

**The Development of Party Financing in Germany:
Indicator of a Change from *Volksparteien*
(People's Parties) to State Parties?**

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This short paper represents an effort to deal with some valid criticism concerning the development of political parties in Germany. With the issue of public party financing as a background, the question poses itself whether parties and the party system in the Federal Republic of Germany have been in the process of changing their character in the course of the past decades, and which role party financing has played. To do this, it is necessary to describe public party financing in context¹, dealing especially with the money parties get from the state, but also touching on the non-financial benefits as well.

1. The Fathers (and those few Mothers) of the Basic Law of 1949 (German Constitution) were still under the impression that political parties would be financed solely from private sources, and above all from membership dues and from donations. For this reason, they saw but one danger--the possible influence of big money on politics--and they tried to avert this danger by requiring transparency. According to the Basic Law (Art. 21, Para. 1, 4th sentence), parties are obligated to present a public accounting of the origin of their funds. However, this obligation remained unfulfilled for a long time. For eighteen years, the parties in government, which were especially dependent on contributions, blocked the "Law Concerning Political Parties."

2. When public party financing was nevertheless introduced in 1959, after a hasty *obiter dictum* of the Federal Constitutional Court in 1958 had paved the way, it was a European "first" and would even have been a world premiere had Costa Rica (1954) and Argentina (1955) not already introduced public financing of parties before. In 1959, it began by allocating five million DM (Deutschmark) in the

¹ For details refer to Hans Herbert von Arnim, *Die Partei, der Abgeordnete und das Geld. Parteifinanzierung in Deutschland*, Knauer Verlag, Muenchen, 1996.

federal budget for party financing. By 1964, the sum had grown to thirty-eight million DM and, according to a draft bill by the government of the same year, it was to increase to over ninety million DM per year.

It is this explosion in finances which caused the Constitutional Court to pull the emergency brake. In a 1966 decision, it allowed only the reimbursement of election campaign expenses from the treasury, and this required a law. (The court regarded the former appropriation of funds solely out of the budget as insufficient.) As the parties did not want to give up the public money which they had in the meantime become accustomed to, the law concerning political parties was finally passed in 1967. As a result, the parties in Germany have had to submit public accounting since 1968.

3. The current extent of public party financing is seen in the following figures: If one adds the direct and the indirect government subsidies through "party taxes" and the tax benefits on dues and donations, it is apparent that parties, in the narrow sense, receive more than 60 percent of their finances from the treasury. (If one counts only the national level of the parties and neglects the state and the local levels the percentage is even higher because the central level receives an even higher proportion of public money.) The state finances almost 100 percent of the parliamentary fractions, party foundations, as well as staff workers of parliamentary representatives.

In one legislative period, the parties, the parliamentary fractions, the party foundations, and the staff of the representatives received about six billion DM in public funds. In the last twenty-three years, this figure has increased ten times and thus has grown much faster than all other possible comparative indicators. (The rate of growth does not change even when those two thirds of the expenses which the party foundations incur abroad have been omitted.)

4. The bulk of the money is at the disposition of the leading groups. This underlines the fact that there are different levels within the parties. The main problems do not stem from the financing of parties in

general, but from the financing of the "governing class."

5. In the beginning it was understood that public party financing should reduce the influence of "big money" and for this reason should be accompanied by ceilings for private contributors. In the end it proved impossible to establish any ceiling at all. Contributors even enjoy tax benefits of almost fifty percent up to sums of 6,000 DM a year for singles (12,000 DM for married couples).

6. The rate of growth of public subsidies to parties, which is nothing short of a land of milk and honey, directs one's attention to the problem of control. The parliaments decide on public financing of parties as "a matter of their own affairs" (Federal Constitutional Court). Those deciding and those benefiting are either one and the same, or they are closely associated with one another.

7. The problem of control is further intensified by the fact that party financing has an impact on power. The type and extent of political financing are part of the highly political rules of acquiring and maintaining power that all citizens have to obey. For this reason, satisfactory legal rules of party financing are, on the one hand, especially important for the legitimation of policy, as well as for the future political vigor of the Federal Republic. On the other hand, because of the autonomous decision making power, these rules are especially endangered.

