Foreword

Gabrio Forti

Several works, drawing on a wide range of experiences and sciences (economics, political science, law, sociology, even psychology), have dealt in the last two decades with the thorny and tangled issue of corruption. Thanks to them we have accustomed our eyes to huge sets of international and national data, together with impressive descriptions of relevant wrongdoings and a bunch of elaborate reform schemes. Thus awareness of the massive harm caused by this crime has been more than adequately diffused among politicians, academics and practitioners. For a long time, even the renowned Transparency International Index appeared annually in most popular newspapers. Some countries’ low rankings on the scale have often been highlighted, thus helping to focus the attention of public opinion on the problem and confronting them with the uneasy perception by other countries of the low reliability of their own to attract investors and entrepreneurs.

Marco Arnone and Leonardo Borlini have aptly chosen as the epigraph for their book a sentence by the great reformer of criminal law in eighteenth century Europe, Cesare Beccaria, namely that “crimes are only to be measured by the injury done to society”. The two authors actually dismiss the main traditional arguments put forward by certain economic theories that corruption serves to grease the wheels of commerce, thus reducing transaction costs and lowering the cost of capital. They extensively and convincingly show that the injury done to society by corruption is enormous; that, besides losing competitiveness, corrupt markets do not attract international capital flows and are marked by low growth. Moreover corrupt countries are at a disadvantage in comparison with others, as corruption not only reduces public revenues, but also has a negative impact on the allocative decisions of governments, heavily influenced by relationships based on patronage, to favor low productivity investment which compromises growth, as well as reducing public investment in education and health, thus compromising the standard of

---

1 Professor of Criminal Law, Catholic University of Milan, Italy.
health and human development of citizens. As put forward by Roubini (2008), and quoted in the book, when corruption extensively penetrates public and private realms, uncertainty rises in the financial system as well, nullifying the correct functioning of the market mechanism in an inherently unstable sector, with potentially destructive consequences for the whole economy.

It seems however paradoxical that, despite the huge amount of serious research put forward as evidence of the devastating injuries stemming from corruption, politicians, administrators and common citizens remain substantially unaffected or at least affected in a way quite disproportionate to the high global price that this “cancer” (according to a metaphor recurrent in seminars and conferences devoted to the evils of corruption) is bound to exact from the moral and material resources of entire populations. Even the upsurge of indignation prompted by the financial crisis hasn’t yet marked a real turning point (certainly in Italy), apart from some reforms that have still not been able to inject sufficient adrenaline into the muscles to prevent corrupt practices.

As emphasized in the book, corruption is highly persistent, which means that “domestic corruption is stable over time and does not vary significantly on a year-to-year basis”. A feature due to the fact that “corruption is the fruit of multiple coexisting factors, many of which are of an environmental nature, and is not significantly subject to influence from one-time, ad hoc policies with temporary effects”.

The persistence of high rates of corruption in many countries offers more than a hint of well-intentioned reformers aiming at establishing good integrity standards or maintaining them in the long run also in the most virtuous countries: it should be matched by an equal and contrary “virtuous” persistence of integrity standards in economic, legal, and social policies. This is a great challenge to national and international regulatory endeavors, particularly prone to aiming at short-sighted measures, often overvalued and sold on the vociferous electoral market. The principle stated, for example in the German Federal Constitution (§ 20a), which requires the State to protect the natural conditions of life, thereby taking responsibility for future generations, should also steer any regulation aimed in the long run at preserving an “environment” of public integrity in our late-modern institutions and social lives.

We could also say that the persistence, together with the elusiveness of corruption, as clearly stated in the book, stems from the extreme difficulty “of identifying the causal direction of the dynamics on which it is based; causes and effects are strongly interconnected with feedbacks that can hardly be isolated: the ‘effects’ negatively influence their ‘causes’”. Chasing the multi-directional causal chains which make up the phenomenon and
its main damaging power requires indeed the ability to combine different knowledges and competences, and, what is more, a broad cultural vision that stretches beyond the boundaries of single technical skills.

