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& Culture

Crime as a Cultural Problem

The Relevance of Perceptions of Corruption to Crime Prevention. A Comparative Cultural Study in the EU-Accession States Bulgaria and Romania, the EU-Candidate States Turkey and Croatia and the EU-States Germany, Greece and United Kingdom

Konstadinos Maras

**Knowledge Transfers, Rationality Fictions
and Lobbyist Exercise of Influence on
Public Administrations**



Sixth Framework Programme of the European Commission
Specific Targeted Research Project



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SIXTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION



RESEARCH PROJECT: CRIME AND CULTURE

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Contents

I. Political corruption: not only illegal	5
II. Knowledge transfer.....	7
III. Public administration: Corruption?	9
IV. Economic influence on politics.....	13
V. Lobbyism.....	15
V.1 Lobbyist exercise of influence	15
V. 2 Economic effects of lobbyism.....	17
VI. Informational recourses of lobbyism	20
VII. Lobbyist informational influence: rationality fiction	21
VIII. Conclusion.....	22
IX. Bibliography.....	24



Executive Summary

This paper tries to explore how one of the dimensions of political corruption, namely appropriation of public means for private use, can be specified in context of the exchange relations between the public and the private sphere, or more concretely, the political/administrative decision making processes on the one hand, and the collective representation of individual economic interests on the other. Apart from the exchange relations in the form of knowledge transfer between politicians and private business, the paper concentrates on some forms the exercise of influence by lobbyists currently takes. After a rather structural description of the interchange between public administrations and lobbyist organizations we try to explain the ever increasing direct involvement of the lobbyist informational resources in the administrative law drafting processes. Since we intend to both explain the apparent legitimacy of lobbyists' appropriating public resources and account for its corruptive aspects, we deploy the notion of rationality fictions. This helps dispel the apparent unavoidability of lobbyism becoming an integrated aspect of public decision procedures.

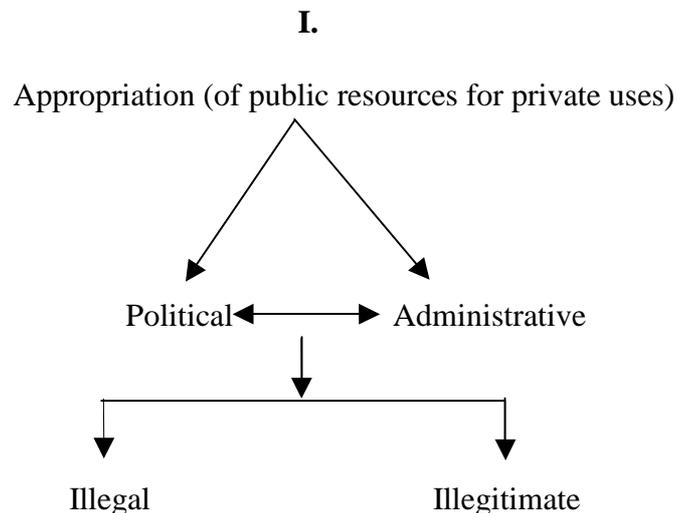
I. Political corruption: not only illegal

At the core of explaining political corruption lie public office-centred definitions, the most important of which equates corrupt behaviour with deviations from the formal duties of a public role based on private-regarding pecuniary or status gains.¹ The typical form of the former is bribery (i.e. deployment of financial means to pervert the judgment of a person in a position of trust), whereas the latter includes nepotism (establishing patronage by reason of an ascriptive relationship rather than merit) and misappropriation defined as *illegal appropriation* of public resources for private-gain uses. However, this explanatory definition of what political corruption consists in raises a number of issues: Firstly, although it is widely consented that every act of political corruption originates in *granting advantages*, the latter need not necessarily be of monetary nature. Secondly, it does not sufficiently differentiate between administrative and political forms of decision making based on motivations for private gain. Furthermore, the notion of private appropriation of public resources needs specification as regards both political and administrative corruption, because in each case *a)* the public means that can be illegally diverted to private uses differ substantially, and *b)* the origins of corrupt conduct may be attributed to other motivational causes than those of the typical individual gain-seeking. Additionally,

¹ Nye (1967).

c) one should widen the scope of private appropriation beyond the sphere of law-trespassing behaviour to include what is considered *illegitimate conduct* in the *realm of public perceptions*.

In order to disentangle the multifarious factors making up the phenomena of unwarranted (illegitimate and/or illegal) appropriation of public resources one needs but recontextualize the aforementioned definition of corruption into the frame of a socio-political reasoning that considers the notion of appropriation in terms of *exchange relations*² between political decision making or administrative procedures on the one hand and economic value-maximizing practices on the other. Given this exchange relations scheme, the appropriation of public resources, whether illegal or not, occurs due to certain ways in which *the pursuit of private interests is embedded in or made to fit into* the overall framework of advancing the national public good (for example lobbyism). Seeing things this way has the advantage of not only focusing on those activities of the economic sector that generate conditions of transfer of public means into private use, but also of highlighting certain dispositions of the political sphere that contribute to making those conditions even more probable than is otherwise the case in the normal interdependencies between the private and public sector in market economies. In other words, as we will see below, we are dealing not only with the exercise of influence based on rechanneling resources from the public to the private working one-way, rather with a more complicated process.



