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"There is no clear evidence that either legal system systematically fosters corruption in the judiciary"

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Abstract

This thesis presents an overview of the susceptibility of the Common Law system and the Civil Law system on corruption and their respective contribution to a judiciary possessing optimal degrees of internal and external independence. A judiciary with such independence is, on the one hand, a significant factor in the battle against corruption; on the other hand such a judiciary has the greatest likelihood of being immune from corruption itself. Since the Common and the Civil Law systems differ in the appointment system of judges and their mechanisms of checks and balances, each legal system has its advantages and disadvantages in terms of securing the judiciary an optimal degree of independence. Various existing, as well as a number of prospective features will be presented, which combine the advantages of the Common and Civil Law systems. These features would guarantee optimal levels of judicial independence, making the judiciary a strong player in the fight against corruption.

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1. Introduction

"Take all the robes of all the good judges that have ever lived on the face of the earth, and they would not be large enough to cover the iniquity of one corrupt judge"[1]

A corrupt judiciary harms society in two ways. In the first place, it cannot fulfill its task of restraining the legislative and the executive branches of government, because it can be bribed or pressurized not to do so. Secondly, fair trials are impossible, since a trial's outcome will depend upon the amount of the kickbacks paid by litigants. Some argue that judiciaries in countries with a Common Law system are less vulnerable to corruption because that system has a better mechanism of checks and balances, than the Civil Law system, making it harder for judges to disguise acts of corruption. Others claim that because political influence on the judiciary in Civil Law systems is weaker, it is harder for politicians to put pressure on the judiciary, forcing judges to accept bribes and to decide in favor of the politician or his/her allies. This thesis aims to describe, in a theoretical way, the influence of the Common Law and the Civil Law systems on the creation and prevention of corruption in the judiciary.

Since no index of measured levels of judicial corruption across countries exists[2], a closer look at the Transparency International Corruption Perception Index (CPI) is taken, to check if there is any sign that either the Common Law or the Civil Law system emerges as the more effective. The Transparency International Corruption Perception Index offers a very useful insight into how widespread

[1] Henry Ward Beecher (Liberal US Congregational minister, 1813-1887)

[2] At least to my knowledge. There exists a table that presents the results of surveys that found out the perception of judicial corruption in 62 countries. Even though this table deals with corruption in the judiciary, I prefer the CPI for various reasons. First, the sample of the CPI is bigger (180 countries versus 62) including nearly all countries in the world. Second, the countries using the Common Law system are underrepresented in the table dealing with corruption in the judiciary (Only 14.52% of the sample are Common Law-countries [11 out of 62] compared to 20% in the CPI [36 out of 180]). Third, out of the 11 Common Law countries used in this table, 5 rank in the top quintile of the CPI (45.45%) whereas in the CPI the corresponding percentage is 22.22%. Out of these 11 Common Law countries used in this table, only one ranks in the lowest quintile of the CPI (9.1%), whereas in the CPI the corresponding percentage is 11.11%. Therefore the sample of the table dealing with corruption in the judiciary is biased; it produces too good results for the Common Law countries. For the table see Transparency International (2007): p. 13

corruption is in different countries. The index does not show overall levels of corruption in different countries, rather it "*ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians*".[3] Looking at the CPI, those countries using a Common Law system come off comparatively well. Of the 180 countries listed on the Corruption Perception Index 2008[4], 15 countries use an entirely Common Law system, a further 21 countries use a mixed judicial system with the Common Law system as most dominant part.[5] This makes a total of 36 countries that have a judiciary where the Common Law system plays the most important role, which amount to 20.00% of all countries listed on the Corruption Perception Index 2008. In the top 20 of the index, however, the share of Common Law countries is 40%, in the top quantile (ranks from 1 to 36) the share is 30.55%. In the lowest quantile (ranks from 145 to 180) the share of Common Law countries is just 11.11%. Further, the average score of countries using a Common Law system surpasses the average score of all countries by 0.45 points.[6]

The question that arises from these statistics is, whether the legal system has an influence on the level of corruption in a country. Since corruption has mainly political, economic and social roots, the sole, direct impact of the legal system on a country's level of corruption is virtually zero. If it were the case that any legal system were truly superior to any other, a country using an "inferior" legal system, should be able to reduce its level of corruption significantly, simply by adopting the "superior" legal system. This is highly unrealistic. The legal systems do have an indirect effect on a county's level of corruption, however, because they directly influence the degree of judicial independence. Since the Common Law and the Civil Law systems differ from each other in terms of how much political influence is exerted on the judiciary, as well as of who monitors the judiciary's performance, the legal system influences the independence of the judiciary and therefore its power to fight internal, as well as external, corruption. But is the Common Law system superior to the Civil Law system,

[3] Lambsdorff (2007): p. 324

[4] See Appendix A.1

[5] These includes countries that use systems that mix Common Law with elements of Civil Law (e.g. South Africa), Common Law with customary law (e.g. Hong Kong) or Common Law with Islamic law (e.g. India). Countries using some features of the Common Law system but with other systems as a basis are not included in this number. A list, showing the legal systems of many political entities is attached to the paper. (See Appendix A.2)

[6] The average score of Common Law countries is 4.48; the average score of all countries is 4.03

or vice versa? The answer is: neither way. As will be pointed out later, both systems have their advantages and their disadvantages in terms of guaranteeing judicial independence. This thesis will explore these advantages and disadvantages and will try to discover how the advantages can be combined, to establish a judicial system which enjoys optimal degrees of independence.

In Chapter two, an overview of the nature of corruption is presented and its most important economic causes and consequences explained. In chapter three the main differences between the Common Law and the Civil Law systems will be outlined. In chapter four, several reasons for corruption in the judiciary will be identified and it will be shown which weaknesses are peculiar to which legal system. In chapter five the importance of an independent judiciary is argued and the necessary requirements for an independent judiciary are introduced. In chapter six, concrete models that should guarantee a judiciary with “optimal” degrees of independence will be presented.

2. Corruption - a brief review

2.1. Definition

In most literature, corruption is defined as the abuse of public power for private gain.[7] In economic terms, "*corruption* [is] *the illicit use of willingness to pay as a decision making criterion*."[8] Private gain arising from corrupt activities can be financial or non-financial: it may be a sum of money, as well as the promotion of political or personal advantages. In the most common form of corruption however, a person or a firm pays money to a public official in exchange for a benefit. These payments pervert the official to oblige the briber, even though it is illegal to do so. Corruption happens in the reverse direction too: public officials, such as politicians or judges, make payments to private individuals, firms or other officials, to obtain benefits in return, which can either benefit the official or his/her party.

As a matter of fact, corrupt deals succeed only when both sides, the person who offers the bribe, as well as the person who accepts it, benefit from it. As a result, acts of corruption *"occur when the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected cost of the penalty"*[9]*.*

2.2. Low-level corruption

In defining the term corruption, one has to differentiate between, what Rose-Ackerman refers to as, "*low-level corruption*" and "*high-level*" or "*grand*" corruption. Rose-Ackerman states that low-level corruption *"[…] occurs within a framework where basic laws and regulations are in place, and implementing officials seize upon*

[7] This, or similar, definitions are used in most of the papers dealing with corruption. See for example: Treisman (2000), Buscaglia and van Dijk (2003), Rios Figueroa (2008) or Transparency International (2007).

[8] Rose-Ackerman (2006): p. xvii

[9] Buscaglia and Dakolias (1999): p. 3

opportunities to benefit personally"[10]. Rose-Ackerman describes several situations that define low level corruption. Officials may, for example, accord the applicant who has the highest willingness to pay a slender public benefit, even though the applicant may not be the best qualified or even be qualified at all. Another example of low-level corruption occurs when applicants who wait for a public service pay bribes to officials to speed up the process or to overcome bureaucratic obstacles. Another very common example of low-level corruption is where officials receive payments for overlooking illegal activities, such as when policemen accept bribes from drivers caught for driving too fast, or customs officials turn a blind eye to smuggled goods in exchange for a bribe.

2.3. High-level corruption

"Low-level" becomes "high-level" when it becomes systematic. Usually, such corruption has a political dimension. As Rose-Ackerman explains:

"*The bribes may be paid at the lowest part in the hierarchy, but they may be part of an organized system that is used to favor political allies and to build campaign war chests, and not only to obtain individual cash benefits.*" [11]

At this point, the negative influences of corruption on the state are much more severe and fighting corruption becomes much more laborious and costly. Buscaglia explains:

"*Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organization or institution cannot function as a supplier of a good or service*. *The probability of detecting corruption decreases as corruption becomes more systemic. Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective"*[12]

Rose-Ackerman distinguishes between three varieties of *"grand" corruption*. The first occurs when leaders of certain branches of the public sector organize large-

[10] Rose-Ackerman (2006): p. xviii
[11] Ibid: p. xix
[12] Buscaglia (2001): p. 2

scale corruption in their branch. Common examples, where large-scale corruption in the public sector is organized, are tax collection agencies and regulatory inspectorates. Another common example of this type of corruption occurs when the police work together with organized crime groups to whom a monopoly on a special illegal activity is guaranteed and protected by police forces in exchange for financial or non-financial gain.

The second variety of grand corruption is a corrupt electoral system, where the outcome of an election depends on bribery.

In acts of corruption which belong to the third variety of grand corruption, politicians or other officials use their power to gain illicit rents from firms. Common examples are privatizations of state-owned enterprises or the placing of public contracts, such as construction projects, when politicians receive payments from firms eager for business.[13]

Rose-Ackerman further differentiates between two extreme cases of grand corruption, namely kleptocracy on the one hand and state capture on the other hand. In the first example, the government massively enriches itself at the expense of the population; in the second, powerful private groups control the state. In cases of kleptocracy and state capture, all three varieties of grand corruption are combined, since in such extreme cases, the electoral system is usually corrupt too.

2.4. Economic research on corruption

Nowadays, more or less every scientific paper dealing with corruption stresses the negative effects corruption has on a country's economy, stability and society. This has not always been the case. Some of the earliest studies of the economics of corruption came to the conclusion that if a well functioning corrupt system were established, its impact on a country's economy would be rather positive. It was argued that by bribing officials, bidders avoided costly and economy-hostile rules and

[13] Rose-Ackerman does not mention the two cases of nepotism, where family relations is the most important decision criterion in, for example, in placing of orders, and fraud, where public officials manage huge budgets and put money out of it on one side.

regulations. Further, services went to the bidder who valued them most which was also positive for the economy. The prevailing opinion in these studies was, that "*a bribe is simply a transfer and therefore entails no serious welfare losses*"[14]

These studies had the major disadvantages that they oversimplified the whole concept of corruption. Further, they ignored the huge negative effects of corruption on the economy and society. Their claim that corruption boosted economic efficiency was usually wrong. Furthermore, these studies did not mention that corruption undermined other public goals such as economic development or social welfare programs. In the following section, various results of research, which prove that a high level of corruption promotes inequality and has a negative impact on a country's GDP per capita, GDP growth and levels of investment, will be introduced. Other current studies demonstrate that corruption lowers government spending,[15] leads to higher spending on the military[16], reduces the quality of public healthcare[17] and even has a negative impact on people's happiness.[18]

As almost all of the current scientific studies regard corruption as a negative phenomenon that harms the economy and must be eradicated, economic research on corruption is crucial in terms of finding ways to fight corruption, as Rose-Ackerman emphasizes:

"*From a policy point of view the goals of economic research on corruption are both to isolate the economic effects of quid pro quo deals between agents and third parties and to suggest how legal and institutional reforms might curb the harms and improve the efficiency and fairness of government."*[19]

2.5. Economic causes and consequences

As pointed out above, early studies on the effects of corruption described corruption in glowing terms, seeing it as a way of side stepping tortuous bureaucratic regulation and, as a result, having a positive influence on the economic performance

[14] Ades and Di Tella (1997): p. 499
[15] Mauro (1998)
[16] Ibid
[17] Gupta et al. (2001)
[18] Helliwell (2006)
[19] Rose-Ackerman (2006): p. 15

of the country. Recent studies on the other hand are much less indulgent and emphasize corruption's negative impact on a country's welfare.

Nowadays there is clearly a consensus among economists about the fundamental question of whether corruption is harmful to the economy or not. About several other related questions however, especially about the causes of corruption, opinions differ considerably. In the following section, an overview is given about some of the most important likely causes and consequences of corruption - and the different conclusions that studies come to.

