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CITIZENSHIP AND ANTI-CORRUPTION IN BRAZIL: ON THE NECESSARY CONNECTION BETWEEN POLITICAL CULTURE AND INSTITUTIONAL DEVELOPMENT

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ABSTRACT: This article analyzes the trajectory of institutional and legislative advances in Brazil as ways of overcoming the social pathology of corruption and as a way of expanding the concept of citizenship. Considering the complexity of the theme, the scope of the study includes, at first, the understanding of the concept of citizenship and its connection with fundamental rights from the theory of recognition. In the wake of this analysis, it will be possible to realize that corruption works as a social pathology that prevents the development and realization of citizenship. The feeling of injustice is a catalyst for institutional changes in the sense of expanding the concept of citizenship from the institutionalization of advances in the control and fight against corruption.

KEYWORDS: Citizenship; recognition; corruption.

CIDADANIA E COMBATE À CORRUPÇÃO NO BRASIL: SOBRE A CONEXÃO NECESSÁRIA ENTRE CULTURA POLÍTICA E AVANÇOS INSTITUCIONAIS

RESUMO: O presente artigo analisa a trajetória dos avanços institucionais e legislativos no Brasil como formas de superação da patologia social da corrupção e como forma de ampliação do conceito de cidadania. Tendo em conta a complexidade do tema, o âmbito do estudo inclui, em um primeiro momento, a compreensão do conceito de cidadania e de sua conexão com os direitos fundamentais a partir da teoria do reconhecimento. Na esteira dessa análise será possível perceber que a corrupção funciona como patologia social que impede o desenvolvimento e concretização da cidadania. O sentimento de injustiça é um catalisador de mudanças institucionais no sentido de ampliação do conceito de cidadania a partir da institucionalização de avanços no controle e combate à corrupção.

PALAVRAS-CHAVE: Cidadania; reconhecimento; corrupção.

1. Introduction

Since the re-democratization in the 1980s, whose landmark is the Federal Constitution of 1988, Brazil has been experiencing a continuous process of opening and affirming rights. The country adhered to the main international guidelines and agendas and sought, in addition to its symbolic and political value, to promote structural changes at both the institutional and regulatory levels.

The cases of corruption that have been revealed in recent decades in different contexts have always been characterized by the inability of institutions to respond effectively. Impunity has long been a hallmark. The reasons for this are attributed to several factors, such as the lack of adequate investigative equipment, obsolete legislation (ALENCAR, 2015, p. 200), and lack of independence[1] and commitment and cooperative spirit of some State institutions,[2] the public procurement regime and the low level of control and transparency.[3]

In this context, the aim of this article is to analyze the trajectory of institutional and legislative advances in Brazil as ways of overcoming the social pathology of corruption and as a way of expanding the concept of citizenship in the light of recognition theory. Considering the theme's complexity, the scope of the study includes, at first, the understanding of the concept of citizenship and its connection with fundamental rights from the theory of recognition. In the wake of this analysis, it will be possible to realize that corruption works as a social pathology that prevents the development and realization of citizenship. The feeling of injustice is a catalyst

1 Independence of institutions is an essential factor to avoid political capture, mainly in a multi-institutional environment, such as Brazil, where the CCC Index Report of 2022 – Capacity of Combating Corruption – recently has affirmed that there was a reduction in the level of the anti-corruption institution's independency (WINTER; AALBERS, 2022, p. 26).

2 One of the characteristics of the accountability system (which addresses corruption combat) in Brazil is its multi-institutionality. That is, several institutions (as will be shown below) monitor, investigate, and sanction corrupt acts. In this sense, cooperation in the form of coordinated interaction between institutions is essential to avoid gaps and overlaps (MACHADO; PASCHOAL, 2016, p. 20). In the Brazilian case, although there are cooperation and coordination mechanisms, including monitoring institutions sharing information with institutions with investigative powers, joint investigative efforts, and formal cooperation agréments, the existing coordination efforts are not homogeneous, do not necessarily result in higher rates of punishment (ARANHA, 2020, p. 108). This situation could end up creating an appearance of accountability, that is, the mere appearance of accountability that reinforces a systemic corruption equilibrium (PRADO; PIMENTA, 2021, p. 74).

3 Considering a broader concept of transparency constituted by three different phases: the creation of information, publication, and public access, researches show that transparency in Brazil (also analyzing the Brazilian procurement regime) transparency is not so transparent after all and failed to curb corruption (MARTINEZ, 2018, p. 302).

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for institutional changes in the sense of expanding the concept of citizenship from the institutionalization of notable advances in the control and fight against corruption.

2. Concept of citizenship and Axel Honneth's Theory of Recognition

Citizenship is one of the foundations of a democratic rule of law. In its most restrictive sense, it establishes political rights as the basis for participation in the process of public formation of the will. Since Marshall (1950), however, this concept has been understood more broadly. It analyzes the evolution of the concept of citizenship from its connection with the historical realization of human and fundamental rights. In this sense, citizenship would embrace, in addition to political rights, the exercise of freedom (autonomy), as well as the realization of civil and social rights (WERMUTH; ROCHA, 2008, p. 147).

Honneth (2003a) develops this concept from his theory of recognition, laying the foundations of the broader contemporary concept of citizenship. According to the author, the subjects of law need to be able to develop their autonomy so that they can rationally decide on moral issues. Here, Honneth has in mind the tradition of fundamental liberal rights and subjective law in post-traditional conditions, which indicate the direction of the historical development of law (HONNETH, 2003a, p. 190). The struggle for recognition should then be seen as a pressure, under which permanently new conditions for participation in the public formation of the will come to the fore. Honneth strives, naturally influenced by Marshall's writings, to show that the history of modern law must be reconstructed as a process aimed at expanding fundamental rights. Honneth, however, reinterprets Marshall's historical reconstruction from his theory of recognition: social actors can only develop the awareness that they are people of law and act consequently at a time when a form of legal protection against the invasion of the sphere of freedom arises, which protects the chance of participation in the public formation of the will and that guarantees a minimum of substantive goods for survival (HONNETH, 2003a, p. 190). Honneth maintains that the three spheres of fundamental rights, historically differentiated, are the foundation of the form of recognition of the right. Therefore, recognizing one another as legal entities means much more than at the beginning of the formation of the State: the form of recognition of the right includes not only the abstract capacities of moral orientation but also

the concrete capacities necessary for a dignified existence (HONNETH, 2003a, p. 190), in other words, the sphere of legal recognition creates the conditions that allow the individual to *develop self-respect* (*Selbstachtung*) (HONNETH, 2003, p. 194).

