

THE IMPORTANCE OF A CULTURE OF LEGALITY IN CONTEMPORARY TIMES: STRENGTHENING DEMOCRATIC VALUES

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Abstract

This article aims to analyze its relevance in contemporary times. To this end, it begins by defining and delimiting the culture of legality in democratic regimes committed to human rights. It then presents a historical digression to understand the origin of the term in the transition from the Modern Age to the Contemporary Era up to the present day in the Western world. It sets out some current challenges regarding the importance of strengthening the culture of legality in society and in the Brazilian State. It also presents some of the results of two relevant studies that are directly related to the theme of the culture of legality. It concludes that four objectives need to be achieved in order to promote a culture of legality in contemporary Brazil: building and strengthening national identity; consolidating democratic values; strengthening citizenship and guaranteeing the right to quality education for all, with emphasis on human rights education.

Keywords

Culture of legality. Legality. Human rights. Democracy. Citizenship.

Summary

1. Introduction. 2. Western Historical Origin of the Culture of Legality from the Modern Era onwards. 3. Scope of the Culture of Legality and its Relevance for Contemporary Democracies. 4. Contemporary Challenges for the Construction of the Culture of Legality in Brazil. 5. Analysis of Research Related to the Culture of Legality. 6. Conclusions. References.

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1. INTRODUCTION

This article aims to analyze the relevance of the culture of legality in contemporaneity and its importance for consolidating the values of the democratic regime, both in societies and in States and their institutions. To this end, it starts with the definition and delimitation of the culture of legality in democratic regimes committed to the protection and promotion of human rights. With the definition in contemporaneity, it presents a historical digression to understand the origins of the culture of legality in the transition from the Modern Age to the Contemporary Era up to the present day in the Western world. It then presents some challenges concerning the importance of strengthening the culture of legality in society and in the Brazilian State. It also presents some of the results of two relevant studies that are directly related to the theme of the culture of legality. The study methodology is based on a qualitative approach, using the deductive method, with bibliographical and documentary research.

Before going into the definition of the culture of legality, it is crucial to ask whether the singularity of each word – culture and legality – when put together, complements each other or whether there is the creation of a new meaning.

This study seeks to demonstrate that, based on the specific concepts of culture and legality, the term Culture of Legality is not to be confused with the two separately. By combining the two words and their respective definitions, a new meaning is born, which will be presented and developed in this study.

However, the terms culture and legality must first be defined separately. Culture comes from the Latin *colere*, which means to

cultivate, care for, harvest or grow. José Pedro Galvão de Sousa *et al* clarify that it applies both to the cultivation of the land, with agriculture, and “also to the cultivation of the spirit and the activity of man, whose intelligence and will come to act by conceiving, imagining, transforming, producing”³. They explain that:

It is an immanent activity, through which man enriches himself with knowledge, and also a transcendent activity, which leads him to act on nature, making useful things (mechanical arts), expanding his aesthetic sense (fine arts), perfecting or innovating production techniques. Culture is specifically human: man is its subject and its object, for it is intended for the good of man, individually and socially considered, allowing him to grow in personal formation and simultaneously to make the necessary contribution to the general good of the community.⁴

In Nicola Abbagnano's analysis, the term culture has, in turn, two basic meanings: “In the first and oldest, it means the formation of man, his improvement and refinement”⁵. In the second, “it indicates the product of cultivated, civilized, polished ways of living and thinking, which are also usually indicated by the name of civilization”⁶.

The term legality is, in political language, and according to Norberto Bobbio *et al*, “an attribute and a requirement of power, hence it is said that a power is legal or acts legally or has the stamp of legality when it is exercised within or in conformity with established or at least

³ SOUSA *et al* 1998, 148.

⁴ SOUSA *et al* 1998, 148.

⁵ ABBAGNANO 2012, 261.

