

RESEARCH ARTICLE

# When (and how) ideas become arguments: the regulation of party donations in Germany

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## Abstract

This article aims to explain the deviant German case of an early and comprehensive regulation of party donations (combining a high level of transparency and incentives for small donations). Given the limited explanatory power of economic and institutional factors, the article emphasises the causal role of ideas for a policy stabilisation which occurred after 1993. A process-tracing analysis suggests that the 1983–1993 reform period was characterised by a conflict of ideas. During this conflict, ideas regarding undisclosed donations as an anti-democratic interference with democratic political competition came to prevail over ideas regarding all donations as a necessary condition for democratic competition irrespective of their regulation. The key actors in this conflict were, on the one hand, the new Green party which resuscitated the idea of donations being potentially anti-democratic and, on the other hand, the Constitutional Court which ultimately endorsed this ideational legacy promoted by the Greens. After 1993, donations in Germany came to be accepted as a necessary evil whose anti-democratic potential had to be limited by transparency obligations and incentives for small donations. The findings presented here suggest that policymakers need to link attempts to regulate party donations to ideational legacies (if available) to successfully tackle political corruption.

**Keywords:** case study; donations; Germany; ideational policy stabilisation; party funding; process-tracing analysis; qualitative content analysis

## Introduction

Private donations to political parties are in decline in most European democracies, especially in those where public funding is available and accusations of corruption loom large (see the introduction of this special issue). Parties often struggle to maintain the link to their electorates and, subsequent to financial participation, political legitimacy crumbles. Germany was among the first countries to develop an early answer to these problems. Since 1993, Germany combines effective transparency obligations with incentives for small donations (and membership dues). This raises the question how such a normatively desirable regulation of donations came into existence. How can we explain the 1983–1993 reform period during which the current system of regulating party donations in Germany took place? Why were large-scale undisclosed donations tolerated – in the sense of ‘grey’ corruption (see Heidenheimer, 2002) – before 1983, but became a case in point of ‘black’ (inacceptable) corruption after 1993, even though the Basic Law had prescribed the disclosure of party accounts already in 1949?

Whereas the introduction of state funding (or lack thereof) to political parties has received substantial scholarly attention (e.g. Clift and Fisher, 2004; Casas-Zamora, 2005; Koß, 2011; Biezen, 2012), the question how to regulate donations without merely substituting them with state funding

has received little scholarly attention beyond analyses of political corruption (Power, 2020). Existing economic (McMenamin, 2013) or institutional explanations (Vanberg, 2005) cannot account for the regulation of donations in Germany since corporatism, federalism and the financial preferences of (at least a majority of) political parties remained stable during the 1983–93 period of donation regulation reform. This renders Germany a deviant case (Gerring, 2008: 655–656).

The explanation presented here takes as a starting point that policies can also originate from ideational legacies (Zuber, 2022) and that conflicts of ideas can account for policy change (Bleich, 2018). Regarding party donations, two ideas were competing in Germany: on the one hand, the idea to regard all donations (irrespective of their disclosure) as a necessary condition for democratic competition and as preferable over quasi-communist state funding to political parties and, on the other hand, the idea to regard undisclosed donations as an anti-democratic interference with democratic political competition. A process-tracing analysis of the 1983–1993 reform period suggests that it was the newly emerging Green party which helped to resuscitate the latter idea. Once the Constitutional Court had endorsed the idea of large undisclosed donations as anti-democratic, this idea served as an ideational legacy which paved the way for an institutional conversion during which the rules underlying party donations were strategically redeployed (Mahoney and Thelen, 2010: 16). After the 1993 reform implementing the Court ruling, an ideational policy stabilisation (Zuber, 2022) took place that merged the formerly competing ideas while giving preference for the ideational legacy of undisclosed donations as being anti-democratic: donations continued to be regarded as a necessary condition for democratic political competition, but only if larger ones were to be disclosed and small ones incentivised.

The article proceeds as follows. The first section provides an overview over economic and institutional explanations for the regulation of party donations. The second section shows that Germany is a deviant case these explanations cannot explain. The third section introduces the ideational explanation for the regulation of donations. Section four gives an overview over the process-tracing and qualitative content analyses required to corroborate the ideational explanation. These analyses are then empirically carried out in the fifth section. Section six concludes.

### **Economic and institutional explanations for regulating party donations**

As mentioned, the bulk of the literature on party funding reforms focuses on state funding to political parties. Such public funding is taken as evidence that parties either formed cartels (Katz and Mair, 1995) or have become public utilities in the wake of the constitutionalisation of parties (Biezen, 2012). But why do parties continue to rely on donations to various extents, and why does the comprehensiveness in the regulation of donations vary? We can distinguish two explanations for this, an economic and an institutional one. Economic explanations emphasise the role of the economy for party donations (McMenamin, 2013). Institutional explanations regard the interests of political parties as crucial (Vanberg, 2005).

