



TRANSCRIME

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COMMENTARY ON

CORRUPTION. ACTS AND ATTITUDES

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1. SUMMARY AND AIM OF THE COMMENTARY

The philosophy of prof. Van Duyne's paper is that corruption is «a state of mind» and that, though corruption is immoral, it is a human conduct that people undertake sometimes deliberately, but also gradually. In democratic systems public officials, operating on behalf of the community, should act with a view to pursue the public interest. Each of them, however, has private interests and goals not always coincident with those professed in public, and might therefore be induced to exercise his/her discretionary power in his/her own interest. Prof. van Duyne provides a straightforward and yet general definition of corruption, according to which corruption is «an improbity or decay in the decision-making process in which a decision-maker (in a private corporation or in a public service) consents or demands to deviate from the criterion which should rule his decision, in exchange for a reward, the promise or expectation of it», while the motives of this decision cannot be cited in justification of the decision itself. He therefore states that the most important aspects influencing the levels and manifestations of corruption are the accountability of decision makers and the erosion of it.

Taking into consideration prof. van Duyne's paper, and with the parallel aim of providing some information on the situation in Italy and other European countries, this paper is divided into two parts.

The first paragraphs contain a commentary on Prof. Van Duyne's theoretical analysis of corruption. On the basis of the elements of corruption defined by prof. van Duyne, the opportunities and risks connected with corruption will then be identified in a theory of corruption as a rational choice, in order to

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delineate more appropriate policies to combat it. The situation of corruption in Italy is also briefly described.

In the second part, the action against corruption is analysed and the contrast strategies introduced by some European countries, and by Italy in particular, are described.

2. CORRUPTION AS A "STATE OF MIND"

In his paper Prof. van Duyne develops a behavioural theory of corruption in which he starts by highlighting five necessary components of the concept from the decision side. The first of these is a *decision maker with discretionary power* to deviate from the rules in the decision making process, and who is *accountable* for the propriety of the decisions made. Two further components are involved: the *exchange relation* between the actors of corruption and the *hidden nature* of this relation. This behavioural definition of corruption as being a state of mind focuses on the individual decision maker, and in Prof. van Duyne's opinion is therefore very wide and can be applied in every context and legal system. He uses a social-psychological approach, and clearly states that, psychologically, corruption is not an abnormal state of mind, but on the contrary rather human. He then classifies corruption into nine categories, in all of which social-psychological factors leading to corruption cases are identified. This behavioural approach, however, seems to leave little if any space for human ratio and the possibility that people make a rational analysis of advantages reachable through corruption and of costs involved.

In Prof. Van Duyne's analysis the natural development of simple one-to-one corruption is towards the spreading of such illicit conduct, all the more if the corrupt scheme becomes more complicated and requires the involvement of other actors. Widening this behavioural perspective, therefore, corruption gradually spreads, leading to a corrupt market and a loosening of public morale.

In such a situation, corruption will increase and spread in every sector due to a combined action of a decrease in the legitimacy of democratic

institutions, in accountability of decision makers with discretionary power and in transparency in general. A lengthy and important section of van Duyne's paper, in fact, examines the development of corrupt attitudes in a working environment. In the scheme of corruption the role played by the leader is fundamental, since Prof. Van Duyne argues that corruption frequently develops in organisations as a top-down disease. In the cases of both a leader with a great deal of decision-making power who is also prone to corruption, and an honest but sloppy manager unaware of what is happening among his subordinates, corruption develops because of *defect leadership*, where standards of proper conduct have been eroded. He states that corruption is a «process [which] is quite human and the transition from non-corrupt but questionable conduct to the first stages of corruption may, even to the participants themselves, unfold as an unnoticed growth process». Again in the example here provided it is clear that fundamental importance is given to psychological factors influencing corrupt behaviour, while the positively and rationally calculated choice to engage in corruption is not considered as a contributing factor.

2.1 The paradoxical story of the successful leader

The paradox thus delineated is that corruption may develop alongside successful management. At first it may even be unseen, and then later denied by the success of the leader. Taken in a more general sense, in Van Duyne's opinion this process also accounts for the development of corruption into systemic proportions, as in the case of Italy.

The first phase of corruption by a successful leader consists of extravagance. The example provided is that of a leader who does not justify his/her excessive expenses: although there is no indication of corrupt behaviour, this is the first stage in the development of a leadership style which deviates from the proper management of public resources.

