

Современные технологии противодействия коррупции

Джанмарко Чифальди, профессор,
Университет им. Д'Аннунцио, Италия,
город Пескара (E-mail: cifaldi@unich.it)

*«Знаю, что никакими средствами,
никакими страхами, никакими
наказаниями нельзя искоренить неправды:
она слишком уже глубоко вкоренилась.
Бесчестное дело брать взятки сделалось
необходимостью и потребностью даже и
для таких людей, которые и не рождены
быть бесчестными».*
Н. В. Гоголь, «Мёртвые души»

ВЛАСТЬ КОРРУПЦИИ

Аннотация. В статье приводится первичный анализ понятия коррупции с точки зрения наиболее актуальных социологических теорий и определения коррупции в итальянском государстве в соответствии с итальянской правовой системой. Разрабатывается концептуальная основа власти коррупции как общемировой социальной патологии, представляющей серьезную угрозу для всех демократических стран. Автор представляет два принципиальных подхода к определению понятия коррупции. Во-первых, даётся определение и историко-хронологический анализ, от греческого права до современного законодательства (коррупция сегодня), во-вторых, подготовлен обзор работы и инструментария наиболее важных неправительственных организаций, сотрудничающих с основными антикоррупционными организациями, освещена роль Италии как государства-члена GRECO (группы Совета Европы по борьбе с коррупцией) и Transparency International. Статья показывает, как фрагментарность социальной структуры и полуперманентный политический кризис обуславливают как новый восходящий тип роста, так и девиантное поведение. С точки зрения автора, коррупция является следствием социальной напряженности, а также определяющим фактором стабильности рассматриваемой структуры власти. В итоге, данная статья представляет собой выверенный комплексный обзор аналитического инструментария для осмысления коррупции, в особенности, применяющегося в Италии.

Ключевые слова: коррупция, ГРЕКО, аномия, Трансперенси Интернешнл.

Modern technologies countermeasures to corruption

Ph.D. Prof. Dr. Gianmarco Cifaldi

Department of Legal & Social Sciences
University "G. d'Annunzio", Chieti-Pescara
Campus of Chieti, Via dei Vestini, 31
66100 Chieti, Italy (E-mail: cifaldi@unich.it)

THE POWER OF CORRUPTION

«I know that there are no means, no menace,
no punishment to eradicate evil.
It has deepened its roots too profoundly.
The necessity to accept the bribe
Has become a necessity, even to those people
Who are not used to being corrupted»
N. Gogol, Dead Souls

Abstract. This paper provides the first analysis of the notion of corruption according to the most relevant sociological theories and a definition of corruption in the Italian State according to the Italian legal system. It also develops a conceptual framework of the power of corruption as a worldwide social pathology representing a grave risk for all Democratic countries. The author presents two guidelines to approach the notion of corruption. First, a definition and a diachronic analysis from Greek legislation to modern legislation (corruption today) and then a synchronic overview on the most important NGO dealing with the main anti-corruption organizations and instruments and the role of Italy as a member State: GRECO (Council of Europe anti-corruption Group) and Transparency International. This article shows how a fragmentary social structure and a semi permanent political crisis gives way to both a new bottom – up type of growth and on the other hand to deviant behaviours. To the author's knowledge, corruption is a consequence of social tensions as well as a determining factor of stability of a given structure of power and the outcome of the article is a perfect and synthetic overview on the measuring instruments for the perception of corruption especially in Italy.
Keywords: Corruption; GRECO; Anomie; Transparency International

A brief historical background.

Corruption is a widely known crime, since ancient times. It is commonly regarded as one of the most serious offences against public administration, and it has been condemned and prosecuted through time in different ways.

The term “corruption”, according to the Italian Digesto, comes from the Latin verb *corrumpo*, meaning to damage, to rot, to undo and, figuratively speaking, to deprave.

The Digesto also says that the fundamental concept of corruption stemmed from Greek legislation.

The corruption of a public officer in the detriment of a private citizen was punished by death penalty, pecuniary payment or by “civic degradation”. Of course the latter was administered according to the gravity of the case.

A fragment of the XII Tables proves that the very ancient roman law prosecuted the corruption of a judge by “extreme torture”.

Roman law, originally, considered the acceptance of gifts or payments by public officers as improper behavior, not a crime.

Afterwards, with the spread of roman territories, population and administration, legislative measures were issued, in order to prosecute public officers taking possession of goods they were not supposed to own. Such measures consisted in giving back the sum embezzled.

At a later stage the *crimen pecuniarum reputandarum* was defined as abuse of power, employed by public officers to obtain illegitimate goods, and a permanent court able to judge such violations was established, as attested during Cicero’s times.

