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On the Nature of the Corrupt Firm: Where to Situate Liability?

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Abstract

Applying the modern Property Rights Approach to depict employment and firm-internal delegation relationships, this paper addresses the question how to prevent corporate bribery. The analysis and the answers that follow take into account interaction effects between firm-internal delegation relationships, the possibly devilish side function of formal corporate ethics efforts (namely to shield firms or superiors from criminal accountability by shifting it onto their subordinate employees), the distribution of criminal liability, and the necessity for courts to rely on available evidence.
From the simple theoretical framework, a bundle of implications follows: (1) conditions under which formal corporate ethics guidelines can take on a Janus-faced nature, i.e. lack credibility, (2) suggestions how firms can enhance the credibility of their corporate ethics efforts, (3) starts how to avoid the possible "second-order" lack of credibility of such credibility-enhancing measures, (4) clear-cut statements as to (a) where criminal liability should be situated within the firm and (b) how corporate and individual liabilities should be combined to both restrain corruption and to sustain the credibility of corporate ethics. These implications allow comparatively evaluating the effectiveness of international anti-corruption laws – specifically the desirability of corporate vs. personal criminal liabilities.

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[2] Please feel encouraged to send any comments you may have on this paper to this email-address.

1. Introduction

In spite of legal and corporate efforts to combat corrupt practices in (inter-)national business, bribery still occurs. Examples of corporate bribery abound and are well documented in court proceedings (see e.g. the compilation of FCPA cases by Newcomb 2003 and Bannenberg 2002 for a collection of German criminal cases), numerous press reports, personal accounts (see Aburish 1985, Moody-Stuart 1997) and case studies (e.g. Darroch 2004). Bribery enables multinationals to gain contracts, especially for public works and arms equipment, or concessions which they would not have won otherwise, or to do so on more favourable terms (Hawley 2000: 2). Rough estimates of the value of bribes paid by Western businesses to win friends, influence and contracts run up to US$80 billion a year (Hawley 2000: 2, referring to an OECD source[3]). Given that their competitors win business by resorting to corrupt methods[4], firms can feel under pressure to resort to unethical business methods too, in order to defend their competitive position.

Recently, in 1997, the OECD member states have adopted a convention which makes bribery abroad a criminal offence in the respective home country of the bribing firm. The way how this convention has been implemented into respective national criminal laws differs. Germany e.g. still solely applies the legal principle of personal accountability whereas other countries (the USA, England, France, Denmark, and other European states) also allow for corporate bodies to be the target of criminal fines and punishment. Twenty years before the OECD convention has been enacted, the US FCPA had been passed. It equally refers to transnational bribery and allows for personal as well as corporate liabilities.

In response to anti-corruption laws referring to transnational and national business bribery, and in response to precedent cases – see e.g. the Lesotho corruption trials which led to Acres, a Canadian consultancy company, Lahmeyer, a German construction company and the French company Spie Batignolles being fined (Darroch 2004: 3; for further precedents, cf. e.g. Bray 2005: 121-125) – firms increasingly make efforts to contain corrupt acts carried out by their members. Such efforts include written commitments on business ethics, which in many cases are elaborated in company codes of conduct or more detailed statements of policy (OECD 2003: 3). According to the OECD, in 2003 67% of extractive industries have issued anticorruption statements in order to improve their corporate policies.[5]

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[3] http://www.oecd.org//daf/nocorruption/faq.htm

[4] In this paper, the terms "corruption" and "bribery" are used as synonyms. They all are supposed to mean "making illegal payments to obtain public favours". "Illegal" means that the payment is against anti-corruption laws.

[5] „Business Europe: Global Vice Squad", by Matthew Kaminski, The Wall Street Journal Europe, 30.06.03.

However, there are hints that, despite such corporate efforts to foster business ethics, employees hear "mixed messages" (Bray 2005: 118). Scattered descriptions, accounts of personal experiences (see e.g. the Wall Street Journal article cited below[6]) and legal court documents show that, although bribery is "forbidden" by the law, employees who are "at the commercial frontline" (Bray 2005: 118) may face a hard decision process whether to take part in bribery or not. Formally, they may be exhorted to solely resort to legal business practices: They are e.g. told to sign annual compliance statements that they have not paid any bribes. In addition, firms may install publicly observable formal company guidelines forbidding bribery. However simultaneously, employees may be subjected to monetary inducements to use whatever means necessary to win business, possibly including corrupt means (Bray 2005: 118; similarly Rose-Ackerman 1978: 192). The sound of the resulting mixed messages to employees is, "[b]y the way, our code tells you not to pay bribes, but the main thing is to win business." (Bray 2005: 118).

Mixed incentives on the level of a firm's employees may be the result of firms shifting the contradicting incentives they face as corporate bodies – the above-described pressures set by corrupt competition vs. those pressures set by criminal laws – onto their employees. Firms, represented by superiors, may implicitly delegate corrupt acts to their subordinates in ways that cannot be easily proved before court. At the same time, formal corporate ethics guidelines which can be used as "hard-copy" evidence before court might be used to shield firms and superiors from criminal responsibility. This way, firms can both defend their competitive position while escaping adverse legal consequences – thus, they can "solve" the contradiction of incentives they are under. Bribery is not stopped despite of legal prohibitions.

It becomes apparent that under these circumstances, formal corporate ethics efforts may take on a Janus-faced nature. Their original ethical intents notwithstanding, they may serve as formal documentation for firms' or superiors' innocence, shielding the latter from criminal liability. At the same time, implicitly, and informally, corrupt acts are delegated to subordinates. A prerequisite for such a shielding-function is that corporate criminal law and law courts base their judgements whom to hold criminally liable on available evidence: i.e. evidence for who is the ultimate wirepuller of the crime – the "principal" (the firm, or superiors), the "agent" (employees), or both.

In light of the serious and bad consequences that corrupt acts have (as pointed out by an extensive literature) this state is unsatisfactory. Two authors have pointed to the problem of

[6] "Ethical Move Enhances Career / Decision to Kill a Big Deal Ends Well for a Manager With Keen Moral Compass", by Hal Lancaster, in: The Wall Street Journal Europe 03.12.02, Career Journal.

mixed incentives at different points in time (Rose-Ackerman 1978 and Bray 2005), the first author within the context of the FCPA, and the second additionally within the context of the recent OECD convention against bribery. The problem thus seems to be both old and up-to-date.

The question how to tackle corporate bribery – taking into account the interplay between corporate organization, the possibly devilish side function of formal corporate ethics efforts, the distribution of criminal liability, and the necessity for courts to rely on available evidence – gains additional topicality in light of a current discussion on the principle of corporate liability (see the hint in Lambsdorff 2002a: 239). The USA and several European countries have adopted corporate liability for corruption as a legal principle. Through the recent enactment of the OECD convention, the discussion has been stimulated whether the German criminal law should equally adopt the principle of corporate liability. In theoretical terms, this amounts to the question whether, according to criminal law principles, the possible "principal" should solely be an individual person, or whether it (also) ought to be a corporate body.

Not only would it be desirable to have clues whether the principle of corporate liability should be adopted. It would also be interesting to have a theoretical framework that delivers pointers as to how the effectiveness of existing international laws against corporate corruption can be optimized – in light of the just outlined problems of mixed incentives and a possibly Jauns-faced nature of corporate ethics guidelines.

The present study addresses these issues. To achieve this, it applies the modern property rights approach (PRA), put forward by Grossman and Hart (1986), Hart and Moore (1990), Hart (1987, 1991, 1996 and 1997). The PRA is used to depict firm-internal legal delegation relationships, and to identify the circumstances that make firm-internal delegation relationships especially likely to be entangled with the (implicit) delegation of corrupt acts. These circumstances indicate potential "danger zones" where credible corporate ethics is especially important to guard against the delegation of corrupt acts. Application of the PRA further captures conditions under which the possible devilish side-function of formal corporate ethics guidelines (namely to shield employers from criminal liability while shifting it onto their employees) is especially likely to emerge. Given this, it is easy to derive suggestions how firms can avoid such a devilish side-function, and thus to enhance the credibility of corporate ethics efforts. The answer can subsequently be modified in light of the problem that even such credibility-enhancing instruments may again be possibly Janus-faced.

Naturally the question arises: who should have an incentive to enhance the credibility of formal ethical company guidelines, given a certain criminal law framework? Based on the PR-

framework, this study identifies where criminal liability within the corporation should be situated. Moreover, it delivers clues how this criminal liability should be organized in order for this incentive to be provided. Thus it shows how corporate bribery can be prevented through criminal law measures in the most effective way.

The theoretical framework thus created then naturally lends itself to a comparative evaluation of international anti-corruption laws. Specifically, it allows evaluating whether a simultaneous application of the legal principles of corporate and personal criminal liabilities is effective; the FCPA e.g. provides for both these principles. In line with the discussion stimulated by the recent OECD convention against bribery, this framework also provides clues whether the German criminal law code should adopt this principle of corporate liability. In addition, the erected framework demonstrates how corporate and criminal liabilities should be combined to optimize the effectiveness of anti-corruption laws.

According to my present knowledge, the ideas of PRA have not yet been applied to analyze the interplay of firm-internal delegation relationships, formal corporate ethics guidelines and criminal liabilities. The existence of mixed incentives or "mixed messages" (Bray 2005: 118) for employees, as mentioned above, has been stated (Bray 2005: 118; Rose-Ackerman 1978: 192). It remains unclear how these mixed incentives can be eliminated and how the credibility of corporate ethics guidelines can be enhanced. The question how criminal liability should be distributed within the firm, given these interaction effects, is still waiting for its answer. In how far corporate and personal accountability should be combined awaits clarification. This study addresses all these issues; therefore it contributes to the literature on legal and corporate efforts to combat business bribery.

