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RESEARCH ARTICLE

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NEW OUTLINES OF DEMOCRATIC RULES AT THE BRAZILIAN SCENARIO

^{1,*}Romano Deluque Júnior, ²Cesar Augusto Marton, ³Michely Thaina Orosco de Rodighero, ⁴Kaíque Ximenes Teixeira, ⁵Elizeu Gonçalves Amorim and ⁶Zilda Isabel Orosco de Zorze Rodighero

¹PHD student of the Postgraduate Program in Psychology at Universidade Católica Dom Bosco (UCDB), Researcher on Issues such as Prejudice and Democracy; ²Master student of the Postgraduate Program in Psychology at Universidade Católica Dom Bosco (UCDB); Researcher on Issues such as men's health and longevity; ³Psychology student at Universidade para o Desenvolvimento do Estado e da Região do Pantanal (UNIDERP); ⁴Civil Engineer graduated by the Faculdade Mato Grosso do Sul (FACSUL); ⁵Psychology student at Universidade para o Desenvolvimento do Estado e da Região do Pantanal (UNIDERP); ⁶Master's degree in Science of Religion from Faculdade UNIDAS

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*Corresponding author:

Romano Deluque Júnior

ABSTRACT

In a free, and often democratic, rule of law, the phenomenon of corruption emerges as a corrosive agent of the political-society link. On the national scene, political corruption gives rise to a state of distrust on the part of society over an entire class. And from the disbelief of a people with their elected representatives, the protagonism of the judiciary rises, and from this weakening of political institutions, the tendency to judicialize life is amplified. The purpose of this article is to propose a debate about the judicialization of politics, judicial activism, as well as their interrelations with the theme of corruption. As a theoretic research, which seeks to discuss issues related to the role of the judiciary as an institutional power, as well as the alterities in the socio-political reality that emerged from the latest legal and social events of great repercussion in the national scenario.

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INTRODUCTION

From the disbelief of a people with their elected representatives, the leading role of the judiciary arises. Never before in national history, popular views, now endowed with sharp cutting power, have turned to decisions made by judges, courts, and higher courts. What we want to say is that decisions of political, social and moral issues of great relevance, which in the past would have been resolved by traditional political instances, such as the executive and legislative, are now prostrate to be appreciated by the judiciary. This is judicialization, a real challenge for an institutional power that, until a few years ago, lived fortunately out of the spotlight. Football is set aside a little and turned on to TV Justiça. The same goes for carnival. In a free and rule-of-law Democratic State, the phenomenon of corruption often emerges as a corrosive agent of the political-society link

(ENGELMANN, 2017). Originating in the Latin *corruptio*, it refers to the explosion of a fruit due to its internal rot (FERREIRA FILHO, 2001). The fact is that, as its etymology adds, corruption acts as a threat to the State and to society, it still has a nature that transcends the agent that commits it, which ends up sabotaging the very foundations of democracy. This democracy, which in turn is built on the basis of a high ideal model, whose virtue is claimed by man (FERREIRA FILHO, 2001). What is more, it assumes that the people choose their own representatives, and this act of choosing, it should be noted, is not based on any other attribute than the qualities of the candidate as well as his nod to virtue and honesty. As can be seen, the theme is complex and demands clarification. Judicial activism, in turn, is not a fact, but an attitude (BARROSO, 2009). It represents the choice of a " [...] specific and proactive way of interpreting the Constitution [...]" (BARROSO; OSÓRIO, 2018, p. 1). It is mainly related to acts of personal interpretation of the judge when the

guidelines are not expressed in the legislative text. In Brazil, there are few initiatives that attempt to clarify this issue (TASSINARI, 2013). The problem runs through the discussion about the extent to which political foundations should affect judicial decisions. It is clear that every judicial decision is, in some way, supported by a political reality in which the magistrate is inserted, however, what we aim to discuss is ethical conduct, in an Aristotelian sense, in the face of an eventual partisanship in the decision-making process decisions by the magistrate. The theme, coupled with the national reality of discrediting the political class due, in part, to the latest corruption scandals, makes the conceptual task itself acquire very peculiar nuances in the face of the new democratic scenario that is presented to us. From this weakening of institutions and political bodies, life is legalized. (BARROSO; OSÓRIO, 2018). In Brazil today, it is not necessary to look far beyond the horizon to realize that the relationship of the people with their democratically elected representatives is weakened, this is not new. Nor is it, with forgiveness for judgment, unjustified. Corruption scandals such as the Mensalão and those exposed by Operation Lava Jato, made, in fact, the Brazilian realize that there is something very wrong in a society where the taxes collected are often divided "internally", bids, constantly defrauded, and corruption, a real stigma inherent in the political class. Judging by the most recent social manifestations, today in Brazil, it is already known that the political order must aim at the good of the people, and the elected politician, as an instrument of that order, exists at the service of that people (MICHNER; PEREIRA, 2016). Collections began. The bill always arrives.

MATERIALS AND METHODS

The purpose of this article is to propose a debate on the theme of the judicialization of politics, judicial activism, and the appropriate interrelationships around the problem of corruption. The analysis of such legal and social phenomena will take place in light of the political, legal and social events that have recently emerged in our national reality. Therefore, the role of the proactive judge and his limits of judgment will also be discussed, as well as the new nuances of the democratic game that are established in the national political scenario.