It is important to emphasize that the distinction illegal/illegitimate for the type of exchange relations between politics/administration and economy, in which the *corruptive transfer of resources* probably takes place, cannot be confounded with that segment of *rule-violating*

² This notion includes corruption as exchange value: Alemann/Kleinfeld (1992: 270).



exchange relations, which are explicitly sanctioned by penal law. The distinction highlights the fact that despite being (sometimes widely) perceived as illegitimate such exchange practices do not as such fall under penal jurisdiction. Embedded in the framework of the wide range of exchange relations the focus on illegitimate action, which in the case of lobbyist activism corresponds to a distortion of the democratic right of interest representation³, helps carry the analysis of political/administrative corruption beyond the confines of a strict legalistic approach. Therefore the following analysis will concentrate on exchange relations perceived/suspected of obeying to or complying with the logic of granting/receiving advantages as a *corrupt form of appropriation*, but falling short of being downright criminal in judicial sense.

Now, the best way to approach the phenomenon of *illegitimate appropriation of public resources* is to examine the nature of the latter, but also the perspectives of the actors involved looking closely at the rationality or types of rationality of action underlying the exchange relations between state/politics and the economy. Since neither the resources involved nor the illegitimate behaviour/action as such can be examined in a unified perspective, we must distinguish as concretely as possible the various resources misappropriated. We should at the same time also differentiate between political/administrative and economic actors. The latter can provide the starting point, as the analysis of recurrent patterns of action includes the kind of public resources which are illegitimately appropriated.

II. Knowledge transfer

Turning first to the political sphere one can discern possible sources of illegitimate appropriation in *the transfer of knowledge and/or administrative know-how from the public to the private sector*. This can include phenomena such as:

- Politicians switching to managerial functions in private corporations help accrue the relative advantages needed for both in terms of sectoral business competition or public contracting. Viewed the other way around, switching to the private sector means that the politician receives advantages (i.e. often very well remunerated posts) on the grounds of bringing in knowledge or public relations capital. Seen from this perspective, the difference between illegality/illegitimacy regarding corrupt conduct is obvious: whereas the former is rent-seeking in office and therefore a direct form of private appropriation of public means, the latter is private employment that draws upon the prior advantages from having been in office

³ Skowronek (2003: 372).



and in this way it can be seen as an indirect appropriation. Whether the latter can justifiably be asserted depends of course, among other things, on the time interval between public office and employment in the private sector. In order to avoid the suspicion of illegitimate appropriation, it has been suggested that this interval should not undercut certain time limits.⁴

- If politicians change to a public stock corporation they sometimes do not even need to deliver any knowledge capital: it suffices that in their previous ministerial functions they took a ‘friendly attitude’ to the company in question. Particularly evident is this kind of “ex post gratification” that politicians act strategically, that is designing their political career in order to gain in advance (prior to their withdrawal from politics) some indispensable qualifications for the future job in the private sector. According to the principle of the ‘revolving door’, the ‘friendly attitudes’ can also be gratified ex post in another way, namely when politicians in leading state administrative positions continue to be paid by their former employers (big private corporations), even if the latter do not demand from them any concrete work.⁵

- Even when no jobs are exchanged for advantages through transfer of knowledge resources there is another kind of interlinkage between politics and business, which raises suspicion of illegitimate action. Although at first sight no illegitimate appropriation seems to take place, the phenomenon of members of parliament having one or more jobs in addition to their parliamentary function permits certain doubts regarding the nature of remuneration flowing from private business activities. What raises mistrust in this case is the obvious contradiction between double or multiple jobholding and parliamentary function. The crucial issue revolves around the exact amount of money received, but also where additional income comes from. An unmistakable indicator of political corruption in the sense of the illegitimate interweavement of political and economic activities is the commitment certain MPs show in the law-making process regarding for example private insurance policies: more often than not they function as mouthpieces of insurance companies, for example, i.e. they act as the missionaries of capital in the centre of the legislative process.

- A particular form of lobbying regarding the issue of how MPs currently strive to ‘widen’ the scope of activities to include stable contacts to the sphere of business is the increasing role of consulting agencies in mediating between politics and economics. This art of mediation can imperceptibly prove to be the ground of economic interests gaining direct access to parliamentary political decision making processes, because MPs slide all too easily into those characteristic dependencies the various consulting agents are keen to establish in

⁴ Transparency International (2006).

⁵ Armin (2008:150, 282).

order to better serve, that is to make politicians receptive to the demands of private economic interests.

III. Public administration: Corruption?

If one now looks at the administrative side of the public sector considering in particular what possible forms (illegal) illegitimate appropriation of public means can take, it is immediately quickly obvious that, owing to a variety of reasons, the German state apparatus has been traditionally almost impervious to such overt corruption types as bribery and similar overt forms of corruption. The main reason lies undoubtedly in the professional ethos that has permeated the administrative work of the state bureaucracy, obviously inspired by the influence of Weber⁶ on the work ethic of state administration technocrats.⁷ If one adds to that work behaviour patterns deeply diffused in the organs of state institutions such as common welfare oriented action⁸ and technocratic neutrality, it is not difficult to account for the fact that German bureaucrats have generally not been eager to embark upon 'deviating behaviour'. Administrative corruption is only likely to occur where a monopolizable benefit, i.e. a considerable amount of money or significant privileges, more than counterbalances the risks.⁹ Thus the belief that the German state apparatus should be accounted among the most corruption-resistant in the world may be a well cherished myth.¹⁰ Nevertheless, one should not underestimate the power of the weberian tradition.

