Corruption within the European Union

- A study of the EU and its Member States concerning their level of - and fight against corruption, and its relation to law and democracy.

Master Thesis in Sociology of Law – European Law
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Much of my inspiration has come from my stay abroad, living in Italy, which is seen as one of the most corrupt states in the European Union. Here I have come into contact with several discussions concerning corruption, as a result of the current political debates.

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ABSTRACT

Corruption is at present costing the European society enormously amounts, in forms of money and in relation to social, economic, political and legal development. Democracy is viewed as one of the fundamental pillars of the European Union, which additionally has been one of the Union's highest priorities since its foundation. One aspect that may be hindering the increasing of democracy is a state's level of corruption. Corruption is at present affecting several aspects of democratic rights and is still a major problem in several of the Union's member states. Therefor this thesis will examine if a state's level of corruption affects its level of democracy, as well as how long-term participation in the European Union influences a member state's corruption and democracy level. Besides, it will study how the European Union has tried to regulate corruption and corruptive behavior in order to increase democracy within the Union's member states, as well as what role cultural and moral values play in this process.

KEY WORDS: *Sociology of Law; European Union; Corruption; Democracy; Causes of Corruption; Regulation of Corruption; Corruption and Democracy levels; Long-term participation in the European Union.*

TABLE OF CONTENT

ABBREVATION

CPI	Corruption Perceptions Index
DI	Democracy Index
EU	European Union
ICP	Institutional Choice Perspective
MS	Member State
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
UN	United Nations
UNGA	United Nations General Assembly
OLAF	European Anti-Fraud Office

1. INTRODUCTION

It is estimated that corruption costs the global world approximately USD 1.000 billion annually,[1] and the European Union (*Hereinafter*: EU) an estimate of 120 Billion Euros a year.[2] Why one accepts or gives bribes has many reasons and it is surely very tempting for a high number of individuals. This additionally makes it extremely hard to control and regulate. By living under poor circumstances using bribes for receiving food, water, health care or education is a tremendously problematic issue, but necessary for those living under these circumstances on a day-to-day basis. Or, to receive some extra money for helping colleges with a favor, such as favoring them in a business contract of some sort to earn for their private gain. Undoubtedly, corruption can be found on all levels in the society, and even in some cultures corruption is an ethical and more or less accepted way of how businesses and the markets run.[3] Even though the ones taking part of corruption still consider its wrongfulness.[4]

1.1 CORRUPTION AND DEMOCRACY

Corruption has for an extended period been regarded as a problematic issue for developing states throughout the world, especially after the 90's century. Seen as an issue created generally by cultural aspects, corruption was seen as a minor issue in developed democracies. Nevertheless, this scheme has drastically changed by the acknowledgements of west European States' corruption scandals.[5] Corruption is

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[1] Kaufmann Daniel, 2004. *"Cost of Corruption"*, The World Bank. Retrieved from: www.web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190187~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html

[2] European Commission, Accessed: 11.04.2013. *"Corruption"*, (Hereinafter: European Commission, 11.04.2013). European Commission. Retrieved from: www.ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/index_en.htm

[3] Transparency International, Accessed 03.03.2013. *"Corruption"*, (Hereinafter: Transparency International, 03.03.1013),Transparency International. Retrieved from: www.transparencyinternational.eu

[4] Alestig Blomquist Peter, 2012. *"Demokrati hjälper inte mot korruption"*. (Hereinafter: Alestig Blomquist Peter, 2012) Svenska Dagbladet. Retrieved from: www.svd.se/naringsliv/nyheter/sverige/demokrati-hjalper-inte-mot-korruption_7636864.svd

[5] Nelken David and Levi Michael, (1996). *"The Corruption of Politics and the Politics of Corruption: An Overview"*, (Hereinafter: Nelken David and Levi Michael, (1996). Journal of Law and Society. Vol. 23, No. 1, 1-17.

through its definition claimed to be the "abuse of power for private gain".[6] Nevertheless, there are several other, more specific definitions presented in this paper under Chapter 3.

Corruption is at present a major issue for the EU and its whole community, embracing all its 27 member states (*Hereinafter*: MS). Yet, the EU is far away from a corruption free Union.[7] Studies have shown that a majority of all EU citizens regard corruption as one major issue within their state.[8] Corruption causes several damages to the EU as a community and its various societies.[9] Susann Rose-Ackerman argues that corruption and democracy is extremely interlinked however she states that democracy is not the only aspect affected by corruption. Legal, social, cultural, ethical and economical norms and aspects are additionally of major importance in relation to corruption. These aspects are affected by corruption, but they also affect corruption in a similar manner.[10] Bo Rothstein argues that the increase of democracy levels in states have for a long time been seen as the most significant instrument for combating corruption. However, he argues that it is not the actual democracy level in a state that is the most significant for the citizens' wellbeing, but instead it is the corruption level that is the most significant.[11]

According to Transparency International (*Hereinafter*: TI) all the aspects previous mentioned are extremely interweaved with several rights, especially in relation to nation-states citizens' right to exercise and enjoy their fundamental, political and democratic rights.[12] The outcomes of corruption mostly affect groups, families or individuals that are living in poverty. For these groups, the use of bribes for accessing

[6] Europa, Accessed; 03.04.2013. *"A comprehensive EU anti-corruption policy"*, (Hereinafter: Europa, 03.04.2013), Europa. Retrieved from: www.europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301_en.htm

[7] Mulcahy Suzanne, 2012. "*Money, Politics, Power: Corruption Risks in Europe*", Transparency International, Berlin, 2012, 1-59.

[8] European Commission, 11.04.2013.

[9] Transparency International, Accessed 03.04.2013. *"Corruption perceptions index"*. (Hereinafter: Transparency International, 03.04.2013),Transparency International. Retrieved from: www.transparencyinternational.eu

[10] Rose-Ackerman Susan, 2010. "*Corruption: Greed, Culture, and the State*", (Hereinafter: Rose-Ackerman Susan, 2010), YALE L.J. ONLINE. Retrieved from: www.yalelawjournal.org/2010/11/10/rose-ackerman.html

[11] Alestig Blomquist Peter, 2012.

[12] Transparency International, Accessed 03.05.2013. *"EU Anti-Corruption"*, (Hereinafter: Transparency International, 03.05.2013), Transparency International. Retrieved from: www.transparencyinternational.eu

fundamental supplies is regarded as a last resort, and therefor also used.[13] Nevertheless, argued and discussed by several scholars, such as Nathaniel Leff and Samuel Hunthingthon is that corruption on the other hand also brings stunning opportunities in relation to for example economic growth, as it is speeding up the process.[14] However, this perspective is very controversial.

Corruption is closely related to a State's level of governance efficiency, level of rule of law, as well as democracy. Unquestionably, a high level of corruption in a country has significant negative effects on the inhabitants and the society, such as limiting their fundamental rights, as well as it may be hindering democracy. This is for certain a major issue throughout the world, but also for the EU and its citizens.[15]

The EU claims that democracy is of essential importance for the Union,[16] which as a result has been one of the Union's highest priorities since its establishment.[17] As corruption is a major issue for establishing a full democracy through hindering its development, the international organization TI argues that the EU must do something promptly against this problematic matter, by for example introducing a stricter and more inclusive anti-corruption policy.[18]

Surely, tackling and regulating corruption is a problematic issue, not least within the EU. It is for certain a major task to be able to uphold a common concept with equal standards and application of EU law, as the Union embraces 27 different legal systems. Likewise, that these systems are based on 23 national languages, which may generate several problems in relation to interpretation. The interpretation of the common EU law, by for example lawyers, can therefore be a rather difficult task, as it should be applied in a similar way throughout the Union,[19] not least in relation to anti-

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[13] Transparency International, 03.04.2013.

[14] Leff, Nathaniel. H, 1964. "*Economic Development through Bureaucratic Corruption*." The American Behavioral Scientist, 8: 2, 8-14 And: Huntington, Samuel. P, 1968. "*Political Order in Changing Societies*", New Haven: Yale University Press.

[15] Transparency International, 03.05.2013.

[16] Treaty of Lisbon, 2007. *"Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon"*.

[17] Europa, Accessed: 09.04.2013. *"The Union's founding principles"*, Europa. Retrieved from: www.europa.eu/scadplus/constitution/democracy_en.htm

[18] Transparency International, 03.05.2013.

[19] Prechal, Sacha and Bert, van Roermund, 2008. "*The Coherence of EU Law: The Search for Unity in Divergent Concepts*", (Hereinafter: Prechal, Sacha and Bert, van Roermund, 2008.), Oxford: Oxford

corruption legislation.[20] To regulate and control corruption is problematic. Not least while encountering different areas that are affecting corruption, such as legal, moral and ethical norms.[21]

Central for this paper is the relationship between law, democracy and corruption. This will be explored by Jürgen Habermas theory of communicative action, which also explores the role of moral values.[22] At present time, there are a majority of researchers investigating the cause of corruption, while the effects of corruption are often left aside.[23] This essay will somewhat tackle both issues in relation to democracy, with law, corruption, and morality as central points.

1.1.1 Research Question

In this thesis there are three overall research questions which are interlinked to corruption and democratic improvements, these are:

(1) *How does a State's level of corruption affect a State's level of democracy?*

(2) *Does long-term participation in the European Union affected its member states in relation to corruption and democracy, and why may new EU states have a higher level of corruption?*

(3) *How does the European Union regulate corruption, and which role do cultural and moral values play in regard to regulation of corruption?*

University Press.
[20] Transparency International, 03.05.2013.
[21] Rose-Ackerman Susan, 2010.
[22] Deflem, Mathieu, 2008. *"Sociology of Law - Visions of a Scholarly Tradition"*. (Hereinafter: Deflem, Mathieu, 2008), University of South Carolina: Cambridge University Press, 162-163.
[23] Judge. Q. William, Brian D. McNatt, Xu Weichu, 2011. *"The antecedents and effects of national corruption: A meta-analysis Original"*, Journal of World Business, Volume 46, Issue 1, 93-103.

