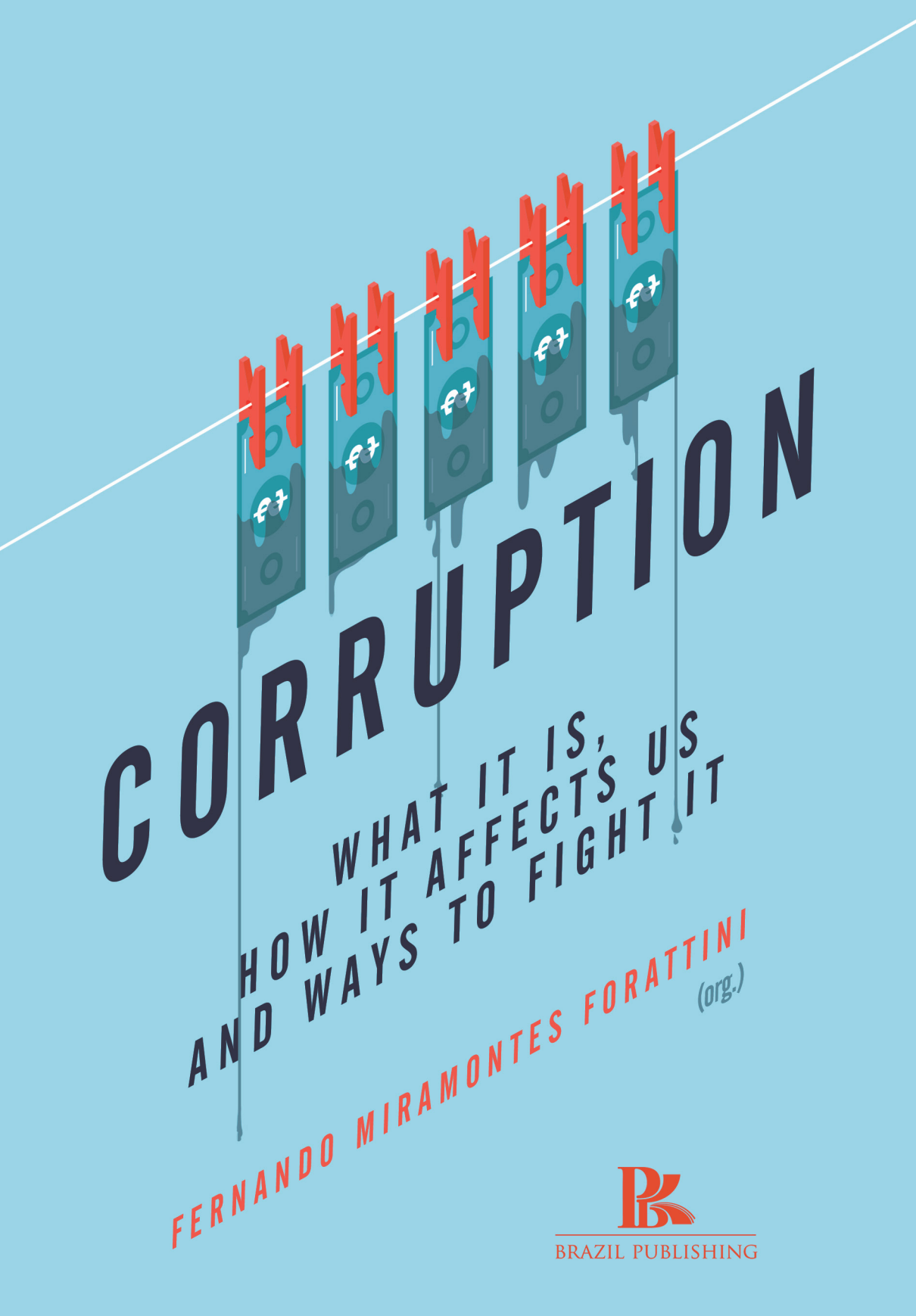

CORRUPTION

WHAT IT IS, HOW IT AFFECTS US AND WAYS TO FIGHT IT

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Chapter 8: corruption; Argentina; history; legislation; anti-corruption.
Chapter 9: Bulgaria; corruption; media; civil society; Access of Information.
Chapter 10: Colombia; School feeding program; corruption; legislation; anti-corruption.

Summary

Introduction

This book aims to address the concept of corruption and the fight against it through different perspectives that normally, mainly in Brazilian publications, do not talk to each other. It is a book that was created after I attended the renowned Transparency International School on Integrity (TISI) for young leaders, in Vilnius, Lithuania, in 2019 and met incredible people from around the world, all engaged in the anti-corruption fight and democracy strengthening.

Thus, the aim of this book was to bring as much variety as possible to the ways of thinking about the effects of corruption and how to fight it in different countries, aiming that the reader can carry out the necessary critical comparisons to comprehend how corruption can be thought of as a global problem, but as one that often presents unique characteristics in different parts of the world and sectors of the State (public and private). Since this book was aimed mainly at the Brazilian public, being myself from this country, I was lucky to have also the contribution of Brazilian professors, researchers and civil society actors.

This is a very rich book in terms of analyzed materials, with precious analyzes on the most varied topics within the spectrum of corruption and different ways of combating it, being essential for beginners and initiates in the study of these themes.

The first chapter of this book will address the main conceptual strands on corruption and discuss the diverse influences it has on governments and society. It will also propose a new focus on how to understand corruption in Brazil: the study of corruption via its cultural bias, which is, for the author, one of the main sources of strength of the anti-corruption discourse. Thus, this article tries to demystify the concept of corruption and the discursive strength of the anti-corruption discourse, showing the reason why it is one of the most widely used political-economic instruments today and that can lead to the erosion of democratic institutions and, thus, the lack of combating corruption itself.

Then, we will have the article "Tragic Heroes - The Significance of Whistleblowers and why they need Protection" written by six hands of Michael Schurian, Daniela Sojkova, and Kenji Oku, who work at the renowned EY Forensic & Integrity Services. This article humanizes and problematizes the whistleblower when showing them as people with moral standards and dilemmas, as well as its fragility while in the condition of whistleblowers. It will highlight the importance of protecting them and the possible conflicts in society that may arise, showing the importance of implementing whistleblowing systems to protect them in the public and private sectors. In addition, it will emphasize the importance of the whistleblowers' motivations for reporting misconduct and experiences during the course of the complaint. It concludes with suggestions on how to make reporting more likely to happen, which improves the fight against corruption. With extremely interesting data, the authors show the importance of whistleblowers both in the public sphere, known to many, and in the private sphere - e.g. 42% of the initial detection of fraud in companies were done by tips from whistleblowers, reducing by half their costs. It is an article with very rich sources, and analytical depth.

The third article, made by Prof. Dr. Luiz Sérgio Fernandes de Souza from Brazil, will discuss corruption from the point of view of the legal and ethical field, discussing the difficulties faced by the Judiciary in arbitrating issues involving corruption. It is a topic that challenges the analysis of controversial and current issues, such as the judicialization of politics and politicization of the Judiciary, in addition to opening debate around the so-called procedural guarantee, all in the context of legal instrumentalism. Still, in the field of law, the fourth article, by the Argentine lawyer and researcher Maria Jose Ruiz de Olano, will analyze and address the challenges of implementing transparency and compliance programs in the public and private sectors. For her, despite all the rules regarding criminal and ethical behavior are regulated in the public sphere, the increase and improvement of regulation is not, in itself, a sufficient antidote for the prevention of corrupt practices. Thus, the author discusses the need to strengthen self-regulatory measures that

increase the internal controls of each organization. Always providing a necessary background on Argentinean anti-corruption law and their evolution over time.

The fifth chapter, by Marumo Omotoye of Botswana, provides us with a critical assessment of how the government of Botswana seeks to show itself aligned with the practices of responsibility, transparency and public participation, through the extensive use of data propaganda, but, using recent data, the author shows that many of these indexes are falling, denoting a valid concern on the part of the author. It is an interesting article to the researcher of good governance practices, especially for researches on other continents than African, because we, in Brazil, are often unaware of the reality of this continent, so close to ours in many aspects, specifically of democratic experience still recent.

Next, on to the field of History, we will have the instigating analysis of Prof. Dr. Pedro Henrique Campos on the appropriation of public funds and the treatment of allegations of corruption during the Brazilian civil-military dictatorship. This chapter will, therefore, examine the allegations of "corruption" during the dictatorship, by questioning the common sense that there was less "corruption" in the period. The article will list different allegations of corruption that happened during that time and proven cases of embezzlement of public resources, payment of bribes to state agents, among other irregularities involving companies and the State. It will suggest that during the dictatorship there was a kind of "perfect storm" for cases of "corruption", sustained by the expansion of public funds, the lack of transparency and the escalation of interests and business figures on the state apparatus. It is a must-read for who wants to understand Brazil not only in that time-frame but nowadays. Still in the Southern Cone and in the field of historical analysis, through a legal-historical view, the Argentine researcher and lawyer Camila Sarmiento, will, within the limits of space that she was given, analyze the Argentine laws and History on corruption, involving different governments and normative proposals.

Finally, we will have three case-studies, one involving an analysis of a famous case of corruption in Colombia in relation to school

lunches, in which Colombian jurist Margarita Maria Gúzman Ramirez, will analyze not only the case itself but the legal difficulties in strengthening the fight against corruption in that country. And two other case studies from the perspective of two researchers working in the third sector. Bulgarian researcher Diana Trifonova, in addition to providing us with a very interesting overview of her country and the fight against corruption, will analyze three cases in which civil society seeks to help fight corruption in Bulgaria and its difficulties, such as the concentration of media. And researcher Laura de Souza Cury, a doctoral student and an employee of the NGO Association of Tobacco Control and Health Promotion (ACT Brasil) will analyze the impact of corruption on sustainable development through the use of the UN Sustainable Development Agenda 2030 (Geneva, 2016).

We hope that the reader will understand how researchers from different countries and academic disciplines can analyze and understand corruption as one of the greatest perils to society and democracy and, above all, provide a holistic view to the reader on this important topic.

Have a good reading.
Fernando Miramontes Forattini

Chapter 1

For a better understanding of the concept of "corruption" and the strength of anti-corruption discourse

FORATTINI, Fernando Miramontes[1]

The term corruption is apparently one of the simplest to define, in addition to being one of the oldest and still present in the imaginary of all social groups. However, moving past from common sense, it is an extremely inaccurate term that currently undergoes a movement of reinterpretation in light of new research that helps us to better delimit it and understand its role and relationship with society and its different social strata. This short article proposes to analyze the main theories about this concept, and understand its influences. Finally, it seeks to answer why the anti-corruption discourse is, today, the most used as a political-economic instrument, and that, sometimes, destabilizes democracies and institutions, and further undermining the fight against the corruption, , especially in populist speeches.

Introduction

The term corruption comes from the Latin corrupt□o and means "deteriorated", "rotten". This is, until today, the same definition found

1 Graduated in Philosophy from the University of São Paulo (USP), Master and Doctorate candidate in Social History from the Pontifical Catholic University (PUC-SP), he now investigates the different aspects of anti-corruption discourse in Brazil and how it can be used as a political-economic instrument, especially by the media. Founder of an NGO called Com. ELA (Communication and Education in the Fight against Anticorruption) that aims to break the barriers between academic research and society, showing, among other things, the harm of corruption in everyday life and to society, as well as the evils of false anti-corruption speech. He is specialized in anti-corruption by Transparency International School on Integrity, in Vilnius, Lithuania (2019) and by the University of Pennsylvania (2020).

in dictionaries: putrefaction; degradation of moral values or customs with a view to personal advantage or to third parties. The most general, and simplistic, sense of the term can be defined as a field of disputes between the public and the private, in which, on the one hand, we have the private interests and, on the other, the interests of the social whole. Whenever private interests are in line with the social whole and its ethical values, we will have an agreement with social expectations. Thus, corruption would reside in an option between the prevalence of the private against the public, resulting in the putrefaction and demoralization of values and customs shared by the whole.

This would be the most traditional view of what constitutes corruption (FRIEDRICH, 1966; HEIDENHEIMER, 1989). A moral struggle between public and private interests. However, even this definition, not entirely wrong, but simplistic, needs to be problematized. For Susan Ackerman, corruption should be linked to the state's own social and economic structure. Corruption not only produces more economic externalities, but creates or reinforces economic, social and political inequality (ROSE-ACKERMAN; FERNANDES, 2002). The State is more ineffective in allocating its resources and its decisions no longer aim at the prevalence of the whole, mainly affecting the feeling of injustice and disbelief in institutions and in the political class, resulting in a collective perception of discredit.

Corruption, in the eyes of society, carries out these two confidence-breaking movements, both in the State and in its administrative capacity, and in the individual seen as without moral character. The Democratic Rule of Law itself and its need is put in check. Leniency and unequal treatment are seen as the main characteristics of the fight against corruption (e.g. how "white collar crime" is treated in relation to other crimes) and guarantees and fundamental human rights as the equality of all before the law begin to be questioned due to a negative perception of an institution that was not forged to be fair and egalitarian.

Another view, extremely influential, was created in the field of Social Sciences since the late 1950s (BANFIELD, 1958), supported by the so-called "development studies", called ***Structural Theory***. It be-

lieves that corruption is a problem linked to economic, political and moral underdevelopment. This theory would be a stereotype of a colonialist discourse on the "primitivism" of certain societies and their evils in contrast to the institutional, economic and moral "virtues" of the "developed countries". Corruption would be a social pathology typical of Third World countries, using their jargon, "in its state-formation phase". The theorists of this conception assumed that corruption would disappear with the increase of "more rational organizations" in key sectors of the State.

A more modern view of this theory, utilized in the field of International Relations, seeks to update the previous concept by introducing quantifications and comparisons through various formulas and surveys that would map the most and least corrupt countries and thus predict the necessary actions. They believe that their methodology and their recipe for "good governance" is neutral (HALLER; SHORE, 2005), however, they do not take into account social, economic and political inequalities between different countries and, thus, make their theory a normative power tactics and part of the art of control of the modern liberal government (FOUCAULT, 1999). This view is prevalent not only in developed countries, but in the intelligentsia of underdeveloped nations since the late 1980s and early 1990s. However, this analyze is indifferent to the context of these countries and imprecise when we analyze their methodology and object of analysis. Terms like "public good", "private gain", "public interest" are not thoroughly defined and problematized, leading them to prescribe universal "remedies" to problems that despite being a global concern, and globalized, has its own specificities.

For a new understanding of "corruption": an anthropological view

The main point of this new theory (which started in the late 1990s) is that we must not understand the term corruption by its restrictive, provincial and puritanical connotations; but as something more subtle and complex, like a "conversation, a ritual" (VISVANATHAN; SETHI,

1998, p. 3). Corruption, seen from the side of its negative reaction (the anti-corruption fight; or at least the anti-corruption sentiment), would be a form of exchange: a polysemic relationship and an important part of the way in which individuals connect with the State (HALLER; SHORE, 2005: 7). In this sense, it is both an enigma, and a social fact, in the Durkheimian sense. What matters most about it - whether as a social perception or as an object of study - is not so much the reality of its existence as the fact that it is widely believed to exist. The narratives created around this belief are essential for individuals to feel connected to the public arena and to seek some way to participate in it: through it, they can make sense and feel connected with politics, however far removed from the political system.

Various anthropological studies have noted that even though there are issues more pressing in interest of these groups, they will focus their conversations around the topic of corruption. In a coordinated research across India, "corruption talks" prevail over any other topic. The study noted that stories about corruption in rural areas are more frequent than folklore and even more than discussions about the state of crops and public policies about them (PARRY, 2000). In Bolivia, the same was observed: "people just talked about corruption non-stop: corruption was how they made sense of politics and the state" (LAZAR apud HALLER; SHORE, 2005, p. 216). The same was seen in comparative studies on corruption in Latin America and Europe (MITCHELL, 2002).

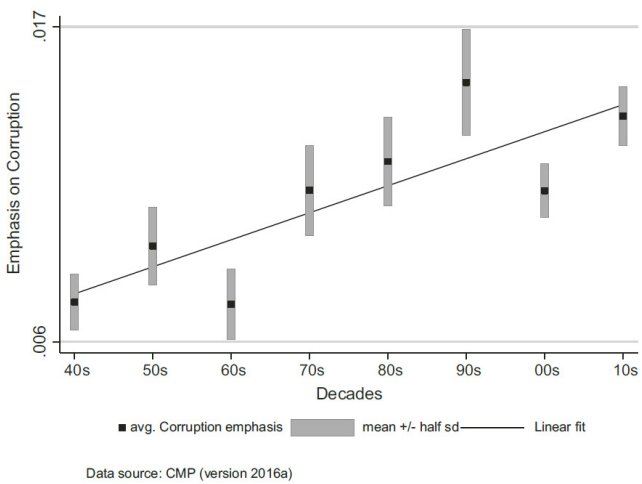
Anti-corruption discourse as a political instrument

Since the 1990s, with the fall of the Berlin Wall, we have entered into what most scholars call an "era of relative consensus" on certain ideological topics that were once regarded as traditional disputes, with rare exceptions. Among them, we can mention the decentralization of the State; the need for some form of Social Welfare State or for a mixed economic system, but with a capitalist bias; the liberal democratic system; etc.

These factors, plus the crisis of social democracy, and the growing lack of confidence in globalization - which did not bring the promised

results of better income distribution and quality of life - and in the institutions responsible for regulating the market, implied a new form of political organization and the way political parties communicate with their constituencies. This incentivized a form of politics in which to draw attention of their electorate they will try to distinguish themselves from their opponents in other ways.

This will result in a rise of "valence-values" issues at the expense of propositional debate. Thus, the emphasis on the simple determination of something as good/bad, in an idealistic and subjective way (manicheist), is predominating in the political debate. The emphasis in these valence-values are, mainly, relegated to the concept of "corruption", and, in second place, "competence." Studies show that the focus on corruption increased the number of votes by 5.6 % in the last elections of the European Parliament, a huge electoral advantage. While the emphasis on the issue of corruption in party manifestos' is increasing exponentially. More than 1.17% of all quasi-sentences of these manifestos are dedicated to this theme, this results in more focus on corruption than on topics such as economic planning, multiculturalism, spending and immigration and others.

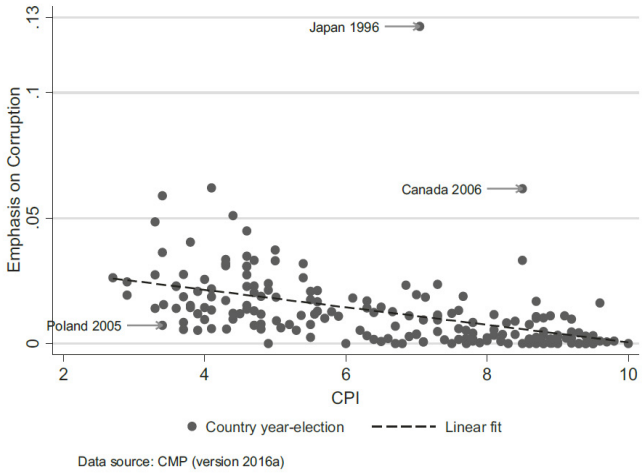


Graph 1. Relationship between Emphasis on Corruption and Time
Source: Curini, 2018: 7

This type of political focus, despite calling attention to an important issue (since corruption is responsible for almost 30% of the diversion of business done in the world and for the majority of deaths in the world), has a detrimental aspect on the electoral process, on democracy, and on the fight against corruption itself. This is because democratic institutions are usually relegated to a second priority by who use this type of approach. They represent democracy as an insufficient system to deal with corruption and inequalities. Finally, the anti-corruption movement, when inserted into this type of idealistic view, is also devoid of positive proposals.

A notorious cycle beings:

1) Incentives via space-pressure to intensify the campaign of negative valence, including the populist strategy, create an attitude of discontent and alienation in relation to democracy and institutions;
2) Favoring the parties most likely to employ a negative campaign;
3) Forging a decline in confidence and generating a dynamic of self-reinforcement of discrediting in favor of more negative discourses;
4) Not fighting real corruption - especially because the climate of profound corruption, favors the effectiveness of this discourse - and putting democracy at real risk.



Graph 2. Emphasis on Corruption and the Corruption Perception Index (Transparency International)
Source: Curini, 2018: 10

Graph 2 shows us the relationship between the emphasis on corruption in the various electoral disputes between 1995 and 2015 and the corruption perception rates of these countries. According to the CPI, we have a scale from 0 to 10, in which the least corrupt countries would tend to 10 and the most corrupt countries would tend to 0. We can see that there is a clear correlation between the presence of debates in which the issue of corruption predominates and the perception of corruption. This shows that sometimes, not always, the perception of corruption is aligned with the amount of debate of corruption a country is experiencing. While this is a good indication, at least showing that where there is corruption there is debate, it also shows that these debates and perceptions can be stimulated by the press and even by the rankings on corruption.

Here we must make a note of great importance, but one that goes unnoticed in the debates on corruption and corruption rates. We just talked about the CPI, one of the most respected indexes today to measure corruption. However, as the name says, it is an index of perception of the level of corruption. Thus, some problems arise at first: to mea-

sure corruption, one must first define the term corruption, one of the most elusive concepts today. Second, the index, when measuring only the perception of corruption in public sectors, it overlooks many other categories that participate and encourage corruption, such as businessmen. These are actually the ones that are, in addition to experts, when the "index of indexes" (CPI) is being elaborated.

> Generally speaking, corruption can be measured. The question remains as to how accurately. […] In conclusion such indices should be used with more caution because of lack of transparency and definition problems. There should be more control of the criteria and of the methods of obtaining aggregated indicators to better understand what they are measuring, and to determine (roughly) their degree of interdependence. (ROHWER, 2009: 51)

Thus, it is laudatory that even Transparency International makes this reservation by saying that what the CPI measures is the perception of corruption and not corruption levels. But we must be aware that since this index is about perception, and only about public agents, we have, in the CPI itself, the capacity to reinforce perceptions of corruption, which often differ from reality, distorting this reality and reinforcing stereotypes of the level of corruption in countries and that they are limited to public agents. This can be damaging to democratic institutions since it can booster the lack of confidence in institutions and its public officials/workers. However, despite its flaws, the CPI makes the issue of corruption appear on the political agendas of many countries: the problem is to see how the data are used, whether by politicians or by the mainstream media.

Therefore, some questions comes to mind: what is the role of the media in its fight against corruption? Which speeches and representations will be transmitted, over time (and what will be the changes)? What agenda is behind them? How do they convey them and what is their role in intensifying the perception of corruption in the State?

The press and its role in the "fight against corruption"

Since the invention of the printed media, the press has sought to influence the agendas of the public arena and impose the political and economic configuration on the State in the way that suits its vision. The media emerged, in an institutionalized way, to represent and give voice to an emerging class and culturally marginalized by the "nobility" and "high clergy" and, over time, started to represent a way of constructing representations of this group, guaranteeing their autonomy.

It was during the Enlightenment that the philosophical-intellectual production set the perception of historical-intellectual-technological progress that will not only justify the bourgeoisie as an emerging class, but result in the perception of a world in crisis and give an utopian perspective in relation to the future and to the possibilities of solution of these crises. Its solvers will be the intellectuals themselves who will try to influence and impose their rationality with what is conventionally called "criticism". They want to legitimize themselves as actors that represent "public opinion", thus legitimizing themselves in trying to shape the actions of the authorities. This would be the ethos of the press: having a supposedly technical, objective aspect, which legitimizes it as rational and impartial; and, on the other hand, to act as a political being and defender of freedoms.

However, over time, with the growing concentration of companies and media power, little has been questioned about this ethos that has become more discourse than reality. In the Brazilian case, it is common to believe that these companies have the legitimacy to act as "public entities" and not private. Only five families are controlling more than 50% of the country's media. These families, despite not having affinity ties in the relational field, will have ideological familiarity from their common social place.

It is a constant search for power, a "war of position in the Gramscian sense, that is, the search for power through the cumulative conquest of ideological spaces on the cultural / ideological sphere" (FONSECA, 2005: 29), disputing values and political agendas within

the public sphere as a private company. In addition to seeking profit (like other companies), it must act as a private device of hegemony and try to balance itself between forming an opinion, receiving influences from advertisers and the government itself, while seeking to legitimize itself as impartial and representative of public opinion.

The mainstream Brazilian media must be understood as a partial being, an organ of power with interests in addition to the financial ones, in which factors such as its influence in the political-economic-financial spectrum, the dissemination of its values, ideologies and interests and its capacity in guiding society's debate agendas are part of its priorities.

Thus, if we understand corruption by the historical-cultural point of view here presented, we can see it as one of the most, if not the most, important instrument of political pressure: given its ontology in being a "link" that allows any individual to feel connected to politics and the State. As we have said, the fight against corruption is based more on a matter of perception than on fact. The public does not know the extent of corruption cases, especially in countries where corruption is more frequent. Therefore, a perception of endemic corruption will be brought forth to the public and be selectively exacerbated whenever political-economic interests or moral demands from part of the population so require.

Therefore, the performance of the media and the anti-corruption fight in Brazil is linked to the main moments in which institutional actions are carried out or when civil society will make them public, varying according to the degree of social censorship present in society at a given historical moment (SOUSA, 2002).

