As a result of intensive international debate and the adoption of a number of renowned international anticorruption conventions and initiatives in the 1990s and 2000s, the issue of corruption has become a convenient theme for different kinds of generalizations in social sciences. However, national legislation does not reflect these developments in its legal regulation due to conservatism inherent in jurisprudence.

One of the most evident gaps in this respect is the sphere of political corruption. While political science and political economy for decades have been successful in explaining political processes in different countries as corrupt conspiracies of political elites, business structures, and other actors in the political process, legal science has kept itself separate from such problems and prefers to deal with individual acts of corruption. But if for criminal law such an approach seems logical due to the methodology of the criminal law, for other branches of law which set forth a systemic view on social processes – primarily administrative and constitutional – there seems to be an omission.

Nowadays, there is a quite favourable environment for the development of a consistent legal understanding of anticorruption in Russia. This has become possible thanks to current Russian administrative reforms, when the need for a highly professional bureaucracy led to a greater demand for various anticorruption mechanisms. The next possible step in Russia may be an attempt to ensure the effectiveness of well-proven anti-corruption methods of the political system as a whole.

In this article we propose a brief background to the evolution of the concept of political corruption in Western and Russian political and legal science, which entails
the necessity of complex scientific legal synthesis on this issue, allows to discuss the existing methodological potential and creates new opportunities to build up appropriate systemic legislative models.

**Keywords:** political corruption; concept of corruption; administrative reform; constitutional legislation; neopatrimonialism.


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### Introduction

*Our knowledge about corruption in politics can be looked at in a quite lengthy retrospective,* as this problem has in one way or another accompanied the entire global history of the development of political and legal thought. Reflection on the “spoiled” (read – “corrupt”) nature of a wrongly designed state structure has been a classic theme for political philosophy since the time of Plato and Aristotle. Their research and ideals make up the base for contemporary political science. Additionally, practical challenges of fighting bribery and embezzlement (the most common types of corruption in a narrow legal understanding) are also long-standing and traditional issues of enhancing state capacity. In this respect, centralized legal policy is based on ancient criminal laws and their corresponding formulations, which at a certain stage of development began to be called criminal law science.

It is currently believed that these two directions of analysis of social reality are merging to a greater degree. Political science helps reveal certain patterns of practical means and tools that political elites, interest groups or public officials resort to in order to benefit from the current infrastructure of the political process for their private gain. Based on long-standing criminal law policies against bribery, legal research contributes to a more detailed formulation of law provisions which are
set forth to hinder abuse of public status in political relations. Following political
science, law endeavors to determine a system out of separate corrupt practices and
is beginning to go far beyond the goals of catching individual corrupt officials and
set new aims for administrative and, especially, constitutional law.

1. The Concept of Political Corruption
   in Western Political Science

The most widely used definition of political corruption in Western political and legal
discussions is quite compact: “the misuse of public power for private profit.” While
corruption is defined in this way by the largest international organizations such as the
World Bank and the U.N., Transparency International expands the notion of “public
power” to “entrusted power” of officials in general, thus going beyond boundaries of
state bodies.

However, a number of experts have come to the conclusion that the given defini-
tion does not explain many questions related to political corruption. Therefore, three
types of definitions were coined by the beginning of the 21st century which describe
different aspects of this phenomenon with regard to politics:

1) Many researchers tend to relate corruption to public office and its implied
duties to fulfill (public-office-centered definitions);

2) Other researchers define corruption through the lens of economic theory,
relaying on a market-centered approach (market-centered definitions);

3) Another segment of scientific findings is focused on the breach of public interest as
an indispensable element of political corruption (public-interest-centered definitions).

The first group of definitions of political corruption, based on fulfilment of duties by
public officials, is presented in the works of D.H. Bayley, G. Myrdal and J.S. Nye. Bayley
suggests that although corruption is mainly perceived as being closely related to
bribery, it

…is a general term covering misuse of authority as a result of considerations
of personal gain, which need not be monetary.

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worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1.

org/what-is-corruption/.

4 Arnold J. Heidenheimer, Perspectives on Perception of Corruption in Political Corruption: Concepts and Contexts

5 David H. Bayley, The Effects of Corruption in a Developing Nation, 19(4) Western Political Quarterly 719,
720 (1966).
One of the most widely cited definitions is the concept proposed by Nye:

Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.\(^6\)

Another group of researchers considered corruption from the market-centered perspective, in particular in analyses of earlier Western societies or contemporary non-Western societies where the norms that set forth duties of public officials are either insufficiently regulated or not regulated at all. As a result, a public official may aspire to enlarge their profit from the office that they hold, perceiving public service as a business,\(^7\) or corruption might be considered as an extra-legal way to exercise influence on the decision-making process, which is the only way for entrepreneurship activities to succeed in the framework of ineffective political systems.\(^8\)

The findings of S. Rose-Ackerman are in a similar vein, as she argues that an economic approach is necessary for analysis of corruption since it allows one to determine where the temptation for corruption is the most prevalent.\(^9\) Rose-Ackerman’s model examines corruption with one public official and firms (private clients) competing for government contracts. Shleifer and Vishny, in turn, proposed a model where corruption is presented as a fight for resources among public officials, and competition among officials and contractors alike influences the level of bribes.\(^10\) Shleifer and Vishny assume that the structure of government institutions and of the political process are important in determining the level of corruption.

However, some researchers claim that while the first sort of approach to corruption is too narrow, the market-centered approach is, on the contrary, too wide. The alternative model that they propose is based on the idea that transgression of public interest is an indispensable trait of political corruption. Friedrich defines corruption in the following way:

Corruption is a kind of behavior which deviates from the norm actually prevalent or believed to prevail in a given context, such as the political. It is

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deviant behavior associated with particular motivation, namely that of private gain at public expense. 11

Assessment of the aforementioned approaches and analysis of the concepts of the misuse of public office and public interest presents some difficulties: are they defined by public opinion, legal norms, or some universal "ideals"? 12 Many researchers claim that public interest is by no means perceived univocally, even though legal norms may institutionally set forth corrupt practices, and it is impossible to introduce an exhaustive list of all possible manifestations of corruption. In this regard, it was decided in the 1960s and 1970s that the only way out was to adopt a general definition, even if it would be based on Western values and perceptions of corruption and the political system. However, neither objectivism, which imposes a Western perspective on the problem, nor relativism, which hampers cross-cultural analysis, seem to be capable of becoming a universal way to define political corruption.