2.5.1. The causes

2.5.1.1. Size of the public sector:

Free market economists claim that minimizing the public sector is a well-proven method of fighting corruption. The argument goes that the less the government interferes in the economy, for example via market regulations, the smaller is the need for corruption as a tool to circumvent these, often costly, regulations. At the macro-level, studies do not support this opinion. For example Elliott finds that levels of corruption are low when government expenditure is high.[20] The impact of privatization on corruption is also unclear. Some studies claim that privatizations reduce corruption because a corrupt government loses opportunities to extract illicit rents.[21] Lambsdorff, on the other hand, argues that privatizations may only lead to shifts of the corruptive acts from the public to the private sector. Private firms' staff replace public officials as bribe-takers.[22]

[20] Elliot (1997)
[21] See for example Boyko et al. (1996) and Shleifer and Vishny (1998)
[22] Lambsdorff (2006)

2.5.1.2. Lack of economic competition

From an economic point of view a high level of competition in a market is regarded as positive for the welfare of the state. The relationship between a high level of economic competition and the level of corruption is not clear. Indeed, there are many indications that high levels of economic competition reduce corruption. Most importantly, in a market where there is plenty of competition, firms have fewer rents to spend on corrupt activities. Furthermore, politicians and public servants have less scope to influence the market on their bribers behalf. Vice versa, when there is a lack of economic competition, firms have more profits they can spend on corrupting politicians. These points are confirmed by various studies, for example by Henderson[23] or Ades and Di Tella[24]. But there is also opposition to these results. One argument comes from Ades and Di Tella themselves; they explain that problems of causality exist. For example government members may advance the establishment of monopolies because they are bribed to do so.[25] Furthermore, situations may exist where higher competition leads to higher levels of corruption. For example, in situations where firms compete not on price but on quality, the incentive to pay bribes may increase in order to avoid strict quality controls or to falsify outcomes.[26]

2.5.1.3. [De]centralization

In theory decentralization could have both a positive and a negative impact on the level of corruption. On the one hand, government institutions would operate closer to the people. As a result these institutions would be more accessible to the population and take care of their needs more readily and could so reduce the incentive for acts of corruption. Furthermore these institutions could fight against corruption more efficiently if they were more closely in tune with the population. On the other hand, these advantages would only be realized if the decentralized

[23] Henderson (1999)
[24] Ades and Di Tella (1995)
[25] Ibid
[26] Lambsdorff (2006)

government were strong. Weak decentralized governmental institutions would be an easy target for powerful local criminal groups: small-scale state capture could happen.

Studies show that the effects of decentralization on corruption cannot be described simply and largely depend upon how decentralization is measured. Fisman and Gatti take fiscal decentralization on government spending as a measure of decentralization and find that it is negatively correlated to corruption[27]. But several other studies come to the opposite conclusion that decentralization is not correlated to corruption.[28] All in all decentralization's effects on corruption are unclear; decentralization is certainly not the most significant measure in reducing corruption.

2.5.2. The Consequences

2.5.2.1. Inequality of income

To contain inequality of income is one of the most important ways of fighting corruption. Successful efforts to reduce or to wipe out gaps in income prove especially positive, since they fight the problem of corruption from two directions. On the one hand successful measurements to reduce income gaps eliminate a consequence of corruption, on the other hand they also strike at one of the roots of corruption. While it is clear why corruption increases inequality in income, You and Kaghram explain why the reverse causality holds: Usually it is impossible for the poor to monitor the activities of the rich, who therefore can misuse their power and indulge in acts of corruption with impunity; inequality, therefore, is a breeding ground for corruption. Furthermore, they point out that the process of inequality increasing corruption is stronger in democratic countries. This is because in such systems, the powerful have to use more subtle methods to oppress the poor, namely corruption, than in autocracies where the wealthy can oppress the poor more easily.[29] Gupta et al. also find that there exists a significant correlation between corruption and income

[27] Fisman and Gatti (2002)
[28] See for example Arikan (2004) or Adsera et al. (2000)
[29] You and Kaghram (2005)

inequality. Further they discover that corruption increases inequality in education and land distribution.[30]

2.5.2.2. GDP per capita

As in the relationship between corruption and income inequalities, reverse causality exists also in the relationship between corruption and GDP per capita. As Paldam points out, on the one hand corruption is likely to reduce GDP per head, but then on the other hand, poor countries also cannot find the resources to fight corruption effectively.[31] Lambsdorff argues that corruption has a negative impact on the ratio of GDP to capital stock which is used as a proxy for a country's average capital productivity.[32]

2.5.2.3. GDP growth

Some recent studies show that corruption lowers the growth of a country's GDP. Knack and Keefer use a variable of institutional quality which, among other factors also including corruption, has a negative impact on GDP growth.[33] *Other studies, for example by* Tanzi and Davoodi, or Mauro also come to the conclusion that corruption reduces the growth of GDP.[34][35] However, they do not provide a theoretical model that can explain why this is the case.

On the other hand Wedeman points out that since many corrupt countries have both high rates of GDP growth, and also experience high levels of corruption, it seems to be the case that it is not the overall level of corruption as such but only certain kinds of corruption which have a negative influence on growth.[36]

[30] Gupta et al. (2002)
[31] Paldam (2002)
[32] Lambsdorff (2003a)
[33] Knack and Keefer (1995)
[34] Tanzi and Davoodi (2001)
[35] Mauro (1997)
[36] Wedeman (1997)

2.5.2.4. Investment

Numerous studies show that corruption reduces a country's capital stock because it makes policy and commitments less credible. As a result, investors are frightened of putting their money into a corrupt system, so a corrupt country's direct investments decrease. Knack and Kiefer[37], Campos et al.[38] or Rock and Bonnett[39] show that corruption is negatively correlated to the ratio of investment to GDP. Corruption's negative impact on FDI is found only in recent studies, for example by Wei[40] or Henisz[41]. Other studies found out that some types of investment decrease more than others. For example Wei and Wu[42] and Straub[43] show that corruption has a negative impact on FDI but no influence on bank loans. But then, a higher reliance on bank loans makes a corrupt country more vulnerable to currency crises since loans can be withdrawn in a crisis very easily.

2.6. Conclusion

Corruption is a worldwide phenomenon that appears regardless of time, society and political system and has wrought enormous damage on mankind. Corruption happens in many different guises: from comparatively harmless bribery of policemen and customs officials, to far-reaching cases of kleptocrazy and state capture, where corruption brings whole states to the brink of collapse. The opinion that corruption improves society is anachronistic; the amount of recent scientific research describing the negative consequences of corruption is vast. The damage done affects the economy as a whole and touches the lives of individuals. Tracing the causes of corruption, which are chiefly economic, different studies come to different conclusions.

[37] Knack and Kiefer (1995)
[38] Campos et al. (1999)
[39] Rock and Bonnett (2004)
[40] Wei (2000b)
[41] Henisz (2000)
[42] Wei and Wu (2001)
[43] Straub (2003)

3. Common Law vs. Civil Law

3.1. Overview

The Common Law system and the Civil Law system[44] are the two major legal systems which operate in most parts of the world. Apart from most countries in the Arabic region, whose legal systems are based on religious law, nearly all other countries, more than 70% of the world's population, use either the Common or the Civil Law systems.[45] The Common Law system had its origins in England and was then exported to the USA, the English speaking part of Canada, Australia, New Zealand and other former British colonies. The Civil Law system is established even more widely. Except for the British Isles, every European country uses a Civil Law system, as do all the countries of the former Soviet Union and almost all those in South and Central America. Some countries, such as South Africa, Israel and Cameroun use a system which combines elements from both systems. [46] In the following section, four important differences between these two systems are explained: the methods of evolving the law, the appointment procedures, the systems of checks and balances and the ways of becoming a judge.

[44] The Civil Law system is usually subdivided by legal scholars in three different subgroups: The Romanistic, the Germanic and the Scandinavian group. For reasons of simplicity and clearness I will not go into detail about the differences between these groups and all of them are included when the term of "Civil Law system" is used.

[45] Koch (2003): p. 1

[46] For more details about the geographic distribution of the law systems see http://www.juriglobe.ca/eng/rep-geo/index.php (Retrieved on 11/10/2009)

3.2. Differences between the Common Law and the Civil Law systems[47]

3.2.1. Code versus Case

The differentiation between using “codes” or “cases” when evolving the law is often regarded as the most significant difference between the Civil Law and the Common Law systems. In general, the judge in the Civil Law system relies upon codes and statutes when making a judgment in a case, whereas the judge in the Common Law system bases his/her judgment on precedents. However, the codification of the law is not a feature associated only with the Civil Law system, so are important fields of law in every single Common Law country regulated by statute. Further, stare decisis is not an exclusive feature of the Common Law system. Röhl estimates that Civil Law judges are as faithful to precedent as their Common Law colleges and that Common Law judges often take the opportunity to digress from precedent.[48]

In this regard, the difference between the Common Law and the Civil Law system lies in another aspect, namely who creates the law. In countries with Civil Law systems, the legislature makes law and the judge bases his/her decisions upon it. In Common Law systems, on the other hand, the judge has the discretion to make law through creating a precedent. But it would be wrong to infer from this difference in the judge’s influence on law-making that a judge in a Common Law system has greater influence on the quality of his/her jurisdiction. As Koch points out:

“*True, Common Law judges have more authority in the sense that they can evolve the law through precedent; whereas Civil Law judges do not have that authority. The Civil Law judge, however, dominates individual litigations and hence sound dispute resolution depends on the quality of its judges and on assuring that they have the wherewithal to perform their responsibilities to the best of their abilities.*”[49]

[47] Röhl states that many experts believe that the differences between these two systems are rooted in history, especially in the different influences of the Roman law. For more details see: Röhl (1995)
[48] Röhl (1995)
[49] Koch (2003): p.1f

3.2.2. Appointment and promotion procedures

A major difference between the Common Law and the Civil Law systems is the way judges achieve office. In the Common Law system, judges are appointed by politicians. In Great Britain, for example, the Crown appoints High Court and senior judges, the former on the advice of the Lord Chancellor, the latter on the advice of the Prime Minister. Magistrates are appointed by the Lord Chancellor who is very influential in the various parts of the British judiciary and has additional tasks, which involve him/her in the legislative and the executive branches too.[50] In the United States, the President has considerable influence on the judiciary. S/he has the right to propose Supreme Court judges, the Chief Justice, District Court judges and courts of appeal judges. The necessary assent of the Senate is usually forthcoming.[51]

In the Civil Law system, a judge's appointment and promotion are usually apolitical. Appointments are based on examinations of the candidate, after s/he has received an education that aims to prepare the candidate for a career in the judiciary. Promotions are granted by superiors, who choose the promoted judges according to criteria which usually depend on merit and seniority. The definition of merit is incumbent on the superiors.

3.2.3. Checks and balances

In both systems there exists a framework which regulates the way judges are checked and monitored. These frameworks of checks and balances in the Common Law system and Civil Law system are different from each other. In the Common Law system, lawyers are responsible for monitoring the judges, whereas in the Civil Law system judges monitor one another.

[50] For more details see: Lyall (2002)

[51] About 20 percent of the proposed Supreme Court judges are rejected by the Senate. For more details see: Kovacs (1997)

3.2.4. Professionalism

Koch claims that: "*Perhaps the most significant distinction between the Civil Law model and the Common Law model is that in the former the judiciary is a corps of specially trained professionals*"[52]. Judges in the Civil Law systems receive an education with the aim of preparing candidates for a judicial career that will usually last for the whole of their professional lives. Especially at the beginning of their careers, young judges have close relationships to senior judges who guide and advise them. The judge's promotion is usually performance-based. In the Common Law system, on the other hand, judges do not have such an educational path to follow: rather they come from a different profession. Koch underlines this point when he says *"[…] the US judiciary is staffed by "amateur" judges largely drawn from a related, but in many ways dissimilar, profession, legal advocacy*"[53]. Whether this difference in the typical career path of a judge in these two systems generates differences in the quality of the judge's work will not be discussed further.

3.3. Conclusion

This short overview of the most important differences between the Common Law and the Civil Law systems makes no claim to be exhaustive. Tendencies towards a similarity in some respects can be observed and differences in the judiciary exist amongst countries sharing the same legal system. Nevertheless, when comparing the susceptibility of these two legal systems to corruption, these differences described above are critical when it comes to analyzing the different advantages and disadvantages a legal system has, in order to prevent its being contaminated by corruption. The differences in the appointment procedures and in the systems of checks and balances are of particular importance, as will be shown in the next chapter.

[52] Koch (2003): p.4
[53] Ibid

4. Corruption in the judiciary

4.1. Overview

A corrupt judiciary is one of the worst nightmares any country can suffer. A corrupt judiciary not only loses its ability to fight corruption but also fails to conduct fair trials. According to Transparency International, *"judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system*."[54] And further: *"Corruption is undermining justice in many parts of the world, denying victims and the accused the basic human right to a fair and impartial trial."*[55]

Since it is the role of judiciary to check and monitor other public institutions, a well functioning, fair and independent judiciary is absolutely necessary to fight corruption. A corrupt judiciary is neither fair nor independent; it harms a country and its society in many different ways. A corrupt judiciary is not fair and readily available to everybody, because personal wealth and willingness to bribe judicial staff determine a trial's outcome; unjust jurisdiction is therefore a daily occurrence.

