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## Economic Analysis of Criminal Law, Arguments for Drug Legalization and the Limits of Economic Imperialism

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**Abstract:**

**Purpose:** The aim of the work was to prove the thesis that the economic imperialism (imperialism of economics) has its limits. These limits were marked within the economic analysis of criminal law, as a manifestation of the imperialism of economics, using the example of the critique of economic arguments for the legalization of drugs.

**Design/Methodology/Approach:** The first part of the work defines the key concepts of imperialism of economics and the economic analysis of law as a manifestation of this imperialism. The second part presents the theoretical background of the economic arguments for legalizing drugs (presented and criticized in the third part of the article) in the form of a characteristic of the economic analysis of criminal law.

**Findings:** The theoretical part shows the limitations of the two main pillars of the economic analysis of law: the instrumental (calculational) rationality of an individual and the economic (utilitarian) effectiveness of the law, against the background of the traditional theory of criminal law (retributivism). Then, in the practical part, the economically motivated postulate of legalizing drugs was opposed, demonstrating the weaknesses of such arguments and presenting an alternative, although also economically well-grounded, scenario of negative social and economic consequences of the end of drug prohibition.

**Practical Implications:** The article draws attention to the theoretical foundations of drug policy. It shows the weaknesses of economic arguments for drug legalization.

**Originality/Value:** The connection between the economic arguments for legalizing drugs and the phenomenon of economic imperialism is rarely seen in the literature. The issue of the limits of economic imperialism is also rarely discussed. This article does not exhaust this topic by any means, but it does show that this problem is worth taking up.

**Keywords:** Economic imperialism, Law & Economics, criminal law, retributivism, drug policy, drug legalization.

**JEL codes:** K00, K14, I18, D63, B41, B49.

**Paper type:** Research article.

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## **1. Introduction**

The subject of economics as a science at its beginnings, within the framework of classical economics developed by A. Smith (1723-1790), D. Ricardo (1772-1823) or J.S. Mill (1806-1873), were the market processes of production, exchange, distribution and consumption of wealth.

However, over time, economics, as a scientific discipline belonging to the social sciences, expanded its horizons of interest. The changes in the understanding of the research area of economics from its beginnings to the first half of the 20th century are evidenced primarily by the difference between the relatively narrow understanding of economics as a science of the wealth of a nation, proposed by the 'father of economics' A. Smith (2007), and the most frequently quoted broad definition formulated today by L. Robbins (1932, pp. 15-16): "Economics is the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses", which means that "there are no limitations on the subject-matter of Economic Science".

Especially in the second half of the 20th century, economists began to take up topics belonging to research areas traditionally occupied by other social sciences, which became the basis for the exaggerated statement attributed to J. Viner (1892-1970): "economics is what economists do" (cf. Backhouse, Middleton and Tribe, 1997, p. 2). The ambitions of economics to address traditionally and seemingly non-economic problems are confirmed by the words of the winner of the Bank of Sweden Prize in memory of Alfred Nobel G. Stigler, who stated that: "economics is an imperial science: it has been aggressive in addressing central problems in a considerable number of neighboring social disciplines, and without any invitations" (Stigler, 1984, p. 311).

The greatest economic imperialist is considered to be G.S. Becker (cf. Lazear, 2000; Barro, 2002), who received the 'Nobel Prize in Economics' in 1992 just for "for having extended the domain of microeconomic analysis to a wide range of human behaviour and interaction, including nonmarket behaviour" (Nobel Prize Outreach, 1992). In his works, Becker addressed many topics that were traditionally outside the scope of economics (e.g. Becker 1976; Becker and Becker, 1997), including the subject of crime and punishment, which is considered using economic methods within the framework of the economic analysis of law (EAL, Law & Economics, economic approach to law). Part of EAL is the economic analysis of criminal law, i.e. the economic theory of crime and punishment, within which the so-called economics of drugs and crime is situated.

The aim of the work was to prove the thesis that the economic imperialism (imperialism of economics) has its limits. These limits were marked within the economic analysis of criminal law, as a manifestation of the imperialism of

economics, using the example of the critique of economic arguments for the legalization of drugs.

The first part of the work defines the key concepts of imperialism of economics and the economic analysis of law as a manifestation of this imperialism. The second part presents the theoretical background of the economic arguments for legalizing drugs (presented and criticized in the third part of the article) in the form of a characteristic of the economic analysis of criminal law. Then two competing scenarios for drug legalization were presented. The conclusions from the conducted research were formulated ~~in the conclusion~~ in the final part of the article.

## 2. Economic Analysis of Law as a Manifestation of Economic Imperialism

According to U. Mäki (2013, p. 334), economic imperialism is the so-called "imperialism of scope". It consists in the fact that economics as an imperialist discipline seeks to explain phenomena that traditionally belong to the subject area of another discipline (especially in the area of social sciences). This is related to the desire to unify the methods of explaining phenomena according to the standards used in economics, thus disregarding the boundaries between scientific disciplines.