Philp directs his attention to the following characteristic elements of political corruption: 13 First, public office implies specific rules and norms which respond to public interest, and in this context, societal interests might come into conflict with personal interests of the office-holder. Besides, a public official may even not transgress law directly since in some cases corrupt transactions may be embedded at the legislative level, in particular, if “state capture” as described by the World Bank takes place. 14

Second, political corruption implies the undercutting of the functions of public office when personal, party or group interests are satisfied at the expense of public interest, and, as a result, those people gain who should not have and those who should have gained fail to gain.

Third, there are three actors that are normally involved in or affected by corrupt activities: the occupant of public office (A), the intended beneficiary (B) and the actual beneficiary (C).

Thus, Philp suggests a formula that would infallibly detect political corruption. This formula consists of the elements mentioned previously: corruption in politics occurs where a public official (A), violates the rules and/or norms of office, to the detriment of the interests of the public (B) (or some sub-section thereof) who is the

designated beneficiary of that office, to benefit themselves and a third party (C) who rewards or otherwise incentivises A to gain access to goods or services they would not otherwise obtain.\textsuperscript{15}

Philp emphasizes that the Western tradition of understanding political corruption implies that the political order is violated and subverted when the political system starts to serve private interests. With this, it is important to take into account the diversity of political systems, cultural differences and discrepancies in perceptions of what qualifies as corruption and what does not. In many countries it is more important to work on the conception of politics in itself, on the role of the government, and on the limits of legitimacy, as well as on the expectations of the people from their political and administrative systems. Philp claims that definitions of political corruption should vary according to the particular contexts and values of each country, while keeping in mind the key elements of the phenomenon.

Here it would be useful to recall that Heidenheimer in turn suggested the following classification of corrupt practices: corruption is “white” when all members of society perceive it as tolerable, “black” – when it is unanimously unacceptable, and “grey” – if corrupt activity is a point of contention.\textsuperscript{16} At the same time, Heidenheimer is also convinced that it is impossible to come up with a single “objective” definition of corruption since it might vary from one society to another according to their historical and cultural peculiarities.

Meanwhile, Kurer holds a contrary view of public opinion.\textsuperscript{17} He claims that theorists of political corruption came to an incorrect conclusion regarding the absence of a universal perception of corruption in different countries. Empirical data show that many forms of corruption are condemned by a large portion of the population in countries where, according to the theory of cultural relativism, corrupt practices are supposed to be tolerable.\textsuperscript{18}

The definition of corruption as “the misuse of public office for private gain” and the focus on “public office” is criticized by Warren,\textsuperscript{19} who claimed that such a definition does not reflect the scope of the danger that corruption poses to democracy. Citing Friedrich\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{15} Philp 2015, at 22.
\item \textsuperscript{17} Oskar Kurer, \textit{Definitions of Corruption in Routledge Handbook of Political Corruption}, \textit{supra} note 13, at 30.
\item \textsuperscript{19} Mark E. Warren, \textit{The Meaning of Corruption in Democracies in Routledge Handbook of Political Corruption}, \textit{supra} note 13, at 42.
\item \textsuperscript{20} Friedrich 1989.
\end{itemize}
and Madison, Warren is convinced that the concept of “public office” is primarily administrative (since “public” means “state” which in its turn implies administrative agencies) and places a high premium on precisely defined duties of office which provide norms of accountability. Second, this definition is premised on the idea that institutions can be “better” than the individuals that constitute them, and that the provision of public good is carried out through division of decision-making powers and gives public officials the capacity to control and uncover activity that undermines societal interests. These ideas provide the foundation for a classical formula of corruption coined by Klitgaard: Corruption = Monopoly + Discretion – Accountability. 

Warren, in his criticism, points out that widely recognized definitions focus more on the execution of duties by public officials than on how the norms that regulate these duties were formed. As a result, an administrative scope of the conception of corruption was introduced, while integrity of the political process as a whole and of the decision-making process was put aside. Warren claims that viewing corruption through the lens of “public office” is not sufficiently political, as the forms of corruption which afflict democratic regimes are primarily political. Warren proposes defining a single normative core – norms of inclusion in and exclusion from the democratic process, which would reflect how the whole spectrum of corrupt practices affects all institutions that help maintain democratic regimes.

In this context it is important to consider how researchers studied corruption through the prism of the political process: what are the roles of the state, political regimes and institutions in political corruption, and what forms political corruption can take.

By the late 20th century, it was commonly believed that economic development in developing countries could take place with effective state intervention in the economy in order to implement large-scale economic, political and administrative reforms. At the same time, excessive state interference was viewed by many researchers as a reason for the appearance of corruption.

Amundsen claims that analyzing the roles of the state and politics are key to understanding the concept of corruption. Citing Nye and Khan, he sees corruption as a state-society phenomenon where public officials misuse public power for private

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25 *Id.* at 2.
26 Nye 1967.
benefit, and he uses the classical definition of political corruption given by Senturia as a base.

Amundsen suggests that political corruption can be used as a synonym of “grand” corruption, which takes place at the high levels of the political system and is committed by political decision-makers. Another form is bureaucratic, or “petty” corruption, which occurs at the implementation end of politics. Though the dividing line between these two categories cannot always be clearly drawn, it is essential to analyze on which level corrupt acts are committed.

In particular, he argues, not only does corruption lead to the distorted distribution of resources, but it also directly affects the formation of power and its functioning, manipulates political institutions and rules of the game, and brings about political decay. Therefore, political corruption is not only deviation from norms and laws, as laws themselves can be adopted to serve the interests of public officials. Furthermore, as a rule, the judicial system is weak and incapable to cope with interference from the executive branch.

Political corruption is a feature of authoritarian regimes that resort to political corruption for preservation of power and personal enrichment. Therefore, Amundsen characterizes political corruption in authoritarian regimes not as a “disease” but as a “normal” condition, which is deliberately introduced by authoritarian leaders to establish economic control.

Thompson, in turn, considers two manifestations of corruption – individual and institutional.\(^\text{28}\) While the first kind implies personal benefit for the occupant of public office, institutional corruption emerges in the framework of the political process and provides status advantages to a public official. As a result of institutional corruption the goals of the democratic process – the institutional “fabric” of political culture – are disrupted.