According to the author, the identity of the subject is constituted by intersubjective recognition in three spheres: the sphere of love, in personal relationships with an affective bond; the legal-moral sphere, in relations of law and self-respect; and the sphere of social esteem, in relations of solidarity (HONNETH, 2003b, p. 155).

The first sphere of recognition, love, corresponds to the forms of disrespect defined by Honneth as *mistreatment (Mißhandlung) and rape* (*Vergewaltigung*). In this form of disrespect, the component of the attacked personality is that of psychic integrity; that is, it is not directly the physical integrity that is violated, but the *self-respect (selbstvertändliche Respektierung*) that each person possesses of their body and that is acquired through the intersubjective process of socialization originated through affective dedication[4] (HONNETH, 2003a, p. 214). These cases of disrespect are identified, for example, in domestic violence, femicide, among other types of family violence.

The form of recognition of the law corresponds to the form of disrespect *entitled to deprivation of rights* (*Entrechtung*). In this sphere of recognition, the component of personality that is threatened is that of social integrity. Here too, disrespect refers to a specific type of self-relationship, namely self-respect. Central to Honneth's analysis of forms of disrespect is the fact that all kinds of violent deprivation of autonomy should be seen as linked to a kind of feeling. The feeling of injustice plays an important role in Honneth's analysis of the law (HONNETH, 2003a, p. 216). However, although he emphasizes at first the role of the feeling of injustice, soon after his analysis begins to consider a type of cognitive respect of the capacity of moral responsibility, which a social actor experiences in a situation of legal disrespect. Therefore, what it means to be the ability for the moral responsibility of a person must be measured in the degree of universalization and also in the degree of realization of the right (HONNETH, 2003a, p. 216).

In the case of the form of recognition of the right, the general properties of the human being are highlighted. In the case of social value, the properties that make the individual different from the other, that is, the properties of its singularity, are highlighted. Honneth, therefore, assumes that the third form of recognition, namely

4 To better understand Winnicott's psychoanalysis: WINNICOTT (2018); WINNICOTT (1991).

the *Community of Values or Solidarity*, must be considered a normative type to which the various practical forms of *self-esteem* (*Selbstschätzung*) correspond. Honneth does accept what Hegel and Mead consider the condition of this pattern of recognition, as both authors are convinced of the existence of a value-sharing and intersubjective horizon shared by all members of society as a condition of the existence of the form of relationship Honnet calls *solidarity*. The author seeks to show, on the contrary, that with the transition from traditional society to modern society arises a type of individualization that cannot be denied. The third sphere of recognition should then be seen as a social means from which the differential properties of human beings come to the fore in a generic, binding, and intersubjective way (HONNETH, 2003a, p. 197).

Hence, for Honneth, within groups and their intersubjective relationships, the forms of interaction usually assume the character of solidary relations because every member of the group knows to be esteemed by all others in equal measure. Then, for Honneth, "solidarity" can be understood as a kind of interactive relationship in which the subjects take reciprocal interest in their different ways of life since they esteem each other in a symmetrical way (HONNETH, 2003b, p. 209).

Honneth identifies a second level of this third sphere of recognition (Solidarity). At the level of social integration, there are values and objectives that work as a reference system for the moral evaluation of the personal properties of human beings and whose totality constitutes the cultural self-understanding of a society. The social evaluation of values would be permanently determined by the moral system given by this social self-understanding. This sphere of recognition is linked in such a way in community life that the capacity and performance of community members could only be evaluated intersubjectively (HONNETH, 2003a, p. 197).

As in the case of legal relations, Honneth analyzes the transition from traditional to modern society as a kind of structural change of this third sphere of recognition: as soon as the hierarchical tradition of social valorization progressively becomes dissolved, the individual forms of performance begin to be recognized. Honneth assumes that a person develops the ability *to feel valued* only when their individual abilities are no longer evaluated in a collectivist way. It follows that an opening of the value horizon of society to the various forms of personal self-realization occurs only with the transition to modernity.

Due to this structural change, however, there is, at the center of modern life, a permanent tension, a permanent process of struggle, because in this new form of

social organization, there is, on the one hand, an individual search for various forms of self-realization and, on the other, the search for a system of social evaluation (HONNETH, 2003a, p. 204). This kind of social tension that permanently oscillates between the expansion of an evaluative pluralism that allows the development of the individual conception of a good life and the definition of a moral background that serves as a reference point for the social evaluation of morality makes modern society a kind of arena in which a struggle for recognition develops uninterruptedly: the various social groups need to develop the capacity to influence public life so that their conception of good life finds social recognition and then become part of the system of moral reference that constitutes the cultural and moral self-understanding of the community in which they are inserted.

Moreover, with the process of individualization of forms of recognition arises in this sphere of recognition, the possibility of a specific type of self-relationship: self-esteem (*Selbstschätzung*). Solidarity is linked in modern society to the condition of symmetrical social relations of esteem among autonomous individuals and to the possibility for individuals to develop their *self-realization* (*Selbstverwirklichung*) (HONNETH, 2003a, p. 209). The symmetry here means that social actors acquire the possibility of experiencing the recognition of their abilities in a non-collectivist society.

