

The Other Side of Compliance Systems and Codes of Ethics: A Foucauldian Perspective on Rule-Based Ethics and Corruption Control

EL OTRO LADO DE LOS SISTEMAS DE COMPLIANCE Y LOS CÓDIGOS DE ÉTICA: UNA PERSPECTIVA FOUCAULTIANA SOBRE LA ÉTICA NORMATIVA Y EL CONTROL DE LA CORRUPCIÓN

RESUMEN: este artículo de reflexión proporciona una visión foucaultiana sobre la influencia del *ethos* neoliberal en las elecciones racionales de los agentes en las organizaciones y cómo esto impacta la tendencia a tomar decisiones orientadas hacia conductas desviadas. Se establece que las prácticas que hacen parte de los códigos éticos tienen efectos menos sustantivos y más simbólicos, así como que el control de la corrupción se da en tres dimensiones: egoísmo, utilitarismo y oportunismo. Los códigos de ética y los sistemas de compliance, entonces, solo permiten el cumplimiento parcial de cada uno de estos requisitos, resultando ser insuficientes para asegurar la integridad empresarial. Por ello, es fundamental hacer la distinción entre los argumentos presentados en este trabajo y aquellos propios del pensamiento dominante en torno a las teorías sobre la ética en las organizaciones, con el propósito de dar una respuesta politizada a las discusiones suscitadas en el campo. La originalidad de este artículo yace en la transposición de conceptos foucaultianos a las prácticas de control de conductas en la gestión contemporánea, abordando el carácter inadecuado de las medidas normativas y formulando enfoques alternativos para las prácticas de gestión orientadas a promover comportamientos éticos en las organizaciones.

PALABRAS CLAVE: códigos de ética, corrupción, ética, Michel Foucault, sistemas de cumplimiento.

O OUTRO LADO DOS SISTEMAS DE COMPLIANCE E DOS CÓDIGOS DE ÉTICA: UMA PERSPECTIVA FOUCAULTIANA SOBRE A ÉTICA NORMATIVA E O CONTROLE DA CORRUPÇÃO

RESUMO: este artigo de reflexão proporciona uma visão foucaultiana sobre a influência do *ethos* neoliberal nas escolhas racionais dos agentes nas organizações e como isso impacta a tomada de decisão orientada a comportamentos desviados. É estabelecido que as práticas que fazem parte dos códigos de ética têm efeitos menos substanciais e mais simbólicos, bem como que o controle da corrupção se dá em três dimensões: egoísmo, utilitarismo e oportunismo. Nesse sentido, os códigos de ética e os sistemas de compliance somente permitem o cumprimento parcial de cada um desses requisitos, resultando ser insuficientes para garantir a integridade empresarial. Por isso, é fundamental fazer a diferença entre os argumentos apresentados neste trabalho e aqueles próprios do pensamento dominante em torno das teorias sobre a ética nas organizações, isso com o objetivo de dar uma resposta politizada às discussões levantadas no campo. A originalidade deste artigo está na transposição de conceitos foucaultianos às práticas de controle de comportamentos na gestão contemporânea, abordando o caráter inadequado das medidas regulatórias e formulando abordagens alternativas para as práticas de gestão orientadas a promover comportamentos éticos nas organizações.

PALAVRAS-CHAVE: códigos de ética, corrupção, ética, Michel Foucault, sistemas de cumprimento.

L'AUTRE FACE DES SYSTÈMES DE COMPLIANCE. ET DES CODES D'ÉTHIQUE: UNE PERSPECTIVE FOUCAULTIENNE SUR L'ÉTHIQUE NORMATIVE ET LE CONTRÔLE DE LA CORRUPTION

RÉSUMÉ: Cet article de réflexion propose une vision foucaultienne sur l'influence de l'*ethos* néolibéral dans les choix rationnels des agents dans les organisations et comment cela touche la tendance à prendre des décisions orientées vers des comportements déviants. On établit que les pratiques qui font partie des codes éthiques ont des effets moins substantiels et plus symboliques, ainsi que le contrôle de la corruption se fait en trois dimensions: l'égoïsme, l'utilitarisme et l'opportunisme. Les codes d'éthique et les systèmes de compliance ne permettent donc qu'un respect partiel de chacune de ces exigences, se révélant insuffisants pour garantir l'intégrité de l'entreprise. Pour cette raison, il est essentiel de faire une distinction entre les arguments présentés dans cet ouvrage et ceux de la pensée dominante sur les théories de l'éthique dans les organisations; ceci dans le but de donner une réponse politisée aux discussions qui ont surgi sur le terrain. L'originalité de cet article réside dans la transposition des concepts foucaultiens aux pratiques de contrôle des comportements dans le management contemporain, en abordant l'insuffisance des mesures de régulation et en formulant des approches alternatives pour les pratiques de management visant à promouvoir un comportement éthique dans les organisations.

MOTS-CLÉ: codes d'éthique, corruption, éthique, Michel Foucault, systèmes de conformité.

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ABSTRACT: The purpose of this reflection paper is to provide a Foucauldian view of the influence of the neoliberal ethos on the rational choices of agents in organizations and how this impacts the tendency to make decisions about deviant behavior. We propose that practices of codes of ethics have less substantive effects and more symbolic effects. The control of corruption occurs in three dimensions: egoism, utilitarianism and opportunism. Codes of ethics and compliance systems, in this sense, possess only the capacity to partially meet each of these requirements, not being enough measure for business integrity assurance. We believe it is essential to distinguish the arguments presented in this paper from the dominant thinking on theories about ethics in organizations. Our interest is to give a politicized response to the discussions raised in the field. The originality of the article resides in the transposition of Foucauldian concepts for practices of control of conducts in the contemporary management. The inadequacy of the normative measures is worked out. Besides, alternative perspectives are proposed to the practices of management for ethical behavior in organizations.

KEYWORDS: Codes of ethics, compliance systems, ethics, corruption, Michel Foucault.

Introduction

In this reflection paper, we analyze Foucault's view on the subject's ethics and transpose his criticism to corruption control in organizations, paying special attention to behavior control through rule-based compliance systems and codes of ethics. The research question that guides this research is: How can Foucault's view on the ethics of the individual contribute to the debate on rule-based ethics (compliance systems and codes of ethics)

in organizations? Our objective, throughout this work, is to establish a critique of ethical control in organizations, opposing it to Foucault's liberal view regarding ethics as self-government.