In the face of the relative 'immunity' of the state bureaucracy to overt corruption it is generally not very easy to discern in what way the administrative system can be susceptible to corruptive influences. However, currently a certain form of illegitimate appropriation of public resources seems to exist, although not easily recognizable as such: *the growing tendency of public offices to recruit and employ experts/technocrats from the private sector*. Considering the character and professional ethic of the state bureaucracy this is indeed an astonishing move, for it implies that the institutional resources and know-how capacities of the state administration are no longer believed to be able to meet the challenges of managing

⁶ Weber (1964: 152).

⁷ The work ethic of bureaucratic rationality includes such characteristics as effort-saving rules and equal treatment, clear-cut spheres of competence and specialization, hierarchical control mechanisms, expertise of office holders, a disinterested, professional attitude of valuation toward a thing for its own sake and the high priority of efficiency.

⁸ This main trait of administrative rationality helps account for the stability of the government apparatus and the high esteem its efficiency standards enjoy in German society.

⁹ Seibel (1997: 93). On the contrary, the risks-costs calculation obviously does not seem to be very difficult for politicians: Although they can be subjected to judicial investigations, they enjoy parliamentary immunity; Wieselmann (2008).

¹⁰ Noack (1985).



the complexities of the socioeconomic environment, thus needing external expertise. The ideal of the new managerialism in public administration consists in raising performance effectiveness by means of a fundamental reorientation in law-making procedures: instead of being merely responsive, the state bureaucracy should adopt a collaborative model of handling an environment in rapid change in the form of integrating various social players, such as the private sector. Collaboration means in certain cases that the administration is willing to undertake a kind of *outsourcing* of law drafting expertise allowing private interests to play an active role in formulating legal regulations. In this manner and under the pretence of knowledge expertise and objectivity, the state apparatus creates a basis for the illegitimate intrusion of private interests into the very sphere of law-making processes. As a result, one can presume that certain business interests are creeping into the apparent objective expertise and the professionalism involved in formulating legislation.

While promoting a lean administration, the former German coalition government and particularly the Ministry of the Interior launched a few years ago a personal exchange program titled “Changing Sides”, which was designed as part of an overall policy strategy to modernize the state apparatus and imbue the administration with the spirit and manners of private service agencies.¹¹ The program designed an exchange of workplaces in order to bring about a transfer of experience and know-how: some representatives from large private corporations were assigned consulting competences in various ministries and in return public servants were given the chance to update their professional knowledge by observing closely modern enterprise management methods. At the beginning the project of mutual transfer of know-how, which the government praised as a brave ‘crossing over’ of the boundaries between state institutions and private corporations, seemed to enjoy considerable resonance, because not only almost all ministries declared their willingness to open their doors to external expertise, but also because the *crème de la crème* of large German corporations (Deutsche Bank, BASF, Siemens, SAP, Lufthansa, Daimler-Chrysler, etc.) embraced the idea with enthusiasm. Apparently, this initiative was supportive to the government in bringing together the brain-pools of the economy and state apparatus.

However, certain details of the exchange program soon raised suspicions regarding the legitimacy of the whole undertaking, the most important of which were *a*) the lack of transparency, the government accepting only reluctantly the facts about the hired experts and *b*) the fact that during the engagement for the public ministries (2-12 months) the external experts continued to be paid by private business. This should be seen not only as a controversial loyalty issue, but even more important as *an indirect import of know-how*

¹¹ The exchange program was launched on June 16, 2004. See outline in: e.economy. das wirtschafts-magazin (37/2006).

pertaining to the sphere of economic private interests. Furthermore, the allegedly mutual benefit from the transfer of know-how had far reaching implications regarding the question of illegitimate appropriation of public resources, because it allowed private business direct, timely and favourable access to public decision making. In this case the time factor should be seen in close connection to the content of the decision making process itself. The chief executive officer of the German association of construction companies blatantly states that prior to the exchange program private interests had to wait for the decisions of the ministerial bureaucracy on public bidding issues, but now they were given the chance of immediately influencing the procedures.¹²

As concerns the issue of the appropriation, we most probably are dealing with the subtle access to and diversion of public means to private uses. What is most astonishing is not so much the number of agents of private interests currently working in the various ministries – it is assumed to exceed 100, which is high enough –, but the extent to which they have in certain cases been allowed to act as equal partners and collaborative players in the law drafting processes. In addition, the private interests involved draw benefits not only from such a direct exercise of influence¹³, but also through a number of other collateral advantages such as gaining

- a) *insight into the routine work of bureaucratic law drafting,*
- b) *access to confidential policy and administrative issues and*
- c) *personal acquaintance with key-figures in the ministerial bureaucracies.*

