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Compliance to Law and Effectiveness of the Rule of Law in Brazil

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Abstract: The goal of this paper is to debate the degree of effectiveness of the rule of law in Brazil, through a survey measuring perceptions, attitudes and habits of Brazilians in regard to compliance to law. The survey conducted in Brazil is based on the study conducted by Tom R. Tyler in the United States, entitled *Why People Obey the Law?* (New Haven, CT: Yale University Press, 1990). The main argument of Tyler's study is that people obey the law when they believe it's legitimate, and not because they fear punishment. We test the same argument in Brazil, relying on five indicators: (i) *behavior*, which depicts the frequency with which respondents declared to have engaged in conducts in disobedience to the law; (ii) *instrumentality*, measuring perception of losses associated with the violation of the law, specially fear of punishment; (iii) *morality*, measuring perception of how much is right or wrong to engage in certain conducts in violation of the law; (iv) *social control*, which measures perception of social disapproval of certain types of behavior in violation of the law, and (v) *legitimacy*, which measures the perception of respect to the law and to some authorities. Results indicate that fear of sanctions is not the strongest drive in compliance to law, but more than legitimacy, indicators of morality and social control are the strongest in explaining why people obey the law in Brazil.

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1 Introduction

The existence of general and universal rules is one of the assumptions of the rule of law, insofar as such rules organize societies and influence the behavior of social actors, ensuring predictability. The way these rules are built and the extent to which they are respected are an integral part of the definition of the rule of law, as well as the degree of its effectiveness. Put another way, disrespect to a country's rules indicates the fragility of its democracy. Accordingly, assess whether the rules are met is one way to evaluate the consistency of the rule of law and its institutions.

It is common sense to say that Brazilians do not respect the laws, or that in Brazil many laws are created and not many people obey them. It is easy to perceive that we produce many laws in the country: considering the ten-year period, from 2000 to 2010, 75,517 new federal and state laws were approved⁴. However, there is no empirical evidence about how much Brazilian population adheres to these laws.

Another common assertion is that we have in Brazil “laws that catch”, i.e., that are followed, and “laws that do not catch”, i. e., laws that become “dead letter”, still formally in effect but no longer enforced. This situation of low deference to the law would not be a Brazilian singularity, it would happen all around the world, but in varying degrees. According to Mauricio Garcia-Villegas⁵, Latin America would be a kind of “culture of lawlessness”, harking back to the heritage of Spanish and Portuguese colonization. And, as a consequence, the violation of the law would not be seen as morally or socially objectionable.

In Brazil, the culture of lawlessness could be seen as the trait identified by Roberto Da Matta⁶ as “*jeitinho*” (“knack”), which is a cultural characteristic whereby we dribble or bypass legal determinations to defend private (or sometimes even public) interests or to take some advantage upon other people by disrespecting the law.

Based on these interpretations and evidences, it may be argued that in Brazil there is an excess of formalism, i.e., there are many laws that establish patterns of behavior, but in everyday life, generally, citizens do not take laws into account. There would therefore be a

⁴ See newspaper article published in 06/19/2011 “Every day, 18 new laws in the country”. O Globo News available at: <http://www.xclipping.com.br/spic/impressos/2011_6_19_O_Globo_47964_A_cada_dia_-01.jpg>.

⁵ GARCIA-VILLEGAS, M. “Individuos sin sociedad: sobre la cultura del incumplimiento de reglas en América Latina”. In: M. Vollora Mendieta e M. I. Wences Simon. La cultura de la ilegalidad. Instituciones, proceso y estructuras. Madrid, Catarata.

⁶ DA MATTA, Roberto. O que faz o Brasil, Brasil?(What makes Brazil, Brazil?) 5. ed. Rio de Janeiro: Rocco, 1991.

recurring situation of disregard for the laws.

Our research aims at measuring, in a systematic way, the perception of Brazilian population regarding the respect for the law and some authorities who are directly involved with law enforcement, as well as identifying the drivers that help us understand this perception.

This measure sets a first step so we can understand why people comply with the law or not, which is essential to the rule of law. Understanding these reasons contributes not only to assess the possibilities and limits of legal solutions to social and economic problems in Brazil, but also to think about public policy more appropriate to solve these problems.

It is important to stress that the purpose of systematically measuring the degree of perception of the Brazilian population on obedience to rules does not mean measuring the degree of compliance with the law by the people. Actually, the main objective of this study is to portray the individual's relationship with the rule of law, noting their respect to the laws and to the authorities that should make sure laws are enforced.

