LUMEN ET VIRTUS

The fight against corruption in the context of Imperial Brazil

https://doi.org/10.56238/levv15n38-025

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ABSTRACT

The present work aims to discuss the way to combat corruption during the Brazil-Empire, in a context of dual jurisdiction, in which the bureaucratic rationality of the State gains prominence, in the face of patrimonialist and personalized government conducts. A period in which the demands of the Public Power were submitted to the administrative jurisdiction and criminal matters to the Judiciary. It seeks to compare the concept of the crimes of "bribery and bribery" to the one later defined as corruption. On the one hand, the Moderating Power, on the other, a weakened Judiciary, submitted to account for its activity to the Executive, without irremovability, a scenario that made the mission of condemning a public servant for abuses in the exercise of his function challenging.

Keywords: Corruption, Administrative Justice, Imperial Brazil.

INTRODUCTION

Corruption is the phenomenon that has been studied for a long time, umbilically linked to the notion of political systems, it brings with it the idea of venality around the exercise of public function (HUNGARY, 1958). In Italy it is known as *bustarela*, the Germans call *it trink geld*, Russians *vzyatha*, French *graisser la patte*, Egyptians *baksheesh*, Americans and English *payoss*, Indians speed *money*, Mexicans *bite* and Spaniards *por debajo de la cuerda* (OLIVEIRA, 1991, p.1).

An intrinsic practice of humanity, it is present outside the existence of laws, regardless of the form of State, government, political or social regime. It is in republics, monarchies, in liberal and socialist regimes. Impossible to be measured precisely, because its perception is precisely linked to the degree of transparency existing in a given government, the more one has access and knowledge to what happens in the intricacies of public administration, the greater the possibility of classifying certain conduct as dishonest. This justifies statements to the effect that "there is no corruption in a dictatorship", precisely because the cases are not made public and are properly handled.

In Imperial Brazil, conflicts of interest were subject to the regime and duality of jurisdiction. Cases affecting the Public Power were assessed in the field of administrative jurisdiction, while the

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Judiciary was responsible for judging criminal matters. In this orbit of ideas, this work seeks to understand to what extent there was a possibility of criminal prosecution of conducts practiced within the scope of public administration.

For this purpose, a retrospective legal research and bibliographic review are carried out with a qualitative approach to the work of Edmundo Oliveira and Aléxia Alvim Machado Faria, which deal with the practices of corruption in Imperial Brazil, together with the works of João Guilherme de Araújo, Edson Alvisi Neves, José Murilo de Carvalho, on Administrative Justice, based on Max Weber's concept of rationality and bureaucracy.

CONCEPT OF CORRUPTION

Corruption is a phenomenon intrinsically associated with the concept of dishonesty, immorality, cause of damage to the community for the benefit of the individual. In this theme, of course, there is a deep symbiosis between law and morality (doctrine of virtue), which in Kant's lesson, in his work "Metaphysics of Morals" is a set of synthetic knowledge about what we should do, thus not having any transcendent character, linked to the search for a criterion of determination between what is just or unjust, so that not only positive law, but also the natural law principle are under the domain of morality (ALVES, 2015, p.39).

Thus, this conception will vary in time and space, according to the laws and customs of each people and time, within standards of coercibility will be defined according to what the law establishes, it may have a civil, administrative or criminal response.

Corruption practices circumvent this system because, in the face of a standardized procedure, it uses the agent's decision-making power, apart from his positional or institutional duties, to exert influence on the administrative *process*, in order to obtain benefits (patrimonial or not directly measurable in money) or advantage for those involved in the corrupt activity (HAYASHI, 2020).

Robert Klitgaard presents an interesting metaphor on the subject: "Like the disease, corruption will always be with us. But as this sad fact does not prevent us from trying to reduce diseases, neither should it paralyze efforts to reduce corruption (KLITGAARD, 1994, p.23).

