



ISSN: 2230-9926

Available online at <http://www.journalijdr.com>

IJDR

International Journal of Development Research
Vol. 09, Issue, 02, pp.25819-25822, February, 2019



ORIGINAL RESEARCH ARTICLE

OPEN ACCESS

DISCURSIVE MEMORY AND SENSE-EFFECTS IN THE CASE OF CORRUPTION THE OPERATION OF ONE-FIFTH OF THE GOLD

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ARTICLE INFO

Article History:

Received 20th November, 2018
Received in revised form
24th December, 2018
Accepted 08th January, 2019
Published online 27th February, 2019

Key Words:

Memory. Sense-Effects.
Operation One-Fifth of the Gold.
Corruption.

ABSTRACT

This essay presents the partial results of a research study conducted at the Discourse Analysis Research Laboratory (Laboratório de Pesquisa em Análise de Discurso, or LAPADis) on the Operation One-Fifth of the Gold and the interference of this case in the exercise of democracy and in the violation of fundamental human rights. The analysis is founded upon theoretical presuppositions that articulate Memory, Law and Discourse Analysis. The *corpus* was composed of discursive sequences extracted from journalistic texts published on major online news sites in Brazil, as well as publications about episodes of corruption involving Courts of Accounts, produced by the NGO Brazil Transparency. The results of the analysis point to an excess of memory on corruption at the Court of Accounts of the State of Rio de Janeiro (in Portuguese, Tribunal de Contas do Estado, or TCE), establishing a parallel between its *modus operandi*, that is, the way in which it exercises its functions, and the embezzlement practiced by Officials of the Foundry Houses designated by the King during the Portuguese colonial rule in Brazil in the first half of the eighteenth century.

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Citation: Maria da Conceição Fonseca-Silva, Luis Cláudio Aguiar Gonçalves and Ellen Fróes Almeida Sena Gomes. 2019. "Discursive memory and sense-effects in the case of corruption the operation of one-fifth of the gold", *International Journal of Development Research*, 09, (02), 25819-25822.

INTRODUCTION

This essay presents the partial results of a research study conducted at the Discourse Analysis Research Laboratory (Laboratório de Pesquisa em Análise de Discurso, or LAPADis) on the Operation One-Fifth of the Gold and the interference of this case in the exercise of democracy and in the violation of fundamental human rights. In a democratic state that abides by the rule of law, such Brazil, wherein there should be respect for human rights and for the fundamental guarantees, namely individual and collective rights as well as social and political rights, the elected political leaders and state institutions whose activities are subject to the control of other centers of authority.

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This control proved necessary given the centuries-old difficulties arising from public managers and administrators who have overstepped the boundaries between the public and the private space, and those between family and state. According to Holanda (1995), throughout Brazilian history there has rarely been an exclusively bureaucratic administrative system committed to the realization of objective interests. This only shows that during the country's colonial period, the structure established to administrate the assets of the Portuguese Crown became ineffective due to the involvement of officers engaged in contraband and embezzlement of the tax on one-fifth of the gold produced in the colony, known as the *One-Fifth of the Gold*. In the political history of Brazil, a system with predominance of private interests has always prevailed, wherein the choice of administrators for the exercise of public functions has mainly hinged on personal trust to the detriment of competency. Though there have always been laws aimed at punishing agents

involved in the misapplication of public resources and administrative misconduct, the recurring corruption scandals spectacularized in the Brazilian news media, especially after the advent of the political opening, at the end of the 1980s, which brought to an end 25 years of military dictatorship, and during the period of Brazilian democracy (Fonseca-Silva, 2009), indicate the extent to which corruption is deeply rooted in all spheres of power in all administrations, and has similar characteristics to the acts of corruption perpetrated in the colonial period. What differentiates the fraudulent conduct of those in power in Brazil over the years is merely the form of government, previously an Absolutist Monarchy and presently, what we call a rules-based democracy, which has nonetheless inherited a good deal of its patrimonialism from the colonial period. In Brazil, corruption has been a recurring agenda matter across the news media, particularly in the period of political opening and during the period of redemocratization. Recently - more precisely as of March 2014 - schemes of political corruption have constituted a significant portion of the news coverage of the country's media outlets, in the context of the investigations of the Car Wash Operation (in Portuguese, Operação Lava Jato)¹, conducted by the Federal Police.

