

**DISOBEYING THE LAW:
THE CULTURE OF NON-COMPLIANCE WITH RULES IN
LATIN AMERICA**

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ABSTRACT

Noncompliance with rules in Latin America is a pervasive and complex phenomenon involving a number of factors. There are diverse disciplinary perspectives regarding this phenomenon. Each places particular emphasis on a specific factor. Three of these visions are analyzed here: a strategic perspective that focuses on self-interest; a political vision based on the perception of illegitimacy, and finally, a cultural view that attempts to show how a belief in higher values can provide incentives for noncompliance of norms. Although none of these perspectives can completely explain the phenomenon of noncompliance, they all shed light on some of its basic aspects. More specifically, this article focuses on the analysis of six non-complying characters, as well as the contexts in which they act, and the remedies needed to counteract their practices.

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INTRODUCTION

The culture of noncompliance with rules in Latin America originated during the Spanish and Portuguese colonial period. Since then,

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writers, thinkers, and political leaders throughout the continent have referred to it.¹ As far back as 1743, for example, Viceroy Eslava complained to his superiors because he felt that “the provinces of Nueva Granada were practically ungovernable.”² With the coming of independence, norms changed but the social reality and the gap between the law and reality remained as before. In the mid-nineteenth century, Mexican president Benito Juárez lamented “the generally observed tendency among peoples to ignore obligations that the laws impose upon them.”³ Not long ago, the poet Octavio Paz said that in Mexico people lived in a constitutional lie, because no one ever complies with the law.

Although ubiquitous throughout Latin American history, the culture of noncompliance with rules is a little-studied phenomenon. “It is surprising”, says,⁴ “that despite the evident Argentine tendency towards illegality it has not been cited until now by scientists, historians and economists as a significant factor indicating Argentine underdevelopment.”⁵

References to the culture of noncompliance with rules in Latin America could be grouped according to their conformity with three points of view. The first is a strategic point of view, according to which

¹ See BENJAMIN KEEN, *LATIN AMERICAN CIVILIZATION, HISTORY, AND SOCIETY, 1492 TO THE PRESENT* (Benjamin Keen, ed., 1996); JOHN ELLIOTT, *IMPERIOS DEL MUNDO ATÁNTICO* (2006); LYMAN L. JOHNSON & SONIA LIPSETT-RIVERA, *THE FACES OF HONOR* (1998); JOHN CROW, *THE EPIC OF LATIN AMERICA* (1992); Richard Morse, *The Heritage of Latin America, in POLITICS AND SOCIAL CHANGE IN LATIN AMERICA: A DISTINCT TRADITION* (H.J. Hirada, ed., 1974); ERNEST LEWALD, *LATINOAMERICA, SUS CULTURAS Y SOCIEDADES* (1973). This is not an exclusively Latin American phenomenon. Most of this culture has been attributed to Spain. See SALVADOR DE MADARRIAGA, *ENGLISHMEN, FRENCHMEN AND SPANIARDS* (1928); JUAN GOYTISOLO, *ESPAÑA Y LOS ESPAÑOLES* (1969); ÁNGEL GANIVET, *IDEARIUM ESPAÑOL* (1980). Such a culture also exists in other countries. See also GUILLERMO O'DONELL, *¿Y A MÍ QUE IMPORTA?: NOTAS SOBRE SOCIABILIDAD Y POLÍTICA EN ARGENTINA Y BRASIL* 330 (1998); NAIM MOISÉS, *ILICIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY* (2005); ROBERT ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991). We must also point out that all rules systems have a certain degree of noncompliance, which justifies their existence. The renowned legal theorist Hans Kelsen refers to this to argue that the law makes no sense in cases of total compliance or total noncompliance. The importance of this phenomenon derives from its degree and recurrence and not from the simple fact of its existence. See HANS KELSEN, *COMPENDIO DE TEORÍA GENERAL DEL ESTADO* 24 (2000).

² JOHN MCFARLANE, *COLOMBIA ANTES DE LA INDEPENDENCIA: ECONOMÍA, SOCIEDAD Y POLÍTICA BAJO EL DOMINO BORBÓN* (1997).

³ BENITO JUÁREZ, *DISCURSOS Y MANIFESTOS* 225 (1987).

⁴ CARLOS SANTIAGO NINO, *UN PAÍS AL MARGEN DE LA LEY* 28 (1992).

⁵ It might be that the lack of interest in the culture of disobedience is part of the general indolence that, until very recently, characterized Latin American social sciences regarding cultural topics and particularly people's beliefs.

people fail to comply after calculating the costs and benefits of disobedience. According to this view people are seen as rational actors who disobey when the negative effects deriving from that behavior—punishment for example—can be avoided, are not grave, or are not comparable to the benefits obtained.⁶ The second perspective is of a cultural type and assumes that the reason why people disobey rules is because the values that these norms protect are less important than other traditional values—for example religious or family values—embedded in people's culture.⁷ The third point of view is political and supposes that

⁶ The strategic point of view on noncompliance is perhaps the most widely accepted and prestigious of all. In general, it is found among authors who take positions close to methodological individualism. Such is the case with certain economists interested in studying the causes of violence. Based on ideas from the *law and economics* movement, certain Colombian economists, for example, maintain that criminality is better explained by the lack of effective sanctions than by other causes such as culture or poverty. Armando Montenegro, *Prologo, in DOS ENSAYOS SOBRE ESPECULATIVOS SOBRE LA VIOLENCIA EN COLOMBIA* (Malcolm Deas & Fernando Gaitán, eds., 1995); see SALOMÓN KALMONOVITZ, *LAS INSTITUCIONES Y EL DESARROLLO ECONOMICO EN COLOMBIA* (2001). In a more interdisciplinary line of thought, Francisco Thoumi believes that criminality and violence stem not only from the existence of incentives deriving from the lack of effective punishments, but also from a type of culture of tolerance for illegality. See FRANCISCO THOUMI, *EL IMPERIO DE LA DROGA: NARCOTRÁFICO, ECONOMÍA Y SOCIEDAD EN LOS ANDES* (2002). Other economists are also interested in noncompliance through the topic of social capital. Where there is less trust and firmness of social ties, people are less willing to comply. ROBERT PUTNAM, *MAKING DEMOCRACY WORK: CIVIL TRADITION IN MODERN ITALY* (1992); JAMES COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* (1990). Where there is less trust and firmness of social ties, people are less willing to comply. Some applications of these ideas can be found in surveys on citizen culture carried out by Latinobarómetro or in the Latin American part of the World Values Survey led by Inglehart and applied in 61 countries. LATINOBARÓMETRO, <http://www.latinobarometro.org/latino/latinobarometro.jsp> (last visited May 15, 2011). In this regard see also MARÍA MERCEDES CUÉLLAR, *COLOMBIA: UN PROYECTO INCONCLUSO: VALORES, INSTITUCIONES Y CAPITAL SOCIAL* (2000); JOHN SUDARSKY, *LA EVOLUCIÓN DEL CAPITAL SOCIAL EN COLOMBIA 1997–2005* (2007); JOHN SUDARSKY, *EL CAPITAL SOCIAL DE COLOMBIA* (2001). It is also worth mentioning the book written by Carlos Santiago Nino entitled *Un país al Margen de la Ley* (A Country Outside of the Law) in which Nino tries to show the costs of noncompliance for democracy and development for Argentina from a sociological perspective. NINO, *supra* note 4.

