

The Role of Foundations in Public Debates in Germany

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ABSTRACT. Why is the German foundations model different from the U.S. model? Does it have to do with the long and surprisingly unbroken history of foundations in Germany or rather with differences in the role of the state? Whatever the answer, this has enormous repercussions on what foundations may achieve in helping to shape public debates. Using Hirschman's model of loyalty, voice, and exit, and a definition of foundations based on seven different functions, the article explores the history of foundations in Germany and assesses their public role, both as contributors of arguments and policy papers, and as objects of public debate. It describes the amazing revival the concept of philanthropy has encountered over the last 15 years, and discusses whether this is due to long-term political convictions or rather to short-term political needs. Using examples taken from the 19th and 20th centuries, the article highlights a number of aspects that serve to illustrate the theoretical dilemma as to whether and to what extent highly hierarchical organisms may legitimately exist in an open heterarchical society.

Introduction

From the days of the earliest organized communities in history, two very basic models of institutionalized action have been followed. One of these relies on the will of one or several individuals as pronounced at the time of its formation for the whole, possibly very lengthy, period of its existence, to be followed from will or force by every other person involved. The second model entails an ongoing evolution of the

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collective will of a community of members or stakeholders, who will continually participate in shaping and indeed reshaping it. Broadly speaking, the first may be described as hierarchy, the second as heterarchy or polyarchy, and while neither of these will commonly exist in their pure form, one will always be able to tell which of the two any given organization basically belongs to (Dahl 1971: 7).

Monarchies, for instance, can be seen as hierarchies, while democracies are heterarchies. Family businesses are commonly ruled hierarchically, while public corporations, at least in theory, are subject to a heterarchy of stockholders. In practical terms, no democratically (heterarchically) organized society today would think of introducing the rules of democracy in every organized collective action. While decisions made to be universally enforced obviously are required to have the support of the majority of decisionmakers, minorities enjoy protection under the rule of law. If this were not so, religious communities, notably the highly hierarchical Roman Catholic Church, like foundations, would find it difficult to exist in 21st-century North America or Europe.

Issues of overall public concern may be determined by individuals or organizations not subjected to a decision-making procedure involving affected parties or those who wish to participate in its evolution. But the extent to which that is true has been under discussion ever since the dichotomy between hierarchies and heterarchies was first analyzed, and preference was accorded to the latter. Indeed, hierarchies, too, grappled with the problem of competing hierarchies, while heterarchies in a real world have not always displayed a pluralist attitude.

Naturally, this issue becomes all the more relevant, as individual organizations have the power and resources to influence decisionmakers (Thaler and Sunstein 2008). In the modern world, unlike other phases in history, nobody would seriously worry about an individual citizen voicing his or her concerns, suggestions, and plans about some issue of general interest in the public arena, let alone putting forward a grand idea for a world order. However, many people, and not only those who may feel pressured or annoyed by the interference into what they consider their very own domain, will and indeed do reflect more critically on contributions to a public agenda when they are brought forward with the help of a media campaign, publications distributed to decisionmakers, invitations to key players, and other measures that

presuppose a certain reputation of the contributor in society and require more than minimal resources at his disposal.

In recent years, a specific type of organization has come under scrutiny on this count: private foundations, more often than not, created in perpetuity by one or very few individual citizens or by a business corporation. The reason for this is their rise in numbers, wealth, and public visibility over the last 30 years or so, which has led many people to believe we are approaching, or have even already entered, a post-democratic era in which society is moving towards a new form of hierarchy, and financial backing ensures a decisive hierarchical advantage. The paradox is that while a large number of foundations adds a heterarchical element to an increasingly hierarchically organized democracy, hierarchical organizations like foundations do not correspond to the increasing urge of modern society to become more heterarchical. Furthermore, to use Albert Hirschman's model, while foundations in German history "freely entrusted the municipality or the state with their endowments" (Adam and Lingelbach 2015: 232), today, they are increasingly faced with the choice whether to be "loyal" to the existing government system, or to be part of the "voice" that attempts to bring about changes (Hirschman 1970). This concern may be felt almost anywhere in the world, but is of particular relevance in societies where personal affluence and the creation of foundations have developed as prominently as they certainly have in North America and Western Europe. Given this framework, this article will look at the power of foundations in Germany, a country to which both parameters apply in a marked way. While assessing the contribution of foundations to public debates in general, it will also look at them as a subject of a particular public debate.

Foundations in Germany in the 19th and 20th Centuries

The Industrial Revolution and the rise of the bourgeoisie in the 19th century in Germany prompted significant growth in the number and size of new foundations. This was in sharp contrast with France, where a radically negative verdict on private philanthropy was pronounced in the Enlightenment period around 1750, and enacted as a complete ban in 1791 (Strachwitz 2010: 63). During the same period, foundations in

Germany remained both popular and, generally speaking, esteemed by the ruling elites. They regarded foundations as important co-funders of tasks increasingly deemed to be of government concern. Indeed, in the field of social welfare, foundations were often the sole organizers of valuable projects, or at least co-organizers with churches or governments.