Two examples¹⁴ from the wide spectrum of possibilities for action of the ‘externals’ in the public administration will suffice to illustrate their direct involvement in and consequently appropriation of decision making processes in order to serve private interests. In both cases rent-seeking (or lobbyism) affects the re-design of regulations and distorts public policies in favour of well-organized industrial interest groups. In the first case one can observe how lobbyist interests combine the pursuit of business oriented goals both at the national and EU level. The extent to which the legislative processes in the EU on the new chemical law for regulating chemicals safety (REACH: Registration, Evaluation und Authorization of Chemicals) have been strongly under the lobby pressures of the national chemical industries (at the first place the German BASF), but also national governments (France, UK, Germany), can be seen from the changes they brought about in the draft law of 2003: Although it was initially planned to put all industry chemicals to toxic tests, it turned out that the draft proposals exempted a considerable amount of toxic substances from safety examinations. It

¹² Adamek/Otto (2008: 12).

¹³ The government has of course denied all allegations of political influence, because the hierarchical structure and the control mechanisms in the state bureaucracies are stable and strong enough to repel any external lobbyist pressures. See *Antwort der Bundesregierung* (16/3395, 13.11.2006).

¹⁴ Adamek/Otto (2008).



was no surprise then to see that the law that entered into force in 2007 reflects the successful strategy of the toxic lobby to drastically dilute safety standards and substitution requirements and to play down contamination dangers. In this context it was also not astonishing that a long-time manager of BASF must have been very influential in cutting the chemical law 'down to size', because until the final preparation of the draft law he was engaged in a group working on the guidelines of the chemical law inside the General Direction Enterprise and Industry of the European Commission. After this external expert left Brussels he switched over to the German Federal Ministry of Economics and Technology, where he must probably have been equally decisive in further reducing the safety tests of the law, thus making national legislation conform to the demands of BASF.

The second case of direct involvement of private interests in administrative processes shows how influential the pharmaceutical lobbies have been in torpedoing the reform of the healthcare system. Not only was the German Association of Research-based Pharmaceutical Companies successful in forcing the former government to draw back any plans to set ceiling prices for pharmaceuticals, furthermore the DAK, a major German health insurance company for employees, opposed one of the pillars of the reform, namely the regular medical tests planned to effect a radical reduction of expenses, and placed someone – probably an external expert – in the Federal Ministry of Health in order to secure inside information. The latter was obviously a success, because as soon as the ministerial administration set up a draft program, the information was given to the press. This time the appropriation of public means (i.e. inside knowledge) for private purposes was not only illegitimate, but downright illegal. Nevertheless, the illegality of the action did no damage to the strategy of the insurance lobby to distort the facts presenting the new scheme of regular medical checks as a cost explosion in the public health service.

This form of corruptive lobbyism fulfils a clear-cut function: The valuable information the various lobbies are able to obtain through strategically placed 'externals' in the public administration is of high significance: Receiving information about law drafts before the new legislation enters into force¹⁵ enables the lobbies to start a campaign to denounce any reform proposals that are detrimental to their interests from the very start. Unfortunately, the whole system of health services is too complicated for common citizens and civil society is supposed to be able to discern and combat these forms of intrusion into and abuse of the public administrative sphere. Here, like everywhere else, where corruptive influences are active, the principle of transparency represents an absolute minimum of what can legitimately be demanded from state administrations, politicians and public corporations.¹⁶

¹⁵ Leif/Speth (2003: 25).

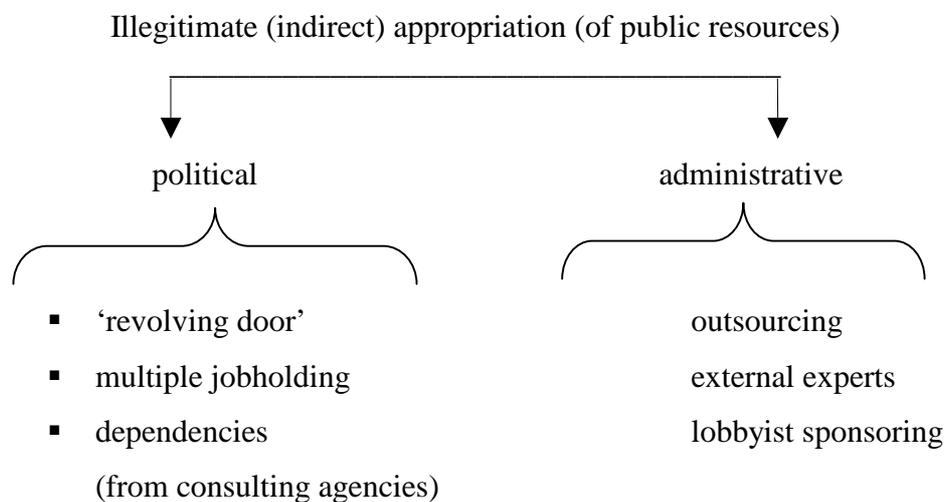
¹⁶ Martiny (2003: 130).

Apart from these overt forms of economic interests appropriating public means to private uses there is currently a phenomenon that deserves particular attention, although it does not straightforwardly fall in the category of *corruptive appropriation of public means*. However, owing to the illegitimacy that attends to it, this trend is of great relevance as regards both

- a) recent tendencies to ‘open up’ the state machine rendering it a flexible, collaborative partner in a societal network of interacting agencies, i.e. social and economic interest groups, and
- b) certain ‘up to date’ methods of large corporations to create the preconditions of gaining direct access to the administrative decision making procedures.