A number of other researchers also view political corruption through an institutional prism. Helmke and Levitsky define informal institutions as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels” and believe that some patterns of corruption should also be considered institutions.\(^\text{29}\) Corruption is institutionalized when it is organized and enforced from above and is widely known and practiced and therefore expected from public officials.

In the same vein, Fjelde and Hegre view political corruption as an instrument that is used by authoritarian leaders to forge political support.\(^\text{30}\) Political corruption


strengthens the power of authoritarian governments and can produce more influence on the political process than formal institutions. Fjelde and Hegre’s research demonstrates that autocracies and semi-democratic regimes with higher levels of corruption are more stable than authoritarian and semi-democratic countries with lower levels of corruption. An inverse pattern is inherent in democratic regimes: democracies with lower levels of corruption are more stable.

The stability of autocratic regimes with high levels of corruption is due to the fact that corruption inhibits the democratization of formal institutions, whereas formal institutions do not contribute to reducing the level of corruption. Notwithstanding the formal existence of a parliament and elections, real power of the electorate is limited. Political corruption does not imply organized competition among various interest groups; on the contrary – it represents the interests of a narrow subsection of society whose influence is not subjected to checks and balances. This un-institutionalized nature of corrupt networks undermines the opportunities of the electorate to participate in collective decision-making.

Some research shows that the electorate exhibits less dissatisfaction with political corruption in semi-democratic states than in autocracies. Taking into account that government institutions cannot force candidates to fulfill their pre-election promises, the most effective system to acquire rents from public officials appears to be the system of patronage. In such cases, political corruption drives society into a dangerous balance where corruption produces personal benefits for many members of society, undermining the incentives to demand for more accountable political institutions.

Analysis of corruption in relation to political regime is a quite standard subject of research. Corruption is perceived as a result of ineffective political systems, or as a symptom of a badly functioning state. Many researchers came to the conclusion

31 Semi-democratic, or hybrid regimes include both authoritarian and democratic features: with formal multi-party system, regular elections and separation of power, de facto power of the elected body – parliament – is significantly restricted, rule of law is violated, pressure is imposed on political opponents and the media. Ted Robert Gurr, Persistence and Change in Political Systems, 1800–1971, 68(4) American Political Science Review 1482 (1974); Scott Gates et al., Institutional Inconsistency and Political Instability: Polity Duration, 1800–2000, 50(4) American Journal of Political Science 893 (2006).

32 Distribution of goods or resources in exchange of political support (bribery of supporters).


34 Fjelde & Hegre 2014, at 291.


that the fight against corruption is possible with overall state democratization.\footnote{Friedrich 1989.} Corruption as the dominant strategy of a state – the “stationary bandit” – was proposed by Olson,\footnote{Olson 1993.} who claimed that high levels of regulation (“market upside-down”) trigger individuals and groups to bypass the legislature, thereby spurring corruption.\footnote{Mancur Olson, Power and Prosperity: Outgrowing Communist and Capitalist Dictatorship 107 (New York: Basic Books, 2000).} Robinson formulated the reasons to implement such a policy, claiming that economic development and social investments contribute to higher political competition.\footnote{James A. Robinson, When Is a State Predatory?, CESifo Working Paper No. 178 (1999) (May 4, 2019), available at https://www.econstor.eu/bitstream/10419/75563/1/cesifo_wp178.pdf.} Otherwise, a state can become predatory due to the following reasons: 1) political power provides large benefits; 2) these benefits are well endowed by natural resources and are 3) badly endowed with human capital, and 4) the regime is intrinsically unstable.\footnote{Id.} Robinson concludes that economic development and political power are inseparable from one another.

In its systemic forms, political corruption can often be used not only for personal enrichment, but also as an instrument to conquer and maintain power.\footnote{Rose-Ackerman 1999; Luigi Manzetti & Carole J. Wilson, Why Do Corrupt Governments Maintain Public Support?, 40(8) Comparative Political Studies 949 (2007).} Through illegal distribution of privileges and favours, such as appointments to public positions or provisions of profitable contracts, public officials acquire political support. Thus, Nyblade and Reed distinguish two types of political corruption: illegal acts for material gain through “selling” influence (looting) and illegal acts for electoral gain and buying votes (cheating). As a result, a vicious circle emerges where a public official who has access to public resources also has more opportunities for buying votes. These corrupt practices lead to the formation of clientelistic systems and patronage systems, which have become the subjects of numerous research papers.\footnote{Benjamin Nyblade & Steven R. Reed, Who Cheats? Who Loots? Political Competition and Corruption in Japan, 1947–1993, 52(4) American Journal of Political Science 926 (2008).}

2. Political Corruption in Western Law and Electoral Campaign Finance

Researchers of political corruption have traditionally viewed the problem of illegal conquest and preservation of power through the prism of one type of political corruption – electoral corruption. Transparency of political party funding and campaign finance is an important issue not only for transitioning countries, but
for established democracies as well. Other forms of political corruption include bribery of members of parliament and judges, favouritism and nepotism, and bribery of the media and civil society institutions. These aspects of the problem of political corruption are not only relevant for broad political science analysis but are also quite standard subjects of detailed legal assessments, as they are all regulated to some extent in the legislatures of developed countries.

The Transparency International Report on political corruption addresses such areas as the regulation of political finance, disclosure of money flows in politics and the enforcement of laws on political finance, elections, the private sector and abuse of power. Precedence is given to political finance (both campaign finance and political party finance) since political corruption often starts with financing. Walecki stated “political finance and corruption are separate notions, but when their valences overlap, the zone of political corruption emerges.” Among corrupt forms of political finance are illegal expenditures including vote buying, receiving funding from questionable sources (organized crime), selling appointments, abuse of state resources, personal enrichment, engaging in activities that violate political finance regulations, limiting access to funding for opposition parties, etc.

Regulation of political finance varies by country and can take the following forms: disclosure rules, spending and contribution limits, bans on certain kinds of contributions and spending, auditing bodies and their powers, direct and indirect public subsidies, political broadcasting and third party advertisement, declaration of assets.