Governments use corrupt judiciaries to further their illegal aims, members of the government use it for personal purposes, undermining the separation of the executive and judicial branches. Judicial corruption happens at every stage of a trial, it *"[…] extends from pre-trial activities through the trial proceedings and settlement to the ultimate enforcement of decisions by court bailiffs*"[56] Examples of such practices are diverse. Judges or court staff manipulate trials and court dates, evidence is withheld or "lost", judicial procedures are not complied with, prosecutors or the police distort evidence and so on, all this to favor the party who has paid a bribe. Judicial failures, such as the ones mentioned, destroy society's trust in the judiciary and send a message that corruption is tolerated. A corrupt judiciary is therefore an ideal

[54] Transparency International (2007b): p. xxi
[55] Ibid: p. xxi
[56] Ibid: p. xxi

breeding ground for corruption in other fields of society: it hampers economic growth and trade, boosts organized crime and weakens society.[57]

4.2. Two types of judicial corruption

Transparency International differentiates between two types of judicial corruption: political interference in judicial processes and bribery. [58] Political interference happens when judicial personnel face pressure from political forces and are forced to rule in favor of those forces. Usually, a corrupt judiciary facing political interference goes hand in hand with a corrupt political system. The problems emerging from political interference in the judiciary will be discussed later in some detail. Bribery, on the other hand, can be as systematic as political interference, but can also occur in a country where there is no political pressure on the judiciary. If there are black sheep amongst judges, lawyers or other judicial staff who accept bribes from litigants, they inevitably harm the quality of the judicial system severely, and make it seem as if the entire judicial process lacks equity and impartiality. If black sheep are in a minority, the judicial system maintains its functionality to fight corruption, inside as well as outside the judicial system, and possesses the strength to take assertive action against corrupt judges. Even in cases where most judges accept bribes, opportunities for the government to free the judiciary from corruption and to sustain its war on corrupt practices will thrive, as long as the government shows determination. If a government colludes with a corrupt judiciary, however, a state of political interference in the judiciary is reached. In a country where strong political interference is widespread, problems are severe and the battle against corruption is much more difficult to wage than in a system where bribery in the judiciary exists but politicians are not involved.

[57] Ibid
[58] Ibid

4.3. Causes

There are many different causes of corruption in the judiciary. In the following section, an overview of the most important ones is given. It is important to notice that in reality, a judiciary is rarely corrupt for one single reason; usually many factors play a role at the same time.

4.3.1. Low salaries

Judges are more susceptible to corruption if they are poorly paid.[59] The lower their salaries, the more easily they will be tempted to accept bribes to feather their own nests. Another aspect of the problem is that if salaries are low, qualified persons prefer taking jobs where they can earn more. The hypothesis that higher salaries in the judiciary will lead to lower levels of corruption is empirically verified by Voigt.[60] In some countries, where judgeships are for sale, judges who bought themselves into office largely depend upon bribes to recoup their investment.[61]

Rose-Ackerman states that the problem of low salaries is more likely to occur in Civil Law countries because: "*Judges may be more vulnerable to these inducements in continental Europe-like systems where they have few accumulated assets*"[62]. Especially in South-East-Asian countries, the poor salaries of judges and other judicial personnel are the principal causes of corruption in the judiciary.[63] Empirical research, on the other hand, shows that judiciaries in some countries using Common-law systems also suffer from low salaries. In Bangladesh and Kenya for example, countries using the Common Law system, the poor salaries of judicial staff leads to massive amounts of illegal payments by litigants to bribe judicial staff.[64]

[59] If judges are allowed to earn extra income they probably would have fewer necessities to accept bribes. Judge's moonlighting may however influence the quality of his/her work, creating incentives for litigants to pay bribes.
[60] Voigt (2007)
[61] Pepys (2007): p. 5f
[62] Rose-Ackerman (2007): p. 23
[63] Yang and Ehrichs (2007)
[64] For more details, see the reports of Laskar, (2007), Métaoui (2007) and Transparency International Kenya (2007)

4.3.2. Political influence

It may happen that a corrupt judicial system is not only tolerated, but even encouraged by the government. As mentioned before, in many countries all around the world, judicial staff face pressure from powerful political forces, to rule in their favor. As well as exerting political influence on the judiciary, members of the government can control the judiciary in many different ways. One of the most fundamental is through the process of appointments. If politicians are able to select judges not by merit, but on the basis of personal insider relationships, this may easily lead to the appointment of corruptible judges. Judges, appointed through nepotism, are more likely to take bribes and to bias their decisions in favor of the intercessor. This problem appears in many countries, regardless of the legal system.[65]

Another way in which political influence can be exerted on the judiciary is via sanctions. If members of the government are able to reprimand or fire judges arbitrarily, independent judges are more likely to suffer recrimination than judges who accept bribes from governmental officials. From fear of sanctions, judges can be forced to act according to the will of their political masters or have to reckon with severe consequences. Often, political might is disguised behind quasi judicial institutions. In a recent case, the Algerian supreme judicial council (CSM) sanctioned two law officers for "*falling short of their professional obligations*". What was supposed to look like an act of judicial self-purification, was a clear case of the government exercising political influence over the judiciary, since the head of state and the Minister of Justice chair and co-chair the CSM.[66]

4.3.3. The law's delay

The prolixity of judicial processes may be an incentive for litigants to pay bribes to speed up procedures. In a judiciary where median times and procedural steps of a judicial process are excessive, corruption will be more widespread. Often,

[65] Recent examples for an intransparent, politically influenced appointment system can be found for example in Georgia or Kenya, where recent judicial reforms aiming to impose a strictly merit-based appointment system did not change the status quo. For more detail see the reports of Karosanidze and Christensen (2007) and Transparency International Kenya (2007)
[66] Métaoui, Fayçal (2007)

a lack of judicial staff or poor working conditions for judicial personnel results in delays in the judicial processes. To circumvent these delays, litigants, unsurprisingly, may consider bribing officials to accelerate proceedings. Voigt shows that the hypothesis that the longer the time needed to get a court decision, the higher levels of judicial corruption are, holds.[67] This problem is especially prevalent in India where in 1999, it was calculated that, given the rate of disposal at that time, the processing of cases pending would take 350 years, but only if no new cases entered the system.[68] Similar problems occur in many other countries, regardless of the legal system they employ.

Long duration of processes and poor working conditions are not the only reason for slow proceedings; judicial personnel can cause slow-downs deliberately to tempt litigants to bribe them. This is possible if staff control "*important aspects of case management, such as the assignment of judges, trial dates and meetings with judges*"[69]. With this power in hand, corrupt staff have numerous opportunities to cause delays or choose the judge at the request of their briber. If these unfair practices can be exercised without consequences, this is rather a consequence of a lack of accountability.

4.3.4. Lack of accountability

As explained above, too much political influence definitely limits the independence of the judge and therefore leads to corruption. On the other hand, however, a completely independent judiciary without any system of checks and balances promotes corruption too. Judges, who fear no consequences because their corrupt practices are not monitored, are naturally more open to bribery. A mechanism of checks and balances where the disciplinary body consists of judges might work well, if corruption in the judiciary happens rarely and very high ethical standards regarding corruption exist amongst judges.

[67] Voigt (2007)
[68] Transparency International India (2007)
[69] Rose-Ackerman (2007): p. 23

If corruption in the judiciary is widespread or even systematic, the system of judges monitoring other judges will not reduce corruption. It might even make things worse, with judges able to organize themselves into an efficiently corrupt body, unchecked by political or any other power. Such a system of judges monitoring their peers exists for example in Guatemala, where cases of suspected corruption involving judicial staff are dealt with by a judicial disciplinary council, consisting of judges and magistrates.[70] A similar development happened in Italy, where now members of the judiciary elect all judges of the higher council which, in turn, decides on every question regarding members of the judiciary.[71] Such developments undermine the traditional hierarchy of the judiciary and may lead to a lower degree of checks and balances, which promotes opportunities to disguise acts of corruption.[72]

4.3.5. Lack of Transparency

Lack of transparency in the judicial system is an ideal breeding ground for corruption. It leads to various problems for judges to keep an overview in a confused system, for example if they lack access to information. This results in poor quality decision-making and delays. Further, insufficient transparency creates opportunities for judicial staff to cover up bribery; as a result corrupt judges do not have to fear getting caught and therefore have no incentive to stop accepting bribes.

Lack of transparency exists if a court's operations and decision-making processes are not or are only in part, published, if a free media does not have access to judicial proceedings or if the public has no chance to find out about problems and lapses inside the judicial system. Usually insufficient transparency goes hand in hand with other shortcomings in the judiciary and is more likely to occur in authoritarian systems. Since opacity is often created on purpose to obfuscate illegal actions, a perfectly functioning, independent judiciary which is free of corruption, will mostly be transparent too.

[70] Peña (2007)
[71] Guarnieri (2007)
[72] The number of cases of corruption arising from too much internal independence usually is the smaller, the more there are cases where boards of judges decide. Since the more judges decide on a case, the higher are the costs for bribing.

A lack of transparency also exists in a judicial system where the decision-making power is concentrated in just a few hands. In such systems, more opportunities to decrease its transparency exist and therefore corruption thrives. This happens, for example if "*judges concentrating a larger number of administrative and jurisdictional roles within their domain*"[73]. In such a system controlling and monitoring judge's actions becomes more difficult and, as a result, opportunities to take bribes increase. Such a system existed in Chile and Ecuador before judicial reforms in the mid-nineties.[74]

4.3.6. Organized crime

High levels of corruption in combination with high levels of organized crime are especially troublesome for a society. Indeed, in many countries there exists a strong connection between the growth of organized crime and corruption in the public sector, including the judiciary. As a matter of fact, Buscaglia and van Dijk discovered that these two scourges reinforce one another.[75] Furthermore, they have the same root. Levels of organized crime and corruption in the public sector depend strongly upon the quality of core public state institutions such as the police, the prosecution and the courts. This applies to any country, regardless of its state of development. The authors point out that "*[…] high levels of organized crime and corruption are linked to low levels of human development… [there exists] a vicious circle of poverty exploited and compounded by organized crime and grand corruption…Organized crime and corruption prosper in an environment of bad governance*"[76]. The strong relationship between organized crime and corruption confronts the judiciary with severe problems, but at the same time offers an excellent opportunity to kill two birds with one stone.

[73] Buscaglia and Dakolias (1999): p. 4
[74] Ibid
[75] Buscaglia and van Dijk (2003). The authors used a sample of 64 countries, amongst them countries with Civil Law systems as well as countries using a Common Law system.
[76] Ibid: p. 31f

4.3.7. Further reasons

In some countries, corruption is not recognized as something illegal but as a regular feature of the judicial process. In such countries, corruption is socially tolerated. Pepys explains that "*In some countries the payment of fees for judicial services is so engrained that complaints arise not if a bribe is sought, but if the requested bribe is greater than usual*"[77].

If elasticity of demand for court services is low, judicial staff have more opportunities to force the litigants to pay bribes. If there are no alternative and competing legal jurisdictions for citizens to take legal actions, litigants are at the staff's mercy: staff can demand illegal payments, because litigants have no alternatives to get their cases heard.

If a judge has to decide a complex new case where no precedents exist, s/he may accept bribes to resolve the matter. Since there are no precedents, the corrupt judge cannot violate any.

Judges threatened with physical harm may be forced to accept bribes. This may occur if the defendant belongs to a criminal organization or is in other respects very powerful. An example in recent European history was intimidation of Kosovar judges, forcing them to decide in favor of Kosovar defendants, even though the law was on the side of their Serb accusers.[78]

4.4. The influence of the legal system on the causes of corruption

Looking at the different causes of corruption in the judiciary described above, three aspects stand out. Firstly, most causes of judicial corruption cannot be assigned to any particular legal system. Secondly, the causes which can be assigned to the Common Law or the Civil Law systems are political influence and the lack of accountability. Thirdly, no cause, not even the ones which can be assigned to a legal

[77] Pepys (2007): p. 4f
[78] Ibid

system, appears in one single legal system exclusively; this is because most causes are rooted in political and social factors beyond the legal system.

4.4.1. Causes not assigned to a legal system

Except for the problems of political influence and a lack of accountability, all other reasons cannot be assigned to a specific legal system. For most of these causes, this statement is straightforward. Low salaries, for example, do negatively affect the standard of living of a judge, resulting in a higher temptation to accept bribes, regardless of the legal system of which s/he is a part. A slow judiciary where procedures take a very long time is not caused by a specific legal system, but rather by a shortage of judicial personnel, out-of-date infrastructure, a lack of modern equipment and a lumbering bureaucracy. Further, processes in the Civil Law system are not per se more transparent than in the Common Law system or vice versa. The reasons for a lack of transparency in the judiciary are mostly deliberate, for example the result of not allowing access to a free media or come about from keeping a court's operations and decision processes under lock and key, which is more a problem of poor accountability. The strong connection between judicial corruption and organized crime is the fault of political and judicial failure rather than a failure of a particular legal system. No evidence exists that the legal system is responsible for the existence of organized crime syndicates. Social toleration of corruption arises because of political and judicial failure, regardless of the legal system, so does low elasticity of demand for court services. No system can protect judges from physical intimidation.

4.4.2. Causes assigned to a legal system

Political influence on the judiciary and a lack of accountability of the judiciary result in judicial corruption whether in countries use a Civil Law or a Common Law system. In contrast to the causes of judicial corruption explored in chapter 4.4.1, however, the nature of a legal system influences the occurrence of corruption caused

by political interference and insufficient accountability. As pointed out in chapter three, The Common Law and the Civil Law systems differ from each other in their appointment procedures and in their systems of checks and balances. These differences produce different levels of vulnerability to political influence on the judiciary, as well as cause different dangers of creating corruption related to the appointment system of judges.

