

Social and economic human rights as a way to impede corruption.

OSVALDO GUARIGLIA

§ 1. “Corruption” is not an easy term to define. There are, of course, several definitions that underscore it as a deviant behavior in view of an accepted standard of sound behavior in public office. Here the differences begin, because one way of regarding the behavior as sound is to match it with the corresponding rules of the exercise of the office in view of private influence, such as bribery, nepotism, etc. The other one considers, instead, that corruption has to do with acting by non-legitimated rewards in ways that damage public interests. Both definitions are, however, incomplete, not only because «public office and public interest definitions of corruption [...] must identify the norms by which we are to define the character and scope of public office or the public interest»,¹ but also because both definitions focus exclusively on corruption as a way of acting of an *individual*. However this tendency to analyze corruption as isolated individual acts overlooks the great political tradition from Antiquity down to Rousseau that unanimously considers «that the source of systematic corruption lie in certain patterns of inequality»². I don’t mean to deny that the individual soul has a role to play in the tragicomedy of corruption, since, as Aristotle puts it, «the wickedness of men is a cup that can never be filled. [...] Men are always wanting something more and are never contented until they get to infinity»³. But this innate selfishness of human beings is constrained and channeled by social forces, like education and morality. Thus, an equilibrium between the destructive desires of our own selves and the constructive impulses of our allegiance to social ideals of solidarity and common interest normally directs people’s lives when a society is seen by its member as a fair community. Individual corrupt behavior is always a symptom of a breach in the underlying structure of a given society.

Some of the main characteristics of a corrupt state of affairs in a given society are associated with deep inequalities between its citizens, which has a disintegrating effect in the internal cohesion of the State. These inequalities are of different kinds and curtail all the development possibilities of less favored members. It is a fact that one of the most pernicious consequences of a country’s lack of social and economic development is the invariable decline in educational achievement. This entails a consequent rise in the lack of the capabilities that would allow a significant sector of the population to join the labor market with higher opportunities. In turn, this spells fostering the conditions that will turn a large percentage of the population into a permanently unemployed mass of people. In the absence of a system of unemployment insurance and training to sustain them, their survival will unavoidably depend on the gifts granted by the political elite in power. That is how a web of “clientelism” is spun. Its maintenance requires drawing on fresh funds outside the legally sanctioned budget and this dependence demands a parallel net-

1 Philp, 1998, see also Philp, 1997, 440 – 46.

2 Dobel, 1978, 961

3 *Pol.*, II 8, 1267 b 1 - 3

work of negotiations where bribe-money often flows. In this way, corruption seeps into all social structures, including those at the center of political power, and carries in its wake two regrettable consequences for the enforcement of human rights in a country. On one hand, the political party that has come to power through this client-system becomes so strong that it turns into a hegemonic party, practically unbeatable in democratic elections. On the other, it disrupts the principle of equality for all citizens, since those closer to power shall have privileges that place them beyond any sort of competition with others on the basis of merit, efficiency, honesty, and so forth. Consequently, the political regime gradually becomes less of an open and transparent democracy and turns into some sort of plebiscite oligarchy.

As a result of unequal globalization during the last decade of the past century, a pattern of internal division in “two societies” within the same nation has emerged in all countries of Latin America, one made up by the rich; the other, by the poor. As Dobel has pointed out, this is a source of potential conflict and class-strife that is always paralleled by corruption of the state, which is very difficult to surmount.⁴ There are, of course, different levels of corruption, not only between different countries but also within the same country. So far I have depicted the deepest level of political corruption a democracy can reach. Certainly, there is no easy way out of a situation like that, because a reform of a plebiscite oligarchy and its transformation into a more decent form of democracy is a long and difficult process and not necessarily successful. In contrast there are less serious levels of political corruption, that is, situations which can be disguised as the normal functioning of a democratic state albeit intrinsically biased in favor of the interest of people asymmetrically situated in relation to others. In what follows I will focus on the role social and economic human rights – properly understood – can play in favor of a progressive smoothing down of existent profound inequalities between the members of the same society. These inequalities are the most important source of widespread forms of corruption undermining the very existence of democracy itself. In so doing, I will describe some of the central features of a deliberative democracy, such as I conceive it.

