

THE PATRIMONIALIST MODEL ADOPTED IN THE ORGANIZATION AND FORMATION OF THE BRAZILIAN STATE, THE CONSEQUENTIAL CORRUPTION AND THE NEED FOR ADOPTION OF PUBLIC ETHICS CODES

O MODELO PATRIMONIALISTA ADOTADO NA ORGANIZAÇÃO E FORMAÇÃO DO ESTADO BRASILEIRO, A CONSEQUENTE CORRUPÇÃO E A NECESSIDADE DE ADOÇÃO DE CÓDIGOS DE ÉTICA PÚBLICA

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ABSTRACT: The present scientific article is intended to find the answer to the following question, which constitutes in its main issue: what could avoid corruptive practices in the public administration, considering the patrimonial management model historically adopted in the Brazilian public administration? In order to answer the question, this research is divided into three topics, with the following aims. In the first topic it is intended to show the difficulty of conceptualizing corruption, due to its multifaceted phenomenon character which can vary depending on the historical moment it occurs. In the second topic it is intended to highlight that corruption in the public management can be considered a result of the State patrimonialistic model, adopted in the construction of the public administration. Finally, the third topic is to point out the need to adopt rational codes in public administration, which determines assignments and build an impersonal official framework, as one of the solutions to avoid corruptive practices and punish them effectively, in case they occur. The method of this study is deductive. The procedure method is the historical critical and in terms of the technics of the research, indirect documentation with bibliographical references from primary and secondary sources were used.

Keywords: Public administration; Codes of ethics; Corruption; Patrimonialism

RESUMO: O presente artigo científico pretende encontrar a resposta para a seguinte questão, que se constitui em sua questão central: o que poderia evitar as práticas corruptas na administração pública, considerando o modelo de gestão patrimonial historicamente adotado na administração pública brasileira? Para responder ao questionamento, esta pesquisa está dividida em três tópicos, com os seguintes objetivos. No primeiro tópico pretende-se mostrar a dificuldade de conceituar a corrupção, devido ao seu caráter multifacetado de fenômeno, que pode variar conforme o momento histórico em que ocorre. No segundo tópico, pretende-se destacar que a corrupção na gestão pública pode ser considerada um resultado do modelo patrimonialista do Estado, adotado na construção da administração pública. Por fim, o terceiro tópico é apontar a necessidade de adoção de códigos racionais na administração pública, que determinem atribuições e construam um quadro oficial impessoal, como uma das soluções para evitar práticas corruptas e puni-las efetivamente, caso ocorram. O método deste estudo é dedutivo. O método de procedimento é o histórico crítico e em termos da técnica da pesquisa, utilizou-se documentação indireta com referências bibliográficas de fontes primárias e secundárias.

Palavras-chave: Administração pública; Códigos de ética; Corrupção; Patrimonialismo.

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1 INTRODUCTORY NOTES

The present scientific article aims to find the answer to the following question, which is its central problem: what could avoid corruptive practices in the public administration, taking into consideration the patrimonialistic management model historically adopted in Brazilian public administration?

In order to answer the question, this research is divided into three topics, with the following aims. In the first topic it is intended to show the difficulty of conceptualizing corruption, due to its multifaceted phenomenon character which can vary depending on the historical moment it occurs.

It is intended to approach some concepts regarding corruption, but it must be highlighted, the complexity of its conceptualization since there is not a ready definite concept for it. Its definition is not a peaceful matter among the specialists. It can occur in many ways in public administration and involves many players, connected with the public administration or with and body State or a service provided by the State, when it happens in private relations, specifically in business circles.

Throughout the research, an analysis will be conducted in order to create a concept. Therefore some of the main characteristics will be identified.

In the second topic it is intended to highlight that corruption in the public management can be considered as a result of the State patrimonialistic model, adopted in construction of the public administration. In the State patrimonialistic model, which is inherent to the building of the public Brazilian scene, corruption becomes some kind of ordinary practice in which the public arena is overrun by the addictions of the private sphere while that one makes use of the State for private interests, as a dominated and controlled entity for benefit of a few. Historically, in public management and in its political scene, corruption started as a consequence of the political patronage and nepotism. In this management model there is not an impersonal scene.

Finally, reaching the answer to the matter of this research, the third goal is to point out the need of adopting rational codes for public administration that determine assignments and build an impersonal official framework in Brazilian public administration. It is considered as one of the solutions to avoid corruptive practices and punish them effectively, in case they occur. The method of this study is deductive. The procedure method is the historical critical and in terms of the technics of the research, indirect documentation with bibliographical references from primary and secondary sources were used.

2 CORRUPTION AND THE DIFFICULTY OF ITS CONCEPTUALIZATION

Addressing this subject comes from the complexity of conceptualizing corruption itself. To present a prompt finished concept of what is corruption is not easy at all, it can also be considered almost impossible to do it. It is presented in practically all through the history of mankind so it is not a recent phenomenon since in several historical periods events of corruptive practices are mentioned.

There are many conceptualization difficulties that range from the matter of having a State agent involved in the practice as an employee or public administrator, for example, in a sense of being connected to a deviant behavior concerning to those agents, to the fact of having or not, necessarily focus on an economical advantage.

Starting the approach, it is noticeable that corruption is a social phenomenon presented in practically all through the history of mankind. Since ancient times there are news about the

misuse of power to obtain personal benefits. Pérez³ quoting Sêneca, stresses what he wrote many centuries ago, that corruption is an addiction of mankind, not the times.⁴

Approaching corruption as a deviant behavior, in the sense of being practiced breaking the law to take undue advantage while on duty it is possible to note that it can be considered a millennial phenomenon. According to Greco Filho⁵, not even Cícero, the remarkably Roman orator and senator, escaped from it, after one year as a province governor, although his poverty when he was younger he went back home rich.

Though corruption phenomenon is as old as humankind, or even more, although it exists since the origin of power, it was in the 20th century, due to its registered rates and generalization, that the awareness of it increased, both in public and private spheres. For Pérez⁶, Spanish scholar who this research is based on, corruption would be closely connected to power, both political and economical claiming that there is a close relationship between both: political and economical power.⁷

Gabardo⁸ emphasizes, that corruption has been such a recurring subject in the world that meetings and normative conventions were delivered in the last decades, as an attempted of reducing or, in the best case scenario, stop corruption from happening in the state sphere. A real endemic series of corruptive acts has been occurring and been published by the media in the worldwide society in the last decades, especially after the 90's, due to the technology improvement on mass media.

The causes and consequences of corruption have to be analysed taking into consideration the social and political background of the society where it is occurring. Most of the time corruption practices are rooted in the political culture of a specific country, in its social history as well as in the bureaucratic traditions. According to Bezerra,⁹ corruption has a legal, historical and cultural dimension which has to be considered when it is intended to be studied. It is necessary to be aware of its complexity and of the different points of view that it can be addressed. It can represent the misuse of power, as well as one of the means to take personal undue advantages or even personal advantages that are not necessarily economicals. In recent years, more specifically in the last twenty five years, a worldwide corruption data and occurrence mapping was done.

Sila¹⁰ when refers to the difficulty to define corruption, observes that it can be addressed in a philosophical as well as economical perspective. When it is approached as a political-cultural matter, asks the author, why in some countries those behaviors so called "rank corruption" are punished by death penalty? While in other countries, such corruption practices are punished by

3 Pero, no nos engañemos, la corrupción no es un fenómeno de hoy. SÉNECA escribió hace muchos siglos que la corrupción es un vicio de los hombres, no de los tiempos.

4 PÉREZ, Jesús González. *Corrupción, ética y moral en las administraciones públicas*. 2. ed. España: Thomson Reuters, 2014, p. 35.

5 GRECO FILHO, V.; RASSI, J. D. *O combate à corrupção e comentários à Lei de Responsabilidade das Pessoas Jurídicas (Lei n. 12.846, de 1º de agosto de 2013)*: atualizado de acordo com o Decreto n. 8.420, de 18 de março de 2015. São Paulo: Saraiva, 2015, p. 15.