4.4.2.1. The appointment system

A high degree of political influence on the judiciary is clearly a sign of a lack of external judicial independence. The Common Law system in particular can be criticized for having too little external judicial independence because of its appointments system. In the Common Law system, politicians appoint judges; therefore candidates who run for office may have an incentive to bribe politicians to get appointed by them. Furthermore, after their appointment, judges may privilege the political party or coalition that appointed them.[79] What may look like an advantage of the Civil Law system in this regard changes, when there are differences in the de jure and the de facto judicial independence of the Civil Law system in respect to the appointments procedure. In the Civil Law model the process of the selection of a judge should be apolitical. If political forces undermine this process to take influence on the outcome, the system is in trouble. Because of the lack of checks, as compared to the Common Law system, an appointment process based on patronage is especially harmful. Therefore it can be said that the Common Law system surrenders a high degree of external independence in order to avoid problems, resulting from flouting of laws controlling the appointment system of judges, which can do a lot of harm to a legal system where the appointment is de jure apolitical.

4.4.2.2. Checks and balances

Critics of the Civil Law system often say that corruption appears more likely in the Civil Law system since too much power is concentrated in the judge and this

[79] Rose-Ackerman (2007): p. 22

increases the chances for corruption. One example is the case that top-level judges are corrupt and as a result, only promote judges who play the corruption game too. So pressure is put on lower-level judges who also have to collect bribes if they wish to rise in the hierarchy and "fit into the system". Furthermore senior judges can manipulate assignments of cases in favor of powerful clients. In a well functioning checks and balances system, such incidents are much less likely. Rose-Ackerman points out further disadvantages of the Civil Law system related to a too high degree of internal independence: "*The lack of dissents and the low level of lay participation will make corruption relatively easy to hide*."[80] In the Common Law system, judges and lawyers are able to check each other more easily which makes it harder for one party to accept a bribe. This argument follows the line that the Civil Law system has to accept a too low degree of internal and external independence in order to avoid any external independence at all. In the Common Law system, the advocacy checks the judiciary. Since the advocacy is a body outside of the judiciary, the Common Law system avoids too high degrees of internal independence of the judiciary, but not at the expense of political influence.

But there are other views on these relations too. According to Koch, the system of checks and balances of the Civil Law system has advantages over the Common Law system. Regarding the prevention of corruption, the higher degree of self-regulation is an advantage. He argues that judges have several ways of checking their colleagues' behavior. If an act of corruption happens where a judge is involved, there is a good chance that other judges will notice and report the crime. He argues further that in a process under a Civil Law system usually several judges are involved: "…*some to build the record, others to manage the litigation and others to bring the case to a decision. For most significant litigation both civil and criminal, the judges sit in panels."*[81] As a result whistle blowing opportunities occur which ensures that integrity is maintained. This is not the case in a Common Law system, where the task of monitoring the judiciary for cases of judicial corruption is carried out by the advocacy which may not have the same insights as judges and therefore have disadvantages in detecting corruption in the judiciary.

[80] Ibid: p. 22
[81] Koch (2003): p. 10

4.5. Conclusion

A corrupt judiciary is a problem that has many different causes. Most of these, for example poor salaries, poor transparency or tardy judicial procedures, are not dependent upon the legal system a country employs. Some of these causes, however, are. Because of their different appointment mechanisms and different systems of checks and balances, the Common Law and the Civil Law systems present different risks of promoting a corrupt judiciary. There is no simple answer to the question, which of the two systems is less likely to promote corruption The Civil Law system surely has its advantages when it comes to the appointment processes, because it has better preconditions to prevent political interference with the judiciary. The Common Law system, on the other hand, has the advantage of a monitoring agency independent of the judiciary, which prevents the judiciary covering up its own acts of corruption. In other words, these different dangers root in a different degree of judicial independence: The degree of independence from the government, the so called external independence, on the one hand and the independence of the judges from their superiors, the so called internal independence, on the other hand. These concepts will be explored more thoroughly in the next chapter.

5. Independence of the judiciary

5.1. The importance of an independent judiciary

"Whatever else courts do, we have the power
to make the other branches of government really angry.
In fact, if we don't make them mad at least some of the time,
we judges probably aren't doing our jobs."[82]

The function of a state's judiciary is to monitor the legislative and executive branches, control their actions for possible illegality, solve conflicts between the executive and the legislative and to protect citizens from unlawful and harmful actions by the other branches. If the judiciary does this work successfully, it plays a key role in reducing opportunities for other governmental departments indulge in corruption. Therefore, the judiciary is one of the most important institutions of state when it comes to fighting corruption effectively and to reducing the opportunities for bribery. Thereby, the independence of the judiciary is a fundamental necessity. The judiciary can only fulfill its function as a control-exercising institution if independence from the branches to control exists, or, in short, if there is "*[…] independence of the judiciary from outside interference"*[83]. In fine, judicial independence means that judges' decisions are implemented, regardless of the preferences of other branches of government. Further these decisions must not result in negative consequences such as expulsion, wage reductions or loss of influence.

Division of powers is the most important requirement for an independent judiciary. The division of the state into the executive, legislative and judicative branches, with each of them having separate areas of responsibility, is of great importance. As soon as the division of powers erodes, the independence of the judiciary is in danger. Members of the legislative and executive branch must not be a

[82] Former U.S. Supreme Court Associate Justice Sandra Day O'Connor in a speech the University of Florida's Levin College of Law, 09/09/2005. For the whole speech see http://www.floridabar.org/DIVEXE/GCBillReport.nsf/Attachments/0B9E26F1B8E419598525730200749 11D/$FILE/Oconnor%20speech%20UF9-9-05.pdf?OpenElement (Retrieved on 11/04/2009)
[83] Hayo and Voigt (2007): p. 2

member of the judiciary. If there is a gray area between the powers of any two or all three branches of the state, the judiciary cannot work independently from the legislative and the executive.

Generally speaking, some countries have much firmer requirements for having an independent judiciary than others. Looking at previous work[84],[85] it was found out, that a greater degree of judicial independence is expected in countries with a well functioning system of checks and balances and in countries with federal systems.
Regarding a democratic system of horizontal checks and balances, individuals that hold power are limited and monitored by the judiciary. Walker argues that "*Without these checks, countries get trapped in an 'asymmetric equilibrium', where the dominant government actors […] have incentives to act beyond or outside their formal limits.*[86]
This is because in countries with a federal system, there usually are more veto players than in those with a unitary system. Since political power in a federal system is distributed over more different players, the power of any individual office-holder is limited, compared to the power of the office-holder in a unitary system.

Next to better requirements for fighting corruption effectively, an independent judiciary brings other benefits to a country too. La Porta et al. found that a higher degree of judicial independence has a significant positive influence on several other indicators. The authors claim that more judicial independence is correlated to higher degrees of political and economic freedom and raises the property rights, the political rights and the human rights indices.[87]

[84] Ibid
[85] Feld and Voigt (2004)
[86] Walker (2006b): p. 760
[87] La Porta et al. (2004)

5.2 Measuring judicial independence

Finding a method of measuring the independence of the judiciary is a crucial step for anyone who wants to do empirical work on this topic. It is not enough simply to refer to the legal framework when analyzing the independence of the judiciary, since de jure assessments may differ from political reality. In the following section different ways of measuring judicial independence are introduced.

The method used by Feld and Voigt is to calculate two values, one that measures de jure judicial independence, the other de facto judicial independence.[88] For measuring de jure independence, they value among other things characteristics of the constitution, judicial tenure, salaries and accessibility. For measuring de facto independence, the authors value among other things the effective average term length, changes in income and numbers of judges. Because the variables indicating de facto independence have to be observed over a certain period of time, the authors base the indicator on the period 1960-2002. This leads to problematic outcomes concerning the former Eastern Bloc countries all of which formulated new constitutions after 1990. Furthermore, the authors focus only on the supreme court of each country; thus they do not differentiate between different types of courts. The concept of de jure and de facto judicial independence will be explained more fully in the following section.

A different approach to measuring the independence of the judiciary of a country is to look at how often the judiciary decides against the government. If the number is comparatively high, then the judicial system seems to work without pressure from the government and can therefore be regarded as relatively independent. A low score may indicate political pressure being brought to bear upon judges and can therefore be interpreted as a sign of a dependent judiciary. Iaryczower et al. examine judicial independence in Argentina from 1935-1998 using this criterion.[89] They come to the conclusion that the stronger the control of the president over the judiciary, the smaller is the probability of judges reversing governmental decisions or voting against the government. Ramseyer and Rasmusen

[88] See for example Feld and Voigt (2003) and Feld and Voigt (2004)
[89] Iaryczower et al. (2002)

use similar criteria and obtain similar results when investigating the Japanese judicial system.[90] Even if the results look comprehensible, the used criteria can be criticized for being simplistic since independent courts may decide in favor of the government and a binary measure cannot describe the complexity of judicial decisions.

Other approaches are for example those used by La Porta et al who measure the independence of the judiciary as the average of their "*measures of tenure of supreme court judges, tenure of administrative court judges and judicial decisions as a source of law".*[91]

Henisz uses the average 1985-1990 value of the variable "Law and Order" by International Country Risk Guide (ICRG).[92] To rule out the cases where law and order are enforced through repressive policies Henisz only regarded the country-years in which the Polity database indicated at least „slight to moderate limitations to executive authority". The author admits that unfortunately problems of endogeneity and subjectivity may occur.

5.3. Varieties of judicial independence

When talking about the independence of the judiciary it is essential to mention that independence is not simply independence, there are important differentiations to be made. First the differences between de jure and de facto judicial independence will be explained. This differentiation is used, amongst others, in the work of Feld and Voigt.[93] Then the difference between external and internal independence will be established, a concept used in the studies of Rios-Figueroa[94]. These differentiations will be very useful when examining judicial independence in the Common Law and Civil Law systems.

[90] Ramseyer and Rasmusen (2001)
[91] La Porta et al (2004): p.8
[92] Henisz (2000b)
[93] See for example Feld and Voigt (2003) and Feld and Voigt (2004)
[94] See for example Rios-Figueroa (2006)

5.3.1. De jure and de facto judicial independence

De jure independence of the judiciary can be understood as the formal laws that frame "*[…] the position of the judiciary with respect to the other pillars of the political system"*[95]*.* Feld and Voigt characterize the term de jure independence as "*[…] the independence of the courts as it can be deduced from legal documents."*[96] By contrast, de facto judicial independence is defined as the "*[…] independence that the courts factually enjoy*" [97] . Essentially, this means the degree of the actual implementation of judicial independence which is legally stipulated.

De jure and de facto independence do not necessarily appear on similar levels in a certain country. In two of their papers Feld and Voigt examine the relationship between de jure and de facto judicial independence and come to remarkable results.[98] , [99] The authors estimated the impact of judicial independence on real GDP growth per capita in the period 1980-1998 and found that all countries which appear in the "Top Ten" of the de jure index, do not do so in the de facto index[100]. What's more, Feld and Voigt found out, that de jure judicial independence turns out not to have a clear impact on economic growth[101], whereas de facto judicial independence does. These findings are clear evidence that it is not sufficient simply to guarantee judicial independence on paper. There must also be willingness on the part of the politicians in power to suit their actions to the word. The most advanced laws and rules guaranteeing judicial independence are worthless if the party in power overrides them. Feld and Voigt supply a possible solution to this problem, when claiming: "*It is necessary to shape judicial Independence by additional informal procedures that may be accompanied and enforced by informal social sanctions."*[102] A good example that confirms this point of view comes from Hayo and Voigt who claim that the more

[95] Feld and Voigt, (2004)
[96] Ibid., p. 2
[97] Ibid: p. 2
[98] Feld and Voigt (2003)
[99] Feld and Voigt (2004)
[100] Feld and Voigt (2003) use a sample of 57 countries; Feld and Voigt (2004) use a sample of 73 countries.
[101] Only the variable "constitutional specification of the court's procedures" as one aspect of de jure Judicial Independence proves to be significant and positive.
[102] Feld and Voigt (2003)

unstable the political situation in a country, the higher is de facto judicial independence. This is because protection of the judiciary from political pressures becomes more important if other governmental branches are exposed to social unrest. They point out: "*This insulation is not based on formal rules, which could be easily adjusted after a change in government, but informal rules*"[103].

5.3.2. External independence

When analyzing the independence of the judiciary, one has to differentiate between external and internal independence. The independence of the judiciary, and especially the independence of Supreme Court judges, from the governmental branches is called external independence[104].