HISTORICAL EVOLUTION

Before scrutinizing the treatment given to corrupt practices during the Brazilian Empire, it is important to deal with the phenomenon in a world-historical scenario. Edmundo Oliveira points out that the oldest formal record dates from the year 74, before Christ. *Statius Albinus Oppianicus,* accused of having ordered the killing of his stepson for the sake of the inheritance, offered money to ten jurors, 640 thousand sesterces to avoid being criminally convicted. The complaint was made by

Cícero, who acted in the process as a Prosecution Lawyer. Judas Iscariot betrayed Jesus for thirty pieces of silver.

A fragment of clay from Assyria, which conveyed the transcription of a contract, indicated that a lady had donated the *Ashur-aha*, a member of the nobility, in exchange for the impunity of a son, accused of murder.

Still at that time, Gaius Verres went down in history for bribing firms and companies that provided services to the Empire. Exercising influence peddling, he managed to interfere in the appointment, removal of judges and interfere in the processes to convict or acquit the accused. Robert Klitgaard brings an interesting view of the phenomenon:

> One reason why corruption is poorly studied as a matter of public policy may be the impression that nothing can be done about it. After all, corruption is as old as the government itself. Writing some 2,300 years ago, the Brahmin Prime Minister of Chandragupta listed "at least 40 ways" to fraudulently extort money from the government. In ancient China, officials received a reward for [...] nurturing incorruptibility. Writing in the fourteenth century, Abdul Rahman Ibn Khadun said that the "fundamental cause of corruption was the passion to live luxuriously within the ruling group. [...] Plato also made mention of bribery in The Laws: "The servants of the nation must arrest services without receiving gifts [...] Forming one's own judgment and sticking to it is no easy task, and it is the surest way for a man to obey faithfully the law that dictates: do not do services in exchange for gifts." (KLITGAARD, 1994, p.23)

In Egypt, the Pharaoh presided over the judging body, similar to the judiciary today, seconded by two viziers, one to the north and the other to the south, who swore an oath to punish the corrupt, the disloyal and the false (OLIVEIRA, 1991, p. 9).

In the classical phase of Greek Law, there were three forms of crimes that could be committed by officials against public administration: embezzlement, corruption and abuse of authority. The corruption of judges received specific treatment, against such crimes there was even the provision of the death penalty.

In Rome, several laws emerged to contain the immoral practices of receiving bribes by people who exercised public function, such as magistrates and senators, which evolved to the criminal adequacy of the conducts of corruption, embezzlement, concussion, excess of exaction, from a preventive and repressive bias, as it intended to ensure the preservation of high public administration, which must occur without the mixture of mercenarism and without interests colliding with the mission of serving society (HAYASHI, 2020, p. 15 -16).

Medieval Law, especially in Italy, called *baratteria the do ut des*, the act of giving or doing something in order to be rewarded. In French, the term barataria brings the idea of giving with a view to retribution, in medieval language the term meant corruption, although it also extended to other crimes. The Visigothic Code did not deal with the subject. In 1256, King Alfonso X compiled old laws, which resulted in the consolidation *of Las Sietes Partadas*, which in title XVI of the seventh

game, listed twelve cases of cheapness, including those practiced by lawyers, but without any indication of corruption of officials (OLIVEIRA, 1991, p.31-32).

It is impossible to ignore, the perception of corruption, as well as several other social phenomena, is marked by colonialism. They tend to believe that developing countries are more prone to this practice. Here, it is worth quoting the lesson of Max Web, in the work "Protestant Ethics and the Spirit of Capitalism":

> The universal reign of absolute unscrupulousness in the pursuit of selfish interests in the making of money has been a specific feature of exactly those countries whose bourgeois capitalist development, measured according to Western standards, has remained backward [...]. Utter and conscientious ruthlessness in the area of shopping has often been closely linked to strict conformity to tradition. (WEBER, 2004, p. 23)

Thus, the existence of repressive measures aimed at controlling and punishing corruption from the perspective of Criminal Law is recurrent in history. And it was no different during the Brazilian Empire, a period of maturation and organization of the Public Administration.

PUBLIC ADMINISTRATION IN IMPERIAL BRAZIL

Max Weber teaches that the bureaucratic model of institutions has several positive points, such as: rationality, the predictability of its functioning, homogeneity, the possibility of reducing friction, discrimination. Something vital for the administrative routine (WEBER, 1999).

