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CORRUPTION, LAW, AND JUSTICE: A CONCEPTUAL CLARIFICATION

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ABSTRACT

This article suggests a concept of corruption based on Jürgen Habermas' theory of communicative action. Corruption, as defined in this study, is a colonization of social relations in which two or more actors undertake an exchange relation by way of a successful transfer of the steering media of money or power, thereby sidestepping the legally prescribed procedure to regulate the relation. Two types of corruption are identified: monetary and bureaucratic. In monetary corruption, the exchange relation is carried out by way of a transfer of money, and in bureaucratic corruption by way of a transfer of power. Both types of corruption can circumvent regulations spelled out by legitimate or systemic law. Corruption of social relations regulated by legitimate law involves a transformation from communicative action to strategic action. Corruption of social relations regulated by systemic law intensifies action-coordinating mechanisms aimed at monetary or bureaucratic success. The value of this approach is explicated with reference to some important topics of debate in corruption research.

INTRODUCTION

This article develops a communication-theoretical notion of corruption as a suitable topic for social-scientific investigation. Corruption is a long-standing topic of sociological reflection, and numerous studies have demonstrated the extent to which corruption continues to be an important issue in contemporary society. Research on corruption, however, has generally failed to develop a clear theoretical perspective of what corruption is and how its social implications can be illumi-

nated. Social research on an issue as important as corruption should be guided by a substantiated understanding of what corruption conceptually means in order to illuminate its social implications. A theoretical formulation of corruption from the perspective of the theory of communicative action advanced by Jürgen Habermas will be outlined.

The argument is developed as follows. First, the central themes in the social-scientific study of corruption are briefly reviewed. The critical function of these studies in their capacity to lay bare crucial concerns of deviance and

criminal justice is examined. Their relative lack of theoretical substance also is examined. Next, the principal concepts and theses of Habermas' theory of communicative action are discussed. While Habermas' critical theory has over the last years stimulated considerable debate, it has largely been neglected in empirically oriented social research. The attempt of this article to link Habermas' basic concepts to the issue of corruption may, therefore, prove helpful for the study of crime and criminal justice in light of recent developments in social theory.¹ As a limitation to the scope of this article, an empirical investigation of corruption is not offered. Instead, a conceptual clarification of corruption that is theoretically sustained, which may show merit as the basis for corruption research is developed. Specifically, a defense of the thesis that corruption can, in communication-theoretical terms, be conceived as a type of social interaction circumventing legal procedures through the monetarization and bureaucratization of social relations is offered. This article concludes by discussing some implications of this notion for theory and research on corruption.

THEMES AND PERSPECTIVES IN THE STUDY OF CORRUPTION

A complete systematic history of the way in which corruption has been examined in social-science research will not be presented. Suffice to say that corruption is a long-standing object of social-scientific reflection and that a wide range of studies has been devoted to it. The most crucial elements in the literature that help clarify the focus of this article will be discussed.

Corruption as a Social Issue

Most studies of corruption begin with some definition of corruption, often indicating how difficult it is to ascribe a clear-cut meaning to the term. Usually, corruption is defined either to refer to illegal acts related to power offices, official institutions, the civil service, and other political spheres, or in relation to the personal

and monetary gain that is involved for the corruptor. Corruption is defined, for instance, as a "perversion of power" (Brasz, 1978:41), or as "a shift from a mandatory pricing model to a free-market model" (Tilman, 1978:62). Depending on how corruption is initially defined, related illegal activities (e.g., bribery, extortion, fraud) are included within that definition, are examined as specific forms of corruption, or are understood as distinct from corruption. In other instances, corruption is very broadly defined or sometimes not defined at all (Williams, 1981). Hence, it appears that "corruption can mean everything and nothing" (Pepinsky, 1992:27), referring to a "multitude of sins" (Sherman, 1974:5). As such, the social-scientific study of corruption has not managed to surpass the multiplicity of terminologies with which it is supposed to delineate its own object of study. Corruption has something to do with the abuse of power and/or money. Apparently, there are as many definitions of corruption as there are studies that have been devoted to its research. A consistent use of one conceptual formulation is often lacking or theoretically unsubstantiated.

While corruption is usually conceived in relation to politics and the abuse of power, research has focused on corrupt practices in many different institutions of society. As early as 1910, Robert Brooks (1910:46) in his classical study *Corruption in American Politics and Life* already argued that "corruption is quite as possible elsewhere as in the state." Next to the political sphere, corrupt practices have been investigated in the world of trade and industry (e.g., Cullen, Maakestad, and Cavender, 1987; Clinard, 1990) and, of special interest for criminal justice studies, in the police (e.g., Avery, 1989; Barker and Roebuck, 1973; Bracey, 1989; Faris, 1989; Goldstein, 1975; Lynch, 1989; McAulay, 1989; Sherman, 1978).