Moments of rupture are not, in fact, always linked to a supposed increase in the number of incidents of corruption, but rather, they depend on the context of the political, social scenario and the ethical and moral values shared by society and its exacerbation. Sousa summarizes some aspects that would lead to this social need for a greater fight against corruption. Here, the most important will be the intensity (greater emphasis on the number of known cases).

> This discrepancy between known and unknown crime seems to be particularly evident in cases of economic crime, which includes the crime of corruption. In a study we carried out, we collected indicators that allow us to verify that the number of known corruption cases seems to be manifestly narrow in view of the real dimension that the phenomenon presumably has in the country. (SOUSA, 2010, p. 78)

And the cyclical nature of corruption denunciation.

> It appears that it will result essentially from the way in which society looks at the problem at every moment in terms of the ethical values it defends. We note that the way corruption is censored by societies is a factor dependent on the moral and social values that each time that same society accepts as valid. [...] [These] are not immutable and at times there seem to be discrepancies between the moral values shared by elites and what public opinion considers to be valid. (idem)

Thus, there will be periods in which cases of corruption will not be priorities for the population; and others in which the economically dominant classes will be more tolerant of this practice, while society as a whole will not, generating a disparity of social expectations in relation to the requested action and actually taken. Finally, there are times when apparently expectations come into agreement between the elites and most of the society and cases of corruption have become scandals, gaining such dimension that they have strong implications on the political scene. After this moment of social censorship, the cycle would be resumed with greater tolerance for corrupt practices. It would be, in our words, like a movement of social catharsis, even if apparent. We can see, then, the importance of the role of the press in the construction of a social representation of corruption and of its role in the State, especially regarding its visibility and intensity cycles, that are able to increase the level of disapproval and a perception of an endemic of the problem.

Moralism and the fight against corruption: the Brazilian case

Moralism is a characteristic that has always been present in the Brazilian political culture, although it varies in significance over time and across classes and cultures. However, in the 1950s in Brazil, with the growth of cities and the greater participation of a new social, urban and conservative class (the middle class), this will have a decisive significance in the political-economic direction of the nation. In an important article attributed to Hélio Jaguaribe called "The moralism and alienation of the middle class" (CNT, 1954), we will have the first important analysis of this phenomenon and its social and political importance: "One of the most characteristic facts of Brazilian public life , in the last few months, it is the exacerbation and proliferation of movements that are constituted under the banner of moral recovery "(idem, p.150).

For him, it will be due to the historical and the growing inauthenticity of our political institutions that part of this "new middle class" will discredit the political class in exchange for an extremely idealized morality as its political vision, disfavoring a pragmatic analysis of reality – that worsens in times of economic impoverishment (like the devaluation of wages in face of rising cost of living in the early 1950s). This idealistic view of reality prevented this important Brazilian class from conceiving that "the only durable solution to remain in the direction of the process political-social situation of the country [was] the modification of the economic structure of Brazil ".

For this class, moralism is based on a question of status. It sees itself as different from the common worker because, with the mechanization and technicalization of capitalism, the middle class will become the one that will maneuver the means of production with greater know-how:

> What characterizes the middle classes is their status. The petty--bourgeois is a proletarian with status similar to that of the bourgeois. This constitutes, psychosocially, a powerful conditioning for an idealistic view of the world [...]. It is a stimulus to believe that the will is the sole foundation of being. Things will be good or bad as they are the product of an honest and enlightened will, or its

> opposite. Such is the foundation of political moralism, it is the ideological superstructure of the middle class. (JAGUARIBE, 1954)

The aggravating factor of this condition would be that due to the impossibility of "giving its own orientation to the country's political-social process," this class became reactionary, especially in a country with a poor majority that did not necessarily agree with its ideological desires. It was a strategy to

> halt the course of history in order to rebuild the lost paradise of pre-capitalism [...], expressing the crisis of the petty bourgeoisie [...] which, having lost the possibility of giving its own solution to political-social process of the country, adhered to the ideology and submitted to the leadership of the mercantile bourgeoisie [a more organized sector and conscious of its interests – e.g. UDN] (CNT, 1955)

This view has its validity, despite oversimplifying the anti-corruption movement and its participants' rationality, and over valuing the "critical view" of other strata (this would be the subject of another article). "The discourse against corruption is seen as a generic and moralizing foundation that aims to hide the real interests of this class in the political dispute against a project that served popular interests" (CAVALCANTE, 2018, p. 105). Unable to react against something in a pragmatic and direct way, part of the middle class will react and, in this case, "makes use of the anti-corruption discourse to achieve its objectives, such as, for example, preserve privileges and strengthen the ideological source of justification of inequality that naturalizes its superior position" (idem).

The motto of this class discourse, since post-war period, will be, on the economic side, the constant tendency to implement a liberal (later, neoliberal) agenda to the detriment of the direct participation of the State in the economy - or even of its indirect participation, through of regulations. This trend is clear in the post-World War II world. We saw that in the 1950s Structural theory will say that corruption will be a problem for "backward" or developing countries.

Corruption will, by this conception, often associated with the State and the political class (the "corrupt per excellence"). Therefore, any manifestation about the economic environment will be linked to some form of corruption: if the economy were more advanced, as liberal-capitalist as possible, corruption would disappear. There would no longer be economic externalities due to the "model" of free competition between economic agents. It is a flawed and selective argument since its conception since it does not notice that corruption is a human phenomenon and, therefore, any form of space that allows a dispute will open space for it.

This discourse will gain even more strength at the end of the Cold War in which countries of Latin America, the former Soviet Union and Africans were being inserted into a radical context of neoliberalism from the Reagan and Thatcher era (consolidated with the Washington Consensus in 1989 and aid financial, conditional and conditional, IMF and World Bank). The moral basis of this discourse lies in the promise of a better quality of life due to the reduction of costs, prices and economic distortions with the end of corruption and "better management". This is also a flawed argument since scandals, even in "incorruptible, and ultraliberal governments" are numerous.

Even during this period when neoliberalism takes over the world as the only possible way, after the fall of the Berlin Wall, scandals are raging. Companies such as Enron, Arthur Andersen, the Bank of Commerce and International Credit and Maxwell Communications - all of which were seen as "model companies" – were amongst the biggest cases of corruption, showing that there is no correlation between State-economy and corruption. Studies show that the moment when most corruption occurs in underdeveloped countries that adopt the liberal program is during privatizations.

Deregulation and privatization, if anything, increased opportunities for corruption, as they not only rewarded fraud and bribery, but eroded the role of public ethics by diminishing the legitimate interest of the State in certain political and economic areas. They are also harmful because by diluting the interest of the general public in areas that no

longer belongs to the State, they are analyzed from the perspective of the pursuit for profit and for the defense of private interests (ROSE-ACKERMAN, 1996). But due to the neoliberal ideological discourse, this is no longer counted as corruption: in a strategic discursive movement, this is diluted in different terms such as "lobbying", "white collar crime", "gray crime" and "black crime", in a gradient of euphemisms for what was once considered abhorrent and synonymous with corruption will be seen as "part of the game".

Few were the emitters of these speeches that sought, over time, to prove the effectiveness of this argument. However, data collected in more than 30 years by the World Bank contradict this statement. Looking at the corruption index issued by this body, we will have two countries tied for first place as less corrupt. Both are countries with similar economic base and similar cultures, which, however, differ in the presence of government in the economy (Denmark with a more present government [69th] and Finland with almost no government presence in the economy [6th]).

Table 1. Corruption and government regulation

Country	CPI Rank 2012	GCR Burden of Gov't Regulation Rank 2012/13	Country	CPI Rank 2012	GCR Burden of Gov't Regulation Rank 2012/13
Denmark	1=	69	Kyrgyzstan	(135)	92
Finland	1=	6	Yemen	(136)	119
New Zealand	1=	14	Cambodia	(137=)	42
Sweden	4	31	Tajikistan	(137=)	22
Singapore	5	1	Libya	(139)	61
Switzerland	6	16	Zimbabwe	(140)	107
Australia	7=	96	Burundi	(141=)	121
Norway	7=	64	Chad	(141=)	95
Canada	9=	60	Haiti	(141=)	115
Netherlands	9=	34	Venezuela	(141=)	143

Note: The number of countries analysed in the GCR and the CPI differs (144 and 176 respectively for 2012). To render the two rankings comparable, those countries in the CPI not included in the GCR have been removed, and the remaining countries re-ranked out of 144. In short, the bottom ten CPI countries in Table 3 are the lowest-ranked that also appear in the GCR, which explains why the 'bottom ten' CPI states in Table 3 are not the same as the bottom ten in Table 1; brackets are used in Table 3 to highlight this.

Source: World Bank, 2012

In fact, of the top 10 countries in the ranking of the least corrupt, only Singapore and Finland are among the countries that least intervene in the economy. Countries known for their intervention in the economy and for their welfare state, such as Denmark, Norway, Australia, Canada, Sweden and the Netherlands are at the top of the ranking. But even with these indices, which have changed little over time, we still have the prevalence of a neoliberal discourse by mainstream media. Which leads us to believe that it is more a political-economic dispute, favoring certain interest groups, than a moral and an economic crusade as they want to make us believe.

Closing remarks

Firstly, we must highlight the strange little amount of work on corruption in Brazilian historiography - a country that has suffered so much political pressure and upheaval thanks to this theme. When they do, they usually start from an economic-political analysis, based on previous Marxist analyzes. We do not disagree that these analyzes have some merit, however, we find them limited. Also in other works, we note a simplification of the study on the fight against corruption by the vendetta's personalist approach. We believe that this is not really an analysis, but a denunciation, normally removed from problematizations and characterized by a binary system of "us", the honest ones, versus "them", the corrupt ones.

We think that to understand the problem one must view it not just as a simple dispute between classes - some more organized than the others and, therefore, with more or less power and interest in manipulation -, but mainly that the perception of corruption are part of a cultural whole, with each location and time with its specificities, each with its strategies of permanence and resistance and, also, of combat and pseudo-combat (as we consider most of these "moralistic journeys" mainly, in our case, the inflated by the press selectively). We believe that the issue of corruption and its criticism act as a link between the individual and the State, always being mentioned much more often than oral traditions in remote places or even conversations about politics and economics on topics more palpable to them. Studying corruption and its cultural manifestations, from this new perspective, also provides us with a way to examine larger and more complex political and social issues, such as the idea of alterity, citizenship, governance styles and even the construction of the State.

We cannot fail to say how relevant this topic is today. The rise of populist and divisive discourses in today's politics, with a special focus on corruption, is prejudicial to any form of debate, where a vacuum of rationality and even proposals are preferred.

In addition to war, corruption is probably one of the greatest threats to democracy. We must be aware that since the anti-corruption discourse is one of the most effective discourse for political pressure and for voters acceptance, since it is an evil that people are really tired, for those same reasons, we must be conscious that it is being used for other purposes than the real fight against corruption, and in detriment too democracy. Let us fight corruption structurally, reinforcing laws and institutions and being aware that this same discourse, due to its high effectiveness, can be used as a political instrument.

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Chapter 2

Tragic Heroes - The Significance of Whistleblowers and why they need Protection

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Ever since the revelations of Wikileaks, Panama Papers and Trump Ukraine Affair, the phenomenon of voluntary disclosure of illegal, dangerous or unethical behavior, a.k.a. ***whistleblowing***, has gained attention from society. This paper will introduce whistleblowers as people who have moral standards and at the same time, face moral dilemmas. Merging the perspectives of law, political science, philosophy, psychology, and business studies, it will highlight the unique ways in which whistleblowing benefits the society, and the possible societal conflicts that it is associated with. Further, it will underline the significance of understanding the motivations of whistleblowers, together with their

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sometimes-traumatic experiences. It concludes with suggestions on how to implement systems in the public and private sector that encourage whistleblowing, by accounting for whistleblowers' motivations and their need for protection.

Whistleblowing as a tool for combating corruption

"Whistle-blowing is the act, whereas an employee (or former employee) discloses what he believes is unethical or illegal behavior to higher management (internal whistle-blowing), an external authority or to the public (external whistle-blowing)" (Bouville 2016).

Corruption is taking place worldwide. The 15th edition of Ernst & Young's Global Fraud Survey asked 2550 business leaders from 55 countries on the risks of fraud and corruption. Of these participants, more than 38% considered bribery and corruption to happen widely in business within their country. 13% would justify unethical behavior to meet financial targets (EY 2018).

In its 2018 Report to the Nations, the Association of Certified Fraud Examiners stated that whistleblower tips contribute 42 % of initial fraud detection. The next highest category was via internal audit, at 15 % (ACFE 2018). However, here the detection of unethical or unlawful behavior often happens only by chance, while the actual main function of such audits is the evaluation of assets and risks to a company (Nzechukwu 2016). Companies lose about 5% of their turnover annually due to economic crimes. Companies with a reporting system, however, have on average 54% less losses to report and can also detect grievances twice as fast (ACFE 2018).

The above figures show how crucial whistleblowing is as a tool to combat fraud and corruption.

Whistleblowing as advocacy of public morality

Some authors argue that whistleblowing is a "micropolitical action" and as such safeguards the principles and values of liberal democracies (Mansbach 2011). In this view, whistleblowing is a form of "fear-

less speech" and telling the truth albeit facing personal danger renders this action as a civil virtue. In a broader view of society, one could also consider whistleblowing as a form of civil disobedience in a limited environment. Civil disobedience is the active refusal to obey the existing laws for the cause of safeguarding higher social values. In this analogy, even though the whistleblower does not necessarily break the law, whistleblowing remains a breach of confidentiality and loyalty towards the organisation to reach higher goals. Its aim is to protect the public from government wrongdoing in the case of public sector whistleblowing, or the company's stakeholders from the company's misbehaviour in the case of private sector whistleblowing.

Studies have shown that people care about morals and their reputation and trust is what keeps a society together and trust is what enables trading with each other (Hardy & Carlo 2005). As stated above, it is a difficult situation for the whistleblower dealing with conflicting values - the values that underlie the misconduct in the organization (like profit maximization, continuous growth, limited scope of actions) and the values that are expected in society: fair play, rule-based trade, not harming the society or the eco-system etc.

In some sense, the whistleblower can act as a representative of public moral within the organisation. The expectation of accordance with public morals is even higher when the organisation is predominantly acting in the public space, like a government agency. However, there is a tendency to expand moral judgments to new cultural spaces that were formerly seen as non-public spaces, like executive board rooms. The discussion about corporate social responsibility, global tax justice, data ethics, the consideration about the use and disposal of products across the whole product life cycle etc. take the same line.

Society and consumers often expect that corporate decision-makers as well as public officials are being held accountable for their actions. This expectation is due to the fact that citizens and consumers are affected by the actions of governments or companies. In the case of a global multinational corporation, misbehaviour can concern millions of people. Disclosing harmful behaviour to the public that is affected

by such actions can enable change and remediation. In some cases, the pressure that arises after the information had gone public is necessary to remedy the breach of laws.

The demands of public morality can sometimes not be enforced by governments, as they are often not able to handle legal but morally questionable practices (e.g cross border tax optimization). The legal means of a government encounter their limits. Whistleblowers on the other hand have indirect power as they can bring attention to such practices. Whistleblowing can therefore be a useful way to satisfy this public need for transparency and accountability for corporate and political decisions, and support public morals at certain issues where governments do not yet have a legal basis to intervene. Thus, changes of the law can be initiated or accelerated.

Society benefits from whistleblowing

Even though disclosing the unethical actions of an organisation causes harm to its reputation, whistleblowing has a positive long-term effect. Without reporting the misconduct, the state of affairs would continue. Whistleblowing helps the company to get "back on the right track".

Through effective remediation, the organization can regain trust, which is the common foundation for long term business success. The loss of reputation and a public scrutiny of the organization's practice help in setting the procedures, the roles, and the perpetrators straight. Ideally, the organisation then decides to foster a compliance culture that prevents misconduct and is, in a broader context also beneficial the society.

The benefit of whistleblowing extends to private corporations and public institutions alike. Corruption and unlawful activities occur in both sectors, and whistleblowers are significant for discovering and escalating crucial information on unethical behavior from lower levels of organisations to the top. In the case of the public sector, however, misconduct is arguably even more devastating, since the stakeholders are also citizens, who put both their trust and tax money in the hands of these public institutions.

Whistleblowers support the effectiveness of the law

What good are laws if they are not obeyed? Laws fulfil various functions in society and among those are the prescription of human behavior. In order to be more than printing ink in a legal code, law needs to be effective. Whistleblowers can essentially contribute to the effectiveness of law through disclosing breaches thereof. This deserves a closer look.

In an environment where the probability of being controlled is low, misconduct may most likely take place. Likewise, an environment where decisions and actions are made non-transparently where people are uninformed or indifferent, facilitates misconduct. Breaking the law) creates negative externalities on the rest of society, e.g. when producing low quality products, evading taxes, or requesting a bribe. The society is burdened with additional costs while the profits of breaking the law are shifted to the law-breakers. Ultimately, this hinders societies from growing.

Obviously, it is not possible for a reasonably liberal government to detect and pursue every single misconduct, and if a government were to gain such kind of control, the risk would be high that it develops into a totalitarian regime. While a certain limitation of governmental power is desirable, it also means that misconduct might go unnoticed to a certain extent. Citizens can however take responsibility by triggering internal or public investigations. Thereby, whistleblowing helps laws to be effective.

As we have seen, whistleblowers have a crucial function in democratic (and even more in autocratic) societies, as they advocate public morals and support the law, by disclosing misconduct in cases where official institutions lack the capacity, resources or the legal grounds to control. Therefore, many concerned citizens, support and celebrate these whistleblowers who have the courage to speak up against injustice.

However, that is not how whistleblowers are treated in most cases by people in their organisation. The next section will look at research from the field of psychology and social studies that dealt with whistleblowers' experiences during and after the whistleblowing process.

The emotional and social cost of whistleblowing

A growing body of research attempts to shed light on the experiences that individuals make during a whistleblowing situation. Despite their good intentions towards their organisations, whistleblowers face severe repercussions. Sometimes they stand accused of legal, civil or even criminal charges, lose their jobs, or are dubbed as a threat to national security. Whistleblowers face social stigma for drawing negative public attention to the organisation. They are often seen as tattletales or troublemakers (Sieber 1998). Many who have reported wrongdoing had to face revenge, harassment and accusations of disloyalty, since the leaking of internal information was perceived as treachery (Rothschild & Miethe 1999).

Acts of retaliation can take formal or informal shape (Bjørkelo 2013). Formal acts of retaliation are mainly dealt by the whistleblower's superiors who make use of the power granted by their hierarchical position. They include reassignment and firing (Dyck et al. 2010), poor performance appraisal, tighter scrutiny of daily activities by the management, or setting whistleblowers up to fail by withholding information that would be needed to successfully perform a task. (Rothschild & Miethe 1999; Rehg et al. 2008).

Informal acts of revenge are commonly performed by the whistleblower's peers (Bjørkelo 2013). They may include verbal harassment or intimidation, coworkers refusing to socialize, ostracism, and other types of workplace bullying (Bjørkelo et al. 2011; Rothschild & Miethe 1999; Dyck et al. 2010; McDonald & Ahern, 2000).

As a consequence of these experiences, many whistleblowers develop psychological and physiological issues. Employees who have blown the whistle have reported symptoms such as depression, feelings of isolation, sleep difficulties, anxiety and panic attacks, paranoia, and eating disorders (Rothschild & Miethe 1999; Peters et al. 2011; Park & Lewis 2018).

However, not only the act of reporting appears to be accompanied by negative consequences. Keeping quiet about perceived misconduct has

been found to come at a health cost as well. McDonald and Ahern (2000) found that both whistleblowers and non-whistleblowers face stress-induced physical issues in context of a whistleblowing situation. People who witness misconduct, but do not intervene, may fear to be held culpable to the crime upon its discovery (Rothschild & Miethe 1999).

In addition, questions about the professional identity and one's role in an organisation may arise. As the workplace is a major factor in shaping one's identity (Mansbach 2011), internal whistleblowing can coincide with an identity conflict of the employee when the company engages in illegal activities or performs antisocial behaviour. To blow the whistle could work like a vent to lower the pressure.

The above findings indicate that a whistleblowing situation is characterized by a decision between two largely unfavorable outcomes: Keep quiet and tolerate the misconduct, or report and risk retaliation by their group.

Surprisingly, some research suggests that the threat of retaliation may not be discouraging, but on the contrary even pushing some individuals towards blowing the whistle (Rothschild & Miethe 1999). If the organization punishes whistleblowers, this may cause them to retaliate by reporting even more wrongdoing, and to turn to external reporting channels (Near & Miceli 2016).

This finding has two important implications:

1. Organisations are well advised to protect whistleblowers from retaliation and threats, in order to avoid an escalation of disclosure and retaliation.
2. It makes sense for any large organisation to set up an internal whistleblowing system that can trigger a fair internal investigation of reported misconduct. By taking whistleblowers' concerns seriously, they strengthen the whistleblowers' commitment to the organisation, whilst keeping them from turning to external channels, and causing costly scandals in the wake.

Motivations of whistleblowing: A tradeoff between moral concerns

A concerned employee who has witnessed unethical behaviour in their organisation faces a difficult decision: The moral dilemma of a whistleblower, namely the choice between loyalty towards their company, or towards their own values. As Bouville points out, whistleblowing appears to be "the choice in betraying one's company or betraying one's humanity" (2016). Both decisions - reporting or to failing to report - can cause feelings of guilt and remorse.

In many cases, whistleblowers choose to act because they see a dissonance between their idea of how their organisation should work, and their experience of how their organisation actually works: Sherron Watkins revealed accounting irregularities at Enron; former CIA employee Edward Snowden leaked classified information to the public as he deemed the NSA surveillance program to be unconstitutional; Howard Wilkinson exposed money laundering at Danske Bank's Estonian branch after the bank had not responded to his four reports on suspicious activities.

This indicates that moral concerns are at the root of most whistleblowers' decisions. Research on moral psychology has shown that morality is a very strong motivator for people's behaviour. Studies by Vonasch et al. (2018) illustrate how many people are willing to endure to protect their moral reputation. In a series of hypothetical choices, a significant number of people preferred outcomes such as losing body parts or even death over harm to their moral reputation, such as being accused of being racist.

In whistleblowing, these moral concerns play a crucial role. Research by Waytz et al. (2013) indicates that the decision to report or not report misconduct constitutes a trade-off between two basic moral concerns: The concern for fairness on the one hand, and the concern for loyalty to one's group on the other. More specifically, the researchers found that the moral concern for fairness was a strong predictor of whistleblowing, even stronger than other factors that were hypoth-

esized to influence the decision, such as people's perception of their organisation, situational concerns, or how much people felt engaged and motivated at their job.

While concerns for fairness are associated with reporting, a high concern for loyalty appears to be a strong predictor for non-whistleblowing i.e. keeping quiet about witnessed unethical behaviour (Waytz et al. 2013).

Using concerns for fairness and loyalty to promote whistleblowing

Based on this assumption, strategic measures can be taken to influence people's concern for fairness or loyalty, to make it more likely for potential whistleblowers to speak up. Popular measures to promote ethics concerns within members of organisations include for example training programs, implementing a code of ethics, or applying an employee selection processes that screens for the desired moral mindset within applicants.

When setting up a whistleblowing system, employees who are on the verge of reporting can be nudged into actually speaking up, by appealing to their sense of fairness, immediately when they make first contact with the system. The goal of these measures would be to raise general concern for fairness on a cultural level, and also stimulate it at the right moment on an individual level, i.e. when potential whistleblowers are about to make their decision whether to report or not.

Increasing a sense of fairness throughout the organisation is rather straightforward. With respect to moral concerns for loyalty, however, it might not be as easy as turning it up a notch at the right moment. By the logic of the trade-off model by Waytz et al. (2013), one would have to decrease concerns for loyalty in employees in order to facilitate whistleblowing, however, loyalty is commonly regarded as a positive attribute in organisations, and thus it would not be desirable to decrease it.

The solution to this loyalty-conflict may be to change peoples' perception of whistleblowing. Dozier and Miceli (1985) propose that

whistleblowing is a type of prosocial behaviour, since it aimed at improving the organisation, rather than the position of the whistleblower. In a 1995 study, Street found that employees' organisational commitment, i.e. strong concern for an organisation's goals and values, and the desire to maintain membership, was positively correlated with whistleblowing behaviour. This supports the hypothesis that individuals may be motivated to report wrongdoing because they have the greater good of the organisation at their hearts.

In line with this notion, Conway (2019) suggests that we can overcome the dilemma by reframing whistleblowing as ***loyalty to society*** or ***the greater good***. The goal here would be to remind members of an organisation, that whistleblowing reflects an act of loyalty, because it corrects wrongdoings, gets the organisation back on the right path, and averts legal charges and scandals. Bringing home this rationale to employees could minimize the perceived trade-off thereby lowering the hurdles to speaking up for ethics and justice.

Another way to improve the image of whistleblowers might be as straightforward as using a different word. For some authors, the term "***whistleblower***" has a negative connotation (Armenakis 2004). Drawing up the image of a referee, it emphasizes the act of disclosure, and leaves out the underlying prosocial component. This makes it hard for people to identify themselves with the idea of becoming a whistleblower. As an alternative, Maassarani and Devine (2011) propose the term "person of conscience".

