

RESEARCH INSTITUTE  
OF LEGAL POLICY

6

MATTI JOUTSEN

THE POTENTIAL  
FOR CORRUPTION

HELSINKI 1975

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Matti Joutsen

THE POTENTIAL FOR CORRUPTION

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## FOREWORD

The subject of corruption both in and outside of government is one that arouses a great deal of interest and moral judgements. Graft and corruption are universally condemned at least in public, and yet for a long time there have been few serious studies in the field. Most information on cases of corruption has been based on hearsay and mucl.-raking journalistic reports of often doubtful veracity.

Lately, however, many social scientists and legal scholars have attempted to bring a more balanced approach to the matter. Moreover, recent well-publicized scandals and law reforms in various countries have occasioned a renewed interest in defining what corruption actually is. These trends are mainly evident in countries with both a well-established tradition of research in related fields, and a noticeably high amount of known corruption. But many researchers also in countries with a comparatively low amount of known corruption (such as the Netherlands, the Federal Republic of Germany and Sweden) have attempted to bring order out of chaos in the matter.

Finland is one of these countries with little reported corruption. Even so, a few cases are dealt with by the courts every year, offering scope for a study of both the reality of and the potential for corruption.

In this study we shall be concentrating not on government as a whole, but on the administrative structure of communes. This limitation was due to practical considerations - it would have been an overly involved task to have considered every aspect of government, to say nothing of going into corruption outside of government, in e.g. the business world.

To give a framework to this study, we have decided to use an actual Finnish commune's administrative structure. The selection of this 'study commune' was a matter of pure convenience, and was not made on the basis of this commune being especially notorious for rampant corruption. (On the contrary, the study indicated that corruption in this commune was almost non-existent.)

The goal of this study is to uncover how much influence 'corruption' has on administration in Finland. Should there seem to be a potential for it, the second goal is to find remedies that would prove to be effective in lessening the impact of corruption.

Helsinki, February 28, 1975

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## NOTE ON THE THEORETICAL PORTION

As this study deals with the practical aspects of corruption, and not with the theoretical definition of it, we have only included as much theory as was thought necessary for the reader to be able to come to grips with the empirical portion. Those interested in the legal, political, sociological, economical and philosophical ramifications of the behaviour dealt with here may feel disappointed over this cursory treatment of what in actuality are extremely complex matters. For the benefit of such readers we can only point out the available literature on the matter. (More specific information on the books is given in the bibliography.)

For the legal aspects of bribery in Finland, we would refer the reader to Paavo Kekomäki's article on the bribery of officials, which appeared in 1951 and is still the authority on the matter. Ola Nyquist has written extensively on the theory of bribery in Sweden (which has a close bearing on the situation in Finland), and he has included much data on court cases. The recently published Swedish Committee report also deals with the legal aspect of bribery.

For the other aspects of bribery (and corruption in general), the collection of articles edited by Arnold Heidenheimer is of special relevance. James Scott has explored the matter from the comparative standpoint, both historically and at the present. Joan Joseph has recently come out with a book highlighting corruption throughout the history of the United States.

There are many incidental features of corruption that have only been briefly dealt with in the text, but which can be of particular interest to specialists. Machine politics, for example, have been dealt with by Dorsett, Gosnell, Mann, Royko, Scott and Wilson; patronage by Hoogenblom, Lundquist and Merikoski; and organized crime by e.g. Cressey.

Even this is only a partial list of the material available.  
It is, however, to be hoped that they will prove of more  
than passing interest to the reader.

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## The Theory of Corruption

One aspect of corruption that has often caused difficulties is the fact that it has been defined in a variety of ways. Philosophers, political scientists, sociologists and economists have all made contributions to this end, and it is basically a question of the intents and purposes of the researcher which of these approaches is suitable. As this study will deal with criminally defined corruption and with court cases, we shall utilize a judicial definition.

The political scientist James Scott has suggested such a definition. According to him, corruption involves "behaviour which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private cliques) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence" (Scott 1972, p. 4).

The first part of his definition deals with corrupt behaviour on the part of public officials. In searching for Finnish legal norms governing such behaviour, we are drawn to Chapter 40 of the Penal Code, which deals with crimes perpetrated by officials. Here we find a number of paragraphs dealing with deviant behaviour in search of private-regarding gains: accepting bribes (para. 1), forgery (para. 6), embezzlement (para. 7), offenses in connection with collecting or registering e.g. taxes and customs fees (para. 8 and 9), taking undue advantage of an entity (para. 10), improperly revealing secrets (para. 19a), and finally, paragraph 20, which criminalizes any otherwise unspecified breach of office for personal gain.

The second part of Scott's definition dealt with improper private-regarding influence. Here, the actor need no longer

be an official, but can be anyone interested in affecting how the formal duties of public role are carried out. As there are a number of decrees that could be seen to govern the exercise of influence, it is ultimately a subjective matter which are regarded as especially affecting the incidence of corruption. We believe that the basic offense from this angle is that of bribery. However, also extortion can be used in this sense, as well as some peripherally interesting offenses to which we shall return later on.

In this study, we shall interest ourselves with 'corruption' when it involves at least two actors, one of whom is an official, as the main participants. Thus, we shall not deal with crimes of 'autocorruption' where the official is alone in his offense. What we shall principally be dealing with is bribery, with a few references to other two-actor offenses.

Two of the basic articles in defining bribery are the aforementioned Chapter 40, paragraph 1 (the accepting of bribes), and Chapter 16, paragraph 13, which deals with the offering of bribes.

Paragraph 1 of Chapter 40 reads in its entirety:

"An official who for an official function takes, requires or demands wrongful compensation shall be removed from office and furthermore sentenced, should there be reason, to at the most four years in the penitentiary.

The bribe or wrongful compensation or the value thereof shall be confiscated by the State."  
(unofficial translation)

Paragraph 13 of Chapter reads as follows:

"Whosoever gives, promises or offers an official or other person mentioned in article 1 a bribe or wrongful compensation for an official function shall be sentenced to imprisonment or at the most three years in the penitentiary or, if the circumstances are mitigating, to a fine.

The bribe or wrongful compensation or the value

thereof shall be confiscated by the State." (unofficial translation. Article 1 referred, broadly speaking, to any person operating in an official capacity or aiding an official.)

In addition to these two major paragraphs, there are special paragraphs on the bribery of certain officials: judges, priests and military officers.<sup>1</sup> Finally, bribery in a purely business setting is criminalized when the target of the bribe is in the employ of another, and the purpose of the bribe is to have the receiver favour the giver, or reward him for such favouring (Law on Unfair Business Practices).

The Finnish Penal Code definition of a public role can be found in Chapter 2, paragraph 12 of the Code, which states that officials are

"government officials and those who are enjoined with the care of matters determined by cities, townships, rural communes, parishes or other public establishments or corporations or authority-created foundations; and those officials and staff members subordinate to these; and all others who are appointed or elected to a public office or to carry out a public function." (unofficial translation)

The formal duties of a public office is a much more difficult abstraction to pin down. There are, in general, three main ways of dividing duties among officials - the horizontal, subjective division, which divides officials by their 'specialization' (e.g. agriculture, defense); the horizontal, regional division (e.g. by counties and precincts); and the vertical division, in which the lower levels are responsible to the upper ones. In Finland, the rough outlines of this are set up by the legislature, while an official's superiors give more detailed instructions.

We can preliminarily define private-regarding wealth or status gains as anything that at least temporarily improves

<sup>1</sup>Rules of the Court (1:12), Evangelical Lutheran Church Law (103), Orthodox Church Law (46) and the Military Penal Code (122 and 123).

the position of the actor. when viewed externally (Kekomäki p. 346). Under Finnish law, these gains may be regarded as bribes only when they are wrongful, i.e. they are not provided for by law, statute, administrative directive or, for example (and here one must be careful), custom. The position of the actor can in theory be improved any number of ways - the improvement, for example, can concern his finances, his physical wellbeing, his power, the respect or moral support accorded him, or even skill or education (Heidenheimer p. 54-55). This improvement may be given directly to the official, or to a third party (such as a member of his family) (Kekomäki p. 333-334). Kekomäki would state as a general rule of thumb that whenever it is the intention of the actor to influence an official function with his bribe/wrongful compensation, then it is a question of bribery (ibid).

Private-regarding influence in itself is not illegal. There are many channels for the exercise of influence that have been specifically established. Examples would be the important role played by formal requests, applications, petitions, and participation in governmental organizations. It is only when the rules governing such behaviour are violated that it can become a matter of corruption.

A prerequisite of bribery, according to the appropriate laws, and of corruption, according to Scott's definition, is the existence of official functions. Prior to an amendment of the law on bribery, it was not considered illegal for someone to give compensation to an official in exchange for what the official was authorized to do (Konkasalo 1938 p.181). Evidently, this was not considered a serious problem. The 1946 law, however, criminalizes any bribe given to influence any official function, whether nonperformance of official functions (nonfeasance), performance of an illegal function (malfeasance) or performance of a legal function (misfeasance) is desired (Kekomäki p. 350-351).

These official functions can involve an almost infinite variety of matters from almost any sector of government. Corruption may take place just as well for the awarding of a communal construction contract as for the purchase of a vote in a close election or for avoidance of investigation for a crime. The actual incidence of crimes of corruption in these different fields is heavily dependent on the value the potential corrupter would place on decisions in each sector, and on the feasibility of attempting corruption - the expected reaction of the official, for example, and the possibility of the transaction being revealed.

In this connection, two further crimes deserve a closer scrutiny - extortion and the buying and selling of votes. Extortion (Penal Code Chapter 31, paragraph 4) is defined as the use of threats to extract certain financial benefits to which the extorter has no legal rights. This benefit must actually lessen or endanger the victim's wealth, or his expected wealth (Honkasalo 1964, p. 130-131). This brings up an interesting question - when an official is extorted into performance (or non-performance) of an official function, is his wealth harmed or even threatened? Strictly speaking, it is not. However, the official is acting as an agent of the State, and it is suggested that any abuse of office constitutes a direct threat to the wealth of the State. Hence, forcing an official into an official function is a form of extortion, and should be treated as such.

The buying and selling of votes in a general election (Penal Code, Chapter 15, paragraph 3) does not fit in with our heretofore used definitions, as no official function per se is involved. However, 'electoral corruption' has an important position in corruption in general, for the obvious reason that elections dictate who shall hold office. The crime of

trading in votes in Finland is interesting for two reasons. First, it is criminalized only when an actual trade has been agreed upon by both parties (in bribery, an offer or a demand is sufficient grounds for criminal proceedings), and second, the form of payment for the vote is left completely open - it may be e.g. a letter of recommendation or an award or title (Honkasalo 1962 p. 60-62).

2

## Corruption As Dealt With By the Courts

The term 'corruption', then, can lie behind a number of different offenses, both those involving one actor (auto-corruption) and those involving two or more. As stated, we shall here be interested only in offenses of the latter nature involving an official, and especially with the crimes of giving, offering or promising wrongful compensation ('active bribery'), or receiving, demanding or requiring wrongful compensation ('passive bribery').

2.1

### Active bribery

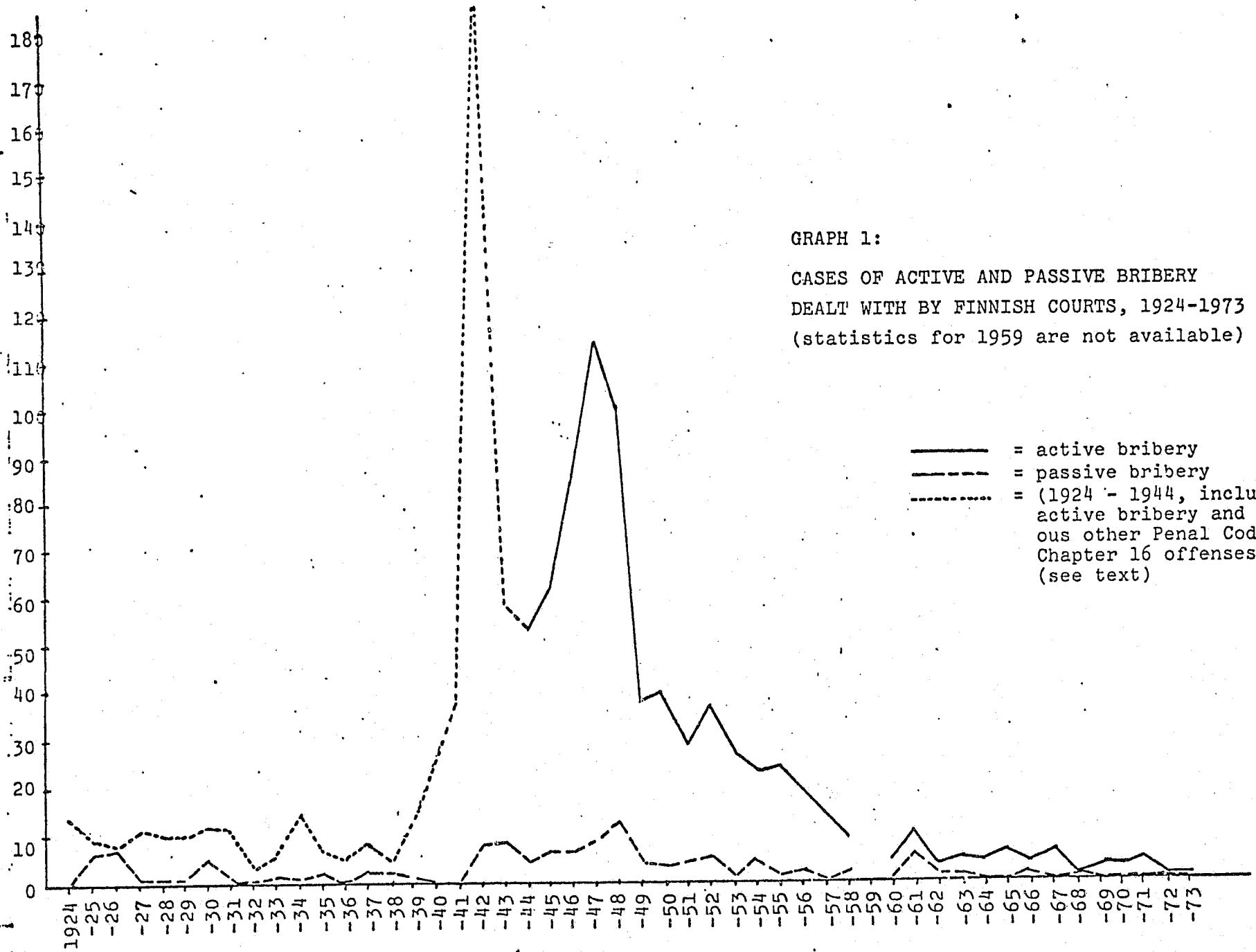
Chart 1 and Graph 1 show the number of convictions yearly for both active and passive bribery over the past fifty years. Prior to 1945, no specific data on the incidence of active bribery is available. Instead, it is lumped together with a variety of other crimes<sup>1</sup>, thus resulting

<sup>1</sup>These crimes are: gathering armed forces, or keeping them together, for criminal intent (Penal Code 16:7), inciting to avoid conscription (16:9), inciting to desertion or disobedience in armed forces (16:9), defacing the flag or seal of Finland (16:16), being an accessory before the fact to certain serious crimes (16:19), aiding desertion (16:21), recruiting Finnish males for foreign military service (16:22) and inciting a Finnish male to emigrate under false pretences (16:23). It should be noted that many of these crimes tend to occur, and the statutes against them tend to be more stringently enforced, during times of war (e.g. the early 1940's).