1.1.2 Key Terms

To perform this research the most significant dependent and independent key terms will been identified, these are:

Dependent: Corruption.

Independent: Corruption and democracy level; Long-term participation in the European Union; Regulation of corruption.

1.2 METHODOLOGY AND USE OF DATA

In order to research the various research questions contained by this master thesis, this paper has its founding in a qualitative method.[24] This is also significant in order to analyze the various independent and dependent key terms used for this paper.

To measure corruption in the EU three options can be considered. The first alternative concerning the measuring of corruption levels is to measure the perceptions of corruption. The second option is to measure the amount of incidence of corruption, and lastly, the third alternative is to measure experts' estimates of the level of corruption. This essay will focus on the latter option, where estimates of corruption levels will be used. By doing so, Transparency International's Corruption Perceptions Index (*Hereinafter*: CPI) will be central.[25] This method of using experts' estimates will additionally be considered by measuring the democracy levels in the EU member states, though the Economist Intelligence Unit's so-called Democracy Index (*Hereinafter*: DI). Besides, this thesis will embrace a model of Institutional Choice Perspective (*Hereinafter*: ICP), which gives an explanatory description on why and how corruption occurs in relation to differing variables, such as political-legal norms.[26]

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[24] Bryman, Alan, 2004. *"Quantity and quality in social research"*, London Routledge, Chapter 2.

[25] The Hungarian Gallup Institute, 1999. *"Basic methodological aspects of corruption measurement: Lessons learned from the literature and the pilot study"*, (Hereinafter: The Hungarian Gallup Institute, 1999), Hungary: The Hungarian Gallup Institute.

[26] Barr, Joshua V.; Pinilla, Edgar M.; and Finke, Jorge, 2012. "*A Legal Perspective on the Use of Models in the Fight Against Corruption"*, (Hereinafter: Barr, Joshua V.; Pinilla, Edgar M.; and Finke, Jorge 2012), South Carolina Journal of International Law and Business: Vol. 8: Issue. 2, Article 5, 267-296.

This study applies towards all EU member states, and the dependent key term, 'Corruption' will be present throughout the whole paper. This key term will be analyzed in accordance to the various independent aspects, presented in this paper. The first key term 'Corruption and democracy level' answers to research question (1). This section is based on cross-country data and the data used is taken from Transparency International's CPI and from the Economist Intelligence Unit's DI. This is significant data in order to observe and evaluate if there is a correlation between a State's level of corruption and level of democracy, and if these variables may affect each other positively or negatively.

The second key term 'Long-term participation in the European Union' answers to research question (2), which investigates if the EU has a general level of corruption among its MS, and if new member states within the EU are generally having a higher level of corruption than older member states. This is a significant chapter in order to evaluate if the EU is throughout its organization diminishing corruption and framing democracy, even if it is within a long-term perspective. Likewise, this section is additionally dependent on cross-country data, in order to analyze and evaluate the correlation between the two variables. The data for this chapter will mainly be drawn from TI's Corruption Perceptions Index. This part of the study additionally looks into why newly associated member states of the EU, may have higher levels of corruption.

 The third and last independent key term 'Regulation of Corruption' answers to research question (3). This question deals with issues concerning how the European Union has worked to fight corruption in relation to the development of a legal framework. Besides, it additionally examines the role of moral values in the regulation of corruption. The material, which lays the ground for this part is mainly from international legal documents, academic book and articles. A historical aspect will additionally provide a deeper understanding for the issues of regulating corruption, and the moral implications.

1.3 MAIN AIM AND PURPOSE OF THE STUDY

The main aim and purpose of this study is three-fold. Firstly, this paper aims to study how a State's level of corruption affects its level of democracy. This is significant as it brings understanding for the relation between the two variables, corruption and democracy. In this essay, this relation is the central point. This is also noteworthy in order to see if there is a co-relation within the EU States concerning these variables, but also to receive an insight in if the EU can do more to reduce corruption in order to increase democracy in the 27 member states. Besides, it gives an insight if the level of democracy and corruption is widespread within the Union, which may imply that EU citizens are having different democratic rights depending in what state they have their livelihood.

Secondly, this thesis studies how long-term participation in the Union affects its member states in relation to corruption and democracy. The aim is to receive an insight over the levels of corruption in different MS and if older MS in the European Union are having a higher level of corruption than newer member states. This also shows if the EU through its organization is diminishing the corruption levels within the various MS. Moreover, it provides an overview about the effect that long-term participation in the Union has on a member state's level of corruption.

The third and last aim of this paper is to examine how the European Union has tried to regulate corruption and corruptive behavior within the Union's MS. This is done through evaluating the development of legal frameworks and other standard setting documents concerning anti-corruption for all its MS. Furthermore, it evaluates issues of regulating corruption, such as what historical aspects and moral values play for role in this matter. This chapter will rise awareness on what provisions that have been established, and what authority the EU actually has in relation to the difficult issue of fighting and regulating corruption. As well as why historical and moral aspects in a society may have an effect on the regulation.

1.4 LIMITATIONS

In order to make this study more comprehensive several limitations have been done. Firstly, this study only applies to the EU and its MS, excluding other European States as well as applicant states to the Union. This additionally means that EU legislation will be a focal point, where international and national legal frameworks concerning anti-corruption will not be considered to a large extent.

Another limitation of this paper is in accordance to the Corruption Perceptions Index, where only data from 2012 will be taken into account. This means that data of member states' corruption levels over an extended time period will not be considered. The data will only evaluate the corruption levels of EU member states in 2012. The basic explanation for this limitation is that there is no findable data for countries that have a longer participation in the EU. This is for certain a major obstacle, as the countries' level of corruption before they entered into the EU is not considered. The data will therefore compare the corruption levels of countries in 2012 and show if there is a correlation between long-term membership in the EU and a country's corruption level.

This is also true in relation to the Democracy Index, where data from 2011 will be measured, as yet there is no findable Index established for the following years.

As the study concerns all EU member states this study is treating the various states, which have different social and legal histories as comparable units. This results in that many issues are set aside.

1.5 OUTLINE

This thesis is divided into 7 Chapters, where Chapter 1 in this paper explores the introduction, embracing the problem formulation and the three overall research questions. Moreover it discusses necessary limitations as well as the main aims and purposes of this paper. In Chapter 2 the theoretical approaches of this thesis are discussed, where firstly the concept of separation of powers will be presented, and secondly where Jürgen Habermas theory will be discussed. Continuously, Chapter 3 is

exclusively discussing the definitions and importance of democracy and corruption internationally and in the EU.

Chapter 4 presents and compares the different data collected in relation to CPI and DI. It examines if there is a relation between EU member states' level of corruption and their level of democracy, while Chapter 5 explores if there is a difference in the level of corruption in new and old member states of the EU. Besides, it explores why new MS may have a higher degree of corruption than older MS. Furthermore, Chapter 6 analyzes how the EU has encountered the fight against corruption, and how developed a legal framework concerning anti-corruption has been developed. Besides, this chapter discusses difficulties of regulating corruption within the European Union, and how States' history, culture and moral values may have an impact in the regulation of corruption.

This chapter is followed by the conclusion in Chapter 7, which gives answers to the three research questions. This Chapter additionally provides recommendations for further research in this area.

2. THEORETICAL FRAMEWORK

2. 1 SEPARATION OF POWERS - LAW AND DEMOCRACY

Several scientific fields may be used while investigating the relation between democracy and corruption. Administrative and organizational theories, as well as theories origining in anthropology, economical and historical disciplines can be used. Nevertheless this essay will depend on sociological theory, associated with Sociology of Law in order to explain the dilemmas this essay is facing.[27] The role of democratic law within a society is for certain of major importance, especially within the field of Sociology of Law. However, the theoretical approach towards this field is very limited.[28]

"In the context of democratic societies (…) law appears as one of the most central mechanisms to ensure that the participation of the populace in a state's governance, as well as the outcome of government in the form of legislative decisions, abide by standards of democracy".[29] This can be compared with more autocratic states, which holds societies, which have established and developed in a manner where legal- and political functions are having little difference. In such states or societies "law operates as an instrument of political domination that has no popular basis of legitimation. With the democratization of political systems, the politicization of law is no longer a constant factor, but, on the contrary, law becomes a guarantee against the abuse of political power. In this sense, law serves as a critical link between citizens and their government".[30] Post-autocratic modifications of nations, transforming them into democracies, bring challenges in relation to their new constitution, where state constitutions conflict. This phenomenon can especially be viewed in East European states. "With respect to the question of rule of law in young democracies, clashes between the executive and legislative branches, on the one hand, and the judiciary and constitutional courts, on the other. As well as those between ordinary and

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[27] Nelken David and Levi Michael, 1996, 1.
[28] Deflem, Mathieu, 2008, 162.
[29] Ibid.
[30] Ibid, 162-163.

constitutional courts are particularly virulent".[31] If there would be a separation of the systems, where legal- and political systems would not interact in the same manner, conflicts would less likely occur. Similarly, in relation to diminishing the abuse of power, especially political power[32] such as corruption, which is according to its definition regarded as such mechanism.[33] Nevertheless, a total separation of power systems in democratic societies does not exist at present time. However, a democratic society cannot function with no separation of governmental power.[34] This is for certain an important matter to this paper, how the separation of power and rule of law is significant for minimizing abuses of power in a society. The notions of the separation of powers are significant to all the aspects of this paper.

