

9 When are judges likely to be corrupt?

Stefan Voigt¹

What factors influence the level of corruption within the judiciary? To answer this question a number of hypotheses will be developed and tested against a measure of judicial corruption from the World Economic Forum's *Global Competitiveness Report*, which asks local business-people about the frequency with which 'irregular payments in judicial decisions' occur.² Tentative policy implications can be drawn from the results.

Possible determinants of judicial corruption

Corruption can be defined as the misuse of public office for private gain. Judicial corruption refers to corruption in the judiciary broadly conceived. Here, the focus is primarily on prosecutors and judges.

Economists assume that actors react systematically to incentives. The higher the (expected) utility of a certain behaviour, the more likely it is that this behaviour can be observed. The more attractive corrupt behaviour appears to be, the more it can be expected. In order to explain different levels of corruption we can ask how attractive it is to be corrupt in different institutional settings.

The expected utility of being corrupt can be calculated as the expected advantage (e.g. the sum of money paid) times the probability of *not* being discovered misusing public office. From this product, we need to subtract the potential costs that a member of the judiciary has to bear if his or her behaviour is discovered, times the probability of being discovered. But since being discovered is not identical to being sentenced, an additional probability has also to be factored in. This equation can now be used to derive a number of hypotheses.

Hypothesis 1

The lower the official salary, the higher the likelihood of corrupt behaviour. If the official salary of judges and prosecutors is low, then bribes can appear quite attractive. If official salaries are high, the potential cost of being corrupt may be high – the official salary will be lost if the

1 Stefan Voigt, Institutional and International Economics, Department of Economics and Management, Philipps University Marburg, Germany. Contact: voigt@wiwi.uni-marburg.de

2 World Economic Forum, *Global Competitiveness Report* (Oxford: Oxford University Press, 2004). The answers range from 1 ('very common') to 7 ('never occurs') and are available for some 80 countries.

judge or prosecutor is discovered and sentenced. Information on remuneration of judges and prosecutors was generated through questionnaires.³

Hypothesis 2

The higher the complexity of the judicial system, the higher the expected level of judicial corruption. Some judicial systems are highly complex, meaning that a high number of procedural provisions exist for many steps of judicial decision making. Highly complex systems often lack transparency, both for those who use them and for outside observers. We assume that complexity increases the incentives to offer bribes because many things can go wrong in such systems. Due to the lack of transparency, the likelihood of being discovered might be lower than in simpler systems. The indicator developed by Djankov et al to proxy for procedural formalism of the judicial system is used.⁴

Hypothesis 3

If judicial decisions, as well as the underlying reasoning, need to be published, expected corruption levels are lower. A low degree of transparency is central to the last hypothesis. It can, in turn, be argued that a high degree of transparency ought to be connected with low degrees of corruption. In their questionnaire, Feld and Voigt (2003, 2006) collected information on this variable.

Hypothesis 4

The slower the judicial system, the higher the likelihood of corruption. It appears plausible to assume that slow judicial systems increase the incentives of private parties to offer bribes to judges to speed up their case. Djankov et al. (2003) have constructed two standard cases (evicting a tenant for not paying her rent; cashing a bounced cheque) and have collected information on how long it takes to get them through the court system in more than 100 countries. These two indicators are used as a proxy for the time dimension here.

Hypothesis 5

The higher the degree of checks and balances, the lower the expected level of judicial corruption. An ideal proxy would look at the degree of checks and balances within a judicial process, and that could be the subject of future work. Here, we measure the number of veto players in a

3 Information on prosecutors' salaries collected by S. Voigt, L. Feld and A. van Aaken, 'Power over Prosecutors Corrupts Politicians – Cross Country Evidence Using a New Indicator', Mimeo: University of Kassel (2004). Information on judges' salaries from L. Feld and S. Voigt, 'Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators', *European Journal of Political Economy*, 19(3) (2003); and L. Feld and S. Voigt, 'Making Judges Independent – Some Proposals Regarding the Judiciary', R. Congleton, ed., *Democratic Constitutional Design and Public Policy – Analysis and Evidence* (Cambridge, MA: MIT Press, 2006).