We start from the debates proposed by Clegg, Kornberger and Rhodes (2007) and Crane, Knights and Starkey (2008), and from the criticism provided by Adelstein and Clegg (2015) on the use of codes of ethics in organizations to establish our criticism directed to the practices of codes of ethics and compliance systems in organizations. Our intention, on the one hand, is to revisit the critique of organizational power and control practices through normative systems and expand, in the field of organizational studies, the Foucauldian agenda that situates ethics as practices of the self, establishing argumentative links between criticism of power and the exercise of freedom within organizations (Crane *et al.*, 2008).

In this sense, we do not only seek to reinforce the criticism proposed by Clegg *et al.* (2007) and Crane *et al.* (2008) that ethical conduct cannot be measured by the moral references of a given organizational context, but we also try to advance on analyzing the effectiveness of codes of conduct and compliance systems in contemporary neoliberal context. For this purpose, we agree with Macintyre, who believes that the notion of ethics cannot be derived from fictions such as natural rights, utilities or a desire for great happiness for as many people as possible (Macintyre, 2007). These notions, instead, are derived from one's own subjectivity and imposed on others due to the domination practices exercised, among other ways, by laws and disciplinary mechanisms (Adelstein & Clegg, 2015).

In the field of ethics, we affirm that the biggest concern should not be "what rules should be followed or who should we obey," but "who we want to be or how we should live our lives." Codes of ethics and compliance systems, in this sense, can be seen as tools for constraining the moral autonomy of individuals and denying critical interpretation of reality, which diminishes the individual competence of self-determination (Crane *et al.*, 2008). Our distinctive feature is that we move further on the critique of rule-based ethics by contraposing it to neoliberal contexts, in which individual sense of profit and an entrepreneurial ethos drive human conduct in personal relations, such as work, family and general social life.

Foucault's theory, although grounded on the practices of power and the modes of subjectivation as means of subjecting human being, aims to freedom —especially when dealing with the resistance, the specific struggles, the analysis of the way of life, the things scarcely theorized. This led him, as pointed out by Souza Filho (2007), to speculate

about the "care of the self" ethics as a practice of freedom. According to Deleuze (2005), Foucault's philosophical approach to freedom and self-determination prevented him from making mistakes of thinking of freedom as a relation to norms and law; his interest was in real liberties, which were not seized by legal mechanisms that limited human conduct. More than that, he established that freedom is fought by power and that power gives rise to resistance; and shows us this in his historical narratives about how we have gradually been subjectively fabricated by those who exert control (Deleuze, 2005; Guijarro, 2014; Sousa-Filho, 2007).

Foucault attributes the basis of his interest on ethical matter to the fact that there were no attempts to impose a single morality between Greeks and Romans, but rather the production of various collective morals oriented towards ethics and stylizations of life; in other words, styles developed by groups to serve groups. Foucault proved himself to be a real scholar of liberties by examining the doors of the asylums and the prison walls and by substituting them for thought and free speech through which the Greeks and the Romans discussed the best ways to conduct their lives according to the self-determination of the will (Engels, 2019; Gamez, 2018).

For Foucault, ethics is a practical concept, which goes far beyond obeying norms based on religion or acting according to Kantian transcendental imperatives (Crane *et al.*, 2008). The idea of ethics promoted by the author goes beyond the views of deontological, utilitarian and ethical egoism, as well as prescriptive perspectives on ethics as a field of moral virtues. Ethics, for Foucault, denotes the possibilities of individual agency and concerns free choices. The author assumes that true ethical choices within organizations derives from free —but not absolute— exercise of the will of individuals (Clegg *et al.*, 2007). Moreover, for Foucault, freedom is a crucial condition for overcoming the liberal individualism imposed by systems of power. In other words, the author's interest is to find out what is the possible meaning of freedom in a world created through interdependent relationships between subjects not governed by structures of domination.

This concern interests us and justifies the choice for Foucault's work. What are we capable of being when we are not subjected to rules and structures of power that delimit our behavior and our ways of thinking? What are the possible and virtual results of our self-discipline and/or self-governance? How can we conceive organizations that overcome the idea of strict control of conduct to allow the flourishing of ethically self-constituted individuals? We believe that the author's constructions may drive our



attention to some features of business ethics that have not been studied by researchers in recent years.

The Mainstream of Ethics in Administration: Codes and Norms

There has been a growing public interest in legal and administrative sciences in understanding what would be the “nature” of corporate ethics, mainly due to the existing knowledge on the effects of non-ethical decisions in organizations—even more when it leads to performance reduction and poor utilization of economic resources (Marani, Brito, Souza, & Brito, 2018). For researchers in the field of ethics in organizations, studies that have dealt with the matter are critically superficial. Therefore, we can notice that little has advanced in terms of effectiveness in the promotion of the ethical decisions (Adams, Tashchian, & Shore, 2001; Adelstein & Clegg, 2015; Babri, Davidson, & Helin, 2019; Remišová, Lašáková, & Kirchmayer, 2019; Santos, Tomei, Serra, & Marietto, 2017). As for the field of administration, the theme has gained more importance in

human resources management and now matches the capitalist purpose of minimizing losses caused by misconduct in productive organizations.

Usually, “acting ethically” has been treated as “acting in compliance with” certain rules and legal precepts. For Alakavuklar and Alamgir (2018), the ethical subject is submissive and conforms to moral norms, which constitute the exact measure of a culture and of the social group standards according to which a person lives; disobeying these precepts means living in immorality. From this perspective, ethics is the conduct or type of human actions, that is, conscious and voluntary acts by individuals that affect social groups. Likewise, one of the great contemporary dilemmas in management arises: As much as we have developed critical moral codes in organizations, moral and ethical theories stumble when the matter is turned to the prevention of deviant conduct, that is, they have failed miserably in securing submission of human beings to the norm (Alakavuklar & Alamgir, 2018; Babri *et al.*, 2019).

The solution found by authors who have been trapped by this dilemma was to turn themselves to the culturalist

and symbolic bias of codes of ethics and its influence on the formation of an "ethical corporate culture" in organizations, including recruitment practices, staff training, performance appraisal, and other methods, such as punishment or dismissal (Adelstein & Clegg, 2015; Llatas & Silva Júnior, 2005), that seek to institutionalize the desired ethical standard in organizations. But what would this ethical standard be? An improvement of the subject according to the social system. For Llatas and Silva Júnior (2005):

[...] Adequate ethical behavior is related to the intellectual perfection of the individual, and the main virtues resulting from this development are: justice (which includes honesty and fairness in judgments), prudence (which includes patience, meekness, caution), courage (which includes daring, willingness or readiness, perseverance, and resistance), and moderation (when virtue is in balance) (p. 15).