The next phase is that of the erosion of accountability. The paradox here is that the more successful the leader is, the less s/he receives negative feedback on his/her actions. «The increase in trust is inversely related to the principle of accountability, but also to the mental openness to critical evaluation of the deeds of the leader.» This will create a climate in which unplausible expenses will be justified by «plausible» explanations. Employees who do not agree with this conduct will frequently be replaced by more

obedient ones willing to accept the erosion of the leader's accountability and the opacity of decision making processes.

Prof. van Duyne then identifies the ownership phase, where the leader of the organisation starts behaving as if s/he were its actual owner. Extravagance now gives way to the leader's unrestrained use of corporate assets for his/her own private and organisational purposes. The leader now needs a court of yes-men who share his/her opinions and do not complain about the non-transparent decisions taken. This also gives rise to a change in recruitment procedures. New employees are now selected because of their appreciation of the leader and not because of their skills. These are what van Duyne aptly calls «Caligula appointments».

This behaviour quickly leads from favouritism to the phase of clientelism, where the personnel appointed will tend to follow the example of the leader and to nominate, in their turn, their favourite yes-men. The organisation has now surpassed the threshold of corruption, and proper decision making standards have been eroded.

In this example it is again very clear that only socio-psychological factors are directing the action of the corrupt leader and his court of yes-men. The attempt on the leader's part to "justify" unjustifiable actions and decisions do not seem to use logical, rational reasoning. The development of favouritism and clientelism is characterised by a series of "rules" which do not seem to follow objective, rational requirements. Even the recruitment procedure, based on an oath of obedience to the leader rather than on the actual skills on the prospective member, again does not involve a use of rationality.

In van Duyne's opinion, the manifestations of this leadership disease differ depending on the interaction with the environment, which determines the rules of the external accountability. This accountability may be imposed by the law and the enforcement policies, as well as by normal business practice and the public morale. There is, in fact, a second phase of corruption in which the phenomenon moves from occurring solely within the enterprise to corruption with the outside world. The first person at risk of being bribed is the accountant of the enterprise, because the external rules of accountability imply that the financial situation must show no sign of mismanagement. Then it might be necessary to bribe a fellow entrepreneur into complicity. At some

stage of this process, interaction with the authorities might begin, according to the different entrepreneurial interests. The degree of intensity of this interaction gives rise to three different levels of corruption, which van Duyne identifies as:

- the executive level, where corruption concerns the daily practice of entrepreneurs;
- the law enforcement level, when entrepreneurs are willing to bribe the law enforcement authorities to prevent or postpone investigations;
- the strategic level, where preventing the authorities from carrying out their duties requires access to the strategic command level. In this case there may not be a discernible exchange of tangible goods, but rather a development of mutual interests.

The examples of different categories of corruption made here highlight that, although Prof. Van Duyne defines corruption as a human behaviour driven by psychological factors, other external conditions are necessary in order to corruption to develop and spread. First, the power to make decisions, either lawful or unlawful is necessary, because he who does not have power will neither corrupt nor be corrupted. Second, the existence and effectiveness of external accountability rules will determine different levels of corruption and variations in its diffusion.

Therefore, in order to explain variations in the diffusion of corruption and to curb it, hypotheses must be formulated on the factors influencing the phenomenon and on the role played by these components. Only then will it be possible to elaborate proposals for policies to combat corruption.

One main question arises from the explanation of Prof. Van Duyne's theory on corruption, and is particularly relevant in the phase of development of corruption into systemic proportions, where "*corruption spreads to a corrupt market and a loosening of business morale*". Since the analysis made by Prof. Van Duyne emphasises the psychological factors influencing the action of an individual and doesn't directly include rationally taken decisions to engage in corruption, the question remains regarding the role which can be played by an economic approach towards corruption.

3. CORRUPTION AS A RATIONAL CHOICE

Starting from Prof. Van Duyne's analysis, and using three of the components he identified, it is in fact possible to develop a framework that considers corruption as a phenomenon operating according to the rules of the market place.¹ The assumption there is that corruption is an illicit good, bought and sold according to market conditions, and that the actors in this market, the seller and the buyer of corruption, are rational human beings who engage in an illicit transaction in order to maximise opportunities while at the same time seeking to minimise the costs of being arrested and convicted, and of losing a good reputation – a valuable commodity, especially for politicians. In terms of contrast policies, the implication of this analysis is that, in order to curb corruption it is necessary to affect the market by reducing the opportunities and incentives to commit such offences, and by increasing the risks at the same time.