In order to achieve our goal, we based our research strategy mainly on Tyler's study "Why people obey the law"⁷. Tyler is interested in understanding the factors that motivate compliance with law and legal authorities, so his research was designed to examine the drivers of people's rule-related behavior, contrasting the instrumental and the normative perspectives (Tyler, 1990: 3). The instrumental perspective has to do with the severity of the penalties applied to those that disobey the laws. The argument is that people would respond to tangible and immediate incentives, so it is expected that if the penalty for committing a certain type of crime were increased, the rate of this type of crime would decrease. The normative perspective, on the other side, is related to people's perception of obligation, moral and justice. Based on the literature on normative and instrumental perspectives, Tyler articulated four different dimensions in explaining the degree to which people generally follow the law in their daily lives: deterrence (threat of sanctions), peer opinion, personal morality and legitimacy (perceived obligation to obey the law and support for legal authorities).

Following Tyler's work we developed five indicators. The first one measures the dimension of *behavior*, which depicts the frequency with which respondents report having performed actions that somehow represent disobedience to the law. This indicator is developed based on ten different situations⁸, to which we ask respondents how often they performed each in the past

⁷ TYLER, Tom R. *Why People Obey the Law?* New Haven, CT: Yale University Press, 1990.

⁸ The choice of those situations was based on Tom Tyler, but we added some other typical cases of Brazilian reality.

12 months, and the possible answers are: often, sometimes, rarely, almost never or never. Those situations are:

1. Make enough noise to disturb your neighbors;
2. Litter in violation with the law (in illegal places);
3. Drive an automobile or motorcycle while intoxicated (like after consuming alcohol);
4. Take inexpensive items from a store without paying for them;
5. Park your car or motorcycle in violation of the law (prohibited spot);
6. Buy “pirate products”, such as DVD, shoes, purse, cigarette, etc.;
7. Use a fake student Id to purchase half price tickets;
8. Give money to a police officer or other public official to avoid being fined;
9. Smoke where is not allowed (like bars, restaurants, offices, etc.);
10. Cross the street outside the crosswalk.

Of course we do not expect this indicator to be precise, since there is social desirability, and as Tyler has noticed, respondents are more likely to admit that they had committed less serious offense. For example, very few people declared that they had stolen items from a store (Tyler, 1990: 40).

The second indicator measures fear of sanctions, in the instrumental perspective, indicating the perception of losses associated with the violation of the law. We have named it instrumentality indicator, in which we asked respondents how likely they think they are to be punished for engaging in those ten previous situations. The possible answers were: very likely, somewhat likely, somewhat unlikely or very unlikely.

The third indicator is the morality one, which measures the perception of respondents about how much is right or wrong to engage in those situations. We have asked respondents to consider their own feelings about what is right and wrong, and answer to how right or wrong they think engaging in the aforementioned situations is. The possible answers were: very wrong, slightly wrong, almost nothing wrong or nothing wrong.

The fourth indicator is the social control, which measures the perception of social disapproval of performing those actions. We have asked respondents to think of their friends and family, and how much they would disapprove their conduct in performing each of those situations, and the possible answers were: a lot, somewhat, almost nothing or nothing.

Last, but not least, the indicator of legitimacy, which measures the perception of obedience to the law and the commands of authorities that should enforce the law. We presented eight statements about people’s behavior to the law and the orders of officials and asked respondents

to say how much they agreed with each statement, with possible responses being: strongly agree, somewhat agree, somewhat disagree or strongly disagree. For the legitimacy indicator we used the following statements:

1. People should obey the law even if it goes against what they think is right;
2. Disobeying the law is seldom justified;
3. Someone who disobeys the law is poorly viewed by others;
4. If a person goes to court because of a dispute with another person, and the judge rules them to pay the other person money, they should pay that person money even if they disagree with judge's decision;
5. If a person is doing something and a police officer tells them to stop, they should stop even if they disagree with the public authority;
6. There are few reasons for a person like me obey the law in Brazil;
7. It's easy to disobey the law in Brazil;
8. Whenever possible people choose to take a "knack" (*jeitinho*) instead of following the law.

2 Empirical results of Brazilian indicators

At first, we are going to present a diagnosis about the compliance to law in Brazil and then we analyze the reasons that could explain these results. In this sense, we are going to start with the data regarding the responses about the behavior indicator.