2. 2 JÜRGEN HABERMAS THEORY

While viewing the small path of theoretical options within the field of Sociology of Law, Jürgen Habermas theories 'The Theory of Communicative Action' and his latter edition 'Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy', are central. Besides him, Niklas Luhmann system-theory is additionally embracing significant aspects for explaining certain noteworthy aspects in respect to democracy and law within the discipline.[35] Nevertheless, one of the most significant points for this paper is "law as a basis for democracy".[36] In relation to this, this thesis will study one deficit of democracy, namely corruption. This will be examined on a comparable basis, and therefore involve theoretical aspects from Habermas theory.

Habermas, one of the most influential philosophers and sociologists in present times, has a strong relation to democracy. To Habermas, democracy takes a predominant

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[31] Hein Michael, 2011, 3.
[32] Persson Torsten, Roland Gerard and Tabellini Guido, 1997. *"Separation of Powers and Political Accountability",* (Hereinafter: Persson Torsten, Roland Gerard and Tabellini Guido, 1997), The Quarterly Journal of Economics: Oxford University Press, Vol. 112, No. 4 , 1163.
[33] Europa, 03.04.2013.
[34] National Conference of State Legislatures, Accessed: 05.10.2013. *"Separation of Powers - An Overview"* United States: Denver. Retrieved from: www.ncsl.org/legislatures-elections/legislatures/separation-of-powers-an-overview.aspx
[35] Deflem, Mathieu, 2008 , 162-163.
[36] Ibid, 162.

role in respect to the development of modern societies and concerning the modifications in the public sphere.[37]

Habermas work were for a long time centered on the interactions between economy and labor in the society, however his work eventually developed, and over time Habermas came to include three aspects which became central for his theory. These features are "interaction, language and democracy".[38] According to Habermas, law is one central aspect in the modern society. His view on law has a strong connection to his "broader theoretical perspective of the nature and transformation of society".[39] Besides, in his theory 'The Theory of Communicative Action', it is significant to apprehend the concepts of rationality. Rationality is divided into two categories. Firstly, the concept of cognitive-instrumental rationality and secondly, the notion of communicative rationality. The first categorization of rationality means the "conduct that is oriented at the successful realization of certain goal",[40] While in the second categorization the orientation of actors' interaction is on "mutual understanding".[41] In relation to cognitive-instrumental rationality Habermas claims that a society can be studied through being viewed as a system.[42]

The theory focuses on the notion of lifeworld and systems. There are three essential components in relation to the lifeworld and Habermas defines them at three different levels; level of culture, level of society and level of personality. At the level of culture, Habermas describes that cultural imitation is related to the sharing of interpretation-patterns by lifeworld members. Furthermore, on the level of society, Habermas argues that due to the sharing of norms of actions between individuals in the society, social integration is established and interpersonal relations are ordered. And finally at the level of personality the goal of the socialization process is explained. Habermas states that the purpose of the socialization process is to promote interactive capabilities of

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[37] Banakar Reza, Travers Max, 2013. *"Law and Social theory; Chapter 4: Legal theory of Jürgen Habermas: Between the philosophy and the Sociology of Law"*. (Hereinafter: Banakar Reza, Travers Max, 2013).Second Edition, Oxford and Portland, Oregon: Hart publishing, 75 - 77.
[38] Ibid, 77-78.
[39] Deflem, Mathieu, 2008, 162-163.
[40] Ibid,164.
[41] Banakar Reza, Travers Max, 2013, 77-78.
[42] Ibid.

individuals.[43] In regard to modern societies, the systems become more separated. This results in that the lifeworld is based on money and power, where the communicative action is no longer the focal point. By defining money and power, money is equal to economy and power to the perception of a state.[44]

Habermas did however develop a later work in relation to democracy and law called 'Between facts and norms', where he somewhat modified his previous view in relation to democracy and law. In regard to modern societies Habermas argues that law is always included in the lifeworld and that law mostly derives from social norms, but can also be imposed by systems.[45] By accepting this view, law and politics, which are based upon the democratic character as well as the legislative process is not the only relation of modern political powers. Habermas posits that there is a relation between morality and law as well.[46]

Between the lifeworld and the system the law has two major functions. The first function is that the law serves as a guarantee to protect and maintain the autonomy of the two systems, state and economy. This means that the "law secures the 'normative anchoring' of the steering-media in the lifeworld".[47] The two systems have through the history been able to uncouple from the lifeworld. Nevertheless, money and power, which are the two means of the respective systems have to be legalized and so reconnected to the lifeworld.[48]

Focusing closer on the aspect of the money system, it is a necessity that the exchange relations are regulated through legislation. Likewise, the system of power and official positions has to be legally regulated. Historically law derives, according to Habermas, from norms determined by the society and is therefore in the modern lifeworld the institutionalization of those. Nevertheless the institutionalization of norms has to be widely accepted by the society and could therefore cause disagreements regarding the

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[43] Deflem, Mathieu, 1995. *"Corruption, Law and Justice: A Conceptual Clarafication"*. (Hereinafter: Deflem, Mathieu, 1995), Journal of Criminal Justice 23(3), 245.
[44] Deflem, Mathieu, 2008,164.
[45] Ibid, 166.
[46] Ibid.
[47] Deflem, Mathieu, 1995, 247.
[48] Ibid.

rightness of the created regulations.[49] That laws are normatively grounded implies that laws, even though they may be imposed upon states, may not function if they do not have a moral foundation within the society. If the society and its systems are not adopted towards a certain law, change may be difficult to achieve. Its up to the individual to follow or 'ignore' certain legal provisions, for moral or strategically reasons.[50]

By discovering the second function of law within the system, law can be viewed as having a systematic technique of entering into the lifeworld. This can be regarded as the lifeworld being internally colonized. Habermas further argues that law regulates social relations, and that throughout history this has become more frequent.[51]

In relation to Habermas theory and to communication-theoretical terms, the practice of corruption can be defined. In his view, corruption is deemed as a strategic action. Such action occurs when "two or more actors undertake an exchange relation by way of a successful transfer of steering-media (money or power) which sidesteps the legally prescribed procedure to regulate the relation".[52]

Regarding corruption, Habermas theory "refers to an exchange relation which sidesteps a legally prescribed procedure to regulate the relation." [53] Habermas furthermore states that corruption is directly related to law, especially when corruption violates legal norms.[54] Habermas describes also corruption as a change of the type of interaction within pre-regulated or legally regulated exchange relations, "from a communicative to a systematic type of interaction… In other words, corruption involves a colonization of a relationship regulated by a legitimate legal procedure".[55]

Another approach is that when social relations are legally regulated in a systematic way, corruption occurs in a systematically ordered society. Systemic law targets

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[49] Deflem, Mathieu, 1995, 247.
[50] Klein Steven. Review of Baxter, Hugh, "*Habermas: The Discourse Theory of Law and Democracy*". H-Law, H-Net Reviews, 2011.
[51] Deflem, Mathieu, 1995, 247.
[52] Ibid, 244.
[53] Ibid.
[54] Ibid.
[55] Ibid, 247.

success and influences activities or events from a cognitive-instrumental point of view, regulating the social interactions in an action-oriented way. Corruption is therefore in this case guided in the same way as law regulates the social interactions. This means that corruption is in this specific scenario a second-order colonization. Furthermore in this kind of corruption, a change from communicative into strategic action is not possible and a conversion from a strategic to a communicative action would result in a legalization of illegal activities such as corruption.[56]

It is extremely significant to receive an understanding of law and corruption and their relation. Furthermore, it is important to note that all strategic action is not to be regarded as corruptive. This due to the fact that "corruption can only be conceived as the sidestepping of legally prescribed procedures, which regulate a social action".[57] This means that social actions that are converted into strategic actions cannot be seen as illegal if law does not regulate those social actions. Those actions may be seen as unethical or unjust, but as law does not regulate these, they cannot be classified as illegal.[58]

To sum up, systems develop by relations and interactions of the social, such as of cultural and moral values, which also shapes the society and its systems. The systems eventually uncouple from the lifeworld. When the system is dissfunctioning, consequences such as corruption occur. Habermas theory serves as an explanatory section for democracy and corruption, through its relation to law, society and morality.

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[56] Deflem, Mathieu, 1995, 247.
[57] Ibid.
[58] Ibid.

3. GENERAL DEFINITIONS

3.1 DEFINITION OF CORRUPTION

To receive more understanding for this paper the most specific term will be defined, namely corruption. Corruption is internationally defined as the "abuse of power for private gain".[59] Nevertheless, there are several more explanations of what corruption is regarded as, and what areas it concerns.