One of the developments of the abovementioned Operation refers to investigations involving the Court of Accounts of the State of Rio de Janeiro – TCE-RJ. These investigations, dubbed Operation One-Fifth of the Gold identified a bribing scheme that involved the participation of five of the seven councilors of this Court of Accounts. The Operation has its origins in a piece of state's evidence turned by former executives of the contractors Odebrecht and Andrade Gutierrez, who reported to the Federal Prosecution Office (Ministério Público Federal or MPF) incidents of kickbacks and bribery requests by councilor Jonas Lopes, when he held the presidency of the TCE-RJ. After receiving the summons, Lopes negotiated a collaboration agreement and opted to turn state's evidence. His son, Jonas Lopes de Carvalho Neto, also became a collaborator of the investigations into the scheme that may have embezzled up to 20% of contracts with government agencies, channeling significant amounts of money to political officials, especially members of the TCE-RJ and of the Legislature of Rio de Janeiro State (Assembleia Legislativa do Estado do Rio de Janeiro, or ALERJ). Five councilors of the TCE-RJ were targets of pretrial detentions, but all defendants were later released after the Superior Court of Justice (Superior Tribunal de Justiça, or STJ) issued provisional remedies such as imposing a ban on contact with witnesses and on entering the seat of the STJ. After the conclusion of the Police Investigation nº 1133 – DF (Federal District), which looked into the activities of the five councilors of the Court of Accounts of the State of Rio de Janeiro, the Federal Prosecution Office brought charges against the involved, which led to criminal prosecution (Case nº 897-DF), whose contents are still confidential. Besides the Criminal Case, on April 16, 2018, the Federal Prosecution Office filed a public-interest civil action against misconduct in public office

(case nº 0088523-53.2018.8.19.0001), which is pending before the 4th Tax Court of the Court of Appeals of the State of Rio de Janeiro, to the disadvantage of the five suspended councilors of the TCE-RJ, whose proceedings are under seal by court order. This corruption scandal opens up a discussion of i) the criteria for appointment of the TCE's councilors, seeing that the five individuals involved were appointed by political agents who have their accounts examined by the Court of Accounts – they are ex-politicians, appointed by politicians, to audit politicians; ii) and the effectiveness of control institutions in combating corruption in the public service, including the Courts of Accounts, which constitute an autonomous power structure, dedicated to supporting the Legislative Branch in the external control of the public accounts, and, consequently, in curbing corruption practices. That being said, we analyzed the sense-effects produced by the discursive formulations about the Federal Police's Operation One-Fifth of the Gold and the forms of appointment to office of the councilors of the Court of Accounts of the State of Rio de Janeiro, as a means for impeding the exercise of democracy and as a violation of fundamental rights.

MATERIALS AND METHODS

In this research study, we put into action principles and procedures of Discourse Analysis (DA), using a qualitative/quantitative approach and establishing a descriptive/interpretative objective (seeing as in DA there is no description without interpretation). The procedure adopted entailed the discourse analysis of the case of the Operation One-Fifth of the Gold.

The analytical archive comprised of i) items of news about the scheme of payments of illicit benefits in the form of funds misappropriated from contracts with public bodies for agents of the State of Rio de Janeiro, especially from members of the Court of Accounts and of the State Legislature of Rio de Janeiro; ii) data from the NGO “Transparência Brasil”, which indicate that the councilors of the TCE-RJ involved in corruption schemes were political agents before being appointed to office at the Court of Accounts; iii) and copies of processual papers without protection of confidentiality available in the records of Criminal Case nº 897-DF and in the civil case of administrative corruption (case nº 0088523-53.2018.8.19.0001). In relation to the discursive *corpus*, we prioritized discursive sequences (DSs) extracted from the analytical archive for analysis. The research work was based on presuppositions from the fields of Memory, Discourse Analysis and Law.