2.1 A diagnosis on respect to law in Brazil

As we have explained before, the indicator of behavior is a measure that reflects the perception of Brazilian population about the respect for law, based on the attitudes of the interviewees in ten specific situations. As we have mentioned before, we asked respondents how often they perform certain behaviors. Such conduct violates the rules of social coexistence and the laws.

The results reveal that the conduct “cross the street outside the crosswalk” is the most frequent behavior, since 72% of respondents have declared that have already crossed the street outside the crosswalk in the last twelve months at least once. The second most recurrent behavior is “buying pirated products”, with 60% of the answers, followed by “make enough noise to disturb your neighbors”, that correspond to 34% of all reports.

The respondents who reported having “crossed the street outside the crosswalk” and the ones who reported having “bought pirated products” have the same profile: they are, mostly, young, male, with high income and average education.

There are some situations where we could detect more respect to law, since the minority of respondents has reported having done some of the aforementioned attitudes against law. Only 3% of respondents claimed having “taken inexpensive items from a store without paying for them” and “given money to a police officer or other public official to avoid being fined” at least once in the last twelve months. Additionally, 5% of all respondents reported they have already “smoked where is not allowed” and “used a fake student Id to purchase half price tickets”.

2.2 Explanatory indicators

In terms of reasons that driven Brazilian behaviors, attitudes and habits regarding compliance to law, we are going to analyze four indicators: instrumentality, morality, social control and legitimacy.

Regarding the *indicator of legitimacy*, we evaluate the answers of respondents on the importance of obeying the law, the police and judges. Therefore, we asked respondents how much they agree with statements related to respect the rule of law and the institutions that comprise it.

Most respondents replied that agree with the statement that “it is easy to disobey the law in Brazil” (82%). Secondly, we note that 79% of respondents agree with the statement that the Brazilian citizen, whenever possible, choose to take a “knack” (*jeitinho*) instead of following the law. Among respondents who agree more with these statements are the youngest (age between 18 and 34 years), with high income and average education.

The profile of respondents who agree or very agree with the statement “there are few reasons for a person like me obey the law in Brazil” is quite different from the two previous profiles. Among the 54% of respondents that have agreed the aforementioned quotation, most

of them are female, blacks, mulattos and indigenous respondents with low income and education. It is a very interesting result since it shows that disadvantaged groups in Brazilian society consider that they have less reason to obey the law comparing with other groups that are not affected by prejudice.

The study reveals the importance that is being given to other people's opinion when someone is choosing between obeying and disobeying the law. For 80% of respondents it is difficult to disobey the law and continue to be respected by the people.

Considering that we are analyzing the degree of effectiveness of the rule of law in Brazil, it is important to verify, besides the compliance to law, the respect to some authorities that are directly involved with law enforcement, such as police and judges.

The research data reveal that 81% of respondents agree with the statement "if the judge rules that a person must pay an amount to another, she has a moral obligation to pay even if they disagree with judge's ruling." On the other hand, only 43% of respondents agree with the statement that "if a police officer asks you to do something, you should do it, even if you disagree." So, we can conclude that the respect for the judge's authority in Brazil is bigger than police's authority.

The majority of respondents that agree with the statement "if the judge decides that a person pays an amount to another, she has a moral obligation to pay even if you disagree with the decision" are young, has average income (2-4 minimum wages, which means about \$680 up to \$1360) and high education.

Respondents who have reported they would respect police's orders are mostly young, between 18 and 34 years, with high income and education.

Regarding the *indicator of instrumentality*, which is related to the incentives that people have to comply with the law, we evaluate how likely the respondents think they would be punished if performing one of the conduits indicated by the interviewer.

Respondents stated that they would have more chance of being punished if they fulfilled the following conduct: "taking inexpensive items from a store without paying for them" (80%), "driving an automobile or motorcycle while intoxicated (after consuming alcoholic beverages)" (79%) and "parking in a prohibited spot" (78%).

On the other hand, the situations in which respondents identified a lower expectation of punishment are: "crossing the street outside of the crosswalk" (since only 52% of respondents said it is likely or very likely to receive punishment in this case) and "buying pirated products" (considering that 54% of respondents reported it is likely or very likely to receive punishment in this case).

The third indicator that could explain Brazilian behavior regarding compliance to law is the *indicator of social control*. In order to measure this indicator, we have asked respondents how they think their peer would disapprove their attitude if they had done any of the hypothetical situations of disobeying of law.

