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# **Corruption in Germany**

## **The Debate in Politics and Political Science**

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### **1. Some Personal remarks at the Beginning**

As a political scientist I haven't always studied political corruption. Political parties and parliaments, organized interest in pluralism: those are the topics I have been dealing with for 25 years. How did I become a student of corruption? Ten years ago I wrote an essay for the trade union journal "Gewerkschaftliche Monatshefte" titled "Political Ethics and Political Culture in the Federal Republic - do Scandals Poison or Purify Politics?" (v. Alemann 1985). At that time, at the beginning of the 80s, the illegal financing of political parties became an issue and so did the corruption in a non-profit trade union enterprise, which both stirred up the Federal Republic.

Insofar my previous research interests such as party finance, interest organizations and political culture built a natural bridge to this dark realm of corruption, fraud, and bribery in politics and society. Since then, in addition to my main focus of research, I have continuously kept an eye on corruption. That is why in 1989 I was asked to contribute to the leading handbook by Heidenheimer/Johnston/LeVine an article on "Political Corruption" in Germany (v. Alemann 1989). I began with a sentence of the famous German political scientist, Theodor Eschenburg. He was an untiring fighter against many incidents of corruption and scandals in the early years of the Federal Republic.

Eschenburg had written in the first edition of the handbook "Political Corruption": "The Germans, spoiled by an extremely honest public administration for more than a century and a half, are sensitive to charges of corruption even today" (Eschenburg 1970, p. 259). And with reference to the tradition of the German civil service (the *Berufsbeamtentum*) Eschenburg said in the spirit of the great sociologist Max Weber: "Thanks to the good tradition of the German civil service which is still effective

even today, bribery, the real corruption, has become comparatively rare" (Eschenburg 1956, p. 699).

Eschenburg's theses led me to three questions:

1. Has the German Berufsbeamtentum (civil service) really been "extremely honest" for one and a half century?
2. Is public opinion in Germany really "very sensitive" to corruption?
3. Is corruption comparatively uncommon in Germany today?

All three theses by Eschenburg, having been established 15 years earlier, I had to reject in 1989 definitely:

1. The German Berufsbeamtentum (civil service) had by no means been "extremely honest" for 150 years.
2. Public opinion is not very sensitive but rather indifferent to corruption.
3. Corruption is not uncommon in Germany, but occurs quite frequently.

What can be said about the present in 1995, six years after the publication of the handbook "Political Corruption" ?

The first thesis still holds, since it contains a historical statement: The history of German politics and its Prussian civil servants was not at all free of corruption. This has been confirmed by research ever since.

The second thesis has got to be revised: Today, six years later, public opinion has become much more sensitive to corruption.

The third thesis needs even more revision: There is evidence of a higher incidence and more systematic corruption in Germany than one would have thought some years ago (cf. Friedrich Ebert Stiftung 1995).

However, after this personal remarks on my previous work on corruption we should proceed more systematically: What precisely is corruption?

## **2. What is corruption? The never-ending history of definition**

The classical conception of corruption since Aristotle, but especially in Machiavelli, thought corruption to be a decline of moral standards in society or, literally speaking, a breakdown of political virtues. This corresponds to the Latin meaning of the word. But even today, the original concept of corruption, being the decline of virtue within a state, has not been completely overcome. One can find, for example, a modern version in Berg/Hahn/Schmidhauser "Corruption in the American Political System" (1956). Corruption is defined as behavior that "violates and undermines the norms of the system of political order which is deemed indispensable for the maintenance of political democracy" (cited by Heidenheimer/Johnston/Le Vine 1989, p. 7).

Corruption conceived as undermining of political values - this definition only appears to be universal in time and place. For all definitions of corruption as decline refer to a historical development. They start with

the "Golden Age" in the past when the fathers' rules were still valid. These rules become corrupt, get spoiled, decay, and disappear. This leads to corruption as a phenomenon of decay, the writing on the wall as a signal of impending decline.

But this is not the only developmental concept. Corruption is also presumed to occur in the loose, shapeless first stages of the emergence of a state. Examples abound after the dissolution of the communist states and the new phase of democratization. New authorities and norms have been established, but have no effect and fail to become widely accepted. That is how corruption would develop.

