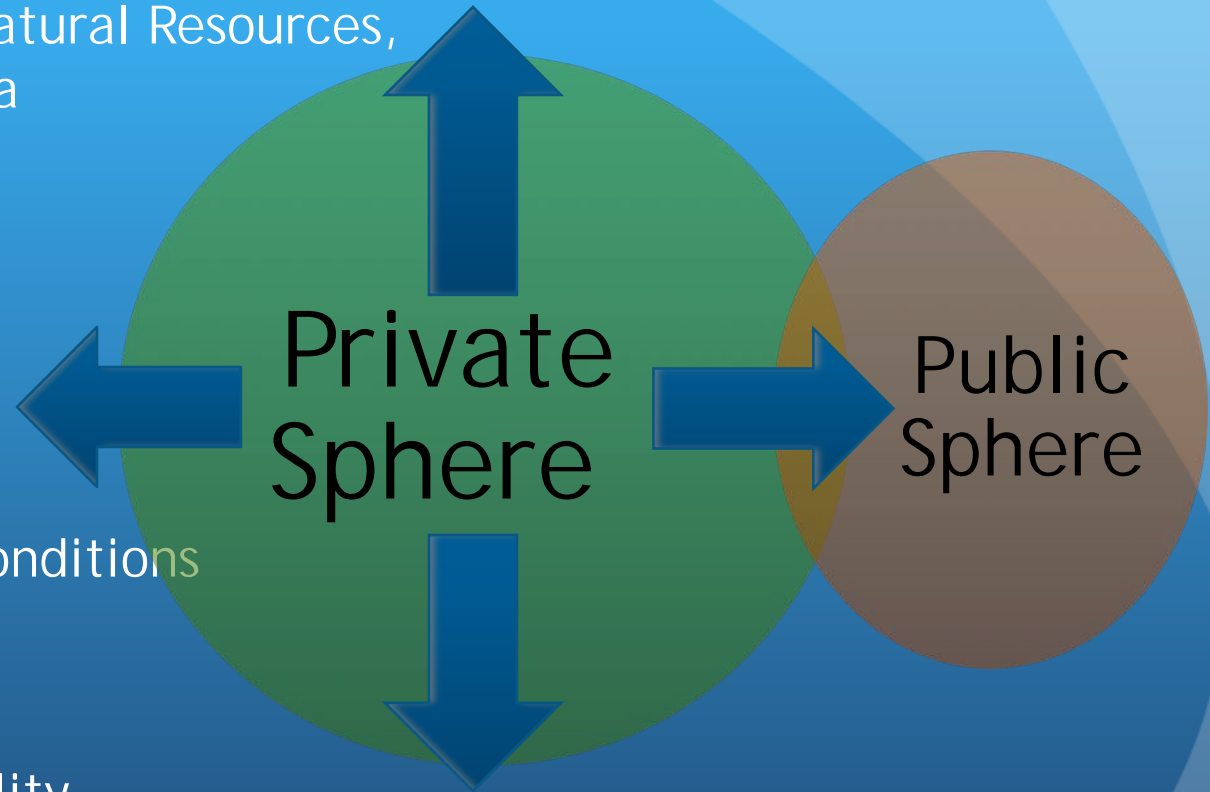
12

Political Finance Database – Reporting, oversight and sanctions



# Market or Government?

- Banking, Energy, Natural Resources, Telecom, the media
- Mass transport
- Education
- Health care
- Wages / working conditions
- Product safety
- Environmental quality
- *Mixed economy, but victories for the market...*



**PRIVATIZATION**

# Contested Commodities

- War
- Prisons
- Sex
- Drugs
- Body parts, organs
- Endangered species
- WMDs/Nuclear weapons

Elections,  
political parties,  
political  
discussion,  
law and policy?

# Democracy funded by an economic marketplace

- Donations to candidates and political parties
- Expenditures by candidates and political parties
- Outside political spending by interest groups and corporations
- Lobbying and the revolving door



# Privatization across contexts

16

## Private control of the means of economic production

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- Factories, natural resources, capital...
- Also new “goods and services” :
  - Prisons
  - War
  - Health care
  - Education
  - Elder care
  - Pensions

## Private control of the means of political production

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- Campaign and party financing
- Lobbying, petitioning, and grievances
- Construction of political issues through the media and PR
- Access and influence over legislative, executive, and judicial processes...