Protection of whistleblowers against retaliation

A 2017 study carried out for the Commission estimated the loss of potential benefits due to a lack of whistle-blower protection, in public procurement alone, to be in the range of €5.8 to €9.6 billion each year for the EU /except Malta. (Rossi, McGuinn & Fernandes 2017). As whistleblowers face severe negative consequences, they need protection from retaliation. One way to achieve this in a globalized society would be to have common guidelines for whistleblower protection which define the minimum requirements.

Even in the European Union, there is to date, no regulation regarding the legal protection of whistleblowers, and thus, there is a diversity of legal situations in the member states. For instance, the Government Office of Slovak Republic decided to install a new governmental department dedicated to whistleblower protection in Bratislava. Also, there is a specific law which protects all whistleblowers in any type of organization or business sector. Under the Austrian law on the other hand, there are currently only few paragraphs in banking and securities and capital markets law that deal with whistleblowing systems.

In efforts of harmonization, the "Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union Law" has been formally adopted on 7 October 2019. Member States have two years, from the entry into force to transpose the directive into national law. The directive protects whistleblowers against dismissal, demotion and other forms of retaliation.

Transposing this directive into national law can however be challenging. The directive aims at protecting whistleblowers who report on breaches that can cause serious harm to the public interest. Yet, the term "public interest" has not been defined. This can open up loopholes which may result in ineffective whistleblower protection laws.

One common way to find unified definitions is to look at previous legal cases. To define the term "public interest" one can, for example, look at the case of Chesterton Global Ltd & Anor v Nurmohamed & Anor (2017). This case dealt with whistleblowing and protected disclosure. The Claimant brought proceedings alleging that he had suffered detriments and been dismissed because he had made protected disclosures within the meaning of section 43B of the Employment Rights Act 1996. The Court Of Appeal examined following criteria that could be applied in order to determine whether a disclosure of information was in the public interest:

1. the numbers in the group whose interests the disclosure served;

2. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
3. the nature of the wrongdoing disclosed;
4. the identity of the alleged wrongdoer.

The challenges of promoting a speak-up culture

Although fraud detection through whistleblowing is beneficial to companies in the private sector, managers are facing a risk that Cailleba and Petit (2018) describe as the *organisational paradox*: "Why should an employee be protected when the disclosure harms the future of the organisation or at least damages its reputation". A company has a legitimate reason to protect its economic and reputational interest. At the same time, disclosure of indicting information counters these interests. This organisational paradox makes the establishment of protective whistleblowing procedures a wary managerial endeavour.

The promotion of integrity and accountability are promising solutions in the corporate area. Waytz et al. (2013) suggest building an organisational culture that regards constructive dissent as a means for improvement and innovation.

The tone from the top is crucial in building this speak up culture, since leaders are role models. They have to set the ethical values of an organization, openly communicate them, and thus, help understand the expected code of conduct. If the employees feel that management supports reporting misconduct, this could increase the willingness to report unlawful or unethical behavior. Further, building awareness of critical situations could be achieved through individualized trainings on ethical and legal activities.

Provided potential whistleblowers are willing to report, they then need reporting opportunities (e.g. hotlines or forums). As a prerequisite for protecting people who report possible infringements, these systems should, in as much as possible, provide anonymity and secure communication. Outsourcing this function to a third-party service provider is one way to achieve anonymity and objectivity in processing reports.

Still, reporting channels alone are ineffective without support from the leadership, and visible consequences that follow reports. The correct approach by the management would be to initiate an internal investigation after reporting, putting an end to the wrongdoing and imposing penalties on the wrongdoers. Follow-up mechanisms such as monitoring the situation after reported wrongdoing has been addressed can lead to sustained improvements.

Closing remarks

Whistleblowing is highly effective for fighting corruption and other types of unethical behaviour. However, it comes at a high cost, as whistleblowers face retaliation and ethical conflicts. Currently there seems to be no alternative that bears comparable results.

Loyalty and personal values push the whistleblower to act not only in the interest of the company, but also in the interest of society (Cailleba and Petit 2018). In many cases, whistleblowing is the ***ultima ratio,*** and the result of a complex decision between many negative outcomes.

The clash of economic interests of the company and collective interests of society can cause tensions within the whistleblower, the company and society. While some celebrate whistleblowers as heroes, others despise them and associate them with troublemakers, spies or sneaks, or even call them traitors (Ettorre 1994). In these situations, moral support of their family, colleagues, supervisors and the society are crucial.

Corporate integrity policies and eventually the law need to address these tensions and resolve them through implementing protective systems and fostering a culture of fairness, constructive dissent and open communication. Changing society's image of whistleblowers may help to promote reporting.

If the experiences, motivations and unique prosocial functions of whistleblowers are understood and appreciated, and their protection is ensured, they can unfold their potential of positively impacting society.

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Chapter 3

Considerations about the Judiciary performance in the context of corruption

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The present study seeks to discuss, from the point of view of the ethical field, the difficulties faced by the Judiciary in the arbitration of issues involving corruption, which challenges the analysis of controversial and current issues, such as the judicialization of politics and politicization of the Judiciary, in addition to opening a debate around the so-called procedural guarantee, all in the context of legal instrumentalism.

Introduction

The French writer George Bernanos, in his work "France against robots", says that "a world gained by technique is lost to freedom", which leads to reflect on the importance of the praxis of law in the construction of relevant meanings from the point of view of the preservation of fundamental values.

The theme suggests a discussion around the relationships that take place between the so-called Ethics of Good (Social Morals and Law) and the Ethics of Power, a perspective from which it is intended to examine the difficulties that are posed to fight corruption through the jurisdictional way.

The expansion of jurisdictional control

San Tiago Dantas, already in 1940, realized that politics, in the 20th century, had recovered its uncontrollable empire, posing problems

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for the jurist that he was not prepared to solve. He maintained that culture represents the subjugation of the physical world by technique, together with man's control over technical reason. Culture is thus composed of technical control and ethical control, the proper expansion of which depends on the expansion or decay of a civilization, of a social group. He warned, at that time, that law, as a technique of social control, had been losing ground to other techniques of conflict composition, less dominated by the ethical principle and endowed with a higher degree of efficiency, such as the economy.

And today there are those who maintain, from the point of view of a pragmatic economic neoliberalism, that the fight against corruption, by not preserving companies and creating uncertainty, leading to the paralysis of consumption and investments in strategic sectors, represents a disservice to the country, with the that the notions of value and worth, valuation and evaluation are confused.

In the midst of the crisis of the political representation model, the difficulties of overcoming a coalition presidentialism, all permeated by what I call the "pseudo-ideological political circle" (with rhetorical nuances of the right, of social democracy and of the left), the Judiciary is called to arbitrate conflicts that, according to the classic model of the tripartition of powers - in which our constitutional tradition was formed - are in the sphere of political action.

This hypertrophy of the Judiciary ends up calling attention to an important aspect, which concerns, precisely, the need to think about Law, in the field of conflict composition techniques, as an ethical domain. The idea of a Democratic State of Law, a regime adopted in Brazil, includes not only the will of the majority, equality, freedom, the guarantee of minority rights, political pluralism, respect for dignity, work and freedom initiative (art. 1, items and single paragraph, of the CF), but also the notion of ethical democracy, which does not end with respect for the rules of the game (proceduralism), requiring the action of a subject aware of his possibilities and his Limits.

In this step, it is undeniable that the so-called "judicialization of politics" - which has the corollary of "politicization of the Judiciary" -

acts to contain the disruptive interference of the "pseudo-ideological political circles" and the less orthodox practices of pragmatic economic liberalism, the same that consents to the use of any means, as long as certain ends are achieved.

But just as there is an instrumental use, a kind of "parasitic strategic action of communicative action" (to remember a Habermasian category) in the so-called procedural guarantee (where the jurisdiction is subject to the presumption of innocence and the imperative of the judge's impartiality), there may be disaggregating consequences in the parasitic strategic action of the communicative action regarding the judge's performance, which suggests the existence of a legal order that is distant from the notion of ethical democracy.

Thus, while communicative action seeks mutual understanding, strategic action is committed to success, with the achievement of certain purposes on the basis of supposed rational rules of choice, thus dispensing with any recourse to rational motivation. Law integrates the cultural sphere, a compartment of the lived world that is preserved from the threat of the systemic sphere, typical of bureaucratic and economic relations, which tend to weaken that communicative reason. The major problem is that, although the rhetoric moves in a social field - in what reveals its capacity to resist the power of expansion of the subsystems of instrumental action - the law, as a whole, cannot be dissociated from its normative base and, therefore, the possibility of using force, which makes one thinks of the contamination of a communicative act by a strategic act (HABERMAS, 1990: 86-101).

Anyway, the process is not exactly a dispute full of curtsies, reflecting in it the same tensions as the rest of society, reason why, no matter how much the law is a science of the spirit, it cannot be closed the eyes for the undeniable ability to co-opt the forms of instrumental action, which end up colonizing the world of life, becoming parasitic on communicative action.

And here we are not talking about "corruption of the judge" in the sense of the pre-existing concern, since the times of the Hamurabi Code, with the magistrate's venal conduct, which, from another per-

spective, in the Judeo-Christian view of Deuteronomy, breaks the covenant with God in acting through bribery. What is being said, however, is a certain judicial activism, which could be defined - for the purposes of our brief presentation - as judicial action aimed at the realization of a particular vision of law, a sense of justice and voluntarism that slips the psychology or the ethical emotivism of Nietzsche (present in the Genealogy of Morals), of which the Free Law is impregnated, School formed by Kantorowicz and Isay.

Corruption, judicial activism and human rights

Judicial activism arrived in Brazil on the basis of the reading that some judges, lawyers and members of the Public Ministry began to make of the so-called "Alternative Law", a trend that had been in vogue in Europe until the end of the 1960s, and that arrived here late, in the 1980s (SOUZA, 1995: 197-207; DEODATO, 2002: 113-137). Then, activism gained other contours, with solid theoretical foundations (TEUBNER, 1988: 17-100), which is not the case to discuss here, it is important to emphasize only that the practices of judicial activism renounce the functional differentiation between Law and Politics, a differentiation this which was made from Max Weber and Hans Kelsen[6], and which is present, for example, in Niklas Luhmann's contributions[7].

From this point of view, when we speak of "CPI Lava Toga", using the same semantic field of the so-called "Lava Jato", we are confusing, purposefully or not, judicial activism and corruption, that is, giving to the judicial activism a meaning that it historically does not have, in the construction made by Political Theory and Philosophy of Law. In other words, when shuffling concepts, judicial activism is being criminalized and, at the same time (in a two-way street), saying that the

6 See Luiz Sergio Fernandes de Souza. Preface to the work of Gabriel Prado de Souza Aranha. Legal domination as an expression of law in bureaucratic societies: dialogue between comprehensive sociology and the pure theory of law. São Paulo: Literature Editora e Livraria, 2018.

7 Regarding this differentiation, see Niklas Luhmann, Legal system and legal dogmatics. Translation by Ignácio de Otto Pardo. Madrid: Centro de Estudios Constitucionales, 1993, p. 29, 40-47, 61, 90, 110 and 113.

suspicions weigh, in the mainstream media, on the jurisdiction of the Constitutional Court (practice of corruption in the strict sense) due to the judicialization of politics[8].

Although the issue of corruption has historically not been part of the spectrum of human rights violations (none of the international instruments for the protection of human rights refers to corruption), there is no doubt that the concern of multilateral organizations (IMF, World Bank, UNDP, American States) with the theme of corruption, which refers to the misuse of public power to satisfy private interests (in fact, in this respect, we see how improper the extension of the meaning of "corruption" is when it comes to attacking activism judicial practice, which consists in enforcing a particular conception of justice, with total distance from the functional differentiation between Law and Politics).

And Brazil has signed international treaties and conventions that promote international cooperation in the preventive and repressive fight against corruption. Among these instruments is the United Nations Convention Against Corruption, and it can be said that the triad participatory democracy (a), access to public accounts (b), the Judiciary and the Public Prosecutor's Office (c) is the basis (a tripod, case) for all those combat actions.

If it is true that corruption does not fall within the scope of human rights violations, it is also true that the repression of improbity is indispensable in combating the violation of those rights, as they are complementary concepts (corruption and disrespect for human rights). humans). Fraudulent bidding compromises important public policies, conspiring against the application of distributive justice. In another aspect, the performance of organized crime, with the collusion of State agents, generates violence (which affects the poorest sections of the population, above all), in addition to investing against physical integrity and the popular economy, as seen in the collapse of buildings in the Muzema Community, Rio de Janeiro, and as can be seen in the

8 Regarding a consistent criticism of judicial activism and judicial corruption, distinct territories, v. J.J. Calmon de Passos. Law, power, justice: judging those who judge us. Rio de Janeiro: Ed. Forense, p. 69, 76, 89, 91, 98, 127 to 133.

Guarapiranga Reservoir source area, in the extreme south of the city of São Paulo, a region where "organized crime" has been carrying out irregular land parceling[9].

Practices of clientelism and patrimonialism - the object of studies that have become classics in Brazilian sociology - have been brought within the reach of Justice thanks to the formulation of legislative aggregating policies, giving rise to the enactment of laws that are civilizing milestones, which, by force of the performance of the press and the intermediary bodies of society (in the words of Norberto Bobbio) still resist constant threats, coming from sectors that have no commitment to ethics. Thus, there is talk of the attempt to the "flexibility" the Law of Fiscal Responsibility and the Law of Administrative Improbity, a neologism with which one seeks to sweeten practices that face the so-called Ethical Democracy.

At the end of 2018, a complementary law was issued that removes the restriction of municipal spending on personnel expenses, which is the object of the Fiscal Responsibility Law, as long as there is a real drop of more than 10% in relation to the four-month period in relation to the previous four months of the last year, due to a decrease in the transfer of royalties, funds from the Municipal Participation Fund or special participations. A bill is being passed by the Chamber of Deputies that, in many respects, will make the process more agile and the punishment in cases of unlawful acts by public and private agents more efficient. However, under the pretext of "modernizing" the provisions of the Administrative Improbity Law, it is being considered to reduce the sentence for the confessed defendant and to apply the leniency agreement to natural persons, which is controversial.

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9 Kruse, Tulio. Organized crime coordinates invasions in areas of water sources in São Paulo. O Estado de S. Paulo. São Paulo, June 24 2019. Sustainability. Available at: <https://sustentabilidade.estadao.com.br/noticias/geral,crime-organizado-coordena-invasoes-em-areas-de-mananciais-de-sao-paulo,70002884543>. Accessed on: 23 out. 2019.
Dolzan, Marcio e Jansen, Roberta. ***Operação prende 14 suspeitos ligados à exploração imobiliária ilegal na Muzema***. O Estado de São Paulo, São Paulo, 16 jul. 2019. Brasil. Disponível em: <https://brasil.estadao.com.br/noticias/rio-de-janeiro,operacao-tenta-prender-acusados--de-construir-imoveis-em-area-de-milicia,70002923720>. Acesso em: 23 out. 2019.

In the climate of the preparations for the last soccer world cup, the rhetoric of the "homeland of soccer shoes" managed to overcome the conscious and consistent civic attitude, "flexibilizing" the Bidding Law, with the establishment of a Differentiated Public Procurement Regime . Recent history shows all the conspiracy woven for the approval of the Law that instituted this DRC, which left a trail of dysfunctional and abandoned works, uncovered loans of huge amounts at the expense of the treasury and the consequent increase in the internal public debt, contributing, in a lot, for the scenario of discouragement that today has settled in the country.

Thinking of the field of practical reason (which guides the will, a fundamental element of life since the Ancients), it is necessary that we have not only the technical dimension of law (in technique, agent, action, and purpose appear separately so that the production is always something external to the subject who produced it) but the dimension of the praxis of law (in praxis, there is a recognition of the subject in what he produces). This is the Ethical question posed in the text by San Tiago Dantas - Full Professor of Civil Law at the former National Faculty of Law -, which draws attention to the importance of prudence, the ability to assess, in all circumstances, the "way forward".

The ethical field and the sphere of culture

It turns out that ethical purposes require ethical means. And here it is a matter of discussing to what extent judicial activism, acting as a champion of justice, would not be investing against fundamental rights of the Constitution, such as the contradictory, the presumption of innocence, the impartiality of the jurisdiction and the exceptionality of the restriction on the right to come and go, a debate that is part of the sphere of ethical democracy, but which goes back to classical philosophy and modern philosophy, bringing to light the issue of ethical conscience.

Rousseau said that we are good by nature and that the notion of duty (unlike what occurs in the conception of Christianity, in which the notion of divine command operates) comes only to remind us of our

innate goodness (ROUSSEAU, 1995: 308-310 ; 387-398; 431-461). Kant, on the other hand, maintains that we are perfidious, abject and cruel, eager for pleasure, and that practical reason (as well as theoretical, universal) imposes on itself norms and moral ends created by itself, so that the imposition of duty - as occurs to Rousseau - is not external to man, heteronomous, but autonomous. In this sense, the categorical imperative operates, which addresses man in the universal sense: "Always act in such a way that you may also want your action to become the universal law of nature" (KANT, 1986: 49, 51, 82, 84 , 87, 89, 130, 134; 1974: 413-421, 425, 428, 447, 449).

The alteration of this notion of subjective morality, which revolves around the subject-nature dyad, arises with Hegel, since the world of culture, the arts, the social, the world of life matters in the formation of the individual's moral character (to remember a expression that would later be used by Wittgenstein). Hence the replacement of a subjective morality by an objective morality, in which the moral conscience is the result of human interactions, represented by the subject-history-culture triad. In these terms, the categorical imperative, instead of addressing humanity, man in the universal sense, must take into account each of the cultural realities (HEGEL, 2014: 256-270, 301-420).

In other words, the ethical demand, far from being a commandment of practical reason, as Kant conceived, emerges transcendentally from historical consciousness. The agreement between the subjective will (individual) and objective will (cultural) occurs fully when the human being internalizes the culture of the environment in which he lives, acting, in this measure, freely and spontaneously. Here is the new conception of moral duty, which is in Hegel. At the moment when the values of a society enter into crisis, man becoming to transgress the moral duty, here the rupture of that agreement occurs (mismatch between subjective will and objective will), which explains the decline of a society, with the appearance of a new historical period.

It is true that legal formalism, in refusing values, gives the impression of refusing history. But Hans Kelsen's methodological positivism, to take an example, is not an ethical skepticism. The Austrian philosopher

seeks only to found a science devoid of values, which, although it is an outdated paradigm (it was not at the time of the formulation of the Pure Theory of Law, it is worth remembering that the concept of "world of life", in the Philosophical Investigations of Wittgenstein, it would only be made public in 1952, Kelsen finding himself perfectly aligned, in refuting the naturalist fallacy - from an utterance of being, one cannot remove an utterance from being-to-be - to the thought of the Vienna Circle, which influenced the Wittgenstein of Tractatus Philosophicus), does not deny the necessity and the importance of the moment of the interpretation of the legal norm.

Final remarks

I believe that the challenge that consists in the control of praxis over technique has long been posed to practical science of law, so that the moral subject, in action, can recognize a purpose that is in accordance with the expectations of society. Bergson, in 1932, in the work The Two Sources of Morals and Religion, distinguishes between closed morality, prone to changing standards of conduct, and open morality, which breaks with tradition, opening space for new values, which happens thanks to the action of inspiring men, like the wise men, heroes, saints and prophets (Bergson, 1939: 21-64). Other contemporary philosophers also pursue a new ethics, but from a proceduralist perspective, making it Karl Otto Apel, from the point of view of a dialogical-discursive reason, Habermas, from the perspective of a communicative reason, and John Rawls, in line with a deontological root theory of justice.

The so-called Operation Lava Jato points to the need of discussing new paradigms for the distribution of justice, not only in the criminal field, but also in its interfaces with Administrative Law and Economic Law. But care is needed so that the fight against a strategic parasitic action of a communicative action does not reproduce the same harms that one seeks to combat. It is worth repeating that ethical ends require ethical means (with reference, in this step, to a more than deontological, legalistic ethics). In other words, ethical democracy involves, in

addition to respecting the rules of content inscribed in the Constitution of the Republic, also respect for the rules of the game (proceduralism). And this has nothing to do - to remind Bergson's reference - with the space of heroism, messianism or mysticism, inserting the discussion in the field of social action.

The Brazilian criminal process has to undergo a profound reformulation. It is an archaic codification, which survives at the expense of many patches. The changes are not just about the distinction between the accusatory system (where the separation between judge and prosecution is rigid) and the inquisitorial system (in which the judge has an initiative in the field of evidence), requiring the establishment of an institutional sphere of discussion and distribution consensus of the burden of proof, as is already the case in the field of civil procedure, from the Code of Civil Procedure of 2015 (SOUZA, 2016: 41-60). Recalling the contribution made, still in the 1970s, by Tercio Sampaio Ferraz Jr., object of the thesis in the Department of Philosophy and General Theory of Law at USP, in this more dialogical judicial process, the plan of the discussion ***against***, full of scams, full of cavilious practices and insincere actions, would give way to the plan of a discussion ***with***, which presupposes homology between the parties in the search for procedural truth (FERRAZ JR., 1973: 31-37, 61-95, 159-189) .

It is a matter of reproducing here - with the exception that the practical science of law does not develop properly in the theoretical field - the model proposed by Thomas Kuhn, in The Structure of Scientific Revolutions, a work in which the author, confronting the scientist's production with the social environment reflected in it, it describes the succession of theories on the basis of a process of normality and crisis, where there are alternating periods of consolidation and replacement of axioms, hypotheses, principles, categories and interpretations, called paradigms (KUHN, 1982: 24-78).

There are times when paradigms, faced with the inability to give an explanation for new facts, enter into crisis, becoming exhausted. At the same time, other paradigms are emerging on the horizon of science, with which the so-called scientific revolutions begin, which are only

consolidated when consensus is established around the emerging paradigm, giving rise to a new period of normal science.

The consensual construction of the paradigm involves strategies of persuasion that take into account social, political, economic and cultural factors. Scientific truth, like procedural truth, is mediated by language, which, in turn, reveals itself as a product of human interaction. Consensus organization is not an easy task. The problem is that outside this dialogical construction it will be simple imposition, which never comforts, never pacifies. And the law is, precisely, an instrument of social pacification, which without the ethical dimension, fails to recognize itself, losing its identity.

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Chapter 4

The new role of public compliance in Argentina

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Compliance is mainly a concept based on preventing corruption through the approach of a risk management system related to the breach of internal and external obligations. Today, public compliance is considered a preventive mechanism and not merely a normative statement. The fundamental reason that should drive the implementation of Compliance Programs in the public sector is to ensure that its employees act according to the highest standards of integrity, prioritizing the public interest on their own and adopting efficient action guidelines to reduce cases of corruption. While all rules regarding criminal and ethical behavior are regulated in the public sphere, increasing and improving regulation this is not, in itself, a sufficient antidote for preventing corrupt practices. It is necessary to strengthen the self-regulatory measures that increase the internal controls of each organization. Through a legal historical review, the Argentine evolutionary path in the process of combating corruption is covered from the 1990s to the present, with Law 27.401, of Criminal Responsibility of the Legal Entity, being a milestone, as it is the first to sanction criminally a legal person for corruption offenses and the inclusion of integrity programs as a necessary part

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of the penalty waiver process.

Private Compliance vs. Public Compliance

"The compliance function takes on the tasks of preventing, detecting and managing risks through the operation of one or more programs, contributing to promote and develop a culture of compliance within the organization." This is how the Argentine Association of Ethics and Compliance defines the role in its White Paper, which is mainly aimed at the private sector. Since the seventies, companies connected with the United States have begun to include this function in their organization charts under that country's regulations, specifically the FCPA ("Foreign Corrupt Practices Act").

Compliance is mainly based on preventing corruption through the approach of a risk management system related to the breach of internal and external obligations. The essential elements that a compliance program must have are:

- Decision by the highest authority in the organization to promote an ethical and transparent culture (from top to bottom);
- Risk assessment;
- Code of ethics;
- *Due Diligence* from Thrid Parties (Stakeholders);
- Integrity in biddings;
- Ethical lines for receiving complaints;
- *Due Diligence* in buyings and fusions;
- Training for all of its employess;
- Whistleblower protection;
- Internal investigation;
- Internal accountability.

What was sought with the Compliance Programs was to regulate the relationship of the organization's members with public officials. Today, the question arises as to whether these compliance programs,

implemented in the private sphere, can be applied in the public sphere.

The fundamental reason that should drive the implementation of Compliance Programs in the public sector is the need to ensure that its employees act according to the highest standards of integrity, prioritizing public interest over themselves and adopting effective action guidelines to reduce corruption cases. What is sought here is prevention through risk management, using internal control models: assessing risks to public integrity and ensuring coherent control mechanisms that include procedures to investigate suspected reasons for violating the standard and facilitating its communication to competent authorities without fear of reprisals.

