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COMPLIANCE AND MIMETIC ISOMORPHISM OF THE ANTI-CORRUPTION LAW IN BRAZILIAN STATES

Compliance e isomorfismo mimético da lei anticorrupção nos estados brasileiros

Compliance e isomorfismo mimético de la ley anticorrupción en los estados brasileños

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ABSTRACT

This study explores the occurrence of mimetic isomorphism in compliance practices based on Brazilian anticorruption law at the state level, with a particular focus on administrative liability, public compliance, and compliance requirements in contracts with the private sector. The institutional theory was employed, considering a sociological approach and the assumption of isomorphism. The methods adopted included documentary research and content analysis, examining documents related to anticorruption actions in Brazilian states. The analysis categories were based on liability and compliance content in the context of public and private relationships. The main results pointed to elements suggesting mimetic isomorphism among states and between them and the federal government. Unlike other studies, this research provides an overview of the adoption of compliance practices in Brazilian states. In terms of theoretical contributions, the research highlighted the similarity of the Brazilian institutional environment in normative adoption. Its practical contribution lies in clarifying that states do have actions to combat corruption.

Keywords: corruption, compliance, institutionalization, isomorphism, Brazilian states.

RESUMO

Este trabalho teve como objetivo discutir a ocorrência do isomorfismo mimético de práticas de compliance, por meio da Lei Anticorrupção, nos estados brasileiros, principalmente considerado a responsabilização administrativa, a compliance público e a exigibilidade de compliance nos contratos com o setor privado. Para tanto, houve a utilização da Teoria Institucional, com a abordagem sociológica e o pressuposto do isomorfismo. Metodologicamente, houve a utilização da pesquisa documental, por meio de documentos que contemplassem ações anticorrupção nos estados brasileiros. As categorias de análises, foram baseadas nos conteúdos de responsabilização e compliance nos contextos de relacionamentos público e privado. Os principais resultados encontrados aludiram a indícios de isomorfismo mimético dos estados em relação à União, e entre os próprios entes subnacionais. Com os resultados, este estudo diferenciou-se dos demais em apresentar o cenário de adoção de práticas de compliance nos estados. As contribuições encontradas foram: teóricas – a similaridade do ambiente institucional brasileiro em adotar normativas; práticas – o esclarecimento de que os estados possuem ações para combater a corrupção.

Palavras-chave: corrupção, compliance, institucionalização, isomorfismo, estados brasileiros.

RESUMEN

Este trabajo tuvo como objetivo discutir la ocurrencia de isomorfismo mimético de las prácticas de compliance, a través de la Ley Anticorrupción, en los estados brasileños, considerando principalmente la responsabilización administrativa, el compliance público y la exigibilidad de compliance en contratos con el sector privado. Para ello se recurrió a la teoría institucional, con enfoque sociológico y el supuesto del isomorfismo. Metodológicamente, se realizó investigación documental y análisis de contenido, utilizando documentos que cubrieran acciones anticorrupción en los estados brasileños. Las categorías de análisis se basaron en contenidos de rendición de cuentas y compliance en el contexto de las relaciones públicas y privadas. Los principales resultados encontrados aludieron a signos de isomorfismo mimético de los estados en relación con la Federación, y entre las propias entidades subnacionales. Con los resultados, este estudio se diferencia de otros al presentar el escenario de adopción de prácticas de compliance en los estados. Las contribuciones encontradas fueron: teóricas – la similitud del ambiente institucional brasileño en la adopción de normativas– y prácticas –la indicación de que los estados tienen acciones para combatir la corrupción–.

Palabras clave: corrupción, compliance, institucionalización isomorfismo, estados brasileños.

INTRODUCTION

Corruption is present in all nations; in some countries, it is higher, while in others, it is more moderate. Since 1995, the organization Transparency International has annually published the Corruption Perception Index (CPI) for approximately 180 countries and territories. Corruption persists regardless of society's perceptions, and it is not a matter of simple solution; it invariably occurs at some point.