For Honneth, therefore, citizenship must be understood as broadly as possible: it depends on the social and institutional embodiment of the spheres of recognition, which are expanded each time a new space for the realization of freedom is identified. The author argues that, however, the historical process of the spheres of recognition and the development of moral consciousness is not linear: there are social and institutional pathologies that can put at risk, prevent the realization of fundamental rights, and generate setbacks. In what follows, we will show that corruption is one of these factors which puts at risk the realization of citizenship.

3. Corruption as a social pathology

According to Honneth (2003b, p. 94-211), for social actors to develop a positive and *healthy self-relationship* (*Selbstbeziehung*), they need to have a symmetrical chance to develop their conception of a good life without suffering the symptoms of pathologies arising from experiences of *disrespect* (*Mißachtung*). Because the experience of recognition always corresponds to a positive form of *self-relationship* (*Selbsterfahrung*),

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Honneth assumes that the content of what is disrespect must be implicitly linked in individual claims by recognition: if and when the social subject makes a recognition experience he acquires a positive understanding of himself; if and when, on the contrary, a social actor experiences a situation of disrespect, consequently, his positive self-relationship, acquired intersubjectively, falls ill.

To make his theory plausible, Honneth needs, consequently, to find in social history traces of a negative tripartite typology of the structure of recognition relationships. This negative typology must fulfill two tasks: (1) for each sphere of recognition relationship should arise a negative equivalent, with which the experience of disrespect can be clarified, following the structure of the form of corresponding recognition; (2) the experience of disrespect should be anchored in affective aspects of the human being so that their motivational capacity to trigger a struggle for recognition comes to light.

These cases of disrespect are connected to personal situations, that is, circumstances in which a person is not understood as a subject of law and is denied basic rights that are available to other members of the community. Here we could cite formal situations of exclusion of rights, such as the lack of recognition by the right of homoaffective marriage, but also more complex situations in which a person appropriates the rights of others for personal benefit. In other words: a person enjoys a social situation of such privilege that his actions, contrary to the law, are not perceived as such. In circumstances like these, law enforcement alone generates inequality. This situation generates a feeling of widespread injustice since the law that should be valid for all and be an instrument of justice ends up being an instrument of inequality.

This is what happens with corruption. Corruption is nothing more than the circumstance in which a person understands that he can appropriate goods and values without following the same rules as the other. The corrupt person understands that they can seek their objectives and appropriate assets that would have a public use, in the case of state funds, or assets and values that should be used in the interest of the organization in the case of corruption in the private sector. In all cases, what is wrong is the fact that this person seeks to use legislation to deprive others of their rights and generate for himself a competitive advantage, a privilege. Given that this situation violates the sphere of recognition of law, this generates indignation and revolt, and this pressures the institutions to establish measures that correct this distortion.

Finally, the form of recognition of solidarity corresponds to the form of *disrespect as moral degradation* (*Entwürdigung*) and *injury* (*Beleidigung*). Honneth understands that

the dimension of the threatened personality is that of *dignity* (*Würde*). The experience of disrespect must be found in the degradation of *self-esteem* (*Selbstschätzung*); that is, the person here is deprived of the possibility of developing a positive esteem of himself (HONNETH, 2003a, p. 217). To clarify the forms of disrespect, Honneth adopts the psychoanalytic concept of pathology.[5] All these forms of disrespect are, therefore, a form of pathology.

Honneth characterizes the process of expanding the spheres of recognition as a learning process that could clarify, at the same time, the differentiation of the spheres of recognition and the internal potential that they carry internally for the moral development of society. The model of the struggle for recognition explains, then, grammar, a subcultural semantics, in which the experiences of injustice find a common language, which indirectly offers the possibility of an expansion of the forms of recognition (HONNETH, 2003a, p. 272). Thus, the author intends to show that the analysis of social events is a task in interpretation, which allows explaining these events as stages of a process of moral formation that takes place through conflict and whose direction is given by the guiding idea of the expansion of recognition relationships (HONNETH, 2003, p. 273).

In his most recent books (HONNETH, 2017, p. 470; 2018, p. 131), the author develops his theory and goes on to resignify the institutional dimension of the State and social policies from his theory of recognition. From a reupdate of Hegel's Philosophy of Law, he shows that the legitimacy of the State and its policies rests on its ability to realize freedom. The citizen, therefore, needs the State to implement through public policies the conditions of the possibility of exercising free autonomy. Among these tasks is to ensure that institutions protect the free competition of the market and the proper use of public money. More than that, public and private institutions must guide and realize their institutional projects without violating the fundamental rights of citizens.

5 According to Honneth: "The possibility of reinterpreting the clinical material about the pathologies of the relationship in the sense of the structural universalization of a balance of recognition proves, from the therapeutic side, the conception according to which the love relationship represents ideally a symbiosis broken by recognition. (...) Since this relationship of recognition paves the way for a kind of self-relationship in which the subjects mutually convey an elementary trust in themselves, it precedes, both logically and genetically, every other form of recognition. Reciprocal: that fundamental layer of a security emotive not only in the experience but also in the manifestation of their own needs and feelings, propitiated by the experience intersubjective nature of love, constitutes the psychic presupposition for the development of all other attitudes of self-respect" (HONNET, 2003, p. 177).

From Honneth's theory, we can, therefore, establish the connection between citizenship and fundamental rights and, at the same time, perceive that corruption appears as a social pathology that prevents the realization and expansion of the spheres of recognition.

3.1 Concept of corruption

It is true that corruption still lacks an exact definition, and its study requires multiple approaches from different perspectives. Commonly, its concept is confused with its typologies, especially bribery of national and foreign public officials and international organizations, private bribery, embezzlement or embezzlement in the public and private sectors, misappropriation and other forms of asset diversion, influence peddling, abuse of power, illicit enrichment, money laundering, concealment, or obstruction of justice.

However, in the present work, the term corruption will be taken only in the legal-formal sense defined by the guidelines of the United Nations Convention against Corruption of 2003 (UNODC, 2003a), to which Brazil is a signatory, and which promoted the main changes in the national legislative sphere. In this sense, corruption includes all behavior, public or private, of individuals or legal entities, national, foreign, or international, potentially capable of compromising the ethical and moral standard in the use of resources of public or private organizations.