Legal acts, over time, introduced a fair measure of government control, and, in an era when subservience to a strong state became an ever more dominant paradigm in Germany, they remained virtually undisputed. One of the earliest examples of large-scale bourgeois philanthropy in the 19th century was the case of the Frankfurt citizen Johann Heinrich Staedel, who left a highly important collection of artworks to an independent foundation to be created after his death. As members of his family contested the will, a lengthy and complicated lawsuit ensued, during which the courts gave a number of legal consultants an opportunity to voice an opinion. Finally, the court ruled that Staedel's estate could become the endowment of a foundation, which exists to this day.

More importantly, the assembled expertise in the Staedel case became the legal material on which experts—notably Friedrich Carl von Savigny, one of the original consultants—relied in designing a unique legal concept of a foundation that was finally incorporated in the Civil Code (*Bürgerliches Gesetzbuch*, §§ 80–88) in 1900. The formula was that this type of foundation should have legal personality, have no members or outside owners, require government approval to be created, could be established for any lawful purpose (charitable or non-), and should be supervised by a specific government agency. In the 20th century, this type of foundation became dominant. Trusts, without legal personality, continued to exist and be created, but the lack of specific trust legislation reduced their relevance and impact. Other forms of incorporation that did not require government approval only began to be realized as an option in the 1960s, the Robert Bosch Foundation being the first major example. Finally, church foundations that existed within the Lutheran, Reformed, and Roman Catholic churches in huge numbers remained virtually unaffected by these changes, since the strong and constitutionally very specific position of the churches did not allow the regional governments in charge to antagonize them. In particular, the churches' contribution to welfare production was (and

still is) such that no government would be capable of compensating for this at short notice. Unsurprisingly, the ensuing strong public voice of the churches and their foundations is contested in times that have seen a substantial decline in membership in all religious communities. For example, the standard practice of inviting the churches to parliamentary hearings on a wide range of subjects is no longer a matter of course, but is regularly commented on by other organizations that are just as regularly not invited.

Lawmakers also enacted provisions for the management of most foundations' assets, attempting to reduce the choice to real estate and government bonds. In addition, government control of a foundation's management, while varying in practice, tended to be considerable. As a result, it is fair to say that many foundations were, in spirit, quasi-governmental institutions. A case in point is that of Ernst Abbe, originally a professor of physics at Jena University, who became the owner of Carl Zeiss Corporation, a booming producer of optical instruments in the late 19th century. Deeply conscious of his responsibility to society, he wished the entire corporation to become a charitable foundation dedicated to funding research at the university, at which he still taught regularly. Interestingly, although he made every effort to conceal the fact that he was on the way to become the university's principal benefactor, he was deeply mistrusted by the government of the small German state of Sachsen-Weimar-Eisenach, who felt its responsibility for and control of teaching would be undermined by such large-scale private patronage. It took years of negotiating before government approval was obtained, and Abbe was forced to agree to a whole range of additional governmental control mechanisms (Strachwitz 1997: 152).

A similar conflict arose between the City of Frankfurt and private donors on one side and the State of Prussia on the other when Frankfurt University was established as a foundation in 1913 by a group of citizens, supported by their local community against the strongest possible opposition from the Prussian government agencies in charge (Roth 2010). In this instance, two other aspects were important. For one, Frankfurt (Main) had been an independent township for centuries and had been taken over by Prussia against the will of its citizens in 1866. The animosity between the city and the Prussian government ran deep, and having a university was seen on both sides as an act of

defiance and opposition. Furthermore, the major donors came from the Jewish community, which had been undergoing a lengthy process of emancipation since the 18th century. Contributing to an important civic cause was seen by these donors as a sign of belonging, designed to increase acceptance. Besides, Jews at this time were still barred from holding academic chairs in Prussia, so that creating an educational institution where this would be feasible constituted an act of self-assurance. On both counts, government opposition was intense, and it took almost a decade of negotiating before permission was granted.

Most foundations created in the 19th century attempted to support government action (“loyalty”). Only a few grew out of disaffection with government action (“exit”).¹ Wealthy, usually self-made, men (and very few women) contributed happily to the public good as defined by government, regularly hoped for public recognition in the shape of titles of nobility, decorations, and other official rewards, and shunned the attention that would have been caused by voicing any opinion on policy, let alone an opposing one. They were content to live with a system that the philosopher Immanuel Kant had imagined in 1797, to the effect that any ruler should have the right to rule over the foundations within his territory as he saw fit, and that foundations should certainly not exist in perpetuity (Kant [1798] 1956: 266). Interestingly, the government legal experts who drew up the Civil Code did not incorporate Kant’s ideas in full. The law, in force to this day, does provide for perpetual existence and has only recently added a clause to allow for spending down. Government infringement on a foundations’s autonomy is, at least in theory, limited. Indeed, there have been a few cases of foundations that were created as answers to government failure or to pursue a decidedly unapproved agenda.

In the course of the 19th century, many wealthy Americans traveled to Germany (as to Britain) to see foundations at work (Adam 2009a: 16, 19, 63). The German foundation became a model that early 20th-century American philanthropists copied, albeit against considerable public and governmental opposition.

