

HUMAN RIGHTS AND CORRUPTION: DEGENERATION OF GOOD GOVERNANCE FROM HISTORICAL APPROACH

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Abstract

Corruption means abuse of power that replaces public interest within private interest. In its origin, founded in patristic philosophy, it was indicated as form of degeneration of common asset. In current international conventions, the meaning of degeneration is revealed, nowadays linked to obstruction of development.

Keywords

Corruption. Power. Human rights. Development.

Summary

1. Introduction: two poles of a necessary relationship. 2. Corruption: through historical route. 3. Final note

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1. Introduction: two poles of a necessary relationship.

The expression human rights is multifaceted. It put across many meanings, which even contradict each other, therefore it could be said that, when we talk about human rights, we often do not know exactly what we are talking about². For this reason, whenever human rights are considered from a certain perspective, the same concept can lend itself to different readings. Also, it is necessary to clarify, that human rights' concept is a result and a conquest of Euro-American culture³, outcome of liberal revolutions of the eighteenth century⁴.

In the eighteenth century, in fact, liberal thought elaborated a conceptual image (metaphysical, ideal and, above all, axiologically strong), capable of make a critical vision of law, considered in the light of the new form of political organization: the State⁵. In this way, we have witnessed the emergence of the concept of legitimate law, compatible with the ideal of justice. This requires limitations of political power and, as consequence, the affirmation (and, before that, the recognition) of individual rights⁶.

Although, into liberal revolutions, the reference of human rights was introduced to limit political power. Interesting to underline that this question precedes the theoretical elaboration of the eighteenth century, due

² KLEIN 2008, 213

³ LOHMANN 2008, 47

⁴ BRANDÃO; GAUER 2005, 147 *et seq.*

⁵ According to Amato Mangiameli: "Consider the modern state, at the same time ordering, community, organization. [...] It is a matter of a great work of foundation and structuring, required by a reason which gives itself its own foundation and which naturally avoids the contradiction of wanting the state of nature" AMATO MANGIAMELI 2020, 11.

⁶ KLEIN 2008, 213

this issue, in fact, had already been the subject of attention and debate by the schools of natural law⁷.

However, with the affirmation and proclamation of human rights by the State, as an institution developed in modernity and still in force today, the most important conceptual architrave of the schools of natural law has been partially emptied. In this framework, human rights – rather than a parameterization for righteous law – are understood as a sort of "functional equivalent" of natural law. About this, important point that:

“The concept of human rights, in post-modernity, has a role substantially identified with that which natural law occupied in the past, emphasizing that this concept allows the affirmation of a substantial philosophy of law.”⁸

And it is, however, in the context of the dutiful limitation of the action of political power, whose purpose should always be protection and defense of human rights, that it is necessary to address the question of corruption.

Already since liberal revolutions, corruption has been the object of blame and stigma as it represented, as it still does, the paradigm of abuse of power. From this point of view, corruption can be perceived as antithesis of human rights, because abuse of power is antithesis of its limitation.

Therefore, it is no coincidence we find an explicit reference to corruption within the preamble of French Declaration of 1789:

“The representatives of the French People, formed into a National Assembly, considering ignorance, forgetfulness or

⁷ BRANDÃO; HOMEM 2015, 10

⁸ ALVES; BRANDÃO 2016, 245

contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.”⁹

This passage clarifies how corruption can be seen. In fact, it is the opposite of human rights. An opposition which represents a conceptual incompatibility between *regulated and limited* power, on one hand, and abuse, on other hand. Like a fundamental theme, the relationship between corruption and human rights calls interdisciplinary research for the reason of its complexity.

2. Corruption: through historical route.

Although important indications about corruption can already be found in Cicero¹⁰, who, from the first century BC, wrote about the intrinsic

⁹ <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen>

¹⁰ CICERO, *passim* especially in book II. <https://www.gutenberg.org/ebooks/54161>

reprobation of this practice, since “*optimus status civitatis*” opposes corruption of forms of government and customs, the development of this concept was produced on fifth century.

In this view, the development of corruption’s definition was made by patristic philosophy, current in medieval thought. Indeed, Augustine has developed this definition both in theology and in political philosophy.

The exchange of letters between the bishop of Hippo and Saint Jerome (then a close collaborator of Pope Damasus) is particularly significant to development of a theological definition of corruption¹¹. On the conclusion of the writings of Apostle James (*De sententia Iacobi apostoli liber*), the concept of corruption is presented as emblem of degeneration, in which it is stated that the sleaze of love constitutes the gravest sin, because the Truth - which is also Charity - dwells in man himself.