The adoption of compliance programs in companies, to a certain extent, led to the privatization of the fight against corruption, through which the State imposed internal preventive measures. For this reason, it is absolutely inconsistent that, on the other hand, the State, as an organization, does not adopt measures similar to those that force companies to implement them.[11]

Background

Only in Latin America, in the 1990s, with the process of deregulation and liberation of trade, with the elimination of restrictions on the entry and exit of capital, the transfer to the private sector of different activities previously provided by the States and the consequent globalization, corruption cases have increased and so their consequent social damage. It is at this point that Argentina begins to regulate the first anti-corruption rules for the State, but still leaving out the private scope - only organizations that had to comply with foreign regulations have had Compliance Programs until now.

Thus, Law 25,188 of Ethics in the exercise of Public Service, Decree 41/1999 - Code of Ethics for Public Service and Regulatory Decree 164/99 of Law 25,188 were enacted in this decade.

11 ADÁN, N. M. El derecho penal económico en la Era Compliance. Edit. Tirant Io Blanch, 2013.

Subsequently, little was done about ethics and compliance.

Although Law 26,857 was issued in 2013, which required the publication of sworn statements by public officials, modifying the Public Ethics Law, they were not presented or their content was insufficient to carry out any type of analysis. The quantity and quality of the data contained in the declarations were reduced, assimilating them to those presented at AFIP (Federal Revenue Agency) for the payment of the tax on earnings and personal assets, extinguishing the control of people close to the exempt taxpayers, favoring the use of "accomplices".

In Argentina, public information was not easily accessible during the presidency of Kirchners. The Institute of Statistics and Census did not function fully and, therefore, there was no way to access the complete data of the Public Administration. The incorporation of anti-corruption policies was not a priority, although, during that period, different international conventions were incorporated into domestic law.

International enforcement

In 1996, in the city of Caracas, the Inter-American Convention against Corruption, adopted by the OAS, was signed. Through Law 24,759, in January 1997, it was incorporated into Argentine law. It was the first international instrument that comprehensively covers the phenomenon of corruption, combining punitive and preventive components, as well as assistance and cooperation between States. Its objectives are:

- Promote and strengthen the development of the mechanisms necessary to prevent, detect, punish and eradicate corruption in each of the Parties-States;
- Promote, facilitate and regulate cooperation between Parties-States, in order to guarantee the effectiveness of measures and actions aimed at preventing, detecting, punishing and eradicating acts of corruption in the exercise of public service.

In 1997, OECD member states (Organization for Economic Cooperation and Development) signed the Convention to Combat Bribery of Foreign Public Officials in International Business Transactions. Only in 2000 was this Convention incorporated into domestic law, through Law 25.319. This international legal instrument:

- Establishes the illegality of paying bribes to obtain international contracts;
- Brings transparency to the global market;
- Approve the rules of the game for all of its actors;
- It forces States to criminally punish people or companies that promise, deliver or offer bribes to foreign officials.
- Promotes that honest companies are not harmed or lose business due to collusion between corrupt entrepreneurs and employees.

In 2003, the United Nations Convention against Corruption was signed in Mérida (Mexico) as a global document that raised, among other issues, the development of preventive aspects, the inclusion of other irregular behaviors, such as corruption crimes and the incorporation of specific provisions for corruption in the private sector. Specifically for public administration, it states:

- The adoption of transparent systems for calling, hiring, retaining, promoting and retiring civil servants;
- Establishment of appropriate procedures for the selection and training of public officials deemed especially vulnerable to corruption;
- Promotion of adequate remuneration and equal salary scales, taking into account the level of economic development of the State Party;
- The adoption of appropriate legislative and administrative measures to increase transparency in the financing of candidates for elected public office and in the financing of political parties;

- The adoption of systems that aim to promote transparency and prevent conflicts of interest;
- Statements to the competent authorities of public officials about their external activities and jobs, investments, assets and gifts or benefits that may give rise to a conflict of interest;
- The adoption of disciplinary or other measures against any public official who violates these rules;
- The adoption of measures to establish public procurement systems based on transparency, competence and objective decision-making criteria that are effective in preventing corruption;
- The adoption of necessary measures for the public to obtain information about the processes of organization, operation and decision-making of the public administration, with due respect for privacy and personal data.

But only in 2006 will it be incorporated into the internal regulation by Law No. 26,097. In addition to these international commitments, the FATF (International Financial Action Task Force) has promoted a series of anti-corruption measures, including a commitment to promote transparency about the true ownership of shares and holdings in companies and other types of institutions: one of the ways used to launder money from corruption.

The OECD, in its Recommendation on Public Integrity, repeatedly recommended measures to combat corruption during the years 2007, 2008, 2014, 2016 and, finally, in January 2017, giving special emphasis to the public sector that should implement integrity systems, promote an ethical culture and exercise the necessary leadership in this area, showing real and effective responsibility. Likewise, in its recommendation on public procurement, it also adopted measures to be adopted to promote transparency in public procurement processes.

New conceptualization

The concept of ethics and transparency in the public sphere has changed. For a long time, it was just a declarative regulation that, at

most, established disciplinary sanctions for civil servants who had the status of permanent staff. Today, Public Compliance is considered a mechanism and not a mere declaration, that is, not a compendium of regulations that must be complied with only by legal requirement, without determining or establishing the way in which it should be carried out. What is being promoted is a concept of corruption prevention similar to that of the private sector.

While all rules regarding criminal and ethical behavior are regulated in the public sphere, increasing and improving regulation alone is not a sufficient antidote for preventing corrupt practices. It is necessary to strengthen the self-regulatory measures that increase the internal controls of each organization. It is known that there are not two private companies with exactly the same Compliance program and, since their planning is subject to the risks that each organization has, the programs differ from each other according to the objective or the size of each organization. The same happens with the Public Administration, in which not all ethical conduct is regulated. It is necessary to establish mechanisms for the prevention and implementation of regulations within organizations. And this can vary according to the different state agencies, considering only the object and the size of each one. To avoid corruption and promote transparency in public management, it is necessary to develop a complex approach that combines punitive policies and practices with preventive policies and practices.

Today we speak of Public Ethics as the "science of the performance of those who exercise public functions oriented to the service to the citizen and commitment to the general well-being. Its objective is to assume certain values that allow the individual to distinguish between what can be done and what must be done, making the approach more.

Therefore, Public Compliance could be thought of as a complement to anti-corruption policies, as they had been conceived in Argentina. It is not a matter of "reinventing the wheel", but of improving what has already been built, in addition to developing a set of tools that lead to a more pragmatic approach to fighting corruption at all levels of the organization.

In practice, as we have seen, the distinguishing factor of this new concept is risk management as a preventive means. This identification of compliance risks can be developed both by the compliance function and by other functions or areas of the organization related to supervision and / or control. In the Argentine Public Administration, part of this task falls to Internal Audits, but they do not have a specific approach to fight corruption. Although it can be interpreted that the Compliance function must fit into the Internal Audits as they are control tasks, they differ greatly from each other, since the first is preventive, while the second is performed ex post for the analyzed facts. Here are the differences:

	Internal Audit	Compliance
Objective	Identifies and prioritizes risks that facilitate the development of the internal audit plan to assist with assessment regardless of the effectiveness of risk management and compliance programs.	Identifies, prioritizes and assigns responsibilities for managing existing or potential threats related to legal violations or inappropriate ethical conduct that could result in fines or reputation damage.
Reach	Risks associated with financial statements and internal control, as well as operational and compliance risks that are likely to have a material impact on results and financial statements.	Laws and regulations that the organization must comply with in all jurisdictions in which it conducts its business, as well as policies of organizations, regardless of whether or not these policies are based on legal requirements.

The most difficult issue in Public Administration is that, often, the issues that make up a Compliance Program are carried out by other internal areas of the agencies. Therefore, it is very important to ensure that tasks do not overlap. It must be emphasized that these are cooperative tasks that must be aligned and focused on compliance issues. For example, if Employee Asset Statements are collected by the Human Resources Department, a double collection will not be requested or the area will abandon the task (an issue that at the operational level can be very complicated), but the compliance area must specify the guidelines or forms of investigation that you think are correct for crime prevention. What is very clear is that the Compliance function must be autonomous, with its own structure, that is, with its own resources and

directly subordinated to the maximum authority of the organization, without the need for intermediaries.

Once risks are identified, the planning of the Compliance Program is essential by establishing objectives aligned with internal policy (for this, it is essential that the anti-corruption voice comes from the highest authority in the organization) and that these objectives must be monitored, properly communicated and subject periodic review and updating (continuous improvement). Another difference that can be found with the private sector is that, in the National Public Administration, every public official is obliged to report any corruption of which he is aware. This means that you are not at liberty to decide within the organization what the course of the infringement committed to the internal organization will be. The only possible option is to decide where the complaint will be made: either before the courts or before the Anticorruption Office. Therefore, a mandatory point in a Public Compliance Program will be the preparation of reception and investigation protocols that determine how to act when complaints are received at the agency.

On the other hand, Law 27.275 on Access to Public Information establishes as a general principle that all information maintained by the State is assumed to be public, so that whoever is in charge of the compliance task of a public agency must incorporate the necessary functions for those responsible for internal public information from each agency or adequately synchronize its functions with those of the person in charge, in order to keep a record of requests and, thus, control the information that leaves the Body and preserve those that have the character of reserve or secrecy.

Current state

As already mentioned, in September 2016, with the Law on Access to Public Information, it is possible, together with the open data portals and the standardization of the National Institute of Statistics and Census (INDEC), to access all State data that are not confidential - all

information generated by the national state is public, so exceptions are set out exhaustively in regulations. In addition, all administrative procedures were digitized through the Electronic Document Management System, generating more visibility on the procedures' hours and transparency, all it takes for access is to enter the document number in the system. A new Electronic Purchasing System, the COMPR.AR System, was also implemented as an electronic management platform for all selection procedures prescribed in the National Administration's Contract Regime Regulation. In the same year, President Mauricio Macri issued Decree 1179/2016 that regulated the "Regime of gifts for public employees" of Law 25.188.

Another measure to continue promoting Transparency and obtain more tools to fight corruption was the enactment of Law 27,304, in November 2016, called "Law of Repentance". It is a tool that allows reducing the penalty for those who participated in a certain crime during the criminal process, providing important information for the cause, allowing to speed up the investigation. It is used in cases of crimes such as corruption, drug, and human trafficking, among others. But there is a limit: it can never be applied in cases of crimes against humanity.

On the other hand, one of the most well-known and transcendent corruption factors in Public Administration is nepotism, understood as the preference that some civil servants have for employing family members or friends, regardless of the merit of holding the position. In countries where meritocracy is exercised, nepotism is generally negative and considered corruption. For this reason, it can be added to the conflicts of interest defined by the Anticorruption Office as the confrontation between public duty and the employee's private interests. In this sense, President Mauricio Macri issued two decrees: Decree 202/2017 regulates conflicts of interest in public contracts and Decree 93/2018 prohibits the designation of persons with kinship.

Law 27401, relating to the criminal liability of the legal person, together with its regulatory decree 277/18, was a milestone in the history of Argentina in the fight against corruption. It penalizes legal entities for the first time for crimes of bribery, influence peddling,

concussion, incompatible negotiations, illicit enrichment, and false balance. Commercial companies, foundations, civil associations, and state-owned companies are included and sanctions may vary from a fine corresponding to the percentage of the benefit received through illicit, suspension of activities, prohibition from participating in bidding processes, loss of state benefits, publication of judgment (with consequent loss of reputation) until dissolution and liquidation. The novelty of this regulation for Argentina, in addition to being able to sanction a non-physical person, is that it also establishes a liability exemption procedure that consists of self-declaration, accompanied by an appropriate compliance program and return of the benefit obtained.

On this occasion, mandatory Compliance Programs are included for the first time in an Argentine standard: "Integrity Programs" for certain contracts with the State, defined as "the set of actions, mechanisms, and internal procedures to promote integrity, supervision, and control, in order to prevent, detect and correct irregularities and illegal acts included in this law, establishing that they must contain at least: a code of ethics or conduct, specific rules and procedures to prevent illegal activities in the field of bids and tenders, in the execution of administrative contracts or any other interaction with the public sector; and conducting periodic training on the integrity program for directors, officers and employees, which may also contain the following elements:

I. The periodic analysis of risks and the consequent adaptation of the integrity program;
II. Visible and unequivocal support to the integrity program by senior management;
III. Internal channels for reporting irregularities, open to third parties and adequately disclosed;
IV. A policy to protect whistleblowers from reprisals;
V. An internal investigation system that respects the rights of the investigated and imposes effective sanctions against violations of the code of ethics or conduct;

VI. Procedures that verify the integrity and trajectory of third parties or business partners, including suppliers, distributors, service providers, agents, and intermediaries when contracting their services during the business relationship;

VII. Due Diligence during the transformation and acquisition of companies, to check for irregularities, illegal acts or the existence of vulnerabilities in the legal entities involved;

VIII. Monitoring and continuous assessment of the effectiveness of the integrity program;

IX. A person responsible for the development, coordination, and supervision of the Integrity Program;

X. Compliance with the regulatory requirements that the respective authorities of the national, provincial, municipal or communities that govern the activity of the legal entity determine these programs.

Subsequently, the Anticorruption Office published the guidelines for the Preparation of Integrity Programs as a guide to the implementation of these programs.

Through Decree 258/2019, the First National Anti-Corruption Plan 2019-2023 is approved where more than 250 intersectoral and sectoral initiatives are enunciated to consolidate and deepen the path of transparency, integrity, institutional strengthening and account resignation which will be monitored by through an Advisory Council for Monitoring Implementation, composed of specialists and/or organizations from Civil Society and Academic Field. This constitutes a major paradigm shift because it is the first time that integrity policies are planned in Public Administration.

In May of this year, Law 27,504, Law on the Financing of Political Parties, was enacted, in which the main amendment to the old law was the ban on anonymous contributions. More recently, we can find Decree 650/19 which, together with Administrative Decision 797/19, institutionalizes the Integrity Links Network with the Anticorruption Office, in accordance with the OECD recommendation in the study on Integrity in

Argentina (2019), in order to implement awareness and training strategies on issues of transparency, ethics, and anti-corruption and promote, within the scope of its competence, compliance with international obligations and recommendations in the fight against corruption and report to the Anti-Corruption Department on its level of progress.

Next challenges

The government took an active stance in the fight against corruption and was determined to comply with the international regulations involved. Although much has been done, the acts are still pending. The new Public Ethics law submitted to the National Congress by the National Executive Branch in March this year will be enacted as soon as possible. It adopts a broader criterion for the definition of "public function", including activities provided by public state or non-state entities in whose government or supervisory body the National State participates, including concepts already mentioned in the Regime of Nepotism within the national public sector.

The Project foresees the incorporation of new subjects, namely: (i) candidates in office for national elected public positions or positions whose designation requires the intervention of one of the Houses of Congress; (ii) members of the collegiate bodies for the management and administration of social works; (iii) members of the governing and management bodies of union associations regulated by Law No. 23,551; and (iv) members of the political parties responsible for the movement of funds. It also establishes as a penalty the loss of 20% of the salary for public servants who do not submit their declarations of assets and interests from the moment they are required until their effective fulfillment.

The classification of conflicts of interest is established in two categories: (i) "real", when the competition of interests is direct and current (as when private activities are carried out in which certain powers are held by the public service, or he is a contractor the agency where he performs his function); and (ii) "potential", when the agreement of in-

terests is circumstantial since it can only occur (when it is necessary to intervene in cases related to people who were previously served or to companies in which the shareholding is maintained).

The Project imposes on civil servants, once they cease their duties, how not to use the information obtained during the office and the refraining from (i) representing, sponsoring or executing administrative procedures for third parties before the entity or body in which they performed their duties; and (ii) supply, directly or indirectly, goods, services or works, personally or using third parties, to the entity or agency in which they performed functions. With regard to the system of donations to civil servants, it incorporates the provisions of Decree No. 1179/2016 and provides for the extension of the regulation to spouses, cohabitants or minor children of certain civil servants.

Finally, it establishes for each of the three powers and for the Public Prosecutor's Office the creation of an autonomous body to exercise the functions of law enforcement authority. As a tool to combat nepotism, a system of recruiting meritocratic personnel must be established, where it can be proven that the person has the necessary experience and adequate training to hold a public office, as well as more transparent competitions, where one cannot deduce that it is aimed at a particular person. Finally, it works with the concept of nepotism, including assimilable people who, without documents, have a personal relationship.

Internally, each organization must address integrity through risk management with separate audits. Internal audits should be a support for the Public Administration's integrity areas, where they provide research material. The control and justice bodies must meet three indispensable conditions: independence, capacity, and competence.

It is necessary to establish a new system of sanctions, since the Public Ethics Bill does not provide anything in this regard, leaving any possible penalty for non-compliance by other bodies. The disciplinary regime could apply to all categories of civil servants who represent about a third of the workforce. Currently, the Public Employment Law establishes a sanctions regime that will apply exclusively to those who are permanently employed, in order to leave out the staff of the of-

fice and those included in the contracting regime. However, the Public Ethics Act states that it will be mandatory for all civil servants, regardless of their hierarchy or type of contract - non-permanent employees today are the majority.

The National Treasury Office (PTN) determines mandatory resolutions for all legal services of the National Administration. Thus, in March 2017, with Opinion 300: 206, PTN decided that the sanctions regime of the Public Employment Law is extendable to all types of hiring when it comes to violations of the Public Ethics Law, since it establishes a legal vacuum when it determines that "they will be sanctioned or removed by the procedures established in the proper regime of their functions". However, these changes cannot support this policy, requiring a regulatory change.

Argentina also needs the enactment of a lobbying law with Transparency International standards, which can be applied to all state powers and adopted by all provinces. At the subnational level, of the 23 provinces and in the autonomous city of Buenos Aires, 11 lack a public ethics law similar to that at the national level.[12]

Finally, I end with a reflection by Diego Martínez: "State compliance and struggle can lend tools and criteria to each other with remarkable efficiency and zero contraindications"[13]. Although the latter government has taken a big step in relation to outstanding debts in matters of ethics and transparency, it is still necessary that pragmatic measures are taken in all public bodies, in order to specify the application of the concepts and normative guidelines to be adopted to each of the employees belonging to the National Public Administration, without distinction of hierarchy or hiring method.

12 OECD. Estudio de la OCDE sobre Integridad en Argentina: Lograr un cambio sistémico y sostenido. In: ***Estudios de la OCDE sobre Gobernanza Pública***, Paris: OECD Publishing, 2019.
13 MARTINEZ, D. H. "Compliance y el sector público: el caso de la Argentina". In: SACCANI, R.; OLIVER, G. M. ***Tratado de Compliance***. La Ley, 2018

Chapter 5

Promoting accountability, transparency and public participation to advance Botswana's fight against corruption

OMOTOYE, Marumo[14]

Introduction

The promotion of transparency and accountability is a key dimension of democratic governance (National Development Plan 11). Transparency and accountability are widely recognized as key imperatives of good governance, as well as economic and social development. Through the National Development Plan and Vision 2036, the Government of Botswana (GoB) has expressed its commitment to enhancing transparency, accountability and public participation across a plethora of governance processes. Good public participation practices can help governments be more accountable and responsive, and can also improve the publics' perception of governmental performance and the value the public receives from the government (Government Finance Officers Association, undated). Participation also denotes the process of empowering citizens to develop intrinsic initiatives for self-reliant mobilization, responsibility and control over how resources are used (Moatlhaping and Moletsane, 2012:24).

However, as this paper discusses, Botswana's performance in enhancing transparency, accountability and public participation has

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shown a gradual decline in several governance indices, namely the Ibrahim Index of African Governance (IIAG) and Rule of Law Index. The 2018 IIAG indicates that Botswana's score declined from about 76.4% in 2008 to 65.9% in 2017 in the transparency and accountability indicator, and from 82.7% to 80.4% in the participation indicator. On the other hand, the 2017 Rule of Law Index scores Botswana abstemiously in its open government category. Similarly, the 2018 Corruption Perception Index (CPI) reports a drop in Botswana's longstanding rank as the least corrupt country in Africa. Using the IIAG and Rule of Law Index, this paper examines Botswana's performance in advancing the principles of transparency, accountability and participation.

The importance of accountability, transparency and public participation

Citizens' demand for more responsive, accountable and transparent governments has compelled the democratic state to adopt measures and initiatives that leave it open to public scrutiny, while trying to consolidate its legitimacy, and maintain public support. Various definitions have been offered to explain the concepts of accountability, transparency and participation. For instance, USAID (2013) states that accountability pertains to the relationship between citizens and government officials, along with a sense of obligation and a public service ethos among public officials, and the power of citizens to sanction, impose costs or remove officials for unsatisfactory performance or actions. Transparency refers specifically to the substantive and administrative procedures through which institutions perform their functions, and whether they are documented, accessible and open to public scrutiny. Public participation refers to the interactions that occur between the government and citizens. The Organization for Economic Co-operation and Development (OECD) endorses civic engagement as a strategy to promote good government practice, close the gap between governments and citizens, improve citizens' trust, and reduce their cynicism towards government (Tanaka, 2007). The three concepts of transparency, accountability and

participation are mutually reinforcing as they intend to consolidate and uphold principles of democracy and good governance. Weakening one pillar may negatively affect the others.

During the 2019 National Budget Speech, Botswana's Minister of Finance and Economic Development, highlighted efforts aimed at strengthening transparency, accountability and public participation. Some of these initiatives include:

- **Public participation:** National Assembly conducts education and outreach programmes, through dissemination of information on the operations of Parliament. The Independent Electoral Commission (IEC) engages with selected groups of society (e.g. people living with disabilities, faith based organizations, women, media, trade unions, etc.) through targeted workshops.
- **Transparency and accountability:** Parliamentary committees (e.g. Public Accounts Committee) provide oversight on implementation of government programmes and projects. A Declaration of Assets and Liabilities Bill to be presented to Parliament in July/August 2019.

Oversight institutions like Parliament have an important role to play in advancing a country's democratic aspirations. However, the effectiveness of the legislature in holding the executive accountable has been questioned (Botlhale and Lotshwao, 2015). Essentially, the promotion of accountability, transparency and public participation is geared towards enhancing the effectiveness and efficiency of governments in responding to the needs and demands of its citizens. Moreover, transparent and accountable governments are equally determined to combat corruption. This requires the presence of certain enablers or conditions that can support governments' efforts to increase levels of accountability and transparency. One such enabler is the facilitation of greater public participation in governance processes. According to the World Bank (2006), citizens and media that have broad access to information on the operation of state institutions are crucial for holding the state to

account. This notion has been buttressed by national governments such as the Government of Botswana. For instance, as Table 1 illustrates, both Vision 2036 and NDP 11 make an unequivocal recognition that transparency, accountability and public participation are pivotal to the attainment of the country's democratic and socio-economic development goals. Furthermore, the GoB is cognizant of the fact that transparency, accountability and participation are critical to not only creating a knowledge-based economy, but also improving the country's competitiveness in attracting foreign direct investment.

Table 1: Vision 2036 and NDP 11: Accountability, Transparency and Participation

	Governance Theme	Description	GoB Action Plan (Commitment)
Vision 2036	Public Participation	Civil society organisations (CSOs), including trade unions and faith based organisations act as watchdogs and play a pivotal role in identifying gaps and advising government on key socio-economic issues.	CSOs will be partners and legitimate actors in the national development process. CSOs will be empowered and supported to undertake functions that are complementary to government development efforts. Civil society will be vibrant, representing the voices of the community, especially the disadvantaged.
	Transparency and Accountability	Transparency and accountability are prerequisites for progressive governance and building trust between the public, public institutions, private sector and civic institutions. Without this, corruption can flourish, obstructing development and the provision of quality services.	Public officials, including leadership in the political and private sectors, as well as civil society, will be answerable to the public for their commitments, actions and inactions. Access to information will be a protected right and will spur public participation.

NDP 11	Public participation	Promoting citizen participation entails involving all citizens in open discussions on the development or improvement of policies and strategies. Citizen participation also builds informed and active citizens who understand how to voice their interests, act collectively, and hold public officers accountable.	Government will enhance participation by focusing on inclusiveness and nation building. Inclusiveness entails full participation in the development and implementation of policies.
	Transparency and Accountability	The promotion of transparency and accountability is a key dimension of democratic governance. Transparency is about accessibility to the general public of clear information about government, private and civil society activities in order to increase citizen participation.	Efforts will be made to increase government's ability and capacity to provide information about government business across all sectors to encourage more effective and accountable institutions and better outcomes for citizens. Through transparent systems, access to quality information would enable citizens to more actively participate in policy making.

Source: Author, derived from NDP 11 and Vision 2036

Botswana's political and economic transition since obtaining independence in 1966 has been well documented. Central to this achievement has been the presence of a traditionally effective system of consultative governance through the ***kgotla***. Vision 2036 and National Development Plan 11 are designed to uphold Botswana's entrenched values of consultation and public participation. While progress has been made in upholding a culture of public consultation and participation in order to ensure transparency and accountability, several gaps have been identified by governance indices that have sought to measure the extent to which governments are classified as "open". Specific reference is made to the Ibrahim Index of African Governance and the Rule of Law Index.