⁷ The cultural view is less coherent and systematic. It contains only isolated, though frequent, references to noncompliance with rules. These are generally found in historical and cultural studies. Thus, for example, based on a few lines from *El Quijote* that say that honorable men must not be the executioners of those who are not honorable, Jorge Luis Borges is convinced of our profound cultural affinity with Spain regarding authority and the law. Jorge Luis Borges, *Nuestro Pobre Individualismo*, in *OBRAS COMPLETAS* 658 (1974). Others have studied this affinity between Spain and Latin America. Others have studied this affinity between Spain and Latin America. See LEOPOLDO ZEA, *LA ESCENCIA DE LO AMERICANO* (1971); RODOLFO PUIGGROS, *LA ESPAÑA QUE CONQUISTÓ AL NUEVO MUNDO* (1961); SEYMOUR LIEBMAN, *EXPLORING THE LATIN AMERICAN MIND* (1976). In Latin América, says Borges, anyone with authority is viewed with mistrust, worse still if they have weapons to back up their power. Borges, *supra* note 7. Another example of this cultural point of view can be found in the work of Brazilian author Roberto Da Matta, for whom the way Brazilians sing, dance and celebrate is a

when people disobey they do so as an act of resistance to authority. According to this view, the social world is dominated by a handful of usurpers who hold power; institutions and authorities lack legitimacy and because of that subjects lose no opportunity to disobey and refuse to do as they are ordered.⁸

key indication for understanding the social system and particularly individuals' detachment from power and authority. Roberto Da Matta, *The Quest for Citizenship in a Relational Universe, in STATE AND SOCIETY IN BRAZIL: CONTINUITY AND CHANGE* (1987). There is something similar in the work of Jorge Mañach entitled *Indagaciones sobre el choteo* (Inquiries into *dvivezamocking*) about the Cuban people. JORGE MAÑACH, *INDAGACIONES SOBRE EL CHOTEO* (1991). There are also the writings of Julio Mafud, particularly his *Psicología de la Viveza Criolla* (Psychology of Creole liveliness) where he accurately describes how Argentines always try to take advantage in their relationships with authority. JULIO MAFUD, *PSICOLOGIA DE LA VIVEZA CRIOLLA* (1965). Some Latin American historians have also looked at popular culture in an effort to understand the relationship that Latin Americans have with authority and the law. Such is the case of José Luis Romero in Argentina, Leopoldo Zea in Mexico, Mario Góngora in Chile or Gilberto Freyre in Brazil. See JOSÉ LUIS ROMERO, *LATINOAMERICA: LAS CIUDADES Y LAS IDEAS* (1999); ZEA, *supra* note 7; MARIO GÓNGORA, *HISTORIA DE LAS IDEAS EN LA AMÉRICA ESPAÑOLA Y OTROS ENSAYOS* (2003); GILBERTO FREYRE, *O BRASILEIRO ENTRE OUTROS HISPANOS* (1975). We could also include here a book entitled *Facundo* by the Argentine intellectual and ex-president Domingo Sarmiento. DOMINGO SARMIENTO, *FACUNDO* (1965). In this cultural point of view can also be placed what was written – and done – by the ex Mayor of Bogotá, Antanas Mockus on the culture of legality. For Mockus, the biggest evil of Colombian society is to be found in the divorce that exists between legal, moral and cultural regulations. As a result, noncompliance with the law is not seen as something morally or socially reproachable. This divorce has led to “a surge in violence, delinquency and corruption; loss of prestige for institutions, the weakening of cultural traditions and a crisis in individual morals”. See ANTANAS MOCKUS, *CULTURA CIUDADANA: PROGRAMA CONTRA LA VIOLENCIA EN SANTA FE DE BOGOTA, COLOMBIA 1995–1997* 3 (2001); See also ANTANAS MOCKUS & JIMMY CORZO, *CUMPLIR PARA CONVIVIR: FACTORES DE CONVIVENCIA Y SU RELACIÓN CON NORMAS Y ACUERDOS* (2003); See Antanas Mockus, *Anfibios culturas y divorcio entre ley, moral y cultura*, *REVISTA ANÁLISIS POLÍTICO*, 1994, at 21.

⁸ The political vision of noncompliance is even more diffuse and less perceptible. There are only brief, passing and isolated references among those who have a critical perception of power and law in Latin America. Two traditions can be differentiated in this perspective: first, the old Spanish *iusnaturalism* – represented by the school of Salamanca – that puts justice over the law, and the right to resist over the obligation to accept the law. The second is the Latin American Marxist tradition that opposes written law, even progressive written law, as a deceit, devised by the dominants against the poor. See CARLOS ANTONIO WOLKMER, *INTRODUCAO AO PENSAMIENTO JURIDICO CRITICO* (1995); OSCAR MEJÍA, *DERECHO, LEGITIMIDAD Y DEMOCRACIA DELIBERATIVA* (1998); Leopoldo Múnera, *La Justicia es pa' los ruana*, in *SOCIOLOGIA JURIDICA EN AMERICA LATINA* (O. Correas, ed., 1991). The distinction between “paper laws” and “real laws,” originally made by Ferdinand Lasalle in Prussia, is important here. See FERDINAND LASALLE, *QUE ES UNA CONSTITUCION* (1964); MAURICIO GARCIA VILLEGAS, *LA EFICACIA SIMBÓLICA DEL DERECHO: ANÁLISIS DE SITUACIONES COLOMBIANAS* (1993); MAURICIO GARCÍA VILLEGAS, *NORMAS DE PAPEL: LA CULTURA DEL INCUMPLIMIENTO DE REGLAS* (2009). From that difference, lays the justification of rebellion: “Against the authority of the *hacendado* (landlord) – says Jose Carlos Mariategui – the written law is powerless.” JOSE CARLOS MARIÁTEGUI, *SIETE ENSAYOS DE INTERPRETACION DE LA REALIDAD PERUANA* (1969) From that fact, the only alternative is a rebellion against the powerful.

None of these three perspectives has a direct and specific interest in the study of the culture of noncompliance. They address this topic only because it sheds light on other phenomena that are deemed more important.

Each of these three visions accentuates a particular type of reasoning for noncompliance: interest, in the case of the strategic vision; defense, in the case of the political vision; and values in the case of the cultural vision. Because they have only one type of reason in mind, each refers to a particular type of political vision or mentality: someone who fails to obey out of convenience; another who does so in order to defend him or herself; and a third who does so because he or she feels that there are values that are higher than those of the norm being imposed. However, in practice, the same person may fail to comply for all of these reasons.

In this paper, I present the outline of a research project on the culture of noncompliance that I conducted in Colombia between 2006 and 2008. The purpose of the project was to overcome the simplistic view carried out by each one of the three perspectives presented in the previous paragraphs, and to show, particularly in contrast to the economic idea of noncompliance, how complex this behavior is and what, theoretically speaking, we need to do to improve the understanding of it. Seven empirical studies were carried out in that project: 1) people jumping lines in different places in Bogota; 2) violation of traffic rules in intersections in Bogotá; 3) smuggling gasoline on the frontier between Colombia and Venezuela; 4) students cheating on exams in two universities in Bogotá; 5) the behavior of a black community on the Rosario Island (in the Caribbean ocean); 6) unlicensed retailers in the streets of Bogotá; and 7) a symbolic analysis of rebellious music in Latin America.⁹ Given the lack of space here, I will not refer to these studies. Instead, I will present an outline of the theoretical account derived from both this empirical research and from my own experience as a Latin-American citizen.

