Misleading the German Public: The New Bundestag Law on Parliamentarians

HANS H. VON ARNIM

This article outlines the history of several attempts to increase salaries and pensions of members of the German Bundestag in the early 1990s. It shows the unethical tactics used by parliamentarians and the way in which public information was in part consciously designed to mislead. It is argued that Bundestag members tend to form a political cartel when decisions concerning their salaries and pensions are made. Similiar tendencies can be observed in all parliamentary decisions involving party finance, providing support for Katz and Mair's thesis that 'catch-all' parties are generally being replaced by 'cartel parties'. Having analysed the issues involved, the article calls for greater accountability and responsibility on the part of German politicians when their own personal advantage is at issue.

The discussion in 1995 concerning the salaries and allowances of members of the Bundestag led to the word 'salary adjustment' (*Diätenanpassung*) being declared by the jury of the Society for the German language the '*Unwort*' of the year, that is, a 'horror word' with unpleasant or dangerous associations. This article analyses what the legislators originally intended to enact, what finally emerged in the law (amended again in mid-1996), and then makes suggestions for a new procedure to be followed when legislation on parliamentary salaries is again on the agenda. It shows above all how Parliament is tempted to soften up public opinion and opposition by failing to give adequate information, or by giving false information when matters of its own interest are at stake.

THE FAILED COUP

Increasing Parliamentary Salaries by over 50 per cent

At the end of 1995, after a lengthy preparatory process, the Bundestag enacted a massive increase in parliamentary salaries. It took two attempts to achieve this, after a failed first attempt, characterised by some features of a 'coup'. The objectives of the initially unsuccessful proposal were, however, not abandoned, but merely postponed so an analysis of it is not simply of historical interest. The increase in parliamentary salaries was linked with decisions made regarding 'parliamentary reform' (a linking not without precedent in earlier parliamentary salary increases), involving a subsequent reduction of the membership of the Bundestag from 672 to 'under 600'. On this latter point, yet another Commission, chaired by the Bundestag Vice-President H.-U. Klose, is to report in 1997.

A joint Bill, introduced in June 1995 by the government coalition and the major Social Democrat opposition party, provided for an increase in members of Bundestag salaries over six stages to the level of the salaries of Superior Court judges in the upper civil service salary bracket. Allowances, including ministerial allowances, were included, and an arrangement for automatically indexing future rises was proposed. Judges' salaries in the salary bracket R6 were to be applied retrospectively in 12 monthly instalments, from the first parliamentary salary increase. The judges' monthly salary was DM13,789, whereas parliamentarians' salary was DM10,366, a difference of 33 per cent. Even if judicial salaries were frozen for five years, the salaries of members of parliament would have risen to the right level by the year 2000. The rate of increase was calculated on the basis that retrospective to January 1995 the parliamentary salary should be equivalent to 80 per cent of the judges' annual salary; rising to 84 per cent in 1996, 88 per cent in 1997, and progressively reaching 100 per cent in the year 2000.

Assuming a yearly growth rate averaging three per cent in judges' salaries, then the increases in parliamentarians' salaries, calculated on this basis, will amount to DM15,942 per month by the year 2000. Assuming that the rises are made retrospective to 1 January of the respective year, salaries would then reach DM16,407 by the year 2000 (see Figure 1).

Skewed Arguments

The chief argument given for the enormous rise in members' salaries was the claim that the increase was necessary because parliamentarians had fallen behind the general level of incomes in the community. There was thus a case for reaching an equivalent level (*Diätenanpassung*). The lagging behind of parliamentary salaries was calculated to have arisen because of seven 'blank rounds' of negotiations (from 1978 to 1982, five rounds, and one each in 1993 and 1994), an argument only valid if one chose the year 1977 as the base year, as the parliamentary representatives did. If 1976 was taken as the base year (or any other year before that), then there was no falling behind, but instead a considerable gain. The reason for this glaring