4 S. Djankov, R. La Porta, F. Lopez-de-Silanes and A. Shleifer, 'Courts: The Lex Mundi Project', *The Quarterly Journal of Economics*, 118(2) (2003).

government system, that is the number of actors who have to agree on new legislation, provided by the variable 'checks' contained in the *Database of Political Institutions*.⁵

Hypothesis 6

If anti-corruption agencies increase the likelihood of corrupt behaviour being sentenced, then such agencies will be correlated with lower degrees of corruption. Our test looks simply at whether an anti-corruption agency exists (using a list of all known anti-corruption agencies produced by Alan Doig, University of Teesside, England), but does not look at the relative performance of anti-corruption agencies.

Hypothesis 7

Countries in which the prosecution agencies enjoy a monopoly have a higher level of corruption. Economists predict that monopolists supply goods in sub-optimal quantities. If courts and prosecutors have a monopoly in prosecuting corruption, the degree of prosecution 'supplied' might be too low. Some countries allocate the competence to initiate prosecution to other actors, such as the police, the victims, NGOs and the like, which should increase the amount of prosecution and reduce the expected utility from corruption. Voigt et al. (2004) collected information on how many actors beyond the prosecution agency have the right to prosecute.

Empirical results

Former studies on the general causes of corruption have shown that the higher the per capita income and the more open to international trade an economy is, the lower the expected level of corruption. These two variables⁶ are used as our vector of standard explanatory variables, M . The variables just discussed are added one by one. Eventually, all these explanatory variables are tested simultaneously in order to test the robustness of the explanatory variables. N is the vector of the other variables, and δ is the error term.⁷ Most results are based on 63 countries. We are, thus, interested in estimating the following equation:

$$\text{Judicial corruption}_i = \alpha + \beta M_i + \chi N_i + \delta_i$$

Table 1 contains the results. Column 1 shows that per capita income and the openness of an economy already 'explain' some 46 per cent of the variation in judicial corruption (though the openness variable is not significant).

5 T. Beck, G. Clarke, A. Groff, P. Keefer, P. Walsh, 'New Tools and New Tests in Comparative Political Economy: The Database of Political Institutions' (Washington, D.C.: The World Bank, 2000).

6 Both variables from A. Heston, R. Summers and B. Aten, *Penn World Table, Version 6.1*, Center for International Comparisons at the University of Pennsylvania (CICUP), December 2002.

7 We are dealing with a variety of explanatory variables and cannot exclude the possibility that some of them are highly correlated among each other. We have analysed the correlation matrix. None of the correlations is larger than 0.5 and very few turn out to be significantly correlated. To be sure that the results are not driven by outliers, we repeated all estimations excluding outliers (here defined as observations deviating more than two standard deviations from their predicted values). It turns out that the coefficients are rather stable.

The income of judges and prosecutors is found to be highly – and negatively – correlated with judicial corruption: the higher their salary, the lower judicial corruption (see column 2). However, the other columns show that this result is influenced by other factors: column 7 shows that an improvement of judicial income of one standard deviation (which is 0.46 for this variable) would only lead to an improvement of judicial corruption of 0.23 (on a scale from 1 to 7).

Columns 3 and 4 show that both procedural formalism as well as the time needed to get a court decision are highly significant for explaining differences in the levels of judicial corruption between countries. The adjusted R square (the part of the variation in corruption levels that is ‘explained’ by the variables considered) improves by some 13 percentage points (from 0.504 to 0.633) simply by including the formalism variable, and by 10 percentage points by simply including the time variable. It should be noted, however, that causation might run in the opposite direction. It is possible that corrupt judges and their staff might introduce more complex judicial procedures and also delay cases on purpose to get payoffs from corruption. Nonetheless, it can be seen from this analysis that there is a clear association between procedural formalism/time needed to get a court decision and judicial corruption.