The links between political corruption and political finance are also explored in the works of Pinto-Duschinsky. He analyzes the role of public subsidies to parties and the enactment of laws regulating political finance and comes to the conclusion that there are “too many laws and too little enforcement.” To describe the ineffectiveness of some measures such as incomplete disclosure of financial accounts, he cites Karl-Heinz Nassmacher, summarizing the broader difficulties for political financing in Western countries:

45 Rose-Ackerman 1999.
Political practice of almost two decades… has re-emphasized the general paradox of constitutional reform measures. Implementation of reform legislation breeds the need for more (and more complex) reform legislation… The elaborate restrictions designed to control the flow of money into the political process have encouraged the professional politicians to engage in a creative search for potential loopholes either in the application of the existing law or when drafting necessary amendments.\textsuperscript{50}

Pinto-Duschinsky argues that evidence for these unending “reforms of reforms” took place in countries such as France, Germany, and the USA, and contends that there is a strong need for more enforcement of existing laws.

Corruption is regarded as a “basically political issue” by Krastev, who claims that the success of “Operation Clean Hands”\textsuperscript{51} in Italy was due to redefinition of the role of politics and political parties in public life.\textsuperscript{52} Mungiu also argues that most corruption in developing and post-communist countries is inherently political.\textsuperscript{53} She also claims that the nature of political corruption in different countries can be seen in electoral corruption which varies greatly from one country to another.

The Western legal thought on political corruption pays significant attention to campaign finance. In the USA, endeavours to restrict the influence of corporate “big money” on electoral campaigns have existed since the 1970s. The Federal Election Campaign Act (FECA), adopted in 1971, introduced disclosure requirements on contributions and expenditures for federal candidates, political parties and Political Action Committees (PACs).\textsuperscript{54}

The Watergate scandal\textsuperscript{55} played a major role in campaign finance regulation, leading to substantial amendments to FECA in 1974, such as restrictions on

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\textsuperscript{51} Operation Clean Hands (\textit{Mani pulite}) in Italy in 1990s was a judicial investigation on political corruption when more than 5,000 public figures fell under suspicion. The estimated value of bribes for bidding government contracts paid annually in the 1980s was up to 4 billion dollars. Sondra Z. Koff, \textit{Italy: From the First to the Second Republic} (London: Routledge, 2000).

\textsuperscript{52} Ivan Krastev, \textit{The Strange (Re)Discovery of Corruption in The Paradoxes of Unintended Consequences} 23 (R. Dahrendorf & G. Soros (eds.), Budapest: Central European University Press, 2000).


\textsuperscript{54} PAC – an organization that pools campaign contributions and donates them for or against candidates.

\textsuperscript{55} During the Watergate scandal of 1972–1974 illegal activities of bugging the offices of the U.S. Democratic Party were discovered. As a result the incumbent President and candidate of the U.S. Republican Party Richard Nixon resigned. During the investigation it was found out that Nixon accepted secret donations of corporations in exchange for favourable government treatment. Bill Allison, \textit{U.S. Campaign Finance}, Bloomberg, 10 November 2016 (May 4, 2019), available at https://www.bloomberg.com/quicktake/u-s-campaign-finance.
\end{small}
contributions and expenditures by candidates and political parties and the establishment of the Federal Electoral Commission.\textsuperscript{56}

One of the benchmark precedents in U.S. campaign finance reform is the 1976 \textit{Buckley v. Valeo} case, in which corruption was recognised as a threat to the election process.\textsuperscript{57} The Court decided that introducing limits on expenditures by or on behalf of candidates and political parties contravenes the provision of freedom of speech, thereby making spending limits unconstitutional since they violate the First Amendment to the U.S. Constitution. As a result, election spending limits were lifted, though some restrictions on individual contributions in support of candidates were introduced.\textsuperscript{58}

One of the major consequences that followed the cancellation of expenditure limits was the increased use of “soft money.” This money was not pooled in election funds but rather was designated for general party purposes, not simply for federal elections. Due to the lack of restrictions on the maximum amount of such contributions, both parties by 1996 spent more “soft money” – primarily on advertisement – than “hard money” (direct contributions accumulated in election funds).\textsuperscript{59}

In 2002, in response to abuses of opportunities brought about by “soft money,” Congress adopted the Bipartisan Campaign Reform Act (BCRA), which forbade parties and candidates to receive “soft money” and imposed restrictions on corporations and trade unions regarding the financing of advertising campaigns aimed at promotion or criticism of specific candidates or parties. However, the U.S. Supreme Court, in the 2010 \textit{Citizens United v. Federal Election Commission} case, decided that the First Amendment, which guarantees the freedom of speech, safeguards the right of trade unions and commercial and non-government organizations to finance advertising companies for or against candidates. As a result, “big money” came back to the electoral campaigns in the USA, thereby stimulating a new round of research on campaign finance.

Issacharoff in his work “On Political Corruption” analyzes the impacts of this case and the return of “big money” on the democratic process.\textsuperscript{60} Issacharoff claims that the Supreme Court mainly tends to perceive corruption as bribery – illegal exchange of “service for service” (quid pro quo arrangements), or as a process where corporate


or personal wealth distorts election results. But Issacharoff himself adheres to an alternative approach to political corruption: in his opinion, a threat to the democratic regime emerges when clientelistic relations appear between elected officials and those who try to benefit from their close position to occupants of public office. Rather than focusing on contributions to candidates’ campaigns, it is much more important to analyze the elected person’s political decisions, which are deemed to be aimed at forging political support to maintain power. Therefore, the study of corruption should be focused on the consequences that corruption entails – distortion of the state’s mission to ensure just distribution of public goods, and clientelism, which leads to privileged access to resources in exchange for political support.

According to Issacharoff, the modern political process encourages private interests to aspire to seize state mechanisms and public institutions. Clientelism leads to the increase of the size, complexity, and non-transparency of governmental decision-making. Acquiescence to clientelistic relations can result in “systemic corruption, which cripples institutional trust and public confidence in the political system”\(^{61}\) and can represent a much more substantial danger than “quid pro quo” corruption, which has been of great concern of the U.S. Supreme Court since *Buckley v. Valeo*.

