BOOK REVIEW

MARIA DE BENEDETTO, *CORRUPTION FROM A REGULATORY PERSPECTIVE*, OXFORD, HART, 2021

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This is an important and fascinating book. Its central idea is that administrative corruption, as a phenomenon strictly connected to the ineffectiveness of rules, is a regulatory issue and should be treated accordingly. More precisely, administrative corruption requires to be addressed by taking into consideration rules and regulation during their whole life-cycle, in order to strengthen their effectiveness and to drastically reduce the room for infringements and administrative corruption. The search for regulatory effectiveness should therefore be integral to any serious model of anticorruption policy: rules should be designed, implemented and enforced in such a way to ensure their full effectiveness, if anticorruption policies really want to achieve their objectives. While such overall approach is not entirely new, as the relations between rules and corruption have been previously investigated by some authors, including Marco d'Alberti and Anthony Ogus, the argument developed in the book clearly represents a major contribution to legal research on integrity and corruption, as well as to administrative law and regulatory studies.

The inquiry opens with an explanation of the main relevant concepts. This part is much more than an introduction to the research: it provides the reader with an insightful and sophisticated discussion of three key notions involved in the regulatory perspective taken by the Author, namely 'rules', 'controls' and 'corruption' (Chapter 1). Each concept is presented in a way which is functional to the line of reasoning articulated in the subsequent chapters, without however simplifying the underlying theoretical issues.

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As for 'rules', in the regulatory perspective taken in the book, they are conceptualized as the basic functional unit of regulation, which should be understood as a 'collection of rules' in a specific policy field. In this context, they raise essential functional issues: rules should be designed in such a way to effectively achieve their objectives, without producing unintended side-effects, including corruption. In particular, their effectiveness depend on three conditions, namely the 'legal normative' features of rules (their comprehensibility, validity and binding force), the hight rates of compliance and low costs of enforcement, and their capability to achieve the desired results ('outcome'). This analytical framework allows the Author to identify the diversity of situations in which rules are dysfunctional, as well as to point to the relevance of trust as an 'intangible factor' of rules' effectiveness. Also the second key notion, 'corruption', is discussed in relation to the regulatory perspective which shapes the inquiry. Corruption is a 'regulatory issue' because it is always connected with rules. As such, it is a wide phenomenon, referring to any abuse of public power for private benefits and determined by bad quality or bad functioning of rules which establish and regulate that public power. This understanding of corruption, which goes beyond the boundaries of criminal law, is then differentiated from some contiguous notions, such as 'conflict of interest', and further articulated. The Author appropriately stresses that corruption, in a regulatory perspective, may be subjective or objective, depending on whether it refers to individuals' or aggregate behaviours; and that it covers both the actual instances and the risk of corruption, that is 'corruptibility'. As for 'controls', the third key notion of the inquiry, the model which is considered more fruitful in the regulatory perspective taken in the book is that of the Principal-Agent-Client. Indeed, the model - which involves three actors, namely the state and its citizens (the Principal), civil servants (the Agent) and private actors (the Client) - is broad enough to take into consideration different types of corruption processes, on the one hand, and different kinds of controls, on the other. From an anticorruption point of view, each of the three relationships (between Principal and Agent, between Principal and Client, and between Agent and Client) opens the way to specific forms of corruption and should therefore be subject to specific types of control: administrative controls, in the case of the relationships between Principal and Agent; public controls of private activities, as for the relationships between Principal and

Client; while criminal ex-post controls apply to the Agent-Client relationship.

The central part of the book articulates the main argument of the inquiry. Set the scene and clarified the basic concepts, the Author discusses, first, anticorruption strategies (Chapter 2), then the rules necessary to implement a coherent and sound anticorruption strategy (Chapter 3) and the specific role played by controls in reducing corruption (Chapter 4). The overall perspective is essentially normative, as the Author aims at identifying an ideal (although realistic) regulatory toolbox to tackle corruption. But there is room for descriptions and empirical analyses of the regulatory models at work in some domestic orders. This is the case, for example, of France, Spain, England and Italy, with the latter considered as a particularly interesting case for its inherent tension between big regulatory failures (from legislative inflation to rigid controlling, overwhelming bureaucracy and distrust in public institutions) and ambitious attempts to develop an appropriate anticorruption strategy, recently fueled by the National Recovery and Resilience Plan.

