

Crime

& Culture



Promotion of Participation

ALACs

and Citizenship in Europe

Promotion of Participation and Citizenship in Europe through the "Advocacy and Legal Advice Centres (ALACs)" of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe

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The Corruption of Norms



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Corruption is regarded as norm violation par excellence. However, the individual associations are quite different depending on place and time. The field of science also involves a long and permanent debate on the appropriate definition of corruption. A research approach that addresses empirical definitions of corruption and their application in the historical and socio-cultural contexts might help to escape the traps of both objectivism and subjectivism (Bourdieu 1990), i.e. corruption as a fact or moral failure. The analysis of the discourse on corruption provides us with information on different cultures of corruption, both within a society and in an international comparison of cultures (see also Tänzler 2007). In this context, scientific definitions are also addressed as empirical concepts with reference to social discourses and practices and their socio-cultural embedding. From the perspective of sociology of knowledge, the logical value attributed to the definitions, both in everyday life and scientific practice, remains bracketed for us; we are merely interested in its pragmatic effectiveness (Berger & Luckmann 1966). Together with Anthony Giddens (1990) we assume a reflexive relationship between society and the humanities: The reception of scientific explanations affects everyday life, from which these explanations were initially read off and on which they usually bring about unintentional effects. This is particularly true with regard to modernity, the more so as it comprehends itself a knowledge society. Therefore, scientific definitions of corruption that are paradigmatically significant for the social discourse are of particular relevance. It is quite striking that corruption does not always enjoy the attention of the society, but mainly in transitional situations and times of crisis (Tänzler 2008).

Corruption as cultural crisis and deviant behaviour: a socio-historical abstract

Corruption, which is certainly as old as the oldest profession of the world, i.e., prostitution, and which has likewise emerged from a ritual practice, was not only *not* considered as immoral and unethical, but as deeply social, if not sacred. The ancient Greeks regarded temple prostitution as part of the religious cult, and what we call corruption was simply a gift, a present, and the celebration of pure sociality, both of them honourable acts. In the Old Testament, the term "corrupt" refers to the evil, the bad; it stands for the perdition of the divine creation by the evil, the fallen angels or the devil. The New Testament describes corruption as the tin god of mammon and material desires, referring to the apostasy, the fall from the holy law. Jesus' expulsion of the merchants from the temple is the most impressive example for this phenomenon. In ancient China corruption was rather referred to as a moral than a material defect and was an expression of bad governance. In Latin, the term "corruptio" implies moral decline. The root of the Latin word "rumpere" means "break", also with regard to an order or organisation and, in an extended sense, breach of contract, however, not only in the strict legal sense of the applicable law, but also and first of all, breach of the social contract, violation of the ethic values, decency, good morals, and finally –

and here we return to the example in the New Testament – against the covenant with God. “Corruptio“ is depravity; “corruptor“ is the satanic seducer in a moral sense.

Being modern Europeans, however, we associate corruption with clientelism, patronage, nepotism and simony (the purchase of administrative bodies). But in history these features were widespread and did not exhibit any touch of ominousness. Bribery of the German electoral princes during the royal elections was a common and acknowledged practice. The familiar definition of corruption as private misuse of a public office exactly describes the normal understanding of official positions in the *ancien regime*: Since they did not receive any salary, civil servants, be it judge or tax collector, were allowed to take advantage of their offices or the related clients (Klaveren 1985: 94). In liberal 19th century England simony and vote buying were not just common practices in politics, they were morally approved. Simony and vote buying were finally prohibited through legislation and thus *criminalised* at the end of the 19th century. What used to be normal is now sanctioned. A new normalisation had been introduced; the breach with the traditional corruption semantics was completed.

The semantics of corruption as moral decline of the society and the state was the prevailing attitude from the ancient world up to modern times. Today, modern civil society labels *actions* to be corrupt, thus making aware of corruption as being a social issue and a problem in itself. However, this awareness requires an explicit prohibition of corruption (Klaveren 1985: 95). What we presently call corruption is no more social practice or normality, but a personal misdoing, a deviation from the norm and, finally, a crime.