Various countries convene in forums to discuss this issue, and treaties emerge from these meetings (Rose-Ackerman, 2009). Brazil is a signatory to some of these documents. As a result of international influence and internal pressure, the "Anticorruption Law," Law 12846, was enacted on August 1, 2013, aiming to mitigate harmful acts against public administration. The law established civil and administrative liability for legal entities involved in practices against national or foreign public administration.

The Brazilian anticorruption law employs the English term "compliance." Coimbra and Manzi (2010) explain to the Brazilian audience that this term, in a simplified manner, means the adoption of practices to comply with laws, standards, regulations, and guidelines. In its Portuguese version, this article also uses the word "compliance" to refer to the implementation of compliance programs. Therefore, the use of the word "compliance" in the Portuguese version of this article varies according to the context, a nuance clear for Portuguese readers but not necessary in English.

While the scope of the Brazilian Anticorruption Law (Law 12,846/2013) is the federal government, Brazilian states have replicated its principles, incorporating them into their legal framework to enhance institutional legitimacy. In line with Castro et al. (2019), who argue that the fight against corruption is promoted by controls that inhibit corrupt practices, the administration of Brazilian states has sought to incorporate compliance programs.

Thus, this study discusses the occurrence of mimetic isomorphism of compliance practices through the anticorruption law in Brazilian states, and it is justified due to the different approaches observed in the literature. Previous studies focused on legal perspectives and forms of textual and/or content analysis of laws (Kovtunin et al., 2019; Ritt & Oliveira, 2018; Schramm, 2018). This study adopts an empirical approach, with arguments and discussions based on everyday occurrences in Brazilian states.

Furthermore, this work expands the discussion about compliance programs in Brazil after the enactment of Law 12846/2013. The study includes the states' executive branches in the debate, highlighting their initiative to issue subnational legislation regarding compliance instruments to prevent and combat corruption.

THE ANTICORRUPTION LAW AND COMPLIANCE

Corruption is one of the most corrosive issues of our time. It destroys public resources, widens economic and social inequalities, creates dissatisfaction and political polarization, and reduces trust in institutions (Organização para a Cooperação e Desenvolvimento Econômico [OCDE],

2018). Corruption in the public sector deserves attention as it harms development and collides with democratic values (Rose-Ackerman & Palifka, 2016). It is not realistic to think that corruption can be eliminated entirely or that it can be addressed in all its nuances (Santano, 2015). However, Brazil has always shown concern in curbing criminal acts against public administration.

In compliance with international commitments, on August 1, 2013, the country enacted Law 12846/2013, also known as the Anticorruption Law. It was a significant advance in providing for objective liability in the civil and administrative sphere of companies that carry out harmful acts against national and foreign public administration (Controladoria-Geral da União [CGU], 2023). The law states that “when applying sanctions, the existence of internal integrity mechanisms and procedures will be taken into account” (Lei n. 12.846, de 1o de agosto de 2013, 2013, n.p.).

This research deepens the discussion on how Brazilian legislation and public administration use the English term “compliance.” For Veríssimo (2017), it is “a noun that means agreement with what is ordered; compliance refers to measures by which institutions intend to ensure that the rules in force for them and their employees are followed, and any infractions are punished” (p. 158, our translation).

The notion of compliance in the Brazilian context helps the state enforce legislation and combat the most diverse types of fraud (Mesquita, 2019). In this sense, Gercwolf (2019) maintains that compliance mitigates the harmful effects of corruption and improves public management.

For Glock (2016), it is worthwhile to implement controls associated with a culture of integrity in institutions, as well as other measures typical of a compliance program. Along this path, the OECD (2018) states that public compliance refers to the consistent alignment and adherence to common values, principles, and ethical standards to sustain and prioritize the public over private interests in the public sector. Similar to what was described by Guimarães (2023):

The compliance program transcends procedural attempts to enforce internal and external rules and has to do with ethics – or the relationship between the moral subject and moral values, which is also made up of two internally related poles: the agent, or moral subject, and the moral values, or ethical virtues (p. 180).