According to this notion of ethics, in which virtues must be learned by the subject in his process of socialization, a self-motivated consciousness of "willing to do good" is required for an action to be perceived as ethical. In this sense, the authors affirm that:

Ethical thinking revolves around two fundamental questions: what is good and what is bad; which things are or are not acceptable. From this, one can perceive that ethical reflection must always start from spontaneous knowledge so that every man must understand that there are actions that must be taken while others must not. Thus, we observe that ethics establishes standards about what is good or bad in human behavior and decision-making, both in the personal and organizational spheres (Llatas & Silva Júnior, 2005, p. 19).

In other words, to be ethical—at least, in this vision—is to conform with the current values and moral standards of "good" and "bad" socially imposed and absorbed by the subject over a historical and cognitive process (Alcadipani & Hodgson, 2009). Simply put, it is not much more than the usual cultural domination of the history of civilizations, since normative practices and codes of ethics are practices as old as antiquity itself. Codes of ethics are common practices of religious societies and throughout history have usually been a model or a portrait of excellence of what individuals and communities must strive to achieve (Santos *et al.*, 2017).

This pattern of excellence expressed by codes of ethics (re) affirms, among other symbolic effects, the professional status of certain groups, the parameters of conduct on most different cases, as well as establishes faith standards

for individuals. Codes of ethics still constitute frameworks to public and political agents in establishing unacceptable and punishable conduct (Bowman, 1981; Santos, Tomei, Serra, & Marietto, 2017).

The existence of codes provides a frame of reference for organizational behavior. Public allegiance to a code can be an important moral event in the personal history of an individual. Clear, specific standards on the part of the organization demonstrate its intent to uphold a professional ethical posture (Bowman, 1981, p. 62).

Ethics studies were then targeted at the most varied types of references created by the multiplicity of ethics codes that began to emerge from organizations in a wide range of contexts, so that their applicability and effects seem to vary according to their place and time. Most papers surveyed addressed the content of ethics codes and offered opinions about the vocabulary, content or value weight brought by the normative text. Research has begun to seek ways of validating the argument that a business ethics code is needed for the cohesion of the bureaucratic structure and that there must be a balance between standards that meet organizational demands and the rules that are targeted at standard behavior (Babri *et al.*, 2019; Remišová *et al.*, 2019).

The first favorable argument is the *need for objectivism* in organizations, which opposes subjectivism and allows the adoption of terms and expressions considered universal to define aprioristic patterns of thought, such as "public interest," or "public morality." The second argument involves the *supremacy of the morality of the community*, that is, the standards established by the community which constitute the ultimate source of the codes. Finally, the third argument is the *dispensation of choice through normative imposition*, and it reaffirms the manager's technical and neutral conduct. On the other hand, the arguments against the use of codes of ethics claim that *they are generally unrealistic and incapable of generalization*, and do not constitute a definitive solution to the moral question since *it is possible to be immoral or unethical even when complying with laws* (Adelstein & Clegg, 2015; Chandler, 1983).

The faith in the effectiveness of the codes led several organizations' managers to adopt such "tools;" either by the belief that this would positively affect organizational performance or by the demand of some markets that demanded certain moral conducts to accept new entrants into the current dynamics. Ethic codes are also commonly used to exempt the company from being accountable for the actions of its employees—primarily by not following procedures and expected behaviors (Babri *et al.*, 2019).

Codes also serve as reinforcement and source of legitimacy for the conduct of employees who are in accordance with its rules, establishing a favorable environment for those who comply and hostile to those who do not. Its symbolic effect is one of the nodal points in the analysis of most of the papers surveyed, which legitimizes its contemporary use in organizations and perpetuates the managerial emphasis on the mechanisms of power and control of subjectivity in organizations.

We assert, upon reflecting on the contemporary use of codes of conduct and norms, that this is a naive way of establishing techniques to control (or govern) the others. It is a way of targeting, governing and framing one's conduct within a fully penalizable standard in case of noncompliance. In this sense, the legal and bureaucratic apparatus in organizations is a contemporary expression of subject control, which does not necessarily concern their constitution as an *ethical persona*. For the purposes of this paper, we understand that what constitutes the ethical nature of a subject goes far beyond what is defined as "good and bad" in codes of ethics and encompasses a necessary historical contextualization on how these techniques to govern others have been developed. The next section addresses this topic.

The Critique of Ethics Reduced to Norms and Codes

To understand how codes of ethics and current laws (the control of the other) were confused with the subjects' ethics (self-control), Foucault developed a theory of biopolitics whose historical landmark begins with the analysis of the ethical constitution of subjects in the contemporary world. The starting point of this narrative was the seventeenth century, when governments faced the problem of scarcity. Governing in this period was a very sensitive task because of the constant threat of seditions, many of which derived from hunger or discontent with the government's punitive actions (Foucault, 2008b).

The scarcity of food and consumer goods demanded not only a solution by the government but also a form of prevention that would allow a more widespread circulation of goods among subjects. In this context, a series of dilemmas concerning price restraint, the right to stock, or even the exchange between people were objects that intrigued thinkers at that time; it was essential to devise a mechanism to supply most of the population with food. It was the physiocratic concept of economics, during that period, which gave rise to a new system that would presumably solve all these questions (Foucault, 2008b).

The free trade of goods promoted by the Physiocrats derived from a principle of freedom (*laissez-faire, laissez-passer*) and an *aller* to allow greater freedom of negotiations between agents; the aim was not necessarily to eliminate, but to maintain an acceptable level of hunger and disease in the population, hence ensuring it did not uprising against the government and focused on the economic relations (Foucault, 2008b). The principle of freedom has become the indispensable regulatory function of the economy, which would guarantee free access to cereals, while the government would have the task of organizing society in such a way as to ensure the fragile mechanisms of competition; in other words, the functioning of the market through the opening of spaces within social processes (Foucault, 2008a).

According to Foucault (2008a), at that moment the government made a series of interventions aimed at avoiding centralization, favoring medium-sized enterprises, supporting non-proletarian enterprises (handicrafts, commerce, etc.), multiplying access to property, substituting the individual insurance for the social coverage of the risks, and regulating all the multiple problems of the environment. The author understands that, at that stage, the weight of State intervention was so significant and implemented through so many actions that it is doubtful whether this principle of nonintervention, so favored by physiocrats, was respected.