According to United Nations, the concept of corruption is broad, including bribery and kickback practices, fraud, embezzlement, or any other misuse of resources by a public official. Also, it may involve cases of nepotism, extortion, influence peddling, use of privileged information for personal purposes, and the buying and selling of court judgments, among several other practices (UNODC, 2003b).

Mário Vinicius Claussem Spinelli (2016) proposes in his doctoral thesis "Street corruption: institutional and political factors of bureaucratic corruption" two approaches to address corruption, personal and institutional, with the objective of guiding the guidelines that should lead the confrontation of the problem, especially from the State's point of view: the personalist and institutionalist approach.

According to the author, the personalist approach includes the causes that lead or may lead a person to commit an act of corruption, such as the opportunity to obtain an advantage (associated with a rational choice of cost and benefit), the pressure received,

the position or function occupied, intellectual capacity, self-confidence, coercive and simulation capacity and the ability to manage stress (SPINELLI, 2016, p. 42). In turn, the institutional approach includes institutional conditions that favor or hinder the practice of acts of corruption, such as discretion and bureaucratic discretion, the economic advantages associated with this power, and the low probability of having to account for crime (SPINELLI, 2016, p. 46). Both approaches influence the understanding of the phenomenon of corruption in Brazil. Similarly, they also impact the Brazilian institutional design, whether at the legislative or organizational level, although it is not always possible to identify the synergy, coordination, and unity that would be desirable between them.

3.2 Corruption in Brazil: historical and current perspectives

Addressing the issue of corruption is not an easy task, especially if we place it in the political-economic and social context of Brazil, where there are multiple cases related to embezzlement of public resources, fraud, bribery, abuse of power, influence peddling, and tax evasion, among others. But what can be said is that corruption is not a recent phenomenon in Brazilian society. On the contrary, it has existed for centuries, precisely since the beginning of Portuguese colonization, especially by the clientelist, patriarchal, and patrimony practices that marked the development of the country, based on a confused relationship between the public and the private (HOLANDA, 2014; FAORO, 2001).

In this regard, Luiz Henrique Urquhart Cademartori and Raísa Carvalho Simões (2010) highlight that during the process of State formation and, especially since the beginning of the modernization of the country's public administration, the practices of undue favoritism already prevailed in the public administration sphere and its surroundings of private relations (p. 225).

In the same sense, Salomão Ribas Junior (2014) warns that Brazil is a country where the payment of bribes is accepted to obtain a document more easily from a public agency. This is the case, for example, of the figure of the traffic dispatcher... It is such a common and peacefully accepted practice in Brazil that it ends up dispensing further demonstrations. What you pay, even knowing that part will complement the remuneration of some server, is not considered, culturally, as administrative corruption. According to the author, this practice could be framed among the small corruptions

naturally accepted by society. They further argue that expediting the desired document is considered for people in general as a much more significant benefit than the cost of corruption for you and society (p. 72).

In the history of Brazilian political thought, there was until recently the perception that the Iberian legacy would have imposed on Brazilian society a social and political organization marked by cultural aspects related to practices that corrupt moral and ethical values and, although centuries and several changes of government have passed, the correlation is still part of Brazil's political structure (FILGUEIRAS, 2009, p. 387).

However, it is important to bear in light the fact that, despite the historical foundations, attributing the phenomenon of corruption only to colonial domination is "to escape reality and try to hide the real reasons and real beneficiaries of the common deviations and frauds committed against the 20th century and which are perpetuated at the beginning of the 21st century" (FURTADO, 2015, p. 18). It is necessary, therefore, to consider that "corruption is directly related to the efficiency and functioning of the institutions established by each company" (GHIZZO NETO, 2016, p. 33). In a complementary way, Filgueiras (2009) points out that corruption is not related to the character of the Brazilian but to a social construction that allows to tolerate it as a practice.

Corruption, therefore, has a social dimension and an institutional dimension that are connected. Honneth's work shows that the experience of injustice creates pressure that drives institutional change, leading to the improvement of institutions.

In the case of Brazil, dissatisfaction with corruption is evident. The latest Transparency International Report on the Corruption Perceptions Index, published in January 2022 (Transparency International, 2022), places Brazil at 94th out of 180 participating countries. This demonstrates widespread social dissatisfaction with corruption. This dissatisfaction has had as a consequence of the fact that the fight against corruption is one of the main points on Brazil's political agenda (TEIXEIRA; REHBEIN-SATLHER; RODRIGUES, 2021).

As demonstrated from the analysis of Axel Honneth's theory, this general sense of injustice moves the social imaginary and impacts the Brazilian public sphere, causing institutional changes and uncover new institutional aspects of citizenship protection. Empirical studies on corruption corroborate this analysis and demonstrate that "interpersonal trust, civic engagement and effective democracy are strongly intercorrelated that all three presumably have a deterrent effect on corruption"

(POWER; GONZÁLEZ, 2003). These studies suggest the plausible thesis that the feeling of injustice is a relevant factor in fighting corruption: the performance of government institutions and the success of institutions in expanding the spheres of recognition and, consequently, in the realization of citizenship, is directly connected with political culture and with the reduction of corruption. Next, therefore, we will show how the advance regarding the role of several institutions in corruption control is taking place in Brazil and what its effects are on the fight against corruption.

4. Institutional advances in the control and fight against corruption

Important institutional advances have occurred since the Federal Constitution of 1988. The democratic opening of the country imposed new paradigms for public administration within the three powers (Executive, Legislative, and Judiciary). After 30 years of democracy, it is possible to identify institutional advances in the field of transparency and control.

These advances have involved the creation of organs and initiatives for their improvement that have increased the management and control of information and, therefore, surveillance and responsiveness to identify the "path of money" and the chains and links of personal, business, and political nature relationships.