In Part I, I analyze the mentality of three non-complying characters. I then look at the study of the contexts in which they act in Part II. Finally, in Part III I refer to the remedies needed to counteract practices of noncompliance.

I. NON-COMPLIANCE MENTALITIES

⁹ The results of this research can be found in my book. See GARCÍA VILLEGAS (2009), *supra* note 8.

I will put names to the three noncompliance mentalities listed above: those who disobey out of interest I shall call “shrewd”; those who do so out of personal defense against authority I shall denominate as “rebels”; and those who do so in defense of superior values I shall call “arrogant.” These are not the only noncompliance characters. Others will arise in the course of my explanation. For now I will limit myself to describing the mentality of these three types, bearing in mind that they involve ideal types, not a faithful description of reality.¹⁰ In analyzing these three mentalities, I will take two additional variables into account: social class—each class has its typical forms of noncompliance—and the type of rationality, which could be either value rationality or instrumental rationality. I will come back to this later.

Three short clarifications before starting: First, I am interested in very mundane and every day mentalities rather than deviant behavior. I am neither analyzing the noncompliance caused by negligence or ignorance, nor the deviant behavior. So, in terms of consciousness or intentions, I am interested in an intermediate type of mentality located between negligence or ignorance, on the one hand, and deviant and troubling behavior, on the other hand. Second, for reasons that I will explain later, I take into consideration not only legal but also social norms (disobeying legal norms is very often the result of obeying social norms). Finally, in spite of the importance of this behavior in Latin America, it is essential to bear in mind that, most of the time, the majority of people comply with norms.

A. THE SHREWD

The shrewd person is the most frequent non-complying character. In every Latin American country, from northern Mexico to the Patagonia, the shrewd person is recognized, and his or her slogans are practiced. There is a specific term describing this behavior that all Latin-Americans know and use: *la viveza*. The person who practices it is a “vivo.”

Shrewd people are borderline characters. They are not entirely cunning or parasites, nor are they mischievous; instead, they have a bit of each of these characteristics. If they act despicably it is because this is necessary, rather than because it is their nature. If they take advantage of others, it is more out of convenience than because they are evil, and when they are naughty it is not always on purpose. Shrewd people

¹⁰ MAX WEBER, *ECONOMÍA Y SOCIEDAD* (1992).

always seek to satisfy their personal interest, and to do so they will adapt the means to the ends so that the means will be as useful as possible, regardless of any moral code or law.

Shrewdness is an ambivalent behavior. On the one hand, it is the subject of praise because it signifies the ability to triumph in difficult situations. The Paraguayan writer Matías Leguizamón puts it this way in reference to the war of the Chaco: “It was one of the most significant events in our history. We Paraguayans triumphed over an enemy that was superior in nearly every way, except for shrewdness at critical moments. This event showed what we are capable of doing, and it was a clear sign of the iron will of our people.”¹¹

On the other hand, shrewdness can be something reproachable when it is used to “rip off,” cheat, or take advantage of someone. Colombian ex-president Alberto Lleras Camargo defined shrewd people as follows: “[T]hey are people who resolve all of their problems and invite others to resolve them using means that are just barely legal, and occasionally illegal, but in such a way that it is not easy to discover. Essentially, they are people who have invented all kinds of tricks to fool the government along with all of its regulations and extremely complex formalism.”¹²

But in practice, in Latin America the difference between these two meanings of shrewdness tends to evaporate. When shrewd people achieve what they are after, they are more likely to receive praise rather than reproach for their conduct. The means are not good but the end is achieved and that is enough. The triumph hides the means used to achieve it. If a particular play by Argentine football star Diego Maradona is praised by his compatriots, it is when, applying his shrewdness, he scored a goal against the British using his hand. The good result erases the memory of the bad intermediate steps. Writer Jorge Luis Borges once said that Argentines used to lack moral conduct, but not intellectual conduct; to be considered immoral is less important than to be viewed as dumb. In mid-twentieth century Brazil, there was a candidate for governor of Sao Paulo named Adhemar de Barros who successfully used the campaign slogan: *Rouba mas faz!* (Steals but does things).

The shrewd justify noncompliance based on a supposed supra-legal “right”: the right to play the game. Individuals are seen as players

¹¹ Yagua, <http://www.asa.edu/py/travesia/articulos/matiasleguizamon.htm>, (last visited Feb. 11, 2007).

¹² Alberto Camargo Lleras, *El Periodista Alberto Lleras*, in ANTOLOGIA (1992).

who play against the State and have the right to cheat, just as the State can trap and punish them. In the vision of the game, the public is just booty. Fines, imprisonment, or death are risks of the game rather than social or moral punishments. The law is not a social norm but simply an additional element in the adventure of living in “society.” Social recognition is more closely linked to triumph rather than moral merit. Merit consists of triumph and nothing more. In this way, a culture of gallant noncompliance is created, which looks down on obedient citizens or public servants. That is why Borges says that Argentines are individuals rather than citizens.¹³

But the shrewd are above all calculating persons. Their art consists of strategically calculating the balance between the risks of noncompliance and the benefits deriving from it. (That is why studying mentalities is insufficient to predict the way in which those who do not comply are going to behave; we must also look at the contexts in which these people design their strategies).

Bearing in mind this idea of calculation, economists tend to explain the phenomenon of noncompliance as the result of incentives to not comply that derive from institutional inability to sanction deviates.¹⁴ Noncompliance is seen as the product of an individual strategy in which the costs of criminal practices are low compared to the results obtained. This being the case, the problem stems from the existence of weak institutions that are unable to impose sanctions on those who do not comply. The lack of effective sanctions is an incentive to violate the norms. Disobedience turns out to be cheap.

But if the shrewd are calculating, their calculations do not always benefit them over the medium and long terms. Carlos Santiago Nino uses the model of the rational actor to maintain that in Argentina there is a kind of anomia in social life, which he calls a “silly anomia,” because it involves a type of behavior that ends up hurting everyone or at least most of the actors involved, despite the fact that, from an individual point of view, it could be viewed as rational behavior.¹⁵ Perhaps the best illustration can be found in automobile traffic: when, in order to arrive

¹³ See JORGE LUIS BORGES, *NUESTRO POBRE INDIVIDUALISMO* (1974).

¹⁴ Economic theories of crime attempt to explain crime and violence as the result of lack of incentives for fulfillment. For examples involving Colombia, see KALMANOVITZ, *supra* note 6; Mauricio Rubio, *Capital Social, Educacion y Delincuencia Juvenile en Colombia*, in DOCUMENTOS CEDE (1996); CUÉLLAR, *supra* note 6; and the introduction to this paper.

¹⁵ NINO, *supra* note 4. Nino uses the celebrated “prisoner’s dilemma” to show how certain rational patterns of behavior produce ineffective and unsuspected results.

first, all of the drivers—or the great majority—violate basic rules that require them to respect the separation of traffic lanes, they all end up creating obstacles and arriving later than they would have if they had followed those rules.¹⁶

B. THE ARROGANT

The arrogant is someone who accepts the law, at least in general terms, but considers that most of the time, he should be excluded from the obligation to comply, given his particular position of power, the type of person he is, or the situation under which he acts. According to him, the law is for the “poncho people”—meaning the poor, the Indians, and the lower class—but not him.