This can well be observed in the German postwar period between 1945 and 1949, when black markets characterized the economic shortage and bribery was characteristic of the vacuum of political power.

A third developmental concept of corruption - following the concept of the final or of the initial stage - refers to the phenomenon of transformation. Possibly this concept describes better the present process of transition in the post-communist states. It is not a new beginning but a process of complex transformation that is on the agenda. The same holds true for the third world where forms of corruption have been partially linked to the process of modernization as necessary concomitants.

I find this notion of corruption as the decay of values questionable for two reasons: It is too comprehensive, because it labels every misconduct of civil servants and politicians globally as corruption. There are, as I would like to think, more appropriate terms for single acts of misdemeanour in office, such as fraud, embezzlement, enrichment in office, favouritism, clientelism, nepotism, simony etc. On the other hand in my view, this notion of corruption is too narrow if it is only applied to certain historical developments, predominantly those of decay, sometimes also those of emergence or transformation of states.

Recent research has confirmed that corruption is spread throughout all periods, in almost all regimes and in almost all regions throughout the world: In ancient Rome, in presentday Italy, in old and in communist China, in the highly capitalistic U.S. as well as in the old Soviet republics, in Prussian civil service state and even in German National Socialism, but even in the exemplary Swiss system of direct democracy. Hence in democracies and dictatorships, in states governed by the rule of law and in authoritarian régimes corruption occurs. Only the forms, the extent and the debates on the subject change. There seem to be cycles of corruption and of attention being paid to corruption.

That is exactly the problem with the definition of corruption. It is just as multifaceted as there are societies and political systems. In some historical periods purchase of office, bribery of parliamentary representatives and purchase of voters were common, known to the public and not disapproved of morally. Yet, in other societies, even tips are prohibited, because they entail corruption, as for example in Cuba. Or the payment of a bribe invokes the death penalty, just like in Singapore.

Thus, Michael Johnston recently proposed to completely dispense with a

definition of corruption as behavior in comparative research: "We never will devise a definition of corruption **as a category of behavior** that will travel well to all such places or times - or even, realistically, to most of them. Moreover, such approaches will often tell us little about the development or significance of corruption in real societies. I propose that in such instances we study, not a category of behavior, but rather the issue or idea of corruption, and the social and political processes through which it acquires its meaning and significance. I regard corruption as a 'politically contested concept', and suggest that comparative analysis can fruitfully focus upon what I call **role-defining conflicts**" (Johnston 1994 p. 2f).

Is it possible that there is no generally valid definition of corruption at all? And is corruption as difficult to determine by social scientists as sickness by doctors who can much more easily define single concrete illnesses? Also, the opposite of corruption, loyalty to office and political virtue, is causing a lot of difficulties to political philosophers. This is again similar to the concept of health which seems even more difficult to define than the concept of sickness.

Should we abandon our search for a definition for that reason? This would be unsatisfactory as well and disastrous for scientific research. What cannot be grasped conceptually cannot be investigated, researched and analysed correctly.

The opposite to the research based on the broad concept of corruption is the narrow legal concept of bribery in public office. Let us have a look on this alternative concept if it is more useful.

Corruption is a term of dispute in the German language, blocking conceptual precision and engendering political controversy. This makes an analysis in the field of political science rather difficult. It is not a term for legal proceedings, because the proper term of the German *Beamtenrecht* (civil service law) is not corruption, but "bribery". Under the entry of corruption, the largest German encyclopedia refers the reader to entries on the legal definition of bribery. In fact, political corruption seems to be a term without indigenous root in the German language.

The civil service law - having its origins in the predemocratic period of the Prussian monarchy - stylized the pride of the incorruptible civil servant to an ideal type of the rational legal rule of bureaucracy. As Max Weber put it: "Its ideal is to decree 'sine ira et studio', without any influence of personal motives or emotional influence, free of arbitrariness and incalculabilities, especially 'without regard to the person' in a strongly formalistic way according to rational rules and - where those fail to be applied - according to 'factual' consideration of expediency" (Weber 1964, p. 152).