6 Aunque el fenómeno es tan viejo como el hombre mismo, o, más exactamente, desde la aparición del poder, al que, como se ha dicho entre nosotros, la corrupción acompaña como la sombra al cuerpo, lo cierto es que ha sido en el último cuarto del siglo XX cuando ante la generalización y cotas alcanzadas se produjo una preocupación sobre él, en ciertos sectores. Tanto la esfera pública como en la privada. Porque la corrupción está estrechamente vinculada al poder, a todo poder, al político y al económico, entre los que existe una íntima relación.

7 PÉREZ, Jesús González. *Corrupción, ética y moral en las administraciones públicas*. 2. ed. España: Thomson Reuters, 2014.

8 GABARDO, E.; REIS, L. E. O gerencialismo entre eficiência e corrupção: breves reflexões sobre os percalços do desenvolvimento. In: SILVEIRA, R. D. da; CASTRO, R. A. P. de. (Org.). *Estudos dirigidos de gestão pública na América Latina*. Belo Horizonte: Fórum, 2011, p. 138-139.

9 BEZERRA, Marcos Otávio. *Corrupção: um estudo sobre o poder público e as relações pessoais no Brasil*. Rio de Janeiro: Relume-Dumará: ANPOCS, 1995, p. 12.

10 SILA, Jorge da. *Criminologia Crítica: Segurança Pública e Polícia*. Rio de Janeiro: Forense, 2008, p. 575-576.

lenient penalties, when they occur. It also refers to the fact that other countries see corruption as a violation of criminal provisions, and cultural, political or economical considerations of it are dismissed.

Gabardo¹¹ observes that although the word corruption is commonly used among people and speeches, generally when it comes to public officials it needs to have a wider concept. It is not possible to outline corruption politically or economically. It can be studied or viewed from many perspectives, such as the social, the political science, the economical and organizational theory, as well as under a civil, administrative or criminal law perspective.

When the question is what corruption is, it becomes difficult reaching to a conclusion and identify what behavior can be considered corruptive. To define it studies and analysis based on concepts seeked in Brazilian and foreign literature sources were made.

Simão Neto¹² defends that the word corruption has the meaning of being a distortion or degradation of a rule that is socially active. The corruption concept only exists because of its opposite concept which represents the term honesty. An honest human being is considered a decent human being that acts or omits itself according to the general rule. Though corruption is a matter as ancient as its studies about the public power service, its definition, as mentioned is also an issue. It can be covered under many scientific studies perspective due to its multiple possible meanings. In public organizations, according to Gomes¹³ corruption practice would consist in the economically or otherwise misuse of its duties for private benefits.

Looking for foreign bibliography basement, attests to the difficulty of reaching to a definition. According to the adopted corruption concept, the way of studying it will be determined and that concept will also determine the rates of its occurrence. Though it is not possible to reach an accurate definition, it is noticeable that there is a consensus that corruption refers to acts where the power of the public office is used for private benefits, where laws which were legally imposed are broken.¹⁴

Or according to Etzioni¹⁵, besides being considered a negative behavior, when occurs in the political system, it would be the use of a public office to obtain a private benefit. In other words it would be the abuse committed by a public official generally in a close private cooperation. The political corruption frequently occurs because of private interests which, seeking for public favors considered illegal, find in the elected officials the willing to commit those practices. Corruption acts in a government concern to at least one public and one private official.¹⁶

Corruption is addressed in studies in the political sphere when its occurrence and

11 GABARDO, E.; REIS, L. E. O gerencialismo entre eficiência e corrupção: breves reflexões sobre os percalços do desenvolvimento. In: SILVEIRA, R. D. da; CASTRO, R. A. P. de. (Org.). *Estudos dirigidos de gestão pública na América Latina*. Belo Horizonte: Fórum, 2011, p. 139.

12 SIMÃO NETO, Calil. *Improbidade administrativa: teoria e prática: de acordo com a Lei nº 12.846 de 01 de agosto de 2013, com a lei complementar nº 135 de junho de 2010: Ficha Limpa*. 2. ed. Leme: J. H. Mizuno, 2014, p. 37.

13 GÓMES, Santiago Roura. Alguns aspectos-chave do combate à corrupção na Administração Pública. In: MENDES, G.F.; BRANCO, P.G.G. *V Seminário Internacional de Direito Administrativo e Administração Pública - Tendências da Administração Pública- Escola de Administração de Brasília – IDP*. Série IDP Eventos. Brasília, 2016, p. 163.

14 What is corruption? One of the difficulties of studying corruption lies in defining it. While it may appear to be a semantic issue, how corruption is defined actually ends up determining what gets modelled and measured. Although it is difficult to agree on a precise definition, there is consensus that corruption refers to acts in which the power of public office is used for personal gain in a manner that contravenes the rules of the game.

15 Corruption, the dictionary says, is evil or wicked behavior. To corrupt is to change a sound condition to an unsound one. However, the corruption that is my subject is not regular garden-variety corruption, but the special species rampant in Washington D.C. corruption of a political system. The unsound condition I deal with is the use of public office for private advantage. This statement may seem to imply that the abuse at hand is something public officials do. Indeed they do, but usually in close collaboration with private parties. Political corruption is typically perpetrated, we shall see, by private interests seeking illicit public favors and finding quite willing elected officials. The change of the government's condition from sound to unsound often involves at least one public and one private partner.

16 ETZIONI, Amitai. *Capital corruption: the new attack on American democracy*. San Diego: Harcourt Brace Jovanovich, 1984, p. 04.

negative impacts connected to the political behavior such as fraud and malfeasance that happen in political relationship between public and private officials are analysed. In addition to it is studied when connected to economical aspects, analysing its negative impact on the economy of a country and also in the global economy. It is also considered regarding sociological aspects, as it occurs in a particular society, how its conceptualizations change throughout the ages, the public and private ethics influence in practices that are defined as corruptive. Therefore, it is addressed in a criminological aspect, when corruption is connected to organized crime, money laundering, as much in a local sphere of a country or even including illegal acts which involve more than one country, as in corruptive acts that subsidise terrorism.

The term corruption comprises a wide range of human actions. To understand its effects on the economy or the political system, it is necessary to connect the term with the particular types of activities or transactions which can be linked to it. Thus, The World Bank Group (1997) define it as the abuse of public office in the public administration, for private benefits, for example, when an employee accepts, requests, or extorts through bribery. The same way when private agents offer bribes to control public policies and processes, to obtain competitive advantage and profit.¹⁷

Currently, there are many legal approaches related to corruption in penal, civil and administrative esphere. In France, for example, by the document entitled: *La corruption: définition et sanctions da Lei-Finance*¹⁸, corruption is conceptualized even as being a criminal malfeasance, where the person who is the corrupt, requests, accepts or approves an advantage, or even an offering. The same when it offers or promises any other type of gifts or benefits, to accomplish, delay or even withhold acts, that might be linked to its functions.¹⁹

Likewise it is considered the action and effect of corrupt, in a sense of deviating, bribing somebody, perverting and causing damages. The concept in the dictionary of Real Academia Espanhola (RAE), presented in this study, is used to define the addiction or abuse of non material things. In this conceptualization, corruption, might be a moral or symbolic depravation.²⁰

When corruption is accepted as a deviant behavior where there is a State agent participation, it is possible to analyse the definition of misappropriation of union assets by officials responsible for managing which is equally considered corruption. It occurs when company managers and officials in general spontaneously embezzle in large scale State assets. At the other end are the small embezzlements such as office supplies, vehicles and even fuel. They are generally low level employees who work where there is no assets control. When such controls exist, they are considered institutionally weak, unable to identify and punish the offenders.²¹

17 The term corruption covers a broad range of human actions. To understand its effect on an economy or a political system, it helps to unbundle the term by identifying specific types of activities or transactions that might fall within it. In considering its strategy the Bank sought a usable definition of corruption and then developed a taxonomy of the different forms corruption could take consistent with that definition. We settled on a straightforward definition—the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit.