This is a significant finding, since sociology is establishing itself as a practical science in these times. Sociology does not address human life as a part of the natural cosmos, as the Greek philosophy does, but as social construction, as human self-realisation within or through social acting, most impressively formulated by the identity theory of German idealism and American pragmatism. The laws of acting are no longer derived from the universal nature of the human being; sociologists rather operate with neutral terms of empiric validity related to the social opinion. Corruption can thus no longer be explained as intervention of the fiend or as a misjudgement of the eternal ideas of Truth, the Good and Beauty; it is in fact based on the self-conception of the actor in a concrete socio-historical situation. In this context, the definition of corruption depends on the fundamentals of common world-views, i.e., in western cultures on the idea of modernity. Corruption then appears as counter-image of these ideas, as relict or relapse into archaic behavioural patterns. Well, we shall see that there is a grain of truth in this.

Corruption and modernity (I)

The widespread and popular idea of corruption as selfish abuse of an entrusted position, mostly for pecuniary purposes, but also for benefits of all other sorts (pleasure trips or career opportunities)¹ appears as a universal definition on the one hand, but then again it seems to be closely interlinked with the modern ideas of economics, politics and society. Sociology in its capacity of a theory of modernity must find an explanation. It must also find an answer to the question of why corruption is still present in modern societies when it is regarded as being incompatible with modernity. There are two paradigmatic doctrines that do not only exclude each other, but also belong to different historical eras that are separated from each other by a sharp caesura. Further terminological shifts pertaining to social changes and crises during the Cold War and the fall of the Berlin wall have appeared beyond the barrier between traditional and modern corruption semantics (late 19th century).

In the 1960s the common opinions about corruption were quite favourable in science and society. Samuel Huntington, who described corruption as a self-escalating transitional phenomenon within the process of modernisation, acts as a pioneer of this modernisation-biased explanation that was equally supported by liberal economists, political scientists and sociologists. Corruption was described as a reaction of economic actors on systemic dysfunctions of an over-regulated bureaucratic “absolutist” state in the hands of traditional powers. The political scientist Klaus von Beyme (1999) ascribes to the corruption parliamentarianism of the early bourgeois democracies a definitely positive function within the process of enforcing parliamentarianism against the king’s dominance. Neither does he hesitate to attribute a similarly positive regulatory function to the corrupt networks in post-socialist Russia, a function that provides compensation for the dysfunctions of the weak state during the transformation phase (Beyme 2001). However, this conclusion appears quite daring to me, even if we observe conditions in Eastern Europe that are quite similar to those of the early modern period. Unlike the puritanical early capitalists who formed up against the autocratic state, a considerable number of Eastern Europe’s *nouveau riches* are not only members of the former nomenclature, but also allies of a new one (e.g., of the Putin system), trying hard to prevent a separation of state and economy by all means. However, in contrast to the rising middle class of the past, they lack a functional equivalent to the Protestant ethic.

The functionalism of the paradigm of modernisation formulated a non-normative scientific theory of corruption. The calculated optimism of this theory is based on a more or less implicit assumption of the universal validity of the western development model and thus the exclusion of alternative development paths. Gunnar Myrdal (1968) had already rejected the

¹This definition is not without difficulties since it is not able to delimit corruption from other offences (see also Schweizer 2009).

euphemistic, functionalist explanation at an early point in time, however, without any consequences. He had called attention to the development constraints caused by corruption, e.g., in Asia. It was Susan Rose-Ackerman (1978) who destabilised the old liberal doctrine providing evidence that corruption is also a perennial phenomenon in democracy and market economy. However, the change of paradigms in the fields of science and society only occurred due to a radical world-political event. The attitude towards corruption changed radically and sustainably after the fall of the Berlin wall and the end of the cold war.