For example when weapons producing companies finance events organized by the army, or pharmaceutical corporations sponsor campaigns of the Federal Ministry of Health, it is an issue of private businesses sponsoring the ministerial bureaucracy by various means. It takes little suspicion to conjecture that such forms of public sponsoring represent a kind of postmodern circumventing of the ‘classical’ methods of direct exercise of influence through briberies and the like.

II.



IV. Economic influence on politics

Now concentrating on the part the economy plays in the field of exchange relations between public and private interests, it can also be observed that apart from the aforementioned forms of exercise of influence there exists a realm of what is perceived of as illegitimate action, although it is either more diffuse than that of politics relating the private sector. Or it constitutes an institutionalized sphere (e.g. lobbying) that cannot as such be immediately



subject to suspicions of feeding corrupt conduct. This, so to speak, asymmetry in regard to corrupt liabilities is of course a consequence of the difference between the action motivating interests: while the public perceptions of politics are guided by the notion that the interests motivating political action serve the public common welfare, the economy in capitalist societies is in a trivial way bound to realizing private interests.

Thus turning to the ways business interests are integrated into public governance helps pinpoint certain types of action that - in analogy to what obtains regarding illegitimate political action - can prove to be the nourishing grounds for illegitimate conduct. For one thing and prior to any concrete acts involving political actors the overall conditions enabling exchange relations must be “positive”. To this end certain segments of the economy develop strategies to optimize the *cultivation of the political landscape*. Formulating this in more general terms, one can say that illegitimate action can (or more poignantly: is bound to) arise since the way private interests penetrate into the state management of public affairs is not possible without systematic influence on the political landscape conducive of corrupt conduct.

To start with, this means creating a favourable ‘climate’ in which no direct exercise of influence is aimed at, but rather politics is motivated to take in principle a favourable stance to eventual large-scale projects planned by big business. Motivating such a favourable stance takes normally the form of donations – or public sponsoring. The fact that all major parties whether in power or in the opposition are (or have been) the recipients of such ‘diversified’ donations testifies to the fact that at first no particular aims need be associated with them.

Given this systemic *interweavement* of economics and politics that as such is normally not thought of as excessive exercise of influence, the question arises at what point donating or any other art of manifestation of ‘good will’ should initially be perceived as illegitimate, let alone illegal.

- An indicator of such illegitimacy – as the case in Germany – can be the cultivation of the political landscape taking one-dimensional forms, e.g. a particular, normally governing political party being disproportionately favoured. This is perceived as a violation of the independence of the political parties or political party competition. The perceptions around the issue of when donation activities begin becoming dangerous for the political life vary of course from country to country, but also in historical terms. In Germany for instance it was well into the 1980s common practice and therefore not considered illegitimate that all major parties were catered to by businesses and only as this sort of “care of the political landscape” became one-sided the awareness came up that certain unwritten limits were surpassed. This case substantiates among others the claim that corruption perceptions often depend upon and



originate in the awareness that one's own position in a competitive game is put to disadvantage.

- Another form of interweavement of economy and politics that more often than not fosters propensities towards corruption is that of lobbyism. The various business associations and lobbies have naturally their own methods of cultivating the political landscape, the most important of which regarding the issue of illegitimate conduct being public relations, information campaigns and sponsoring. As such part of the democratic rights of collective articulation of interests, the PR events organized by the various lobbies are nevertheless often the social space in which economic interests exercise direct influence on the political will, e.g. and potentially legislative action. Now, given the *escalation logic* (insatiability) that characterizes all such ex-post thank-giving activities from the recipient side, e.g. first accepting seemingly innocent invitations only to end up admitting that receiving presents has become a habit, it is not surprising to find here the seeds of illegitimate (or potentially downright criminal) action.

- Although not directly a component of the interweavement of politics and economy, one more aspect of illegitimate action should be mentioned: it consists in bribes made abroad. But why are they often only (perceived as) illegitimate and not just simply and straight away criminal? The reason for this lies in two interdependent facts: For one thing illegitimate conduct can appeal to certain practices in foreign countries that should objectively and without doubt be castigated as corrupt. Nevertheless they represent habitualized regularities that every businessman must take into account, if he wants to see his interests realized. Moreover illegitimacy need not be perceived as such at all: this is the case, when different *penal law cultures* exist - it is unwarranted to transfer corruption perceptions from one country to another.

V. Lobbyism

V.1 Lobbyist exercise of influence

The previous observations about how some aspects of the current *exchange relations between politics/public administration and private interests* can be analyzed in terms of one of the characteristics of corrupt conduct, namely the *appropriation of public resources for private uses*, highlight certain elements of lobbyist action that can now be systematized. To begin with, organized private interests (associations of industry and commerce, lobbyist organizations) generally have two means of exercising influence on public decision making:

direct and indirect.¹⁷ The former comprise financial (donations, sponsoring, but also benefits, bribes, etc.¹⁸) and informational (knowledge of the economic potential and market position of the corporations that are members of the lobbyist associations) elements, the latter consisting in collective actions, either in the political (for example election-centered mobilization of the member corporations in favour of a political party) or the economic sphere (decisions regarding the market behaviour of enterprises). Separately or combined these resources can be used to address the public administration and the ministerial bureaucracies: the type of deployed resources qualifies at the same time the aspired type of exercise of influence. Whatever forms the lobbyist exercise of influence may take in particular cases, it generally follows the logic of exchange value. The more efficiently lobbyists deploy these direct and indirect means, the greater their influence is likely to be on administrative decision procedures.