The disclosure of corruption in many different social domains offers the primary relevance of empirical research on the issue. It has revealed that illegal activities can be found in various areas of social life and particularly in social institutions affecting the broader structures of society, which are specifically set up

to serve the public interest. Corruption is observed to touch the whole of society and directly or indirectly affects all of its members. Moreover, empirical research has succeeded in laying bare the secrecy involved with corruption and the strategies, often on the part of the rich and powerful, to conceal its occurrence.²

The Extent and Nature of Corruption

Considering that, with corruption, basic problems of the social fabric are at stake and issues of (mis)trust and (ir)responsibility are implied, studies probing into the extent and nature of corruption in society perform a task of considerable significance. Empirical studies of corruption have described its causes and consequences, indicating the incentives and motives of the individuals involved, which are mostly seen in strict monetary terms as private gain or profit maximization (Etzioni, 1984; Meier and Holbrook, 1992; Rogow and Laswell, 1978; van Klaveren, 1978). Other studies have touched on the broader social implications and ideologies of corruption, and have suggested strategies to prevent, reduce, or eliminate corruption.³ Historical accounts have shown that corruption has been present throughout history, while comparative studies have indicated the specific nature and types of corruption across various cultures.⁴ In addition, research on corruption has revealed its alliances with other illegal activities. Examinations of the intricacies of corruption, particularly with regard to its connections with organized crime, have unmasked the ties between the criminal underworld and the official sociopolitical and economic establishment.⁵

In summary, studies of corruption have focused on: definitions of corruption; descriptions of its causes, effects, and ideologies in society; and the elaboration of strategies designed to prevent, reduce, or eliminate corruption. The significance of these studies cannot be denied. They have demonstrated the extent to which corruption can spread in various areas of social life. Most critically, they have succeeded in uncovering corruption in those institutional domains of society in which deviations from social norms run counter to the essen-

tial functions of those institutions (police, politics, business). As such, corruption research has indicated the important complexities of the social order, involving the obscurity to demarcate legal from illegal and the crossing of boundaries between what should and what should not be. Robert Brooks' (1910:vii) assertion that the "vileness" of corruption should not lead us away from "cool, systematic studies of social evils" still holds true today. Research on corruption is often obfuscated by a premised immorality of the act, and whatever (however worthwhile) follows in research is guided by that belief.⁶ What is first needed, however, is a conceptualization of what corruption implies from a theoretically substantiated perspective before the reasons for its vileness or immorality can be brought to light. In the following pages, this article will focus on the basis of Habermas' theory of communicative action to develop a concept of corruption which will reveal its characteristics as a type of interaction and as an issue of continued social importance.

HABERMAS' COMMUNICATION-THEORETICAL APPROACH TO SOCIETY

To clarify the notion of corruption that will be introduced, the basic premises of Habermas' theory of communicative action will be reviewed briefly. First, the communication-theoretical concepts of rationality and social action will be addressed. Second, an explanation of Habermas' two-level approach to society will be provided (see Habermas, 1984, 1987a).

Strategic Versus Communicative Action

At the heart of Habermas' theory of communicative action is an analysis of the rationalization of (Occidental) societies. According to Habermas, the problem of rationality offers the best entry into the study of society because it reveals the way in which statements on social reality can be grounded (i.e., how social order is possible). Habermas distinguishes

two concepts of rationality. First, rationality may be conceived in cognitive-instrumental terms, referring to the successful use of applying means toward a privately defined goal in an objectified world. Habermas contends that this notion of rationality alone is inadequate to account for the fact that what is objectively conceived in society can only be understood as the result of an intersubjective, social process: Objectivity requires a socially reached agreement on the way things should and can be considered objectively valid. The communication-theoretical approach to rationality, therefore, focuses on the formation of intersubjectively accepted and shared interpretations of the world through speech acts. Communicative rationality refers to social actors' capacity to forward substantive arguments for the claims they make in speech acts oriented at mutual understanding. This implies that the claims of speech acts are open to critique. Habermas identifies three validity claims which make speech acts criticizable: A speech act claims truth (on the way things are), rightness (on the way things should be), and truthfulness (regarding the intentions of the speaker). On the basis of this distinction, Habermas argues that a communicatively reached agreement among social actors refers to three domains of reality at once: the objective world of things and events; the social world of normative standards guiding social action; and the person-bound world of individual intentions, feelings, and motives. The central characteristic of Occidental rationalization, Habermas claims, is that the shared definitions of the world can be put under scrutiny with regard to the three validity claims. Where once the shared interpretation schemes were incontestably pre-given (e.g., in traditional worldviews and religions), the differentiation of validity claims has made it possible that arguments can be forwarded for and against any particular view of the world.

It will prove useful for the topic of this article to consider in more detail some of the characteristics of the types of social action that can be distinguished on the basis of cognitive-instrumental and communicative rationality (see Habermas, 1984:273-337; 1992a:57-87).

On the one hand, cognitive-instrumental rationality guides actions directed toward the success of employing a means to an end. These action types are instrumental when the actor is (nonsocially) aiming at the efficient intervention in a state of affairs or circumstances. Actions guided by a cognitive-instrumental rationality are strategic when they (socially) aim at successfully influencing the decisions of an opponent. In both cases, the actor is guided by considerations about the successful manipulation of an outer-worldly environment: the world of objective events and circumstances and the externally conceived world of objectified people, respectively (object-object relations). Communicative actions, on the other hand, are aimed at the mutual understanding between social actors (subject-subject relations). This means that social actions are guided by the rational motivation to (dis)agree with speech acts in relation to any of the validity claims. Rational motivation refers to bringing in substantial arguments, and only arguments, with respect to each of the stated claims.

