DECENTRALIZED CORRUPTION IN GERMANY

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ABSTRACT

This article focuses on the link between administrative reform and decentralized corruption in German municipalities. It argues on the basis of survey findings, that the decentralization process of public service delivery from core administration to public enterprises during the last years has not only resulted in a shift of administrative authority, personnel and financial resources to newly established public enterprises but also in a shift towards decentralized corruption. Findings show that the perceived quantity of decentralized corruption is as high as bureaucratic corruption. In the course of decentralizing public service delivery to new administrative bodies, municipalities have missed the opportunity to adapt their audit systems. Old corruption risks have been shifted to public enterprises and new opportunities for corruption have been created. The data presented are based on a survey conducted with local audit experts and analyze the motivation, opportunity, and possibility for decentralized corruption.

BACKGROUND OF THE INVESTIGATION AND RESEARCH QUESTION

This article focuses on the link between administrative reform and decentralized corruption in German municipalities. It argues on the basis of survey findings, that the decentralization process of public service delivery from core administration to public enterprises during the last years has not only resulted in a shift of administrative authority, personnel and financial resources to newly established public enterprises but also in a shift towards decentralized corruption. Decentralization is the process of passing administrative authority to an appointed body (Pollitt/Bouckaert 2004: 87), e.g. public companies in
German local government. Decentralized corruption is therefore understood as the acceptance or payment of bribes outside the core administration by individuals in public enterprises or government contractors, which are charged by public authorities with the fulfillment of public service delivery.

The plurality of New Public Management (NPM) reform strategies aiming at the transformation of bureaucratic administrative systems have been characterized as “maintain, modernize, marketize, and minimize” (Pollitt/Bouckaert 2004: 186f.). Transforming the traditional Weberian bureaucracy into more flexible, economic and effective private-enterprise-like organizations resulted in what some observers now term the Neo-Weberian State (NWS) (Bouckaert 2004), as we can see in Belgium, Finland, France, Italy, and the Netherlands. These countries have introduced performance budgets, loosened personnel rigidities, extensive decentralization and devolution of authority, and quality standards for service delivery to citizens (Pollitt/Bouckaert 2004: 97). Germany, at least at the local level, has seen similar changes with regard to the New Steering Model (Reichard 2003). One important element has been the decentralizing of administrative departments from the core administration into intermediate forms, e.g. public enterprises.

The interesting question, which has been at the center of a recent debate (see Maravic/Reichard 2003 and Jones 2004), is: Does the risk and location of corruption change as a consequence of this administrative transformation (Self 1993, Frederickson 1999, Doig 1995, 1997, 1998)? A number of documented corruption cases in different countries make this possibility seem plausible (see below). Rose-Ackerman’s work on different corruption risks within different organizational structures gives us a first idea for exploring this topic. Her conclusion is that each organizational structure is vulnerable to the
exploitation by unscrupulous officials but organizational structures differ with regard to the *locus* of corruption (1993: 817). Rose-Ackerman argues that the structure of the bureaucracy determines the discretionary power of an actor and the expected costs of accepting a bribe (1993: 803). As new forms of administrative systems emerge, the question of where to identify potential risks of corruption in the new administrative systems is of relevance for a better understanding of the current situation.

So far the whole discourse of the reform impact on corruption is mainly an academic one. The perceptions and experiences of practitioners in the public sector and their concerns or positive experiences with NPM reforms have not yet been sufficiently appreciated. As this debate on the unintended consequences of public management reform has been a rhetorical rather than an empirical one, survey research on German municipalities highlights the empirical dimension of this discourse by showing that decentralized corruption is a significant problem.

This article gives a brief overview of the debate on the adverse effects of public management reform and reviews selected research (paragraph two). In paragraph three a definition for decentralized corruption is suggested in order to overcome the orthodox analysis on political and bureaucratic corruption. Actor-Centered Institutionalism provides the theoretical basis for the analysis of unintended effects of public management reform on corruption. The analytical framework of *corruption-fostering situation* used in this survey research, will be introduced in paragraph four. Paragraph five presents the empirical findings from a survey with auditors from German municipalities on their perception of decentralized corruption.
A BRIEF OVERVIEW OF THE LITERATURE ON THE ADVERSE EFFECTS OF ADMINISTRATIVE REFORM

Though the knowledge of the unintended consequences of certain reform measures for corruption in specific countries is still not satisfactory (Matheson in Maravic/Reichard 2003: 91), there has been some debate and research by academics and auditors on corruption in reform countries, e.g. New Zealand, United Kingdom, Canada, and Netherlands. The following paragraph gives a brief overview of the discourse:

Proponents of NPM argue that the introduction of competition, contracting-out, outsourcing, quality standards, performance measurement and a clear responsibility structure improves not only the economy, efficiency and effectiveness of the administrative system, but also curbs corruption by more transparent managerial processes and government structures (Osborne/Gaebler 1997; Osborne/Plastrik 1997; Schedler in Maravic/Reichard 2003: 95). This is meant in contrast to the traditional bureaucratic model, which, according to proponents of NPM, encourages corruption (Jones in Maravic/Reichard 2003: 89; Kelman in Maravic/Reichard 2003: 87).

