

Competition and Corruption: Challenges Regarding Brazilian National Economic and Social Development

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Abstract

The following article aims, through scientific research, to relate the multifaceted phenomena of corruption, its modalities (public and private), with effects on free competition, highlighting the market failures arising from it, and then the generated inefficiencies that are harmful to national development and competitiveness, corroborating to the vicious feedback of subdevelopment both in economic and social aspects of a given society. The aim is to highlight the indispensability of an integrated response in defense of the economic and social order constitutionally established by the “Economic Constitution”, through an integrated lens, regarding the study of Law and Development. The hypothetical-deductive method was used in the research, through the qualitative analysis of the constitutional law and hermeneutic, the selected bibliography and research papers, using interdisciplinary resources from the areas of Law, Political Science and Economics, being mainly a juridical approach.

Keywords

Corruption, National Development, Economic Order, Social Order, Competition

1. Introduction

Corruption as a pathological social fact (Durkheim, 2007; Gonçalves & Andrade, 2019) is a multifaceted and deeply rooted phenomenon in different societies around the world, directly affecting the economic and social development of

countries.

In the Brazilian context, corruption not only represents a moral and ethical failure, but also a significant obstacle to progress and economic efficiency. This article aims to analyze the intersection between corruption and competition law in economics, exploring how corrupt practices distort markets, promotes inefficiency, and hinders sustainable development.

Established as a fundamental principle by the 1988 Federal Constitution, free competition aims to guarantee an economic environment where private initiative can prosper under fair and equitable conditions. However, corruption introduces an element of inequality and illicit favoritism that compromises the integrity of competitive processes, as corruption “distort incentives, impede investment and divert the allocation of productive resources to rent-seeking activities” (Dissou & Yakautsava, 2012). Companies that integrate corrupt schemes, obtaining undue advantages, end up promoting the destabilization of the market balance, marginalizing honest competitors.

In addition to eroding trust in public institutions, corruption creates a significant barrier to national and foreign investment (Wei, 2000), and to economic growth itself (Mauro, 1995), as well as “several empirical papers have shown that corruption is an impediment to growth, as it mainly constitutes hindrance to investment” as in Dissou & Yakautsava (2012), “corruption continues to impede development and undermine social transformation” (Oindo, Oyugi, & Samita, 2021a). Resources that could be directed to education, health and infrastructure are fraudulently diverted, perpetuating cycles of poverty and inequality (Chiarello, Porto, & Placca, 2021) Corruption practices acting “as an arbitrary tax on investment, lowering the marginal product of capital and thereby slowing growth” (Dissou & Yakautsava, 2012). It also undermines the institution of democracy itself (Yi, Teng, & Meng, 2018). Therefore, understanding the relationship between corruption and competition is essential for formulating effective strategies to combat illicit practices and promote a healthy and competitive economic environment.

This article uses an interdisciplinary approach, integrating concepts from Law, Political Science and Economics to provide a comprehensive analysis of the effects of corruption on competition and national economic development. The research adopts the hypothetical-deductive method as of Mezzaroba & Monteiro (2009), based on a qualitative assessment of selected bibliography to explore the implications of corruption in both the public and private sectors of society.

In short, by investigating the challenges posed by corruption to free competition and economic development, this study aims to raise awareness of the issues involved, contributing to the consolidation of the claim regarding the need to formulate more robust and effective public policies, based on an integrated perspective, capable of imposing concreteness to the promotion of integrity, transparency and efficiency in the Brazilian market, as a means for national economic and social development.

2. Economical Constitution and Economic Order According to the Constitution of the Republic of 1988

The evolution of society through the ideological and economic experiences of the political models of the 20th century, and, mainly, in the post-Second World War, the doctrinal evolution of so-called third generation fundamental rights, and the increase in the axiological-normative force of State Constitutions, the result of post-positivism, Economic Law has consolidated itself as an autonomous discipline (Do Nascimento, 2013).

The Constitution of the Federative Republic of Brazil, through its article 170, established the foundations for the economic order in a directive and programmatic way, erecting the legal discipline of the Economic Constitution.

The constitutionally established economic order outlines the fundamental principles, and in this way, aims to guide and harmonize the principles of the market economy with the precept of social justice, as taught by Martins (2021) combining the two foundations as touchstones for the Economic Constitution.