The most significant achievement of that period was not only the creation of a free market zone and a self-regulating economic device but also the generalization of the "business form" within the social structure. As Foucault (2008a) asserts, this social structure was divided and unfolded not according to the measure of the individuals but according to the measure of the enterprise. Men happen to be situated between several enterprises that constitute the economic mechanism. Thus, the activities of an infinity of companies that produce goods or that take their labor force or their resources to operate the circulation of goods in an economy are transposed into the same person, expropriating subjects from controlling their own possibilities to the extent that only the economic flow is allowed.

In this model, men become enterprises and find themselves as entrepreneurs among several enterprises, becoming a rational economic agent whose action is referred to the obtaining of goods between the economic flows (Foucault, 2008a). This movement, known as ordoliberalism, attributed to the subject the obligation to integrate itself to the economy by stating that the individual is genuinely responsible for the economic movement—and does not require the State to ensure the survival of his subjects—so that every individual is alone (Costa, 2009; Gamez, 2018).

This rationality of each subject becomes constituted by the mechanics of economic thought in which everyone must then seek to maximize their gain and reduce their losses (utilitarianism).

It involves extending the economic model of supply and demand and of investment-costs-profit so as to make it a model of social relations and of existence itself, a form of relationship of the individual to himself, time, those around him, the group, and the family. So, it involves extending this economic model. On the other hand, the ordoliberal idea of making the enterprise the universally generalized social model functions in their analysis or program as a support to what they designate as the reconstruction of a set of what could be called "warm" moral and cultural values which are presented precisely as antithetical to the "cold" mechanism of competition. The enterprise schema involves acting so that the individual, to use the classical and fashionable terminology of their time, is not alienated from his work environment, from the time of his lime, from his household, his family, and from the natural environment (Foucault, 2008a, p. 332).

What is evident in these liberal ideas is that subjects are businesses themselves and that economic relations are the ones that will guide social ties from that moment on, always aiming at the maximum gain. It is under this formation that children are developed, creating a real belief, from the earliest years, that the human being is in itself a form of capital that owns other capitals of different types; this configuration may be the key to an economic theory of population and can give us a clue as to how the ethical formation of each human being in the contemporary context is constituted (Costa, 2009; Gamez, 2018). If every individual is an enterprise of the self, educated to think selfishly, this allows us to infer a series of theoretical possibilities regarding what formation constitutes subjects.

In this egoistic model, we do not experience intentionally mutualistic relationships, but competitive ones instead. According to Foucault, competition is a principle of order in the field of the market economy, but not the foundation of society, since it is more a dissolving rather than a unifying principle (Foucault, 2008a). Once again, it is the government's role to unify social interests and organize them in space; it is the government's moral duty to unite and socially integrate human beings to cooperate with one another.

With the American neoliberalism in the 1970s, influenced by Chicago School's theories (Costa, 2009; Gamez, 2018), the power of the economic metaphor ideologically expanded for all fields of life, not just the exchange

relationships (Foucault, 2008a). Thus, in family relationships, at work, in affective relations, principles of economic analysis are always absorbed, which leads to the economy of the non-economic. As stated earlier, man becomes a capital, or a human capital. In this view, man can always seek his answers based on the theory of marginal gains or even in relation to the cost-benefit of his actions:

In their analysis of human capital, you recall, the neo-liberals tried to explain, for example, how the mother-child relationship, concretely characterized by the time spent by the mother with the child, the quality of the care she gives, the affection she shows, the vigilance with which she follows its development, its education, and not only its scholastic but also its physical progress, the way in which she not only gives it food but also imparts a particular style to eating patterns, and the relationship she has with its eating, all constitute for the neo-liberals an investment which can be measured in time. And what will this investment constitute? It will constitute a human capital, the child's human capital, which will produce an income. What will this income be? It will be the child's salary when he or she becomes an adult. And what will the income be for the mother who made the investment? Well, the neo-liberals say, it will be a psychological income. She will have the satisfaction a mother gets from giving the child care and attention in seeing that she has in fact been successful. So, everything comprising what could be called, if you like, the formative or educational relationship, in the widest sense of the term, between mother and child, can be analyzed in terms of investment, capital costs, and profit—both economic and psychological profit—on the capital invested (Foucault, 2008a, pp. 334-335).

From the standpoint of human capital, it is possible to establish an archeology of knowledge concerning the subjects' ethical formation, which begins in the early years of life in the family. The transmission of human capital happens through mechanisms of biopolitics in which, in all educational instances, the human being is submitted to the knowledge that builds and legitimizes the market and capitalism as a natural system of social organization (Gamez, 2018). As Foucault (2008a) puts it, "A wealthy family, that is to say, a high-income family [...] whose components have a high human capital, will have as its immediate and rational economic project the transmission of a human capital at least as high to its children [...]" (pp. 335-336). We must emphasize the way in which the family itself becomes a productive unit composed of roles. Children, in this sense, are nothing more than their parents' economic projects.

This involves making the household a unit of production in the same way as the classical firm. What in actual fact

is the household if not the contractual commitment of two parties to supply specific inputs and to share in given proportions the benefits of the household's output? What is the meaning of the long-term contract entered into by people who live together in matrimony? What justifies it economically and on what is it based? Well, it is that this long-term contract between spouses enables them to avoid constantly renegotiating at every moment the innumerable contracts which would have to be made in order for domestic life to function (Foucault, 2008a, p. 336).

Economism has grown in unexpected proportions, and the government, former regulator, and guarantor of freedoms have become a threat to the market insofar as the positions of power held by those who dominate the dynamics of capitalism have already been established. According to Foucault (2008a), neoliberalism tries to filter all the action of the public authority in the name of a market law that will allow to gauge and evaluate each one of its activities. Besides, "*laissez-faire* thus turns in the opposite sense, and the market is no longer a principle of government's self-limitation; it is a principle that is turned against it. It is a sort of permanent economic tribunal confronting government" (Foucault, 2008a, p. 339).