§ 2. The various international covenants and declarations on human rights include two kinds of rights, which are usually described as “civil and political rights”, on one hand, and “economic and social rights”, on the other. Typical of the former is the statement in Article 3 of the *Universal Declaration of Human Rights*, which asserts: “Everyone has the right to life, liberty and security of person”. An example of the latter is Article 25, according to which, “Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including, food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, etc.” (See also art. 11 of the *International Covenant on Economic, Social and Cultural Rights*)

⁴ Dobel, 1978, 968

A current philosophical line contends that there is a strict parallel between these two types of rights, and describes both as basic. In fact, as Henry Shue has asserted in his already classical work, “the same considerations that establish that security rights are basic for everyone also support the conclusion that subsistence rights are basic for everyone. It is not being claimed or assumed that security and subsistence are parallel in all [...] respects. The only parallel being relied upon is that guarantees of security and guarantees of subsistence are equally essential to providing for the actual exercise of any other rights”⁵. Despite that, economic and social rights – regarded as *positive* insofar as they acknowledge that the subject of those rights holds a valid demand to have some particular basic rights satisfied – such as food, medical care, etc. – have not received equal sanction by laws in developing countries, let alone in so-called poor countries, as they have in developed ones. On the other hand, in some of the most powerful nations the protection the state offers through these rights to their least favoured groups is currently endangered by the enactment of policies that cut taxes that should finance such protection.⁶

How should we define the formal concept of an economic or social human right? This type of right asserts in each case a demand that must be satisfied – with respect to food, for instance, clothing, housing, medical care, and the like. Nevertheless, rights, formally considered, cannot go beyond this overall general statement, since the actual and precise extent of whatever may be regarded as a basic right to be satisfied will depend on each national, regional and even communal context. An additional controversial point is whether this rights-claim or demand has in each case a particular recipient, since it is not usually a simple matter to identify a particular agent’s precise obligation corresponding with the claim set forth by the holder of the right. Of course, one may think that the foremost agent is always the relevant state, or some of its institutions or agencies. Even if this is admittedly the most straightforward answer, some not easily surmountable obstacles immediately crop up. For example, What happens when the State is so weak, dislocated or corrupt that it is unable to note in a precise and orderly manner the basic demands of its population, let alone satisfy them? An adequate response to this question would state that, since social and economic rights are moral rights, they are usually claimed “only when not protected by legal rights efficiently acknowledged”⁷. In other words, the moral validity of the demand and, along the same lines, its universal appeal, persists counterfactually especially wherever the state does not fulfil its task. However, the question remains open: how is it possible to allot responsibility to the recipients of claims asserted by beneficiaries of positive rights, since the notion of a demand without its corresponding respondent can easily become empty.

Before we may even attempt a reply, it is necessary to analyze who are the beneficiaries of the rights in question, and how they should be determined. The first point, who are affected as holders of positive rights, may be solved in general

5 Shue, 1996, pp. 25 – 26

6 See P. Krugman, “Stating the Obvious”, *NYTimes*, May 27, 2003.

7 Nino, 1989, p. 48, n. 37.

terms by answering that, potentially, *all members* of a given society qualify. For, either they have citizenship rights in the corresponding state, or they are foreign residents legally acknowledged as such by the state. In view of the fact that resources are limited, however, it is imperative to establish some kind of hierarchy among potential beneficiaries. This will require selecting – as a guiding criterion – a *minimum set of basic needs* that must be satisfied.

So we come to the second problem: How are we to determine who are the people whose basic needs are below a standard that can be publicly acknowledged as “decent”? It has been rightly objected that it is impossible to determine beforehand the scope and characteristics of basic needs in each individual society since its culture, and economic and technological development decisively influence both variables. That notwithstanding, it is actually possible to establish a sufficiently exact, albeit flexible, indicator to determine a set of basic needs – and these would include food, housing, education and medical care. I am referring to the group of average needs required by a person of either sex in order to attain sufficient *control of his/her capacities and abilities*, which will ensure full use of his/her *autonomy*.⁸ The magnitude of the resources necessary to guarantee such a minimum set will largely depend on the stage of social development achieved not only by a particular country, but also by the various regions within it. Thus, whoever comes below the minimum line, established according to regional, even communal, parameters and is unable to provide subsistence for him – or herself by his or her own means – due to temporary or permanent impairment, temporary or chronic unemployment, or whatever other reason – will be a primary beneficiary of economic and social rights.

§ 3. Up to this point we have developed the concept of a social and economic human right and a normative criterion to determine who are the holders of this type of rights and what standard we must use to determine the scope and amount of basic needs. Yet, unless we find an independent way of arriving at a publicly accountable and generally applicable concept of “autonomy”, we run the risk of turning in circles. In this juncture, I propose to bridge the divide between this concept and the procedure of a deliberative democracy in order to ascertain the capabilities and actual abilities necessary to participate actively in civic life. “Autonomy”, indeed, is not a state but an agency that explains itself by doing, so that one must refer precisely to the circumstances and activities in which one acts autonomously in order to assess if it is actually at work. Public deliberation demands from each participant the capacity to give reasons in support of his/her own claims and to accept the reasonable objections or counter-reasons posited by others, following commonly accepted argumentation rules. Such activity presupposes that each participant has an equal dominion not only of the rules but also of the necessary relevant knowledge (empirical, scientific or general) of the issues at stake. Otherwise, the inequality of people’s diverse situations in education, rhetorical and logical