Through this intellection, it is possible to understand the affiliation of the constitutional regime to the capitalist model of production, according to Bastos & Martins (2000), adding four principles as foundations in the hermeneutic interpretation of the aforementioned article 170, namely, the valorization of human work, free enterprise, dignified existence and social justice, leading to the “market economy”.

In this sense, Reale (1998), considering the historical, social, and economic factors that embodied in legal and political formation, in addition to the postulation of the constituent, identified that the constitutional economic order is focused on “social liberalism or liberal socialism”, forming part of the so called third way of the modern economy.

Following this reasoning, the Brazilian Constitution of the Republic of 1988 converged ideologies, adopting a flexible and timeless stance, advocating efficiency in the State economic model, instead of adhering to a specific political ideology, adapting through imperative social facts characteristic of contemporary society, notably the rapid evolution in technology, competence, efficiency and, according to Martins (2021), demanding from governments a posture at the height and mastery of technique as opposed to ideological deepening.

As the article 1 of the Constitution of the Republic elevates the social values of work and free initiative to the legal category of foundations, the political charter, in this sense, is affected by the adaptability and then the normative technique required by the new social parameters (Martins, 2021).

The equation of the two pillars listed by Martins (2021), the valorization of the social value of work and of free initiative, requires an overt action by the State to establish a scenario conducive to the performance of free initiative, notably, the duty-power of surveillance and punishment of the abuse of economic power. Thus, the abuse of economic power makes it possible to drive in preponderance with functional and ethical distortions of the free market, establishing a rela-

tionship of subordination in relation to those who do not have the strength and means to compete (Martins, 2021). Then, free competition is what makes the constitutional principle of free initiative viable, “free initiative is only possible in face of free competition” (Martins, 2021).

Regarding an understanding of economic power as a manifestation of power conditioned to the economic factor that subordinates those who do not hold the economic element:

Economic power is the manifestation of power conditioned to the economic factor that subordinates those who do not hold the economic element. The manifestation of economic power is a difficultly perceived domination, in which the dominant and the dominated relate to each other forming something unique, at the same time that they remain distinct, each one the face of the same coin. The master needs his slave, otherwise he ceases to be master; the slave recognizes his condition and his master. (Bagnoli, 2022: p. 21) (Our translation from Portuguese)

Thus, to achieve the constitutional dictations and achieve free competition as a structuring precept of the Economic Constitution, the Constitution of the Republic provides the bases for state intervention in the control and repression of economic power, article 173, § 4th, and 174, establishing the role of the State as a normative agent and regulator of economic activity, meaning that it will act in the functions of inspection, incentive and planning, acting as a determinant for the public sector, and indicative for the private sector.

3. Economic and Social Development, Competition and Market

From the perspective of economic development provided through the legal-constitutional construction, with the notion of constant national development as a national objective in accordance with the command of the article 3, a holistic, harmonious, and integrated view between the economic order and the social order is necessary for the full implementation of economic and social development, inseparable factors (Oliveira, 2023) from national development:

The treatment of the economic order has effects on the social order, therefore, the intention to dissociate economic from social is controversial, especially because an economic policy that promotes development must focus on modifying people’s standard of living, and encouraging free competition and freedom of initiative must be articulated with the constitutional objectives of consumer protection, the social function of property and the reduction of inequalities, in the search for full employment, these goals being of a social nature. (Nohara, 2023: p. 506) (Our translation from Portuguese)

National development is the foundational principle that guides the relation and functioning of all State actions and enterprises, especially regarding economic behavior:

It is important to highlight that the Federal Constitution determines that guaranteeing national development is a fundamental objective of the Federative Republic of Brazil. This objective is a factor that should guide the functioning of all State practices to provide the best result possible to the relationships established by him, guaranteeing beneficial factors for the population. (Petean, 2019: p. 26) (Our translation from Portuguese)

Development, in addition to appearing as a national objective of the Republic, is a fundamental human right of the third generation, a basic condition for the development of citizenship and the axiological core of the dignity of the human person (Rêgo, 2023).