In the social life, illegal activities can be preformed in various ranges of areas. Not least within establishments upholding the structure of the society or reflecting the societies interests, such as governmental institutions. The whole society is affected directly or indirectly by acts of corruption, not least its inhabitants.[60] In regard to Habermas theory, there are two different kinds of corruption, one in relation to money (monetary corruption), and one related to power (bureaucratic corruption). "In monetary corruption the exchange relation is carried out by way of a transfer of money, and in bureaucratic corruption by way of a transfer of power. Both types of corruption can circumvent regulations spelled out by legitimate or systemic law."[61]

Furthermore, recognized by Heidenheimer are three types of areas of where Corruption occurs, and by whom; these are *public office-centeredcorruption, market-centered corruption,* and lastly *public interest-centered corruption.*[62]

Public office centered corruption is argued by Joseph. S. Nye to be based on misbehavior related to individuals having a public role and/or authorized with official duties. This means that public officials use their public power for private gain, which can consist in monetary or non-monetary benefits.[63]

Jacob Van Klaveren argues that *market centered corruption* is related to civil servants. Further, Van Klaveren claims that individuals holding such position have a view of

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[59] Europa, 03.04.2013.
[60] Deflem, Mathieu, 1995, 244.
[61] Ibid, 243.
[62] The Hungarian Gallup Institute, 1999.
[63] Nye Joseph S, 1967. *"Corruption and Political Development: A Cost-Benefit Analysis",* American Political Science.

their specific workplace to be an independent business. The main aim of the civil servant is to maximize his and the business income, which to a large extent is dependent on the situation of the market. In relation to this, the civil servant must in accordance to the society's demand maximize his gain. Therefore it leads to that civil servants use corruptive tools to maximize their profits.[64]

In relation to *public interest corruption* Friedrich argues that this scheme of corruption may occur when an individual has an influential and power position, in relation to for example monetary matters, or has a position to favor one part that provides rewards. This situation interferes and damages public interest, as the public interests are not represented in the best manner.[65] Likewise, Adam Graycar and Aiden Sidebottom claim that corruption is most likely to occur when individuals are authorized or may have a monopoly power. This monopoly is generally in relation to services or goods, where the individual uses its power in a gainful way.[66]

One other viewpoint noticed by Transparency International is the relation of corruption to economic issues, where some European States have encountered troubles in accordance to for example the economic crisis. This is related to a too close relation between governments and businesses. A too close connection gives more chances and opportunities to preform corruption, which as a result also higher the level of corruption.[67]

Dennis. F. Thompson discusses legislative corruption and claims that "legislative corruption is institutional insofar as the gain a member receives is political rater than personal, the service the member provides is procedurally improper, and the connection between the gain and the service has a tendency to damage the legislature or the democratic process… Recognizing institutional corruption is not always easy because it is so closely related to conduct that is a perfectly acceptable part of political

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[64] Van Klaveren Jacob, 1989. *"The Concept of Corruption, in A. J. Heidenheimer, M Johnston and V. T. LeVine: Political Corruption: A Handbook"*, New Brunswick: Vierteljahresschrift Sozial und Wirtschaftgeschichte.
[65] Friedrich C. J, 1966. *"Political Pathology"*, The Political Quarterly, Vol. 37.
[66] Graycar Adam and Sidebottom Aiden, 2012. *"Corruption and control: a corruption reduction approach"*, Journal of Financial Crime, Vol. 19 (4), 384 – 399.
[67] Transparency International, 2012. *"Close Link between Business and Government pose Risk in Europe"*, Transparency International.

life".[68]

Furthermore, Jane Arvind argues that corruption is likely to occur when there is an abuse of political power, and that such misuse of power arises when markets and political institutions fail, or are lacking power.[69] Alfredo Del Monte and Erasmo Papagni on the other side argue that corruption levels are higher in states where the authority of the government is higher. This results in that profit and benefits are dependent on governmental policies. Which results in that entrepreneurial skills as well as common managerial skills are having less importance, which as a consequence favour corruptive activities and behaviours. This means that nations investing more in the state or common economy, generally also have a higher corruption level.[70] Nevertheless, even if the causes of corruption may vary, it occurs in all levels of the society, and has crucial outcomes in various ways.[71]

3.2 DEFINITION OF DEMOCRACY

Democratic law and its relation to society are of major significance within the discipline of Sociology of Law, which additionally is emphasized by Jürgen Habermas.[72] Democracy is to the highest extent related to social, cultural, economic and political rights, and should therefor be maintained and uphold in order to obtain improvements within these fields.[73] "Politics always concerns the relationship between government and citizens, between those who govern and those who are governed. As indicated by the etymological origin of the word democracy from the Greek for people (demos) and power (kratos), a political system is democratic when government is organized with explicit reference to those who are governed".[74]

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[68] Philip Mark, 1997.*"Defining political corruption"*, Political studies, XLV, 436-462.

[69] Arvind Jain K, 2001. "*Power, Politics and Corruption* in Arvind Jain K. (ed.), *The Political Economy of Corruption"*, Routledge: London, 3-10.

[70] Del Monte Alfredo and Papagni Erasmo, 2007. *"The determinants of corruption in Italy: Regional panel data analysis"*, European Journal of Political Economy, Vol. 23, 379-396.

[71] Transparency International, 03.03.2013.

[72] Deflem, Mathieu, (2008), 162.

[73] Meyer-Resende Michael, 2009. *"Democracy revisited - Which Notion of Democracy for the EU's external relations?"* (Hereinafter: Meyer-Resende Michael, 2009), European Parliament, Brussles, 5-30.

[74] Deflem, Mathieu, 2008,169.

Nevertheless, the European Union does not have an own legal definition of democracy, however it is a requirement for candidate countries to be viewed as a democracy for becoming a member state of the EU.[75] Laid down in Article I-1 and I-2 of the Official journal of the European Union, candidate countries and member states shall respect and promote the Union's values, where democracy is listed as one of them.[76] Nonetheless, even though the EU embraces 27 different democracies, all of them are equally acceptable. The Union has discussed the option of defining democracy, however a resolution of the issue is not yet settled, as well as there are arguments declaring that such definition would not be necessary. Surely, there is additionally one other aspect that makes it hard to find one definition of democracy; this because it is hard to establish a definition for all 27 MS, as there is a major diversity among them.[77]

The United Nations General Assembly (*Hereinafter*: UNGA) has however established a definition of what elements democracy contain. The definition states: "(...) the essential elements of democracy include respect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly and of expression and opinion, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as a pluralistic system of political parties and organizations, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media".[78] Surely, all these significant elements are substantial areas within democracy and important for its for its development.[79]

Nevertheless, even if there do not exist a universal nor a European definition for democracy yet, most individuals would agree upon that a democratic society grasps

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[75] Meyer-Resende Michael, 2009, 5-30.
[76] Official Journal of the European Union, 2004. *"Treaty establishing a constitution for Europe"*. 2004/C 310/01, Volume 47.
[77] Meyer-Resende Michael, 2009, 5-30.
[78] UN General Assembly, 2005. *"Enhancing the role of regional, sub-regional and other organisations and arrangements in promoting and consolidating democracy"*, UN Doc A/RES/59/201.
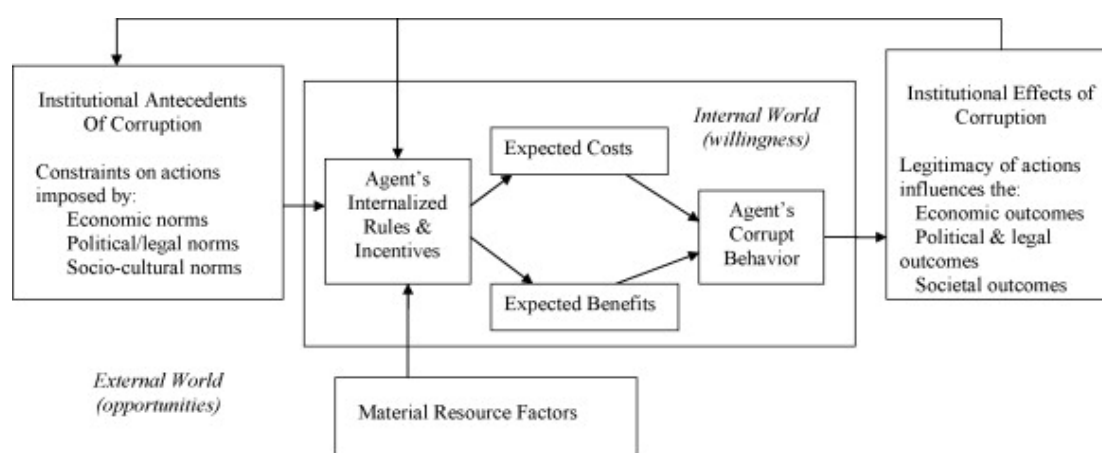[79] Meyer-Resende Michael, 2009, 5-30.

somewhat a minimum standard of democratic standards, such as holding of free and fair elections, and respecting fundamental human rights.[80] In Chapter 4, section 1 in this thesis the level of democracy in the various EU member states will be presented.

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[80] Kekic, Laza, 2006. "*The Economist Intelligence Unit's index of democracy*," The Economist: London.

4. RELATION BETWEEN CORRUPTION AND DEMOCRACY

In the light of the definitions of corruption, a more explanatory theoretical model of corruption will be applied. By viewing corruption, there are several models explaining its existence, performance and effects. Indorsed by this thesis is the model of Institutional Choice Perspective, created by Michael. W. Colliers, which illustrates the linkage between the cause and affects of corruption.[81]

MODEL 1: Institutional Choice Perspective

(Source: Barr, Joshua V. Pinilla, Edgar M.; and Finke, Jorge, 2012, 279).

Model 1 illustrating the ICP shows that corruption is highly related to actions that are associated to socio-cultural, political-legal or economic norms, in relation to an agent's corruption behavior, resulting in the effects of corruption.[82] This specific model "focuses on the internalized world of the agent who may or may not engage in corrupt behavior and the externalized world surrounding the agent which serves to constrain and/or legitimize corrupt behavior. In addition, material resource factors influence the expected benefits of corruption. The internal world makes up the agent's decision-making process and his willingness to partake or not partake in corrupt actions. The external world makes up the rules and opportunities that influence the agent's decision-making".[83]

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[81] Barr, Joshua V.; Pinilla, Edgar M.; and Finke, Jorge 2012, 267-296.
[82] Ibid.
[83] Ibid, 280.