The second form of indirect influence, namely exchange relations based on transfer of information and know-how, exemplifies the aspect of the interdependencies between public and private economic spheres that can prove to be the grounds for illegitimate or corrupt conduct. Lobbyist associations dispose of information about their members that administrative officials and politicians are in permanent need of: based on this information the former draw up the law drafts, which the latter then use to steer economic policies. Furthermore, business associations can themselves prepare law drafts and then forward them directly to government officials.¹⁹ With this information input they principally direct the attention of public offices to economic policy issues demanding administrative action – or appear to do so. As regards the latter the information factor of lobbyist activities tends to become more influential,

- a) the more business associations target domains of public governance with high grade election relevance,
- b) the greater the value of the information flow for each individual ministerial bureaucracy, since this increases the demand for administrative action and therefore the budget resources allocated to it, and
- c) the greater the coherence, unity and coordination of strategies the various lobbyist organizations can establish among themselves.²⁰

Given these requirements of influence optimization and considering the overall context of exchange relations between the public and private sphere the main objectives of lobbyist

¹⁷ Daumann (1999: 120).

¹⁸ Additionally, lobbyist agents can deploy the financial instruments at their disposal in such a way as to offer government officials or ministerial bureaucrats lucrative posts either in the lobbyist association or in the supervisory boards of the member corporations: Alemann (1996: 36).

¹⁹ Wittman (1976: 3).

²⁰ Daumann (1999: 213-215).



activism consist in securing particular benefits for the members of the lobbyist associations such as monetary and/or resource transfers. Such transfers are the outcome of lobbying which, when successful, *a*) results in the selectively favourable allocation of administrative instruments regulating the framework conditions of free competition on the one hand, and public contract bidding, on the other, or *b*) initiates new regulations.

V. 2 Economic effects of lobbying

Apart from the obvious economic consequences the activism of business associations has for the member corporations, it is interesting to dwell on the particular issue of *advantages* resulting from the exercise of influence on the public administration by lobbyists. The advantages should be seen as *economic gain effects* concerning both the satisfaction of particular corporation interests and the development of the economy as a whole. As regards the former, the particular advantages the representatives of lobbyist groups try to bring about through the exercise of influence on the political sphere are in principle of a redistributive nature in the overall framework of national political economy. In other words the economic effects of lobbyist pressure do not bear on the primary functions of the state economic policies of redistributive social transfers, but have rather a derivative status, for they concern overall framework regulations for economic activity. In this way the influence of lobbyists is primarily aimed at achieving economic policy measures that

- a) regulate economic competition in favourable terms
- b) affect a selective, partial and ‘moderate’ approach concerning the instruments of state economic policy in imposing restrictions on the leverage of economic actors, and
- c) benefit particular corporations²¹ in promoting their chances in the public bidding mechanism of awarding contracts.

Derivate effects are also clearly observable in such cases in which lobbyist interests gain non-competition benefits by acting on economic policies regulating the conditions of competition such as measures regarding access to the market, price and quality regulations etc. Of course this does not mean that under certain circumstances lobbyists do not also strive to exploit framework conditions of the political decision making process to induce administrative regulations with direct redistribution effects. The latter include real transfers and monetary benefits such as tax reductions, state subsidies and the like. Apart from this, the exercise of influence by lobbyists can have an indirect economic impact in that it contributes to economic policy regulations that restrict the range of free competition: the decrease in the intensity of

²¹ Political/administrative regulation instruments are deployed in such a way that corporations with comparatively greater influence resources are favoured: Becker (1983).