⁸ See Guariglia, 1992, pp. 23 – 33, y 1996, pp. 173 ff.; Gewirth, 1996, pp. 51 ff, Fabre, 1998, pp. 267 ff.; O’Neill, 2000, pp. 29 – 49, 137 – 138.

training, etc., reproduces the basic inequality of society at large. Material conditions of well-being, such as appropriate housing, food supply and health care for all participants in public deliberation are also clearly involved. Otherwise, those whose needs regarding one of these items were unsatisfied, would be situated in a lesser level in relation to other participants. The criterion based on securing an equal starting point for the participants in a public argumentation is indeed more demanding than one based on the individuals' capacities for planning and executing their own goals.⁹ In the case of a criterion such as the one posited by Amartya Sen, for example, each individual is responsible only for his or her own success or failure. A common deliberation, instead, must include the particular interests and reasons of all participants and through the interchange of arguments for and against each possible outcome arrive at a non-coercive decision, which should synthesize the common interest. As Bohman has pointed out, «there is a good empirical indicator for such deliberative capability: it is not merely Sen's idea of "the capability to appear without shame in public"; more specifically, it is the social capacity to initiate acts of deliberation about their concerns».¹⁰

Consequently, the fulfillment of the economic and social human rights is far more genuinely warranted by a citizenship's wide participation in public deliberations related to decisions involving common concerns. Obviously citizen public participation presupposes that civil and political human rights are fully in force in the corresponding state. As adequately noted on the relation between rights, these come in waves and one refers back to the other.¹¹ It is impossible to express one's opinion freely and to sustain one's proposal openly in the absence of a guarantee that no punishment or harm will ensue in retaliation for one's public activity. Due to the lack of this guarantee, authoritarian states are much more prone to corruption than liberal ones, although concentration and monopoly of mass-media by a single owner, such as in present day Italy, warn us against full certitude about the universal truth of this assertion.

§ 4. The most current form of a corrupt state is the faction state. This is a profoundly divided state, since «the factions into which the community breaks destroy the loyalties which sustain this community».¹² Factions struggle one another in search of more power, money, privileges and security for themselves. The more each faction strives after increasing wealth or power, the more it will place the private interests of its members above the public interest of the State. Totally disregarding the common interest, each faction attempts to conquer the whole apparatus of the State to use it for its own benefit. Secrecy, collusion with other parties on hidden profits, and exclusion of the many in the main decisions of the State are some of its most conspicuous methods. Although the hegemony or exclusiveness of one party over the entire political system, such as in the case of PRI (*Partido*

9 Sen, 1992, 73 ff.

10 Bohman, 1999, 333; see also Guariglia, 1996, 171 ff.

11 Waldron, 1993, 212 – 213.

12 Dobel, 1978, 964.

revolucionario institucional) in Mexico or *Peronism* in Argentina, greatly favors the establishment and extension of factions throughout the political system, it is not actually a necessary condition. Two-party systems can also be associated with the rising of factions that are supple enough to make illegitimate deals with both parties in power according to the circumstances. In the long run, a two or more party system that mixes institutional power with business gradually switches into an oligarchy formed by a political elite ruling over the great mass of citizens. Such was the case in Italy, for example, before the great judicial processes of the *mani pulite* era.

As observed at the beginning of this paper, an unavoidable and regrettable consequence of such oligarchic rule is that citizens' survival depends so crucially on the benevolence of one of the dominant factions that they lack almost any chance of building up an *autonomous will*. A democracy, however, is a very demanding regime that necessarily requires the public body of its citizens to be constituted by a majority of autonomous members. So the only way out from a degenerate regime like plebiscite oligarchy is to build up a citizenry with the necessary capacity to participate in civic life through direct involvement, and ready to resist the pressure of the dominant elite, be it through threats or through attempts at cooptation. Enforcing social and economic human rights is, in my judgment, the key to reform a corrupt regime in the long run. For, the higher the educational level of citizens the greater must be the transparency of public office and the publicity of political decisions, specially those involving the allocation of fiscal resources. In view of a wider participation of citizen in public life, however, it is not sufficient to provide a mere technical training that will allow everyone to join the labor market. Beyond this essential condition it is basic to develop the capacity for communication among citizens so that they may take part in the public debate within the contents and procedural framework of *public reason*.¹³ I cannot develop my own view of public reason in this paper. For my present purpose, suffice it to say that to my mind public reason is less limited than Rawls' in connection with the issues at stake, but more restricted than the undetermined spectrum of contents defended by Habermas.¹⁴ Whichever way we take, however, it will lead us to the same conclusion, namely, that seriously enforcing human rights, struggling against political corruption and building some kind of deliberative democracy are not only conceptually but also practically interwoven activities.

National Research Council and University of Buenos Aires.

13 Rawls, 1993, 212 ff., 1999, 131 ff.

14 Habermas, 1992, 349 ff., Guariglia, 2002, 140 ff.

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