It is crucial for a judiciary to enjoy the right degree of external independence to effectively prevent corruption. If there is a lack of external independence, for example officials committing acts of corruption would either not be prosecuted at all or only prosecuted as a matter of form, but would not fear to get convicted of illegal actions. This is because a judge, who is dependent on the ruling politicians, would not decide against the officials whom s/he depends upon. As a consequence, the judge would have to fear negative, formal as well as informal, consequences for him/herself. Further, a lack of external independence is especially harmful regarding the appointment system of a judge. In most countries using the Common Law system, politicians have an important influence on the appointments of judges.[105] This is often criticized as a threat to external independence of the judiciary for the reasons mentioned above.

On the other hand, if the degree of external independence of the judiciary is too great, major problems occur if the judiciary is corrupt itself. Juridical personnel

[103] Hayo and Voigt (2007): p. 26
[104] Rios-Figueroa (2006): p 5
[105] In many Civil Law countries, especially countries in the third world, politicians influence the appointment of judges too, although de jure they are not allowed to do so.

working in a wholly independent and therefore unchecked judiciary would have strong incentives to demand bribes and, as a result, increase the level of corruption instead of reducing it. As Rios-Figueroa argues "*a corrupt judiciary can facilitate high-level corruption, undermine reforms and override legal norms"*[106]*.* He further shows that the more autonomous the judiciary is the greater is the level of corruption in the country. [107]

This leads to the conclusion that since too much as well as too little external independence leads to a negative outcome, a medium level of external judicial independence is optimal to fight effectively against corruption.

5.3.3. Internal independence

As important as the right degree of the judiciary's external independence is its level of internal independence. Internal independence *"[…] refers to the extent to which lower court judges can make decisions without taking into account the preferences of their hierarchical superiors"*[108]. It is ascertained *"by the extent and location of administrative controls and the extent to which judges' decisions are constrained by legal rules regarding bindingness."*[109] The assumption is, that the greater the internal independence of the judiciary, the less are lower court judges monitored, and as a result, the easier it gets for them to accept bribes. On the other hand, too little of internal independence can also lead to problems. In a system where low court judges are not allowed to decide independently, only regarding their hierarchical superior's opinion and not putting their own preferences forth, can surely not be identified as fair and balanced. Furthermore, problems occur if these hierarchical superiors are corrupt themselves. People who successfully bribe superior court judges in a system of high internal independence hardly have to worry about low court judges deciding against them.

[106] Rios-Figueroa (2006): p. 11
[107] Ibid
[108] Ibid: p. 13
[109] Ibid: p. 13

5.4. Reforms for an independent judiciary

When aiming to reform the judiciary system so that it maintains an optimal degree of internal and external independence, politicians have to detect the links between the judicial system and other institutions, governmental and non-governmental alike, *"[…] but also not neglect to review factors hampering independence within the judiciaries themselves*"[110], to find potential sources of pressure on the judiciary. After they are found, precise reforms need to be made to accomplish an independent judiciary and, as a result, free the judiciary from corruption. Therefore, it is especially important that potential sources of corruption are eradicted. This importance is stressed by Rose-Ackerman who points out that: "*Policy must address the underlying conditions that create corrupt incentives, or it will have no long lasting effects."*[111]As one reason she emphasizes that "*Powerful groups that lose one source of patronage will search for another vulnerable sector*".[112]

To prevent the government being able to exert influence on judicial decisions it is necessary to build up mechanisms which make it very costly for the government to limit judicial independence. On the one hand mechanisms outside the judiciary have to be established which maintain judicial independence. On the other hand rules within the judiciary have to be established to protect it from governmental interference. Of course, reforms outside and inside the judiciary, are strongly connected. A well-organized opposition and a free press cannot lead to an independent judiciary if the framework within it lacks protection from "outside". On the other hand, an independence-supporting framework within the judiciary is not sufficient in a system that has no opposition or a muzzled media.

[110] Buscaglia and van Dijk (2003): p. 29
[111] Rose-Ackerman (2006): p. xxxvii
[112] Ibid: p. xxxvii

5.4.1. Mechanisms outside the judiciary

The most effective way to establish and maintain judicial independence from outside is to build up a strong opposition which can monitor governmental actions. This opposition can assume many forms. It can be exercised via political parties in parliament, via a free and critical press [113] and by citizens that can organize demonstrations, referendums, strikes, etc. These varied forms of opposition have to be free to interact with each other. As an example, it can be very difficult for citizens to actually recognize political interferences in the judicial independence; therefore they rely upon the media to be informed properly.

Depending upon the political and social development of a country, building up these mechanisms can differ a lot in their expenditure of money, time and other resources. It can be a very hard task, especially for poor and unstable countries. But building up frameworks within an opposition and a free press can develop the benefits will stretch far beyond an independent judiciary.

5.4.2. Rules inside the Judiciary

Compared to the mechanisms outside the judiciary, establishing an independence-supporting framework within the judiciary is much less extensive. One of the most important indicators for judicial independence is whether the court's procedures are specified in a constitution. If this is the case it is a strong indicator for judicial independence, because constitutional law is normally more difficult to modify than ordinary law. As a result, if constitutional provisions, within which judges operate, are fixed by constitutional law, it guarantees greater independence of judges and prosecutors because the independence of judges crucially depends upon the stability of their labor conditions.

[113] As Hayo and Voigt point out: "*Strictly speaking, a free press is not part of the relevant institutional structure, but rather a consequence of a certain institutional structure*.". In: Hayo and Voigt (2007): p. 9

Furthermore, it is very important for guaranteeing judicial independence that appointments of judges are made by other independent bodies. The first choice of such independent appointers would a committee, dominated, but not controlled, by other judges or jurists, whereas an appointment by one single powerful politician such as the president, the prime minister or the minister of justice would make guarantee bonds for judicial independence much less credible. What a system of independent appointers who bring judges to office might look like will be discussed in the next chapter. This point of view is shared by Feld and Voigt and explained in their work.[114] Rios-Figueroa, however, comes to a different conclusion, claiming that appointment and impeachment procedures do not seem to have a significant impact on a country's level of corruption.[115]

Another important factor determining judicial independence is the duration of judges' tenures. It increases external independence of the judiciary, if judges are appointed for life or up to a certain compulsory retirement age and cannot be removed from office. If this were not the case judges would "[…] *have an incentive to please those who can reappoint them"*[116]. Rios-Figueroa claims after analyzing his estimations that if the tenure of Supreme Court Judges is longer than that of their appointers, average corruption is lower.[117] On the other hand, long durations of judges in office decreases their accountability. In the next chapter an "optimal" tenure will be suggested.

Another important issue, that determines the level of judicial independence, is a judge's remuneration. If a judge's salary could not be reduced it would increase judicial independence because judges could make their decisions without fearing a salary cut.[118] Further, salaries should not be determined by members of other government branches because then the judge could develop an incentive to decide in favor of these members. Another problematic aspect of judges' salaries being too

[114] Feld and Voigt (2004). The authors examined 73 countries it the period from 1980-1998.

[115] Rios-Figueroa (2006): p. 24. The author examined the eighteen largest Latin American countries, except Cuba in the period from 1996 to 2002.

[116] Feld and Voigt (2004): p. 9

[117] Rios-Figueroa (2006)

[118] A different question, however, is if salary cuts are an appropriate way to sanction judges if their decisions are of poor quality or in case of minor malfeasances.

low is pointed out by Chief Justice of the United States John Roberts in 2006 Year-End Report on the Federal Judiciary. He claims that low salaries represent unfavorable barriers to entry for a lot of people willing to work as a judge. Corresponding to the fact that the salary of federal judges has in real terms since 1969 declined 23.9%[119] Roberts writes:

"*The dramatic erosion of judicial compensation will inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge. Our judiciary will not properly serve its constitutional role if it is restricted to (1) persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or (2) people for whom the judicial salary represents a pay increase.*"[120]

Buscaglia brings forward a similar argument, claiming that higher salaries attract personnel with higher qualifications.[121] As a result, a change in judges' remuneration should require a broad legislative majority and must be valid for all judges, to avoid an intentional political "punishment" for a specific judge.

A further criterion for an independent judiciary is its accessibility. Every citizen should be able to access a court when s/he experiences a violation of his/her rights. If this were not the case and courts could only be accessed by governmental officials, the judiciary would lose its independence and could not effectively protect citizens from official illegal actions. Limited accessibility can arise from various causes, these can be financial if citizens simply cannot afford to use legal services or if judges are permanently used to full capacity. Initiatives to increase the capacity of the courts, for example by employing additional judges or boosting alternative ways to settle disputes outside the court will play their part in increasing judicial independence.[122] When examining corruption levels in Chile and Ecuador from 1990-1996, Buscaglia discovered that an increase in the use of alternative dispute-resolution mechanisms lead to a decrease in reported cases of corruption.[123]

[119] Roberts, John (2007): p. 3.
[120] Ibid: p. 7
[121] Buscaglia and van Dijk (2003): p. 27
[122] Walker (2006): p. 24
[123] Buscaglia and Dakolias (1999). Generally the authors observe that after judicial reforms 1993/94 in Chile and Ecuador reported cases of corruption decreased significantly.

Judicial independence is higher if there is no individual, such as a chief justice, responsible for the allocation of cases to the members of the court. If this is the case the chief justice's influence is very great which makes him/her especially exposed to corruptive actions compared to the situation where a general rule administers the allocation of cases.

In countries where the constitutional court is within the judiciary corruption is higher than in countries where it stands outside it. Latter countries experience lower levels of corruption, if the number of Supreme Court judges is specified in the constitution." *For countries with the constitutional court within the judiciary, if the judiciary itself controls its institutional structure corruption is less than if this is not the case."*[124]

5.5. Conclusion

Similar to the causes of corruption, most of the reforms designed to bring more independence to the judiciary are not dependent upon the legal system. Mechanisms outside of the judiciary, for example a free press or a well-informed and organized society, can be established and promoted regardless of the legal system. Most of the proposed rules inside the judiciary are not connected with the legal system either. Procedures that are fixed by constitutional law, rules about the length of a judge's term, rules concerning who determines judges' salaries, a high degree of accessibility by the public can all be established in the Common Law and the Civil Law system alike. Nor does the position of the constitutional court depend upon the legal system. The appointment system, on the other hand, is indeed different in the Common Law and the Civil Law systems. An appointment system where neither politicians exert great influence, nor judges decide on their own, is a mixture between the traditional appointment systems of the Common Law and the Civil Law systems. In some countries such systems exist. These systems are a very important feature of a model

[124] Rios-Figueroa (2006): p. 23

that tries to establish a judiciary with “ideal” degrees of internal and external independence which will be presented in the next chapter.

6. Searching for an “ideal” model of an independent judiciary

6.1. Overview

Having established what is meant by the terms “de jure” and “de facto”, “internal” and “external” judicial independence respectively, and considered the advantages and disadvantages of the Common Law and Civil Law systems in terms of their susceptibility to corruption and having taken a look at some of the reforms that might help establishing an independent judiciary, the question left to ask, is whether it is possible to frame mechanisms that would guarantee a judicial system possessing an “ideal” degree of internal and external independence. Such a system would have optimal qualifications to combat corruption effectively.

In the first place, such a system needs to incorporate an optimal degree of both internal and external independence. As explained above, neither too much, nor too little external independence benefits a judiciary’s power to fight corruption and prevents its protagonists becoming corrupt themselves. The same holds true for internal independence. Secondly, these optimal degrees of independence must be adhered to, which means that de facto judicial independence is essential. Since Feld and Voigt showed, as described above, that the degrees of de facto and de jure judicial independence often differ within a country, a high degree of de jure independence is desirable but not necessarily required.

In the following sections, an attempt is made to describe the features of such an “ideal” system. First of all, the commission system of judicial selection is introduced. Jackson argues that only this model of a selection system guarantees that the best degree of judicial external independence is achieved. In his paper, he describes how to balance judicial independence and accountability. The “*Bangalore Principles of Judicial Conduct*” deal with this problem from the judge’s perspective.

These principles are a set of recommendations that aim to give advice to judges, about what they can do themselves to reach optimal degrees of internal and external independence.

6.2. The commission system of judicial selection

The process of judicial selection plays a very important role in successful efforts to select the most qualified judges. Jackson claims that the commission system of judicial selection offers the best preconditions for this. This system attempts to strike the right balance between keeping the selection process as free from political influence as possible whilst preserving some judicial accountability. Various versions of the commission system of judicial selection are currently in operation. Most widely used is the "Missouri Plan". Under this system, three candidates are selected by a non-partisan committee; the governor is notified of the selection and appoints one of them. The "Missouri Plan" also includes a retention election, for judges who have served for at least one year. These elections take place at the next general election.[125] Through these features political independence on the one hand and accountability on the other, are guaranteed and accorded equal weight.

Other versions of the commission system of judicial selection regard political independence as more important. An example is the version used for the election of Supreme Court judges in the American state of Rhode Island, where Supreme Court judges serve for life. Some systems pay particular attention to greater accountability, putting up with political independence. One example is the system used in the New York's Court of Appeals, where the commission and the governor have to reappoint the judge who wishes to retain office; the approval of the senate is also required.