As the subject matter touches different real-world aspects, the present study also adds to different strands of the Economics literature. First, it extends the Property Rights Perspective, put forward by Grossman and Hart 1986, Hart and Moore 1990, Hart 1997, Hart 1987, Hart 1991 and Hart 1996 to entanglements of hierarchical and lateral, legal and corrupt relationships within the firm. Second, it intends to add to the literature on the connections of legal and corrupt spheres. Entanglements of legal and corrupt associations have been studied by Lambsdorff and Teksoz (2005) and by Lambert-Mogiliansky (2002). Lambsdorff and Teksoz (2005) examine the link between completely legal relationships and corrupt ones, hinting at the relevance of a transaction-cost framework and associated New Institutional Economics approaches as tools to explain this link. The core proposition of their study is that corrupt transactions are often linked to legal ones, as pre-existing legal relationships can help to enforce corrupt arrangements (Lambsdorff and Teksoz 2005: 143). Lambert-Mogiliansky

(2002) examines the potential of legal business networks to enforce infrequent corrupt agreements between private firms and the public sphere. In contrast to both these contributions, this paper uses a property rights approach to depict the corrupt and legal transactions and to examine their link. Moreover, the present study focuses on the relationship between the bribing units (the firm) and their hierarchically bound "middlemen" or agents (employees), instead on the relationship between the bribing units and the bribed (public officials).

Third, this study adds to the literature on corrupt "middlemen". Employees can be interpreted as "middlemen" who act on behalf of the bribing firm – a legal entity –, and who thus serve as linking pins to the bribed in the public sphere. A firm is only a legal entity, comprising natural persons and physical and non-physical assets. Thus, it always needs employees and its members who act as agents on its behalf. The literature on the figure of the corrupt "middleman" has been rather scarce yet. Hints at the importance of this figure can be found in Lambsdorff (2002a; 2002b; 1999), Husted (1994) and Oldenburg (1987). Lambsdorff (2002a; 1999) moreover implicitly delivers a definition of corrupt middlemen as actors that lower the transaction costs of corrupt deals. More elaborated, game-theoretical treatments do exist (Lambert-Mogiliansky et al. 2003; Hasker and Okten 2004). However, these focus on bureaucratic corruption and deal with "external" middlemen who are not employees of the bribing firm's organization. Rose-Ackerman (1978), Bray (2005) and Andvig (1995) provide contributions, which explicitly deal with firms and a firm's employees as bribers. These works hint at various single aspects which have motivated this study, specifically mixed incentives which employees face (Bray 2005: 118; Rose-Ackerman 1978: 192) and the issue of deniability (Bray 2005: 117-119; Rose-Ackerman 1978: 191-192). These contributions and thus these aspects still remain disconnected and do not yet relate to each other. In contrast, the present paper uses the modern PRA as a unifying framework which allows bringing together these issues and deriving anti-corruption measures. The impulse to apply the PRA, originally a "firm boundary" theory, to the firm's corrupt dealings, was stimulated by Andvig's (1995) contribution. It discusses why North Sea oil firms may favour firm-external versus employed "middlemen" to accomplish bribery.

Finally, this study intends to add to New Institutional Economics approaches to organization theory (see e.g. the overviews by Milgrom and Roberts 1992; Kräkel 1999; Brickley, Smith and Zimmerman 1997) as it extends PRA, applied to firm-internal relationships, to the field of "dirty business".

2. The problem: Mixed incentives, the influence of criminal law, and the possible Janus-faced nature of formal ethical company guidelines

As has been sketched out in the introduction, firms can be described as working under mixed incentives. This is most visible in transnational business but also in national, corruption-prone industries like e.g. the construction industry. On the one hand, competition and competitors who refer to corrupt methods may pressurize companies to win business and to thus secure their competitive position by whatever means necessary – possibly including bribery. On the other hand, legal rules threaten, via criminal penalties and fines, to make it "expensive" to resort to corrupt business methods.

A survey conducted by Control Risks' Group (2002) among 250 international companies based in Germany, Hong Kong, the Netherlands, Singapore, the UK and the US, corroborates that internationally operating companies take the pressures of corrupt competition seriously. A significant proportion of respondents in the survey believed that they had lost business in the previous year or the previous five years because a competitor had paid a bribe (Bray 2005: 113). From these results, Bray (2005: 113) draws the conclusion that although no one relishes paying bribes, business people may be tempted to "pay" when this seems to be an accepted part of the "system" and there is no apparent alternative. The inducements are particularly acute when companies believe that their competitors are themselves paying bribes (Bray 2005: 113). This situation resembles a multi-actor prisoners' dilemma: As soon as a firm perceives its competitors to "defect", i.e. to refer to corrupt business methods, it is equally tempted to "defect" as well, in order to evade getting the "sucker's payoff".

As a reaction to anti-corruption laws like the U.S. FCPA and the laws enacted according to the recent OECD-convention, firms increasingly make efforts to prevent their employees from carrying out corrupt acts. Firms visibly introduce measures like written commitments on business ethics and company codes of conduct (OECD 2003: 3).

Referring to such corporate ethics efforts, Bray (2005) and Rose-Ackerman (1978) hint at a mixture of incentives similar to the one to which firms are subject. This "second-order" mixture of incentives is present at the employee-levels of firms. Sales personnel may be told to win business by whatever means necessary – including bribery. Their remuneration depends on success, and they are promoted for winning contracts (Bray 2005: 118). Social pressure, monetary inducements like high-powered incentive payment and promotion schemes, and implicit threats to block careers in case the employed salesperson does not win contracts make bribery the most profitable choice of action – at least as long as the personal short-term "gains" are perceived as higher than the expected value of legal penalties. – On the other hand,

employees are confronted with formal company guidelines and compliance statements which exhort them to abstain from bribery (Rose-Ackerman 1978: 192). In addition, employees may have to sign annual compliance statements in which they assure not to have paid any bribes (see e.g. the example given by Bray 2005: 119).

Thus, despite formal ethical company guidelines and other formal corporate anti-corruption instruments, employees may implicitly remain "in charge" to dirty their hands by e.g. transferring kickbacks on a shady firm-external intermediary's off-shore bank account and drafting false invoices. Bray (2005) cites the example of one executive who believes that his company's compliance policy was proposed to protect senior management. The executive said that his bosses still expected him to win business by any method necessary which also comprises bribery. In case he was detected having paid a bribe, his employer would apply the annual compliance statement as an apology for denying responsibility and "leaving him to his fate" (Bray 2005: 119).

Given these observations, a possibly Janus-faced nature of formal corporate ethics efforts emerges. Even if they originally have been enacted with the intention to foster corporate ethics and to put a stop to corporate bribery, they may serve a devilish side-function. Being formal documentation for firms' or superiors' innocence, they may guard the latter against criminal liability while superiors informally assign corrupt acts to subordinates.

The prerequisite for such a devilish side-function to be activated is that corporate criminal law courts base their judgements on available evidence on who is ultimately responsible for the corrupt act – the "principal" (the firm, or superiors – depending on whom the respective national law principles allow to hold liable as "principal") or the "agent" (subordinate employees). Resorting to available evidence, courts must discriminate between delegation of corrupt acts from principals (employers, superiors) to agents (subordinate employees), and the independent and voluntary commitment of a corrupt crime by an agent (employee). Formally documented corporate ethics measures, being "hard-copy" evidence which can be used in court, can – in the absence of counter-evidence of equal weight – then bias the judgement as to exonerate the "principal" (the firm, or the superior).

Different national laws differ with respect to how they deal with corrupt principal-agent relationships within firms. According to the FCPA e.g., not only firms but also single individuals can be punished with fines and prison sentences (Heimann 1994: 327, Bannenberg 2002: 30). In German law, only single individuals can be the target of criminal liability, as Germany has not yet adopted corporate liability as a criminal law principle (Wessels and Beulke 2002: 29). According to German criminal law, the criminal liability of employers,

superiors, and also possibly co-workers of a firm member who pays out bribes is determined according to the laws on instigation ("Anstiftung", §26 of the German Criminal Law Code (StGB)), aiding and abetting ("Beihilfe", §27 StGB), complicity ("Mittäterschaft" §25II StGB) and indirect perpetration of the offence ("mittelbare Täterschaft", §25I StGB). In order to establish whether the superior or the subordinate is liable according to these laws for a corrupt act the subordinate has committed, a court must have sufficient evidence available to determine the actual course of events. That an employer has issued ethical company guidelines and compliance statements may, in the absence of further evidence, be used as exonerating counter-evidence.

No matter whether criminal laws hold firms or only single superiors (as respective "principals") responsible for corrupt acts, the problem to proof whether the "agent" or the "principal" is the ultimate wirepuller of the crime remains. As long as courts do not attribute liability in a totally rigid way, e.g. always to the principal irrespective of available counter-evidence, this problem of proof remains ever present. A totally rigid way of attributing liability to the principal (or the agent) irrespective of available counter evidence strikes as unacceptable; it would completely hand over the principal (the agent) to his agent's (principal's) criminal whims.