To avoid misunderstanding, two important remarks should be made. First, Habermas' notion of communicative action does not assume that understanding can only be established via speech acts. Several types of action may be oriented toward reaching agreement, but only if they can be converted into linguistically mediated interactions. Second, the orientation to understanding in communicative action does not imply that all communication between actors will automatically lead to consensual agreement. Language can also be used with an orientation to consequences: Some speech acts only aim at bringing about an effect upon the hearer, that is, at trying to influence something in an objectified world. They are, therefore, a special case of strategic action. Social actions are only communicative if the speaker is trying to harmonize his or her individual interpretation scheme with those of others under the aspect of the three validity claims (truth, rightness, and truthfulness). In communicative social action, people argue for or against the claims of speech acts by taking into account the perspectives of all relevant others.

Lifeworld and System

Although speech acts can be criticized, Habermas argues that they are usually naively accepted in everyday life because they are coordinated through interpretation schemes that are already at hand in the lifeworld (Habermas, 1987a:119–52). As such, the lifeworld offers the undisputed resources to guide social activity. In the course of history, however, Habermas contends, the lifeworld has rationalized. This means that three attitudes toward the world have developed and differentiated according to the structure of the validity claims: an objectivating attitude toward the external world of events and circumstances, a normative attitude toward the social world, and an expressive attitude toward the personal world of subjectivity. The lifeworld concept is, therefore, not limited to the cultural tradition (the shared interpretations of the world) in a particular community: the lifeworld also ensures that social actors abide by the normative standards of their community (for the solidarity of social groupings) and that social actors are able to act as competent personalities in harmony with their social environment (identity formation). Three structural components of the lifeworld correspond to these functions. First, at the level of culture, cultural reproduction relates to the transmission of interpretation schemes consensually shared by the lifeworld's members. Second, at the level of society, social integration establishes legitimately ordered interpersonal relations through the coordination of actions via intersubjectively shared norms of action. Third, at the level of personality, socialization processes seek to ensure that personalities with interactive capabilities are formed.

The lifeworld approach, however, cannot account for the fact that social systems have managed to arise in which social action is no longer coordinated through language. Therefore, Habermas pays attention to the rationalization of the systems of economy and state, which in the course of history have split off from the lifeworld (uncoupling of lifeworld and system). The economy and state function independently of the lifeworld because their

action-coordination mechanisms are transferred from language over to the delinguistified steering media of money (economy) and power (state). Actions coordinated through these steering media aim at the successful realization of structuring the exchange of goods and services on the basis of their value (economy) and making effectively binding decisions (state). In systems, then, social actions are exclusively guided by cognitive-instrumental rationality. Habermas does not conceive the uncoupling of system and lifeworld as problematic. The coordination of action in systems can best be secured by steering media because they manage to relieve communicative actions with great efficiency and productivity. Systems also have the capacity to exert their influence in communicative lifeworlds, however. The action coordination function of language is thereby replaced by coordination mechanisms oriented to success in the domains of the lifeworld (culture, society, and personality) that, in fact, can only be secured through communicative action. The lifeworld is then colonized by the systems.

CORRUPTION: THE MONETARIZATION AND BUREAUCRATIZATION OF LEGALLY REGULATED SOCIAL RELATIONS

On the basis of Habermas' theory, corruption, it is argued, can be conceived as a colonization of social relations. Corruption entails a subversion of action-coordinating mechanisms, similar to Habermas' original formulation of the colonization of the lifeworld. Corruption, however, refers to a person-to-person interaction which is not directly bound to the functioning of systems but can be initiated by any social actor in whatever institutional sphere of society (which does not mean, of course, that corruption is as likely to occur in one institution as the next). Corruption is not a feature of systems but a type of social action. Bearing in mind that Habermas identifies two steering media which are capable of colonizing social actions oriented at mutual understanding, two types of corruption are distinguished: corrup-

tion involving a transfer of money (monetary corruption) and corruption involving a transfer of power (bureaucratic corruption). A general definition of corruption is given and the two types of corruption are analyzed.

Corruption: A General Description

In communication-theoretical terms, corruption can be defined as that type of strategic action in which two or more actors undertake an exchange relation by way of a successful transfer of steering media (money or power) which sidesteps the legally prescribed procedure to regulate the relation.

Because in any corrupt action the prospect, on the part of at least two actors, of a (personally defined) success of the interaction is what motivates the exchange to be undertaken, corruption is an attribute of a type of *interaction*. In corruption, two or more people are involved who anticipate a successful outcome of the exchange relation. Because corruption involves at least one corruptor and one corruptee, it is the type of social action undertaken that constitutes corruption. This remark may seem rather superfluous. It is, however, important to keep in mind that corruption denotes a type of exchange relation because it explains one of its typical features in comparison with other (instrumental) illegal acts. Corruption is not a matter of "partners in crime" but of "criminal partnership" vis-à-vis a legal regulation of interaction. Consequently, the negative (victimization) effects of corruption are largely indirect. The victim of the corrupt interaction is often unaware of the harm done to him or her. However real the victimization as a result of corruption, it usually does not present itself immediately to the victim, but results secretly in a loss of money or power and is, therefore, often a source of fierce condemnation after the victimization has been revealed.