If we accept that corruption is a rational choice², the main question to be answered is: why do individuals, whom we assume are rational human beings, decide to behave in a corrupt manner? And a second consequential question: what is the effect of this decision on institutional development? In other words, how does corruption, after infiltrating a system, become systemic?

A summary of the variables taken into consideration by the various theories on corruption, shows that a combination of factors tends to increase opportunities for corruption. These factors are the number of decision-makers, the amount of their discretionary power, their amount of responsibility for the decisions made and enforcement of formal procedures for the control of this power. In fact, when there is only one decision-maker, "monopolistic corruption" increases, while the higher the number of decision-makers ("competitive corruption"), the fewer opportunities there are for corruption. Moreover, when discretionary power increases, so also do

¹ E.U. Savona, "Beyond Criminal Law in Devising Anticorruption Policies. Lessons from the Italian Experience", in *European Journal on Criminal Policy and Research*, vol. 3, n. 2, Kugler Publications, Amsterdam/New York, 1995.

² R.O. Tilman, "Emergency of Black Market Bureaucracy: Administrative Corruption in the New States", in *Public Administration Review*, n. 28, 1968. See also Van J. Klaveren, "The Concept of Corruption", in A.J. Heidenheimer (ed.), *Political Corruption, Readings in Comparative Analysis*, New Brunswick, Transaction, 1970; B.L. Benson and J. Baden, "The Political Economy of Governmental Corruption: The Logic of Underground Government", in *Journal of Legal Studies*, vol. XIV, June 1985.

opportunities for corruption³, because the public official can allocate the rights at his/her disposal so that some people have more advantages than others.

Finally, the existence of formal procedures for the control of this power bring about an increase in the «value» of corruption, thus increasing the cost for the buyer while at the same time increasing the advantages for the seller. Therefore, besides the strict economic advantage of a monetary bribe, the benefits of engaging in corruption comprise every other kind of advantage connected with a secret exchange of favours.

As derives from above, as discretionary power increases, so too do opportunities for legal corruption, while the existence of precise formal procedures for the control and regulation of discretionary power have the effect of increasing the corruption value: in the sense that they increase the cost for the buyer and augment the opportunities for corruption available to the seller.

On the other hand, as corruption is a criminal offence, the actors in this market have to take a number of risks connected to the commission of a corruption offence into account. The costs of corruption can be analysed by making use of Becker's model as a theoretical framework for an economic analysis of this crime.⁴ According to Becker, «a person commits an offence if the expected utility is higher than the one he could receive by using his time and other resources for other activities».⁵

Criminal law can play an important role in influencing human behaviour: it imposes risks and therefore additional costs for criminal activities and provides the offender an economic disincentive to commit the crime.⁶

The costs calculated by criminals before choosing to commit a corruption offence influence the level of corruption in a country, and can be of two different kinds: objective and subjective. On the one side, there are what can be called institutional, objective costs. Among the costs involved in this

³ B.L. Benson, "A Note on Corruption of Public Officials: The Black Market for Property Rights", in *Journal of Libertarian Studies*, n. 5, 1981.

⁴ G. Becker, «Crime and Punishment. An Economic Approach», in *Journal of Political Economy*, n. 76, 1968, pp. 169-217.

⁵ G. Becker, *op. cit.*, p. 176.

⁶ W.H. Hirsh, *Law and Economics. An Introductory Analysis*, New York Academic Press Inc, 1979, p. 200.

rational choice are the risk of law enforcement (that is, the risk of being identified, prosecuted and punished) and information costs arising from the loss of reputation in the community caused by a criminal charge for corruption.

On the other side, there are also subjective costs, more difficult to observe and measure since they reflect internal rather than institutional judgements, but which nevertheless can be equally influential. There are in fact the «moral» costs linked with an individual aversion to doing something illegal. From this perspective, the willingness to commit a corruption offence depends on whether the culture or the subculture in which the subject operates possesses moral rules which sanction political or bureaucratic illegality. In fact, there seems to be an attitude of general acceptance towards illicit conduct intended to ensure an enterprise's success. Like other white-collar crimes, corruption is a criminal offence closely connected with licit activities that have a positive social value. The manager who corrupts therefore behaves in a twofold manner: although s/he abides by the general rules of a system, s/he at the same time may violate rules which interfere with the goals of his/her enterprise.⁷

The interaction between opportunities and costs will determine different amounts of corruption. Prof. Van Duyne gives an example in which the role played by an ineffective piece of legislation regulating one of the variables, namely accountability, combined with a low set of moral rules, can significantly favour the spreading of corruption.