Economic analysis of law in its traditional mainstream "deals with the study of law and the description of its institutions and phenomena occurring in it from the point of view of economic principles and using tools appropriate for this science" (Stroiński, 2008, p. 482), and also "tries to predict the effects of the impact of established legal sanctions on human behavior" (Cooter and Ulen, 2011a, p. XVII). Hence, the basic concepts within Law & Economics are, according to R. Posner (2002):

- value – "subjective valuation of a good by an individual",
- utility – "satisfaction achieved by an individual from the choices made",
- efficiency – as "a criterion for allocating resources at which value is maximized" (cf. Pawłusiewicz, 2007, p. 326).

EAP is therefore situated between economics and law and is sometimes referred to, following R.A. Posner (1987), as the "law and economics movement". However, if we were to accept the aforementioned definition of economics according to L. Robbins and the view of L. Balcerowicz (1995, p. 450) that "economics is distinguished (...) not so much by its subject, but by its method, which can be applied to all social phenomena", EAP could be act as a theoretical branch in economics.

It could be classified as a whole to the so-called non-market economics (due to its subject matter) and neoclassical economics (due to its theoretical layer and methods), and in the part that refers to economic issues – to the new institutional economics (cf., Stankiewicz, 2012).

The subject of EAP is of course not only the branches of law related to economic issues, which indicates the wide scope of economics' influence on law. The wide scope of influence is one of the premises for recognizing EAP as a manifestation of economic imperialism (c.f., Mäki, 2013, p. 336). Another premise is the asymmetry of the relationship between economics and law – a one-way relationship between economics as an imperialist discipline and law as a colonized discipline. The third premise is "crypto-axiological - imperialism «smuggles» a certain set of values into the colonized discipline, which make up a specific image of the world standing behind the imperialist discipline" (Boruszewski, Hardt, Mróz and Nowak-Posadzy, 2020, p. 31). In further considerations, the axiological aspect of economic imperialism will be particularly visible.

### **3. Main Pillars of the Economic Approach to Criminal Law**

The philosophical basis of the economic approach to law is utilitarian thought, which is characterized by the aforementioned basic concepts of EAP: value, utility, efficiency. Its creator J. Bentham (1748-1832) postulated that the goal of the legislator should be to shape the law in such a way as to maximize the utility of society (Kochanowski, 2007). And since "men calculate, some with less exactness, indeed, some with more: but all men calculate (...) even a madman (...) calculate", and "the business of government is to promote the happiness of the society, by punishing and rewarding", then "the value of the punishment must not be less in any case than what is sufficient to outweigh that of the profit of the offence" (Bentham 1789, pp. 67, 175, 185). Thus understood, the economic (utilitarian) efficiency of the operation of law and the "instrumental rationality" (Boehlke, 2005, p. 49), i.e., calculative, of the individual are currently the main pillars of the economic analysis of law.

#### **3.1 Economic Efficiency of Law**

According to the economic theory of crime and punishment, "an act should be treated as a crime if it is conducive to increasing social welfare", and the crime should be punished "to such an extent that it maximizes social welfare" (Cooter and Ulen, 2011a, p. 591). According to G.S. Becker, increasing social welfare is achieved here due to greater "«effectiveness», of public efforts to discourage offenses" (Becker, 1976, p. 74). In other words, criminal law should minimize the social cost of crime, or "the social loss in income from offenses" (Becker 1976, p. 77), which is equal to the sum of losses caused by criminals and the costs of preventing them (Cooter and Ulen, 2011a, pp. 617-618).

Therefore, where possible (e.g. not in the case of murder), representatives of the economic approach advocate the use of fines instead of imprisonment, because in their opinion the social cost of the former is close to zero, and therefore leads to increased social welfare (Becker, 1976, pp. 113-119). They are also against long

prison sentences, because they constitute a high economic cost to society and often do not act as a deterrent at all.

Economic (utilitarian) efficiency as an objective of law is derived from the economic statement about the scarcity of resources, which results in the need to make choices based precisely on the criterion of economic efficiency, based on a cost-benefit analysis (Pawłusiewicz, 2007, p. 323; Szamota, 1992, p. 37). The adoption of economic efficiency as a decision-making criterion within the EAP translates into the understanding of the relationship between morality and law and the concept of justice.

According to D. Lyons (2002), a representative of the traditional theory of criminal law called retributivism, law and morality interact: what the law orders or permits to some extent influences our views on the morality of various behaviors. In turn, moral beliefs shape the content of law to some extent. As a result, the laws of a given community partially overlap with the moral views prevailing in it (Lyons, 2002, p. 66).

Therefore, law and morality are not essentially separate, as the representatives of legal positivism wanted: J. Bentham, J. Austin or H. Hart (Lyons, 2002, p. 66), which is also a tacit assumption of the economic analysis of law. For the supporters of the economic analysis of law, efficiency is an "economic explication of justice" (Stelmach and Brożek, 2004, p. 137), therefore EAP can be treated as a specific theory of justice (Pawłusiewicz, 2007, p. 331).

