## Contents

**Preface and acknowledgements** x

**PART I THE PROBLEM AND ITS CONSEQUENCES**

1 **Introduction** 3
   1.1 The scope of this book 4
   1.2 Corruption: a many-headed monster 7
      1.2.1 The law enforcement difficulty 7
      1.2.2 The concept of corruption and corrupt acts 12
      1.2.3 Forms of corruption 14
   1.3 Competing understandings of the problem 17
      1.3.1 Corruption in social science 17
      1.3.2 Law and economics 20
   1.4 Anticorruption approaches and integrity systems 22
      1.4.1 Detection and prevention beyond criminal law 23
      1.4.2 Evaluation of integrity systems 25
   1.5 Criminal justice response 26
      1.5.1 Crime and criminal law regulation 26
      1.5.2 Corruption as crime 28
   1.6 Efficient criminal justice response 31

2 **The causes and consequences of corruption** 34
   2.1 Corruption hinders economic development 35
      2.1.1 Corruption, income levels, and GDP growth 35
   2.1.2 The direct damage caused by corrupt acts 40
      2.1.2.1 Categorizing the distortions of corruption 41
      2.1.2.2 The consequences differ across sectors 44
      2.1.2.3 The consequences depend on one’s perspective 49
   2.2 Arenas particularly exposed to corruption 51
      2.2.1 Unchecked state authority 52
      2.2.2 Manipulated regulation for market power 54
      2.2.3 Secrecy in the world of business 56
      2.2.4 Unbridled access to state revenues 58
vi

Corruption and criminal justice

2.2.5 Worst case scenarios 60
   2.2.5.1 Thievery pays 60
   2.2.5.2 Disconnected governance 61
   2.2.5.3 Brutal kleptocracy 62

2.3 Methodological approaches and challenges 64
   2.3.1 Corruption indices 66
   2.3.2 Micro-level controlled experiments 69
   2.3.3 Questionnaire-based surveys 72

2.4 Conclusion: corruption’s damaging consequences 73

3 Practical obstacles to efficient criminal law enforcement 76
   3.1 Obstacles at the political level 78
      3.1.1 Weak political commitment 79
      3.1.2 Opportunities for undue personal benefits 81
         3.1.2.1 Collusion with corrupt state institutions 82
         3.1.2.2 Impunity for law breakers 82
      3.1.3 Commercial benefits at the expense of anticorruption 84
      3.1.4 Insufficient prosecutorial independence 85
   3.2 Inadequate law formulation and crime definitions 86
      3.2.1 Weakly enforceable legal solutions and definitions 87
         3.2.1.1 Corruption-like circumstances 87
         3.2.1.2 Narrow interpretation of international agreements 88
         3.2.1.3 Confusing organization of the relevant legislation 90
      3.2.2 Unclear liability: legal and natural persons 92
      3.2.3 Corruption not captured by criminal law 94
   3.3 Obstacles to efficient investigation and prosecution 95
      3.3.1 Failure to investigate and prosecute suspected corruption 96
         3.3.1.1 Lack of resources for investigation 97
         3.3.1.2 Environments not conducive to whistle-blowers 98
      3.3.2 Weak coordination across domestic law enforcement institutions 100
      3.3.3 Insufficient international legal assistance 103
   3.4 Unpredictable penalties, sanctions, and consequences 105
      3.4.1 Variation in repression levels 105
         3.4.1.1 The repression level 106
         3.4.1.2 Debarment 107
PART II  FUNDAMENTAL CHALLENGES AND THE WAY FORWARD

4 Economic reasoning on corruption

4.1 Premises for law enforcement strategies and sanctioning
   4.1.1 Legal conditions for sanctioning criminal law offenders
   4.1.2 The rationality assumption
   4.1.3 Empirical validation of theory

4.2 Economic perspectives on crime deterrence
   4.2.1 The propensity to commit crime
   4.2.2 Sentencing and repression
      4.2.2.1 Applying the sanction principle under resource constraints
      4.2.2.2 The sanction principle extended

