

The “Grey Zone” of Political Corruption in Germany

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1. Introduction

Since the 1990s there has been an ongoing discourse on and increased efforts against corruption. Besides the proliferation of research activities, governments, public authorities and other institutional actors have been provided with recommendations and policies meant either to confront the problem head on or to establish rules and counter-measures to curb its further growth. Institutional anticorruption action has at the same time been assisted by the research and field work of numerous non-governmental organisations.

Nevertheless there seems to be a growing dissatisfaction with purely administrative approaches that steer institutional action towards tackling the problem “top-down”. The reason for the dissatisfaction with such “deductive” problem-solution approaches lies in the growing awareness that the implementation of any anti-corruption regulations cannot develop the effectiveness aimed at without taking into account the “embeddedness” of corrupt conduct. The latter means the ensemble of everyday-life orientations bearing on socio-cultural contexts and often determining the manner actors, institutional or not, habitually behave.

Thus instead of one-sidedly relying on the success a resolute implementation and enforcement of prevention regulations can lead to, research aiming at optimising anti-corruption effectiveness should also try the other way round, that is “bottom up”. Taking its bearings from the fundamental insight that individual actors have to translate institutional rationalities and functional demands into concrete actions, the “bottom up”-approach focuses on corrupt conduct as a non-law-conforming ‘translation’ of rule-governed institutional action. This means that functional rationalities are observed albeit deploying rule violating means.

This paper aims to apply the “bottom-up” approach in a twofold way: Focussing on a concrete study case, that is the party financing affair of the government of Helmut Kohl (German Chancellor 1982-1998) during the 1990s, we on the one hand analyse the arguments of institutional actors (i.e. politicians, Members of Parliament) aiming to illuminate perceptions of corruption that sustain those arguments. On the other hand we methodologically take the established argumentative/perceptual patterns as starting point in order to elaborate on their implications in the context of certain corruption theories. Proceeding this way does not prejudice the findings since we are not led by preconceived notions about “corruption” either as theoretically determined or justifiably codified. Nor do we want to give much credence to the usual distinction between “corruption” conceived as an objectively given entity and subjective perceptions of corrupt conduct. On the contrary, we purport to show to what extent perceptions of what can justifiably be claimed to be corrupt conduct play a constitutive role towards determining a fact, eventually calling for administrative penalty and penal

prosecution.¹ The case under examination suits perfectly the purposes of a “bottom-up” approach conceived in these terms since in this party financing scandal there no ‘hard’ evidence could be found that backed up the accusation of corruption which needed to be sanctioned by the prosecuting authorities. The most that could be claimed beyond doubt was that violating existing party financing rules had a *corruptive impact* on party and parliamentary democracy.

The scope of this paper is limited to the extent that we do not aim to deliver recommendations that can immediately be put to test in corruption prevention policies. It should be rather considered as an attempt to explore the way argumentative stances of institutional actors provide insights into underlying patterns of perceiving corrupt conduct. This in turn can deepen our knowledge of those cultural contexts in the broadest sense of the term which any anti-corruption strategy must necessarily take account of.

2. The Party Financing Affair: Case, Materials, Method of Analysis

At the end of 1999 ex-chancellor Helmut Kohl admitted publicly that he had access to secret accounts from which as it turned out he allocated large sums of money to individual representatives and party bodies, circumventing the responsible party structures and prevailing laws, albeit securing in this way his control over the party machine. He also confessed that he received over 2 million German Marks from anonymous donors, placing them in secret accounts that he personally controlled and which were not subject to any official report. Part of the illegal party funding originated in weapons deals. A parliamentary inquiry committee set up by the mid-left coalition concluded (July 2002) its two-and-a-half-year investigation, presenting the Bundestag a 1102-pages strong final report that came to the conclusion that while the CDU raised millions of Marks in illegal donations from 1982 to 1998 investigators were unable to trace their sources. In line with the legislation on party funding the legal case against Kohl was dropped.

The analysis of corruption perceptions carried out in this paper focuses on the parliamentary debates around the party financing affair. As basic units of evaluation 10 protocols of plenary sessions of the Bundestag (German Parliament) [1999-2002, 14th and 15th legislation period] were selected. Where it was necessary, we have drawn upon the protocols of the hearings held by the parliamentary investigation committee on the illegal party financing of the Kohl-government. The related documents have been directly generated at the Archive of the ‘Bundestag’ in Berlin. As a background document the ‘Party Donations. Final Recommendation and Report of the 1st Committee of Inquiry’ of the German Parliament has also been consulted.