The defense of competition, as a principle set out in article 170 itself, item IV, and the express constitutional order of article 173, §4, is fundamental for the institution of the market economy, and for the health and efficiency of a domestic and international market, in order to achieve national development (Bagnoli, 2019):

It is based on the principle of free competition, as set out in art. 170, IV, of the Federal Constitution, the foundation of the market economy, in which economic agents must fight their disputes and from this clash, the best, the fittest, will achieve victory, overcoming their rivals. This environment of free competition tends towards more efficient results, with technological innovations, increased quality of products and services, reductions in costs and, consequently, prices, effectively contributing to development, with gains in the economic well-being of consumers. (Bagnoli, 2019: p. 69) (Our translation from Portuguese)

Competition supposes promoting the proper functioning of the market, guaranteeing more effective and efficient results through the meritocratic process of disputes and clashes carried out by economic agents in the negotiating environment, presupposing the essence of balance between supply and demand:

Thus, in the market economy, in which several economic relationships (exchanges) are involved, and wealth circulates and is shared, competition is fundamental, as it reveals itself as the essence of the balanced relationship between supply and demand. (Bagnoli, 2019: p. 70) (Our translation from Portuguese)

In this way, a market with higher levels of competition encourages a better distribution of product production, with a volatile distribution of income among competitors, resulting from the pressure for efficiency and meritocracy. For the economist Zingales (2014), as long as the system is conducive to assigning commercial responsibilities to people who deliver the most, in return, rewards are seen as a fair prize.

To guarantee this scenario, it is necessary to establish parameters that give effectiveness to the constitutional postulate, such as competition legislation and

the proactive action of control bodies, aiming to protect the market from abusive practices of dominance by economic power, against anti-competitive practices and against corruption.

Economists have always praised the merits of competition in markets where it is possible. However, competition is rarely perfect; markets have flaws, and market power—that is, a firm’s ability to set its prices substantially above its costs or to offer poor-quality services without losing many customers—has to be checked. Advocates of competition, as well as its detractors, sometimes forget that competition is not an end in itself. It is only an instrument in the service of society. If it leads to inefficiency, it must be eliminated or corrected. (Tirole, 2017: p. 357)

In ensuring this scenario, competition must be seen as a means and not as an end in itself, an instrument at the service of society for national development, according to economist Tirole (2017), in face of market failures.

4. Corruption, Its Effects on the Market and Socioeconomic Development

Above all, it is essential to understand corruption as a multifaceted phenomenon (Fernandes Junior, 2021) of organizational degeneration, notably of a social and economic nature, which generates market inefficiency and, consequently, hinders the economic and social development of nations.

Corruption is also of notably difficult delimitation, because of its untransparent nature and inherent dissimulated covert character (Gonçalves & Andrade, 2019).

The effective and efficient fight against corruption involves understanding the macrosystem of corruption, especially public corruption. This has cultural, systemic, and structural facets. A fundamental fact of the corruption of public affairs is the confusion between public and private, which causes the phenomenon of patrimonialism (Nohara, 2012; Oliveira, do Nascimento, & Schelp, 2023; Ghizzo Neto, 2023). In this sense, “corruption involves the abuse of a trust, generally one involving public power, for private benefit which often, but by no means always, comes in the form of money” (Johnston, 2005).

The patrimonial system, confusion between public and private in public, social and financial relations, can be identified as one of the forms of domination and maintenance of power in societies, integrating the so-called “traditional domination” according to Weber (2004). “Corruption is understood as a situation in which a public officer uses public resources for personal gain” as of (Oindo, Oyugi, & Samita, 2021a).

A founding characteristic of traditional domination, in addition to patrimonialism (Weber, 2004), is personalism, where there is the personal evocation and exaltation of the person of rulers and administrators, a situation in which objective statutes and orders are not obeyed (Oliveira & Neves, 2022), but rather the

very character of people traditionally linked to the dominant power, due to personal and subjective ties, in detriment of objective parameters, impersonality, and above all meritocracy (Oliveira, do Nascimento, & Schelp, 2023; Nohara, 2023), originating from the bureaucratic system and basic principles of the republican ideal (Nohara, 2012).

Through a personalist approach to corruption as of Teixeira & Spinelli (2024), starting from the cultural and historical reasons that influence the actions of the corrupt, in the cultural-historical formation of Brazil, cultural characteristics of corruption are notable as identified by Holanda (2015). The author utilizes the expression, to elucidate the social anthropological trait of Brazilian national culture as a “cordial man”, which implies a departure from formalism and social conventionalism in their relationships, reinforcing personalism in cultural expression, giving rise to the traces of patrimonialism present in the governance of institutions.

