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Ética, Códigos de Conduta e Integridade na Administração Pública Brasileira

Ética, Códigos de Conducta e Integridad en la Administración Pública Brasileña

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ABSTRACT:

Objective: examine the concepts of ethics and morals in the context of integrity programs on the rise in the Brazilian public administration, highlighting challenges and potential.

Theoretical framework: defines public administration as a field in formation and transdisciplinary in the treatment of its objects of investigation. It is based on the philosophy of how to do philosophical from problems and whose essential function is the production of contextualized concepts. It approaches ethics from deontological, utilitarian and virtues perspectives, also exploring the concept of integrity from philosophy.

Results: demonstrates the imprecision and limits regarding the appropriation of the concepts of ethics and moral conduct in their expression applied in public service, with the consequent weakening of efforts to codify conduct and the performance of ethics committees in integrity programs.

Originality: proposes the philosophical work for the conceptual purification of ethics in relation to the meanings and potentials of its different aspects in the process of appropriation of codes of conduct and performance of ethics committees in integrity programs in public service.

Theoretical and practical contributions: highlights the potential of philosophy as a philosophical practice based on problems such as an approach to appropriating ethics applied in a substantive way, transcending the current instrumentality in relation to the established codes that are now more in line with a new element of bureaucracy with significant formalistic potential. It offers a conceptual perspective capable of supporting the reorientation of integrity policies, especially in content and form of codes of conduct and the performance of ethics commissions as spaces for formulation, deliberation and education.

KEYWORDS: Ethics, Code of conduct, Integrity, Bureaucracy, Philosophy.

RESUMO:

Objetivo da pesquisa: examinar os conceitos de ética e de moral no contexto dos programas de integridade em ascensão na administração pública brasileira, destacando desafios e potencialidades.

Enquadramento teórico: define a administração pública como campo em formação e transdisciplinar no tratamento dos seus objetos de investigação. Assenta-se na filosofia como fazer filosófico a partir de problemas e que tem como função essencial a produção de conceitos contextualizados. Aborda a ética a partir das vertentes deontológica, utilitarista e das virtudes, explorando também o conceito de integridade a partir da filosofia.

Resultado: demonstra a imprecisão e os limites em relação à apropriação dos conceitos de ética e de conduta moral em sua expressão aplicada no serviço público, com a consequente fragilização dos esforços de codificação das condutas e de atuação das comissões de ética nos programas de integridade.

Originalidade: propõe o fazer filosófico para a depuração conceitual da ética em relação aos significados e potenciais de suas diferentes vertentes no processo de apropriação dos códigos de conduta e atuação das comissões de ética nos programas de integridade no serviço público.

Contribuições teóricas: destaca o potencial da filosofia como fazer filosófico a partir de problemas como abordagem de apropriação da ética aplicada de modo substantivo, transcendendo a instrumentalidade vigente em relação aos códigos instituídos que ora mais se alinham a um novo elemento de burocracia com significativo potencial formalístico. Oferece perspectiva conceitual capaz de subsidiar a reorientação das políticas de integridade, em especial em conteúdo e forma dos códigos de conduta e atuação das comissões de ética, como espaços de formulação, deliberação e educação.

PALAVRAS-CHAVE: Ética, Códigos de conduta, Integridade, Burocracia, Filosofia.

RESUMEN:

Objetivo de la investigación: examinar los conceptos de ética y de moral en el contexto de los programas de integridad en auge en la administración pública brasileña, destacando desafíos y potencialidades.

Marco teórico: define la administración pública como un campo en formación y transdisciplinario en el tratamiento de sus objetos de investigación. Se basa en la filosofía de cómo hacer filosóficos a partir de problemas y cuya función esencial es la producción de conceptos contextualizados. Aborda la ética desde la perspectiva deontológica, utilitaria y de virtudes, explorando también el concepto de integridad desde la filosofía.

Resultado: Demuestra la imprecisión y los límites en relación a la apropiación de los conceptos de ética y conducta moral en su expresión aplicada en el servicio público, con el consiguiente debilitamiento de los esfuerzos por codificar la conducta y el desempeño de los comités de ética en los programas de integridad.

Originalidad: propone la práctica filosófica para la depuración conceptual de la ética en relación a los significados y potencialidades de sus diferentes aspectos en el proceso de apropiación de códigos de conducta y desempeño de los comités de ética en programas de integridad en el servicio público.