⁶ ABBAGNANO 2012, 261.

accepted laws”⁷. The term legality is also conceived by José Pedro Galvão de Sousa *et al* as:

a set of rules of positive law in force in a given society, which results in the formal justification of power, if exercised in accordance with the pre-established precepts. The legal system, by establishing the competences of power and defining rights and obligations, marks out the scope for understanding the legality to which everyone is subject when carrying out their activities. The validity of a legal order thus makes it possible to have objective knowledge of the rules that regulate social life.⁸

Given the different meanings of culture and legality, each with its own specificities and scope, it is worth analyzing the concept and scope of the term culture of legality, which has a new meaning. It is a definition that goes far beyond the legal world, allowing for a broader and more holistic understanding of the phenomenon, which is also social, cultural and political.

In order to introduce the discussion, it is important to present the culture of legality not only as a form of mentality and consciousness, but also as an individual, collective, public and institutional way of acting, based on an appreciation of democratic values as well as the *res publica*, such as public goods, through respect for public institutions, the community, justice, freedoms and equality. Although the incorporation of the expression ‘culture of legality’ into political

⁷ BOBBIO *et al* 1994, 674.

⁸ SOUSA *et al* 1998, 302.

discourse is relatively recent, that is, from the 1990s, its essence is at the basis of the creation of the Rule of Law and the democratic regime. It is worth highlighting the definition presented by José Maria Cano, due to its scope and meaning beyond the legal sphere. For the author: “it is a kind of interdisciplinary approach to the legal phenomenon, focused on the study of social mentalities concerning normativity and characterized by adopting an empirical, pluralistic and participatory perspective on the conditions that generate institutional loyalty”.⁹ This is an academic and socially enriched definition, because it seeks to find in the field of social mentalities - and there can be many of these - which generates “institutional loyalty”, in other words, appreciation of the common interest - to the *res publica* - as well as to the values of democracy.

2. WESTERN HISTORICAL ORIGIN OF THE CULTURE OF LEGALITY FROM THE MODERN ERA ONWARDS

Historically, the achievements in the political-legal field of the Bourgeois Revolutions of the 17th, 18th and 19th centuries in Europe represent an important foundation in the construction of the culture of legality in the Western world. This is because, in the absolutist model of State, the political and legal relationship of subordination of subjects to the monarch prevailed, with the imposition of tyranny. It was the despotic power of the monarch and, therefore, without

⁹ CANO 2010.

control or limits defined and agreed in rules pre-established by society.¹⁰

With the bourgeois revolutions and the gradual conquest of the constitutional Rule of Law, the political and legal relationship between the State and the individual becomes - or at least should become - structured between rulers and citizens, and the latter began to have not only duties, but also rights that limited and defined the State's actions vis-à-vis the citizen.

The basis of the Rule of Law – constitutional and representative¹¹ – is legality, based on the social contract that came to guarantee liberal citizenship. The French Constitution of 1791 and the American Constitution of 1787 are the formal milestones of modern constitutionalism, as they pioneered the protection of fundamental rights at a constitutional level, as mechanisms to protect citizens from any attempt at abuse or tyranny by the State.

Thus, the principle of legality is the cornerstone of the normative structure of the Rule of Law. Alongside the legal structure based on legality, the “spirit” of the Constitutional State, idealized by the

¹⁰ Celso D. de Albuquerque Mello explains that: The origin of the expression 'absolute power' ('potestas absoluta') is found in Ulpiano's maxim and collected in Justinian's Digest: 'quod principi placuit legis habet vigorem' ('what pleases the emperor has the force of law', meaning that a law 'passed' in assembly by the Roman 'populus'). Still in the Digest, there is another maxim also attributed to Ulpiano 'princeps legibus solutus' ('the prince is not bound by the law') and therein perhaps lies the origin of the word absolute MELLO 1994, 68-69).

¹¹ MIRANDA 2002, 3.

declarations of rights, such as the Universal Declaration of the Rights of Man and of the Citizen of 1789, brings the belief in a society based on a *modus vivendi* that has been agreed upon, and therefore contracted, for the sake of a harmonious and safe coexistence for all. This social, political and legal contract is backed by both legal and political dimension, as well as the collective, intersubjective and relational dimension, with the purpose to build social harmony, based on a collective conscience of respect and appreciation for the law, because it is the result of a minimum consensus of balanced political and social coexistence. This is the Western origin of the culture of legality, based on the principle of legality and the Constitutional State¹².