James D. Wolfensohn, president of the World Bank in the 1990s, called for struggle against the „cancer of corruption” in an almost prophetic manner. He therewith broke a taboo in this organisation where corruption had to be kept under wraps. But what were decisive for this turnaround were rather economic experiences than scientific findings. In times of the cold war, the United States and their western allies could enforce their economic, political and military influence by supporting authoritarian regimes particularly of the developing countries, which they made reliant on them also by illegal operations including corruption. The change of attitude in the 1990s did not casually occur after the breakdown of the Soviet empire. Ivan Krastev (2004) declares the anti-corruption discourse to be a reaction to the failure of US companies to gain new markets in Eastern Europe, the access to which was obstructed by the old and the new nomenclatures. One means to disavow and destabilise these networks was the anti-corruption discourse that can be regarded as part of the neoliberal revolution – just as the crusade for democracy.

Whatever the explanatory power of such ideology criticism might be in relation to the genesis of the current anti-corruption discourse (economic and political interests etc.); such empirical derivations cannot prejudge its validity and legitimacy.² What is apparent with regard to the new attitude towards corruption is the replacement of the forcedly optimistic functionalism by a rigid moralism. Economists and political scientists have regarded corruption as a rational course of action under conditions of imperfect competition, i.e. market or state failure e.g., in transitional phases from pre-modern to modern capitalist economies, but also in oligopolistic or monopolistic markets of late-capitalist societies. If we only consider the bilateral relationship between the corrupters and the corrupted, the negative effects of corruption threaten to vanish as they did in the modernisation theory. The restriction to the relationship between two parties leads to a positive assessment of corruption and to a trivialisation of the victims as collateral damage, (this is, in short, Myrdal’s argument) that must be put up with in the sense of the asserted positive (since controlled by the *invisible hand*) development. Susan Rose-Ackerman (1978) broke with this euphemistic point of view. She defined corruption as the acting of agents who perform against the interest of the principal in major organisations. The extension of the *homo oeconomicus* model to the *principal agent* theory within the

² I owe this insight to Konstadinos Maras.

framework of an institutional economical approach, i.e. by the dimension of the institutional embedding of economic and therewith also corrupt activities, brings organizational loyalties and culture-specific normative and emotional motivations of rationally acting economic operators into view.

In doing so, institutions are regarded as the expression of contracts. The corrupted and the corruptors implicitly conclude a contract on the rational mutual maximization of benefits.³ Agents and clients, corrupted civil servants and corrupting citizens regard the corrupt relationship as an economic *win-win* situation due to the "spill-over effect" of a network relationship between „acquaintances“. However, this apparent zero sum game is at the expense of a third party, i.e. at the expense of the principal who is excluded by this illegal contract. Operating on a pseudo-market does not create any profit, but skims yields that are fed by illegal sources (Priddat 2005). From the viewpoint of the principal (in this case the state and – thus – finally the citizen) the corrupt relationship (and the underlying implicit contract) is a violation of the official agreement between agent and principal, civil servant and state.

Economic transactions turn into corruption in the sense of illegal or even criminal actions only with regard to the involved breach of contract in relation to a third party, i.e. including a legal fact. This leads to the question of how far the explanatory power of economics of corruption might reach, if – as we can learn from the institutional economics – the nature of corruption, the breach of contract, is not an economic but a normative-legal category. The economic theory basically only determines potential incentive structures for corruption, which is also true for the variant of Rose-Ackermann, or, as Albert Hirschman puts it: it determines corruption opportunities, but not the very action (Hirschman 1982).

However, jurists pursue a surprising attitude towards corruption. They consider this phenomenon much too confuse to be justiciable. The German law only punishes definable facts, such as bureaucratic abuse, bribery, fraud, misappropriation, breach of trust, etc.⁴ Jurists are quite aware that the everyday term of "corruption" describes a reality, namely the connection of the mentioned facts with a whole that goes beyond the sum of the individual components, a whole that, as already stated, eludes any criminal prosecution. The change in values that was initiated both politically and by the civil society induced the introduction of a

³The new German anti-corruption law does then also construct the existence of an "injustice agreement" („Unrechtsvereinbarung“) as an indicator for corruption. Not the more or less evident offences as such that are usually connected with corrupt activities like betrayal, embezzlement, bribery are corruption. These behaviours turn into corruption only when they are committed in connection with such "cryptic" or "concealed agreement" that must not having been vocalized by the contracting parties to perform as a motivator for their acting. Viewed in this light, corruption is a second order offence. Due to its holistic character, corruption can hardly be grasped, and legal experts are faced with a bunch of problems, that seemingly represent more trouble for them than it does for the "common understanding", as can be learned from the reaction on current cases (see also Grüne 2010: 11).