In Brazil, it can be said that only exceptionally have we had an administrative system and a body of employees purely dedicated to objective interests and based on those interests. On the contrary, it is possible to follow, throughout our history, the constant predominance of private wills that find their own environment in closed circles and little accessible to an impersonal order (Holanda, 2015: p. 146) (Our translation from Portuguese).

Regarding culture, cordiality or the “cordial man” as of Holanda (2015), also nepotism and clientelism which are linked to the sense of cordiality and personal and private wills in detriment of the principle of supremacy of public interest also contribute to the development of corruption practices, as noted in: “kinship system contributes to corruption through nepotism, ethnic cronyism and clientelism” as of Oindo, Oyugi and Samita (2021b). As a whole, societal structures and culture heritage pose as a fundamental factor:

In this matrix, carrying out research on corruption and its repercussions as a universal phenomenon (Ghizzo Neto, 2023), Affonso Ghizzo Neto identifies the Iberian cultural heritage as a constructive fact of systemic and institutional corruption in the country, in addition to listing the trends of corruption in the characteristics of the clientelism, patrimonialism, personalism, kleptocracy, neoauthoritarianism (Ghizzo Neto, 2023). With this, conceptualizing the cultural and institutional characteristics of corruption, an issue that transforms the government into a large private business desk. (Oliveira, do Nascimento, & Schelp, 2023). Our translation from Portuguese

Religion however also plays a role, as studied by Oindo, Oyugi, & Samita (2021a), regarding the correlation between religion and moral as actors against corruption. In this sense, religion must not be regarded outside of moral and ethical parameters (Oindo, Oyugi, & Samita, 2021a), as noted in regard to the

cordiality by Holanda (2015) with religious practices serving only as façade without any cohesion as Holanda (2015) points out. As brought by Teixeira & Spinelli (2024) quoting La Porta et al. (1997):

Countries with more hierarchical religions had less efficient judicial systems, poorer quality bureaucracies, lower rates of participation in civic and associative activities, less trust, and higher corruption. For the authors, religion may have discouraged the formation of horizontal networks of cooperation in these countries. (Teixeira & Spinelli, 2024)

As well as de Carvalho (2008) understands the history of politics in Brazil through three significant memorable movements, substantiating the historical and continuous character of political corruption in Brazil, as well as the social effects. It is interesting to note the reaction centered on the middle class, as a social-historical factor.

The historical and continuous nature of political corruption in Brazil was very well diagnosed by historian José Murilo de Carvalho. According to the author, three important changes occurred in the meaning of the expression “corruption”: 1) semantic change: while the accusations of corruption directed at the Empire and the First Republic referred to the system, the focus of these accusations, from 1945 onwards, was the individuals, politicians; 2) change in size: the increase in the size of the State and its despotic character, especially during the military regime, led to an increase in corruption, as the growth of the state machine and the discretion of rulers expanded clientelist and patrimonial practices; 3) change in reaction: the reaction has been centralized in the middle class, sometimes without the solidarity of the social sectors located above and below it, benefiting, respectively, from the profitability of their businesses and social policies. (Oliveira & Neves, 2022: p. 4) (Our translation from Portuguese)

As stated, corruption has been a recurrent theme in the history and formation of Brazil (Mamede & Garcia, 2023). Contemporarily, the context of corruption in Brazil is the focus of constant and recurring research both domestic and internationally, with notable operations being necessary and augmented by the police, therefore requiring ostensive action by the public prosecution and the judiciary. The Transparency International (2023) index showed that Brazil scored 36 points, recording the 104th position in the ranking. Regarding this context:

By the way, in Brazil, as throughout the world, corruption is a current evil that with the influx of globalization is seriously expanded, to the point that the deepening of social relations and the integration of economic and political ties have even allowed the institutionalization of corruption as a form of government, known as “kleptocracy”. (Fernandes Junior, 2021) Our translation from Portuguese

Corruption within the bowels of Public Power makes the State and its organi-

zations serve as a constitutive scenario so that characteristics such as subjectivism, clientelism, patrimonialism, personalism, kleptocracy and neo-authoritarianism, lending themselves to the distortion of the public interest, contributing to the administration becoming a true “private business counter” (Ghizzo Neto, 2023; Oliveira, do Nascimento, & Schelp, 2023).