4.3 A clash between camps? Law’s skepticism toward economic solutions
   4.3.1 Law’s main concern about the economics of crime
   4.3.2 Bridging the camps
   4.3.3 Humankind as a moral and social animal

4.4 The distinct economic features of corruption
   4.4.1 The crime of corrupt decision-making
   4.4.2 Exchange of information and transaction costs
      4.4.2.1 Bureaucratic structures
      4.4.2.2 Loyalty to the corrupt deal
   4.4.3 The impact of control and sanctions
   4.4.4 Incentives for self-reporting

4.5 The distinct feature of corporate liability
   4.5.1 Incentivizing organizations for compliance
   4.5.2 Duty-based liability
   4.5.3 Negotiated settlements
4.6 Conclusion: economic solutions for more efficient criminal law enforcement 162

4.6.1 Economic reasoning on crime and corruption: common inferences for policy 163

4.6.1.1 Toward more efficient criminal law enforcement 163

4.6.1.2 The (simple) sanction principle with resource constraints 163

4.6.1.3 The sanction principle extended, including insights from behavioral studies 163

4.6.1.4 Criminal justice systems and the control of corruption 164

4.6.1.5 Corruption mechanisms 164

4.6.1.6 Corporate liability for corruption 165

5 Principles versus pragmatism in law enforcement systems 167

5.1 Criminal justice efficiency 168

5.1.1 The efficiency concept in the context of criminal law 169

5.1.1.1 Why debate system efficiency 169

5.1.1.2 Efficiency criteria associated with efficiency dimensions 171

5.1.2 Crime deterrence 171

5.1.3 Fair process 173

5.1.4 Value for money 175

5.1.5 Efficiency trade-offs 176

5.1.5.1 Threat-based versus trust-based approaches 178

5.1.5.2 Detection versus deterrence 179

5.1.5.3 Determining guilt versus incentivizing responsibility 179

5.2 Practical implications: holding organizations liable 180

5.2.1 Toward vicarious liability for corporations 181

5.2.1.1 Justifying criminal liability 181

5.2.1.2 Strict liability with compliance-based defense 182

5.2.1.3 The applicability of criminal law and organization 184

5.2.2 Criminal corporate sanctions and procedure 186

5.2.3 Legitimate negotiations on evidence and sanctions 189

5.2.4 Criminal liability for state institutions 192
5.3 The prosecutor’s standing on efficient law enforcement 194
5.3.1 Competencies for efficient law enforcement 194
5.3.2 Prosecutor independence and accountability 198
  5.3.2.1 The risk of a corrupted judiciary 198
  5.3.2.2 The independence spectrum: two contrasting cases 200
  5.3.2.3 Access to law enforcement information 202
5.4 Summary: efficiency and law enforcement principles 204

6 The law enforcement environment at the national and international level 206
6.1 Contextual understanding of the law enforcement challenge 206
  6.1.1 Heaven and hell: different law enforcement equilibria 207
  6.1.2 Threat-based enforcement or trust-based compliance 209
6.2 Fighting each country’s corruption internationally 213
  6.2.1 The international character of law enforcement obstacles 213
    6.2.1.1 The allure of bribery in challenged societies 213
    6.2.1.2 The role of other governments 215
    6.2.1.3 The unintended consequences of collaborating with a corrupt regime 216
  6.2.2 Coordination failure in anticorruption 218
    6.2.2.1 The difficulty of joint action against foreign bribery 219
    6.2.2.2 Toward enforcement substitutes 223
6.3 Law enforcement in cases of international corruption 225
  6.3.1 Law enforcement collaboration in complex cases: global settlements 226
  6.3.2 The role of international investment arbitration 229
  6.3.3 Collaboration for reduced impunity 232
6.4 Conclusion: controlling corruption in the most challenged societies 235

References 238
Index 253