Hans H. von Arnim, Hochschule für Verwaltungswissenschaften Speyer

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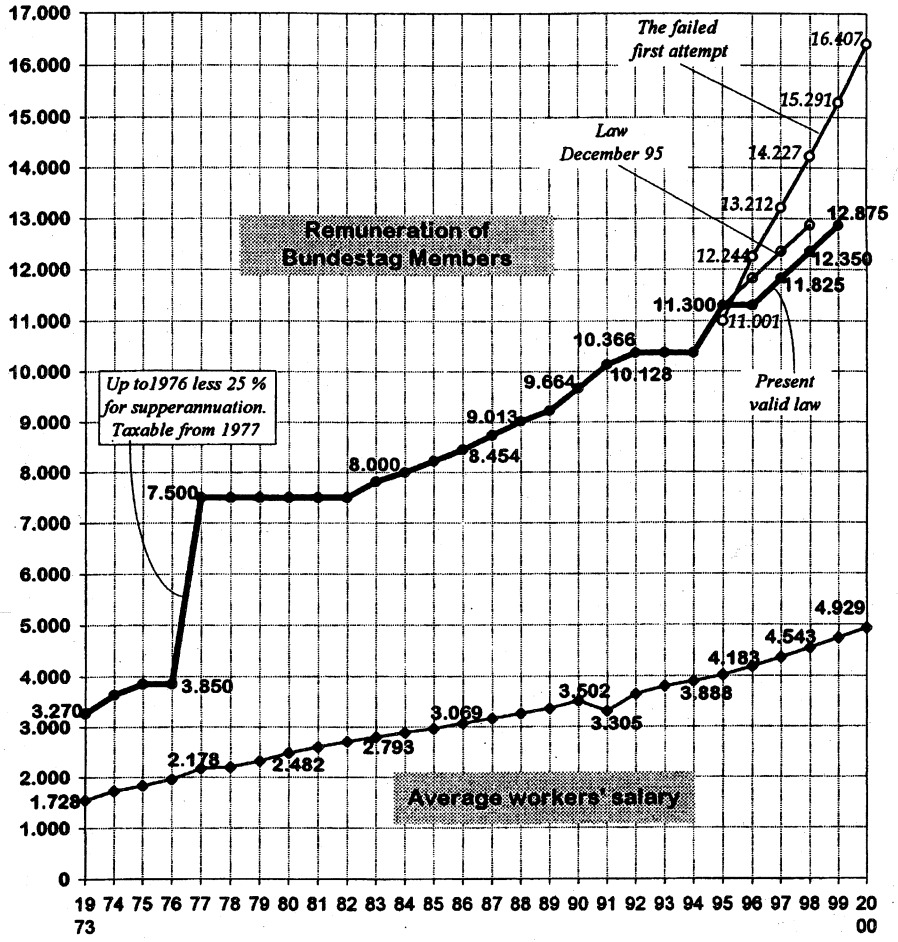
FIGURE 1

REMUNERATION OF BUNDESTAG MEMBERS 1973–2000
MONTHLY PAYMENTS IN DM



difference is simple: from 1976 to 1977 allowances for living expenses of members were practically doubled. Although these expenses were taxable from 1977, the personal superannuation contributions of members, totalling a quarter of the payment, were exempt.

The doubling of salaries in 1977, criticised on all sides as too generous and exceeding the recommendations of the Special Committee set up to report on them, was certainly a reason for salaries not being increased in the following years. In addition to a generous salary at that time of DM7,500, there were extra entitlements (transitional allowances, tax-free out-of-hand expenses, superannuation provision and inadequate means of accounting for multiple payments from public funds if members had pension rights deriving from prior service in public office). Members also had the possibility of receiving income such as 'donations' and funds from lobby groups associated with industry and associations. There was general agreement among constitutional lawyers and publicists that these 'side payments' were excessive and probably unconstitutional, although the expected court challenge did not occur owing to procedural difficulties. All these factors led the Bundestag to practice restraint for some time.

Another dubious argument for increased salary related to the supposed strengthening of the independence of members. Independence from party control cannot be secured by this means: in view of the monopoly enjoyed by the political parties in nominating members for election, there is instead an increase in dependence on the party when salaries are raised. When one considers, for example, the case of a teacher elected to parliament, the disparity between what he receives as a school teacher and what he is paid in parliament makes the loss of a parliamentary seat if the member is not re-nominated a serious blow. Likewise, the salary increase could not have been designed to secure the independence of members from persons representing the interests of industry, since to have achieved this the Bundestag would have had to take effective steps against payments from interest groups of all kinds, and not left the unlimited payment of 'donations' to members uncontrolled. This excludes the declaration by members of 'donations' of DM20,000 and over, made mandatory by the 1992 ruling of the Federal Constitutional Court.

The third standard argument for increasing members' salaries was that parliamentary seats would become more attractive for successful and well-paid figures from industry, the bureaucracy, the self-employed, the universities and cultural spheres. This reasoning fails to take account of the common-sense argument that remuneration from the public purse will never be so high that high income earners like the directors or managers of large concerns, leading medical specialists, professional sportsmen, artists and entertainers would not experience a considerable loss in income if they were

to take a seat in parliament. Moreover, persons from these circles generally do not seek parliamentary seats. For those oriented towards high achievement, activity in parliament is less attractive (even in the event of higher salaries) because 'normal' parliamentarians are frequently excluded from important political decisions. This power usually rests with a small circle of insiders at the top of the government, the parliamentary parties and the outside political parties.

A further deterrent is that success at pre-selection for a parliamentary seat implies having a certain powerbase in the party which is generally won only after years of serving in a round of minor posts and functions (*Ochsentour*). Potential candidates from outside do not, on the whole, want to subject themselves to such a round. Even if they did, their chances are smaller than is commonly realised. Precisely because of massive salary rises, internal party fights and factional manoeuvring will be more unrelenting than before, and those who have cultivated their party at the grassroots generally have an insuperable lead over outsiders.