[125] Missouri Judicial Web site: http://www.courts.mo.gov/page.jsp?id=297 Retrieved on 11/06/2009

6.2.1. Five principles for an optimal commission system

In order to find an "optimal" version of a commission system of judicial selection, with regard to maximizing the quality of the appointed judge, Jackson states five principles that must figure in an ideal selection system: independence, accountability, representativeness, legitimacy and transparency.[126] Since this article deals with the different reasons for susceptibility of the Common Law and the Civil Law systems to corruption, the principles of independence and accountability are of particular interest here.[127] As seen above, every commission system of judicial selection faces the problem that independence and accountability are opposed. Every rule that emphasizes one of these two principles automatically undercuts the other. Therefore, a single "optimal" selection process does not exist; rather there is an "optimal range" of commission systems with verifying degrees of independence and accountability. Analyzing these two principles separately is not feasible.

6.2.2. Independence and accountability

Systems included in the "optimal range" of commission systems of judicial selection have to guarantee that the degree of external independence is at a level where neither political actors, nor political groups have enough power to appoint judges without the approval of other persons or groups having the right to vote in the appointment of the judge, nor should politicians be able to exert excessive pressure on judges from outside. The judge should not have to fear losing his/her job or any other sanctions if his/her decisions do not correspond to the will of a powerful politician and decisions must not be swayed by political pressure.

Jackson describes judicial accountability as "*the "opposite side" of the coin from judicial independence* [because] *any measure of accountability necessarily*

[126] Jackson (2007): p. 126

[127] Without doubt, representativeness and legitimacy of judges, as well as a transparent system of judicial selection are very important concepts to increase the quality of the judiciary and keep the judiciary free from corruption. In contrast to the principles of independence and accountability however, these concepts are de jure not grounded stronger or weaker in one of the judicial system compared to the other.

limits judicial independence."[128] So, as explained above, a system inside the optimal range strikes the balance between independence and accountability rather than trying to maximize both. The degree of judicial accountability should be high enough to provide opportunities to remove judges if they are involved in illegal actions, otherwise they are not worthy of their profession.

Jackson explains that the question about the right degree of independence and accountability is important in three areas of the commission systems of judicial selection: "*1) the makeup and procedure of the selection commission and its relationship to the appointing authority, 2) the length of term judges serve, and 3) the retention mechanism involved."*[129]

6.2.2.1. The selection commission

The way the selection commission is composed and related to the appointed authority offers different possibilities of adjusting the degrees of independence and accountability. To prevent political forces having enough power to appoint judges without the approval of others, the composition of the commission should be as diverse as possible. The more different groups are represented in the nominating commission, the harder it becomes for one group to be able to decide alone. Furthermore, the judges appointed would not have to feel under an obligation to a particular group and therefore be less obliged to decide in their favor. The nominating authority should neither have the right to select any members of the nominating commission, nor to refuse all of the proposed candidates. The selection commission in Israel fulfills these criteria to a considerable extent. Of the nine members of the commission, non-politicians outnumber politicians five to four, members of the three governmental branches as well as members of the legal profession form the commission. The three Supreme Court judges form the largest group within the commission. The president's task of appointing the judges is simply a formal one.[130]

[128] Jackson (2007): p. 132
[129] Ibid: p. 136f
[130] Salzberger (2005)

Colquitt describes in his work three features, an ideal selection commission should possess: fidelity to democratic principles, maintaining independence and actively striving for public support. Political elites should play no part in a truly democratic system and the courts they are responsible for should reside within the same judicial districts. External and internal independence is also an issue. No politician should have influence on the commission from outside, for example, by having the right to elect its members, nor should a single member or group inside the commission have enough power to decide policy de facto alone. A further way of increasing external independence is to extend the length of terms of office for the members of the commission. However, this could lead to a reduction of accountability and therefore increase internal independence excessively. If the public recognizes the commissions' holding to democratic ideals and independence, it will be more willing to support the selection commission. What's more, the commissions' public credibility will be high if it is open to the people. On the one hand, this involves public relations work. Colquitt gives various examples for that:

"…*establishing a public speakers' bureau of commissioners (and possibly judges and attorneys) to explain the commission's role to interested groups, having commissioners interviewed by the media, disseminating public service announcements about the commission and its activities, and, when possible, conducting its business in open proceedings to which the public has been invited."*[131]

On the other hand, the public must also be able to exert control over the commission. This can happen through regulation, reviews or sanctions in cases of misbehavior.

6.2.2.2. Length of term

The length of term a judge serves is a very good indicator of the degrees of independence and accountability. Shorter tenure offers greater accountability, because opportunities to remove judges happen more frequently. The longer the tenure, the greater is the degree of judicial independence. Jackson argues that the optimal tenure is six to eight years. This period "*strike*[s] *a balance between allowing*

[131] Colquitt (2007): p. 82

judges enough time so that their performance on the bench can be evaluated, and allowing the public an opportunity to exercise its right to evaluate its judges."[132]

6.2.2.3. Retention mechanism

Two types of retention mechanisms are used in commission systems: "*non-partisan retention elections and reappointment by the same or similar method as selection".* [133] The non-partisan retention system attaches greater importance to accountability, because in this system accountability is provided directly and not through representatives. On the other hand it lacks political independence, since judges may be subjected to political processes in their retention races. In the reappointment system, accountability is transferred from the public to elected officials, decreasing both the accountability and independence of judges. The most important feature, however that both systems should have is that an independent evaluation commission exists, that can provide unbiased information about a judge's work and performance.

6.3. Bangalore Principles of Judicial Conduct

6.3.1. Overview

The "*Bangalore Principles of Judicial Conduct*" are a code of ethical guidelines which aim to give a judge recommendations how to behave in his/her job. The Principles were framed by a group of senior judges who form the "*Judicial Group on Strengthening Judicial Integrity*" in 2002. All these senior judges come from Asian and African Common Law countries. The Principles recognize the active role and the responsibility of the judiciary when it comes to maintaining their own independence

[132] Jackson (2007): p. 139
[133] Ibid: p. 139

and integrity. When following these guidelines, judges lay optimal foundations to prevent damage arising from the illegal exertion of influence from inside and outside the judiciary.

6.3.2. Core values

The Bangalore Principles expound six core values every judge should comply with: independence, impartiality, integrity, propriety, equality and competence and diligence.

6.3.2.1. Independence

The Principles describe judicial independence as a pre-requisite for judicial disinterestedness. Judicial independence implies that judges shall be "*free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason*[134]". It is also stressed that judges should strive actively for independence. Furthermore, the importance of public confidence in the judiciary is emphasized, because this is quintessential for the preservation of an independent judiciary.

6.3.2.2. Impartiality

Impartiality is also a very important feature a judge must exhibit if he wishes to be fair and independent. The Principles point out that impartiality "*applies not only to the decision itself but also to the process by which the decision is made*"[135]. To maintain impartiality, a judge should conduct his/her duties in a fair and unbiased fashion and should avoid any action that would cause anyone to be in doubt about his/her impartiality.

[134] The Bangalore Principles of Judicial Conduct (2002), p. 3
[135] Ibid, p. 3

6.3.2.3. Integrity

Integrity is also a feature of high importance. The Principles state that a judge's conduct should be above reproach and his actions "*must not merely be done but must also be seen to be done*"[136].

6.3.2.4. Propriety

A judge's job entails permanent public scrutiny, so a judge has to behave correspondingly. The Principles insists that a judge must avoid any action which might cast doubt upon his/her propriety. This includes for example, not participating in any case where a member of the judge's family is involved, avoiding any action that could be regarded as corrupt or using his/her social position for advancing private interests.

6.3.2.5. Equality

A judge must always treat everyone equally, regardless of race, sex, religion, profession and similar characteristics. Then, and only then, can a judge be said to be independent and of integrity.

6.3.2.6. Competence and Diligence

The Principles point out that a competent and diligent judge must value his duties above all other activities, must keep himself/herself informed about developments in international affairs, must continually broaden his/her horizons and should avoid all conduct which is incompatible with the conscientious exercise of his/her duties.

6.3.3. Criticism

Mayne points out two weaknesses in the Bangalore Principles. In the first place, the principles "*are not contained in a binding document under international law*"[137]. The principles have been created outside the UN processes; they are not

[136] Ibid, p. 4
[137] Mayne (2007): p. 43

binding on any state since they form part of no international treaty. Therefore the scope of the Bangalore Principles is limited. Secondly, the Principles may not improve judicial conduct directly, because they do not set out enforceable rules but are merely non-binding guidance. They are not written in a way that "*enables their direct application or incorporation into domestic law as enforceable rules of conduct*[138]". Furthermore, they do not specify any consequences or penalties in case of violation.

6.4. Conclusion

The commission system of judicial selection and the Bangalore principles are systems designed to establish mechanisms that will keep the judiciary free from political influence, but at the same time keep the judiciary accountable. Whereas the former is a system that is already established in some parts of the world, the latter is a collection of recommendations that, so far, has a de jure influence on the judiciary of 10 countries.[139] Combining these two systems, however, would lead to a legal system where many opportunities for corruption because of political influence or a lack of accountability would be eliminated. Politicians' influence on the appointment of judges would be greatly reduced, limiting external influence in the appointment procedures to a minimum. Extensive pressure on judges, from outside as well as from inside the judiciary, would be prevented by application of the Bangalore principles.

A further feature of an "ideal" legal system would be a mechanism of "permanent accountability" which gave the public a mechanism for evaluating the performance of a judge permanently and set in place sanctions if a judge misbehaved. To establish such a system without allowing additional political pressure on the judiciary is very difficult, however.[140] Establishing a commission responsible

[138] Ibid: p. 43

[139] „*The Bangalore Principles are being used either as a basis for the development of a code or to revise existing codes in Mauritius, the Netherlands, England and Wales, Bulgaria, Uzbekistan, Serbia and Jordan and have been adopted in Belize and the Philippines.*" Mayne (2007): p. 42

[140] To my knowledge, systems where judges are only, or at least to a great extend, permanently accountable by the people, does not exist.

for monitoring the judiciary might be a more satisfactory solution than entrusting lawyers with the task of monitoring the judiciary, as is the case in the Common Law system. But then again, two questions occur: who would appoint the commission and who would monitor it? As soon as politicians are allowed to influence the appointment or the monitoring of such a commission, political influence can be exerted on the judiciary. A possible solution would be to entrust the selection commission with the task of monitoring of the judiciary. Since the power of this commission would be enormous, the more important it would be to create well-functioning mechanisms that allowed the public to check the commission's work.

As pointed out in chapter five, the question of whether the Common Law or the Civil Law system has more effective mechanisms to prevent infiltration by corruption cannot easily be answered. Each system has its advantages and drawbacks, grounded on its different preferences regarding internal and external independence. The features explained above try to combine the two systems' advantages into mechanisms that promote "optimal" degrees of internal and external independence. These mechanisms are independent from other characteristics of a legal system; therefore they can be applied to both, the Common Law and the Civil Law systems. Even though the commission system of judicial selection is used in many judiciaries in countries using the Common Law system, there is no reason why such a selection system should not work is Civil Law countries too. Even though the Bangalore Principles of Judicial Conduct were formulated by Common Law judges, these guidelines are not inconsistent with any feature of Civil Law practice.

The mechanism of "permanent public accountability", on the other hand, is neither consistent with the Common Law system, nor with the Civil Law system. If this mechanism were used in Common Law or Civil Law systems, the responsibility for monitoring the judiciary would be transferred from lawyers and the judiciary respectively, to the public. For both types of legal systems such a shift in responsibility would significantly change the nature of the systems.

7. Final Conclusion

A corrupt judiciary causes massive harm to a country and its society. Various reasons for corruption in the judiciary exist. Two of these reasons, excessive political influence and insufficient accountability, are strongly connected to the features of the legal system a judiciary works within. There are many sources for corruption in the judiciary, however, which are not connected to any special feature of either the Common Law or the Civil Law systems, like low salaries or long durations of judicial processes. Therefore the legal systems' influence on corruption in the judiciary is limited.

There is no clear evidence that one of the legal systems has better requirements to prevent corruption in the judiciary. Neither system systematically fosters corruption in the judiciary. Compared to the Civil law system, the Common Law system is better in terms of avoiding too high internal independence of the judiciary because lawyers monitor the judges, but it implicates higher political influence, because of its appointment and promotion procedures. An "ideal" model of an independent judiciary, such as the one introduced in chapter six, must combine the different advantages of the Common Law and the Civil Law systems, thus establishing optimal degrees of internal and external independence. But then again, such an "ideal" model is not sufficient to eliminate corruption in the judiciary, since only some sources of corruption in the judiciary result from wrong degrees of internal and external independence. Additional reforms must be carried out to free the judiciary from corruption. This is only possible, however, if the government is willing to do so and if enough resources are raised. To free the judiciary from corruption is very costly and usually comes along with resistance from those utilizing a corrupt judiciary. But only a judiciary free of corruption obtains fair trials and fights corruption in other parts of the state. Therefore eradicating corruption in the judiciary is one of the most important measures when aiming to free a country from corruption.