However, Issacharoff’s approach is criticized by Sachs, who believes that expanding the concept up to clientelism inevitably transforms political corruption into too broad of a concept and complicates its factual regulation, at least from a legal point of view. For Sachs it is almost an impossible task to separate a state (candidates) from the influence of some individuals (sponsors); instead, it is vital to defend a state from itself by prevent the channeling of public resources into self-sustaining political machines. Sachs is convinced that political machines can pose a far greater threat to democracy than can, say, a couple of contractors, since it is not so much thirst for personal enrichment that is dangerous to democracy as is the aspiration to maintain power and create a self-sustaining political machine which is far less susceptible to democratic control.\(^{62}\)

Raban also supports Issacharoff’s criticism of the *Citizens United* decision, claiming that the definition of corruption as “quid pro quo” is far too narrow. He refers to American federal laws against bribery, which conceive of corruption as a much broader phenomenon and introduce criminal proceedings not only for bribery but also for the giving and receiving of gifts, which are not necessarily “quid pro quo” exchanges.\(^ {63}\)

Furthermore, some researchers wonder whether the Supreme Court is entitled to define corruption at all. Hellman holds that corruption is a derivative concept


and depends on a theory of the institution involved – how these institutions are supposed to operate and how a public official is supposed to act. Therefore, before giving a legal definition of corruption, it is important to come up with definitions of a healthy functioning democracy and the role of an effective public official. Similar to gerrymandering and apportionment cases, the Court should have been cautious in introducing the constitutional framework on the definition of corruption, since this is a matter of both individual rights and issues of democratic theory. And since the Court is incapable of defining “good government,” then it also should refrain from defining corruption.64

It might seem paradoxical, but one potentially effective instrument to lessen the role of “big money” on elections is a recent reform that expands candidates’ opportunities to raise funds for election campaigns (in particular among citizens), thereby significantly reducing concerns about political corruption.

Meanwhile, Kang is convinced that the results of the Citizens United case demonstrated the end of regulation of campaign finance. The Court’s decision led to unlimited financing aimed at promotion or criticism of candidates.65 The absence of restrictions allowed many groups that are not formally registered as affiliated with candidates or political parties to transfer millions of dollars to advertising campaigns of candidates, with no need for candidates to disclose funding sources.66 In this regard, Kang is convinced that the Court’s decision closed all potential options on imposing restrictions on advertising campaigns, thereby marking the beginning of the process of complete deregulation of campaign finance as a whole.

This case, according to Kang, may become a turning point in the regulation of interconnections between campaign finance and the political process. Kang suggests that it is essential to control where contributions end up after they have penetrated the political system (juxtaposition of ex ante and ex post). Among such initiatives are the Obama administration’s decisions on lobbying, which barred executive branch appointees from accepting gifts from registered lobbyists, and restrictions on former lobbyists from working on matters for which they lobbied in the previous two years.67 Kang concludes that henceforth, an effective way to weaken the influence of “big money” on the political process is to regulate lobbyism (ex post), rather than campaign finance (ex ante).

Contemporary legal theory endeavors to pose questions about political corruption on a more fundamental level as well. For instance, a rather ambitious

66 Id.
attempt to view corruption through the prism of the Constitution was undertaken by Teachout, who claimed that while the anti-corruption principle is one of the structural principles embedded in the U.S. Constitution, akin to federalism or separation of powers, the modern interpretation of corruption by the U.S. Supreme Court has made the conception of corruption fractured and ahistorical and has led to incoherent jurisprudence. According to Teachout, instead of citing the case of *Buckley v. Valeo* as a starting point for the issue of campaign finance reform, the Supreme Court should resort directly to the U.S. Constitution.

All in all, the American legal discussion on political corruption primarily focuses on the problem of electoral corruption and its central aspects – campaign finance (in particular contributions and expenditures) and the influence of “big money” from interest groups (corporations) on the political process. This approach to the issue is quite typical for the Western discussion in general.

3. The Phenomenon of Political Corruption in Russian Political Science and Legal Discourse

As we can see, political corruption has become a separate theme in Western political science and law relatively recently, as it is believed that the concept began figuring into American political science in the 1960s. In Russia, the problem of political corruption was skewed in the Soviet period due to a particular sort of perception of corruption in the context of an ideologically-driven science and a peculiar political model which hampered independent analysis of the Soviet Union’s setbacks.

The term “corruption” can hardly be deemed operational or widely-used in the Soviet literature. Even when it was mentioned, it was only used as an illustration of a problem inherent in political systems of Western countries.

In analyses of the specifics of the functioning of the Soviet state, it was impossible to allow the inclusion of even the slightest trace of correlation with corruption. For instance, in a confidential letter of the Central Committee of the Communist Party of the USSR of 29 March 1962 entitled “Enhancing the Struggle Against Bribery and Embezzlement of Public Property,” bribery is phrased as a “social phenomenon engendered by the conditions of an exploitative society.” The October Revolution of 1917 wiped out the root causes of bribery, whereas “the Soviet administrative-management apparatus is a new type of structure.” At the same time, official offences in the USSR were regarded primarily as failures of the government, the Party and/or trade unions to educate workers.

Meanwhile, even though ideology proclaimed the absence of any systemic features of corruption in Soviet society, this does not mean that Soviet political

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science did not have any conception of the problem of corruption in Western societies. According to the Great Soviet Encyclopedia (1976 edition),

Corruption is a crime, wherein a public official directly uses the rights granted to him by office for private benefit. Bribery of public officials and these officials’ venality is also considered corruption. Corruption is inherent in all types of exploitative states, but it is especially widespread in imperialist states. It is typical in bourgeois state apparatuses and parliaments where all state and political figures arrange their private affairs with help from their official statuses. Vladimir Lenin, who characterized imperialism as parasitic and decaying capitalism, noted that some of its properties are “corruptness and bribery on a giant scale.”

Another type of corruption is sponsorship of a candidate’s electoral campaign for an elected position, which is then, upon election, compensated for by means of various services (allocation of beneficial positions, contracts, etc.). Corruption is also associated with lobbyism. Corruption is widespread in the USA.

Corruption as a *corpus delicti* is set forth in the criminal codes of many bourgeois states; however, as a rule, these crimes go unpunished.

This definition of corruption is important from the point of view that it is rather similar to definitions proposed by Senturia and Nye, which are considered classics in the Western political and legal discourse. Such an understanding of the issue was not novel for the authors of the Great Soviet Encyclopedia, as the term was well-known in Russian criminology at the time. The definition was not borrowed from the English-American scientific discourse; rather, it originated from Russian criminal science, which had developed in the Russian Empire for a couple of preceding centuries in close connection with European legal science. Assessing the characteristics of corruption was commonplace in Russian criminal law in analyzing crimes committed by public officials.