In this scenario, the Federal Court of Auditors (TCU), the General Controller of the Union (CGU), the Financial Activities Control Council (COAF), and the Department of Asset Recovery and International Legal Cooperation (DRCI) were created and act to control corruption. Each of these bodies, within its sphere of competence, has been producing qualified knowledge to identify illicit activities.

Within the Framework of the Court of Auditors of the Union, the financial audit in the accountability of public bodies and entities, and the operational audit in the systematic collection and analysis of information on the characteristics, processes, and results of programs, activities, and organizations stand out. Both types of audits allow identifying of details in the public construction of roads, railways, and airports (DUTRA; CHAMPOMIER, 2014, p. 72).

The General Controller of the Union, an agency linked to the Ministry of Transparency, Supervision, and General Controller of the Union, has joined forces with the TCU. However, as a differential element, its performance covers the entire cycle

of public procurement, as it is responsible for internal control actions, public audit, correction, prevention, and the fight against corruption. Among the monitored topics are public tenders, corporate card expenses, food and transportation, and outsourcing. The CGU issues alerts when it finds transactions that fall into any of the multiple types of illicit activities previously identified by the CGU itself (OLIVEIRA; SOUSA, 2020. p. 324-326).

Regarding the Financial Activities Control Board, this is the body that acts in the prevention and repression of money laundering and is therefore responsible for monitoring atypical financial operations. COAF cooperates with financial intelligence units (UIFs) around the world through operational information related to financial transactions and equity transactions. In Operation "Lava Jato", COAF collaborated through the sharing of the Financial Intelligence Report (RIF), which documents the hypotheses of financial atypicalness (FLORÊNCIO FILHO; ZANON, 2018, p. 76-77).

In 2003, the Department of Asset Recovery and International Judicial Cooperation was created, an integrated body in the structure of the Ministry of Justice and Public Security, responsible for international legal assistance procedures in civil and criminal matters. The establishment of a single Central Authority to manage both types of international cooperation procedures stem from the United Nations Convention against Organised Crime (Palermo Convention), as well as bilateral cooperation agreements, which transfer the competence to manage them from the Ministry of Foreign Affairs to the Ministry of Justice, as a means of improving the ability to articulate and simplify procedures (MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA).

Finally, it is worth mentioning the National Strategy to Combat Corruption and Money Laundering (ENCCLA), created in 2003 within the Ministry of Justice, with the function of promoting interinstitutional articulation in control and the fight against corruption. The ENCCLA action assumed, among other results, the reduction of the differences in criteria between the organizations involved in understanding a whole series of technical issues. In addition, it involved these agencies in a whole series of bills, such as the Criminal Organizations Act (Law Nº. 12,850/2013). In this sense, it is important to highlight that ENCCLA was recognized by the United Nations (UNODC, 2011, p. 11) and by the International Financial Action Task Force

(FATF, 2010) as a good Brazilian practice in the development of anti-corruptionanti-corruption policies.[6]

These institutional advances, altogether with legislative advances below, are crucial initiatives to improve corruption deterrence and control, expand the spheres of recognition, and consequently ensure the realization of citizenship.

5. Regulatory advances in the control and fight against corruption

It is possible to recognize in the Brazilian judicial system an increasingly broad and synergistic legal model that allows the curbing of behavioral deviations, increases transparency, reduces spaces of opportunity, establishes controls and restrictions, objectively rationalizes the decision-making process, and increases the risk of having to face the responsibilities that are incurred.

At the international level, "the growing focus of international organizations on the link between effective institutions, corruption, and growth led to a proliferation of international agreements in the 1990s that focused on anti-corruption activities and agencies" (RECANATINI, 2011, p. 532). In this context, the United Nations Conventions against Transnational Organized Crime and Against Corruption, the Convention of the Organization of States for Economic Development (OECD), all ratified by Brazil, and, as regards the exchange of information in tax matters, the recommendations of the Action Group (FATF) and the bilateral agreements on mutual assistance

6 Other results obtained by ENCCLA: the creation of the National Training Program for combating corruption and money laundering (PNLD), which since 2004 has qualified about 15,000 agents in all regions of the country; the creation of the National Register of Financial System Clients (CCS), under the management of the Central Bank of Brazil (BACEN); the standardization of the form of request/response of bouts of bank secrecy and respective traces and development of the Bank Handling Investigation System (SIMBA); the creation of the Technology Laboratory against Money Laundering, aiming at the optimization of investigations and criminal actions, through the simplification of the analysis of large volume data; the preparation of the preliminary draft of equity inquiry, to regulate the declaration of assets and values that make up the private assets of the public agent. The preliminary draft culminated in the edition of Decree 5.483/2005 at the federal level: the creation of the National System of Seized Goods, managed by the National Council of Justice (CNJ), and the promotion of the early disposal of assets, thus allowing greater effectiveness in cutting the financial flows of criminal organizations; the creation of the Register of Inidôneas and Suspicious Entities (CEIS), maintained by the Comptant General of the Union, ensuring more publicity, transparency and social control in relation to companies that contract with the public authorities; the creation of the National Registry of Entities (CNEs), under the management of the Ministry of Justice; the consolidation of a central authority for the purposes of international legal cooperation - greater effectiveness of justice with the possibility of seeking evidence abroad; the drafting of several draft laws and proposed amendments, notified the draft law on criminal organizations (Law No. 12,850/2013), money laundering (Law No. 12,863/2012), extinction of dominance (civil forsaking of assets related to illegal acts), intermediation of interests (lobbying). (ENCCLA)

in criminal matters that Brazil has signed with twenty countries, including Canada, Spain, the United States, France, Italy, Mexico, the United Kingdom, and Switzerland.

The last one, as well as the multilateral treaties of judicial cooperation ratified by Brazil, has been gradually incorporated into the Brazilian judicial culture. Thus, under Operation "Lava Jato", international judicial cooperation agreements were used in more than 180 requests for aid (130 applications issued by Brazil to 33 countries and 53 requests received by Brazil from 24 States) for the exchange of information and evidence, production of evidence abroad, access to bank data, tracking, freezing and repatriation of goods and extradition, among others (EXAME, 2017).