The arrogant behavior is for the most part a legacy of the Spanish Colony. The Spanish society of the sixteenth century was not only very hierarchical—each person had a very specific and stationary position—but also a society that valued the heroic life and the noble spirit, rather than labor, material progress, and everyday life.

José Luis Romero maintains that the epic concept of life was the primary characteristic of the mentality of the conquistadores.¹⁷ Latin Americans received a culture from Spain, which thinks more highly of grandiose myths, the heroic life, and the noble spirit than of the virtue of manual labor, material progress, and life in society. “If Spain is not great due to its ability and industrial and commercial wealth, it is nonetheless great because of its intention and grandiosity,” according to De la Torre.¹⁸

Instead of being a widespread attitude throughout society, this lordly spirit is a moral characteristic predicated by the governing Spanish elite during the eighteenth and nineteenth centuries.¹⁹ The lords of the colony “. . . acquired the arrogance of their condition of wealth, disguised as noble arrogance. . . .”²⁰

For the dominant elite, what was of fundamental importance was the contemplation of superior values and the social and economic

¹⁶ See O'DONNELL, *supra* note 1.

¹⁷ ROMERO, *supra* note 7, at 16. In this, Romero is in line with Unamuno. MIGUEL DE UNAMUNO, *DEL SENTIMIENTO TRÁGICO DE LA VIDA* (1993).

¹⁸ ZEA, *supra* note 7, at 228. “Dignified idleness,” says Leopoldo Zea, “was always better or more ennobling in the eyes of a good Portuguese or Spainard than the arduous struggle for daily bread.” *Id.* at 230.

¹⁹ FERNANDO ESCALANATE, *CIUDADANOS IMAGINARIOS* (2002).

²⁰ ROMERO, *supra* note 7, at 75.

structure that sustained and legitimized those values. Manual labor and physical effort were looked down upon. Ana María Prieto says that in colonial Mexico, “decent” people felt that “idleness was evidence of success and wealth, so that those who practiced it were honored.”²¹ While in parts of seventeenth-century Europe, equality, the ethic of work, and the accumulation of wealth were imposed, in Spanish America the defense of the noble spirit predominated, along with justification of social differences and the contemplative life. Social ascent was based more on social capital, linked to blood and the past, than on the bourgeois virtues of work and veneration of daily labors.

The Catholic-Spanish world vision did not favor building a social structure founded on clear and universally practiced rules of the game, as was the case in countries with a Protestant culture. Honor, family, and faith were always above these social values and justified the permanent introduction of exceptions to the rule of law.²²

In 1776, for example, a royal ruling established that family honor could be one of the judicial objections to matrimony.²³ The colonial elites shared the ideal of honor that the conquistadores brought to America and that the Siete Partidas (Seven Basic Legal Precepts of Alfonso X) defined as “the reputation that a man has acquired due to his rank, exploits or the valor that he demonstrates.”²⁴ In theory, honor could not be invoked to disobey authority. In practice, however, the elites would disobey authorities whom they considered less honorable than themselves. Cases of disobedience of local authorities based on the lesser honor of the rulers were relatively frequent in the colonial society of Nueva Granada.²⁵

Faith also played an important role in fostering arrogant behavior. The Spaniards considered religion as a universal and unquestionable truth that they were obliged to disseminate, by force if

²¹ ANA MARÍA PRIETO, *ACERCA DE LA PENDENCIERA E INDISCIPLINADA VIDA DE LOS LÉPEROS Y CAPITALINOS* 70 (2001).

²² In this regard De Holanda says “For the same reason why we resist a supra-individual principle of organization, all of our ordinary conduct frequently shows a singular attachment to the values of the character molded in the domestic sphere.” SERGIO BUARQUE DE HOLANDA, *RAICES DO BRASIL* 139 (1995).

²³ According to Góngora, “this provisions shows to what extent the policy of Charles III, far from being bourgeois, continued to be inspired by the basic concepts of status and honor.” MARIO GÓNGORA, *HISTORÍA DE LAS IDEAS EN LA AMERICA ESPAÑOLA Y OTROS ENSAYOS* 122 (2003).

²⁴ MARGARITA GARRIDO, *HONOR, RECONOCIMIENTO, LIBERTAD Y DESCATO: SOCIEDAD E INDIVIDUO DESDE PASADO CERCAÑO* (1997).

²⁵ *Id.*

necessary. "A Christian government was a government tempered by virtue and directed by divine grace."²⁶ This messianic ideal survived the coming of the republics, except that it was now headed by the dominant elites.

Defense of the family also tends to be above the law. Or to put it another way, the family tends to subjugate individuals more effectively than the state. When, in *100 Years of Solitude*, General José Arcadio Buendía, the ruthless ruler of Macondo, is about to order the execution of Don Apolinar Moscote, Ursula Iguarán, his grandmother appears, and not only thrashes him without pity in front of everyone, but disbands the firing squad and orders Don Apolinar to be taken safe and sound to his home. "I dare you, murderer," she screams. "And kill me as well, son of a bad mother. Then I will not have eyes to weep from the shame of having raised such a phenomenon."²⁷

The progress of the market and the rise of the bourgeoisie at the end of the nineteenth-century were unable to banish the economic structures inherited from the colony or the lordly spirit that accompanied them. Independence from Spain removed the king but not the caudillos (strongmen), military personnel, chieftains (*caciques* and *curacas*), and ringleaders (*cabecillas*).²⁸ Many nobles transformed themselves into bourgeois, but meanwhile kept the habits of their aristocratic pride. During the twentieth century, the mestizos made gains, even among the dominant elites. Nonetheless, the spirit of moral and political superiority of the elites made few concessions. Bourgeois and egalitarian behaviors mixed with aristocratic and lordly attitudes.²⁹ Status and social roles ended up becoming stronger than the law and citizenship.

Since then, Latin Americans have been much more firmly guided by their roles in society than by a citizen identity with regard to the law. Roberto DaMatta, in *Brazil*,³⁰ distinguishes between two types of replies in social encounters: "Do you know who I am?"; and "Who do you think you are?" The first question puts hierarchy first and is very common in Latin American societies, whereas the second puts equality and citizenship first and is common in Europe or the United States.

The equalizing power of general and abstract laws was never strong enough to banish the differences in a society based on hierarchy

²⁶ ZEA, *supra* note 7, at 255.

²⁷ GABRIEL GARCÍA MÁRQUEZ, *CIEN AÑOS DE SOLEDAD* 93 (1970).

²⁸ ERIKA SILVA CHARVET, *IDENTIDAD NACIONAL Y PODER* 134 (2005).

²⁹ ROMERO, *supra* note 7.

³⁰ DA MATTA, *supra* note 7.

and privilege. The “doctors” replaced the commanders, barons, viscounts, and imperial counselors.³¹ Those who enjoyed positions of privilege developed an entire set of strategies so that the goal of universalizing the law would be compatible with recognition of those privileges. The old and new regimes ended up coexisting and nourishing a hybrid society composed of selected spaces for modernity and tradition.

C. THE REBEL

The rebel is someone who disobeys because he or she does not recognize the legitimacy of the authority or because he or she dismisses social and political power.