Accountability, transparency and public participation in Botswana

The Ibrahim Index of African Governance provides an annual statistical assessment of governance performance in 54 African countries. It is published by the Mo Ibrahim Foundation, which defines governance as the provision of the political, social and economic goods and services

that every citizen has the right to expect from their state, and that a state has the responsibility to its citizens.[15] The IIAG is comprised of four main pillars of governance: Safety and Rule of Law, Participation and Human Rights, Sustainable Economic Opportunity, and Human Development, which are further subdivided into fourteen sub-categories. However, this section is limited to examining Botswana's performance in the areas of accountability, transparency (both under the Safety and Rule of Law pillar) and participation (under the Participation and Human Rights pillar). According to the 2018 IIAG, Botswana is amongst twelve African countries that have experienced 'increasing deterioration' in its overall governance performance since 2008. The IIAG states that the transparency and accountability category measures the degree to which public officials, institutions and the private sector are subject to oversight and scrutiny by other institutions and citizens, in order to make the government responsive in the pursuit of the public interest.

Figure 1 illustrates Botswana's performance in the IIAG's transparency and accountability category between 2008 and 2017. Consistently high levels of government transparency and accountability have seen Botswana perform well above the continental average. Notwithstanding, improvements can and should be made as a result of the gradual decline that has been recorded since 2012. Consequently, this decline led to Botswana being surpassed by Rwanda in the sub-category of transparency and accountability in 2016. Rwanda's stronger performance has been attributed to: government's commitment to increasing access to public and legislative information, increased accountability of government and public employees, reduced levels of corruption in government branches and the private sector, as well as strong anti-corruption mechanisms.

15 See 2018 Ibrahim Index of African Governance Report. Accessible from: http://s.mo.ibrahim.foundation/u/2018/11/27173840/2018-Index-Report.pdf?_ga=2.112669124.1176337419.1543934790-620983256.1533297462

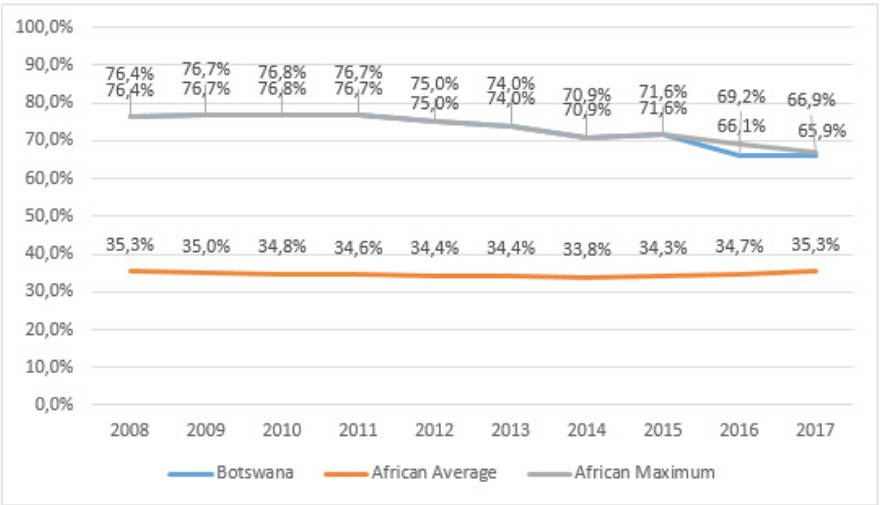

Figure 1: Transparency and Accountability in Botswana (2008-2017)
Source: Author, computed from IIAG dataset

As Figure 1 indicates, prior to 2016, Botswana had consolidated its position as the best performer in the accountability and transparency sub-category. Reasons behind Botswana's overall gradual decline in the transparency and accountability sub-category from 2012 to 2017 are ascribed to a number of factors, such as:

- Access to public and legislative information (scored 25 out of 100, but score declined by -12.5 points between 2008 and 2017)
- Access to records of state-owned companies (scored 25 out of 100, but score declined by -25.0 points between 2008 and 2017)
- Accountability of government and public employees (scored 78.3 out of 100, but score declined by -1.4 points between 2008 and 2017)
- Absence of corruption in the public sector (scored 78.6 out of 100, but score declined by -10.3 points between 2008 and 2017)

- Absence of corruption in the private sector (scored 69.5 out of 100, but score declined by -13.6 points between 2008 and 2017)
- Absence of favoritism (scored 72.7 out of 100, but score declined by -6.3 points between 2008 and 2017)

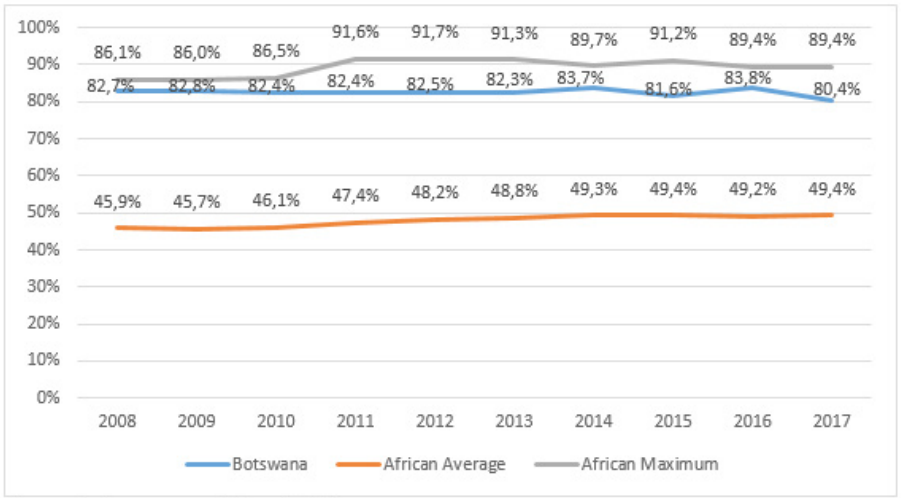

Figure 2: Public Participation in Botswana (2008-2017)
Source: Author, computed from IIAG dataset

Botswana's score in the participation sub-category has relatively been consistent between 2008 and 2017, and remains well above the African average during this period. In fact, this sub-category recorded one of the lowest declines (-2.3 points between 2008 and 2017) amongst all other governance indicators. Reasons for this decline are attributed to:

- Civil society participation (scored 85.7 out of 100, but score declined by -1.6 points between 2008 and 2017)
- Capacity of Election Monitoring Agencies (scored 58.3 out of 100, but score declined by -7.3 points between 2008 and 2017)

The IIAG notes that, continentally, progress in the participation and human rights pillar is undermined by a closing of the civil and

political space. African governments need to make deliberate efforts to increase opportunities for active public participation in policy making, implementation and monitoring. Countries such as Mauritius, Cape Verde, Ghana and Namibia have performed better than Botswana in the areas of political and civil society participation. In other words, citizens of these countries play an active role in the political and administrative spaces of their countries. While it is important to consider the diverse relations between governments and civil society across African countries, it may yet be that civil society organizations in these countries are perceived to be performing better than CSOs in Botswana because of their capacity to adequately address the multiplicity of challenges that confront their operations.

Status of open government in Botswana

The World Justice Project Rule of Law Index measures the rule of law based on the experiences and perceptions of the general public and in-country experts worldwide. The Index measures the rule of law by assessing eight pillars: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory environment, civil justice, and criminal justice.[16] However, this section is limited to examining the open government pillar. The open government pillar measures openness of government, which is defined as the 'extent to which a government shares information, empowers people with tools to hold government accountable and fosters citizen participation in public policy deliberations. This factor measures whether basic laws and information of legal rights are publicized and evaluates the quality of information published by government'. The open government category is comprised of 4 sub-categories, namely:

- **Publicized laws and government data**: measures whether basic laws and information on legal rights are publicly avail-

16 See 2017/2018 Rule of Law Index Report. Accessible from: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf

able, presented in plain language, and made accessible in all languages. It also measures the quality and accessibility of information published by government in print or online, and whether administrative regulations, drafts of legislation, and high court decisions are made accessible to the public in a timely manner.

- **Right to information**: measures whether requests for information held by a government agency are granted, whether these requests are granted within a reasonable time period, if the information provided is pertinent and complete, and if requests for information are granted at a reasonable cost without having to pay a bribe. It also measures whether people are aware of their right to information, and whether relevant records are accessible to the public upon request.
- **Civic participation**: measures the effectiveness of civic participation mechanisms, including the protection of freedoms of opinion and expression, assembly and association, and the right to petition the government. It also measures whether people can voice concerns to various government officers, and whether government officials provide sufficient information and notice about decisions affecting the community.
- **Complaint mechanisms**: measures whether people are able to bring specific complaints to the government about the provision of public services or the performance of government officers in carrying out their legal duties in practice, and how government officials respond to such complaints.

Botswana was ranked 78th out of 113th in the 2018 Rule of Law Index for its performance in the open government category and joint fifth in Africa with Madagascar and Burkina Faso. Its score of 0.46 implies a 'weaker adherence to the rule of law'.[17] Scores range from 0 to 1, with 1 indicating the strongest adherence to the rule of law. Figure 3 presents Botswana's scores for its performance in the open government category.

17 See page 38 of 2017/2018 Rule of Law Index Report.

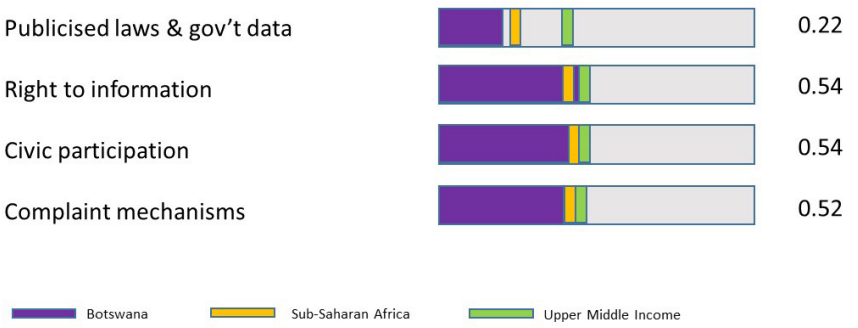

Figure 3: Open Government in Botswana
Source: 2018 Rule of Law Index

Unlike the transparency and accountability category found in the IIAG, the Rule of Law Index's open government category places greater emphasis on the degree to which national governments create opportunities for citizens to participate in governance processes. As Figure 3 illustrates, the lowest performing indicator relates to the publication of laws and government data. The GoB acknowledges that certain challenges have hampered optimal utilization of information and communication technology (ICT) opportunities in the country. NDP 11 notes that comparatively high costs of ICT services, slow implementation of e-Government programmes, and limited participation and empowerment of citizens are some of the challenges that have been identified in creating access to public data and information. Although Botswana is yet to adopt a Right to Information or Freedom of Information Act, this has generally not hindered public access to certain government policy documents, acts, regulations, reports, etc. (Kaunda, 2008). However, there might be a need for the country to adopt such legislation to further support the GoB's commitment of strengthening levels of transparency and accountability, as well as ensuring that citizens' rights to access public information is protected. When asked to indicate their level of agreeability or disagreeability regarding public access to information, approximately 64% of Afrobarometer respondents in Botswana disagreed that information held by public authorities should only be

used by government officials and shouldn't have to be shared with the public (see Figure 4).

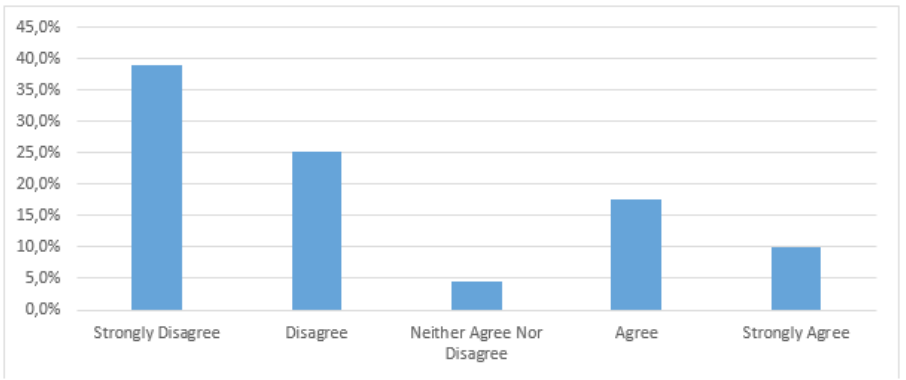

Figure 4: Public Access to Information
Source: Afrobarometer (2017)

Respondents were asked: Information held by public authorities is only for use by government officials; it should not have to be shared with the public?

According to Kaunda (2008) laws such as the National Security Act have been criticized for constraining government employees from providing certain information requested by the media. The protection of national interest and security are cited as one of the reasons for national governments' reluctance to enact freedom of information laws. Other reasons are that FOI represent an unjustified invasion of personal privacy or commercial confidentiality (Birkinshaw, 2006). In light of the fact that the GoB has committed itself to enacting legislation on the declaration of assets and liabilities, it is important to question whether a freedom of information act would support or hinder the effectiveness of such legislation in particular, and enhance transparency, accountability and participation in general.

Conclusion and recommendations

Botswana's efforts in safeguarding the principles of good governance and democracy have been widely recognized and lauded. Both

the National Development Plan 11 and Vision 2036 clearly outline the Government of Botswana's commitment to promoting accountability, transparency and public participation. However, according to the Ibrahim Index of African Governance and the Rule of Law Index Botswana's levels of accountability, transparency and public participation have gradually declined. The IIAG attributed the decline in the transparency and accountability category to limited access to public and legislative information, as well as limited access to records of state-owned companies. Similarly, the Rule of Law Index found that Botswana's lack of openness could largely be attributed to the weak publication of laws and government data. Arguably, effective participation hinges on sufficient levels of government accountability and transparency. The slow implementation of e-government initiatives hinders effective participation as citizens may experience challenges in accessing critical government data and information that is only available in hardcopy or not widely available in all localities.

The following recommendations are aimed at strengthening Botswana's levels of transparency, accountability and public participation:

I. There is a need to fast-track the implementation of e-government initiatives. For instance, existing (informal) information and communication technologies could be used to promote ongoing discussions and establish feedback mechanisms between government and citizens, especially during the implementation of projects and services. For example, through website portals, discussion blogs or forums, webinars, or social media such as a Government of Botswana Facebook Page;
II. The Government of Botswana's commitment to strengthening transparency and accountability should be formally operationalized through the enactment of a Right to Information Act. Information increases accountability and transparency as it empowers citizens to scrutinize government affairs and reduce information asymmetries;

III. Strengthen capacity of oversight institutions to the extent that they enhance political and administrative accountability;

IV. Public access to legislative information and proceedings could be improved by publishing parliamentary committee reports online;

V. Public documents should be made available and accessible in a non-technical format. This can include summarized versions of documents such as laws and policies in local languages;

VI. Non-state actors around the world are playing an increasingly important role in monitoring how governments utilize public money and provide services. CSOs, particularly those representing society's most vulnerable and marginalized groups should be empowered to fully participate in governance processes, especially at the local level. This would initiate and propel vital bottom-up dialogue.

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Chapter 6

The perfect storm: Dispute over the public fund and allegations of corruption during the Brazilian civil-military dictatorship (1964-1988)

CAMPOS, Pedro Henrique Pedreira[18]

"Corruption" is a topic that has occupied a central place in the political debate and media in Brazil in recent years. Being a current target of instrumentalization for certain political purposes, in addition to undergoing a process of intense simplification in the way it is worked on in the press, the issue has been a growing object of academic interest. There is an evident demand to better understand the characteristics, motivations, and interests surrounding this phenomenon and its extensive exploitation at the level of common sense. Thus, we propose in this article to analyze the issue, problematizing the denunciations of "corruption" during the Brazilian civil-military dictatorship (1964-1988). To address the issue, we proceeded with a brief theoretical reflection on the theme of "corruption", given the polysemy of the term, the lack of a clear scientific concept, as well as its various interpretative possibilities. Then, we established a discussion about the cases of "corruption" that occurred in the dictatorship, problematizing the specific historical and political-institutional conditions in which the episodes thus titled in that period took place. We postulate the hypothesis that some cases of corruption perceived in the period and in other contexts are related

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to the dispute between companies for the appropriation of the public fund, in particular those formed or increased during the dictatorship.

"Corruption", a brief theoretical consideration

One of the first issues to be problematized when working on the issue of corruption concerns the difficulty in conceptualizing the term. Marcos Bezerra, an expert on the subject, points out that the category is commonly placed imprecisely, which often helps with the purpose of instrumentalization and manipulation around the term. The author states that "this imprecision of the term favors it to be the object of different appropriations and disputes of meaning in the context of social struggles" (2018, p. 17). Several social phenomena are homogenized under the label of corruption, often quite different from one another. A certain historical simplification is also common when using the term, with its combination to deal with practices and phenomena that occurred in different periods (Bezerra, 2017). Thus, certain approaches tend to incur anachronism when dealing with the issue. The American political scientist Peter Bratsis (2017) draws attention to the significant distinction between the corruption referred to in the classic texts of Aristotle and Machiavelli that currently prevails in capitalist societies, in which, by liberal logic, there is a formal separation between public and private.

Fernando Guarnieri and Luiz Alfredo Salomão studied American political scientists who were cleaved by the logic of public interest to typify corruption in the forms of bribery, nepotism, private appropriation of public resources and clientelism. In a similar vein, Rogow and Lasswell understand that "acts of corruption are violations of the common interest due to particular advantages." (apud Salomão; Guarnieri, 2016, p. 25). Such definitions start from a liberal bias, which ontologically separates the public from the private, the state from the market and society. Recently, agents of Transparency International and other global organizations have redefined the sense of corruption as "opacity" and "lack of transparency" (Bratsis, 2017).In addition to the imprecision of the term and the difficulty of conceptualizing it, in view of the multiplicity of phenomena covered

in the use of the category, there is a very numerous range of texts and analyzes that deal with the different uses in the fight against corruption. In the light of recent political experience in Brazil, Jessé Souza (2016) highlights the anti-corruption agenda and the support for coups d'état in the country and demarcates how the media narrative on the subject produces a kind of novelization and "generalization" of corruption, without pointing out its structural and institutional bases in Brazilian politics. Souza draws attention to the high mobilizing power of the flag, especially in the "middle class", adhering to the discourse against corruption for being the depository of the belief in meritocracy. In addition to the political uses of corruption, Felipe Demier (2019) calls attention to the excessive exposure of corruption cases in the media as a diversionist mechanism, or rather, that draws attention to the theme while placing less emphasis on issues crucial aspects of contemporary social and political life, such as labor and social security rights, public debt management, as well as budget and tax issues. Thus, the press is able to shift the focus from the public debate on issues of class struggle and distributive conflict to particular cases of corruption, as if this constituted one of the most relevant national problems.

Another current aspect regarding corruption concerns the effects produced by the repetition of "scandals" by the media. Cid Benjamin (2019) draws the attention that the exposure and emphasis of the media on cases of corruption generates a depoliticization of society, with generalization and criminalization of the members who hold political positions and removal of the population from political activities. Depending on this reading, Eduardo da Costa Pinto and other authors point out that the recent Lava Jato operation works following the leakage of evidence and information from the investigation - generating instability - delegitimizing the policy - legitimacy of the operation. Far from being configured as a collateral damage, in this case the delegitimization of the policy corresponds to a right objective of the operation, according to Pinto, who, to reach this conclusion, resorted to the texts produced by judge Sergio Moro in his studies and reflections on 'Operation Clean Hands' in Italy (Pinto et al., 2017).

Another common place generated by the approach to corruption in common-sense concerns an alleged understanding that corruption holds a central place in national issues, has profound economic impacts and that it would be the main cause for several social problems in Brazil, and in other countries. There is, therefore, a certain reading that corruption would be a kind of "pandora box" of Brazilian society, from where all national ills came. Warde (2018) criticizes this myth and recalls that corruption is very common in economies that have experienced intense economic growth and, despite, according to him, generating inequalities, corruption is not an obstacle to growth. In the same vein, Pinto (Pinto et al., 2017) recalls that, just as there are some who think that corruption is the cause of all the country's ills, attorneys and judges recently engaged in the issue sincerely share the faith that the fight to corruption will save the country.

It is also common to assimilate corruption to the State or its size. Some of the defenders of the fight against corruption focus on associating the State with corruption, eventually producing an anti-State discourse that sanctifies and legitimizes the market. Marcos Bezerra (2018) highlights the use of corruption cases to justify privatizations and the decrease in the action of state-owned companies. Despite this customary argument, it is possible to contrast it by indicating that several agents in the business sector state that the practice of bribery is quite common in the private sector, usually with the objective of mitigating or excluding competition (Salomão; Guarnieri, 2016).

Another point that critical voices direct to the way in which the issue of corruption is placed with the population concerns the emphasis on specific cases and that, many times, are not quantitatively relevant as others that are omitted. Thus, while bribes of thousands and even millions of reais committed against state-owned companies are denounced, irregular practices such as tax evasion do not have so many spotlights in the media (Souza, 2016). Going a step further, Fatorelli (2015) indicates that there are legalized cases of corruption that involve figures much higher than those highlighted in the press, such as the rollover and payment of interest on public debt, which implies

the transfer of billions of reais of the funds raised by the population for some large creditors of state debts, usually large banks and financial funds. The logic of corruption - appropriation of public resources by private agents - is present in this process, but in general, are seen as legalized practices.

Another critical stance put forward by authors on how corruption has been combated in Brazil concerns a criminalization that is made of capitalism itself with the actions that have been taken by the judicial system. Thus, Walfredo Warde (2018) points out that, under the justification of fighting corruption, the Public Ministry, the Judiciary and the Federal Police have destroyed entire segments of the economy, dismantling the productive chain, dismantling companies, closing jobs and damaging the GDP. In a similar vein, Pinto (2017, p. 31) states that Lava Jato has generated a "criminalization of the operationality of Brazilian capitalist accumulation".

According to some authors, this devastation of the Brazilian economy, in particular some of its branches, makes sense when faced with the way the issue has been treated recently in the world. The issue of corruption has gained relevance in recent decades and today has the character of an international public problem. Bratsis draws attention to the fact that, after the Cold War, a global anti-corruption agenda was created to serve the interests of transnational capitals, bothered by how the mechanisms of corruption served as a protective barrier in certain local markets. Thus, several international standards were created to prevent corruption, disseminated by multilateral organizations such as the United Nations (UN), Organization for Economic Cooperation and Development (OECD), Organization of American States (OAS), World Bank (Bird), International Monetary Fund (IMF) and Transparency International (TI). These regulations go beyond the supposed specific limits of the theme of corruption and end up regulating political and commercial relations between countries, and with foreign capital, prescribing "good governance" practices that, applied as domestic policies, disorganize and generate instability when practiced in certain countries. countries, besides generating delegitimization of governments

and building an ideology that associates international inequalities and peripheral countries with corrupt practices. States, in turn, often adhere to this agenda by adopting norms guided by these international agendas, as Brazil recently did, implementing laws used in Lava Jato. Gabriel Kanaan (2019) points out that this agenda was not restricted to international organizations, but was also practiced by the American government. Thus, the US Embassy in Brazil carried out the Bridges project, with which courses on combating financial crimes and corruption were offered, which took place at the consulate in Rio, with, among others, Judge Sérgio Moro as a participant. This agenda is originated in the USA, where, in 1977, the Foreign Corrupt Practices Act (FCPA) was formed, and perfected in 1988. This initiative verified that several North American companies paid bribes and commissions to official agents abroad and started to defend an anti-corruption agenda that later took shape, allowing stronger input from the US and other countries to markets controlled by certain business groups (Bezerra, 2018).

Coming to the field of academic explanations about corruption, particularly for Brazil, we can see that the theme is not marginal in scientific production in the country. On the contrary, in a way it is present in classic works of Brazilian social thought. Thus, in his criticism of the work of Sérgio Buarque de Holanda, Souza (2016) believes that this author created with Raízes do Brasil, from 1936, an orthodoxy in Brazilian scientific thought, forging a supposed national identity that had hegemony in the Brazilian academy, with a liberal-conservative profile. According to the author, the "cordial man" thesis ends up explaining corruption as a common feature in Brazilian society, derived from its Iberian tradition, associated with the patrimonialism of the Brazilian State, which serves historically dominant groups. With this, Holland would have demonized the Brazilian state, which would serve this elite, sacralizing the market. Bezerra (2018) is also critical of essentialist theses, which seek in the Brazilian socio-historical formation, in a generic way, the cause of corruption, which also leads to the association of corruption with the underdeveloped condition of the country. Danilo Martuscelli (2016) points out that it is a mistake to associate corrup-

tion with underdevelopment, in view of notorious cases such as those exposed in Mani Pulite, in Italy, and Watergate, in the United States, among others.

Condemning the essentialist and moralist theses on corruption, Bezerra (2018), who developed a careful study on the topic, accesses the knowledge accumulated in Anthropology to understand the issue of corruption. According to the author, the practices considered as corruption are related to political and state actions that are inscribed in everyday sociability and that, in truth, constitute and integrate the very dynamics of the State. Thus, the practice of giving gifts, reciprocity and other typical actions of everyday life also make up the State and its functioning, which, according to him, reinforces that the idea of separating the State from society and the market must be rejected.