Aportes teóricos y prácticos: destaca el potencial de la filosofía como práctica filosófica basada en problemas como la apropiación de la ética aplicada de manera sustantiva, trascendiendo la instrumentalidad actual en relación a los códigos establecidos que ahora están más alineados con un nuevo elemento de la burocracia con importante potencial formalista. Ofrece una perspectiva conceptual capaz de apoyar la reorientación de las políticas de integridad, especialmente en cuanto al contenido y forma de los códigos de conducta y el desempeño de los comités de ética como espacios de formulación, deliberación y educación.

PALABRAS CLAVE: Ética, Código de conducta, Integridad, Burocracia, Filosofía.

INTRODUCTION

The concept of ethics is amongst the appropriations in course in the Brazilian public administration and more recently associated to integrity and conformity programs, reaching legal status, for instance in the Federal Law nº 12.846/2013, which rules both the civil and administrative responsibility of legal persons in acts against public administration, the Federal Law nº 13.303/2016, which controls the legal regime of state companies, and the most recent Federal Law nº 14.133/2021, which regulates both biddings and administrative contracts. This text intends to present a reflection on the adoption of the concept of ethics in its applied expression (Parizeau, 2007), more precisely in relation to the emergence of the so-called codes of ethics in the public administration (Plissock-Varas & Lagos-Machuca, 2021; Vieira & Barreto, 2021; Graça & Sauerbronn, 2020; Vieira & Barreto, 2019; Kempfer & Batisti, 2017; Downe; Cowell & Morgan, 2016; Mendes & Lucio, 2016; Svava, 2014; Gomes, 2014), included in integrity programs (Ocde, 2021; Huberts, 2018; Menzel, 2015; Kolthoff; Macaulay & Anechiarico, 2013). These, in turn, are accommodated in a specific interpretation of the governability concept whose polysemic aspect (Buta & Teixeira, 2020; Oliveira & Pisa, 2015; Levi-Faur, 2012; Lynn Jr., 2012; Marques, 2007; Learmonth, 2005) has contributed for the emergence of definitions restricted to the organizational domain, limiting its potential, mainly in the public service, to the political dimension. Due to this scenario, the main objective of this article is the discussion of the instrumental adoption, not rarely formal or symbolic, of the philosophical concepts of ethics and moral conduct (Castro & Nunes, 2019).

This work is based on extensive bibliographic research in the areas of philosophy and public administration, as well as in examination on recent legislative production. It includes also reflections that indicate possible effects of conceptual inaccuracy in the explanation of the formal aspects of the code of ethics phenomena in the Brazilian public administration, including its influence in the appropriation of the integrity concept. Besides this introduction, it is presented a section which deals with the transdisciplinary aspect of the public administration and the role of philosophy, ethics and moral emphasizing their origins. The work also discusses the applied ethics emerged as codes in the Brazilian public administration with emphasis on the contributive potential of its conceptual refinement. Finally, a few remarks are presented on the limitations of this study indicating points for future improvements.

PUBLIC ADMINISTRATION AND PHILOSOPHICAL CONTRIBUTIONS: THE ETHIC WORKING AND THE MORAL CONDUCT

The theoretical and epistemic dynamism of public administration (Coelho, Almeida, Midlej, Schommer & Teixeira, 2020; Duarte & Zouain, 2020; Fadul, Coelho, Lustosa da Costa & Gomes, 2014) resulting of multiple social sciences and subjects connected to them (Drechsler, 2020; Gault, 2020), supply not only heterogeneity and conceptual strength, but also a multitude of contrasts and tensions which promote the development of this research field. This fluidity allows to identify in the public administration connections with the philosophy, nest of their conforming disciplines, and its refuge whenever their scientific structures are threatened (Barreto, Carrieri, & Romagnoli, 2020; Burrell, 1999; Paula, 2016); these disturbances become conspicuous whenever transdisciplinary interactions are established (Japiassu, 2006). It is herein proposed, therefore, the return to philosophy for the due analysis of the phenomenon.

Several studies linking philosophy to public administration have been published recently (Bergue, 2022; 2021; Ongaro, 2020a, 2020b; Zappellini, 2020; Santos, Serafim, Pinheiro & Ames, 2019; Souza, Silva, & Gomes, 2019; Whetsell, 2018; Gomes, 2014; Deleon, 2012; Shue, 2006; Dobel, 2005) demonstrating potentialities of philosophy for the conceptual accuracy and improvement of both critical and reflexive analyses of the basic principles of the reasoning, not only in the research, but also in governmental domains. The studies of Caldeira & Duflath (2021), Castro & Nunes (2019), Kempfer & Batisti (2017), Menzel (2015), and Cherman & Tomei (2005) are relevant because of the adoption of codes of ethics or conduct in integrity systems, which demonstrate both the importance and challenges of this process. The present analysis focuses on the accuracy of the concepts of ethics and moral (or conduct) involved.