The following theoretical considerations therefore initially make the plausible assumption that a principal can be held accountable for his agent's actions, provided not enough counter-evidence is available to exonerate him. His liability grounds on more or less rigid standards as to his duties to exhort his agent to comply with anti-bribery laws and to subsequently monitor the agent's compliance. – As indicated, this however opens a loophole for "principals" (firms, superiors): They can shield themselves against criminal liability by deliberately producing "hard copy" evidence for their innocence. Formal corporate ethics guidelines and similar measures can be *easily* verified by courts. Thus, they can serve as such "hard-copy" evidence. Shielded by formal ethics guidelines, principals may be tempted to delegate corrupt acts to their subordinates in ways that are informal and thus *cannot* be *easily* verified by courts. This way principals can both have the cake *and* eat it: They escape criminal liability *and* reap the monetary benefits of the corrupt crime, e.g. the profits generated by a huge construction contract which has been attained on corrupt grounds.

Examples corroborate that ethical company guidelines can possibly be Janus-faced. Worldcom e.g. had been caught up in scandals despite of having formal corporate ethics guidelines.[7]

[7] Jens Bergmann: "Fraport – Operation Saubermann", in: brand eins, 05/2003, http://www.brandeins.de/home/inhalt_detail.asp?id=173&MenuID=130&MagID=5&sid=su212144145174645856

According to the OECD, in 2003 67% of extractive industries have issued anticorruption statements in order to improve their corporate policies, compared with 8% among automobile companies.[8] This is cynically commented by a Wall Street Journal writer: "Anyone seriously believes that this means the oil majors, who drill in the world's most difficult investment climates, from Russia to Western Africa, are cleaner than the car giants, who build factories in places like Japan or Wales? – Codes of conduct don't necessarily change corporate culture, or even simple human nature, when business deals are on the line."[9]

The just mentioned problem of evidence courts face sets an incentive for principals (firms, firm-leaders, superiors) not only to misuse existing formal ethics measures but also *to* deliberately *produce* such hard-copy evidence to shield them from criminal liability.

Given this, legal measures which address the problem of implicit delegation of corrupt acts are subject to a *tightening-knot* phenomenon: These legal rules approach the problem through setting tighter standards for firms to monitor and exhort their employees to resort to ethical business methods. The tighter the standards as to what constitutes a principal's responsibility of his agent's criminal acts grow to be, the higher the principal's incentive becomes to deliberately produce evidence that he has fulfilled these standards, i.e. he has done enough exhortation and monitoring. This retroactive incentive spurred by the tightened criminal law thus blunts the intended anti-corruption effect of the law. Given this, a tightening of legal standards remains ineffective in two respects. It neither completely solves the problem of implicit delegation of corrupt acts, nor does it eliminate the possibly Janus-faced nature of corporate ethics efforts. Two questions arise:

First, which instruments can eliminate the potential devilish side function of formal company guidelines and other formal corporate anti-corruption measures – given that courts rely on available proof when deciding on personal or corporate accountability (depending on what types of liability the respective national legal system allows for) of principal, personal accountability of the agent, or both? In other words, how can firms and their leaders make formal corporate ethics efforts more credible? *Second*, how must criminal law, referring to "principals" (corporations, superiors) and their "agents" (employees, subordinates), be designed in order to set incentives for principals to enhance the credibility of formal corporate ethics guidelines, and to abstain from (implicit delegation of) corrupt acts? Is corporate liability or individual liability preferable? How should these principles of liability be organized? The answers to these questions deliver a framework which naturally lends itself to

[8] „Business Europe: Global Vice Squad", by Matthew Kaminski, The Wall Street Journal Europe, 30.06.03.
[9] „Business Europe: Global Vice Squad", by Matthew Kaminski, The Wall Street Journal Europe, 30.06.03.

a comparative evaluation of (international) anti-corruption laws. They also deliver clues how the effectiveness of such existing laws can be optimized.

Depicting firm-internal relationships in terms of the modern property rights approach delivers a framework for analyzing the interrelated matters just outlined. It leads to answers to these questions.

3. A property rights view on corporate ethics and liabilities

3.1 PRA applied to corporate delegation relationships

The family of models which outline the modern Property Rights Approach (Grossman and Hart 1986, Hart and Moore 1990, Hart 1987, 1991, 1996 and 1997) originally elucidate the distribution of ownership of nonhuman assets between different individuals or firms. The PRA explains ownership arrangements of nonhuman assets by assuming that parties to an exchange relationship wish to set incentives for relationship-specific investments in a way that social surplus is maximized, given that bargaining over investment returns will occur after the investments have been sunk. Theoretical building blocks of this original PRA can also depict characteristic features of employment or delegation relationships, respectively.

A simplified version of one of the original PR-models, outlined in Hart (1997:29-55), can illustrate these building blocks of the PRA. It is as follows. Two parties to an exchange relationship, "seller" (*S*; he is producer of an intermediate good), and "buyer" (*B*; he is producer of an end product and processes the intermediate good in his production process) are assumed to write a contract about their intended exchange of the intermediate product. This contract is however not verifiable and enforceable by courts with respect to the division of contractual surplus. *B* and *S* thus cannot commit to each other, backed up by formal law enforcement devices, to limit their respective greed as to contractual surplus to a certain predefined amount. Both could make relationship-specific investments which enhance the cooperative value of their exchange relationship and which thus increase contractual surplus. Under these conditions, the division of surplus created by these relationship-specific investments after they have been sunk is not governed by the contract. Instead, allotment of surplus – through negotiating the price of the intermediate good – is merely determined by the parties' bargaining power at the time surplus is to be divided. Bargaining is assumed to be executed according to the rules of a cooperative game, and the Nash bargaining solution is applied as a solution concept. In the Nash bargaining solution, each agent receives what he can achieve without an agreement (this equals the value of his "outside option") plus half the gains from trade (= the difference between the sum of each partner's payoff in case they trade with

each other, and the sum of payoffs each partner can achieve in case they do not trade with each other). The contractual partners are assumed to be able to rationally foresee the outcome of this bargaining process. Thus, agents in a relatively unfavourable bargaining position are less motivated to incur the costs of specific investments, since the greater part of the surplus resulting from their investment efforts will be "expropriated" during the consequent bargaining stage.

S is assumed to own a specialized machine – an archetypical example of the above-mentioned "non-human assets". Hart (1997) defines "ownership" as the right to decide about all usages of the asset which are not predefined in the contract (Hart 1997: 30); in the context of the model (Hart 1997: 36-49), this definition is implicitly further specified to mean the owner's ability to deny others access to the asset. The mentioned specialized machine is necessary to produce the intermediate input. *B* presently does not own this machine; if he would own it, though, he could produce the intermediate input on his own, without *S*'s help. As said, *B* needs the specific intermediate input produced by *S* in order to be able to produce an end product which ultimately allows him to earn profit.

Given this constellation, both buyer and seller are more or less dependent on each other. Specifically, *B* depends on *S*'s delivery of the intermediate input, and more indirectly, on (access to) *S*'s machine. The PRA measures each trading partner's relative dependency by the difference between the surplus he can reap within the specific relationship and the value of his respective "outside option" (= the surplus he can reap outside the specific relationship). In the buyer-seller model, the value of *S*'s outside option is influenced by two determinants. The first is how easily he can sell his intermediate product to other buyers, i.e. the market conditions on the market for intermediate products. These market conditions include whether there are possible buyers outside the special relationship and their willingness to pay for the product. The second is how costly it is for him to adjust this intermediate product to meet the preferences of buyers outside this special relationship. Similarly, the value of *B*'s outside option is influenced by two determinants. The first is the conditions on the market for intermediate products. These market conditions affect the price he has to pay for the intermediate good outside the specific relationship. Here, ownership of the asset is brought into play: If *B* would own the specialized machine himself (instead of *S*), then adverse conditions on the market for intermediate goods would not adversely affect *B*, because then he could produce the specialized intermediate input on his own. The second determinant is the amount of revenue he can collect on the market for end-products, if he has to do without the specific intermediate input.

These determinants of the values of outside options can take on several shapes. An extreme constellation illustrates how asset ownership can confer bargaining power. Assume that *B* has no alternative possibility to obtain any intermediate input from the "market", i.e. from outside the specific relationship. If he neither has access to *S*'s machine nor to *S*'s intermediate product, he then cannot fulfil the demands of his end-product customers and cannot make any profit. Under these conditions, *B* faces a very low-value "outside option" compared to the value of his "inside option", i.e. he strongly depends on *S*, because the latter owns a crucial asset (the machine). If *S* moreover has available several ready-to-pay customers for his specialized intermediate product, he is in a relatively better bargaining position compared to *B*. *S* can make use of this position by threatening to deny *B* access to *S*'s intermediate input (and to *S*'s specialized machine), as long as *B* is not forthcoming with respect to the division of surplus. This illustrates how ownership of non-human assets can confer superior bargaining power to the owner, given his contractual counterpart faces low-value outside options. It also illustrates that the value of a person's outside options can be influenced by (non-)ownership of crucial assets.

The original PRA takes these insights to explain how ownership of assets is distributed between individuals. The logic is as follows. Actors in a relatively unfavourable bargaining position are less motivated to incur the costs of specific investments, since the greater part of the surplus resulting from these investments will be "expropriated" during the consequent bargaining stage. Asset-ownership can enhance an actor's relative bargaining position and thus his motivation to sink specific investments. If the parties can make binding lump sum transfers (to ensure that no actor will loose wealth as a result of a change of the ownership distribution), they will choose that distribution of asset ownership which induces specific investments that maximize social surplus.