18 DROIT – FINANCES (droit-finances.commentcamarche.net). *La corruption: définition et sanctions*. Março de 2016. Disponível em: <http://droit-finances.commentcamarche.net/contents/1320-la-corruption-definition-et-sanctions>. Acesso em: 15 ago. 2016.

19 La corruption est un comportement pénalement répréhensible par lequel une personne (le corrompu) sollicite, agréé ou accepte un don, une offre ou une promesse, des présents ou des avantages quelconques en vue d'accomplir, de retarder ou d'omettre d'accomplir un acte entrant d'une façon directe ou indirecte dans le cadre de ses fonctions.

20 Corrupción es la acción y efecto de corromper (depravar, echar a perder, sobornar a alguien, pervertir, dañar). El concepto, de acuerdo al diccionario de la Real Academia Española (RAE), se utiliza para nombrar al vicio o abuso en un escrito o en las cosas no materiales. La corrupción, por lo tanto, puede tratarse de una depravación moral o simbólica.

21 THE WORLD BANK GROUP. *Helping Countries Combat Corruption: The Role of the World Bank*. Poverty Reduction and Economic Management The World Bank. September 1997. Disponível em: <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>. Acesso em: 22 ago. 2016.

Regarding it, according to Gomes²², corruption would be an embezzlement mechanism of a group which harms the society through the reproduction of political and economical institutions.

Cunha²³ addresses corruption as the abusive use of public resources, power or position by a public or private official, in its duties, under any practice or omission that involves violation of its obligation. These abusive practices, have as an aim to expand, anticipate, obtain any advantage as well as prevent, reduce or differ a disadvantage for itself, any other person or a group of people connected by common interests.

Bobbio²⁴ defines corruption as the situation of public employee to act differently from the normative standards which are established by the system, occurring private benefits in Exchange of illegal reward, in this example it would be the illegal behavior of those who play a role in the state sphere.

Regarding the servant of the State, for Greco²⁵ what is unfair in corruption is that it consists in an abuse of power, through malfeasance. It would occur in private benefit, when, for example, the public employee do its job by connecting it to private benefits for him or a third party.

Once again foreign bibliography sources contribute to the preparation of the present article corruption includes any kind of advantage which is considered illegal, through an illicit or unethical practice which might benefit a person or an economical activity. It would be the abuse of power practice, means or acts to obtain economical advantages. Influence peddling, bribery, extortion, fraud would be some of the corruptive practices that illustrates this kind of action, for example, give Money to a State servant to win a bid or to bribe in order to escape from being arrested. It might be connected to other crimes, when, with its practice, illegal practices are allowed to happen. For example, a police officer is corrupted if he accepts Money to benefit a theft without interfering. In this case two illegal practices are linked: corruption and theft practice.²⁶

Several decrees were redacted with the aim of sanctioning the considered deviant behavior which affects the public property. According to Petrelluzzi²⁷ from the legal point of view, as well as the ethics and moral, there are several controversies about the extent and the definition of what is corruption. Therefore there is a consensus in the different types of concepts adopted, according to Lopes²⁸, that corruption is a social pathology.

They can even be considered as a corruption practice, deviant behavior, but that does

22 GÓMES, Santiago Roura. Alguns aspectos-chave do combate à corrupção na Administração Pública. In: MENDES, G.F.; BRANCO, PG.G. *V Seminário Internacional de Direito Administrativo e Administração Pública - Tendências da Administração Pública - Escola de Administração de Brasília – IDP*. Série IDP Eventos. Brasília, 2016, p. 169-170.

23 CUNHA, Ary Ferreira da. Causas e consequências da corrupção: uma breve introdução jurídico-econômica. In: CUNHA, Ary Ferreira (Coord.). *IV Congresso de Direito Fiscal*. Porto: Quid Juris Sociedade, 2014, p. 45.

24 BOBBIO, N.; MATTEUCI, N.; PASQUINO, G. *Dicionário de política*. 5. ed. Brasília: Editora Universidade de Brasília; São Paulo: Imprensa Oficial do Estado de São Paulo, 2000, p. 291.

25 GRECO FILHO, V.; RASSI, J. D. *O combate à corrupção e comentários à Lei de Responsabilidade das Pessoas Jurídicas (Lei n. 12.846, de 1º de agosto de 2013)*: atualizado de acordo com o Decreto n. 8.420, de 18 de março de 2015. São Paulo: Saraiva, 2015, p. 29-30.

26 En otro sentido, la corrupción es la práctica que consiste en hacer abuso de poder, de funciones o de medios para sacar un provecho económico o de otra índole. El tráfico de influencias, el soborno, la extorsión y el fraude son algunas de las prácticas de corrupción, que se ven reflejadas en acciones como entregar dinero a un funcionario público para ganar una licitación o pagar una dádiva o coima para evitar una clausura. A la corrupción se encadenan otros delitos, ya que el corrupto suele incurrir en la práctica para permitir o solicitar algo ilegal. Un policía resulta corrupto si recibe dinero de un hombre para que le permita robar en una casa sin intromisión policial. En este caso, se juntan dos delitos: el acto de corrupción y el robo. El tráfico de influencias, el soborno, la extorsión y el fraude son algunas de las prácticas de corrupción, que se ven reflejadas en acciones como entregar dinero a un funcionario público para ganar una licitación o pagar una dádiva o coima para evitar una clausura. A la corrupción se encadenan otros delitos, ya que el corrupto suele incurrir en la práctica para permitir o solicitar algo ilegal. Un policía resulta corrupto si recibe dinero de un hombre para que le permita robar en una casa sin intromisión policial. En este caso, se juntan dos delitos: el acto de corrupción y el robo.

27 PETRELLUZZI, M. V.; JUNIOR RIZEK, R. N. *Lei Anticorrupção: origens, comentários e análise da legislação correlata*. São Paulo: Saraiva, 2014, p. 19.

28 LOPES, José Mouraz. *O espectro da corrupção*. Coimbra, Portugal: Almedina, 2011, p. 28.

not necessarily aim at economic advantages. Greco Filho²⁹ argues in that sense, that although there isn't an economical aspect, corruption would also be an illegal behavior practice to gain a benefit to itself or a third party. In this wide concept and that highlights once more the difficulty of definitely and completely conceptualize corruption, for example, the employee who punches the clock for another employee or the employee who goes over the turnstile to evade the surveillance system which controls the office hours. This preliminary study that has been realized, illustrating the difficulty of defining what corruption is, addressing the countless approaches that can be made, as in the economical, philosophical, social or even criminal is reinforced by Leal's words when highlighting the absence in the western political thinking tradition, of a consensus about what corruption is. There is not a specific definition in this sense and it is not possible to nominate it a Political Theory of Corruption. Furthermore, there are different approaches about this subject, made by specific renowned philosophical theorists.

Gabardo³⁰ stresses that, although exist properly classified in exhaustive as corruptive practices that are possible to occur the ones stressed by the UM are considered more common practices such as bribery, fraud other illicit gains, collusion, power abuse and breach of trust, misappropriation of public funds and conflict of interests.

Although there are significant difficulties for its conceptualization, in an attempt, it is possible to say that corruption is an illicit means of influencing in public decisions with private or third party benefit. It leads to serious losses in the public interest, causes deep wear on one of the most significant factor of the public and social system organization, which is its legitimacy. Corruptive practices that occur in the public sphere will always have as the main consequence to cause losses to the collectivity.

3 PATRIMONIALISM AS A MEANS OF ADMINISTRATIVE ORGANIZATION OF THE BRAZILIAN STATE AND THE CORRUPTIVE PRACTICES

Brazil did not follow a rational model of public management and administration due to the fact of being adopted since the beginning a model which is known as patrimonialism. This model is characterized, mainly, by the confusion that occurs between the public and the private sphere. Therefore it is possible to stress that public corruption in Brazil is directly connected to it. Patrimonialism will be defined here also addressing its main characteristics, highlighting that the country slightly adopted a rational management, disregarding the separation which must exist between the public and the private.