The diffusion of this behaviour and its manifestations depends mainly on the extent to which the rules of *external accountability* are imposed by law or law enforcement, as well as by the public moral. In countries where opportunities for corruption are high and are combined with low accountability and moral rules, the trend will be towards the growth of corruption to systemic proportions. This is, for example, the case of Italy, where this development results from mechanisms whereby illicit conduct has become the rule and where corruption is so routine and institutionalised that organisations reward those who act illicitly and penalise those who comply with the rules.⁸

⁷ Della Porta, Vannucci, *Corruzione politica e amministrazione pubblica*. Risorse, meccanismi, attori, Il Mulino, Bologna, 1994, p. 327.

⁸ CAIDEN G.E., CAIDEN N.J., «Administrative corruption», in *Public Administration Review*, 1977, p. 306, as cited in Della Porta, Vannucci, *op. cit.*, p. 463.

4. APPLYING THE PARADOX OF THE SUCCESSFUL LEADER TO THE ITALIAN CASE

Corruption in Italy seems to display the following features: it results from highly rational choices made by political, economic and administrative actors; and it ends in, but also flows from, continuous and stable relations among public and private subjects. Traditional survey methods designed to penetrate such corruption have fallen short of their goal, largely because of the high levels of sophistication achieved in the processes of corruption and the evident mutual interest of actors to hide a favourable but illicit exchange. It causes devastating damage which affects both the economic system and democratic institutions. Finally, it is circular in nature because it tends to duplicate itself and spread, thereby becoming «systemic».⁹

In short, corruption in Italy has been the product of an old individualistic and opportunistic culture combined with weak ethical and juridical rules. When it becomes environmental corruption¹⁰, as described by the ex-judge of «Mani Pulite», Antonio Di Pietro, corruption may render the rules of the market devoid of content. This is an evolved form of corruption in which a bribe is not paid in order to win a particular contract, but in order to enter the small group of businessmen with access to a certain market. The payment of bribes becomes a practice which continues even when the official changes. In this way corruption infiltrates the market machinery and eliminates the rules of competition that should favour the strongest.

Cases of corruption are certainly much more numerous than those which have actually been discovered. Investigations and trials have highlighted the existence of a system in which the necessity to pay bribes – in order to obtain subsidies or to conclude agreements – has become the generally accepted rule. It is therefore possible to argue that the cases detected are not exceptions, but rather a small proportion of a much more widespread pathology. On the other hand, recently discovered examples of corruption demonstrate that scandals and trials, far from eliminating corruption, in many cases only make paying bribes riskier (and thus more expensive). Thus

⁹ G. Forti, «Unicità o ripetibilità della corruzione sistemica? Il ruolo della sanzione penale in una prevenzione «sostenibile» dei crimini politico-amministrativi», in *Rivista Trimestrale di diritto penale dell'economia*, n. 4, 1997, pp. 1075 ss.

¹⁰ Environmental corruption is a situation in which the subject giving the bribe does not even wait to be asked for it, because he knows that in that specific «environment» it is customary to pay bribes, and he therefore promises to pay it.

corruption grows more sophisticated and the fight against it is consequently becoming more difficult.

5. ACTION AGAINST CORRUPTION

Given the picture outlined above in which corrupt behaviour is defined as a leadership disease, the problem is to devise measures able to prevent corruption.

The economic analysis of corruption developed in paragraph three can provide guidelines to policy makers. In other words, an effective fight against corruption must be directed at creating a market with a low level of corruption. According to the economic analysis the fewer the decision makers, the higher their discretionary power and as the level of responsibility of decision makers decreases, the opportunities for corruption increase. In a low-corruption market, there are likely to be more sources of regulation, i.e., more institutions which offer contracts, and more competition among the firms participating in the bidding procedure. Those responsible for making decisions should be constrained by a system where the decision-making process is rationalised (discretionary power) and reported in written form (responsibility) and consequently accessible to everyone.

Although penal measures have a deterrent effect, because they increase the cost of corruption, it is evident that their essential function is to control crime by punishing offences already committed. However, corruption cannot be combated only by penal means. Penal sanctions should be adopted with caution, since they may also have undesired effects: for example, they may increase the *price* of corruption, that is the bribe.