The legal system is defined by the utility calculation. The criminal practice, for example, began to observe the lowest cost. From the solution proposed by Beccaria, it was believed that the punitive right should have a pedagogical function so that all crime should be avoided (since it is cheaper to prevent crime than to punish the offender). The legalistic solution seems interesting, according to Foucault (2008a), as a criminal economy would allow the simplest and least costly solution to ensure the conformity of human behavior to the government and the market. Hence, law, norms, and codes became a new economic segment to serve the market and allow the delimitation of what is fair, correct and ethical, making punishment possible.

The law is the most economical solution for punishing people adequately and for this punishment to be effective. First, the crime must be defined as an infraction of a formulated law, so that in the absence of a law there is no crime and an action cannot be incriminated. Second, penalties must be fixed once and for all by the law. Third, penalties must be fixed in law according to the degree of seriousness of the crime. Fourth, henceforth the criminal court will only have one thing to do, which is to apply to an established and proven crime a law which determines in advance what penalty the criminal must suffer according to the seriousness of his crime. An absolutely simple, apparently completely obvious mechanics constitute the most economical form, that is to say, the least costly and most effective form of obtaining

punishment and the elimination of conducts deemed harmful to society. [...] *Homo penalis*, the man who can legally be punished, the man exposed to the law and who can be punished by the law is strictly speaking a *homo œconomicus*. And it is precisely the law which enables the problem of penal practice to be connected to the problem of economy (Foucault, 2008a, pp. 340-341).

The existence of laws that conduct human behavior begins to be inflated as they become economic and guarantees the continuity of market mechanisms. The value content of laws is wholly emptied of normative texts. The *homo legalis* (or *homo penalis*) is thus taken up through an entire anthropology of crime that will systematically replace the "mechanics of the law: there is an inflation of forms and bodies of knowledge, of discourse, a multiplication of authorities and decision-making elements, and the parasitic invasion of the sentence in the name of the law by individualizing measures in the name of the norm." (Foucault, 2008a, pp. 342-343). In this sense, laws arise to discipline the bodies and allow the acquisition of customs, beliefs and allow the market to adjust when necessary. The emptying of legal activity also depletes the content of the political clashes that drive it. Therefore:

[...] the penal code does not give any substantive, qualitative, or moral definition of the crime. The crime is that which is punished by the law, and that's all there is to it. So, you can see that the neo-liberals' definition is very close: crime is that which makes the individual incur the risk of being sentenced to a penalty. It is very close, with however, as you can see, a difference, which is a difference of point of view, since while avoiding giving a substantive definition of the crime, the code adopts the point of view of the act and asks what this act is, in short, how to characterize an act which we can call criminal, that is to say, which is punished precisely as a crime. It is the point of view of the act, a kind of operational characterization, as it were, which can be employed by the judge: You will have to consider as a crime any act which is punished by the law. It is an objective, operational definition made from the judge's point of view. You can see that it is the same definition when the neoliberals say that crime is any action which makes an individual run the risk of being sentenced to a penalty, but the point of view has changed. We now adopt the point of view of the person who commits the crime, or who will commit the crime, while keeping the same content of the definition (Foucault, 2008a, p. 344).

In this system, the individual becomes fully controllable or, in Foucauldian terms, governable. The contact between the subject and the government's power will occur by legal

means, which will limit the power of the government to the same extent that they define rules of conduct. The environment in which this subject will inhabit will be governed entirely by economic relations, by the symbolic force of the laws to maintain *compliance* with the population and by the risks of deviant conduct, which generate damages to the economic system and cause repudiation towards those who do not submit to the rules. The right to punish is the guarantee that these subjects will be repressed insofar as they pose risks to society. The level of punishment will be graduated to the extent that injury becomes more detrimental to the economy (Foucault, 2008a).

You can see that at this point society appears as the consumer of conforming behavior, that is to say, according to the neo-liberal theory of consumption, society appears as the producer of conforming behavior with which it is satisfied in return for a certain investment. Consequently, the good penal policy does not aim at the extinction of crime, but at a balance between the curves of the supply of crime and negative demand. Or again: society does not have a limitless need for compliance. Society does not need to conform to an exhaustive disciplinary system. A society finds that it has a certain level of illegality and it would find it very difficult to have this rate indefinitely reduced. This amounts to posing as the essential question of penal policy, not, how should crimes be punished, nor even, what actions should be seen as crimes, but, what crime should we tolerate? (Foucault, 2008a, p. 350).

In this sense, we construct an argument on why we have reduced the question of ethics and corruption to codes and norms: By subjecting all instances of social life to economic analysis, we have created an individualistic and selfish idea that each subject is an enterprise; this attribution of economic character to all elements of life has enabled a system of life that places market values first. Man is governed by norms that also follow an objective of safeguarding market functions. The norm, which has a symbolic weight for humans, is used as a means of creating conformity between behaviors insofar as this is convenient for the subsistence of neoliberal values. The content of ethics is emptied and comes to be interpreted only as the blind obedience of laws devoid of qualitative content.

We understand that the subject guided ethically by selfishness and utilitarianism, realizing the opportunity to develop *contra legis* acts without the risk of punishment or the risk of minimum punishment in relation to the benefit obtained (opportunism), will engage in acts considered illicit or reprehensible, which we call corruption (figure 1).

By means of biopolitical mechanisms, from an early age, in our childhoods, we learn the ethical content from the normative references we have. The morality of economy

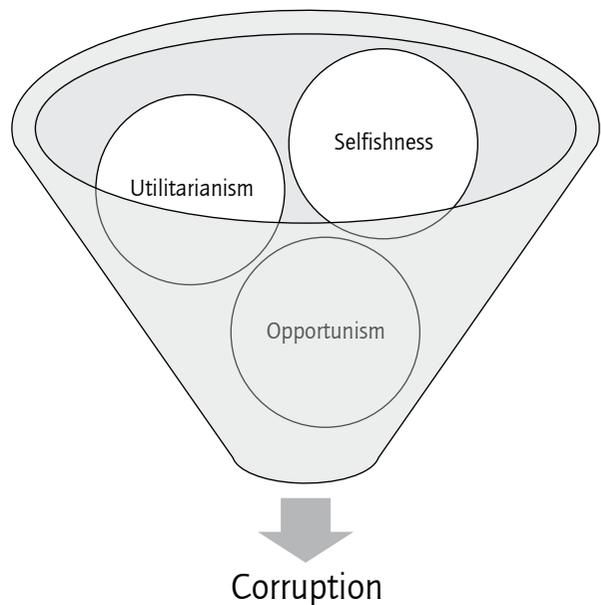


Figure 1. The elements of corruption. Source: authors.

that emerged over the last few centuries has become a significant factor in the formation of individuals and the desire to always maximize their gains and reduce their losses; political economy and human capital have become central aspects of the human condition from the twentieth century onwards—and hence the possibilities of an ethical knowledge targeted at the good of the others without implying necessarily an economic interest. Finally, the ways of revising these types of thinking are hampered, since the neoliberal system seeks self-preservation, hence rejecting any government attempts to achieve a better balance as for the coexistence of human beings.