It is worth noting that although the citizenship achieved with the Bourgeois Revolutions - English, American and French - was exclusionary - liberal citizenship - in the sense that it did not guarantee rights to a large section of society, either through the imposition of the census vote, or by excluding women, children, and enslaved people in the colonies from having a say, people enslaved in the colonies, as well as the original peoples in the then newly created United States of America, one can point to advances in the current historical scenario, since these revolutions made it possible to open up paths for the gradual conquest of more rights for more groups that had hitherto been excluded and marginalized.

¹² MIRANDA 2000, 7-32; CANOTILHO *et al* 2007.

This long road has taken place through the continuous historical affirmation of fundamental rights, that is, historical rights¹³, which are reinvented as new demands arise and generate new claims for rights by the respective societies. This whole process was and is based on respect for legality.

During this period, a new social and political awareness flourished, based on Enlightenment philosophy, which formed the basis of the legal documents on human rights. It is worth pointing out the reflections of Alexis de Tocqueville, in *The Old Regime and the Revolution*, when analyzing the impact of the French Revolution in the 18th century:

As its aim was not just to change an old government, but to abolish the old form of society, the French Revolution had to simultaneously attack all established powers, demolish all recognized influences, erase traditions, renew customs and usages and, so as to say, empty the human spirit of all the ideas on which respect and obedience had hitherto been based.¹⁴

Equally, in the sense of building values, it is important to mention the ideas of the aforementioned author, in his book *Democracy in America*, when analyzing the United States of America in the 19th century. According to Alexis de Tocqueville: “The revolution in the United States was produced by a mature and reflected taste for liberty and not by a vague and undefined instinct for independence. It did not rest on passions for disorder; on the contrary, it advanced with the

¹³ BOBBIO 2004.

¹⁴ TOCQUEVILLE 2009, 11

love of order and legality”¹⁵. Also according to the author: “Democracy has gradually penetrated usages, opinions, forms; it is found in every detail of social life, as well as in the laws”.¹⁶

In the aforementioned *Democracy in America*, one of the author's constant analyses is to point out, according to his vision, how democracy has become a habit, in other words, a *modus vivendi* for Americans throughout their history. However, it is important to point out that if, on the one hand, democratic values have gradually shaped American society over the centuries, on the other hand, one cannot fail to note the reality of exclusion and marginalization of those who did not meet the stereotype of the white man with a certain income, materialized in the census vote.

Just as in post-revolution France, in North America, indigenous peoples, women and enslaved people were not initially integrated as citizens into this new political, legal and juridical order. However, it cannot be denied that the North American republic was born in the 18th century as a State governed by the rule of law and in the following centuries moved towards a democratic State, guided by legality.

In this way, even in the face of bourgeois liberal citizenship, which was therefore exclusionary, we can see that this was a period of paradigm shift, with the purpose of inaugurating a new social and political consciousness, which was consolidated in the political legal field by means of the new model of the State, that of the Rule of Law,

¹⁵ TOCQUEVILLE 2024, 82

¹⁶ TOCQUEVILLE 2024, 410

founded on the principle of legality, with the social contract structured in the highest law: the Constitution.

The main doctrine of modern constitutionalism in the 18th century was the affirmation of fundamental rights and the limitation of State powers by means of a constitution that protected these rights. André Ramos Tavares explains that

In all its successive phases, constitutionalism has had one constant feature from the beginning, which is the limitation of government by law, the so-called ‘constitutional limitations’. This is the oldest and most recent feature of constitutionalism. Since its inception, it has opposed arbitrary government¹⁷.

With the promulgation of the American Constitution of 1787 and the French Constitution of 1791, modern constitutionalism gained momentum and spreads its Enlightenment principles not only to Europe, but also to other continents. Several European States began to have their own constitutions, as did States on other continents, including Brazil, with its first constitution, the one from 1824, which, although granted and conceived in a slave regime that lasted until 1888, was inspired by the Enlightenment and provided for an extensive list of fundamental rights¹⁸.

In the trajectory of the relationship between the Rule of Law and fundamental rights, the constitutional State has historically moved towards the consolidation of the democratic rule of law. According to Norberto Bobbio: “first liberal, in which the individuals who claimed

¹⁷ TAVARES 2002, 13.