According to the “bottom-up” approach the data were put to a qualitative content analysis. The session protocols of the parliamentary debates were subjected to a computerised quali-

¹ The continuous relevance of the issue treated in this article can be demonstrated by pointing to the current allegations about the Prime Ministers of Saxony and Nordrhein-Westfalen, Tillich and Rüttgers, having been involved in practices that come close to corruption (see SPIEGEL ONLINE - 27.02.2010. Available at: <http://www.spiegel.de/politik/deutschland/0,1518,680675,00.html>. Accessed: 6.3.2010). The state governors are suspected of offering corporate sponsors face time in return for cash. Allowing companies to gain commercial advantages by paying money to the ruling parties seems at first sight an obvious case of political corruption. However, as this article will show, one must distinguish between what the penal law defines as corruption on the one hand, and what public perceptions hold corrupt conduct to be on the other. So long as there is no sufficient law legislation regulating the exchanges between business und politics and the role of lobbyism allegations of political corruption will but have an elusive character.

tative content analysis (content analysis software *ATLAS.ti*) according to the principles of *Grounded Theory* methodology.²

3. Party Politics, Competition, (Law-) Deviations

Taking the fact into account that the parliamentary investigation procedures coincided to a great extent with the emergence of another corruption affair, this time involving leading party officials of the Social Democratic Party (SPD) in the Federal State of North Rhine-Westphalia, it is no surprise that the sessions of the German Parliament (Bundestag) have been held under a certain legitimation pressure resulting from the indignation with which large parts of the public sphere confronted the two major political parties. Under the exigencies of casting off the wide spread suspicion that “they [politicians] are all alike” most of the members of CDU and SPD outbid each other contesting the claims of the opponent of being undoubtedly corrupt. Accordingly the main thrust of the arguments evolves around the contestation as to which party can legitimately claim the moral authority to rightly castigate wrongdoing of the opponent.

3. 1. The Double Binds of Moralising

Since it cannot be disputed that the methods of party financing on both sides are far from being law-conform, one must first identify grounds for ruling out that the opponent has a good argument. This is indeed the basis communicative reasoning where the terms of participation are at stake. This can be achieved only on the grounds of the claim of moral indignation being arrogant, that is somehow dubious and hypocritical. In this manner the CDU-MPs counter the accusations of the Social Democrats by deploying the rhetoric figure of moral arrogance: Instead of outrageously decrying the defaults of the opposite side one should rather downplay the whole affair, lest its moral gravity turn back upon the accusers that are in no way better. As the then (1999-2002) conservative opposition is constantly at pains to point out the illegitimate use of public transport means to private use and the corruption affair in Cologne in the Federal State of North Rhine-Westphalia, governed by the Social Democrats, suffice to disqualify them as moral judges.

In this way and contrary to the driving force of the argumentative tactics of the rival parties a stalemate arises at the possibly worst point for both. Then under the pressure of having to prove their righteousness by castigating the wrongdoings of the other side, they slide without notice into the double bind situation of being obliged, but not able to sustain the moralising stance. Since both turn out to be disqualified as self-appointed judges in the face of the symmetrical charges they level at each other, the means they deploy turn back against themselves. If they do play out the moral card – something they must do considering the public outcry –, they end up being exposed as hypocritical. If they do not, they are right away under suspicion. Either way they are in an impossible position. The sheer weight of the phenomenon of parties that represent two-thirds of the electorate population sharing common moralising grounds that prove to be self-destructive is as much telling as anything can be. In a certain sense we are dealing with an ideal type of a moralising line of argument that proves to be a pitfall for the actors employing, because it depraves them of legitimacy. What does this self-inflicted de-legitimisation therefore mean regarding corruption perceptions?

² Glaser/Strauss (1998).

This performative self-contradiction lays bare ex negativo the underlying corruption perception for which there seems to be a realm beyond power politics and party struggles in which certain moral laws hold indisputably sway. Considering the widespread notion of politics as constitutive of the state structure and consequently instrumental for the public good this deep rooted 'everyday-life' perception equates disturbances, dysfunctions and misguided developments as form of "corrumpere", that is as deviation from that state of political affairs that is best suitable to serve the advancement of public good. Notwithstanding the endless row of corrupt deviations that in a way accompany the history of the modern state like its shadow the longevity of this perception originates in the deep-seated influence Aristotle's *Politics* has exercised on European political and ethical thought. Since then one of the main pillars of political theory that has thoroughly permeated societal perceptions of good governance and public ethics or conversely 'bad corruption' consists in the assumption that the goal of the state community lies in advancing the cause of a good and self-sufficient life.³ Unavoidably then, political action is valued positively or negatively according to the extent the public sphere perceives the pursuit of this telos on the right way being achieved.