In Part I of the book, Marco Arnone would seem to have been blessed with the rare ability to embrace the intricacies of corruption dynamics through a wide “vision” and to combine his understanding with the persistence to track down the many noxious vicious circles which make corruption a sort of auto-immune self-replicating disease: “where corruption is pervasive and public officials pursue their individual interests, regulations governing society reflect bad governance. In these circumstances the laws appear not to oppose corruption and low-quality institutions”.

In spite of being a law scholar myself, I can only appreciate the critical remarks expressed in the book to legal experts bent on combating corruption solely or mainly with the armoury of rules and sanctions. They often seem to act within “the boundaries of a Newtonian world” and are therefore “at a loss in dealing with complexity, that is, the emergent properties of a system formed by recognizable and simple elements”. I am also in full agreement that it’s not enough for criminal experts to prosecute individual elements of the system or that “law-makers regulate market infrastructure”, since “what we need is to understand complexity and modify our legal systems to minimize these negative impacts”.

These comments sound really Machiavellian, in quite the best (and strictly etymological) meaning of the word, to the effect that they show due attention to an aspect often neglected by lawyers, legislators and economists as well, as highlighted in Chapter XV of The Prince, where the great Florentine thinker expounds his intent “to write something useful to whoever understands it”, and then “more fitting to go directly to the effectual truth of the thing than to the imagination of it”. Actually the ease with which legislators can write down their rules fatally exposes them to the lures of the imagination, as it gives rise to the delusion of fully controlling social processes just through a few blots of ink, which more often than not means they fail to grasp the quite dynamic “effectual truth” of social and economic processes. As Remo Bodei wrote recently, commenting on this Machiavellian sentence (Il Sole – 24 ore, 24 March 2013), the art of governing according to reason and justice and to temper conflict and order requires the ability to track down and mold such “effectual truth” (the German Wirklichkeit), which is a moving flow of historical energies,

2 Written by Marco Arnone. Leonardo Borlini co-authored Part I, Chapter 1; Chapter 2, Sections 2.1, 2.2, 2.3, 2.4.2, 2.4.4; Chapter 3, Sections 3.3.2, 3.7; Chapter 7, Section 7.4.1.2.
Corruption absolutely not a static picture once and for all encompassed within a set framework of desultory schemes (and laws).

It is not only the absent-mindedness or limited vision of legal theory and approach that should be remedied thanks to a wider, mobile perspective. Economic theory too requires to be vigorously driven towards “the effectual truth of the thing” and away from “the imagination of it”. Suffice it to mention the infamous (yet for decades rather influential) “trickle-down theory”, which assumes that the benefits of economic policies can trickle down from the wealthy to everyone else, fostering for the most part, on these false premises, heavy tax cuts. As Steven Greenhouse puts it (The Big Squeeze, 2008) trickle-down economics didn’t actually work, as revealed by a terrific worsening of income inequality, which suggested rather a trickling up of prosperity (e.g. in America, household incomes tripled for the richest 1 percent of households and grew 80 percent for the top fifth, while increasing only 6 percent for the bottom fifth).

Marco Arnone, one of the authors and the mentor of this book, was not only a clever young economist, but a true renaissance man, with his deep knowledge of various fields, curiosity about many of the humanities (whose mastery seemed to him a prerequisite for any technical and professional approach) and rare open-mindedness and readiness to listen to and learn from non-economist researchers, including lawyers and legal scholars, for whom he always displayed great respect and the genuine expectation of receiving helpful hints in finding ways to deal with economic and social problems: a trait not easily found among economists, especially in recent times.

The legal approach, with all its rigidities and limitations, is undeniably helpful in devising regulatory measures aimed at a reduction in the complexity (and opacity) of economic and, especially, financial practices, which the book deems unchecked so far and thus a source of gross instability at the macro and micro level. The strategy recommended is one equivalent to keeping a biological system in check when cells replicate, eliminating wrong and/or dangerous mutations: “if the organism fails, then cancer ensues: the strategy to fight cancer is exactly that of limiting the complexity of cancer cell replications and interactions”. The role of legal and criminal experts is then particularly valued, especially within schemes aimed at prosecuting not only individuals, but also emergent properties and organizations that misbehave (as is the case with Italian law 231/2001 on the criminal-administrative responsibility of legal persons).