According to McMenamin (2013), money talks either pragmatically or ideologically. Which motivation dominates arguably relies on the economic (and political) structure of a polity. In liberal economies, a lot is at stake in terms of policy change following changes of government (especially if there is no federal power-sharing). For this reason, pragmatically motivated donors are willing to invest large sums to ensure that parties close to their preferences do well in elections (see also Goerres and Höpner, 2014). In contrast, much less is at stake in corporate countries. Here, parties, trade unions and business associations participate in policy-making irrespective of the composition of governments. This explains why shifts in government most likely result in less pronounced policy change. In such polities, donors are more likely to be ideologically motivated and, accordingly, spend less money on donations.

Institutional explanations focus on either the role of powerful Constitutional Courts or political parties' financial preferences to account for the outcome of party funding reforms in general. According to Scarrow (2004), parties can either pursue electoral economy (preferring undisclosed

donations over state funding) or revenue-maximising strategies (preferring state funding and transparency over donations). From an institutional perspective, Constitutional Courts appear as arbiters deciding which preference prevails. Germany seems to be a case in point of this explanation as several important decisions – e.g. those rendering virtually unlimited tax-deductibility of donations unconstitutional in 1958 and 1992 – went back to Court rulings. Vanberg (2005) convincingly argued that the German Constitutional Court always factored in the parties' financial preferences in its decisions since it regarded the parties as constitutional peers. Accordingly, judges anticipating that overriding the interests of a partisan majority would come at a price were willing to make 'important concessions to the established parties' (Vanberg, 2005: 165). At the same time, the main parties regularly anticipated the Court's power, too, and aimed at coordinating their interests to an extent which left the Court little opportunity for far-reaching changes of the status quo. According to Vanberg (2005: 164–165), this logic was particularly visible in the 1992 judgement.

### Germany as a deviant case of party donation regulation

Germany can be regarded as an early adopter with respect to the regulation of party donations since it was the first country to introduce disclosure requirements for donations to political parties as early as 1966. What is more, Germany also pioneered with respect to tax incentives for donations and sanctions enforcing the latter's disclosure in 1958 and 1983, respectively. We can distinguish four periods of donation regulation in Germany (see Figure 1). First, the 1949–66 period characterised by little regulation and a dominance of party donations over other sources of income, especially for the centre-right parties. Even though a disclosure of party income was already foreseen in the Basic Law in 1949,<sup>1</sup> donations remained legally unregulated during this phase. When donations became tax deductible in 1954, generous – that is, business-friendly – thresholds ensured that large business donations were especially incentivised (Lovens, 2000: 187). In 1958, the Constitutional Court regarded these thresholds as violating the principle of equal opportunities and rendered the tax deductibility of donations unconstitutional.

After 1958, companies started to donate to so-called Citizens' Associations (*Staatsbürgerliche Vereinigungen*) which were registered charities formally independent from political parties. This status ensured that indirect party donations via Citizens' Associations remained tax-deductible (Koß, 2011: 79–80). Accordingly, the second period of regulation between the 1966 passage of a Party Law and 1983 was characterised by illicit party funding through indirect and undisclosed donations. The Party Law prescribed annual reports disclosing the names of donors of more than EUR 10,000<sup>2</sup> (Lovens, 2000: 290). Only small donations of up to EUR 300/600 were tax deductible (for individuals/couples; raised to EUR 900/1800 in 1980). Irrespective of the Party Law's disclosure requirements, most donors circumvented these obligations by continuing to donate via Citizens' Associations.<sup>3</sup>

The third period of donation regulation in Germany consisted of three consecutive reforms between 1983 and 1993 (see Lovens, 2000: 293–296). The initial 1983 reform re-introduced almost unlimited tax incentives for donations. Donations became tax deductible up to 5 per cent of an individual's taxable income or 2 per mill of a company's business volume. The disclosure requirement remained unchanged but was now monitored more effectively for the first time (see FAZ, 1988). Additionally, financial sanctions of twice the amount of wrongly declared donations were introduced.

<sup>1</sup>The final sentence of paragraph 1 of Article 21 of the Basic Law reads as follows: 'They [political parties] must publicly account for their assets and for the sources and use of their funds'.

<sup>2</sup>All DM sums are displayed in Euros with DM 1 = EUR 0.5.

<sup>3</sup>If one only takes into consideration donations by one company (the Flick holding) – a total of EUR 27.9 million between 1963 and 1980 (SZ 1984) – the share of donations in parties' income already rises from 21.7 to 22.9% in the 1968–1980 period for which reports are available.