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A Appendix

A. 1 Corruption Perceptions Index 2008[141]

2008 CORRUPTION PERCEPTIONS INDEX				
country rank	**country**	**2008 CPI score[142]**	**surveys used[143]**	**confidence range**
1	Denmark	9,3	6	9.1 - 9.4
1	New Zealand	9,3	6	9.2 - 9.5
1	Sweden	9,3	6	9.2 - 9.4
4	Singapore	9,2	9	9.0 - 9.3
5	Finland	9	6	8.4 - 9.4
5	Switzerland	9	6	8.7 - 9.2
7	Iceland	8,9	5	8.1 - 9.4
7	Netherlands	8,9	6	8.5 - 9.1
9	Australia	8,7	8	8.2 - 9.1
9	Canada	8,7	6	8.4 - 9.1
11	Luxembourg	8,3	6	7.8 - 8.8
12	Austria	8,1	6	7.6 - 8.6
12	Hong Kong	8,1	8	7.5 - 8.6
14	Germany	7,9	6	7.5 - 8.2
14	Norway	7,9	6	7.5 - 8.3
16	Ireland	7,7	6	7.5 - 7.9
16	United Kingdom	7,7	6	7.2 - 8.1
18	Belgium	7,3	6	7.2 - 7.4
18	Japan	7,3	8	7.0 - 7.6
18	USA	7,3	8	6.7 - 7.7
21	Saint Lucia	7,1	3	6.6 - 7.3
22	Barbados	7	4	6.5 - 7.3
23	Chile	6,9	7	6.5 - 7.2
23	France	6,9	6	6.5 - 7.3

[141] Source: http://www.transparency.org/policy_research/surveys_indices/cpi/2008 Retrieved on 11/10/2009
[142] The score ranges between 10 (highly clean) and 0 (highly corrupt)
[143] 13 different polls and surveys from 11 independent institutions are used.

23	Uruguay	6,9	5	6.5 - 7.2
26	Slovenia	6,7	8	6.5 - 7.0
27	Estonia	6,6	8	6.2 - 6.9
28	Qatar	6,5	4	5.6 - 7.0
28	Saint Vincent and the Grenadines	6,5	3	4.7 - 7.3
28	Spain	6,5	6	5.7 - 6.9
31	Cyprus	6,4	3	5.9 - 6.8
32	Portugal	6,1	6	5.6 - 6.7
33	Dominica	6	3	4.7 - 6.8
33	Israel	6	6	5.6 - 6.3
35	United Arab Emirates	5,9	5	4.8 - 6.8
36	Botswana	5,8	6	5.2 - 6.4
36	Malta	5,8	4	5.3 - 6.3
36	Puerto Rico	5,8	4	5.0 - 6.6
39	Taiwan	5,7	9	5.4 - 6.0
40	South Korea	5,6	9	5.1 - 6.3
41	Mauritius	5,5	5	4.9 - 6.4
41	Oman	5,5	5	4.5 - 6.4
43	Bahrain	5,4	5	4.3 - 5.9
43	Macau	5,4	4	3.9 - 6.2
45	Bhutan	5,2	5	4.5 - 5.9
45	Czech Republic	5,2	8	4.8 - 5.9
47	Cape Verde	5,1	3	3.4 - 5.6
47	Costa Rica	5,1	5	4.8 - 5.3
47	Hungary	5,1	8	4.8 - 5.4
47	Jordan	5,1	7	4.0 - 6.2
47	Malaysia	5,1	9	4.5 - 5.7
52	Latvia	5	6	4.8 - 5.2
52	Slovakia	5	8	4.5 - 5.3
54	South Africa	4,9	8	4.5 - 5.1
55	Italy	4,8	6	4.0 - 5.5
55	Seychelles	4,8	4	3.7 - 5.9
57	Greece	4,7	6	4.2 - 5.0
58	Lithuania	4,6	8	4.1 - 5.2
58	Poland	4,6	8	4.0 - 5.2
58	Turkey	4,6	7	4.1 - 5.1

61	Namibia	4,5	6	3.8 - 5.1
62	Croatia	4,4	8	4.0 - 4.8
62	Samoa	4,4	3	3.4 - 4.8
62	Tunisia	4,4	6	3.5 - 5.5
65	Cuba	4,3	4	3.6 - 4.8
65	Kuwait	4,3	5	3.3 - 5.2
67	El Salvador	3,9	5	3.2 - 4.5
67	Georgia	3,9	7	3.2 - 4.6
67	Ghana	3,9	6	3.4 - 4.5
70	Colombia	3,8	7	3.3 - 4.5
70	Romania	3,8	8	3.4 - 4.2
72	Bulgaria	3,6	8	3.0 - 4.3
72	China	3,6	9	3.1 - 4.3
72	Macedonia (Former Yugoslav Republic of)	3,6	6	2.9 - 4.3
72	Mexico	3,6	7	3.4 - 3.9
72	Peru	3,6	6	3.4 - 4.1
72	Suriname	3,6	4	3.3 - 4.0
72	Swaziland	3,6	4	2.9 - 4.3
72	Trinidad and Tobago	3,6	4	3.1 - 4.0
80	Brazil	3,5	7	3.2 - 4.0
80	Burkina Faso	3,5	7	2.9 - 4.2
80	Morocco	3,5	6	3.0 - 4.0
80	Saudi Arabia	3,5	5	3.0 - 3.9
80	Thailand	3,5	9	3.0 - 3.9
85	Albania	3,4	5	3.3 - 3.4
85	India	3,4	10	3.2 - 3.6
85	Madagascar	3,4	7	2.8 - 4.0
85	Montenegro	3,4	5	2-5 - 4.0
85	Panama	3,4	5	2.8 - 3.7
85	Senegal	3,4	7	2.9 - 4.0
85	Serbia	3,4	6	3.0 - 4.0
92	Algeria	3,2	6	2.9 - 3.4
92	Bosnia and Herzegovina	3,2	7	2.9 - 3.5
92	Lesotho	3,2	5	2.3 - 3.8
92	Sri Lanka	3,2	7	2.9 - 3.5
96	Benin	3,1	6	2.8 - 3.4
96	Gabon	3,1	4	2.8 - 3.3

96	Guatemala	3,1	5	2.3 - 4.0
96	Jamaica	3,1	5	2.8 - 3.3
96	Kiribati	3,1	3	2.5 - 3.4
96	Mali	3,1	6	2.8 - 3.3
102	Bolivia	3.0	6	2.8 - 3.2
102	Djibouti	3	4	2.2 - 3.3
102	Dominican Republic	3	5	2.7 - 3.2
102	Lebanon	3	4	2.2 - 3.6
102	Mongolia	3	7	2.6 - 3.3
102	Rwanda	3	5	2.7 - 3.2
102	Tanzania	3	7	2.5 - 3.3
109	Argentina	2,9	7	2.5 - 3.3
109	Armenia	2,9	7	2.6 - 3.1
109	Belize	2,9	3	1.8 - 3.7
109	Moldova	2,9	7	2.4 - 3.7
109	Solomon Islands	2,9	3	2.5 - 3.2
109	Vanuatu	2,9	3	2.5 - 3.2
115	Egypt	2,8	6	2.4 - 3.2
115	Malawi	2,8	6	2.4 - 3.1
115	Maldives	2,8	4	1.7 - 4.3
115	Mauritania	2,8	7	2.2 - 3.7
115	Niger	2,8	6	2.4 - 3.0
115	Zambia	2,8	7	2.5 - 3.0
121	Nepal	2,7	6	2.4 - 3.0
121	Nigeria	2,7	7	2.3 - 3.0
121	Sao Tome and Principe	2,7	3	2.1 - 3.1
121	Togo	2,7	6	1.9 - 3.7
121	Viet Nam	2,7	9	2.4 - 3.1
126	Eritrea	2,6	5	1.7 - 3.6
126	Ethiopia	2,6	7	2.2 - 2.9
126	Guyana	2,6	4	2.4 - 2.7
126	Honduras	2,6	6	2.3 - 2.9
126	Indonesia	2,6	10	2.3 - 2.9
126	Libya	2,6	5	2.2 - 3.0
126	Mozambique	2,6	7	2.4 - 2.9
126	Uganda	2,6	7	2.2 - 3.0
134	Comoros	2,5	3	1.9 - 3.0

134	Nicaragua	2,5	6	2.2 - 2.7
134	Pakistan	2,5	7	2.0 - 2.8
134	Ukraine	2,5	8	2.2 - 2.8
138	Liberia	2,4	4	1.8 - 2.8
138	Paraguay	2,4	5	2.0 - 2.7
138	Tonga	2,4	3	1.9 - 2.6
141	Cameroon	2,3	7	2.0 - 2.7
141	Iran	2,3	4	1.9 - 2.5
141	Philippines	2,3	9	2.1 - 2.5
141	Yemen	2,3	5	1.9 - 2.8
145	Kazakhstan	2,2	6	1.8 - 2.7
145	Timor-Leste	2,2	4	1.8 - 2.5
147	Bangladesh	2,1	7	1.7 - 2.4
147	Kenya	2,1	7	1.9 - 2.4
147	Russia	2,1	8	1.9 - 2.5
147	Syria	2,1	5	1.6 - 2.4
151	Belarus	2	5	1.6 - 2.5
151	Central African Republic	2	5	1.9 - 2.2
151	Côte d´Ivoire	2	6	1.7 - 2.5
151	Ecuador	2	5	1.8 - 2.2
151	Laos	2	6	1.6 - 2.3
151	Papua New Guinea	2	6	1.6 - 2.3
151	Taijikistan	2	8	1.7 - 2.3
158	Angola	1,9	6	1.5 - 2.2
158	Azerbaijan	1,9	8	1.7 - 2.1
158	Burundi	1,9	6	1.5 - 2.3
158	Congo, Republic	1,9	6	1.8 - 2.0
158	Gambia	1,9	5	1.5 - 2.4
158	Guinea-Bissau	1,9	3	1.8 - 2.0
158	Sierra Leone	1,9	5	1.8 - 2.0
158	Venezuela	1,9	7	1.8 - 2.0
166	Cambodia	1,8	7	1.7 - 1.9
166	Kyrgyzstan	1,8	7	1.7 - 1.9
166	Turkmenistan	1,8	5	1.5 - 2.2
166	Uzbekistan	1,8	8	1.5 - 2.2
166	Zimbabwe	1,8	7	1.5 - 2.1
171	Congo, Democratic Republic	1,7	6	1.6 - 1.9

171	Equatorial Guinea	1,7	4	1.5 - 1.8
173	Chad	1,6	6	1.5 - 1.7
173	Guinea	1,6	6	1.3 - 1.9
173	Sudan	1,6	6	1.5 - 1.7
176	Afghanistan	1,5	4	1.1 - 1.6
177	Haiti	1,4	4	1.1 - 1.7
178	Iraq	1,3	4	1.1 - 1.6
178	Myanmar	1,3	4	1.0 - 1.5
180	Somalia	1	4	0.5 - 1.4

A.2 Alphabetical Index of the Political Entities and Corresponding Legal Systems[144]

Political Entities	Legal Systems	Mixed systems Components
AFGHANISTAN	Muslim	
ALBANIA	Civil Law	
ALGERIA	Mixed	Civil Law/Muslim
ANDORRA	Customary	
ANGOLA	Civil Law	
ANGUILLA (UK)	Common Law	
ANTIGUA AND BARBUDA	Common Law	
ARGENTINA	Civil Law	
ARMENIA	Civil Law	
ARUBA (NL)	Civil Law	
AUSTRALIA (***AU***)	Common Law	
AUSTRIA	Civil Law	
AZERBAIJAN	Civil Law	
AZORES (PG)	Civil Law	
BAHAMAS	Common Law	
BAHRAIN	Mixed	Muslim/Civil Law/Common Law/Customary law
BANGLADESH	Mixed	Muslim/Common Law
BARBADOS	Common Law	
BELARUS	Civil Law	
BELGIUM	Civil Law	
BELIZE	Common Law	
BENIN	Civil Law	
BERMUDA (UK)	Common Law	
BHUTAN	Mixed	Customary/Common Law
BOLIVIA	Civil Law	
BOSNIA AND HERZEGOVINA	Civil Law	
BOTSWANA	Mixed	Civil Law/Common Law
BRAZIL	Civil Law	
BRITISH INDIAN OCEAN TERRITORY (UK)	Common Law	
BRITISH TERRITORIES OF ANTARTICA (UK)	Common Law	
BRUNEI	Mixed	Muslim/Common Law/Customary
BULGARIA	Civil Law	

[144] Source: JuriGlobe – World Legal Systems Research Group. Available at: http://www.juriglobe.ca/eng/sys-juri/index-alpha.php Retrieved on 11/10/2009