CHART 1. ACTIVE AND PASSIVE BRIBERY AS DEALT WITH BY FINNISH COURTS, 1924 - 1973

	ACTIVE BRIBERY (16:13) <sup>x</sup>								PASSIVE BRIBERY (40:1)								
	accused	sentenced	nature of sentence					as subs. off.	accused	sentenced	nature of sentence					as subs. off.	
			penitentiary	cond. penit.	prison	cond. prison	fine				penitentiary	prison	cond. prison	fine	dismissal		warning
1973	1	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
1972	1	1	-	-	-	1	-	-	1	1	-	-	-	-	-	-	-
1971	7	4	-	-	-	3	1	-	-	-	-	-	-	-	-	-	-
1970	5	3	-	-	1	-	2	-	-	-	-	-	-	-	-	-	-
1969	4	3	-	-	1	-	2	-	-	-	-	-	-	-	-	-	-
1968	2	1	-	-	-	-	1	-	1	1	-	-	-	1	-	-	-
1967	6	6	-	-	3	-	3	-	-	-	-	-	-	-	-	-	-
1966	5	4	-	-	2	-	2	-	1	1	-	1	-	-	-	-	-
1965	8	6	-	-	3	-	3	-	-	-	-	-	-	-	-	-	-
1964	4	4	-	-	3	-	1	-	-	-	-	-	-	-	-	-	-
1963	8	5	-	-	2	-	3	-	1	1	1	-	-	-	-	-	-
1962	3	3	-	-	3	-	-	-	1	1	-	-	-	1	-	-	-
1961	40	10	3	1	1	3	2	-	5	5	3	1	-	1	-	-	-
1960	4	4	-	-	3	1	-	-	-	-	-	-	-	-	-	-	-
1959			not available								not available						
1958	13	9	-	-	3	1	-	5	1	1	-	-	-	-	-	-	1
1957	25	14	-	-	1	2	8	3	2	-	-	-	-	-	-	-	-
1956	19	19	-	-	1	2	4	12	2	2	-	-	-	-	-	-	2
1955	27	24	-	-	7	-	5	12	1	1	-	-	-	4	-	-	-
1954	23	23	-	-	6	2	6	9	4	4	-	-	-	2	-	-	2
1953	30	27	-	-	4	7	4	12	1	1	1	-	-	-	-	-	-
1952	42	37	2	-	9	5	11	10	6	5	2	1	-	1	-	-	1
1951	31	28	-	-	3	1	7	17	5	4	1	2	-	1	-	-	-
1950	44	39	-	-	3	4	13	19	3	3	-	1	-	2	-	-	-
1949	45	38	-	-	5	3	11	19	7	4	-	2	-	2	-	-	-
1948	101	97	-	-	14	8	36	39	13	12	2	1	-	3	-	-	6
1947	125	114	-	-	11	2	38	63	10	8	2	-	-	3	-	-	3
1946	87	84	1	-	7	2	37	37	13	6	-	1	-	2	1	-	2
1945	66	62	-	-	2	1	18	41	10	7	-	-	-	1	2	3	1
x 1944	60	53	-	-	-	-	12	41	6	4	-	1	-	2	-	-	1
1943	64	59	-	-	5	-	24	30	9	8	-	2	-	2	-	-	4
1942	223	187	-	-	135	-	27	25	7	7	-	3	-	2	-	-	2
1941	40	39	1	-	17	-	14	6	2	-	-	-	-	-	-	-	-
1940	30	27	-	-	-	-	15	12	-	-	-	-	-	-	-	-	-
1939	14	13	-	-	1	-	9	3	2	1	-	-	-	1	-	-	-
1938	5	4	-	-	-	-	3	1	2	2	-	-	-	2	-	-	-
1937	9	8	-	-	-	-	5	3	2	2	-	1	-	1	-	-	-
1936	5	5	-	-	2	-	2	1	-	-	-	-	-	-	-	-	-
1935	8	7	-	-	1	1	1	4	2	2	-	1	-	-	-	-	1
1934	14	14	-	-	3	1	7	3	1	1	-	1	-	-	-	-	-
1933	8	6	-	-	3	-	2	1	2	1	-	-	-	1	-	-	-
1932	6	3	-	-	1	-	2	-	1	-	-	-	-	-	-	-	-
1931	14	11	-	-	2	-	7	2	2	1	-	-	-	-	-	-	1
1930	14	12	-	-	-	-	4	8	5	5	-	1	-	1	-	-	3
1929	18	10	-	-	1	-	7	2	3	1	-	1	-	-	-	-	-
1928	12	10	-	-	1	-	7	2	1	1	-	1	-	-	-	-	-
1927	18	11	-	-	-	-	3	8	3	1	-	1	-	-	-	-	-
1926	10	8	-	-	-	-	3	5	11	7	-	4	-	2	1	-	-
1925	17	10	-	-	1	-	3	6	7	6	-	2	-	4	-	-	-
x 1924	15	14	-	-	1	2	10	1	-	-	-	-	-	-	-	-	-

x the figures for "active bribery" from 1924 to 1944 (inclusive) actually contain Penal Code Chapter 16 articles 7, 13, 16, 19 and 21-23. See the footnote in the text.



GRAPH 1:  
 CASES OF ACTIVE AND PASSIVE BRIBERY  
 DEALT WITH BY FINNISH COURTS, 1924-1973  
 (statistics for 1959 are not available)

— = active bribery  
 - - - = passive bribery  
 ···· = (1924 - 1944, inclusive)  
 active bribery and vari-  
 ous other Penal Code  
 Chapter 16 offenses  
 (see text)



in the fact that both the chart and the graph are partially misleading up to 1945. This reservation should be constantly kept in mind during the following discussion of the statistics.

Even a cursory review of the information provided by the graph shows that the 1940's mark a distinct departure from the otherwise level trend of active bribery. The graph begins to rise sharply from 1938 on, and doesn't come down to near its pre-war level until the early 1950's. It can only be speculated, in the absence of specific data, how many of the offenses up to and including 1944 actually were cases of active bribery, and how many were e.g. abetting desertion. During the 1930's, this speculation is not of importance, as the entire number of cases in this wide category averages around ten per year, and, obviously, the annual incidence of court-tried active corruption was low. But the war-years of 1939 to 1944, with an average of over 60 convictions a year, form a more problematic period. Although it is probable that many of these convictions were for such war-year-related crimes as abetting desertion, it would not be at all implausible to suppose that the incidence of active bribery was also high.

The rapid increase in the number of convictions from the 1930's to the 1940's can be presumed to be due to the fact that the war years and the post-war reconstruction period gave rise to unusual circumstances conducive to social disorder. Thus, there was a necessity of imposing new regulations (especially rationing<sup>1</sup>, wider conscription, and the confiscation of land for the use of displaced refugees), and

<sup>1</sup>Liquid fuels were rationed on September 4, 1939, sugar was rationed one month later, and gradually rationing spread to many other sectors and items. On some products it lasted as late as 1953. See e.g. cases 9 and 10 in the appendix.

of enforcing some other regulations more stringently. It may be theorized that the increase in court-tried active bribery (and of bribery in general) is symptomatic of a sector of the population's inability to cope with these regulations, and of their belief that the regulations must be at least partially circumvented or ignored, through a bribe, if necessary.

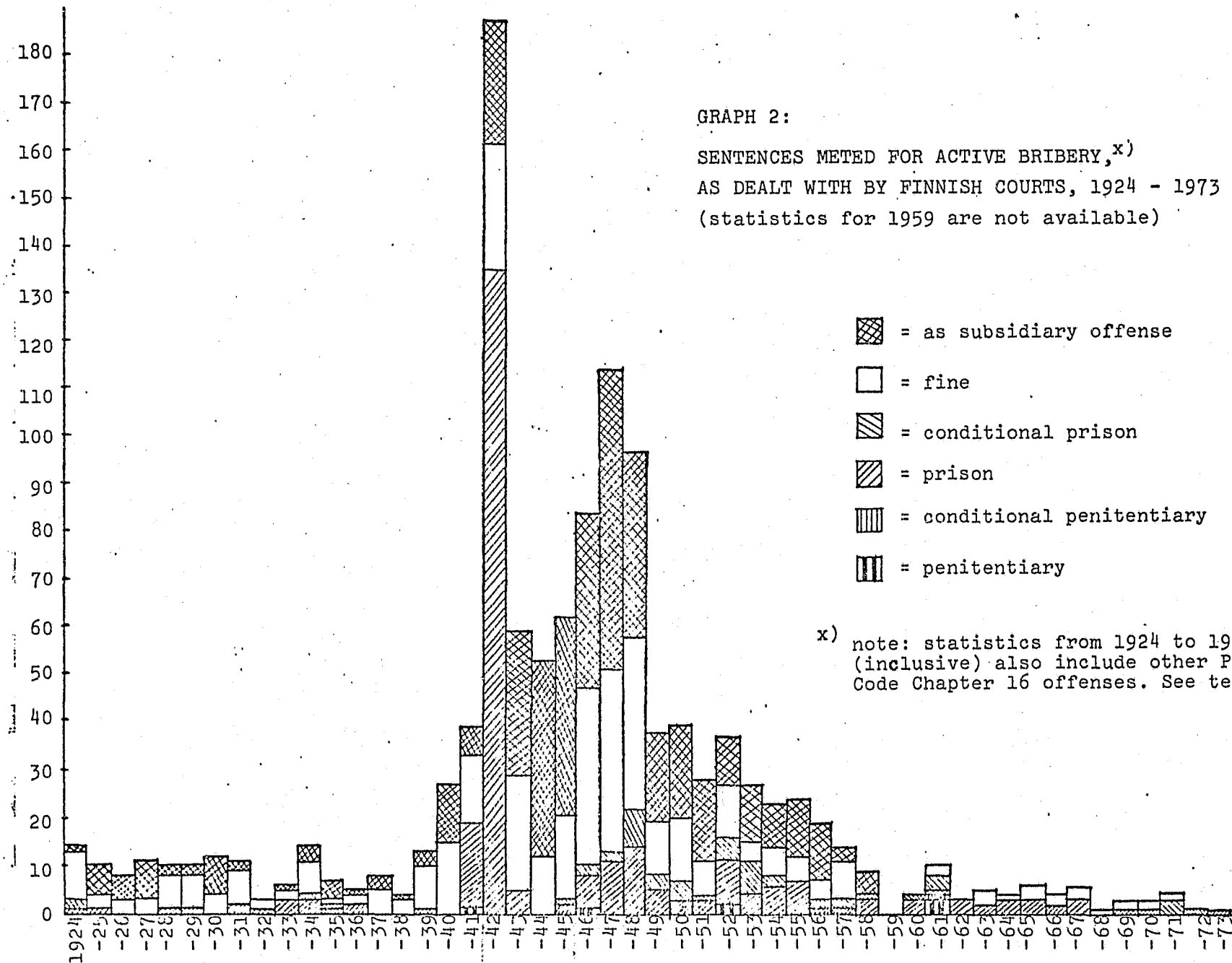
Support for this theory can be had indirectly from the fact that a great number of the convictions in this category during the peak years of the 1940's were handed down as convictions for subsidiary offenses.<sup>1</sup> Whenever this is the case, the offender has also committed another offense that carried a greater punishment. Hence, one suspects that the bribe (if, indeed, it was a question of active bribery) was attempted in order to cover up an illegal act - an attempt to get around the regulations of the time. It is, furthermore, quite possible that a large number of the remaining cases of bribery were centered around a bribe being offered to cover up an offense that carried a lesser punishment than did bribery.<sup>2</sup>

Aside from the war and post-war period of exceptional circumstances and (presumably) high numbers of cases of active bribery, the level in Finland has remained fairly constant, ranging annually from zero to ten. During the past twenty years (1954-1973), the annual average over-all has been 8; from 1960 to 1973 it has been 4.

Active bribery is punishable by up to three year's imprisonment, or under mitigating circumstances by a fine. Chart 1 and Graph 2 show that Finnish courts seldom sentenced

<sup>1</sup>It must be repeated that the figures up to and including 1944 include offenses other than active bribery.

<sup>2</sup>Offenses against the laws on rationing, for example, were usually punished with a fine.



the offender to the penitentiary (a total of only 7 cases). No distinct trend in the use of any of the sanctions can be otherwise readily observed, especially when the actual incidence of active bribery (and thus the corresponding sentences) up to 1944 is unknown. From 1945 on, however, it can be noted that the sanction most often used was a fine (218 cases). Unconditional imprisonment was the sentence in 99 cases, while conditional imprisonment was meted in 48 cases (plus one case of conditional penitentiary).