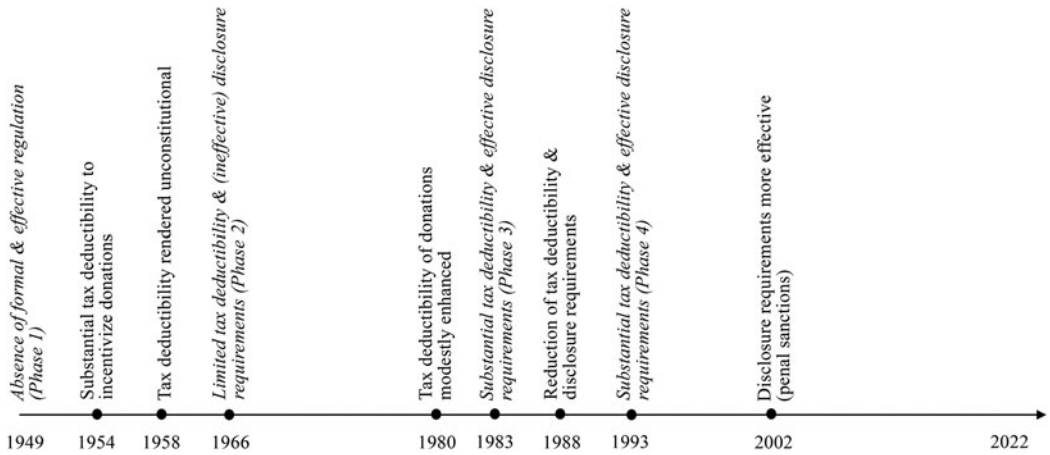


Figure 1. The regulation of party donations in Germany since 1949.

The two post-1983-reforms were preceded by judgements of the Constitutional Court. Each time, the Greens had challenged the existing rules which they regarded as unfair towards parties which received few or no company donations. In 1986, the Court did not follow the Greens and only called for a cosmetic cut of the threshold for donations (Constitutional Court, 1986: 96–97). Accordingly, the 1988 reform left the incentives for donations virtually unchanged (with generous limits of EUR 30,000/60,000) and the threshold for the disclosure of donations was even raised to EUR 20,000. In 1992, however, the Court followed the Greens' complaint and called for significantly tightening the rules. The threshold for the disclosure of donations was to be lowered immediately back to the pre-1986 level of EUR 10,000. A 1993 reform further reduced the tax deductibility and incentivised only small donations of up to EUR 3000/6000; company donations ceased to be eligible at all.

Whereas during the 34 years before the reform period, party donations were four times subject to reforms, Figure 1 shows that only one marginal reform occurred in the fourth phase after 1993. Since 2002, donations larger than EUR 50,000 are to be disclosed immediately and penal sanctions apply if disclosure requirements are violated. The average share of parties' income from donations was about 15% between 1984 and 2019 with donations accounting for between 8.5 (SPD) and 30.2% (FDP).

The relative importance of donations despite the availability of state funding to political parties and, more importantly, the incentives for small donations make Germany stand out among European democracies. Europe is the region with the highest dependency on state funding (Biezen and Kopecký, 2017; Piccio, 2024). Among the 23 West and East European countries studied by Casal Bértoa and Walecki (2018), Germany was the only one where state funding accounted for less than half of parties' income irrespective of its comprehensive availability. During the 2010–13 period, the average share of parties' income from donations in 18 European democracies was 9.4% (Biezen and Kopecký, 2017: 87) compared to Germany's 15% long-term average. What is more, Germany was the only country where the relative importance of donations rose over time while that of state funding simultaneously decreased (Biezen and Kopecký, 2017: 89).

In a comparative perspective, Germany operates a liberal system of regulating party donations. Whereas disclosure requirements exist virtually all over Europe (Biezen and Kopecký, 2017), private donations are more often limited than not: there is a ban in nine out of 15 West European countries and ten out of 15 operate ceilings for donations (Piccio, 2024). Similarly, most new democracies ban donations from companies and limit those from individuals (see Casal Bértoa

and Walecki, 2018). Incentives for small donations are rare: tax deductions only exist in six out of 15 European countries. Matching funds for small donations and membership fees only exist in Germany and the Netherlands, albeit to a limited extent (Piccio, 2024; see also Fiorelli, 2021: 34–39). A report by the European Parliament recommended the German approach to regulating donations because it ‘shows how subsidies may be used to incentivise more democratic participation through small donations’ (Reed *et al.*, 2021: 7).

Neither economic nor institutional explanations can account for the evolution of this German approach, especially the fact that indirect donations were tolerated so long after 1949. Both Germany’s economic structure and partisan preferences remained stable during the 1983–1993 reform period. Due to its corporate design, the German polity is the ideal-typical case where donors can be expected to have little incentives to give money to parties, that is, to be ideologically motivated in the sense of McMenamin (2013). After the introduction of state funding in 1966, donations indeed ceased to be the dominant source of income of German parties. However, if spending was ideologically motivated in the first place, why did donors in Germany have such an interest in remaining anonymous? The German example suggests that corporatism can also incentivise donations if economic actors want to cover all their bases. Whatever donors’ motivation, the German economic structure cannot account for the changes during the 1983–1993 reform period: if it changed at all, the German economy became more liberal *after* 1983. Put differently, donations played a more important role during the period in which German corporatism was created than during the period of economic liberalisation.

Similarly, institutional explanations cannot account for the Constitutional Court’s U-turn on donations in 1992 either. Most of the parties, especially the governing coalition of Christian Democrats and Liberals, continued to support generous rules for the tax-deductibility of donations. If they (or the Court, for that matter) were in favour of restricting donations, they could have done so in the first place in 1983. However, it took three reforms to reach the regulation of donations which still underlies the current German funding regime. Of course, the composition of the Court changed considerably between its 1988 and 1992 decisions<sup>4</sup> – but so it did later during the period of policy stability during which none of the parties fearing a ‘donation hole’ (FAZ, 1993)<sup>5</sup> in their finances challenged the funding regime anymore. Accordingly, economic approaches cannot explain why the business-friendly Bundestag majority of Christian Democrats and Liberals change its mind on the regulation of (business) donations.