The effects of the mechanisms just described in the behavior of human beings constitute an involuntary zone of individualities. Foucault (2008a) goes further by placing *homo œconomicus* in the meshes of a complex economic system that does not depend on his will or is not directly affected by his action; yet, it depends on the collective outcome of human conduct. To understand this argument, it is enough to realize that the most remote event to happen on the other side of the world can have repercussions in the interest of a given person, who, in turn, cannot influence it at all; the will of each person is linked to a mass of elements that escapes individual control. In this sense, the *homo œconomicus* is situated in a double involuntariness between the accidents that happen to him and the involuntariness of the gain that he produces for others with the fruits of his labor—because he produces for the market and not for the people. This situation, as Foucault (2008a) explains, legitimates the egoistic ideology that one must think of one's own gain—for it also benefits the market as a whole—and that gain alone translates into social progress.

The contemporary problem to be answered by this thesis that we propose is: How would the subjectivities be (re) constructed in the face of the ethical and moral changes in this moment of capitalist crisis and strengthening of neoliberalism? The mechanics of governmentality, as explained, seek to program people and control them in the ways they act, feel, think and stand before themselves (Costa, 2009). These phenomena are perceptible from managerial practices in the field of administration, and in this sense, these processes and policies of subjectivation have converted the normative principles of an entire society to principles of business economics.

Finally, we can infer the consolidation of an entrepreneurial *ethos* in contemporary social practices. According to Costa (2009), the new discursiveness of educational instances aims to turn individuals more and more into relentless machines of production under the motto of existing virtues in entrepreneurship. Accordingly, the entrepreneur will be the proactive, innovative, inventive, flexible individual, with a sense of opportunity, capable of provoking change, among other characteristics that condition him to personal merit and exacerbated individualism. One of the questions that emerge from this discussion is: Where did the human being concerned with the collectivity go? In this sense, it is already possible to think of clues that explain—or that have the explanatory potential—the issue of corruption as reprehensible conduct that brings benefits to a subject to the detriment of the well-being of other members of a given community. Accordingly, thinking beyond the exclusively punitive mechanism, norms and codes can be an important alternative for a better understanding of the phenomenon.

The critical point of the domination established by management in organizations is that the masses are not aware of the very condition of the strategically produced subjectivities in a medium that is hegemonically governed by economic reason (Alakavuklar & Alamgir, 2018). What Foucault offers as an alternative is precisely the possibility of emancipation from being ruled by others to self-government; the ethical constitution of man is no longer just a constitution by the practices of control of the other, but real techniques of self-care. The next section will deal with Foucault's ethical theory, departing precisely from the state of ignorance to self-knowledge as a subject, in order to deal with techniques of the self and of the other, as well as the possibility of human emancipation.

Ethics for Freedom: From Minority to the Care of the Self

Foucault was interested in a philosophy that liberates our own existence from ourselves, or from the prisons of

our subjectivities, which were historically and socially constructed and, at the same time, were presented to us as a natural and universal substance of life (Foucault, 2010). Therefore, the theory of ethics we have apprehended from his writings does not necessarily come from literal inferences from texts, but the interpretation that we have built upon the figures of speech and metaphors idealized from his ideas.

For Foucault, in the condition of total domination of subjects, it is not possible to speak of liberties; these can only exist in opposition to the powers that are exerted in a dynamic and discursive way in society (Engels, 2019; Gamez, 2018; Raffnsøe, Mennicken, & Miller, 2019). In order to do so, Foucault set out to elaborate an actual history of thought composed of three main elements: (i) the *venues of experience*, which make up the matrices of knowledge, are the history or genealogy of the knowledge that constitutes our conviction; (ii) the *normative matrices of behavior*, which refer to the devices used for the exercise of power and the normalization of behaviors; and (iii) the *modes of virtual existence for possible subjects*, which constitute the experience and the production of subjectivity as they go interacting with the "real world" as presented (Figueiredo, 1995; Fonseca, 2003).

Foucault's method imposes a series of questions that, in organizational research, cannot be left unanswered. The first question concerns (i) *what is the history of knowledge that constitutes the hegemonic discourses and convictions about what is ethical and unethical in organizations?* The second question is (ii) *what are the sets of standards and devices that make up the control techniques aimed at ethical behavior in the management of organizations (public and private)?* Albeit not exhaustively, we have already addressed this topic in the previous subtitle, which deals with the issues of codes of ethics; however, we believe that we should discuss the matter further departing from empirical research. Finally, the third question is (iii) *how does the constitution of experience of the subject in the organization happen from its notion of what it is to be ethical?* or (iv) *how is the ethical subject discursively formed from the possible experience?* Based on these questions, we believe it is possible to perform a more in-depth analysis of what ethics and corruption are in organizations.

We have perceived the possibility of a theory of ethics in Foucault's thoughts from the reading of *The Government of the Self and Others* (2010), which is analyzed in further detail in the next few paragraphs, so as to establish a theoretical framework for the ethics of the individual throughout this narrative. The theme of ethics is inherent in Foucault's works. This is because, for the author, the

relation of the subject is with itself. However, we are not entirely capable of understanding our own reality because we are, according to Foucault, in a state of minority—or of philosophical incapacity in relation to the real status of things.

Departing from Kant's notion of *Aufklärung*, the author begins his constructions from the idea that the true enlightenment of the human being is the understanding of reality, considering the position of the thinking subject in relation to that reality (Gamez, 2018). The reality, in this sense, must be discovered from its historical analysis, from the determination of its nature and from the role that the enunciators of discourses play in the process of historical constitution of knowledge. The relation of the discovery of knowledge is an exercise (or technique) of self and, therefore, freedom (Foucault, 2010).