BURKINA FASO	Mixed	Civil Law/Customary
BURUNDI	Mixed	Civil Law/Customary
CAMBODIA	Civil Law	
CAMEROON	Mixed	Civil Law/Common Law/Customary
CANADA (***CD***) (minus QUEBEC)	Common Law	
CANARY ISLANDS (SP)	Civil Law	
CAPE VERDE	Civil Law	
CAYMANS- (UK)	Common Law	
CENTRAL AFRICAN REPUBLIC	Civil Law	
CHAD	Mixed	Civil Law/Customary
CHILE	Civil Law	
CHINA (***CN***) (minus H-K and MACAU)	Mixed	Civil Law/Customary
COLOMBIA	Civil Law	
COMOROS	Mixed	Civil Law/Muslim
CONGO	Mixed	Civil Law/Customary
CONGO, POPULAR DEMOCRATIC REPUBLIC OF	Mixed	Civil Law/Customary
COOK ISLANDS (NZ)	Common Law	
COSTA RICA	Civil Law	
COTE D'IVOIRE	Mixed	Civil Law/Customary
CROATIA	Civil Law	
CUBA	Civil Law	
CYPRUS	Mixed	Common Law/Civil Law
CZECH REPUBLIC	Civil Law	
DENMARK (***DK***)	Civil Law	
DJIBOUTI	Mixed	Civil Law/Muslim/Customary
DOMINICA	Common Law	
DOMINICAN REPUBLIC	Civil Law	
EAST TIMOR	Mixed	Civil Law/Muslim/Customary
ECUADOR	Civil Law	
EGYPT	Mixed	Muslim/Civil Law
EL SALVADOR	Civil Law	
EQUATORIAL GUINEA	Mixed	Civil Law/Customary
ERITREA	Mixed	Civil Law/Customary/Muslim
ESTONIA	Civil Law	
ETHIOPIA	Mixed	Civil Law/Customary
FAROE ISLANDS (DK)	Civil Law	
FIJI ISLANDS	Common Law	
FINLAND	Civil Law	
FRANCE (***FR***)	Civil Law	
FRENCH GUYANA (FR)	Civil Law	
FRENCH POLYNESIA (FR)	Civil Law	

FRENCH SOUTHERN AND ANTARCTIC LANDS (FR)	Civil Law	
GABON	Mixed	Civil Law/Customary
GAMBIA	Mixed	Muslim/Common Law/Customary
GEORGIA	Civil Law	
GERMANY	Civil Law	
GHANA	Mixed	Common Law/Customary
GIBRALTAR (UK)	Common Law	
GREECE	Civil Law	
GRENADA	Common Law	
GREENLAND (DK)	Civil Law	
GUADELOUPE (FR)	Civil Law	
GUAM (USA)	Common Law	
GUATEMALA	Civil Law	
GUERNSEY (UK)	Customary	
GUINEA	Mixed	Civil Law/Customary
GUINEA-BISSAU	Mixed	Civil Law/Customary
GUYANA	Mixed	Common Law/Civil Law
HAITI	Civil Law	
HAWAII (USA)	Common Law	
HONDURAS	Civil Law	
HONG KONG (CN)	Mixed	Common Law/Customary
HUNGARY	Civil Law	
ICELAND	Civil Law	
INDIA	Mixed	Common Law/Muslim/Customary
INDONESIA	Mixed	Civil Law/Muslim/Customary
IRAN	Mixed	Muslim/Civil Law
IRAQ	Mixed	Civil Law/Muslim
IRELAND	Common Law	
ISRAEL	Mixed	Civil Law/Common Law/Jewish/Muslim
ITALY	Civil Law	
JAMAICA	Common Law	
JAPAN	Mixed	Civil Law/Customary
JERSEY (UK)	Customary	
JORDAN	Mixed	Civil Law/Muslim/Customary
KAZAKHSTAN	Civil Law	
KENYA	Mixed	Common Law/Customary /Muslim
KIRIBATI	Common Law	
KOREA NORTH	Mixed	Civil Law/Customary
KOREA SOUTH	Mixed	Civil Law/Customary
KUWAIT	Mixed	Muslim/Civil Law/Customary
KYRGYZSTAN	Civil Law	

LAOS	Civil Law	
LATVIA	Civil Law	
LEBANON	Mixed	Civil Law/Muslim
LESOTHO	Mixed	Common Law/Civil Law/Customary
LIBERIA	Mixed	Common Law/Customary
LIBYA	Mixed	Muslim/Civil Law
LIECHTENSTEIN	Civil Law	
LITHUANIA	Civil Law	
LOUISIANA (USA)	Mixed	Civil Law/Common Law
LUXEMBOURG	Civil Law	
MACAU (CN)	Civil Law	
MACEDONIA (FYROM)	Civil Law	
MADAGASCAR	Mixed	Civil Law/Customary
MADEIRA (PG)	Civil Law	
MALAWI	Mixed	Common Law/Customary
MALAYSIA	Mixed	Muslim/Common Law/Customary
MALDIVES ISLANDS	Muslim	
MALI	Mixed	Civil Law/Customary
MALOUINES/FALKLAND ISLES (UK)	Common Law	
MALTA	Mixed	Civil Law/Common Law
MAN ISLE OF (UK)	Common Law	
MARIANA (USA)	Common Law	
MARSHALL ISLANDS	Common Law	
MARTINIQUE (FR)	Civil Law	
MAURITANIA	Mixed	Muslim/Civil Law
MAURITIUS	Mixed	Civil Law/Common Law
MAYOTTE ISLAND (FR)	Civil Law	
MEXICO	Civil Law	
MICRONESIA	Mixed	Common Law/Customary
MOLDOVA	Civil Law	
MONACO	Civil Law	
MONGOLIA	Mixed	Customary/Civil Law
MONTSERRAT (UK)	Common Law	
MONTENEGRO	Civil Law	
MOROCCO	Mixed	Muslim/Civil Law
MOZAMBIQUE	Mixed	Customary/Civil Law
MYANMAR	Mixed	Common Law/Customary
NAMIBIA	Mixed	Common Law/Civil Law
NAURU	Common Law	
NEPAL	Mixed	Common Law/Customary
NETHERLANDS (***NL***)	Civil Law	
NETHERLANDS ANTILLES (NL)	Civil Law	
NEW CALEDONIA (FR)	Civil Law	

NEW ZEALAND (***NZ***)	Common Law	
NICARAGUA	Civil Law	
NIGER	Mixed	Civil Law/Customary
NIGERIA	Mixed	Common Law/Muslim/Customary
NIUE ISLAND (NZ)	Common Law	
NORFOLK ISLAND (AU)	Common Law	
NORTHERN IRELAND (UK)	Common Law	
NORWAY	Civil Law	
OMAN	Mixed	Muslim/Customary/Civil Law
PAKISTAN	Mixed	Muslim/Common Law
PALAU	Common Law	
PALESTINE	Mixed	Civil Law/Muslim
PANAMA	Civil Law	
PAPUA NEW GUINEA	Mixed	Customary/Common Law
PARAGUAY	Civil Law	
PERU	Civil Law	
PHILIPPINES	Mixed	Common Law/Civil Law
PITCAIRN (UK)	Common Law	
POLAND	Civil Law	
PORTO RICO (ASS. USA)	Mixed	Civil Law/Common Law
PORTUGAL (***PG***)	Civil Law	
QATAR	Mixed	Muslim/Civil Law/Common Law/Customary
QUEBEC (CD)	Mixed	Civil Law/Common Law
REUNION ISLAND (FR)	Civil Law	
ROMANIA	Civil Law	
RUSSIA	Civil Law	
RWANDA	Mixed	Civil Law/Customary
SAINT-BARTHELEMY (FR)	Civil Law	
SAINT HELENA (UK)	Common Law	
SAINT KITTS AND NEVIS	Common Law	
SAINT LUCIA	Mixed	Civil Law/Common Law
SAINT MARTIN (FR)	Civil Law	
SAINT PIERRE AND MIQUELON (FR)	Civil Law	
SAINT VINCENT AND THE GRANADINES	Common Law	
SAMOA	Mixed	Common Law/Customary
SAMOA, AMERICAN (USA)	Common Law	
SAN MARINO	Civil Law	
SAO TOMÉ AND PRINCIPE	Mixed	Civil Law/Customary
SAUDI ARABIA	Muslim	
SCOTLAND (UK)	Mixed	Civil Law/Common Law
SENEGAL	Mixed	Civil Law/Customary
SERBIA	Civil Law	

SEYCHELLES	Mixed	Common Law/Civil Law
SIERRA LEONE	Mixed	Common Law/Customary
SINGAPORE	Mixed	Common Law/Muslim
SLOVAKIA	Civil Law	
SLOVENIA	Civil Law	
SOLOMON ISLANDS	Mixed	Common Law/Customary
SOMALIA	Mixed	Muslim/Civil Law/Common Law/Customary
SOUTH AFRICA	Mixed	Civil Law/Common Law
SOUTH GEORGIA AND SANDWICH ISLANDS (UK)	Common Law	
SPAIN (***SP***)	Civil Law	
SRI LANKA	Mixed	Civil Law/Common Law/Customary
SUDAN	Mixed	Muslim/Common Law
SURINAME	Civil Law	
SWAZILAND	Mixed	Civil Law/Customary
SWEDEN	Civil Law	
SWITZERLAND	Civil Law	
SYRIA	Mixed	Civil Law/Muslim
TAIWAN	Mixed	Civil Law/Customary
TAJIKISTAN	Civil Law	
TANZANIA	Mixed	Common Law/Customary
THAILAND	Civil Law	
TOGO	Mixed	Civil Law/Customary
TOKELAU (NZ)	Common Law	
TONGA	Common Law	
TRINIDAD AND TOBAGO	Common Law	
TUNISIA	Mixed	Civil Law/Muslim
TURKEY	Civil Law	
TURKMENISTAN	Civil Law	
TURKS AND CAICOS (UK)	Common Law	
TUVALU	Common Law	
UGANDA	Mixed	Common Law/Customary
UKRAINE	Civil Law	
UNITED ARAB EMIRATES	Mixed	Muslim/Customary
UNITED KINGDOM (***UK***) (minus SCOTLAND, GUERNSEY AND JERSEY)	Common Law	
UNITED STATES OF AMERICA (***USA***) (minus LOUISIANA)	Common Law	
URUGUAY	Civil Law	
UZBEKISTAN	Civil Law	
VANUATU	Mixed	Civil Law/Customary/Common Law

VATICAN/HOLY SEE	Civil Law	
VENEZUELA	Civil Law	
VIETNAM	Civil Law	
VIRGIN ISLANDS (USA)	Common Law	
VIRGIN ISLANDS (UK)	Common Law	
WALLIS AND FUTUNA (FR)	Civil Law	
YEMEN	Mixed	Muslim/Civil Law/Common Law/Customary
ZAMBIA	Mixed	Common Law/Customary
ZIMBABWE	Mixed	Civil Law/Common Law/Customary

B Summary in German / Deutsche Zusammenfassung

Die Diplomarbeit beschäftigt sich mit der Frage in welchem Ausmaß die spezifischen Eigenschaften der beiden weitverbreitetsten Rechtssysteme, des Common Law Systems und des Civil Law Systems, Korruption in der Justiz beeinflussen. Nach einem Überblick über wesentliche Grundlagen der Problematik der Korruption und über die beiden analysierten Rechtssysteme, werden in der Diplomarbeit die wichtigsten Gründe für Korruption in der Justiz beschrieben und analysiert welche Gründe sich einem Rechtssystem eher zuordnen lassen. Es wird geschlossen, dass der einzige, die Korruption betreffende, relevante Unterschied zwischen den beiden Rechtssystemen, der unterschiedliche Grad der Gewährleistung der Unabhängigkeit der Justiz ist. Die Rechtssysteme haben demnach nur einen Einfluss auf jene Gründe für Korruption in der Justiz, die auf mangelnde oder zu große Unabhängigkeit der Justiz zurückzuführen sind. Diese beiden Gründe sind einerseits politischer Einfluss auf die Justiz sowie mangelnde Kontrolle der Justiz. In einem nächsten Schritt wird die Unabhängigkeit der Justiz untersucht, dabei wird geschlossen, dass optimale Grade von Unabhängigkeit gefunden werden müssen um die Justiz immun gegen Korruption zu machen. Einerseits darf die Unabhängigkeit der Justiz nicht zu klein sein, da dies politische Einflussname zur Folge hat, andererseits führt eine zu große Unabhängigkeit zu mangelnden Möglichkeiten die Justiz zu überwachen. Abschließend werden drei Features eines Modells vorgestellt welches dazu beitragen soll optimale Grade von Unabhängigkeit der Justiz zu garantieren.

C Curriculum Vitae

Personal Details:

Name:	Sebastian Rieder
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Education:

March 2006 – December 2009	Study of Sinology at University of Vienna
October 2004 – December 2009	Study of Economics at University of Vienna
September 1995 - Juni 2003	GRG 1 Stubenbastei, A-1010 Vienna Passed with honours
September 1991- Juni 1995	VS 1 Stubenbastei, A-1010 Vienna

Civilian Service:

October 2003 - September 2004	Civilian Service at Sanatorium-Maimonides-Zentrum, Bauernfeldgasse 4; A-1190 Vienna

Work experience:

January 2007- November 2007	Statistical evaluations for Austrian Research Promotion Agency (www.ffg.at)

Languages:

German, mother tongue

English, good written and oral skills

Russian, basic written and oral skills

Chinese, basic written and oral skills

Additional Skills:

Very good Microsoft Office skills

Background in acting and classical singing since September 1994