Of interest here is Hart's (1997: 56-58 and 61-63) analysis how building blocks of this outlined PR-model – specifically, asset ownership and the value of outside options, – enlighten the nature of employment and firm-internal delegation relationships. An employment relationship is characterized by the employer having more or less superior bargaining power towards his employee. The source of this bargaining power is the employer's ownership of assets which the employee needs in order to be productive. "Assets" can be interpreted extensively, including e.g. physical capital, machines, inventories, and buildings, but also more subtle resources such as patents, client lists, files, existing contracts, and a firm's name and reputation (Hart 1997: 56). The degree of the employer's power to make the employee do what the employer wants is determined by the degree of dependency of the employee. The

employee depends the more on the employer the more the employee needs the employer's assets in order to be productive (and thus to earn his living). The degree of this "need" is in turn determined – analogously to the buyer-seller model – by the value of the employee's outside options. Thus, control over non-human assets gives the employer power (or authority) over the employee, as the employer can exclude the employee from having access to the employer's assets (Hart 1997: 58). Adding the insights of Hart's (1997: 29-55) seller-buyer model to this, the employer's power over the employee's surplus-creating actions is however a relative one. This power depends on the value of the employee's outside options (i.e. how much the employee "needs" the employer). The value of these outside options therefore both determines and limits the employer's authority over the employee.

This way, Hart (1997: 56-58, connected to 29-55) outlines a specific aspect of the nature of the employment relationship, namely the source and limits of the employer's authority over his employee's actions. His account implicitly allows for different surplus-creating activities (carried out by employees), in addition to the relationship-specific investments allowed for in the buyer-seller model. These activities can also comprise "normal" tasks and jobs without an investment component. This is typical for real-world employment relationships where fulfilment of such "normal" day-to-day tasks plays an important role.[10]

How "surplus" is divided in real-world legal employment relationships between employer and employee is not elaborated in Hart (1997). As said, this surplus is usually created by the employer enabling the employees (by means of giving them access to his assets) to carry out legal productive tasks and jobs or to make productive specific investments, and by the employees carrying out and making them. Contrary to the buyer-seller model, bargaining over contractual surplus in the employment relationship can be viewed as being typically carried out in the following "two-stage" fashion: First, when the legal employment relationship is concluded, employer and employee determine a certain monetary wage and also broadly agree on "performance", i.e. on the tasks the employee has to carry out and on specific investments the employee has to make in return for the wage, and also on broad qualitative criteria the employee must fulfil when doing these jobs. Thus, they agree upon a formal wage-, or benefit-performance ratio. The second "bargaining stage" begins after the legal employment relationship has been concluded, and parties are thus tied to each other. In this stage, the

[10] In addition to Hart (1997: 56-58), the analyses in Hart (1997: 59-61) and Hart and Moore (1990: specifically 1140-1145) also mention "workers" and "managers". However, in contrast to Hart (1997: 56-58), their aim is not to clarify the nature of the employment relationship but to explain the optimal distribution of ownership between workers or bosses. The only actions workers are assumed to take are specific investments, but not also "normal" jobs for their bosses without an investment component. Moreover, the ability of the boss to force the employee, based on his superior bargaining power, to sink specific investments (or to carry out any other surplus-creating jobs) is not taken into account.

effective benefit-performance ratio, that is, the effective division of surplus between employer and employee is determined. The "benefits" which the employee receives include the monetary wage and the monetary value of psychic and social advantages the employment position may bring him. Both employee and employer may try to influence the division of surplus as is advantageous for each of them. The employee may try to lower his performance while retaining his wage, because lower performance may entail lower disutility for him. This shifts the distribution of surplus in favour of the employee. In contrast, the employer, represented by superiors, has an interest in extracting higher performance for a given wage, by e.g. ordering the employee to carry out additional, heavier or different tasks than initially agreed upon. Likewise, he may try to bias the distribution of surplus to his own advantage by lowering the employee's wage, as this part of the employee's overall "benefits" presents costs to the firm. Such post-contractual opportunism in the presence of incompleteness of contracts and contractual partners' (mutual) dependency is dealt with in the literature on the hold-up problem (see e.g. Klein, Crawford and Alchian 1978: 302; Milgrom and Roberts 1992: 136-139).

Given this, the above-outlined sketch of the nature of the legal employment relationship by Hart (1997: 56-58, connected to 29-55) can be enriched as follows. The value of the employee's outside option can be viewed as equating the perceived benefits minus the disutility in his next-best alternative job plus the extra costs of changing jobs. By analogy with the buyer-seller model, the value of the employee's outside option is influenced by the market conditions he faces on the labour market.

The lower this value of the employee's outside option is, the stronger is the employer's bargaining power towards the employee and vice versa. The comparatively stronger the employer's bargaining position is, the wider his scope is to (a) assign the employee with additional, heavier or different tasks than agreed upon before, while holding the agreed-upon wage or remuneration method fixed. Alternatively, (b), the employer could unilaterally lower the wage for a given array and level of tasks. Regardless whether the employer chooses (a), (b) or both, he can lower the employee's effective benefits and raise his disutility up to the point where the difference of these two components falls short of the employee's "reservation" value, i.e. the value of his outside option.

The following analysis rests on these PR-insights on the sources, limits and impact of the employer's authority over the employee's actions. These insights do not only apply to legal employment relationships but, as Hart (1997: 61-63) indicates, generally to delegation relationships within the firm. For simplicity, the ensuing sections will mostly utilize the

original PR-term "value of the outside option" instead of "benefits minus disutility of the next best (employment) opportunity". Moreover, any "second-stage" negotiation between employer and employee on a change of the initially agreed upon monetary wage level and remuneration method is ignored; i.e. wage level or remuneration method are assumed to remain fixed once the employment contract has been concluded. This means that the monetary wage- or remuneration-component of the legal employment relationship is held constant.

3.2 Outside-Options, *Exit* and *Voice*: How to add credibility to corporate ethics

The outlined PR-view on employment relationships within the firm can be extended to the case where such relationships are entangled with implicit delegation of corrupt acts. The idea is that an employer can use his legal authority towards his employee not only to order legal tasks, but also to order corrupt jobs. Corrupt tasks can be implicitly delegated e.g. by promotion policies and remuneration schemes which are solely oriented towards output-based measures but not tied to measures of ethical behaviour (for descriptions of incentives that employed sales personnel may be confronted with, cf. Bray 2005: 118). The employer's authority can thus weaken the deterring effect which anti-corruption laws may otherwise have on the subordinate.

As pointed out, according to the PRA, an employer's relative authority to order his employee to carry out legal – and possibly corrupt – jobs is the higher the lower the value of his employees' outside options (compared to the value of the "inside options") is. Transferred to the special context of corrupt delegation, "value of the outside option" means the monetary valued consequences an employee has to face if he refuses to take part in or to contribute to a corrupt deal. E.g. the sales manager, the commercial and the finance manager may refuse to approve of an agency agreement with an external intermediary as soon as they become aware of its obvious purpose, namely to cover the payment of bribes. Equally, the firm's in-house lawyers may refuse to draft such a corrupt agency agreement (see Stanbury's 2004 description of a typical incidence of bribery in the construction industry).

Given that there is a possibility for an employer to – possibly implicitly – order not only legal but also corrupt tasks, conditions leading to low-value outside options for employees indicate potential "danger zones" where delegation of corrupt acts is most likely to occur. This leads to the following implication:

***Proposition 1*: A relatively low value of employees' outside options indicates "danger zones": Delegation of corrupt acts is likely to occur. Outside options can be classified into *exit* and *voice*.**

In order to identify conditions leading to employees' relatively low-value outside options and thus "danger zones", it is useful to classify the outside options – outside the corrupt delegation relationship – which are available to an employee into two categories, *exit* and *voice*. These categories originate in the constitutional economics literature (see e.g. Hirschman 1970: 21-43). They can readily be transferred to the corrupt sphere, as the firm can be viewed as a "sub-economy" (Holmström 1999). *Voice* means that an employee can refuse to take part in corrupt acts, while going on working within the firm. *Exit* means that he leaves the firm. In extreme settings, saying "no" to corrupt acts can in the long run lead to being fired; in this case the *voice*-option is basically non-existent.

In contrast to the outlined PR-model of the legal employment relationship, the outside-option does not refer to the inside-option "legal employment relationship". Rather, it refers to the inside-option "corrupt delegation relationship", whose existence is however convoluted with the "legal employment relationship": it is the legal superior who transfers his legal authority to the corrupt sphere, thus creating the "corrupt delegation relationship". *Voice* therefore means that the employee escapes the corrupt delegation relationship while he continues to stay in the legal employment (delegation) relationship. *Exit* also enables the employee to escape the corrupt delegation relationship, but at the price of having to make do with his outside option in the original sense of the PRA – outside his present legal employment relationship.

Rational employees can be expected to choose that available option which they perceive as most valuable. In case both outside options, *exit* and *voice*, are of considerably lower value than the option to follow corrupt orders, an employee will be most likely to be a ready target of corrupt delegation. Such factors thus strengthen an employer's power to order corrupt acts.

Choice of the *exit*-option means for an employee that he has to change jobs and possibly has to incur periods of unemployment. The value of the *exit*-option is thus lowered by all factors that exacerbate costs arising due to job-search, job-change and unemployment. Unemployment is especially unattractive if there is no social security system which could cushion the income-loss. The costs of job-search and job-change are aggravated if the employee is easily substitutable, i.e. if labour market conditions are unfavourable for the employee. The costs of the *exit*-option can also be exacerbated by established reputation mechanisms on the labour market. Having changed jobs can send a bad signal about the employee no matter whether his former employer was the ultimately unethical actor. A general opinion shared among and

upheld by possible employers on such "difficult", not ready-to-bribe employees also lowers the value of the employee's *exit*-option.

