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Regulatory Hypercomplexity and Social
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Anomic Dependence and Corruptive Contagion. Regulatory Hypercomplexity and Social Fragmentation in the Mid-Global Era

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Abstract

Corruption is normally perceived as a system of power that overlaps the state-system. The average citizen seems subjugated to its workings and refrains from fighting against it. The reasons of such an attitude could be subjected to different explanations; there is no doubt that, generally, the social actors consider the state apparatus and its institutions responsible for their lack of action in the face of a widespread practice of corruption, within society. Another relevant aspect is that, due to the transversal nature of corruption, all its proceedings seem to swallow the root of the practice, namely the first corrupted act. As consequence of that, corruption, as a phenomenon, seems to operate as a spiderweb, from which it becomes difficult to untangle.

Keywords: insecurity, anomie, distrust.

1.

The theme of corruption, as well as that of legality or illegality understood like a macro-sector, is widespread across the institutional and the social system; it is present inside the job market; it exacerbates the problems and the crisis of several areas; it is a relevant element inside the hypercomplex process of decision-making and, recently, it seems that it played an important role in the management of funds and financial resources allocated, in the aftermath of the pandemic. The corruption phenomenon has a consequential character, in the

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sense that it offers us a key to reading as a *continuum*, functional, that is to identify the types of corruption and their impact over time, and can be used as a predictive and prospective hypothesis, in relation to what we can measure as a possibility of change, both in terms of corrective and punitive interventions, and for the assessment of the extent of its dissemination and its impact on the social fabric.

Corruption determines anomic processes, not of “dissociative” type, as interpreted and defined in the theory of Durkheim (2021), as result of the indeterminacy of the set goals; or of Merton (2000), as a product of the defect/imbalance of uniformity of the objectives prefixed, but as a paradoxical interpretative adaptation. Expanding Luhmann’s definition of system (2001), it could be said that corruption encompasses, by expanding it in an uncontainable way, the operational space, the regulatory and social system within the corruptive environment. The real critical point for the analysis of the corruption phenomenon is the impossibility of defining the data with certainty. Corruption is and remains, by its nature, a dark number, in the sense the most reliable measurement tool remains the perception. Globalization and regulatory complexity, widespread in every area, have led to the dissemination of corruption, emphasized by the potential availability of funding to combat the pandemic.

The analysis of the corruption, as a phenomenon, allows us to assess the inversely proportional relationship between the enjoyment of rights, from the regulatory system, and the opportunities deriving from illegality and abuses of power. In this sense, especially in the most critical or labelled territory – we know that the process of categorization implies a “partially” labelling of territorial delimitation – corruption, as well as illegality, becomes a “selective” filter, which separates and defines civilization from incivility. In this process it transforms itself and it turns into a total institution, weakening the shared trust and the stability of a social system, which becomes affected by a lack of cohesion and trust. The most critical node of the corruptive phenomenon seems to be the difficulty to transmit, as inherent to society, the meaning of legality, that links conceptual and cognitive protection. The younger generations are mostly affected by similar void.

Hence lies the most frequent simplification, which makes the limit of legality acts only as a limit that separates the lawful from the unlawful. As a result of similar reductive reading of the phenomenon under study, the opportunity to become corrupted present itself as an easy strategy to solve the problems at hand.

Therefore, the law is not perceived as a model for action, in all its meanings and functions, but as a “counter-model” that dispenses forms of punishment or interdictions, not as positive communication. The most elementary

regulatory mechanism, in term of the operational and constructive proactiveness of the law, is truly undermined or neglected; legality is experienced only in its punitive and negative meaning. The corruption system, widespread and transversally articulated, is proposed not only as an alternative to legality, but it is strongly represented in its ability to create and guarantee a stratified system of protection from any punitive process and it seems to act as an antidote against dissociative attitudes.

The law, therefore, is projected in its remoteness and abstractness. This is, undeniably, the very effect of corruption. The social body collapses under this process, by losing cohesion and trust in the work of the law, that is founded on the concept of the inseparability of rights and duties, as an instrument of social cohesion, growth and of social solidarity. The social body, also, as an institution in itself, is weakened, and defeated by the subculture of belonging to the group. Corruption, both at its micro and macro level, is responsible for this social malaise: the disintegration of the social fabric.