Correspondingly, the German civil service law stipulates heavy penalties within the criminal code. An act of bribery is committed when an office holder is offered, promised, or granted an advantage (not only money) in return for an action which has already been carried out or is to be expected. Moreover, a civil servant risks punishment should he derive

advantage by linking an official duty with a service in return, even though he fulfills his duty correctly. Consequently, civil service bribery is graded according to its severity as follows: (1) Accepting advantage (*Vorteilsnahme*) is punishable, if a civil servant demands advantages, accepts the promise of advantage, or accepts advantage for an otherwise official duty which is left at his discretion. Conversely, someone commits an offense if he offers an advantage to a civil servant (*Vorteilsgewährung*). This offense of simple bribery can be punished with a maximum imprisonment of two years. (2) Corruptibility (passive bribery) of a civil servant occurs if he demands advantage, or accepts advantage for a breach of duty - even if the action will not be carried out. Conversely, offering a bribe to a civil servant is also punishable. This severe type of bribery is generally sanctioned with imprisonment of between three months and five years.

In my opinion the limitation of corruption to the bribery of civil servants seems too narrow. Of course, public office-holders are obliged to loyalty to the public interest. But the opinion that the world of public service is separated by a wall from the surrounding world of the private economy belongs to the past.

State administrations and companies in the private sector are becoming more and more alike. The state privatizes and deregulates public services. Civil service law is modernized and incentives for efficiency and achievement are implemented. On the other hand, markets for certain products and services are increasingly monopolized. The economy bureaucratizes itself and tries again to undo bureaucratization and to get "leaner". These are all parallels to the state. Thus, why shouldn't one apply the same criteria of loyalty and ethics to the employees in the private sector?

Indeed in Germany there are criminal codifications against bribery of employees in the private sector. This is widely unknown even in Germany itself. It is Article 12 of the law against unfair competition which already exists since the turn of the century. Besides, there are similar codifications in the law applying to shareholding companies and the law governing cooperative societies (Ricks 1995, p. 207).

But these sanctions are rather ineffective and hardly spectacular. Firms almost never want their employees prosecuted in order to avoid attracting public attention. Instead, they prefer an internal settlement.

There is increasing public criticism that especially in Germany kickbacks and payoffs for the acquisition of orders - especially from abroad and in the third world - are tax deductible.

Two non-governmental organizations against corruption in international business were founded in the last two years: "Business Crime Control" (Ricks 1995, p. 285) and "Transparency International" (Eigen 1995). The OECD has passed guidelines against corruption in international business in 1994.

It is obvious corruption outside the public service is increasingly considered as a serious problem. As a consequence, it must be defined

more broadly. In my article for the handbook "Political Corruption" I have therefore identified with the definition of David Bayley, which reads: "According to this definition, corruption, while being tied particularly to bribery, is a general term covering misuse of authority as a result of considerations of personal gain, which need not be monetary" (v. Alemann 1989, p. 858).

From my present point of view this is still too general. The misuse of authority for personal purposes can be enrichment in office as well as embezzlement, fraud or favouritism and nepotism.

Corruption is always a process of exchange between two persons (or, more rarely, groups): The corrupter (A), who has economic resources at his disposal, and the corruptible person (corruptee B), who has power resources at his disposal. A, the corrupter, wants a concession, an order, to avoid a penalty etc. Therefore he bribes B, the corruptee, who has the means of power at his disposal to assign the order, the concession or to take a different decision.

So the following seven components belong to the exchange logic of corruption:

#### The exchange logic of corruption

1. The **buyer** (the person offering the bribe: the corrupter) wants
2. a **rare good** (an order, licence, or position) which
3. the **seller** (the person to be bribed: the corruptee) can assign. The latter receives
4. an **additional incentive** (money or payment in kind) for the assignment above the normal price. The corruptee thereby
5. **violates** generally accepted **moral standards** and
6. **damages the interests** of a third party or competitor and/or the public interest.
7. Therefore **corruption is hidden** and concealed.

Given all these seven components, then corruption can be said to occur. The interdependence of these seven components is shown in figure I.