Moreover, it is important to note that the cited article points out forms of political corruption such as electoral corruption and lobbyism. In other

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71 “Abuse of authority or of official position, that is, the commission by an official of any act that he can commit solely by virtue of his official position and which, not being required by the discharge of the duties of that office, results in some definite derangement of the proper operation of an institution or agency or causes it material loss, or results in some violation of public order or of some legally protected right or interest of an individual citizen – if such an act is committed by an official systematically or from some mercenary motive or other consideration of personal interest, or if to the knowledge of the official it might have had serious consequences even if in fact it had no such consequences…” Уголовный кодекс РСФСР 1926 г. // СПС “КонсультантПлюс” [Penal Code of the RSFSR of 1926, SPS “ConsultantPlus”], para. 106.
words, in the 1970s, the understanding of the specifics of political corruption in Soviet political science and law hardly lagged behind Western scientific work on this issue. However, the most important difference between the two disciplines is that the American science analyzed the problem of political corruption on the basis of its own vast empirical material, whereas the Soviet science examined corruption in Western countries and excluded any possibility of posing the question of political corruption in the USSR itself.

Scientific interest in political corruption in Russia emerged with the collapse of the Soviet Union and the beginning of democratic reforms in the late 1980s and early 1990s. First, ideological obstacles to free social and political discussion were eliminated. Second, Russian society ceased to be Soviet and acquired features of Western capitalist societies with all of their advantages and disadvantages, including their characteristics of political corruption. In total, it enabled discussion of political corruption drawing on genuine Russian experiences and using both Russian and comparative scientific research results.

A more or less complete, specialized body of work on political corruption began to appear in Russia in the late 1990s, focusing on two main aspects:

The first trend concerns the development of legal sciences. The post-Soviet period has borne witness to the advancement of criminal law and criminology, which, attempting to assess the consequences of democratic reforms of the 1990s, pose the question of political crime and of political corruption as one of its forms. Then, during an administrative reform, many original organizational and legal mechanisms appeared which were designed to foster a new highly-effective bureaucracy and spur economic development, which Russian administrative and legal science aspires to conceptualize.

The second direction of research on political corruption is represented by political science and economics, which are currently actively adapting to foreign research findings on political corruption, including such aspects as political corruption’s economic effects on the development of political relations, specific traits of democratic state-building in Russia, evolution of electoral mechanisms, the emergence of a new and relatively sustainable model of an authoritarian state, and other problems.

It is interesting to note that at the junction of these two research directions, a new layer of scientific synthesis is emerging which allows scholars to unite the advantages of different social sciences for a more comprehensive and detailed examination of the problem of political corruption. One example of a consequence of this phenomenon is the interest that constitutional law has shown regarding the problem of systemic political corruption, which enables one to connect the resolution of this problem with concrete legislation that formulates complex institutional reforms of the political system. Here we briefly present the evolution of the directions that the emerging multidisciplinary theory of political corruption has taken.

In Soviet science, the definition of the term “political corruption” remained a theme for speculative social theory, while the common perception of corruption as some
generalized idea of “abuse of advantages inherent in public status for private gain” appeared to be sufficient to resolve practical criminal and legal collisions. However, during the democratic reforms of the late 1980s – early 1990s, the essence of political and economic relations changed dramatically. Former party and public control over the public service and production discipline faded out, and the efforts of criminal law policies were not enough to counter new forms of property appropriation and to achieve visible results, especially in the field of preventing corruption. For this reason, a new branch of legislation was progressively emerging in Russia – anticorruption legislation, while the term “corruption” appeared in titles and texts of regulatory acts and became more instrumental and important in practice.

Despite the fact that a large number of regulatory acts on anticorruption have been adopted since the early 1990s, a legal definition of corruption in Russian legislation was introduced only with the Anti-corruption Federal Law in 2008, which has since become pivotal for anti-corruption legislation in Russia. This law defines corruption as abuse of official position, bribery, taking of a bribe, abuse of authority, commercial bribery, or any other illegal use of official capacity by an individual that runs contrary to the legitimate interests of society and the state for the purpose of receiving benefits in the form of money, valuables, other property or services of a proprietary nature, other property rights for themselves or third parties, or the illegal provision of such benefits to the specified person by other individuals, as well as committing these deeds in the interests of a legal entity.

This definition of corruption is legal and, naturally, forms the foundation for discussions about the traits of corruption in the Russian political and legal discourse. Upon evaluation of the contents of the legal definition of corruption, one can identify the following main features:

– First, the definition is incredibly vast and complex and is obviously a compromise, thereby bearing witness to the lack of development of the theory and indicating that the scientific doctrine will continue to hone its features;

– Second, the definition starts by enumerating public officials’ crimes which are very familiar to the Russian Criminal Code, but the list is kept open, which enables us to widen our perceptions about forms of corruption in line with practice;

– Third, at the core of the definition lies a classical characteristic of corruption – abuse of official position for private gain; however, the definition includes some distinctive features:


A) The type of corruption that is intended by this Law is only that which violates
the law, which means that violations of ethical prohibitions are beyond the scope
of this Law;

B) In terms of the type of offense, corruption is not presented only as a crime
(as opposed to the understanding given by the Great Soviet Encyclopedia), which
means that corruption may potentially engender any form of legal liability (criminal,
administrative, civil, material, disciplinary, constitutional);

C) A subject of corruption is any individual who participates in corrupt activities
connected with abuse of official status for private gain “contrary to the legitimate
interests of society and the state.” Inclusion of commercial bribery in the list of corrupt
acts means that the Law broadens its understanding of corruption to include the
private sector as well. The basic condition required in order to attribute an act to
corruption is a broadly defined use of one's official capacity in some organisational
hierarchy “contrary to the legitimate interests of society and the state.” It allows for
the interpretation of phenomena such as even the most refined organizational
schemes of bribery or bid rigging of suppliers in the public procurement system
as corruption;

D) Only material gains are considered when discussing benefits derived from
a corrupt act – receiving money, valuables, other property or services of property
nature, or property rights. This means that the Law only considers selfish (or
material, in Russian judicial practice) motives to recognize an offence as corruption.
However, Russian legal doctrine traditionally considers “other personal interests”
besides mercenary ones as well. This implies the aspiration to obtain non-property-
related benefits, driven by such incentives as careerism, nepotism, and the desire to
embellish one’s actual position, receive reciprocal services, gain support in resolution
of a problem, hide one’s incompetence, etc.