In line with the abstract considerations made above, the existence of the last-mentioned concrete factors indicates "danger zones": As employees' *exit*-options are of relatively very low value, implicit delegation of corruption can be expected to be rather common. In terms of the above-mentioned concept of the effective benefit-disutility difference, the employer then has wide scope to vary the employee's tasks through adding corrupt tasks to the legal workload. This "variation" of tasks may lead to higher profits for the firm, because the employee then helps to exploit lucrative corrupt business opportunities. Simultaneously, this task-variation exposes the employee to the risk of criminal punishment. This effectively lowers the employee's expected "net benefits" (= benefits from being in the legal employment relationship minus the expected value of the consequences of criminal punishment). Employees whose best alternative employment opportunity does not offer a perceived better net benefit-disutility ratio, i.e. a higher-value outside option, will remain in such a corrupt delegation relationship. Examples are the "Yogore Yaku" in Japan (Lambsdorff 2002a: 238). These are well paid lower-level employees to whose families special reimbursements are guaranteed in case the former are convicted of bribery (Lambsdorff 2002a: 238). The PR-considerations on *exit*-options can explain why this phenomenon is to be observed just in Japan. In this country, changing jobs is considered very unusual as many workers stay with their employers for life. Thus a change of jobs inevitably sends a signal which reflects negatively on the employee, irrespective of the underlying reason for the job-change. Given these relatively unattractive outside-options, employers have considerable power to misuse subordinates as fall guys.

The value of the *voice*-option, as far as it is existent, is determined by the consequences an employee has to fear in case he says "no" to corrupt acts. This option may be – in the employees' perceptions – heavily entangled with the *exit*-option: Lacking positive "precedents" as counter-examples, they may fear "the worst" consequences, e.g. being fired or ostracized in case they exercise the *voice*-option. Abstracting from such a possible perception, e.g. a sales manager who wants to work in a corruption-free manner and thus chooses the *voice*-option, may confront different consequences. The most direct consequence may be *monetary* disadvantages, compared to the case where he resorts to corrupt business methods. Employed salespersons often are compensated on an output-basis, e.g. by percentage commissions, or relative to their peers. In case an employee, e.g. an employed sales person, is on such a high-powered remuneration scheme, the value of the salesperson's "outside option"

in case of saying "no" to corruption is then lost commissions. In a more long-term perspective, it may result in lost promotion. Other possible negative consequences which ultimately may boil down, at least in the long run, to monetary disadvantages or to being explicitly or implicitly forced to finally leave the firm, can be subsumed under the heading *peer-pressure*. The following personal statement of an employee, cited in a Wall Street Journal Article, draws a picture of the perceived possible consequences of *voice*:

> "In 1994, Howard Davidson faced his crucible. At the time, he was an investment banker, working in an Asian country. He was on the verge of pulling off a prestigious $500 million (502.8 million euro) stock offering for an Asian utility. "We invested $11 million in the deal and pre-sold the issue," recalls Mr. Davidson, now a financing consultant for the Institute, a management-consulting firm in Redwood City, California. "At the last minute, I was approached by a government official." The official's message: Give him a kickback or forget the deal. "To him, it was as logical as day follows night," Mr. Davidson says.
> It would have been simple to comply.
> […] He felt he couldn't even share the decision with superiors at the bank. What if they ordered him to pay up and push on with the offering? And with other people involved, how could he be sure the whole sordid mess wouldn't leak to the press? […]
> In the end, he declined and the deal was pulled, resulting in a lot of heat for his company from an unknowing public. Press critics wondered aloud if the company knew how to pull off a deal of that magnitude in a foreign land.
> The decision turned out well for Mr. Davidson, who finally confided in his superiors afterwards. The company's senior executives felt he'd made the right call, and he wound up with a promotion after his division went on to a "great year" anyway, he recalls.
> But it could have been a disaster. In another, less-ethical, get-the-job-done-at-any-cost culture, he could have been pushed aside, ignored or outright vilified by co-workers and his career could have come to a dead halt. […] In a highly competitive world, there's considerable pressure to adopt that point of view. When bosses talk about doing "whatever it takes" to make a sale, the salespeople see that as an easily decipherable code. Translation: "Do whatever you have to, as long as it doesn't come back on me." There's also social pressure to "go along with the gang." People who don't are ostracized. […]" [11]

This statement hints at the fact that a corporate culture which is very hostile towards employees who choose to say "no" to corrupt acts may bias employees' decisions towards committing corrupt acts. – Possible negative consequences an employee has to face if he exercises the *voice*-option are also shaped by the way how labour courts decide in these matters. Courts' decisions in turn depend on the specifics of formal labour law and former judicial decisions in the respective country.

So far, it has been assumed that principals (employers; superiors) have an unequivocal incentive to delegate corrupt acts to their subordinates. Delegation of corrupt acts is advantageous in the principals' view if this way, they can increase their own income, i.e. their "share of contractual surplus". But this income-increasing effect must not be counterbalanced by adverse criminal consequences that such a delegation may have as a consequence. It follows that, in addition, superiors must have a possibility to shift criminal accountability for

[11] "Ethical Move Enhances Career / Decision to Kill a Big Deal Ends Well for a Manager With Keen Moral Compass", by Hal Lancaster, in: The Wall Street Journal Europe 03.12.02, Career Journal.

corrupt business methods to their subordinates. Given such a possibility, this shifting of accountability may even be the ultimate reason for delegation. Otherwise, superiors would have an incentive to refer to "do-it-yourself"-bribery. Thus, the way how criminal laws deal with such entanglements of legal and illegal delegation relationships plays an important role.

As has been set as a plausible assumption, it is available proof that determines whether a firm or a superior (as principal) is held accountable for criminal acts which are ultimately carried out by his or its subordinates (as agents). Courts hold "principals" (firms or superiors) accountable in case there is evidence that the latter have eased the criminal act to take place, or not prevented it although it was their duty to do so. Under this condition, formal ethical company guidelines and compliance statements, their original ethical intents notwithstanding, can be misused by employers and superiors to shield them from criminal accountability and to shift it to their employees. The existence of formal ethics guidelines may thus set incentives for superiors to delegate corrupt acts instead of preventing them. Firms or superiors (as principals) may even have an incentive to deliberately *produce* such hard-copy evidence with this criminal intent in mind.

Combining the insights that "danger zones" make delegation of corrupt acts especially likely, and that the existence of formal ethics efforts is a prerequisite for such a delegation to take place (as they shield principals from adverse legal consequences of their delegation), the following proposition ensues.

***Proposition 2*: Formal ethical company guidelines and compliance statements which are paired with the existence of "danger zones" make company guidelines possibly Janus-faced.**

The next proposition follows straightforward from the former two.

***Proposition 3*: The credibility of formal ethical company guidelines can be enhanced by eliminating "danger zones" – through the provision of relatively valuable "outside options", outside corrupt delegation relationships, to employees.**

Given the interplay between employers' incentives to shield themselves from criminal liability and their incentives to delegate corrupt tasks to employees, the credibility of corporate ethical guidelines hinges on whether it is a valuable choice for subordinates to choose an "outside-option", i.e. to escape corrupt delegation relationships.

Many determinants of the value of the *exit*-option refer to conditions on the labour market and are thus largely outside the employer's control. In contrast, firms *can* positively influence the

value of the employee's *voice*-option. Actions that increase the value of the *voice*-option therefore amount to starts how to enhance the credibility of corporate formal ethics statements, thus eliminating the possible Janus-faced nature of the latter. In order for *voice*-options to contain corrupt delegation relationships, the firm must raise the value of the *voice*-option up to the point where it becomes relatively attractive for a subordinate not give in to orders to carry out corrupt acts in the first place (compared to the case where the subordinate follows such an order), and up to the point where it becomes relatively unattractive for an employee to stay within a corrupt delegation relationship once it has already started.

It is useful to pick up again the above classification of factors shaping the *voice*-option into monetary and non-monetary ones. As to *monetary* factors, the relative value of the salesperson's *voice*-option is raised if high-powered incentive remuneration schemes are avoided. This is especially important if the salespersons' customers belong to the public sphere. Another possibility may be to counterbalance output-based remuneration measures by measures based on ethical behaviour. Ethical behaviour may however not lend itself to measurement. In addition, this version may lead to contradictory incentives; the monetary, corruption-prone incentives may still remain the ultimately decisive ones.

The *non-monetary* factors refer to the psychic costs, resulting from superior- and peer-pressure that may be the consequence of saying "no" to corrupt acts. Thus, firm leaders should take care to prevent or alleviate such peer-pressure. A specific formal corporate "constitution" and a "healthy" informal corporate culture can be means to achieve this. As to the cultural aspect, the attitudes of employees who denounce to carry out corrupt acts must be highly valued. The above-cited statement of an employee[12] illustrates that the expectation of how superiors and peers react to the employee who abstains from corrupt business methods is decisive. Such expected behavioural patterns form one of the building blocks of an economic approach to corporate culture, as suggested by Kreps (1990).

Formal corporate "constitution" should provide for independent bodies to which employees can turn if they see themselves caught in superior-subordinate relationships in which they are ordered to commit corrupt acts. Ombudsmen can be such an independent institution. For instance, the German firm FRAPORT AG has enacted codes of conduct for its employees. These have been backed by instituting an ombudsman who anonymously takes tips hinting at irregular practices.[13] These ombudsmen must have the powers to increase the value of

[12] "Ethical Move Enhances Career / Decision to Kill a Big Deal Ends Well for a Manager With Keen Moral Compass", by Hal Lancaster, in: The Wall Street Journal Europe 03.12.02, Career Journal.

