

CRIMINALIZATION OF CORRUPTION: PHILOSOPHICAL AND LEGAL FACETS*

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Abstract. *The article discusses philosophical, historical and social issues of corruption. The authors analyse the peculiarities of perception of corruption in different paradigms of criminal justice: classical, positivistic, and constructionist, as well as its respective interpretation in terms of vice and sin, wrongful conduct, or conflict between public and private interests. The analysis presented allows to conclude that criminalization of corruption has its own legal logic and reflects existing social cultural context, and due to this reason cannot be considered to be a universal instrument of dealing with conflicts between public duties and private interests.*

Key words: *corruption, philosophy of criminal law, criminalization*

Introduction

The most popular “working” definition of corruption presents this social phenomenon as “abuse of entrusted public power for private gains” (Transparency International). While there is visible and solid consensus among various parties including experts and ordinary citizens about the treatment of corruption as a kind of social evil, it is not so obvious what has to be done in order to reduce corruption and minimize its harm for societies and their members. Although social, economic, political and other preventive anticorruption remedies

are discussed widely, the “criminal prosecution of corruption” are still very popular in both professional and public discourses.

The very notion of “crime of corruption” seems to enjoy a kind of axiomatic status. Practice of punishing bribery has existed from the very beginnings of the history of humankind. Bribery was punished in Mesopotamia (Johns 1987: 321), Israel (Smith 2005: 32), Egypt (Breasted 1906: 32), and Greece (Arnaoutoglou 1998: 52). Today one would hardly find a penal code of any nation that would dispose of punishment for corrupt behaviour. The number of international instruments requiring criminalization of certain corrupt conduct is among the most rapidly growing ones. There is a plenitude of research literature devoted to methods and ways of criminalization and

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punishment of corruption offences. This phenomenon can be partly explained by the fact that legal experts and legislators took a lesson from Edwin Sutherland, who in his famous *White collar crime* (1949) pointed at the odious inability of the legal system of that time to bring to justice and to punish those who violate the basic principles of integrity and ethics in public office and business. In democratic society no one wants to be accused of the ignorance of “crime of the powerful”, which in many cases is much more dangerous for society than “street crime”, and this is a good stimulus to prosecute corrupted persons, who usually belong to the social “white collar” class.

On the other hand, in constructionist perspective, criminalization is far away of being the tool of the establishment of justice (equilibrium) and equity among various groups of society. According to one of the founders of constructionist approach in criminology Richard Quinney, “Crime is a definition of human conduct that is created by authorized agents in a politically organized society. Persons or behaviors become criminal because of the formulation and application of criminal definitions – thus crime is created. [...] Criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy” (Quinney 1970: 15-16). In other words, criminalization is rather a political means in the process of legitimization of power elite, and the prospects of its usage against “powerful” wrongdoers look as at least a controversial project.

Not only critical criminologists expressed their doubts about criminalization as an efficient and fair means in the implementation of the principles of justice in

society. Critical voices come also from the prominent theoreticians of criminal law. The leading expert in the field of the philosophy of criminal law Douglas Husak drew attention to the fact that in current criminal justice policy one can see an obvious tendency when “more criminalization produces more punishments”. This situation, which he calls an “overcriminalization”, does not serve to justice in society, rather this is just another source of injustice, violation of the right “not to be punished” (Husak 2008: 92-103).

Unfortunately, these philosophical cautionary words about political and legal obstacles seem practically unknown among those fighters against corruption who suppose that criminal punishment is an inevitable tool of making public administration and management as well as a whole political process more transparent and accountable for the public eyes. From this point of view one should not be very much surprised that a very limited number of authors are raising questions whether and why corruption shall be criminalized. Nevertheless, the lack of interest in discussing the theoretical sources and practical consequences of the criminalization of corruption does not prevent the raising of philosophical and legal questions about the appropriateness of this measure, its applicability and its restrictions.

The purpose of the current publication is to present and to analyse the philosophical and legal perspectives in the criminalization of corruption. The insights provided below are intended to question the applicability of the principles of criminalization that circulate in the literature on criminalization of corrupt acts and omissions.

The theoretical context for the discussion on the criminalization of corruption refers to the phenomenological tradition

of sociology of knowledge (Schutz 1967, Becker and Luckmann 1991) and its application in the field of criminal justice and criminology (Quinney 1970), corruption research (Tänzler et al. 2016), and paradigmatic interpretation of the concept of wrongdoing in Western Culture (Arigo and Williams 2006, Cohen 1985, Dobryninas et al. 2014). The notion of corruption as socially wrong and the attempts of its criminalization are scrutinized on the basis of philosophical, legal, political and criminological academic publications, as well as international and national political and legal documents.