Critics argue that NPM focuses solely on criteria such as efficiency, effectiveness and economy and thereby neglects probity, legality and public welfare in the traditional sense of equality (Adonis 1997; Behnke 2005: 246; Doig 1997, 1998; Löffler 2000; Yesilkagit/de Vries 2002; Maesschalck 2004; Gregory 2002; Rubin in Maravic/Reichard 2003: 90; Savoie 1995). NPM, it has been argued, leads to a decentralized organizational structure, empowered managers and less hierarchical control and supervision (Machura 2001). The introduction of market mechanisms and competition increases the...
interaction with the private and non-profit actors (Meny 2000) and blurs the boundary between the public and the private sphere. Public managers, they say, have become more exposed to conflicts of interest than before. Moreover, it is being claimed that the recruitment of personnel from the private sector changes the former character of a homogenous bureaucratic culture (Heuer 1995: 91). These aspects, it is being argued, foster corrupt behavior in the public sector.

The following paragraphs review publications on corruption in selected countries in order to show that almost all OECD countries have experienced some kind of decentralized corruption. The discourse is dominated by the focus on ethics (Maesschalck 2004), a changing ethical infrastructure (Behnke 2004) and bureaucratic versus managerial values. Though definitely relevant, this rather narrow focus does not illustrate the complexity of the corruption phenomenon. By examining the literature for factors fostering decentralized corruption, one discovers a diverse picture. Socio-psychological factors such as uncertainty and alienation play significant roles as well as organizational elements such as purchaser-provider splits, contracting-out and the role of competition. Difficulties of auditing decentralized corruption in public enterprises and agencies are being reported as well as the general issue of accountability. The following review of selected country publications gives a brief idea of this diversity.

Gregory (2002) reports adverse effects of remuneration policies, public controversies about the egalitarian ethos and corruption scandals in the civil service as a consequence of the far-reaching reform of the public sector in New Zealand. Doig characterizes the reform of the British health care system as “enterprising and innovative but also an area of risk, misunderstanding and conflict of purpose” (1998: 145). He shows that NPM has led to an enterprise spirit within the health service, where public
managers increasingly adopt the lifestyle of private managers. Public money is partly used to finance the lifestyle of public managers, as it is common in private enterprises (Doig 1998: 164). Doig reports increasing uncertainty and alienation among employees as a consequence of the way public management has been implemented in the UK (Doig 1995: 196) and criticizes the missing adaptation of control and revision procedures in the course of decentralization, devolution and delayering (1998: 146). The official investigation of the Comptroller and Auditor General of the United Kingdom (2000: 15) into the so-called ‘Focus Housing Corruption Scandal’ in Birmingham, highlights corruption problems with regard to the NPM inspired restructuration of the housing sector in the United Kingdom (see Maravic/Reichard 2003: 125f.).

Yesilkagit and de Vries (2002) investigate the corruption scandal of a public bank under the perspective of decentralization and ‘managerialism’ in the Netherlands. They reach the conclusion that the fragmented administrative system and the insufficient administrative control of agencies fostered corrupt behavior. Jorgensen and Bozeman (2002) present findings on the effects of contracting-out on ethics in the Danish city of Farum and conclude that under certain circumstances „contracting-out in itself tends to de-publicize public life“ (Jorgensen/Bozeman 2002: 75). Farum is a former candidate for the Bertelsmann Award for the Best Run Local Government in the World in competition with Phoenix, Arizona and Christchurch, New Zealand. The city became recently known to a wider public after the mayor was accused of corruption (Greve in Maravic/Reichard 2003: 114f.).

on contracting-out and a decreasing range of in-house expertise (Kettl quoted by Frederickson 1999: 274). Concerning the growing role of competition with regard to public tendering, Painter (2000: 170) identifies intensified rent-seeking behavior between market competitors, decreasing audit knowledge of the state to control the market, and high incentives and opportunities for bribery in the Australian public sector. In 2003 the Auditor General of Canada reported on corruption and maladministration in the sponsorship program of the federal government, especially between the newly created ‘Public Works and Government Services Canada’ and the private business firm Groupaction Marketing (Auditor General of Canada 2002). This report stirred a debate on corruption problems resulting from NPM inspired decentralization trends (see Jones 2004), which culminated in the comment by the Canadian public management expert Savoie “New Public Management has been discredited, thank God” (quoted in Jones 2004: 148).

Adverse effects of public management reform have been observed in Germany as well (Klages in Maravic/Reichard 2003: 99). Parallel to the international development, decentralization tendencies, as a core element of reform on the local level, have intensified during the last years (Bogumil/Holtkamp 2002; Reichard 2002). A strong element of administrative reform in German local government has been the creation of public enterprises (Bogumil/Kuhlmann 2004). Public enterprises are regarded as more flexible, economic and efficient than the bureaucratically organized core administration. The administrative areas mostly affected by decentralization have been construction, culture, building maintenance, and security (KGSt 2003). Empirical knowledge on the unintended consequences of the so-called New Steering Model (Reichard 2001) in German municipalities has been rather scarce, though not absent. Edeling shows for German
public companies that the majority of their managers do not regard themselves to be public office holders, as defined by §11 Criminal Code, but compare themselves with CEOs of major German enterprises such as Daimler Chrysler (2003: 241). Klages observes that on the level of reform implementation the establishment of necessary links between decentralizing administrative authority and effective controlling instruments is “by no means guaranteed” (Klages in Maravic/Reichard 2003: 100). These observations are good reasons to investigate the phenomenon of decentralized corruption in German municipalities more closely. Official government statistics have not yet paid attention to this phenomenon; despite the fact that a number of decentralized corruption cases have become known in the cities of Wuppertal, Hagen, Duesseldorf, Bielefeld, Bonn, and Cologne. German government statistics document for the period 1995-2002 an increase of bureaucratic corruption cases of about 6 times from 291 in 1995 to 1,683 in 2002 (BKA 2002: 4). If corruption has formerly been regarded mainly within the dichotomy of political and bureaucratic corruption, how can then decentralized corruption be defined?