At the national level, the main regulatory system used to investigate administrative, civil, and criminal violations in Operation "Lava Jato" was inspired by the international commitments made by Brazil. Thus, the award-winning collaboration has been particularly used in the Operation, considering that more than 150 agreements were signed (MINISTÉRIO PÚBLICO FEDERAL, 2023). In addition, regarding regulatory advances to control and combat corruption, the following laws stand out:

1) Law Nº. 8,429/1992: Law of Administrative Improbity, which punishes acts that violate the principles of public administration, cause damage to public coffers, or generate illicit enrichment.
2) Law Nº. 8,666/1993: Bidding Law, which establishes the legal regime of public procurement through competition, assuming that this is the best way to protect the public interest.
3) Law Nº. 9,613/1998: The law establishing the Brazilian system to combat money laundering defines the crime of money laundering, creates the Financial Activities Control Board (COAF), and defines the administrative responsibility of a number of people forced to report suspicious financial transactions. This law was amended by Law Nº. 12,683/2012.
4) Law Nº. 12,527/2011: Law on access to information, which regulates the right to information within the scope of public administration on the basis of the principle of publicity, whereby secrecy becomes exceptional, temporary, and applicable only in the cases provided for by law.
5) Law Nº. 12,813/2013: Law on conflicts of interest in the exercise of office or employment in the Federal Executive Branch and impediments after the exercise of office or employment.

6) Law Nº. 12,846/2013: Brazilian Anti-Corruption Law, which regulates the objective, civil and administrative liability of legal entities involved in acts of corruption, and establishes a whole series of management procedures, a code of conduct and integrity, an internal communication regulation and training programs, which must be adopted by said legal entities.
7) Law Nº. 12,850/2013: Law that typifies the crime of criminal organization and regulates several procedural instruments to qualify the criminal investigation, including, but not limited to, agents' infiltration, award-winning collaboration, and access to registration data of telephone companies and the Treasury.
8) Law Nº. 13,260/2016: Law regulating the provisions of paragraph XLIII of Article 5 of the Federal Constitution, and reformulating the concept of a terrorist organization, amend Laws Nº. 7,960 of December 21st, 1989 and 12,850 of August 2nd, 2013 introducing various provisions for the investigation and repression of terrorism.
9) Law Nº. 13,303/2016: Law dealing with the legal situation of publicly traded companies in the country. This law requires the adoption of codes of conduct and integrity and objective and meritocratic criteria for the exercise of management positions, sealing partisan political sponsorship for such nominations, as well as for public positions of trust in the board of directors. It also establishes submission to a whole range of transparency and risk management requirements.

Of the legislative advances pointed out, two procedural instruments should be highlighted, the award-winning collaboration and international judicial cooperation, which we believe have been determining factors for the proper progress of investigations in the course of Operation "Lava Jato".

We cannot fail to mention the Brazilian Anti-Corruption Law (Law Nº. 12,846/13). Although it is the first rule that provides for the administrative and civil liability of legal entities for the practice of acts against the public administration (national or foreign), its introduction into the Brazilian legal system strengthens and complements the "legal system of defense of morality" (MOREIRA NETO; FREITAS, 2014), which had already been incorporated: (i) the Law to Combat Administrative Improbity (Law

Nº. 8,429/1992); (ii) the criminal provisions of the Bidding and Administrative Contracts Act; (iii) the Competition Law (Law Nº. 12,259/2011); (iv) the so-called Clean Archive Law (Complementary Law Nº. 135/2010); and (v) the types of offences provided for in the penal code that provides for crimes against the public administration (Art. 312 to 359-H). In this context, in addition to innovating by proposing the tightening of sanctions on legal entities involved in acts of corruption against the public administration, the new law establishes, as a mechanism for mitigating sanctions imposed on companies, compliance/compliance programs and the adoption of administrative measures agreements of recognition of responsibility.

In this way, the new framework for controlling and combating corruption introduced significant changes in the country's regulatory structure. These laws are largely inspired by international premises and initiatives provided for in conventions and treaties.

6. Challenges and perspectives in controlling and combating corruption

Corruption, money laundering, security, defense, and organized crime are all complex problems subject to a competing and fragmented competitive regime, given its interdisciplinary nature. Therefore, they require the commitment of people and institutions, the existence of a collaborative governance model capable of reducing the risk of contradictory decisions, greater legal certainty, and higher levels of regulatory control and prevention.

Neither organized crime can form and survive, nor do illegal markets thrive if there is no co-optation of public agents and capital to finance them (Levi, 2009). There is no doubt that legislative reforms, greater transparency and control, financial monitoring, and systematic data collection and processing are needed. But what really can make a big difference is to change the level of interaction and cooperation between the bodies involved.

Chris Ansell and Alison Gash (2008), analyzing 137 cases of collaborative governance models in public sectors as diverse as health, education, and safety, identified a number of critical variables that influence the success or failure of different initiatives: imbalance of power and resources, lack of incentives, historical antagonisms between

various organizations that have to collaborate, facilitating leadership, institutional design through protocols and basic rules of cooperation, collaborative processes that require face-to-face dialogue, building trust, commitment to the process, alignment of ways to understand the problem and valorization of small and fast victories. Another important risk factor highlighted by Frederick M. Kaiser (2011) in his report to the United States Congress is changes in the political and governmental environment.

Among all the elements pointed out in the literature, in the process of effective change, such as what Brazil is beginning to accomplish at this moment, a strong and active facilitating leadership is particularly important to induce the construction of the desired culture of commitment. In addition to the desire for change, technical competence, cooperation agreements, and regulations, it emerges as essential to establish a leadership that can, with regard to the actors involved: (I) generate fear of loss of power; (II) promote the development of opportunities for strengthening and growth; (III) reaffirm the communion of purposes and mutual trust; (IV) deter business resistance; (V) build synergy, consensus and appropriate alignment in decision-making; and (VI) generate the impetus to pursue a joint vision.