[13] Jens Bergmann: "Fraport – Operation Saubermann", in: brand eins, 05/2003, http://www.brandeins.de/home/inhalt_detail.asp?id=173&MenuID=130&MagID=5&sid=su212144145174645856

employees' *voice*-options up to the above-described point – which however might be a difficult undertaking for such an outside body.

A firm's efforts to provide employees with valuable *voice*-options may be thwarted by informal forces (the same may apply to public efforts to grant immunity to crown witnesses and protection to whistleblowers). Despite the existence of firms' respective efforts, whistle blowing (e.g. to ombudsmen) and exiting corrupt delegation can be dangerous ventures for employees, as the value of outside options may be determined by a tight fabric of unsympathetic informal relationships. Considerable peer pressure, a network of corrupt informal associations within the firm, and a possible lack of alternative job opportunities can effectively deter whistle blowing. A striking empirical example is provided by Bannenberg (2002: 109-110). It is a German case, involving a cartel of lane markings firms ("Fahrbahnmarkierungskartell"). This cartel was existent for several decades, backed up by bribes to public officials. An executive employee wrote an anonymous letter to the prosecuting authorities in which he reported the corrupt practices. This whistleblower not only had to face sceptical reactions of the prosecuting authorities (one public prosecutor is reported to have named him "a hysterical, more and more untrustworthy guy", Bannenberg 2002: 109). Based on the argument that his employer had suspicions about this employee's loyalty – this executive employee had independently lowered a tender which had been made overpriced by means of corruption – this employee was sacked. During the advance course of events, additional witnesses and available evidence confirmed the executive employee's statements to be true. Nevertheless, the executive employee more and more was laid open to suspicion, and his trustworthiness was called in question. He became subject to massive threats. In response, he was first included into a witness protection programme. But soon these threats he stated to be subject to were judged to be paranoia. – In this case, *exit* and *voice* are more strongly intertwined than in the above theoretical discussion: The employee said "no" to the corrupt corporate practices by reporting them to the prosecuting authorities. Being consequently sacked, he was then forced to make do with his *exit*-option. These complications notwithstanding, the case shows that a fabric of informal peer and hierarchical pressures can perpetuate corrupt practices within the firm. These informal forces can lower the value of *voice*-options. Also, they may thwart the effectiveness of corporate measures to increase the value of *voice*-options, like e.g. ombudsmen. The case shows that such informal forces may even spread to ex-employees.

A "second order" credibility problem arises. Formal *voice*-options like e.g. the absence of incentive-based payment or the existence of independent corporate bodies like ombudsmen

might be subject to the same problem as formal ethical company guidelines can be. Equally, they may take on a Janus-faced nature. As they can formally be documented, they thus may be used as hard-copy evidence before court. By this, they may equally shield superiors from criminal accountability while the latter informally can delegate corrupt acts to their subordinates (e.g. by resorting to hard-to-verify and thus hard-to-prove informal pressures to block careers). The following section will show, among other things, how this "second-order" credibility problem can be addressed through legal means.

As to the *exit*-options, firms' possibilities to influence these positively are more limited compared to the *voice*-options. However, a firm can positively influence general public opinion within the respective industry towards not ready-to-bribe employees. An industry comprises the entirety of firms working in a special field, e.g. the oil or the construction sector. As the sum of individual opinions forms the general opinion within a sector, each firm is jointly responsible for building up and changing an industry-wide public opinion. How incentives can be set for firms to develop such a "positive" attitude will equally be shown below.

Exit- and *voice*-options are connected to each other. As hypothesized above, this may be true in the employees' perceptions, as they may fear the worst when exercising *voice*. More tangibly, factors which lower the value of the *exit*-option indicate externally determined "danger zones" in which employees may be especially easy targets for the delegation of corrupt acts. Within these zones, credible corporate ethics – backed up by functioning *voice*-options – is particularly important.

To sum up, for a corporate "constitution" to guard against corrupt acts, this constitution must, credibly, provide for democratic elements, i.e. high-value *voice*-options.

3.3 Power Differentials, formal and real authority: Where to situate, and how to organize corporate and personal criminal liabilities

Why should firm leaders have an incentive to make formal ethical company guidelines more credible, i.e. specifically, to provide valuable *voice*-options to their employees? They may have intrinsic motives to do so. As competitive pressures may however crowd out such intrinsic motives, criminal law sanctions should provide additional incentives. This leads to the question how criminal accountability should be organized to achieve this. Specifically, who should be held liable for corporate corrupt acts, principals, agents, or both? And who should be the "principal": individual superiors, or the whole firm (i.e. the legal entity)?

On the simplifying assumption that principals have *no* possibility to shield themselves from criminal accountability through formal counter-evidence (because courts on principle do not accept any such counter-evidence), the property rights perspective delivers quite a clear-cut statement on the former question: The "principal" should be punished in case the "agent" commits a corrupt crime. Given that the principal (e.g. the superior) is punished for corrupt acts which his agent commits, the principal has no incentive to delegate corrupt acts, neither implicitly nor explicitly. The term "principal" in terms of the PRA refers to that person that has enough bargaining power to make his contractual counterpart do what the principal wants.

The property rights approach can be extended to the whole firm, assuming that superiors at each hierarchical level have sufficient power to make their respective subordinates do what the latter want (i.e. assuming that superiors on each hierarchical level are the "principals" of their respective subordinates). Then, in light of the PRA, those should be the target of criminal liability that within the firm ultimately have the powers to make the other firm members do what the former want.

Hart (1997: 62) delivers a statement as to who, in concrete terms, is "highest on the hierarchical ladder". He notes that the whole firm can be seen as constituting a hierarchical ladder of delegation relationships characterized by differentials in bargaining power. According to this, the owners of a company, i.e. the shareholders, are on the highest level. As these often cannot run a company's daily business, they delegate power to a board of directors and to managers (Hart 1997: 62). The same idea applies to lower hierarchical levels of the firm. Top managers delegate power to subordinates. These in turn assign power to their sub-subordinates, and so on down the line (Hart 1997: 62). – Modifications of this statement that shareholders are those "highest on the ladder" in real terms are dealt with below, in connection with the evaluation of national criminal corruption laws.

In terms of the PRA, it is *real* authority that counts, not the formal one (Hart 1997: 62 points to the issue of formal vs. real authority; Aghion and Tirole 1995 deal with this distinction using an incomplete contracting framework. Also the sociological and organization literature makes this differentiation, see e.g. Barnard 1938: 164-165).

Thus, given the above simplifying assumption that principals have no possibility to shield themselves from criminal accountability through formal counter-evidence, the principals, i.e. those highest on the corporate ladder in real terms, should always be held liable in case an agent (an employee, a subordinate) commits a corrupt act. Threatening those in real power (the ultimate "principals" within the firm) by such a criminal sanction, they not only have high incentives to abstain from active delegation of corrupt acts, but also to provide their employees

with valuable *voice*-options. Otherwise subordinates would be under pressure to commit corrupt acts which would mercilessly trigger personal punishment of the superior. The ultimate "principals" within the firm would even have an incentive to avoid the above-mentioned "second order" credibility problem, according to which formal *voice* options like e.g. the absence of incentive-based payment or the existence of independent corporate bodies like ombudsmen can take on the same Janus-faced nature as formal corporate company guidelines – because both could be formally documented and then used as hard-copy evidence before court. Given merciless liability for their agents' corrupt actions, the ultimate "principals" have an incentive to care for a corruption-free corporate culture and to influence even intangible, informal incentives in a way that prevents subordinates from committing corrupt acts.

However, PRA endogenously defines participants to an exchange relationship as "principals" or "agents". "Principals" are those who have, based on their relatively better bargaining position (based on asset ownership and outside options), the power to make their contractual counterparts do what the principals want. If superiors, being now mercilessly liable, have such a high incentive to provide credible high-value *voice* options to their employees, they stop being "principals" towards their employees as to the corrupt sphere. By providing their employees valuable *voice* options, they effectively surrender their bargaining power to order corrupt acts and thus restrict their authority to the legal sphere. This however means that employees become their own principals with respect to corrupt acts they commit, because no superior or employer pressurizes them to resort to corrupt business methods. This in turn sets an argument in favour to additionally hold employees personally accountable in case they commit corrupt acts although they had such credible high-value outside options at their disposal. From this, the following proposition follows:

***Proposition 4*: Those highest on the "corporate power ladder" within the firm should be held unbendingly responsible for the corrupt acts their employees (those "lower on the corporate ladder") commit. If this is the case, then simultaneously the employees who commit the corrupt act must equally be held liable. Thus, liability of principals must be triggered in case agents commit a corrupt crime and are held liable for it.**

This proposition entails a solution that balances the disadvantages of the two alternative ways to distribute criminal accountability discussed above. *The first* way is the one on which the first half of this paper (sections 3.1 and 3.2) proceeded. According to this first "solution", the

principal, the agent, or both could be held criminally liable, but actual personal liability (according to who is the ultimate wirepuller) was determined by courts according to available evidence. This provided an incentive for principals to delegate corrupt acts to their employees, because principals could wriggle themselves out of criminal accountability by deliberately producing exonerating hard-copy evidence, e.g. formally documented corporate ethics efforts, exhortations, and monitoring measures. As pointed out, this legal "solution" did not set incentives for firms or superiors to care for a corporate culture which helps to restrain acts of bribery. Instead it carried in it the incentives to (abstracting from possibly existent countervailing intrinsic motives of the firm's leaders) cultivate informal measures that foster corrupt acts within the firm. Ultimately, it carried the danger to produce a state where lower-level employees ("agents") could be victimized as "fall guys" (Lambsdorff 2002a: 239). In other words, it can lead to a "*one (agent; employee) for all (the whole firm, superiors)*"-situation. This way, legal measures simply change the way corporate bribery is carried out: from "do-it-yourself-bribery" to "bribery-by-delegation". Corporate bribery is however not stopped from happening.