The regime of dual jurisdiction in force in the unitary, monarchical-representative State of the Empire gives rise to the existence of administrative litigation which, in the constitutional order of the Empire, resorted mainly to two sources of different value: colonial law and French public law (ARAGÃO, 1955).

It is possible to separate the exercise of administrative jurisdiction into two moments, in the first (1790-1830) there is talk of homologable justice [...] administrative competence was determined for each litigation; It depended on a particular examination of each case. [...] it extends to the maximum, which is explainable. It is based on the political concern to rigorously prevent the administration from being judged by the Judiciary. In the second delegated phase (1830-1872), the determination of competence then obeys the criterion of classification into acts of empire and acts of management. Administrative competence would be excepted only by the constitutional order, civil and criminal, subject exclusively to the appreciation of the Judiciary (ARAGÃO, 1955).

In this period, there was a clear superiority of the administrative authority in relation to the judicial authority. Administrator was a party and a judge at the same time, which made it difficult to distinguish between jurisdictional acts and administrative acts. Administrative litigation was very arbitrary and obscure, "only accessible to those who have entry into the secretariats and are brave

enough to dust off huge bundles of paper, where everything lies buried in the dust of oblivion" (CARVALHO, 2002).

In this orbit of ideas, the basis for understanding how corruption was fought is sought, in a system of dual jurisdiction, in which administrative acts were treated in a different sphere from criminal matters.

> [...] The decision of most administrative litigation transactions is truly a legal assessment, a sentence. However, the principle of responsibility is very difficult to apply to most legal assessments, especially in complicated cases and doctrinal interpretation of the law. He says that there is a mistake; it can be committed in good faith in the appreciation, but this error can be the result of convictions; it can be based on special reasons; the minister can maintain in good faith, and there are many who follow him, that the error is on the part of those who argue it (CARVALHO, 2002, p.166).

Here it is worth mentioning the difficulties narrated by Guilherme Aragão when dealing precisely with the appeal based on excess of power, which to a certain extent may represent an act of corruption, in the context of Administrative Justice, in which judge and party were confused:

> [...] If such a distinction is not easy, there would no longer be a boundary between annulment litigation and that of full jurisdiction or cassation, according to the French model. Consequently, there would be no place for the exercise of the genuine action for annulment on the ground of misuse of powers as part of the action. It would be impossible to erect it in a specific appeal, for annulment. Faced with this appropriation of the part by the whole, the Brazilian Council of State had no choice but to consider the excess of power subjectively as an exaction or abuse of authority, using it as a corrective for arbitrary decisions. In short, we had an excess of power, not an expression of excess of power (ARAGÃO, 1955, p. 19)

In this period, according to the lesson of Edson Alvisi Neves, bureaucracy manifests itself as an element of confluence and concentration of decision-making power in the hands of certain agents – the magistrates. Bureaucracy imposes an internal logic, the more solid the institution, the less possibility of external influence. Moreover, in the state apparatus of the Empire, patrimonialism was present and nepotism was naturalized, which coexisted with the bureaucratic model, in which two logics alternated.

There was a gradual replacement of the person in charge of government functions in the place by bureaucratic officials, which was associated with the movement of displacement of the normative base, to a path based on the impersonality and universality of social action in simultaneity and de-charismatization of power. The rationality of the state bureaucracy was gradually implemented, present in the administration controlled and directed by the metropolis, coexisted with primary interpersonal relationships based on kinship and common interests, without official recognition.

This movement of bureaucratic rationality in the Brazilian Empire, as in Portugal, comes from the Enlightenment influence for the constitutionalization of the State, legalized and positivist, in which the power of the state to regulate social life in accordance with the public interest is revealed (NEVES, 2008, p. 78-83).

LEGAL TREATMENT OF CORRUPT PRACTICES DURING THE EMPIRE

The idea of corruption is closely linked to the morals and ethics of a given society. Felipe Hayashi states that within a legal normative system, the law will establish what corruption is, according to the culture, values, and customs honored at a given historical moment, to the point of classifying certain conduct as a criminal, civil, or administrative offense (HAYASHI, 2020). In this line of ideas, what was or was not considered corruption in Imperial Brazil may not fit the current parameters.