¹⁸ Brasil. (1824). **Constituição do Império**, de 25 de março de 1824.

sovereign power were only part of society; then democratic, in which it was potentially everyone who made such a claim”.¹⁹

Carlos Ari Sundfeld, for his part, defines the essence and structure of both the Rule of Law and the Democratic Rule of Law. The former, for the author, is created and regulated by a constitution, the Basic Law:

where the exercise of political power is divided between independent and harmonious bodies, which control each other, so that the law produced by one of them must necessarily be observed by the others and that citizens, being holders of rights, can oppose them to the State itself.²⁰

The elements of the Democratic Rule of Law are:

a) created and regulated by a Constitution; b) the fundamental public agents are elected and periodically renewed by the people and are accountable for the fulfillment of their duties; c) political power is exercised in part directly by the people, in part by independent and harmonious State bodies, which control each other; d) the law produced by the Legislature is necessarily observed by the other Powers; e) citizens, being holders of rights, including political ones, can oppose them to the State itself.²¹

One is able to verify, based on the concepts presented by these authors, that the principle of legality is the cornerstone of both the Rule of Law and the Democratic Rule of Law. With the political and

¹⁹ BOBBIO 2004, 93.

²⁰ SUNDFELD 1993, 48.

²¹ SUNDFELD 1993, 53.

legal construction of the Democratic Rule of Law, a European reality that was only established at the beginning of the 20th century, with the Weimar Constitution of 1919 as an important milestone, there was recognition not only of the Democratic Rule of Law, but of the first Social and Democratic Rule of Law, which did not have the historical and political time to consolidate itself, given the rise of the Nazi regime in Germany; however, it represents the model of a State committed to social justice.²²

Historically, the European continent experienced authoritarian regimes for decades in the 20th century, such as Francoism in Spain, Salazarism in Portugal, Fascism in Italy, Stalinism in the former Soviet Union and Nazism in Germany, which dismantled, each in their own way and to their own degree, the protection of human rights and the values of freedom and equality. In this sense, appreciation of the culture of legality belongs to the democratic regime and values. There is no room for a culture of legality in an environment of oppressive and tyrannical States.²³

With the end of World War II, the achievement of peace and the realization of the atrocities committed by the Nazi State not only directly against Jews and minorities, but against humanity as a whole, it was necessary to redefine new parameters of human coexistence in international geopolitics.

Thus, and from the perspective of human rights, the construction of the International Human Rights System begins, through International

²² COMPARATO 2004, 185-195.

²³ HOBSBAWM 1995.

Human Rights Law, which consolidates the system of the United Nations Organization in 1945, and the Inter-American, European and African Regional Systems, respectively. At international and supranational level, the aim is to consolidate the great global social and political contract based on the protection of human rights, respect for the dignity of the human person and the exercise of cosmopolitan citizenship, as well as to build a culture of human rights, based on a culture of legality at international level too.²⁴

In this new scenario, there was, on the one hand, the beginning of the structuring of a new international legal and political order, with the aim of building international peace, international security, democratic values, and a commitment to human rights at a global level. On the other hand, there was a world divided by the Cold War, imperialist interests, and the threat of a third world war.

The following decades would not be easy in terms of geopolitics and international relations, but the International Human Rights System gradually gained strength and space, seeking, between advances and setbacks, to build the culture of human rights, which has the culture of legality at its core.

With the arrival of the 21st century, marked by its own complexities and demands, the international human rights framework has been somewhat weakened, with strong signs of regression, given the weakening of democratic regimes in the world, armed conflicts with increasingly destructive capacity, the climate emergency, relations

²⁴ LIMA 2019, 33-38.

between world leaders that are increasingly unfriendly and rude, among other issues to be faced.

On the one hand, advances in artificial intelligence have been essential in various areas of knowledge and have promoted many advances, such as in the areas of health and industry. On the other hand, artificial intelligence has also been used to propagate hate speech and discrimination, as well as disinformation and *fake news*, which has greatly contributed to weakening democracies and human relations.