The philosophy is connected to the public administration not only through constitutional principles and legal consequences, but also doctrinal ones as, for instance, the concepts of legality and discretionarity (Lotta & Santiago, 2017), both in terms of actions and political decisions. In this sphere, elements of rationality, local culture and values are also important due to their impact on moral dilemma faced by public governmental agents (Ames, Serafim & Martins, 2021; Santos, 2020; Santos, Serafim & Lorenzi, 2018; Santos, Serafim, Pinheiro & Ames, 2019). This discussion is based in questions which precede technical-scientific parameters, and belong to the philosophy domain, involving conflict of values, choices, consequences and responsibilities, all of them connected to ethics. And ethics, in turn, is connected with the moral in the treatment of phenomena linked in these processes. But, first and foremost: What does mean philosophy as philosophical problematization?

Philosophy is, basically, the problematization of concepts; it starts on them and, subsequently, these concepts are developed or reformulated. However, these concepts are not exempt from complementary or systematic analysis. Hence, Deleuze & Guattari (1992, p. 13) argue that philosophy “*more precisely, is the the discipline that create concepts*”, and does it through detailed and systematic process of reflection of cultural objects in order to reach consistency and the due contextualization in the problem under analysis. The relationship between concepts and philosophical problems is both essential and interdependent. Philosophical problems result in conceptual answers, which can be placed as new problems endowed with the peculiarities of their philosophical nature. According to Gallo (2012), the concept, as rational product of the investigation of a problem, is not conclusive, but the base for successive investigations. In this sense, to examine the meaning of ethics, even in its first approach, allows the comparison to the concept of moral, as well as, to notice their distinct lines of thinking.

This work intends to demonstrate that the expression “*code of ethics*” is imprecise in conceptual terms, because only the moral conduct of the subject can be ruled by codes. Therefore, what is sometimes referred as synonyms – codes of ethic or conduct (Castro & Nunes, 2019; Svara, 2014) – deserves conceptual refinement.

The concepts of ethics and moral, due to their close relationship, are commonly misinterpreted in their actual meanings (Rachels, 2013; Ricoeur, 2007). Ethics is the branch of philosophy which deals with the values and beliefs and their principles, while moral is the “*object of ethics*” (Abbagnano, 2012, p. 795), and refers to the values, rules and traditions that influence the behavior in determinate context. These elements constitute a scenario socially organized of the attitude and conduct, and these patterns might vary according to the social structure, resulting in distinct morality elements according to historical and cultural aspects. Therefore, social structures might have different types of morality defined by the sharing of specific values, but that can intercommunicate. Even in the public service, where some values might be shared, it is possible to identify different moral frames. In general terms, therefore, the diversity and plurality of societies contribute to the coexistence of these distinct frames, occasionally contrasting in their boundaries. Ethics tries to solve conflicts in these cases.

As previously mentioned, ethics is a critical reflection process on moral postulates (Cortina & Martínez, 2005). As a philosophy area, ethics encloses itself the philosophy as a whole: A critical, reflective and radical analysis of the thinking and action toward the world. Therefore, it acts on the subject actions. It is also possible to say that ethics shapes and changes the moral, because it works on it, characterizing connected and interdependent concepts, since ethics’ purpose is “*to clarify the moral in a reflexive way*” (Cortina & Martínez, 2005, p. 10). Ethical sense is, therefore, related to action; and philosophy, especially ethics – which deals with the subject and its actions – gives support to the reflexive action of people in society or in determinate community. It is noteworthy, also, that ethics is not neuter, but being critical and reflective, has relationships with any specific code of moral (Cortina & Martínez, 2005).

The analysis of the due use of the concept of ethics in the public administration demands awareness of the existence of different lines of thinking on the analysis and justificative of the action. Among the main features of ethics, deserves attention the utilitarian and deontological virtues.