From the point of view of political philosophy, corruption embodies the ultimate degradation; a degradation well represented by the same difference that exists between the City of God and the City of Earth. According to Augustine, in fact, degeneration would represent one of the major enemies from which it is necessary to defend the City of God¹². For Augustine, the exercise of power is condemned to be "distorted" when whoever holds it succumbs to disordered passions, transforming power itself into an object of idolatry. More in details, according to his understanding, the "distorted" sovereign would dominate, overwhelm and mistreat his fellow men, governing pursuing his personal advantage, not, as it should, for the benefit of the common asset. A distortion, which, according to Augustine, obscures his heart, making it properly corrupt. And corrupt, in this sense, is the heart (*cor*) broken (*ruptus*).

¹¹ GUARNIERI 2016, 454

¹² AGUSTIN 1996, 99

So, the success of political organization would depend precisely on the ability to contain and dominate passions. In short, the holder of political power capable of achieving this dominion will succeed in making the common asset prevail over his own private interests. Also, it will thus turn his mind and his heart to the heavenly homeland, that is, to the City of God¹³. On the other hand, according to Augustine, where rulers let themselves be overwhelmed by disordered passions – as, for example, happened to the rulers of the Roman Empire described in the book City of God – we would witness the emergence of a constellation of vices destined to corrupt the heart¹⁴.

In conclusion, it is evident that, according to the reading offered by patristics, corruption is the most absolute and dangerous degeneration of power. A perverse degeneration, which – due to the affirmation and absolute prevalence of private interests – would lead to the death of the common asset.

Currently, corruption is still defined as degeneration of power, however, most of the references to the consequences of this degeneration are no longer conceptually related to common asset, but rather to development. In this context, for example, international human rights rules underline that corruption is a mechanism of degeneration of power that blocks development. A mechanism which, in turn, is destined to produce various groups of consequences which have an impact on human rights. In this sense, the preamble to the Inter-American Convention against corruption, states that:

¹³ AGUSTIN 1996, 254

¹⁴ AGUSTIN 1996, 255

“Corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples”¹⁵

Also, the preamble of the Convention of United Nations Against Corruption expressly mentions the impediment to development due corruption, *verbis*:

“Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.”¹⁶

In summary, corruption would generate bad governance and its cost would be borne by a contraction of development¹⁷. From this point of view, according to Zaffaroni, the definition of corruption would revolve around the decision-making power of the state. Inasmuch as it would cause degeneration of power and, with it, it would determine reduction of the state's capacity to generate income, corruption obstruct development. Capacity which, on closer inspection, is functional and necessary to ensure the affirmation of human rights¹⁸.

And it is precisely in this broader sense that corruption obstructs development and undermines the affirmation of the values that underpin the democratic rule of law and the notion of the dignity of the person. Which is why – despite international human rights treaties provide that corruption should be the subject of criminal law - it is instead necessary that

¹⁵ https://oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp

¹⁶ https://unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

¹⁷ KAUFMANN 2000, 267

¹⁸ ZAFFARONI 1990, 371

this practice be tackled through an interdisciplinary approach¹⁹, which includes, in addition to criminal law, politics, ethics, economy and, most importantly, human rights, since human rights represent the most distant and opposite polarity of corruption.

3. Final note

Norms and conventions on human rights that consider the correlation between the protection and effective enjoyment of these fundamental rights and corruption are later and relatively recent. Only in the 1990s, in fact, the debate restarted (initiated starting from the French Revolution) regarding the link between the limit (and the necessary control) of power and its possible abuse.

Indeed, although the Declaration of the Rights of Man and of the Citizen of 1789 had already clearly stated that the neglect and violation of human rights represented one of the most serious consequences of government corruption, the Universal Declaration of Human Rights of 1948 did not pay attention to the issue of corruption.

However, the significant turning point took place around 1990. In this sense, the economic development policies of the World Bank should be mentioned here: the ideal of good governance which have identified in corruption the major obstacle to the development and success of economic reforms. And it is within this perspective that two well-known international norms on corruption, namely Inter-American Convention against

¹⁹ MANTINON QUINTEIRO 2016, 12

corruption and Convention of United Nations Against Corruption, have been established.

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