ISOMORPHISM AND INSTITUTIONALIZATION

Law 12846/2013 is federal legislation that pertains to acts related to the federal government. However, Brazilian states have reproduced and incorporated its principles into their legal framework to gain institutional legitimacy. Therefore, the public administration at the state level in Brazil also sought to establish compliance programs. As Meyer and Rowan (1977) described, the organization’s survival prospects increase as they respond to institutionalized rules and established state frameworks.

We approach this discussion from the perspective of sociological institutional theory, which provides the basis for understanding individuals and organizations. According to DiMaggio and Powell (2005), institutionalization occurs through institutional isomorphic mechanisms resulting from each organization’s observations in its organizational field and can occur in three formats: coercive, mimetic, and normative.

Isomorphism constitutes a constraint process that compels a unit in a population to resemble other units facing the same environmental conditions (DiMaggio & Powell, 2005). In the view of Hannan and Freeman (1977), isomorphism results from competitive pressures that force organizations to adopt the form most adapted to their survival, inserting the context of competition into the institutional environment.

For DiMaggio and Powell (1991), it is necessary to understand the processes of institutionalization and structuring of the organizational field to comprehend the institutionalization of organizational forms. Berger and Luckman (1964) assert that while the institution represents a social order or pattern that has reached a certain state or property, institutionalization represents the process that leads to that state or property.

Therefore, this discussion proposes (P1) that mimetic isomorphism exists in the institutionalization of compliance in subnational entities. This scenario occurs in regulating the Anticorruption Law within the administrations of subnational entities and in contracting the public administration of states with legal entities.

Institutionalization is the path that an organization, faced with new problems, new rules, or any other stimulus in its organizational environment, must follow to adapt new routines to its processes and/or actions. Since the institution is the product of an institutionalization process, Tolbert and Zucker (1996, pp. 181-184) state that institutionalization results from a sequential process, which develops in three phases: habituation, objectification, and sedimentation.

In their research, Boxenbaum and Jonsson (2017) point out a close but complicated relationship between diffusion (propagation) and isomorphism, considering diffusion an antecedent to isomorphism. However, in the case at hand, compliance by state administrations has nuances of the public sector, an environment with different characteristics from the private sector, where the creation or institution of new practices occurs through the enforcement of legal documents, which invariably contain the word “institute” in their preambles, and the public agent is not responsible for weighing its use or not, limited to its fulfillment, the duty to do it, with the dissemination process restricted to meetings, forums, debates, and discussions encouraged by entities for this purpose – leading to the predicted and debated copy in mimetic isomorphism.

It is important to stress that mimetic isomorphism is characterized by one organization taking another as a model, copying it, and imitating it. It occurs in the face of confusing goals or an environment of symbolic uncertainty (DiMaggio & Powell, 2005).

METHODOLOGICAL DESIGN FOR THE DISCUSSION OF ISOMORPHISM IN COMPLIANCE

This study was conducted through documentary research examining laws and decrees issued by state authorities in all Brazilian states. These documents regulated or provided directions for compliance or anticorruption measures introduced by Law 12846/2013. The state governments' websites and the online platforms of the legislative branches of each state were consulted. These

platforms engage in active transparency, meaning the periodic and systematized disclosure of state information (Zuccolotto et al., 2015) or information voluntarily or mandatorily made available for public consultation (Michener & Bersch, 2013).

The data analysis was carried out in the following steps: i) content analysis of collected documents to understand the provisions of the Anticorruption Law enacted in each state, especially compliance, liability, and integrity; ii) assessment of whether mimetic isomorphism existed between the states and the federal government. The categories of content analyzed included observing the regulation of administrative and civil liability of legal entities related to acts against public administration, the implementation of compliance programs in the public administration of Brazilian states, and the existence of public administration compliance programs with its suppliers as a contractual condition; iii) using the gathered data, simple descriptive statistics were employed to construct a table with the obtained information.