RESULTS AND DISCUSSION

Pêcheux ([1983] 2015) takes the concept of discursive memory, which relates to the recurrence of ready-made phrases and communicative utterances that emerge from a specific historical contingency, and that are updated or forgotten according to the discursive process, seeing that it is something that always speaks, before, in another place. According to the author, “Memory must be understood [...] in the interwoven meanings of mythical memory, of a social memory embodied in practices, and of the memory constructed by historians” (Pêcheux, [1983] 2015, p. 44). Based on this operational concept, we understand that the operation of the Federal Police titled One-Fifth of the Gold updates a

¹Operation Car Wash (in Portuguese, Operação Lava Jato), known as the most extensive investigation of corruption and money laundering ever conducted in Brazil, began “in March 2014 with an investigation pursued before the Federal Court System in Curitiba of four criminal organizations lead by black market currency exchangers, the Operation Car Wash has already identified irregularities at Petrobrás, a semipublic, majority state-owned Brazilian oil and gas company and the country's largest state-owned company, as well as in large-scale contracts, such as the construction contract of nuclear power plants Angra 3 in Rio de Janeiro. At present, the Operation has had ramifications in Rio de Janeiro and in the Federal District, in addition to criminal investigations before the Federal Supreme Court to look into facts attributed to individuals entitled with the prerogative of function” (<http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato>).

discursive memory, insofar as, in a rules-based democracy, as currently is the case of Brazil, agents vested with authority misuse public funds for private benefits through the practice of corruption, just as occurred in the colonial period, when those responsible for supervising the payment of the one-fifth tax to the Crown facilitated the smuggling of gold and the evasion of the aforementioned “royal tax”. The results of the analyses of the discursive *corpus* point to an effect produced by an excess of memory of corruption in the TCE-RJ, which ignited a discussion about the form of appointment of the councilors and ministers of the Courts of Accounts, seeing that the appointment of those who shall review the public accounts is made through the Legislative and Executive Branches, which makes possible partiality from those who were appointed in exercising their functions. This can be observed data from data provided by the NGO “Transparência Brasil”, obtained in 2014, when 80% (eighty per cent) of the councilors and ministers in public offices linked to the Exchequer system (State Treasury) occupied elective offices (namely state and federal representatives/deputies, senator, mayor, among others) before they served these roles.

(SD1) The Court of Accounts is an agency entrusted with providing assistance to the Legislative Branch. It is responsible for overseeing the management of public resources of the state and to give transparency to the actions of the government.²

(SD2) All five councilors arrested by the Federal Police in the operation One-Fifth of the Gold were elected by deputies of the State Legislature of Rio de Janeiro (Alerj). Jonas Lopes, president of the Court on leave of absence and responsible for the agreement to turn state’s evidence that resulted in the aforementioned operation, was appointed to office after he was nominated by the then Governor of Rio de Janeiro Anthony Garotinho.³

(SD3) Responsible for overseeing and judging the use of public resources, 80% of the constituents of the Courts of Accounts came into office after elective.⁴

DS1 produces a sense-effect of political corruption in the Public Administration, seeing that the criteria for the choice of councilors ignore technical and legal factors, contrary to what is required by the legal norm at issue. DS2 produces the same sense effect, since it indicates that councilors are to be appointed by the Governor of the State, and that the arrested councilors were actually elected by deputies of Alerj. DS3 indicates that the members of the TCE-RJ illicitly benefitted through the abuse of public office for private gain. In thinking about this effect, we can observe that the actual criteria for nomination of the councilors of the Courts of Accounts affect the very functioning and isonomy of these Courts, seeing that the councilors are chosen by the Chief of the State’s Executive Branch, and also by deputies of the respective State Legislature, which ultimately binds the councilors to the interests of those who appointed them, in the way that occurred in Rio de Janeiro with the Operation One-Fifth of the Gold. This effect is conducive to the effect of fragility of control of

the Courts of Accounts, which can also be identified in DSs 4, 5 and 6:

(SD4) The former director of Odebrecht says he then arranged payment with the former president of the TCE-RJ in the sum of R\$ 4 million, in four installments of R\$ 1 million. In exchange, the bid notice would be approved.⁵