The deontological sources of ethics, more deeply developed by Immanuel Kant, sustains the good will as supreme value, because of its independence of preferences, and supported by the observance of the duty in distinct and complementary formulations of the categorical imperative concept, that is presented as unconditional application order (Bonjour & Baker, 2010; Galvão, 2019; Kant, 2019). The duty sense, “*which the good will*” is a primary element in the Kantian ethics, distinguishing juridic and ethical rules (Kant, 2019, pp. 26-27). The first rules are those based on incentives external to the subject, and their observance is connected to the concept of legality. The ethical rules, in turn, find their incentives in the sense of duty, an internal tension in the agent which supply moral value to the action (Mohr & Ruhl, 2020).

The ethical action, in this perspective, depends of an objective, and is based on “*aphorisms*” taken as rules (Westphal, 2020). According to Kant (2019), an aphorism is a subjective principle of action turned into an universal one by the subject. Therefore, the ethical action is not subordinated to factors external to the individual, but results from its own judgement. Therefore, according to this standpoint, the reason is the fundament of ethics (Guyer, 2020).

Another perspective that must be considered is the utilitarian ethics, which appeared during the modernity mainly by Jeremy Bentham and John Stuart Mill. This perspective has a teleological character (gr. *telos* = finality), identifying the justified moral act as the one which brings the best results, comparing procedures and outcomes aiming at the maximum result of the action in terms of pleasure or minimal pain. The utilitarianism is one of the expressions of rationality which considers the consequences of the act as the element of judgement. It represents a valorative attribute subjacent to more flexible contemporary reinterpretations of legality, and with expressions sustained, inclusive, by the Federal Law nº 13.655, of April 25th, 2018, of introduction to Brazilian Law.[i]

The third perspective mentioned – denominated ethics of virtue – is based on the proposal of Aristotle (2014) and is guided by the achievement of happiness as activity – or action – and most valuable possession, and utmost objective of the individual in society (Aristotle, 2014; Hooft, 2013). It is founded in the sense of

virtue – excellence – as “*disposal which deserves praise*” (Aristotle, 2014, p. 77), getting importance also the concepts of median or due measure (Aristotle, 2014; Hooft, 2013). A bibliographic review on ethics in the public service reveals the appearance and predominance of this interpretation, especially in Santos (2020), Santos *et al.* (2019), Souza *et al.* (2019) 19), Santos *et al.* (2018), *inter alia*.

Among the characteristics of virtue ethics is its “*particularism*”, dealing with “*specific objects*” (Hooft, 2013, p. 227), which implies the possibility of “*diverging responses*” depending on the context. The virtue sense, which characterizes the “*reverent agent*” does not aim at an utilitarian reason, but considers the importance of the action by itself. The virtuous action is conducted by the reverence of the intrinsic value of the objects, instead of in observation of a sense of duty, aiming at the “*correctness of the action*”. Hooft (2013, p. 228), regarding the health professional in relation to life, sustains that:

The reverent person does not have the cold certainty as the duty ethicist who thinks that the due execution of an activity is the most important thing. One becoming virtuous will be sensitive to the values and requirements of all individuals involved in specific situations, and take part in the responsibility and give due value [...] suitable to the context (Hooft, 2013, p. 228).

The virtue ethics reinforces aspects of sensitivity, attention, respect, trust, and valuable traits of character, in contrast to the strict rationalism, which might result from more strict interpretations, sometimes based both on the duty and utilitarian ethics. Among the virtues of a moral agent is the integrity, in the sense of “*the unity or completeness of virtues and ethical commitments of an individual*” (Huberts, 2018, pp. 22). Virtue, coherence, originality, sincerity, honesty, responsibility, among others, can be considered conforming elements. Hooft (2013), states that:

the integrity virtue field includes the sphere of interpersonal commitments, such as promises, contracts, professional roles and public positions wherein temptations of advantages resulting from trust abuse might occur. It is the field where people put confidence in governmental agents, company leaders, or any people occupying relevant positions, which demand responsibility. This field belongs both to the public and interpersonal sphere, and conveys one’s personal commitments to this sphere. The integrity is the virtue which encloses both personal and public expectatives (Hooft, 2013, p. 236).

It can be noticed that the correct action might be reached from different ethical principles as, for instance, the sense of duty, the assessment of potential gains and losses, or the execution of virtues which respond to these values. They constitute, therefore, distinct thought traditions, which do not have to preclude the search for a convergence oriented towards the use of ethics as an instrument of change in the public service. The effort of conceptual integration involving several theoretical perspectives aims at to avoid the one-way choice, considering potential contributions of others to think the applied ethics in the public service. Hence, the establishment of a broader conceptual base might contribute for the development of solutions beyond the almost sterile prescription of duties, or merely the enunciation of virtues. It would also avoid to restrict the judgement of an action to a narrow instrumental analysis, involving the decisions about subjects and problems of complexity and repercussions, as those connected to the public administration in modern societies.