DISCUSSIONS ABOUT COMPLIANCE AND ISOMORPHISM IN BRAZILIAN STATES

Brazilian states followed the actions implemented at the federal level to combat corruption, introducing subnational legal frameworks related to Federal Law 12846/2013, including measures related to compliance programs.

When analyzing the organizational aspect, it is observable that Brazilian states sought legitimacy or a form of isomorphism. This assumption is based on the fact that the Anticorruption Law enacted at the federal level did not directly apply to subnational governments. Thus, the states revealed a necessity to show society and the other states that they are concerned – or at least appear to be – about corruption.

The findings observed for Brazilian states align with the idea of Meyer and Rowan (1977), who suggest that organizations seek to increase their legitimacy by implementing practices already institutionalized in society. Additionally, this involves the method of mimetic isomorphism, as their actions are appropriate to the assumption of DiMaggio and Powell (2005) that organizations tend to take other organizations that they perceive to be more legitimate as models in their field.

This research collected data from the 26 Brazilian states and the Federal District through online consultation on governmental platforms, observing the incidence of institutional legitimation through mimicry among subnational entities. Three normative perspectives were considered:

- a) administrative and civil liability of legal entities for carrying out acts against the public administration (administrative liability);
- b) implementation of compliance programs in public administration at the state level;
- c) requirement for compliance programs from suppliers when concluding contracts (compliance requirement).

The result of the investigation conducted until the second week of October 2023 is summarized in Table 1. It is presented within the three perspectives above and separated according to Brazil's macro-regions.

Regulations at state levels were and are still occurring gradually, given the political/administrative environment permeated with uncertainty, a fact inferred by the recent publications of regulations in the states of Maranhão (Decree 38074 of January 02, 2023), São Paulo (Decree 67683 of May 05, 2023), and Mato Grosso (Decree 376, of July 26, 2023), reproducing the mimetic isomorphism that DiMaggio and Powell (2005) explain as standardized responses to symbolic uncertainties, constituting an encouraging form of imitation.

Table 1. Compliance and integrity regulations in Brazilian states

REGIONS	STATE	ADMINISTRATIVE LIABILITY	PUBLIC COMPLIANCE	COMPLIANCE REQUIREMENT
NORTH	AC	#	Law 3747, of July 02, 2021/ Decree 10991, of February 07, 2022	#
	AP	#	#	#
	AM	#	#	Law 4730, of December 27, 2018
	PA	Decree 2289, of December 13, 2018	#	#
	RO	Decree 23907, of May 15, 2019	Decree 26238, of July 19, 2021	#
	RR	#	#	#
	TO	Decree 6105, of June 03, 2020	#	#
NORTHEAST	AL	Decree 48326, of May 05, 2016	#	#
	BA	#	#	#
	CE	Decree 33951, of February 23, 2021	Law 16717, of December 21, 2018/ Decree 34814, of June 22, 2022	Decree 35067, of December 21, 2022
	MA	Decree 31251, of October 28, 2015	Decree 38074, of January 02, 2022	Law 11463, of May 06, 2021
	PB	Decree 38308, of May 21, 2018	#	#
	PE	Law 16309, of January 08, 2018	Decree 46855, of December 07, 2018	Law 16722, of December 09, 2019
	PI	#	#	#
	RN	Decree 25177, of May 13, 2015	#	#
	SE	#	#	Law 8866, of July 07, 21/ Decree 41008, of October 06, 2021

(continue)

(conclusion)