As narrated in the previous topic, it was a period in which state bureaucratic rationality began to develop, alongside practices that today would be disapproved since they are underlying kinship and sponsorship, in which there is no full independence or autonomy between the execution of administrative activities and their judgment, because in the scenario of Administrative Justice, Sometimes, judged and judge were confused.

From this premise Aléxia Alvim Machado Faria would start to analyze the crimes of "bribery and bribery" during the Empire. “[...] corruption has a long and diverse history and has a meaning that is axiological and moral rather than properly descriptive, which implies the constant change of its semantics over time and between cultures." (FARIA, 2017, p.22).

Lilia Schwarcz points out that in this period the term corruption was rarely used, as this concept is closely linked to the idea of equal rights, a model that did not make the government founded on the moderating power, a fourth power, exclusive to the monarch, which annulled the others.

The phenomenon accompanies the history of the country, it is in the first official written document, the "letter of Pero Vaz de Caminha", which conveyed a request addressed to the Portuguese king, D. Manuel I, to release from exile the son-in-law of the subscriber, who was in São Tomé as a result of the commission of crimes. "Corruption, favoritism or patrimonialism, Caminha's message oscillates in its definition, but it certainly indicates the use of private advantages from privileged entry into the public space" (SCHWARZ, 2019). And more:

> There is also evidence of attitudes that today would be called corrupt in the American colony of the Portuguese since the time of the first governor-general, Tomé de Sousa (1503-79), who was authorized by King d. João III, in 1548, to make "gifts to any person", as long as he consolidated the Lusitanian dominion in Brazilian lands. Illicit enrichment was attached to the biography of local authorities and especially to that of governors. Mem de Sá, who was governor-general of Brazil between 1558 and 1572, was accused of abusing his position. Slave traders who left the coast of Africa towards the Río de la Plata and were forced to dock in Rio de Janeiro to supply their slave ships, knew in advance that there they would end up coerced to disburse a certain percentage of their "goods" and deliver it to the governor of the captaincy. Often, the "toll" cost even more: authorities demanded the right to get on board and reserve for themselves the best enslaved men and women [...] (SCHWARZ, 2019, p.79)

And he goes on to highlight that in an environment of lawfulness of slavery the moral bases were diminished and the rule of self-benefit is observed. Impunity was considered a "privilege" that

the king granted to local elites, who were committed to the "development" of the country, and found no formal limits. The focus of the State was the collection of taxes. The royal family itself was welcomed in 1808, with a "gift" from a slave trader. Elias Antônio Lopes ceded the "Quinta da Boa Vista" to serve as a home for the nobility, in "exchange" he continued to get rich and received a title.

Negotiations with the Portuguese prince were something very common, the mixture between public and private interests was constant. “[...] Anyone who wanted to display a title, present his coat of arms engraved at the entrance of his house, or intended to print it on domestic porcelain or stationery, would have to pay the Crown a considerable amount [...]" (SCHWARZ, 2019).

Very expensive habits, influence peddling marked the first reign, but the notion of corruption hardly appears. A circumstance that did not change with the assumption of the throne by D. Pedro II, remembered as a constitutional monarch by divine right and also as a patron of the arts, leader of a political system above "worldly" issues (SCHWARZ, 2012, p.192).

The suitability of the system only began to be questioned after the Paraguayan War, when abolitionism gained strength and the Republican Party was founded. From 1880 onwards, a series of cases of corruption and bribery began to appear. Discontent overflows from the private space and reaches the public. The limits of this system are questioned, associated with expedients that implied bribing public officials and citizens or, simply, avoiding the effective application of the law.

The power of the monarch is questioned, increasingly weakened. Administrative ineptitude is pointed out, with greater impetus, as Lilia Schwarz points out, when the jewels of Empress Tereza Cristina and her daughter, Princess Isabel, are stolen from inside the São Cristóvão Palace.