This model can be adjusted and used in the light of this essay which is combining and examining one of the variables of corruption, where this essay will examine the variable from a political-legal standpoint, putting much emphasizes on how the so-called external world, in this case the European Union, influences corruption behavior and democracy though its organization, and legal framework. This effects as well the political and legal outcomes.[84]

4.1 DEMOCRACY LEVEL

The Democracy Index 2011, is based on a major international survey, and aims to evaluate the level of democracy in states around the globe. This Index measures states electoral process and pluralism, the functioning of governments, political participation and cultures, as well as civil liberties. These are all indicators, which are identifying a democratic state. The highest score of this Democracy Index is 10, which implies that a state can be seen as a democratic society, while the lower numbers captures less established and developed democracies. States with a score of 8 to 10 are considered a full democracy, while the ones below, having the scores between 6 and 8, are considered to be flawed democracies. Hybrid regimes are considered having a lower score that is under 6; followed by so-called authoritarian regimes, which are below a score of 3.94.[85]

TABLE 1: Democracy level in EU member states

Rank	EU Countries	Score
1	Denmark	9.52
2	Sweden	9.5
3	Finland	9.06
4	Netherlands	8.99
5	Luxembourg	8.88
6	Ireland	8.56

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[84] Barr, Joshua V.; Pinilla, Edgar M.; and Finke, Jorge, 2012, 280.
[85] The Economist Intelligence Unit, 2011. *"Democracy Index 2011- Democracy under stress"*, (Hereinafter: The Economist Intelligence Unit, 2011), The Economist.

7	Belgium	8.5
8	Austria	8.49
9	Germany	8.34
10	Malta	8.28
11	Spain	8.2
12	Czech Republic	8.19
13	United Kingdom	8.16
14	Portugal	7.81
15	France	7.77
16	Slovenia	7.76
17	Italy	7.74
18	Greece	7.65
19	Estonia	7.61
20	Slovakia	7.35
21	Cyprus	7.29
22	Lithuania	7.24
23	Poland	7.12
24	Latvia	7.05
25	Hungary	7.04
26	Bulgaria	6.78
27	Romania	6.54

(Table 1: Data collected from; The Economist Intelligence Unit, 2011).

Noticed in Table 1 is that the democracy level throughout the Union is extremely widespread from the highest score of 9.52 to the minimum of 6.54. This may imply that EU citizens are exercising their democratic rights differently, depending on where one has its livelihood. Besides, Table 1 additionally shows that there are still 14 states considered as flawed democracies within the Union, while 13 of the EU member states are considered full democracies. There are no EU states considered to be a hybrid regime, however it is very eye catching that some states are very close to the limit, such as Romania and Bulgaria. These two states are relatively close to the boarder for being regarded as a hybrid regime being last listed in the ranking at the

place 26 and 27, with a score of 6.78 and 6.52. Predicted in relation to EU is that the EU does not incorporate any authoritarian regimes.

4.2 CORRUPTION LEVEL

Transparency International's Corruption Perceptions Index has been exclusively used in order to rank the 27 MS of the European Union in relation to their level of corruption. The scores of CPI are measured from 0-10 where 0 is the highest rate of corruption and 10 holds the lowest rate of corruption. It is claimed that states with a lower score than 5, are seriously targeted by corruption, and corruptive behavior. Transparency International collects the data gathered for this index. The Index captures the experiences of corruption by people on a day-to-day basis. The CPI is mainly based on experts', analysts' and business-people's observations and views of their experiences with corruption in their state. This results in that the individuals' views are not explicitly reflected and studied.[86]

TABLE 2: Level of corruption in EU member states

Rank	EU Countries	Score
1	Denmark	9.0
1	Finland	9.0
3	Sweden	8.8
4	Netherlands	8.4
5	Luxembourg	8.0
6	Germany	7.9
7	Belgium	7.5
8	United Kingdom	7.4
9	France	7.1
10	Austria	6.9
10	Ireland	6.9
12	Cyprus	6.6

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[86] Transparency International, 03.04.2013.

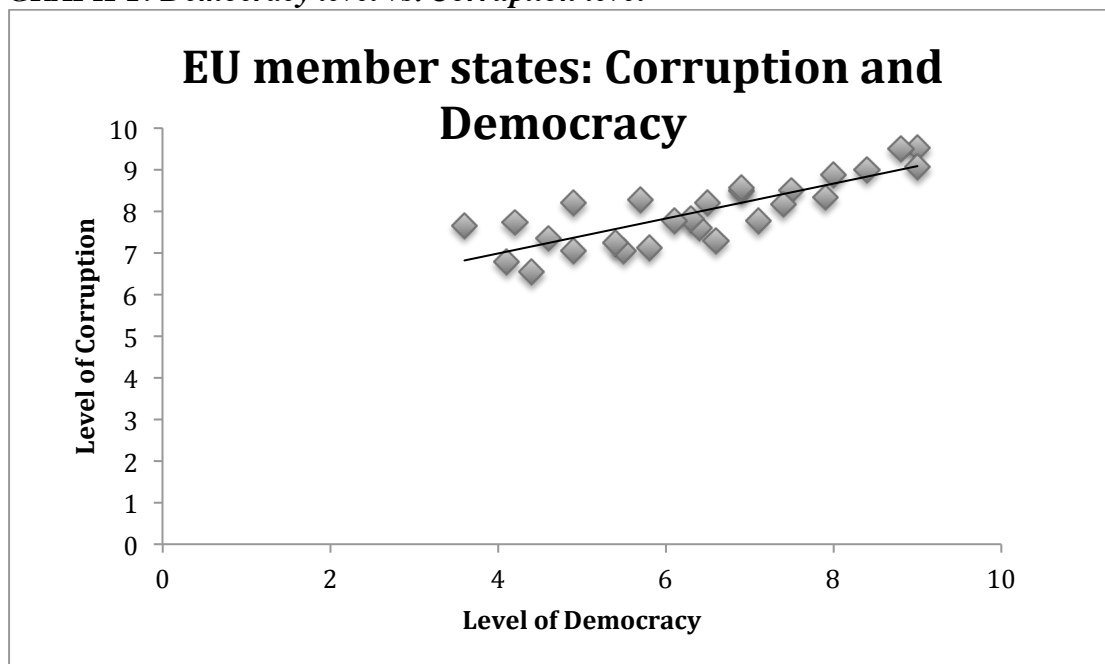| 13	Spain	6.5
14	Estonia	6.4
15	Portugal	6.3
16	Slovenia	6.1
17	Poland	5.8
18	Malta	5.7
19	Hungary	5.5
20	Lithuania	5.4
21	Czech Republic	4.9
21	Latvia	4.9
23	Slovakia	4.6
24	Romania	4.4
25	Italy	4.2
26	Bulgaria	4.1
27	Greece	3.6

(Table 2: Data collected from; Transparency International, 03.04.2013)

Table 2 evaluates the level of corruption in the 27 MS of the European Union. One can clearly notice that the MS are extremely spread in relation to their level of corruption, which implies that the EU and its MS still have a long way to go in order to optain a general transnational corruption level thorughout the Union. Seven of the EU Member states have a seriosly high level of corruption, where their score is below 5.0. These states are Czech Republic, Latvia, Slovakia, Romania, Italy, Bulgaria and Greece.

4.3 DEMOCRACY LEVEL IN RELATION TO CORRUPTION

Within Graph 1 presented below, there is a combination of the data collected from the CPI and DI Indexes and it embraces all the 27 member states of the EU. The vertical axis measures the dependent variable of this paper, namely the level of corruption in a EU member state. As mentioned before, the level of corruption is measured through a scale of 0 to 10, where 10 is the highest score. This also means that states' having a higher score have a lower level of corruption.[87] The horizontal axis is measuring nation-states level of democracy. This measurement is based on a scale of 0 to 10, where 10 is the highest score. This means that states having a higher score have a more well functioning and established democracy in their society.[88]

GRAPH 1: Democracy level vs. Corruption level

(Graph 1: Data collected from; The Economist Intelligence Unit, 2011, and; Transparency International, 03.04.2013).

Noticed in Graph 1 is that there is a negative correlation between EU member states level of corruption and democracy. This simply means, that states having a higher level of corruption generally have a lower level of democracy, and vise-versa; states having a lower level of corruption have a higher level of democracy.

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[87] Transparency International, 03.04.2013.
[88] The Economist Intelligence Unit, 2011.

4.4 ANALYSIS: LEVEL OF CORRUTION AND DEMOCRACY IN THE EU

Examined this far in this Chapter is the relation between EU member states' level of corruption and their level of democracy, in order to view if these two variables somewhat affect each other. Exposed throughout the data gathered through the CPI and DI is that there is a negative correlation between corruption and democracy. This means that states that have a higher level of corruption generally have a weaker democratic standard in their state, and vise versa, states having a lower level of corruption generally have a more stable democracy within their state.

Further notices are that both the corruption levels and the democracy levels within the EU member states are extremely widespread. In relation to the corruption levels there is an extreme gap between the top- and bottom states. Noteworthy was that several states had an extremely high level of corruption. Concerning the democracy level, which likewise showed extremely diverse results. 14 states showed to be considered flawed democracies, while 13 member states were regarded as full democracies. One striking aspect of all this is that two states were close to the limit to being viewed as hybrid democracies.

Indeed, the European Union does not have a common definition of what a democratic states is, which means that all these states are equally acceptable. However, the facts still show that there are extreme differences among the states, which also implies that that EU citizens are living under differing circumstances, where also their democratic rights may be diminished due to corruptive behaviors.

5. AFFECTS BY EU MEMBERSHIP

5.1 LONG-TERM PARTICIPATION IN THE EU

Transparency International's CPI has been used in order to score the European Union's MS in relation to their level of corruption and also the MS years of membership have been compared.