The German law goes beyond that by stipulating that the corrupter and the corruptee must be aware of their wrong doing. Only then the exchange act is considered bribery. Therefore the former federal minister of finance Graf Lambsdorff was acquitted of the charge of bribery. He had accepted donations for his political party, the FDP, by the Flick company. Though this was illegal, the court said, he had thought it to be legitimate and therefore the requirement of intent was not fulfilled.

I consider this argument as highly problematic and will not adopt it as a further component to my seven conditions. The reason is that the awareness of wrong doing is generally little developed as far as corruption is concerned. Many of those, who are involved in cases of corruption consider their conduct to be justified in accordance with higher standards. Corruption is committed, because it accelerates proceedings, reduces bureaucratic obstacles, and compensates for injustices.

It is a double moral standard we are dealing with here: the actors do know that the public does not approve of their behavior. Therefore it is concealed and hidden. But they claim a special form of moral for themselves because they are serving a higher cause. In party-finance scandals in particular, this double moral standard can be frequently observed.

Arnold Heidenheimer (1989, p. 149 ff.) describes this split in moral consciousness as typical for "grey corruption". He distinguishes three different evaluations of corruption in society:

- **white corruption:**

Corrupt behavior is coded tolerantly. This is typically the case in traditional family based system as well as in patron-client based systems.

- **grey corruption:**

Corruption is regarded with some opprobrium. Corruption is reprehensible in public moral standards, but the affected persons are widely missing a consciousness of doing wrong. This is typical for modern constitutional states and states in transition towards democratic political culture.

- **black corruption:**

Corruption is generally regarded as severe violation of community moral and legal norms. This is characteristic for modern democratic media societies.

These are my proposals for conceptual clarification. They took me a long time. That is why I would like to outline my own approach to empirical research of corruption only very briefly in eleven points.

### **3. An Agenda of Systematic Corruption Research**

Apart from the definition at least ten additional steps would have to follow:

1. concept of corruption

2. typology of corruption

- low level corruption
- top level corruption or
- petty corruption
- routine corruption
- aggravated corruption

3. vertical levels of corruption

- local politics (micro level)
- middle level, regions (meso level)
- nation-state level (macro level)
- international level (mega level)

#### 4. horizontal areas of corruption

- administration of housing and construction
- agencies of economic development
- procurement administration
- licenses, approvals
- military procurement
- secret services

#### 5. actors of corruption

- politicians
- leading civil servants
- administrative staff
- members of parliament
- party politicians
- business people
- employees
- interest organizations

#### 6. arenas of dealing with corruption

- the legal system (courts, prosecutors, police)
- administrations
- parliaments
- economy
- mass media
- citizen action groups
- scientists

#### 7. causes of corruption

- change of values
- change of state activities
- density of regulations
- changes in the communication system

#### 8. normative questions and corruption

- ethical questions
- attitudes towards and tolerance of
- change of moral systems
- overlapping of different ethical systems within a society

#### 9. societal functions of corruption

- ethnocentric school: corruption als deviation from the western standard
- functionalistic school: corruption promotes mobility, change and stability



- sociology of organizations: corruption as micro politics normative school: corruption as decline of manners and moral standards

#### 10. consequences of corruption

- inefficiency of state and administration
- inefficiency of economy
- unfair distribution of resources
- decline of values
- change of systems, coups d'état

#### 11. strategies against corruption

- new laws
- new penalties
- more internal controls
- more transparency of the administration
- increasing rotation of staff
- more posts for civil servants
- more money for civil servants
- more qualification
- more computers

A comprehensive study of corruption would have to deal with all these aspects. Of course, this cannot be done in this presentation (some further considerations I have made in v. Alemann 1989; v. Alemann/Kleinfeld 1992; v. Alemann 1994; for the recent German debate on corruption see Hartwich/Wewer 1991; Benz/Seibel 1992; Kursbuch 1995; and Friedrich-Ebert-Stiftung 1995).

In Germany the public debate since the mid of the 80's flourished. Many political scandals entertained the public agenda, quite a few politicians had to resign, the issue of corruption occupied the media. It would take me too far, to evaluate the important question, whether there is a real increase in corruption or only an uprise in the debate on corruption.