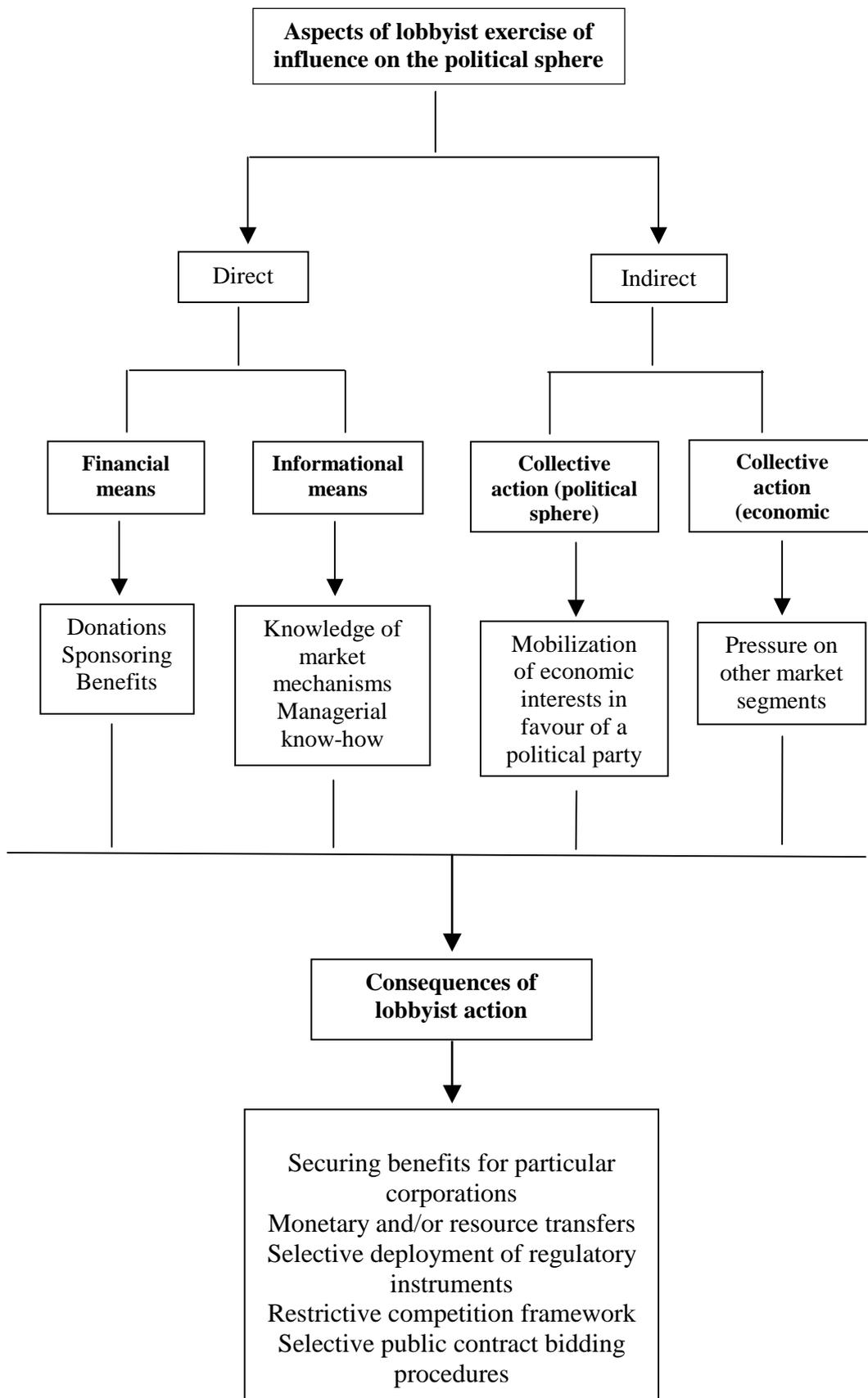


competition results in additional capital profits. Owing to the restrictive access to markets newcomers are submitted to this disadvantage can of course not be evened out. On the one hand this has of course immediate redistributive effects, for restrictive competition enables the few competitors in the field to raise the prices to the disadvantage of consumers.²² Such is the case for example in the German energy sector. Restrictive competition regulations have, on the other hand, distorting effects on the selective mechanisms of the market, because – due to the non-competitive enhancement of the profit chances and the limited access to the market – some economic actors remain in the field, although they would have long left under normal competition circumstances. This fact in turn means an increase of over-capacities, a slow-down of innovation dynamics and, last but not least, a defective mobilization and allocation of resources. In sum, the indirect economic consequences of lobbyist influence on public economic policies can lead to a decrease in

- a) the effectiveness selection mechanisms in competitive situations, and
- b) the mobility and velocity of resource allocation.

²² Eickhof (1985: 73).

III.





VI. Informational recourses of lobbyism

Against the background both of the empirical observations on current forms of illegitimate (lobbyist) action and the short structural analysis of the types of influence lobbyist associations exert on the realm of state/administrative economic policy making, we can now take some tentative steps to concretize the notion of (public perceptions of) illegitimate appropriation of public means for private use. Since the financial resources that lobbyist pressure groups can use, but also the collective action forms they dispose of are not of primary relevance in the present context, we focus on the informational means.

Owing to their function of collective representation of private economic interests, lobbyist associations are in a distinguished position to provide the administrative bureaucracy with valuable information about their member corporations, especially regarding

- framework conditions determining economic behaviour. These conditions not only have to do with economic law regulations, but also the make-up of the markets surrounding these corporations;
- economic potential. This knowledge comprises information about sales volume, product market profitability, number of employees, investment scale, etc.; and
- strategic preferences. On the basis of statistical data lobbyist groups are capable of providing a quite accurate picture of market options and economic behaviour patterns. In addition they can raise data about the design of future activities.

In addition to practical know-how, all these aspects sum up why lobbyist associations (seem to) enjoy knowledge advantages against both their individual members and, even more significantly, the administrative state apparatus. Without this expert knowledge the ministerial bureaucracy would have to establish its own information procuring instances, which on the one hand is not possible. Yet on the other hand the dependency on the selective information policies of the lobbyists, however unavoidable it may be, is equally undesirable. In any case, the input of lobbyist informational resources represents a kind of *necessary interface* in the exchange relations between public and private interests.