Results of our research of the criminalization of corruption will be presented in two articles. The current article is devoted mostly to philosophical, historical and social issues of the definition of corruption, and its interpretation as a criminal wrong. The second part (forthcoming) will focus on the technical aspects of the criminalization of corruption, and will analyse the legal mechanism of the construction and possible deconstruction of corruption as a criminal wrongdoing. Using the constructionist approach we will scrutinize in which way the criminalization practice finds its stance in the objective for defending public interest against corrupted conducts, and how this practice could influence the modern anticorruption policy.

1. Wrong in the context of criminal justice paradigms

The problem of the criminalization of corruption as well as other deeds inadmissible for the member of society required broader theoretical discussion about very notion of crime. Looking from the legal perspective,

the understanding of criminalization is closely related with the “reflection on the nature of the criminal law” (Husak 2008: 58). In its turn, the criminal law defining the “certain types of conduct as criminal [...] defines and condemns such conduct as wrong: not merely, and trivially, as legally wrong, as a breach of the rules of this particular game, but as morally wrong in a way that should concern those to whom it speaks, and that warrants the further consequences (trial, conviction, and punishment) that it attaches to such conduct” (Duff 2011: 127). In other words, the process of criminalization is related to the determination of the wrong in the society in a very specific sense: the moral wrongfulness in the context of criminal law is presented as a public wrong, i.e. as bad (or wrong) not only in a sense of individual behaviour, but in a sense of threat for the community’s wellbeing and existence. However, both notions – moral wrong and public wrong – are not only a proper concept of criminal law, but also subject to historical change and cultural variations. As it had been noted by Georg Wilhelm Friedrich Hegel, “a penal code belongs to its time and to the condition in which the civic community at that time is” (2001: 177).

The history of theoretical perception of wrong can be formally described as a consecutive development of three paradigms of criminal justice: classical, positivistic, and critical (constructionist)¹. The first, the classical paradigm was linked with the metaphysical tradition of natural law, and its various historical forms. Within this paradigm, crime (wrong) is treated as an object

¹ For more details see Williams and Arrigo 2006: 1-15; Dobryninas et al. 2014: 55-75.

matter related to the manifestation of human will and reason. In ancient schools of natural law the wrong is treated as a vice, later the theological interpretation of the Middle Ages converted it into a sin, and at last, the Enlightenment's ideas of social contract helped to conceptualize it in the framework of the theories of crime and punishment, which became the classical principles for criminal law. The positivistic criminological paradigm had been starting to form alongside other "positive" social sciences in the second half of the 19th century and achieved impressive academic recognition in the USA in the first half of the 20th century. In this paradigm, crime (or deviance) is treated as a fact that can be analysed in the context of positive sciences – mathematics, biology, sociology, psychology, etc. Crime does not have metaphysical references, it is rather a consequence of the unsuccessful (abnormal) human adaptation to the social-economic environmental conditions caused by the individual or structural factors. This desubstantialization of crime later was perfectly grasped by Evgeny Pashukanis, who stated that achievements of positivistic criminology reduced the traditional criminal and legal rhetoric on "crime-guilt-punishment" to the "medical pedagogical task" (1980: 48). The third, critical paradigm started to form in Western criminology in the middle of last century. It considers a crime rather as a product constructed in the societal power network than a result of the interaction between existing system of social control and its target – the wrongdoer. In some sense it returned to the fundamental questions of classical paradigm about the persons' responsibility for wrongdoing. However, differently from the classical paradigm, the constructionist paradigm is eager to

put this question in a reversed form: about the social (institutionalized) actors "appointed" and "responsible" for the designing and implementation of the definition of crime. Managerial ("criminalization") and critical ("decriminalization") rhetoric with appellation to the public needs is intrinsic characteristic of the discursive practice of this paradigm.

2. Corruption: from moral wrong toward illicitly smart

Having in mind the above mentioned paradigmatic development of the notion of wrong, one has not to be surprized that the problem of corruption has been seldom considered as belonging to the realm of legal discourse in the times of Plato and Aristotle. As a form of vice it was taken over by rather moral or political philosophies and discussed in the context of the right governance of the soul or the state, like it was done in Plato's Republic.