This is the only instance where the Law narrows the definition of corruption
instead of widening it. By all appearances, the reason for this phenomenon seems
to be the necessity to achieve some compromise at the moment when the Law was
under discussion in 2008 in order to ensure its adoption. Indeed, on the one hand, this

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74 In other words, the rhetoric of the definition does not give grounds for narrowing “official capacity
by physical person” to “public official” that is used in Russian Criminal Code (see note 1 to Art. 285
of the Criminal Code of 1996). The main circumstance is the possibility to identify this person in
some public organisational hierarchy (state bodies, municipal bodies, state corporations, state and
municipal enterprises, etc.).

75 Along with the use of official capacity contrary to the interests of the service, protectionism should also be
considered. Protectionism is illegal support in employment, career promotion, rewarding of an employee,
and any other professional patronage which is carried out of mercenary, or any other personal interest.
Постановление Пленума Верховного Суда РФ от 16 октября 2009 г. № 19 «О судебной практике
по делам о злоупотреблении должностными полномочиями и о превышении должностных
Federation No. 19 of 16 October 2009. On Judicial Practice on Affairs Concerning Abuse of Authority and
Law does not interfere with investigations of offences by public officials under the Russian Criminal Code, where “any other personal interest” remained intact at least due to the higher position of the Criminal Code over ordinary laws in the normative hierarchy. On the other hand, using a narrowed concept of corruption allows for the continuation of the practice of implementing a new interdisciplinary conceptual Law for Russia with more precise limits, since evaluating the illegal redistribution of property rights is easier than evaluating intangible motives of corrupt behavior.

In other words, the main feature of the Russian political and law discourse about the definition of the general term “corruption” is the fact that the definition became legal in 2008 and has become an instrumental term in legislation. Its content, however, is sufficiently general that it considers almost any abuse of authority for private gain to be corruption, except those that are not illegal, do not violate the legitimate interests of society, or do not relate to receiving benefits in some form of property.

As far as the term “political corruption” is concerned, there is no mention of it in any Russian legislation. On top of that, political corruption as an independent and integral scientific concept is not sufficiently studied by the Russian political and legal literature. Indeed, the quantity of scientific works dedicated to constituent elements of political corruption – bribery of voters, abuse of campaign finance by political parties and candidates for elected positions, illegal lobbying in the political decision-making process, privatization and procurement fraud, asset-grabbing with the participation of public officials – significantly exceeds (even separately) the number of works on the systemic problem of political corruption.

Nevertheless, there is some background of Russian political and legal debate on this problem, and there is a substantial number of convincing works that convey the great scientific potential of the problem:

Prof. D. Shestakov, the founder of Russian political criminology, considers corruption as a type of political offence, while Prof. N. Kuznetsova and Prof. V. Volzhenkin, eminent figures of Russian criminal law and criminology, characterize political corruption as a sub-type of elite crime. The diversity of forms of political corruption varies to some extent for different Russian criminologists, but in general, it is limited to the list of corrupt acts laid out in the Russian Criminal Code.

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The essence of the understanding of political corruption in Russian contemporary criminology can be expressed by the words of P. Kabanov, who is the author of the greatest number of serious scientific papers on this issue. From his perspective, political corruption manifests itself as the aggregation of crimes committed by public or municipal officials, by candidates for official positions, or by other individuals who acted on these individuals’ behalf, using their official, material or other type of capacity contrary to the interests of other individuals or society in order to occupy, maintain, redistribute or lose an official position, in a certain state (or region) during a certain period of time.79 Prof. V. Lunev80 and A. Mizeriy81 define political corruption in the same spirit.

In other words, in contemporary Russian criminology, political corruption is perceived as a method of political struggle, in which different actors in the political process resort to corrupt mechanisms to take power (bribery, abuse of authority, etc.). However, criminologists primarily focus on the criminal qualification of these acts according to the Russian Criminal Code, thereby limiting the development of a scientific conception on the emergence and essence of political corruption as a social phenomenon.

Russian economic science largely avoids direct references to the problem of political corruption, preferring instead to leave the issue for political scientists and lawyers. However, research on the specifics of the Russian economic structure from the perspective of political economy analysis, institutional economics, constitutional economics and other popular Western economic theories, especially with references to D. Acemoglu, J. Buchanan, S. Rose-Ackerman, A. Shleifer, R. Vishny and others, inevitably leads to the formation of conclusions on the direct relationship between politics and corruption (A. Auzan, S. Guriev, M. Levin, V. Mau, G. Satarov and others),82 in which weak political institutions engender and exacerbate political corruption.

In contemporary Russian political science, a number of papers have been dedicated to the peculiarities of political corruption. The essence of their understanding of the issue is similar to the one that has been formed conventionally

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82 Левин М.И., Левина Е.А., Покатович Е.В. Лекции по экономике коррупции [Mark I. Levin et al., Lectures on Economics of Corruption] (Moscow: HSE, 2011).
in criminology; however, a number of works point out some important issues and pose new problems for Russian social sciences.

Prof. Y. Nisnevich, referring to the definition of political corruption, indicates that political corruption manifests itself in the capture and retention of power for purposes of personal gain. For criminologists, if one compares their various definitions, any sign of capturing power by means of bribery, abuse of authority, and other corrupt methods are seen as sufficient to recognize political corruption. These two approaches seem to differ in terms of motives and goals that corrupt officials pursue; however, this is not entirely the case. In fact, if in one country an official position guarantees subsequent material well-being, then these two approaches do not differ much at all. In countries of this type, political corruption ensures both power and property at the same time – strictly power first and then property, and not vice versa: possession of property does not guarantee political power, since it is not money that determines political status, but rather loyalty. Moreover, the absence of political power makes property possession extremely unstable. Acquisition and preservation of property in societies of this type require integration in the political system and occupation of a relatively high position in the power hierarchy.