Reaching the scope of analyzes and interpretations typical of historical materialism, Armando Boito draws the attention that the issue of corruption stems from an ideological reading of the reality in which the public is separated from the private. Thus, the anti-corruption agenda focuses on trying to reinforce this separation, which is eminently ideological, in view of the classist profile of the State. According to Boito (2017, p. 13), "The capitalist state establishes the formal distinction between public and private resources and the idea of corruption stems from such a distinction." Demian Bezerra and Rejane Hoeveler (2016) access Gramsci to indicate that the public debate about corruption ends up subsuming the national agenda to the dynamics of small politics.

Marxist authors also associate corruption with capitalism. Advanced in this formulation, it is possible to notice a dynamic of business competition around various situations known as corruption. To write their book, Salomão and Guarnieri (2016) interviewed executives from contractors, who claimed that most of the payment of undue advantages to official agents occurred to avoid competition with other companies. Warde (2018, p. 10) also indicates that "the fight against corruption is a business, perhaps a technique for demolishing national economies and for political destabilization, a competitive strategy, a means, never an end". Thus, the capitalist logic of competition between companies is related to some situations identified as corruption.

Concluding our brief theoretical reflection, it is important to point out a specific configuration of capitalism in Brazil during the period covered in this text. Francisco de Oliveira draws attention to the fact that, for much of the twentieth century, after the Great Depression, the public fund became a prerequisite for financing capital accumulation and the workforce. With the increase in revenue and state budgets, the public fund became structural in contemporary capitalism:

> The presence of public funds, on the side of the reproduction of the labor force and of general public social spending, is structural to contemporary capitalism, and, until proven otherwise, irreplaceable.
>
> [...] The Welfare State's pattern of public funding operated a veritable "Copernican revolution" in the foundations of the value category as a central nerve for both the reproduction of capital and the labor force. (Oliveira, 1998, p. 23; 27)

Throughout the Cold War, the public fund was more advanced in Western Europe and central countries of capitalism, being fragile in Brazil, where, according to the author, a "State of social malaise" prevailed. In any case, there was an increase in government revenue and expenditure and the public budget was relevant to the formation of several groups and economic sectors of Brazilian capitalism. Thus, some cases entitled as corruption in the period worked in this paper can appear as a kind of competition within the State between business groups for the appropriation of the public fund.

We will work with this theoretical hypothesis in the next part of the text, reserved for discussing cases of "corruption" in the dictatorship, a time of expansion of the public fund.

Dictatorship, "corruption" and the strengthening of the public fund

The 1964 coup was launched using a moralistic anti-corruption discourse. This flag was instrumentalized in that context to justify the

overthrow of the Goulart government, as, ten years earlier, it was also handled to help remove Vargas from the presidency of the Republic. Giuliana Monteiro da Silva (2017) draws attention to the advent of corruption as a public problem in Brazil in the fifties, in the midst of the construction of the Vargas State. The handling of the fight against corruption as a pretext to nullify political competitors was not restricted to the moment of the coup, being used by the dictatorship, particularly in its early years. Thus, Rodrigo Patto Sá Motta (2016) developed an analysis of newspaper cartoons during the Castello government (1964-1967), showing how the press encouraged the impeachment of political rights with the justification of corrupt acts. The dictatorship expunged Kubitschek and Adhemar de Barros from the Brazilian political scene, getting rid of two rivals of the regime, claiming precisely indications of corrupt practices on the part of both. Similarly, the AI-2 text indicated that the main objectives of the "Revolution" were to combat "subversion" and "corruption".

There is a common sense in Brazil that during the dictatorship there was less corruption than after the re-democratization and nowadays in Brazil. This myth also indicates the military as subjects less likely to be corrupted than other public officials. These assertions do not correspond with the evidence, complaints, and evidence of illegal and irregular practices during the dictatorship. Although there is a political environment less prone to investigations, with less possibility of disclosure to the population of accusations of bribery and other practices, some cases have surfaced, even with the censorship of the press, restriction of parliamentary and political opposition and control maintained over State institutions, such as police, prosecutors and judiciary. Thus, the journalist José Carlos Assis (1983) published a series of press reports, later collected in a book, about the financial "scandals" verified in the country after the creation of the Central Bank and reformulation of the National Financial System (SFN), including cases such as Delfin, Halles, Banco de União Comercial (BUC), EUB-Rio Sul, Lume, Ipiranga, Áurea, Luftalla, Atalla, TAA, Vitória-Minas, and the cassava scandal. These are diverse and distinct cases, but in general, they concern the controversial or ille-

gal appropriation of public resources reorganized after the SFN reform. Military officer Dickson Grael (1985) also published in a book the denunciation of the Saraiva report, about the charging of bribes by Delfim Netto when he was the ambassador of Brazil in France on account of his intermediation of business involving French and Brazilian companies. Ricardo Kotscho made a report in 1976 denouncing the "stewardship in the Geisel government", pointing out the facilities and luxuries of state and public officials in the second half of the 70s (Molica, 2005). In 1978, the newspaper Movimento denounced a "sea of mud" in the Geisel government, denouncing illegalities and corruption involving government agents, which led to the repression of the regime over the press agency (Movimento, 1978). José Carlos Assis (1984) published books addressing the Coroa-Brastel case, in addition to a work in which he weaves a series of accusations involving state officials and "corrupt" practices, present in cases such as Capemi, Tama, Cobec, Vale and Dow Chemical. Other "scandals" in the period were Magnesita, 1972, General Electric, 1976, corruption in Itaipu, in addition to cases involving the Paulo Maluf management in the state of São Paulo, such as Paulipetro and the move of the São Paulo capital.

As seen in the list indicated above, there were many cases of accusations of corruption during the dictatorship, often involving military officers. Thus, it seems inappropriate to imagine that the regime enjoyed "public" and "moral" practices superior to the democratic regime. On the other hand, it is important to note that the authoritarian escalation of the dictatorship ended up hampering the investigation and publication of irregular episodes. Thus, Assis (1983) is aware of the fact that the AI-5 forged an ideal scenario for illegal practices involving public administration bodies, in view of the precariousness of control systems to curb the collection of kickbacks and other irregularities in the period. Elio Gaspari had access to documents from senior agents of the dictatorship and found that the National Information Service (SNI) investigated ministers like Delfim Netto, Andreazza and others at the height of the regime, finding irregular practices that did not come out in public (Gaspari, 2002). Thus, the lack of control mechanisms in place during the dictatorship acted as

a shield to irregular actions involving companies and the State and even seems to have encouraged these situations.

The lack of transparency was associated with other factors that ended up forming a highly favorable environment for the escalation of business interests over the state apparatus throughout the regime, including illegal acts. Thus, there was a restructuring of the Brazilian capitalist state in the period, with the modernization of its devices to boost capital accumulation. At the beginning of the dictatorship, there was the reorganization and creation of new public funds managed by renewed or newly created state agencies. The reorganization of the tax structure, with the creation of new taxes, in addition to the formation of compulsory savings, such as the Guarantee Fund for Time of Service (FGTS), the Social Integration Program (PIS) and the Program for the Formation of Public Servants' Equity (Pasep), helped to leverage resources that would be directed to companies through previously existing agencies - such as BNDE, Banco do Brasil and others - and new ones, such as the National Housing Bank (BNH), Central Bank (BC) etc. It is important to highlight the high indebtedness of the Brazilian State in the period, which contracted many loans in Brazil and abroad to account for the regime's priority projects, which boosted the financial availability of these funds. Several cases of "corruption" during the dictatorship concern the appropriation of these funds by private companies, one example being the episode Delfin, which managed to obtain funds from the Financial Housing System (SFH), which centralized FGTS funds, under the management of BNH . Carlos Sant'Anna, a Petrobras employee and head of high positions at the state company in the dictatorship, points out that private companies were formed from the actions of state companies and with these resources from the public fund, such as the petrochemical industry, the capital goods industry , heavy construction, etc. (Interbrás, 1984).

A third fundamental element to understand the multiplication of denunciations of "corruption" cases during the dictatorship concerns the way in which the regime was formed, some of its main actors. René Armand Dreifuss (1981) studied the formation and trajectory of the

Institute for Research and Social Studies (Ipes), an organization with a business-military profile that had decisive action in the 1964 coup, acting before to destabilize the Goulart government, to organize the overthrow of the system democratic and elaborate projects for the restructuring of the State and public policies that came to be implemented after the coup. Dreifuss identifies several entrepreneurs composing the Ipes who later filled positions in the state apparatus, taking the logic of the functioning of capitalist companies to the heart of public administration. This did not happen only in 1964. Companhia Brasileira de Entrepostos e Comércio (Cobec), a kind of Brazilian state-owned trading company, formed in 1973, was chaired by Paulo Konder Bornhausen at the beginning of its activities, with its main positions held by members of Consultec , a private consulting firm that was involved with Ipes, the coup and the Castello government (Assis, 1984). In this way, these agents took typical practices of the private companies to the interior of the public autarchies and organs of the State apparatus.

Thus, the increase and creation of new public funds, associated with the closure of the regime, with less transparency from the public administration, and the escalation of agents from the private business sector - under the supposed name of being "technicians" - in the management of state-owned companies and public authorities made it possible to forge a fertile ground for the multiplication of irregularities and denunciations of illegal practices involving State agents and public officials with private companies. As in the beginning of the 70s, censorship and the closing of the regime inhibited the denunciations, we verified in the period of the political transition the opening of several accusations involving cases of "corruption".

The disclosure and exploitation of allegations of corruption during the political transition period also have a certain peculiarity. Amid the process of opening the regime, there was an increase in freedom for parliamentary opposition, the press, and other agents made accusations about irregular practices involving public resources and state agencies. These actions were often confused with criticisms of the dictatorship, but not only. Some of the attacks carried out involved flags typical of

the opening period, such as, for example, the campaign against the nationalization of the economy. This movement was launched in the mid-1970s and developed under the Geisel government, with accusations by segments of the business community against the expansion of state actions in the economy. Press agencies such as Visão, Jornal do Brasil and Estado de S. Paulo boosted the campaign that, as Sebastião Velasco and Cruz points out, selectively accessed liberal premises to attack the policies developed in the period as appropriate. The campaign forged a common sense of excessive action and inefficiency of the State in the economy to justify policies of privatization that came to be implemented in the midst of re-democratization and during the New Republic (Cruz, 1995).

We found that some accusations of corruption in the period drank from this ideological fountain, by attacking the state's economic operation, in contrast to the supposed efficiency and correctness of the actions of private companies. An example of this is found in the accusations made by Assisi. The author, when referring to business in Nigeria by the state-owned company Interbrás that would have caused losses, stated that "the merchant state has been creating a pattern of inefficiency, incompetence, and corruption. It is not uncommon for the most effective action of the private sector abroad to be confused. " (Assis, 1983, p. 57). The very title of the book of Assisi, when referring to the "mandarins of the Republic", expresses criticism of the heads of state and civil servants, maintaining a certain tone of private and anti-state criticism.

In this way, we verified that the expansion of the public fund, the State's business "equipment" in the dictatorship and the restriction to the investigation generated an escalation in the cases of "corruption", with the due disputes between capitals to appropriate these resources and mutual accusations that ended up in public "scandals" of corruption, mainly during the political transition. These accusations, when relating the State and its intensification of actions in the economy, ended up being related to the movements against the "nationalization of the economy", forging a common sense that prepared the environment for privatizations.

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Chapter 7

Corruption as a global phenomenon and the 2030 Agenda for the Sustainable Development as a tool of combat

CURY, Laura de Souza[19]

Introduction

Corruption is a historical phenomenon; the misuse of power - be it public or private - for private gains has always happened worldwide, to a greater or lesser extent. However, precisely because of this broad historical and geographical character, the concept of corruption has been changed over time and can vary across space, according to different societies and cultures. Whether in the so-called developing world or in the developed world, there is an increasing awareness of the negative effects of corruption and demand that something is done to reduce its existence as much as possible.

Despite the historical character of corruption, it was only since the mid-1990s that, at the international level, there was a greater awareness of the corrosive and potentially devastating effects of the phenomenon. This article intends to analyze how the fight against corruption, through the establishment of strong and democratic institutions and the guarantee of the Rule of Law, is essential to the path of sustainable development, as proposed by Agenda 2030.

Within a context of greater fragility and disbelief, on the part of important global players, in the need to strengthen the multilateral system - something that the Agenda itself demands in order to achieve its objectives -, the theme becomes particularly relevant.

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Corruption as a global issue

Globalization and multilateralism are commonly understood as forms of a certain compression of the world and as a result of growing interdependence between different actors. This interdependence causes any political, economic, social and/or environmental changes to reverberate and lead to "cascading" effects, which may affect, in one way or another, several global actors, at different hierarchical levels. If, on the one hand, the globalized world has brought modernization to many areas, on the other, it has helped to spread greater social stratification, competition for natural and human resources, resulting in several evils such as climate change, environmental devastation and greater inequity in the distribution of income.

Corruption is also a global problem. Criminal organizations involved in international trafficking - including drugs, arms, and human beings - would be much less effective if it were not for the fact that they can often bribe officers in border areas, for example. A broad concept of corruption also encompasses allegations made against international bodies, including sports bodies, such as the International Football Federation (FIFA). In early 2014, one of the most widely reported cases of corruption was related to the bidding process for the 2022 World Cup. "These allegations, whether proven or not, undermine the international legitimacy of such [international] bodies, as well as the states accused of involvement in corrupt practices ".

As noted earlier, the international community began to focus its attention on corruption relatively recently. According to Leslie Holmes, one reason why the West, in particular, had little interest in promoting an international anti-corruption agenda was due to the Cold War: the United States, in particular, did not want to disturb its allies by criticizing them for corruption and also did not want to criticize developing countries in order to potentially encourage them to enter the Soviet camp.

With the advent of the new world order resulting from the fall of the Berlin Wall, however, this scenario has changed. During the 1990s, what appeared to be the first major attempt by an International

Organization to address the issue of corruption emerged: the OECD's 'Recommendations on Bribes in International Business Transactions' (Organization for Economic Cooperation and Development), published in 1994. The fact that the World Bank also began to seriously attack corruption in the 1990s has led the international community to pay more attention to the seriousness of the corruption problem. The OECD recommendations received more attention in the form of an anti-bribery convention, which came into force in 1999. The thirty-four OECD member states are part of the Convention, as are seven others, including Brazil.

Other anti-corruption agreements and conventions have emerged, but the one endorsed by the largest number of States is the United Nations Convention against Corruption (UNCAC), which came into force in December 2005. UNCAC today has 140 signatories and 186 states parties (since June 26, 2018) and is described by the UN itself as the world's first legally binding anti-corruption document, in addition to being understood by some experts as "the 'gold standard' of anti-corruption documents, despite having no real definition of what the concept of corruption would be ". Thus, it is clear how this issue came to be understood as a global issue, as well as a national one.

However, if many governments think that it is precisely due to the global character of these evils (albeit with local effects) that only through a joint, multilateral effort, between countries that real progress can be made. Currently, the predominant criticism used by groups opposed to the "sovereignty" of international organizations, sometimes referred to as 'anti-globalists', is that both the evils and the arrangements on the international scene make States relegate their sovereignty to these organizations, representing, for them, a change of authority in the search for a resolution. For this group, this "transfer of responsibilities" harms countries, especially in terms of sovereignty and national identity.

In view of the contemporary need to think about problems in a global and cooperative way, however, many accuse the limit of this strategy. It was in this way, for example, that the UN Secretary-General, Antonio Guterres, spoke in September 2018:

> The world order is increasingly chaotic. Power relations are less clear. Universal values are being eroded. Democratic principles are being encircled. The rule of law is being undermined. Impunity is increasing as leaders and states widen borders at home and in the international arena. We face a set of paradoxes. The world is more connected. However, societies are becoming more fragmented. The challenges are growing abroad. While many people are turning inward. Multilateralism is being criticized just when we need it most[20].

Other senior United Nations officials and various professionals and groups in society also offer a strong defense of multilateralism - and the efforts of all stakeholders (governments, civil society, and companies) acting in collaborative partnership as the main tools to prevent and combat corruption and move forward with compliance with the 2030 Agenda and its Sustainable Development Goals (SDGs).

2030 Sustainable Development Agenda

In September 2015, all 193 UN member states, including Brazil, approved the document "Transforming Our World: the 2030 Agenda for Sustainable Development", an action plan with 17 Sustainable Development Goals (SDGs) and 169 goals, for people, for the planet and for prosperity, seeking integrated development. It is a concerted, global attempt to achieve, by the year 2030, sustainable development, on several fronts: social, economic and environmental. The SDGs deal with an extremely complex set of issues. Common sense and practice determine the breakdown of this complexity into manageable parts for didactic purposes, but further analysis of the SDGs suggests that they are intertwined: the success of specific objectives is essential to ensure the delivery of other objectives. The SDGs were designed, signed and declared to be interconnected and indivisible, and need to be addressed in a systematic and holistic manner.

20 Disponível em: <https://www.globalpolicywatch.org/blog/2018/11/04/member-states-call-for-commitments-to-overcome-crisis-in-multilateralism/>. Acessado: 20/01/2019.

Agenda 2030 is an integrated plan for governments, companies, academia, and society as a whole. It is a State commitment, which must be respected, despite governments, parties, and ideologies. It is, however, an agreement, considered by International Law as "soft law", with optional rules, without binding power, and, therefore, there is no provision for sanction for non-compliance. However, these agendas become part of - and become increasingly necessary guidelines - what is called "Global Strategic Planning" and reveal new ways of making international agreements in the face of collective issues and problems, such as concerns with the environment and new strategies for borderless trade.

SDG 16, anti-corruption fight and its impact on promoting sustainable development

Agenda 2030 recognizes that the rule of law and development are closely interlinked and that they reinforce each other, helping to promote sustainability. The promotion of inclusive and peaceful societies, access to justice and effective and accountable institutions are necessary to achieve each of the 17 SDGs. The crucial importance of combating corruption in sustainable development is increasingly understood as an imperative to meet the expectations raised by Agenda 2030.SDG 16 requires States to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" and include goals to substantially reduce corruption and bribery at all its forms (goal 16.5) and develop effective, accountable and transparent institutions at all levels (goal 16.6).

Corruption negatively affects people, communities and nations as it hinders economic growth and increases poverty, depriving more marginalized groups of equitable access to key services. According to Antonio Guterres, corruption "robs societies of schools, hospitals, and other vital services, in addition to warding off foreign investment and helping to strip nations of their natural resources". Corruption thus undermines development in general; businesses and individuals pay

an estimated $ 2.3 trillion a year and developing countries lose $ 1.1 trillion annually in illicit financial flows, according to 2013 data from the World Economic Forum.

As already pointed out in a 2018 United Nations Development Program (UNDP) document on corruption and the SDGs, there are several interrelationships between the two bodies. With regard to the social sphere, corruption diverts resources from national budgets and reinforces poverty (SDG 1) and inequality (SDG 10). In the area of health (SDG 3), corruption reduces the ability of governments to provide essential drugs and services, diverting investments in necessary infrastructures, such as hospitals and clinics. "Ghost" doctors, for instance, mean long queues and the possible non-attendance of patients. In some developing countries, pharmaceutical expenditures represent up to 50% of total health expenditures. Due to the high market value of these products, they attract unethical practices, such as fraudulent and substandard preparations, as well as unjustified registration, which causes unnecessary suffering to patients and their families, with potentially fatal consequences.

Equally, corruption makes it difficult to achieve a quality education (SDG 4). The waste made on purchases in the educational sector, including school buildings, fake maintenance costs, and materials paid for but never received, is costly to the public. As a result, educational opportunities for the most vulnerable are generally limited. On the other hand, education is a crucial element in any attempt to effectively address the phenomenon of corruption, as, by increasing knowledge of its risks and effects, it is possible to promote attitudes that are intolerant of corruption and develop skills that allow resistance to pressure social, and even cultural, when confronted with unethical practices.

Corruption impedes the development of industry, innovation, and infrastructure (SDG 9). The dispute over lucrative contracts can lead to bribery, fraud, and embezzlement, damaging large-scale infrastructure projects, as these can be built in substandard ways, putting the public at risk, or even not being built, depriving them of necessary works and services. Resources can also be allocated to sectors where

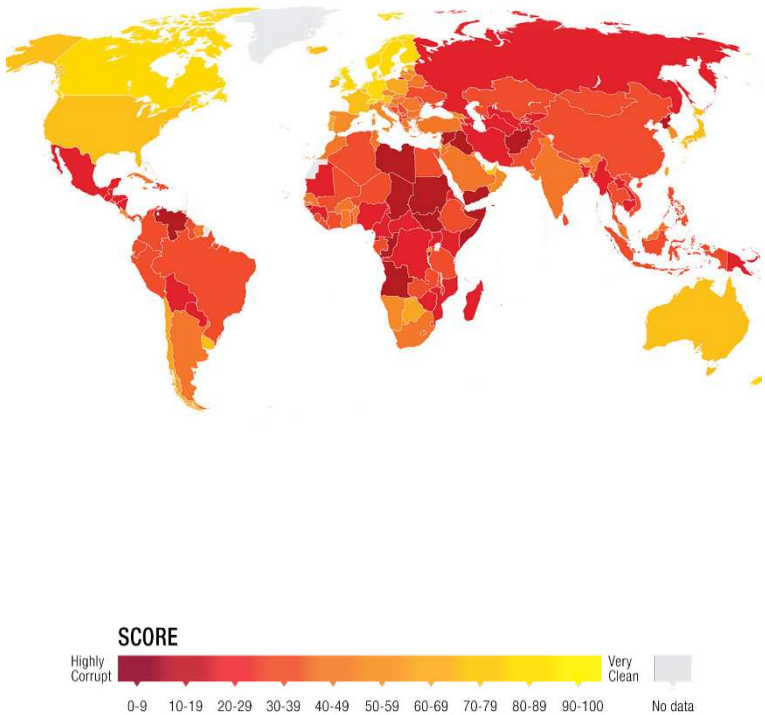
collective needs are less, but which offer better perspectives of personal enrichment to decision-makers.

Corruption also makes issues related to environmental preservation difficult (SDGs 13, 14 and 15). Failure to observe protective legislation and illegal flora and fauna trade, for example, contribute to the rapid disappearance of many of the planet's protected species. Environmental corruption, in its various forms, facilitates crime against wildlife and contributes to the global loss of biodiversity and the degradation of ecosystems, causing enormous challenges, such as climate change. With responsible mechanisms, it is possible to have greater control that the use of natural resources is sustainable and that profits are reinvested in conservation programs, for example.

As the indivisible ownership of the different aspects of Agenda 2030 attests, there are strong relationships between the goals and objectives of sustainable development, compliance and anti-corruption policies. The adoption of the 17 SDGs, and more specifically of the SDG 16, may interfere with the statutes, internal regulations and the good governance of the institutions.

Relationship between governance and corruption

The strengthening of institutions and the democratic system itself are crucial for fighting corruption, a movement that is related to the quality of governance. There will only be progress in undermining corrupt practices if this relationship is effectively understood. The attempt to combat corruption with personalist revanchisms, without paying attention to constitutional rules, proper to the rule of law, weakens democracy and, therefore, removes the effectiveness of anti-corruption policies.

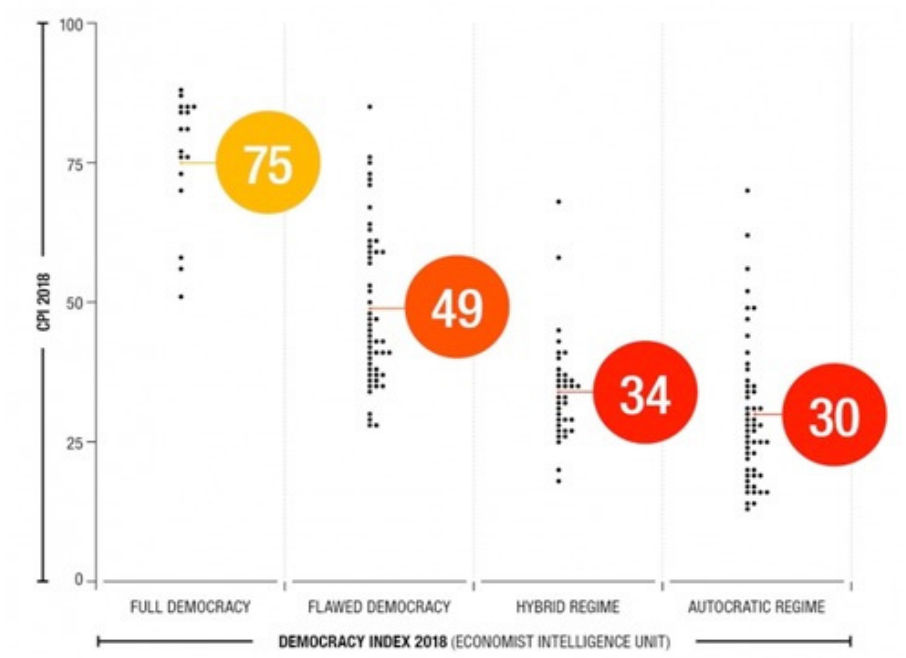


Corruption Perceptions Index 2018 – Transparency International

The chart above, Corruption Perceptions Index (CPI), measures levels of corruption in the public sector in 180 countries and territories around the world. This index - which, it should be noted, addresses only 'perceptions', therefore dealing with some degree of subjectivity - uses a scale of "0-100", where "0" is highly corrupted and "100" is very clean. In 2018, Denmark and New Zealand reached the highest rates, 88 and 87, respectively. South Sudan, Syria and Somalia reached the lowest rates, 13, 13 and 10, respectively. Although we know of the difficulty in obtaining a perfect score (100), it is important to note that, according to the organization, since 2012, only 20 countries have significantly improved their scores, while 16 countries have significantly

reduced theirs. It is worrying that most countries have achieved little or no progress during this period. In 2018, the global CPI was 43/100, below the average[21].