In the face of this it is not difficult to discern the ramifications of such an ethically connoted perception of political corruption regarding our case study. Under the pressure of upholding the normative foundations of political rule the two major parties must on the one hand play through the rhetorically potent moralising argument lest there arise the suspicion that the public perception of ethically good governance to which they themselves subscribe 'deviates' from factual political practice. On the other hand by doing so, that is reciprocally exposing corrupt conduct, they unwillingly prove the contrary, namely that it is exactly current political action that does not fit the scheme of what is perceived of in the public sphere as morally sound or ethically founded. Either way the discrepancy between normative political standards and everyday party financing practices cannot be closed up. Should this be the case one must drop the ideal-type distinction between governance as subservient to the ethics of public good and/or occasional 'deviations': deviation (eventually corrupt conduct) almost becomes the rule.⁴

3. 2. The Vicissitudes of Party Struggle

Below the level of lofty polity morals and beyond the ensemble of accusations and counter-accusations the two major political formations are naturally at pains to let anybody see that besides blatantly failing to meet normative standards the rival party exploits the affair of party financing in order to draw political capital. In this way it does not surprise that the offence of moral arrogance the MPs of the oppositional Christian Democrats thrust at the government develops at times to a full blown suspicion of the legitimacy of the whole investigative procedure set up by the parliamentary inquiry committee. In the eyes of the opposition it comes close to, or rather coincides with a tactical manoeuvre to discredit the previous governments that does not even eschew disregarding fundamental law principles. Which principles are being violated is not stated, but it is easy to follow the rhetorical thrust of the instrumentalisation argument up to point where its content becomes clear: the committee violates one of the fundamental preconditions for the fair play of and competition between the political forces: the equality of chances.

Since it purports to ruthlessly expose its financial resources, it deprives the party of certain advantages that accrue from having diverse and powerful donors thus decreasing its ability to

³ See Aristotle (1995: 1280b 30-35).

⁴ See Jansen (2005: 24).

act. According to this argument the activities of the inquiry committee could at best be seen as party tactical machinations with the will to bring about transparency to the detriment of free competition between political parties. Then since the committee demands from the treasurers a detailed account of the party's financial transactions it undeniably exposes core functions and mechanisms of the party to the scrutinising gaze of the political rivals that will of course take a certain advantage.

Now it should be asked what kind of perceptions of party funding lie behind this notion of parliamentary inquiry being detrimental to fair party competition. If one follows the argument closely, what at first strikes the eye is that exposing party funding in the framework of party competition is perceived as disadvantageous because it allows the political opponent access to financial resources that are in principle limited. In this way the oppositional Conservatives can supplement the charge that the whole investigation procedure is a political means of power struggle by pointing out that it aims either at cutting them off from vital financial resources or criminalising their donors.

Keeping in mind the rules of allocation of resources in a competitive market economy this perception of securing funds is certainly at first sight not beyond the point. A resolute exposure of funding channels curtails in a certain sense the equality of chances political parties must enjoy should they be able to compete in fair terms. This argument can however cut both ways. As the Social Democrats are accordingly eager to point out it was exactly the system of party funding the Conservatives established over the last decades that enabled them to secure a dominant position in the political life of post-war Germany thus curtailing the equality of chances of other democratic parties. By turning the argument against the Conservatives the Social Democrats successfully bring together their claim that the hegemonial position of the conservative party has rested upon illegal party financing with the defence of the investigation procedures aiming at transparency and re-establishing fair conditions of party competition.

In this way one observes how one and the same perception of what is regarded in a competitive economy and political system as requisite party financing can acquire different values depending on the position the parties occupy at a time in the relations of party struggle. Although the Conservatives cannot by and large deny that the system of secret accounts ex-Chancellor Kohl had established over the years was not exactly legal, they somehow cannot relinquish the claim of suffering irreparable competitive losses should the whole affair be scrutinized either. Obviously guided is this stance by the perception that no matter how norm-deviating these party funding practises may have been, they were unavoidable given the acute competition with and the struggle against the Social Democrats.

3. 3. Does Competition (really) kill Corruption?

In the face of the weight the competition argument has regarding access to funding resources it is worth expanding it. At first if one looks at the matter broadly, considering corrupt practices (i.e. briberies) of firms in a competitive action framework, it can by no means be sustained – as the liberal economic doctrine does – that the rules of free competition tend to decrease the level of corruption. Drawing on three variables to capture the degree of deep competition, that is reduction of transport costs, the tendency toward more similar cost structures and the one towards lower overhead costs relative to profits, it cannot be shown that raising their level is associated with lower levels of briberies.⁵ If one transfers this insight into

⁵ Bliss/Tella (1997: 1021).

the realm of party competition it is accordingly not easy to dismiss the competition argument right from the start as misguided or merely apologetic in order to cover up wrongdoing.

Viewing economic and political competitive action under these auspices as symmetrical does of course not mean that the rationalities governing the political and economic systems can be confounded – although as we shall see in the perceptions of political actors they often do. It is true that the claim both parties raise regarding party financing as an essential precondition of successful competition in terms of fair play rests upon deeply anchored perceptions of the necessity for liberal economics of equal chances to find application in all realms of public and private life. However, the asymmetries are considerable, the most important among them being that competitive democratic politics rely on open competition governed by normative and institutionalised assumptions of equality (of chances).⁶ Moreover self or party interests are of course driving forces, but in contrast to markets, where equality is seen merely as a starting point or outcome, it is assumed that in the framework of a democratically based national politics these forces will be integrated into broadly-accepted public policies.