DECENTRALIZED CORRUPTION

The search for definitions is a continuous process of political and scholarly reasoning (Johnston 1996: 321). As societies, political and administrative systems change, the understanding of what we mean by corruption must keep pace with these developments. Contracting-out, outsourcing, decentralization, agentification, and the creation of quasi-autonomous bodies challenge our traditional understanding of corruption, which is still characterized by the dichotomy between political and bureaucratic corruption. Corruption traditionally refers to individuals holding public positions and those who seek to
influence them (Johnston 1996: 322). The most influential definition is probably the following one: corruption is the abuse of office by public officials for private gain (Gardiner 2002: 27). The focus is on the words ‘office’ and ‘public officials’. This rather restricted definition does not do justice anymore to the complex developments that administrative systems are confronted with today. A ‘modern’ conception of corruption must pay tribute to the intensified notion of decentralizing service delivery to public enterprises or contract-out public service delivery to private business or nonprofit organizations during the last decade, as Moroff correctly argues (2004: 90).

As the boundaries between the public and private sector are blurring and municipalities make flexible use of service providers from the public, private and nonprofit sector, there are more individuals and companies from the private or third sector who deliver services to the citizen, the municipality, manage debt, financial or construction projects on a contractual basis without being public servants (BKA 2002: 28). Decentralizing public service delivery in German municipalities from the core administration to publicly owned companies goes hand in hand with a de facto shift of financial resources as well as personnel (KGSt 2003: 54). These developments ask for a modified definition of corruption. Therefore, corruption is here defined to be the *abuse of office, power or trust by politicians, public officials or those individuals who are charged by public authorities with the fulfillment of a defined task*. Decentralized corruption refers according to this understanding to acts of bribery outside the core administration undertaken by individuals in public enterprises or government contractors. The present investigation focuses on decentralized corruption in public enterprises.

The analysis of decentralized corruption here is based on the theoretical approach of Actor-Centered
Institutionalism. The aim is to integrate different corruption-fostering elements, for example changing ethical infrastructure, decision-making discretion, and audit competencies into one conceptual framework, which is applied in the survey. The following paragraphs introduce this framework.

THEORETICAL BASIS FOR A SYSTEMATIC ANALYSIS OF CORRUPTION

Public management reform is dynamically influencing the behavior of employees, changing organizational structures and impacting on common beliefs and traditions of organizations (Pollitt & Bouckaert 2004). In order to overcome the trappings of isolated arguments in the debate on public management reform and corruption, it is necessary to develop an integrated framework for the survey analysis of corruption in the context of public management reform.

Conceptual Framework

This framework is based on the theoretical approach of Actor-Centered Institutionalism developed by Fritz W. Scharpf (2000), which combines Sociological Institutionalism with Rational Choice analysis. It transforms disparate, isolated arguments in the literature into a systematic analytical concept. The logical structure of analysis and the questions included in the questionnaire refer to the concept of corruption fostering situation, which refers to the motivation, opportunity, and possibility for corruption (see Maravic 2003).

In order to be able to analyze the impact of NPM on corrupt conduct, a theoretical framework is needed that supports the analysis of how actors behave in changing institutional settings. Conventional economic analysis of corruption ignores cultural dynamics and norms as factors
influencing corrupt conduct. In the economic analysis of corruption, it is assumed that the motive and the incentive for corruption lie in maximizing the interest of the individual and this motive originates externally (Klitgaard 1988). This analysis is expressed by the following citation:

„In a study of corruption, one can make substantial progress with models that take tastes and values as given and perceive individuals as rational beings attempting to further their own self-interest in a world of scarce resources“ (Rose-Ackerman 1978: 4).

For the answer of our question - if and how public management reform impacts on the corrupt behavior of actors - this pure rational-choice analysis neglects factors that have been considered to be important in the literature.

However, on the other hand, people do not only act according to scripts and norms. The New Institutionalism puts too much emphasis on the importance of institutions for the individual conduct (March & Olsen 1989). People are intelligent individuals capable of developing a set of preferences that exists independently from the institution. Norms do not hinder individuals to maximize their utility (Scharpf 2000: 51). No approach that focuses only on cultural aspects of corruption or pure rational-choice analysis provides a sufficient basis for further investigation. It is therefore necessary to adopt an approach that considers the influence of institutions on the individual set of preferences. Therefore, we propose an approach that combines institutional as well as actor-centered analysis. Actor-Centered Institutionalism provides a so-called fusion of paradigms (Scharpf 2000: 73), which is considered to be functional for this kind of analysis because it overcomes the aforementioned deficits.