8. In a parliamentary democracy, it is normally the opposition which, together with the general public, denounces political flaws and criticizes the government majority which is responsible for them. However, in taking decisions concerning political financing, the opposition regularly finds itself in the same boat. The big parties form a "political cartel," a term first used by Otto Kirchheimer, and thus escape control by the voters. Their votes no longer have an effect on state financing of the parties. No matter what party they vote for, (almost) all of them are bound together in a cartel. Control by the people is further weakened in that, of late, legislatures have begun to decide upon graduated increases in public party financing, valid for the following four years, at the beginning of an election period, i.e., far away from the next electoral vote. As a result, the entire burden of control usually lies with public opinion, and with the Federal Constitutional Court.

9. In some spectacular cases public criticism has succeeded in preventing misuse in financing politics (e.g., in the State of Hesse in 1988, in Hamburg in 1991, and in 1992 in the Saarland). The latest case happened last year in autumn, when the members of the *Bundestag* of the governing parties and of the opposing SPD even tried to misuse their cartel power to change the Basic Law in order to raise their salary by a third and bind them to the salaries of federal judges. After the protest of more than eighty public law professors the *Bundesrat* refused to pass the amendment to the Constitution.

10. This all-round control-deficit has contributed to the dominating role of the Federal Constitutional Court as the central controlling-body of political financing. In this capacity, it is active in creating law in a comprehensive manner and has attempted, though in a round-about way, to draft a legal order for party financing.

11. However, the possibilities of control through the Constitutional Court are also limited. The Court cannot act on its own initiative. In matters regarding public political-financing, citizens do not have standing to appeal to the Court. Only governments, parties, fractions, and representatives have this right and, for the most part, they do not use it. If a case is brought to court, nevertheless, it usually lasts for many years, and until now, the Court has never obligated the reimbursement of public funds which were granted unconstitutionally. The plaintiffs are chiefly outsider-parties and their representatives (especially the Greens, who have, however, become more and more established, the PDS [the former communist party of East Germany] and municipal elector-unions). On the other hand, the Court's influence is ambiguous. Sometimes it had, willingly or not, encouraged public financing with its decisions.

12. Moreover, until now, control by the Court has been concentrated on party-financing in a narrow sense. As a result, the parties, using their autonomous decision-making power have redirected the funds to other institutions closely associated with them. Since the Court's Decision of 1966 limited public party-financing in a narrow sense, a gigantic re-routing of public money to parliamentary fractions, party foundations, representatives and their staff-workers has taken

place. Payments to fractions in the *Bundestag* have increased by more than 3,200 percent from 3.4 million in 1966 to 107 million Marks in 1995, whereby almost 800 staff workers are employed. For the same time period, payments to parliamentary fractions in the state legislatures have shot up from 7 to 131 million DM. Payments to party foundations have ballooned from 14 million DM in 1966 to 620 million DM in 1994 (see Diagram B, pg. 34), i.e., they have increased by 4,300 percent². Within Germany itself, the foundations employ almost 1,500 full-time personnel. This enormous increase in money and staff led to a shift in the functions and tasks. The parliament fractions in particular do more and more conceptual and programmatic work, and new federal and state laws concerning fractions entitle them to make publicity which is not far from propaganda. Thus the constitutional barriers to state financing of parties in the narrow sense have been circumvented.

13. Above and beyond this, there are further indirect forms of party financing which, until now, have also been barely subject to effective control. The positions of the approximately 2,000 representatives in the sixteen state legislatures, originally conceived as honorary posts, were expanded, even in some very small and poor federal states like the Saarland, to fully paid and over-pensioned full-time jobs, even though--at least in the original eleven federal states--the rights of the state legislatures have been considerably reduced in the last decades. At any rate, the rights are much more limited than those of the state legislatures in the U.S. or, for example, in Switzerland (whose members, nevertheless, receive much lower compensation and even less pension). These findings led the director of the legislature of Lower Saxony to ask how long the representatives would be able to hide their over sized financial suits from the tax-payers. This overfinancing of

² During the super election year of 1994 and during the previous year the payments to the party foundations and the parliamentary fractions decreased. This is in connection with the massive public discussion and the critic by the Party Financing Commission (*Parteienfinanzierungskommission*). A temporary reduction, however, does not do very much, if the problem area--the lack of legal order and discipline--is not attacked at the roots.

state representatives in Germany makes it possible for them to act, as the former president of the *Bundestag*, von Hassel, put it, as “well-paid party workers.”