Below this level of well institutionalised, norm conforming party competition it is conceded though that competition as a contest of forces cannot be reduced to a purely institutional arrangement – competitors' perceptions of the actual state of the 'game' and their own stance in it equally contribute to defining the facts. What counts in this context as socially valid and intersubjectively binding, like in every other realm of societal action, is essentially mediated by the actors' everyday-knowledge assumptions.⁷ On the basis of this theoretical principle and taking into account the fact institutional rationalities are also mediated by and 'translated' into individual action the aforementioned normative and institutionalised assumptions of equality of chances need to be reconsidered. Generally speaking it can be claimed that the institutional guarantees securing equality in a competitive political system need not coincide with prevailing perceptions about the 'actual' state of (competition) affairs.

This becomes strikingly clear once one turns to empirical sources – in our case the statements made by the leading figures of the party financing affair in the investigation process of the parliamentary inquiry committee. Ex-Chancellor Kohl does not deny that his system of fundraising did not conform with the party financing laws and is ready to assume full responsibility. Nevertheless it was for him in a certain sense compulsory taking in account the necessity of observing the political rule of the equality of chances between the political parties. In the face of the oppositional Social Democratic Party enjoying extensive financial support among others by the invested capital in the printing media sector and by the trade unions, the then ruling Christian Democrats on the contrary had to take pains to compensate for this relative drawback. Trying to catch up in financial terms with the opposition, the donations, though undeclared, were a crucial contribution to re-establishing a certain balance of competitive power between the parties. In this way the allegation that the illegal funding represents an obvious case of political corruption is totally unfounded for Kohl, since it was not private benefits/private enrichment that he aimed at, rather the economic well-being of the party – the secret accounts, whose existence he does not deny, were for the use of the party and not the individual(s). Furthermore the fact that the donations came from legally declared incomes allows him to have a clear conscience. Therefore it is no surprise that Kohl, while acknowledging the fact of illegal conduct, nevertheless does not see why he should be made accountable for violating the constitution.

⁶ Johnston (2001: 9).

⁷ Berger/Luckmann (1989: 16).

Lest this be understood as an apologetic tactic, the testimonies of other key figures also point towards the factual perception that the party which was under the pressure of catching up with the Social Democrats had to revert to ‘other’ methods to secure financial resources. The former treasurer Kiep claims that in contrast to the hierarchical structure of the Social Democratic Party the Treasurer of the Christian Democratic Party, which is organised federally, had only limited access to the value assets of the federal CDU, these being largely at the disposal of the local party organisations in the various federal states. In this way the value assets appearing in the party’s books did not display the actual state of affairs regarding the financial resources of the federal party. Depending on the local party organisations for support, the federal CDU was obliged to negotiate with them over even such matters as the amount of dues paid by party members to be put at its disposal – this negotiation process often took the form of an internal party struggle. Presumably facing the need to *compensate* for this weakness and also match the economic efficiency of the oppositional Social Democrats, but most importantly to keep the party functioning on national level Kiep has functioned as go-between in various economic deals involving the state and multi-national corporations. A similar strain of argument was developed by his successor at the Treasury of the party, Brigitte Baumeister, contending that in her field of expertise and responsibility was only the acquisition of donations. She undertook efforts to win as many donations from private persons as possible in order to achieve such a volume of funds that would enable the party not to be dependent on donations from businesses and commerce.

Taking these testimonies at face value may of course not suffice to provide ‘hard’ evidence. They are nevertheless indispensable indicators for the existence of positions on and perceptions of party competition that have undoubtedly favoured the preference of non law-abiding party funding. It can also be assumed that an important component of these perceptions was insecurity, a factor that often determines, or even causes law deviating conduct (corruption).⁸ Insecurity does not necessarily only refer to perceiving rival parties as enjoying comparative advantages or conversely assuming one’s own position in party struggle as suffering from certain deficits regarding material/financial resources. It also qualifies the actors’ perceptions of their relative power position inside the party structure. This becomes all the more important the more the organisational profile of the party is determined by factional divisions and cross-cut by strong influences of (federalist) localism, as in the Federal Republic of Germany. In such cases excessive inner-party competition often goes hand in hand with factions demanding side-payments or other gratifications for their ‘loyalty’.

We are thus led to the assumption that competition as such is a necessary, but not a sufficient condition regarding pre-empting corrupt conduct. It is generally true that political competition nourishes strong public pressure – through laws, democratic elections and the independent press.⁹ Given three preconditions, that is free and fair elections, legitimacy and diffusion of political power, there seems to be sufficient ground on building anti-corruption immunities.¹⁰ But the opposite holds true too: Where the level of competition is low, that is when the oppositional party forces are weak, the elected elites sometimes engage in entrenched corruption too.¹¹ It seems that the German case lies somewhere between the two: Although according to their guiding perceptions of party competition Kohl and other leading figures of the Christian Democratic Party acted as if under pressure to secure financial resources at any cost, the actual state of the relation of forces in the political landscape of the 90s was far from disadvantageous for the party. On the contrary, the Conservatives had in a certain sense

⁸ Knack/Keefer (1995).