The economic analysis of law refers to restorative justice, which is "a form of action oriented primarily to introduce justice by repairing the harm caused by the violation of the law" (cf., Królikowski, 2006, p. 124). The above definition does not include the concept of punishment and no reference to any existing norms and values. Therefore, reparative processes may be based on an agreement that is, in fact, satisfactory for the offender and the injured party, but at the same time abstracts from the social entanglement of the crime.

The basic role of punishment is to communicate condemnation or recognition of guilt of a person considered a moral subject (Hirsch, 2006, p. 48). Punishment, according to R.A. Duff's communicative theory of punishment, is not only a physical ailment or reprimand, but also a means of communication that does not communicate punishment alone (Duff, 2006, pp. 34-35).

Criminal punishment, "through its features of moral condemnation, symbolizes social disapproval of criminal behavior and in this way helps to confirm, strengthen and stabilize among citizens such moral norms that limit such behavior" (Hirsch, 2006, p. 56). Opposed to it is the utilitarian idea of punishment, present in EAP and originating from J. Bentham, according to which the prevention of crime is the only basis for criminal punishment. According to its supporters, the purpose of criminal

punishment is to deter potential criminals from committing crimes (Hirsch, 2006, p. 54). The presented difference in the understanding of criminal punishment has its practical consequences. For example, replacing a given fine with a tax would not make a big difference for representatives of the economic analysis of law, whereas according to the assumptions of the traditional theory of criminal law, a fine expresses condemnation of the criminal, while a tax does not (Hirsch, 2006, p. 58).

### **3.2 Instrumental (Calculating) Rationality of the Individual**

The concept of a person as a moral subject assumes that a person is capable of conducting ethical considerations concerning the good and bad sides of their actions (Hirsch, 2006, p. 51). A person is a rational being whose reason is responsible for the decisions they make.

According to I. Kant, the source of the moral subjectivity of a human being is precisely their rationality, because only a rational being can be the subject of action, because only such a being is capable of freedom, and this makes it possible to attribute responsibility to them (Chmieliński, 2006, p. 314). A person as a moral subject commits a crime because they are fallible – they have the ability to recognize what is good and what is bad, but they make mistakes and are tempted to do evil (cf., Hirsch, 2006, p. 65).

In contrast to the above concept of a rational person, according to G.S. Becker, individual rationality consists in the "consistent maximization of a well-ordered function, such as a utility or profit function" (Becker, 1976, p. 153). Consequently, in his opinion, "a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other recourses at other activities" (Becker, 1976, p. 46). A rational (calculating) criminal calculates "the expected value of the crime, which is equal to the benefits reduced by the amount of punishment, multiplied by the probability of being caught and convicted" (Cooter and Ulen, 2011a, p. 601). Therefore, in terms of the economic theory of criminal law (and the economic analysis of law in general), a person, by making rational choices, maximizes their satisfaction, which is consistent with the concept of homo oeconomicus adopted in mainstream economics (Pawłusiewicz and Brożek, 2002, p. 47).

The two presented approaches to the nature of man in criminal law are in fact two concepts of rationality: the rationality of a person as a moral subject and instrumental (calculating) rationality. The vision of a person maximizing utility reduces him to a "calculating" person, allowing for the application of assumptions and models that simplify reality, which have been developed on the basis of economic theory (cf. Pawłusiewicz and Brożek, 2002, p. 47). In practice, people do not decide to obey the law (or break it) only on the basis of their own cost-benefit calculations, but they also have internal motivations (including morality or

amorality) and a desire (or contempt for) respecting the law (e.g. because of their civic virtues) (cf., Cooter and Ulen, 2011a, p. 613).

The assumption of rational maximization of satisfaction for explaining and predicting criminal behavior may be useful in certain situations (e.g. estimating the costs of a specific anti-drug policy), but it does not adequately reflect reality and may therefore prove unreliable.

Another subject of criticism may be the issue of rational choice during calculation, which practically does not occur when people have to choose between alternatives that are incomparable to them. Thus, not only can certain values not be expressed in numbers, they also cannot be compared with other values (Pawłusiewicz, 2007, p. 329).

#### **4. The Main Economic Arguments and Reasoning Behind the Demand for Drug Legalization**

The economic arguments for drug legalization are an example of utilitarian thinking within the economic approach to criminal law. Drug legalization is the opposite of drug prohibition, therefore its essence can be defined as the lack of a “set of policies which establish criminal penalties for both the production (manufacture and distribution) and consumption (possession and personal use) of drugs” (Yablon, 2011, p. 3).

##### **4.1 Arguments of High Costs and Ineffectiveness of Prohibition Policies**

The basic economic argument against drug prohibition is its high costs. In the mid-1990s, over \$15 billion was spent annually at all levels of government in the US on the “war on drugs”, which was launched in 1971 by President R. Nixon (Cooter and Ulen, 2011a, p. 670). In the following years, spending for this purpose increased significantly, reaching \$41 billion per year (Cooter and Ulen, 2011b, pp. 520-521). It was also calculated that the United States of America allocated as much as \$200 billion per year to combat drugs and the harm caused by crimes related to them (Küçükuysal, 2011, p. 222).