Institutions fulfill the function of a coordinator. Actors orient their actions “on socially constructed rules in otherwise chaotic social environments” (Scharpf 1997: 39). Institutions do not only provide socially accepted rules but
in the case of violation sanction this. That is what makes behavior for other actors predictable and establishes certainty and security. Institutions are of analytical importance because they restrict or open-up opportunities of potential behavior. “Required, prohibited, or permitted actions” (Scharpf 1997: 39) are being specified. Within the given setting actors do not only follow impersonal goals but a strategic calculus that is affected by the way other actors behave (Hall & Taylor 1996: 12). Though actors act rationally within their institutional environment, institutions affect the individual preferences; they may even create them to a significant extent (Scharpf 1997: 40). Actors violate binding laws when the price of the sanction they have to pay is lower than the expected surplus or when there are no serious sanctions to fear. The risk calculation depends on the institutional environment.

These paragraphs showed that institutions influence perceptions, preferences and the identity of actors. Different institutional environments have divergent influence on the strategic choice of alternative options; they require, prohibit or permit action. How can this understanding be used for the analysis of corruption-fostering situations?

**Corruption-Fostering Situation**

The link between Actor-Centered Institutionalism and corruption-fostering situations is based on the understanding that actors make their decisions within institutions, which *require, prohibit or permit* action. This means, for the analysis of corruption that a person does not only act corruptly because he or she is personally motivated to do so. It is more complex and requires a multidimensional approach. Quah emphasizes three institutional elements that characterize a corruption:

“(...) the *incentive* to be corrupt does not by itself result in individual corrupt behavior. The individual must
also have the *opportunity* to be corrupt, which in turn depend on the extent his official activities are *controlled* by others, the frequency of his contacts with the public, and his position in the organization. In short, an individual is likely to become corrupt if both the incentives and the opportunities to do so are great enough” (Quah 1993: 842; italics by the author).

Quah regards the incentive, the opportunity and the constraints, which limit an actor’s discretion, to be relevant factors. It is important to differentiate between these three factors more clearly: (1) *motivation for corruption* - the dominant value context that requires a certain behavior of somebody and influences the preferences of actors in taking decisions; (2) *opportunity for corruption* - those elements that explicitly permit a certain behavior by delegating the legal requirements in terms of decision-making competences, financial as well as human resources to an actor. The term describes the discretion of a manager in terms of hiring personnel, spending financial resources, contract-out services as well as the extent to which he or she interacts at the public-private interface in public business activities; (3) *possibility for corruption* - factors that prohibit certain choices by constraining his or her decision-making discretion in terms of controlling, overseeing, and evaluating performance. As every organization has some type of control, supervision or audit system, an actor’s discretion over personnel, finances and contracts is limited.

Why do these three factors belong in one analytical framework? None of the variables alone can sufficiently explain the complexity of a corruption-fostering situation. The motivation of corruption is relevant because it clearly shows that in the case of corruption the institution itself has lost its integrative power (March/Olsen 1989: 22, 137). As an institution loses its integrative capacity, the actor’s scruple to accept or extract a bribe decreases. That does not
mean that an actor who is motivated to act corruptly will also do so. First, the actor needs the opportunity for a corrupt deal. A person who is responsible for the cafeteria is not as much exposed to corruption as the head of the procurement department. Secondly, the actors’ awareness of effective control mechanisms increases the risk and price of being caught. On the other hand, does the actor perceive ineffective controls, an obscure structure of responsibilities and low sanctions as elements that hide corrupt deals? Third, in the case of lacking supervision by superiors, the actor may identify possibilities to undermine those controls. Despite the possibility for corruption, it is quite reasonable that the actor stays loyal to the institution and resists this chance. Motivational factors must be high enough to outweigh the relatively low risk of being caught. This is the case when the organization offers the actor material security, satisfaction and a promising future. The actor may also value immaterial incentives, such as the service to the public, equality and loyalty, which would then outweigh personal profit. The risk of corruption is high when the supervision and control is inadequate (possibility), the opportunity is given and institutional requirements for behavior are weaker than individualistic reasoning (motivation).

This model will be applied to the phenomenon of decentralized corruption in German municipalities in the following paragraphs.

**SURVEY**

Corruption is not only difficult to measure (Johnston 2002: 866-869), it is also a very sensitive issue and public officials are hesitant to reveal information. Anonymous survey research is, according to Alemann, one possibility to handle this problem (2004: 31). Using the perception of people as a tool to gather information has
become a widely used instrument in the study of corruption, e.g. Corruption Perception Index (CPI). It circumvents certain obstacles researchers are facing, such as direct field and data access (Alemann 2004: 31). Perception can be regarded as a compilation of objective facts (e.g. cases of corruption, audit rights), intuition (e.g. life-long working experience) and wishful projection (e.g. revenge, strategic calculations). All this depends on the position from where people look (Moroff 2004: 85). The questionnaire used in this research asked about the professional perception of auditors on different aspects of the motivation, opportunity and possibility for decentralized corruption within their municipality.

The Data Set

The data set used in this article is built from an anonymous survey conducted in spring 2004 with the cooperation of the Local Management Institute (Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung, KGSt), Cologne. A brief description of the research project was published in the KGSt newsletter in March 2004 (KGSt Info 2004) and municipalities were asked to participate in this survey on corruption.