(SD5) The agreement involved payment in the sum of R\$ 70 thousand to five councilors of the Court. According to Jonas Lopes, the link between the councilors and business owners was Picciani, who was then president of the State Legislature of Rio de Janeiro (Alerj).⁶

(SD6) Purchase of seats. Until now, the Federal Police has even identified cases relating to the purchase of seats on court. Operation Ararath indicated that councilor Sérgio Ricardo de Almeida, from the state of Mato Grosso, paid R\$ 4 million to his predecessor in office to assume a seat on the court. He was ousted in January through a court ruling.⁷

In these DSs, the sense-effect of fragility of control of the Courts of Accounts is produced by the criteria for appointment of the councilors as a formation mechanism of these Courts, which opens the door for misperformance or neglect of the recognized duties and functions of the Institution, through practices of corruption. In the encounter between a memory and the present time, effects produced by the act of corrupt acting by public agents can be identified, which calls to mind the colonial period, indicating corruption as a practice that is constant and atemporal in the political activity of the country, perpetrated by public agents of the Court of Accounts that impede the exercise of democracy and of fundamental human rights that were guaranteed after the country’s redemocratization. Democracy is fundamental in the principle-based structure of Human Rights, insofar as it is only possible to think about the exercise of rights in democratic states, a fact that, in turn, involves the exercise of popular sovereignty, which is the highest degree of political power extracted from the sum of attributes of each and every member of a state-run society, responsible for choosing its representatives in government through universal suffrage and expressed by egalitarian, secret and direct vote (Bulos, 2003 p.480).

CONCLUSION

The DSs analyzed produce sense-effects of organization of large and complex schemes of corruption (setting up of parallel accounts, payment of kickbacks and bribes and money laundering), in which business owners, through the illicit funding of electoral campaigns, manage to elect politicians who will defend their interests in parliaments, by means of bidding processes and/or the approval of budgetary amendments. Likewise, the discursive sequences analyzed indicate sense effects of departure from finality and control and control that engender/stem from the Courts of Accounts”), which arises from its form of constitution. The Operation One-Fifth of the Gold marks the encounter between a memory and

²Source: (<https://g1.globo.com/rio-de-janeiro/noticia/operacao-quinto-do-ouro-nasceu-de-delacao-de-ex-diretor-da-odebrecht.ghtml>).

³Source: (<https://noticias.uol.com.br/politica/ultimas-noticias/2017/03/29/com-salario-alto-e-mandato-vitalicio-cargo-de-conselheiro-do-tce-e-um-dos-mais-cobicados-do-rio.htm>).

⁴Source: (<http://domtotal.com/noticia/1139973/2017/04/80-dos-conselheiros-de-contas-vieram-da-politica/>).

⁵Source: (<https://g1.globo.com/rio-de-janeiro/noticia/operacao-quinto-do-ouro-nasceu-de-delacao-de-ex-diretor-da-odebrecht.ghtml>).

⁶Source: (<http://agenciabrasil.ebc.com.br/politica/noticia/2018-02/ex-presidente-do-tce-rj-diz-que-picciani-era-elo-com-empresarios-de>).

⁷Source: (<http://domtotal.com/noticia/1139973/2017/04/80-dos-conselheiros-de-contas-vieram-da-politica/>).

the present time on the practice of corruption of the “One-Fifths” by public agents. The results indicate that the form of appointment and the criteria for choice of members of the Courts of Accounts stipulated by the Constitution of the Federal Republic of Brazil undermine the impartiality and independence necessary for the fair review of the public administration, since the crimes committed by public agents in connection with the misuse or misapplication use of public resources are aggravated when committed with the consent and approval of, and moreover, with the participation of the Councilors of the Courts of Accounts, casting doubt on the legitimacy of these courts to oversee and control the acts of corruption committed by other public administrators, which renders the external controls ineffective, and compromises the exercise of democracy in the principle-based structure of Human Rights. Political corruption violates the right of millions of people across the world, as it takes away from them the potential use of and benefit from community assets and impedes the exercise of fundamental rights such as health, education and access to the judicial system.

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