Factors other than salaries being thought too low were consequently of over-riding importance in the threat to the independence of parliamentarians. Salary increases in fact increase the threat. They benefit those who have, irrespective of other considerations, opted for politics as a way of life. Here we see proved the adage, which has various forms, that the higher members' salaries are, the better it is for the community. Members of the Federal Bundestag are acting on their own behalf as an interest group.

There are a number of further points which make an alignment of members' salaries with those of judges inappropriate. First, unlike judges, members can make earnings on the side without requiring official approval. Second, members can accept with impunity 'donations' from interested parties and payments from spurious consultancies and contracts, whereas judges would be charged with corruption for similar acts. Members need not make these payments public. Third, active and former members can in many cases receive double payments from the public purse, payments which are not, or only to a limited extent, abbreviated. Strict provisions prohibit judges from doing this.

In Parliament the party called Alliance 90/Greens had proposed raising the salary merely to DM10,729 per month, whilst the Free Democrats wanted to set the monthly salary at DM11,200 by 1 July 1995, and at DM12,000 by 1 July 1996.

Transitional Payments, Pensions and Indexing

The transitional payment received by members who leave the Bundestag were limited, although the limit was less than that proposed by the Kissel Commission. For each term spent as a member, there is a transitional

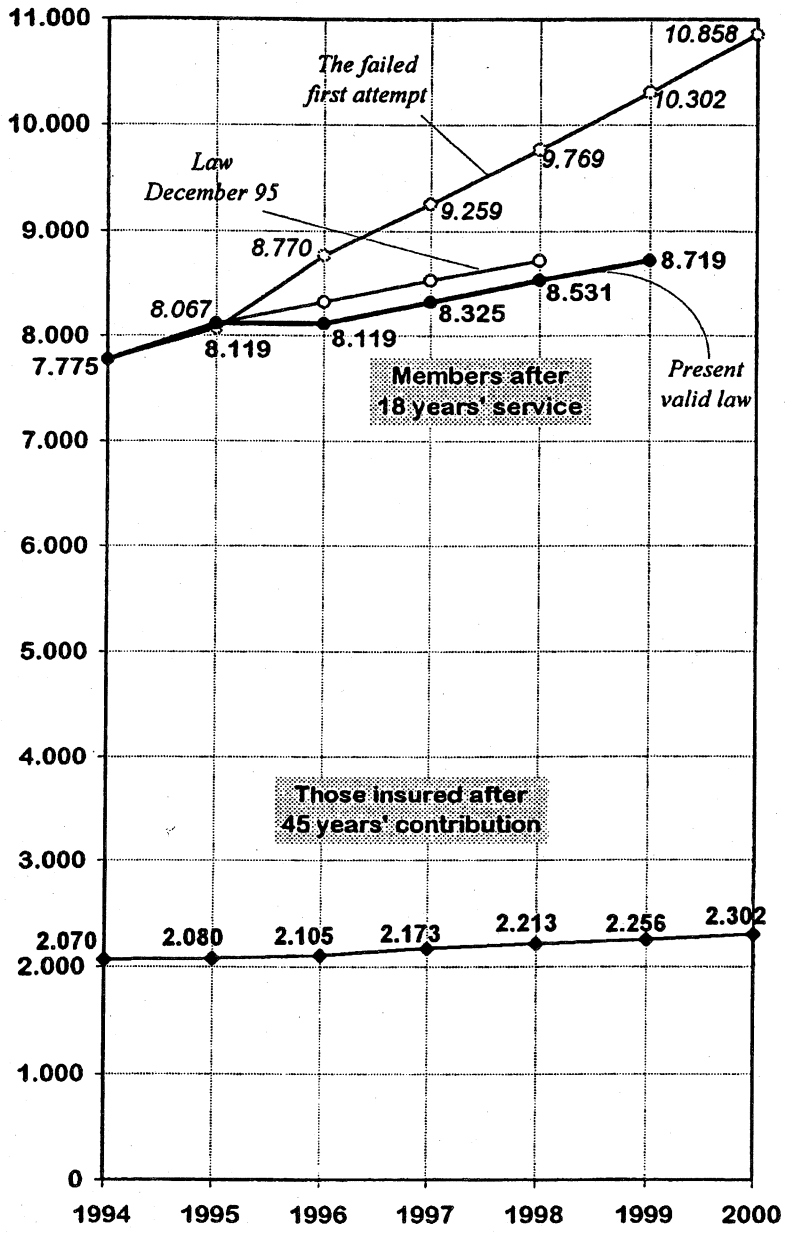
payment equivalent to four months' salary (previously seven months), the maximum period of 36 months was reduced to 18 months, and income earned privately from a member's profession, previously not taken into account, is now included in the calculation. At the same time, however, the monthly amount paid as a transitional payment rises because of the rise in the annual salary. This arrangement will only apply to future members, first entering the Bundestag after the new regulation comes into force, that is, essentially at the federal elections in 1998 or later. Former members who had already left parliament when the new regulation came into force will, on the other hand, be dealt with under the previous system which has the maximum monthly payment frozen at DM10,366. Members who are still in office have the choice of opting for what they see as the more advantageous of the two regulations.