⁹ Schleifer/Vishny (1993: 610).

¹⁰ Wollack (2005: 2).

¹¹ Doig (1984).

developed over the years to what is termed a cartel party, characterized by the interpenetration of party and state.¹²

4. Money, Politics, Power

If the relation between political competition and corrupt conduct cannot sufficiently be explored then without considering the level of subjective awareness that mediates the way politicians ‘translate’ the rules of institutionally structured political competition into concrete party tactics, we must now further examine the argument the MPs bring forth trying to account for the party financing affair. As we have seen on the charge of the Conservatives that the investigative activities were disastrous for the party and detrimental to essential preconditions of political competition, the Social Democrats counter that it was this very system of secret and illegal party financing that enabled the Conservatives to maintain a hegemonial power position over the years.

In the face of the overwhelming evidence against them, the parties of the oppositional Christian Democrats and Free Democrats must then draw the defence lines in a more differentiated manner than that of simply counter-accusing the government parties (Social Democrats and Greens) of being preposterous, that is taking advantage of the parliamentary control mechanisms in order to discredit the opposition. Accordingly they draw upon certain weaknesses of the report of the inquiry committee in order to dismantle the argument that the system of illegal donations is evidence of political corruption. Since the results of the investigation could not substantiate the claim that the financial transfers were concomitant with the exercise of influence on the political parties from external factors the accusation that the former governments’ decisions rest on financial dependencies must fall. Neither can we assume according to this reasoning that the premise the system of secret accounts is based on consists in the intention to gain private enrichment/benefits, as the government parties are then on their part obliged to concede. Indeed since their attack premised on political corruption cannot be sustained by means of hard evidence, Social Democrats and Greens must in turn draw attention to the grave effects this system has had on the functioning of party mechanisms and political democracy. But before we examine how they counter the argument that no case of political corruption really exists, we turn our attention to the perceptions behind the latter.

4. 1. Corruption without Private Benefits?

The Conservatives are at pains to make a strong case out of the fact that funding, as was practised under the former Chancellor Kohl, did not serve the purpose of personal enrichment. Now if one takes into account how Transparency International defines corruption as “being the misuse of entrusted power for private gain”¹³ [whether in the public or private sector, in the scope of satisfying some personal or group interests], it is indeed at first sight somehow difficult to subsume the German party financing affair under this definition. In the absence of private benefits intended or factually gained it is far from clear that the ‘system’ of secret accounts Kohl was able to establish over the years is beyond doubt evidence to the fact of politically corrupt conduct. The illegal donations were deposited in off-shore accounts and remained off the balance sheet, but under the assumption/perception that the party was structurally

¹² Mair and Katz (1997: 108).

¹³ Transparency International (2006).

underfinanced in comparison to the Social Democrats they were subsequently re-channelled into the party to finance election campaigns or the work of various party committees.¹⁴

Of course one can argue that the group interests the TI definition speaks of should be extended to include the party interests as well, but in this case that would mean that illegal funding served the party interests without there being sufficient indications of misuse of entrusted power in connection with fund raising though. Trying to fit the TI definition the other way round, that is starting from the misuse of power, could be more promising however, for it was the hegemonic position in the party or state apparatus that enabled Kohl *a)* to attract various donations and *b)* to put himself above the democratic procedures of accountability refusing to disclose the sources of the donations received. This last point deserves peculiar attention because the denial to comply with the legal regulations on transparency means reversing the priorities of ethical conduct politicians are normally supposed to observe. Preferring to uphold the (at first sight somehow outmoded) private ethic of personal loyalty, or better, reliability in terms of the ‘word of honour’ Kohl dispensed with the one of the principles of public ethic – accountability.

Positioning himself beyond the realm where the principle of public accountability reigns does not mean though that the loyalty Kohl wanted to be observed at any cost should not be seen as necessitated by certain ‘duties’ or, more exactly, responsibilities. At this point it is crucial to observe the distinction between accountability and responsibility: Whereas the former qualifies the external relations of an organisation (for example a political party) represented in the head of the organisation, the latter refers to those bonds of allegiance that are functions of complexity reduction in hierarchically structured organisations.¹⁵ According to this view Kohl’s decision to revert to ‘traditionalist’ allegiances disregarding presumptuously the procedures of public rendering of accounts casts a positive light on certain aspects of power politics he successfully practised leading the conservative party in an authoritarian manner. One part of the responsibility he acknowledges has to do with party funding functioning as a control mechanism inside the party apparatus – for Kohl instrumental both in respect to political competition and the successful role of the party in the process of German reunification at the beginning of the 90s as well.