There are other factors that can also contribute to these processes. Thus, for example, there are twelve integrated command and control centers distributed throughout the country, built for the 2014 World Cup. In addition, technological interoperability between databases has been strengthened, which contributes to consolidating joint access to information, knowledge development, and direction in decision-making (e.g., the TCU Account Lab and the Brain of the Economic Defense Board of Directors).

Similarly, there are also reference initiatives built on the recognition of complex problems that require a great cooperative effort and which can assist in the construction of the Brazilian agenda, the experiences of the European Union (Europol and Eurojust), the United Nations and the World Bank (STAR) and the United States (National Counter Terrorism Center, Stolen Asset Recovery Initiative).

As can be seen, therefore, the new regulatory and institutional strategies have promoted concrete advances in the control and fight against corruption, especially regarding transparency, monitoring of the financial system, social control and improvement of investigative and repression instruments and mechanisms, recognition of responsibility agreements and collaborative measures between different agencies.

7. Conclusion

In the present article, we tried to analyze and demonstrate that the trajectory of institutional and legislative advances in Brazil is a way of overcoming the social pathology of corruption, which is directly connected with the expansion of the concept of citizenship. Considering the complexity of the theme, the scope of the study included, at first, the understanding of the concept of citizenship and its connection with fundamental rights from the theory of recognition.

In the wake of this analysis, the theory of recognition helps to understand that corruption works as a social pathology that prevents the development and realization of citizenship. This pathology generates a sense of injustice generated, which acts as a catalyst for institutional changes in the sense of expanding the concept of citizenship from the institutionalization of notable advances in the control and fight against corruption.

However, although laws and public policies have promoted changes and advances in the prevention and repression of corruption through the creation and improvement of institutions and legislative rules as set above, considering the Corruption Perception Index, the social perception still has negative rates due to the enormous economic and social damage that corruption has generated. Therefore, considering the multi-institutional framework of anti-corruption system in Brazil, in which several institutions need to interact to combat structural corruption, more than preventing and repressing it, it is necessary to promote a change in the culture of public-private relations in Brazilian society within institutions and regulation system, because there is no real change, nor concrete institutional advances, without the realization of citizenship and the consequent change in the political culture.

REFERENCES

ALENCAR, P. W. de. A lei anticorrupção é "só para inglês ver?": uma breve análise comparativa entre os sistemas brasileiro e norte-americano de combate à corrupção. *Revista do Ministério Público do Rio de Janeiro*, n. 57, p. 192-206, July/Sept. 2015.

ANSELL, C.; GASH, A. Collaborative Governance in Theory and Practice. *Journal of Public Administration Research and Theory: J-PART*, v. 18, n. 4, p. 543-571, 2008.

ARANHA, A. L. Lava Jato and Brazil's web of accountability institutions: a turning point for corruption control. *In*: LAGUNES, P. F.; SVEJNAR, J. Corruption and the Lava Jato scandal in Latin America. London: Routledge, 2020.

CADEMARTORI L. H. U.; SIMÕES, R. C. A sobrevivência do modelo patrimonial na reforma administrativa gerencial do estado brasileiro. *Revista Panóptica*, v. 3, n. 18, p. 27-153, 2010.

CARVALHOSA, M. La nueva ley anticorrupción brasileña. *Tribuna de Actualidad*. v. 2, p. 37-45, June 2014.

DUTRA, T. A. de G. L. CHAMPOMIER, J-M. A função da auditoria financeira em Tribunais de Contas: as perspectivas do TCU e a experiência da Corte de Contas da França. *Revista do TCU*, n. 130, p. 70-81, May/Aug. 2014.

ENCCLA. *Principais resultados*. Available at: http://enccla.camara.leg.br/. Access on: May 20th, 2023.

FAORO, R. *Os donos do poder*. Rio de Janeiro: Editora Globo, 2001.

FILGUEIRAS, F. A tolerância à corrupção no Brasil: uma antinomia entre normas morais e prática social. *Opinião Pública*, v. 15, n. 2, p. 387-421, Nov. 2009.

FLORÊNCIO FILHO, M. A.; ZANON, P. B. Políticas Públicas de Prevenção e combate à lavagem de dinheiro no Brasil: COAF e arranjo institucional. *Revista Pensamento Jurídico*, v. 12, n. 2, p. 67-91, July/Dec., 2018.

FURTADO, L. R. *As raízes da corrupção no Brasil*: estudo de casos e lições para o futuro. Belo Horizonte: Editora Fórum, 2015.

GHIZZO NETO, A. O combate à corrupção e a educação como instrumento de ação coletiva. *In*. CUNHA FILHO, A. J. C. da; ARAÚJO, G. R. B. de; LIVIANU, R.; PASCOLATI JUNIOR, U. A. (coord.). *48 visões sobre a corrupção*. São Paulo: Quartier Latin, 2016.

GRUPO DE ACCIÓN FINANCIERA INTERNACIONAL – GAFI. *Mutual evaluation report*. 2010. Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf. Access on: May 19th, 2023.

HOLANDA, S. B. de. *Raízes do Brasil*. São Paulo: Companhia das Letras, 2014.

HONNETH, A. *Kampf um Anerkennung:* Zur moralischen Grammatik sozialer Konflikte. Frankfurt am Main: Suhrkamp, 2003a.

HONNETH, A. *Luta por Reconhecimento*: A gramática moral dos conflitos sociais. São Paulo: Ed. 34, 2003b.

HONNETH, A. *Luta por Reconhecimento*: A gramática moral dos conflitos sociais. São Paulo: Ed. 34, 2010.

HONNETH, A. *O Direito da Liberdade*. São Paulo: Martins Fontes, 2015.

HONNETH, A. *Das Recht der Freiheit. Grundriβ einer demokratischen Sittlichkeit*. Berlin: Suhrkamp, 2017.

HONNETH, A. *Anerkennung. Eine europäische Ideengeschichte*. Berlin: Suhrkamp, 2018.