Later, since the Patristic period until the latest Middle Ages, the notion of corruption is being developed in accordance with the theological notion of sin. Starting with St. Augustine, the corruption of human nature is being perceived as "a moral disorder resulting from the condition mankind inherited from Adam" (Pereira 2013: 172), a "loss of integrity and purity" (Augustine 1872: 55). The same notion then had been transposed to the realm of political philosophy. St. Thomas Aquinas wrote, that "man's nature may be considered in two ways, either in its purity, as it was in our first parent before sin, or as corrupt, as it is in ourselves after the sin of our first parent" (Fairweather 1954: 140), "it belongs to the nature of human laws that they be ordered to

the common good of a political community [...] tyranny is another, altogether corrupt form of government, and the laws of tyrannical regimes are not laws” (ibid.: 193). The views presented reveal the general tendency that political philosophy has inherited from the theological writings – to consider corruption as a characteristic of an individual, a ruler, instead as behaviour of those under consideration.

The secularization of public life that started in the Renaissance and has continued during the Enlightenment made theological interpretation of corruption less relevant. Political philosophers of those times, without any links to theology, transposed corruption from being an individual characteristic of a ruler to a feature of the whole *corps politique*, e.g. Niccolò Machiavelli (“a people into which corruption has fully entered cannot live free even for a short time, in fact not at all” (1989: 236)), Charles de Montesquieu (“once a republic is corrupted, there is no possibility of remedying any of these evils but by removing the corruption and restoring its lost principles” (1977: 175)), and others. And still even when applied to the states, governments and other entities instead of individuals, the individualistic notion of corruption had been retained, e.g. Thomas Hobbes (although he does not use the word “corruption”) writing about “imperfect institutions” likened each of these to a disease (Boatright 2014: 74). The concept of corruption there is closer to the principles of the theory of social contract rather than to the Christian notion of sin, although it had stayed re-emerging in different writings by some authors up to the middle of the last century. However, most writings about corruption of that period restricted itself to condemnation of corrup-

tion on moral grounds and did not get into a more thorough analysis of the concept (Hutchcroft 2002: 493).

The situation changed significantly with emergence of positivistic paradigm after sociologists joined the discourse on corruption. Yet in the works of Émile Durkheim the moral norms are discussed in the context of the social subordination of general and private interests. Domination of either mechanical or organic solidarity in society forms different mechanisms of social control for maintaining equilibrium of interests: from the demonstrative penal sanctions to the invisible regulation through the division of labour (Durkheim 1984). Later Walter Lippman publishes *Drift and Mastery: An Attempt to Diagnose the Current Unrest* and states that modern corruption as a social phenomenon has significantly different meaning from that of corruption as a legal offense, the meaning that has been acquired in the modern times of political participation only: “when they [people] had no vision of what a democratic state might do, it didn’t make so very much difference if officials took a rake-off. The cost of corruption was only a little money, and perhaps the official’s immortal soul. But when men’s vision of government enlarged, then the cost of corruption and inefficiency rose: for they meant a blighting of the whole possibility of the state. There has always been corruption in American politics, but it didn’t worry people very much, so long as the sphere of government was narrowly limited. Corruption became a real problem when reform through state action began to hold men’s thought” (1914: 31). Based on this sociological viewpoint corruption loses its moralistic core, changes from an act that hurts immortal soul of a public servant and costs little money to the briber, to a social

phenomenon that relates to government efficiency and therefore could be measured in relation to it as being either positive or negative.

The view on corruption as a social cultural phenomenon was supported by Robert Merton with his famous insights, that even “political rackets” can “satisfy the needs of diverse subgroups in the larger community which are not adequately satisfied by legally devised and culturally approved social structures” (1968: 126) and that “to adopt an exclusively moral attitude toward the ‘corrupt political machine’ is to lose sight of the very structural conditions which generate the ‘evil’ that is so bitterly attacked. To adopt a functional outlook is to provide not an apologia for the political machine but a more solid basis for modifying or eliminating the machine, providing specific structural arrangements are introduced either for eliminating these effective demands of the business community or, if that is the objective, of satisfying these demands through alternative means” (ibid.: 130).