Among all situations, respondents expect greater social disapproval in the following are: “taking inexpensive items from a store without paying for them” (90%), “driving an automobile or motorcycle while intoxicated (after consuming alcoholic beverages)” (88%) and “giving money to a police officer or other public official to avoid being fined” (87%).

In contrast, situations that present, according to the respondents, the less social disapproval are: “crossing the street outside of the crosswalk” (66%) and “buying pirated products” (64%). These situations would thus have a low indicator of social control, compared to conduits listed in the previous paragraph.

The *indicator of morality*, in turn, was built according to the perception of respondents about what is right or wrong.

The situations that were most considered by respondents as wrong or very wrong are “driving an automobile or motorcycle while intoxicated (after consuming alcoholic beverages)”, “littering in violation with the law”, “taking inexpensive items from a store without paying for them” and “parking in a prohibited spot”. In all of these situations, each with a window morality of 99%. On the other hand, “buying pirated CD or DVD” was considered wrong or very wrong for only 91% of respondents – the lowest percentage shown in the moral evaluation of hypothetical behaviors used in the research.

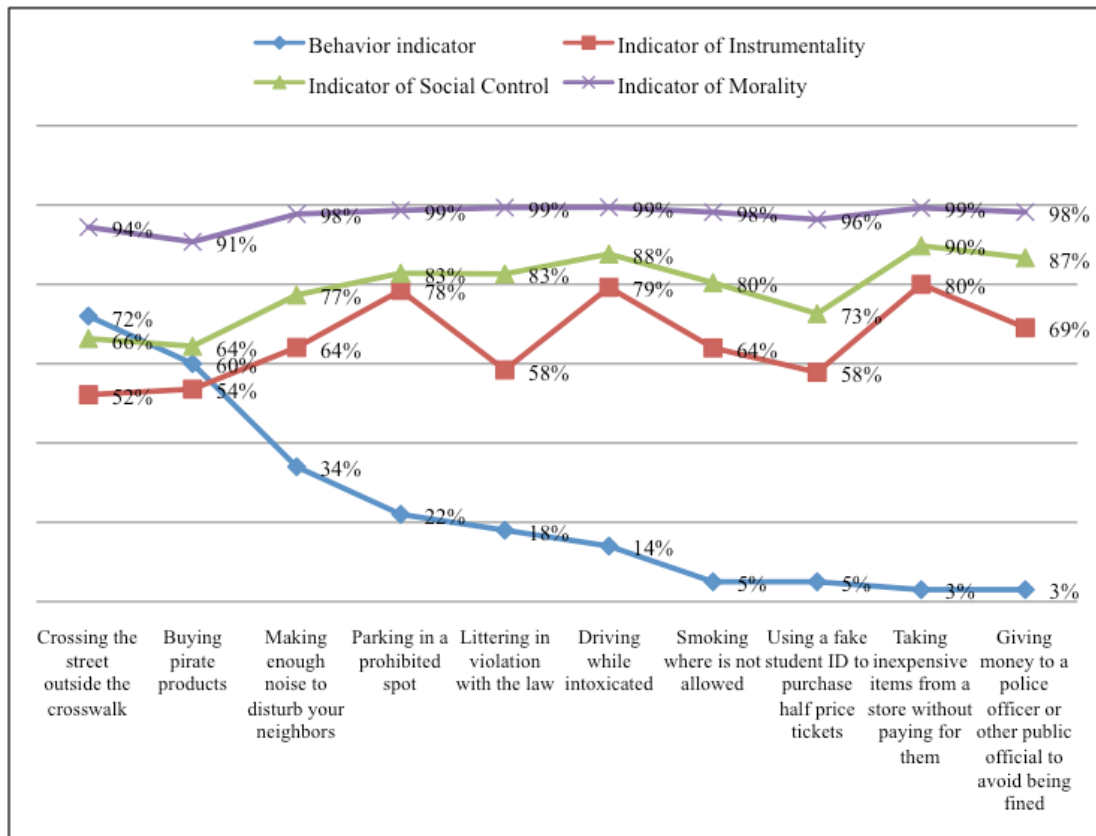
When all indicators are analyzed together, we can find interesting results about the reasons that could influence people’s behavior in order to comply with law.

The situations in which Brazilian people usually obey the law are the ones that follow the same pattern: high indicators of instrumentality, morality and social control.