In an attempt to define what is patrimonialism, it is stressed that, according to Max Weber³¹ lessons, there is a personal administrative framework. Tradition and not legal statutes prevail in this kind of framework. People considered "associated with the Mr" that must obey him and not the laws are benefited. The administrative framework is even military characterized by being ruled by this lord, which holds strong personal power, based on tradition and not in legal requirements. The political organization of patrimonialism does not consider the competence, authority or magistracy concept in a contemporary sense. The separation of what is a public and what is a private matter as well as public and private assets, and the public and private

29 GRECO FILHO, V.; RASSI, J. D. *O combate à corrupção e comentários à Lei de Responsabilidade das Pessoas Jurídicas (Lei n. 12.846, de 1º de agosto de 2013)*: atualizado de acordo com o Decreto n. 8.420, de 18 de março de 2015. São Paulo: Saraiva, 2015, p. 16.

30 GABARDO, E.; REIS, L. E. O gerencialismo entre eficiência e corrupção: breves reflexões sobre os percalços do desenvolvimento. In: SILVEIRA, R. D. da; CASTRO, R. A. P. de. (Org.). *Estudos dirigidos de gestão pública na América Latina*. Belo Horizonte: Fórum, 2011, p. 139.

31 WEBER, Max. *Economia e sociedade: fundamentos da sociologia compreensiva*. 4. ed. Brasília: Editora Universidade de Brasília, 2009 (reimpressão), p. 151-152

manorial employees allocations does not occur.

In Paim's³² lessons, in the patrimonial State exists a typical representation of a set of traditions considered unchangeable. Everything is based on tradition and in personal considerations. Rational rules which should regulate are replaced by different rules which are based on the tradition mentioned and the so called "prince justice" and his employees. Even privileges by the sovereign are temporary. Nascimento³³ emphasises that historically in our country the separation between what is public and what is private is not respected. Brazil is not an example of a Modern State, that is legitimized by impersonal and rational laws. Patrimonialism is considered an ordinary ailment, therefore separation between administration means, employees and governors is not promoted and favoring their privileged access to the public structure and wealth to exploit as their privileged rank and positions.

The absolutist tradition of the colonial era used to have this combination of the treasure of the Portuguese State, the king and the nobility, who were the main servants of the State. Reports Domingues³⁴ that the metropolis had a significant difficulty in controlling its employees in America. With the independencies, States that had formal modern structuring established with a clear separation between public and private. That did not implied the disappearance of the patrimonialism characteristics of those States, but, as a consequence, brought them a decisive transformation.

Such facts, unlike other countries from Europe which adopted public administration rational codes idealized by Max Weber did not happen in Brazil, those rational codes suggest rules that establish in rational terms the separation of what must be considered public and what is private. Brazil adopted very little of Max Weber's concept about separation, as mentioned in this article. Precisely according to Faoro³⁵, the patrimonialism's legitimacy is not based on management legal institutes, any kind of legal determination based on tradition which only determines that "So it is because it's the way it has always been". These statements related to adopting management codes based on rational models, are opposite to Weber's thoughts.

It is relevant to observe that in Brazil the patrimonialism adopted in public administration which is explained by our political organization, since colonial Brazil is also called social strata. This, according to Weber is characterized by the domain of a specific social class of people in power of giving orders. Such people, in the administrative framework, are part of a specific group which appropriates of economical opportunities. The appropriators might historically be part of a previews administrative framework with a non social strata character, or might not have been part of this framework before the appropriation.

In accordance with Paim³⁶, the historical development of Brazilian patrimonialism, structured and strengthened in the first centuries of the Portuguese History, consisted in a social strata formation. This bureaucratic character refers to the bureaucracy, not in the modern sense, as a rational political control over the State but as an extraordinary organization. The reality reported, hinders the rationality in the public administration and produces as a consequence a establishing effect on the economy. As a result of the bureaucratic stratum which causes discretion and consumption waste, it unables industrial capitalism to happen

32 PAIM, Antonio (Org.). *O patrimonialismo brasileiro em foco*. Campinas: VIDE, 2015, p. 21.

33 NASCIMENTO, Melillo Dinis do. O controle da corrupção no Brasil e a Lei nº 12.846/2013 – Lei Anticorrupção. In: NASCIMENTO, Melillo Dinis do. *Lei Anticorrupção empresarial: aspectos críticos à Lei nº 12.846/2013*. Belo Horizonte: Fórum, 2014, p. 75-76.

34 DOMINGUES, José Maurício. Patrimonialismo e Neopatrimonialismo. In: AVRITZER, et al. (Org.). *Corrupção: ensaios e críticas*. Belo Horizonte: Editora UFMG, 2012, p. 159.

35 FAORO, Raymundo. *Os donos do poder: formação do patronato político brasileiro*. 5. ed. São Paulo: Globo, 2012, p. 819-820.

36 PAIM, Antonio (Org.). *O patrimonialismo brasileiro em foco*. Campinas: VIDE, 2015, p. 27.

and flow, due to the fact that the bureaucratic stratum is inconsistent with capitalism rules in a sense of achieving economic growth.

Faoro³⁷ stresses that the historical Brazilian reality demonstrated the perseverance of the patrimonial structure, presenting as main characteristic an administrative framework based on the social stratum. And this group which has the power is becoming progressively more bureaucratized presenting as a consequence a reality where everything stays the same and the structural change needed does not occur. It is precisely in the State corpus that the bureaucratic stratum focus the clearing house mechanisms, with its financial manipulation, monopolist of public grant of activity, of credit control, consumption control, privileged production, with extensive activities which go from the direct managing to the material legislation of the economy. This management manner is inconsistent with the capitalism purposes, hinders it and even excludes the possibility of economical growth in a country administrador this way.

In this approach, it is highlighted that historically the public Brazilian administration was based on patrimonialism principles, specifically on the patrimonialism social stratum, where a group, in the public administration, practically appropriates of the administrative machinery, originating “a caste” which makes its public concession activities, in the activities of credit control, consumption control and even in the privileged production. Accommodation is based on a bureaucracy where there is not a structural change, difficulting any kind of amendment in this sense. The activities of this caste, which in a social strata appropriates of the public administration, end up having competence over quite a few activities, as previously exemplified, that goes from the direct management to the economic material regulation.

Another characteristic of the public administration which necessarily must be approached, is that in the country, since Colonial Brazil, there is not a meritocracy appreciation culture. Being replaced by different ways of rewarding: favors, political patronage, collusion because the public administration has Always been considered the king’s activity known as “*longa manus*”, rationally disorganized and in a personal way. In this part of the history, stresses Nucci³⁸, the meritocracy, which should exist, in the public administration was replaced by the mentioned quid pro quo and palatial collusions since public office belonged to the king and even the crown sold job titles.

From this fact it is possible to observe the losses that this behavior, which was the basis to corruptive practices, caused to Brazilian history. And currently, it is confirmed in practice the same system. It is stressed that many of the political appointments to important positions originated from quid pro quo, palatial collusions, cleverness in the relationships, and the already known two way street friendships.

A widespread “give and take”. It became a Brazilian tradition the offering of illegal advantages to public officials, being even marginalized the one who does not accept bribes. That actions have as the main consequence the commission of corruptive practices in the essence of the public administration.

Currently, the patrimonialism that exists in Brasil is nominated as contemporary, possessing in the State its basis, since it is constituted connected to other corporate agents, the State agents which connect to private interests. Exemplifies Domingues³⁹, that this spontaneous patrimonialism manner, is happening in the country giving the opportunity to corruptive practices,

37 FAORO, Raymundo. *Os donos do poder: formação do patronato político brasileiro*. 5. ed. São Paulo: Globo, 2012, p. 819-824.