The views posited by structural functionalism have inspired a generation of economists and political scientists that have joined the academic discourse on corruption in the 1960s and formed the so-called “structural-revisionist school. A cost-benefit analysis of corruption presented by an economist Joseph Nye enables the author to discern certain beneficial impacts of corruption: “where private capital is scarce and government lacks a capacity to tax a surplus out of peasants or workers openly, corruption may be an important source of capital formation”, “corruption helps to mitigate the consequences of ideologically determined economics devices”, “corruption may provide one of the major means

by which a developing country can take use of [entrepreneurship and incentives]”, “corruption may provide the means of overcoming discrimination against members of a minority groups, and allow the entrepreneur from a minority to gain access to the political decisions necessary for him to provide his skills”, “corruption may help overcome divisions in a ruling elite that might otherwise result in destructive conflict”, “corruption may help to ease the transition from traditional life to modern”, “scandals associated with corruption can sometimes have the effect of strengthening a value system as a whole”, “corrupt material incentives may become a functional equivalent for violence” in strengthening government capacity (1972: 465-467).

Another famous economist Nathaniel Leff has added a more generalized approach to the benefits of corruption, stating that “corruption may induce an element of competition into what is otherwise a comfortably monopolistic industry” (2002: 311), “the propensity of investment and economic innovation may be higher outside the government than within it” (ibid.: 312), therefore “because payment of the highest bribes is one of the principal criteria for allocation, the ability to muster revenue, either from reserves or from current operation, is put at a premium. In the long run, both of these sources are heavily dependent on efficiency in production. Hence, a tendency toward competition and efficiency is introduced into the system” (ibid.: 314). James C. Scott, who has introduced the themes of corruption into the discourse of political anthropology, advocated a view that corruption could be an alternative means of interest articulation: “the peasants who avoid their land taxes by making a smaller and illegal contribution to

the disposable income of the Revenue Officer are as surely influencing the outcome of government policy as if they formed a peasant union and agitated for the reduction of land taxes” (2002: 128). Samuel Huntington has also joined the revisionist school stating that “a society which is relatively uncorrupt – a traditional society for instance where traditional norms are still powerful – may find a certain amount of corruption a welcome lubricant easing the path to modernization. A developed traditional society may be improved – or at least modernized – by a little corruption; a society in which corruption is already pervasive, however, is unlikely to be improved by more corruption” (Huntington 2002: 261).

To summarize the views of authors advocating acknowledgement of positive impacts of corruption, corruption can promote legitimacy by integrating elites and non-elites and thereby fostering national integration; promote political stability by giving “outs” a stake in the system or otherwise bridging schisms between the interests of majority and minority; ensure a supply of able and willing public servants and energise them to go an extra mile to render a service; consolidate new institutions by allowing leaders to employ material interests in lieu of coercion or violence and thus aggregate enough power to govern; foster economic development by enabling competition among entrepreneurs in bidding for favours and assuring that the prize (e.g. a license) goes to the one who can make the best offer, and is thus presumably the most efficient producer of goods or provider of services; preclude numerous and bewildering laws, rules, excessive formalism and regulatory and vexatious procedures from overwhelming

the efficiency of implementers; empower relocating resources away from consumption and into investment; facilitate capital formation; increase investment by affording investors a means to reduce uncertainty, etc. (Adeh 2010: 130-131).

3. Corruption as a public matter

Although the flourishing of the revisionist school took place in the 1960s, some contemporary authors still support the statements this school has been built upon, e.g. Pranab Bardhan states, that “in the context of pervasive and cumbersome regulations in developing countries, corruption may actually improve efficiency and help growth” (2005: 139). However, if one considers the general tendencies followed in research literature, the decline of the revisionist school could be easily traced to the beginning of 1980s. Starting with the influential *Corruption: A Study in Political Economy* by Susanne Rose-Ackerman (1978) and supported by a number of authors, including Edward C. Banfield (1975), Robert Klitgaard (1988), Paolo Mauro (1995), Daniel Kaufmann (1997), Vito Tanzi (1998), Daniel Treisman (2000), Shang-Jin Wei (2000), Jakob Svensson (2005), Johann Graf Lambsdorff (2007) and others. In the words of Edward C. Banfield, “the costs of preventing or reducing corruption are not balanced against the gains with a view to finding an optional investment. Instead corruption is thought of (when it comes under notice) as something that must be eliminated ‘no matter what the cost’” (1991: 201). However, the return to the traditional understanding of the negative side of corruption has been based on an amplitude of empirical data revealing

detrimental effects of corruption instead of mere former moralistic views. An amplitude of statistical studies have established correlation between increased corruption and reduced gross domestic product (Mauro 1995: 681); that quality of governance was important for growth, investment rates, foreign aid, and in preventing government spending; that reducing transparency had negative effects on finance and governance; that better governance was positively associated with substantial improvements in poverty reduction and standards of living; that banking crises were more likely in those economies with poor transparency requirements; that state capture had very negative consequences for privatization and market deregulation, etc. (Manzetti 2009: 20-21).