From 1924 to 1958, sentences for active bribery as a subsidiary offense appear in the statistics. As mentioned above, this presumably indicates that the bribe involved was intended to 'hush up' a breach of regulations, which in itself led to a punishment greater than that meted for the act of bribery. Due to the lack of data on court cases during this period, one cannot infer too much of the nature of the sentence meted for active bribery in these cases. Using the fact that the sentence for the subsidiary offense is less than that for the main offense, however, one can suppose that a large number of these cases led to fines or short-term imprisonment.

In dealing with specific cases of active bribery, it must first be noted that no uniform picture of the circumstances leading up to these cases exists in Finland over the entire period in question. Through a variety of sources we have been able to trace the particulars in fourteen cases<sup>1</sup> (mainly from the late 1960's and the early 1970's), but even these constitute but a small minority of the total amount of the court-tried cases. Little can be said of the individual cases of active bribery in the 1940's and earlier,

<sup>1</sup>These sources included, primarily, the Legal Statistics Department (Oikeustilasto) of the Finnish Central Statistical Office; the Archive of the Office of the Chancellor of Justice; the annals of the Supreme Court, 1918-1972; the minutes of various court proceedings, and journalistic reports.

except for the above supposition that many of these involved a bribe to cover up another offense. Continuing in this line, one could suppose that usually the official to whom these bribes were offered were law enforcement officials - police or customs inspectors, for instance, and the bribe or wrongful compensation was either a sum of money or some goods (such as part of the goods being smuggled or under rationing, as the case may be). From the theoretical standpoint, such cases have little interest, as the revealed cases usually did not result in any hoped-for corresponding action on the part of the official.

As for the cases of bribery that have been itemized (and which are outlined in the appendix), all of them involved an administrator as the target. No member of the judiciary or the legislature has been implicated in any of the cases uncovered in the course of this study.

All of the cases had an individual as the active briber. In one case (case 12)<sup>1</sup> the active actor was operating in the capacity of his position in a store, but as this store was under his personal ownership, and any profit that accrued to the store would go to him, even this case could be seen to involve a private individual.

In ten of the fourteen cases, the 'goal' of the active actor was to have a law enforcement official ignore a breach of regulations or drop his/their investigations. Eight of these cases involved police officers, one involved the naval guard, and one involved customs officials.

Two of the cases involved misfeasance, i.e. misuse of power which does not formally exceed the authority of the official (Merikoski 1964, p. 36). In one case, an owner

<sup>1</sup>This refers to the number of the case in the appendix.

of real estate wished a city manager to persuade the city council to purchase his property (case 11), in the other case, the owner of the store wished that two communal officials would make purchases for the commune through him (case 12). In both cases, the misuse of authority would have taken place had the appropriate officials undertaken these on the surface legitimate actions in exchange for wrongful compensation.

Finally, two of the cases were aimed at an illegality. In one case, an individual requested that the aide-de-camp of a military unit allow him to use the unit's seal on some documents which he had prepared (case 13), and in the other case an individual requested that permission be granted to hold a public amusement with tickets that did not contain the necessary stamp tax (case 14).

The wrongful compensation offered in these instances varied greatly in size, if not in substance. The smallest bribe noted was three boxes of cigarettes, valued by the court at 150 marks (about \$1.50)<sup>1</sup> (case 13). Usually the bribes were outright sums of money. As such, they ranged from a ten mark bill (\$3.50) (case 6) to 250 000 marks (\$1400) (case 11).

## 2.2

### Passive bribery

Again, Chart 1 and Graph 1 show the incidence of cases of passive bribery from 1924, when statistics were kept separately for this crime for the first time, to 1972. Compared to active bribery, the level from year to year is very steady.

<sup>1</sup>The dollar value which will be used throughout this study is computed on the basis of the present value of the bribe, which in turn has been derived from the wholesale goods index, as published in e.g. the 1975 *Mitä Missä Milloin* yearbook, p. 483.

The 1940's, however, show an increase in the incidence which is relatively quite large. In his 1950 article on bribery, Kekomäki suggested that this increase was due to the expansion in the number of untrained officials, the exceptional circumstances, the low salary scale, and rationing (Kekomäki p.331, see also Jermo p.42).

Another theory that we would suggest is based partially on the fact that the rise in the graph is preceded and at all times exceeded by the probable rise in the graph for active bribery. Thus perhaps the increase in the 'temptation' to commit passive bribery, as evidenced by the large number of recorded 'offers', i.e. the convictions for active bribery, explains the rise in the amount of uncovered incidents of passive bribery.

Asides from this period of numerous cases, the level of passive bribery has remained low, with an average of one conviction a year during the second half of the fifties and through the sixties.

Passive bribery is punishable by a maximum of four year's imprisonment. Under less aggravating circumstances, the offender is to be suspended for up to two years, or fined. Due to the low total number of cases, it is difficult to trace any pattern in the attitude of the courts to this crime. Of the 118 offenders tried, 11 have been sentenced to the penitentiary and 31 have been sentenced to prison (of which 1 was sentenced conditionally). Of the rest, 30 were sentenced for passive bribery as a subsidiary crime, and their sentence for this crime is not available. The remaining 46 were seen to have committed the offense under mitigating circumstance, and were sentenced accordingly - 3 were let off with a warning, 6 were dismissed, and 37 were fined.

As for the specific cases, we have been able to trace ten cases of passive bribery through the sources mentioned previously. In addition, one case on record originally involved passive bribery, but the official was subsequently convicted of fraud (case no. 23). Both of the High Court of Impeachment cases outlined in the appendix also involved corruption-linked motives that were akin to passive bribery, but were not legally treated as such.

The officials involved in these cases held widely different positions. In one of these cases (no. 19) the accused were court officials who were charged with having illegally taken redemption fees for legal documents. (In the end, the Court ruled that this had taken place through ignorance.) The rest of the cases involved officials in different administrative posts - 4 involved communal officials, one involved a school teacher, one a military officer, one a police department clerk, one a director of a penal institution, one a state official in charge of real estate matters.

None of the cases recorded involved nonfeasance, i.e. refraining from performing an official function called for in the situation. It is highly doubtful whether this is in keeping with the distribution among all cases of passive bribery. It is true, of course, that it is normally easier to observe an official function that has been performed than a failure to perform an official function, and thus in turn it should be easier to note cases of misfeasance and malfeasance than it is to uncover nonfeasance.








The cases that are on record are evenly divided between misfeasance and malfeasance. The particulars in these cases, which varied widely with no two cases involving the same type of function, can be seen in the appendix.

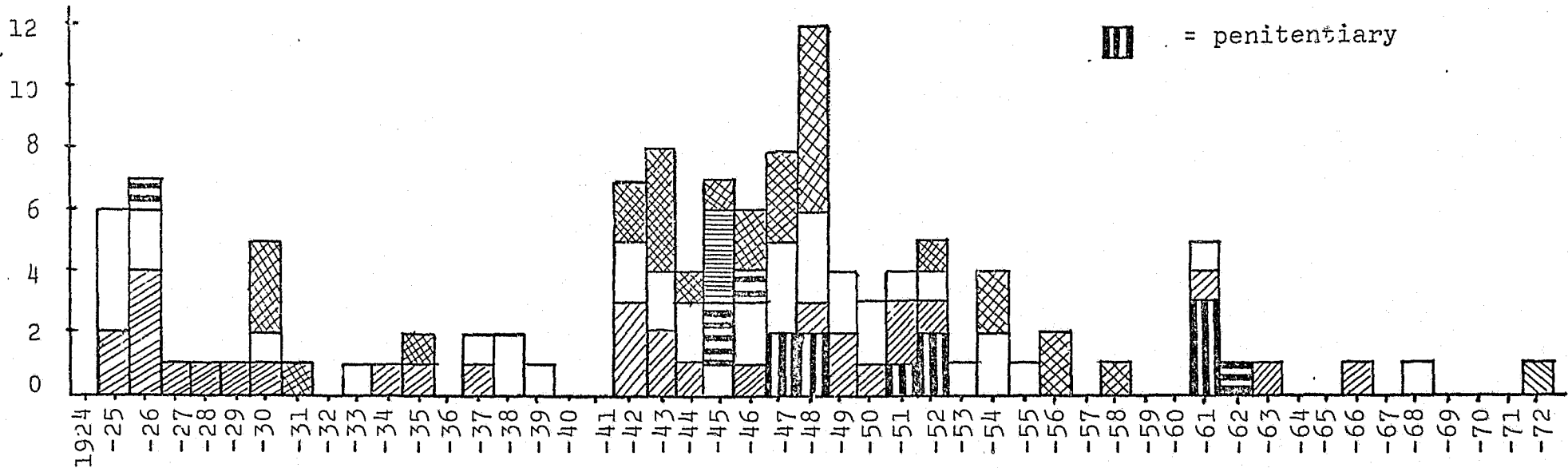




GRAPH 3:

SENTENCES METED FOR PASSIVE BRIBERY,  
AS DEALT WITH BY FINNISH COURTS, 1924-1972  
(statistics for 1959 are not available)

-  = as subsidiary offense
-  = warning
-  = dismissal
-  = fine
-  = conditional prison
-  = prison
-  = penitentiary



The wrongful compensation in these cases had more variety than did the cases of active bribery. In one (no. 16), the compensation was to take the form of illegal assistance in cashing checks, and in another (no. 17), the 'bribe' was alleged to have been a trip abroad. In a third case, the compensation took the form of shares in a company (case no. 15). The other cases centred around sums of money. The rate of recidivism in these crimes is unknown. The fact that there have been so few convictions for passive bribery at least shows that there is little likelihood of recidivism being a large problem in connection with this crime. But a study in the Netherlands showed that at least there the recidivism rate for active bribery was large. (Heidenheimer p.245)<sup>1</sup>

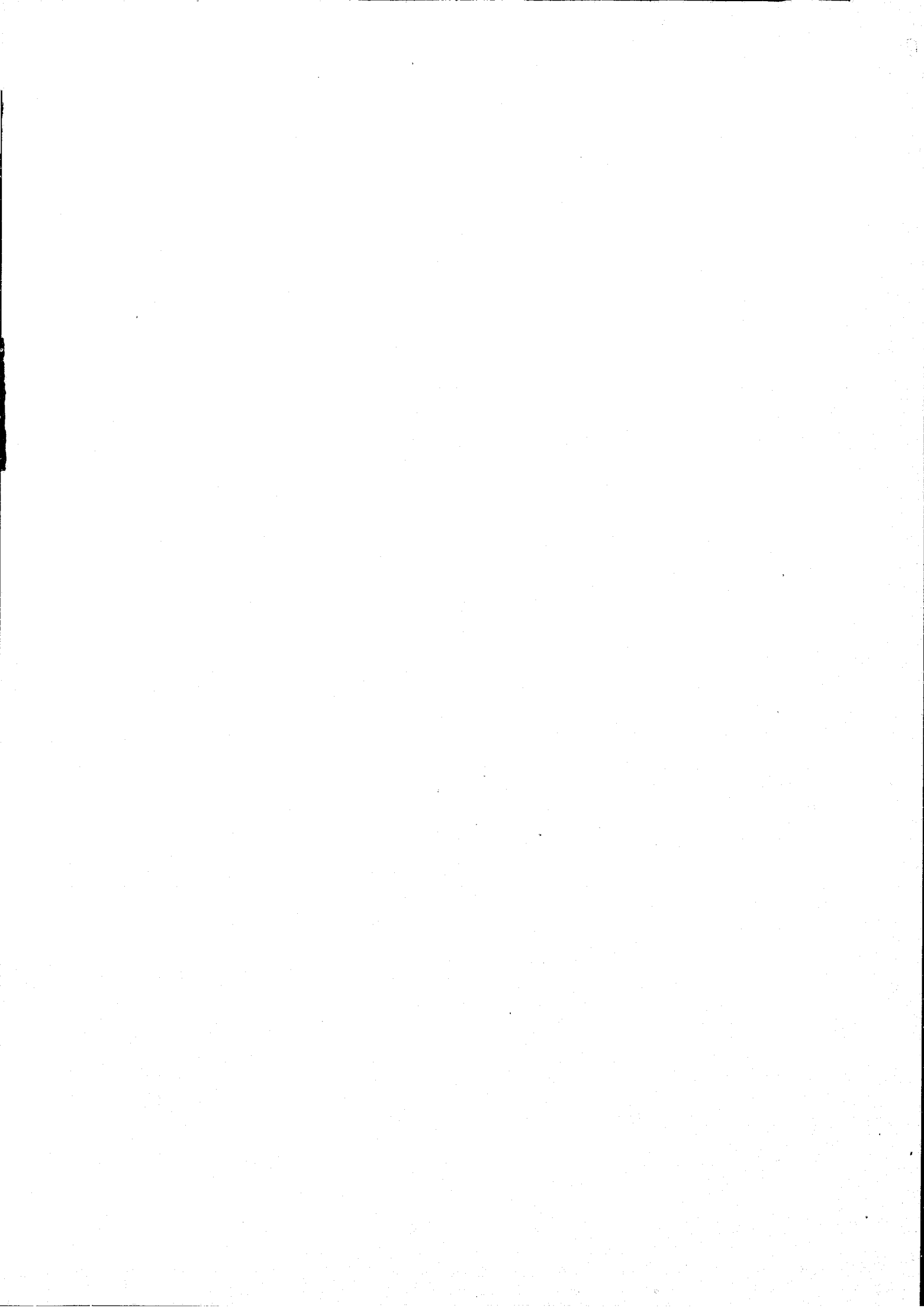
### 2.3

#### Other crimes

In the data collected, there were three cases of extortion or alleged extortion. All three had an official (in two, communal officials, in one, a court official) as the offender. Again, it is doubtful whether three cases are representative of all extortion cases involving an official. During the sixties, for example, there were 40-60 convictions annually for extortion, and it is unknown how many of these involved an official as either the offender or the victim.