What the Americans tended to overlook was the much more state-oriented framework in which German foundations operated. German tradition did not allow for much private involvement in public affairs, thereby making German foundations more palatable than their later

counterparts in the United States. It must not be forgotten that Germany at this time was a monarchy (a federation of monarchies, to be exact) with a hierarchically-oriented class system still in place. New hierarchical systems could therefore well be seen as competing with old ones, notably the aristocracy, but not as fundamentally alien to the existing political order. In the United States, by contrast, where social equality was regarded as an ideal, mistrust against inherited wealth and undue influence of privileged parts of society was much more pronounced than in Germany.

Finally, German philanthropists, like Ernst Abbe in Jena (Strachwitz 1997: 146) and Hermann Julius Meyer in Leipzig (Adam 2009a: 42), usually had a life-long track record of active philanthropy and ethical behavior in their business dealings. That contrasted sharply with the United States, where Andrew Carnegie (Krass 2002: 239) and John Rockefeller were regarded as “robber barons” attempting to make up for their misbehavior and achieve a degree of acceptance or exert undue influence by becoming philanthropists towards the end of their lives (Zunz 2012: 21). Whether the fact that passing private wealth on to the next generation was becoming increasingly costly due to heavy estate tax so that creating a foundation could also be seen as the sole means of starting a dynasty (as may be seen in the case of the Rockefeller family) is an open question. Certainly, in the 19th century as today, the estate tax in Germany is nowhere near the level it reaches in the United States, so passing one’s wealth to one’s children remains a more feasible option in Germany.

For several reasons, the beginning of the 20th century saw a big divide in the development of foundations. In the United States, where all through the 19th century very modest growth had prevailed in the foundation community, their number and societal impact grew steadily all through the 20th century, particularly after the 1969 Tax Reform Bill (Zunz 2012: 234). Germany, on the other hand, saw a near-complete marginalization of foundations in the course of World War I and its aftermath, for several reasons. First, 1918 saw the end of the monarchy in Germany. The country became a republic and adopted a heterarchical concept of society, at least in theory. The 1900 Civil Code, including the framework for citizens to create a foundation and for foundations to exist, remained in force, but the legitimacy of these provisions was

questioned in public debate more than before (Heydemann and Toepfer 2006: 19). It is significant that one of extraordinarily few publications that dealt with foundations at all in the 1920s concentrated on the dangers brought about by the “dead hand” issue: the legal provisions that guaranteed the dominance of past generations over decision-making processes in the present (Rittershausen 1929).

Second, the rise of the welfare state followed the notion of a wider scope of government tasks. Public welfare had first been constitutionally introduced in the whole of Germany as a government aim in 1871, not last as a means to secure social peace. Governmental measures for social security followed. In 1919, the republican constitution formally adopted the notion of a welfare state, following the increased need for government intervention to relieve human suffering at the end of the war. This also followed a development that had begun before the war: the significant rise in the level of taxation. While the reason for this had been to generate the income needed to fund the war (and later the huge reparation payments imposed on Germany under the Versailles Peace Treaty), government income did in fact rise to a hitherto unknown level. The increased revenue enabled the advocates of strong government to minimize the impact of nongovernmental funding sources in the areas of welfare, social services, and health. (In education and research, nongovernmental funding had traditionally not been as large.) While large welfare organizations retained the right to operate under the principle of subsidiarity and in fact grew in numbers, size, and impact, foundations only retained their position inasmuch as they were service providers themselves. That is still quite commonly the case. Funding became a government task, both from taxes and from the government-controlled social security system. This led to a dependence on government that precluded nongovernmental organizations from acting as independent players in the public arena.

Third, a very large number of foundations ceased to exist due to the fact that they had invested in government bonds, especially bonds issued during the war (Adam and Lingelbach 2015: 233). The hyperinflation that culminated in 1923 made these bonds virtually worthless, and while private citizens received an, albeit minimal, compensation after 1926, foundations were expressly excluded. In a sense, foundations (and life insurance holders) had unwittingly borne the brunt of

funding the war. Due to the fact that data on foundations were scant and unreliable even before the war (Adam and Lingelbach 2015: 232), and that collecting data on foundations was only resumed in 1989 (Strachwitz 1994: 18), it is virtually impossible to state how many foundations went under due to the loss of their endowment. It was certainly the majority, especially those attached to universities and local communities, as these had received binding orders to invest in the bonds that were now worthless.

The fact that foundations were excluded from any form of compensation highlights a rationale that saw foundations as alternative and independent centers of wealth and possibly power that could potentially become unwelcome participants in public debates or critics of parliamentary and administrative decisions. In the best tradition of German political theory as laid down particularly by Kant and Hegel, the public arena was identified totally with the government system, and while the 19th century had had to make a number of concessions, the new republic was seen as a chance to set up this system in its purest possible form. The so-called Weimar Republic only lasted for 14 years, before giving way to Adolf Hitler and his “National Socialist German Workers’ Party” takeover in 1933. The years were marred by hyperinflation, unstable governments, the 1929 financial crash, and the unwillingness of a growing part of the citizenry to come to terms with a democratic system. During these years, foundations were neither seen as relevant contributors to the well-being of the citizens nor as important voices in public debate, but rather as marginal rich people’s playgrounds. Nevertheless, even during the years following World War I, new foundations were created.