Actually Marco Arnone felt and expressed a deep loyalty himself to the “rule of law”, thus not only understanding the paramount importance of this principle and requirement for a public life based on democracy, legality and human rights protection, but even assuming it as a kind of moral
and social standard of human decency, quite opposite to that self-satisfied acquisitive attitude which Jorge Maria Bergoglio, now Pope Francis, described in 2005 (in a public address recently published) as making up the “heart of the corrupted man”, resistant to redemption, being sealed up against external dialogue and respect for other people’s (and also his own) dignity.

Entirely consistent with his wide-ranging humanistic and cultivated way of thinking and living, Marco Arnone particularly emphasized, among the double directions of causation deemed the most relevant, the one linking education and corruption. As he had already shown in one of his previous works (written with E. Iliopulos, Corruption Costs, 2005), corruption is often associated with cutting expenditure on education and thus with falling cultural standards in a country, with devastating effect on the quality of governance: “less educated citizens are inevitably less conscious voters, penalized by a weakened ability to influence the political course of the country”, an argument which has gathered further support in recent empirical evidence from the United States, revealing a significant relationship between the extension of corrupt practices and the number of citizens with only a primary level of education.

Looking at Part II of the book,3 on the “birth and evolution of an anti-corruption global legal standard”, the reader is comforted by the description of the huge advances in international hard law instruments deployed in the field, but also frankly overwhelmed by the intricacies of legal issues involved in the fight against corruption, laid bare by the cases of transnational corruption discussed therein. The different ways of criminalizing the offence and sanctions among various countries, the many distinctions in conceiving corporate liability, the quite thorny jurisdictional and mutual legal assistance issues, the slow progress in asset recovery achievements, the measures and the need for sound follow-up procedures: we feel that, apart from persistent distractions, the path yet to be trodden is still very long and littered with hindrances and traps. It should however be strenuously followed, especially with the aim of reshaping a “global governance, that goes beyond the nation-State toward a bloc-sized global financial and legal management, in areas such as finance and transnational crime, further invigorating all multilateral organizations, and in particular the International Monetary Fund, the World Bank, the OECD, and the multilateral financial institutions in general”.

Due to the intertwining causal chains and feedbacks which make corruption so complex a phenomenon to deal with at any level, the most

3 Written by Leonardo Borlini.
suitable strategy would be to target it not only through frontal onslaughts, 
but, with much more effectiveness, through an encirclement maneuver 
capable of eroding the ground and draining the sources through which this 
“cancer” of civil society, politics and administration draws its vital nutri-
tion. However such an elusive, almost homeopathic, bunch of remedies, 
conceived to counter the elusiveness of corruption, should single out the 
predominant causal directions to be addressed first within long-running 
and wide-ranging reforms.

In a 1996 Conference on Responding to Corruption, which took place 
in Italy, Robert Klitgaard pleaded for the targeting of a few “big fish”, 
whose cases should be prosecuted first. I think that any anti-corruption 
strategy, unwilling to be sucked into the micromanagement of the too 
many variables at stake, should select as its “big fish” some well-localized 
but also essential target areas, in other words, it should concentrate its 
efforts on those “jugular veins” of corruption whose cutting will obstruct 
the flow of the most noxious of its vicious circles.

If, according to the World Bank distinction, there are two main types 
of corruption – State capture and administrative corruption (where the 
concept of State capture concerns all illegal actions aimed at influencing 
the decision-making process of policy making in the different spheres of 
the life of a country) – the first “big fish” to be targeted should be just State 
capture. As aptly highlighted in the book, this kind of all-out corruption 
“leads to the destruction of the ‘intangible goods’ of society”, “jeopard-
izes institutional credibility, legitimacy, and image in the forum of public 
opinion; it encourages illegal acts and, therefore, speeds up its own diffu-
sion and enhances a self-reinforcing process”. Actually governance vari-
ables have a strong causal link to corruption of any kind, as the “spreading 
of corruptive episodes depends on the qualitative characteristics of gov-
ernance”; “good governance minimizes the conflict of interest and areas 
of discretion (necessary preconditions to make corruption possible); sets 
effective rules, creates reliable institutions and also sets in place an effec-
tive system of prevention, control and punishment of deviant behavior”.