Starting from the fact that corruption is a leadership disease, efforts to fight and prevent it must seek to change behaviour and attitudes at the highest levels of private and public leadership. Such action, according to van Duyne, should follow two basic principles: namely, the transparency principle and the first servant principle.

The *transparency principle* is the basis of accountability, and to ensure its application, codes of conduct, for example, have been elaborated. Van Duyne, however, highlights that the preventive application of this principle might be rather difficult, and, especially when applied above the executive level, only formally applied. This would again erode the accountability mentioned above. Its repressive application may also prove to be difficult: if closely linked to what can be proven under the penal code, and if there is no in-depth investigation, rapid penal action will be welcome: a few executives will be dismissed and public opinion satisfied, but they will soon be replaced by others who behave similarly.

The second principle mentioned by van Duyne is the *first servant principle*. This holds that the leader should be the first servant of the organisation, and that no one is so important that rules do not apply to him or her. Compliance with this principle seems to be as difficult as in the case just mentioned. Using the excuse that the exception proves the rule is a human trait which nonetheless creates the tendency to bend the rules in one's own interest.

5.1 What instruments for fighting corruption?

As a criminal offence, corruption is covered by the penal codes of many countries and is severely punished. Penal sanctions, however, have proven to be inadequate: they are both ineffective and inefficient. It is therefore necessary to elaborate different policies which aim to reduce opportunities for corruption. The following sections provide an overview of the strategies recently introduced by some European countries to control and prevent corruption. They show the practical application of the two principles analysed by prof. Van Duyne.

5.1.1. A comparative analysis

In the last few years the fight against corruption has been the topic of studies, proposals, reforms and conventions in various countries and at the international level. The level of corruption, though, differs significantly from country to country: whereas in some (such as France and Italy) it is systemic, in others (like Sweden, Finland and Denmark) it is casual.¹¹

¹¹ E.U. Savona, L. Mezzanotte, *La corruzione in Europa*, Carocci Editore, Roma, 1998, pp. 61-63.

Many countries, such as Austria¹², Germany, Finland, the Netherlands, Greece, Portugal and Norway are trying to reform the organisation and structure of the public administration, the aim being to reduce the opportunities for corruption.¹³ Many have recently elaborated and introduced new codes of conduct for public employees and officials. Some countries, notably Germany, Finland, the Netherlands, Denmark, Belgium and Portugal, have introduced the obligation for public employees to make financial declarations of their assets in order to improve transparency in the public sector.¹⁴ Another common ground for action in many countries is the creation of *ad hoc* anti-corruption authorities.

In the last ten years **France** has enacted three important items of legislation paying particular attention to the financing of politic parties. In 1988 a law was passed which requires members of the Government and of Parliament, presidents of regional assemblies and mayors to provide information on their initial and final assets. The same law for the first time disciplines the financing of political parties and of elections. In 1993 a study commission, tasked with proposing modifications to the legislation in force, recommended the adoption of codes of conduct, increased transparency in the public administration as well as in private corporations, the tightening of controls over corporations in order to prevent slush funds and tax evasion, and the modification of some penal provisions. In 1993 a *Service Central de Prévention de la Corruption*¹⁵ was also established with the tasks of providing documentation and information for judicial authorities investigating corruption cases, and of giving advice to the public administration.

As far as the **United Kingdom** is concerned, important recommendations for combating corruption are set out in the report by the Nolan Commission which was set up in 1995. The report stresses the importance of codes of conduct, of internal and external checks on the public administration by independent bodies, and of the training of public employees. Greater transparency is required in the lobbying activities of members of Parliament and in the authorisation of consultancies.

¹² «Austria's administrative reform programme», in *Focus*, Public Management Gazette, Puma, n. 9, June 1998.

¹³ OCSE, «Ethics in the Public Service: Current Issues and Practice», in *Occasional Papers*, n. 14, 1998, Puma, pp. 19-26 and 99.

¹⁴ OCSE, *op. cit.*, p. 57.

¹⁵ Law n. 93-122, 29 January 1993, *Journal Officiel de la République Française*, 30 January 1993, p. 1587.