RESULTS AND DISCUSSION

A Wake Up More Than Late: When we make a prelude to the history of a nation, we often refer to a past more or less distant from our recent social reality. We do not conceive, most of the time, that history may be being written in the here and now. History is what is in the books, so we think. A fine mistake. It's not just for 20 cents! The haughty crowd shouted on Avenida Paulista in mid-June 2013, in a demonstration that took shape, with very rare exceptions, in all capitals of the country. As we recall, it was an event of pharaonic proportions, whose energy and reach has not touched on since the impeachment of ex-president Fernando Collor. It was very likely that the era of tolerance for corruption and the unpunished indifference of politicians towards their governors was coming to an end. A sharp rejection against the deafness of a State (BUCCI, 2016). According to Eugênio Bucci (2016, p. 11), "street protests spread throughout the country like a fire that made the ground crackle, transforming the empathy of official proselytism into ashes, and the demagogic lero-lero of conventional oppositions into smoke." The blow hit the heart of the federal government's speech, which faltered in a stilted manner and without knowing what to do. Three years later, in 2016, the impeachment came and the president fell apart. The period of government of the Workers' Party, which at the end of exactly thirteen years and five months of government, had ended in substantial disrepute before society. Despite screams such as "our flag will never be red", in clear reference to the colors of the governing party, the origin of national sentiment was much more profound, referring to the change of one, if it can be called, conscience collective, in the form of a big enough to the old way of doing politics, and to the political entities of the current establishment (SANTOS, 2013). More than that, it was a cry against government

blindness, political cynicism, the culture of the gift gift or the take over. The Brazilian, at last, had awakened.

However, What Means Corruption?: The phenomenon refers to antiquity, and in no case is it inherent only in modern times (NOONAN, 1987). It has its origin in the term, in Latin, *corruptio*, which symbolizes that which rots from the inside out. It is a phenomenon that emerges in all places, cultures and times (FERREIRA FILHO, 2001). It is possible to verify that the investigation about the phenomenon is out of date. Much is said, but little is deepened in this theme, which covers an enormous diversity of acts. Corruption can, in a pragmatic way, mean different types of conduct, such as "[...] cheating, scam, deception, illicit gain, embezzlement, concussion, forgery, loot, fraud, bribery, embezzlement, extortion, nepotism and others" (BREI, 1996, p. 65), which makes the task of giving it a concept that is definitive quite complex. The act can consist of small behavioral deviations and even go to government levels of illicit conduct. In all spheres, such conduct ends up flirting with illegality and with its own benefit to the detriment of the norm and the common good (NOONAN, 1987). It is worth saying that corruption is measured based on the conduct of those who practice it, that is to say, in the face of the same act, a particular practice can be considered more, or less serious, when the agent who conducts it is in focus. For example, "[...] a civil servant who meets your affiliations is nepotistic. The same action, however, practiced by a politician, is more socially accepted, and he may even be more admired as a competent politician" (BREI, 1996, p. 65). This equation certainly enters the understanding that society has, about what is, and what is not, morally accepted, within clear, of the time and space that, at that moment, it is inserted.

A final definition seems distant, but one thing seems certain: as much, or even more than the law and the norm, the concept of corruption depends on the popular understanding that, at that moment, is about the practice of the various acts that make up its conceptual matrix. . The positive starts to give space to the morally accepted (FRIEDRICH, 1966; NOONAN, 1987). What today is considered immoral and corrupt is certainly not the same as it was taken twenty years ago. The fact is that the delineations around the word corruption seem to vary, which does not mean, however, a total surrender to the subjectivism of popular opinion. When an ethical judgment is enunciated, through speech or conduct, "" one is not neutral or indifferent: one evaluates, approves, disapproves, expresses an attitude for or against" (BREI, 1996, p. 75), therefore, what appears is that the analysis and evaluation of corruption are subject to a judgment that is also, certainly, of a moral nature. As historical beings, we are linked to ideas of value that are, a priori, passed on through traditions (GADAMER, 1997) and language in a complex hermeneutical circle of exchange of information and knowledge. Such ideas come to guide popular thought and imagination, which inevitably ends up influencing the positivation and development of the legal norm itself.

CONCLUSION

More than discussing the problem of corruption for academic and conceptual purposes, the relevance to which the theme deserves reflects very pragmatic needs. It is, therefore, a problem of global scale, and causes effects in the most varied social spheres. Because of her lack of money. We still need to invest in actions and assistance policies for the least favored and under-served, because at the end of the day, they are the ones who pay the most expensive bill and those who have the lowest voice. The phenomenon of corruption also causes an excess. So there is cynicism, immorality, and illegality. Concepts that, although abstract in their roots, have very real consequences. The cynicism is there, pretending, pretending not to see. With it, it is possible to look at one side while the bribe passes through the other, and in the end, nothing was seen. Immorality is also right there, therefore dwelling within the limits of legality. It is in aid-change when it does not, in fact, change, it is there in the supersalaries and in the indemnity funds that extravagantly extrapolate any limit concerning the reality of the average Brazilian.

And finally, there is illegality, which focuses on criminal attitudes of embezzling money, receiving and paying bribes, and on so many other acts that violate the legal system and the concept of good morals. In this context, the judiciary therefore emerges as the guardian of the constitution and legal norms, and must respect them even if it has to make unpopular and countermajoritarian decisions. It is an attitude in favor of democracy and society, and based on a moral feeling that, it is supposed, is based on ethical principles concerned with the common benefit. To act in favor of the dignity of the human person and in defense of constitutional principles sometimes means to contradict the political opinion and popular will of that moment. It is a question that transcends the science of law from mere positivism and makes it flirt with a true Aristotelian ethic towards the common good.

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