The Spanish conquest of America brought with it the creation of dual societies divided between the powerful and the humble.³² With the coming of the republic, political structures changed and new social groups came to power. The upper class was no longer an impermeable circle. Many Creoles entered it, making it more ductile and permeable.³³ However, this did not halt reproduction of the habits of arrogance and nobility characteristic of the dominant colonial class. Neither the colonial economic structure nor the foundations of this dual society were substantially affected.³⁴ Onerous taxes and the draft revived the perception of institutional illegitimacy that came from the colonial past.

During the colonial period, Spaniards and whites were considered honorable persons. To have honor was tantamount to having virtue and liberty.³⁵ That liberty translated into two large privileges: not having to work, and not having to obey practically anyone.³⁶ Having to work was viewed as something for the lower classes, and obedience to God and King—both of whom were so remote, although undeniable—did not necessarily imply obedience to local authorities. The more honor you had, the freer you were. The extremes of the social scale were differentiated not only in terms of wealth but also in terms of honor and

³¹ GILBERTO FREYRE, *ORDEN & PROGRESO* (1962).

³² ROMERO, *supra* note 7.

³³ FERNANDO LÓPEZ-ALVES, *LA FORMACIÓN DEL ESTADO Y LA DEMOCRACIA EN AMÉRICA LATINA* (2003).

³⁴ See MARIÁTEGUI, *supra* note 8; ZEA, *supra* note 7; LEWALD, *supra* note 1.

³⁵ In the colonial collective imagination, an association was made between honor and liberty. GARRIDO, *supra* note 24.

³⁶ There is a large literature on this subject both in Spain and Latin America. See, e.g., GANIVET, *supra* note 1; LEWALD, *supra* note 1; FREYRE, *supra* note 7 (covering the case of Brazil, which on this is very similar).

freedom. At one end were the powerful, honorable, and free, and at the other were the slaves.

Not only did you win freedom by being noble, you also won nobility by being free. This happened to the free mestizos. In the eighteenth-century the number of free mestizos, who were also called “free of all colors,” rose considerably. Imitating the upper classes, they began to claim their honor in relation to the lower groups: the honor of not having to work like a slave and of “not taking orders from anyone.” The common saying of that period, “cura manda indio” (the priest governs the Indian), was the basis for the identification of non-Indians as being free and therefore without obligations.³⁷ Perhaps it is this mestizo assimilation between freedom and honor that has given rise to that idealization of indomitable behavior so frequent in Latin American culture. But not only that, it may have also created the relative acceptance of disobedience and even rebellion as acts emanating from liberty (and from honor).³⁸

Independence brought new values of equality and obedience to the law, which was aimed at eliminating privileges based on honor. However, the hierarchy among social classes continued to reproduce the ideals of honor and liberty in order to differentiate themselves not only from the other classes, but also from the law and from political authority. On the other hand, the middle and subordinate classes, with their newly acquired freedoms and faced with the fragile legitimacy of the new rulers, also reproduced that veneration for freedom and, in the name of that freedom, conditioned their subjection to the law.

Since the colonial period rebelliousness has been something very common in Latin America. This is evident in the political arena. Some of the protagonists in Latin American History like Gauchos in Argentina, Charros in Mexico, llaneros in Venezuela and bandoleros (*cangaceiros*) in northeastern Brazil, were rebels.³⁹ Martín Fierro, the hero of the Argentine national novel, is undoubtedly one of the best illustrations of the rebel. The difference between criminals and politicians has always been blurred among these characters. According to Jose Luis Romero,

³⁷ GARRIDO, *supra* note 24, at 13.

³⁸ DE HOLANDA, *supra* note 22; Gabriel García Marquez, *La Proclama por un Pais al Alcance de los Niños*, 18 CONSIGNA (BOGOTA) 5–8 (1994).

³⁹ MARIA ISUARA PEREIRA DE QUEIROZ, OS CANGACEIROS: LA EPOPEYA BANDOLERA DEL NORTE DEL BRASIL (1992).

“the same kind of people who joined bands of highwaymen may have enlisted in the revolutionary armies”⁴⁰

Latin American literature and popular culture have very often illustrated rebel behavior. One example of this is Pedro Malasartes, a personification of the Brazilian popular culture studied by DaMatta.⁴¹ Malasartes, is a “a hero without character”; an individual who is poor but uses tricks and jokes to make fools of those who give orders and to correct the injustices of the world. Pedro Malasartes—as narrated by Camara Cascudo—is born into a poor family.⁴² He has a brother who goes to look for work on a hacienda (ranch) but falls into the hands of a despotic boss who refuses to pay him for his work. On seeing him return home penniless after a year of labor, his brother Pedro is filled with rage and promises to avenge him. Pedro then goes to work for the evil boss and through shrewdness is able to destroy him and obtain wealth.⁴³

But Malasartes is not a Robin Hood who robs the rich to give to the poor. Instead, he is a burlesque, individualistic, and cynical transgressor who, seeing the injustice that he is forced to experience, rebels and “gives the devil his due.”⁴⁴ It is a story of “social ascent as a moral right.”⁴⁵ That is why he is a hero: because he is a bad man who has the right to be bad. “I wanted to be someone”—says Chula Romero—“someone who steals with the right to do so, like they steal, damnit.”⁴⁶ If complying with the boss’s rules does not bring its due reward, then you have to seek that reward through noncompliance. That is how this “cruel world” learns its lesson.

But, as I said before, I am interested in lay people and in a type of behavior that occurs in everyday life. Rebelliousness is also important in schools, in streets, in public spaces, and in families. Latin American legal culture is still part of that old Spanish understanding of the

⁴⁰ ROMERO, *supra* note 7, at 217.

⁴¹ DA MATTA, *supra* note 7, at 10. In line with Clifford Geertz, Da Matta attempts to unravel the structures of power and culture and society of Brazilian society by studying its popular culture: carnivals, parades, parties, songs, prayers, and other practices of ordinary life.

⁴² CAMARA CASCUDO, *CONTOS TRADICIONAIS DO BRASIL* (1967).

⁴³ A similar character is the Mexican Pito Perez developed by Jose Ruben Romero in “La Vida Inutil de Pito Perez”. Jose Ruben Romero, *La Vida Inutil de Pito Perez*, in *OBRAS COMPLETAS* (1963).

⁴⁴ CASCUDO, *supra* note 42.

⁴⁵ *Id.*

⁴⁶ JORGE ICAZA, *EL CHULA ROMERO Y FLOREZ* 184 (2005).

individual for which a perfect life is one that is free from the obligation to comply with authorities.⁴⁷

The three mentalities described until now illustrate the visions of noncompliance that were presented at the beginning. The strategic vision refers to the shrewd, the political vision refers to the rebel, and the cultural vision to the arrogant. Instrumental rationality, perception of the illegitimacy of power, and belief in supra-legal values are the three reasons that, respectively, nourish these three mentalities. But these visions are not pure. In practice, they mix and combine. That is how the three intermediate mentalities can be differentiated. The first of these combines shrewdness with rebellion and is typical of a character that I shall call “cunning.” The second combines shrewdness with arrogance and is typical of the one I shall refer to as the “despot.” The third combines rebellion with arrogance, which I shall call the “restorer.”