It is not surprising that the Nazi rule did not favor foundations as public actors, believing in the strictest possible form of hierarchy, entirely dependent on Hitler, the “*Fuehrer*” (leader). However, foundations were not abolished as a legal form, and were actually used by some Nazi leaders as a means to satisfy their own vainglory. On the other hand, so-called Jewish foundations, i.e. ones that had been created by Jewish citizens or for the welfare of the Jewish community, were brought to an end by government intervention. Being seen as potentially dangerous opponents of the new regime, they were systematically harassed, and their assets were eventually confiscated. Quite

apart from the deplorably unethical nature of that policy, the confiscation of those assets constituted a very severe loss in terms of the overall size of the foundations community, as Jewish citizens had been particularly active philanthropists. Aside from personal philanthropic reasons, Jewish donors were also motivated by a strong urge to assimilate with and contribute to the existing public domain. With the possible exception of the Frankfurt University case, there are no examples of Jewish philanthropists having seen their philanthropy as means to gain influence or to push specific beliefs. For Jews as well as for other Germans, government was seen as being in charge of all things public, and it was not the place of foundations to interfere. Philanthropists, Jewish and other, were driven by a wish to be seen as good active, “loyal” subjects, not by an urge to “voice” concerns, or “exit,” let alone change society.

The Emergence of Foundations as Policy Think Tanks, 1950–2000

After World War II, Germany was poor and divided. (Germans were indeed historically poor by comparison with other Europeans. The fact that Germany may be considered a wealthy country today is a post-WWII phenomenon, which renders private wealth much more of an issue than elsewhere.) The number of foundations sank again by loss of endowment, by near total confiscation in the Soviet Zone, later East Germany (Adam and Lingelbach 2015: 234–237), and by individual acts of government agencies, especially by local governments, which made use of legal uncertainties to seize assets. Later estimates that 100,000 foundations existed in 1914, of which only 5,000 remained in 1950, are most probably wildly exaggerated, but they do point to the fact that foundations had become a marginal phenomenon after World War II. Academic interest in them was virtually nonexistent. Apart from a legal history (Liermann 1963), a collection of sociological essays (Rassem 1979), and a few legal treatises, virtually nothing was published on foundations until the early 1990s. Until nearly the end of the 20th century, and despite efforts to change this, foundations were not seen as in any way relevant players in society.

Efforts of foundations to play a significant role in German society had actually begun in the 1920s, and were American in origin.

American funding prompted the establishment of the “Abraham Lincoln Stiftung,” a foundation under German law that aimed at supporting democratic initiatives in Germany (Richardson 2000: 44–209). After World War II, U.S. citizens, notably Shephard Stone and John McCloy, toured Germany, advocating the foundation as a means of contributing to public life by creating philanthropic institutions. The Ford Foundation, in part funded by the U.S. government (Saunders 1999: 134), also lobbied for the idea of philanthropy, so that many people began to believe that foundations were a typically American way of demonstrating civic engagement. The Volkswagen Foundation, created by government in the early 1960s, the Thyssen Foundation, created in 1959 by a member of the Thyssen family with strong nudging from Chancellor Konrad Adenauer, the Krupp Foundation, created in 1962, and the Robert Bosch Foundation, arguably Germany’s largest, are examples of large endowments created during this period.

Bosch is a particularly interesting case. Robert Bosch, an early 20th-century entrepreneur, had begun as a philanthropist in 1910, and not unlike Ernst Abbe’s philanthropy 15 years before, Bosch’s programs had a political edge. The expressed intention “to provide for a new relationship between capital and the workforce” (Stuermer 1997: 254) by supporting research, relying on the huge sum of 1 million Marks, was only a little short of revolutionary. Bosch died in 1942, after having initiated a whole range of philanthropic institutions and steered very clear of the Nazi regime. Under the terms of his will, his entire estate, which comprised one of Germany’s largest business corporations, was to serve the public good. Although he had not expressly stated that it should be turned into a foundation, the heirs decided this was the best way of fulfilling his wishes. Eventually, the Robert Bosch Foundation was incorporated in 1964, and endowed with more than 90 percent of the stock of the Bosch Corporation. The Bosch Foundation soon became extremely active in supporting avant-garde public causes, albeit those supported by broad public consensus, such as exchange programs on several levels between Germany, France, the United States, and Poland. At the end of the Cold War, many meetings with the new leaders in Poland were eased considerably by the fact that they were well acquainted with their German counterparts from Bosch-supported events in the past. In October 2014, a conference on the

future of civil society to mark the foundation's 50th anniversary was opened with an address from Joachim Gauck, President of the Federal Republic, who commented on the fact that the Bosch Foundation was an early supporter of the notion of civil society. One may, he added, meet people once supported by the Bosch Foundation in the most extraordinary places: the U.S. State Department, a library in the Nile delta, at Chatham House in London, or within a citizens' action group in Novosibirsk (Gauck 2014: 10).