Before we take up on this in the context of the parliamentary debates we must look more closely at the other side of the issue of responsibility, namely that referring to the party donors. Keeping in mind the long standing linkages between the Christian Democratic Party and certain fractions of finance and industry, most notably exposed in the party financing scandal of the Flick affair in the mid 80s¹⁶, we can assume that donation activities took place in the frame of an informal network. Except for cases of bribes originating in weapons deals, these donations landed regularly in the secret accounts of the party, though without the possibility of proving that they were immediately connected with or exercised a direct influence on the political decision processes of the then ruling party. This being the case, the question arises

¹⁴ Party Donations. Final Recommendation and Report of the 1st Committee of Inquiry of the German Parliament (2002: 1072)

¹⁵ Luhmann (1964).

¹⁶ The Flick corporate group had sold shares worth about €1 billion and reinvested the revenue. The company applied to the German Ministry of Economy for tax exemption on the reinvestment, which was granted and described as ‘economically highly eligible’. At the same time, the then governing liberal party (FDP) received generous donations via the ministers of the economy Otto Graf Lambsdorff and Hans Friedrichs. In the beginning of the 1980s investigations began and both liberal ministers and Flick manager Eberhard von Brauchitsch were charged with bribery and tax evasion. In the course of the criminal investigations it was found out that all parties had received large amounts of money from the steel industry, through civil associations acting as collecting agencies.

how to explain the relation between the informal donating network and the leading circle of the party. This question is primarily motivated by the obvious contradiction between the law-deviating conduct concerning party financing on the one hand, and the unconditional loyalty to the network of donors on the other.

Why should this be a contradiction demanding explanation? Obviously because deviating from or violating the norms in the former case could easily coexist with a norm observance in the latter which undoubtedly tolerated no ‘deviations’: The ‘word of honour’ given to the donors was meant to be kept – absolutely. It seems that the norms regulating the political culture of public account rendering were not strong enough as to not allow ‘deviations’ in comparison with the norms of that other culture of personal allegiance and mutual trust. From this angle, the issue turns out to be not that contradictory: far from excluding each other both types of perception-based action function complementarily – as the present case and numerous other party financing affairs with the same design show. Subsequently, what is (was) perceived in the corridors of party leadership as a constant weakness of the formal organisation, namely certain deficits of the party to steer the allocation of resources, i.e. the mechanism of fundraising, so that *a*) the requirements of successful competition are met, and *b*) the control of power over the party apparatus is secured, can be compensated through a recourse to the informal network.

Accordingly, if we consider this type of party funding as the allocation of financial resources coupled with party apparatus control, the relation between political institutions and networks clearly emerges as functional complementarity. Regarding violations of funding rules, this means that law-deviating conduct inside the formal organisation initiates or mobilises an informal organisation/network that in turns exercises positive effects on the former. If this reasoning fits the scheme of perception/action of the Kohl government on institutional grounds it also helps to explain the ‘stubbornness’, or to be more precise, the responsibility out of honour of the ex-Chancellor that could outweigh any duty out of public accountability. Then what characterises informal networks of this type is their being situated in a kind of no-man’s-land between norm deviation (eventually crime/corruption) and norm observance (loyalty). The lines in either direction can be crossed quite smoothly because the network superimposes in a way that curtails their validity upon such dichotomies like legal/illegal, legitimate/illegitimate, lawful/lawless its own paramount difference: exclusion/inclusion.¹⁷ The ‘word of honour’ marks the dividing line between being responsibly loyal on grounds of the latter and disdainful of public accountability owing to the former.

This in turn casts the question whether the illegal party financing of the Kohl era could in any way be compatible without private benefits having been gained in another form: Is corruption dependent on private benefits? If to the attempt to match the answer with the definition of IT leads us to expand the notion of private benefits to include group or party interests, then considering corrupt conduct under the light of its “embeddedness” in the culture of trust/allegiance obtaining in the informal networks renders, on the contrary, this very notion meaningless. The primary function of these networks lies not in bestowing ‘benefits’, or rather, exchanging money for favours, but in reproducing forms of friendly turns.¹⁸ As concerns the fact that these friendly turns could not be proved *a*) to have exercised a direct impact on the decision process of the Kohl government or *b*) to have been efforts to achieve legislative quid pro quos, one could argue that the affiliations to the donors’ circles were strong enough to last presumably for the whole political career of Kohl, but (probably) not strong

¹⁷ Luhmann (1995: 25)

¹⁸ Jansen/Priddat (2001: 253).

enough to be the causes of concrete political decisions: In any case the strength of weak (i.e. informal) ties could be based on this.¹⁹

4. 2. The Elusiveness of Political Corruption

Now returning back to the political aspect of Kohl's perceptions of responsibility towards the party, it is not surprising that in the context of the parliamentary debates the bulk of the arguments referring to the relation between illegal funding and party politics focuses on the nature of power politics practised by the Conservatives. Although not all critics would go as far as to support the claim that the damage the party financing affair inflicted on the parliamentary system comes close to a state crisis, most of them approve of the assertion that the desolate state of affairs must primarily be seen as a result of a devastating perception and understanding of party politics and democracy. Far from being fortuitous, the party financing scandal must be seen as inescapably flowing off from the ground self-perception of the conservative party as being the most original western party in the confrontation of systems during the Cold War. Identifying itself with the defence of democracy and constantly at pains to roll back the Social Democrats, it developed over the years a political self-understanding in which the country's fate, national interest and party goals coincide.