There are also two pension systems in operation, one for future members and one for former members. A third group is formed by those who are still members, who can choose between the two systems, taking the one most advantageous to themselves. Future members will have a reduced percentage of their salary paid to them as a pension. After eight years' service in the Bundestag, members will have a claim to 24 per cent of their salary, but based on the increased salary (not as previously on 35 per cent of the then current salary), so that the highest rate payable after 23 years (previously 18 years) is equivalent to 69 per cent of the salary (previously 75 per cent). This can be paid from the age of 55. For previous members, pensions remain based on the earlier high percentages. At the same time, the level of provision was considerably raised, even if not to the same extent of salaries themselves. According to the original Bill which failed, members' entitlements were once more set at a twelfth of the yearly income of judges and had risen by a bare 17 per cent, that is by one-sixth, if judges' salaries were to remain frozen until the year 2000. In addition, there would be the usual yearly increases. If we assume an average yearly rise in judges' salaries of three per cent, there would be an increase in pensions of almost 40 per cent since 1995. These provisions were so generous that serving members would also have opted for them.

The enormous increases in pensions for former and present members far exceed increases in social service pensions in Germany, which rose in the same period by about 11 per cent. The comparison is particularly telling since in the public estimation members are already over-generously provided for. The sponsors of the Bill had consequently announced publicly a reduction in the pension rate. Before the proposed legislative change a member received, after a term of 18 years, a monthly pension of DM7,775 without having made any contributions himself, the pension being indexed and payable from the age of 55. After the six-stage rise, the monthly pension

FIGURE 2

PENSIONS OF FORMER AND CURRENT MEMBERS OF THE BUNDESTAG, MONTHLY PAYMENTS IN DEUTSCH MARKS



would reach DM10,858 (see Figure 2). This rise would have had the value of a tax-free one-off payment from the budget of up to DM700,000, the amount a normal salary earner would have to put aside in order to acquire an additional pension from private insurance, corresponding to the pension rise that was proposed.

A rise in the level of pensions of members already over-generously provided for also seems inappropriate because of demographical and fiscal considerations. It will be necessary in the foreseeable future to make significant cuts in the provisions for millions of social service pensioners and retired civil servants. A parliament whose members look first of all after themselves lacks credibility for making cut-backs in the pensions of others. The Federal Constitutional Court has pointed to this danger with regard to state financing of political parties and the Court's words apply no less to members' salaries: 'If citizens were to get the impression that the parties were serving themselves from the treasury, this would necessarily lead to a reduction of respect for them and finally impair their ability to carry out the tasks which the Constitution assigns to them.'

The tax-free expense allowance for members of the Bundestag, which amounted at the time to DM72,000 yearly, was to be indexed as prices rose. Decisions on indexing were in future not to be made by legislation, but by the Budget Committee or the Bundestag Council of Elders, neither of which meet in public. Since the Bill did not indicate the base year for indexing, there was a danger that from 1996 pensions could have jumped up by means of indexing from a base year many years ago. There was an explicit barrier against such retrospectivity in the report of the Legal Status Commission, which was not included in the Bill subsequently introduced.

To cap all this, there was another amendment proposed to the law which would have authorised the Bundestag to increase salaries even more in the future. The clause proposed for insertion into the Basic Law would have provided that salaries be aligned to that of a judge of the Superior Federal Court. Since there are various categories of such judges who are paid different salaries according to their classifications, the planned constitutional change would have given parliament an excuse of its own manufacture to change the law on parliamentary salaries yet again, taking a higher bracket as its guide. The highest judicial salary bracket is DM6,000 higher than the pay bracket proposed in the one (Level R6) prescribed in the law on parliamentarians. The President of the Bundestag gave an indication of where she saw parliamentary salaries heading when she said that parliamentarians should really earn as much as the highest officials whose activities they monitor. That would mean a monthly salary of DM21,000 if the level of Secretary of State (B11) were to apply.

The six-stage rise which was proposed would have loosened the much

quoted link to the reduction in the size of the membership of the Bundestag. Why would members actually bring themselves to effect a reduction, if this should become a firm proposal in 1997 and be recommended by the Reduction Commission, if they had already agreed to a six-stage salary increase? Unless, that is, they wished to reach an even higher level than R6 by means of a new amendment.

Legitimising Salary Changes by Legal Amendment

The proposal infringed the Basic Law with a clarity rarely encountered. The Basic Law demands transparency when Parliament deliberates on its own salaries. In this instance, the public, together with the Court itself, is the sole effective monitor. The actual sums to be paid as salaries must be named specifically in the law; linkage to the salaries of officials or judges enabling salaries to be increased by stealth is not permissible. This is an express ruling of the Federal Constitutional Court.