Ethics applied to the public service offers the possibility of an examination in the due context on the act and the corresponding thought subjacent to it, supplying not only justificative to the action, but also consciousness of the subject in the due context. The decisions for the correct administrative action in the public service reinforce the centralization of judgements, therefore, the conceptual distinction between moral and ethics allows to distinguish moral judgements from ethical ones.

The moral judgement – which answers the question *what to do?* –, is performed in the context of a system of valorative elements socially built and shared, leading to the option for one or another justificative of action, but limited to explicit moral elements. It constitutes, therefore, an examination of phenomena under concepts given and legitimated in a collectivity. The ethical judgement, on the other hand – which answers the question *why to do?* – implies the reflection on valorative elements that lead to the moral options proposed and that support (justify) the resulting action. In these terms, the moral judgement is carried out by any member of the collectivity relatively well informed; the ethical judgement, in turn, demands higher rigour

and critical-reflective discipline, being performed only by “*those people who cultivate the taste for thinking, as long as they exhausted the problem*” (Cortina & Martínez, 2005, p. 10). Ethics implies, therefore, potential rupture with current moral patterns.

In this line of reasoning, ethical approach in the public administration demands to understand it as through a deep and reflexive thinking, beyond the rules imposed by the codes of moral conduct (either formally or informally proposed).

Such distinction is useful because it refers to two levels of analysis and language on the moral action, and therefore it is necessary the use of two different terms to avoid confusion. Hence, we refer as moral these principles, rules and values that each generation conveys to the next one based on the confidence that they constitute a legacy of how to deal and behave correctly along life. And we name “Ethics” this discipline that constitutes a reflection of second order on the moral problems. The fundamental question would be: “What we have to do”, while that the main question of ethics would be: “Why we have to do?”, that means, “Which arguments reinforce and sustain the moral code that we are adopting as a conduct guide?” (Cortina & Martínez, 2005, p. 20).

The *ethics* might be, therefore, understood as a reflective process; and moral as resulting from the intellect action when collectively legitimated. Ethics is, simultaneously, in a historical collection – distinct philosophical lines of thinking – and action, as practice, or ethic, which implies a critical-reflective effort on the moral patterns shared currently. This attitude, in turn, is based on the philosophical problematization (Porta, 2014; Armijos Palácios, 2013, Cerletti, 2009).

APPLIED ETHICS AND CODES OF CONDUCT IN THE PUBLIC ADMINISTRATION

The applied ethics is an emerging field in philosophy (Hooft, 2013), and even more recent is its insertion in the Brazilian public service, representing a fertile area for transdisciplinary investigation (Japiassu, 2006). It has been increasing and acquiring importance in contemporary Brazilian public administration, mainly connected to integrity programs, which appear as legal requirements and demand substantive assimilation.

The instrumentalization of the concept of ethics in the universe of integrity programs, can be considered as a control mechanism designed to deal with deviant attitudes of both public and private agents in their different expressions, such as those involved with the complex phenomenon of corruption (Caldeira & Duffloth, 2021; Macedo & Valadares, 2021; Pliscoff-Varas & Lagos-Machuca, 2021; Souza *et al.*, 2019). It is also noteworthy, that the concepts of ethics and integrity (Menzel, 2025; Dobel, 1990) acquire increasing significance, not only as response to illicit conducts, but also of new organizational formats, such as flexible work arrangements, which combine both physical and virtual presential interactions, wherein control relations are reorganized.

The substantive transformation of the correct practices of public administration aimed at society and guided by the public interest involves the continuous essential rethink and subsequent production of concepts in the due context (Deleuze & Guattari, 1992; Gallo, 2012); and this is imposed toward the concepts of integrity and ethics (Zenkner, 2019; Kempfer & Batisti, 2017; Mendes, Bessa & Silva, 2015; Cherman & Tomei, 2005). It is important to identify the ethics as an exercise of radical reflection – reaching the values of the fundamentals of thought – related to the fundamentals of the moral parameters of justified action in use by the society. Therefore, it is mandatory to know the essence of integrity also as an evaluative element of the ethical action, which contrasts with the instrumentalized expression “*codes of ethics*” as part of “*integrity programs*”.