Against this background, Germany can be regarded as a deviant case which ‘demonstrates a surprising value’ (Gerring, 2008: 655) compared to what economic and institutional explanations for the regulation of donations would predict. This justifies a case study of donation regulation in Germany because ‘the primary purpose of a deviant-case analysis is to probe for new – but as yet unspecified – explanations’ (Gerring, 2008: 656). As will be argued below, it was the power of ideas which accounted for this change because it forced institutional actors to support a more comprehensive regulation of donations.

### An ideational explanation for regulating party donations

In an ideational explanation, ‘the content of a cognitive structure influences actors’ responses to a choice situation, and in which that cognitive structure is not wholly endogenous to objective, material features of the choice situation being explained’ (Jacobs, 2015: 43). The literature on party funding includes hints at an impact of cognitive structures. For example, the abovementioned constitutionalisation of parties relates to a certain idea of democracy, more precisely a ‘substantive rather than procedural conception’ (Biezen, 2012: 205). Similarly, many funding reforms,

<sup>4</sup>Five out of eight judges who took the 1988 decision had left the Court in 1992, with the authors of dissenting vote carrying on (SZ 1992).

<sup>5</sup>Remarkably, it was the SPD treasurer (whose party relied least on donations) who raised this concern.

especially in the wake of corruption scandals arising from illicit donations, can be regarded as cases in point of the idea that corruption undermines democracy (see Power, 2020). However, Nwokora (2014) and Koß (2011) warn that (perceived) funding scandals, although sometimes a precursor of reform, are neither necessary nor sufficient for explaining party funding reforms. This suggests that if ideas matter, the causal logic must be more complex than a simple stimulus–response relationship.

To overcome this problem, the explanation presented here takes Zuber’s (2022) notion of an ideational policy stabilisation as its starting point. We have already seen that the regulation of donations remained largely stable after 1993. Zuber argues that for ideas to have an impact on policies, two core elements need to emerge: on one hand, a discursive elite consensus ensuring that ideas are publicly communicated and, on the other hand, bureaucratic routines which institutionalise ‘ideas as policy practices’ (Zuber, 2022: 6). If ideas are communicated in discourses, they can help create (or suppress) dispositions: the more dominant an idea is in a certain discourse, the more likely it is to inform the dispositions of policymakers, that is, collectively shared identities and values (Zuber, 2022: 19). An ideational influence on the outcome of political decisions requires ‘rhetorical links’ between policy ideas and an ‘encompassing conception of identity’ (Zuber, 2022: 23–24).

However, which conceptions of identity ideas relate to is subject to conflict. In this regard, ideational explanations need to be sensitive to the fact that groups’ identities are often related to multiple and potentially conflicting ideas. Therefore, new actors can alter this balance, affect ‘the distribution, salience, and stability of prevailing ideas’ (Bleich, 2018: 54) and, ultimately, change bureaucratic routines and outcomes. Such a reform, in which new actors make new ideas prevail over old ones, can be regarded as a case in point of an institutional conversion, that is, ‘the changed enactment of existing rules due to their strategic redeployment’ (Mahoney and Thelen, 2010: 16; see Bleich, 2018: 66). This leads us to the working hypothesis underlying the empirical analysis of this article:

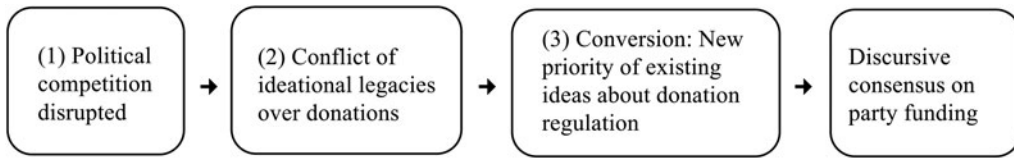
New actor constellations can shift the balance between competing ideas about the regulation of party donations and, consequently, cause policy reforms.

Figure 2 depicts the causal mechanism which will be assessed below. Here, each causal stage is an individually insufficient but necessary part of the whole (Beach and Pedersen, 2013: 29–32). Therefore, the stages of the mechanism ‘have no independent existence in relation to producing Y; instead, they are integral parts of a “machine” that produces Y’ (Beach and Pedersen, 2013: 50). This ‘machine’ is the causal mechanism.

The mechanism devised here consists of three steps: the new actor expected to shift the balance of ideas over donations to political parties are the Greens which entered the Bundestag at the beginning of the reform period in 1983 (step 1). For an ideational explanation to hold, the Greens must engage in a conflict of ideas during which mutually exclusive visions how to regulate party donations – all of which linked to questions of German history and identity – clashed (step 2). Once the ideational legacy referred to by the Greens became more salient, this finally shifted the balance of ideas about donations to parties, most likely because it was endorsed by the Constitutional Court (step 3). Taken together, these steps explain the outcome, an ideational policy stabilisation characterised by a discursive consensus of all parties on the comprehensive regulation of donations.