Equally, it is unconstitutional for committees which meet *in camera*, like the Budget Committee, to make decisions on special parts of the salary package, as was the intention with regard to raising expense allowances. The Federal Constitutional Court has declared unconstitutional an analogous regulation in one of the state laws transferring the setting of parts of parliamentary remuneration to the parliamentary presidium. The Court declared that this procedure would withdraw essential parts of the parliamentary remuneration of members from public gaze, precisely what the Bundestag Bill proposed with regard to expense allowances.

Instead of adhering to the provisions of the Constitution, however, members made an unprecedented attempt to tamper with it for their own financial benefit. To make their proposal constitutionally sound, there were to be two constitutional amendments. Firstly, the salaries of Superior Court judges were to be set in the Constitution as the level for parliamentary remuneration. Secondly, by adding the words 'or on the basis of a federal law', decisions about salaries or parts of them could possibly be transferred to committees which do not meet in public, such as the Budget Committee of the Bundestag.

Had these self-interested constitutional changes succeeded, there would probably have been no stopping them. State parliaments would have quickly followed the example of Bonn: in autumn 1995, some chairmen of parliamentary parties had announced this intention. It is too tempting to be able to push up one's own salary, concealed from public view, and to legitimise the move by means of a constitutional amendment. And what was to prevent parliamentarians in future from circumventing the Constitution for the purpose of public funding of the political parties, for example by setting aside the absolute upper barrier which the Federal Constitutional

Court had developed? Constitutional prohibitions against party membership playing a role in the civil service might have been removed by a constitutional change. Breaking the taboo against salary coalitions misusing a two-thirds majority to change the levels imposed on them by the Constitution courts the danger of a new form of absolutism: the absolutism of the political class.

The Basic Law contains provisions which place insuperable barriers in the way of legislators who wish to change it. Article 79 para. 3 makes it mandatory to maintain precisely those democratic principles and mutual checks and balances (*Kontrolle*) in the organs of the state that the proposed measures would have endangered. The notorious words of Louis XIV 'L'État, c'est moi' would in the mouths of the political class be translated into modern parlance as 'The state is us'. But who would have been able to challenge such an unconstitutional law in the Federal Constitutional Court? The ordinary citizen is not authorised to do so, nor are associations, but only governments and federal parliamentarians. Those who want to file a complaint are not authorised to do so; those who are authorised to do so do not want to. Consequently the political class is also protected by procedural mechanisms against interventions from citizens.

Public Protest, Appeals by Constitutional Experts, and Checks by the Federal Upper House

It was consequently all the more important for public action to seek to impose restraint at the very outset of the process. This was finally successful as regards the proposed alteration of the Constitution, but only with the help of the Bundesrat. The Taxpayers' Association had publicised the law's intent as decoded by this author in three press conferences in Bonn in September 1995. There were extensive reports carried by press, radio and television, some of which also produced comprehensive critical analyses. 86 constitutional experts appealed to the Federal Upper House to refuse approval of the alteration to the Basic Law, probably a unique action in contemporary German constitutional history.

Out of the previously rather half-hearted opposition of the minor Bundestag opposition groups (Greens, Free Democrats and PDS), there emerged a revolt of the party grass-roots, particularly amongst Social Democrats. SPD state premiers were unable to ignore the clamour within their own party. The Free Democrats also made their influence felt where they held the reins of government. Elections about to be held in some Länder also had a bearing on the matter. In addition, several state premiers and state governments were themselves critical of the Bundestag proposal. Finally, there were press revelations that the person who had chaired the Commission set up to examine the proposal would personally profit from a

payment of DM40,000 in December 1995 (which included a pension derived from an earlier post as Lord Mayor of Hamburg). The leader of the SPD declared in the press the day after this report that criticism was 'in part justified' and withdrew his party's agreement to the proposal which had already passed in the Bundestag. On 13 October 1995 the proposed law was defeated in the Upper House, with only two state premiers (Stoiber and Biedenkopf from states with single parties holding majorities) voting for the proposal.

THE NEW ENACTMENT

Provisions of the New Law

Six weeks later, after renewed inter-party agreement, a new proposal was submitted, which was speedily enacted into law. The SPD party annual conference at Mannheim was over, so as not to provoke discussion by the party grass-roots or even lead to a party resolution likely to delay the proposal. The new law follows the structure of the failed Bill, but the sums to be paid are lower. The new law provides for remuneration to be paid in four stages, to reach DM12,875 per month. That is a gain of about 24 per cent, but still considerably less than what was earlier proposed (see Figure 1). The sums are explicitly mentioned in the law and there was no proposal for a constitutional amendment.

The first rise of DM834 per month was not backdated, as originally proposed, to 1 January 1995, but 'only' to 1 October 1995. The further three rises, each of DM525, were set out in the law to follow every nine months, but this was later delayed by a year. The smaller rises granted had an effect on the transitional payments for future members. For former members the sum remains frozen at DM10,366, the amount proposed in the first amendment. Present members still have the possibility of opting for the scheme most suitable to them personally.