Another important element in the definition is that corruption is *strategic* interaction. As mentioned before, social action is strategic when it is aimed at the successful realization of personally defined goals. In any corrupt activity, all actors (on both the corrupting and

the corrupted side) must have decided, under certain circumstances, not to coordinate their action through communication aimed at understanding. There must be tacit agreement, of course, between the parties involved to engage in the corrupt action. This agreement, however, precisely concerns the parties not taking further actions aimed at understanding. If all the actors decide that the transfer of steering media can be expected to be carried out successfully (in light of their personally defined goals), and in consideration of the expected success of employing other means toward the same goal or abandoning the plan to aim toward that goal, the possibility of engaging in communicative action following that agreement is automatically excluded. Corruption, from the point of view of the persons involved, thus, can be explained purely in terms of cognitive-instrumental rationality. Obviously, while corruption may be carried out in the world of business and politics (the systems of economy and state), it is not confined to these systems of society nor does it derive its characteristics as an exchange relation from them (although the coordination mechanisms are the same). Corruption is a type of interaction between individuals which may take place in several social domains, and its characteristics as strategic interaction are derivative from the exchange relation it entails, that is, a transfer of so-called delinguistified steering media (money and power).

Types of Corruption

Bearing in mind that two steering media are capable of colonizing actions oriented at mutual understanding, two types of corruption can be identified. The corrupt interaction is executed by way of a transfer of money or of power, that is, through the monetarization or the bureaucratization of social relations (see Figure 1).

Monetary corruption can be defined as that type of corruption in which the exchange relation is carried out by way of a successful transfer of the steering medium of money, in particular, a transfer of a sum of money in return for a service or commodity, which by-

Type of Corruption	Social Role Corruptee	Medium of Exchange	Social Role Corruptor
Monetary Corruption	"consumer"	goods and services → MONEY ← sum of money	"producer"
Bureaucratic Corruption	"client"	loyalty → POWER ← position of power	"administrator"

Figure 1. Types of Corrupt Exchange Relations.

passes the legal procedure to acquire that service or commodity.

In the case of monetary corruption, the exchange relation is, in communication-theoretical terms, empirically motivated by the corruptor through *inducement*. Empirical motivation refers to the fact that the interaction is not motivated through agreement based on bringing in arguments (rational motivation) in communicative action (Habermas, 1987a:265–82). Bribery is the classic example. The corruptor assumes the role of the economic producer in that he or she suggests from a success-oriented perspective to undertake the exchange on the grounds of the value of the money he or she wants to transfer (the bribe is the product of the exchange). The corruptor, thus, can induce the corruptee to engage in the exchange relation backed up by a positive sanction because he or she is in possession of the money (the reward) required to carry out the transfer. The corruptee assumes the role of the consumer when he or she has decided to accept the money in return for offering some good or service (the price of the exchange).

Bureaucratic corruption refers to that type of corruption in which the exchange relation is carried out by way of a successful transfer of the steering medium of power, in particular, a transfer of a position of power (an office) in return for power-supportive behavior

(loyalty), which bypasses the legal procedure to acquire the position.

As in the case of monetary corruption, the exchange relation in bureaucratic corruption is empirically motivated. The corruptor assumes the role of an administrator and suggests to undertake the exchange because of the prospected realization of collectively defined goals through the transfer of power. The incentive to engage in this exchange, however, needs an additional basis of confidence in comparison to monetary corruption (see Habermas, 1987a:267–77). Monetary corruption is only backed up by the possession of money, that is, by means of a material backup. In the case of bureaucratic corruption, concrete means of enforcement offer this material backup. In addition, the power-driven exchange can only be carried out when the goals of the interaction are defined as collective, in the sense of being considered beneficial to all parties involved. In other words, the exchange has to be accepted as legitimate in view of the shared interests it purportedly aims to fulfill. The corruptor has to use his or her definitional power to persuade or force the corruptee that the goal of the interaction is collectively valid. Unlike money, power is less quantifiable and cannot as freely circulate from one person to another because it tends to become bound to specific individuals. Therefore, bureaucratic

corruption is negatively motivated by the corruptor—who is more powerful than the corruptee—through *deterrence*. The corruptor tries to deter the corruptee from not entering into the exchange, backed up by a negative sanction (the threat to use power) in case the corruptee would try to resist accepting the transfer. The structurally disadvantaged corruptee is forced to assume the role of client and accept a position of power in return for loyalty toward the corruptor.

CORRUPTION AND LAW

This article has proposed to define corruption as a particular type of strategic action in which an exchange relation is undertaken through the transfer of money or power. One important element in the definition has been left untouched this far: Corruption refers to an exchange relation which sidesteps a *legally prescribed* procedure to regulate the relation. Corruption necessarily refers to law, specifically those legal prescriptions which corruption violates, and as such it relates to the normative sense of justice imbedded in law. It will, therefore, prove helpful to briefly discuss Habermas' theory of law and examine its relevance for the concept of corruption.