The second, equally unsatisfactory, and artificial solution was the one laid out in this subsection (3.3). It was based on the hypothetical assumption that principals (firms; superiors) are always held responsible and punished in case one of their agents (employees; subordinates) commits a corrupt act. Those "highest on the corporate ladder" within the firm were assumed to have *no* possibility to wriggle out of criminal liability by delegating the corrupt jobs to their subordinates while hiding behind a "hard-copy"-evidence veneer, made up by formal corporate ethics measures. It followed that under these conditions, principals not only have no incentive to delegate corrupt acts. Given this "merciless" approach, principals also have a natural incentive to enhance the credibility of corporate ethics measures through providing their employees with valuable *voice*-options. In addition, they have an incentive to care for an informal corporate culture within the firm which prevents corruption, i.e. they are induced to eliminate the possibly Janus-faced nature of the *voice*-options. The problem with this approach is however that intuition says that employees who are – now credibly – provided with such a pressure-free work environment should be held liable for corrupt acts they commit. In case they commit them, they have not been pressurized to do so, and thus they should be punished. Otherwise, principals would be victimized by their agents; principals would be completely handed over to their agents' criminal whims. By analogy with the former "solution", this would amount to the inverted situation which can be labelled "*all (the whole firm, or*

superiors) for one (employee)". The principal, being either "the firm" or single superiors, would have to inescapably take their agent's blame and to suffer for it.

The intuition that this violates basic principles of justice is backed up by PR-considerations. If the subordinate faces high-value voice-options, he is *not forced* any more by his superior to refer to corrupt business methods. Thus, the subordinate is no more in a dependent "agent"-position with respect to corrupt acts. Equally, the superior is no more in a "principal"-position with respect to the corrupt sphere, as he has surrendered his possibility to transfer his legal authority to the corrupt sphere. It follows that then, with respect to corrupt acts, subordinates become both their own principal *and* agent. Their corrupt offences then must be attributed to their own, independent decisions.

This last consideration resulted in the above, forth proposition, which outlines a simultaneous and linked liability of principals (firms; superiors) and agents (employees who e.g. physically paid out the bribe). It boils down to a "*one (agent; employee)* and *all (superiors, the whole firm)*" approach and allows combining the advantages of the former two approaches. At the same time, it avoids their respective disadvantages: As soon as the agent (employee) knows that he will be made personally liable for a corrupt act which he in person commits, he has to fear personal punishment. This fear eliminates the agent's incentive to victimize the principal. On the other side, the principal knows that he will in any case be punished as soon as one of his agents is held liable and punished. This sets an incentive for the principal neither explicitly nor implicitly to delegate corrupt acts to the agent. It further sets an incentive for principals to care for such intangible factors as a corruption-free corporate culture and the credibility of corporate ethics efforts. It even helps to alleviate the above described problem that the value of employees' *exit*-options may be lowered by opinions shared among and upheld by possible employers. The problem was that employees who want to escape corrupt delegation through changing employers may confront little employment alternatives, because potential alternative employers may hold negative attitudes towards such "difficult", not ready-to-bribe employees. Holding firms liable as described in proposition 4 helps to solve this problem. Given the threat of liability, firms have an incentive to highly value and welcome just these, not ready-to-bribe employees. This in turn raises the value of employees' *exit*-options.

In sum, it followed that an anti-corruption law which aims at corporate bribery must fulfil the following standards in order to be effective. *First*, both principal and agent must simultaneously be held liable in case an agent commits a corrupt crime. *Second*, the "principals" at whom the fine gears must be those firm members who have the ultimate

authority or power in real terms within the firm. – These criteria can be used to comparatively evaluate the efficacy of different national criminal law approaches.

The FCPA provides for corporate as well as for individual liabilities. It consequently allows filling the theoretical category "principal" with both corporations and individual persons (superiors, employees). As to the above mentioned *second* criterion, a corporate fine hits the shareholders, besides influencing other stakeholders of the firm. Abstracting presently from other stakeholders, it thus must be examined in how far shareholders are those who have the highest authority among firm members.

According to Hart (1997: 62), this is true, abstracting from further complications. (Hart 1997: part II) deals, among other things, with such complications. Here, only some aspects which might be relevant to the delegation of corrupt acts shall be sketched out. In terms of formal delegation, shareholders may – within the U.S. board system – indeed be "highest on the ladder". However, as far as shareholders cannot completely control the board of directors' dealings, the directors are "higher on the ladder" in terms of real power. Shareholders may have problems to completely control the board of directors' dealings. As directors are in charge of making strategic decisions and are more in touch with day-to-day business than shareholders, they may have superior information compared to the latter. This opens up scope for directors and managers to carry out hidden actions which can be harmful to shareholders (the literature on principal-agent relationships deals with this moral-hazard problem; for an overview cf. e.g. Richter and Furubotn 1999: 163-171). Moreover, shareholders may be widely scattered which leads to collective action problems (Olson 1965) to carry out their control function, even if formal corporate laws (e.g. U.S. corporation laws or corporation codes, or the German Aktiengesetz, AktG) allow them to do so.

Another monitoring problem may arise in that it is difficult for shareholders to control the board with respect to "soft" factors as whether the board fosters a corruption-free corporate culture. A possible start to change this could be to make shareholders the ultimate "ombudsmen", and to give them, or their representatives, the possibility to informally and anonymously talk to employees at the commercial frontline of public business.

Despite such monitoring and control problems that shareholders may have, corporate fines may still be effective, because shareholders have a less immediate but more long-term disciplining power. As soon as corrupt acts committed by firm members occur, this provides an indicator for how (badly) the board members cared for both tangible anti-corruption measures and for intangible aspects like a corruption-free corporate culture. Monetary fines imposed on the corporation lower shareholders' wealth; the same applies to losses of corporate

reputation which may deter future customers and suppliers from dealing with a firm thus sullied by corruption problems. This wealth loss may induce shareholders to "vote with their feet", i.e. to deduct their capital and go for better investment opportunities. If board members' remuneration is tied to the firm's capital market value, board members can sense this. Through this long-term mechanism shareholders' control of the board may be effective, also with respect to "soft" issues of corporate culture which are hard for shareholders to monitor directly.

As far as shareholders' control remains ineffective, board members should be additionally and personally held accountable as "principals". The same argument applies for lower-level superiors, whom in turn board members may have difficulties to monitor closely from day to day. As an alternative to additional personal criminal accountability of board members, shareholders could also demand payment of damages from the board members in case the corporation is fined. – Given however effective control mechanisms on different hierarchical levels, corporate liability sets incentives for the board and lower-level superiors to foster corruption-free business dealings, both through easily-to-monitor formal as well as hard-to-monitor informal means.

As to the above-mentioned *first criterion*, a detailed analysis of FCPA-cases could reveal in how far U.S. courts apply the principle of unbendingly linking the principal's to the agent's liability and thus, in how far the FCPA is optimally effective in this respect.

In sum, the FCPA, as it allows for corporate as well as for individual liabilities which can also be linked to each other, can roughly be seen as an application of the criteria which followed from the above PR-analysis. These theoretical criteria consequently can serve as a rational explanation for two assertions raised in the literature: On the one hand, it has been supposed that application of the principle of *corporate liability* is one of the success factors of the FCPA in combating transnational bribery (Bannenberg 2002: 37). This can be explained by the above stated second theoretical criterion. On the other hand, it has been asserted that one of its success factors is that the FCPA *simultaneously* provides for personal (especially for prison sentences) and corporate liability (Heimann 1994: 327). This can be rationalized by the above stated first theoretical criterion.

These findings in turn can serve as an argument for signatory countries of the OECD-convention to adopt the above-stated principles as well. The German criminal law code presently does not allow for criminal accountability of legal persons, apart from a rule according to the OwiG ("Ordnungswidrigkeitengesetz", a German law code against minor offences against public rules, Wessels and Beulke 2002: 29; this rule has however has not yet

attained high practical importance, cf. Pieth 1999: 521 and Bannenberg 2002: 37). According to the German criminal law code, it is only individuals who can be held criminally liable. Given that courts have to rely on available evidence, this entails – in light of the theoretical framework – the danger that those "highest on the power ladder" in real terms may – depending on the circumstances, more or less easily – shift criminal liability to lower-level employees. It further sets the outlined incentives to misuse easy-to-prove formal corporate ethics guidelines and formal *voice*-options. Thus, the German criminal law approach entails the danger to produce "*one (employee, subordinate) for all (firm, superiors)*"-situations, in which employees may take on the roles of "fall guys". This argues in favour of the German legal system to adopt the principle of corporate liability, following examples of the USA and other European states. To optimize the legal anti-corruption effect, this principle must however be paired with a simultaneous, linked liability of both corporate body and employees.