In municipalities public auditors are most familiar with the issue of corruption (Fiebig 1998).³ They were selected as relevant experts for this research on decentralized corruption in German local government. We decided against including private sector accountants in the survey because their clients are only civil law based public enterprises and their function is not to investigate corruption but to check the economic performance of a company. Due to their daily work, public auditors possess the expert knowledge required to assess specific aspects of auditing decentralized corruption. Whenever a case of corruption is officially investigated in a municipality, the
The auditor of the municipality has an official capacity in the criminal investigation.

Questionnaires were sent to 40 municipal auditors. The selection-criteria are municipalities of different sizes and with a different quantity of public enterprises. In the sample there are seven municipalities with less than 50,000 inhabitants, twelve with a size of 50,000 to 100,000, seven with a size of 100,000 to 250,000 and twelve municipalities greater than 250,000 inhabitants (see graph 1 below). Regarding the number of public enterprises, seven respondents stated that their municipality is the primary owner (share of 50 percent) of less than five enterprises. 13 municipalities own between five and fifteen, three possess between fifteen and twenty-five, and three use more than twenty-five public enterprises. Ten respondents did not answer this question. These figures, after all, show the quantitative relevance of public enterprises and their unequal distribution among German municipalities.

Graph 1: Number of Public Enterprises & Size
In total, 38 local auditors answered the questionnaire. The questionnaire contained questions with standardized as well as open answers. The open questions were chosen to allow the respondents to explain their opinion and leave room for explorative investigation of this subject. This article cannot document all answers and explanations given by the respondents. The main arguments were summarized as precisely as possible. Though this survey is not statistically representative for all German municipalities, it allows for exploratory conclusions about decentralized corruption in German municipalities.

DECENTRALIZED CORRUPTION IN GERMANY

The respondents were asked whether their municipality had experienced cases of bureaucratic and/or decentralized corruption during the past five years. 52 percent of the municipalities experienced some type of corruption. Of these 52 percent, 26 percent reported cases of decentralized corruption, while an equal percentage of municipalities experienced bureaucratic corruption.

It is interesting to note that, although one fourth of the respondents experienced decentralized corruption, neither academics nor official statistics have given much attention to this phenomenon. The number of actual cases of both decentralized and bureaucratic corruption that have not been brought to court yet, is supposedly higher than the figures presented here, as the author learned from informal conversations with some respondents. Decentralized corruption in German municipalities is, according to these figures, as virulent as traditional bureaucratic corruption. The first step was to show that decentralized corruption matters empirically. The second question is: What are the factors contributing to this type of corruption?
Public Management Reform and Corruption

The discourse on the impact of public management reform on corruption is mainly an academic one and lacks the perspective of practitioners. This investigation focuses on the perception of public auditors. How do they perceive the link between administrative reform and corruption? The result is straightforward: 58 percent of the respondents believe that new reform measures increase the risk of corrupt behavior. 39 percent answered that the risk remains equally high. Only 3 percent think that these reform measures have a positive effect in curbing corruption.

When asked for an explanation as to why auditors think that these measures increase the corruption risk, respondents argue that by decentralizing administrative functions, municipalities shift opportunities for corruption from the core administration to public enterprises. According to their opinion, municipalities do not recognize the necessity to counter decentralization by strengthening its own audit, control, and procurement capacity. Some state that the actual number of persons involved in administrative processes has increased de facto in the course of decentralization. As more actors are involved in procurement processes there are more actors to be watched and more potential persons to be bribed.

The motivation for corruption

The motivation for corruption refers to the institutionalized values and therefore to the required behavior in an organization. The aim of this paragraph is to determine whether local auditors perceive different standards of incorruptible behavior in the core administration and in public enterprises.
PERCEPTION OF INCORRUPTIBLE BEHAVIOR IN THE CORE ADMINISTRATION AND IN PUBLIC ENTERPRISES.

As the survey findings show an equal number of corruption cases within the core administration and public enterprises, the respondents were asked about their perception of ethical standards in these institutions. As the questions were open, the main arguments are summarized in the following.

There are two categories of arguments about the decline of standards of incorruptible behavior in the core administration as well as public enterprises, though not all perceive a decline of standards. One group of respondents does not see a decline in ethical standards in the core administration as no major changes have taken place. Even a higher sensitivity for ethical behavior in the core administration is being observed, which stabilizes behavioral standards. The respondents perceive recent corruption scandals as having a sensitizing effect in the administration. With regard to public enterprises some respondents argue that it is difficult to differentiate between the core administration and public enterprises. If there were a decline of standards, then it would take place in both institutional spheres.

The one group who actually blames the introduction of private sector management practices argues that people justify unorthodox, sometimes illegal behavior with the economic rationality that success can and must be achieved. With regard to public enterprises it is argued that the flexibility of managers in public enterprises has increased. Correspondingly, respondents reflect upon different ‘rules of the game’ in public enterprises, compared to the core administration. They argue that private sector rationality emphasizes output, profit and efficiency rather than process, legality, and probity. These
different rationalities provide different incentives for corruption. The public economy provides higher incentives to serve the individual interest than the core administration.