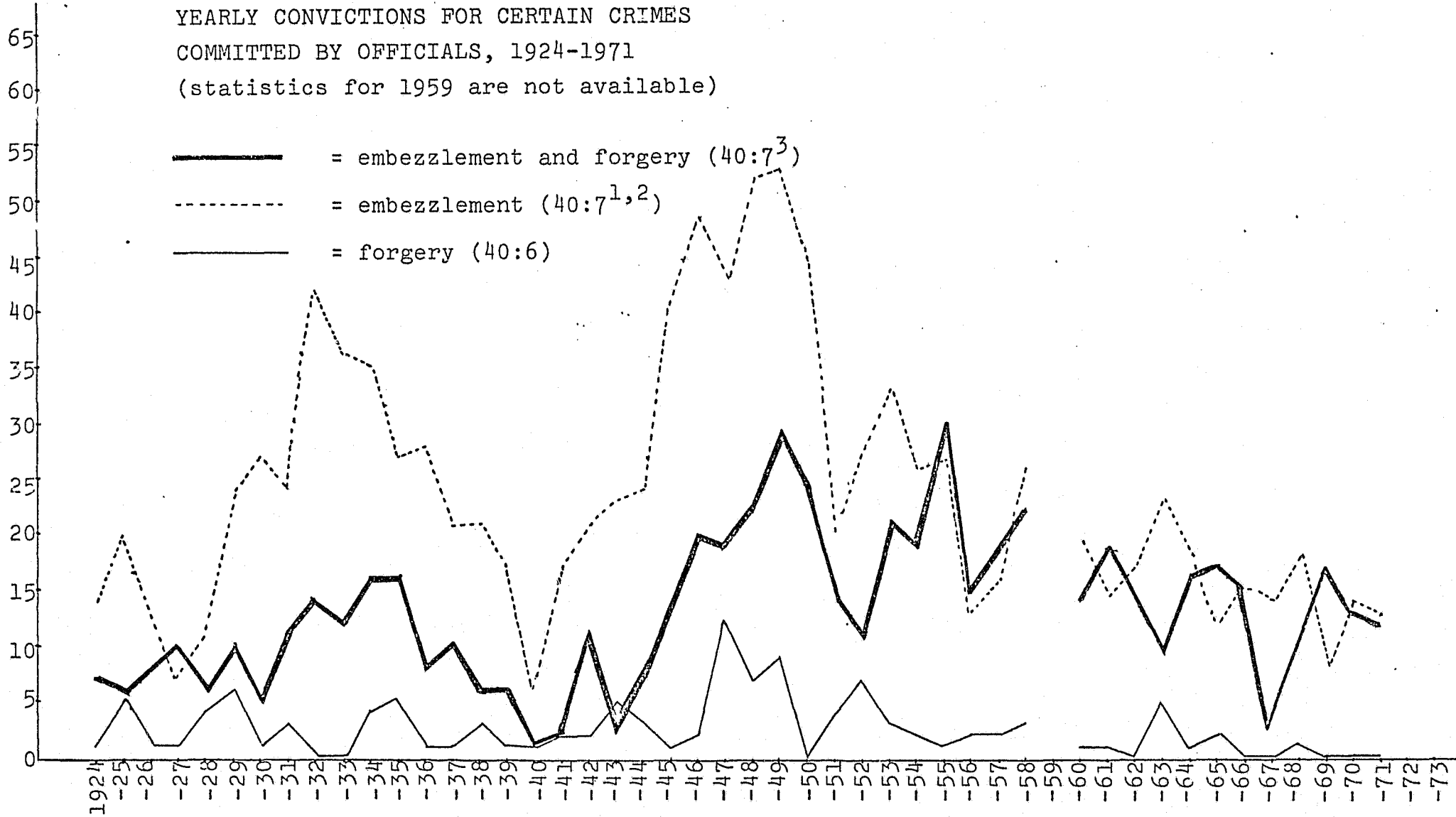
As for the other crimes we have briefly mentioned, such as the crimes of autocorruption, we have not attempted to investigate specific cases. Statistics on the incidence of these crimes are presented in graph form (graph 4) on the following page. We have not included statistics on the buying and selling of votes, as this is extremely rare.

<sup>1</sup>According to this study, of the 52 convictions for active bribery from 1953 to 1957 in the Netherlands, 24 (46%) were second or further convictions for this or other offenses.



GRAPH 4:

YEARLY CONVICTIONS FOR CERTAIN CRIMES  
COMMITTED BY OFFICIALS, 1924-1971  
(statistics for 1959 are not available)



Since Finland became independent (from 1917 up to 1971) there have only been 32 convictions under the entire chapter 15, which deals with voting offenses. Of these, at least those that occurred during the past ten years (1962-1971, 7 cases) were against other articles of this chapter (one involved obstructing another from voting, the other six involved dishonesty in voting). It can be assumed that most, if not all, of the earlier cases also involved other articles than the one concerning the buying and selling of votes.<sup>1</sup>

## 3

## Corruption in a Commune

In the following we shall deal explicitly with a certain, limited portion of government. For this, we have chosen the administrative structure of a commune. This is due to the preliminary indications of the accumulated data - most cases of publicized corruption involve either communal administrators or various law enforcement officials. And of these two categories, the cases involving law enforcement officials tend to be of a uniform nature - all of those we have chronicled in this study concerned active bribery intended to ensure nonfeasance in regards to an already committed offense. Moreover, in these recorded cases the bribe was always one-sided and remained so, in that the passive actor did not seek or accept it.

On the other hand, the cases of corruption on a communal level offer more variety in that they consist of cases of active bribery, passive bribery and even extortion, and they involve nonfeasance, misfeasance and malfeasance.<sup>2</sup>

<sup>1</sup>An interesting, though irrelevant footnote on this subject is the fact that of the 83 individuals who have been accused of violations of chapter 15, 41 or almost half were brought to court in one single year, 1921. Of these, all but one were acquitted.

<sup>2</sup>These terms are explained on p. 4.

## 3.1

## Background on communal administration

As this is not a study of communal administration per se, we shall not go into detail on the organization of government in communes. However, a rough outline of how decisions are made would be necessary to provide a backdrop for the following exposition.

At the beginning of 1973, there were a total of 493 communes in Finland, consisting of 60 cities, 22 towns and 401 rural communes (Statistical Yearbook, p. 3).

All communes by law have a communal council as the main decision-making body, an administrative board as the preparative and the executory body, and a variety of specialized boards, which assist the administrative board in their respective sectors. In addition, a commune may choose to form additional specialized boards, and they may have a variety of appointed officials.<sup>1</sup>

The communal council, then, exercises communal authority in decision-making. It is this body, for example, which has the final say in the following matters:

- the issuing and amending of communal regulations
- the organization of communal activity
- the organization of inter-commune cooperation
- important financial matters and
- the selection of important communal officials.

<sup>1</sup>The following review of communal administration has been taken primarily from Kuuskoski-Hannus, Kunnallislaki ('Communal Law'), Helsinki, 1973, and Kunnallisasiain käsikirja ('The Handbook of Communal Affairs'), Helsinki, 1967.

The council is elected by the voters of the commune for a four-year term. Usually the members are elected along party lines, though sometimes they represent purely local interests. The council meets whenever necessary, but by law it must meet at least three times a year to deal with preordained matters (such as the annual communal budget). A quorum is formed by two-thirds of the total membership, which ranges from 13 to 77, depending on the size of the commune's population. For most decisions a simple majority is sufficient, but for some important matters a qualified majority of two thirds of the given votes is necessary. Council meetings are generally public, unless specifically decreed otherwise for a certain matter. All proposals made to the council must first be prepared by the administrative board before they are finally dealt with, unless the council votes unanimously otherwise.

The administrative board serves as a collegiate executive body. Its most important functions include:

- preparing matters for the deliberation of the council
- executing the decisions of the council (unless this is left to other bodies or officials)
- looking after the day-to-day administration of the commune
- deciding on matters relegated to it by the council
- supervising the legality of council decisions
- deciding on matters transferred to it from the specialized boards, and
- dealing with complaints on the legality of specialized board decisions.

The board, consisting of a chairman and at least five members (at least four members in cities), is elected by the council. The chairman is elected for a four-year term.

If the commune has a manager, he is automatically the chairman of the board. The members are elected for two-year terms. The council meets whenever necessary. More specific



regulations on the functions of the board are to be found in the regulations of each commune.

The specialized boards are set up to look after a certain field in communal administration, and thereby assist the administrative board. Some specialized boards are required by law (such as those for education, taxation, health, social services, roads, and fire prevention), others are outlined in law without being mandatory, while still others are purely voluntary in form as well as establishment. Some communes have established quite a number of these boards. The city of Helsinki, for example, has over 40.

Usually, board members are elected directly by the council. Some communal officials, however, are ex officio members of the board covering their specialization (e.g. the communal doctor and the veterinarian are members of the board of health). Furthermore, in order to further cooperation between the administrative board and the specialized boards, the membership of the latter include at least one representative of the administrative board.

The boards have a large measure of independence. For example, any matters that are relegated to the boards by law cannot be transferred to the administrative board. Otherwise the administrative board can take matters from the specialized boards on the request of the administrative board or its chairman for a final decision.

The appointed officials of the commune are selected by the council. Each commune decides on the details of the hiring, removal from office and powers of these officials, but the position of some are subject to national law (in this category belong the personnel of the health services, and grade school teachers). By law, for example, cities and towns must have a manager, while rural communes have the option of choosing to have one. There are also special

laws or statutes on e.g. communal doctors, midwives, nurses and elementary school officials.

### 3.2

#### Background on the study commune

The commune we have selected for the purposes of closer scrutiny<sup>1</sup>, and to form a backdrop for our discussion of the mechanics and possibility of corruption, is a small rural commune. Sixty percent of the population live by farming, and the rest are evenly distributed between industry and services. Speaking in general terms, the commune is relatively well-to-do, with above-average housing and virtually no unemployment.

To get a more intimate view of the commune, a series of interviews was carried out with the communal executive. The intention was to get an inside view of the mechanics of communal administration in action.

The data thus gathered will form the background for the following. When the cases under discussion have taken place in the study commune, this will be mentioned specifically; otherwise, the cases have taken place in other communes in Finland.

### 3.3

#### The communal council

The council in the study commune consists of seventeen members. Due partially to the small size of the commune, many of the official positions overlap, and for example

<sup>1</sup>At the request of the communal executive, the identity of the commune, which is irrelevant for the purposes of this study, will be anonymous. The selection was based purely on convenience, and no attempt was made to find a commune especially 'notorious' for corruption. Indeed, our study indicated that corruption specifically in this commune was almost non-existent.

four members of the council are also members of the administrative board, and nine council members are on various specialized boards.<sup>1</sup> Only three council members have no other official duties. Of the rest, three hold one other position, six hold two other positions, three council members have three other positions, (including one who is chairman of two specialized boards), and the last council member belongs to six other public bodies.

Key believed that corruption tends to appear only in connection with the tactics of small groups out after matters of immediate, large monetary gain (Key 1958, p.152). By law, most matters that would fall into this category are left, on the commune level, to the authority of the council. For example, it is the council that decides on the purchase and sale of real estate for official purposes, and on the awarding of communal contracts. This has been realized by those legislators responsible for communal legislation, and there are several safeguards to at least lessen the potential effect of undue interest. These include:

- 1) council meetings are generally open to the public, and the records of the meetings are in any case public;<sup>2</sup>
- 2) the council votes as a collegiate body, and several decisions of exceptional importance call for a two-thirds majority;

<sup>1</sup>Heikki Koski has studied the participation of communal citizens in the administration of their commune in the city of Pori. One of his results show that during the 1960's, each 'luottamusmiehes' (a person carrying a position of public trust) averaged around 1,4 positions (Koski, p.96).

<sup>2</sup>According to various studies, few take advantage of this right. In Koski's study, for example, it is noted that only 4 % of adult citizens had attended a council meeting (Koski, p. 91-93). According to the executive of our study commune, visitors to council meetings in the commune average one or two per meeting.

- 3) the administrative board is empowered to set aside a council decision it regards as illegal (of course, not all decisions influenced by corruption are illegal in content);
- 4) the administrative board usually prepares the matter for deliberation; and
- 5) council members that are personally affected by the matter under discussion are not to participate in the decision.

In this last case, the procedure in practice is vacillating. It should be noted that council members, unlike administrative and specialized board members, are not subject to the more comprehensive incapability statutes that originally were applied to judges, but are now applied also to administrative and specialized board members. While these last-mentioned must leave the meeting during discussion on a matter personally affecting them, council members in similar cases are not obliged to depart - they can, in fact, participate in the discussion leading to the final decision (Kuuskoski-Hannus, p. 119). Furthermore, whether or not a matter affects a member personally is something that must be decided separately in each case (ibid).

One field in which this incapability clause comes into play (and where there is a possibility of autocorruption) is in the question of economic transactions between a commune and an individual who is a council member, or an entity which has council members on its governing board or in other important positions.

In one such case that was dealt with by courts, a council decision involved the sale of lumber from communal forest property to, among others, a company in which a council member had shares. The matter was brought before the provincial government, which ruled that the council member

was incapable under the circumstances. However, the government ruled that as there remained a sufficient majority in favour of this decision, the decision was not otherwise illegal. An appeal was made to the Supreme Administrative Court (hereinafter referred to by its Finnish initials, KHO), which upheld the legality of the council decision, but ruled that the council member was capable of participating in the decision (KHO 1942 II 54).<sup>1</sup>

In another case, the chairman of a communal council was also vice-chairman of the board of directors of a local cooperative. As council chairman, he presided over and participated in a decision to sell communal property to the cooperative. The vote was 16 to 11 in favour of the sale. The KHO ultimately upheld the legality of such procedure (KHO 1961 II 639).

But on the other hand, the KHO has ruled against the participation of a council member in decisions somewhat similar to the above. In one such case, the chairman of a communal council was also chairman of the administrative board of an association which wished to sell property to the commune. As council chairman he presided over and participated in a decision to accept the purchase (the vote was 10 - 4). The provincial government, however, ruled that he was incapable under the circumstances. As a consequence, the measure was not supported by the required majority of the council members, and the decision was ruled illegal. The KHO agreed with this ruling (KHO 1963 II 53).