## Research design and methods

A case study is particularly appropriate to collect evidence for the observable implications given that ‘[s]mall-N comparative historical research is singularly well-suited to uncovering causal mechanisms’ (Falleti and Lynch, 2009: 1161). Since the causal mechanism devised here is hard to observe directly, Figure 2 refers to observable implications for each step (see Beach and Pedersen 2013: 44). Methodologically, identifying evidence for or against these observable



#### Observable implications

New challenger party (here: Greens) enters parliament	Clash of mutually exclusive visions of how to regulate donations	Binding decision (here: by Constitutional Court) endorses challenger argument for closer regulation of donations	Permanent new regulation agreed on by all parties
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Figure 2. A causal mechanism explaining the regulation of donations in Germany.

implications requires a process-tracing analysis (Falleti and Mahoney, 2015: 212) of the crucial reform period between 1983 and 1993.

To identify empirical evidence for each observable implication, the article relies on various forms of data which allow for a triangulation. First, the process-tracing analysis will rely on a qualitative assessment of all newspaper articles including the terms ‘party donations’ (*Parteispenden*), ‘party funding’ (*Parteienfinanzierung*) and ‘financial statements’ (of political parties, *Rechenschaftsberichte*) between March 1983 and January 1994<sup>6</sup> which appeared in one of the two leading German quality newspapers, the conservative *Frankfurter Allgemeine Zeitung* (FAZ) and the liberal *Süddeutsche Zeitung* (SZ). The second major source of data is contemporary records of public institutions (Bundestag debates and judgements by the Constitutional Court). Finally, political science, historical and legal research constitutes the third source of data.

To show not only how ideas became arguments and to also assess the balance of power between them, the content of two Bundestag debates at the beginning and the end of the period under investigation here (one from 1986 and one from 1993) will additionally be analysed more systematically. For both debates, the arguments for and against the regulation of party donations stemming from competing ideas were identified and coded. The coding of these idea-inspired arguments combines the strengths of deductive and inductive reasoning. We started with a set of one argument per idea,<sup>7</sup> to which we subsequently added based on a first round of trial coding (see Fereday and Muir-Cochrane, 2006).<sup>8</sup>

### Preventing anti-democratic donations in Germany: from idea to disposition

For ideas about the regulation of donations in Germany to become arguments, it first took the Greens’ allegations that the donation scandal of the 1980s stood in direct continuity to the anti-democratic funding of the National Socialists. This then allowed for the idea to prevent anti-democratic donations to become a disposition shared by virtually all policymakers after 1993.

<sup>6</sup>The starting point is the federal election which brought the Greens (as the alleged motor of party funding reform) into the Bundestag and the end date is the month in which the reform in the wake of the 1992 judgement of the Constitutional Court was promulgated by Federal President. The total amount of 312 articles is available upon request.

<sup>7</sup>Large (corporate) donations pose a threat to democracy given the experiences of National Socialism’ and ‘All donations help to prevent the rise of Communism’.

<sup>8</sup>Each parliamentary debate was coded first independently by a research assistant and the author. We then discussed all controversial codings with the goal of resolving them. Through discussion and joint recoding, remaining divergencies regarding the categorisation of arguments were resolved. The default coding unit was the quasi-sentence (Werner *et al.*, 2011: 5–6). The coding was done in Maxqda (Version 12). The full coding frame can be found in the online Appendix.

### ***Political competition disrupted: the advent of the Greens***

The German Greens were the most successful Green party in Europe. As early as 1979, they polled 3.2% of the vote in European Parliament elections and managed to surpass the 5%-threshold for the state parliament of Bremen. In 1983, the Greens entered the Bundestag. Their success depended on societal changes, value shifts and controversial issues.<sup>9</sup> The Greens were a self-proclaimed anti-party party that challenged the German post-war consensus on representative institutions, passive citizenship, economic growth, consumerist lifestyles and engagement in the Western Alliance (including nuclear deterrence). Unlike all other German parties, the Greens emphasised decentralisation, ecology and non-violence. Additionally, they took up neglected issues such as feminism and migration. What was more, the German Greens were highly critical of an alleged ‘cartel’ of the established parties, pre-empting the scholarly critique of Katz and Mair (1995) by more than a decade. To overcome cartelisation, the Greens emphasised intra-party democracy and bottom-up decision-making in a deliberately non-professional party organisation.

The conflict between the Greens and all other parties was further acerbated by a generational conflict about the German past. The German New Left – with which most leading Greens were associated – was engaged in a dual protest against the present Bonn Republic and the past Third Reich, both of which were regarded as manifestations of fascism (Markovits and Gorski, 1993: 21–22). These dual protests helped to create an ‘atmosphere of contrition’ (Markovits and Gorski, 1993: 22) which was to become consequential in the debate about party donations.

### ***A conflict of ideas over the regulation of donations***

The conflict of ideas over the regulation of donations originated from a funding scandal involving one of Germany’s largest industrial companies, the Flick holding. Apparently, its owner, Karl August Flick, had used anonymous donations to ensure tax exemptions for his businesses and to influence on political decisions (Engels, 2019: 127). Tacitly accepted undisclosed donations now came under pressure. The most visible indicator of this was the failure of two attempts to amnesty those affected by legal investigations (Engels, 2019: 106–107). On the occasion of the Flick scandal, two ideas on the regulation of donations clashed.