From here, as cause and effect, at the same time, of the phenomenon of “social dissociation” produced by corruption, pockets of dissatisfaction and maladjustment are generated and co-opted, overflowing, today more than ever, in the complex global reality and, with even more evidence, in the recent dimension of the pandemic. Global regulatory hypertrophy undoubtedly has a great responsibility, especially if we consider it in its ambivalence of cause and effect of corruption in the dominant macro-sectors, especially economic and financial ones (Marselli, 2020). This hypertrophy, in fact, has denied the corrective efficacy, hypothesized by Luhmann (2001), of a simplifying regulation, disseminating conflictual dynamics present at all levels with policontextural corruption, which, in turn, have been transformed, cascading, in vehicles for the dissemination of multiple corruptive actions. The physiological conflicts, typical of individual socio-institutional systems, overlapped those determined by globalization and its regulatory hyperferetation (Rufino, 1999), assuming a character, at the same time, disintegrating and cumulative, vertical and horizontal, emphasized even more by the emergency produced by the pandemic phenomenon.

As Friedmann would say, the harmonization of values in the social system can only be achieved by activating the “safety value”, that is constituted by the culture of legality (Friedmann, 1976). Legality, therefore, should be interpreted as an organic security system *versus* an inorganic defence system. In this sense, legality is or should be able to correct, upstream and *in itinere*, the pockets of dissatisfaction that overlaps in social dynamic and which, on the contrary, in their branching, are subtly conjugated with the resolute instrument of illegality and corruption. The rule of law, in corruption phenomena, is simply denied due to a new and justified “state of necessity”. On the contrary, an organic defence,

of a legal, guaranteed and security type, should prepare and rearrange the connective links between rights and duties, according to the principle of responsibility.

This is an explanatory and synthetic premise of the oppositional relationship between the legal system and the corruptive system, to which it is appropriate to add some necessary theoretical references, in order to identify the conceptual and operational “holes” generated by the transformations of the rule of law. A necessary premise to understand the impact on the social system of these transformations, which have become even more critical in the current historical moment.

The theme of corruption cannot fail to refer to a topical text of the birth of the rule of law and of modern society, to a text that belongs to the foundations of the law, *Der Kampf ums Recht*, by Rudolf von Jhering, of 1872. The meaning of the title, *The Struggle for law*, constitutes the interpretative paradigm of the analytical references used in the introduction and an evaluative and critical confirmation of all the corruptive dynamics, which can be generated within the structural perimeter of the rule of law and from which it would be necessary to defend oneself (von Jhering, 1875). At that time, in 1872, law as a value system, was just beginning to take shape, not only in the scientific field, but also, practically, inside the regulatory and social structure of the state. Yet, von Jhering had included in the title what would become the dominant leitmotiv of every affirmative act of law, in its establishing itself as a progressively inclusive system.

Wanting to adopt this leitmotiv in an original technical-etymological sense, as in a Wagnerian work, the fight for legality requires a constant commitment that must be activated both in the micro and macro-normative processes and in the micro and macro-behaviors and in the dynamics of interaction, affirming, postponing and intertwining, in a recurring way, precisely as a leitmotif, the meaning of this struggle. The struggle, in this sense, guides the behavior of every citizen and leads, or must lead, to the protection of everyone and the entire social system.

Von Jhering's predictive indication can help, even today, to understand and resolve the complexity of the relationship between the legal system and its degenerative dynamics. After nearly two centuries of “field testing” the inclusive capacities of the regulatory system, the title of Von Jhering's work could be considered as a constructive and corrective “response” to the contradictory proportional inversion between enjoyment of rights and opportunities offered by corruption and abuse of law. The evolutionary linearity imagined by von Jhering was progressively superimposed on a complexity and a *modus operandi* that obscured the very objectives of the “struggle”.

2.

It is widely stated that globalization has become an instrument for the dissemination of corruption, where it has weakened identity boundaries and “perforated” regulatory processes, where corruption practices are more easily routed. And here, we cannot avoid the necessary reference to a text by Gunther Teubner (1999), *Diritto policontesturale. Prospettive giuridiche della pluralizzazione dei mondi sociali*. A term, “policontextuality”, which has demonstrated topical efficacy to make people understand not only the transformative process of the social system, but also the risks and dangers that are hidden inside systemic hypertrophy, first of all regulatory, but also communicative, identity, social and institutional.

The *good* Luhmann, perhaps, would have surrendered in the face of the derivative of the global world and due to the defeat of the auspices of simplification. But let’s go back to *medias res*, to the apparent disconnection between the micro and macro dimension of corruption, dimension that too often, in fact, do not converge as a systemic datum in the analysis of the corruption phenomenon, thus helping to generate interpretative gaps, which can turn into a real obstacle to understanding the phenomenon in its complexity.