Freedom, in Foucault, is a value that aims to guide our actions, no matter if we will never be able to truly achieve it. To this end, it is necessary to analyze the different power relations that one tries to establish over the other with regard to his subjectivity and the constitution of the self. Every human being must take care of itself to prevent others from taking for themselves the task of thinking. Along these lines, Foucault postulates that the true ethical relation of the subject is the care with oneself; to be ethical is to be able to resist and think of one's own freedom through one's own clarification (Angels, 2019; Raffnsøe *et al.*, 2019). Clarification, in this sense, is the action of questioning about one's own reality, of causing a revolution in oneself by not accepting discourses as given and natural.

Before proceeding further to the theme of clarification, we believe we should delve a bit further into the idea of minority. For Foucault (2010), the minority is a state in which man does not want to think for himself. And he does so for several reasons, either out of fear, laziness, lack of interest or even self-indulgence. The minority is philosophical and does not depend on the age of the human being; there are millions of elderly people who have not abandoned the minority, that is, they have not learned how to think for themselves.

For Foucault, the human being places himself in a state of minority to obey and be governed by other humans, hence allowing others to think for them and regulate their life. By being in a state of minority, for example, we allow others to guide our steps toward what they deem as "the best for us;" the education given to us will be made available from the "interests of society," and work will be given only to those who are interesting for a society as elaborated by those who hold power. We only resort to knowledge given to us by others to serve our interests. To clarify oneself, or

to illuminate oneself (enlightenment), results from a decision-making movement by man to take on the task of thinking about reality for himself, hence abandoning his minority status (Foucault, 2010).

In the current system of life, as well as in the way it presents itself, each individual is searching for the satisfaction of his own well-being in terms of the comfort of habit; living life means following the rites that guarantee their subsistence and a certain standard of comfort (Gamez, 2018). It is precisely this comfort that causes human beings to submit blindly to the determining forces that are untied and unrelated to life. For Benjamin, money has devastatingly become the center of all vital interests, and on it resides all the limitation from which all human relationships have failed (Gomes, 2014). The state of minority, for these authors, is no more than a convenient choice to non-think:

The possibility of an individual being autonomous and conscious in this administered society is impaired because alienation has been the result of their formation and, in the impossibility of consciousness, ethical life and ethical practice are distant. It is necessary to go beyond the simple realization that there is no ethical life, but to question what leads this society to barbarism and to not consider ethics in life in its fullness (Gomes, 2014, p. 1032).

Every day we identify the effect of the minority on the power relations that surround us. If we are living in the state of minority we are only allowed to think to the extent of the knowledge that others have taught us. For Foucault (2010), we must overcome these barriers from our own constructions. Only after developing the mastery of self, of his own reason, can a human being govern the reason of the others. If one masters the truth for himself, then he will be able to understand what the truth could be for other people. When we make statements of a reified concept in this work, for example, we establish power relationships with readers from the moment when we start to govern their notion of the concept. The reader, then, will repeat our concepts and obey our lessons. Obedience, in this sense, is possible only in the absence of reasoning. If there is no reasoning, our concept will dominate the others. If there is reasoning, there will be a series of attempts for the emergence of new concepts that will dispute, in the field of forces and power, over which of them will be regarded as valid. It is a game of truths.

Departing from the notion of care of the self, researchers have later sought to establish a theoretical framework concerning what a theory of ethics would be, by resorting to Foucault's concept of techniques of the self (Gamez, 2018; Gomes, 2014; Raffnsøe *et al.*, 2019). According to these

authors, the theory is grounded on the argument that people are ethical in caring for themselves and explore and respond autonomously to the real games to which they are exposed. Truth games are the general policies of truth or the types of discourses that are accepted and constitute what is real. For Foucault, caring for oneself is to question the historical and cultural milieu that shapes people as individuals. The ethical adventure, in this sense, is not to find or reveal who we are, but the work involved in exploring our roles and identities in the historical and cultural narrative that involves the subjects (Gamez, 2018).

To Foucault, the self is not ontological, but rather a relationship between “me and myself;” the task of ethics is to critically question how we come to understand ourselves. In this sense, in order to be ethical, we need to quit being guided by timeless notions and metaphysical principles, so as to establish ourselves aesthetically. To be aesthetic is to pay attention to the culture and history that shape us; that is, to the discourses that constituted us.

The true way to emancipate from such discourses and the path for independent thinking pervades the activities of knowing and criticizing them (Raffnsøe *et al.*, 2019). Taking care of oneself has become an imperative for those who wish to expose modes of knowledge and erudition that bring to the individual the supreme value, as well as ways to find his or her own dimension of well-being; however, self-care should not be supported by modern narcissism fueled by the capitalist system. More than a mirror of society, man must be a place of affirmation of uniqueness before others (Gamez, 2018; Sheldahl-Thomason, 2019).

This form of individualistic neoliberal narcissism (as already discussed in the previous section) has been largely responsible for a number of elements that constitute the moral deviation experienced in contemporary society: loneliness within organizations, lack of sense of collectivity, lack of sense of political participation, market speculation, and, more recently, the deterioration of the environment (Gamez, 2018). All these factors derive not from the care of the self, but rather from placing oneself in a position of superiority and totality before others, hence reproducing the reality of the system of social organization as a place for it to extract advantages. This is not Foucault’s ethics. The care of the self concerns less the theme of selfishness and more the development of a non-exclusionary community, not constrained by systems of laws, customs and habits that lead the subject to a “standard of conduct” (Gardiner, 1996; Sheldahl-Thomason, 2019). Foucault hopes to create a society in which every human being can strive to pursue —without dominations or techniques of production of subjectivities in individuals— an individual life

project accompanied by others who have common interests in the symmetry of powers.

Foucault turns his attention to something he had, by his own admission, previously undertheorized: the complex process by which we exercise control over ourselves. The forms of experience and subjectivity that human beings claim to have are possible only if we are capable of developing what he calls a ‘modality of relation to self.’ Such modality ‘constitutes human beings as social and juridical subjects; it is what establishes the relationship with oneself and with others and constitutes the human being as an ethical subject.’ In taking this position, Foucault’s chief intent is to demonstrate that external moral codes, particularly those concerning sexuality, are intertwined with prevailing structures of power, and thereby subject us to normalizing pressures (Gardiner, 1996, p. 32).

According to Figueiredo (1995), to care for oneself refers to the ability to become “masters of the chaos that we are in ourselves, without mutilating the forces in combat, forcing the chaos to take shape” (p. 148). For the author, life’s ideal is to make a work of art of oneself or a blank canvas that would receive the paintings of our own thoughts. In other words, it would bring the world to oneself and problematize the tensions arising from differences, disagreements, interests and the various aspects that constitute us as subjects (Figueiredo, 1995). It is to establish a home for ourselves, to establish the essence of home comfort within the subject, without further naturalization of totalizing moral codes or concerns arising from the rules of behavior advocated by the punitive society.