The results show that the higher the social control indicator, the greater the possibility that the law is obeyed. In cases where there was a greater respect to the law, it is noted that the indicators of social control is higher, exceeding 73%. In cases where there is less respect for the law – “crossing the street outside the crosswalk” and “buying pirated products” – the indicator of social control is lower compared to other situations, representing 66% and 64%, respectively.

Similarly, the greater the likelihood of someone being punished for having done certain action in disrespect to law, a higher incidence of answers stating that they acted in accordance with the law. In cases where we have noted more respect for the law, the indicator of

instrumentality exceeded 58%. The biggest indicator of instrumentality detected was 80% for respondents who reported they have already taken inexpensive items from a store without paying for them”. This is the situation with the smallest behavior indicator: 3%.



Graph 1. Indicators about compliance to law in Brazil, Oct. 2012- March 2013

In other words, we can conclude that the lower the expectation of punishment, the greater the frequency of the conduct of lawlessness. This is the case of respondents who said they have crossed the street outside of the crosswalk at least once: the lowest indicator of instrumentality (52%) against the biggest indicator of behavior (72%).

3 Comparison between Tyler's indicators and Brazilian's Indicators

Since our research was inspired by Tyler's study about why people obey the law, we would like to compare some of our results with Tyler's data in order to understand what are the main reasons that influence compliance with law in Brazil and in United States.

But first we would like to stress some relevant differences in both societies regarding the indicator of legitimacy.

Concerning the compliance with some authorities' orders, we have concluded that in Brazil the respect for the judge's authority is bigger than police's authority. It happens just the opposite in the United States, since in Tyler's research 74% of respondents agree with the sentence "If a person goes to court because of a dispute with another person, and the judge orders them to pay the other person money, they should pay that person money even if they think that the judge is wrong" and 84% agree with the situation "If a person is doing something and a police officer tells them to stop, they should stop even if they feel that what they are doing is legal".

Furthermore, 82% of American respondents agree with the statement "disobeying the law is seldom justified". In Brazil, otherwise, only 52% has the same opinion. It reveals that half of Brazilians think that sometimes there are many reliable reasons that can justify the disrespect to law.

Finally, we could compare the correlations between indicators and lawlessness in Brazil and in United States.

According to Tyler, the correlations are the ones that follow:

- Legitimacy (.22)
- Deterrence (instrumentality) (.28)
- Peer disapproval (social control) (.34)
- Personal morality (.42)

Differently, we have noted other levels of correlations in Brazil, as we can conclude by the analysis of the data below:

- Legitimacy (.05)
- Deterrence (instrumentality) (.09)
- Personal morality (.20)
- Peer disapproval (social control) (.23)

Those results reveal that in United States, the drivers are stronger than in Brazil, i.e., the indicators of legitimacy, instrumentality, social control and morality are more strongly correlated with obedience to law. However, the correlation in Brazil is weaker than in American society. The biggest difference between the correlation's results is related to the weight of legitimacy, which is very little correlated to the behavior indicator. In other words, the legitimacy of Brazilian authorities is very weak.

4 Final Remarks

The data presented in this paper were produced by a research project developed by São Paulo Law School of Getulio Vargas Foundation. The objective of the research project is the construction of a compliance with law index – which is called “Perception Index of Compliance with Law”. The first research measuring was applied from October 2012 to March 2013 and had interviewed 3.300 people, with 18 years or more, in eight different Brazilian states: Amazonas, Pernambuco, Bahia, Minas Gerais, Rio de Janeiro, São Paulo, Rio Grande do Sul and Distrito Federal. In order to build the Perception Index of Compliance with Law, we will have one reporter per semester for the next years and had agreed to produce data in a systematic and continuing way.

The first results of the research Project have showed that we have to rethink what we have meant by legitimacy when we’re building the indicator of legitimacy, to discuss what is the role of the authorities in Brazilian society and why the respect to them is so low and to distinguish the compliance with law to the compliance with authorities. All these considerations are necessary to achieve the main objective of the research Project which is helping policy makers to reform or build new policies considering the future compliance to them.

In this sense, it is interesting to see that in Brazil the highest correlation between indicators and Lawless is the peer disapproval (social control) (.23) which indicates that the relationship and the place that each Brazilian has been involved could say a lot about its behavior. If this perspective is true, the results of the first sounding confirm a set of researches developed in the end of the 1980’s which showed that in Brazil the civil rights including the idea of liberty and equality beyond the Law are not a social value.

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