Habermas on Law and the Colonization of the Lifeworld

Habermas attributes two functions to law in the relation between system and lifeworld (Habermas, 1984:243–71; 1987a:164–79). On the one hand, legal arrangements are needed to secure the independent functioning of the system's economy and state. In this sense, law secures the "normative anchoring" of the steering media in the lifeworld. While the systems of economy and state have, in the course of history, managed to function independently from the lifeworld, the operation of their respective media, money and power, has to be recoupled to the lifeworld through their legalization. In the case of the money medium, exchange relations have to be legally regulated

in property and contract laws. The power medium of the political system likewise needs to be normatively anchored by legally regulating the arrangement of official positions in bureaucracies. In this way, law is the institutionalization of a moral–practical discourse on the historically determined normative standards of society.

On the other hand, law may also enter into the lifeworld in a systemic way. Habermas (1987a:356–73) here develops the thesis of the internal colonization of the lifeworld. In the course of history, Habermas argues, several tendencies of juridification have taken place. Juridification refers to the expansion of law (more social relations become regulated by law) and its densification (social relations are regulated in ever more detail). In its present form in modern welfare states, juridification primarily concerns guaranteeing social rights and freedoms against the unbridled operation of politics and economy. This freedom-guaranteeing juridification, however, while resulting out of the lifeworld's demands to curtail the economic and political systems from penetrating ever deeper into communicative action structures, has certain negative effects. Welfare state juridification leads to a systemic restructuring of the interventions in the lifeworld because it attempts to fulfill human needs to which only individuals are entitled, under formally specified legal conditions, by a claim made to and dealt with in bureaucratic organizations, and often arranged in the form of monetary compensations. The normative claims of the lifeworld are thereby transformed into bureaucratic and monetary arrangements so that the law operates system-like in the social relations of everyday life. To express this duality of law, Habermas (1992d) refers to the facticity and validity of law, indicating the possibilities of modern law to be systematically distorted (by market and state) or legitimately rooted (in the lifeworld). In his earlier work on law, Habermas (1987b) denoted this duality by drawing a distinction between the institution and the medium of law, but he now suggests law's duality by positioning it between system and lifeworld (Habermas, 1992d).

Corruption in Modern Society

The communication-theoretical concept of corruption can now be related to the functions of law outlined by Habermas. This leads to distinguish corruption of social relations regulated by legitimate law, which will be referred to as first-order colonization, and corruption of social relations regulated by systemic law, or second-order colonization (see Figure 2).

When the legally prescribed procedures to regulate an exchange relation are arranged in legitimate law, corruption of this relation takes on the form of a *conversion* from a communicative to a systemic type of interaction. When a legal regulation institutionalizes normative standards, the action orientation is aimed at mutual understanding (despite whatever disagreement there may be on the rightness of the regulation). Corruption of such legally regulated social relations involves a transformation from communicative action to strategic action guided by a cognitive-instrumental orientation. In other words, corruption involves a (first-order) colonization of a relationship regulated by a legitimate legal procedure.

On the other hand, when the legally prescribed procedure to regulate a social relation is itself of a systemic nature, then corruption

of that relation takes place within a domain of social life that is already systemically ordered. Systemic law, by definition, coordinates actions from a cognitive-instrumental perspective oriented to success. Corruption of these type regulated social relations is a second-order colonization because the corrupt interaction is guided by the same kind of action orientation by which law regulates the social action. While this form of corruption cannot constitute a conversion from communicative to strategic action (a conversion of action coordinating mechanisms would actually go the other way around, i.e., from strategic to communicative action, as in the case of legitimate illegal actions),⁷ the notion of corruption as a second-order colonization does not imply that this type of corruption is any less significant. On the contrary, corruption as a second-order colonization involves an intensification of action coordinating mechanisms aimed at success. Corruption as second-order colonization in a way doubles the strategic nature of social relations, specifically by converting an illegitimate but legal procedure into a likewise illegitimate and illegal relationship.

It is important to stress the intimate relation between corruption and law. The fact that corruption is a kind of strategic action does not, of course, imply that all strategic action

Domains of Action Action Orientation	Legitimate Law	Systemic Law	Not Legally Regulated Social Relations
Mutual Understanding	legitimate legal procedure	illegitimate legal procedure	communicative action
Success	corruption 1st-order colonization	corruption 2nd-order colonization	strategic action

Figure 2. Socio-Legal Domains of Corruption.

is corruption. Corruption can only be conceived as the sidestepping of legally prescribed procedures which regulate a social action. Communicative social actions that are not regulated by law can also be converted into strategic action. Even if this is considered unjust from an ethical point of view, if a law regulating the interaction does not exist, it can never be illegal. Consequently, these type strategic actions remain immune from legal control.

ISSUES FOR THEORY AND RESEARCH ON CORRUPTION

The proposed communication-theoretical notion of corruption as the colonization of social relations can show merit with respect to some of the topics of concern in the study of corruption, which were surveyed at the beginning of this article. Corruption from a communication-theoretical perspective indicates a type of exchange relation, not of the social actors involved. Of course, someone has to initiate the exchange and at least one other actor has to be induced or influenced to engage in the relation so that one of the two parties can potentially have a more active role in the interaction. Especially in the case of bureaucratic corruption, the structurally disadvantaged position of the corruptee is a determinant factor in the execution of the exchange relation. Nevertheless, the type of exchange relation and action orientation involved is essential to corruption. The strategic nature of the interaction in the form of a conversion into, or an intensification of, success-oriented action coordinations is crucial. If corruption is popularly condemned, it is because it colonizes social relations through success-oriented action precisely where legally prescribed procedures are expected to coordinate the relation.