Of course, a house, whatever shape it takes, can be conceived as an apparatus for living or as a monument to be enjoyed from outside. However, for the person who inhabits it and while living in it, the house is not a utensil and an object, just like other beings. The house has, as the world itself, a pre-object nature, it is like a part of the world, but exactly the part where we can feel relatively warm. Well, to consider *ethos* as a house, as an installation, is to see in it, in the codes, values, ideals, postures, and conducts towards oneself and towards the others, something equivalent to dwelling (Figueiredo, 1995, pp. 142-143).

By establishing the human *ethos* as an exercise in the freedom to care for oneself, Foucault invites us to know our own truths, a singular and unique experience, to be master of oneself, to produce life as a work of art (Gamez, 2018). Furthermore, it is also an invitation to perpetually adopt a transgressive, non-predetermined, and entirely open relationship with the world (Gardiner, 1996). Hence the importance, according to Foucault’s perspective, of listening

to the singular voices and forms of knowledge and of the testimonies of specific human experiences, instead of "insisting on saturated models of political action or on projects for a future like a bed of roses (socialist or others) to which we would hand in (and postpone) our freedoms" (Sousa-Filho, 2007, p. 10). It is an invitation for us to enter the truth games as real players, not as pawns manipulated among other players.

Final remarks and the proposal of an agenda

This paper aimed to analyze the debate on rule-based ethics according to Foucault's perspective, so as to shed light on a field that has recently begun to be explored. We described different ways of understanding ethics and undertook an effort to distinguish it from morality in codes. We have historically situated the mainstream concerning the use of codes of conduct in organizations to sustain the argument that the field of compliance pertains to only one of the distinct and complex dimensions of ethics in organizations. The greatest contribution of Foucault's analysis is the critical reading of the disciplinary basis in organizational life and the submission of morality to power. In this perspective, we understand that the subject within organizations cannot be seen as a passive agent, but a true source of diversity and possibilities.

The field of compliance systems still faces difficulties to establish itself as a control practice, because it is still framed by a criminal practice grounded on the economic inflation of laws and on the belief that the legal norm has a preventive effect on the conduct of agents, which constitutes a fragile control device when opposed to a system of values targeted at values that are harmful to human coexistence. We recognize that in a perspective of rule-based ethics a possible control of corruption in neoliberal contexts would occur through three ways of action: (i) through the control of opportunities (increased surveillance); (ii) by reducing the perceived utility in deviant acts (decreasing tradeoff attractiveness); and (iii) by the reduction of selfishness as the agent is embedded in a sense of collectivity with which he identifies (increased sense of community). All these objectives can be achieved through the improvement of the legal system and its enforcement through compliance control. However, these forms of conduct control within organizations would not eliminate the specter of corruption.

As much as we have bold control systems, they tend to fail when applied to social relations based on neoliberal practices of selfish competition, in which agents do not care about the sustainability of human coexistence. The implementation of stricter control systems creates more constraints on the individual, denying him subjective interests and freedoms that, when taken to the extreme by

individual interests and the promise of a good reward, could result in acts of organizational corruption; in this case, an objective expression of the affirmation of his freedom, interests and subjectivity in the face of organizational constraints. The shadow of corruption will be there as long as we are deprived of values targeted at the community benefit.

Likewise, while cost-benefit relationships are still the primary drivers of social relations, the effectiveness of laws will always be conditioned to the value of the benefit that can be gained by engaging in corrupt practices in society. Therefore, our proposition is that ethical systems should not be anchored only in codes of ethics and compliance systems, but also in proposing spaces for learning, self-improvement, self-management and active listening to the agents that constitute the organization environment.

Foucault, then, makes possible a form of ethical behavior towards codes; this would entail analyzing, critiquing and revealing the regimes of truth that are constituted by codes, and developing modes of thought and action that minimize domination by them. This does not mean that we should believe that all codes are pointless, unnecessary or dangerous, but that attention should focus on reducing their potential to render us docile, and maximizing their potential for us to realize our moral agency and imagination. As discussed earlier, Foucault would not suggest that it is possible to be free of the disciplinary forces of codes, but that to act ethically, one has to look to how one can constitute oneself as an active moral agent in the face of them (Crane *et al.*, p. 312).

Crane *et al.* (2008) conceived pedagogical strategies for the subjects' self-ethical constitution. Through the analysis of organizational practices and negotiation processes existing between agents, it is possible to think about the constitution of bottom-up norms in organizations, rather than top-down imposed. Such constructions would derive from teaching about "managing one's own subjectivity" rather than "managing the other's subjectivity." However, we should recognize that this is an uncertain path, as it can open space for the conception of many individual arbitrary practices (Crane *et al.*, 2008).

Clegg *et al.* (2007), on the other hand, understand that the ethical dimension in an organization is better understood and theorized as a form of practice. Therefore, ethics in organizations can be better conceived as a continuous process of debate and challenge of moral choices. The authors' idea is that the democratic constitution of discourse on ethics based on debates has the advantage of "updating" social dilemmas to which organizational agents are subjected in their daily lives, as well as avoiding permanent standardization of moral values.

We believe that both Crane *et al.* (2008) and Clegg *et al.* (2007) proposals are complementary. We understand that a certain minimum level of rules must be initially negotiated by the agents. The principle of self-management and collective bargaining of conduct rules must be the basis for sustaining collective morality in organizational environments. From this "minimum legislation," the group's self-improvement practices should be the engine for ethical and moral change. Based on the individuals' freedom and the sense of collective, perhaps it would be possible to think of an ethical foundation democratically established in the organization, which is self-constituting from its own processes rather than from symbolic impositions imposed by "empty signifiers" such as codes of conduct.

In conclusion, an agenda of democratic management techniques and practices that discuss the possibility of self-constitution of the subject within an organizational environment is needed. This agenda would necessarily encompass two dimensions. On the one hand, the perspective of agent learning in organizations. On the other, the possibility of active debates on moral issues that involve business dynamics. These propositions go beyond the proposal of strict control of conduct to illuminate the proposal of an "ethical self-management" in organizations, based both on the freedom of the subject and on the sense of belonging/reciprocity in a social group in which the subject plays an active role.

Disclosures

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