Regarding the relevance of public corruption in public bidding, South African economist Lewis (2014), in an article presented to the Global Competition Forum of the International Organization, Organization for Economic Cooperation and Development (OECD), dealing with the relationship between anti-competitive behavior and corruption, differentiates between economic activities, according to the classic methodology of the science of economics, that generate income and activities that “seek income”, as of rent seeking. It points out that large public contracts and massive infrastructure projects are susceptible to capture by political interests that aim to ensure political support, on the part of the corrupt public, and behaviors that seek income, on the part of the private corruptor, being an activity of political corruption, which can be conceptualized as a dimension of “pure corruption”, unlike other types of private cartels, and typical anti-competitive activities in the private sphere. According to him, it can be said that corruption in tenders is the main means of public corruption.

Major public contracts are awarded, not on the merits, but in order to secure the political support of the beneficiaries and the constituencies that they represent.

Infrastructure projects are prone to both anti-competitive conduct and corruption. Large-scale infrastructure projects are susceptible to bid rigging.

[...]

Moreover there appears to be a dimension of “pure” corruption at play in public sector bid rigging—particularly those that involve large infrastructure projects—that is not as frequently present in the case of many other cartels. (Lewis, 2014: pp. 19, 28)

Through this logic, behaviors that generate income, value, economic development, can be conceptualized as productive behaviors, while “rent seeking” behaviors aim at parasitic accumulation of income, which do not generate income in themselves, being generally linked to the abuse of economic power by the perpetrators, and are almost always, but not necessarily, linked to illicit market practices (Rose-Ackerman & Palifka, 2016). A behavior that reeks of opportunism and economic utilitarianism, for the purposes of private gains, diverse and unrelated to public interest (Mamede & Garcia, 2023).

In this sense, from the perspective of economic sciences, corruption as a rent seeking activity, “serves to adjust the functioning of the bureaucratic machine” (Rosa, 2004), so that administrative corruption lends itself to the appropriation of income through the capture of public resources.

In the field of Political Science, [Rose-Ackerman & Palifka \(2016\)](#), completing the economic concepts, relates corruption with the activity of rent seeking, associating the unproductive nature of this, with high levels of corruption and low levels of investment and growth:

In between are situations where people use resources both for productive purposes and to gain an advantage in dividing up the benefits of economic activity—called “rent seeking” by economists ([Bhagwati, 1974](#); [Krueger, 1974](#)).

I explore the interaction between productive economic activity and unproductive rent seeking by focusing on the universal phenomenon of corruption in the public sector. In recent studies, high levels of corruption are associated with lower levels of investment and growth. Corruption reduces the effectiveness of industrial policies and encourages business to operate in the unofficial sector in violation of tax and regulatory laws. ([Rose-Ackerman & Palifka: 2016, p. 2](#))

In the context of competition, [Lewis \(2014\)](#) highlights the inverse correlation between competition and corruption, between low levels of competition in a market and high levels of corruption, bringing to light factors such as the effectiveness of antitrust laws and the abuse of economic power to establish the market dominance, identifying the opportunity through rent seeking logic, “the least competitive the market, the greater the rent generated and the greater the opportunity for rent seeking” ([Lewis, 2014](#)).

Addressing private business relations concerning the privatization procedures of sectors with previous State monopoly, [Lewis \(2014\)](#) pays special attention to the potential for corruption in this process as of [Megginson & Netter \(2001\)](#). Meaning reflections of abrupt and vulnerable procedures, fruits of the so-called crony capitalism enhanced by the cordial relations between the public agents responsible for the privatization of the sector and the business lobby, as well as enhanced by a weak and inefficient regulatory network on the part of the State. The result is a monopolized private market, dependent on State relations and financing, and corrupt for the second, private sector as of [Kaufmann & Siegelbaum \(1997\)](#).

Understanding corruption as the abuse or excess of power, the confusion of public and private interests, and its fundamental link with rent seeking economic behavior, abusive market and anti-competitive practices are easily understood as forms of corruption. For [Tirole \(2017\)](#), “Corruption represents the extreme quest for rents”.