# Private investment in U.S. campaigns

- \$1 billion
- \$11 million
- \$1.5 million
- 48 people and corporations donated \$1 million or more to Trump's Inauguration

# Private Investment in U.S. Outside Spending

18

- In 2016, \$1.57 billion raised by super PACs
- In 2012, \$828 million raised by superPACs; \$416 million spent by dark money groups
- 160 individuals and entities gave \$1 million or more
- 200 millionaires and billionaires stand behind about 80% of all the money spent (roughly \$1.3 billion)

JANUARY 18, 2008

AFTER SHARON: DOES PEACE STAND A CHANCE?

TIME



# THE MAN WHO BOUGHT WASHINGTON

Jack Abramoff took influence peddling to new heights—and depths. Now he's ready to tell all. A TIME investigation of the lobbyist who's turning Washington inside out

BY KAREN TUMULTY



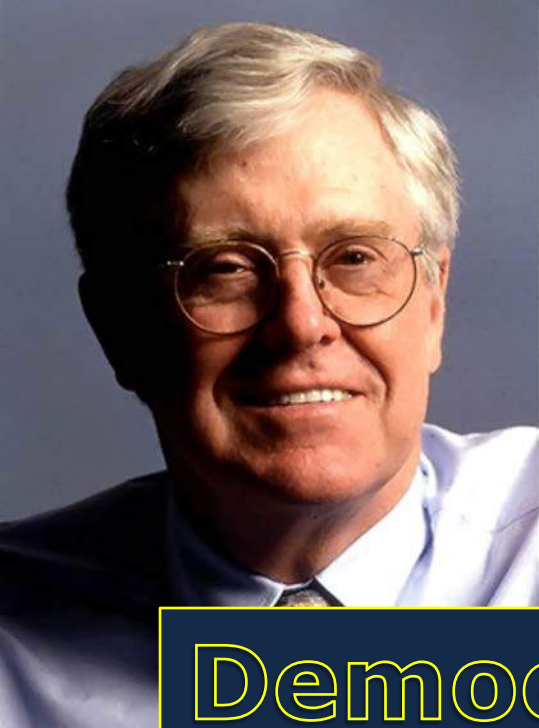
Corruption and Criminals



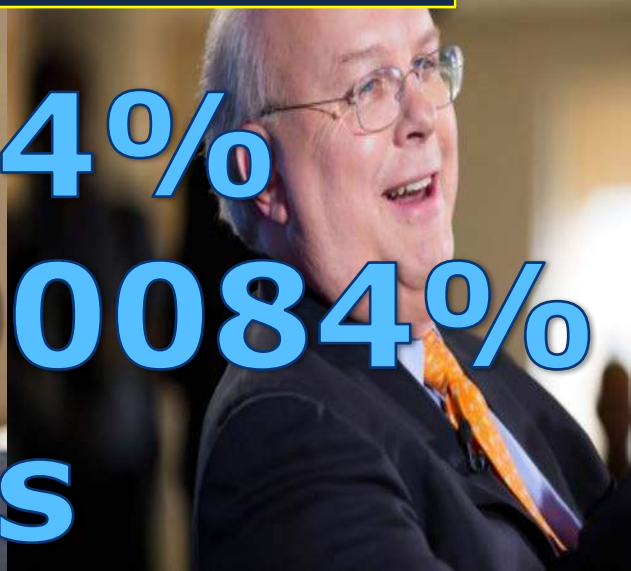
NEW TONIGHT

FORMER CONGRESSMAN RELEASED FROM PRISON  
RANDY "DUKE" CUNNINGHAM MOVED TO HAWAII





# Democracy Is a Market for Political Investors



**Donors: 0.04%**  
**Spenders: 0.000084%**  
**Lobbyists**

# Is the Donor Class Representative of the U.S. population?

- 70% male
- 84% college educated
- 85% have family incomes of \$100,000 or more
- 99% white
- Defining trait: “significantly **more conservative** than other wealthy, educated citizens **on economic issues**-- guaranteed jobs, spending on social programs, affirmative action...”