38 NUCCI, Guilherme de Souza. *Corrupção e anticorrupção*. Rio de Janeiro: Forense, 2015, p. 09-10.

39 DOMINGUES, José Maurício. Patrimonialismo e Neopatrimonialismo. In: AVRITZER, *et al.* (Org.). *Corrupção: ensaios e críticas*. Belo Horizonte: Editora UFMG, 2012, p. 159-160.

occur the entailment to the personal interest of the single individual which bribes the traffic warden, as well as the big company which connects to parliamentarians and state agencies. In the same way, it goes through election campaigns funding and in the situations where the State positions and posts become private object possessions of their occupants.

Therefore in addressing corruptive practices which occur in this reality, it refers to the misuse of public resources as well as to the unethical practices. Based on the Weberian concept, previously studied, which explains what patrimonialism is, it becomes the analytical focus for the corruption issue. In other words, the troublesome situation of not adopting management rational codes, which is the main characteristic of the public administration considered modern, was not adopted by Brazil. Administrative framework based on tradition and personal frameworks were historically adopted.

According to Nascimento⁴⁰, in the State patrimonialism model, which is typical of the public scene development corruption becomes some kind of day to day practice. The patrimonialism tradition describes the corruption issue as a symptom of the same diagnosis: the promiscuity which exists between the private and the public sphere. In this sense, the public sphere is invaded by the private's viciousness while this one appropriates of the State to use and control it as a dominated entity for the interests of only a few.

The importance of a separation between the public service sphere and the personal advantage environment is highlighted because it originates the implementation of a general principle, constituting the Liberal State of Law, which is principle of the separation between public and private spheres, between State and society. Stressed Greco and Teixeira⁴¹ that the distinction is essential and cannot be a one way street. To the mentioned spheres it is considered troublesome the State intervention in private subjects and the same way the other way round: the interfering of the private in public duties.

By addressing corruption, as being practices in public administration, caused by the administration that does not follow impersonal and rational models, but is personal and of social strata, it is noticed that always among its negative consequences, there will be a social right unredeemed.

Gabardo⁴² reaffirms that corruption effects on the State activity and the society are felt by everyone. Generally new means of public resources control, legal proceedings, intended to fight against corruption, which are invasive, are discussed. At this point, the implications are not measured only in a financial or conduct penalty aspects to be supported by the State. It is also noticed that immeasurable abstract consequences come from corruption.

Garcia⁴³ also argues that although a public official which is corrupt, acts in an organizational institute intended for pursuing the common welfare, he deviates from its original purposes and acts in favor of a private interest. It is the one that provides an illegal advantage for itself and intends a benefit for the person which colluded with the corruptive practice.

What is really important to highlight and reinforces the present study, mentioning Cunha⁴⁴, in which this argument is based on, is that, especially in the cultures where there is

40 NASCIMENTO, Melillo Dinis do. O controle da corrupção no Brasil e a Lei nº 12.846/2013 – Lei Anticorrupção. In: NASCIMENTO, Melillo Dinis do. *Lei Anticorrupção empresarial: aspectos críticos à Lei nº 12.846/2013*. Belo Horizonte: Fórum, 2014, p. 75-76.

41 GRECO, L.; TEIXEIRA, A. Aproximação a uma teoria da corrupção. In: LEITE, A.; TEIXEIRA, A. (Orgs.). *Crime e política: corrupção, financiamento irregular de partidos políticos, caixa dois eleitoral e enriquecimento ilícito*. Rio de Janeiro: FGV, 2017, p. 29.

42 GABARDO, E.; REIS, L. E. O gerencialismo entre eficiência e corrupção: breves reflexões sobre os percalços do desenvolvimento. In: SILVEIRA, R. D. da; CASTRO, R. A. P. de. (Org.). *Estudos dirigidos de gestão pública na América Latina*. Belo Horizonte: Fórum, 2011, p. 139.

43 GARCIA, E.; ALVES, R. P. *Improbidade administrativa*. 7. ed. rev., ampl. e atual. São Paulo: Saraiva, 2013, p. 68.

44 CUNHA, Ary Ferreira da. Causas e consequências da corrupção: uma breve introdução jurídico-econômica. In: CUNHA, Ary Ferreira (Coord.). *IV Congresso de Direito Fiscal*. Porto: Quid Juris Sociedade, 2014, p. 68.

not a clear separation between public and private spheres, in regard to the public officials, or in the cultures where they see themselves as the owners of the power associated to them and not as holders of a delegated authority, there will be a tendency toward more corruption.

As presented, patrimonialism has its origins in the colonization period of our country. It reflected the State organization of Portugal according to its colonies. The separation between what is considered public or private was not respected. As well as the public management frameworks were formed by their lord proprietor patronage, they were personal and there was not meritocracy. The history of our public administration in its patrimonialism model, did not adopt, or disrespected if it was adopted, legal determinations, which with discipline and impersonal organization conceived by Max Weber, might have given a rational character to the public management.

It must be vanished the concept that the public sphere does not belong to anyone. This concept is a consequence of popular ignorance: ignorant people do not act against corrupt agents. According to Garcia⁴⁵, the corrupt agent deviates public resources and wards off them from its destiny, the welfare. People become more ignorant and dependent on those who undermined them, becoming unable to break the cycle – they can, at best, change the characters.

This is the reason why it is necessary to adopt ethical public codes, to avoid specifically this confusion between what is public and what is private, reflection of the patrimonialism culture, which was historically adopted by the public administration. This topic will be approached in the following.

4 ETHICAL PUBLIC CODES: THE NEED TO ADOPT THEM

One of the most important characteristics, in the Modern State creation, is the separation between public and private. This concept arose in Western Europe with the liberal thinking and had Max Weber as the greatest theorist of it. Such model is present in European, American countries and in other parts of the world. As highlights Leal⁴⁶, one of the essential elements in the constitution of the Modern and Contemporary State, according to Max Weber's vision, was specially the formation of a bureaucratic administration conceived in rational models.

Weber⁴⁷ idealized the format of and administrative framework which is bureaucratic. This framework must, first, become legal, based on ideas which have to be connected to each other, as it follows: every right must be legalized in a rational model, referring to purpose or values, or even both things, through an imposition pact. For him the law is an abstract set of rules, which normally are legalized with specific intentions. The administration is exactly this caution, which is rational, of foreseen interests within the limits of legal rules and according to the principles which are legally stated.

In this rational management model, the one who gives orders observe the impersonal arrangements which orients the guidelines, and who obeys, does it as a member of the association and at ends only the law. Therefore, in management the idea applied is that, when the association members obey they are not running personal dispositions of a lord, as it occur in patrimonialism, for example. But in obeying, in this rational model, planned by Weber, they are following those rules that are legal and impersonal. They are obliged to obey only in an

45 GARCIA, E.; ALVES, R. P. *Improbidade administrativa*. 7. ed. rev., ampl. e atual. São Paulo: Saraiva, 2013, p. 56-68.

46 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 48.

47 WEBER, Max. *Economia e sociedade: fundamentos da sociologia compreensiva*. 4. ed. Brasília: Editora Universidade de Brasília, 2009 (reimpressão), p. 142.

objective competence and which is rationally limited. They are abstract legal rules.

With these rational dispositions, about public administration, those concerned with the public administration must comply with the legal determination, since it is that which gives legitimacy in administration. Leal⁴⁸ observes that, in this model, the political power acquired a rational character, once the faith in the legality in the orders that are created and in the individuals' competence chosen to execute it, it has a different quality of what occurs in the tradition or charism faith. Therefore it is the rationality itself, inherent to the legal form that provides legitimacy to that political power which is legally executed.