<sup>1</sup>Annals of the Supreme Administrative Court. '1942' refers to the year, 'II' to the section of the yearly report of the proceedings, and '54' to the case number.

Another important sector of council powers where the law on the incapability of members comes into play is that of choosing communal officials. Here, a subtle distinction has been made. A council member is regarded as capable of participating in the selection of appointed representatives (e.g. members of specialized boards) even if he himself is one of the candidates (KHO 1963 II 53),<sup>1</sup> but he may not under like conditions participate in the selection of appointed officials (KHO 1952 II 155).<sup>2</sup>

In an indirect application of this latter ruling, a teacher was removed from office by the local school board. Due to a technicality, the communal council in question was ordered to choose new members to this school board so that the question could be dealt with again. The new council also decided to remove the teacher from office. Now, however, the teacher took the matter up with the provincial government, on the grounds that the council chairman was a personal enemy of his, and as chairman supposedly saw to it that those selected to the school board were unfavourable towards the teacher. The government ruled that the chairman was incapable under the circumstances, but his vote didn't affect the outcome. This was then upheld by the KHO (Viipuri Prov. Government, April 23, 1929, and KHO 1930 I 12).

A third field where this clause carries import is in that of absolving individuals of financial responsibility. Formerly, council members could participate in such decisions even when they themselves were the individuals affected (KHO 1940 II 283), more recently, they are considered incapable (KHO 1958 II 224).

<sup>1</sup>The chairman of the council was a candidate.

<sup>2</sup>Also council members were being considered for the position of communal alcohol store inspector.

In a case that illustrates the problematics of disqualifying a council member from voting on matters affecting himself, and which occurred in the study commune, the director of the board of the local (private) water company was, at the same time, chairman of the communal administrative board and a member of the communal council. Furthermore, two other company board members were also on the council.

The matter involved the transfer of the company from private to communal ownership. First, as director of the company board and as chairman of the administrative board, the individual presided over the preparation of the proposal which went before the council. And then, together with the other two company board members on the council, he participated in the final, affirmative decision.

In the light of decisions of the KHO on similar matters, it could be held that no illegality occurred here. In a 1932 decision, the KHO ruled that a council member who was also on the board of a local (private) electricity company was incapable of participating in the decision by which the commune took over ownership. However, the decision itself was upheld (KHO 1932 II 571). Two years later, in another case, 6 council members (one of whom was council chairman) were members of the governing board of a local (private) electricity company, while six other council members held stock in this company. Here, too, the council decided to take the company under communal ownership. The provincial government decided that these individuals were capable of such action. The KHO, however, ruled that the council chairman was incapable, but the decision itself was upheld (KHO 1934 I 13).

In both of these court cases, the financial condition of the companies was seriously questioned. However, in the case of our study commune's water company, no doubts have

been raised as to any possible loss to the commune in assuming ownership. Furthermore, the company board chairman (and the board members) apparently did not personally benefit from the arrangement.

Often when a case of court-tried or otherwise publicized corruption occurs involving council members, the pertinent official function concerned communal purchases or contracts. In one of the court cases in our data, the owner of a house offered a city manager part of the purchase price as a kickback if the latter would convince the communal council to purchase the house. (Here, of course, the corruption did not directly involve the council, as the decision to purchase the house would have by itself been legal.) (Case no. 11) In another case, which was dealt with by the Parliamentary Law Counsel, a city manager and the chairman of the city council were alleged to have taken a trip abroad at the expense of a contracting firm with local interests. The Law Counsel subsequently ruled that these allegations had no foundation, and no illegality was involved (Case no. 17).

In this second case, the initiator of the complaint undoubtedly realized that both a communal executive and the chairman of a communal council are capable of influencing at least in part which contracting companies are favoured (though the system of bidding for contracts is, of course, usually in force). Had these two officials actually gone on the trip under the circumstances alleged (which in itself would have implied close relations, if not close co-operation between the officials and the company), the officials would have been under a debt of gratitude to the company, a fact that could seriously affect their judgement in subsequent dealings. It is for this reason that the legal interpretation of wrongful compensation includes not only sums of money, but also assorted re-



numeration which is ostensibly given as gifts to the official. This has been called into play in Sweden more often than it has in Finland, as evidenced by court cases. In Sweden, the courts have not made any particular point of precisely stating what the official function question was when wrongful compensation has changed hands. Often indeed, the 'compensation' was an unusually expensive object, given as a gift (e.g. for Christmas or a birthday), and no official function had taken place (Mut- och bestickningsansvaret, p. 38-46 and passim.).<sup>1</sup> Of all the Finnish cases on which data has been accumulated, this last one cited was the only one where the form of the official function was not detailed.

In a third case, an allegation was made to the Chancellor of Justice, and a complaint was given to the Provincial Government in respect to the decision of a communal council to purchase a tract of land from a construction firm, irregardless of the Ministry of the Interior's statement that it will not accept the visualized building plans for the area (Helsingin Sanomat, Nov. 17 and 24, 1974). This case included decisions on several different levels, and by different officials, and it will be dealt with in its entirety later on.

### 3.4

#### The administrative board

The study commune's administrative board consists of a chairman and seven members. As mentioned previously, four of these are also members of the communal council. In

<sup>1</sup>Case 6 in this committee report, for example, involved an official who received, for his 50th birthday, a 500 crown present card (about \$100) and a 300-crown (about \$60) Chinese vase. The court, in convicting him of passive bribery, emphasised that Christmas and birthday gifts in themselves were quite proper, even when given by, for example, a company to a state official with control over purchases. These gifts, however, should not be overly large.

line with communal law, the board members also sit on various specialized boards (for a brief, one-year term), so that each specialized board has at least one administrative board member.

The administrative board is in a key position in the commune, due to its executory and preparatory role. The meetings of the board are generally closed to the public, though the council chairman and vice-chairman have the right to be present. The minutes of the meetings, however, are public.

Due to the importance of communal council decisions, it is possible that corruption will be indirectly attempted through the administrative board on the council. This would be evidenced by a proposal favourable to the active actor being prepared by the board, and then presented to the council (a tactic somewhat similar to the kick-back scheme outlined above, involving a city manager, a property owner, and the council).

In the study commune, a case along these lines occurred, revolving around the commune building ordinance. According to the previous ordinance, from 1970, a tract in the middle of the parish village was zoned as non-residential, and not to be developed. One member of the commune who intended to build a house for himself on this tract arranged for the drawing up of a bill of sale between himself and the commune, represented by the chairman of the administrative board. He then turned to his father, who was also on the administrative board, in order to have this bill of sale approved by the board - even though the tract should not have been for sale. This his father and the chairman of the board did propose. Unhappily for the intended buyer, the administrative council noticed the irregularity and voted 6 - 1 (with the father abstaining) to reject the

the bill of sale. Ultimately, the tract was turned into a public park.

Here we have an interesting mixture of three matters- misfeasance, nepotism, and a variety of 'honest graft'.

The misfeasance, i.e. the use of official functions for "purposes alien to the authorization and the duties of the official" (Merikoski 1964, p. 36) is manifested in the intent of the member of the board to use his official position to directly benefit a relative. By law, the strict incapacity clauses governing judges are to be applied where possible also to administrative board and specialized board chairmen and members (Communal Law paragraph 24, clause 1). In practice, this means that such a board member may not even be present at a meeting when a matter involving 'exceptional benefit or harm' to certain close relatives (such as parents, children, siblings and spouse) is under discussion (Rules of the Court, chapter 13). This is clearly applicable in this case, as the father realized when the matter came up for a decision - he left the room. But even so, the matter itself was of questionable validity - the bill of sale would, in effect, transfer into private ownership land that was intended solely for public use. The officials involved in the presentation of the proposal would be open for a charge based on Penal Code chapter 40, paragraph 21 - 'error in the performance of official duties'. However, no wrongful compensation evidently changed hand, so charges of bribery would presumably not enter the question.

Here we also see evidence of the effect of social and blood (nepotism) relations in decision-making, and, possibly even more importantly, the way in which they can be used with little legal restraint (other than the above-mentioned incapacity clause). In this particular case, the fact that

the active and the passive actor were close relatives would not lead to legal sanctions, as the incapacity clause itself was not violated. No charges at all could seemingly be raised against the petitioner (except the very hazy one of 'incitement of misperformance of duties'). Should there have been no close relations at all between the two (as defined by the Rules of the Court), even the incapacity clause would be inapplicable.

In this latter case, of course, one could theorize that there is no need for any special legal remedies against such behaviour. Furthermore, there are doubtless great difficulties inherent in formulating statutes prohibiting officials from participation in decisions involving 'great benefit or harm' to an acquaintance - surely one could not expect an official to disqualify himself in all such matters, even though this would doubtless facilitate impartiality. For example, we have already mentioned that in our study commune, many officials are in constant contact with each other, and naturally also with many non-officials. To expect that these officials under such conditions would be unacquainted with all of those bringing matters before them would seem to be highly naive.

'Honest graft', according to its foremost proponent, George Washington Plunkitt, is money made as a result of political power, without doing anything (ostensibly) illegal. Plunkitt used as his example the fact that he knew that his city was to purchase an area for a park. He purchased it in advance, and then sold it to the city for a profit.<sup>1</sup> In the case of our study commune, the individual who intended to purchase the plot is also 'speculating' with its value

<sup>1</sup>George Washington Plunkitt of the turn-of-the-century Tammany 'machine' in New York. William Safire, *The New Language of Politics*, New York, 1972, key word 'honest graft', and Task Force Report, p. 69.

in a similar manner - the plot presumably would be of only minor value to him if he could not build a house on it, and he doubtless expected that if he waited until after the area had been re-zoned as residential, he would either have to pay more for the same plot, or perhaps someone else would have been able to purchase it before he had time to.

In dealing with the communal council, we mentioned the study commune case where the chairman of the administrative board presided over meetings where the take-over of the local water company was discussed. The chairman was also director of the water company board. As chairman of the administrative board, was he incapable of participating in the deciding of this matter?

In the light of KHO decisions, the answer would probably be that he was not incapable. In one very similar case, a communal executive (and thus chairman of the administrative board) was also chairman of the board of the local savings bank. The board dealt with the matter of entrusting the communal finances to this bank. The board approved such a measure, and the vote was 7 to 6. In dealing with a complaint centred on the alleged incapacity of the board chairman, the KHO ruled that the decision was legal, as there was no 'great benefit or harm' to him in the matter (KHO 1968 II 48).

### 3.5

#### The specialized boards

The study commune has a total of eleven specialized boards, including boards for building, agriculture and industry. Nine council members are also specialized board members (one is a member of two boards, and another is chairman of two boards), and each specialized board includes a representative of the administrative board. Board meetings are closed.

In one interesting case from outside the commune a specialized board member was convicted of passive bribery. An owner of property wanted to arrange some property dealings with the commune. One member of the appropriate specialized board knew when the matter would be taken up by the board, and he insinuated to the property owner that he could arrange matters so that two board members who would be opposed to the deal would be away on a trip at the crucial time. The member further informed the owner that it would cost 3000 - 4000 marks (\$750 - \$1000) to pay for the trips of these members. In addition, there would be restaurant bills to pay. He later claimed that he had paid for these arrangements himself, and he requested that the property owner reimburse him. But as Shapley said, "A man who's damned fool enough to call witnesses in to see him take a bribe deserves the extreme penalty of the law." (Key 1936, p. 49). Several crucial conversations were held in front of witnesses. The member was sentenced to prison for passive bribery, and 3000 marks (\$750) in bribes were confiscated by the government (Case no. 22).

This transaction was regarded by the Court as passive bribery. It is distinguished by the fact that the board member committed an illegal act by seeing to it that two other board members were not present at a crucial meetings (this would fall under article 20 of chapter 40 of the Penal Code - an official in the performance of his duties purposefully breaks the law in order to benefit himself or another - punishable by suspension from duties). It was the fact that the board member tried to collect money for his act that led to the harsher conviction for passive bribery - even though ostensibly the offender would not personally profit.

In another case, the head of a fire prevention board and the communal fire chief were empowered by the commune to purchase an amount of fire hose. In the negotiations for this purchase with the managing director of a company supplying the article, the director offered to sell the hose at the reduced price normally granted communes. However, he further said that he would register the purchase price as actually having been the normal market price for the hose. The intention was that the two officials would collect the difference (46900 marks or \$300) as a kick-back. Both the officials agreed, and the transaction was made (Case no. 12).

Here we have a combination of misfeasance and kick-backs. The misfeasance is evident in the fact that the official function was carried out for purposes alien to the duties of the two officials. Though the commune finally did get the fire hose, it would have had to pay a higher price than normally, while on the other hand, the two officials based their decision to purchase specifically from this company not so much on the economic and practical value of the purchase to the commune, but on the financial reward to themselves.

The kick-back, in turn, appears in the fact that the 'wrongful compensation' was paid not as such, but as part of the nominal purchase price, i.e. as part of a nominally legal financial transaction.

### 3.6

#### The appointed officials

Various appointed commune officials have powers that would interest individuals and judicial entities willing to resort to corrupt means. At the same time, those holding these positions may try to benefit from them.

In the collected data, two of the extortion cases involve communal officials. One involved the housing inspector of a communal room rental board, and the other involved two communal building contractors.

In the first case, the power of the inspector was heightened by the fact that Finland was in the reconstruction period, when there was a severe housing shortage especially in the larger cities. Consequently, several individuals were desperate enough to pay bribes to get housing. The inspector realized this, and accepted or extorted bribes in the following manner: he demanded 24 5000 marks (\$245) for obtaining, through the room rental board, a new apartment; he demanded 10 000 (\$100) from another for the same function; he demanded 25 000 (\$250) from a third for the same function (but received 10 000 or \$100); he took 67 000 (\$670) from a fourth in return for seeing to it that this person was able to change apartments; and he took 10 000 (\$100) for obtaining permission for a fifth person to live in the area.

The referendary of the room rental board was convicted for assistance in the third offense listed (KHO 1948 II 423).