In the present context this means that an ever increasing amount of the knowledge components in the decision making processes in the administrative instances derives directly from the information pools of the lobbyist associations themselves. This fact on the one hand certainly *contradicts* the traditional administrative/bureaucratic spirit of impartial objective

rationality, but on the other hand *concord*s with the aforementioned current trend of ‘opening up’ administrative decision making procedures in order to make them collaborative partners in an interactive network comprising various social players. Relying increasingly on first-hand information from the collective representatives of particular economic interests, the state administration seems to progressively give up and lose its traditional claims on and impartial management of societal knowledge feeding decision processes that serve the public good.

VII. Lobbyist informational influence: rationality fiction

At this point one can of course raise the question, why attending to the requirements of a policy making that takes into serious account the demands of private interests contradicts the goal of optimizing the public good. If one presupposes that the collective representation of private interests must by all means be a legitimate social partner, then the discussion of illegitimate exercise of influence or even the corrupt appropriation of public resources seems to move on uncertain, apparently unjustified grounds. However, if one wants to account for and explain the retreat of the *homo administrativus* against the offensive of the *homo economicus*, but at the same time uphold the claims of illegitimacy of knowledge transfers serving particular interests, then one has somehow to combine necessity and critical stance. This can be at best accomplished by deploying the notion of *rationality fictions*.²³

Some features of this notion help make clear how it fits the present explanatory scheme. At first, rationality fictions are *immediately prescriptive*, that is, they outline from the start a certain kind of unavoidability for the decision to be taken. Because they blend out the contingency immanent in every decision situation, thus obliterating awareness of alternatives and other deliberation possibilities they can be characterized as intersubjective routines that function as substitutes for real decisions. The individuals, however, act on the belief that the decisions to be taken result from the ‘coercive’ force of rational choice. Apart from this apparent one-way decision options rationality fictions bear additional importance: they reduce the time required to cope with the complexities of deliberative situations, for they discharge the individuals of the rational duties of the search for and choice of action alternatives. In this way they *neutralize the uncertainty factor* concomitant with every real process of evaluation of alternative choices. Based on these ‘advantages’ rationality fictions provide the individuals involved in decision processes with a certain security regarding the *legitimacy* of their activity: since the range of choice options has been narrowed down to one, the belief that the decision taken represents the only rational one can justifiably raise the claim to be by all means legitimate.

²³ Schimank (2006).



These observations can easily be transposed into the context of the exchange relations between public administrations and organized private interests. To begin with, one can already find rationality fictions at work within the Weberian ideal type of bureaucratic rationality in the sense that the standardized professionalism of streamline uniformity simplifies decision making procedures rendering them a matter of pure fit of means to preestablished ends. Rationality fictions legitimate themselves through procedural accountability, thus creating the societal security anticipation of public policies. An important step to increase the legitimacy of bureaucratic accountability is made when decision making procedures are backed up by experts, who provide scientific reliable expertises for and theoretical justification of what rationality fictions display as recommended decision making. This holds all the more true for the exercise of influence with which organized private business strive to make public administrations adopt economic policies serving its interests.

Figuring as external expertise lobbyism enhances the *legitimacy pretensions of rationality fictions by raising the prescriptive status of its informational resources*. The fact that the latter currently take the form of normative maxims public administration cannot but comply with may have two reasons: On the one hand the public discourse on the relations between state and economy has in the last decade come increasingly under the sway of neoliberal doctrines, which propagate that due to globalization and in order to raise international competitiveness national economies must primarily attend to reducing the production cost factors. For this reason public economic policies should be able to integrate as much information coming from the various business associations as they can. On the other hand this flow of information appears all the more indispensable and normatively binding to the extent that the state administrations become a collaborative partner of social players (for example the economy). Both reasons converge in the demand for more flexibility on the part of administrative decision making procedures. Therefore it comes as no surprise that the influence of lobbyist interests does not confine itself to securing the informational inflow in general, but ensures that the latter plays a determining role in the law drafting processes.

VIII. Conclusion

Against the background of these observations we can now gain a glimpse of how the notion of illegitimate (indirect) appropriation of public means for private uses is specified in the context of certain current forms of lobbyist exercise of influence. The informational resources of lobbyist organizations seem to increasingly become not just input factors necessarily to be taken account of by every economic policy making, but rather part and parcel of public



decision making procedures. In this sense they function as *substitutes for the impartial objectivism of the bureaucratic information processing*, for they impose themselves as rationally indispensable. The fact that they represent a collective expression of individual economic interests makes them *rationality fictions*, the legitimacy of which rests currently upon widely shared assumptions about how public administrations should cope with the phenomenon of increasing economization of almost all aspects of social life under existing circumstances.

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**SIXTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION
PRIORITY 7, FP6-2004-CITIZENS-5**



SPECIFIC TARGETED RESEARCH PROJECT: CRIME AND CULTURE

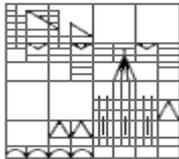
**Crime as a Cultural Problem. The Relevance of Perceptions of Corruption to Crime Prevention.
A Comparative Cultural Study in the EU-Accession States Bulgaria and Romania, the EU-
Candidate States Turkey and Croatia and the EU-States Germany, Greece and United Kingdom**

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