The scores of CPI are measured from 0-10 where 0 is the maximum rate of corruption and where the score of 10 holds the lowest rate of corruption within a nation-state.[89] The data concerning the year of membership within the EU has been taken from the European Unions own documentation.[90] This data is both used in Table 3 and Graph 2 presented below.

TABLE 3: Year of membership and level of corruption

Year of Membership	EU Countries	Score
1952	Netherlands	8.4
1952	Luxembourg	8.0
1952	Germany	7.9
1952	Belgium	7.5
1952	France	7.1
1952	Italy	4.2
1973	Denmark	9.0
1973	United Kingdom	7.4
1973	Ireland	6.9
1981	Greece	3.6
1986	Spain	6.5
1986	Portugal	6.3
1995	Finland	9.0
1995	Sweden	8.8
1995	Austria	6.9

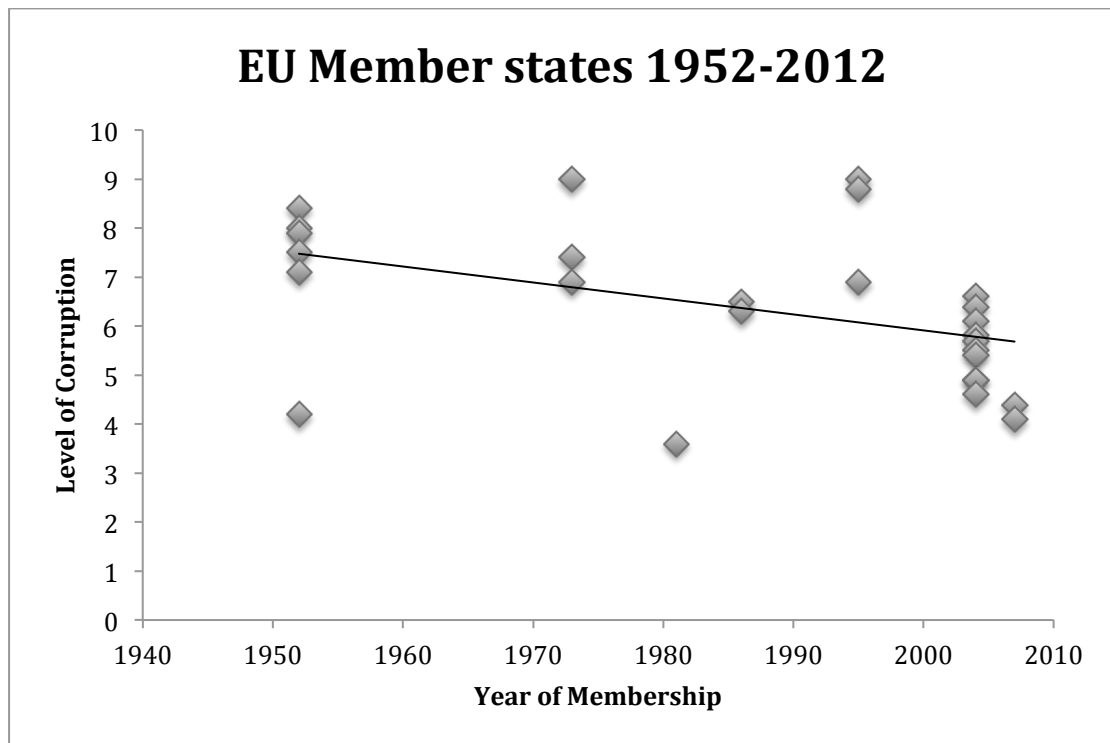
[89] Transparency International, 03.04.2013.
[90] European Union, Accessed 03.04.2013. *"European Union; List of countries"*, (Hereinafter: European Union, 03.04.2013), European Union. Retrieved from: www.europa.se

2004	Cyprus	6.6
2004	Estonia	6.4
2004	Slovenia	6.1
2004	Poland	5.8
2004	Malta	5.7
2004	Hungary	5.5
2004	Lithuania	5.4
2004	Czech Republic	4.9
2004	Latvia	4.9
2004	Slovakia	4.6
2007	Romania	4.4
2007	Bulgaria	4.1

(Table 3: Data collected from; Transparency International, 03.04.2013, and; European Union, 03.04.2013).

Table 3 presented above, displays what level of corruption European Union's states have in relation to how long they have been participating in the Union. This data is further analysed below in Graph 2, where this data is compared in order to overview if there is any corellation between the states' level of corruption and how long a state has been a member of the European Union.

(Graph 2: Data collected from; Transparency International, 03.04.2013, and; European Union, 03.04.2013).

Noticed in Table 3 and Graph 2, which embraces all the 27 member states within the Union, is that EU member states generally have a lower rate of corruption the longer they have been members of the Union. This means that even though the graph showing a rather week relationship, one can still recognize that newer MS generally have a higher corruption level. However exposed is also that there are exeptions to this facts, where some states fall out of the general structure. Italy is one of these states, which is one of the founding states of the European Union, but has one of the lowest rakings in accordance to corruption. This table addittionally shows that the EU is through its organization diminishing corruption, even though it is over an extended time period.

5.2 WHAT MAY EXPLAIN WHY NEW MS HAVE A HIGHER TENDENCY TO CORRUPTION THAN OLDER MS

What may explain why new MS have a higher tendency to corruption than older MS is somewhat depending on that the European Union accepted 10 new member states to associate in the Union. These states have to some extent a lower social, economic and political development, which played a major role in the new corruption levels within the Union. Furthermore, the rather large amount of new states joining the Union during the last few years have often been controlled by communistic regimes and have been affected by the Soviet Union, where corrupt behavior has often been a used tool and system for an extended period. This means that the cultural system of corruption has been and is used in order to gain power as well as survive in the society.[91] Habermas also discusses these issues within his theory of communicative action, where he highlights the relationship of moral values to law and towards the creation of systems.[92] Besides, the newly associated states change from a communist state to a democratic state with established democratic rights and a developed market economy has given further opportunities for corrupt behaviors and affairs. This can for example be observed during the time when East-European states where striving to establish a market economy, and privatization of different properties was preformed. Such events created opportunities for individual gain, where both bribes and unofficial networks were typical and interactions with them occurred regularly. Surely, the new associated East-states are not the only states within the Union having a culture of corruption, as this can also be observed in for example Italy, which is one of the founding states of the Union.[93]

This explanation of European East-states' corruptive culture follows the same scheme. This because it has occurred a post-autocratic modification of the nations, transforming them into democracies. For certain this has brought both challenges and

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[91] Johnnsen Lars and Hilmer Pedersen Karin, 2011. *"For the common good: Combating corruption in new EU member states"*, (Hereinafter: Johnnsen Lars and Hilmer Pedersen Karin, 2011), Journal of Comparative Politics, 91-107.
[92] Deflem, Mathieu, 1995, 247.
[93] Johnnsen Lars and Hilmer Pedersen Karin, 2011, 91-107.

conflicts between law and democracy, such as towards controlling corruption.[94]

In order to ensure a higher level of democracy and minimizing the abuse of power, which especially occurs when political and legal power are closely connected, such as in more authoritarian states. It is important to work towards separating these two forces, to be able to establish a well functioning democracy, and diminishing corruption.[95] Habermas theory additionally addresses this issue, and claims that law serves as a guarantee to protect and maintain the autonomy of the two systems, state and economy. This means that the "law secures the 'normative anchoring' of the steering-media in the lifeworld".[96]

5.3 ANALYSIS: LEVELS OF CORRUTION IN THE EU; NEW AND OLD MEMBER STATES

As mentioned before, and shown in Chapter 4, is that there is a widespread level of corruption within the EU member states. In relation the corruption levels of new and old member states in the Union one can clearly see a trend, that older member states generally have a lower level of corruption. However, this is not a guarantee, where for example Italy, one of the founding MS of the Union has one of the highest scores of corruption within the region. Surely, these facts show that even throughout the EU there is no common, well-implemented anti-corruption policy. States having a longer participation in the Union generally have a lower level of corruption. However, the corruption levels are very different within the Union, which means that a joint anti-corruption policy could help to diminishing corruption, and on the other hand increase democracy. One significant aspect of why new states are more corrupt is their history and culture linking them back to being controlled by communism regimes, where corruptive actions where a significant part of how to receive for example basic facilities or obtain a certain power or influence over a specific issue. This specific issue is interlinked with the notion of separation of power, which means that more

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[94] Hein Michael, 2011. *"Constitutional Conflicts between Politics and Law in Transition Societies: A Systems-Theoretical Approach"*, (Hereinafter: Hein Michael, 2011), Studies of Transition States and Societies, Vol. 3, Issue 1, 3-6.
[95] Persson Torsten, Roland Gerard and Tabellini Guido, 1997, 1163.
[96] Deflem, Mathieu, 1995, 247.

authoritarian states have a closer connection between legal and political powers and systems, which results in that there are higher chances that abuses of power occurs. This additionally implies that democratic systems are still following the older system, where the morality within the society has yet not changed. The relationship between law and corruption is additionally addressed by Habermas.

6. REGULATION OF CORRUPTION

Regulation of corruption is a controversial matter. The following Chapter will deal with the development of EU legislation and its current legislation. It will also touch upon issues of regulating corruption.