The previously dominant idea was best summarised by the public intellectual Enzensberger (1988: 137) who argued that a ‘healthy anticommunism’ ensured that most Germans preferred ‘private oligopolies over state monopolies’ in party funding. Enzensberger pointed towards a Cold War logic in which whatever helped private businesses was publicly preferred over a nationalised economy. Regarding donations to political parties, this idea translated into an argument that all donations – even undisclosed ones – were acceptable over a quasi-communist dependence of parties on state funding.

In line with this idea, business representatives in defence of Flick such as the President of the Association of German Chambers of Commerce and Industry, Otto von Amerongen, pointed out that any criticism of undisclosed party donations was only helpful for ‘those who strive for another democracy, another economic system, [who] prioritise the environment over anything else and think of business only as either kibbutzim or small enterprises’ (1984). Amerongen argued that ‘defending our democratic order also is an entrepreneurial task’ (1984; see also FAZ, 1984). The latent antisemitism of this argument – equating second-order businesses with ‘kibbutzim’ – inadvertently illustrated the continuity of the ideational dispositions underlying pre-democratic funding patterns during the Cold War. Apparently, this was the best argument defendants of the status quo of party donations could forward during the Flick scandal, and it had obviously sufficed until the 1980s.

<sup>9</sup>This and the following paragraph draw on Frankland (1995: 17–21).



In this situation, the Greens brought a conflicting ideational legacy back to the fore in the discourse on party donations. According to this ideational legacy, undisclosed donations were a continuation of antidemocratic donations during the Weimar period. Indeed, antidemocratic business donations to the National Socialists through the so-called ‘Friends of Heinrich Himmler’ (*Freundeskreis Heinrich Himmler*) circle helped to bring down the Weimar Republic (Engels, 2019: 118–119). These very donations were the reason why the Basic Law stipulated that parties should disclose their income. However, there was no consensus on disclosure requirements in the early Federal Republic since this stipulation only made it into paragraph 1 of Article 21 of the Basic Law somewhat accidentally: in the Council’s main committee, a majority voted against a disclosure requirement which then was narrowly agreed on in the plenary (Kofß, 2023). This suggests that there always had been a latent tension between two mutually exclusive visions how to regulate donations.

During the Flick scandal, the Greens brought references to the National Socialist past to the fore again and amplified the salience of the idea to regard undisclosed donations as anti-democratic. They could establish rhetorical link between past donation practices and the current funding scandal because the father of Friedrich Karl Flick had been a member of the aforementioned ‘Friends of Heinrich Himmler’ group. The opportunity for the Greens to resuscitate the ideational legacy ruling out undisclosed donations arose when a committee of inquiry to investigate the Flick scandal was established immediately after they had entered the Bundestag in 1983.

The Green member of this committee of inquiry was Otto Schily, a lawyer who had defended the members of the Red Army Faction against charges of terrorism. Schily was a typical protagonist of the generational conflict over the German past outlined above. From the outset, Schily established the connection between current and historical donations from the Flick holding when he argued that ‘the blood of the politics of Aryanization and extinction of the Third Reich keeps on sticking to the Flick millions’ (Bundestag, 1983/5/6: 264). The Greens also linked historical injustice to their competitors. When Christian Democrats and Liberals legalised the status quo ante of party funding regulation in 1983, the Greens denounced them as ‘Flick parties’ (FAZ, 1983).

A closer look at the 1986 Bundestag debate on the final report of the Flick committee of inquiry suggests that at the time, the number of speakers and quasi-sentences invoking the ‘undisclosed donations as anti-democratic’ and the ‘all donations as necessary for democratic competition’ ideas were similar (Table 1). Remarkably, each idea was exclusively referred to in one of the two political camps. While the centre-left (consisting of the Greens and the Social Democrats) exclusively drew on the former idea and called for a more comprehensive regulation of donations, the centre-right majority (consisting of the Christian Democrats and the FDP) regarded all donations – disclosed or undisclosed – as necessary and held that no reform of the regulation of donations was required.

Both ideas were forwarded in one more radical and another more modest argument. The radical argument for reform was almost exclusively forwarded by the only Green speaker of the debate, Otto Schily. Schily linked indirect donations to three democratic deficits of the Federal Republic: First, the ‘lack of any disruption of the ongoing Flick rule’ which Schily regarded as the ‘worst fact the committee [of inquiry] could find’ (Bundestag, 1986/3/13: 15646). Second, Schily called it a ‘shame for our people that Friedrich Flick had not been nationalised after the end of the Second World War’ (Bundestag, 1986/3/13: 15646). The third democratic deficit Schily identified was that the clandestine system of Flick funding could emerge irrespective of the Basic Law’s stipulation that parties needed to disclose their income (Bundestag, 1986/3/13: 15647). The SPD primarily endorsed the modest argument and rather emphasised the need to fight political corruption effectively. If this was not done, undisclosed donations would increase the risk that ‘democracy fades away into lifeless spectre of democrats by name only who cease to act accordingly in the expectable fashion’ (Bundestag, 1986/3/13: 15640). Only one SPD speaker used the radical argument in passing