Pensions for former and consequently for present members will now grow at a much slower rate than originally proposed, that is, in four steps amounting to about 12 per cent (see Figure 2). In view of the over-generous provision of benefits made for them, consideration of a freeze might also be considered. Pensions for future members will, in fact, according to the present state of the law, be lowered. But the desire still exists to align remuneration at a later stage, after salaries have been increased in the four stages, to those of federal judges. This would lead to a sharp rise in transitional payments to members just retiring and in pensions, even if the law remains unchanged in the meantime.

Salary Increase Postponed but Privileges Remain

In summer and autumn 1995 the Bundestag had succeeded in keeping the need for massive cuts in the provision for general social services out of public discussion about rises in parliamentary salaries. But in 1996 it was becoming ever clearer to what extent social service payments for the mass of citizens, especially old age pensions and pensions for civil servants, would have to undergo cutbacks and that rises in personal contributions would be necessary to keep the general social service system viable in future. At the same time, it turned out that in negotiations for civil service salaries there was scarcely any scope to increase the existing rates. Against this background it was obvious to all observers that there was a disparity opening up between massive automatic salary increases for parliamentarians and the freezing or reduction of payments in general. This disparity was not to be defended, nor could it be reconciled with the facts of the situation. But just as the Bundestag had quickly passed the salary increases before Christmas of the previous year, so now it delayed taking action. Finally, a Bill to amend the law relating to federal parliamentarians and members of the European Parliament was introduced to postpone by one year the rises of salaries and allowances until 1 July 1996. The two later instalments were also postponed for a year.

The haste with which the new law was rushed through before Christmas is a further cause for scepticism. It meant that those privileges which persisted were shielded from public discussion. The constitutionally questionable possibility of drawing double remuneration from public funds remained untouched, as did the tax-free expense allowance for Bundestag members, contrary to the recommendations of the Kissel Commission. The allowance was in fact indexed, and amounts to about DM74,000 per annum. This indexing of expense allowances for members is particularly objectionable because most taxable allowances, and other exemptions for ordinary citizens, have not changed for years. In addition, concessions for business expenses and expenditure on workplace-related matters had been significantly limited since the beginning of 1995. (Here the words 'office at home' ring a bell). Moreover, parliamentarians could still accept unlimited donations from lobbyists. No effective action was taken against phoney consultancies and work contracts, contrary to calls by the Federal Constitutional Court, and although members place themselves under the taint of corruption claims.

The Key Function of Decision-Making Procedure

What has now become particularly problematic is the legislative procedure applying to further increases in remuneration and allowances. The new

Bundestag law provides in Section 30 for the Bundestag in future to set, at the beginning of each new Parliament, the rise for the duration of the Parliament. In this way parliamentarians decide on their own behalf before, in fact, transacting any other business. At the same time, the elections are so far distant that members need not expect any hindrance from the public. This procedure, which merits particularly critical analysis also on account of the level of the rises envisaged, represents a perversion of a procedure introduced in 1992 in the USA. The American Congress can by virtue of a new constitutional provision decide salary rises only for the next legislative period. This distances members from their decision and allows voters to react at the intervening elections. Such a procedure was, in fact, suggested for the Federal Republic, but found no support at the time. Meanwhile, the problems of the Bundestag's decisions for the benefit of its members have gained a completely new constitutional dimension.

The content of the decision was practically replaced, completely changing its weight. Originally the question concerned a 'recompense for expenses', but this has since become a matter of full salary funding (*Vollalimentation*) with over-generous benefits and a considerable amount for personal staffing and associated costs. This increases the importance of adequate decision-making procedures. These developments have caused the constitutional expert, W. Henke, to consider parliamentary decisions made in the interest of its own membership to be unconstitutional: infringements against elementary principles of the rule of law. His doubts are even stronger with regard to the procedure laid down in Section 30 of the new law, because these decisions are removed from the possibility of public check. Henke's suggested solution of setting up an independent tribunal with decision-making powers has, however, met with constitutional and political objections. As long as no immediate popular voice is available on the question, the American model might offer a minimal and convincing constitutional solution to the problem.

THE PROBLEM OF CHECKS AND CONTROLS

The above analysis calls attention to the problem of scrutiny and checks (*Kontrolle*) and thus to a central aspect of constitutional law and the organisation of the state. Parliaments decide in general on the payment of members as well as on public funding of politics on their own behalf (to quote the Federal Constitutional Court). Those who make the decision and those who benefit are either the same, or else are very close to one another. The problem of control is made more acute by the fact that, as Wildenmann argued, the manner and the volume of financing of politics are among the key political devices for acquiring and maintaining power. Effective control

mechanisms are especially important for political legitimacy, and for the future viability of the Federal Republic as a whole. Deciding on one's own behalf is fraught with danger, especially in the absence of control by the opposition and by the electorate.