D. THE CUNNING (PERSON)⁴⁸

Even in the most hierarchical societies, where the powerful seem to have all of the power, there is some moment at which those who are subordinate are able to express their repudiation of the powerful, ignoring the rules that oppress them. In *The Weapons of the Weak*, James Scott cites the following proverb: “When the great lord passes by, the wise peasant bows in reverence and silently farts.”⁴⁹ Oppression and subjugation are never absolutes. In daily life, those who are dominated develop a kind of political art of resistance that enables them to search for the gaps in domination.⁵⁰

In Latin America, the submission of the poor was never complete. Those who did not openly rebel against the Spanish invasion—aware that such a struggle would lead to death—resigned themselves without banishing hatred and thirst for revenge from their hearts.⁵¹ Little by little, through cunning and without losing composure in the presence of their bosses, they began to adapt to the new

⁴⁷ GANIVET, *supra* note 1; AMERICO CASTRO, *IBEROAMERICA: SU HISTORIA Y SU CULTURA* (1954).

⁴⁸ In the Spanish version, I use the term “taimado” for this character. I had difficulties founding the appropriate word in English. I will use cunning here as a noun rather than as an adjective.

⁴⁹ JAMES SCOTT, *LOS DOMINADOS Y EL ARTE DE LA RESISTANCIA* (2000).

⁵⁰ See JAMES SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF RESISTANCE* (1985); NATHAN WACHTEL, *LA VISION DES VAINCUS* (1971); S. GRUZINSKI, *LA PENSÉE MÉTISSE* (1999); SCOTT, *supra* note 49; MICHAEL DE CERTEAU, *LA SAVANT EL LE POPULAIRE* (1989).

⁵¹ WACHTEL, *supra* note 50.

circumstances, measuring their doses of obedience and disobedience according to the conditions of the moment. Veiled noncompliance thus became a weapon of the weak against the powerful. Indians, the poor, and marginalized people bred a social attitude of hidden disobedience to rules imposed by a social and political order that they considered foreign and invasive. Poverty and aristocracy⁵² engendered a “particular type of guile that could not be resolved in the humble and embarrassing attitude of people who had to darn their socks.”⁵³ There is a Latin American expression describing this attitude: *la malicia indígena* (indigenous malice), very well described by the Bolivian writer Alcides Arguedas.⁵⁴

The cunning person is a hybrid character that combines the strategic attitude of the shrewd with the rejection of authority characteristic of the rebel.

E. THE DESPOT

When the arrogant mentality is combined with shrewdness, a character arises that we could call “the despot.” By definition, a despot is someone who abuses his power or authority; someone who unscrupulously exploits his situation to obtain personal benefits. The belief in supra-legal values—typical of arrogance—and abuse of power—typical of shrewdness—are like two magnets that mutually attract each other.

The despot is someone who supposedly defends the same values and beliefs that are praised by the arrogant, but, in practice, he is only interested in using them instrumentally, and cynically, to get what he wants.

Abuse of power and manipulation of family, religious, and cultural values by the elites hinder the creation of strong states and the configuration of the public sphere in Latin America. The disdain of Latin American dominant elites for the law, for the public, and, in general, for social rules—except for those of their own social group—tends to translate not only into a justification for noncompliance of the law but also for abuse of the law. The elites negotiate application of the law; that is why they “speak with the corresponding authorities” and accommodate their compliance to their own needs and interests. The Argentine legal thinker Genaro Carrió tells how some army generals

⁵² ROMERO, *supra* note 7, at 78.

⁵³ *Id.*

⁵⁴ ALCIDES ARGUEDAS, PUEBLO ENFERMO (1996).

once came to see him to ask how they could legally overthrow the constitutional regime.⁵⁵ For many Latin American rulers, such as the Argentine generals who consulted Carrió, the law has been more of an instrument of power than a limitation on power.

The despot's disobedient attitude is firmly rooted in a society that accepts profound social inequalities as though they were normal and even justified. This attitude is common in Latin American societies. Inequality is greater in Colombia and Brazil than in Uruguay or Chile, but in all of these countries the elites are accustomed to live in a social environment in which the poor, when they do not beg, offer their labor almost unconditionally.

But perhaps the most representative character of the Latin American despot is to be found among the rulers. This character achieved its full potential in the nineteenth century during the age of the caudillos (strongmen). The caudillo's despotic arrogance was nourished by his racial, cultural, and economic contrast with the subordinate classes. The rulers were white, rich, and educated according to European taste and values; the rest were poor and uncultured indigenous people and mestizos, the inheritors of a vision of an anachronistic world and the holders of perfidious values. It was therefore logical for the elites to view the difference in terms of "civilization or barbarism." The President, called the "First Magistrate" in Alejo Carpentier's work (*El recurso del método*)

. . . only feels fulfilled in Paris where he sleeps in a hammock surrounded by works of art and with the Arch of Triumph visible through the window . . . continuously drinks Santa Inés rum and reads FACUNDO, which leads him to "express bitter opinions about the dramatic destiny of the Latin American peoples, always stuck in a Manichean struggle between civilization and barbarism and between progress and caudillismo."⁵⁶

Many rulers in Latin America assumed a messianic mission no less fundamentalist and authoritarian than the one undertaken by the missionaries of the conquest, except that the difference between them and the missionaries was that the elites would carry out this work

⁵⁵ GENARO CARRIÓ, *SOBRE LOS LÍMITES DEL LENGUAJE NORMATIVO* (1973).

⁵⁶ CONRADO ZULUAGA, *NOVELAS DEL DICTADOR: DICTADORES DE NOVELA 21* (1977).

reluctantly. Rodríguez Francia, the Paraguayan dictator portrayed by Augusto Roa Bastos in his novel *Yo, El Supremo*, complains

... of finding myself in a country of purely idiotic people, where the government has no models to look upon, it being necessary for me to act, to be industrious and to teach, all for the purpose of taking Paraguay out of the unhappiness and depression in which it has been trapped for three centuries.”⁵⁷

The despots would not have existed had they not been supported by an entire political, economic, and intellectual elite who praised them while complaining about the political doctrines that involved the subjection of the ruler to the laws. An eloquent example of the justification for despotism can be found in the celebrated book *Cesarismo democratic*, by the Venezuelan author Laureano Vallenilla Lanz. In it, he maintains that “anyone who reads Venezuelan history with an open mind finds that, even after independence had been assured, social preservation could in no way entrust itself to the laws but rather to prestigious and most fearsome caudillos.”⁵⁸

II. OBSERVATIONS ON THE CHARACTERS

This typology of non-complying characters is an interesting starting point but cannot fully capture some of the complexities of the phenomenon of noncompliance itself. This is because these subjects represent ideal types, whereas in practice these characters blend together. Someone who skips to the head of the line may do so to take advantage of other people’s compliance, but also because he believes he has more of “a right” to go first. The first reason is typical of the shrewd, whereas the second is characteristic of the arrogant. When a government employee disguises his idleness on the job, he may do so to defend himself from a domineering boss or out of laziness or comfort. Shrewdness can reinforce the behaviors of the arrogant, such as the wealthy person who cheats on his taxes out of contempt for the government and because it is simply convenient. Colombian gang members, or the Maras of Central America, are as cunning and shrewd as they are arrogant. Rebellious and arrogant behaviors are frequently mixed together in people who obey only their own beliefs.

Shrewdness (*viveza*) is the most frequent behavior among those who refuse to comply. The cunning and the arrogant also tend to be

⁵⁷ *Id.* at 44.