The causes of corruption in **Spain** have been identified as the ineffectiveness of the rules on the financing of politics, the great presence of the state in society and the economy, and the weakness of its structures. The debate, however, has centred mainly on repressive measures, such as a tightening of sanctions, revising the penal procedure or creating a special jurisdiction for economic crimes with advantages for those who collaborate. In 1995 the Anti-Corruption Prosecuting Service was set up with special powers to investigate crimes against the public administration. Consisting of investigating magistrates, this service also has a special police unit and experts in tax and administrative law.

5.1.2. The Italian experience

The Italian experience since 1992 has shown that penal action may be unable to affect the origins and causes of systemic corruption rooted in popular attitudes and behaviour.¹⁶ Besides the magnitude of the problem, Italy differs from other countries in that corruption has infiltrated every level of public decision-making. Corruption has been discovered both in large-scale decisions involving extensive financial resources and in local ones of ordinary administrative procedure.

For this reason, attention should focus not on the tightening of penal sanctions, but on legislative measures intended to ensure transparency in sectors where corruption may more easily develop. The problem is one of prevention and administrative controls, of the deregulation or re-regulation as the case may be of markets more susceptible to corruption. Little has been done to introduce measures to reduce discretionary power, to limit monopolistic decision-making by individual public administrators and to enhance accountability at the same time.¹⁷ A correlated problem is that of

¹⁶ E.U. Savona, «Beyond criminal law in devising anticorruption policies. Lessons from the Italian experience», in *European Journal on Criminal Policy and Research*, vol. 3, n. 2, 1995.

¹⁷ The following extract is taken from an essay on the conference on corruption held at Ditchley Park in 1998 (Oxfordshire, England) and related to some of the causes of corruption: «... a number of factors favourable to such conduct were noticed, such as... significant degrees of discretion granted to public servants accompanied by low levels of accountability, high levels of government regulation which increased opportunities for corrupt behaviour, low levels of competency among officials which encouraged the use of intermediaries, centralised economic policies such as monopolies, preferred subsidies and closed markets and, finally, a general lack of transparency in government policy-making and process implementation.» (Maurice Copithorne, *Corruption: Progress in Counter-strategies*, Ditchley Conference Report No. D98/02, The Ditchley Foundation,

creating incentives for more moral behaviour by public administrators, working on levels of discretionary powers together with responsibility.

Italy has recently enacted a number of laws covering the public administration. In 1990, two laws were enacted, respectively on local authorities¹⁸ and on administrative proceedings¹⁹, with a view to improving the efficiency of the administration and providing citizens with greater opportunities to control the decisions made by the public administration.

More recently, in 1997 the Italian Parliament enacted three important pieces of legislation concerning institutional and administrative reform in order to change the rationale of the public administration. The laws decentralise local autonomies, reform public-sector employment, simplify administrative procedures, change control systems, and reform the state budget.

Two of these laws act in the direction highlighted by van Duyne by enhancing accountability and increasing transparency. *Law n. 59 of 1997* empowers the government to issue, by legislative decree, a general code of conduct for the public administration and to adopt special codes for the various sectors of the administration. The government is also empowered to create institutional bodies with control and counselling functions in relation to these codes. Moreover, *law n. 94 of 1997* sets out a new structure for the state budget. Each individual item of state expenditure is now linked with what has been termed a 'function-goal', by which is meant that the objectives of every item of expenditure must be clearly specified. This linking of every expense-creating public sector policy to a well-defined goal makes it possible to measure output by the public administration in terms of the quantity and quality of the services supplied to citizens. The law also establishes 'centres of administrative accountability' responsible for the management of each single item of expenditure and headed by senior public officers accountable for their performance.

These legislative changes, however, have not had the desired result of radically modifying the structure and attitudes of the public administration.

Oxfordshire, England, 1998, as cited in A. Di Nicola, «Anti-corruption measures in the Italian experience. Towards the reduction of opportunities for corruption», paper prepared for *The XII International Congress on Criminology*, International Society of Criminology, Seoul, Korea, 24th-29th August 1998).

¹⁸ Law n. 142, 8 June 1990.

¹⁹ Law n. 241, 7 August 1990.

Analysis of the causes of corruption as well as proposals for action has been conducted by two different initiatives, respectively, by the Italian Parliament and the Government.

On 27 September 1996 a study Committee on the prevention of corruption was established with the task of proposing legislative measures to prevent corruption. The means to be adopted for this purpose were identified in accordance with the constitutional principles of the impartiality of the public administration and of the loyalty and responsibility of employees.