Table 1. Ideas and arguments for and against the regulation of party donations in Germany, 1986 and 1993

Year Argument	1986				1986				1986				1993				1993				All donations as necessary for democratic competition			
	Continuity to national socialism	Danger of corruption	Prevention of communism	Legal framework encourages donations	Transparency and matching strengthen democracy	Parties and disclosed essential	Democracy requires more regulation	Court overstretching separation of powers	Undisclosed donations as anti-democratic	All donations as necessary for democratic competition	Undisclosed donations as anti-democratic	Transparency and matching strengthen democracy	Parties and disclosed essential	Democracy requires more regulation	Court overstretching separation of powers	Undisclosed donations as anti-democratic	All donations as necessary for democratic competition							
	# speakers	# quasi-sent./speaker	# quasi-sent./speaker	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker	# speakers	# quasi-sent./speaker						
CDU/CSU	-	n/a	1	15	5	76	15.2	2	7	3.5	1	2	-	-	1	11	11	-						
FDP	-	n/a	1	4	1	23	23	1	1	1	1	10	-	-	1	5	5	-						
SPD	1	2	4	118	29.5	-	n/a	2	20	10	2	17	8.5	2	6	3	9	3						
Greens	1	43	-	-	n/a	-	n/a	-	-	n/a	-	-	n/a	1	9	-	n/a	-						
PDS	-	-	-	-	-	-	-	-	-	n/a	-	-	n/a	1	10	-	n/a	-						
Indep.	-	-	-	-	-	-	-	-	-	n/a	-	-	n/a	1	13	-	n/a	-						
Total/Ø	2	45	22.5	4	118	29.5	2	19	8.5	6	16.5	6	30	5	4	29	7.3	5	38	7.6	5	25	5	0
Stance on regulation	+				-				+				-				-							
Total for/against (proposed) regulation	6 speakers, 163 quasi-sentences				8 speakers, 118 quasi-sentences				10 speakers, 59 quasi-sentences				10 speakers, 59 quasi-sentences				10 speakers, 63 quasi-sentences				0			

when he referred to the system of forced labour on which the Flick holding's wealth was built (Bundestag, 1986/3/13: 15660).

Speakers from the centre-right camp also used the modest argument against the regulation of donations more frequently. Six MPs (five Christian Democrats and one Liberal) pointed out that donations were encouraged by the legal framework of the Party Law for good reason; only two speakers (one each from the CDU and the FDP) marked donations, whether disclosed or not, as an anti-democratic duty. The modest argument was exemplarily forwarded by the parliamentary business leader Friedrich Bohl (CDU) when he rhetorically asked: 'What is immoral about it [the Flick donations]? Why criticize this, given that the Bundestag has – also with your votes – upheld, just like the Constitutional Court, that donations are also a politically [*staatspolitisch*] necessary matter not to be criticized from a moral perspective?' (Bundestag, 1986/03/13: 15656). The more radical version of this argument additionally pointed to the (alleged) alternative of donations to political parties: 'Only the German Communist Party receives a higher share of state funding than the Greens [...], even though this funding is provided by another country [the Soviet Union]' (CDU MP Manfred Langner, Bundestag, 1986/3/13: 15632). In a similar vein, another CDU MP referred to Schily's past legal engagement for the terrorist Red Army Fraction to mark him as anti-democratic himself (Bundestag, 1986/3/13: 15669).

In line with this political division over ideas, both quality newspapers also weighted the arguments according to their respective political leanings. While the left-liberal SZ (1986) explicitly referred to Flick's father as a major donor of the NSDAP, the FAZ used Langner's statement that only the German Communist Party is dependent more on state funding than the Greens as the reference point of its report (FAZ, 1986). This raises the question how the ideational legacy originally invoked by the Greens eventually came to dominate the discourse on donations.

### ***Institutional conversion: the emergence of a new priority to regulate donations more comprehensively***

One major reason why the Greens were successful in shifting the balance of ideas in favour of the legacy they supported was the 'culture of contrition' emerging in the 1980s in which atonement for the Holocaust was identified as a central political and moral duty in Germany. David Art defined this culture of contrition as '*the central lens for interpreting issues related to national identity*' (2005: 51; original italics). The perhaps most significant example of this new culture was a speech delivered by Federal President Richard von Weizsäcker in 1985 in which he described the end of the Second World War on 8th May 1945 as an unambiguous day of liberation (and not of occupation, as conservatives argued). In his speech, which became very popular, Weizsäcker maintained that all Germans had a responsibility to 'keep alive the memories of the past' (Art, 2005: 73). This emerging culture of contrition was the background against which the Flick scandal broke and which gave the idea to effectively abolish antidemocratic party donations leverage far beyond the share of the vote the Greens could muster in the 1980s (see also Engels, 2019: 109).