In this case, we can certainly see foundation activities going beyond supporting causes predefined by government, albeit cautiously. In a more pronounced way, the Hamburg entrepreneur Kurt Koerber followed the same model. One of the best known programs of the foundation he endowed in 1959, aged 50, was what he called Bergedorf Talks (*Bergedorfer Gespraeche*), named after the seat of the corporation that eventually became part of the foundation's endowment. From 1961 onward, up to 50 political and business leaders plus academics, journalists, and others, carefully selected each time for their particular expertise, would assemble once or twice a year in different places around Europe to discuss a topic of overall political relevance. East-West relations figured prominently among the topics chosen, and again, personal contacts established years before on one or more of these occasions paved the way for many close ties established very soon after the end of the Cold War. Arguably, normalizing political relations between Germany and its Eastern neighbours went surprisingly quickly. This was due, in part, to the fact that the Bergedorf Talks had got civil rights activists in Central and Eastern Europe from the previous period, who now emerged as political leaders, to know the people they needed to talk to in the West. When Koerber died, 100 percent of the assets of Koerber Corporation became the property of the foundation and have remained so. This was possible because, as in the case of Ernst Abbe and the Zeiss Foundation in the early 1900s, there was no clause in the law that actually forbade this to happen, even though the government's intentions had certainly been otherwise.

Reinhard Mohn, who founded the Bertelsmann Foundation in 1977, went a big step further. Notwithstanding the fact that U.S. foundations are severely restricted in pursuing any kind of political activities and from holding more than a minority interest in a single business, and are

only very rarely operating foundations, Mohn would regularly refer to what he saw as the American model and to what he had experienced in the United States in making clear what he believed foundations should be doing: to help formulate government policy and to shield corporations from takeovers. This was all the more surprising as Mohn in fact built his foundation very much on the old European model of an operating institution. After a few years of experimenting, e.g., by devising new systems for managing public libraries, and after creating a special policy unit that aimed at reforming the German university system (*Centrum fuer Hochschulentwicklung – CHE*), the foundation soon embarked on looking into a whole range of top political issues, like progress in the big European unification project. When the government decided to revisit the legal and fiscal framework for foundations and other nonprofits in 1998, it was the Bertelsmann Foundation that immediately responded by setting up a commission of experts to define the paradigm (Bertelsmann/Maecenata 1999). What makes these activities special is that the Bertelsmann Foundation never makes grants. The work is either done in-house with the help of approximately 300 staff, by contracting out specific tasks, or by entering into a cooperation that ensures a strong influence for the foundation. Besides, convening and publishing serve to move an issue that the foundation believes to be relevant.

What has attracted considerable attention is the fact that, like Koerber and Bosch, the Bertelsmann Foundation is closely connected to a major corporation, in this case owning approximately 75 percent of the stock. But unlike the other two, Bertelsmann's corporate activities are directly relevant to the foundation and vice versa, Bertelsmann being an international publishing and media concern, while Bosch produces electrical equipment and Koerber machinery. As a result, there may be business interests beyond the concern for general public affairs that drive both the foundation and the corporation. Critics have argued that some of the Bertelsmann Foundation's activities serve the business interests of the corporation directly, a thought that certainly comes to mind when looking at libraries and universities (Schuler 2010).

The fourth case that merits mention is that of the Mercator Foundation, founded in 1996. Unlike the others, the foundation is only

loosely connected to a business company. It does not own stock and the founding family is not the major shareholder in the large retail company Metro that supplies the income the foundation can draw on. Also, the family refrains from determining the foundation's strategy. More than with the Bertelsmann Foundation, in particular, this was, from the start, left to the management. But the foundation's urge to contribute actively to social change is extremely pronounced. Policy initiatives, both in foreign and home affairs, take top priority on the foundation's agenda, China being one example. With 11 others, the foundation is an active member of a network of German foundations that promotes the advancement of European unification. Like Bertelsmann, Mercator does not restrict its "voice" activities to issues borne by a broad consensus, and decidedly takes a stand on controversial topics.

In all cases, as in many others, close contact with political decisionmakers is deemed to be of essence, and only a few top politicians seem shy to attend conferences and meetings organized by a large foundation. The head of state, the Chancellor, members of federal and state parliaments, government ministers, and high court justices not only regularly receive bulletins, working papers, and other publications, but are invited to speak, and are offered consultancy services when forming an opinion on political issues. Indeed, in some instances, foundations have been invited to supply the materials that eventually determine policy. Not many German foundations are active in this field, but those that are behave as policy think tanks.

All this having developed over many decades, two points need to be remembered. When foundations first began to take an interest in shaping policy, there were few of them, and they were not in any way comparable in size to John D. Rockefeller's or Henry Ford's endowments, let alone that of Bill Gates. Even today the average endowment of German foundations is considerably smaller than that of those in the United States (Maecenata Institut 2013). Nevertheless, the number of foundations has grown to an extent that renders them a sizeable component of today's civil society. Also, from the 1950s until well into the 2000s, an overall corporatism was a determining aspect of German politics. Public authorities, welfare organizations, trade unions, trade associations, nonprofit organizations of all kinds, and many others,

were—and still are—intertwined in a close network. In many cases, this enables ideas to reach implementation in a complex and yet efficient system of dialogue and compromise. However, the system also favors undue influence, and possibly corruption, and potentially bypasses a functioning system of checks and balances. It is only in the last few years that this firmly entrenched alliance of nearly all influential sectors of society has begun to crack, largely in the face of popular protest, some scandals, and the growing impact of compliance and accountability procedures (Strachwitz 2015). The recent scrutiny is also due to the emergence of new civil society players, who are showing a considerably larger degree of independence and would certainly be classified as “voice” rather than “loyalty.” Besides, this has to do with a fundamental paradigm shift in public affairs.