In philosophy, the concept of integrity is linked to “*what is present in its completeness, implying robustness and perfection. Etymologically, integral means something that was not touched or ruptured, which keeps complete, intact*” (Carvalho, 2014, p. 210). The concepts of ethics and integrity are, therefore, linked (Huberts, 2018). But, could be ethics codified? Or the codes which ruling and managerial discourse refers to would be, more precisely, of conduct codification?

According to Cortina & Martínez (2005, p. 21), “besides the examination and fundamentation of the moral action, the ethics also applies this understanding in different aspects of life, in order to “permit in the society a critical moral (rationally based), instead of a moral code imposed as a dogma or the absence of moral references”. Ricoeur (2007) states that the concept of moral indicates both the conduct rules on what is permitted or not, and the sense of obligation of the subject in relation to the rules. This double perspective is, according to the author, the “hard core” which serves as reference to two approaches of the concept. One is the “previous ethics” which refers to the “rooting of rules both in life and in desire”, and the other denominated “posterior ethics”, which refers to the inclusion of rules in concrete situations (Ricoeur, 2007, p. 591). It becomes clear, therefore, that moral is composed of two important elements: The system of rules and the sense of obligation relation to its observance, being this a psychological effect of the system on the subject, which gives legitimacy and consistency to the moral arrangement.

The codes were included in the Brazilian public administration in the middle of 1990 decade, in a context of changes in organization of state and its apparatus. Transformations in global scale involving actions against corruption aiming to improve relations, mainly economic ones, safer, more stable, and, therefore more reliable, were in vogue. In this same sense are the actions recently intensified, guided toward the concepts and practices of conformity and integrity of the management systems, mainly the relations between companies and the state and state companies and their markets. This movement might be associated, among other aspects, to the increasing complexity of structures and organizational and social interactions integrating different dimensions of life, mainly the political and economical ones in a society which gradually becomes more plural and multifaceted.

This ethical approach, according to Parizeau (2007, p. 596), “is directly linked to concrete situations is denominated ‘applied ethics’”. It refers to the analysis of practical and precise questions inserted in certain contexts to be examined under interdisciplinary perspective (Cortina & Martínez, 2005) the consequences and justify the decisions according to areas such as bioethics, environmental ethics, and professional ethics, where are inserted conduct codes that “determine the professional values, as well rights and responsibilities connected to the profession; (...)” (Parizeau, 2007, p. 596). It is, therefore in the context of applied ethics that this concept becomes closer to the moral sense. Moreover, it is important to emphasize that its *applied* character does not implies less reflexion effort and radicalism in the examination of their object of analysis, no matter concepts or actions. When instrumental applications are examined in professions and organizations, both values and conduct rules are expected of the subject in a collective expectative of correct and justified action. It is noteworthy, however, that applied ethics does not mean “application of a theoretical ethics”, and it is not limited to “an ethics to be applied” (Parizeau, 2007, p. 598).

The applied ethics presents characteristics that oppose exactly a deductivist model in moral philosophy and the nitid separation between theory and practice. The emphasis on practic cases marks the importance of the context. The latter is not a major aspect in moral theories of deontological type (e.g., Kantianism). The normative purpose of the ethical analysis indicates clearly that it is concerned with results of the moral actions, either present or future (for the next generations); in the debates, moreover, this influences the choice of moral teleological theories (the utilitarianism, the consequentialism). (Parizeau, 2007, p. 598).

The conceptual examination permits observe an incomplete appropriation of what is understood more precisely as ethics in its necessary extension. What is codified is not ethics, but elements of a moral conduct; and this imprecision has practical implications. Studies on ethics and codes of ethics in organizations emphasize the relation to appropriation and instrumentalization of the concept in this applied sense (Silva, 2020; Castro & Nunes, 2019; Mendes & Lucio, 2016).

Consequences of the inadequate use begin by possibility of reinforcement of a misinterpretation wherein the existence of codes of “ethics” (more precisely, codes of conduct) formally proposed, as well as, the other elements of an integrity system – e.g., comissions of ethics, with the due prevision of disciplinary sanctions –, would, by themselves, resolve the demands of ethics involving public administration (Cherman & Tomei,

2005). Ethics is much more and more complex yet. Ethical procedures, one of the dimensions of integrity as control element of management system, does not mean to be subordinated to rules prescribed in a code of conduct. Ethical judgements could be made from parameters predicted in these code, but not restricted to them. Ethics is a reflection which tends towards the justification of conducts carried out in a moral system.