The opposition points out the negligent and omissive way in conducting the family's intimacy, which was reflected in the lives of the subjects, considering that the jewels were public goods. The crime was elucidated, but it served to highlight the government's moral fallacies. The Emperor, even aware of the criminal authorship, allowed the criminal to continue living in the vicinity of Quinta da Boa Vista and consented to the immediate release of the others involved. In addition, he awarded the police officers with honorary orders, which was interpreted as an evident intention of silencing, political corruption and favoritism. Attacking the emperor was synonymous with attacking the State, personified by him.

> [...] Corruption is, therefore, a notion that emerges in this context – even if under other names – as a form of accusation against the system, which, in order to exist, needed to be above it. Among the specificities of the monarchy is precisely this complicated relationship between public and private spheres. What is up to the king, what is part of the responsibilities of the State is difficult to say or affirm. This time, therefore, criticizing the monarch meant, in some way, spearheading the system in its suitability. We are in 1882 and the Empire would only fall in 1889. But from the first date on, the newspapers would be full of facts of this type or similar to this. As Andersen's famous tale said, "the monarch was naked," and he had barely noticed. (SCHWARZ, 2012, p.199)

Thus, in Imperial Brazil, corruption ranges from illicit acts committed by public servants, which could not be linked to the receipt of illicit advantage, to smuggling and other practices used to escape tax collection, as occurred with the "hollow stick saints", in addition to the infamous leaps into the incipient state bureaucracy, to the detriment of the common good and the idea of impersonality (FARIA, 2017, p.22).

BRIBERY AND BRIBERY IN BRAZIL: THE TYPIFIED CORRUPTION IN IMPERIAL BRAZIL

In the Brazilian Empire, the Criminal Code of 1830 and the Penal Code of 1890 were in force, which listed the crime of bribery or bribery as a practice contrary to the law, caused by the receipt of an advantage or promise (bribe) or by the simple influence or petition of another (bribery), conducts that were reformulated and renamed in the Code of 1940, which began to treat them as corruption.

The Criminal Code of the Empire used the term comprehensively to define the most diverse conducts, it referred to any conduct that violated a predetermined prescription, always linked to the idea of immorality of the action of public servants. Traditionally, the Portuguese used the concepts of "bribe and bribery", consolidated in Book V of the "Philippine Ordinances" to refer, in a specific way, to the receipt or offer of gifts to an official so that he would act differently from what was bureaucratically determined for his functions.

Under the influence of Roman Law, Portugal, from the fifteenth century onwards, disciplined the fact in the Afonsine Ordinances, followed by the Manoelinas, Sebastiânica and Philippines, as mentioned. The penalty for this ranged from loss of office, fine, banishment, and even death, which could reach the public official and the corruptor (HAYASHI, 2020, p. 16). In Aléxia Faria's lesson:

> The conceptual choice is not, therefore, a mere observation of the crimes of the Empire from the perspective of the crimes of the second republic, which with few modifications are still in force today. It is, in part, the search for the history of the formulation of the idea of corruption as a crime, whose beginning dates back well before 1940, and is based not only on the concomitantly retroactive and progressive look at the idea of "corruption", but also on the link between the crimes that represent it. (FARIA, 2017, p.24)

According to the historical approach, the conducts, currently typified as corruption, were treated in Portugal, in Colonial Brazil and also in the Empire phase, as "bribery and bribery". Although the Criminal Code is inspired by articles 177 to 183 of the French Penal Code of 1810, which already used the term *Corruption of Public Officials,* the Portuguese tradition prevailed in the use of the terms. (FARIA, 2017, p. 23).

The act of perceiving an offer of a gift or gift, so that a public servant acted in a manner different from what his functional duty determined, is criminalized. It was considered the most serious of functional crimes.

The criminal law of 1830 dealt with corruption in two distinct sections, bribery and bribery, the former had as its object money or an equivalent thing, while the latter dealt with "trafficking" of influence or begging (articles 130 to 133), which was brought together in 1890 in a single section, with some modifications. In Aléxia Faria's lesson:

> The very definition of bribery and bribery, if we go back to the Portuguese dictionaries, has an old link with corruption [...], to bribe was, among other meanings, "to give to corrupt"; "give something so that another thing is forbidden to us". Bribery, in turn, was defined as "corrupting someone's mind to induce him to act badly (...)" and bribery, "that which corrupts witnesses, judges". [...] The conceptual choice is not, therefore, a mere observation of the crimes of the Empire from the perspective of the crimes of the second republic, which with few modifications are still in force today. It is, in part, the search for the history of the formulation of the idea of corruption as a crime, whose beginning dates back well before 1940, and is based not only on the concomitantly retroactive and progressive look at the idea of "corruption", but also on the link between the crimes that represent it. (FARIA, 2017, p. 24)

Crimes of responsibility inserted in the midst of the abuse of power or authority were dealt with, submitted to a specific procedural rite for the Supreme Court of Justice, for the Relations and Judgments, according to the Code of Criminal Procedure of 1832, which brought privileged jurisdiction. The denunciation could come from anyone of the people.

The term "crime of responsibility" was not used in the Criminal Code, but it is a defining criterion of jurisdiction in the Code of Criminal Procedure, it dealt with infractions committed by ministers, secretaries, judges, deputies and other public officials. To this genre it was still possible to add concussion and malfeasance. These crimes found a normative basis, not only in the Criminal Code, but also in the Constitution, Emperor's Notices and Special Laws.

The Constitution of 1824, in articles 133, II, provided for the liability of the Ministers of State for bribery and bribery, stipulates popular action for their prosecution. It proclaimed in articles 133, III, 156 and 179, XXIX the punishment of conduct when practiced by magistrates, judicial officers and public employees for abuse of power. The Criminal Code was in harmony with these precepts.

The constitutional and legal precepts did not guarantee the effectiveness of the measures provided for therein. In a new law, dated October 15, 1827, aimed at dealing with the responsibility of Ministers and Secretaries of State, bribery and bribery were dealt with together, with penalties divided into maximum, medium and minimum degrees, in comparison with the seriousness of the conduct.

For the act to have its execution considered completed, the promise of economic advantage (gift) was enough. The penalty included removal from the Court of one to three years. Ministers would be punished for the misuse of their authority, when their acts produced losses or damage to the

State to the private individual or did not comply with the law, for the effectiveness of the responsibility of their subordinates, for whom reprimand would be conferred as if it were an abuse of power. Aléxia Faria highlights the emotion with which this law was received:

> This law [...] "It is of the highest importance, and can be called par excellence the practical law of the Constitution. The law, which watches over the ministers of state, watches over the execution of all laws; It embraces at the same time the stability and glory of the throne with all national interests. The history of nations attests to the shocks that the thrones have felt, and the calamities that the peoples have suffered through the fault of ministers of state who sacrifice the trust of the monarch to the particular interests of their adherences, or to criminal negligence and impostor incapacity. In order that those who serve the v.m.i. may not open the fidelity and love of justice, it is fitting to establish them in duty for the rule of law. And if nothing else, it would be enough to see in the responsibility of the ministers the pedestal on which the most eminent monarchical attribute, inviolability, rests unshakably, for this law to be worthy of your V.M.I., and the ardent wishes of all Brazilians (FARIA, 2017, p.27).

The issue received different treatment in the code of 1830, which defined peita as Receiving money, or any other donation; or accept a promise directly, and indirectly to practice, or refrain from performing some act of office against, or according to the law." It eliminated the gradations conferred by the Law of 1827. And the judges did not dwell on the nuances of the issue, as Aléxia Faria points out:

> It is curious to realize, however, that the issues related to the concept of these crimes were not a point so addressed in the jurisprudence, at least not in the one cited by the doctrinaires. Much more frequent was the discussion, in the codes commented on, about the competence of the crime, the existence of a privileged forum in relation to the petitioner and the petitioner, competence to decree the nullity of the act on which the petition falls, conditions for receiving the indictment. On the other hand, it seems to be a consensus that the petition does not admit attempt, because it consists of the "moral act of accepting the donation or money, or the promise, and, as long as the official repels it, the crime is frustrated in its effects and the consistency of the preparatory fact, which the law does not criminalize, is destroyed (FARIA, 2017, p. 28).

It is noteworthy the different way of treating "corruption" practiced by Judges in the period, punished with extreme rigor, as well as the differentiated sanctioning for Ministers and States, which, without a doubt, is a cause and reflection of the very system of duality of jurisdiction of the period, in which, in the administrative field, judge and judge could be confused. And the Judiciary was considered weak.