⁴See also article 103 GG

constructed "injustice agreement" ("Unrechtsvereinbarung") into the German law, which is, however, incompatible with the traditional sense of the legal thought.⁵ The moralization of corruption in politics and society seems to modify the German interpretation of the law. Let us put it like this: the jurists manage with the construction of an "injustice agreement", i.e., with the idea of an implicit, illegal agreement.⁶ What does that exactly mean?

The suggestion of the sociologist Sighard Neckel (1995) provides some help, calling corruption "immoral exchange". The epithet "immoral" is the essential feature. To define corruption as exchange (see also Della Porta & Ackerman 2002) does not yet capture the peculiarity of the phenomenon.⁷ The basic error is based on the understanding of corruption as an operation, specifically as an act of exchange, as a social relationship, as an agreement (between principal and agent), etc. The main point is disregarded, i.e., the fact that corruption is a negative value judgment with regard to an action, an exchange or a social relationship, but not the *corpora delicti* as such. Corruption is not defined by objective, functional or structural features of an object, a matter of fact or an event, but by the social framework in which these are utilized, i.e., social moralities and normative settings. Corruption must rather be analysed on the level of symbolic order than on the plane of actions or relationships. The sociology of corruption would then have to be conceived in the sense of a sociological critique of the power of judgement.

Reference parameters for the theory of corruption as acts of immoral exchange are no longer welfare or justice and the rule of law, but the basic guidelines for human social behaviour. The micro-economic approach is thus extended by the analysis of the micro-social basics of human role acting. Role acting is the typical form of human behaviour in the public and is oriented towards universalistic norms that must be observed to maintain the public order, especially in a plural and functionally differentiated society.

Corruption occurs when a particularistic relationship of exchange is established between private persons behind the veil of a public role acting that is focused on universalistic norms.

⁵The same applies to the punishability of companies claimed by anti-corruption experts, which, however, contradicts the spirit of German legal culture and its holy principle of individual assignment of guilt (Hetzer 2009:12).

⁶See also Pfefferle/Pfefferle 2010: 15 ff. on the offence of "corruption and corruptibility in commercial transactions" (§ 299 StGB): „Notwendig ist also eine (angestrebte) Unrechtsvereinbarung, die auf die unlautere Bevorzugung eines anderen abzielt. Das bedeutet, dass der Vorteil gerade als Gegenleistung für eine unlautere Bevorzugung gefordert, angeboten, versprochen oder angenommen werden muss“ [“An (proposed) injustice agreement is indispensable that intends an illegitim favour to someone. That means the benefit has to be stipulated, offered, promised or taken as reward for an illegitim favour.“] However, it is also noticed that it is insufficient to see „Korruption nur als Tausch zwischen zwei Akteuren zu ihrem gegenseitigen Vorteil“ [“corruption simply as exchange for the reciprocal benefit of two actors.“] (p. 1). With regard to the 'injustice agreement in § 332 StGB (bribery) please also refer to Joecks 2010: 812. I would like to thank Samira Akbarian for the legal information. All translations by the author.

⁷See also footnote 5.

The ambivalent attitude towards corruption as reprehensible, but wholly human and thus approved behaviour, results from the contradictory character of the corrupt relationship (see also Reiter 2009: 74). The contradictory character and the related possibility of (self-)deception of the actors are due to the fact that even a corrupt relationship can only work after application of the elementary rules of sociality. Just like every social relationship, a corrupt relationship is based on the principle of reciprocity stating that a gift or an offering must be reciprocated, i.e., a performance must be rewarded *quid pro quo* or (in the case of monetary transactions) a certain price has to be paid. However, there is one difference: the gift is committing, money makes you free. The gift, in turn, has the potential to build a relationship of trust, affection, friendship or love between two persons. Instead, the power of the money consists in the formalisation of social relationships and in the confidence in the system that is projected into the medium. Within the framework of a gift exchange the social relationship is an end in itself, but within the monetised exchange it is only a means of communication between “character masks” for the purpose of individual maximization of benefits.