⁵⁸ LAUREANO VALLENILLA LANZ, *CESARISMO DEMOCRÁTICO* (1990).

shrewd. Because shrewdness is so common, the culture of noncompliance tends to be attributed more frequently to the shrewd than to any other character, and it is also the strategic point of view—which tends to have a rational actor in mind—that has the most visibility.

The five characters that I have explained have a specific relationship to the two variables mentioned at the beginning of this essay: social class and rationality (see graph # 1). Each social class has its typical way of not complying. One tends to find arrogant non-compliers in the upper class. Many wealthy people in Latin America cannot tolerate social inclusion and equal rights. That is why they multiply symbolic differentiation as a mechanism that enables them to enjoy their position.⁵⁹ One of these mechanisms consists of introducing exceptions to the norms to enable them not to comply.

Many members of the middle class, trapped in the fear of marginalization and the illusion of social ascent, tend to see the social world as a struggle that the state is incapable of regulating and therefore end up rewarding those who are the shrewdest. On the other hand, many of the poor tend to maintain a defensive attitude towards power which they consider, if not abusive, at least remote. That is why, because they view themselves as victims of the normative system, they do not comply or only comply when they feel obliged to do so.⁶⁰

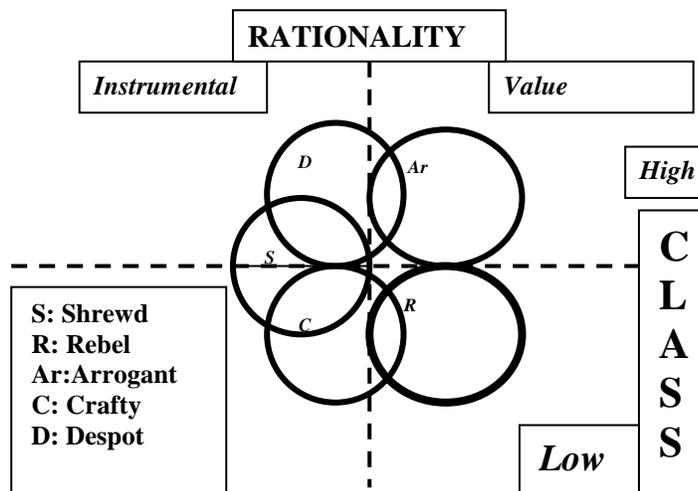
These are typical ways of respecting norms that can change and blend, but they nonetheless demonstrate a certain permanence that supports them as ideal types. The noncompliance characters not only represent cultures and ways of seeing power, legality, and social rules, but are also relatively stable class structures and visions. According to Pierre Bourdieu, symbolic visions of power and legality, on the one hand, and class structures, on the other, maintain a reciprocal influence so that culture is structured and, in the same way, structure is subjectivized by that culture.⁶¹

⁵⁹ The Spanish nobility—especially during the Eighteenth century—was known for their dismissal of productive work. No wonder many law nobles had a frugal and almost an impoverished type of life; nevertheless, they relied on their honor and the purity of their blood to feel different and proud. Don Quixote is a good example of this. See GOYTISOLO, *supra* note 1.

⁶⁰ For this classical text see OSCAR LEWIS, *LOS HIJOS DE SANCHEZ* (1965).

⁶¹ For an explanation about how values work as a tool of stratification see PIERRE BOURDIEU, *LA DISTINCTION: CRITIQUE SOCIAL DU JUGEMENT* (1979); PIERRE BOURDIEU, *HABITUS, CODE ET CODIFICATION* (1986). See also Mauricio García Villegas, *Symbolic Power with Symbolic Violence?: Critical Legal Comments on Legal Consciousness Studies*, 16 *INT'L. J. FOR SEMOTICS LAW* 363–393 (2003); Mauricio García Villegas, *On Bourdieu's Legal Thought*, 55 *DROIT ET SOCIÉTÉ* (2004).

The second variable refers to the type of rationality of the social actors. Following Max Weber's classic distinction, I differentiate between valorative and instrumental rationality. The former is driven by values, whether ethical, aesthetic, or religious, regardless of the results of following these values.⁶² This is the ethic of saints.⁶³ They obey their beliefs to such an extent that they are not willing to negotiate those beliefs even when the consequences might appear undesirable. Instrumental rationality, on the other hand, is determined by the search for the most efficient possible means to reach the desired objectives. This type of rationality is characteristic of politicians. Their goal is to achieve certain ends and they are willing to adapt the means—along with their values and beliefs—to do so.⁶⁴ As can be seen in graph # 1, the strategic rationality predominates among the shrewd, the despot, and the cunning, whereas the valorative mentality is characteristic of the rebel and the arrogant (the plucking lines may be wider than they appear in this graph).



III. NONCOMPLYING MENTALITIES

Having said that, I will point out 5 additional clarifications:

First, the characters presented here are usually found in everyday life, among very common people. They reflect a routine and common

⁶² WEBER, *supra* note 10.

⁶³ MAX WEBER, *THE AGRARIAN SOCIOLOGY OF ANCIENT CIVILIZATIONS* (1976).

⁶⁴ MAX WEBER, *ECONOMY AND SOCIETY* (1978).

way of being that is part of the daily life of Latin Americans. Rather than being deviant, their behaviors are “normalized” and in a way regularized in society. They are guided by social rules more than other types of norms.

Socially regular actions are not always explained, either as the result of obedience to rules, or as brute causality. As Pierre Bourdieu has explained, there is an intermediate space of behavior between rules and social norms in which the concept of *habitus* takes place. The *habitus*, according to Bourdieu are

. . . systems of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principles which generate and organize practices and representations that can be objectively adapted to their outcomes without presupposing a conscious aiming at ends or an express mastery of the operations necessary in order to attain them. Objectively, ‘regulated’ and ‘regular’ without being in any way the product of obedience to rules, they can be collectively orchestrated without being the product of the organizing action of a conductor.⁶⁵

Most of the noncompliance behavior is the product a *habitus*. Viewed within this sociological perspective, the understanding of noncompliant behavior moves beyond the institutionalized epidermis that makes up the legal rules by which persons behave or do not behave in a certain manner. Jacques Bouveresse, following Bourdieu, puts it in these terms: “As the *habitus* is not necessarily of a mental nature (there are forms of *habitus* which are simply corporeal) it is independent of any distinction between the conscious or unconscious, and it is not less independent of distinctions like that between the product of a simple causal constraint and an action that is ‘free’ in that it escapes any constraints of this nature.”⁶⁶ The *habitus* is then an intermediate concept between rules, in the legal sense, and causality or rules in a physical sense.

That is why, in general terms, noncompliant characters do not perceive their practices as criminal behavior or even as disturbances of

⁶⁵ PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* 53 (R. Nice trans., Stanford University Press 1990) (1980).

⁶⁶ Jacques Bouveresse, *Rules, Dispositions and the Habitus in Richard Shusterman*, in BOURDIEU: A CRITICAL READER 53 (2000).

public order. People complain—they rarely protest⁶⁷—but in most cases noncompliance is seen as a misfortune, as something that must be put up with or even tolerated, but not as an offense.⁶⁸ That is why those who fail to comply not only reject reproaches by those who criticize them but tend to react indignantly against their critics, accusing them of “sticking their noses in other people’s business.”