It seems that high budget expenditures within the framework of the anti-drug policy, or other possible shortcomings of the current anti-drug policy, do not constitute a strong argument for legalizing drugs.

Firstly, they speak at most for changes, for example, in the size and structure of expenditures – how much to spend on controlling the supply of drugs in the producer country, how much to spend on stopping smugglers, and how much to spend on law enforcement on one's own territory (Caulkins, Reuter, Iguchi and Chiesa, 2005, p. 18). It is in the context of shaping drug policy from the economic perspective that the use of EAP is justified.

Secondly, the above objection to prohibition policy is based on the tacit assumption that after legalization there would be no costs associated with it or that the benefits would exceed the costs. Meanwhile, the American government agency for combating drugs, the DEA (Drug Enforcement Administration), established in 1973, estimated that the social cost of legalizing drugs, due to the drop in productivity and the increase in accidents at work alone, would amount to between \$140 and \$210 billion (McCollum, 2000, p. 26). However, in practice, cost-benefit analysis encounters difficulties related to comparing the measurable and unmeasurable effects of legalization.

Along with the argument about the high costs of combating drugs, the conviction about the ineffectiveness of this fight is put forward. Firstly, a restrictive policy of high penalties, according to G.S. Becker, K.M. Murphy and M. Grossman (2004, pp. 9 and 22) led to higher drug prices, which translated into higher income for those producers and dealers (the drug market was valued at several hundred billion dollars) who managed to avoid punishment.

Such increasing profits led to the intensification of drug wars, the social cost of which was very high due to the funds spent on their suppression, corruption of officials and the costs of prisons. As a result, the costs of the war on drugs exceeded the benefits, which is why the principle of economic efficiency was not maintained: "drugs ought to be prohibited if, and to the extent that, the benefits of prohibition outweigh its costs" (Kleiman and Saiger, 1990, p. 532). Although, according to Becker (2001, p. 32), legalization is not a panacea for all the problems caused by drugs, it would at least eliminate most of the revenues and corruption associated with the drug trade.

It is hard not to raise reservations about the above comparison of costs and benefits in support of the postulate of legalizing drugs, since it does not take into account potential new expenses resulting from the effects of this legalization. In this case, the cost-benefit analysis encounters significant methodological barriers, e.g. how to estimate the damage to social health, as well as moral damage, which I discuss below. Thus, one could just as well claim that the costs of increasing drug use after their legalization due to the reduction in their price could exceed the savings from abandoning the "war on drugs", because there would be an increase in the number of addicts, homeless people, as well as an increase in the number of crimes and the level of aggression in society (cf. Thornton, 2004; Drug Enforcement Administration (DEA), 2010).

Secondly, supporters of legalization emphasize that high drug prices lead to an increase in crime among drug users (Becker and Becker, 1997). However, according to the DEA (2010, pp. 13-14), six times more murders are committed by people under the influence of drugs than by those looking for money for drugs. And legalization inevitably leads to an increase in the availability of these drugs.

Moreover, the statement of the former head of the DEA (the so-called "drug czar") W. Bennett seems to be true: "even if drugs were legal, people would still steal and prostitute themselves to pay for addictive drugs" (McCaffrey, 2000, p. 117). In turn, the "Nobel Prize winner in economics" M. Friedman (1989) stated, that the crystal form of cocaine (crack), which caused great social harm, would never have been invented if not for the high drug prices (as a result of prohibition). But would a new technology for producing cocaine not eventually have been developed to enable the production of larger quantities of the drug at a lower price, due to the higher demand reported on the free (legalized) drug market?

#### **4.2 Two Scenarios of the Consequences of Legalizing Drugs**

According to the vast majority of participants in the debate on drug legalization, the end of prohibition would result in a decrease in drug prices. Prices could be lower by as much as 90% (Becker and Becker, 1997), although the size of the decrease would be reduced by taxing producers with the so-called "sin tax" (Becker, 2001, p. 32).

The costs of drug use are twofold: personal (e.g., health) and external (e.g., the impact of their use on loved ones, friends, local community). The latter can be taxed to compensate those who have been negatively affected by drug use (Fordham, Jones, Sumnall, McVeigh, and Bellis, 2007, p. 6; Bretteville-Jensen, 2006, p. 556). Another explanation for introducing such taxation is that it leads to equalizing the difference between the previously higher "private value" (intrinsic) and lower "social value" (extrinsic) of drug use (Becker, Murphy, and Grossman, 2004, p. 30).

It has been estimated that tax revenues from this would amount to almost \$47 billion per year (Cooter and Ulen, 2011b, pp. 520-521), exceeding spending on the fight against drugs. As a result, according to the supporters of this concept, such taxation of a legally produced good may lead to a greater reduction in consumption due to the increase in price than would occur with optimal prosecution of drug offences, even if we take into account the fact that some producers could go to the informal economy to avoid taxation (Becker, Murphy and Grossman, 2004, pp. 22-23).