Money and gift lose their unambiguousness in the case of corruption. Money does no longer buy a good or a service, but the person. The relationship becomes personal, but the person does not turn into an object or a thing. In contrast to the purchase, where the social relationship is transacted anonymously, objectively and without any permanent commitment, the corrupted pledges himself as individual. Neckel regards corruption as immoral because something that is not “buyable“ gets “alienated“: the ”person“, the decency, and the dignity of the individual. The person is the secret pledge of the corrupt relationship. However, individuals, decency, dignity are all inalienable and not buyable, since they ensure the basic confidence on the basis of which social relationships such as an exchange relationship are established in the first place. If these values are utilised as pledges for a business transaction, the pledged person’s freedom of action is destroyed. This result can only be understood in view of a blurred intermixture of two types of social relationships and the relating typification of the actors: business and friendship.

On the one hand, a corrupt civil servant acts immorally since he treats a client relationship that is bound to generalised norms (*sine ira et studio*) as a personal relationship with a ”well-known acquaintance“ or a ”friend“ within the framework of his duties, and in doing so he is oriented towards particularistic values. All clients must be objectively and consistently treated as „cases“, friends and relatives must be treated personally and in a privileged manner.

These two incompatible moral concepts collide in the corrupt relationship. The civil servant acts – on the other hand – immorally because he only pretends to act in the sense of a friendship, while he actually employs it as a means within the framework of a purposeful relationship. He abandons the meaning of the friendship through its instrumentalization.

The corruptor in turn acts immorally because he illegitimately claims a favour within the framework of a pure purposeful relationship, which is not based on the freedom of friendship, but on the compulsion that results from the latent risk of betrayal, namely from an illegitimate relationship of dependence or power. Finally this informal power-relation threatens the organisation that becomes "infiltrated". The corruptors are immoral seducers, disguised as friends. The corrupted do not only harm themselves in the economical regard, because the civil servants must finally bear the damage in their capacity as taxpayers. They are also acting illegally because they violate their employment contracts. Finally, the corrupted enter a relationship of dependence that destroys his freedom of action and, in its final consequence, his personal self. In the language of the philosophers, immorality is a performative self-contradiction, which in the case of corruption is based on the utilization of a general rule and the exclusiveness of its application.

But finally, immorality also involves self-deception that destroys the moral identity and personality with regard to the nature of the corrupt relationship, and thus the basis for a free society. This explanation of corruption as immoral exchange reveals the internal micro-social structure of corrupt social relationships. It evidences that corruption is the exploitation of elementary structures of the social, and therefore appears wholly human, a characteristic that can hardly be distinguished from decency and moral. The theory of corruption as immoral exchange combines a universal basic rule of reciprocity with the historical, namely the modern concept of a universalistic moral.

Norms and values that are universalistic according to their nature and entitlement are not considered universal per se. Pre-modern, so-called traditional societies raise the claim to universal validity for particularistic opinions and values. The idea of modernity assigns universal validity only to principles that are universalistic according to their nature (e.g., the Decalogue and the human rights). Particularistic values (e.g., religious values) are regarded as private affairs. In other words, morality is an expression of a socio-historic world-view. Therefore we have to identify the cultural conditions for the validity of the moral principles that corrupt actors make use of in the model of immoral exchange. As already indicated, the modern distinction between public and private is a basic prerequisite. According to Albert Hirschman, the modern idea of establishing a clear distinction between the public and the private spheres leads to the fact that their "unblushing confusion" (Hirschman 1982: 125) is regarded as corruption. Max Weber had neutrally described this unblushing confusion as patrimonialism, which, as already implied, prevailed until the 19th century. For the liberal middle classes private enrichment and social commitment still complemented one another in a pleasant and comfortable way, an arrangement that was scientifically legitimated in Adam Smith's metaphor of the *invisible hand*. Today, this metaphysical idea of a pre-stabilised

harmony finds only few supporters besides the economists. It seems that a ditch has been torn open. Can it be closed?