Moving from these basic premises, a crackdown on conflict of inter-
est (and on tax evasions and tax havens, from which the resources for 
kickbacks are mainly drawn) appears to be the primary step towards 
prevention of State capture, the most noxious kind of corruption from 
which a large part of administrative and (comparatively) minor political 
corruptions (here properly) “trickle down”.

In one of the most original sections of the book, jointly written by 
Carlo Bellavite Pellegrini and Laura Pellegrini and devoted to the impact 
of corruption on financial markets, the first part of the book describes 
how the element of “capture” can be endemic to certain economic systems,
where economic entities have some degree of market power due to connections with higher political echelons. Such connections do not necessarily originate monetary transactions, but can take more indirect forms, like the trading of influences. Empirical evidence confirms that access to finance is one key factor in determining the success of new businesses and the competitiveness of new market entrants and that politically connected firms enjoy better access to finance, stronger market power and tax benefits, while, conversely, performing generally worse than other businesses. Italy (where 79 industrial and holding listed firms have been politically connected with 44 politicians from 1987 to 2006) “represents a telling example of an industrialized and democratic country, where the impact of political connections within the economic system is considerable”.

We could even say that, together with the blurring of any divide between the public and private sector, the evolutionary stage of illicit practices dissolves the same distinction of roles between briber and the bribed increasingly played by the same political or economic (politics and economics cease to be separate) entities. This is the climax, the apotheosis of corruption, in the sense of confusion and loss of the original form of things which should be kept clearly distinct. After having reached this stage, the cancer of corruption is well planted in the pith and marrow of society and its mores. It’s quite apparent therefore that such an invasive presence in a given market of politically-connected firms “cannot be effectively coped with through regulatory responses, and calls for radical systemic reforms”.

Considering the great gap existing between the widespread awareness of the injuries of corruption and the real efforts to contain it, any serious anti-corruption policy could not help addressing pointedly also what I would call the “anaesthetic of corruption”, namely the “weapons of mass distraction” which paralyse the ability of individuals, institutions and societies to act in accordance with such awareness.

Drawing on the ample definition of corruption provided by the book, as “an abuse of public office for private gain”, we get a good first explanation of this numbing effect inherent in the wrongdoing. Corruption stems from inequality and further enlarges the areas of inequality. As the book well details, “corruption favors the interests of those who know the rules of a game in which there is a concentration of power and money”. Thus “the insider-outsider structure that comes to be inevitably determined results in vicious circles that tend to favor stronger strata of society, who have access to large resources or hold strategic positions”. On the one hand, “the basis of corruption dynamics consists precisely in the disparity of conditions faced by different economic actors”; on the other hand, corruption itself “can raise social inequality remarkably”.

As Michael Sandel (2009) puts it, we suffer (not only in America) from
a dearth of attention to inequality in contemporary politics and the most important reason to worry about the growing inequality in many societies (as confirmed also for various European countries, like Italy, by recent data developed from the Gini coefficient, used as a measure of inequality of income or wealth) is that the yawning of a huge gap between rich and poor undermines the solidarity required by democratic citizenship, leading the privileged to secede from public institutions and facilities, and thus to a kind of cultural and human desertification of those institutions that once gathered people together and served as informal schools of civic virtue.

In a few words: it brings about what has been aptly called the hollowing out of the public realm and, we could add, the hollowing out of any persistent rule of law.

Since inequality and conflict of interest are the powerful breeding grounds of corruption (besides being its damaging outcomes), targeting them at any level, through far-reaching systemic reforms, should be the primary way to break the vicious circles of the ever expanding corrupt flow. Albeit difficult, this is not mission impossible, and in any case it is inescapable for any anti-corruption policy bent on achieving good integrity standards and not merely interested in exhibiting its self-righteousness or in selling junk reforms to easily distracted (or contented) audiences.

It is greatly to the credit of Marco Arnone’s friend and colleague Carlo Bellavite Pellegrini that he patiently collected and edited, together with Laura Pellegrini – both co-authors of three chapters in the first part of the book – one of his most worthy intellectual legacies, which is not only his substantial contribution to this book, but the very idea of writing and publishing it, coupling economic and legal doctrines and expertise in such a way as to provide a sound and enlightening reference work for any future anti-corruption awareness and policy.