Through the study of [Lewis \(2014\)](#), in the social context, it is possible to conclude that the metric of the countries listed in the research is underdevelopment. However, the phenomenon of corruption is not restricted to underdeveloped countries, but has a great relationship of dominance, establishing itself as a true obstacle to the development of underdeveloped countries, leading to the stagna-

tion of these countries' growth on the international stage, leaving them at the mercy of practitioners of "rent seeking", reinforcing the listed characteristics of the deleterious effects of corruption.

To the extent that it serves as a tool for illicit income capture and detriment to the moral quality of institutions, corruption works as a true obstacle to economic and social development, "the management of the issue requires considering that this phenomenon feeds low social and economic indices" (Rosa, 2004), as it increases transaction costs, necessary for the proper allocation of public resources, according to the logic of the Law and Economics discipline of the Coase Theorem, according to Coase (2022), mainly in the public context.

As Chiarello, Porto, & Placca (2021) exemplify, the burden on public coffers, through corruption, reduces and diverts assets that would be used to provide essential goods and services, fundamental pillars for the development of citizenship:

Corruption, by burdening the coffers, reduces the amount available to invest in essential services such as health and education, which are two of the fundamental pillars on which the agent's life is built in Brazilian society. People become more subject to hunger, malnutrition, premature death, and illiteracy. (Chiarello, Porto, & Placca, 2021: p. 266) (Our translation from Portuguese)

In the field of public resources and public capital, corruption acts as a means to divert public resources, "in the presence of corruption, government diverts a part of tax revenues away from investment in public capital" (Dissou & Yakautsava, 2012).

In regard to corruption and democracy, Yi, Teng, & Meng (2018) and also Mamede & Torres (2021) point out that fraud can occur at all levels of government and cause significant frustration to citizens then, with this increase in frustration, there is a growing lack of trust in the government, which ends up deteriorating current democracy.

As an anti-competitive practice, the effects of corruption on development are enormous, causing distortion in the allocation and waste of resources, which are already scarce, further widening the existing inequality in the country, and "competition and corruption are, therefore, issues of concern. greater relevance for any economies, especially those in development" (Bagnoli, 2019).

Among the effects of corruption, there are visible and invisible ones. The first appear to be wasteful, inefficient, causing market distortions and poor service provision, ending up compromising the subsistence and quality of life of those administered, the general populace (Rosa, 2004).

It also scares away honest investors due to reputational and business image damage, causing the detriment of natural resources and the environment by devastating the economy, leading to a scarcity of resources that provide advancement to the economy of raw extractivism, compromising the development

of areas of education, science and technology and of national industry (Rosa, 2004). As noted by Wei (1998) the more corrupt a country is, the slower its growth, instead of being a “grease” to the economy and economic development.

The scaring away of investors gains great relevance in the modern context of shareholder capitalism, and even more relevance for the ESG, environmental, social and governance model of stakeholder capitalism proposed by Schwab (2021), which proposes the insertion of parameters and ethical concepts of citizenship in the market economy, in addition to the incessant search for profit in the traditional shareholder system, through the joint action of the second and third sectors in the economic and political activities of transnational society.

As invisible effects, it is possible to list the compromise of democracy (Yi, Teng, & Meng, 2018), and institutions, the monetization and patrimonialization of the State, and above all, the feedback of the corruption subsystem itself, in addition to the promotion of the most diverse forms of crime.

These costs arising from invisible effects are notable, as they undermine the Rule of Law, destroying the very institution of Democracy and Citizenship, constituting social costs of corruption, according to the Coase (2022) theorem, in addition to the visible effects that are primarily economic by nature, greatly hindering integral national development between social and economic aspects.

So Mamede & Torres (2021) collecting studies regarding the effects of corruption directly influences economic growth as researched in (Mauro, 1995), (Bardhan, 1997) and (Mo, 2001), the level of investment in (Wei, 2000) and (Habib & Zurawicki, 2002) and its adverse effects may even be worse than high rates of taxation (Fisman & Svensson, 2007).

Corruption also works as an “arbitrary tax on investment, lowering the marginal product of capital and thereby slowing growth” (Dissou & Yakautsava, 2012), then the illicit practices raises the tax rate, both hindering growth and lowering the average taxpayer economic prowess.