Column 5 contains three insignificant variables that are also insignificant when estimated one by one (not shown here). Neither the obligation to publish court decisions, nor the level of checks and balances nor the existence of anti-corruption commissions has a significant impact on the level of corruption within the judiciary. In columns 6 and 7 the dummy for anti-corruption commissions has a negative sign, implying that they are correlated with a *higher* level of judicial corruption. Without time-series data it is impossible to conclude that the introduction of such agencies causes corruption levels to increase. Causality could run from high levels of corruption to the introduction of anti-corruption agencies, and not the other way around.

Column 6 unites all explanatory variables used until here in a single estimation. It shows that all of the explanatory variables that were significant when estimated in isolation keep their significance at least at the 10 per cent level when estimated jointly with the other variables. Finally, column 7 documents the effect of the absence of a monopoly to prosecute on judicial corruption levels. The variable has the expected sign (implying that the absence of a monopoly leads to less corruption), and is also significant at the 5 per cent level. The explanatory variables contained in column 7 ‘explain’ more than 67 per cent of the variation in corruption levels.⁸

Potential policy implications

Our results seem to imply four measures to reduce judicial corruption: increase the remuneration of judges and prosecutors; reduce procedural formalism; reduce the time needed to arrive at judicial decisions; and get rid of the monopoly of prosecution agencies to initiate the prosecution of suspects. Yet, whether a marginal improvement in the salary of judges and

⁸ But also note that the number of observations has dropped to 43 in this column.

Table 1: OLS regressions with judicial corruption 2004 as dependent variable

Variables	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Per cap. income	1.727** (7.597)	1.421** (5.068)	1.456** (6.170)	1.143** (4.818)	1.510** (4.356)	1.159** (4.269)	1.324** (5.595)
2000 log							
Openness (imports plus exports)/GDP	0.003 (1.519)	0.005* (2.463)	0.002 (1.039)	0.003* (1.659)	0.004* (1.770)	0.002 (0.842)	0.002 (0.846)
Income of judges and prosecutors		0.703** (3.519)	0.479* (1.675)	0.487* (1.726)	0.646* (2.019)	0.474* (1.665)	0.452 (1.542)
Procedural formalism			-0.454** (6.156)			-0.359** (3.977)	-0.415** (4.086)
Time needed to decide				-0.015** (4.454)		-0.010** (2.816)	-0.009* (2.233)
Obligation to publish decisions					0.118 (0.294)	0.067 (0.202)	0.123 (0.437)
Checks and balances					-0.037 (0.438)	-0.001 (0.011)	-0.022 (0.296)
Anti-corruption agency					0.183 (0.606)	-0.215 (0.897)	-0.249 (1.075)
Prosecution monopoly							0.619* (2.000)
Constant	-7.099	-5.484	-3.758	-2.685	-6.053	-1.529	-2.329
\bar{R}^2	0.462	0.504	0.633	0.606	0.485	0.653	0.672
SER	0.900	0.864	0.743	0.770	0.881	0.723	0.785
J.-B. Test on Normality	3.893	3.289	1.242	2.446	3.372	0.660	2.118
Number of observations	63	63	63	63	63	63	43

prosecutors would indeed lead to a reduced level of judicial corruption is unclear: as long as corruption is safe (expected sanctions are low), why should one stop being corrupt all of a sudden? This situation can also be interpreted as an equilibrium with high rates of corruption. In such a situation, the question becomes: what can be done to switch to an equilibrium with low corruption levels? It seems plausible to argue that a number of isolated measures are unlikely to induce such a change of equilibriums and that simultaneous changes in a number of judicial institutions promise to have more significant effects. At this stage of research these are little more than educated guesses. For future research, the analysis of single cases that have been identified as success stories would be worthwhile.