However the major role in the changes of academic attitudes towards corruption could be acknowledged to a significant change in the policies of such powerful social actors as the World Bank and International Monetary Fund (IMF) that has been taken at the beginning of the period. If we take into account that the Revisionist School had been flourishing in the 1960s and 1970s, the decades that had witnessed rapid decolonization and state building in the “Third World” countries, and simultaneous rapid economic growth in the West/North accompanied with an increased need for the natural resources in the West/North (e.g. oil prices quadrupled in 1973 and were followed by a further doubling in 1979 (Ritzen 2005: 75)), we could presume a dominating approach of the Western capital to gain influence in the newly built state structures and thus acquiring better positions in exploitation of the resources possessed by the “Third World” countries and required by the Western economies. However, in the following decades an attitude had somewhat

changed when the growth rates in the North/West started slowing down and a need for new emerging markets, populated by people capable of paying for the Western/Northern goods have become manifest. In this context the World Bank’s and the IMF’s funds devoted to combating inflation and promoting structural reforms have significantly increased (the World Bank’s lending has doubled from 5 billion USD in 1979 to 10.3 billion USD in 1983 (Kopper 1997: 444)) as well as there was an increase in worrying that the funds were actually being wasted, and reforms were severely undermined by the lack of transparency in government accounts and in the regulatory environment for private activity (Manzetti 2009: 20). The changes in the attitude of the World Bank to the global issues of corruption have been disclosed when the long serving director of the Regional Mission for Eastern Africa of the World Bank Peter Eigen has initiated establishment of Transparency International in 1993 and the president of the World Bank James Wolfensohn has publicly declared corruption to be one of the main causes of world poverty in 1996 (ibid.), while the long serving director of the Regional Mission for Eastern Africa of the World Bank Peter Eigen has initiated establishment of Transparency International. Many studies on issues of corruption carried out in the auspices of the latter two organizations can even be considered to be the core of the turn in academic literature to denote the revisionist school. The tendency against corruption initiated in this way has also manifested itself in a rapid increase in a number of international instruments adopted on a regional as well as on universal level requiring criminalization of certain manifestations of corruption.

Preliminary conclusions

Corruption as well as punitive response to the corrupted practice have long historical records. However, in the modern society the popular demand for criminalization of corruption deeds needs more critical reflection on the neediness and efficiency of such means. Criminalization cannot be suggested as a universal instrument for restoring justice in the conflict of public and private interests. Besides its specific political and legal role in maintaining social control in the society, criminalization has its own legal logic, which has to be carefully considered in order to understand what one can expect inflicting punishment on corrupted persons.

The views presented in the article reveal the general tendency, which political philosophy has inherited from the ancient philosophical and medieval theological writings, considering corruption rather as a personal characteristic (in the forms of vice or sin) than simply a matter of wrongful conduct. Later this classical approach

towards corruption was substituted by the structural functional approach, which inspired cost–benefit analysis of the corruption practice in society. In the scope of this approach some authors even discuss the positive impact of corruption, as if corruption can promote legitimacy by integrating elites and non-elites and thereby fostering national integration.

In recent years, the challenges of globalization bring academic attention back to the negative and disastrous consequences of the spread of corruption in the society. Previous positivistic revisionist school has been challenged by the new constructionist approach based on the re-evaluation of the role of institutional actors in preventing the “privatization” of public interests. Constant inducement of the leading transnational organizations to promote good governance, its transparency, integrity, accountability, etc., reconstructs and redefines corruption as an institutionally wrong practice that should be globally and locally corrected and overpassed.