The data on the prosecution of active and passive corruption in Germany are given in figure II. They constitute no evidence of a dramatic increase in cases of corruption at the criminal courts. There is no significance of an uprise paralling the public debate.

The same holds true to the scientific debate. The frequency of the items "corruption" and "bribery" in a data bank of the German social science literature (SOLIS) shows no uprising curve as well (figure III). However, the public debate on corruption is almost as important as the development of the real cases.

### **4. Corruption as Shadow Politics**

I would like to conclude my lecture by proposing how the humanities and social sciences could contribute to the study of corruption from different perspectives. It is certainly the predominant task of philosophy to investigate the moral and ethical evaluation of corruption and also to further participate in the development of ethical standards. The faculty of

law is called upon to examine and to implement legislation. There can be no doubt that one cannot simply propose the tightening of sanctions. The question has to be asked whether the legal instruments are sufficient for an effective battle against newly emerging forms of corruption in the international system and in the economy. Administrative science has to develop more efficient instruments for the internal control of corruption in public administrations. Criminal science has to develop better forms of detection and establish special departments for corruption control. Social psychology and sociology in particular have to intensify empirical research on the change of values within society and should try to explain this phenomenon.

My own discipline, political science, definitely has got to do a lot of research cutting across the previously mentioned disciplines. It is the task of political science in particular to develop a political theory for the explanation of corruption. This is why I made the proposal to understand corruption as some kind of informal politics which I called shadow politics (v. Alemann 1994).

Apart from the institutions outlined in constitutions and the visible structures of power within a society, there is what Bachrach and Baratz (1977) have called "the two faces of power". Informal politics, however, is not basically illegal or unlawful. Moreover it is normally a quite necessary addition to formal politics. Without personal agreements, without shortcuts to bureaucratic official channels, large formal organizations and institutions could not be governed. But informal politics, or shadow politics, is ranging from a grey area of completely normal informal agreements and regulations to the black area of illegal and unlawful corruption and organized crime.

Corruption in societies, being a part of informal politics, is inevitable. This does not mean that it is acceptable, that it should not be fought. On the contrary. Corruption is as old as human civilization and its forms have been constantly developed and refined. Just like other forms of economic white-collar crime corruption always occurs without automatically being linked to the decay of a state or the decline of moral standards. It is imperative to analyse corruption as a cold matter of empirical fact and to fight it concretely, instead of conjuring up the decline of the west. Corruption is so hard to fight, because by definition it happens concealed and hidden. Corruption, as I once said, is therefore a matter of trust (v. Alemann 1993). It prospers in an informal exchange of give and take, requiring mutual trust and confidence. There aren't any contracts that could stand up in court. People trust one another by producing a unilateral benefit whose reward cannot be enforced. This is why corruption is prospering so well in established networks of clientelism. These networks have to be controlled more intensively. Preventive measures have to be taken in order to control areas susceptible to corruption.

Doing research on corruption is tremendously difficult. First of all one cannot obtain data since corruption is always concealed. If, secondly, as a research scientist one does get data, they do not constitute evidence. If, thirdly, you do happen to have evidence, you are often not able to publish it. After all, it is the characteristic of successful corruption never to be

uncovered. Despite all these difficulties a student of corruption should not resign himself to this fate. Corruption dreads the light of day. That is exactly why we should talk about it, pull it into the open and fight it instead of demonizing it as a work of the devil.

## **5. Conclusion**

Let me conclude my remarks on the German debate on corruption in seven points:

1. The definition of corruption should not be too broad and widened to the decay of a state.
2. The definition of corruption should not be too narrow and focussed to the bribery of bureaucrats.
3. Corruption is a phenomenon of all times, but differs from country to country and from time to time.
4. Corruption can be conceptualized as a model of a cycle of at least seven steps.
5. Corruption research needs an agenda of at least eleven steps for interdisciplinary cooperation.
6. Corruption is the extreme black side of a scale of informal politics, or, as I suggest, shadow politics.
7. At what point grey behavior of informal politics turns to black corruption, is extremely difficult to fix: a smile is not a bribe.

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