Barbarian peoples’ legal systems rarely refer to this type of violation, mainly because of the nomadic asset of their society, which was definitely not a State and therefore lacked the normative rules for public power.

The ecclesiastic law, according to the Digesto, offers a wide number of dispositions against corruption.

In what is commonly known as intermediate law, the corruption of a judge is called “barratry” and it defines the theory of *crimen corruptelae*.

Modern legislations such as the Napoleonic Code (1810), in those sections regarding passive corruption, established prison and pecuniary sentences for the public officer who accepted or embezzled money to carry out his duties.

Tuscan (1853) and Sardinian (1859) Codes, according to Murri’s study, established an organic system quite similar to that in force.

The Rocco Code, following the Zanardelli Code, maintained a continuity with its predecessor, conforming to the key concept of

Italian law. The only difference between the two was in the penalties for the corruptor and for the attempt at corrupting.

Corruption today.

GRECO: Council of Europe anti-Corruption Group
(www.coe.int/GRECO)

GRECO was founded in 1999 by the Council of Europe anti-corruption Group in order to try and supervise the State Members' respect of the anti-corruption norms elaborated by the organization.

As of today, the Group consists of 49 State Members (47 from the EuC, Belarus and the U.S.).

GRECO's main purpose is that of improving the ability of its members in fighting corruption by means of a dynamic process of reciprocal evaluation and peer pressure. The Group helps in identifying gaps in national policies against corruption, and it encourages the States to adopt the appropriate legislative and institutional reforms. GRECO is, moreover, a forum where to share good policies as far as prevention and inspection of corruption are concerned (rpcoe.esteri.it).

GRECO's evaluation system, as stated in the Organization's official website, is based on the gathering of information by means of questionnaires, while specialists pay visit to the Countries involved in order to gather information directly from the main national characters.

The Organization attempts at improving the abilities of the State Members against corruption, so to meet the anti-corruption standards required and established by the European Council.

They are summarized as follows:

The Penal Convention on Corruption, in force since July 1st, 2002

The Protocol on the Convention on Corruption, in force since February 1st, 2005.

The Civil Convention on Corruption, in force since November 1st, 2003.

GRECO and the Italian State.

Italy took part in GRECO on June 30th, 2007, and it has been since evaluated twice, ending up with 22 recommendations. (2000-2) (2003-6).

«Having adhered after the second cycle of general monitoring, our Nation was subject to an adjunct evaluation procedure regarding certain arguments discussed in the previous years: independence,

specialization and the means national organisms can employ in order to prevent and fight corruption, extension of immunities, incomes from corruption, public administration and corruption, legal persons and corruption.

GRECO has been promoting a series of recommendations through time: July 2nd, 2009, January 31st, 2011 and on May 27th, 2011, the first conformity report on Italy (Greco RC-I/II (2011) 1E).

Italy is at the moment summoned to give clarifications on 13 recommendations only half fulfilled. With reference to the third cycle of monitoring, the evaluation report on Italy was adopted on March 23rd, 2012 and it contains 16 recommendations which the authorities will have to implement within 2014, especially with reference to state funding of political parties. On June 13, 2013 the Group of States against Corruption published their annual report, encouraging its members to enhance the prevention of corruption of MPs, judges, etc.

Transparency International

Transparency International is a no profit NGO aiming at fighting any form of corruption by means of specific indicators and research parameters which may help to understand and analyze the processes of corruption manifesting themselves in politics, economy and business, and society.

The outcome of such researches are publicly available on the official website, along with the so called MEASURING INSTRUMENTS FOR THE PERCEPTION OF CORRUPTION.

They are three, listed as follows: CPI, BPI, B.

Corruption Perception Index (CPI) – It determines how corruption is perceived in the public sector and in politics in various Countries, according to which each Nation has a score that ranges from 0 (maximum) to 10 (absence of corruption). It is a composite index, calculated on the basis of research and interviews administered to business experts and prestigious institutions. Its methodology varies each year in order to depict local realms as faithfully as possible.

Research is conducted by Universities or Research Institutions on behalf of T. I.

Bribe Payers Index (BPI) – It highlights the ranking of bribe payers among the major industrialized nations in which the use of bribing in order to obtain commissions has not yet been eradicated,

even though bribing officials is considered a crime by these countries' legal systems.

TI's survey on Bribe Payers is the largest and most complete public-opinion poll on the perception of the causes of corruption ever made. This survey integrates the first BPI (1999). Results today offer detailed answers on the export businesses' inclination to corrupt the most corrupted sectors; on big companies managers' level of awareness on the extraterritoriality of the OECD Convention against corruption, which has made illegal to bribe foreign public officers; on how these companies are implementing their conformity to the Convention; on the perception of irregular commercial operations; on bribing in order to seal contracts.