Therefore, corruption also acts as a hinderance on new actors in the market, damaging the free competition of the market as “unlike already established producers new investors are often in need of licenses, registrations, permits and, therefore, are more likely to fall victims of corrupt public officials”, as noted by Dissou & Yakautsava (2012), and supported by Murphy, Shleifer, & Vishny (1993).

The detrimental effects of rent seeking practices and corruption on culture, “corruption meddles with the people’s capacity to look for and practice common good” (Oindo, Oyugi, & Samita, 2021a), in the sense that a person is shaped by its community, and then the society is sculptured back by its collective of individuals in a kind of circular feedback “the group/community should consequently, make the individual and the individual makes the group/community” (Oindo, Oyugi, & Samita, 2021a), consequently then, corruption acts on culture creating an immoral background in society that ensues the denial of the very principle of human dignity: “corruption denies human dignity since it is the

wellspring of underlying hindrances that deny individuals the material and intellectual products that they ought to enjoy” (Oindo, Oyugi, & Samita, 2021a).

In the context of the visible and invisible effects of corruption, Heidenheimer (1970), in the field of Political Science, structures corruption into three figures, of which it is highlighted that the black figure corresponds to acts marked by primary criminalization by the public, the gray figure to the gray territory marked by the lack of consensus in public opinion about the corrupt character and the white figure acts in which there is consensus regarding the social acceptance of such behaviors (Brei, 1996; Fernandes Junior, 2021).

It is through the gray figure that the axiological difficulty regarding the conception of corruption and its illicit and political nature becomes evident. This component makes perception and repression difficult, bringing to light the harmful and degenerative nature of the invisible effects of corruption in institutions, as well as accentuating the difficulty of perceiving the illicit nature of the corrupt intent, leading to confusion between the public and private, ensuring the private interest of those in power.

The legislative framework regarding public corruption in Brazil is widening, besides the criminal liability, it is notable to note both the Law n. 8.249/92 which was reformed profoundly by Law 14.230/21, regarding the civil responsibility the corrupt acts perpetrated by public officers, the reforms signifies that the control and supervisory agencies need a deeper and more precision in its acting (Oliveira, do Nascimento, & Bruno, 2023), and the incentives and legal affirmation brought by the reforms to the consensual conflict resolution and the civil compensation of the damages of corrupt acts practiced by public officers through the instrument of both the leniency agreements and the civil non-prosecution agreement (Fernandes Junior & Smanio, 2023).

Also, it is of note to the Law n. 12.846/13, Clean Company Act, sets forth in Brazil civil and administrative strict liability of legal entities for acts committed against national or foreign public administration performed in the legal entities' interest or benefit. The legal incentives to the adoption of compliance programs both by the private sector and also the public sector, which means a progress towards an anti-corruption in organizational culture (Nohara, 2019) and also besides the incentives and legal instruments regarding Competition Law and its Compliance, in Brazil's Antitrust Law, Law n. 12.529/11 (Bagnoli, 2019).

However, it is necessary to go further and understand corruption as a phenomenon that goes beyond the classic meaning of public corruption, not limiting its effects and occurrence exclusively in the Public Machinery.

It is worth highlighting that the multifaceted phenomenon of corruption transcends the spheres of Public Power, and private corruption, also being present in the private sector, with its study and confrontation being of notable significance on the international scene (Guaragni & Anjos, 2021).

Hence, with the increase in regulations on the matter internationally and the realization of the harmful effects of corruption on economic development, the

importance of the American Foreign Corrupt Practices Act stands out, which is seen as the initial international framework for combating corruption, which had the specific approach to the harmful effects of corruption on competition between American companies, both in favor of the health of the domestic market and the international market.

From globalization, the Mérida Convention deserves to be highlighted, the result of the United Nations Convention Against Corruption, convened in 2003 by the United Nations, which in its preamble states that: “corruption is no longer a local problem to become into a transnational phenomenon that affects all societies and economies”.

Having established this transnationality, the Mérida Convention recommends that signatory States consider the possibility of adopting legislative measures against private corruption, in accordance with its article 21. By promoting the criminalization of private corrupt conduct, the Convention “aims to improve integrity and honesty in private relationships.” (Guaragni & Anjos, 2021).