In another case, which bears a striking resemblance to the notorious kick-back cases chronicled in e.g. parts of the Eastern United States, two communal building contractors were alleged to have extorted fees from contractors desiring contracts from the commune. The local District Court found them guilty, but the Court of Appeals returned the decision to the first court, due to a technicality. The District Court then set the charges aside (Case no. 27).



In a third case, involving an official entrusted with powers highly regarded by some citizens, a communal alcohol store inspector was openly accused of being bribable, by, among others, the local press. He reputedly threatened to see that the alcohol purchase permits of the reporters of the local paper were revoked. In this, however, he did not succeed (Jermo p. 292 - 293).

The position of the communal manager (and, to a lesser degree, that of the communal secretary) can be quite influential (cf. cases 11 and 17). The manager as chairman of the administrative board often has a de facto effect on board decisions, and also an indirect decision over council decisions, as he embodies the authority of the commune in one person.

The communal executive of our study commune believes that it is not at all rare in Finland that those in executive positions are given wrongful compensation in the form of gifts (such as expensive birthday or Christmas gifts, or free trips), often with the unvoiced implication that the executive intervene on behalf of the giver in e.g. administrative board meetings.

In one instance a local merchant provided the communal executive several benefits at his store (the executive only took advantage of those also provided to others). At the same time, it was this merchant who delivered oil for the use of the commune.

In such situations, we are face-to-face with the problem of gifts and socially acceptable custom as 'wrongful compensation'. Though matters may not have gone as far as some scandalous exposés of the 'wining and dining' of decision-makers would seem to suggest, it is quite apparent that the practice exists on several levels and in a variety

of forms. It is doubtless difficult to draw a line between corrupt intentions and pure politeness, good-will or courtesy (Kekomäki p. 348).<sup>1</sup> Usually if the purpose of the giver of the gift is only to maintain friendly relations with the official, it will not be considered bribery by Finnish (or Swedish) courts. In some cases, however, the position of both the 'winner and diner' and the official being treated is such that there is reasonable cause to believe that it is the intention of the active party to affect a decision on matters pertaining to his interests, and the official can be supposed to be aware of this. According to Swedish practice, as previously mentioned, unusually expensive gifts etc. are sufficient grounds for a conviction for bribery.

### 3.7

#### Commune administration as a unit

So far we have dealt with each communal administrative unit separately. The administrative process should, however, be treated also as a whole. In some cases, it is sufficient for the purposes of the active actor to corrupt only one small sector, as when a housing inspector is bribed so that he will find the active actor a house, or when commune representatives are offered a kick-back so that they will do business with the active actor.

But when it is a question of larger undertakings which are so important that more than one official will either deal with the matter or be interested in it, matters become far more complex. In such cases one must look at the administrative process as a whole.

<sup>1</sup>For a half-humorous autobiographical account of the use of such tactics in the U.S., see the Congressional Quarterly's Guide to the Congress of the United States, p. 557.

To illustrate this, we shall take as an example the possible chain of events when there is lucrative building property in a commune, something that can definitely be a matter of great, immediate monetary interest to parties, and thus, according to Key, a possible cause of corruption.

Let us begin by supposing that there is a 100 hectare tract of undeveloped land in the commune that is in private ownership. The original owner would like to sell, and he offers it to the commune, and approaches the land acquisition board. The board, after informal discussions with the administrative board and several informal dinners with the owner, decides that the price is too high and allows the matter to drop.

Then, a construction firm that has been active in the area (and which has been able to cultivate friendships with local residents, especially some officials) steps in and purchases the land. Naturally, it is interested in seeing the land developed, but this means that it must first be zoned as residential by the commune. This decision must ultimately be made by the communal council.

There are several planning bodies that have an interest in the development of communes in general, or this commune in particular. Different bodies have members with differing opinions of how things should be done, so it came as no surprise when the different planning bodies gave opposing opinions on the advisability of developing the area. Of the three opinions presented, one was favourable, while two others went into detail in basing their negative decision.

At this stage, one of the influential officials would naturally be the communal planning architect, should there be one. In our case, let us suppose there is, and

that he decides on his own that the favourable opinion is more in keeping with the facts and the interests of the commune as he sees it. He then presents his findings to the communal planning board, which deals with the matter and is also favourable.

From the specialized board, the matter is transferred to the administrative board, which after a vote decides to present the favourable proposal on the zoning to the communal council.

After a brief and desultory debate, the council approves the decision as presented. The matter is passed back to the communal planning board so that the communal experts on zoning can start in on their work. The board then delegates the work to zoning officials, who operate under the guidance of the communal planning architect.

On a regional level, the Ministry of the Interior has been interested in these events, as it is the Ministry's responsibility to see to it that such matters are in keeping with wider interests. According to a report by a blue-ribbon team of experts, shall we say, the tract of land is not suited for residential development. The Ministry informally made this report known to the members of the communal planning board.

The board, with their local knowledge and interests, remains under the conviction that the zoning is in keeping with the best interests of the commune, but even so, they decide to indefinitely postpone the actual zoning.

And then, quite surprisingly, a proposal is made before the administrative board to purchase the tract from the construction firm, for three times the sum that this firm originally paid for the land. Without referring to the

opinions of the local experts, the matter is quickly voted on and approved. The matter goes then to the communal council for the final decision. Again, in quick succession, the purchase is debated and voted on. Approval, let us suppose, is given by the required majority.<sup>1</sup>

Under such circumstances, the party that stands to make a profit or incur a loss would be the construction firm that owns the property. If the zoning is not approved by the commune, the firm, in effect, owns expensive property that it can not develop. Surely one could not expect this firm, then, to passively wait for the final decision. It will, naturally, utilize all the legal channels that are available - it will furnish its own experts, for example, who will emphasise the benefits that development will bring the commune, and it will cooperate as much as possible with the other officials.

It will also presumably open a public relations campaign, in order to build up a stock of goodwill that will possibly come in handy later on. In addition to the official contacts with the communal decision-makers, planners and other involved officials, it may utilize informal contacts. Those members of the firm who are personally acquainted with these officials will now and then take up the matter in a positive light. All of this, of course, is undoubtedly legal and, from the stand-point of the firm, quite

<sup>1</sup>This succession of events is based on recent happenings that have taken place within one commune in Finland. According to report, criminal charges may be raised against some of those involved. The following conjectures are not necessarily in accordance with what actually happened in this case, they are just possibilities. See Helsingin Sanomat, November 17 and December 8, 1974.

understandable and natural. But what if the firm feels that the decision is in doubt, that the commune may decide against them and cause them a loss that would seriously harm the firm?

In such circumstances, the public relations campaign may be stepped up. After the formal negotiations, the representatives of the firm may invite the officials out for informal negotiations over dinner, drinks or a sauna. Once the officials are in a receptive mood, the firm emphasises the good it will do the commune if the decision is favourable. Small souvenirs of the evening may be passed out, so that the officials will have a more permanent reminder of the firm. At Christmas time, birthdays or other special occasions. the firm may see fit to send another reminder of their presence - calendars, flowers, perhaps, or maybe something more expensive. The firm may invite several officials to see some property in another area that the firm has developed - and the trip will no doubt be made as pleasant as possible. The firm may even pick up the bill for trips abroad to sites that the firm has been involved in.

With the time for the decision-making coming ever closer, the firm may try to ensure even more support for its side. Some officials that have been favourable to the firm may even be promised a position in the firm later on. More channels for informal contacts may be explored - it may be uncovered, for example, that both a key official and a member of the firm are both representatives of a fraternal organization, or another official and a firm member have friends in common, or have gone to school together. These contacts will then be exploited. A third company worker has a friend on a newspaper, who promises to see to it that pleasing reports on certain commune officials, and on the firm are published.

And finally, the firm may resort to outright bribes of money, or even threats of unwanted action, to get the final key officials on their side. When the time for the decisions comes around, the firm is able to make a profit.

4

#### The Effects Of Corruption

In the hypothetical case we have just dealt with, the firm was able to sell land to the commune that, according to top-level expert opinions, should not be used for residential purposes, and thus could not be profitable to the commune. In another case, fire hose was sold at an inflated price to a commune. In another, a commune was offered a house, and the chairman of the administrative board was promised a kick-back if the house was sold.

Put in these terms, the immediate effect of corruption is obvious. The communes in question stand to lose economically.

In other cases, police officers have been offered money so that they would release offenders or drop investigations. A soldier was offered cigarettes if he would simply relinquish the seal of the unit for a few minutes. A specialized board member provided two other members with a free vacation during the time of a crucial vote.

In such cases, the immediate effect of corruption is not so self-evident. What is wrong with offering policemen additional money which they no doubt can put to good use? Why shouldn't a seal be loaned for a brief period? Can't board members take a hard-earned vacation?

Researchers have attributed a variety of negative effects to corruption. One of the earliest writers on the subject, Lincoln Steffans, emphasized the negative moral results:

the sum result of corruption, and machine government in particular, was a perversion of the legal, rational order, and it opened up a potential for tyranny (Wilson, p. 212).

Later writers have tended to speak less of the moral results and more of the social, administrative, political and economic consequences.<sup>1</sup>

Among the administrative and political dysfunctions of corruption have been mentioned administrative inefficiency and negligence, a curtailment of freedom of action for the immediate parties, and restrictions in government policy due to this curtailment of freedom of action. Widespread corruption could also lead to political instability (Scott, p. 9).

In a theory which has not been universally accepted, it has been suggested that corruption may at times have positive administrative effects by lending discretion and flexibility to an otherwise rigid system.

"Although damaging ... it is clearly not a subversive or revolutionary phenomenon. It is, rather, an emollient, softening and reducing conflict. At a high level it throws a bridge between those who hold political power and those who control wealth." (Friedrich, p. 196)

One of the more often mentioned social effects of corruption is that it acts as a break on progress. Gunnar Myrdal, for example, believes that "corrupt practices are highly detrimental to the value premises of modernization

<sup>1</sup>For more detailed investigations of the effects of corruption, see Friedrich, p. 148, Alatas, p. 22 - 23; Task Force Report, p. 71 - 74; and Heidenheimer, p. 50 - 53, 480 - 485, 514 - 516 and 539.



ideals." (Heidenheimer, p. 40). Scott further believes that corruption contains violence in part and diverts it through less destructive channels, by providing wealthy elites with a channel of influence - thus often resulting in conservatism (Scott, p. 35).<sup>1</sup>

Other writers believe that corruption undermines confidence in and respect for the government, and could result in wide-spread alienation (Friedrich p. 148 and Alatas p. 23).

Corruption has immediate social effects on the part of the immediate actors. Successful transactions usually lead to gains in power, respect, well-being, affection, enlightenment, skill or support, as already mentioned. Revealed transactions, on the other hand, usually lead to sanctions, both legal and social.

Many researchers have placed their emphasis on the economic results of corruption. It is often pointed out that when wide-spread, it may lead to a discouragement of new enterprise, waste of public resources, damage to legally functioning businesses, and a higher cost of products, which is ultimately passed on to the consumer (Ibid. and Task Force Report p. 73). On the other hand, positive results have also been cited. According to the Task Force Report on corruption referred to previously, many legal organizations also participated in and benefitted from illegal gambling, which was condoned by the corrupt administration of their study city. Other legal organizations benefitted directly or indirectly - usually service occupations such as hotels and restaurants which served those brought in by the illegal activities.

<sup>1</sup>See also Scott, Corruption, Machine Politics and Political Change, American Political Science Review December 1969, p. 1154.

Friedrich would, finally, add two more positive economic functions to the list. He believes that corruption overcomes the indifference and hostility of governments (especially in underdeveloped countries) to economic progress by making it attractive for them in the form of immediate gains - bribes. Also, investors are attracted to such systems as they may believe that if they run across any difficulties, a small, strategic bribe will smooth things over (Friedrich p. 196 and Task Force Report p. 73).

But all of these positive effects, in themselves open to question, presuppose either an otherwise undeveloped administrative system, or else wide-spread corruption. Neither of these conditions would fit Finland. Otherwise, the negative aspects of corruption far outnumber and overpower the slight positive results. Corruption can not, for moral, economic, administrative, political or social reasons, be excused in Finland.

## 5

### Barriers to Corruption

If corruption is not to be condoned, how can its effects be minimized, or how can it itself be eradicated? In the following, we shall deal with possible barriers to corruption in the following order: a) those directed at opportunity; b) those directed at the motivation behind the offense; and c) those involving the definition of the offense (Anttila and Törnudd, p. 131 - 149).

#### 5.1

##### Opportunity

We can discern three different levels in the question of the opportunity of corruption. First, the actor must have an opportunity of communicating his corrupt intent to the

second actor, whether this second actor is an official or not. Second, when an official is approached, there must be a chance that he will accept the offer - or at least the other actor should believe so. This we shall term the opportunity of acceptance. And lastly, there must be an opportunity (in the eyes of the actors) of the transaction not being disclosed, and the actors subjected to sanctions.

At least on the surface, there does not seem to be any practical means of inhibiting communication of corrupt intention to a second actor. Officials and citizens in the course of their functions are often in contact, whether orally or through written means. Official communication can be 'cleansed' of the possibility of corruption to some extent by relying on extremely formal channels of communication, e.g. strictly prescribed applications and documents. But such procedure would lead to rigid bureaucracy, with all its inherent drawbacks. Furthermore, even with rigid bureaucracy, those with corrupt intentions are usually still able to find open channels of communication.

More can be done, on the other hand, with the second level of opportunity, that dealing with the expected reaction of the second actor to the offer. This reaction, in its turn, can be estimated on the basis of opportunities, motives and the conception the second actor has of the definition of offense. Again, we shall leave the matter of motives and definitions until later, and deal now with opportunity.

On the part of the non-official actor, his opportunities to engage in corruption are limited almost only by his means of communication, as we implied above. After the corrupt intent has been made known, there are many ways he can e.g. give wrongful compensation to the official. These compensation channels can be lessened by demanding that the official, for example, report all such forms of compensation which he has received or been offered to his superior.