Based on Habermas' discussion of the colonization of the lifeworld, two types of corruption, monetary and bureaucratic, are distinguished. While the literature sometimes emphasizes one of these two types (often at the expense of the other), it is essential to consider separately the characteristics and implications

of both. This article, for instance, describes the difference in empirical motivation in the two types (inducement versus deterrence). This does not mean, however, that both types cannot be interconnected. Indeed, the valuable point could be made that power and money are very closely related and can easily be converted from one to the other. Therefore, the categories of monetary and bureaucratic corruption essentially are to be treated as analytical. Precisely on the basis of the study of this analytical distinction, the close association between money and power, and its relevance for corruption, can be elucidated.

Extortion offers a good example to show the interrelatedness between the two corruption types. In the case of extortion, the interaction may be steered either by the money or the power medium. Nevertheless, it is fundamental that extortion always takes place against the background of a negative sanction, namely the threat to use certain means of force in case the exchange would not be accepted. In other words, the extortioner can rely on an effectively strong definitional power to have the goals of the exchange defined as collective because the demand is backed up by deterrence. In this way, power (or the threat to use it) is always a condition of extortion, while the exchange itself can be carried out through transferring either one of the steering media.

It has also been argued that it is useful to locate corruption within the broader sphere of legal arrangements regulating social relations in society. In this article, this led to distinguishing (1) corruption from other types of strategic action, and (2) two forms of corruption based on what type legal code was violated. Without some law regulating relations, there cannot be corruption. There are, of course, social relations which are not legally regulated but which are still of a strategic nature. Here could lay one of the central focal points for empirical research if a purely legalistic approach to corruption is to be avoided. A legalistic perspective of corruption would not only limit the focus to illegalities, it would also justify this limitation and restrict analysis to violations of social relations regulated by law.

From the perspective advanced here, law is considered a variable (not a constant) in analysis, corresponding to a social constructionist viewpoint. In particular, this model can lead to investigating whether there is a trend in modern societies that more and more social relations become regulated by law. If the tendency of the juridification of social relations is seen to persist, an increase in corruption could be predicted. This is not because more people more often undertake such actions, but because more relations are legally regulated and, therefore, are more corruptible. This would specifically apply to formal organizations which are subject to an increase of bureaucratization (i.e., an excessive implementation of legal procedures which may inhibit rather than facilitate a smooth functioning of the organization). In addition, corruption research from this perspective could seek to discover why some relations are (or are not) legally regulated, and what kind of processes lead to (non)regulation. Research on corruption without research on law, as a variable of research, would necessarily miss some significant explanatory mechanisms in accounting for the extent and nature of corruption in society.

While this author believes that Habermas' theory can adequately expose the connection between corruption and law, this does not mean that this approach is not without shortcomings. As several scholars have argued (e.g., Bader, 1983; Baxter, 1987; Peters, 1994), Habermas' concepts of system and lifeworld rigidly separate two domains of society. Habermas thereby denies the possibility that system and lifeworld can, as analytical tools, be applied to any social institution. This comment is valuable, particularly because a reformulation of Habermas' concepts along these lines could lead to an inquiry into the motivational basis and institutional contexts of social action. In the case of corruption, this would lead one to ask pertinent questions about the incentives and motives of the actors involved (which, from Habermas' perspective, appear to be dissociated from their social contexts). The following classification of corruption could then be proposed: (1) corruption as the result of the voluntary collaboration between two (or more)

actors; (2) corruption voluntarily initiated by one (or more) corruptors, to which one (or more) corruptees are involuntarily subjected; and (3) corruption as the result of institutionally determined pressures and opportunities.

The first type can easily be positioned in terms of Habermas' action theory, but the latter two indicate that the model this article derived from Habermas' approach must remain strictly analytical to be applicable. The second type indicates the relevance of the differential distribution of money and power which determines who will actively initiate corruption (and who will participate). Although Habermas' theory indicated the relevance of differential power distribution in the case of bureaucratic corruption, in the case of monetary corruption, important structurally determined differences were obscured by a narrow focus at the interactional level. This critique especially applies to the third type, which hints at the important structures of corruption in such closed institutions as politics, business, and police. Corruption in the police, for instance, conflicts markedly with its function (to serve and protect). The police also are subject to specific pressures (to make arrests) and opportunities (the seclusion of the force from public scrutiny, and the closeness to crime), which may explain the often widespread extent of corruption when it is discovered in police forces.⁸ The distinction between monetary and bureaucratic corruption, as well as the distinction between corruptor and corruptee, therefore, can remain useful. This only occurs when they are conceived as analytical, thus allowing the actual variation in their degrees of demarcation to be empirically elucidated.