Article 131 of the Criminal Code indicates that the judge who decided something after being bribed or bribed, would be sentenced to the same penalties as other public officials if his decision was fair, however, in the case of injustice the penalty would be from two months to two years, more than double the reprimand defined for common crimes. Moreover, in the case of a criminal sentence, the punishment would be the same as that attributed to the convicted person. In addition to the provision of the death penalty and life imprisonment. the judge who condemns a person to the death penalty and is held criminally responsible for bribery or bribery after his execution could also be executed (FARIA, 2017).

It was a time of deep regulation of the Judiciary. According to the lesson of Edson ALvisi Neves, it cannot be ignored that during the Empire there was the Moderating Power, a fourth State Power, also exercised by the Emperor, Chief of the Executive. The Judiciary did not truly enjoy the status of power, because without irremovability the exercise of its functions was compromised. Furthermore, tradition linked the idea of justice to the Executive, although the constitution had another guideline, it was up to it to interpret the positive norm as the last interpretation. The Judges, by legal imposition, were accountable for their activities to the president of the province, with a copy to the Minister of Justice (NEVES, 2008, p.70).

This scenario, without a doubt, created obstacles for conduct tainted with abuse of power to be in fact subject to conviction for "bribery or bribery". Here is Edson Alvisi commenting:

> [...] the hierarchical structure of the Judiciary in the imperial Political Charter was closer to the colonial experience than to the aspirations expressed by the dissolved constituent assembly, ensuring a rigid control in the structure and jurisdictional action. Although the constitution did not indicate a *dual* system of jurisdiction, administrative justice was assigned to the Council of State, which functioned as the Supreme Court of Appeal. [...] Applying justice, the Executive began to control all phases of the governmental process, making the judge of the acts proper. [...] the patrimonial structure reigning in that bureaucracy provided the operation only to guarantee the interests already largely protected by other mechanisms (NEVES, 2008, p.75).

Finally, it should be noted that the Criminal Code of 1930 was applicable to ordinary public servants, Ministers and Secretaries of State were governed by the Law of 1827. There was no strangeness in the Empire in the existence of laws applicable to people according to the quality of their office.

> This hypothesis, reaffirmed by article 308 of the Criminal Code, demonstrates coherence with the government decisions found so far, which frequently withdrew the determination of suspension of employment (supposedly applicable to all those pronounced for bribery and bribery) for senior officials, to the explicit argument that they are officials of higher grade. Another indicator of this ease of understanding the double treatment is in relation to the allegation of the existence of bribery at the time of voting by deputies and councilors. In relation to the deputies, I did not find a single government decision that upheld the decision of the parish priest who prevented the election of a certain deputy because of the allegation of bribery, and I found several that modified the decision, when it had been given in order to prevent the election. And the arguments are always the same: defect in the formal process of acclamation for bribery (FARIA, 2017, p.31).

Thus, it is possible to see the difficulty of effectively holding accountable those who, in the exercise of public functions, committed abusive acts, subordinating the public interest to the convenient maintenance of private interests.

FINAL CONSIDERATIONS

The work sought to describe the normative parameters that guided the fight against dishonest conduct by public servants during Imperial Brazil, a period in which the administrative jurisdiction was separated from the Judiciary, responsible for appreciating and judging criminal cases.

Acts tainted with abuse of power or authority could be the object of analysis in administrative litigation, submitted to the administrative justice system and also have consequences that could be criminally typified.

As seen, there were many criticisms regarding the autonomy in the assessment of cases involving the public administration. The period was one of coexistence between bureaucratic rationalization and the resistance of local elites, who naturalized practices such as patrimonialism, nepotism and influence peddling. In addition, the Emperor's administration was classified as negligent and omissive, marked by honoring personal interests to the detriment of the collectivity.

> The Judiciary did not have the autonomy of the present day, there was no room for magistrates to act impartially in the conduct of processes in which criminal conduct of public servants was analyzed. Without irremovability, subject to account for his work to the president of the province, there was little room to claim effective action in this area.

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