From the stand-point of the official, there are several structural barriers that may prove effective in lessening the opportunity of corruption. One of the more effective barriers is the interdependence of officials and the use of collegiate bodies for decision-making. The idea behind this is that one official who is entirely on his own in making a decision may yield to corrupt influence, but if he must make the decision with other officials or in the presence of third parties in general, the potential for corruption is diminished. The obvious drawback to collegiate decision-making, on the other hand, is the cumbersomeness of using more than one official for even the most minor decisions. Even so, if the only contact the other actor has with the official is a formal one in the official's place of work, for example, the mere presence of other officials can be an inhibiting factor.

A second possible structural barrier would be to limit the extent of free judgement officials have over matters. Thus, for example, the granting of a construction permit would be completely dependant on the existence of objective factors. Often, however, it has proven necessary to allow officials leeway in applying laws (see Merikoski 1968, *passim*).

The final level of opportunity, that of disclosure, can in turn be divided in two. Part is linked with disclosure at the moment of the transaction, and is dependent on the process of decision-making as we have briefly dealt with it above. The other part is concerned with disclosure after the event, and we shall deal with that here. Such later disclosure is possible only if the effects of the transaction (or the official function caused by the transaction) linger. For example, if a motorist caught speeding gives the policeman a bribe to ignore the offense and no one else observes this, there are few lingering effects (unless the motorist boasts about it to friends, or the policeman's

wife asks him where he got the extra money). On the other hand, if a merchant agrees to sell fire hose to a communal representative at a higher price than normal, there are more lingering effects - e.g. the merchant's and the commune's accounts show the purchase price (unless this is illegally altered), and the fire hose exists, which may cause someone to inquire about the purchase price. Furthermore, it is possible that the communal representative had to have another official approve the purchase (see case 12 in the appendix).

Such control, then, can deal with monetary transactions and take the form of numerical accounts, or it can involve the substance of decisions, and possibly require that a superior official either approve the decision or at least be knowledgeable of it. In both cases, of course, there is added paper-work, which can be regarded as a drawback especially when the decisions or sums involved are trivial.

This control can also come from outside the normal administrative structure by utilizing e.g. an ombudsman or journalists. One of the principal ideas behind the ombudsman institution (which to some extent can be compared with the right of Parliament or Congress members to conduct investigations) is that there should be someone with authority to investigate matters, who should be impartial, and who should be available to 'ordinary' citizens dissatisfied with what may seem to them to be cumbersome bureaucracy. However, the ombudsman should not be regarded as the 'Mr. Clean', the ultimate solution to injustice in government, though his role in preventing or punishing corruption may be quite noticeable (such as in cases no. 17, 24 and 25 in the appendix).

One long-time barrier to the unhampered spread of corruption has been and still is the use of what has been termed the 'muckraking' tactics of both journalists and members of

the political (and other) opposition (Wilson, *passim*, and Safire, 403 -404). This tactic is especially effective against passive bribery, i.e. when the corruption is due to the actions of the official. By focusing attention on uncovered actions, these reports can cause the appropriate actions on the part of the judiciary and administrative control system.

## 5.2

### Motivation

Roughly speaking, criminal motivation is affected by 1) internal norms, 2) unofficial, social norms, and 3) official (penal) norms (Anttila and Törnudd, p. 137 - 138). The internal norms are determined by a long complex process, and any attempt to deter corruption by concentrating on these would have to be a long-range project involving education and training. An obvious way of cutting down on the incidence of corruption would be to select those with a high internalized motivation towards honesty and then giving them additional training. Kekomäki, for one, emphasized that the rise in the number of cases of passive bribery during and after the war was partly due to an influx of unfit people into official positions (Kekomäki, p. 331). Improved personnel and leadership selection and training could prevent a recurrence on a similar scale. One specific means of ensuring that only 'fit' people are groomed for official and leadership positions is the use of the merit system of selection and advancement (as it is used in e.g. Finland). Under this system, applicants for positions are not judged on the basis of their party allegiance and activity, as in the patronage system, but on the basis of more objective grounds, such as adequate ability and skill (see e.g. Merikoski, Hallinnon politisoituminen, *passim*, Hoogenblom, *passim*, and Lundquist, *passim*).

Internalized motivation also comes into play when one speaks of the 'temptation' caused by corruption. One method of cutting down the incidence of corruption that has often been suggested is a substantial increase in salary, especially to those who are both underpaid and in constant contact with the public (as, in some countries, police officers). However, even if salaries were raised, the active actor may keep the temptation relative by increasing the sum of bribe. Increased salaries by themselves are no solution to corruption, though they may play an important part in lessening the 'need' for e.g. passive bribery and autocorruption. An option to increasing salaries is the granting of legitimate rewards for proper behaviour (Murphy). This, of course, can present large problems of application - e.g. what proper behaviour should be rewarded, and by how much.

Internalized norms can be supplemented by symbolic acts (such as oaths of office) and pronouncements of what is 'right' or 'moral' behaviour (which can be written up in the form of e.g. codes of ethics).

The internal motivation for corruption can be lessened by providing alternative channels of influence to potential corrupters. The prerequisite in such cases, of course, is that the active actor has a legitimate request that can be fulfilled through proper channels. None of the Finnish cases noted in this study, however, involved a legitimate request that could not have been dealt with through the existing channels.

Unofficial norms are evident in the attitude of other people to corrupt transactions. Should they condone it, and not report it for prosecution, it is more likely that it will be attempted than if they would be hostile to e.g. bribery. Alatas, for one, believes that corruption generally is first

evidenced in the upper circle of society, from where it later spreads by force of example to other levels (Alatas, p. 31 - 35). Even if the spread of corruption does not proceed in this order, there is little doubt that examples do play a part, whether these are taken from superiors, colleagues or e.g. the daily press. When there exists an atmosphere of "anything goes", when officials defend their own corrupt behaviour with the nonchalant phrase "everyone is doing it" (International Herald Tribune, Jan. 24, 1974 and Time, Dec. 31, 1973), it is obviously time to clear the air about what is and what is not acceptable.

One of the goals of muckraking has been to combat what has often been seen as similar public indifference to corruption, when the public shrugs off corruption as an inherent part of politics and administration. One of the drawbacks of corruption which we have mentioned is that it lessens public confidence in their administration and government, leading to cynicism or alienation, or both. This public indifference can also be manifested in more attempts at corruption by those members of the public who are in contact with officials.

Official norms act as the authoritative proclaimer of what behaviour is officially sanctioned and what is not. They are especially effective when they operate in the same direction as internal and unofficial norms, in other words when all three are directed against the same type of behaviour (Anttila and Törnudd, 138). The official norms governing corruption are the Penal Code and other legal decrees we have mentioned, and other such decrees covering related behaviour. At this stage we can ask whether these official decrees do indeed cover that behaviour which is termed 'corrupt'.

The situation in regard to autocorruption is evidently well dealt with in the Penal Code, in that such crimes as forgery



and embezzlement by officials are specifically criminalized, and in general all activity through which an official profits in an unauthorized (and unacceptable) way are outlawed by Chapter 40. It is the courts that ultimately decide whether a form of behaviour that isn't specifically mentioned in this chapter is 'illegal' in the sense used in paragraph 20.

As for two-actor corruption, the acts of bribery and extortion, as we have noted, are criminalized. A recent Swedish Parliamentary committee dealt with the question of the extent of the coverage of the bribery statutes in the Swedish Penal Code, which is very similar to the Finnish statutes on the subject. In the committee's reasoning, the committee members dealt with quite a few court cases that have been tried in Sweden, and in connection with these, asked three questions:

- 1) Did the transaction take place for an official function?
- 2) Was the compensation wrongful?
- 3) Was the subjective clause filled, i.e. was there intent to influence by bribery? (Mut- och bestickningsansvar, p. 32).

Comparisons between Swedish and Finnish court practice are highly relevant, given the similarity in the statutes. Thus, these same three questions can be asked of Finnish cases, and at the same time one can ask to what extent bribery in general is criminalized in certain respects.

As regards the first question, "Did the transaction take place for an official function?", Finnish practice, too, demands that there must be such a connection for the transaction to be regarded as bribery (Kekomäki, 348. He also emphasises, however, that the function need not be specified in advance. Ibid., p. 351).

The cases cited in the Swedish committee report show that Swedish courts have been satisfied with the requirement that the active actor wanted to maintain friendly relations with an official specifically because of the official's position, and not to any social purpose per se (Committee report, examples 5 - 7, 11, 13, 17, 18, 20, 21, 25, 29 and 32 - 34, on. p. 34 on). In a like manner, officials have been convicted for requesting compensation - not for an official function, but for ostensibly social purposes, which were not in keeping with the actual social relationship between the two. For example, an official may request an unusually large loan from an individual, who will not wish to lose the 'friendship' of the official with whom he has official dealings (Committee report, same examples, plus examples 4, 14 and 30).

The second question was, "Was the compensation wrongful?" Here the committee emphasises that the definition of 'wrongful' is difficult, and may vary from time to time and place to place. According to a Swedish Parliamentary committee report from 1944, some kind of tipping system on a minor scale is regarded as acceptable (quoted in the latest Committee report, p. 37). A later Parliamentary committee report, dealing with unfair business practices, noted that in the official sector much that had previously been regarded as acceptable was currently held to be wrongful (ibid.).

In Finnish cases, as we have seen so far, the compensation is usually a self-evident pile of money. The Swedish cases cited in the report also involved definite objects as the compensation, and non-substantive compensation (such as promotions, honorary decorations and recommendations) are not mentioned as having led to a conviction for bribery. Among the bribes that are mentioned as having resulted in convictions in Sweden are financial assistance (Committee

report examples 4, 5 and 24 - 34), gifts (6, 7, 17 and 18), reductions (13 and 14), the picking up of hotel and restaurant bills (19 - 23), free trips (23 and 34) and tips (35).

The last question, that of the substantive clause, has also been mentioned as a prerequisite for bribery under Finnish law (Kekomäki 359). In the Swedish report, it was emphasized that the active and passive actors' own opinion of what is wrongful compensation and what is not, is of no critical importance. (Committee report, p. 46).

The Swedish report goes on to suggest changes in the various Swedish statutes dealing with bribery. The major change proposed deals not with the definition of the offense, but with the sphere of responsibility - it is suggested that the Swedish passive bribery paragraph (Swedish Penal Code Chapter 20, paragraph 2) be rewritten to include not only officials, but also in general all of those exercising official authority, those in a position of trust in legal or economic matters, and all employees in their economic sector (Committee report, p. 8 - 9).

This is a major change in the sphere of juridical responsibility which carries with it notable problems of application. Furthermore, new statutes that are apparently unmotivated may reflect needless suspicion, and thus cause discontent (Committee report, p. 150). To extend the sphere of Finnish laws on bribery to include e.g. trusteeships would first call for an appraisal of whether such positions are misused or not.

On the part of bribery of 'ordinary' officials, the Swedish report does not propose other than minor revisions, nor does the Finnish situation seem to demand reappraisal of the law. A comparison of available Swedish and Finnish court cases, however, show that Swedish courts interpret

the bribery statutes more extensively than the Finnish courts interpret almost similar Finnish statutes<sup>1</sup> - the implication is that the Finnish statutes are not enforced as widely as would be possible.

### 5.3

#### The definition of corruption offenses

An attempt at corruption, or an actual corrupt transaction, will obviously not be penalized if no one believes that any offense was involved. If there is no outsider present who will inform the actors that bribery, for example, is a punishable offense, it is quite possible that the actors will engage in bribery without feeling that there is anything wrong, in other words, their internalized motivation does not inhibit the transaction, and they moreover have an opportunity of completing (or at least attempting) the transaction.

The importance of this is evident in many of the more recent cases of bribery noted. Of all the convictions meted for bribery from 1969 on, for example, only case 22 would seem to be a case where both actors are presumably aware that they are engaging in criminal bribery. Cases 4, 6, 7 and 8 involved intoxication, and case 14 was ruled to have involved ignorance. In all of these cases, it may be argued that had the active actors understood that the offering of a bribe is illegal, and had they understood what the law regards as a bribe, they may not have perpetrated the offense. Thus, of all the barriers to corruption that have been mentioned so far, the following may

<sup>1</sup>This is suggested, for example, by the fact that the Finnish court cases in the data (except for case 16) involved definite bribes clearly given for a certain official function, while the Swedish cases also involved less direct attempts (see Committee report, examples on p. 32 - 48).

prove the most effective in reducing the number of corruption offenses: educate both officials and the public on what is meant by corruption. A second notable point about such a policy is that it need not be as expensive as, for example, having decisions made by a collegiate body, or by increasing the degree of control (which have the additional drawback of reflecting suspicion of the officials).

In Sweden, a book was published at the beginning of the 1960's which presented a code of conduct specifically for businessmen and officials in their dealings with each other (Nyquist and Körner).<sup>1</sup> It dealt, for example, with the often unclear questions of reductions in price, presents, overly bountiful hospitality, and private economic assistance. It is strongly suggested that this or a similar code be publicized to the same extent as it has been in Sweden, e.g. by sending copies to those businessmen and officials affected.

<sup>1</sup>An English translation of this code is to be found in the appendix.

APPENDIXES

## A.I

## SUMMARY OF CASES REFERRED TO IN TEXT

## A.I.1

## Active bribery

nonfeasance:

1. An individual caught in the act of smuggling offered the arresting officer 30 000 marks (\$180) if the latter would ignore the offence. He was convicted for active bribery. (KKO 52 II 93.)
2. An individual caught in the act of smuggling offered the two arresting officers 50 000 marks (\$300) for ignoring the offence. He was convicted. (KKO 52 II 101.)
3. The driver of a car which had accidentally swerved off the road offered the two investigating police constables 30 000 marks (\$150) each for dropping their investigations. He was sentenced to eight month's imprisonment. (Turku Magistrate's Court, March 31, 1960.)
4. A driver being investigated for driving offences (including driving under the influence of alcohol) offered the investigating police officer a bribe for ignoring the alleged offences. He was sentenced for bribery to five month's imprisonment. (Nurmes District Court, October 26, 1973.)
5. An individual being investigated for abuse of auto license offered one police officer 10 000 (\$100) and another 20 000 (\$200) marks for dropping their investigations. He was convicted. (KKO 48 II 290.)