BPI has been applied to the emerging countries which are highly involved in foreign investments.

Interviews were administered to senior managers of national and multinational companies, as well as to financial managers and directors, Chambers of Commerce, national and foreign commercial banks and legal and marketing offices. The questions of the survey are intended to portray the impressions gathered by multinational companies belonging to Bribe Payers.

The results depict the opinions of experts in international commerce, who are in the best position to evaluate the extent of corruption and bribing to public officers in emerging countries.

Corruption Perception Barometer. It was created in 2003 by Transparency International in collaboration with Gallup International. It is a survey administered to citizens, investigating their perception of the spread of corruption in various areas (politics, judiciary, private sector, public Institutions, information, etc.). (Website: www.transparency.it)

The notion of corruption.

Corruption is not an easy concept to define. Any definition would be incomplete, given the heterogeneity of the elements distinguishing it. For this reasons, the legislator has to present a large number of bills.

We are quite used to hearing definitions such as moral corruption, political corruption, mafia, economic or social corruption. But it must be considered that the phenomenon can vary considerably from State

to State, given the different spatial and temporal dynamics, and the variation of juridical and social assets.

According to F. Cazzola, three denotative criteria must be taken as permanent features in order to delineate a more precise explanation: legality, public interest (common good), public opinion.

Of course corruption is everywhere the violation of legally defended ethical norms (Y. Meny, 1995, p. 9).

Corruption has always existed as a fact. It has changed through time, adapting itself to the historical, political and social realms which allowed its diffusion.

At present, episodes of corruption have increased considerably during the last twenty years, in free Countries as well as in dictatorially driven Countries.

The power of corruption as a worldwide social pathology is a grave risk for all democratic Countries, since it is in contrast with democracy itself.

The end of the Cold War in 1989 was a crucial moment for the development and stabilization of democracies, even though corruption as power has not ceased to undermine our democracies' stability.

American functionalism has pointed out the advantages of a certain amount of corruption in socialist and undeveloped countries: corruption was the necessary key for certain stiff and rusty engines to get started again (D. Della Porta, Y. Meny, 1995, p. 2).

R. K. Merton, following the sociological and anthropological turn of structural functionalism, came to theorize that the corruption of the political apparatus would help to implement certain functions unattended by official structures, thus coming to the conclusion that corruption could not be restrained, for this would imply devastating consequences on the system's stability. Corruption as a means to compensate for the functional flaws of official structures (F. Cazzola, 1992, p. 482).

Corruption is paradoxically meant to be a useful instrument to integrate in a given social and political system those groups which, if left out, would undermine the integrity and stability of the system itself.

According to the theories exposed so far, corruption would seem a consequence of social tensions (ethnic, economic), as well as a

determining factor able to ensure the stability of a given structure of power.

Integrationist theorists such as Merton have maintained that corruption allowed the humanization of public interventions, making up for the functional flaws of the official apparatus in an impersonal and objectifying contemporary society (Cazzola, 1992, p. 484).

Corruption is, according to these theories, perfectly able to foster the integration of certain groups in a given social and political system. Otherwise the system's integrity would be jeopardized by these groups' behavior.

The economists' approach to corruption is somehow similar to Merton's theorization. Corruption is regarded as a favourable phenomenon for economic investments since it would halve consumption –the entrepreneur would find these occult, illegal practice the best way to develop his business (Cazzola, 1988, 18-19).

V. Pareto, as commented by G. Sapelli, gives a different explanation:

We have now, on a different scale, a new feudality, partly reproducing the substance of the old one. In those times, gentlemen would gather their horses to go to war and, in case of victory, they would get the war chest. Nowadays politicians, unionists do the same: they gather their troops for the elections, to fight their enemy and obtain the profits of the winner (Sabelli, 1994, p. 59).

Pareto's passage is a crucial one, for it clearly depicts the factual historical and general form of corruption, especially in contemporary society's political systems.

Pareto gives no alternative: the social apparatus of uniformity puts on display the impossibility of finding any behavior which would not be founded on fraud and deception, in politics as in the market. [...] The peoples' ethical conscience is the only thing that would "save us" (G. Sapelli, 1994, p. 60).

This is a consequence of conceiving power as a praxis, the ruling class using two fundamental instruments for its self preservation: force and art, the capacity of politicians held "by the romans and by our contemporaries" (G. Sapelli, 1994, p. 61).