Coming closer to the arguments concerning the immediate causes of the illegal party funding, the parliamentary factions of the mid-left governing coalition (Social Democrats and Greens) must – in the face of lacking evidence – base their critique of the former government being involved in political corruption on other grounds than those of the pursuit of private benefits. Accordingly they mount a wholesale attack on the Kohl 'system', holding it responsible for two cardinal violations of democratic rules. First and foremost Kohl's autocratic and authoritarian principles of leading the party are held responsible for the phenomena of favouritism, hypocrisy, cronyism, intrigues, crime compatible networks etc. Being necessitated to concede that no sanctionable private enrichment effects can be observed, the argumentative strategy here consists in rendering the notion 'private' less personal than essentially political. Under the premise that Kohl's will for power was strong enough as not to eschew from setting up a refined system of illegal party funding, the 'private benefits' should in his case be interpreted as political assets accumulated through distributing the secretly acquired funds so as to secure the loyalty of the party functionaries, making them dependent on his political decisions – identifying himself with the party, it was all the more consequent to regard the illegal funds not as personal enrichment, but as a form of effectively promoting the cause of the party – and ultimately that of the state/country. Given this fact it does not surprise that the counter-argument of the Social Democrats insists on seeing the situation both ways: If it is true that handing out the illegal funds to secure the reliable loyalty of party officials implies a certain political 'bribery' or corruption – even if for the shake of the party cause –, then it should be clear that the same holds true in the case of the secret donors funding the party in order to promote the cause of their economic-political interests. Either way the personal responsibility of Kohl, that is, his being accountable for trespassing the law of party financing, should be beyond doubt.

The second charge focuses on the fact that this very autocratic style in the course of the hearings has turned out to be the main obstacle for carrying out the parliamentary investigation to an end. Therefore in the eyes of the government parties the authoritarian rule in the CDU, that is the democratic deficits of the former ruling party, together with the influence peddling in

¹⁹ Granovetter (1985).

relation to personnel decisions and political resolutions and oiled with discreet transfers of money – all this deems the efforts to clear up the case to failure. As the main obstacle to investigative transparency the democratic deficits of the former ruler party are attributed to a certain fundamental attitude of Kohl: Both the authoritarian control over the party and the system of secret funds are seen as the results of his false understanding of party life and democracy. The attitude the critics claim to be the root of the problem consists in placing the value of personal confidence above the procedures of political life. Having decided that the trust put by his donors in his discretion is to be valued higher than the formal procedures of parliamentary control mechanisms is a fact that testifies to Kohl's antidemocratic attitudes.

If the latter can justifiably be claimed, it seems difficult for these argumentations though to derive from this general state of authoritarian party rule and certain propensities to circumvent democratic procedures a clear-cut designation of political corruption. Following a standard definition²⁰ political corruption occurs when: *a)* office and mandate are deployed as political resources for obtaining/realising 'private' interests; *b)* political resources are exchanged for economic ones; and *c)* there is a conflict between private and public interests. Trying to make the facts of the corruption affair fit the definition scheme encounters certain problems. *Firstly* it is true that Kohl drew on his leading party function to attract considerable funds, but only under the premise that his 'private' interests were identical with those of the party a political corruption case can be made. But this in turn can only mean sustaining a political charge that focuses not so much on rule-violating fundraising as such, but rather on the fact that he used it to secure the patriarchal power over the party apparatus. Considering this practice in relation to its relevance for a criminal proceeding it is obvious that it cannot have any prosecution consequences since none of the requirements of *a)*²¹ is met: *a1)* Deviation from the formal duties of a public role because of private pecuniary or status gains; *a2)* Violation of rules against the exercise of certain types of private influence (i.e. bribery, nepotism, illegal appropriation of public resources for private-regarding uses). *Secondly* on the grounds of evidence lacking the claim that an exchange of political for financial resources must have occurred remains speculation – in dubio pro reo. This juridical principle aside the grounds on which political corruption as an exchange relationship could be based on are highly insufficient – to say the most. For it is by no means clear in what way certain (motivational) preconditions of bribery²² as a) solution of problems of selection [i.e. acceleration or security regarding the allocation of resources], b) achievement of higher revenues, and c) speeding up decision processes, could at all be observed. *Thirdly*, more chances to match the definition could possibly provide the conflict of private and public interests. This in turn raises the question how to define the latter so that it suits the party financing affair. The most promising perspective would be to restrain 'public' interests to the rules of party democracy, for as we have seen the appeal to the ethics of public/state governance may have moralising effects. Additionally of help could also be a weak version of corruption as an exchange relationship dependent on economic rationality. Following this version in the party financing affair not financial means were exchanged for power resources, but the sort of exchange that undoubtedly occurred must be seen in general terms as a change of steering media: economic/ financial resources were 'transformed' into power resources.