Thomas Piketty, *Capital in the Twenty First Century* (Harvard University Press 2014)

40 year rise in inequality, 1970-2010

Top 10%, 70% (59% in NZ)

Bottom 50% 2% (also 2% in NZ)

*Function of law and policy*



- Martin Gilens & Benjamin Page, *Testing Theories of American Politics* (2014)

“mass-based interest groups and average citizens have little or no independent influence”

--Lobbying and political spending

# At Odds with the American Trajectory?

- 1776-1976: A long revolution towards greater popular participation, political equality, and representation...



# Congressional Purposes (Federal Election Campaign Act, 1974 Amendments)<sup>24</sup>

Limits on donations and expenditures will:

- (1) Combat “the prevention of corruption and the appearance of corruption...”
- (2) “Equalize the relative ability of all citizens to affect the outcome of elections,” and
- (3) Slow “the skyrocketing cost of political campaigns, thereby . . . open[ing] the political system more widely to candidates without access to sources of large amounts of money.”

## Buckley v. Valeo (1976), on equality:

- “[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure the widest possible dissemination of information from diverse and antagonistic sources, and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” Buckley at 48-49.

# Citizens United v. FEC (2010)

- *Austin* (1990) recognized “a different type of corruption in the political arena: **the corrosive and distorting effects of immense aggregations of wealth** that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”
- “*Austin* interferes with the ‘open marketplace’ of ideas protected by the First Amendment.”
- “That [corporate] speakers may have influence over or access to elected officials does not mean that these officials are corrupt.”

# McCutcheon v. FEC

## 134 S.Ct. 1434 (2014)

What is corruption?

- only the “exchange of an official act for money”
- Not a form of corruption: “the possibility that an individual who spends large sums may garner ‘influence over or access to’ elected officials or political parties.”
- “government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford.”



# Attorney Gen. of Can. v. Harper, [2004] 1 S.C.R. 827 (Can.)

- “[W]hat promotes an informed voter? For voters to be able to hear all points of view, **the information disseminated by third parties, candidates, and political parties cannot be unlimited.**
- “[Without] spending limits, it is possible for **the affluent** or a number of persons and groups pooling their resources and acting in concert to dominate the political discourse...[E]quality in the political discourse is necessary for meaningful participation...and ultimately enhances the right to vote.” Para. 72, also 68-74

# Animal Defenders v. UK (ECtHR, 2013)

- The 2003 Act: affecting ads by social advocacy groups (not just political parties) and applying outside the election period
- “The prohibition was necessary to avoid the distortion of debates on matters of public interest by unequal access to influential media by financially powerful bodies and, thereby, to protect effective pluralism and the democratic process.”
- The court accepts that those aims correspond to the legitimate aim of protecting the “rights of others” (Art. 10(2), limitations clause)

# NZ can side with the Canadian Supreme Court and the European Court of Human Rights

24th January 2019:

- National Party MP Nick Smith, spokesperson for electoral law, is considering moving to restrain foreign influence
- Parliament's justice select committee have invited the country's intelligence agencies to brief MPs about foreign interference:
  - risks posed by the hacking the public officials' communications, **foreign donations, and anonymous and politicised social media campaigns...**

[https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12195007](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12195007)

# Green Party: Member's Bill Electoral (Strengthening Democracy) Amendment Bill

Golriz Ghahraman MP

Part 5:

- a candidate must either return to the donor or pay to the Electoral Commission any part of a donation or aggregation of donations that exceed \$35,000.
- a candidate or a party must either return to the donor or pay to the Electoral Commission all donations received from overseas persons or donations to which overseas person have contributed (rather than only donations or contributions over a \$1,500 threshold).



A map of the Roman Empire at its greatest extent in 117 AD. The empire is shown in red, covering Europe, North Africa, and the Middle East. The British Isles are labeled 'Britannia' and the region of modern-day Belgium is labeled 'Belgica'. The title 'The Roman Empire' is written in a large, black, serif font in the top right corner, with a small '32' in the upper right corner of the slide.

# The Roman Empire<sup>32</sup>

in 117 AD, at its greatest extent

- “Bribery and abuses always occurred... But by the fourth and fifth centuries they had become the norm: no longer abuses of a system, but an alternative system in itself. The cash nexus overrode all other ties. Everything was bought and sold: public office ... access to authority on every level, and particularly the emperor. The traditional web of obligations became a marketplace of power, ruled only by naked self-interest. Government’s operation was permanently, massively distorted.”

# Contact information

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