Weber⁴⁹ also outlined what he called fundamental categories of rational domination. In his opinion, when duties are performed, they occur in an ongoing process, which is connected to specific rules, and within a specific competence. The organized exercise in this function is called institutional authority. The official hierarchical principle, which is the organization of fixed supervisory and controlling instances for each institutional authority, as well as the right to appeal or complain from the subordinates to their seniors are linked. The regulating rules are the technicals and the norms. And, for the implementation of these ideas, with the aim of reaching plain rationality, it is necessary, in both cases a professional qualification. Therefore, only the ones who provide evidence of a professional qualification can be accepted as employees.

In this administrative rationality conceived by the referred author, also applies to the Absolute Separation Principle between the administrative framework and the means of administration and production. It means that the officials, employees and workers of the administrative framework do not possess the material means of administration and production. They obtain it in cash or kind and possess accounting responsibility. In this purpose it is noticed the separation between what is considered public and what is considered private, applying the absolute separation principle between the property (or capital) of the institution (company) and the private property (of the patrimonial management), as well as between the professional activity's location (office) and the employees household. And, to reach the plain rationality, it must also be applied the documentation of the administrative procedures principle, even in situations where the practice is the oral hearing. It is equivalent to say that, at least, the preliminary considerations and requirements, as well as the decisions, dispositions and final orderings of all kinds, must be established in writing.

Finally, for Weber⁵⁰, the purest type of legal domination is the one which serves by a bureaucratic administrative framework. The set of the framework must be constituted by individual employees which are personally free, and that obey only to objective tasks of its position. This administrative framework will be nominated not elected. Will obey a strictly hierarchy of positions which have fixed functional competences, according to an agreement, following the free selection principle, based on professional qualification. In the most rational case the qualification is verified through examination and certified by a degree. They will be paid by fixed salaries in cash. Most of the times, with pension rights. They work in their positions as being their only job or main activity. They have perspective of reaching higher positions, by seniority or efficiency, or both. They work in absolute separation from administrative means

48 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 48-49.

49 WEBER, Max. *Economia e sociedade: fundamentos da sociologia compreensiva*. 4. ed. Brasília: Editora Universidade de Brasília, 2009 (reimpressão), p. 143.

50 WEBER, Max. *Economia e sociedade: fundamentos da sociologia compreensiva*. 4. ed. Brasília: Editora Universidade de Brasília, 2009 (reimpressão), p. 144.

and without position appropriation. They are conditioned by a system which is very strict and uniform of discipline and service control.

The Modern State is one of the main creations originally Western. In the European context that set up after the barbarian invasions, which caused the dissolution of the Roman empire. According to Paim⁵¹ one of the main characteristics of the Modern and Contemporary State is the presence of a bureaucratic administration, conceived in rational molds. This replacement occurred in Western, amending gradually, a non specialized operational mode by an officialdom politically guided and trained based on legal and rational regulations.

Starting from these ideas, which sustained the public administration, in the main European countries, based on legality, in rational and bureaucratic molds which exist today, Domingues⁵² notes that, in this idea, the State property, which now is public, is separated from its employees and governors. Idea that contrasts with a patrimonialism view of the State, where the positions and offices must be naturally explored by governors and employees, without distinction between private and public resources. Such resources are also originated from the exploration of those positions and offices in which the job did not require much effort, although it allowed to obtain several personal benefits.

It is observed that Brazil does not respect, or almost did not adopt, this rational administration form conceived by Weber. Historically, as mentioned, Brazilian public administration was based on patrimonialism, which is supported not by the administrative rationality but by the tradition. Living in a reality where a separation between public and private does not exist, this is the main reason, in this reality, why corruptive practices occur.

Stressed Leal⁵³ that, by the rational model of Max Weber, the State orders are political demonstrations, the reason why they hold national character. The power must be molded by a rational form, which is the law. The legality is what ensures the formal character of the administration of the power and the public administration, based on principles, aiming this way at the national security.

So arises the importance of the public ethics, precisely to follow the rational regulations, imposed to the Public Administration to be observed by its officials and in regard to the people related to it in the administrative context. If well established fulfilling the obligations, with strictly punishment of the offenders, they will be an efficient form to avoid and punish corruptive practices.

Based on foreign bibliography, Cortina⁵⁴ makes some notes about the “public ethics” expression, which is necessary to approach. Although the use of the term public ethics is common to refer exclusively to the behavior of institutions and people involved in political life and in public administration duties, for the author the use of that expression would be inappropriate and would even cause confusion. Any ethics in a pluralistic society will be aimed at publicity, to appear and express itself publicly, and also to serve the public. To Cortina, there would exist

51 PAIM, Antonio (Org.). *O patrimonialismo brasileiro em foco*. Campinas: VIDE, 2015, p. 17.

52 DOMINGUES, José Maurício. Patrimonialismo e Neopatrimonialismo. In: AVRITZER, et al. (Org.). *Corrupção: ensaios e críticas*. Belo Horizonte: Editora UFMG, 2012, p. 158.

53 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 48.

54 Aunque es cierto que en la vida corriente se hay introducido la expresión “Ética Pública” para referirse exclusivamente al comportamiento de las instituciones y personas relacionadas con la vida política y con el ejercicio de la Administración Pública, esa identificación es inadecuada y confusiva. En definitiva, cualquier ética que se presente en una sociedad pluralista tendrá pretensiones de publicidad, es decir, deseará presentarse en público, expresarse en público y servir para el público. Sólo que hay un tipo de ética específica de quienes ingresan en el mundo de la Administración Pública, a la cual convendría entonces denominar, para evitar confusiones, “Ética de la Administración Pública”, “de la Función Pública” o “del Servicio Público”.

only one specific type of ethics, which must be presented in the public administration, and to avoid confusion, should be called of one of the following ways: “Public administration Ethics”, “Public function Ethics” or “Public service Ethics”⁵⁵

There are disagreements in relation to the meaning and use of the term public ethics. It is observed that in the present study, it will be adopted the term Public Ethics, when referring to the principles and values which must be applied to the behavior of those who develop roles in the public service.

Public ethics would be the order considered fair and stable, in other words, the base of the social organization. It is the set of values, principles and also rights. It is the content of justice idea and the legal system that a society must have. Among the addressees of the public ethics are the authorities, law professionals, lawmakers, judges and officials, the same way, each person, considered a citizen.

In Cortina’s⁵⁶ words, ethics has a value in use, and not only personal, but also the organization ethics and the institutions of public life. To the author, it is correct to state that institutions and public organizations which work ethically acquire legitimacy and credibility to realize the tasks, which are obligations inherent in its mission, especially to the citizens, which are more and more conscious of public institutions roles.⁵⁷

To fight against corruption and reach the good public administration, it is necessary to establish in regulations, provisions of the behaviors which are considered ethical which must be adopted in the public sphere and also in the private sphere.

One of the formulas to fight against corruption in public administration, would be reinforcing public ethics and, as a consequence, recover the trust in institutions. Stressed Cortina⁵⁸ that the trust is acquired in our daily life, when trustworthy acts are realized. When the trust is present institutions are the ones benefiting from it, incorporating ethical habits, which form its character and that becomes part of its existence.⁵⁹

Ethics is considered an essential issue to Good Government and, on Mileski⁶⁰ words, it was from the end of the 90’s of the 20th century, that this matter started to indicate the necessity of implementing Ethical Codes in all governmental or administrative levels. Once again, the public ethics, in Cortina’s⁶¹ words is considered essential, a staple product in a public life. Without it the great institutions of the modern world and “post-modern”, which means, the State, the economy and the businesses, the professional and work activities, third sector or social sector, just do not work. It is a common sense that social relationships can be broken, although remain apparently working when the set of values is missing, such as credibility and

55 CORTINA, Adela. *Hasta um pueblo de demônios: ética pública y sociedade*. Madrid, España: Santillana/Taurus, 1998, p. 98.

56 Sin embargo, no es menos cierto que también la ética tiene un valor de uso, y no sólo la ética personal, sino también la ética de las organizaciones e instituciones de la vida pública, que es la que ahora nos importa. También es cierto que las instituciones y organizaciones públicas sólo si funcionan éticamente ganan la legitimidad a que deben hacerse acreedoras ante una ciudadanía cada vez más consciente de serlo y también la viabilidad, el permanecer realizando su tarea, que es la obligación a la que está ligada cualquier organización.