14. The previously mentioned “party taxes” are another form of indirect state financing of parties. They are high supplementary amounts which all representatives, even those on the municipal level, must pay to their parties in addition to their regular dues, if they do not want to endanger their nomination for the next elections. So they are taken into account when the representatives decide on their salaries. This form of indirect state financing of parties amounts to seventy million DM a year.

15. The desire to make up for the limits imposed by the Constitutional Court on party-financing in a narrow sense was among the reasons behind the establishment of funds for the staff workers of the representatives. In 1969, when it was introduced, 3.25 million DM were made available for the *Bundestag*; in 1995, 151 million DM were provided. This means that each *Bundestag* representative receives 235,000 DM a year to pay staff workers and that all together, 4,000 staff workers are in employment. (See Diagram C, pg. 35. It is necessary to note here that, with regard to the need for staff workers, the *Bundestag* cannot be compared to the American Congress; one reason is that the work-intensive drafting of legislation is done mainly in the federal ministries.) In 1995, an additional 78 million DM were made available for the staff-workers of representatives in the state legislatures. And they are engaged in increasingly more party work.

16. The representatives themselves justified their generous compensation with the argument that such positions have to be attractive to the upper-income groups in order to motivate them for candidature. This argument is convincing only under the condition when true openness and equal opportunity are part of the competition for positions. If they are missing, and if in the selection of candidates from small groups favoritism based on personal interests plays a role (as described by Erwin and Ute Scheuch), then the rewards for patronage lead to an intensification of exclusion of rather than openness for “qualified outsiders.” At this point, it is appropriate to note that there are no primaries in Germany; the parties possess a *de facto* nomination monopoly and

the voter often can only choose between fixed party lists, i.e., he cannot make any choice regarding the selection of candidates.

17. Another indirect form of party financing also consists of recruiting and promoting civil servants along party lines, with among others the expectation that the beneficiary of such patronage will be available for party work to a much greater degree. This phenomenon includes not only political posts but rather, to an ever-increasing degree, also "normal" civil service positions. Any effective counterweight is lacking because all established parties do it on federal, state and local levels, so no party can really blame the others for it. President Roman Herzog calls these steadily-growing elements of the spoils system "the most grave and at the same time weakest point of the party state." According to the Constitution, political parties are actually not permitted to exert any influence in filling these positions. And yet the Constitutional Court until now has not done anything to interrupt this tendency, maybe because a similar method is used when its own members are chosen. The phenomenon is further reflected in the large portion of public servants among the active members of parties, and also in the "predominance of the civil service in the parliaments" (Federal Constitutional Court). Forty percent of the representatives in the *Bundestag* come from the public sector, and in many state legislatures, it amounts to more than fifty percent.

18. The rapidly growing fiscal volume of direct and indirect public party financing (and its shifting) is, of itself, an interesting phenomenon. Even more interesting is the significance of these findings as an indicator of general characteristics of the way the political will is formed, as well as the effect of this change on the structure and the character of the party system itself.

19. If it is true that the appearance of government is usually reflected best in its financial status, one would suppose that party financing shows the general characteristics of politics relatively clearly. No less a personage than the former president of the Federal Republic of Germany Richard von Weizsäcker reduced his criticism of parties in 1992 to the caustic formulation that the parties were "power-crazy about electoral victory and power-forgetful about taking on the sub-

stance and main ideas of leadership." Indeed, party financing reflects weakness in problem solving and the dominant role of personal interests almost to the point of caricature. And furthermore, party financing reflects most clearly the powerlessness of the citizens in the Federal Republic. That is indirectly proven by other countries where the people exert a very strong influence over these matters, for example, in Switzerland, where laws can be approved or rejected by a referendum; thus public financing is well controlled by the people.