Given the interrelationship between the culture of legality and the culture of human rights, it can be seen that the weakening of one leads directly to the weakening of the other. This is because they both defend common values. There is a real intersection between them. In this context, it is worth mentioning Norberto Bobbio's reflections on the relationship between human rights, democracy, and peace at the end of the 20th century:

The recognition and protection of human rights is at the basis of modern democratic constitutions. Peace, in turn, is the necessary precondition for the recognition and effective protection of human rights in each State and in the international system. At the same time, the process of democratization of the international system, which is the obligatory path towards the ideal of 'perpetual peace', in the Kantian sense of the expression, cannot advance without a gradual expansion of the recognition and protection of human rights, above each State. Human rights, democracy and peace are three necessary moments in the same historical movement: without human rights recognized and protected, there is no democracy; without democracy, there are no minimum conditions for the peaceful resolution of

conflicts. In other words, democracy is the society of citizens, and subjects become citizens when they are recognized with certain fundamental rights; there will be stable peace, a peace that does not have war as an alternative, only when there are citizens not just of this or that State, but of the world.²⁵

The author's ideas show the intrinsic and straightforward relationship between the three institutes presented: human rights, democracy and peace. It can be observed from what has already been said in this study that the protection of human rights is directly linked to the preservation and improvement of the democratic regime, and these two institutes are an important foundation, if not the very basis, of the culture of legality. Peace, for its part, is necessary for all institutional and political stability and for social and interpersonal relations.

Over the last 80 years, international human rights bodies, both in the global system and in regional human rights systems, have sought to build friendly and respectful relations between States, societies and people, guided by international human rights law, with the aim of intense dialogue and exchange through the culture of human rights, the culture of peace and the culture of legality.

Thus, the purpose of the post-World War II era was to create a broad global social contract based on the values of democracy and human rights. The aim was, and still is, to strengthen the culture of human rights at international level, with direct repercussions at national level, and which undoubtedly has a culture of legality at its core.

²⁵ BOBBIO 2004.

One of the current questions, however, is whether we have achieved sufficient success in building the purposes and the global link within the international community and world society. Undoubtedly, this is an ongoing process, and the construction of democracy and its values is never a finished project. It is constantly being affirmed and improved. It must always be a living, vibrant and continuous process, with the concomitant participation and supervision of the whole of society, as well as every citizen.

3. The Scope of the Culture of Legality and its Relevance for Contemporary Democracies

On the Latin American continent, José Antonio Crespo, in his 1990 text “*Hacia una cultura de la legalidad*” (*Towards a culture of legality*), questioned the possibility of democracy operating properly in Mexico. He explains that the conviction is widespread both in society and in the political class that the essence of Mexicans is to act outside the law and always take advantage. The author questions whether dishonesty and lack of integrity are inherent qualities of Mexican national identity, making it impossible to consolidate the rule of law. He also asks whether there is a subculture of fraud, which would make Mexican society and the State incompatible with democracy²⁶.

However, the author believes that this reality has deeper origins and argues that there was a historical lack of an adequate opportunity to

²⁶ CRESPO 1990, 121-129.

create the institutional conditions for a culture of legality in the political sphere. According to him:

There was then no reason to think that, in the Mexican case, the existence of the 'subculture of fraud', sustained by the 'ethics of corruption', could be explained by cultural reasons and national identity. The conditions of political monopoly that have prevailed for so long in our country explain the phenomenon better. The situation could improve if an authentic political democracy were established, as a result of a balance of power between those who have benefited from an authoritarian power structure - and therefore defend it - and those who strive for a fair, plural and rational, which means constitutional, political game (although this is only because they can promote their political interests more effectively in this way).²⁷

This same question posed by the Mexican thinker could be applied to Brazilians, to the Brazilian society and to the Brazilian State, given the very similar realities between nations, marked by corruption and the fragility of democracy. Also, it seems that the author's reflection and response are equally pertinent to the Brazilian reality.