6.1 EU ANTI-CORRUPTION LEGISLATION

6.1.1 Development of legal frameworks

Law is essential for minimizing the abuses of power,[97] and over an extended time-period the European Union has developed documents aiming to diminish and fight against corruption. Already in the Treaty of the European Union preventing and diminishing corruption was a significant issue lifted in Article 29. This is expressed to be a way to preserve and uphold security, freedom and justice within EU's boundaries. Other significant steps towards the fight against corruption have been taken; such as in 1997 when a call for an EU policy concerning anti-corruption was addressed by the action program on organized crimes, the issue was also addressed and discussed in the 1998 Vienna Action Plan as well as in 1999 by the Tampere European Council. Undoubtedly, the need for an anti-corruption policy has been emerging for a long time, and this was additionally addressed while establishing the Millennium strategy on the Prevention and Control of Organized Crime. Yet there is still no exclusive and common EU anti-corruption policy applied to all MS on an equal basis.[98] However, the EU has developed two conventions aiming to combat corruption, as well as the European Anti-Fraud Office (*Hereinafter*: OLAF). OLAF is through its organization having inter-institutional investigative powers. Besides, it embraces the 'Council Framework Decision 2003/568/JHA of July 22nd, 2003 on combating corruption in the private sector'. Surely, this is a significant document, but it is not implemented in all the MS yet, as well as it does not cover all the aspects of a society that may be targeted by corruption.[99]

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[97] Deflem, Mathieu, 2008, 162- 163.
[98] Europa, 03.04.2013.
[99] Europa, Accessed: 22.04.2013. *"Fighting corruption"*, (Hereinafter: Europa, 22.04.2013), Europa. Retrieved   from: www.europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/lf0004_en.htm

The European Union is at present trying to establish a common anti-corruption policy, however it has not been incorporated into the Official Journal of the European Union yet.[100] Besides this, a legally binding framework addressing issues and combating corruption is laid down in Article 67 and 83 of the Treaty on the Functioning of the European Union.[101]

6.1.2 Present legal frameworks

The Treaty of the Functioning of the European Union is a legally binding document, which applies to all the European Union's member states, and should therefor be respected.[102] Article 67 and 83 of TFEU lay down a common framework for working against corruption,[103] nevertheless these two articles are very broad. Through the TFEU the Union has the authority to act in accordance to anti-corruption legislation. Nevertheless, restrictions to its provision are made. The EU has an obligation to prevent and combat crimes, to uphold security. In this regard, Article 83 of the TFEU provides a list of criminal acts which should be prevented, where one of them is corruption. Corruption is through this Article viewed as a cross-boarder issue and crime. This as "corruption may have adverse effects on the functioning of the internal market, on competition, and on the use of EU resources and can be used as a tool for organized crime".[104] Unquestionably these Articles are very broad and can be viewed as ambiguous. However, they give the Union provision to act in accordance to anti-corruption policies, as well as they highlight that it is the Union's obligation to act against corruption. Moreover these Articles declare corruption as one aspect of crime, and especially organized crime, on national, regional and international level.[105]

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[100] European Commission, Accessed; 03.04.2013. *"Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - On a comprehensive EU policy against corruption"*, (Hereinafter: European Commission, 03.04.2013), European Commission. Retrieved from: www.eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2003&nu_doc=317

[101] European Commission, 2011. *"Establishing an EU Anti-Corruption reporting mechanism for periodic assessment, EU Anti-Corruption Report"*, (Hereinafter: European Commission, 2011), European Commission: Brussels.

[102] Official Journal of the European Union, 2008.*"Consolidated version of the Treaty on the functioning of the European Union"*, C115/47.

[103] Ibid.

[104] European Commission, 2011.

[105] Ibid.

As mentioned, the European Union has established a legal document combating corruption, 'Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector'. However, this document is yet not fully implemented in all the states of the Union and does only address corruption in the private sector.[106]

The two EU Conventions combating corruption, namely 'the Convention on the protection of the European Communities financial interests' and the 'Convention on the fight against corruption including officials' are of major significance for regulating corruption within the Union. These two Conventions, where one is aiming to diminish corruption to safeguard the Union's financial interests through combating fraud and the other focuses on combating corruption involving officials within the EU and on national level are of major importance for the fight against corruption.[107] Nevertheless, the implementation process of legal documents combating corruption is rather inefficient. This additionally relates to international legal frameworks such as "the Council of Europe Criminal Law Convention on Corruption, its additional Protocol, the Civil Law Convention on Corruption, the United Nations Convention against corruption".[108] However, there are still EU states that have not even ratified these significant documents.[109]

6.2 HOW CORRUPTION CAN BE REGULATED THROUGH LAW

Law is a significant instrument in order to regulate the abuses of power,[110] and as mentioned by Habermas, law is a central instrument for ensuring that the societies systems are functioning independently.[111] Nevertheless, as corruption is interlinked not only to democratic aspects, but also to socio-cultural and economical norms, a comprehensive legislation may be problematic to establish for all states within the Union.[112] This as the EU includes 27 MS and the same amount of differing legal systems, as well as it holds 23 national languages. Undoubtedly this is a major

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[106] Europa, 22.04.2013.
[107] Ibid.
[108] European Commission, 11.04.2013.
[109] Ibid.
[110] Deflem, Mathieu, 2008, 162- 163.
[111] Deflem, Mathieu, 1995, 247.
[112] Rose-Ackerman Susan, 2010.

challenge for the EU to manage and to regulate such a cross-country matrix, where legislation has to be applied in a similar way throughout the whole Union.[113] By regulating corruption through law, several aspects have to be taken into account. Below in Table 1 these issues, which additionally affect the possible outcome of the legislation, in form of legitimacy in the various MS, are presented.[114]

MODEL 2: Issues of regulating corruption

"Motivation of Behavior	Generic sources of (non-) compliance	Possible general sources of non-compliance in the anti-corruption field	Examples of specific compliance issues in the anti-corruption field
Instrumental	Positive and negative incentives	Weak or no penalty for corrupt behavior and/or weak or no reward for non-corrupt behavior	Particular forms of corruption not criminalized; legal penalties for corruption crimes weak; rewards for non-corrupt behavior (even in highly corrupt contexts) not provided
	Monitoring	Low likelihood of application of penalties due to weak detection of corrupt behavior	Low reporting of corruption (despite legal obligation to report; impunity for self-reporting etc.)
	Autonomy issues	Significant part of the target group is victim of extortion	Accessing public services possible only through corrupt behavior, or non-corrupt behavior extremely costly
	Information effects	Target group unaware of relevant rule	Little or no knowledge among target group of relevant legislation, their rights, or procedures for seeking redress
Normative	Social norms	Target group condones particular corrupt practices, or believes infringement of existing social norm against corruption is widespread	Forms of petty corruption commonly excused or justified; widespread perception of fellow citizens commonly engaging in corruption; perception of impunity of corruption crimes
	Legitimacy	Low acceptance/credibility of law-makers or law enforcement agenciesas source/enforcer of obligations	Government, political parties, or individual politicians widely seen as corrupt; police and/or judicial corruption seen as common; legislative process not transparent."

(Source: Table taken from Batory Agnes, 2012. *"Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective"*, Department of Public Policy, Central European University, Budapest, Hungary, 66-82.)

Nevertheless, law can be used as a tool to change norms and behaviors in relation to corruption acts.[115] Regarding legal- and democratic systems, it is significant that these two components are not too interweaved as such circumstances could increase the abuse of power. This could be adopted in relation to many fields, where one of them is corruption.[116]

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[113] Prechal, Sacha and Bert, van Roermund, 2008.

[114] Batory Agnes, 2012. *"Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective"*. Department of Public Policy, Central European University, Budapest, Hungary, 66-82.

[115] Ibid.

[116] Persson Torsten, Roland Gerard and Tabellini Guido, (1997), 1163.

6.2.1 What role has cultural and moral values into the regulation of corruption

The international community often refers culture to traditions and customs. This means that a society's legal and social practice is justified by its traditional practices of acting towards certain issues. A cross-cultural legal norm may therefore be hard to apprehend as a state's legal system, political structure and other institutional organization are differing to a large extent. Nevertheless culture is not a closed system but can be influenced by new traditions. What is regarded as right or wrong is individual to different societies, in relation to their cultures. [117]

Corruption has throughout history been a major issue, both globally and for the European Union. Corruption came on the political agenda in the 90's. After the enlargement of the Union in 2004 and 2007 corruption inspired behaviors and affairs became extra problematic in the EU.[118]As mentioned in the previous Chapter 5, cultural and moral aspects have a significant role towards corruption. Not least, one can acknowledge that East-European states, which have been previous communist states, are affected by its history. As additionally discussed by Habermas is the role of culture and morality, which derives from the society, and which creates and reflects the systems within the society.[119] One example can be viewed by analyzing East-European States that have previously been governed by communist regimes. By living under communist regimes, corruption has been a well-integrated system and used on a day-to-day basis. This has for certain affected the populations' moral values in regard to the issue, even if they may regard it as a wrongful act. Corruption, integrated in the society and morally accepted by the inhabitants, makes this offence hard to control and regulate.[120]As Habermas argues, "modern law even when it is formally enacted by political authority and enforced accordingly, also requires popular legitimation in order to be recognized as valid among the subjects of law."[121]

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[117] Alston Philip and Goodman Ryan, 2012. *"International Human Right - The successor to International Human Rights in Context"*, Oxford University Press, 536-543.
[118] Johnnsen Lars and Hilmer Pedersen Karin, 2011. *"For the common good: Combating corruption in new EU member states"* Journal of Comparative Politics, 91-107.
[119] Deflem, Mathieu, 1995. *"Corruption, Law and Justice: A Conceptual Clarafication"*. (Hereinafter: Deflem, Mathieu, 1995), Journal of Criminal Justice 23(3), 245.
[120] Ibid.
[121] Deflem, Mathieu, 2008, 165.