6. The intoxicated owner of a boat that had been stopped by the naval guard for investigation of maritime offences offered 10 marks (\$3.50) for ignoring the alleged offences. He was fined 280 marks (\$100) for bribery under mitigating circumstances. (Tammisaari Magistrate's Court, January 26, 1970.)
7. An individual in custody offered a police constable 100 marks (\$30) if the constable would release him from detention. He was sentenced to two month's conditional imprisonment. (Isojoki District Court, November 22, 1971.)
8. An individual detained by the police for investigation of driving under the influence of alcohol offered the two police constables 1000 marks (\$315) apiece for not taking him to a blood test. For this he was sentenced to two month's imprisonment. (Teuva District Court, September 2, 1971.)
9. An individual attempted to bribe a police official in connection with the investigation of rationing offenses. He was sentenced to 1 year and 10 days in the penitentiary. (HRO January 13, 1942.)
10. According to a newspaper article quoted in Aake Jerro, *Kun kansa eli kortilla* (Helsinki, 1974, p. 52.) a person caught smuggling rationed goods in from Sweden attempted to bribe the customs officials into releasing her. The inference by the author is that this was not an unusual occurrence.

misfeasance:

11. An owner of real estate offered a city manager 250 000 marks (\$1400) if the latter would influence the city council into purchasing the former's property for 4 250 000. He was convicted. (KKO 57 II 84.)



12. The managing director of a firm agreed with two communal officials empowered by their commune to purchase fire hose that he would sell them the fire hose at what was nominally the going price (470 472 marks) and not at the reduced price (46 900 marks less) to which the commune was entitled. The court ruled that this 46 900 marks (\$300) was intended as a bribe, and the director was fined 24 000 marks ( \$150 ) (Helsinki Magistrate's Court, January 19, 1954.)

malfeasance:

13. An individual engaged in forgery offered the aide-de-camp of a military unit 3 boxes of cigarettes if the latter would allow the former to use the unit seal, which he needed for his forgery. (The Court valued the wrongful compensation at 150 marks (\$1.50).) (KKO 49 II 449.)
14. An individual who had attempted to acquire permission for a public amusement (the proceedings of which would go to public purposes), which said permission was turned down by the local police chief, suggested that he himself personally apply for the permission. Should permission be granted so that no stamp tax would be affixed on the entrance tickets, the police chief was to receive 30 % of the returns. The Court ruled that this act of active bribery had taken place through ignorance, and it had thus taken place under mitigating circumstances. He was fined 300 marks (50 x 6) (\$95). (Teuva District Court, September 2, 1971.)

A.I.2

Passive bribery

nonfeasance:

- - -

misfeasance:

(see case no. 12.)

The two communal officials involved, the chairman and a member of the fire prevention board, were each convicted of passive bribery. They were both fined (the offence was seen to have taken place under mitigating circumstances), the former 15 000 marks ( \$100), and the latter 11 250 marks ( \$70 ). (Helsinki Magistrate's Court, January 19, 1954.)

15. A firm purchased abandoned barrack buildings from the government for 1 618 000 marks, or, according to the judgement of the court which dealt with the matter, for 500 000 marks too little. The official responsible for the acceptance of this later took 150 000 marks (\$1000) worth of shares in this company, which the court deemed wrongful compensation. He was dismissed from office and declared unfit for public office for five years. (Helsinki Court of Appeals, March 31, 1954.)
16. The inspector for the district land cession office offered a member of a bank board in a land cession case if the latter would illegally cash \$1000 in checks. He was convicted for passive bribery. (KKO 51 II 87.)
17. In a complaint made to the Parliamentary Law Counsel, a city manager was accused of having made a trip abroad at the expense of a construction firm with local interests.

(The chairman of the city council was also alleged to have participated in the trip.) The Law Counsel stated as his belief that investigations showed that both had participated as members of the board of a semi-official construction cooperative, and that the trip had been at the expense of this cooperative. Furthermore, investigations showed that the purpose of the trip was in line with the interests of the cooperative. (Helsingin Sanomat article, November 12, 1974.)

18. A school teacher who travelled to the homes of some of his pupils for extra summer tests had his pupils reimburse him for expenses. The Court ruled that such reimbursement was legitimate under the circumstances, and did not constitute a bribe. (KKO 30 II 157.)

malfeasance:

19. Two court officials, a district court justice and an assistant judge, were alleged to have illegally taken redemption fees for legal documents. The Court ruled that this had taken place through ignorance. (Vaasa Court of Appeals, June 8, 1962.)
20. A military officer accepted in one instance 20 000 marks (\$120) for the design and drawing of a bridge which was built by the staff of his military unit. In another instance, he had accepted 10 000 marks (\$160) from a firm which benefitted from the design, drawing and construction of a wharf, which was built by the same unit. The Military Court sentenced him to 10 day's confinement. (Supreme Military Court, July 10 and 16, 1952.)
21. The director of a penal institution was charged with having accepted bribes in exchange for illegally allowing local merchants to carry out commerce on institution grounds.

The charges were subsequently dropped. (Halikko District Court, November 4, 1971.)

22. A member of a communal specialized board promised to see that two board members were 'away on a trip' during a crucial vote. He subsequently demanded 3000 - 4000 marks (\$750 - \$1000) as reimbursement for his paying for these trips, plus an unspecified amount for restaurant bills. The Court found him guilty and sentenced him for bribery to 10 month's imprisonment. (Espoo District Court, October 23, 1974 and Helsingin Sanomat article, October 24, 1974.)
23. A police department clerk, while acting as police department examineer, notified the examinee that he could prevent the charges against the latter from coming to court. In return, he had accepted a fee, even though he had already sent the minutes of the examination on to the appropriate official. The Helsinki Magistrate's Court ruled this a question of fraud. The Turku Court of Appeals overturned this, and ruled that it was a question of a 10 000 marks (\$100) bribe (November 21, 1947). Ultimately, the Supreme Court ruled that it was a question of fraud, not passive bribery, and that was the final verdict. (KKO 48 II 334.)

### A.I.3

#### Related High Court of Impeachment cases

24. In the second High Court of Impeachment case tried in Finland, a minister was charged with having recommended and voted for state financial assistance to a company, the debts of which he was partially responsible for. Furthermore, he was accused by the Parliamentary Law Counsel of having been aware of the bad financial condition of the company when so doing, and of the fact that

the grant would presumably be used for other than the intended purposes. The High Court decided that through his actions he was guilty of misusing his official position for profit, to the obvious detriment of the state. Another minister was found guilty of carelessness in the performance of his duty, while two other ministers against whom charges were raised were found not guilty. Thus, the first minister was guilty of both nonfeasance and misfeasance. He was sentenced to a 75 000 mark fine plus a 2,5 million mark indemnity. (Decision given September 18, 1953.)

25. In the third High Court case ever tried, a minister was charged with, among others, supporting the awarding of a contract to a firm that to his knowledge was in poor financial condition. He was alleged to have purchased shares in a building that was being constructed by this firm, and thus would stand to benefit from the firm being able to finish the contract. According to the decision of the High Court, he was not guilty of seeking personal profit, or guilty of intentional breach of duty. However, he and another minister were found guilty of a breach of office through neglect. (According to five dissenting opinions against the 9-member majority, the first minister was guilty of profit-seeking). (Decision given on December 14, 1961.)

A.I.4

#### Extortion

26. The inspector for a communal room rental board was alleged to have extracted fees and demanded payment from several applicants for housing, in the following manner: 24 500 marks (\$245) for obtaining a new apartment through the room rental board; 10 000 (\$100) for the same act; 25 000 (\$250) from a third individual for the same accept (but he

was alleged to have received 10 000) (\$100); 67 000 (\$670) from a fourth in exchange for assistance in changing apartments; and 10 000 (\$100) from a fifth in exchange for obtainal of permission to live in the area. He was convicted. (KKO 48 II 423.)

27. Two communal building contractors were alleged to have demanded payments from contractors desiring to work for the commune. In the first trial held, the court found them both guilty, and sentenced one to suspension from office, plus disqualified him from public office for a year, and the other was sentenced to six months in prison. The Court of Appeals, however, ruled that three witnesses were plaintiffs, and their testimony was inadmissable. Thus, the case was returned to the Magistrate's Court, where the two were declared not guilty. (Helsinki Magistrate's Court, October, 1968; Helsinki Court of Appeals, May, 1970; Helsinki Magistrate's Court, December 16, 1970; and Helsingin Sanomat, December 17, 1970.)

## A.II

## A RECOMMENDATION FOR A CODE OF CONDUCT

(Translated from the original Swedish. Source: Ola Nyquist and Lennart Körner: Mutor och bestickning, Stockholm 1963)

The recommendations deal with the relations between, on one hand, juridical or physical persons and their representatives and, on the other hand, government officials with whom these come into contact due to either arranged or proposed agreements with officials on purchases, sales, exchanges, services or labour or presented or intended applications or the like which are dealt with or shall be dealt with by officials, or the control functions of officials.

A functionary here referred to shall not accept from the other party either for himself or for the functionary in his stead an exclusive reduction in price or other price benefit. In principle, in other words, a functionary should only accept a reduction in price which at the time in question can be had either by purchasers in general or by anyone with the functionary's qualifications (such as knowledge of the market) but lacking the position of this functionary, or normally by everyone belonging to a larger group, such as government officials, those employed in a certain authority, or members of a certain organization. Even if there exists some of the prerequisites mentioned, a functionary should in general not accept more beneficial conditions than what are received by officials.

A functionary here referred to shall not accept gifts from the other party which can be assumed to place him in a debt of gratitude to the giver, or otherwise affect his performance of duty. This presumeably is generally not the case when it is a question of PR gifts in the form of articles with an obvious advertising character, seasonal gifts in

the form of flowers, fruit or other relatively low-valued objects, for example for Christmas or New Year, or courtesy presents for personal occasions and the like in the form of flowers or in special cases other gifts.

A functionary here referred to should observe self-restraint in connection with an offer of hospitality from the other party. When this, due to its form or extent, can be seen to place the functionary in a debt of gratitude, or otherwise affect him in his performance of duty, it should not be accepted.

A functionary here referred to should not enter upon private economic contacts with the other party in the form of e.g. loans, an agreement of security or goods credit above what is in general offered to customers.

A functionary here referred to should not accept other benefits from the other party which can be seen to affect his performance of duty or otherwise place him in a debt of gratitude to this party.



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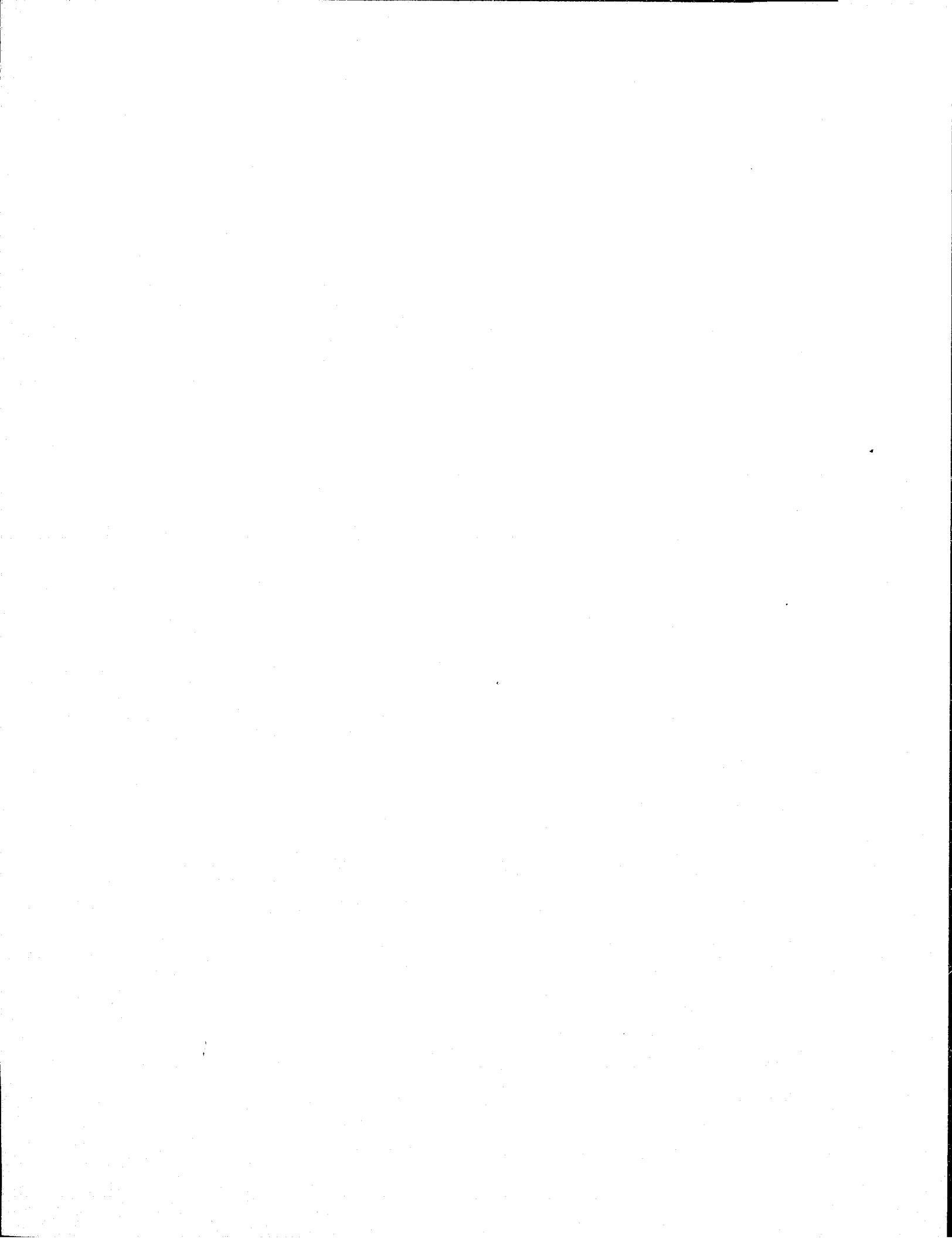
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**END**