The increase of candidates for public office with a populist platform - for example, against minorities, such as LGBTIs and immigrants, for example -, which seek to undermine institutions and promote anti-democratic agendas, has occurred in several countries in recent years. These politicians often make use of corruption scandals and public disillusionment to gain power. It is worth noting that there are no complete democracies with a score below 50 on the CPI. Similarly, very few countries with autocratic characteristics score above 50. The analysis of the graph below shows a clear connection between public sector corruption and the weakening of democratic institutions and norms[22].



Democracy Index 2018 (Ecomonist Intelligence Unit)

21 Ver <https://www.transparency.org/cpi2018>. Acesso em 09/11/2019.
22 Ver <https://www.transparency.org/cpi2018>. Acesso em 09/11/2019.

As we can see, full democracies achieve the highest CPI results. Similarly, autocratic regimes have the worst results. These classifications reflect the deterioration of the rule of law and democratic institutions, as well as a growing space for civil society and the existence of an independent media. To fight corruption, change must be structural and involve strengthening democracy. For Delia Ferreira Rubio, president of Transparency International:

> [this] research establishes a clear link between having a healthy democracy and successfully combating public sector corruption. Corruption is much more likely to flourish where democratic foundations are weak and, as we have seen in many countries, where populist and undemocratic politicians can use it to their advantage.[23]

Democracy and sustainable development

It is imperative to recognize the importance of democracy in the defense of human rights and to review the (sometimes fragile) state of democracy worldwide. The challenges of global development are complex and multifaceted and the Sustainable Development Goals establish fundamental goals to face these challenges. As we have seen, SDG 16 occupies a prominent position among the others in relation to this theme. As former UN Secretary-General Ban Ki-moon noted in his 2016 Democratic Day commemorative message:

> democratic principles run the Agenda like a golden thread, universal access to public goods, health and education, as well as safe places to live and decent work opportunities for all. Objective 16 deals directly with democracy: it requires inclusive societies and responsible institutions.[24]

23 In: <https://www.transparency.org/news/feature/cpi_2018_global_analysis>. Acesso em 10/11/19.

24 In: <https://www.cipe.org/blog/2016/09/21/democratic-governance-unlocking-the-keys-to-the-sdg-agenda/>. Acesso em 10/11/2019.

The SDGs are related to democratic governance and, therefore, are crucial to achieving the 2030 Agenda. Beth Tritter, of the Millennium Challenge Corporation (MCC), highlights how SDGs 1-15 can be understood as representing "what", while SDGs 16 and 17, such as "how". Factors such as stability, inclusive institutions, effective governance and access to justice (SDG 16), as well as global partnerships (SDG 17) support the ability to succeed in all other areas of the 2030 Agenda. Without respect for the rule of law and without strong (democratic) institutions, it will be difficult to achieve and maintain improvements in other areas of development: providing security, justice, health, and education; stimulate inclusive economic growth and respond to the needs and demands of the population.

Open and transparent dialogue, in which governments, citizens and companies have a voice, participation in the decision-making process and coordination of collective action are some of the characteristics of democratic governance. They help ensure political, legal and economic inclusion. Countries that develop strong institutions, that have fair and predictable legal systems and effective democracy - participatory and inclusive - are better able to implement Agenda 2030 and ensure that economic growth and prosperity are shared.

Final remarks

In addition to social, economic and environmental consequences, it is also necessary to pay attention to the dimensions of promoting peace and good governance, including anti-corruption mechanisms and their effects on cohesion and social inclusion. Corruption exacerbates conflict and violence, widens inequality and deteriorates prospects for more peaceful and democratic societies. Through effective actions to combat corruption, governments can reform laws and strengthen institutions that promote justice and social inclusion. This path is a two-way street and, equally, the promotion of development and social inclusion lead to contexts with a lower incidence of corrupt practices.

Only with strong multilateral systems will it be possible to effectively combat corruption, since it is a global problem, as well as a local one. Through the integrated feature of Agenda 2030, it is clear that the fight against corruption is not only an objective in itself, but also a necessary way to guarantee development that is inclusive and sustainable.

Corruption affects everyone; only by joining forces, in different spheres, will it be possible to guarantee actions capable of leading to contexts of greater transparency, efficiency and equity. The fight against corruption is, therefore, both a result and a facilitator of sustainable development.

Chapter 8

Brief analysis: a radiography of corruption in Argentina

SARMIENTO, Camila[25]

Despite its short years since the birth of its independence and even more since the restoration of its democracy, Argentina has an extensive history of corruption that certainly obscures its past, as do other countries in Latin America and the world. Corruption has been and is currently one of if not the most relevant of the problems facing Argentine society. The truth is that since the first government meeting in 1810, virtually no Argentine government has been free from suspicion. It is an omnipresent factor that is seen and felt every day, regardless of the location in the country and of which social class you come from. Undoubtedly, corruption was established as a cultural issue and stained all social positions and spaces that involve relations between subjects and the State. We have become a permissive society and, worse yet, even unconsciously, many times a corrupt act is committed, on various levels of size, from a simple fault considered as minor, such as avoiding fines or receiving privileges, to tax regime, such as tax evasion. Not only is this behavior observed in public-private relations, but these usual practices have also entered the sphere of exclusively private relations.

Argentina is and has always been a paradigmatic case. At the end of the 19th century, it was the richest country on the planet, richer than the United States, Australia, Canada or even the United Kingdom

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during the British Empire. However, although in the mid-20th century the country had already lost some positions, it still remained among the ten richest and most prosperous countries in the world. Argentina is currently facing a monumental economic and institutional crisis, with a government that does not generate confidence in its people, nor reduce inflation, in addition to very high levels of corruption and little transparency. In the last Corruption Perception Index elaborated by Transparency International[26], Argentina occupies the 85th position amongst 186 countries. This index is just a perception, but it provides a generalized map of where Argentina is located in relation to other countries and what is thought of the country internationally and internally. The fact that it is so poorly located, despite having improved, shows the many institutional weaknesses that need to be addressed, e.g. the control agencies and a Judiciary that fights effectively corruption.

But how is it possible for a country to experience this decline? In the case of Argentina, historically, there have always been leaders who owned land, especially in the defense of borders and with great power in the 19th century. Caudillismo is a traditional social phenomenon in Latin America that peaked in Argentina after its independence. After the sanction of the first Constitution, in 1819, news from Europe about the search by Buenos Aires' envoys for a monarch by the United Provinces of the River Plate was disseminated in the provinces. The rise of a heterogeneous group of leaders gave rise to protests and expressed a feeling that became a support for republican and federal ideas in the face of Buenos Aires interests - common to European ideas.

This power of the "Argentine leader", which in many cases became the only real power in his areas of influence, maintained it through the creation of institutional links with different social groups, turned up to the formalization of these groups as clients of the State. These leaders were born as a form of authority closer to the problems of ordinary people. This initial form of power would become one of the first antecedents of a political organization with clientelistic characteristics that characterize the politics of Latin American.

26 https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2018

Clientelism is a form of politics designed to dismantle institutions, empowering leaders commonly called populists, who accumulate power, restricting the individual and commercial freedoms of the citizens of the countries they "govern". Populist leaders, de facto or elected, from right or left parties, assume that they have been empowered to do what they consider necessary, even in violation of current legislation and even the national constitution, in order to fulfill the popular will and supposed well-being of society, showing itself as a similar of the neediest. Certainly, that well-being never comes; instead, those who end up benefiting and raising their standard of living are those who exercise government and their closest circle. In this way, people have less chance and become subject to a paternalistic populism[27].

In Argentina, in particular, this clientelistic structure of the relationship between State and citizens continued until Juan Domingo Perón came to power in the second half of the 20th century. Perón only partially transformed the system, under the new alliance of the army and the working classes. However, despite this, flagged by the ideas of political sovereignty, economic independence, and social justice - the three pillars imposed by Perón -, the Peronist ideology was, and managed to consolidate itself today in Argentina, as a hegemonic political force characterized by two fundamental aspects: extreme interventionism and excessive public spending. The idea is that Peronism, according to the Peronists themselves, repairs social injustice and restores dignity to the people.

However, the secret of his political success has a lot to do with this discourse, since every time Argentina has a problem, Peronism promises more and more public spending, which in turn is financed with the favorite instrument of populist politicians: the coin printing machine. In this way, the Peronists ended up making Argentina a country closed to the world, with bestial inflation in the long run, living practically in a permanent crisis, in addition to generating a very beneficial climate for the development of corrupt practices.

27 Exposition on "populism vs. República "by Guatemalan politologist Gloria Álvarez: https://www.youtube.com/watch?v=MZYEFNMdxG4

Years after Perón, Argentina's future was really bleak when the military took power in 1976, making it one of the darkest moments in Argentine history, not just in terms of economic and institutional transparency, corruption and political depravity, but also for the plan that started with arbitrary arrests, torture and forced disappearances of people.

When the military junta, without having solved fundamental social and economic problems, gave way to democracy in 1984, many Argentines hoped that the country would return to the path of growth and that finally the control mechanisms would be established to combat corrupt practices. However, in 1989, Carlos Saúl Menem came to power and for ten years applied a privatization policy that made the country the leader of neoliberalism, introducing the convertible peso one to one American dollars, in addition to countless sales of public companies that were supposed to turn big profits to the country. In this way, foreign investments arrived, trade grew and Argentines prospered again. However, in parallel with the reception of foreign investments, public spending did not decrease, but skyrocketed, along with corruption and waste of all kinds. Furthermore, the specifications and conditions under which these companies were privatized were probably not sufficiently secure for citizens, who would pay what they had to pay and no longer had control over the quality of the services they would receive, because, in fact, these circumstances never were discussed with society, as promised. This left Argentina with an overvalued currency, huge public spending, a lot of imports and a huge debt.

Although the political process linked to corruption in Argentina throughout its history is very complex and impossible to outline completely in these few pages, it is undeniable that its constant economic crises have always placed the country in a situation of extreme vulnerability. In this way, undoubtedly the 1990s, a time when many state-owned companies were privatized, established a policy model that functioned as a fertile ground for businessmen, public officials and politicians to take advantage and cause acts of corruption that favored them by too many years.

"Los 90" is seen as a pronounced stage of privatization, ended in 2001, with the Argentine "default", leading to revolts in the streets, the famous "corralito" and a succession of five consecutive presidents nominated for the chief executive position in Argentina in a week. In those days, the country reached what is known as its bottom and the economic crisis left the middle class in the gutter. The debt, unemployment and economic output indices were all in red numbers.

In 2003, Argentines believed they had found the man who could save the country, improving the economy and at the same time regenerating the country in its cultural and social practices. His name was Nestor Kirchner, former governor of the province of Santa Cruz and of Peronist ideology, only this time much more inclined to the left. His promise of a fairer and less corrupt country has overshadowed public opinion. A paternalistic leader in turbulent times and a chronicle of the announced corruption crisis. The truth is that in the first years of Néstor Kirchner's government there was strong economic growth, favored by the record price of raw materials, such as soybeans, the main national export good. However, the "boom years" were not used to create countercyclical funds, as happened in other countries in the region, such as Chile, but they were used to cover a form bonanzas, the perfect engineering to guarantee the emptying of public coffers in their favor: a circumstance that would gradually be revealed in the following years at the head of journalistic investigations. Nevertheless, all that enthusiasm and hope deposited in the leader of Santa Cruz would continue with a double bet on his successor and wife, Cristina Fernández de Kirchner, who managed to establish herself - democratically - for two consecutive terms in the executive's head, arousing passions and hatred in public opinion.

During his years at Casa Rosada, imports were restricted, public spending multiplied, as well as taxes and social projects. During this period, businessmen, union members, judges, journalists, artists and civil society leaders succumbed to the power of state money, transforming the government into a network of customers oiled by concessions and subsidies conveniently distributed and without any control. There was no official data or transparency. There were politicians who threatened,

journalists who did not report, prosecutors who did not investigate, judges responsible for prescribing causes and cartelized businessmen; union members linked to the apparent mafia; and bizarre reported cases (e.g. millions of dollars in hidden in convents in bags of money).

The so-called "era K" would end after twelve years of exercise, leaving behind a completely polarized society and consolidating itself as what many understand, with more than 2160 complaints of corruption, some even claiming to be the most corrupt government in history of Argentine democracy[28].

But one of the most relevant aspects that characterize the corruption of Argentina's last twelve years is not only the dismantling of all state institutions in a systemic way, but also the ingenious managerial maneuver applied to Argentina's large public investments, whose engineering I will try to explain soon later.

In this context, Mauricio Macri, with his speech of change and promise of stability, would democratically assume a new political cycle in 2015, with an uncertain future and a phenomenal measurement of expectations, with a due date in December 2019. Nevertheless, the strong inheritance resulting from the corruption of his predecessors was noted throughout his administration and the critical economic and social situation in which he leaves the country (enormous public debt, low GDP, uncontrolled inflation, uncertain exchange control regime, cloud tax pressure, lack of private investment, extreme poverty and country risk that exceeded 2000 points, among others)[29]. It is necessary, however, to highlight the considerable improvement in Argentina in recent years in relation to its position in the fight against corruption and the establishment of transparency.

Although Argentina seems to constantly undergo a political process in which its own system rewards corruption, giving those who

28 https://elpais.com/internacional/2018/08/17/argentina/1534524746_729644.html https://elpais.com/internacional/2016/06/15/argentina/1466012603_414044.html https://chequeado.com/el-explicador/cfk-esta-procesada-en-11-casos-cuales-son-las-causas-en-su-contra/ https://www.clarin.com/politica/todas-causas-cristina-kirchner-procesada_0_HkLnRfdOm.html

29 https://www.bbc.com/mundo/noticias-america-latina-50154403

practice it greater political representation over the years, in legislative matters transcendental tools have been created to combat these perverse practices, linked to access to information, transparency, and punishment for acts of corruption.

One of the most emblematic measures formalized by the State since the return of democracy, probably due to the influence of its involvement in the Inter-American Convention against Corruption (CICC) [30], whose Argentine ratification was completed in 1997, is the creation of the Anticorruption Office (OA, in Spanish) [31].

OA is a public agency of the Ministry of Justice and Human Rights and is responsible for strengthening ethics and integrity in centralized and decentralized national public administration, through the prevention and investigation of corruption and the formulation of transparency policies. From it, concrete measures were promoted, such as the Public Ethics Law, which imposes the obligation of all employees of the National Executive Branch to complete annual patrimonial depositions detailing their assets and those of their close relatives, whose data are or must be open to public access. The ratification of the Inter-American Convention against Corruption in 1997 was the starting point that forced Argentina into the international arena of the fight against corruption. However, this apparently was not enough and reached the beginning of an internal struggle even in the government.

As all government officials know, the impact of corruption covers multiple realities and the consequences are reflected precisely in social exclusion, in the reduction of educational quality, in the health system, in unemployment, in a higher poverty rate, in more insecurity. Corruption always has a human cost, because despite having a significant legislative increase in institutional strengthening and in curbing corrupt practices in recent years, there is currently not only a state of abandonment where the circumstances mentioned arise to exhaustion causing a negative impact on the quality of life of citizens, but also a real

30 Law 24.759

31 To know more about the "Oficina Anticorrupción": https://www.argentina.gob.ar/anticorrupcion

state of widespread violation of the law in this country, which puts the rule of law and the democratic system in a situation of absolute rupture.

Therein lies the answer to most of a state's institutional problems, the general absence of the rule of law, ill-treatment of authority and a lack of interest in strengthening its institutions, both for political representation and for civil society. It must be taken into account that Argentina is a democratically young country and, despite having extremely advantageous tools to combat and eradicate these dishonest practices, such as the recently enacted law on criminal liability of legal entities[32], the new Civil Action Procedural Regime for Extinction of Domain[33] of criminal assets, which has practical application, the recent appearance of the figure of "repentant"[34] as a result of the cause of the "notebooks", whose Brazilian regulation, for example, already had a long time ago, and all the existing legislation in the Argentine system will not improve if the people involved in collective processes, public and private, do not fight for transparency within their own sphere of exercise.

In this sense, Argentina has difficulties in many areas and, specifically in terms of corruption, there are endless cracks. In recent years, this governance crisis in terms of transparency has manifested itself exponentially and the deeper and structural problems of the political system have become evident in cases such as "the notebooks", "the money route", "Odebrecht", "dreams shared", "Argentine mail", among others. This determined moment of exposure, in terms of corruption, coincides with the growing tendency of States to show themselves combative against this phenomenon, something that is awakening globally.

On the other hand, getting out of a structural corruption crisis like Argentina's today is also not an easy task, something that is not unique to Argentina - in fact, we have the examples of Peru, Brazil, and Italy in the last decades, which show us that they had structural problems of corruption in their countries and also problems after, for example, in Italy, about twenty-five years ago, the so-called "Tangentoplis",

32 Ley 27.401
33 DNU 62/2019 https://www.boletinoficial.gob.ar/detalleAviso/primera/200462/20190122
34 Ley 27.304

a fines scandal that was investigated with the process known as "Mani Pulite", which resulted with the death of public officers and later a prime minister involved in scandals with minors; or the case of Brazil after Lava Jato, which led to a far-right president, who defends dictatorship, tortures and shows xenophobic traits. In Argentina, we have this problem at the door, which is to get out of the problem to avoid a bigger problem.

Another very high risk faced by a country with this level of corruption is to simulate changes that are not real, and that is exactly what happens in most countries where the tendency to corrupt practices is a constant, a dichotomy between what is and what is it should be: real Argentina and ideal Argentina.

In ideal Argentina, we have an Anti-Corruption Office and anti-corruption laws that promote transparency; in real Argentina, the head of the OA is a member of the political party that governs, something that takes away independence and, consequently, does not intervene in the causes in which the incumbent president may be involved. In real Argentina, the electoral justice, charged with controlling all expenses and revenues of all electoral candidates, has a national body of fewer than ten auditors, charged with controlling all revenues and expenses, of all candidates, of all parties in all electoral cycles. In ideal Argentina, in the orbit of the public administration and specifically with regard to the system of equity declarations, all national civil servants submit their declaration annually to OA. In real Argentina, this happens, but it works poorly, as economic statements are not compared with those previously presented by the same official. This circumstance reduces the performance of the system because there is no confrontation, there is no possibility of notice of unlawful enrichments or conflicts of interest. In real Argentina, the testimonies of members of the National Judiciary are practically secret and are preserved without any confrontation with previous presentations. In the National Congress, the testimony system is satisfactory in the Senate and quite poor in the Chamber of Deputies[35].

35 ÁNGEL, Bruno. "Apuntes sobre la corrupción y la Convención Interamericana". In: **Suple-**

In the Argentine reality, federal courts, which are the courts charged with investigating political power in acts of corruption, do not investigate every scandal. In turn, political power is complicit and everyone is used to this routine and implicit agreement. This toxic relationship to the State, between what is and what should not be and this process of politicization of justice generates, consequently, professional operators who learn to be players, fundamental parts of the system, who "play" according to everyone the parties, with those in power. These operators are often associated with white-collar criminals, gangsters, corruption experts, money laundering, drug trafficking, and corporate fraud. These operators are primarily responsible for the decline of the rule of law and the democratic system. They are largely guilty of what happens in Argentina. Since the beginning of the political process, they have been present, serving their particular interests for or against the interests of the incumbent government.

Final remarks

To finance a political campaign in Argentina, $ 10,000 is needed to run for councilor in a medium-sized city. To reach the position of mayor 35 thousand, and for the presidency of the nation, 100 million dollars. Everyone knows it, politicians, corrupt and corrupters, including the control agencies that should control it. But where does the money comes from? Although in Argentina there are no records of drug cartels financing national campaigns, as in other cases, the control of political financing is not a minor issue. In fact, it is a fundamental issue and its non-observation is a major deficit in this political system. In the election, whoever intends to compete will have to knock on the door of certain operators, who do not give money for the love of art, but because they wish to have privileged access to the position of power, to the place where the most serious and sensitive decisions of the institutional life are taken. Entrepreneurs, for example, are concerned

mento Especial Compliance, Anticorrupción y Responsabilidad penal Empresarial, *mayo 2018, Buenos Aires,* Thomson Reuters-La Ley; 2018.

with providing enough money to guarantee the allocation of a proposal. With regard to systems for the acquisition of goods and services, the issue of the allocation of proposals is particularly sensitive in Argentina in relation to corruption, since it is the area in which most types of bribes are requested and offered. Recent research in recent years in the field of bidding in Argentina has shown shocking results in the field of public services. For twelve years, businessmen shared public work without the government caring for who and how it remained, whether or not they completed it. The reality of Argentina surpasses fiction. During these years of impunity, the corruption network has reached extreme professionalism, to such a degree that, even if the work has been completed, the companies collected the advance that the National State grants for the bidding company to finish buying the machines and the sufficient resources to start the work. To start the work, they used 21% of VAT instead of paying it to AFIP, which is the agency responsible for collecting taxes at the national level and whose owner was related to government interests. If there was no advance, companies would have to pay this fee; which, in this case, varied between 10% and 20% of the total cost. The mechanism was replicated in the energy sector, and by highway concession companies that made a monthly payment of $150,000 to employees. In the transport sector, the "fine" mechanism was based on subsidies: the state kept rates frozen and granted subsidies to companies to make up for the delay. The companies declared extra kilometers or trips for the subsidy to be higher and returned a maximum of 5% of the total subsidies, which the more inflated they were, the more return involved. The premiums were over 70% in some cases. In Argentina, for 15 years in a row, we experienced real looting of the state through a systematic process led by the government to empty the public coffers. This is not a small amount, but billions of dollars.

But the final question is: is it possible to overcome corruption in Argentina? Well, the answer, for this author, is positive. Nevertheless, in Argentina, it seems that citizens give a lot of power to public officials, who understand that they do not need to be held responsible for what is being done, the turning point is when the population will begin to

get involved and put pressure on the government. That is why access to information is so important because it means knowing what is being done, what budgets are dealt with, what decisions are made and why they are made. It is important to know that the information is from the citizen and not from the employee who is circumstantially in charge of a given power. Antonio di Pietro, who was the prosecutor in charge of investigating Italian Mani Pulite, who had to use the false name "Marco Canale" to avoid being killed for investigating corruption and who today is a global symbol in this fight, says that things could only change when Italians say enough.

Social movements in Argentina deserve a separate chapter. Many changes have emerged from the social organization, some examples are the Blumberg Laws, driven by mass popular demonstrations, after the death of Axel Blumberg in 2004; the march of silence in Catamarca to demand that the murder of Maria Soledad Morales[36], or the well-known 2x1[37] be resolved; the much discussed 125[38] and the legalization of abortion[39], which legislators would not debate at the congress, but realized that citizens were involved. These examples of mobilization show that change is possible, but it also depends on us[40]. Argentina has the necessary tools to fight corruption, but it requires solid political will, maturity and responsible citizen conscience.

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36 https://www.lanacion.com.ar/sociedad/maria-soledad-morales-el-caso-que-revoluciono-catamarca-nid2156009

37 https://www.clarin.com/politica/masiva-marcha-plaza-mayo-repudiar-fallo-represores_0_rkTThNWeW.html

38 https://www.clarin.com/politica/10-anos-resolucion-125-conflicto-cambio-destino-gobierno-cristina-kirchner_0_ryxsKDq7X.html

39 https://www.infobae.com/sociedad/2019/05/28/con-una-masiva-marcha-presentan-el--proyecto-para-legalizar-el-aborto-en-el-congreso/

40 Hugo Alconada Mon en TEDxRiodelaPlata, Buenos Aires, Argentina, 2018.

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Chapter 9

Civil society organizations fighting corruption in Bulgaria: three case studies

TRIFONOVA, Diana[41]

The context

> 'A luxury hotel in Velingrad. A husky young man rents a room. He travels with a retinue of helpers. A van with dark-tinted windows is parked in front of the hotel. Over the next few days hotel guests see the same scene play out time and again: the man receives a long procession of visitors. After a brief verbal exchange, each visitor steps into the van and leaves it with a bag. The bags—some smaller, others bulkier—are full of money. Each man throws the bag over his shoulder and heads back whence he came.
>
> An election would soon follow. The men with the bags are members of local grassroots organizations of the Movement for Rights and Freedoms (DPS). The origin of the money is open to speculation.'