Sometimes, however, noncompliance mentalities are not found among common people. Rather, they are found among notorious criminals: the rebel can end up being a guerrillero, the despot a tyrant, the shrewd a mafia boss, the cunning guy a thief, etc. Sometimes, because of diverse circumstances, those who do not comply with social rules pass into open illegality. This step is not always easily taken; it happens more easily in a society where disobedience of small rules is very frequent, than where the great majority are born compliers. But the leap to criminality must not hide the fact that the mentalities of these people tend to also be present in common ordinary citizens.

There are other attitudes that break with the social order but are not exactly criminal. The cunning, and sometimes the shrewd, willfully or out of need, loosen their bonds with the social world to become marginalized or to settle on the fringes of the social world. An arrogant person can become a cynical intellectual or a bohemian; both distance themselves from the social world out of disdain for established values and social rules. All of these characters can be cataloged as radical non-compliers, in contrast to the ordinary or prosaic non-compliers.

Secondly, one of the reasons why the study of mentalities, although important, is not enough for the understanding of the noncompliance behavior is that people change according to the contexts. A single individual with a well-defined noncompliance mentality can suddenly become a strict complier when changing from one context to another. The inveterately shrewd comply when they see that the police are nearby and they could be punished; the rebel may obey when authority changes or when the norms change; the arrogant obey the rules as long as they are compatible with the values that they defend, etc. This does not mean that these mentalities are irrelevant. The presence of a police officer may dissuade the shrewd from failing to comply, but not

⁶⁷ One of the purposes of the citizen culture campaigns implemented by Bogotá Mayor Antanas Mockus was to increase self-regulation; in other words, citizens’ reproach of deviant conducts through denunciation.

⁶⁸ O’DONNELL, *supra* note 1.

necessarily the rebel or the arrogant. Greater legitimacy on the part of authority may constitute a reason to make the rebel comply, but it may be a matter of indifference to the shrewd. There are even people who do not change despite the context; they are always shrewd, rebellious or crafty. The complexity of practices of noncompliance is derived precisely from this variable combination of visions or mentalities and social contexts.

The contexts—like the mentalities—also vary. That variation above all affects the shrewd person who, as an essentially instrumental actor, changes his strategy when the context changes. It also affects the cunning and the despot, who have many of the characteristics of the shrewd. Running a red light at three o'clock in the morning in a suburb of Sao Paulo is very different from doing so at three o'clock in the afternoon downtown; jumping to the head of the line at a hospital emergency room is very different from doing so at the entrance to a concert or cafeteria. The rebel, the reformer, and the arrogant, in contrast, are more valorative and therefore, in principle less voluble in their responses to the context. However, they can also be affected by it to the extent that the perception of authority and the interpretation of values are part of those contexts.

The contextual variations depend on a number of factors: the time, place, infrastructure, type of norms, economic and social conditions of the subjects, the type of social relations that they maintain, etc. But there is a contextual factor that particularly determines the degree of compliance with norms. I refer to the degree of institutional presence—or institutional capacity—that a particular social space has; in other words, the degree of institutionalization of that social space. I differentiate three types of contexts: institutionalized, non-institutionalized, and hybrid. The five characters behave differently in each of the three contexts. But an explanation of this topic merits more space and dedication.⁶⁹

Third, as I have said before, in practice, these characters not only mix together, but one single person can change his or her mentality from one moment to the next. Moreover, in practice the phenomenon of noncompliance in a determined society tends to have motives that are much less clear and defined than this typology suggests. Very frequently, people who fail to comply are negligent, lazy, careless, or simply indolent, which is not easily recognized in any of these characters. Nevertheless, that does not take away from the importance of the

⁶⁹ For an in depth explanation of this see GARCIA VILLEGAS, *supra* note 8.

typology. It does demonstrate, as is only natural in this analytical procedure, that reality is more complex than the categories we use to understand it, although typology can be useful to better discern that complexity precisely for that reason.

The characters described here have been built based on their motivations.⁷⁰ These can be of many types. Sometimes they are based on simple personal interests—as tends to happen with the shrewd—sometimes on rational principles—the rebel or the arrogant can have justifications of this type—and sometimes on simple passions—as may be the case with the despot, the rebel, or the restorer. The subject of motivations is a very complex one⁷¹ because, for among other reasons, what is made explicit is not always what truly motivates an individual.⁷² I have left aside these complexities—more fitting for a micro-sociological analysis—and have instead chosen to address the subject of motivations as though they were static.⁷³

Fourthly, each one of the three basic mentalities reflects a basic deficiency of the political system. Shrewdness (*la viveza*) is the product of the inefficacy of the state; the rebelliousness is the result of the lack of legitimacy public power; and arrogance is the product of the absence of a culture of legality (rule of law). Thus, institutional capability is a remedy for shrewd behavior, legitimacy is a remedy against rebellious characters, and the rule of law is a remedy against arrogant conceptions and attitudes vis-à-vis legality. None of these remedies is exclusively destined to only one type of behavior. All are complementary:

⁷⁰ Motivations, rather than values. In that sense, culture is more as Ann Swidler explained, “like a style or a set of skills and *habits* than a set of preferences or wants.” Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOCIOLOGICAL REV. 273–296 (1986). This is close to the idea of practice in Bourdieu. BOURDIEU, *LA SENS PRATIQUE* (1980).

⁷¹ JON ELSTER, *ALCHEMIES OF THE MIND* (1999).

⁷² Like in Aesop’s fable of the fox and the green grapes, we frequently adapt our motivations to our possibilities or interests.

⁷³ For readers interested in more technical debates over social theory, I would like to take note of two things: 1) the motivations to which I refer – involving prosaic non-fulfillment - are in an intermediate conceptual zone between purely voluntary acts (social agency) and structures imposed on the subjects. To state this in terms of Bourdieu, they are like the *habitus* (“lasting and transportable provisions, structured structures predisposed to operate as structuring structures, in other words, as principles that generate and organize practices and representations.”) and 2) precisely because the mentalities are not pure in terms of agency or structure, the figure on the preceding page, by setting everything out in terms of instrumental or valorative rationality – that is to say, in terms of agency - leaves out motivations that have a more passionate origin – vengeance, rage, fear, etc. - than a rational source and which in a certain way are imposed upon people. PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* 53 (1990); ELSTER, *supra* note 71. I would like to thank Maria Paula Saffón for making me see these points.

effectiveness may contribute to improved legitimacy; legitimacy is essential for the construction of a rule of law; effectiveness is easier to obtain when a culture of the legality exists, etc. Remedies are therefore interconnected and influence each other reciprocally.

Finally, it is necessary to notice that not only individuals disobey. The State is perhaps the first noncompliance actor in Latin America. Not just politicians, but administration officials as well, promise to and do not comply. But that is another story.

CONCLUSIONS

Noncompliance to laws and rules is a complex phenomenon involving a number of factors. This explains the existence of the diverse disciplinary perspectives regarding that phenomenon. Each places particular emphasis on a specific factor. In this article I have listed three of these visions: a strategic perspective that focuses on tactical noncompliance; a political vision that analyzes the perception of illegitimacy; and, finally, a cultural view that attempts to show how a belief in higher values can provide incentives for noncompliance with norms. None of these perspectives can completely explain the phenomenon of noncompliance, although they all shed light on some of its basic aspects.

Additionally, in practice, these visions not only mix together—the strategic vision can combine with the political (cunning) and with the cultural (despot)—but they also vary in time and space according to, among other factors, the degree of institutionalization of the context in which they act.