KAISER. F. M. *Interagency Collaborative Arrangements and Activities:* Types, Rationales, Considerations. Congressional Research Service, 2011.

KLITGAARD, R.; MACLEAN-ABAROA, R.; PARRIS, L. *Corrupción en las ciudades:* Una guía práctica para la cura y la prevención. Bolivia: Aguilar, 2001.

Lava Jato já teve mais de 180 pedidos de cooperação internacional. Exame. Mar. 17th, 2017. Available at: https://exame.com/brasil/lava-jato-ja-teve-mais-de-180-pedidos-de-cooperacao-internacional/. Access on: May 19th, 2023.

LEVI, M. Corruption and money laundering. *Journal of Law and Society*, v. 36, n. 4, p. 589-591, 2009.

MACHADO, M. R.; PASCHOAL, B. Monitorar, investigar, responsabilizar e sancionar: A multiplicidade institucional em casos de corrupção. *Novos Estudos CEBRAP*, v. 1, n. 35, p. 11-36, Mar. 2016.

MARSHALL, T. H. *Citizenship and Social Class:* And Other Essays. Cambridge: University Press, 1950.

MARTINEZ, T. M. Transparency in Brazil: why has it failed to curb corruption?. 2018. Thesis (Doctoral degree in Philosophy) – London School of Economics and Political Science, London, 2018.

MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA. Recuperação de ativos e cooperação internacional. Available at: https://www.gov.br/mj/pt-br/acesso-a-informacao/perguntas-frequentes/ativos_cooperacao/recuperacao-de-ativos-e-cooperacao-internacional. Access on: May 19th, 2023.

MINISTÉRIO PÚBLICO FEDERAL. *Entenda o caso:* Lava Jato. 2019. Available at: https://www.mpf.mp.br/grandes-casos/lava-jato/entenda-o-caso. Access on: May 19th, 2023.

MINISTÉRIO PÚBLICO FEDERAL. *Operação Lava Jato:* Resultados. 2023. Available at: https://www.mpf.mp.br/grandes-casos/lava-jato/resultados. Access on: May 19th, 2023.

MOREIRA NETO, D. de F.; FREITAS, R. V. de. A juridicidade da Lei Anticorrupção: reflexões e interpretações prospectivas. *Revista Fórum administrativo*. Available at: https://www.editoraforum.com.br/wp-content/uploads/2014/01/ART_Diogo-Figueiredo-Moreira-Neto-et-al_Lei-Anticorrupcao.pdf. Access on: May 19th, 2023.

OLIVEIRA, G. J. de.; SOUSA, O. A. V. de. Controladoria Geral da União: uma agência anticorrupção? *In*. PEREZ, M. A.; SOUZA, R. P. de. (coord.) *Controle da Administração Pública*. Belo Horizonte: Fórum, 2020.

POWER, T. J.; GONZÁLEZ, J. Cultura Política, Capital Social e Percepções sobre Corrupção: Uma Investigação Quantitativa em Nível Mundial. *Revista de Sociologia Política*, 21, p. 51-69, Nov. 2003. DOI 10.1590/S0104-44782003000200005

PRADO, M.; PIMENTA, R. de M. Systemic corruption and institutional multiplicity: Brazilian examples of a complex relationship. *University of Toronto Law Journal*, v. 71, n. 1, p. 74-102, 2021.

RECANATINI, F. Anti-Corruption authorities: an effective tool to curb corruption?. *In*. ROSE-ACKERMAN, S. (ed.). *International Handbook on the Economics of Corruption*, v. 2, UK: Edward Elgar Publishing, 2011.

RIBAS JUNIOR, S. *Corrupção pública e privada – quatro aspectos:* ética no serviço público, contratos, financiamento eleitoral e controle. Belo Horizonte: Editora Fórum, 2014.

SPINELLI, M. V. C. Street-level corruption: fatores institucionais e políticos da corrupção burocrática. 2016. Thesis (Doctoral degree in Public Administration and Government) – FGV, São Paulo, 2016.

TEIXEIRA, A. B.; REHBEIN-SATLHER, A. G.; RODRIGUES, M. R. Percepções sociais sobre a corrupção política no Brasil: práticas corruptas *versus* atuação dos órgãos de controle. *Colombia Internacional*, 105, p. 57-88, Jan. 2021. Available at: http://journals.openedition.org/colombiaint/1094. Access on: Jan. 24th, 2023.

TRANSPARENCY INTERNATIONAL. *Corruption Perceptions Index*. 2022. Available at: https://www.transparency.org/en/cpi/2022. Access on: May 19th, 2023.

UNODC. 2003a. Available at: https://www.unodc.org/unodc/en/treaties/CAC/index.html. Access on: May 19th, 2023.

UNODC. 2003b. Available at: https://www.unodc.org/lpo-brazil/pt/corrupcao/index.html#:~:text=O%20conceito%20de%20corrup%C3%A7%C3%A3o%20%C3%A9,parte%20de%20um%20funcion%C3%A1rio%20p%C3%BAblico. Access on: May 19th, 2023.

UNODC. 2011. Available at: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_01_19_Brazil_Final_Country_Report.pdf. Access on: May 19th, 2023.

WERMUTH, M. A. D.; ROCHA, A. F. O. da. O difícil processo de consolidação da cidadania plena no Brasil: notas sobre o patrimonialismo, o clientelismo, a corrupção e a pobreza política. *Revista Do Direito*, n. 29, p. 146-165, Jan./June 2008.

WINNICOTT, D. W. *Playing and Reality*. London/New York: Routledge, 1991.

WINNICOTT, D. W. *The Maturational Processes and the Facilitating Environment*: Studies in the Theory of Emotional Development. London/New York: Routledge, 2018.

WINTER, B.; Aalbers, G. *Índice de Capacidade de Combate à Corrupção*. America's Quarterly. 2022. Available at: https://www.americasquarterly.org/wp-content/uploads/2022/06/CCC_Relatorio_2022.pdf. Access on: May 19th, 2023.