57 CORTINA, Adela. *Hasta um pueblo de demônios: ética pública y sociedade*. Madrid, España: Santillana/Taurus, 1998, p. 98.

58 El confianza no se confía, la confianza se gana a pulso en la vida cotidiana realizando actos dignos de ella, se la ganan las organizaciones e instituciones incorporando hábitos éticos, que van ya formando parte de su carácter, de su éthos.

59 CORTINA, Adela. *Hasta um pueblo de demônios: ética pública y sociedade*. Madrid, España: Santillana/Taurus, 1998, p. 101.

60 MILESKI, Helio Saul. *O Estado contemporâneo e a corrupção*. Belo Horizonte: Fórum, 2015, p. 145.

61 [...] la ética es un producto de primera necesidad en la vida pública, porque en ella las medidas jurídicas, con ser necesarias, resultan insuficientes. Lá ética es en la vida pública un producto de primera necesidad, en princípio, porque sin ella no funcionan las grandes instituciones del mundo moderno y “postmoderno”, es decir, el Estado, la economía y la empresa, las actividades profesionales y el “Tercer Sector” o “Sector Social”. Es público y notório que las relaciones sociales se quiebran, aunque em apariencia sigan funcionando, cuando faltan en ellas, prestándoles un soporte, los valores de credibilidad y confianza.

trust.⁶² Reinforces Gomes⁶³ that the ethical codes are documents that are supposed to meet requirements in the probity of the policy makers' behavior.

To Mileski⁶⁴, there must be a negative ethical, which contributes to eliminate abusive behaviors, fraudulents, prevaricators, which were previously standardized as administrative criminal offenses and violations. It must also be encouraged a positive ethical, in a sense of refreshing public service and its values, as well as the commitment with the tasks and functions of the public power.

Several countries have taken the initiative of developing their public ethical codes. The first reference is related to the Ethical Behavior Principles in the USA, since it is a country with a long experience in terms of ethical norms in public administration. By the decree number 12.731, of 1989, were established the Ethical Behavior Principles, in the following form: Legality, conflicting interests, honour, integrity, honesty responsibility, impersonality, impartiality, austerity, diligence, good Faith, objectivity and impartiality, exemplarity.

In Portugal⁶⁵ in the Portuguese Public Service Letter, are listed, as fundamental values of public employees: their actions performing in an exclusive interest of the service or the public interest; the neutrality in all the situations in which there are objectivity or impartiality; the responsibility; the competence related to the efficiency and integrity not to accept donations or any other type of present.

In the UK was published, in may 1995, Nolan Report⁶⁶, document considered essential for the discussion of the ethical behavior standards of the public officials, politicians, both parliamentarians and senior administration officials. Most of these recommendations were adopted and implemented in the UK, and currently are analysed and studied by universities around the world. The document approaches themes such as ethical responsibility, impartiality and public employees' corruption.

The seven principles of public life, recommended by the referred report are: public interest, integrity, objectivity, accountability (in a sense of accounting reports), transparency, honesty ad leadership. About each of them there are several references and situations presented by the text both related to the politicians and the public servants.

According to Perez⁶⁷ what is proposed against the lack of public ethics, as the seven famous principles of the Report which is called Mr. Nolan, is that, besides possible legal norms, mas be taken into account that any body creates its behavior code, in a clear way, and which must be precisely applied. So, it is necessary an effort of the public sphere in promoting the ethical formation of its employees and, finally, of implementing external oversight bodies.⁶⁸

Mileski⁶⁹ mentions that the Organization for the Cooperation and Economical Development (OCDE), by proposal of the public management Committee, in 1996, made

62 CORTINA, Adela. *Hasta um pueblo de demônios: ética pública y sociedade*. Madrid, España: Santillana/Taurus, 1998, p. 98-101.

63 GÓMES, Santiago Roura. Alguns aspectos-chave do combate à corrupção na Administração Pública. In: MENDES, G.F.; BRANCO, P.G.G. *V Seminário Internacional de Direito Administrativo e Administração Pública - Tendências da Administração Pública - Escola de Administração de Brasília - IDP*. Série IDP Eventos. Brasília, 2016, p. 173.

64 MILESKI, Helio Saul. *O Estado contemporâneo e a corrupção*. Belo Horizonte: Fórum, 2015, p. 145-147.

65 PORTUGAL. *Diário da República* – I – Série B. Nº 64, 17-3-1993. Páginas: 1272- 1273. Disponível em: https://www.isa.ulisboa.pt/files/daf/nrh/pub/docs/enquadramento-legal/18_93.pdf. Acesso em: 30 abr. 2017.

66 NOLAN, Lord. Normas de Conduta para a vida pública. *Cadernos ENAP, nº 12*. Fundação Escola Nacional de Administração Pública. Normas de conduta para a vida pública. 1997. Disponível em: <http://antigo.enap.gov.br/index.php?option=content&task=view&id=258>. Acesso em: 04 abr. 2019.

67 Ante esta situación, partiendo de los siete famosos principios del Informe que lleva su nombre, Lord Nolan proponía que, al margen de las posibles normas legales, se siguieran las siguientes vías: - Que todo organismo establezca su código de conductas, claras y precisas, que hay que hacer cumplir. -Que se esfuerzen en la formación ética de los funcionarios. - Y, por último, la implantación de unos órganos de control externo.

68 PÉREZ, Jesús Gonzáles. *Corrupción, ética y moral en las administraciones públicas*. 2. ed. España: Thomson Reuters, 2014, p. 50.

69 MILESKI, Helio Saul. *O Estado contemporâneo e a corrupção*. Belo Horizonte: Fórum, 2015, p. 148-149.

a series of recommendations for the countries that integrate it, adopt measures to control the proper functioning of the institutions, seeking to foster a behavior in accordance with the public service ethic.

Within the European Union, as part of the overall reform of the administration, started in 1995 and accelerated in 1999, the following three behavior codes were edited: the Code of Commissioners, the Services Code and the Officials Code, which is the European Code of Good Administrative Behaviour.

Regarding the Code of Commissioners, it should be stressed that the European Commission is the executive body of the Union, composed of a Commissioner appointed by the EU Member State. It has a President who holds the place of the Commissioner of his country in the Commission, who submits the approval of the European Parliament to his policy. All Commissioners are questioned by Parliament before the European Commission is formally appointed.

The Code of Commissioners is a Code of Governors and is thought for its political performance. It provides the activities which are allowed, publishing rights and copyrights, gift rules, compensations, conflicts of interest, confidentiality and tasks rules. While the Code of Services seeks to regulate relationships between Commissioners and their offices, establishing loyalty and trust as principles and ensuring the full political responsibility of the Commissioners.

According to Mileski⁷⁰, the European Code of Good Administrative Behaviour, on the other hand, was endorsed by the European Parliament on 6th September 2001 to be applied by the institutions and bodies of the European Union, as well as their administrations and respective officials. The listed principles presented in it are: Legality; Equality; Proportionality; Equity; Absence of abuse of Power; Impartiality and Independence; Objectivity; Legitimate expectations, Coherence and advisory; Politeness; Reasonable time decisions adoption; Motivation of decisions; Indication of possibilities of appealing; Data protection; Conservation of appropriated records.

For Muñoz⁷¹ the UN is working to spread the access facility, implement policy investigations on how to foster ethics and fight against corruption in the public sphere. And in a document of hers, entitled the Millennium Declaration on Public Administration, were also presented provisions that refer to a Good Government, democracy, the improvement to provide basic social services, an administrative reform, integrated planning, citizen participation in decision-making, decentralisation, transparency, accountability and corruption.