The importance of conceptual precision, essential attribution of philosophy, is here resumed. It is one of the challenges posed by the important advances of Brazilian laws involving integrity programs – Federal Law nº 13.303/2016, juridic statute of state companies and, more recently, the Federal Law nº 14.133/2021, which rules contracts and biddings (art. 25, §4º; art. 60, incise IV; art. 156, § 1º, incise V; art. 163, sole paragraph) (Law nº 14.133, 2021). The institution of “codes of ethics and conduct” as instruments of the integrity systems was also predicted in the Federal Law nº 12.846/2013, art. 7º, incise VIII, acting as attenuating of sanctions “VIII – *the internal instruments and procedures of integrity, audit, and incentive to denunciation of irregularities and effective application of codes of ethics and conduct of legal person*” (Law nº 12.846, 2013).

It is the action of people – particularly the decision-makers – which is the object of the integrity programs and, consequently, of the conduct codes. The prescription of the subject behaviour is in the field of moral; the ethic judgement simply acts on the concrete action of this subject during the action, to examine their fundamentals. In the applied sphere, ethics constitutes the critical and reflective effort which tends not only verify the adherence of the action of the subject in relation to the codified conduct, but also of this norm to the context. The place of ethics is, therefore, the substantive examination of the conflict or even potential rupture with the conduct stipulated in concrete situations. And this examination might be sustained in distinct origins of formulation about the ethical action: the virtue, the deontological or the utilitarian, for instance. In the case of instrumentalization of applied ethics, especially in organizations, these judgements are also carried out afterwards by the ethical commissions. These, in addition to the subject, are the essential structures to increase the ethical reflection and reinterpretation of the morality patterns (conduct) in determinate context. This reflection originated from the philosophy, as philosophical problematization (Armijos Palácios, 2013; Bergue, 2022; 2021).

The understanding and justification of the action is the object of ethics, thinking deeply on the fundamentals which modulate the action. The ethic attitude, as philosophical attitude, is to think about the thinking in relation to the action aiming at good actions, and has the patterns of conduct fixed and shared as one of the curbing constituents of the actions. This reflexive attitude when the thinking and action result more directly from the uncritical and decontextualized obedience to prescribed patterns. What is present in codes, therefore, are moral references of conducts – rules – and not a critical and reflective effort about these rules, instead of to concrete situations in a plural and dynamic context – i.e., ethics. In synthesis, moral is the codification of the expected conduct, while ethics is the reflection on it. The ethical action involves to question about the moral, examining and reviewing it according to the situation; it might, therefore, cause ruptures or inflexions toward the prescriptions. Ethics holds, according to Cortina & Martínez (2005), the practice of a critical and radical analysis; not the uncritical subjection to a conduct code.

In their expressions of application, therefore, the sense of ethics assumes a more prescriptive characteristic, which, in addition to the situations of imprecision and poor conceptual assimilation can corrupt its essence and contribute to the strengthening of its bureaucratic aspect, in consequence, more potentially formalistic of codifications. Hence, a reflexion on the effectiveness of these prescriptions is proposed, as well as it is recommended, moreover, emphasis on the development of critical-reflective competences which stimulate attitudes that contribute to the promotion of a conscientious and responsible positioning when making decisions. So, in relation to the codes, special attention is necessary in commissions of ethics as not only processing, but formulative, consultive, receptive, advisory, and, above everything, educative instances.

In spite of the broad adoption of the expression “*codes of ethics*” in the context of integrity systems, its fixation in laws is extremely rare, being limited to the above mentioned incise VIII of the art. 7º of

Federal Law n° 12.846/2013. Moreover, the reference to “*code of ethic*” present in the law is followed by the expression “*and conduct*”, decreasing its conceptual precision. It is also observed the more precise adoption of the expression “code of conduct and integrity” in accordance to the Federal Law n° 13.303/2016, which disciplines the juridic regime of state companies (Law n° 13.303, 2016).

The sense of integrity suggests coherence between discourse and action (Huberts, 2018); but, it must be reinforced that a code of conduct is not sufficient to ensure integrity. It is mandatory actions in conformity, which also can not be reduced to attitudes in accordance to the prescriptions, since legality *per se* does not necessarily means correctness. What promotes the correct action is the ethical judgement, which might transcend the codified conduct. In the same context are also involved the concepts of discretionarity and freedom, as well as the subsequent responsibility and imputability (Cortina & Martínez, 2005). Promotion of ethics, therefore, depends, among other factors, to understand the whole meaning of the concept.