Acknowledging this critique, Habermas' social theory nonetheless leads to relate corruption to the extent and forms of legal regulations. This matter is particularly important in relation to the notion of the so-called system of corruption, which is sometimes introduced to refer to the extent to which corruption practices have spread in society (Alatas, 1990; Clarke, 1983). It is obviously an important observation when corruption is seen to flourish widely in society so that it seems to constitute a normal social fact. This is reminiscent of

Durkheim's observations on the chronic state of anomie in the world of trade and commerce; that is, a complete breakdown of the moral order allowing for widespread deviance and action directed solely at efficiency and success (see Mestrovic, 1991:163–83). To speak of a system of corruption in communication-theoretical terms, corrupt interactions (even when they are vastly dispersed throughout society) would also have to be normatively anchored in the lifeworld through a legal back-up. This cannot be the case because, while corruption does not always seem to meet with popular resentment (indicating the extent to which the colonization phenomena have managed to spread in society), and while some social relations are regulated in a systemic way, legal regulations, by definition, cannot legalize corruption. Although economy and state, as systems, operate independently from the demands of the lifeworld, they also need to be recoupled to the lifeworld through the legalization of their operation. In terms of Habermas' critical theory, a moral-practical discourse pointing to the need to sustain, change, or abolish the legal regulations of social relations (a need which research on corruption could reveal) is still able to criticize the normativity (or lack thereof) of laws affecting corruption.

In this regard, Habermas' refusal to give up a normative, emancipatory core within contemporary society is important to consider.⁹ Habermas, since the beginning of his work, has stressed the inadequacy of classical Marxism to account for the potentials of democracy and the way in which principles of individual freedom and social rights can be institutionalized in modern law (Habermas, 1989, 1992c, 1992d, 1993a; see Calhoun, 1992). Indeed, Habermas' theory not only emphasizes the social implications of law (and, as clarified in this article, law's relationships to deviance), it also suggests a normative proposal for the democratization of law.¹⁰ The distinction between legitimate and systemic law can be precisely determined by reference to their normative content, defined in terms of law's popular legitimation. Law, Habermas argues, can

only be normatively secured when law is an institutionalized complex of valid norms, that is, when legal regulations are accepted as legitimate. The validity of norms, from the perspective of Habermas' moral philosophy, can only be guaranteed when those norms "meet (or could meet) with the approval of all affected as participants in a practical discourse" (Habermas, 1990:66). In other words, the legitimacy of law resides with those affected by law (see Habermas, 1992d, 1994). In the case of systemic law, conversely, the validity of legal norms is subject to the critique that laws are determined by their instrumental qualities (subservient to the political and economic systems).

Finally, the foregoing leads to an important observation on corruption in nonindustrialized societies. Certain customs in non-Western societies are often described in terms of a corruption-system operating independently from (and against the action coordination in) the political system. Traditional ways of nepotism or favoritism are seen to counteract the norms of modern political and legal arrangements. It would be a mistake, however, to refer to such practices in terms of corruption because the rationalization processes leading to the differentiation of lifeworld and system characteristic of the West have not taken place in these societies (see Harrison, 1991). For instance, in societies in which kinship ties and ethnic affiliations play an important role, the loyalty expressed to family and ethnic community members is essentially part of the traditional lifeworld and cannot be clarified in the systemic terms of the steering media of money and power. These traditional practices in non-industrialized societies cannot be labeled corrupt because it would ignore the fact, or at least the possibility, that these practices are legitimated in the traditional, undifferentiated lifeworld. The fact that such customs are often seen to collide with the norms accepted in the modern political system and the accompanying legal arrangements in those societies does, of course, reveal a crucial tension between two modes of action coordination. It would show little understanding for the spe-

cific historical developments in nonindustrialized societies to frame these practices in terms of a concept of corruption based on Western political systems. While such practices may indeed face opposition from those who are affected and who suffer from its negative consequences (Theobald, 1990:10), it is important to stress that the traditional lifeworld is not so much a source of tensions for these societies as is the fact that modern (Occidental) political, economic, and legal systems of action coordination have been imposed upon them since the days of colonial rule.

CONCLUSION

This article has developed a concept of corruption as referring to a strategic exchange relation by way of a transfer of steering media colonizing legally regulated social relations. It suggests that research on corruption should begin with a clear conceptualization of what corruption is without socially constructed moral codes interfering with the project before research is undertaken. A critical theory of society, however, is guided by "an emancipatory interest . . . an attitude which is formed in the experience of suffering from something man-made, which can be abolished and should be abolished" (Habermas, 1992b:193-94). The relevant question is, "What is to be abolished and why?" In this respect, the construction of corruption by two types of law is crucial. Indeed, while this article first explored corruption at the interactional level, on the basis of Habermas' social theory, this approach then proposed to consider legal regulations as essential and variable components of research, thus locating corruption in relation to the broader structures of law in society. Moreover, policy-oriented critical comments then follow rather than precede theoretically guided research on corruption. Defined as the monetarization or bureaucratization of legally regulated social relations, it is particularly important that corruption cannot be properly conceived without considering the nature and morality of the legal procedure it circumvents. Research on corrup-