The importance of seeking for public ethics lies in the sense that unethical behaviors end up corrupting the functioning of public bodies and also affect the image of the institution where corruption is practiced. This situation is considered common in governments and also in public administration. Reinforces Bautista⁷² that when ethics is present, corruption of values is disapproved by others, because they are badly seen practices, considered improper by those who adopt an ethical behavior, because there are people illegally benefiting.⁷³

Brazil has several documents dealing with the theme of Public Ethics, especially the Code of Professional Ethics of the Public Official of the Federal Executive Branch and the

70 MILESKI, Helio Saul. *O Estado contemporâneo e a corrupção*. Belo Horizonte: Fórum, 2015, p. 150-151.

71 MUÑOZ, Jaime Rodríguez-Arana. *Direito fundamental à boa administração pública*. Belo Horizonte: Fórum, 2012, p. 123-125.

72 Cualquier actitud basada en antivalores corrompe el funcionamiento de los organismos públicos, situación común en distintos gobiernos y administraciones públicas. Con fundamento en la ética, la corrupción de los valores es mal vista, ya que se compone de una serie de actos indebidos por parte de personas que se benefician de manera ilegal e ilegítimo, con el añadido de afectar a la imagen de la institución donde ésta se practique.

73 BAUTISTA, Oscar Diego. *Ética pública y buen gobierno: fundamentos, estado de la cuestión y valores para el servicio público*. Toluca: Instituto de Administración Pública del Estado de México, 2009, p. 139.

Code of Behavior of Federal High Administration. According to Leal⁷³ are considered the main aspects of regulation of these Codes of Ethics: a) Misuse of public office; b) Illicit enrichment in the exercise of the function – sponsorship of private interest regarding public administration (influence peddling); c) Violation of confidentiality; d) Use of privileged information; e) Provision of advice for private entities; f) Professional activity in parallel with the civil service; conflict of interests; g) Limitations for professional activities subsequent to the position held; h) Acceptance of gifts; i) Use of public resources and servers in private activities; j) Appropriation of funds or public material assets, among others. The basic norms for the protection of the rights of administrators, aiming at the best fulfilment of the public purposes, are provided in Law 9.784 of 29/01 of 1999, which regulates the administrative process within the Federal Public Administration.

Brazil has the assets declaration of the public servers in general. The law nº 3.164, from 01/07/ 1957, which is considered an important tool for the protection of public ethics. It instituted the mandatory public registration of values and property belonging to the private property of those who hold public positions in the Union, municipal entities, elective or not. Law 8.730, from 10/11/93, also establishes mandatory of all political agents and members of the judiciary and the Public Prosecutor's Office of the Union – that submit declaration of assets, indicating sources of income, at the time of possession and at the end of each financial year.

Leal⁷⁴ highlights the need to create institutional and social instances to give effectiveness to regulatory frameworks of Public Ethics, such as ethics committees, accounting offices, internal affairs office, among others. With these institutions, effective mechanisms of control and monitoring of Public Ethics were created, such as: audits, inspections, monitoring, performed by internal and external control agencies.

The idea of always attending to general interests is that it should govern the actions of anyone who performs a public function, both the authority, the civil servant or the politician. They serve the State and other public entities and not some kind of political or economic bias. In this line of argument, Pérez⁷⁵ stresses that programs of public ethics should be developed according to the concept of service performance, highlighting that the official is serving the collective.⁷⁶

And according to Cortina⁷⁷ the discredit that happens in institutions, due to the occurrence of corruption practices, is not only immoral or illegal, but demoralizes, and, what the author calls “take the mood”, in the medium and long term, of the society considered as a whole. In a discouraged and apathetic society, it is not possible to build anything solid.⁷⁸

In the words of Leal⁷⁹, corruption can reach any situation, phase or variable of the work processes, decision-making process and even executives of the institutions. Corruption can be present from the request to carry out the processes, to the conception and planning of them, as

73 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 65.

74 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 65-66.

75 La idea de servicio de los intereses generales debe presidir la actuación de cualquiera que realice una función pública, autoridad el funcionario, político el empleado. Están al servicio del Estado y otras entidades públicas y en el de “parcialidad política o económica alguna”, en palabras de la Ley venezolana contra la corrupción. Consecuentemente, los programas de Ética pública se elaboran sobre la idea de servicio, tratando de inducir la idea de que el funcionario está al servicio de la colectividad.

76 PÉREZ, Jesús Gonzáles. *Corrupción, ética y moral em las administraciones públicas*. 2. ed. España: Thomson Reuters, 2014, p. 157.

77 Ciertamente que si el engañado es débil, en indignación o en desidia queda su desacuerdo, porque el derecho es eficaz sólo en manos de los poderosos. Pero no es menos cierto que este paulatino descrédito de las instituciones no sólo es inmoral, no sólo es ilegal, sino que desmoraliza, roba el ánimo al medio y largo plazo a la sociedad en su conjunto, y en una sociedad desanimada no puede emprenderse nada sólido.

78 CORTINA, Adela. *Hasta un pueblo de demônios: ética pública y sociedade*. Madrid, España: Santillana/Taurus, 1998, p. 99.

79 LEAL, Rogério Gesta. *Patologias corruptivas nas relações entre Estado, administração pública e sociedade: causas, consequências e tratamentos*. Santa Cruz do Sul: EDUNISC, 2013, p. 69.

well as in their preparatory phases, in the execution, and even, when the results are presented.

Therefore it is demonstrated how necessary it is to fight against corruption, through codes of public ethics, which establish what behavior should be adopted for those who work in public administration and also for those who, at some point, are related to it. Moreover, it is predominant that those who engage in deviant behaviour must have exemplary punishments, established in the referred codes, since impunity fosters corrupt behaviour and brings even more discredit and distrust to the institutions.

5 CONCLUSIVE NOTES

Corruption occurs since the beginning of national history, as it happened practically at all times, including during the years of military Dictatorship. It is observed that in this historical period, due to the imposition of censorship, there was no access to information about its occurrence, some situations only came to be publicized by a circumvention of the press.

The patrimonialism, which was the model of state organization, adopted in the country, certainly, can be considered one of the historical causes of corruption in the national Public Administration. As demonstrated in the present study, there is not in this model, the adoption of legal and rational codes in public management, because tradition prevails, where there is a lord and his companions (resembling the role of subjects) who owe him favors and obedience, who holds political and economic power. In this way, corruption presents itself as a behavior that degrades the public interest in favour of the private. Another aspect that characterizes negatively the Brazilian public administration is that culturally it did not stimulate meritocracy.

Brazil does not respect, or little adopted, a rational form of public management conceived by Max Weber. Historically, the Brazilian public management was based on patrimonialism, which is based not on management rationality, but on tradition. Living in a reality where “confusion” between the public and the private, is precisely this reality that enhances the occurrence of corruptive practices.

By Max Weber’s rational model, state orders are manifestations of political power, so they have a rational character. Power must be shaped by a form of rationality, which is the law. Legality is the one that ensures the formal quality of power administration and of the Public Administration, based on principles, aiming at social security. Here is the importance of public ethics, precisely of following the rational regulations, imposed for the Public Administration to be observed by its servers and in relation to the people who relate to it, in the administrative context. If well established with the fulfillment of their determinations, with strict punishment to their transgressors, they will be an efficient way of avoiding and punishing corruptive practices.

Public ethics constitutes itself as being the order considered fair and stable, which is, the basis of social organization. It is the set of values, principles and also rights. It is the content of the idea of justice that the legal order of a society must have. Among the addressees of public ethics are authorities, law professionals, legislators, judges and officials, and likewise, every person, considered as a citizen.

In order to fight against the evil of corruption and to achieve good public administration, it is necessary to establish, in regulations, provisions of ethical conduct that must be adopted in the public and private spheres. Countries that adopt codes of public ethics, some used even as a reference for other countries, were mentioned and pointed out in the present study, which now concludes, some of its main aspects. It is possible to stress that, all these codes of public ethics, adopted, mainly in European countries, have in common, as their main objective, to establish public ethics, for who works and relates with it, and also determine effective punishment for when corrupt practices occur.

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