Among the measures considered more appropriate in the short run are codes of conduct and financial declarations for public officials. In the medium run, more appropriate seem to be reducing state intervention in the economy, separating the selection and career of public employees from politics, and modifying the stipulation of contracts in the public sector. Finally, in the long run, the effective means are those aimed at preventing corruption: the re-organisation and simplification of legislation, the simplification of administrative proceedings, and a system of controls based on results rather than on processes.

On 26 September 1996 a Special Commission for the examination of bills on the prevention and repression of corruption was set up by the Chamber of Deputies and tasked with analysing twenty bills on the repression and prevention of corruption. Working with a deadline of 31 October 1996, the Commission identified four main issues: the control of legality and transparency in the public administration; transparency in politics and its disciplining together with economic activity; the awarding of contracts by the public administration; and the relation between penal and administrative proceedings by public employees.

On 31 March 1998 the Commission presented eight bills to Parliament. Four of them are of particular relevance, since they seek to enhance transparency and accountability.

The first deals with lobbying activities. It defines what is to be considered lobbying activity and regulates it for the first time, listing in detail all actions which are unlawful and the obligations which must be fulfilled. The second bill deals with controls on contracting activity by administrations: it provides for a new system of external controls on the awarding of contracts in order

to ascertain conformity with the general objectives of the administration, legitimacy, efficiency and profitability.

A further proposal is to establish an authority ensuring legality and transparency in the public administration. Among the tasks of this authority would be the gathering of information and data in order to supervise public offices. It would also monitor the fulfilment of obligations and investigate the financial situation of public employees, informing the judiciary or the competent administrative bodies of any irregularity.

Finally, a fourth bill proposes changes to the penal code. In an endeavour to devise remedies to facilitate investigations and to sever the relationship between the actors of corruption, rather than tighten sanctions, the bill proposes a variety of sanctions, which are reduced in the case of collaboration and aggravated in that of obstruction of the action of magistrates.

Apart from these initiatives by Parliament, a Ministerial Decree of 7 November 1996 set up a study commission to curb corruption and improve action by the public administration through measures to improve the quality of administration and to prevent corrupt practices. The Commission was of the opinion that the malfunctions which permit the development of corruption can be eliminated by re-organising the public administration, and that the best instrument to prevent corruption is an efficient administration, where transparency and efficiency are ensured, and the responsibility of public officials is better defined. It is therefore necessary to eliminate the gap between the law «in the book» and the law «in action». The Commission has made several suggestions: increasing the role of technical bodies both in national and local administrations; increasing the decision-making powers of public managers, reducing the political pressure on them; fostering the territorial mobility of public employees; and promoting the adoption and implementation of codes of conduct, ensuring that effective disciplinary sanctions are applied to those who do not comply.

6. CONCLUSIONS

Some brief conclusions can be drawn from this analysis and might be useful for further discussion. The analysis of corruption, particularly in Italy, has made it clear that criminal law remains an essential component in the fight against corruption. In fact, «criminal law can play an important role by influencing human behaviour, imposing additional costs on the criminal activities and providing the single person with an economic incentive not to commit an offence...».²⁰ However, penal sanctions can play their most effective role only if aided by a number of other measures, thus constituting a comprehensive, far-reaching and long term anti-corruption strategy.

First, incentives should be provided for the «producers of morality»: schools, families, cultural, religious and political associations. The means to do this are various, and they might involve appropriate legislative reforms, the redirecting of public expenses, and additional public investments. Second, as regards the disincentives for the «destroyers of morality», whether these are organised crime, managers of corporations creating slush funds, international corruptors, all the possible strategies should be used. For example, a more intelligent use of penal and administrative law can make great inroads in anti-corruption efforts, as can a more efficient deployment of the law enforcement and judicial authorities responsible for preventing and controlling corruption. Greater emphasis should be given to self-regulation by means of codes of conduct providing for a variety of administrative sanctions, to the expulsion from the corporation or the public administration office.²¹

Finally, since the focal point of corruption still remains the public administration, it is important that, in the long term, legislative reforms such as those envisaged in Italy are implemented, in order to de-regulate and re-regulate a sector which is often characterised by great confusion and which thus provides enormous opportunities for the illicit exchange of favours.

²⁰ W.H Hirsh, *op. cit.*, p. 200.

²¹ For a more extensive analysis see S. Chiri, «Suggerimenti per controllare la corruzione e minimizzare i danni», in L. Barca, S. Trento (eds), *L'economia della corruzione*, Laterza, Bari, 1994, p. 151 ss.