If the model advocated by Luhmann, of simplification as a form of guarantee for all, has not been established, if, in the infinite connection nodes of social reality and global regulation, we fail to identify an adequate interpretative paradigm that allows us to understand the risks and limits of action in adhering to transversal corruptive co-option; if, as we know well, corruption is distinctly “vigilant”, that is ready to occupy and implement actions and reaction that are now “inclusive”, having acquired a defining model prerogative of the “government of force”, how corruption could be configured, so how is it taking shape in the most recent global transformation, also in order to provide it with functionality, to find remedy?

3.

Understanding the functioning mechanism of corruptive phenomena can represent and can materialize in a deductive model of which complexity and problematic certain territories – some more than others, it is true, but the phenomenon is, by now, detectable in a global way – present as a form concrete social life. The corruption phenomenon does not have an exclusive area to which it can be traced back, it is common to the institutional, administrative, professional, commercial, financial and industrial areas, in general, as well as it

permeates the social realm. None of these areas is free from problems and complexity. And it is not enough to argue that corruption occupies the empty space left by the State and the law to identify and define an adequate interpretative model: if it were, it would be enough, on the contrary, to trace the process of establishing and applying the law to correct the ineffectiveness of the failure of regulatory and institutional actions. This is not the case. The transformations of the social system and of the regulatory system have followed the same path in parallel bending, equally jointly, to the abandonment of rules and strategies of systemic equilibrium, so that the widespread weakness and fragility have translated, respectively, into dependence and absence.

The complex and articulated and “destructural” link between the two systems was the domination of the principle of particular interest and the systematic “transfer” of its protection to the sovereignty of force (Rogow, Lasswell, 1963). A progressive sale, parallel to the dilution of institutional responsibility, on the one hand, and of social trust, on the other. The interdependence between the social system and the institutional system was, consequently, replaced by a widespread “anomic dependence”, determined by the weakening of the authorial capacity of state structures and the shattering of the collaborative responsibility of the social one. Public structures are no longer or mainly definable according to an objective functional logic, rather they respond to global dynamics, albeit subjective and partisan, dictated by the prevalence of interests, of particular interests, internal and external to the system. Globalization and subjectivization overlap. Thus, in the rampant and increasingly less decipherable polycontextuality, legality and normalised actions are replaced by the progressively inclusive and contagious force of corruption. The corrupt behavioral model cascades into the social system, already weakened by a reduced collaborative capacity, due to the stratification of disillusioned expectations, emerging risks and complex identity fragility. A relapse that is difficult to remedy.

Meritocracy is too frequently called into question as a barrier to the spread of corruption (Klitgaard, 1988). But, now dissolved as a category and as a definition, merits systematically subordinated to the taxing force of the particular interest to be “protected”: and thus, corruption affects, upstream and downstream of the production and professional processes, the citizen’s adhesion to the State and legality. A fact is often underestimated in measuring the operational effectiveness of the corruption phenomenon: the replacement of the corruptive imposition to the logic of legality generates conflict, which, due to its “circular functional” structure for self-protection, does not provide for a solution. A conflict that, therefore, the law cannot mediate and that becomes, precisely in a circular way, itself a source of corruption. This replacement mechanism, in the regulation and management of the conflict,

represents the main defeat of the rule of law, whose task, from the outset, had been precisely that of foreseeing, preventing and regulating the conflict, also through the “government” of force.

“The good citizen is the one who cannot tolerate in his homeland a power that claims to be superior to the laws”, Cicero would have warned. But a citizen who is “forced” to face the weakness or even the lack of responsibility of the State in its most representative institutions, and who faces the alluring working of a corrupted system, ends up avoiding, systematically and out of “necessity”, the evaluative responsibility, in ethical and moral terms, of the choice of field.

4.

It is not decisive or any case it is not enough to praise the call of professionals, ideas, productivity, ethics and justice, as a critical tool and defence against “corruptive contagion”, especially at the present time, in the face of “porosity” and hypothetically of the regulatory perspectives and of the institutional actions to be articulated. The “force of the law” can be reaffirmed only by identifying preventive and predictive strategies for analyzing the phenomenon and a mapping of the propagating roots of corruption, in their polycontextural dimension.

A legal model capable of de-legitimizing the parallel and “promised” model of success or personal profit, cannot be established if the corruptive dynamics and their possible projections are not investigated from the outset, transferring new behavioral models into the social system. The connective tissue produced, in this sense, by analytical observation can and must be inspired and constituted by the ethics of responsibility, as the guiding thread of the rules and behaviors.