While it is surprising that most German foundations, until very recently, believed in professing to abstain from politics, as long as the corporatist system prevailed, foundations found it easy to be part of it, if they wished. While their endowment gave them a comparatively large degree of independence, and the prestige of their founders gave them access to political decisionmakers at every level, they were often in a position to provide or finance urgently needed empirical studies, analyses, and policy studies. In addition, educational and cultural institutions, which traditionally had relied almost totally on government grants, were actively encouraged to seek third-party funding, which gave foundations additional leverage. Thus, it is hardly surprising that when the German federal government, after many decades of total abstention, decided in 1998 to revisit the legal framework for all civil society organizations, foundations were chosen as a prime object of legislation. Contrary to the United States, in all four subsequent major legislative moves (2000, 2002, 2007, and 2013), foundations were privileged over public charities. Tax relief for donors is more generous when endowing a foundation, and foundations enjoy more exemptions from spending rules. Added to unquestioned ongoing privileges this certainly reflects an extraordinarily positive view that the political system takes towards their activities. Furthermore, no restrictions on foundation activities other than straight support of party politics have ever seriously been discussed, let alone implemented. Nor were any restrictions placed on the

control foundations may exercise over business corporations in perpetuity, a practice hard to imagine in the United States.

Foundations in Modern German Society

In putting the role foundations may play in 21st-century German society into perspective, it is helpful to adopt a functional model of classification. First developed by the European Commission in the 1990s (European Commission 1999), and since elaborated in several steps on the basis of research undertaken at the Maecenata Institute, it serves to define the contribution a civil society organization may make to society at large and safeguards against excluding types and individual organizations (Strachwitz 2014: 78–86). In this context, foundations today can be seen to perform at least five out of seven types of typical civil society activity. While self-help and active community building are difficult to imagine as a task for foundations, as they would involve a membership they do not entail, foundations are as much involved in active service provision, advocacy, watch-dog activities, and political deliberation as they are in the intermediary role of grant making. This is certainly a big difference from the United States, and one that has a very long history and is not disputed. The largest museum complex in the country, Stiftung Preussischer Kulturbesitz in Berlin, is a foundation, albeit organized by the government. Bodelschwingesche Stiftungen, Bethel, the largest foundation by number of staff (17,000), manages institutions for the disabled on a budget of well over 1 billion Euro. The Bosch Foundation, besides its other activities, manages a large hospital. World Wide Fund for Nature (WWF), Germany, the national branch of one of the world's leading nature conservation advocates, is organized as a foundation, as are a number of nonprofit watchdogs. There is nothing in civil or fiscal law that precludes foundations from assuming any role that other charities take on. Consequently, sources of income vary considerably. Besides the revenue of an endowment, public fundraising, proceeds from business activities, reimbursement for services rendered (such as by the national social security system), and public grants may contribute substantially to balancing a foundation's budget. Foundations are thus perceived as a particular form of civil society organization rather than as an instrument of philanthropy.

The only special case is party political activity, not deemed charitable and not permissible for regular tax-exempt organizations, but still tax deductible for private and corporate funders under a separate regulatory system. Indeed, all major political parties have think tanks organized as foundations—and heavily subsidized by the taxpayer. Of these, however, only one (Friedrich Naumann Stiftung, attached to the FDP or Liberal Party) is a foundation under civil law, while the other five, while calling themselves foundations, are legally organized as membership organizations.² Even the trade unions have their own foundations, funded by the dues that union delegates receive as members of the boards of major corporations (as is compulsory in Germany) and are required to hand over.³ Like those close to the political parties, it is their express aim to establish and influence policy. Under these circumstances, it is little wonder that the political system would find it very difficult to come out against foundations in general, since members of parliament are frequently involved with their party's foundation and more often than not hope to be accorded a good position with its management, particularly in one of the many international branch offices, when their term ends. Due to a very proactive information policy, these particular foundations receive broad media attention and are consequently often identified with the German foundation community as such, especially outside the country.

Given a persistent lack of reliable data, it is difficult to put figures to these general statements. A recent survey shows that 34 percent of German foundations consider supporting governmental programs as their priority ("loyalty"), while 63 percent contend they operate independently from the state, which would need to be classified individually as loyalty, exit, or voice, since 70.6 percent profess they support existing institutions, while only 45.3 percent aim at finding solutions to issues and promote innovation (Anheier 2015; 4). This corresponds with previous findings that divided the German foundation sector into a corporatist and a liberal subsector (Adloff and Schwertmann 2004: 73–83; Adloff 2010: 381–395).