The 1992 Constitutional Court judgement constituted the missing link between the Greens' resuscitation of the 'undisclosed donations as anti-democratic' legacy, the culture of contrition and the discursive consensus on the disclosure of donations. This judgement was very critical of donations, especially of large ones (FAZ, 1992). What was more, the Court was echoing the Green argument when it explicitly linked its critical view of donations to the debate in the Parliamentary Council where a (narrow, as we have seen) majority had decided to rule out large-scale undisclosed donations to political parties (Constitutional Court, 1992: 319–320). This was a clear break with all six previous judgements of the Constitutional Court which had been in line with the 'healthy anticommunism' logic of the Cold War. The Court had never referred to the proceedings of the Parliamentary Council. On the contrary, in 1958, it had explicitly accepted that Citizens' Associations were tax-exempt registered organisations even though they forwarded donations to political parties (Constitutional Court, 1958: 56, 70). In contrast,

the 1992 judgement now endorsed a different idea with respect to the regulation of donations, thus paving the way for an institutional conversion in which pre-existing rules (such as the long-existing disclosure requirements) was rendered effective.

This institutional conversion became possible once the ‘all donations as necessary for democratic competition’ idea had disappeared. In the 1993 Bundestag debate preceding the passage of the revised Party Law, no party justified undisclosed donations anymore. At the same time, MPs remained split on their stance towards the proposed reforms (Table 1). However, critics of the regulation of donations now charged that the envisaged reforms were not far-reaching enough and that democracy required even more regulation of donations, both with respect to transparency and more limited tax-deductibility. With 38 quasi-sentences, this was now the single most frequent argument. But even Wolfgang Krause, an independent MP highly critical of the proposed reform, admitted that the matching of donations was a ‘just’ measure (Bundestag, 1993/11/12: 16412). Another line of criticism was directed against the Constitutional Court and its U-turn on donations. However, none of these criticisms vis-à-vis the Court translated into a justification of undisclosed donations.

Similarly, MPs who continued to regard parties and donations as essential for democratic political competition only referred to disclosed donations in 1993. On top of transparency, the matching of small donations (and only small ones) was now regarded as healthy for democratic party competition (see Bundestag, 1993/11/12: 16405–16406, 16410). Despite criticism that the reform was not far-reaching enough – what else would one expect from opposition parties? – this suggested that the ideational legacy once almost exclusively promoted by the Greens had now become dominant.

### ***The outcome: a discursive consensus on the regulation of donations***

After 1993, ideas about the regulation of party donations became dispositions and a discursive consensus on a comprehensive regulation of party donations emerged. No party could justify unlimited tax incentives for donations, let alone undisclosed ones, anymore unless they wanted to argue against the very meaning of German national identity now building on the culture of contrition. This explains why, after 1993, an ideational policy stabilisation (Zuber, 2022) around the now dominant legacy of donations as potentially anti-democratic took place.

This ideational policy stabilisation also explains why, after 1993, the regulatory framework of donations was only reformed once. In line with the new consensus to overcome anti-democratic donations, the 2002 reform introduced even more comprehensive regulations for donations. Just like the 1983–1993 reforms, this reform also stemmed from a corruption scandal and its aim was to strengthen the link between donations and democratic party competition (hence the immediate disclosure of large donations and the introduction of penal sanctions). However, the consensus across the political spectrum was that the regulatory framework passed in 1993 had stood the test of time (Koß, 2011: 124–125).

### **Conclusion**

The analysis presented in this article provided first evidence for the working hypothesis according to which new actor constellations can shift the balance between competing ideas about the regulation of party donations. Older policy ideas can be successfully ‘resuscitated’ by political actors. In Germany, this was possible once these ideas had become part of a society’s repertoire of dispositions, that is, its shared values and identities. This explains why undisclosed party donations were tolerated in Germany for decades but not any more after a reform period lasting from 1983 to 1993. During this reform period, an ideational legacy regarding undisclosed donations as anti-democratic came to dominate for three interconnected reasons: First, because it was forwarded by a new political actor, the Greens, who engaged in a conflict of ideas; second, because it fit with an

emerging ‘culture of contrition’ (David Art) regarding the Nazi past; third, because it was endorsed by the Constitutional Court. Taken together, these changes ensured that the ideational legacy to prevent antidemocratic donations could become a disposition shared by virtually all policymakers. The balance of power between the ideas about the regulation of donations had shifted in favour of the centre-left parties, irrespective of the fact that these never held parliamentary majorities during the reform period.

Even though the very logic of deviant case calls for careful adaptation to other cases, the results presented here are important not just for academics but also for international organisations that aim to improve party funding regulations such as the Venice Commission (2016), or the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) (2015) for two reasons. First, a comprehensive regulation of party donations combining transparency obligations with incentives for small donations (and only small ones) is a promising safeguard against both corruption and the growing dependency of parties on state funding many citizens and academics alike regard as problematic. Second, and more importantly, when trying to introduce normatively desirable regulations of party donations (such as incentives for small donations), reform-minded policymakers need to be aware that linking such reforms to case-specific ideational legacies (if available) might shift the balance of power in their favour. Given that recent reforms of party funding rarely concerned donations,<sup>10</sup> this might contribute towards overcoming corruption and achieving a more balanced mix of political parties’ income.

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<sup>10</sup>According to Piccio (2024), the only such reform since 2000 was the introduction of tax deductions in Spain.

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