²⁰ von Alemann/Kleinfeld (1992: 263).

²¹ Nye (1989: 963-984).

²² Neugebauer (1977: 25-39).

4. 3. The “Grey Zone” of Political Corruption

Taking together all these difficulties to pinpoint the exact nature of corrupt conduct it is not surprising that for the MPs of the SPD and the Greens the problem how to come to grips with the party financing scandal of the Kohl era comes down to defining the exact demarcations between sanctionable corrupt conduct and the general exercise of influence. This in turn proves to be for both Conservatives and Liberals a welcome opportunity to mount their counter-attack claiming that it is the very same situation with the Social Democratic Party which controls a huge print media empire and thus acts as an economic agent.

This accusation may of course not contribute substantially to fend off the allegations of the coalition parties that the conservative Opposition has systematically practised illegal party financing. This is all the more obvious since having powerful connections to businessmen from the mass media sector the Conservatives themselves cannot but be made accountable for what they otherwise level at the governing parties, i.e. intermingling economic and political interests. However, the self-defeating aspect put aside, this line of argument is not entirely beside the point, for it helps pinpoint the fact the Social Democratic Party itself is entangled in market strategies. Besides, the Cologne corruption affair has shown clearly that all the corruption criteria are met: criminal acts, fiscal frauds, personal enrichment. In this sense it is no difficult matter for the Conservatives to denigrate the charges of political corruption as nebulous or pure party polemics and this all the more so since the illegal funding committed during the Kohl era could not be shown by the parliamentary investigation committee to be the cause of certain political decision processes. Nevertheless the governing parties represented by the chairman of the investigation committee would like to insist upon corrupt conduct having taken place, albeit not in relation to the illegal funding. The whole scandal affair should rather be located in that *grey zone* between sanctionable corruption and general political exercise of influence.

With this counter-reference to wrongdoing on the part of the Social Democrats the parliamentary arguments come full circle in a sense. The reciprocity of being shown to have violated existing regulations forces the two main political formations to acknowledge the systemic nature of confounding political and economic rationalities. Given the scale of the party financing and corruption scandals, but also the intermingling of party and states interests, a certain danger of a state crisis is not ruled out. Nevertheless, state affairs such as this one demand wholesale solutions, although apart from revising the party financing laws there seems to be uncertainty about what the latter should be. In any case, making a virtue of necessity one may hope that this state crisis could put the regenerative forces of the system to test, proving democracy's self-healing powers.

5. Conclusions

The party financing affair of the Kohl government raises some questions, which on the basis of the analysis undertaken in this paper reveal certain inadequacies in the current approaches – both legislative and judicial – dealing with the phenomenon of political corruption. Considering the scale of self-delegitimation of the main political parties between 2000 and 2002 it must be asked whether there can be effectively enforceable norms in liberal-democratic systems that bind state-political action, or, as the Kohl affair shows, cases of political corruption should in a way be considered unavoidable taking into account the polyvalence of interests and norms, but also the structure principles of pluralistic societies. One of the main reasons accounting for the elusiveness of this particular corruption case can be shown to be a result of

two discrepancies or tensions inherent to liberal political systems: *a)* that between institutional role-setting and norm-obeying action on the one hand, and their ‘translation’ into everyday conduct depending on the actors’ perceptions of the norms being ‘rightly’ applied to the other; and *b)* that between the multiplicity of contesting organisation loyalties and norms on the one hand, and the unitary state norms on the other. Regarding political corruption one can of course reduce such tensions and complexities on the level of codified law-violations, thus restraining the notion of politically corrupt conduct to the aspects of private benefit maximisation through briberies and granting undue advantages. But in face of the insufficiencies such a narrow approach that counts only on the prosecution-relevant aspects of law-deviating conduct often reveals, research on and prevention policies against political corruption need to take into account more thoroughly both the ‘conflicting loyalties’ and the societal perceptions of justified action.

6. Primary Sources

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- P1:** Plenary session protocol 14/248 (04.07.2002), [25097 B – 25129 A] ·
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The stenographic protocols of the interrogations of the Parliamentary Investigation Committee refer to the following persons and dates:

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1. **P31:** Protocol of the 31st Plenary Session (29.06.2000) [Protocol Number 31, pp. 1-69]
2. **P33:** Protocol of the 33rd Plenary Session (6.07.2000) [Protocol Number 33, pp. 36-143]
3. **P57:** Protocol of the 57th Plenary Session (25.01.2001) [Protocol Number 57, pp. 37-131]
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· The numbers/capital letters refer to the original pagination of the stenographic protocols [pdf-format].
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