20. Concerning the impact of the party system, public financing has the tendency to discriminate against the political rivals outside of parliament and, in so doing, to impair equal opportunity and openness in political competition, and the ability of the whole system to react to new challenges as well.

21. In addition, the explosion of public funds threatens to make the so-called political class independent of citizens, party members and party-sympathizers and thereby intensify their own remoteness from the people, along with the people's disenchantment with politics.

22. The Constitutional Court has, on the other hand, accepted that state subsidies were defined proportional to electoral success in the past, while in respect to participation in free time for election propaganda on public television, new and small challenger parties are less disadvantaged. On the other hand, the court has indeed tried to keep public financing open, for example, by insisting that legislation is to include parties outside of parliament which have at least 0.5 percent of the vote. Furthermore, the Constitutional Court has tried to maintain, to some extent, the parties' citizen orientation through special provisions for the organization of public financing. However, both attempts only affect the parties in a narrow sense and not the financing of the fractions and party foundations, nor the representatives and their staff. And it is exactly this type of financing which has increased explosively.

23. As a result of the increase in public money and the shifts within the parties, it is increasingly probable that the dangers which farsighted academics and statesmen warned about in the early discussions of party financing will gradually come to pass. Due to the fact that the governing class takes part in the distribution of public benefits and

posts, even when it is in the opposition, it can pay less attention to the desires and interests of the people because it is less dependent on their support and on the support of the party members. It is a most fascinating question whether these findings contribute in changing the character of the parties so that *Volksparteien* (People's Parties) are increasingly becoming fractions and representative parties; whether they are becoming less a voice of the people and more state parties which seek primarily to safeguard their membership in the "power cartel," which guarantees its members public money and positions, but otherwise, from the top down, try to keep the people contented.

So the question "Whose party is this?" might be answered: They are no longer the parties of the people; they are more and more becoming the parties of the political class instead. Dieter Roth has shown that the ties between parties and society have been loosened. It is worth asking whether this discontent is at least in part caused by the parties themselves and their self-serving excessive public financing.

24. This sort of transformation of the parties, some elements of which the author has discussed in several publications regarding Germany, has been investigated, in general, by the American political scientist Richard S. Katz and the Belgian political scientist Peter Mair in their recent study of parties in western democracies. They have suggested the term "cartel parties" to describe a character transformation of the parties today. In so doing, they pointed out that this development is especially pronounced in Germany, Austria and the Scandinavian countries, where public financing, job patronage and a general style of party cooperation are especially strong.

25. Katz and Mair seem to accept this development and try to adjust democratic theory accordingly. A constitutional lawyer and researcher of politics, concerned about slowing down this development might however point out that if the rate of growth of the public financing of parties of the past thirty years continues in the future, the danger that Germany will ultimately face an "Italian" situation, or worse, will grow.

For one thing, the limits and requirements which the German Federal Constitutional Court has developed for public party financing in a narrow sense (e.g., the absolute cut off amount, the demand for