Corruption and modernity (II)

Niklas Luhmann offers a way out. He also describes corruption as a consequence of the functional differentiation in modern societies. The formation of a conflict between an archaic logic of networks that is forced away into the private domain and a modern procedural logic that becomes compulsory in the public life is historically inevitable. Corresponding to the theory that corruption is an immoral act of exchange, Luhmann assumes that the gift or the present fosters solidarity in relationship networks, just as in traditional societies. According to Luhmann corruption is nothing more than the continued existence of such personal network relationships, which are built on the basis of a gift exchange and subjected to morally negative assessments in modern functionally differentiated societies, whose formal-rational system logics are incompatible with the logic of networks that follows material claims. However, Luhmann does not regard corruption as the legacy or the invasion of the archaic into modernity, but as a function of modernity, namely as a consequence of its fundamental difference between 'private' and 'public'. Corruption expresses the fundamental problem of modern societies with networks.

Within the framework of the sociology of functional differentiation, a third party interferes with the intimate relation between the corruptor and the corrupted is. According to Luhmann, this third party is not the victim, the principal, but the organisation. The motivation to act in corrupt relationships and the immanent conflict of values becomes clear only if we consider the organisational aspect, says Luhmann. Rose-Ackerman had claimed this, too, and she raised the question of organizational loyalties. However, their organisational concept is too unspecific from the sociological point of view. On the one hand, organisations belong to different spheres, e.g., are economic enterprises, political organisations, public administration organisations, civil society organizations, etc. On the other hand, they refer to other subsystems and the society as a whole. This leads to inevitable conflicts of interests and an amalgamation of the semantics.⁸ The consequences are faulty communication and interruptions of the subsequent activities in the organisation, because members of the organisation are excluded from closed network communications by the simple fact of not knowing the code. Economic organizations do not only act economically, but also – for instance – politically, just as economical issues also influence the decisions of political organizations, e.g., parties. Today, the exertion of influence by economic actors on politics, and by political actors on the economy is regarded as corrupt.

⁸ Similar also Jens Ivo Engels (2010: 42).

The *principal-agent* model ascribes corruption to the principal's loss of control, who is complicit due to a lack of interest or ignorance, putting corruption finally down to human weakness. Sigward Neckel demonstrates the social-moral roots of corruption and Albert Hirschman depicts the socio-cultural formation of a "public moral" or a public spirit that bring forth corruption as ideological effect. Luhmann combines the structural and the moral argument within the framework of a system theoretic explanation. Like Hirschman, he does not ascribe corruption to universal-anthropological, but rather to social causes: namely to the modernisation of society. However, corruption is not a consequence of a structural defect as in Huntington's theory of modernisation (state and/or market failure: imperfect competition, bureaucratisation, defective democracy), but an unintended, nevertheless unavoidable side effect of the functional differentiation and, in this context, the consequence of a selective self-observation of modern societies.

This argumentation offers another opportunity to solve a controversial issue in the scientific discussion on corruption. Luhmann regards corruption as a normative concept that science can, however, objectively explain as a structural effect. Corruption is seen as depreciation of personal relationships of confidence and solidarity, as they exist through traditional ("pre-modern") networks between relatives and acquaintance, in favour of impersonal system trust in modern formal organizations and expert systems. However, organisations also provide opportunities for "personal attributions" in the search for a solution of *material* problems. Especially loyal civil servants or employees are provided with discretionary powers, decision-making freedom and sufficient room to manoeuvre beyond the norm. These powers have been extended in the course of the neoliberal administrative reforms (*new public management*) and increasingly offer opportunities for corruption. Based on the insight that corruption is a moral value judgment that is, however, an expression of a structural conflict, Luhmann offers a possibility to escape a moralization of the problem (Luhmann 1997, p. 837, 929).⁹

The modernisation of corruption

Corruption is not only a consequence of modernisation. We can also observe a modernization of corruption itself. Usually, we distinguish between two basic types: *petty corruption* and *grand corruption*, i.e., caused by contingent opportunity resp. systematic organization of action. The classical example for petty corruption is the baksheesh. It is paid as a small favour in order to escape a complaint or an expensive fine after having jumped a red traffic light and being caught by the police, or in cases where we receive a restaurant concession or a building permission by paying speed money. This might function in Romania, but certainly not in

⁹Corruption does not only appear as a problem, but initially as a problem solving (Reiter 2009, Tänzler et al. 2013).