Pareto's position are thus illuminating, in their punctual explanation of what corruption is. He speaks of "demagogic

plutocracy”, a new way of administering power which uses money and decorations as its principal instruments.

Weber’s theory is just as illuminating as Pareto’s: political and economical corruption is the consequence of the tendency to guarantee the acquisition of goods by groups or individuals, thus establishing a “political capitalism” which is nothing but the reproduction, in modern times, of the medieval class power (Sapelli, 1994, p. 56).

Corruption and the Italian State.

Recent laws pursuing the goal of fighting and preventing illegal activities in public administration by enhancing supervisory bodies are two: a law passed on November 6th, 2012, n.190 implementing the UN convention against corruption dated October 31st, 2003, and Strasburg’s penal convention on corruption dated January 17th, 1999.

Law n. 190 modified the Italian penal code as follows: 1) it increases the penal terms for the crime of corruption; 2) it separates the crime of duress bribery by introducing embezzlement in giving or promising utilities instead of duress bribery; 3) it introduces the crime of illicit influences and corruption among privates; 4) it introduces extra punishments and confiscation of goods for active subjects in bribery and corruption.

The Italian legal system orders the crime of corruption according to sections going from 318 and 322 of the Penal Code.

The aforementioned sections contain a complex and articulated discipline, conjured up to fight, as Vassalli wrote, one of the gravest phenomena «of disgregation of the State and of the social order».

These very sections enlist a number of hypotheses for corruption, as follows:

N. 318 p. c.: corruption for the performance of duties.

More specifically, n. 318 quotes: the public officer who, to perform his duties or power illegally receives, for himself or a third party, money or other goods or accepts a promise, is punished by a prison term ranging from one to five years:

N. 319 p. c.: corruption for an act contrary to official duties

N. 319 bis p. c.: aggravating circumstances

N. 319 ter p.c.: Corruption in judiciary acts

N. 319 quarter p.c.: embezzlement in giving or promising utilities

N. 320 p.c.: Corruption of a public officer

N. 321 p.c.: punishment for the corruptor

N. 322 p.c.: instigation to corruption

N. 322 bis p.c.: embezzlement, concussion, corruption and instigation to corruption of members of the EU and Foreign States and its functionaries.

Corruption, according to the Italian legal system is therefore a necessary collusion type of offence, consisting in a criminal arrangement, *factum sceleris*, with commodity of the functional activity of public administration as its main object (G. Fiandaca et al., 2002, p. 219).

The Code distinguishes between proper and improper corruption.

Proper corruption happens when the commodity concerns an act which is contrary to official duties, while improper corruption occurs when the commodity has for its object an act which is in conformity with official duties.

Corruption is also antecedent or subsequent.

Antecedent corruption happens when the retribution is established before the act and with the purpose to perform it (Fiandaca, 2002, 220).

On the other hand, subsequent corruption regards an act that already took place (Fiandaca, 2002, 220).

According to the authors, Fiandaca and Musco, the legislator considers proper corruption as a more serious offence, since the commodity has for its object an act which is contrary to official duties.

On the other hand, improper corruption expresses an attenuated non-value (Mirri, 2008, p. 3).

This quite fragmentary, variously interpretable discipline on corruption has in fact mislead interpreters, who have through time tried to solve problems and misunderstandings, quite often operating controversial distinctions.

Part of the juridical theory maintains that corruption should be divided into two different crimes: active and passive corruption.

Other theorists holds that the two subjective positions should be unified in a multi-subject offence. On a structural plan, corruption is a figure requiring, to be enacted, two or more people (Mirri, 2008, p. 3).

Leaving these different theoretical approaches aside, the most relevant distinction is that between proper and improper corruption.

The “public officer” is the active subject of proper corruption. Moreover, according to sec. 320 -1, active subjects are also “any person in charge of public service” and according to sec. 321, “the private person” (estraneus).

If one considers the definition of “public officer” given by the Penal Code, corruption involves all public officers, from low rank employee to managers (Caferra, 1992, 36).

Potential active subjects are those who were elected on a public duty, therefore a significant part of MPs.

Steering away from penal theory, the range potential active subjects widens notably, including those who hold power in a given society.

Of course parts can be exchanged on various levels, when corruption is acted. The essence of corruption as the act of receiving or accepting the promise, for oneself or for a third party, of money or any other utility, remains unaltered.

The position of the subject in the dynamic of the corruptive act can vary.

Criminal conduct is enacted when the intraneus receives or accepts the promise, and the extraneus promises money or any other utility.

The notion of utility is a broad one, and it has been broadly interpreted.