This story is one of many recorded testimonies by sources interviewed as part of a two-year research[42] by six Bulgarian journalists aiming to create a chronological account of one of the largest bank failures in Bulgaria. The collapse of Corporate Commercial Bank (commonly called KTB) is among the most significant cases of state capture of the

41 Diana Trifonova is a program director for the America Foundation for Bulgaria. Before joining the foundation's team, she worked on projects in the area of civil society and media. She also worked for cultural organizations in Bulgaria, volunteered as part of a number of initiatives gaining experience in media research in the field. Diana holds a bachelor's degree in journalism from the Faculty of Journalism and Mass Communication at the University of Sofia, as well as a master's degree in E-Europe from the same institution. She has training experience in countries like Belgium, Germany, South Korea, and Bulgaria.

42 ***The KTB State***. Zornitsa Markova. 2017. Available at: http://www.ktbfiles.com/

regulatory bodies and institutions that should and could have prevented it. The case demonstrates how the tight grip of a tandem of businessmen on the government, the judiciary and the media in Bulgaria slowly deteriorates the foundations of a democracy.

Ironically, the processes that lead to the present environment in Bulgaria started in 2007. This is the year when Bulgaria joined the European Union and the European Commission set up the Cooperation and Verification Mechanism[43] as a tool to measure the country's progress in the fields of judicial reform, corruption and organized crime. Twelve years on Bulgaria has not made significant progress in those fields as evidenced in the reports[44] under the Mechanism. This conclusion is re-confirmed in international indices of corruption, competitiveness and freedom of expression where Bulgaria lags behind the rest of the EU member states and continues to drop in ranking:

The *Corruption Perception Index*[45] of Transparency International (TI) places Bulgaria 77th which leaves it last among the countries in the European Union. TI Bulgaria's analysis[46] of the index notes that '***despite the relative stability in political and economic terms, the main weaknesses in the period 2012 – 2018 are connected with the effectiveness of the use of public funds, the functioning of the supervisory institutions and the judiciary in the country***'.

43 *Cooperation and Verification Mechanism for Bulgaria and Romania.* European Commission. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en

44 *The reports on progress in Bulgaria and Romania.* European Commission. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

45 *Corruption Perception Index 2018.* Transparency International. Available at: https://www.transparency.org/cpi2018

46 *Index 2018.* Transparency International Bulgaria. Available at: http://transparency.bg/bg/transp_indexes/%d0%b8%d0%bd%d0%b4%d0%b5%d0%ba%d1%81%d0%b8-2/%d0%b8%d0%bd%d0%b4%d0%b5%d0%ba%d1%81-%d0%b7%d0%b0-%d0%b2%d1%8a%d0%b7%d0%bf%d1%80%d0%b8%d1%8f%d1%82%d0%b8%d0%b5-%d0%bd%d0%b0-%d0%ba%d0%be%d1%80%d1%83%d0%bf%d1%86%d0%b8%d1%8f%d1%82%d0%b0/%d0%b8%d0%bd%d0%b4%d0%b5%d0%ba%d1%81-2018-%d0%b3%d0%be%d0-%b4%d0%b8%d0%bd%d0%b0/

Along the same lines the *Global Competitiveness Index*[47] which measures the ability of countries to provide prosperity to their citizens puts Bulgaria at 49th place among 141 countries. One of the lowest ranked pillars remains 'Institutions'. This part of the Index examines 26 aspects of the functioning of both public and private institutions. Among them fall scores in the area of organized crime (111th), judicial independence (89th), freedom of the press (89th), efficiency of the legal framework in settling disputes (94th).

The *World Press Freedom Index*[48] which evaluates the state of journalism in 180 countries puts Bulgaria on 111th place. Worth nothing, when the country joined the EU in 2007 it ranked 51st. The 2018 report marks that *'corruption and collusion between media, politicians and oligarchs is widespread in Bulgaria'*. The most notable example in this respect being Delyan Peevski, a member of parliament with business interest in a vast number of companies, owner of a number of newspapers, news websites, a TV station and the sole owner of the major part of the distribution market for print media in the country.

A tool that has allowed state agencies and ministries to exert pressure over the freedom of expression have been the European Union operation programs as evidenced in numerous researches of Bulgarian media and most recently in a 2017 survey[49] by the Association of European Journalists-Bulgaria. The sizable EU funds provide budgets for advertising of the programs they support to appear in the media. This has been used as a leverage by the ministries, which operate them, to put pressure on the editorial rooms of media who receive advertising money.

In a situation where private interests have repeatedly been meddling in the functioning of the institutions that should be serving as watchdogs and preventing corruption activities where does the civil society in Bulgaria stand? This paper will examine three Bulgarian Civil

47 http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf
48 https://rsf.org/en/bulgaria
49 Valkov, Y. '*The Big Comeback of Political Pressure*'. Association of European Journalists-Bulgaria. 2017. Available at: http://www.aej-bulgaria.org/en/wp-content/uploads/2018/01/The-Great-Comeback-of-Political-Pressure-2017.pdf

Society Organizations which address the issue. The CSOs approach the topic of corruption from different angles. What unites them is that all three raise awareness about the problem, place it for public discussion and thus force reaction on behalf of the government.

Access to Information Programme Foundation

2001. Bulgaria has a newly elected government. The fresh start requires a set of new reforms. To do that the government hires the British consultancy Crown Agents to facilitate the process of reforming the customs administration. The first contract with Crown Agents is signed in 2001 behind closed doors and without a public tender. The second is concluded in 2004, also without tender. For eight years after the first agreement was concluded, the two contracts remain classified on the grounds that they contain information affecting national security. Questions about contractor selection, the fairness of the agreed terms, and the price paid by taxpayers were left unanswered.

It was not until 2009 that the Crown Agents contracts were declassified and posted on the website of the Ministry of Finance, and the answers became available. Through the court practice surrounding this case an amendment to the Access to Information Act was introduced. The new piece of legislation states that: *'The access to official public information may not be restricted in the case of overriding public interest'*[50]

This was an important milestone in making state institutions more accountable and open to citizens — one achieved by the Access to Information Programme Foundation (AIP) and its team. The foundation's lawyers worked on the cases suing the Ministry of Finance for access to information in the Crown Agents contracts. After initially turning down their request for information, the Supreme Administrative Court reversed its stance and determined that the contracts did not contain state secrets, and no conclusive evidence of the need for classification had been presented.

50 Access to Information Act. Available at: https://www.me.government.bg/en/library/access-to-public-information-act-448-c25-m258-2.html

Access to Information Programme Foundation is a nongovernmental organization established in 1996 by a group of lawyers. It provides legal assistance to citizens, journalists, nongovernmental organizations and businesses in cases involving access to information. The organization contributed to the adoption of the Access to Public Information Act in 2000 and its subsequent amendments. AIP helped secure free online access to the Commercial Register, the register of property owned by high government officials, and the archives of the communist-era State Security.

The organization's lawyers have worked on more than 500 cases. With their help in 2004, journalists Petia Vladimirova, Vassil Chobanov, Elena Encheva, and Bogdana Lazarova won a case against the Supreme Judicial Council, which had denied the media access to its sessions. The refusal was revoked by the court with the words: *'The right to information access is the norm, and the restriction of access—an exception.'* Now journalists have constant access to the Council's work.

Litigation is only part of the organization's activities. In partnership with journalists, it monitors practices and conducts information access studies across the country, organizes workshops and trainings, publishes handbooks on the right of access to information, and offers consultations to individuals.

Access to Information Program is pushing government institutions to be more transparent by publishing information about their work. To do that AIP conducts an annual survey[51] evaluating the websites of 567 institutions on national and regional level. The list includes all ministries, municipalities and regional inspectorates among others. Each of the 567 institutions receive a request for access to information from AIP. The organization then tracks how many of them respond, what is the quality of the received responses (i.e. if the information was provided in the format it was requested and if it is complete), whether the institutions respond in time. When the survey is published each organization is ranked against others which allows to easily compare how the scores change over time.

51 *Active Transparency Rating 2019*. Access to Information Programme Foundation. 2019. Available at: https://data.aip-bg.org/en/surveys/BAV422/

In the first edition of the Active Transparency Rating in 2009, only 41% of the institutions responded to the requests for access to information. Ten years later, 87% of the institutions did so. When the Access to Public Information Act was adopted in 2000, only 3% of the population knew about the right to access information. In 2010 this percentage increased to 39%.

Anti-Corruption Fund

The Anti-Corruption Fund (ACF) is an independent civilian non-profit organization comprised of a team of legal professionals and journalists. Its main activity is tracking, analyzing and collecting information about specific corruption cases that appear in the media and social networks. The Fund also accepts tips from citizens who can easily submit information on corruption practices through ACF's website[52]. With the available information the Fund prepares signals that it then submits to the respective prosecution service, regulatory bodies or government agencies. ACF tracks the cases development until they get resolved. On cases of high public interest the organization typically partners with media outlets to jointly publicize about those investigations.

A recent case that ACF examined and later gained international attention addressed property deals of senior public officials. The case became known as Apatmentgate[53] and was a joint investigation of ACF and Radio Free Europe. Through analysis of the Bulgarian Property Register and through a number of requests for access to information it was uncivered that the real estate company Arteks had sold a luxury apartment below market prices to the Deputy Chairman of the ruling party GERB Tzvetan Tzvetanov.

Soon after this news came out reports about similar purchases from Arteks by other prominent political figures from GERB were published. The names of the Deputy Minister of Sport Vania Koleva, the

52 Anti-Corruption Fund Foundation website: https://acf.bg/en/

53 *Apartmentgate: the property deals of senior public officials.* Anti-Coruption Fund. 2019. Available at: https://acf.bg/en/kazusat-apartamentgeyt/

Minister of Justice Tzetzka Tzacheva, the Deputy Minister of Energy Krasimir Parvanov and the former Minister of Culture Vezhdi Rashidov were mixed in the scandal. The sales took place between June and December 2018 and were for apartments in one of Sofia's most expensive districts. Just a year before that on January 25, 2017 an amendment to Art. 153(2) of the Spatial Planning Act was passed with the support of the ruling party GERB. What the amendment provides is that it expands the timeframe for constructions of certain categories of buildings. This allowed Arteks to request extension of the deadline for construction of a controversial skyscraper in a central and expensive neighborhood in Sofia.

Another part of Apartmentgate that deserves special attention concerns misrepresentation and non-declaration of properties under the obligatory assets declarations for public officials. The leading figure in this story is Mr. Plamen Georgiev, Chairman of the Commission for Counteracting Corruption and the Forfeiture of Illegally Acquired Property (CCCFIAP). He declared the purchase of an apartment at a price 30% lower than the taxable value of the property. He also missed to list a rooftop terrace bigger than the apartment itself, which was otherwise listed in the property documents.

The investigation led to the resignation of Tzvetan Tzvetanov as well as the rest of the ministers and deputies who were exposed in the case (the only politician who has not stepped down yet is the former Minister of Culture). Tzvetanov's resignation is particularly significant as he was the second most influential political figure in the leading political party GERB after Prime Minister Boyko Borisov.

The Prosecutor General's office launched investigations into the cases but we are yet to see what the results of these would be. There are, however, a number of legal implications that if proven lead to: criminal liability for false declaration of the amount of the sales; conflict of interest under the Anticorruption and Forfeiture of Illegally Acquired Property Act if proven the politicians received preferential treatment or that power was executed to serve private interests; violation of the rules on the organization and the activities of the National Assembly.

Transparency International - Bulgaria

While corruption at the national level in Bulgaria is wildly discussed and easily appears among the headlines of publications, at the local level systematic data is missing. With regional journalism being close to extinct in the country and regular integrity initiatives absent, wrongdoing remains largely unnoticed.

As a result of policies supporting decentralization in the country over the past ten years the responsibilities of Bulgarian municipalities have increased drastically. Now they operate a cumulative budget of over BGN 3.3 billion per year. A set of secondary legislation relating to local businesses is also managed by them. They are the institutions that also issue permits, licenses and public procurement tenders. Put together all these obligations of municipalities pose a corruption risk if they are not scrutinized carefully.

To address the issue in Bulgaria's 28 regions Transparency International – Bulgaria launched the Local Integrity System Index[54]. The Index assembles a total of 73 indicators. They help assess corruption risk and the anti-corruption capacity and role of nine key local actors: municipal council, mayor, municipal administration, businesses, media, civil society organizations, judiciary and police.

The assessment process takes into account the following components: transparency of administrative procedures; effectiveness of administrative services delivery; management of public budgets and public procurement; conflict of interest prevention; handling of complaints by business and citizens; corruption risk management potential; accountability of local administration; judicial oversight; and effective institutional co-operation.

The evaluation of each indicator is based on a combination of research methods. Questionnaires are used among a large pool of key interviewees and publicly available data for each of the local actors is collected and analyzed. For the assessment of each region a narrative qualitative assessment is developed. Finally, for a quantitative assess-

54 Local Integrity System Index website: http://lisi.transparency.bg/en/

ment the data is turned into numerical values assigned to each indicator which allows for presenting a ranking of the municipalities.

On Local Integrity System Index's website all data is presented in a way that allows to easily compare the results of each region. For better communication of the findings to the general public the final assessment is presented as a traffic light: Green standing for excellent anti-corruption potential, Yellow for average results and Red representing poor abilities to withstand such practices.

The most important part of TI – Bulgaria's work on the Index comes after it is published. A series of public presentations of the results take place where both A-grade and F-grade municipalities are invited to participate in discussions. This allows for weaknesses and best practices to be shared. As the leadership of municipalities goes through election campaigns every four years the Index allows for a comparative assessment of its work during this timeframe.

Final Remarks

To become truly effective in fighting corruption in Bulgaria civil society organizations have created a diverse set of tools and techniques to advocate for improvements in this area. This covers a wide range of activities an NGO does - from creating and publishing detailed research to advocacy and legal representation. What unites the different ways CSOs in Bulgaria try to tackle corruption is the desire to actively communicate those findings two two audiences - 1) the general public and 2) the professionals working inside the institutions.

The case with Apartmentgate mentioned above wouldn't have lead to changes if it hadn't sparked the interest of the general public. The scandal fell in the center of media attention, then caused public unrest which resulted in the quick actions on the part of the government. While this works for some cases, creating such breaking stories doesn't work with all. What has proven helpful, though, is when CSOs directly convey the conclusions, solutions and recommendations they have discovered in their work to the respective institutions and work together with them to improve processes.

Chapter 10

A brief analysis of corruption behind the school feeding program in Colombia

RAMÍREZ, Margarita María Guzmán[55]

This text seeks to briefly analyze the corruption scandals around the School Feeding Program in Colombia, explaining why these scandals are among the most sensitive ones and how offenders used PAE as a platform to perpetrate several corrupt conducts. Additionally, this text will be mentioning a few legal instruments and measures tending to fight against corruption in Colombia. Finally, this article will propose some accurate Anti-corruption strategies that are not being implemented in Colombia yet.

Brief Contextualization

For decades, the Colombian state, have been facing some obstacles that have impacted negatively and are generating a lack of progress and development. Some of the most notorious issues are:

i) Armed conflict;
ii) Drug trafficking;
iii) Common delinquency
iv) Corruption.

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For several years, Colombia has been living under alarming corruption levels. It is not surprising that Transparency International (2018), through its Corruption Perception Index (CPI) ranked Colombia 99/180 last year with the insufficient score of 36/100. Nowadays, the local media is getting used to expose serious corruption scandals, that day after day are increasing and attacking unimaginable spheres such as justice, health, education, and even the private sector. ***Inter alia.***

Colombia is a country of contrasts, where the economic gap is predominant within its regions and communities. Poorness and unemployment have been part of the social panorama for decades. Those factors have pushed the government to create strategies directed to help the less fortunate population to satisfy at least their first necessities. Sadly, some of those programs are not enough to guarantee the minimum conditions to access to a dignified life. Or sometimes those strategies are not working properly because of some problematic phenomena as corruption.

The School Food Program (PAE), on the other hand, is a federal public government initiative, which was created by Law 1176 of 2007 and, subsequently, its legal framework was progressively improved. According to the Colombian Ministry of Education (2013), the program is a strategy designed to guarantee the permanence of students in the public education system, facilitating not only a food supplement, but also full support, its main objective being to prevent school dropouts.

Program beneficiaries are minors from all over the country who attend public schools. The main requirement to enter the program is a previous registration in the Integrated Enrollment System (Simat). This system is defined by the Anticorruption University Network (2017), as: "(…) the main means by which educational institutions provide essential information about students for the distribution of resources".

As stated by the Ministry of Education (2013), the program is financed mainly from the national general budget. The amount allocated to the program has been increasing every year. As specified in El Heraldo (2018) and others, the amount allocated to the PAE program in 2018 was about 1.7 billion Colombian Pesos (COP). This digit in-

creased to 2.2 billion COP in 2019. In addition, in 2018, approximately 5.3 million minors were recipients of the program and in 2019 the number of recipients increased to 5.6 million.

Corruption scandals around PAE

Is accurate to clarify that is not a unique big scandal that has occurred within the program. Conversely, behind PAE, is a chain of unacceptable corruption polemics, that are producing strong critics against the program.

Fernando Carrillo Flórez (Head of Colombian Public Ministry), through a report accomplished by the Colombian chapter of Transparency International - *Transparencia por Colombia* (2018), showed how the program PAE was used as a platform to perpetrate a bunch of different corrupt acts. Although the majority of the people involved in scandals have the category of public servants, private sector also has been implicated. The same report, was also pointing that around COP 84.000 million has been certified as the loss amount because of corruption in the program. Some of the most common modalities of corruption registered were:

i) Precarious lunches offered to children despite the destined budget for it;
ii) Exaggerated and absurd costs of raw materials;
iii) Irregularities to benefit certain people or companies to celebrate supply or operation contracts with the government;
iv) Embezzlement;
v) Non- payment to suppliers or to operators that fulfil their liabilities.

Another outrageous scandal was disclosed through a video that was published by the local media such as *Semana* (2016), the mentioned video showed how children had to pose with a lunch to be photographed, in order to prove the efficiency of PAE. Nevertheless, the

issue occurred because there was only one lunch to photograph all of them. The video clearly exposed how kids posed with the unique plate and how immediately they gave this lunch to the next child to be photographed. It is a shame that incidents like that had occurred, because the meals provided by the program for some recipients are the only one food that they eat daily, due to the insufficient economic conditions of most Colombians.

Likewise, the system SIMAT was immersed in a scandal popularly named "*Niños Fantasma"* that means ghost children. And this phenomenon is about inconsistencies in the database of the enrollment system. This phenomenon was studied by the Anti-Corruption University Network (2017), that exhibited how the system showed more children enrolled than those who were really registered. Seeing that, this scandal has direct consequences in the analyzed matter, because as the present text mentioned before, to be a recipient of the program PAE it is required to make a duly registration in the system SIMAT.

Around 130.000 cases of *"Niños Fantasma"* were regitred in 2015. And according with the mentioned network:

> This information comes from an audit realized by the Ministry of education (2014), during the second semester of 2014, (…) according to the report the certified territorial entity (ETC) with the higher number of non-existent records was Bogotá with the number of 80.266, followed by the departments of Bolívar with 20.936, cases and Magdalena with 16.802 cases. (Anti-corruption University Network, 2017, p. 22).

Why scandals around PAE are labelled among the worst corruption polemics?

Particularly, scandals around PAE have generated a massive indignation, because a corrupt conduct within the program, is not only affecting the public administration and its budget, but also the wellness of children. It violates the supra - constitutional principle of "Best Interest of the Child". This guarantee initially was described internationally, but it was included in the Colombian legislation through the

44th article of the Constitution. This guarantee has a high relevance and applicability because seeks the prevalence of the interest of minors over any other interest. Conversely, when it comes to corruption scandals around PAE, it is clear the prevalence of an individual economic interest over other interest.

The scandal viewed from a legal Approach

Criminal typologies of corruption in Colombia

The current Colombian Criminal Code (Law 599, 2000), does not establishes the crime of corruption per se, but establishes several conducts that are corruption typologies. Those typologies are conducts specifically described and punished by the law. Even though, those typologies are not the same as the types (classification) of corruption.

Notwithstanding the Criminal Code does not establish literally the crime of corruption and for that very reason neither a concept of it, we could resort to other sources to have a rapprochement to a phenomenon of corruption in Colombia. Most of the corruption typologies contained in the code, are conducts described as crimes against public administration (Title XV). However, corruption is a negative phenomenon that is not exclusively public, because it has permeated even the private sector, for that reason the criminal code also includes the crimes of private corruption (Article 250 A), disloyal administration (Article 250 B), money laundering (Articles 323 and 324) terrorism financing (Article 345).

In Colombia is also frequent the increase of corruption in election time, for that reason the code also established the crime of corruption of voters (Article 390). As this text referred before, most of the subjects involved on the program PAE scandals have the quality of public servants, for that reason, the majority of the crimes committed are harmful conducts against the public administration.

Measures to fight against corruption

Beyond the classic criminal law and the criminal procedures, the government has been trying to fight corruption from different outlooks not only the criminal law one. For instance, the Anti-corruption statute

(Law 1474, 2011), contains numerous anti - corruption strategies such as administrative measures, disciplinary measures, special institutions, institutional policy, measures for an accurate fiscal control, dispositions to avoid corruption on the public procurement, the legal fiscal procedure and more. With a naked eye, it seems an integral anti - corruption plan of action. But sadly, the excessive regulation is not working as expected. Conversely, corruption levels are increasing every day.

In contrast, the private sector has been increasingly advancing towards a greater implementation of the ethics and compliance programs. Compliance programs are a clear example of the evolution of the classic Criminal Law that was purely a reaction discipline. With the appearance of modern criminal risks, Criminal Law acquired an additional characteristic of preventive. Because day after day, criminality is being turning more sophisticated. For that reason, reaction is not enough to combat crimes and prevention becomes essential to advance towards a real efficiency of Criminal Law.

Initially, the Financial Statute (Decree 663, 1993), under its articles 102 to 107 stated that the entities watched by the Financial Superintendence, have the obligation to adopt measures to avoid criminal conducts or its financing. The compliance programs have been adopting as accurate measures to avoid criminal offences within the companies. It was at the beginning an exclusive obligation of companies watched and controlled by the Financial Superintendence. Nevertheless, entities of different industries have been voluntarily adopting compliance programs, as a consequence of their effectiveness and efficiency. Actually, some companies are also adopting ethics programs that are not purely to avoid crimes within companies, because the ethics programs promote an integrity culture (in general) inside the corporations.

Measures as a consequence of corruption in the School Feeding Program

Transparencia por Colombia (2018), stated that until 2018 were active approximately 154 fiscal liability legal processes, in the frame of the scandals around PAE.

On the other hand, the National Prosecution Service - *Fiscalía General de la Nación* (2018), considered the program, as a: *"(…) commodity of corruption in lieu of being a nutrition tool in favor of the youngest citizens"*. (para. 2). Likewise, the institution confirmed that until august of 2018, 53 people were officially linked to criminal procedures, and other 26 were being in under investigations.

Analyzing the last supplied data, it is not hard to deduce that the criminal procedures are less effective when it comes to numbers. In addition, it happens because it is not easy to criminally pursue high influence people as some of the public servants.

The other obstacle that avoids an effective Anti- corruption strategy nowadays is that in Colombia under the Criminal Code and a large amount of jurisprudence, it is established that only individuals could be criminally investigated and judged. Excluding companies and other legal persons of any penal sanction. Ruefully, corruption perpetrators have been using companies and legal persons as a crime tools and often it allows offenders to shield itself of legal actions.

Conclusions and Suggestions

Colombia have created several strategies and programs directed to help the less fortunate population to satisfy at least their first necessities. PAE is one of the strategies implemented in order to prevent the school desertion and provide an integral support for minors. However, this program has been used as a tool to perpetuate different corrupt conducts instead of being an instrument that satisfies the education and nutrition necessities of the poorest children. The government have been trying to fight against corruption from different outlooks, but those measures are not being effective whatsoever. In contrast, as a consequence of a real effectiveness and efficiency, it is becoming common the implementation of compliance programs in different industries of the private sector.

Consideration should be given to extending the implementation of compliance programs to the public sector in order to reduce the risk of crime in government institutions, their programs and public procurement. In addition, it is necessary to move forward in fulfilling the criminal liability of companies and legal entities. This legal flaw allows the perpetration of major corruption scandals, increasing impunity and

instilling in society a negative feeling of lack of confidence in the institutional system.

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CORRUPTION

This book aims to address the concept of corruption and the fight against it through different perspectives that normally, mainly in Brazilian publications, do not talk to each other. It is a book that was created after I attended the renowned Transparency International School on Integrity (TISI) for young leaders, in Vilnius, Lithuania, in 2019 and met incredible people from around the world, all engaged in the anti-corruption fight and democracy strengthening.

Thus, the aim of this book was to bring as much variety as possible to the ways of thinking about the effects of corruption and how to fight it in different countries, aiming that the reader can carry out the necessary critical comparisons to comprehend how corruption can be thought of as a global problem, but as one that often presents unique characteristics in different parts of the world and sectors of the State (public and private). Since this book was aimed mainly at the Brazilian public, being myself from this country, I was lucky to have also the contribution of Brazilian professors, researchers and civil society actors.

This is a very rich book in terms of analyzed materials, with precious analyzes on the most varied topics within the spectrum of corruption and different ways of combating it, being essential for beginners and initiates in the study of these themes.

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