6.3 ANALYSIS: REGULATING CORRUPTION

Law is a significant tool to regulate corruption, however as Habermas states, the law still needs to be normatively grounded, which may make the regulation harder in regard to some aspects. Even though laws may be accepted or imposed upon states, they may not be functioning, as they are not normatively grounded. If the law is not practiced in the society's system, change may be hard to reach. As cultural and moral values are differing within states, it is hard to apprehend a common and equal regulation.

Article 67 and 83 of the TFEU embrace a provision for the EU as an organization to act in accordance to anti-corruption policies, as well as they highlight that it is the Union's obligation to act against corruption, as well as they mention corruption as one aspect of crime, and especially organized crime, on all levels within the Union. The European Union does have a legal legislation for anti-corruption in relation to combating corruption. There have been established two Conventions, one aiming to diminish corruption in relation to safeguarding the Union's financial interests through combating fraud, and another concerning combating corruption involving officials in the EU and on a national level. Regarding the private sector the EU has additionally established a legal document. Nevertheless, this legal document is yet not fully implemented in all the EU member states as those are having difficulties to apply all the articles of the legislation. Besides, it does not apply to all sectors in the Union, such as the public sector. This additionally shows that the EU is lacking efficiency in implementing such a significant document into its member states. But, as the Union includes several legal cultures and systems, it is a major problem for them to find a regulation, which is directly applicable to all.

Taking actions against corruption and implementing legislation may lead to diminishing corruption levels, help to uphold a constant democracy level and better other significant areas that are interlinked and damaged by corruption. This is revealed in Chapter 5 of this thesis. Strengthening of anti-corruption laws and implementation processes may be a significant instrument for tackling issues related to corruption that are indirectly minimizing a states level of democracy. However, as it can be seen in Table 1 there are several aspects that have to be taken into account while tackling regulatory issues of corruption. As mentioned before, in relation to

more autocratic states such as East European states, there has to be more separation between legal and political power in order to diminish the chances for an abuse of power.

Nevertheless, as the Union has not yet fully handled the issue of a common anti-corruption policy, there would be a need for improvement to be able to tackle the issue of high corruption levels, in order to receive a more stable, democratic Union.

This part of the research is also interlinked with the third research question, and conceders issues of regulating corruption and what relation it has to cultural and moral values. As previous mentioned, cultural aspects play a significant role in relation to corruption. This can not least be viewed in East European States, which have been under communist regimes, and are newly developed democracies. In these states, there are more tendencies for corruption to occur, as their morality towards corruption is formed by their history. As a result, moral and cultural values towards corruption are still present today, which additionally affect the regulation of it. Likewise, Harbermas additionally highlights the moral and cultural interactions in relation to the systems, and that these values are reflected in the societies' systems.

7. CONCLUSIONS AND FURTHER REMARKS

7.1 CONCLUSIONS

In this last chapter the conclusions of this thesis will be presented and the three over-all research questions are answered.

Democracy is shown to be an important aspect, both for the EU as well as for the MS and its inhabitants. All the European MS have to obey and promote the values of the Union, where one of them is democracy. This is additionally an entry requirement to the Union. However, the EU does not have a common definition to what democracy is, and what a democratic state requires. This means that all the EU member states are equally accepted and valid to the Union. Nevertheless, there are still major differences between these democracies, which have been shown in Chapter 4. Nevertheless, as noted, one major threat to the establishment of a fully democratic society is corruption, which also is a major issue for the Union, especially since the 90s'.

The first research question - *How does a state's level of corruption affect a states level of democracy?* - has been examined by looking if the European Union member states have a similar level of corruption and democracy, as well as graphs have been created to show if there is a correlation between these two variables.

In accordance to the member states' democracy levels it is shown that the results of the measurement vary tremendously among the 27 MS. Only 13 states where regarded as full democracies, while 14 of the states where observed as flaw democracies. Despite this fact, some of the states were close to the limit to be a hybrid democracy. This implies that EU states democracies are extremely different, as well as the participation and rights for EU's inhabitants may be enjoyed differently throughout the Union.

Further, it is shown that the corruption within the various MS of the EU does not have a similar level. On the contrary, the level of corruption varies tremendously among the MS.

By combining the data concerning corruption and democracy levels in the 27 member states, a clear negative correlation is shown. This means that states with low corruption levels have a stronger and better-established democracy, and vise versa. The states having a high level of corruption are generally having a low level of democracy.

Surely, the result depends on several different factors, such as the enlargement of the EU in 2004 and 2007, when 10 new European states entered into the Union. Many of these states have their origins in previous communism regimes, linked to the Soviet Union. The corruptive behavior is in many states heritage from the soviet system, where corruption was a significant way to gain power, survive or live a "common" every day life. This corrupt behavior has become a cultural way of acting. Besides, since starting the democratization process of their states, with the privatization of states and governmental properties, authorized persons saw the opportunity for private gain, which additionally favored corruption.

The Second research question: - *Does long-term participation in the European Union affected its member states in relation to corruption and democracy, and why may new EU states have a higher level of corruption?* - has firstly been studied by analyzing if new member states within the European Union are having a higher level of corruption than older member states. This investigation has shown that the level of corruption has a relation to how long a specific state has been a member of the European Union. Nevertheless, not all states are following this scheme, but generally a tendency can be viewed in the data analyzed and the graph presented.

The results found show that the EU itself, throughout its current values, legislation and work is somewhat affecting the level of corruption of its member states, even though it is over an extended period of participation in the Union. This research question is further linked to the third question, which will be discussed below.

Nevertheless, one can acknowledge that the EU is somewhat efficient through its work against corruption. However, an improved and well-implemented common anti-corruption policy could help to speed up this process.

Secondly, this research question has studied the 'Why' issue of this question through analyzing reasons for why new EU states have a higher level of corruption. The results show that newly associated states within the EU are mostly former communist states, which through their history have followed a cultural scheme of corruption where legal and political power were, and are at some extent still very connected. This has additionally opened ways for an abuse of power, such as corruption. Corruptive behavior is well integrated into the citizens' cultural values and norms, which furthermore makes it hard to regulate, as corruptive actions are more accepted throughout the society. These arguments can additionally be regarded in the light of Habermas theory. By focusing on the separation of power, and the notion that more autocratic states' legal power is more closely connected to the authority, or those with key power are of major importance in this question. By democratization, these two powers are normally becoming more and more separated, which makes the abuse of power less likely to occur. The newly democratic systems are to some extent still following their older system, where the morality within the society has yet not changed towards corruption.

This part of the research question can additionally be viewed in the light of Habermas theory, where he discusses the role of cultural and moral aspects in the society.

The third research question: - *How does the European Union regulate corruption, and what role do cultural and moral values play in regard to regulation of corruption?* is very complex.

This third research question has investigated the development of legal frameworks combating corruption in the Union, as well as if the EU has a joint anti-corruption legislation for its member states. Moreover, it has investigated issues of regulating corruption, such as cultural aspects and morality.

This question is somewhat interlinked with the second research question of this paper, which shows that long-term participation in the Union has an affect on the states' level of corruption and democracy. As well as that there are various reasons affecting the regulation of corruption, such as cultural and moral values. This can for example be viewed in East European States, which previously were under communist regimes. This has resulted in that moral and cultural values towards corruption are still present today, which also affect its regulation. This is also argued by Habermas, where he claims that cultural and moral values reflect the society and its systems.

The European Union has its anti-corruption legislation incorporated into four legal documents, namely the Treaty of the Functioning of the European Union, the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, the Convention on the fight against corruption including officials, and finally the Convention on the protection of the European Communities financial interests. Surely, these three last mentioned documents are a major progress in the fight against corruption. However it is shown that the implementation process of the documents is having differing outcomes, where many states have failed to apply their provisions. This additionally implies that the implementation of EU legislation into national legislation could be more adequate and efficient.

Even though the Union is allowed to act against corruption and promote regulations against it, one can clearly see that there is still a major lack of legal regulation in order to fully control the issue. Nevertheless, the Union has however developed an anti-corruption policy, which is not yet incorporated into the Official Journal of the European Union. Surely, it is a problematic process for the Union to establish such a policy, as it implies a major cost for all the MS. But as corruption is a significant threat against democracy and other fundamental rights, the European Union should therefore work more effectively to find a solution for this issue. Further, as corruption levels within the European Union still are drastically high within a majority of the member states, improvements of the legislation may help to diminish the current corruption levels, and increase democracy levels.

Law is essential for regulating the abuse of power within a democracy. Strengthening anti-corruption laws and implementation processes may therefor be a meaningful instrument for tackling issues related to corruption, which are minimizing a states level of democracy. By introducing more sustainable legislations in relation to anti-corruption law, with a more efficient implementation processes may therefor, minimize the abuse of power, and maximize democracy. However, as shown, regulating corruption is not a simple matter, where many aspects have to be considered and many features play a major role in the legitimacy of the law in the society, such as cultural and moral values. Law needs a popular basis for legitimation and acceptance by the population to be fully functional.

As observed, modification of states often encounter conflicts between the state and the legal system, which can be noticed among the east European states. Authoritarian states' legal- and political powers are often having a close connection, which opens up for the abuses of power. In order to diminish such an abuse of power and increase democracy, these two systems have to be more separated. Likewise, as discovered through Habermas theory, law serves as a guarantee for ensuring that these two systems are functioning separately.

7.2 FURTHER REASERCH

In relation to democracy and corruption there are many fields that are still unexploited, particularly in relation to sociology of law. Within this study, all the European Union's MS are equally compared, leaving aside their individual social and legal histories. It additionally does not explicitly clarify what specific aspects of a state's legal culture which may facilitates or allows corruption to occur. This leaves out several significant aspects, which may play an important role in relation to the development of corruption and democracy. Therefore, further contributions in this research area require in-depth analyses of these issues.

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