As convincingly argued by the Author, current anticorruption strategies are, in descriptive terms, the result of global constraints and domestic policies. Since the last decade of the XXth century, international and global regimes have laid down a rich pattern of binding and soft law measures aimed at preventing and repressing corruption in national polities; this is the case, for example, of the Transparency International Corruption Perceptions Index (1995), the United Nations Convention against Corruption (2003) and the OECD recommendations on transparency and integrity in different fields of government action. While the rise of international and global regulation has reduced the room for national autonomy, domestic anticorruption policies nevertheless differ in many regards one from the other. The Author suggests that three main models are at work in Western countries. They are not alternatives to each other, but rather represent incremental responses to corruption. One is 'conventional anticorruption', based on a traditional deterrence approach and relying on anticorruption offices carrying out a control function over public institutions. Another is 'behavioural anticorruption', which exploits the contributions coming from behavioural and cognitive sciences. The third model, 'regulatory anticorruption', is oriented to prevent corruption by focusing on rules and regulatory delivery.

Here comes the normative stance of the Author, who argues that the last model, the regulatory one, is to be preferred over the others on a functional basis, as it may address some of the shortcomings of conventional anticorruption, while, at the same tine, integrating insights from the behavioural approach.

The discussion on anticorruption rules, presented in Chapter 3, takes a further step. If regulatory anticorruption is a promising strategy, which rules are required for its implementation? The answer provided by the Author revolves around the idea that 'managing rules' is the fundamental rationale of a regulatory approach to corruption, as the quality and effectiveness of anticorruption strategies ultimately depend on *ex ante* and *ex post* evaluation of the regulatory framework. Managing rules, though, should be articulated in two different directions. First, it should be directed to the regulatory stock, which can be managed through simplification programmes (broadly meant as programmes oriented to the reduction of the number of rules as well as of compliance costs and administrative burdens) and by providing advocacy powers to national anticorruption bodies (which should be able, for example, to propose regulatory changes and report information to regulators). Second, managing rules should address the regulatory flow, which can be managed by using specialized regulatory tools, such as a specialized impact assessment, and by tracing the interests at stake in the regulatory process.

In this overall framework, controls play a specific role as anticorruption tools. The Author appropriately highlights the relevance of controls, meant as a system of different but functionally complementary instruments, both in regulatory theory and in public law: controls are necessary tools for making rules effective, in particular in the compliance phase of the regulatory cycle, as well as a key instrument of the power-checking function historically developed by public law over the last two centuries. She then articulates a practical approach to controls, by pointing to a number of factors which may impair their effectiveness (starting with the risk of selective control and the costs produced by control activities) and by putting forward a set of proposals. In particular, it is argued that the following elements are essential in order to establish effective controls: information, to be developed in the perspective of evidence-based policy-making; the proper design of controls in regulation (that should also guarantee privacy and data protection); appropriate planning of controls; the concrete ways in

which controls are implemented, ranging from cooperation to coercion; communication strategies; reform of the regime of controls, where this is needed to increase compliance.

Building on this analysis, the last chapter aims at identifying a 'formula' for combating corruption via regulation and controls. The regulatory anticorruption toolkit presented by the Author is based on a specific instrument referred to as 'corruptibility assessment'. Such instrument is different from the corruption impact analysis at work in some legal orders. Indeed, it focusses on the probability that corruption will follow from certain legislation, by pointing to three main elements: the incentives or disincentives in regulation which promote, directly or indirectly, administrative corruption; a protocol to identify and assess the risk of corruption produced by specific rules, starting from legal concepts, such as that of authorization, and language indicators, with a view to activating the appropriate anticorruption responses; criminal databases capable of providing information for early administrative anticorruption, as in the case of data suggesting that some policy sectors or specific administrative powers may be involved in corruption more frequently than others. While these elements may be used in different types of anticorruption strategies, they always encapsulate and promote a regulatory approach to anticorruption, that is an approach based on the assumption that rules are at the same time determinants of administrative corruption and anticorruption tools. The last word, however, is left to the 'human, intangible side of regulation' (p. 192), which the Author ultimately identifies in 'trust'. Trust is the intangible factor which is at the basis of rules' effectiveness. Accordingly, repairing and restoring trust should be part of any regulatory approach to anticorruption.