It is normally the opposition in a parliamentary democracy which, jointly with the public, castigates political failings and the government majority responsible for them. But the opposition is regularly party to decisions on public funding of politics so that the legislative process lacks the corrective of contrary political interests. The major parties form a 'political cartel', and thereby make it difficult for the voters to exercise any kind of control. Voters are not able to use their ballots against abuses in public funding of politics. Whichever party they vote for, almost all of them are part of the cartel. Control is further reduced by the trend for parliaments to bring in increases to parliamentary salaries and allowances, to be staged in over four years, at the beginning of a legislative period, that is, at the greatest possible remove from the next election.

The unanimity of parties acting 'in coalition mode' renders inoperable the principle of separation of powers which is so basic for the modern rule of law. This principle is weakened in any case in parliamentary democracy when the majority parties which have chosen the government and live politically off their success, tend rather to support the government than to criticise it publicly and to offer any checks on it. The control and counterbalancing functions are all the more the province of the parliamentary opposition. If it too fails to carry out this role, there is little left of the separation of powers. For this reason the whole burden of exercising controls and checks rests mostly with public opinion and with the Federal Constitutional Court. (In the Bonn 'salary coup' of autumn 1995, the Upper House took over a counterbalance function and put a brake on the Bundestag by withholding its agreement for an amendment to the Basic Law.)

The absence of control by the opposition increases the importance of public monitoring and scrutiny of parliamentary activity. We are given all the more cause for reflection when the effectiveness of this scrutiny is mostly weakened from the outset as shown in cases like those just cited. This scrutiny depends quite essentially on a functioning parliamentary opposition which has been largely lacking in the present case. If, however, public criticism does arise, then it has to confront both the government coalition parties as well as the established opposition party, that is, practically the whole of the so-called political class which is, in addition, gaining increasing influence over the basic direction of the media, particularly in the public sector.

CAMOUFLAGE

Obscuring the Issues

The means a political cartel adopts in order to keep public criticism at arm's length is shown by the Bonn salary coup. The initiators of the salary plans in summer 1995 constructed a completely unreadable law. There were no amounts named in the law, only percentages which were related to concepts difficult to grasp from the salary and allowance schedules for the civil service. Merely to grasp its contents demanded, even for trained lawyers, a considerable effort. The author needed weeks and innumerable inquiries of the parliamentary administration to form a reliable picture of the Bill's content. The Bill was introduced shortly before the summer break and immediately given its first reading. Soon after the end of the summer break it was passed by the Bundestag.

Transparency was further reduced by the substitution of Bills. The whole of the Bonn press corps was misled as well. The President and Vice-President of the Bundestag had presented a Bill in the middle of June 1995 which gave concrete amounts, proposed only a four-stage increase to DM13,809 by 1 January 1998, and also provided correspondingly lower pensions and transitional payments. The Bill introduced two weeks later into the Bundestag was quite a different one, without anyone on the outside being aware of this. Obviously no one was supposed to notice, for the deviation from the original version which, at least, was founded on recommendations of a Commission specially set up to report on salaries, was neither mentioned in the new Bill itself, nor at its first reading in the Bundestag. No reason for this deviation was offered.

Indicative is the fact that the changed proposal and its first reading were not mentioned in the periodical *Das Parlament*, although the function of this journal is to keep the public informed of parliamentary debates, and its policy is to publish for this purpose the text of members' speeches, even if in excerpt. The Bundestag ignored the Standing Order provision that Bills should be debated at the earliest on the third day after printed documents on the measures were available, in defiance of all the well-meant advice not to bulldoze the public when measures of this kind are brought in.

All this had the result that public discussion on the subject lasted for weeks and months, even when it was no longer current and concerned matters which had not been proposed, such as a supposed lowering of pensions as a counterbalance for increased salaries. The 'success' of this parliamentary diversionary manoeuvre in leading public discussion down a false path is indicated by the results of a survey of ten people by *Die Woche,* asking them how they judged the salary increase for members. They based their replies as a matter of course on the Bill which was no longer current.

The six-stage rise for salaries also carried over to pensions, leading to the high increases mentioned above, especially for past members and sitting members. Since this was not only questionable in view of the existing over-generous provision for members, but also contradicted public announcements of the party leadership, the greatest efforts were devoted to camouflaging the pension issue. Even the highest Bundestag representatives, in their attempt to cloud the true position, did not hold back from manipulating the figures. For instance, the President of the Bundestag publicly calculated that the pension (after a term of eight years) would be 27 per cent lower by 1995 for future parliamentarians than the previous entitlement. But this only used as its benchmark the first of the six stages in the increase in payment so that the 24 per cent (reduced from 35 per cent) used to calculate the entitlement had too great a weight placed on it. On the other hand, nothing was said about the fact that future members who would need to serve at least eight years to have a pension entitlement, could have received their pension by 2003 at the earliest. Under these circumstances, all six stages of the salary increase would form the basis for the calculation of their pension entitlement. This would not produce a reduction but a gain.