Such a type of society is rather familiar for Russian political science: similar terms were used to describe the Soviet political system led by the so-called party “nomenklatura,” a unique political class which was protected from the rest of society by a system of informal traditions of control and violence. However, after the collapse of the USSR and eradication of the leading and directing role of the Communist Party, such features appear to be relevant for overall contemporary post-Soviet society as well. Nowadays, this type of system has become possible thanks to a model of political systems that some Western political scientists have begun to describe as neopatrimonial, referring to the concept of the patrimonial state as described by M. Weber. This notion is used in Western political science to describe states in which relatively weak political and legal institutions necessitate the establishment of a regime of personal power that preserves a façade of a democratic state with elections, formal separation of powers, deceptively free institutions of civil society, etc.

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84 In this case the term “property” is used as “wealth,” i.e. some material assets which substantially exceed an average level of the income per capita in any given state.


Thus, Russian political science not only acknowledged the existence of political corruption but additionally, later on, grasped its institutional and systemic character, and in recent years has revealed some of its features which are inherent in a unique model of political corruption found in some authoritarian personalistic regimes, where this corruption acts as a central mechanism for the functioning of the political system. This changes the formulation of the question of the causes of corruption and of ways to tackle it. In neopatrimonial states, corruption has taken on such deeply-rooted forms that certain problems of political corruption that are considered traditional in Western societies, such as campaign finance violations or lobbyism regulation, may seem insignificant in comparison with the real extent of the problem.

The development of knowledge in this area necessitates a sort of scientific synthesis that would be able to unite ideas from different areas of social theory in order to develop a programme to fight systemic political corruption. A defined foundation for this synthesis already exists in the form of various studies performed by international institutions on complex anti-corruption reforms. Mapping of the programmes of these reforms demonstrates that a substantial part of their basic structure is connected with constitutional reforms. The only way to ensure stability

87 “Systemic corruption takes place when corruption becomes a part of the system of governing – in many cases it is indispensable to the extent that the system cannot function without it. Systemic corruption encompasses all or almost all important spheres of social life, state (municipal) and nongovernmental sectors. Systemic corruption is an Achilles's heel of reformers, since new power full of determination to fight corruption finds out its inability to reform the system, which it is supposed to rely on in implementing management functions. Developing countries suffer from political corruption more often than developed countries. In developed countries, as a rule, corruption strike a part of the system – separate state or municipal states, a powerful union or a political party. In developing countries there are less institutions and watchdog organizations which would be capable to protect society from corruption which allows officials to breach the law in order to survive. In this sense, peculiarities of Russia is that systemic corruption soared against expectations along with the democratization process, and derogated the very ideas of liberty and market.” Бондаренко С.В. Коррумпированные общества [Sergey V. Bondarenko, Corrupt Societies] 18 (Rostov-on-Don: Rostizdat, 2002).


of the political system against the attempts of the political elite to use it for private gain is consistent implementation of the ideas of democracy, separation of powers, political pluralism and other fundamental principles of constitutionalism in the practice of social construction. Therefore, it is no coincidence that the contemporary Russian fields of theoretical-legal science and constitutional-legal science have shown interest in such reforms, as these fields of study evaluate social reality from the perspective of the possibility to transform it through incorporation of new knowledge into practical activities of state and civil institutions, as well as through the development of current constitutional legislation and practice.\textsuperscript{91}

**Conclusion**

To conclude, the Russian approach to developing an understanding of the problem of political corruption differs from the Western approach in a number of ways, but is similar in the most important area: both perceive political corruption as a much more complex and systemic social phenomenon than a simple aggregation of illegal exchanges of services based on the use of official capacity. Currently, such a vision of the problem allows to incorporate knowledge about political corruption into precise ideas on gradual constitutional reforms and transform these ideas into concrete constitutional legislation.

Differences between the Western and Russian discourses on political corruption are closely connected with political history: while Western scholars studied problems of political corruption both comparatively and in terms of their own experience, ideological prohibitions imposed on Soviet science made the issue of political corruption an object of abstract speculation which was used to stigmatize decaying capitalism.

On the other hand, in the 1990s, specific acts on anti-corruption legislation started to appear in Russia that were tailored to compensate for the eradication of party control over the discipline of public officials and to hinder any formation of traditions of trading public status in the new conditions of economic management. Later on, in the 2000s, the notion of corruption became a legal understanding, and anti-corruption legislation started to become a separate and powerful branch of Russian legislation, whose institutions permeated other spheres of the Russian legal system as well. This fact has provided a methodological opportunity to connect social theory on corruption with applied anti-corruption legislation.

It is worth noting that in both Western and Russian scientific discourses, demand is beginning to form for a synthesis of political, economic and legal knowledge that would be able to form complex, practical solutions to the problem of corruption.

as a systemic social phenomenon, which could find its resolution in law. The
starting points for these movements are different. Prof. S. Issacharoff calls upon the
Supreme Court of the USA to reconsider its approach to corruption and see it more
as a complicated system of clientelism which binds politicians and their campaign
sponsors, and to turn this vision into practical decisions. Scholars of constitutional
law in Russia in turn pose the question of the eradication of traits of systemic political
corruption through a transformational change of the neopatrimonial model of state
development into a competitive democratic society with clear rules of a game – all
through systemic constitutional reforms.

Obviously, the interaction of various components of social theory regarding the
question of political corruption is much more complex than the relatively small number
of factors that we analyzed in this article. However, our goal was to show as succinctly
as possible the existence of a certain tendency in the evolution of approaches to the
problem of political corruption in Western and Russian political and legal debates.
And the main idea can be found in the fact that political philosophy, political science
and economic theory, which find that political elites use the mechanisms of the
political system for private gain, and law, which attempts to formulate the means
to fight different forms of corruption in legislation, are moving towards each other.
This means that contemporary social theory, perceiving political corruption as
an important problem in the political system, is ready to formulate a sequence of
practical constitutional transformations in national legislation.

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**Information about the authors**

**Stanislav Sheverdyaev (Moscow, Russia)** – Assistant Professor of Constitutional and Municipal Law, Law Faculty, Lomonosov Moscow State University (1 Leninskie Gory, Bldg. 13–14, GSP-1, Moscow, 119991, Russia; e-mail: snshev@gmail.com).

**Alina Shenfeldt (Moscow, Russia)** – Analyst at Laboratory for Anti-Corruption, National Research University Higher School of Economics (20 Myasnitskaya St., Moscow, 101000, Russia; e-mail: alinakashapova1993@gmail.com).