Corruption is now a mass phenomenon, which over time has become a *total institution*. Subdivision, unproductiveness and conflict constitute, *ab origine*, the identifying triad of the phenomenon, held together by the use of the facilitating force of clientelism, functional to the promise of guarantee of personal interest, but also by the threat of exclusion from protection. In this sense, corruption operates as a system of “social inclusion”, covered by the flow of a disseminating current of an underground and pervasive river, as well as eroding the foundations of the social system (Rufino, 2012). With the spread of corruption, we are witnessing what can be defined as “a society of permanent transition”, and not only with regard to the Mafia or Camorra (Arlacchi, 1983). However, the relationship between structured criminal systems, even from a historical and analytical point of view, and corruption in a broad sense, does not see a solution of continuity. The connection makes it possible to identify the links that, *in continuum*, produce behaviour revealing the absence of the State

and, in general, of public responsibility. The collaborative pact between institutions and citizens, functional to achieving stability, security and the “normalization” of the conflict, is undermined at its base by a parallel power structure, which shatters, step by step, the connective and proactive elements of decision-making processes and responsive.

Corruption, like criminal associations, uses the government of fear. Lack of transparency and brutal violence represent the interpretative codes of the illegal enterprise, in its various manifestations. In this sense, the penetrating force of insecure communication (Rufino, 2020a, 2020b), normally used by corrupt attractors, and all the more successful in our historical today, should not be underestimated. If the institutions are absent in the prevention and management of conflicts, if the institutional system transfers the definition of the difficulties in resolving problems and their relative risks to the communication macro-sector; if the communication of fear overlaps and engages in the attractiveness of alternative and agile solutions, the citizens, structurally weakened and made less resourceful, are expected to embrace the alluring opportunities of the corruptive mechanisms. In this sense, the real *vulnus* of the promise of security, on which the collaborative pact between state and society was founded right from the start. Corruption creates inequality, social fragmentation and addiction and, in this sense, deactivates the participation and sharing of values of the founding principles of the rule of law. Therefore, mistrust and distrust produce social imbalance, and, as a consequence of that, lead to the denial of a fundamental principle of the legal system, the democratic recognition of rights and equality for all.

5.

In view of the arrival of European funds, many have raised alarm at the risk of corrupted appropriation of the loans. And it is no coincidence that the PNRR has given special attention to competition (corruption discourages free competition, influencing time, costs and results, in the private sector and in public procurement), to the issue of wages (corruption would tend to keep them low, to activate subordination, functional to the attractiveness of improvement, confirming that the dissemination of corruption is favoured by development and growth retirement), the planned use of extraordinary funds aimed at a “normalized” change of the system (corruption is grafted on irregular variation and changes, exploiting the disconnections of the administrative and management apparatus, which in that void are determined, and finalizing, in the promised optimization, profits according to agreements that ignore the public interests). The risk or, in other respect, the objective, which crosses all the

transversal dynamics in progress, is, once again, the relationship between growth and development *versus* the articulation of alternative paths, structured in the activation of weakening mechanics, precisely, certainties and social security.

The current political climate in the world, not only in Italy, the political and institutional crisis, the fragility of the economic and employment system has increased the feeling of separation between the citizens and the State actor, increasing the formers perception of being left alone.

The weakening of fundamental institutions, such as education and justice, have negatively affected the participation of citizens in the “public sphere” that has in turn increased social and institutional disorientation. One of the key tools of social system, as they are configured in the rule of law, was social control (Gottfredson, Hirshi 1990), the main tool for defining the prevailing values expressed by a given society. But control, as such, cannot ignore the legitimizing recognition of the institutional and social system that structures and includes it, precisely as a system of defence of the rules that make it possible to measure the ethical and moral figure of social capital. In this sense, social control, as a stabilization tool, has become an alternative to the use of force, and defeated by the latter! Corruption, in fact, dominates the perception of risk and danger precisely through the governance of force and fear and, thus, indicates which behaviour to adopt. It prevails by “protecting” from the danger of labelling, however underestimated, due to the prevalence of the extent of the benefits. The pact between citizens and the state is thus replaced by that between citizens and corrupters.