Advertising campaigns, e.g., under the slogan "just say no", which would be financed from tax revenues from drugs (Becker, Murphy and Grossman, 2004, p. 27), would also have an impact on reducing the demand for drugs. Moreover, such a tax would finance the treatment of addicts and education of young people (Becker, 2001, p. 32). Allowing companies to legally produce and distribute drugs would also reduce violence in the drug industry, and competition between them would weaken the monopoly position currently held by drug dealers, who also derive higher profits from it (Becker and Becker, 1997). The legalization-taxation-tax financing scheme would be supplemented by certain regulations, e.g. regarding quality and safety control of drugs, and a repressive system of penalties for those selling to minors, as well as for those under the influence of drugs at work or while driving (Becker, 2001, p. 32).

The above vision of the state after drug legalization, based on economic arguments, seems very simplistic even at first glance, especially when it comes to the consequences of widespread drug use. It is also hard to resist the impression of hypocrisy: on the one hand, the restriction of the supply of drugs would be stopped and their universal availability would be made possible, and on the other hand, the money thus earned through taxation would pay for the increased personal costs and social costs of drug use due to higher consumption (a consequence of greater availability).

More financial resources than before would be allocated to the treatment of addicted youth, because this social group would also be affected by the widespread and easier access to drugs, the reason for which is given below. In addition, the above regulations and the need to enforce them, with the growing number of drug users, would create new costs in the administrative and judicial systems. It also does not seem justified to assume that most of today's criminals would legalize their activities and pay taxes. Another scenario after drug legalization could also take place. Under the influence of restrictions on the quality and composition of drugs (due to the recommendations of medical organizations), a black market for stronger and more addictive drugs would be created. This market would continue to grow as science progresses and new harmful consequences of drug use are discovered, and as a result, more drugs are prohibited.

In this situation, the costs of prohibition would increase. Some of the social effects of legalizing the most harmful, but initially legal drugs, would be irreversible even for several generations. High prices on the black market and tax evasion would make a rational (calculating) entrepreneur (criminal during prohibition) decide to move to the informal economy, because it would be more profitable for him, especially for reduced law enforcement apparatus in the country of legal drugs.

Such a scenario of events after legalization of drugs is not less probable than the previously presented optimistic variant, since the argument was based on the same economic categories: demand, supply and price. Especially since there are strong premises for the development of the situation according to the pessimistic scenario, due to the demand side, which is key from the point of view of the effects of legalization. Namely, the wide availability of drugs would normalize their use, which is tantamount to the erosion of deterrence from their use and the perception of drugs, also by young people, as harmless, safe and socially accepted (Küçükuysal, 2011, p. 222; McCaffrey, 2000, p. 112; Walters and O'Gara, 2000, p. 18). Perceiving drugs as harmless would lead to an increase in their use. In such a case, it would be difficult to educate young people about the harmful effects of drugs since drug trafficking has been legalized.

For many reasons (immaturity, desire to impress peers, etc.), drugs are attractive to young people, and the only way to combat their attractiveness seems to be education and deterrent-discouragement campaigns, which, however, must be consistent with

the applicable anti-drug law (cf. Walters and O’Gara, 2000, pp. 18-19). As a result, the “drug culture” created under the influence of legalization could lead to social decay (Marshall, 2000, p. 21), because according to the previously quoted W. Bennett: “drug use degrades human character” and their users “make inattentive parents, bad neighbors, poor students, and unreliable employees” (Kleiman and Saiger, p. 536). This process would be difficult to stop without incurring high prohibition costs, including those limiting civil liberties, which would be a paradox in a country of legal drugs (Marshall, 2000, p. 21).

The concept of drug legalization based on economic calculation can also be criticized for the uncertainty of forecast results due to the underestimation of the cost of legalization. Even without taking into account the intangible or difficult to measure costs, DEA (2010, p. 4) calculated that the costs of treating addicts alone would significantly exceed the revenues from legal drugs – they would amount to over \$180 billion.

When using an economic approach in this matter, one should also be aware that drugs are a specific "good" that escapes some assumptions of neoclassical economic theory, e.g. there is a lack of full information about them, a possible lack of striving to maximize utility, or a lack of uniformity of buyers in terms of their propensity to use drugs. In particular, a utilitarian analysis, assuming the existence of a rational consumer maximizing their utility, does not always apply to an addicted person, because their drug consumption may exceed the point after which the personal costs will certainly exceed the personal benefits of taking drugs – an overdose may occur, which the person may not have wanted (c.f., Fordham *et al.*, 2007, p. 6).

## 5. Conclusion

This work has revealed, on theoretical and practical grounds, one of the directions of the advancing imperialism of economics, which is the economic analysis of law. According to Hardt (2015b, p. 91), the imperialism of economics "may lead to an increasingly stronger economization of (various) areas of human activity", which is why "it is worthwhile for economists themselves to set limits to marketization understood in this way". As if in response to this suggestion, as an economist, I referred the purpose of this article to this very point, within which it was possible to identify three types of limits of economic imperialism in criminal law.