REFERENCES

- Adeh, I., 2010. *Corruption in the Contemporary World: Theory, Practice, and Hotspots*. Berlin: Lit.
- Arrigo, B. A.; Williams, C. R. (eds.), 2006. *Philosophy, Crime, and Criminology*. Chicago: University of Illinois Press.
- Arnaoutoglou, I., 1998. *Ancient Greek Laws. A Sourcebook*. London [u.a.]: Routledge.
- Aurelius Augustine. 1872. On the Morals of Manicheans. In M. Dods (ed.), *The Works of Aurelius Augustine, Bishop of Hippo*. A New Translation. Vol. V. Edinburgh: T. & T. Clark.
- Banfield, E. C., 1975. Corruption as a Feature of Governmental Organization. *The Journal of Law and Economics* 18 (3).
- Banfield, E. C., 1991. *Here the People Rule: Selected Essays*. Washington: American Enterprise Institute for Public Policy Research.
- Bardhan, P., 2005. *Scarcity, Conflicts, and Co-operation: Essays in the Political and Institutional Economics of Development*. Cambridge, Mass. [u.a.]: MIT Press.
- Berger, P. L.; Luckmann, T., 1991. *The Social Construction of Reality. A Treatise in the Sociology of Knowledge*. London: Penguin Books.
- Boatright, R. G., 2014. Can Public Financing and Citizens United Coexist? In J. Mendilow, I. Peleg (eds.), *Corruption in the Contemporary World: Theory, Practice, and Hotspots*. Maryland: Lexington Books.
- Breasted, J. H. (ed.), 1906. *Ancient Records of Egypt: Historical Documents*. Vol. III: The Nineteenth Dynasty. Chicago: University of Chicago Press, pp.22–33.

- Cohen, S., 1985. Criminology. In *The Encyclopedia of the Social Sciences*. London: Routledge, pp. 140–146.
- Dobryninas, A.; Čėsniėnė, I.; Dobrynina, M.; Giedraitis, V.; Merkevičius, R. 2014. *Perception of Criminal Justice in Society*. Vilnius: Baltijos kopija.
- Duff, R.A. 2011. Responsibility, Citizenship, and Criminal Law. In R. A. Duff, S. P. Green (eds.), *Philosophical Foundations of Criminal Law*. Oxford: Oxford University Press, pp. 125–148.
- Durkheim, E., 1984. *The Division of Labor in Society*. London: The Macmillan Press.
- Fairweather, A. M. (ed.), 1954. *Nature and Grace. Selections from the Summa Theologica of Thomas Aquinas*. Philadelphia: Westminster Press.
- Graf Lambsdorff, J., 2007. *The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy*. Cambridge, UK: Cambridge University Press.
- Hegel, G. W. F., 2001. *The Philosophy of Right*. Kitchener: Batoche Books.
- Husak, D., 2008. *Overcriminalization: The Limits of the Criminal Law*. Oxford: The Oxford University Press.
- Huntington, S. P., 2002. Modernization and Corruption. In A. J. Heidenheimer, M. Johnston (eds.), *Political Corruption: Concepts and Contexts*. 3rd ed. New Brunswick, NJ: Transaction Publishers, pp. 15–24.
- Hutchcroft, P. D., 2002. The Politics of Privilege: Rents and Corruption in Asia. In A. J. Heidenheimer, M. Johnston (eds.), 2002. *Political Corruption: Concepts and Contexts*. 3rd ed. New Brunswick, NJ: Transaction Publishers, pp. 489–512.
- Johns, C. H. W., 1987. *Babylonian and Assyrian Laws, Contracts, and Letters*. Birmingham, Ala: Legal Classics Library.
- Kaufmann, D., 1997. Corruption: The Facts. *Foreign Policy* 107.
- Klitgaard, R., 1988. *Controlling Corruption*. Berkeley, Calif. [u.a.]: Univ. of Calif. Press.
- Kopper, H., 1997. The World Bank's European Funding. In D. Kapur, J. P. Lewis, R. C. Webb, (eds.), *The World Bank: Its First Half Century*. Washington, D.C.: Brookings Institution.
- Leff, N. H., 2002. Economic Development through Bureaucratic Corruption. In A. J. Heidenheimer, M. Johnston (eds.), *Political Corruption: Concepts and Contexts*. 3rd ed. New Brunswick, NJ: Transaction Publishers, pp. 307–320.
- Lippman, W., 1914. *Drift and Mastery: An Attempt to Diagnose the Current Unrest*. New York: Mitchell Kennerley.
- Machiavelli, N., 1989. Discourses on the First Decade of Titus Livius. Book I. In N. Machiavelli. *The Chief Works and Others*. Volume I. Durham, North Carolina: Duke University Press.
- Manzetti, L., 2009. *Neoliberalism, Accountability, and Reform Failures in Emerging Markets: Eastern Europe, Russia, Argentina, and Chile in Comparative Perspective*. University Park, Pa: Pennsylvania State University Press.
- Mauo, P., 1995. Corruption and Growth. *Quarterly Journal of Economics* 110 (442): 681–712.
- Merton, R. K., 1968. *Social Theory and Social Structure*. New York: Free Press.
- Montesquieu, Ch., 1977. *The Spirit of Laws: A Compendium of the First English Edition*. Berkeley: University of California Press.
- Nye, J. S., 1972. Corruption and Political Development: A Cost-Benefit Analysis. In N. T. Uphoff, W. F. Ilchman (eds.), *The Political Economy of Development. Theoretical and Empirical Contributions*. Berkeley: University of California Press, pp. 463–476.
- Pashukanis, E., 1980. The General Theory of Law and Marxism. In P. Bierne, R. Sharlet (eds.), *Pashunakis: Selected Writings on Marxism and Law*. London: Academic Press.
- Pereira, J. L., 2013. *Augustine of Hippo and Martin Luther on Original Sin and Justification of the Sinner*. Göttingen: Vandenhoeck & Ruprecht GmbH & Co. KG.
- Powis Smith, J. M., 2005. *The Origin and History of Hebrew Law*. Clark, N.J.: Lawbook Exchange.
- Quinney, R., 1970. *The Social Reality of Crime*. Boston: Little, Brown and Company.
- Ritzen, J. M. M., 2005. *A Chance for the World Bank*. London: Anthem Press.
- Rose-Ackerman, S., 1978. *Corruption: A Study in Political Economy*. New York: Academic Press.
- Schutz, A., 1967. *The Phenomenology of Social World*. Evanston: Northwestern University Press.
- Scott J. C., 2002. Handling Historical Comparisons Cross-Nationally. In A. J. Heidenheimer, M. Johnston (eds.), *Political Corruption: Concepts and Contexts*. 3rd ed. New Brunswick, NJ: Transaction Publishers, pp. 123–138.
- Svensson, J., 2005. Eight Questions about Corruption. *Journal of Economic Perspectives* 19 (3).