The book has many merits. First, it is a remarkable contribution to research on anticorruption law and policy. Literature in the field is notoriously abundant and diverse, covering many different issues and taking a plurality of points of view (see e.g., among the most recent contributions, A. Graycar (Ed.), *Handbook on Corruption, Ethics and Integrity in Public Administration* (2020); F. Merloni, *Corruption and Public Administration. The Italian Case in a Comparative Perspective* (2020); C. Hodges and R. Steinholtz, *Ethical Business Practice and Regulation* (2017)). The inquiry carried out in this book contributes to such literature by providing a sophisticated and well developed regulatory toolkit to tackle corruption. As already observed, the regulatory approach taken in

the inquiry is not entirely new, as it finds some precedents in some important studies on the relationships between rules and corruption (see, in particular, M. d'Alberti (Ed.), *Corruzione e pubbliche amministrazioni* (2017); and A. Ogus, *Corruption and Regulatory Structures*, in *Law & Policy,* 2004, 329). What is genuinely innovative, though, is the way in which the regulatory approach to corruption is articulated and developed. The Author provides a systematic and coherent reconstruction of the micro-dynamics of regulatory anticorruption. With great analytical precision and clarity, she demonstrates, one step after the other, how an anticorruption regulatory strategy could and should be designed. The result is an operational toolkit, a pragmatic combination of instruments which may serve both as a benchmark to assess anticorruption measures currently used in Western States and as a source of inspiration for governments to develop new and more effective strategies. The reader may disagree with this or that specific element of the toolkit, perhaps even reject the idea that corruption is a regulatory side-effect, but it is difficult to deny that the 'formula' presented by the Author is a powerful and highly coherent synthesis of the way in which a regulatory anticorruption strategy, as well as its implementing rules, should be designed.

A second merit of the book is its attempt to go beyond the technocratic dimension of regulatory anticorruption. Admittedly, the toolbox is a set of instruments and techniques functionally oriented to a specific policy objective. Yet, its deep rationale is ultimately human and social, rather than technocratic. In a somehow circular way, the inquiry opens and ends up with a reference to trust as the intangible element at the basis of rules' effectiveness. The basic perspective is therefore one in which regulatory effectiveness actually depends upon trust, in at least three senses: public institutions require trust to function properly and ensure policy delivery; the lack of trust in institutions decreases the degree of compliant behaviour; institutions can and should promote and protect trust, for example in market and political competition. The reference to trust may appear a bit paradoxical in an inquiry clearly focussed on the instruments capable of operationalizing an anticorruption regulatory strategy. But it is not, of course. In functional terms, trust is the glue that allows the proper functioning of such instruments, the social value animating and sustaining the regulatory effort against corruption. At a deeper level, trust is a dimension of law, as recently stressed by some

original lines of research in legal philosophy (see in particular T. Greco, *La legge della fiducia. Alle radici del diritto* (2021)). At the same time, by pointing to trust as a foundation of the regulatory anticorruption strategy, the Author brings in the regulatory discourse a number of new and complex questions, starting with those concerning the ways in which regulatory techniques, organizational structures and procedural instruments should be designed in order to build social cooperation, facilitate shared interpretations and behaviours, and promote trust in institutions and inter-private relationships.

Finally, the book is an interesting (and successful) methodological experiment. The Author puts her disciplinary background in administrative law at the service of an inquiry in law and regulation. The dividend is rich. The administrative law perspective shapes and deepens the regulatory understanding of corruption as well as the design of appropriate anticorruption strategies. For example, the lenses of administrative law are particularly useful in illuminating a number of important issues, such as, for example, defensive administration, the relevance of interests in the regulatory process, the functional rationale of controls. From this point of view, the book shows how regulatory studies may benefit from insights coming from legal analysis, and from administrative law in particular. It also shows, however, that administrative law scholarship may be in turn enriched, perhaps even revitalized, by the interaction and contamination with regulatory studies. The regulatory approach, for example, sheds some light on the functional dimension of administrative law and the orientation of its structures and processes towards specific policy targets. It also opens the way to research on the relationship between bucreaucratic behaviour and the quality of rules, as well as, at a more profound level, on the effectiveness of administrative law and its enabling conditions. And it comes with no surprise that the Maria De Benedetto has recently co-authored with Guido Corso and Nicoletta Rangone a monograph on the effectiveness of administrative law (*Diritto administrative effettivo* (2022). It is, indeed, a further confirmation of the fruitful results of the method experimented in this book on regulatory anticorruption.