The other argument is that recent scandals of top managers in the public service undermine trust and loyalty of public service employees. It characterizes a kind of ‘slippery slope’ development: the public misbehavior of politicians and other high-ranking officials leads consequently to misbehavior of public officials as they do not feel bound to stick to required behavior. The perception that politicians and top officials function as a model for ‘good’ behavior seems to be widely spread. One respondent asked, “why shall the little man in the hierarchy stay honest, when he sees how other people higher in the hierarchy fill their pockets?” A second respondent supplements this perception: “it leads to frustration, poisons the working climate and increases the temptation of corrupt behavior in the public service when they extend the weekly working time while concomitantly cutting the Christmas as well as holiday bonus” (italics by the author). It seems that public employees are less reluctant to turn the public room into a private property right and compensate themselves for perceived material losses or unfair treatment, when the top management or politicians themselves set a bad example.

Summing up, those respondents who blame the introduction of private management techniques to the public sectors actually refer to a presumed cause of decline of standards; the group that perceives a decline in leadership refers to a symptom of declining values. Both aspects can be regarded as two sides of the same coin. Ineffective ethical leadership may already be regarded as a consequence of a changing ethical infrastructure.
THE THREE MOST IMPORTANT CHALLENGES TO PUBLIC ENTERPRISES.

The previous paragraph already indicated the importance of leadership for ethical behavior. In this paragraph results are shown where respondents were asked to name the three most important challenges with regard to corruption in public enterprises. Seven standardized answers were offered and each respondent was asked to choose up to three (see table 1).

A quarter of the respondents blame top management’s indifference to (un-)ethical behavior for corruption problems. As the exemplary function of the top management is perceived to decline, employees do not stick to behavioral standards. Another 25 percent perceive a missing identification with public service values as a challenge. Missing leadership and identification with public service values appear to be the primary challenges in public enterprises. Though some German academics (Sommermann 1998, Loeffler 2000) have warned against a heterogeneous administrative culture, local auditors do not regard this issue to be as virulent as leadership. One reason is that the German public sector has never been a homogenous institution but has always differed with regard to administrative culture, e.g. police, financial administration, foreign ministry. One reason for regarding lower wages and different working conditions as of lesser importance is that, for the German context, the discrepancy has until now been minimal.
Table 1: Corruption challenges in public enterprises (n=106)

<table>
<thead>
<tr>
<th>Three answers to choose</th>
<th>percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) High performance pressure for employees</td>
<td>12 percent</td>
</tr>
<tr>
<td>b) Blurring of a homogenous administrative culture</td>
<td>11 percent</td>
</tr>
<tr>
<td>c) Employees don’t identify with public sector values</td>
<td>25 percent</td>
</tr>
<tr>
<td>d) Low wages</td>
<td>8 percent</td>
</tr>
<tr>
<td>e) Working conditions are not as good (e.g. timely limited contracts, no seniority principle)</td>
<td>7 percent</td>
</tr>
<tr>
<td>f) Insufficient training about ethical standards</td>
<td>10 percent</td>
</tr>
<tr>
<td>g) Top management is indifferent towards corruption</td>
<td>25 percent</td>
</tr>
<tr>
<td>h) Other answers</td>
<td>2 percent</td>
</tr>
</tbody>
</table>

The Opportunity for Corruption

The following paragraphs take a look at the opportunity for corruption. Do auditors perceive more opportunities to extract rents in public enterprises compared to the core administration, and if so, why is this the case? Respondents were asked to consider the quantity and quality of public-private interaction as well as the discretion actors enjoy over financial resources. Auditors were asked to rate on a scale from 1 to 6 (1= low risk, 6= high risk) different types of public enterprises with regard to actual opportunities to extract rents or being exposed to them. They were asked to give reasons for their judgment. The results are presented in table 2.
Table 2: Legal types of public enterprises and the perceived risk of corruption

<table>
<thead>
<tr>
<th>Rating Institutional Arrangements</th>
<th>1 low risk</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6 high risk</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureaucracy</td>
<td>7</td>
<td>8</td>
<td>7</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>2.1</td>
</tr>
<tr>
<td>Separate estate (Sondervermögen)</td>
<td>1</td>
<td>5</td>
<td>13</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>2.9</td>
</tr>
<tr>
<td>Own enterprise (Eigenbetrieb)</td>
<td>1</td>
<td>5</td>
<td>12</td>
<td>6</td>
<td>1</td>
<td>-</td>
<td>3.0</td>
</tr>
<tr>
<td>Limited liability company (GmbH)</td>
<td>-</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>3.8</td>
</tr>
<tr>
<td>Public Private Partnership</td>
<td>-</td>
<td>2</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>2</td>
<td>3.9</td>
</tr>
<tr>
<td>Joint-stock company</td>
<td>-</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>6</td>
<td>3</td>
<td>4.2</td>
</tr>
</tbody>
</table>

There is a clear tendency to regard those public law based public enterprises that are “closer” to the core administration in terms of hierarchy, budget and audit, e.g. ‘own enterprise’ (Eigenbetrieb) or ‘separate estate’ (Sondervermögen), to be less exposed to corruption than those which are founded on the basis of civil law. The core administration receives on the scale from 1-6 the average grade 2.1. Although the core administration receives the ‘best’ grade, it is clear that auditors do not perceive it to be corruption immune. The joint stock company, for example, receives a 4.1, which indicates that persons are perceived to be more exposed to corruption who work in a joint stock company than those who work in the bureaucracy. Nevertheless, the findings show that no institutional type is perceived to be immune to corruption.