Utilitarian thought has been present in legislation since the times of J. Bentham, but it was not the dominant trend. The economic analysis of law reintroduced utilitarian thought into law using economic theories, methods and ways of reasoning. This primarily poses a threat to non-utilitarian values, which is clearly visible in the example of criminal law and the postulate of legalizing drugs based on economic reasoning. Therefore, according to Mäki (2013, p. 337), the limitations of scientific imperialism also include axiological limitations, due to "concern about important human values failing to be expressed and even being suppressed in consequence of

scientific imperialism". Based on the above considerations, it can be stated that economic imperialism in relation to criminal law undoubtedly has its limits at the axiological level.

The postulate of legalizing drugs supported by economic arguments is not only morally flawed and socially harmful, but is also questionable even on empirical grounds. The presented economic arguments in favour of drug legalisation are often based on weak empirical foundations, which are mainly forecasts of the consequences of legalisation, burdened with a significant risk of committing an error due to the underestimation of the negative consequences of legalization. Thus, the imperialism of economics in relation to criminal law has clear limits at the empirical level.

The weakness of empiricism in the service of the postulate of legalizing drugs is associated with methodological difficulties, including those concerning the basic in neoclassical economics, cost-benefit analysis. The problem is that the social or moral costs of legalization are particularly difficult to measure and quantify, so that they cannot be fully captured by economic methods. It must be remembered that "the limit of the applicability of neoclassical economics is (...) the limits of the world it was designed to explain" (Hardt, 2015a, p. 49). This proves the existence of limits of the imperialism of economics in relation to criminal law at the methodological level.

So, on this basis, should EAP be rejected as a method used in (criminal) law? The view that EAP is 'more scientific' (and therefore better) because it is more formal in comparison to other approaches to law should certainly be rejected. At the same time, one must also be aware of the fact that in the practice of lawmaking, e.g. in relation to anti-drug policy, there is a temptation to attach greater importance to economic arguments as supposedly more empirically embedded. They are easier to evaluate quantitatively *ex ante* and *ex post* and have a strong impact on public opinion.

Especially since society is familiarised with economic thinking in law (and in other non-economic disciplines) through journalism and popular science literature (e.g. Becker and Becker, 1997; Becker and Posner, 2009), including the very popular works from the "kiosk economics of everything" series, which for Mäki (2012) are a manifestation of economic imperialism.

Undoubtedly, the EAP can be helpful in shaping a specific policy to combat drugs, because it draws attention to the economically effective spending of public funds, which is important in public management. Therefore, the mere use of the criterion of economic (utilitarian) efficiency, which is based on the instrumental (calculation) rationality of an individual, is not excluded, because *de facto* methodological reductionism may prove valuable.

However, the condition for its adoption is the awareness that it is not the only and not superior way of describing reality, because otherwise we are dealing with categorical reductionism, which certainly cannot be defended against the accusation of an unacceptable simplification of reality (Beldowski and Metelska-Szaniawska, 2007, pp. 58-59; Pawłusiewicz, 2007, p. 337; Pawłusiewicz and Brożek, 2002, p. 47).

On the basis of the above considerations, EAP may be useful in the practice of creating criminal law, provided that it does not conflict with non-utilitarian values important for society, constituting an alternative method of inquiry within the criminal law system based on retributivism.

### References:

- Backhouse, R., Middleton, R., Tribe, K. 1997. Economics is what economists do, but what do the numbers tell us? Paper for Annual History of Economic Thought Conference, University of Bristol, England.  
[https://seis.bristol.ac.uk/~hirm/Downloadpapers/Backhouse,%20Middleton%20and%20Tribe%20\(1997\)%20Economics%20is%20what%20economists%20do%20con%20ver.pdf](https://seis.bristol.ac.uk/~hirm/Downloadpapers/Backhouse,%20Middleton%20and%20Tribe%20(1997)%20Economics%20is%20what%20economists%20do%20con%20ver.pdf)
- Balcerowicz, L. 1995. Wolność i rozwój: Ekonomia wolnego rynku (Freedom and Development: Free Market Economics). Kraków, Znak.
- Barro, R. 2002. Nothing is Sacred: Economic Ideas for the New Millennium. Cambridge, Mass., London, The MIT Press.
- Becker, G.S. 1976. The Economic Approach to Human Behavior. Chicago and London: The University of Chicago Press.
- Becker G.S. 2001. It's Time to Give up the War on Drugs, Business Week.  
<https://www.bloomberg.com/news/articles/2001-09-16/its-time-to-give-up-the-war-on-drugs>.
- Becker, G.S., Becker, G.N. 1997. The Economics of Life. New York: McGraw Hill.
- Becker, G.S., Posner, R.A. 2009. Uncommon Sense. Economic Insights, from Marriage to Terrorism. Chicago: The University of Chicago Press.
- Becker, G.S., Murphy, K.M., Grossman, M. 2004. The Economic Theory of Illegal Goods: the Case of Drugs. NBER Working Paper, 10976.  
[https://www.nber.org/system/files/working\\_papers/w10976/w10976.pdf](https://www.nber.org/system/files/working_papers/w10976/w10976.pdf).
- Beldowski, J., Metelska-Szaniawska, K. 2007. Law & Economics – the origins and characteristics of the economic analysis of law). Bank i Kredyt, 10, 51-69.
- Bentham, J. 1789. An Introduction to the Principles of Morals and Legislation. London.
- Boehlke, J. 2005. Charakterystyka nurtu prawo i ekonomia we współczesnej myśli ekonomicznej (Characteristics of the Law and Economics Current in Contemporary Economic Thought). In: B. Polszakiewicz, J. Boehlke (red.), Ład instytucjonalny w gospodarce (Institutional Order in the Economy) (43-56). Toruń: Uniwersytet Mikołaja Kopernika.
- Boruszewski, J., Hardt, Ł., Mróz, R., Nowak-Posadzy, K. 2020. Kulturowy wymiar modelowania ekonomicznego: Perspektywa humanistyczna (Cultural Dimensions of Economic Modeling: A Humanist Perspective). Warszawa, Scholar.
- Bretteville-Jensen, A.L. 2006. To Legalize or Not To Legalize? Economic Approaches to the Decriminalization of Drugs. Substance Use and Misuse, 41(4), 555-565.