Table 1. Compliance and integrity regulations in Brazilian states

REGIONS	STATE	ADMINISTRATIVE LIABILITY	PUBLIC COMPLIANCE	COMPLIANCE REQUIREMENT
CENTER-WEST	DF	Decree 39736, of March 28, 2019	#	Law 6112 of February 02, 2018/ Decree 40388 of January 14, 2020
	GO	Law 18672, of November 13, 2014/Decree 9573, of December 05, 2019	Decree 9406 of February 18, 2019	Law 20489, of June 10, 2019
	MT	Decree 522, of April 15, 2016	Law 10691, of November 05, 2018/ Decree 376, of July 26, 2023	Law 11123, of May 08, 2020
	MS	Decree 14890, of December 11, 2017	Decree 15222, of May 07, 2019	#
SOUTHEAST	ES	Decree 3956-R/2016, of March 30, 2016	Law 10993, of May 24, 2019/ Decree 5114, of March 25, 2022	Law 10793 of December 21, 2017
	MG	Decree 46782, of March 23, 2015	Decree 48419, of May 16, 2022	#
	RJ	Decree 46366, of July 19, 2018	Decree 46745, of August 22, 2019	Law 7753 of October 17, 2017
	SP	Decree 67301, of November 24, 2022.	Decree 67683, of May 05, 2023/Decree 67682, of May 03, 2023	#
SOUTH	PR	Decree 11727, of July 14, 2022	Law 19857 of May 29, 2019/ Decree 2902 of October 01, 2019	#
	RS	Law 15228, of September 25, 2018/ Decree 55631 of December 09, 2020	Decree 56237, of December 07, 2021	Law 15228, Art. 37
	SC	Decree 1106, of March 31, 2017	Law 17715 of January 23, 2019/ Decree 2234, of October 27, 2022	#

Key: absence of standard (#). Acronyms: Federal District (DF); Goiás (GO); Mato Grosso do Sul (MS); Mato Grosso (MT); Alagoas (AL); Bahia (BA); Maranhão (MA); Pernambuco (PE); Piauí (PI); Rio Grande do Norte (RN); Sergipe (SE); Acre (AC); Amazonas (AM); Amapá (AP); Pará (PA); Rondônia (RO); Roraima (RR); Tocantins (TO); Espírito Santo (ES); Minas Gerais (MG); Rio de Janeiro - RJ); Sao Paulo-SP); Paraná (PR); Rio Grande do Sul (RS) and Santa Catarina (SC).

Source: Data from Brazilian state websites.

Regarding administrative liability, 20 of the 27 states implemented some regulations related to the Anticorruption Law. It is possible to observe similarities between the legal framework

elaborated in the states and that put forward with the Anticorruption Law at the federal level – or its federal regulation provided by [Decree 11129 of July 11, 2022 \(2022\)](#):

- Anticorruption Law – administrative liability, administrative liability process, leniency agreement, judicial liability;
- Regulation of the Anticorruption Law – preliminary investigation, administrative liability process, administrative sanctions and judicial procedures, leniency agreement, compliance program, national register of disreputable and suspended companies, and national register of punished companies;
- Pará – preliminary investigation, administrative liability process, disregard of legal personality, application of sanctions, simulation or fraud in mergers or incorporations, judicial liability, leniency agreement, compliance program;
- Ceará – preliminary investigation, administrative liability process, compliance program, disregard of legal personality, administrative appeal, application of sanctions, leniency agreement, corruption prevention mechanisms;
- Maranhão – administrative liability, the administrative liability process, administrative sanctions and judicial procedures, leniency agreement, compliance program, the national register of disreputable and suspended companies, and the national register of punished companies;
- Mato Grosso do Sul – preliminary investigation, administrative liability process, disregard of legal personality, simulation or fraud in mergers or incorporations, application of sanctions, leniency agreement;
- Rio de Janeiro – competence to start and judge the administrative liability process, preliminary investigation, initiation, instruction, and judgment of the administrative liability process, disregard of legal personality, simulation or fraud in mergers or incorporations, application of sanctions, leniency agreement, compliance program.