In either case, foundations enjoy a high degree of trust with the citizens, despite the fact that, legally, they are not publicly accountable and are not required to publish any sort of information whatsoever (Krimmer et al. 2014). While larger foundations now habitually publish

annual reports, most smaller ones do not, and are content with filing standardized reports with the governmental supervisory agencies, which, in turn, do not make them public. No rules and procedures for publication exist beyond those reports, which makes comparison of existing publicly available data difficult, and, in some instances, impossible (Strachwitz 2015). The breakthrough achieved in the United States by the 1969 Tax Reform Act (Zunz 2012: 224–231) has to date not been followed.

Yet, surprisingly, the legitimacy of foundations as such is not seriously contested except in occasional academic debates. On those occasions, critics raise concerns about the lack of internal democratic structures, the adherence to the founder's will, and the power exercised by large foundations, which enjoy tax exemption despite their connections to business. The concern of American policymakers throughout the history of the United States, that no single individual should gain undue influence over public affairs, is not high up on the agenda of German public debate. In the case of foundations, this may have to do with the far more modest size of German foundations, on average (Adam 2009b), but there are probably other reasons as well. In actual fact, foundations only contribute minimally to the overall support of the tasks they fund, and they tend to overestimate the importance and impact of their contributions, both in quality and quantity. Around 94 percent of all foundations believe they are very successful or successful (Anheier 2015: 7, 9). In reality, to a much larger extent than in the United States, public tasks in Germany are funded by tax revenues. For example, in education, the funding provided by all foundations in one year equals the funding provided by the state in less than a day (Thuemler and Steinfort 2011: 236–239). Even today, the real contribution made by most foundations is minimal: 50 percent have assets below 500,000 Euro, and 36 percent have below 250,000 Euro (Poldrack and Schreier 2013: 12). Comparatively few are real agents of change, of disruptive innovation, or can be classified as “inventive foundations” (Leat 2014). The positive effect of foundation activity has not been proven (Adloff 2010: 15) and is becoming increasingly difficult to prove, as returns on liquid assets, especially on government bonds, have plummeted.

Furthermore, public debate on legitimacy in the German tradition tends to confuse legitimacy with legality. Most legal scholars—and it is they who traditionally dominate this debate—would contend that as long as anything is legal, it is also legitimate. This says something about German political thinking centering on the role of the state, but also about an inherent conservatism in German political philosophy.

The German political system is still very much influenced by its traditional corporatism across boundaries of party politics and ideological differences. There is some evidence that government officials believe foundations to be supportive of the structural conservatism inherent in foundations as opposed to membership organizations, especially if these are of the informal kind prevalent in protest and citizen action movements (“voice”). Foundations, by their very nature, by their dependence on the original deed as worded, more often than not by personalities considered to be part of the establishment, and by the composition of their governance (Beyer 2012) are considered to be “loyal.” They support the established system, and, at best, they edge towards reform from “within,” rather than from the fringes of society. This argument would help explain the fiscal privileges accorded to foundations over the past 15 years that do not extend to “public charities.” It may have come as a surprise that, with a growing number of foundations, this expectation was not met, since a number of foundations have developed an active and critical “voice.”

Nevertheless, the legitimacy of foundation activity in a democratic society remains a subject of ongoing consideration (Adam 2009b: 179). “Even when the answer to the question of the right to exercise power is affirmative (as it was not in the French Jacobinian tradition, for example), a second question arises as to whether power is exercised appropriately and responsibly, based on either pragmatic or normative assessments” (Heydemann and Toepler 2006: 21). In recent years, this discussion has blended into one that centers around the existence of a civil society as an arena of public action distinctive from the state and the market, and around the question whether foundations may be considered to be part of it. While 20 years ago, most foundations would not have been aware of this discussion and would not have considered themselves to be civil society organizations, this has changed considerably. Today, most foundations, and all the larger ones, would contend

being part of civil society for two reasons: first, as an argument to support their legitimacy, and second, as one to support their active involvement in public affairs.

Conclusion

There remains a paradox. When John D. Rockefeller attempted to obtain a charter for his foundation from the U.S. Congress in the early 1900s, this was denounced as a “Trojan Horse” ready to undo democracy (Zunz 2012: 21). None of even the wealthiest German donors has ever faced comparable criticism. Not even personalities like Reinhard Mohn, who was very outspoken that foundations should disruptively change society, was subjected to such rigid opposition from public decisionmakers. On the contrary: many political decisionmakers have actively sought and received support in setting the political agenda from foundations operating as or supporting think tanks. Critical publications (e.g., Schuler 2010) remained few and never received the attention accorded to Wright Patman’s congressional attack on foundations in the 1960s (Zunz 2012: 236).

The uncritical acceptance of foundations in Germany may have occurred for at least two reasons. First, official regulation and the accountability of foundations to government antedated their popularity as instruments of private philanthropy. Most regulations were introduced in the 19th and early 20th centuries, while more than 60 percent of all existing foundations in Germany were created after 1991 (Dross et al. 2013: 27). Second, while modern German democracy was being developed, the number and size of foundations was marginal. Their role became more pronounced only after democracy had been achieved towards the end of the 20th century. By this time, there existed an extreme shortage of government funding for an array of government tasks, including public welfare, the arts, and education, while government spending for unemployment relief reached hitherto unknown heights. Under those conditions, many people hoped that “loyal,” well-to-do citizens could make a significant voluntary contribution if granted public acceptance and fiscal benefits.