tion, therefore, is by implication also research on law. Although this article acknowledged that law is only one institutional factor affecting corruption, the relationship that is drawn between corruption and law from the perspective of Habermas' theory of communicative action shows that the legally prescribed procedure to regulate the interaction can either be strategic (systemic law) or communicative (legitimate law). The failure to make the distinction between types of corruption in relation to the legally prescribed procedures from different areas of law has confused much of the debate on the so-called positive functions of corruption (Alatas, 1990). The assertion that corruption can have positive functions is based on the idea that, through corruption, the shortcomings of legal arrangements can be fairly redressed. Take, for example, the politician rendering a service to someone by offering assistance in making effective his or her legal claim to obtain pension. It could be argued that such a settlement positively redresses the shortcomings of the legal system and that the politician justly helps in providing access to justice. This conclusion, however, is not warranted because it does not take into account, first, that the legal arrangement of the claim itself may not be legitimated, or at least not legitimately regulated by law, and, second, that the redress is made only on behalf of one individual, under bureaucratic conditions not controlled by the beneficiary, in the form of monetary compensation, and in return for political loyalty. In corruption, not the outcome of the exchange in an individual case is at stake, nor the aggregate of different individual cases, but the mode of action coordination operating in such practices under specified legal conditions. Social research revealing tendencies toward increasing colonization of social relations through corruption in social areas more (or less) extensively and densely regulated by law can, therefore, contribute substantially to lay bare the conditions under which the legal and normative core of society's order is affected. Thus, in examining corruption, much more is involved than just the analysis of an illegal give-and-take.

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NOTES

1. See Groves and Sampson (1986) for an attempt to relate Habermas' epistemology to theoretical issues in the explanation of crime, and Deflem (1992b, in press) for a discussion of social control and criminal justice from the perspective of Habermas' theory of communicative action (for an application, see Lilly and Deflem, in press). For the influence of Habermas' work in the area of sociological studies, see the discussion in Deflem (1994).

2. On camouflage techniques and secrecy in corruption, see Kay (1978); Simon and Eitzen (1990:319-26). The broader social implications of secrecy and deception, and the methodological consequences for social research are discussed by Marx (1972, 1984).

3. See, for example, the discussion of corruption effects by Alatas (1990:125-53). See, from a more critically oriented perspective, William Chambliss's influential work *On the Take* (1978). The suggested effects and causes of corruption, as well as the recommendations to control corruption, are directly related to, and limited by, the priority given to either power or money in the definition of corruption. See Braithwaite (1981/1982) in this regard for a discussion of legalist versus economist control strategies of corporate crime and corruption.

4. One of the oldest accounts of corruption can be found in the writings of Ibn Khaldun (see Alatas, 1968:9-10). See also Alatas (1990:13-39) on corruption in the Roman Empire and ancient Greece. On corruption in developing countries, see, for example, Pepinsky (1992) on corruption and political culture in Tanzania; Bayley (1974) on corruption and police in India; Santiago (1989) and Jeaffreson (1989) on the control of corruption in the Philippines and Hong Kong.

5. Donald Cressey's *Theft of The Nation* (1969) has been especially influential for this kind of research. For a discussion of corruption in relation to illegal business, Haller (1990).

6. Barker and Roebuck (1973:4) complain about the value-laden approach of most analyses of corruption. Likewise, Leys (1978:31) describes studies of corruption as moralistic. One of the reasons for the peculiar outrage against corruption, which also seems to affect social research, may be that it is often discovered in institutions where deviance violates popularly held beliefs (see Levi [1987:57-75] on the perceived seriousness of corruption and fraud).

7. See Etzioni (1984:56-80) for a discussion of the differences between the illegality and illegitimacy of corruption. Note the way in which the suggested model indicates

the relevance of legal regulations in defining corruption and that it does not exclude the possibility of illegal yet legitimate social action. A classic example of this case is civil disobedience, which involves purposely conducted illegal behavior which, nonetheless, rests on popular support (see the discussions in Habermas, 1985:79-99, 1988, 1992b:223-27).

8. Research on police corruption, indeed, often reveals the widespread extent of corruption in the forces where it is detected. This offers support for a "tip-of-the-iceberg" theory which suggests that once corruption is discovered, particularly in formal organizations, it is bound to have affected the organization as a whole (see, e.g., Bracey, 1989; Cressey, 1973; Faris, 1989; Lynch, 1989; Sherman, 1974).

9. This idea is also central to Habermas' rejection of postmodernism (see Habermas, 1987b). For a discussion of Habermas' critique of postmodernism in relation to theories of social control and criminal justice, see Deflem (1992a:183-85, in press).

10. Donahue and Felts (1993) have recently applied elements of Habermas' theory to a discussion of police ethics. Although these authors have usefully elucidated the problematic subversion of communicative action by mere technical considerations, they have failed to substantiate the relationship between this subversion and legal and normative considerations on Habermas' theory. Specifically, they erred in stating that "ethics *per se* was not and is not Habermas' primary concern" (Donahue and Felts, 1993:340). In fact, Habermas has devoted two recent books entirely to ethics (Habermas, 1990, 1993a), and he has over the last decade written extensively on the relationship between ethics, politics, and law (e.g., Habermas, 1988, 1992d, 1993b, 1994).

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