- Caulkins, J.P., Reuter, P., Iguchi, M.Y., Chiesa, J. 2005. How Goes the "War on Drugs"? An Assessment of U.S. Drug Problems and Policy. RAND Corporation Occasional Paper.  
[https://www.rand.org/content/dam/rand/pubs/occasional\\_papers/2005/RAND\\_OP121.pdf](https://www.rand.org/content/dam/rand/pubs/occasional_papers/2005/RAND_OP121.pdf).
- Chmieliński, M. 2006. Kanta filozofia kary (Kant's philosophy of punishment). *Ius et Lex*, 1, 309-322.
- Cooter, R., Ulen, T. 2011a. *Ekonomiczna analiza prawa* (wyd. 2) (Economic Analysis of Law (2nd ed.)). Warszawa: C.H. Beck.
- Cooter, R., Ulen, T. 2011b. *Law & Economics* (6th ed.). USA: Pearson Education.
- Drug Enforcement Administration. 2010. Speaking Out Against Drug Legalization.  
[http://www.justice.gov/dea/demand/speak\\_out\\_101210.pdf](http://www.justice.gov/dea/demand/speak_out_101210.pdf).
- Duff, R.A. 2006. Karanie obywateli (Punishing citizens). *Ius et Lex*, 1, 19-43.
- Fordham, R., Jones, L., Sumnall, H., McVeigh, J., Bellis, M. 2007. The economics of preventing drug use: An introduction to the issues.  
<http://www.cph.org.uk/showPublication.aspx?pubid=287>.
- Friedman, M. 1989. An Open Letter to Bill Bennett. *The Wall Street Journal*.  
<https://web.uncg.edu/dcl/courses/viceCrime/m6/Milton%20Friedman%20-%20An%20Open%20Letter%20To%20Bill%20Bennett.htm>.
- Hardt, Ł. 2015a. O granicach ekonomii (On the Limits of Economics). In: Ł. Hardt, D. Milczarek-Jędrzejewska (red.), *Ekonomia jest piękna? Księga dedykowana Profesorowi Jerzemu Wilkinowi* (Is Economics Beautiful? A Book Dedicated to Professor Jerzy Wilkin) (45-57), Warszawa, Scholar.
- Hardt, Ł. 2015b. Pokora i ekonomia (Humility and economics). In: T. Dołęgowski (red.), *Przewodnik po moralnym kapitalizmie* (A guide to moral capitalism) (71-95). Warszawa: Centrum Myśli Jana Pawła II.
- Hirsch, A. Von. 2006. Uzasadnienie istnienia i wymiaru kary we współczesnym retributywizmie (Justification for the existence and severity of punishment in contemporary retributivism). *Ius et Lex*, 1, 45-83.
- Kleiman, M.A.R., Saiger, A.J. 1990. Drug Legalization: The Importance of Asking the Right Question. *Hofstra Law Review*, Vol. 18, No. 3, Spring.
- Kochanowski, J. 2007. *Ekonomiczne podejście do przestępczości* (Economic approach to crime). *Ius et Lex*, 1, 9-13.
- Królikowski, M. 2006. Sprawiedliwość retributywna wobec sprawiedliwości naprawczej (Retributive justice versus restorative justice). *Ius et Lex*, 1, 107-129.
- Küçükuysal, B. 2011. Drug Legalization Debate. *Journal of Social Sciences*, 24, 215-224.
- Lazear, E. 2000. Economic Imperialism. *The Quarterly Journal of Economics*, 115(1), 99-146. doi:10.1162/003355300554791.
- Lyons, D. 2002. Osąd moralny a teoria prawa (Moral judgment and legal theory). *Ius et Lex*, 1, 63-64.
- Marshall, D. 2000. Drug Prohibition Is Effective. In: S. Barbour (ed.), *Drug Legalization*, San Diego: Greenhaven Press.  
<https://www.yumpu.com/en/document/read/3240300/drug-legalization>.
- Mäki, U. 2012. On the philosophy of the new kiosk economics of everything. *Journal of Economic Methodology*, 19(3), 219-230. doi: 10.1080/1350178X.2012.714146.
- Mäki, U. 2013. Scientific Imperialism: Difficulties in Definition, Identification, and Assessment. *International Studies in the Philosophy of Science*, 27(3), 325-339. doi: 10.1080/02698595.2013.825496.