The acceptance of foundations has been aided by the fact that “private” foundations are not a domain reserved exclusively for

individual wealthy citizens: 14 percent were created by public bodies, 10 percent by corporations (Poldrack and Schreier 2013: 9). Since the 1990s, community foundations have become popular, as have other foundations supported by many donors. In a world-wide context, Germany is among the countries with the largest number of foundations created by the state in the course of privatization initiatives. This supports the argument that foundations are conceived as public benefit institutions rather than as expressions of individual philanthropy. The Volkswagen Foundation is one of the earliest and most prestigious examples (Salamon 2014: 23).

This said, questions are beginning to be asked, in the political arena, in academic circles, and in public debate. "There are voices that are critical towards foundations. After all, individuals may decide for what purpose they donate assets and gain tax benefits" (Gauck 2014: 11). The lack of democratic governance within foundations and a potentially undue influence exerted by citizens who are seen as being more influential than others anyway are beginning to cause concern. That concern has been heightened by the fact that some foundations are perceived as lobbying for a concept of society that is popular in conservative circles for certain aims and goals that benefit the same people that produce this brand of philanthropists, or even for interests identifiable as personal or corporate. Proactive, operational foundations have encountered the argument that foundations should limit themselves to funding the programs of other civil society organizations and should not compete with those organizations by engaging in the operation of projects.

This attitude does not actually correspond with German foundation history, which boasts a long and vibrant tradition of operating foundations. Nevertheless, criticism of this aspect of foundation activity may serve as an indicator for a certain uneasiness. Pragmatically, this uneasiness may well be supported by looking at Germany's improved financial condition. When the (left-wing) government actively began nudging philanthropists and foundations in the late 1990s, it was hoped this would ease the strain on the national budget. This hope was not realized. More importantly, it no longer seems relevant, now that Germany's budget is balanced, the rate of unemployment has fallen drastically, and reserves for pensions and the social security system seem to

be in place. It is therefore an open question both whether privileges for foundations over other civil organizations will prevail and whether foundations' interference with the public agenda will continue to be universally accepted.

Until fairly recently, the main argument brought forward by social scientists—and occasionally in the media—against foundations was the legitimacy argument based on conventional political theory that accorded legitimacy solely to the democratically constituted state. While legality alone has not been successful in suppressing this argument, it has been successfully refuted on pragmatic grounds, such as obvious state (and market) failure. Together with other civil society actors, foundations have been able to convince the public of the validity of anyone's, and particularly of civil society's, contribution in deliberating policies. However, the acceptance of foundations, as put forward by Meyer and Rowan (1977), still remains an issue (Strachwitz 2010: 213–214), as does argument that wealthy citizens might gain too much influence over public affairs. Foundations and their contributions to public debates continue to need to be accepted, and the role they can assume will, in the future, depend largely on their success in so doing.

There remains one final argument to consider, the strength of which is being increasingly realized as intercultural discussions are mushrooming in Germany, as elsewhere. In discussing the heterarchy vs. hierarchy issue in the context of philanthropy, the focus has been on the immediate advantages society might draw from the existence of foundations, such as funding projects or managing institutions. In other words, the whole issue has been looked at from society's point of view. This, however, is not the only stand one may take. In an open society, to act philanthropically may well also be judged as being beneficial by its inherent intentions rather by its outcomes, and by the intrinsic value of citizens engaging in public affairs by giving their time, assets, ideas, reputation, and creativity to the public. One might even argue that this does not even matter at all, in that citizens should be free to act as they wish, to include acting philanthropically, as long as no harm is done to other citizens. More than a century of a welfare state, a heavily bureaucratized government, and extreme security precautions have made citizens regard themselves as objects, rather than subjects, of their

communities. They are faced with a principal-agent issue of enormous consequences.

In the 21st century, to judge philanthropic activities only by their immediate effects and by their benefits to society seems to fall short of a full understanding of the approach needed to ensure an evolutionary and participatory development of society (Adloff 2010: 53). Supposing it seems timely for citizens and society to wake up to the truth that this depends on citizens regaining the position of principals, the state being subservient to the citizen rather than vice-versa, the legitimacy issue may be answered in a very different way. Given this paradigm shift, it is interesting to note that in Muslim societies, philanthropy is a means to fulfill religious obligations, the state's role being to make sure that every citizen has the chance to do so. Philanthropy as a human rights issue may seem odd in a societal context that relies heavily on utilitarian arguments. But with the emergence of a new discussion on normative categories of society in Germany, it may well serve to support the legitimacy of foundations, albeit to be balanced against the need for and limitations of any societal action.

Notes

1. Editor's note: The author presupposes here that readers will be familiar with Hirschman's (1970) distinctions between three options (exit, voice, or loyalty) in relation to authority. They roughly correspond to rejection, dissent, or acceptance.

2. The other five are: Konrad Adenauer Stiftung (Conservative Party, CDU), Friedrich Ebert Stiftung (Social Democratic Party, SPD), Hanns Seidel Stiftung (Conservative Bavarian Party, CSU), Heinrich Boell Stiftung (Green Party), and Rosa Luxemburg Stiftung (Socialist Party).

3. For example, the Hans Boeckler Stiftung.

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