Corruption demands at least two actors. According to the political economy approach, as Rose Ackerman stated, single episodes of corruption are the result of the meeting of two individuals who, on the basis of a cost-benefit ratio, decide it more convenient for them to pay and receive a bribe (Della Porta et al., 1994, p. 17).

He who is corrupted must necessarily be the agent of another individual (or of an organization), since the main goal of bribing is to give precedence to individual needs in detriment of those of the organization he works for. In order to be suitable for a corruptive act, he who is corrupted must necessarily hold a position of power (Della Porta et al., 1994, p. 17).

Conclusion

Italian society during the eighties can be defined as extremely dynamic as well as anomic, unable to fix common behavior rules apt

to regulate the action of its individuals and groups (Magatti, 1996, p. 24).

Anomy is a sociological concept created by Durkheim to explain social complexity. Social structure is more fragmentary in respect to its past, and individualism is all-pervading.

The disequilibrium between social question and the ability of the system to get back to it leads to a phase of “rebellion”, the followed by one of “innovation” (Magatti, 1996, pp. 195-196).

“Rebellion” in Italy can be traced back to the seventies, the so called “years of lead” and terrorism, Merton defines rebellion as a form of adaptation which encourages men to abandon their social structure, while forcing them to re-enter in a new type of society. This new structure will imply alienation from the goals established beforehand.

Innovation is the “attempt to force and search for alternatives that go beyond the existing institutional order. [...] Innovation is, on the other hand, akin to, and often encompasses, deviant behavior” (Magatti, 1996, 196).

A fragmentary social structure and a semi-permanent political crisis gives way to two types of reaction. On the one hand a new bottom-up type of growth is looked for, on the other deviant behavior are fuelled, and they find in corruption and influence peddling its main reference background (Magatti, 1996, 196-7).

References

Della Porta, D., (1992). *Lo scambio occulto*. Bologna: Società Editrice Il Mulino

Sapelli, G., (1994). *Cleptocrazia. Il meccanismo unico della corruzione tra economia e politica*. Milano: Idee/Feltrinelli.

Della Porta, D., & Mény, I., (1995). *Corruzione e democrazia. Sette paesi a confronto*. Napoli: Liguori Editore.

Cazzola, F., (1988). *Della corruzione. Fisiologia e patologia di un sistema politico*. Bologna: Società Editrice Il Mulino.

Della Porta, D., & Vannucci, A., (1994). *Corruzione politica e amministrazione pubblica. Risorse, meccanismi, attori*. Bologna: Società Editrice Il Mulino.

Della Chiesa, N., (2010). *La convergenza. Mafia e politica nella seconda Repubblica*. Milano: Melambo Editore.

Magatti, M., (1996). *Corruzione politica e società italiana*. Bologna: Società Editrice Il Mulino.

Turone, S., (1992). *Politica ladra. Storia della corruzione in Italia. 1861-1992.* Bari: G. Laterza & Figli.

Caferra, V., M., (1992). *Il sistema della corruzione. Le ragioni, i soggetti, i luoghi.* Roma-Bari: G. Laterza & Figli.

G. Fiandaca, E. Musco, *Diritto Penale. Parte speciale. Vol I* quinta edizione. Zanichelli Editore Bologna 2012. P. 219 (da 218 a 244).

Article or chapter in an edited book (print)

Marini, L., (1997). *La corruzione politica.* In (a cura di Violante., L.,) *Storia d'Italia. Annali 12. La criminalità.* (pp. 321-370). Torino: Giulio Einaudi Editore.

Cazzola, F., (1992). *Corruzione.* In (no autori) *Enciclopedia delle Scienze Sociali. Vol. II.* (pp. 481-487). Roma: Istituto dell'Enciclopedia Italiana G. Traccani/ Marchesi grafiche editoriali S.p.a.

Mirri, M., B., (1991) *Corruzione.* In (no autori) *Enciclopedia Giuridica. Vol. IX.* (pp.1-12). Roma: Istituto Poligrafico e Zecca Dello Stato.

Nelken, D., (1997). *Il significato di Tangentopoli: la risposta giudiziaria alla corruzione e I suoi limiti.* In *Storia d'Italia. Annali 14. Legge, diritto, giustizia.* (595- 627). Torino: Giulio Einaudi Editore.

Digesto Utet (Quarta edizione) voce *Corruzione*, autore Carlo Federico Grosso, pag. 153-170.

Online reference work

www.trasparency.it

www.trasparency.com

www.funzionepubblica.it

www.coe.int/GRECO

www.funzionepubblica.gov.it

www.rpcoe.esteri.it

www.unipdcentrodirittiumani.it/it/schede/gruppo