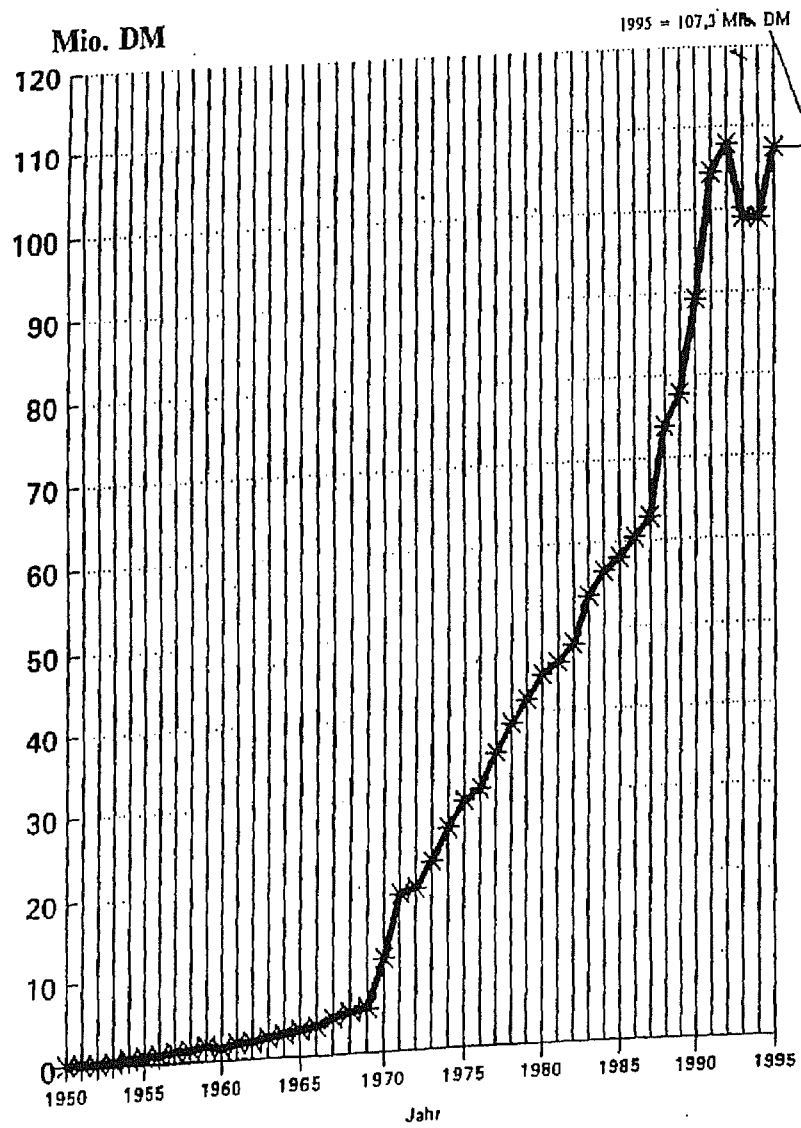
transparency and, as far as possible, the inclusion of forces outside of parliament) must also be extended to those other areas to which the flow of finances have, in the meantime, been redirected (fractions, party foundations, representatives and their staff), and to the tasks which have been transferred to them as well.

26. With respect to public financing, the most important task is the reform of the decision-making process of party financing. The people must be activated as a counter balance against misuse of power on the part of their representatives. A good deal could be achieved on the state level through referendums. However, such an instrument has until now not been provided for on the federal level.

27. With regard to the practical possibilities, the American decision-making process could be considered. Following the passage of a constitutional amendment a few years ago, Congress can make decisions concerning salary increases of representatives only affecting the legislative period following the decision.

In this way, there are always general elections that take place between the decision-taking and its effective date. This, in turn, impedes improper regulations concerning personal advantage. It seems that in the Federal Republic such a procedure is in general advisable, not only for salary increases for representatives, but also for all forms of party financing. However, it is unlikely that parliament will introduce such a change on its own. For this to succeed, the Federal Constitutional Court alone can intervene.