A common figure to all the dynamics of today is the is the trasformism, an effective and synthetic interpretative scheme of the disconnections and destabilization of the relationship between the institutional system and the social system. Transformism is a form of institutional hypocrisy, attesting to the crisis of certainties, of those certainties on which it was assumed to build a cohesive social system, articulated on ethically correct behaviors, understood, that is, as “exchanges” of value and natural trust, ultimately as an intrinsic value of every social system. Conversely, transformism, on the other hand, like corruption, contributes to denying the interpretative paradigm on which social capital is routed (Putnam, 2002), undermines, at the base, the trust in the institutional apparatus, disorients the sense of sociality and certainties, returning, in the “perennial transition”, the idea of responsibility without interlocutors. Who answers what?

Arbitration, inefficiency, insecurity, circulatory of anomic dynamics, lack of data and information adequate for their understanding, administrative and managerial hypertrophy, fragmentation of social and relational capital, dissemination of administrative subsystems and pseudo-social subsystem, ideal

and political disorientation: these are all parallel paths and increasingly, substitutes for legality and place the “fragile” citizen or made such in the face of the alternative of total exclusion or complacent acceptance of “differently” attractive systems.

6.

Corruption thus becomes custom, practice, behavioral model, transversal to choices, decisions, arguments, relationships.

The lack of awareness of the “positive” value of law and legality is therefore assuming the features of a widespread behavioral subculture, emphasized by the emergence of regulatory disorder, in the face of the progressive distancing from the institutional dimension or from the juridical-normative dimension in strict sense. In between, the subculture of the necessary adhesion to the group or the power structure, activated by an increasingly deep-rooted dissatisfaction and widespread maladjustment, which broaden the boundary of the most extreme social periphery, into the disconnected territory of legal culture, all the more in its global hypertrophic version. A periphery whose access point allows us to glimpse, in retrospect, unreachable borders.

The complexity of the social system in progress, what Friedman called the trafficking of the social life, produces even more conflict and conflicting “diversity”. A conflict, today, difficult to stem through regulation and its simplification, as the systemic theory data suggested. In this sense, the stratification of conflictual dynamics has resulted in an inverting mechanism of the resolving possibilities of difficulties, unease and insecurity. A mechanism that has replaced the functional logic of the rule of law.

Would it be enough to raise the level of punishment and severity of the sentence? A positive response would only reduce the problem downstream. In fact, without an adequate reconfiguration and rearrangement of social action and collective consciousness, as Durkheim would have reminded us, and a different *modus operandi* of the state apparatus, no punishment could contribute to eradicate the corruption phenomenon in a tangible and lasting way. The constructive process of corrupt behavior cannot be traced back only to the fracture/ separation/detachment between the function formally attributed by the State to the administrator and the administrator himself, as a more illustrative example: in the accreditation of the replacement dynamic, the administrator is already the product of a widespread corruptive act, it does not need to recognize the authority of the State. Proceeding backwards in a paradigmatic construction, it is not possible to easily identify the incipit of the single phenomenon. This is the real problem of corruption today, all the more

emphasized by its widespread reach inside the global system. Corruption is no longer attribute only to the search for the means and tools necessary to achieve success (Lenz, Lipset, 2000), although it constitutes its main humus.

The most macroscopic fact that characterizes corruption is its configuration, precisely, as a practice and custom, a custom that does not fear labelling (Becker, 2017), because, on the contrary, it is perceived as a normal social fact. This shift has increased, in many areas, the direct connections between corruption, in the strict sense, and organized crime, furthering any form of disdain for corruption, perceived, eventually, as “normal”.

Corrupt systems use specific tools to “gain credit”. First, as is all too clear, the promise of success and enrichment. But, not least, it should be noted that corruption invests both in fear, which, in turn, generates addiction and adaptation in the dissemination process, and in ignorance, a fertile ground for corruption dissemination. Corruption, structured in the way, is transformed into a “ergonomic model”. As a confirmation of this characteristic, an emblematic paradox emerges, namely that, in the face of an index of perception and widespread recognition of corrupt behavior, there is a decreased or an inadequate activation of complaints. All the more in this sense, corruption is a far-reaching social fact that escapes the possibility of categorization, both at national and international level in terms of regularization.

Therefore, an essential element common to all types of corruption is missing in the fight for legality: conscious responsibility for the action, and, formally, an adequately configured regulatory category, both essential tool of deterrence and intervention. The ergonomic characteristic of the behavioral model produced by corruption represents, in its normalization and socialization, the real obstacle to the struggle for legality to easily find a recognizable field where it can be expressed. Transparent management procedures, operational responsibility, qualified personnel “by merit” and a responsive regulatory system can contribute to defining a preventive and behavioral model necessary to observe and eradicate a corruptive practice which, as it stands, even surpasses any criminal action.

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