In the European Union, in the Criminal Convention on Corruption, which also recommends its member countries, there is concern about controlling private corruption explained in three specific reasons, one of which is the protection of competition. The community debate is based on the understanding that both public and private corruption are threats to the Democratic Rule of Law, as well as harming competition and impeding economic development (Foffani, 2009).

In Germany, which since 1909 has typified the crime of employee corruption, adopts the model identified as the competitive model of combating private corruption, the crime has the legal interest of competition, directly aiming to protect “free and fair competition”, and “ensure loyalty in competitive economic relations” (Guaragni & Anjos, 2021), and in 2015 the sphere of protection was added to work relations in this criminal type.

For David (2019), in his doctoral work on private corruption, the competitive model adopted in Germany, Spain, Austria and Colombia is what would best suit “the protection of corrupt relations in the private sector”, as it defines a legal good supra-individual in nature and harmonizes “with the need for state intervention in the economic sphere”.

The legislative model in Brazil applied to private corruption is not ample and there is no specific criminal normative provision, prevailing in the country the conception that corruption occurs when there is involvement of a public officer (Guaragni & Anjos, 2021; Chaves, 2013). However, there are currently some application hypotheses regarding some specific contexts, along with the general civil accountability and general normative provisions for crimes against property in the Penal Code. The applications are the following, the article 195, items IX and X of Law 9.279/96, which provides for the crimes of unfair competition, the delict of “economic espionage” (Pierangeli, 1997) regarding corruption in Industrial Property, and the crime of “private corruption in sport” provided in the

General Law of Sport, Law 14.597/23, article 165, which provides penalties for those who commit fraud and corruption at sporting events. Notably, “Brazil lacks the development of a more serious debate involving the theme” (Guaragni & Anjos, 2021). and the Mérida Convention of 2003, signed by Brazil in 2003, and in vigor as of Decree N.º 5.687/06, recommends that its signatories should adopt legislative measures against private corruption.

Finally, the main reasons for concern and importance in combating private corruption are through improving integrity in private relations, in order to guarantee the protection of free competition and allow zeal for economic development and market efficiency; as well as the prevention and repression of public corruption, the protection of public assets, the stimulation of efficiency in the public sector, aiming to improve the management of public resources, always aiming to guarantee the fundamental right and objective of Republic to national development.

5. Conclusion

After the discussion regarding corruption in the historical and cultural construction of the country, effects, and forms, it is necessary to go further, and this response occurs through the recognition of an integrated approach between economic and social development, and consequently, between the order social and economic order, set out in the Constitution of the Republic.

The phenomenon of corruption is multifaceted and has profound social, economic, and political implications. Its presence deteriorates market efficiency, impedes sustainable socioeconomic development, and weakens public and private institutions.

Combating corruption requires a comprehensive understanding of cultural, systemic, and structural manifestations and, to mitigate the effects of corruption, it is essential to promote an environment of transparency and accountability, strengthening control institutions and implementing effective governance policies. Meritocracy, fair competition, and a clear separation between public and private are fundamental pillars to create a system that minimizes corruption and maximizes sustainable development.

The market economy, when properly regulated, can be a powerful instrument in efficiently distributing resources and promoting innovation. However, without effective control mechanisms, it can become a fertile ground for corrupt practices.

Fighting corruption is not just a matter of implementing repressive rules, it includes promoting an ethical culture, with transparency and responsibility at all levels of society. Only in this way will it be possible to achieve truly sustainable and equitable economic and social development.

As answers Rose-Ackerman (2002), Pantzalis, Parke, & Sutton (2008), Brada, Drabek, & Perez (2012), Mijares (2014), Bahoo, Alon, & Paltrinieri (2020) and Mamede & Torres (2021) point towards the necessity of strengthening the public

sectors, of greater political integrity, the resources available for public policies must be allocated impartially and according to the needs of each region, and not due to political influence, and greater transparency in the financing of electoral campaigns.

It is concluded, therefore, that investment in strengthening policies to combat corruption and promote free competition, as well as in public and private control institutions, are essential for the national market to meet the constitutional parameters of the economy market, contributing to socioeconomic development, in alignment with the constitutional objective of promoting national development.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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