Behave ethically implies the ability of reflection about the principles of the own action, not only in terms of alternatives to deliberation, but go deeper and become conscious the values which determine also the establishment of the alternatives under examination. So, it can not be expected from these codes that they promote ethical behavior by themselves. They constitute important element, but do not deplete nor ensure the ethic action, being the ethic prescription necessary, yet insufficient to promote the ethic action of the agents (Cherman & Tomei, 2005; Graça & Sauerbronn, 2020; Kempfer & Batisti, 2017).

To sum up, the codes of moral define parameters for the judgement of what is right and good, the conduct expected and adequate to the public interest, but they are simply resources of ethic reflection. It is the practice of the ethic judgement which confers organicity to the codes of conduct, connecting them to the reality, giving meaning to the rules and conducting the desired transformations. Therefore, to take inadvertently the moral for ethics reinforces the conceptual imprecision which results in the so-called “codes of ethics”, which in their usual form, are nothing more than new elements of bureaucracy, and therefore, subjects to the formalism. It is necessary, therefore, to reflect about the concept included in the adoption of these codes in order to reach the correct action through the ethics. Actions based exclusively on moral principles, sometimes involving fragile principles and values of conduct, might not lead to an ethic action; as previously mentioned, legality by itself does not mean exactly justice.

FINAL REMARKS

Due to the multiplicity of sources of public administration it was emphasized the contribution of philosophy, in special of ethics, as a critical-reflexive instrument with incidence on the integrity programs and their codes of conducts. These guides of conduct hold shared values, beliefs, and expectations or intend to be divulged and transformed in practices in accordance with the public interest by the agents and others involved with public administration. They result from elaboration and consensus between members of a collectivity on how to behave correctly and what attitudes are expected in situations which demand decision, being considered a prescription of the due action to be taken. They are, therefore, indicators of behaviour and, consequently, also parameters of responsibility and sanction. In this sense, they actually organize patterns of moral conduct and qualify the bureaucracy while normative arrangement.

The ethics, in turn, is observed in the relation of people to what is codified. Ethics is action; it is the individual judgement of the subjects in due situation, where one of the ingredients of decision are the patterns of conduct. The ethics determines the discretionary action of the agent – either public or private –, based on judgements of convenience and opportunity, while the moral behaviour occurs especially limited to the acts linked to it. The discretionarity is always relative, follows the sense of legality, finality, motivation and public interest among the other regulators of the legitimate action. This fluidity reinforces the central role of ethics as critical and reflective action which includes and explains the moral parameters in the decision making.

Based on this it is possible to observe that the philosophy, especially the ethics, has potential contribution to the public administration in their expressions of authority and, therefore, of relationship with society and among multiple agents. It is especially in the sphere of discretionarity that the authority is revealed in disfigured expressions, mainly in abuses carried out by both public and private agents. This is the moment when the influence of the rules prescribed in the codes of moral is tested, and the potential of ethics is revealed and imposed. Another component to be investigated is the reliability, in contrast with the presumption of unreliability inherent to the assumption of the positivist perspective of the current law.

In a more limited sense, the codes of conduct, erroneously denominated as “*codes of ethics*”, are rules of behaviour that can suffer sanction whenever they are not observed. They are, therefore, bureaucratic resources; patterns prescribed to ensure the integrity of management systems, based on values of transparency and responsibility. They differ little of other elements that rule a bureaucratic if not linked to ethics. In this sense, the instrument with the highest potential of transformation of ethics and integrity in the public administration are the commissions of ethics identified as formulating, consultive and educative instances. In relation to these commissions, there are important areas of investigation reaching their structures and operation, beyond the fundamentals of ethics and their meanings. If the conceptual imprecisions which affect the denominations ascribed to the codes of conduct can be associated, initially, to the confusion between the concepts of ethics and moral, their subsequent formalistic adoptions might be influenced by the fragility of the commissions of ethics; this also demonstrates the importance of this conceptual approach in educative programs of public servers and administrators. Lastly, the due appropriation of concepts of ethics and moral can be reached not only through the empirical studies on the subject, but in analysis on the possibilities of convergence between the codes of conduct and the servers’ disciplinary statute, avoiding the disciplinary segregation of its juridic and philosophic dimensions.

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NOTES

- [i] In accordance with the “Lei de Introdução ao Direito Brasileiro – LINDB”, in different deliberative spheres “decisions will not be based on abstract legal values without taken into account the consequences of the action” (art. 20, caput) and, moreover, according the art. 21, caput, all decisions which invalidate acts and analogous “should indicate explicitly their legal and administrative consequences” (Lei n. 13.655, 2018).