Similarly, misleading calculations regarding the superannuation of former and current members were given by the President. In a press statement of 25 September 1995, she declared that the rise in pensions for current members of the Bundestag would be only 3.76 per cent under the new law. This percentage seemed to signal that it was merely the case of a normal routine rise in line with general income movements and that former and current members should have a full share in them. In reality, this was not at all the case. Additional to routine normal salary increases from which pensions of former and current members should benefit as well, members had voted themselves a six-stage rise of about 17 per cent in all in the level of their pensions. The President of the Bundestag had obscured this fact by confining her attention to 1995.

Perverting the Function of Constitutional Alteration

What was most contentious was the proposed alteration to the Constitution, because it would render existing controls inoperable. The parliamentary leadership once more went to great efforts to lend this move an acceptable appearance. By omitting to mention its intended function as the basis of salary increases, the formula for aligning members' salaries to those of Superior Court judges was presented as a means of introducing clarity and transparency in salary matters, so that in future everyone could ascertain what remuneration a member was to receive. Such were the claims made by both the President and Vice-President of the Bundestag in press statements and interviews.

In fact, the opposite was true. In any case, scarcely anyone is aware of what Superior Court judges are paid, and even to those who do know, the planned constitutional provision was totally uncertain. The proposal would have created a framework which varied from the basic salary of a 'further judge of a Superior Court', of the salary category R6 (DM11,063 monthly) to the total salary of a chief justice of a Superior Court (salary category R10, monthly salary DM20,169).

Defaming the Critics of the Parliamentary Manoeuvres

Accompanying such instances of disinformation were attempts to blacken the name of critics of the proposal, including the present author. The claim was made that he was alone amongst constitutional lawyers in his criticism. During the Bill's second reading, its subject matter was given less notice than expressions of indignation at the supposed improper claims by the Bill's critics. Obviously, members wanted to divert attention from objective criticism or else weaken its impact.

A German Press Agency report of 13 October 1996 carried the following text:

> The whole of the Bundestag executive has incurred blame. Constitutional lawyers such as H.H. von Arnim have been inundated with open expressions of enmity by the Bundestag President and others in the House. The President's deputy went so far as to compare these critics with the antidemocrats of the Weimar Republic. Only after 80 other well-known constitutional lawyers also raised constitutional doubts did the reproaches begin to subside. Suddenly the Vice-President now admits that the critics were right who said that the proposals submitted in summer by the Committee he had chaired had been significantly doctored by the parliamentary parties' executives.

Tampering with History

The conscious intent with which the political class used the information resources at its disposal to obscure the history of the real course of the Bonn parliamentary salary case is revealed in an article which appeared in the 28 June 1996 issue of the weekly *Das Parlament*, mentioned above. The writer of the article is a woman long employed in the research services of the Bundestag and thus dependent for her livelihood on the parliamentary institution about whose members her article was concerned.

Using completely one-sided sources and deriving data exclusively from conversations with those immediately involved, that is, from parliamentarians and their spokespersons and advisers, she relies on publications by them or on

those of authors close to them. On the other hand, criticism from outside the Parliament is not mentioned. A full-page article in *Die Zeit*, material in the news weekly *Der Spiegel*, or even the present author's book were not mentioned.[1] By excluding everything which does not fit in with the version of events suitable to those who make laws in their own favour, a white-washed, one-sided and, consequently, inaccurate picture is constructed.[2]

CONCLUSION

Having reviewed the Bonn salary and pension affair, it is clear the *Das Parlament* article represents a mixture of omissions and distorted and inaccurate material conveying an entirely false picture. The reader is left in the dark about why 86 constitutional lawyers protested and why finally even the SPD parliamentary, Rudolf Scharping, publicly described the criticism as 'partly justified', withdrawing his party's support for the proposal. Nor does the article make it clear why the Upper House of the Parliament, the Bundesrat, refused to agree to the proposed alteration to the Constitution. The means used by the Parliament's executive to inform the citizens of the Federal Republic about what we have termed the Bonn salary coup were highly dubious, raising fears lest they represent a move to practices which we only usually associate with one-party states.

NOTES

An earlier version of the first section of this paper appeared in the *Neue Juristische Wochenschrift* of 8 May 1995. The present version has been completely revised and substantial material added.

1. H.-H. von Arnim, *We are the State. The Political Class out of Control?* (1995). Copies were sent in September 1995 by the author to all state premiers who were as members of the Bundesrat to vote on the proposals by 22 September according to the original timetable. This date was changed to 13 October. The Taxpayers' Union sent all 672 Bundestag members a copy of the paperback edition so as to give them an opportunity to go beyond what the press reported. Several members refused to accept the copy sent to them.
2. A detailed review of three of H.H. von Arnim's recent books by Richard S. Cope is found in *Legislative Studies: Journal of the Australasian Study of Parliament Group*, Vol.9, No.2 (Autumn 95), pp.80–84.