Switzerland – which is less a question of income differences but rather a question of the ”public moral“, which also includes the extent of law-abiding behaviour.

The basics of the *grand corruption* can be explained using the example of the Mafia in Sicily, even if they are not identical. The Mafia form of structural corruption is characterised by three typical features: 1st: It is organised; 2nd: bribery is only part of an entirety of criminal acts such as fraud, embezzlement, extortion, undue advantage, etc.; and 3rd: it is associated with violence, a condition that makes it different from *grand corruption*. The Mafia in Sicily, the Camorra in Naples, the 'Ndrangheta in Calabria, the Yakuza in Japan, the Chinese Triads, etc. are traditional networks – they call themselves family, brotherhood – with their own code of ethics that works according to the rules of direct reciprocity: an eye for an eye, a tooth for a tooth. These illegal networks are based on patron-client relationships with reciprocal irredeemable relationships of confidence and commitment. So we are facing the continued existence of pre-modern social relationships. Max Weber called such kind of relationships patrimonialism that represent a certain kind of political fiscal management as it was cultivated on a large scale in the Real Socialism; post-socialist transformation societies still have to cope with the legacy of these affairs. The central characteristic of this form of systemic, i.e. self-reproductive corruption is the unification of political and economic power. In recent years, we could observe how members of the old and the new nomenclatures in Eastern Europe have been converting their social capital into economic capital, e.g. in Russia under Putin. The particularity of these illegal post-socialist networks is their switching between nonviolent systemic corruption and the Mafia, e.g., in cases where the boundaries between police and private security service or paramilitaries become blurred, such as in the Republika Serbska.

But also in modern western countries such as Italy, Mafia-like organisations threaten the principles of the social order through the connection between politics and economy. However, there is one great difference: in Italy, but also in the United States, business tycoons like Berlusconi are able to purchase a political office, what is considered less disreputable than the opposite case in Eastern Europe. The Italian case is a mixture of the traditional form of systemic corruption (critical characteristic: violence) with a modern form of systemic corruption, as we have experienced in Germany, e.g. in connection with Siemens. The consultancy contract is typical for this form of corruption. Consulting is an answer to someone's ignorance and is deliberately organised with so-called *outsourcing* activities. At the same time *outsourcing* minimizes the risk for the ignorant members of the organisation. While the patron, godfather, Oyabun (Japanese: father) knows everything as Roberto Saviano (2008) wrote in his book on the Camorra, while he lives with the knowledge that he will have to pay for it some day and that he might die in a hail of bullets like a Wild West hero, Helmut Kohl, former chancellor of Germany, and Mr von Pierer, former CEO of Siemens, aver to know nothing at all and will live in peace until the end of days. Those offenders who are

nabbed are consultants on the one hand, and the medium ranks, the operative management on the other, doomed to dirty their hands to ensure that the shirts of the board members remain white and clean.

As Britta Bannenberg (2002) was able to demonstrate, the typical modern corrupt individual is the parvenu – just as Mafia or Yakuza had been political organisations of the deprived at the beginning that developed into illegal political organisations. Parvenus are venturesome and often show little social responsibility. The traditional morality entrepreneurs still had to endure in the liberal era does not appear to be necessary in the new capitalism. The patron-client relationship has been replaced by a rational employment contract between boss and employee. However, on looking closely, this working relationship is morally secured by a rather military form of comradeship. In the case of Siemens the employees were called “Siemens soldiers“, who simply had to perform their duties in order to expect legal assistance and wage continuation from the organization even in the case of unemployment due to a prison term in the case of police or legal persecution. The organisation is not interested in what happens to the so-called consultants, since these consultants work as *freelancers* and thus on own risks; the organization is not responsible for their working practices.¹⁰ Moreover, organizations like Siemens experience political support even during corruption scandals. The Bavarian state chancellery pushed the public prosecutor to close the proceedings to avoid detriment for a German model enterprise.