How do the respondents justify these judgments? One important reason why some types of public enterprises are rated better than others is related to the service they provide. Joint stock companies, limited liability company, and public-private partnerships are more common in
municipal electricity, water, and garbage disposal services, all of which are areas that are infamous for corruption. In the core administration the construction department is generally known for manipulated contracts and the acceptance of bribes. The judgment of the respondents is based on these kinds of indicators. A second reason that is being named is the quantity of interaction and contacts between a municipality and private business firms. Respondents regard civil law based public companies, e.g. public-private partnership, to be more exposed to economic interaction than the core administration. It lies in the nature of the firm to engage in economic activity and that holds also true for public enterprises. Therefore, people who work in institutions with high public-private interaction have more opportunities to extract or accept bribes than others. A third reason concerns the quality and quantity of awarding municipal contracts to private business. Respondents argue that the number of contracts that are awarded to private business firms on the basis of negotiation is higher in joint stock companies and public limited companies than in the core administration. Procurement standards differ between the core administration and civil law public companies. Civil law allows more flexible decisions than public law. Civil law based public companies have to obey different, if not lower, procurement standards than public law based companies (Becker 1989: 354). This means that the individual actor in a civil law based public company has more decision-making discretion than his or her colleague in the core administration. This discretion over financial resources, it is being argued, attracts people to influence decisions by illegitimate means.

Thus far, it could be stated that there is a positive correlation between decentralizing service delivery and a perceived increase in the opportunity for corruption. Auditors perceive civil law based public enterprises such as
limited liability company (GmbH), joint-stock company or public-private partnership as being more prone to corruption than those that are based on public law.

At this point, one might be led to conclude that the more decentralized a public enterprise is from traditional bureaucracy, municipal audit, and procurement principles, the higher opportunity for corruption. This would show linear correlation. However, the variation of ratings is rather wide and shows another important result. 90 percent of the respondents rate a public-private partnership with the grade 3 or worse, 10 percent rate the same type with the grade 2, thereby assuming a lower risk of corruption. A similar picture can be observed with regard to ‘own enterprises’ (Eigenbetriebe). The preliminary assumption at this point is, first of all, there is no – natural - vulnerability for a certain type of public enterprise, and secondly, the assessment of risk depends on the specific situation of local enterprises in a specific municipality.

As said before, the opportunity for corruption is, besides the motivation and possibility for corruption, one of three basic elements that foster corruption in a given situation. All the three of them must be seen as a compilation of factors contributing to the understanding of decentralized corruption.

The Possibility for Corruption

The possibility for corruption refers to the (in)ability to exert control on decentralized managers, departments and agencies. Devolved decision-making competencies in regards to the use of financial resources and the misfit between decentralized structures and audit mechanisms, allows delinquents to believe that the risk of being caught is relatively low and the chance to succeed in undermining supervision high.

Machura criticizes in-transparent institutional arrangement of public-private partnerships and less control
by the city council and the audit department (Machura 2001: 82). The city council itself decides on the legal audit competencies to oversee civil law based enterprises of a municipality.

Given this phenomenon, how do local auditors assess their own legal competences to audit different public enterprises? Again, 38 participants were asked to use a scale of rates from 1 (sufficient audit competencies) to 6 (insufficient audit competences). Graph 2 (see below) illustrates the distribution.

In German municipalities auditors have either limited or no legal competences to audit civil law based public enterprises such as public-private partnerships, public limited companies and joint stock companies. Their legal competences to fully audit an institution, which means full and unlimited access to files and data, are clearly restricted to the core administration and public law based enterprises, e.g. own enterprise or separate estate.

Respondents perceive a reduction of public supervision of civil law based enterprises. They complain that an increasing complexity of legal and technical questions in contracting-out public services sharply contrasts the real audit demand with the actual municipal audit capacity. This is supported by the following figures: auditors critically evaluate their own audit capacity to oversee public enterprises. With regard to the legal competencies of audit departments 10 percent had to accept a limitation of their audit rights, 61 percent reported no changes, and 29 percent say that their legal competences to audit public enterprises have been enlarged during the last five years. 14 percent did not answer this question. The extension of audit rights in some municipalities can be regarded as an indicator for the necessity to counter the perceived audit vacuum. 42 percent of the audit departments were confronted with a reduction of their
personnel, while none of them experienced an increase of personnel. For 58 percent of the auditors nothing changed with regard to their personnel. The financial resources that were provided for the audit tasks show a similar trend. 29 percent of the auditors faced financial cutbacks, 70 percent kept their financial resources stable and none of the departments could increase their budgets.

These figures document a development that is characterized by the perception of an increasing audit complexity but also by a decreasing audit capacity. Reducing legal, personnel, and financial resources of the public auditor runs counter to the development of decentralizing public service delivery to public enterprises.

Decentralization, it is being argued, makes it easier for delinquents to undermine control structures. The sessions of the supervisory board as well as those of the shareholders are non-public. Members of the supervisory
board, mostly politicians and public servants, are bound to secrecy and are not allowed to inform the city council properly and the audit is restricted to limited compliance audits. Respondents observe a sneaking abolition of the so-called four-eye principle as a consequence of the New Steering Model, saying that each file is not anymore signed by at least two persons. Public enterprise managers defend the abolition of audit rights and the four-eye principle with the argument that too much supervision constrains their management flexibility. While the reform doctrine of New Public Management propagates higher decision-making discretion for managers, a large number of auditors criticize a lack of awareness among council members about control and audit deficits that have been created in the course of decentralization.