- McCaffrey, B.R. 2000. Drugs Should Not Be Legalized. In: S. Barbour (ed.), *Drug Legalization* (s. 109-118), San Diego: Greenhaven Press.  
<https://www.yumpu.com/en/document/read/3240300/drug-legalization>.
- McCullum, B. 2000. The War on Drugs Should Focus on Reducing the Drug Supply. In: S. Barbour (ed.), *Drug Legalization* (s. 25-29). San Diego: Greenhaven Press.  
<https://www.yumpu.com/en/document/read/3240300/drug-legalization>.
- Nobel Prize Outreach. 1992. <https://www.nobelprize.org/prizes/economic-sciences/1992/summary/>.
- Pawłusiewicz, K. 2007. Rachunek zbrodni i kar? Próba spojrzenia na możliwości i ograniczenia teorii ekonomicznej z punktu widzenia polskiego prawa karnego (Calculus of crimes and punishments? An attempt to look at the possibilities and limitations of economic theory from the perspective of Polish criminal law). *Ius et Lex*, 1, 319-339.
- Pawłusiewicz, K., Brożek, B. 2002. Prawo karne w świetle ekonomicznej teorii prawa (Uwagi krytyczne) (Criminal Law in the Light of the Economic Theory of Law (Critical Remarks)). *Państwo i Prawo*, 12, 45-55.
- Posner, R.A. 1973. *Economic Analysis of Law*. Boston, Little Brown.
- Posner, R.A. 1987. The Law and Economics Movement. *American Economic Review*, 77(2), 1-13.
- Robbins, L. 1932. *An Essay on the Nature and Significance of Economic Science*. London, Macmillan.
- Smith, A. 2007. *Badania nad naturą i przyczynami bogactwa narodów t.1 (An inquiry into the nature and causes of the wealth of nations, vol. 1)*. Warszawa, PWN.
- Stankiewicz, W. 2012. *Ekonomika instytucjonalna: Zarys wykładu (wyd. 3) (Institutional Economics: Outline of the Lecture (3rd ed.))*. Warszawa.  
<https://www.scribd.com/document/109511313/Waclaw-Stankiewicz-Ekonomika-Instytucjonalna-III>.
- Stelmach, J., Brożek, B. 2004. *Metody prawnicze: logika, analiza, argumentacja, hermeneutyka (Legal methods: logic, analysis, argumentation, hermeneutics)*. Zakamycze.
- Stigler, G.J. 1984. Economics: The Imperial Science? *The Scandinavian Journal of Economics*, 86(3), 301-313. doi:10.2307/3439864.
- Stroiński, R.T. 2008. Wprowadzenie do ekonomicznej analizy prawa (Law and Economics) (Introduction to the Economic Analysis of Law (Law and Economics)). In: M. Bednarski, J. Wilkin (red.). *Ekonomia dla prawników i nie tylko (Economics for Lawyers and More)* (482-526). Warszawa, LexisNexis.
- Szamota, B. 1992. Teoria ekonomiczna przestępczości (Analiza krytyczna modelu wyboru zachowania przestępnego) (The Economic Theory of Crime (A Critical Analysis of the Criminal Behavior Choice Model)). *Państwo i Prawo*, 1, 37-48.
- Thornton, M. 2004. Prohibition vs Legalization: Do Economists Reach a Conclusion on Drug Policy? *Econ Journal Watch*, 1(1), 82-105.  
[https://econjwatch.org/File+download/33/2004\\_04\\_thornton\\_reach\\_concl.pdf?mimetype=pdf](https://econjwatch.org/File+download/33/2004_04_thornton_reach_concl.pdf?mimetype=pdf).
- Walters, J.P., O'Gara, J.F.X. 2000. Prohibition Is Essential to the War on Drugs. In: S. Barbour (ed.), *Drug Legalization*. San Diego, Greenhaven Press.  
<https://www.yumpu.com/en/document/read/3240300/drug-legalization>.  
[http://wps.aw.com/aw\\_cooterulen\\_lawecon\\_6/178/45815/11728880.cw/index.html](http://wps.aw.com/aw_cooterulen_lawecon_6/178/45815/11728880.cw/index.html).
- Yablon, D.R. 2011. The Effect of Drug Decriminalization in Portugal on Homicide and Drug Mortality Rates. [http://econ.berkeley.edu/sites/default/files/yablon\\_daniel.pdf](http://econ.berkeley.edu/sites/default/files/yablon_daniel.pdf).