As for administrative sanctions, state regulations invariably provide for the application of fines. This is the case, for example, of Rondônia, Alagoas, Pernambuco, and Rio Grande do Sul. Systematically, these regulations also provide for the inclusion of those sanctioned in the register of punished companies, whether this register is at the national or state level. This is the case, for example, in Goiás, Tocantins, Alagoas, and Pernambuco. In terms of public compliance, 17 out of the 27 states already have some type of standard that includes the use of compliance programs in their administrations. Once again, the similarity between the legal devices stands out:

- Rondônia established a compliance program encompassing the direct and indirect administration linked to the state executive branch. The program does not include state-owned enterprises or mixed-capital companies;
- Goiás established the public compliance program in the executive branch;

- Pernambuco started the *Pernambuco Mais Integro* (PPMI) program, which aims to establish targets and guidelines for the promotion of ethics, integrity, probity, and respect for the norms that regulate relations between public administration and the public and private sectors, as well as defining the structure of the compliance programs and plan;
- Minas Gerais has the Minas Gerais Integrity Promotion Policy (PMPI). The policy refers to the executive branch and both the direct and indirect public administration. It sets the objectives and guidelines for the promotion of ethics, probity, and respect for the norms that regulate relations between public administration and the public and private sectors, and defines the structure of compliance programs and plans;
- São Paulo established the State Integrity Promotion Plan, an instrument to guide compliance programs to be implemented with agencies and entities of the direct administration and Brazilian autonomous legal entities called *autarquias*.

From the perspective of compliance requirements, 11 of the 27 states require compliance programs from their suppliers in order to sign contracts. When analyzing the design of state standards, one can again infer the occurrence of mimicry when stipulating a minimum contract value for the compliance program requirement, as explained below:

Federal District: “[...] with a global value equal to or greater than BRL 5 million”;

Goiás: “[...] whose value limits are higher than the competitive bidding modality, of BRL 1.5 million for engineering works and services and BRL 0.65 million for purchases and services”;

Sergipe: “[...] whose global value limits are equal to or greater than BRL 1 million for engineering and management works and BRL 0.65 million for purchases and services”;

Amazonas: “[...] whose value limits are higher than the competitive bidding modality, of BRL 3.3 million for engineering works and services and BRL 1.43 million for purchases and services”;

Another example of homogeneity between state regulations is the minimum contract period:

Goiás: “[...] the term of the contract is equal to or greater than 180 (one hundred and eighty) days”;

Federal District: “[...] This Law applies in its entirety to legal entities that enter into a contractual relationship with a validity or execution period equal to or greater than 180 days”;

Amazonas: “[...] the contract term is equal to or greater than 180 (one hundred and eighty) days; Rio de Janeiro: “[...] the term of the contract is equal to or greater than 180 (one hundred and eighty) days”;

Maranhão: “[...] This Law applies in its entirety to legal entities that enter into a contractual relationship with a validity or execution period equal to or greater than 180 days.”

Finally, with the analysis of federal and state legislation on compliance, there is no rejection of the proposition of this work, reiterating the copying or imitation of new legal processes by subnational entities with smaller state capabilities.

FINAL CONSIDERATIONS

The results of this discussion point to the use of mimetic isomorphic mechanisms in the process of institutionalizing compliance as an instrument to mitigate corruption in the institutional environment of Brazilian states. Law 12846/2013 boosted compliance in public administration on the national scene, even though its use is not mandatory. The states copied and/or adapted its guidelines, incorporating them into their own regulations. This renders the subnational legal framework very similar to the federal, characterizing mimetic isomorphism.

As a consequence of this study, a field is opened to be explored, suggesting future discussions that include, for example: i) costs of implementing and using compliance in the public sector; ii) compliance in information technology management; iii) compliance in personnel management; and iv) the maturity of compliance in the management of subnational entities. In addition, future studies will add great value by collecting and analyzing primary data, going beyond discussions based solely on documentary or legal analysis.

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CONFLICT OF INTEREST

The authors have no conflict of interest to declare.

AUTHORS' CONTRIBUTIONS

Sander José Couto da Silva: Conceptualization, data curation, formal analysis, Methodology, Writing – original draft.

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