Three qualifications must be made. First, with respect to shareholders' wealth, there is a trade-off. On the one hand, shareholders may be interested in the firm making profits and defending its competitive position, possibly by resorting to corrupt means, because this raises their wealth. On the other hand, corporate fines for corrupt acts committed by the firms' members lower their wealth. Thus, shareholders might not have an unequivocal incentive to exhort the board to resort to corruption-free business methods. The shareholders' willingness to tolerate corrupt practices as long as this increases their wealth may be communicated to board members also via remuneration which is tied to the firm's capital market value. Second, in case a fine is imposed on the firm, it is not only the shareholders who loose wealth, but this also adversely affects the other stakeholders, including employees and creditors. The above sections have abstracted from this fact. This poses the question whether these other stakeholders are the "right" targets for such fines, as they might not be responsible in any way for the corrupt acts having happened. Third, when applying the above theory-based considerations, the difficulty is to locate *real* authority within the firm. Where this real authority is situated may be determined by informal forces as well as by formal corporate governance and control rules. It is possible that "soft factors" which are hard to capture within legal rules wield a thwarting influence. Further, where real authority is situated may also depend on the respective national governance system. The above considerations as to the U.S. board system can provide a start for further comparative analyses which include different national governance systems (e.g. the U.S. board system vs. the German two-tier system which includes a supervisory board, "Aufsichtsrat"). Not only do these systems differ with

respect to national laws by which they are regulated. They also show variations as to further circumstances including the influence of banks, the shareholders' structure (the practical relevance of minority vs. majority shareholders), the influence of the market for corporate control, the degree of influence of the capital market on the board's behaviour (via remuneration schemes), and worker participation rights (Bühner, Rasheed, Rosenstein, Yoshikawa 1998). National differences in corporate culture can be added.

4. Further issues arising from the "bargaining perspective"

4.1 Reverse corruption

So far, the PRA has only been used to depict how employers can possibly misuse their legal authority to order acts in the corrupt realm. In terms of the above-mentioned benefit-performance ratio, this meant that the employer has more or less scope to vary the employees' tasks by adding corrupt tasks. This exposes the employees to punishments if their offences are detected, which effectively lowers the employees' expected "net benefits". – But it may also be the other way round. Bargaining levers can also be born in the corrupt sphere and emerge on lower hierarchical levels, and these can then be misused to compel actions in the legal realm, e.g. to force the opponent to keep numb on one's misbehaviour in the legal sphere. For instance, by becoming an accessory and possibly the target of his boss's delegation of corrupt acts, and by gathering "hard-copy" evidence on this, a subordinate employee may gain considerable bargaining levers against his boss – in case the latter is actually subject to criminal liability. The subordinate's knowledge of compromising facts gives him the asset "threat of denunciation" against his superior. The subordinate can misuse this as a "bargaining lever" to get away with laziness, disloyalty, and corrupt acts to the firm's detriment.[14] Also this phenomenon can be stated in terms of the above-mentioned benefit-performance concept: One of the superior's tasks is to see to it that his subordinate engages in activities which enhance and that he abstains from actions that lower the firm's productivity. For this task, the superior receives a certain monetary wage and possibly further, non-monetary benefits. If the superior's criminal offences are detected, he must expect to be criminally punished, which lowers his "net benefits" (= benefits from being employed minus the expected value of the consequences of criminal punishment). The subordinate can threaten to trigger prosecution and thus to make the superior's benefits to drop to this net value. This threat makes the

[14] Rose-Ackerman (1978: 189-211) deals with managers' incentives to betray their shareholders by using corrupt methods. Her account does however not deal with this as a possible repercussion of superiors' corrupt acts within a PR-framework.

superior willing to give in to the subordinate's shirking, disloyalty, inverted corruption, etc. (which amounts to a "variation" of the superior's tasks), as long as their consequences are less serious to him than being forced down to his net benefits. – On the assumption that superiors has to fear personal criminal punishment for delegating corrupt acts, these considerations can be summarized in the following

***Proposition 5 (tentative)*: Delegation of corrupt acts fosters reverse corruption to the firm's detriment – given that superiors are liable for their delegation of corrupt acts.**

Also Bannenberg (2002: 142-143) mentions this phenomenon, referring to an empirical case involving several German construction firms. These firms had bribed public municipal officials in a German city over several years. Several hierarchical levers within the bribing firms were involved in the bribery. Bannenberg (2002) comments on her findings: "Bribery and fraud belong to the corporate strategy of many construction firms" (Bannenberg 2002: 142). "[…] for many big companies it can be assumed that these transfer non-legal practices from top to bottom onto their employees" (Bannenberg 2002: 142-143). "[…] with time passing, the employees realize which practices are used for sales promotion. No control takes place as to whether work is done in an honest way. In case these employees demand cash and advantages for public officials, they do not bump into resistance but are ultimately encouraged. The employees also discover that the firms run 'black funds' and are rather lax in their ways to 'include' public officials into advantages shared out by the firm. This not only fosters a culture of bribery and fraud at the expense of the public. It also induces employees to try to further profit personally from these behaviour patterns and to defraud and to bribe for their own advantage. At this stage, firms can be harmed by their own employees. However, it can take a very long time until firms realize that such a criminal sales culture does have a backlash effect on them" (Bannenberg 2002: 143). – Proposition 5 therefore delivers an additional argument for firms to care for a corruption-free corporate environment. Rose-Ackerman (1978: 194; however referring to firm-external, not to employed agents) points to a related aspect. In order to escape criminal liability, firms must not have knowledge of their agents' dealings. Thus, they must not closely monitor their agents. This lack of being monitored gives the latter leeway to betray the firm (Rose-Ackerman 1978: 194).

4.2 Courts and implicit corrupt delegation

The PR-framework, taking into account employees' outside options, can also provide courts with further clues how to deal with problems of evidence on criminal accountability, leading to the following

Proposition 6: **Courts should be attentive to the existence of the above-identified "danger zones" or "red flags" for delegation of corrupt jobs.**

If an employee faces very unattractive outside options paired with high-powered incentives, this may be taken as indication that superiors may have resorted to implicit delegation of corrupt acts. Courts must also take into account that an employee's outside options – and possibly also again his superior's – may be shaped by informal peer pressures and corporate culture. These supposedly "soft factors" should be explored by interviewing not only the accused employees but also other members of the respective firm listening to possible overtones of informal peer pressure.

5. Conclusion

Three observations served as starting points for this paper. First, in spite of legal and corporate effort to combat corruption, bribery still occurs – as numerous reports show. The most influential international legal anti-corruption initiatives are the U.S. FCPA of 1977 and the OECD-convention against bribery of 1997. Corporate efforts to combat bribery include written commitments on business ethics, company codes of conduct and detailed statements of policy. Second, companies, especially in transnational business, are reported to face a dilemma. On the one hand, corrupt competition may pressurize firms to win business, possibly also by corrupt means. On the other hand, legal rules make it – via the threat of criminal penalties and fines – possibly "expensive" to resort to corrupt business methods. Third, scattered descriptions show that firm's employees, specifically those at the commercial frontline, may face mixed incentives. On the one hand, they are exhorted by formal corporate ethics measures not to resort to corrupt business practices. On the other hand, they may be subjected to monetary and non-monetary inducements to use whatever means necessary to win business, possibly including bribery. These hints were taken as indicators that formal corporate ethics guidelines, irrespective of their original ethical intent, may take on a Janus-faced nature. They may shield firms and superiors from criminal accountability for corrupt

acts while the latter delegate the "dirty work" to their subordinate employees, leaving them to their fate.

The question arose how corporate and legal efforts to combat bribery can be made more effective, given these observations which point to interaction effects between formal corporate ethics efforts, criminal law approaches, and firm-internal dealings which shape employee's incentives. Specifically, two crucial questions appeared: *First*, which instruments can eliminate the potential Janus-faced nature of formal company guidelines and other formal corporate anti-corruption measures? How can firms and their leaders make formal corporate ethics efforts more credible? *Second*, how must criminal law, referring to business bribery, be designed to induce firms to enhance the credibility of formal corporate ethics efforts and to abstain from bribery? Is corporate liability preferable, as the U.S. and many European countries have adopted as a legal principle, or individual personal liability, for which the German criminal law code solely allows? How can the effectiveness of existing anti-corruption laws aiming at business bribery be optimized?

When addressing these questions, initially the plausible assumption was set that courts – in order to avoid arbitrariness – base their decisions whom to hold liable for corrupt acts on available "hard-copy" evidence. This is a prerequisite for formal corporate ethics guidelines, being such "hard-copy" evidence, to take on the mentioned Janus-faced nature. Through this, employees' mixed incentives can come into existence. The modern property rights approach (PRA) then was used to model delegation relationships between firms or superiors as principals, and employees as agents. The PRA was chosen because it captures the sources, limits and impact of authority between employer and employee. It predicts under which conditions the employee is most likely to follow the employer's (thus, principal's) orders, including orders to carry out corrupt acts. Under just these circumstances, formal corporate ethics guidelines most likely run the risk of taking on a Janus-faced nature. Ways how firms can enhance the credibility of such formal ethics guidelines followed straightforward.

The question arose how firms and superiors can be induced to abstain from corrupt delegation and to care for credible corporate ethics. On this, the theoretical framework generated two criteria which corporate anti-bribery laws must fulfil in order to effectively restrain corruption. First, both principals and agents must simultaneously be held liable in case an agent commits a corrupt crime. Second, the "principals" at whom the fine gears must be those firm members who have the ultimate authority or power in real terms within the firm.

An exemplary application of these criteria to current international anti-corruption laws revealed that the FCPA, as long as both corporate liability and individual liabilities of

employees are unbendingly tied to each other, is preferable to present German anti-corruption laws. The German criminal law code solely provides for personal liabilities of individual agents. According to the PR-framework developed in this paper, this however is not likely to prevent corporate bribery from happening.

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