Sutherland, E., 1949. *White collar crime*. New York: Holt, Rinehart & Winston.

Tanzi, V., 1998. *Corruption Around the World: Causes, Consequences, Scope, and Cures*. Washington, D.C.: International Monetary Fund, Fiscal Affairs Dept.

Tänzler, D.; Maras, K.; Giannakopoulos, A.; Rogowski, R., 2016. The Social Construction of Corruption: Theoretical Reflections. In D. Tänzler, K. Maras, A. Giannakopoulos (eds.), *The Social Construction of Corruption in Europe*. London: Routledge, pp. 13–32.

Treisman, D., 2000. *Causes of Corruption: A Cross-National Study*. Amsterdam: Elsevier.

Wei, S. J., 2000. How Taxing Is Corruption on International Investors? *Review of Economics and Statistics* 82 (1).

Transparency International, 2016. What is Corruption. Accessed 30.08.2016. <http://www.transparency.org/what-is-corruption>.

Williams, C.; Arrigo, B., 2006. Introduction. Philosophy, Crime, and Theoretical Criminology. In B. A. Arrigo, C. R. Williams (eds.), *Philosophy, Crime, and Criminology*. Chicago: University of Illinois Press, pp. 1–15.

KORUPCIJOS KRIMINALIZACIJA: FILOSOFINIAI IR TEISINIAI ASPEKTAI

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Santrauka. Straipsnyje aptariami filosofiniai, istoriniai ir socialiniai korupcijos aspektai. Autoriai tiria, kaip korupciją suvokia skirtingos baudžiamosios teisėgumo paradigmos – klasikinė, pozityvistinė ir konstrukcionistinė, kuriose korupcija atitinkamai interpretuojama kaip yda ir nuodėmė, blogas elgesys arba konfliktas tarp viešojo ir privataus intereso. Straipsnyje pateikiama analizė leidžia formuluoti išvadą, kad korupcijos kriminalizacija turi savo teisinę logiką ir yra priklausoma nuo konkretaus socialinio bei kultūrinio konteksto, todėl negali būti laikoma universaliu viešųjų ir privačių interesų konfliktų sprendimo įrankiu.

Pagrindiniai žodžiai: korupcija, baudžiamosios teisės filosofija, kriminalizacija

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