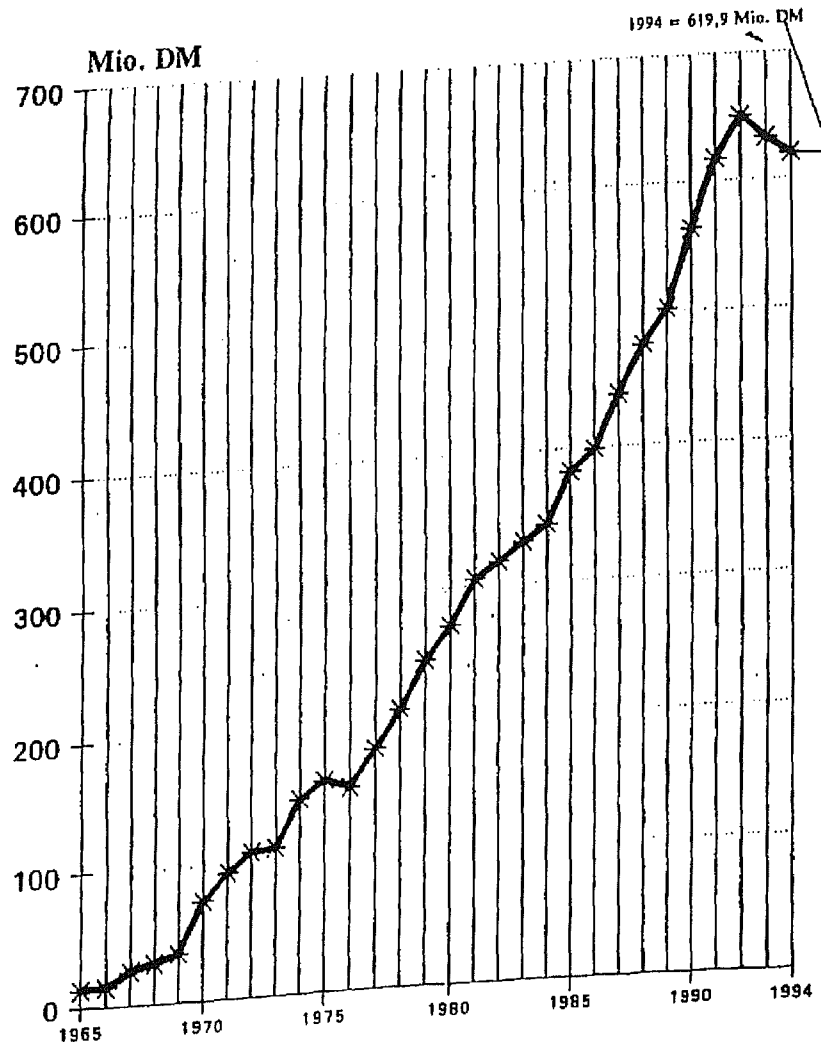
Subsidies to the Fractions of the Bundestag



Source: German Federal Budget

Diagram A

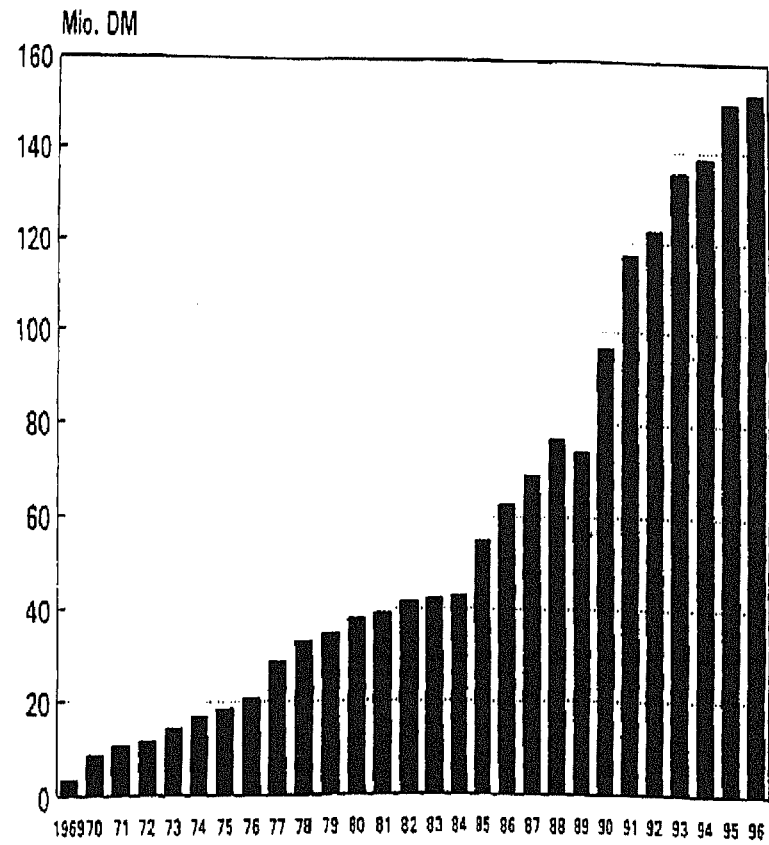
Public Financing of Party Foundations



Source: German Federal Budget

Diagram B

Expenditures for the Staff of the Representatives of the Bundestag



Source: German Federal Budget

Diagram C