Corruption of norms and normality

Corruption flourishes in the dark. This is only possible because the society usually covers this shadow world with the mantle of secrecy. Attention is paid to corruption in times of social change. Corruption suddenly experiences another perception, becomes the subject of public debates, and relevant cases are scandalised in the media. This is due to the fact that the structural breaks connected with the social change are perceived as crisis, and the readjustment to the new situation forces a reviewed interpretation of reality. Accordingly the public discourse on corruption change the social perception and the policy-making attitude of the actors: a new social definition of the phenomenon wins through.

However, the phenomenon of “corruption“ exhibits a peculiar character. The example of the German judiciary demonstrates that the term “corruption“ is not applied to individual facts representing a norm violation, but it is rather used to describe a holistic phenomenon. The facts are understood as vehicle for a holistic phenomenon that is more than the sum of its components – and this wholeness points to a secret agreement. This secret agreement qualifies

¹⁰ The recently deceased (former) SPD politician Wienand was the prototype of this kind of consultant.

individual facts as “corruption”, but is hardly tangible on an investigative and legal basis. The corrupt character of the action makes clear that a social normality operates behind the legal norm that is violated by facts like fraud, embezzlement, betrayal of confidence, abuse of office, etc.; jurists appeal to this social normality, even if it is not codified as law. The secret agreement that constitutes the act of corruption is a *common sense* construction. The new social attention on corruption forces a change of the law and the legal practice that induces an alteration of the German legal understanding and of the German legal culture.

What is observed here in the field of law can also be realized in the society as a whole. The alienating view of ethnographic research might provide some help here: In Romania, the term “corruption“ works as “catch-all-term“ to describe all crisis phenomena triggered by the social transformation. It is ethically charged, i.e., corruption stands for all evils, for all injustices that are suffered day after day in the new post-socialist daily routine, but first of all for the new social inequalities that are perceived as a breach of the social contract (Tänzler 2008). This social contract does not only refer to the official social practice monitored by the governmental institutions, but also to the unofficial practices within the redistribution networks inherited from socialist times, in which all citizens used to participate. These redistribution networks have been adapted to the new conditions. In Romania and other post-socialist societies, corruption means the exclusion of the people from the privatisation of the state and the public property – mainly of the former “socialised” companies – that fell prey to the class of the *nouveau riches* in politics and economy, recruited from the old nomenclature. In Germany the attitude towards corruption has also been changing in the course of the neoliberal revolution, beginning in the 1990s. However, this does not happen because corruption has increased (specific statements are quite difficult in this regard)¹¹, but because the phenomenon is attracting attention; a fact that cannot be ascribed to legal, economic or political reasons, since these items do not particularly affect the individual citizen. The illegally acquired advantage is not the only point to excite the minds, since corruption is tolerated as long as the citizens themselves benefit from the profits, completely in accordance with the economic theory of the *invisible hand* that shares the gains of the so-called top performers with everybody. Corruption is a part of the normality and the social practice that is approved therein. Only those who are adversely affected by corruption are no longer willing to accept the illegal action, it is regarded as illegitimate, as act of injustice and as breach of the social contract. The idea of normality has changed, stigmatising corruption as norm violation. The social discourse forces the law to respond to this new sensitivity and the modern construction of reality and to provide the looming new or renewed social contract with a legally valid basis. If this sociological analysis of the phenomenon of corruption and the new German anti-corruption law are correct, the limits of the current tendency towards the

¹¹The economist Friedrich Schneider has been addressing the clarification of black economy for many years (see also Schneider 2011).

so-called “Case Law”, i.e., a law created by legal experts alone, will become visible. Not corruption in itself, but the debate on corruption becomes an expression of a social crisis and of an alteration of the social practice including legal norms.

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SEVENTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION
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RESEARCH PROJECT: “ALACs”

Promotion of Participation and Citizenship in Europe through the “Advocacy and Legal Advice Centres (ALACs)” of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe

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