In this case, audit competencies are laid down as an object of the contract in the partnership agreement between the municipality, the newly founded public enterprise and its private partners. There is no actual vulnerability of a certain legal type of public enterprise. In the end it is a question of political will and audit arrangement. Nevertheless, the open question that cannot be answered here and could be a basis for further research is: Why do some municipalities establish the necessary audit infrastructure while others do not?

CONCLUSION

According to the auditors in our survey, cases of decentralized corruption in public enterprises are as common as bureaucratic corruption in core administration. The perception that public enterprises are highly prone to corruption is based on the perception of higher corruption incentives, an increase of opportunities for corruption and limited legal competencies to audit decentralized service delivery.
Furthermore, we can document a highly critical assessment of public management reform techniques with regard to the vulnerability to corruption. The majority of local audit experts view the public management reform trend of widening the decision-making discretion, decentralizing administrative capacity, as well as deregulating the public sector as not contributing to curbing corruption in municipalities.

Using the conceptual framework of motivation, opportunity and possibility for corruption to structure the findings of this survey research, some things have become clearer while others have led to new questions. Some light has been shed on the issue of leadership, which is being regarded by auditors as the most relevant challenge to the traditional administration, as well as public enterprises. But the respondents also observe a problem with regard to the identification of employees of public enterprises with traditional public values.

Auditors perceive civil law based municipal enterprises to be more prone to corruption than those that are closer to bureaucracy. Though one might conclude ‘the more decentralized, the more susceptible to corruption’, data show that the way auditors assess the risk of corruption depends to a great extent on locally existing institutional audit arrangements. This insight calls for further research about the political rationality to establish sufficient audit structures or not.

The ‘audit game’ has tremendously changed during the last decade. Together with the increasing quantitative importance of decentralized service delivery (Reichard 2002), German local auditors’ responsibility to audit decentralized service delivery has decreased. This gap between decentralizing service delivery and not adapting the audit capacity causes an audit vacuum. The traditional ex-post compliance audit has in many cases not caught up with this development. In most of the investigated cases,
Auditors are either not involved in conducting a full and independent audit or they have been restrained to a limited compliance audit of public enterprises.

The fear of the audit vacuum may result in changing auditing habits and capacities. This requires a move from an ex-post compliance audit attitude towards an attitude that fosters prevention along with a new ex-ante auditing philosophy. This trajectory can be partly observed in German local government as a recent development, which can be described as bridging the gap between a perceived audit vacuum - the risk of decentralized corruption - and the actual competences to audit decentralized service delivery.

REFERENCES


NOTES

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2 The statistics of the BKA, which are published since 1992, do only differentiate between political and bureaucratic corruption but ignore decentralized corruption. Nevertheless, they include in their annual report on corruption in Germany since 2000 a passage that deals with legal aspects of corruption in decentralized service delivery units (BKA 2000: 24). There it says that municipalities will be increasingly confronted with this issue in the upcoming years, as more administrative functions are being contracted-out. With the words legal aspects we refer to the question of whether private actors who are charged with public administrative functions, such as engineers or architects, are subject to § 11.1 Nr. 4 StGB (criminal law) and can therefore be convicted for bribery according to §§ 331-334 StGB (criminal law). The same question arises with regard to the CEO of a public enterprise who is not a public servant, though his employer is a municipality and the enterprise is being run according to private law. We are here talking about the question if those CEOs are so-called “Amtsträger” (§11.1 Nr. 2 StGB) – a holder of public office – and can therefore be convicted for bribery on the legal basis of §§ 331-334 StGB. This is not a “glass bead game” of legal rhetoric’s but a question where courts have ruled differently during the last years and for many CEOs of public enterprises it is not obvious that they are subject to these laws. Coming back to the passage in the BKA report: Interestingly enough, this passage has become more specific during the last two reports (BKA: 2001: 30), which indicates a growing awareness. There it is made clear that CEOs of new institutional arrangements, such as public-private partnerships (PPP), in the area of municipal water and waste management, a policy field where service
delivery has been traditionally executed by local governments has been decentralized to public enterprises, can be convicted for bribery and are treated as if they were public servants (BKA 2002: 28). Having said that, decentralized public service delivery does not mean a flight from criminal law.

3 In German municipalities the main task of the local auditor is to conduct compliance audits at the end of the fiscal year and if necessary criticize the deficits. So far it has not been the task of the local auditor to consult other departments with regard to relevant questions of financial or procurement management. In this respect local auditors differ significantly from the audit courts at the federal (Bundesrechnungshof) and state level (Landesrechnungshöfe) (Fiebig 1998: 21). In North-Rhine-Westphalia, where 85 percent of the participating auditors are located, local auditors are institutionally situated in-between the municipal council and the administration. The auditor is directly accountable to the audit committee of the city council (§104 (1) GO NW). The council charges the auditor with special audit requests but also decides whether the auditor will have unlimited or limited access to the municipals private companies. Auditors are on the one hand independent from any orders of the mayor while on the other hand the auditor’s personnel are recruited from the administration.

4 In the questionnaire a different order was chosen in order not to influence the decision.