It cannot be said, or even confirmed, that dishonesty and a lack of integrity are inherent qualities of the Brazilian national identity, making it impossible to consolidate the Democratic Rule of Law, which currently has constitutional *status* under the 1988 Constitution. As in the Mexican case, it is a question of the historical absence of

²⁷ CRESPO 1990, 121-129.

adequate opportunities to create institutional and social conditions for a culture of legality at national level.²⁸

José Maria Cano's comments are also important: although he points out the great semantic indeterminacy of the term “culture of legality”, he explains that the verification of whether or not the culture of legality is appreciated goes through many dimensions besides the legal one, such as the sociological-legal one, when analyzing the social practices of the law; the psychological-legal one, when investigating the collective mentality surrounding the understanding of the legal phenomenon; and the political sciences, when analyzing the relationship between the State administration and civil society.

All of these areas verify, each in its own field, the degree and intensity of adherence, acceptance and loyalty on the part of both those in power and those governed to the pact as a political, legal and social order.²⁹

José Maria Cano, in trying to understand and describe the scope of the term culture of legality, presents the following aspects: *culture, conditions of legality and conditions of legitimacy*. As for *culture*, he points to three dimensions. The first one has a sociological approach: “in which culture refers to a certain configuration of psychosocial values and attitudes that shape the processes of internalization of social patterns and roles of behavior and define the frameworks for conceptualizing behavior that is socially labelled as deviant.”³⁰

²⁸ LIMA *et al*/2025.

²⁹ CANO 2010

³⁰ CANO 2010, 17.

The second aspect of culture, according to José Maria Cano, points to the axiological dimension, that is, of value:

I refer to the configuration of collective narratives that aspire to delimit shared ways of life around the fact of participating in certain moral values and in certain ideal representations of group configuration. These are the spaces that aim to define the collective around ideas relating to a common origin defined by historical decantations of moral characters.³¹

The third aspect of culture, in turn, includes, according to the author, the use of the term culture in an analytical sense as a context of choice: Here, the cultural approach emphasizes the components that are relevant to the formation of moral frameworks of meaning that allow individual life plans to be drawn up. This approach significantly reduces the relevant moral contents of the respective society and focuses on those that make it possible to give meaning to the formation of autonomous life plans. Among these basic components of this cultural formation of the context of individual choice would be the elementary characteristics of the institutional framework of the society in question. Depending on which cultural aspect is emphasized, the analytical tools to be used would be, in the first case, the ideas of socialization and internalization processes. Analyses of the social construction of deviance and its labelling are relevant, as are the instruments of social control involved in educational processes and the formation of public opinion. The second focuses on hermeneutic approaches related to the reconstruction of memory, the formation of

³¹ CANO 2010, 17.

collective identity and the attribution of moral guidelines for behavior that are valued as identifying the group. Debates on obedience to the law, and specifically those on the moral obligation to obey the law, would find a suitable space for analysis here. Finally, the third perspective would emphasize the importance of determining the institutional components that contribute to shaping the contexts of individual choice in shaping individual life projects.³²

As for the aspect of the *conditions of legality*, the author points out four distinct dimensions that rely on each other. Referring to the concept of the rule of law and the principle of legality, he says: “In the first place, it is necessary to underline the central character of the ideas relating to the institutional framework configured around the existence of formal rules endowed with the notes of generality and abstraction”ⁱ. The second component of legality concerns the effectiveness of the law, in the sense of its equal application in practice for everyone without exception.

For José Maria Cano:

The egalitarian component that defines the rule of law approach - the law is equal for all - takes on its most empirical form here: equal enforcement is assessed here in the most empirical way: the equal application of sanctions to the offender is assessed. The effective elimination of randomness in the effectiveness of repression thus emerges as a central element in the categorization of the Rule of Law.³³

³² CANO 2010, 17

³³ CANO 2010, 17

The third component of legality consists, among other practices, of the centrality of the fight against corruption, organized crime and networks of influence peddling in the culture of legality, since they reveal a systemic structure of violation of the law and can incorporate a certain acceptance of transgression if they are not vehemently delegitimized and combated.ⁱⁱ

The fourth dimension pointed out among the conditions of legality is the culture of legality:

refers to the development of new forms of normative production which, while not necessarily in collision with State law, open up prospects for forms of legal pluralism, both in terms of their agency of production, such as phenomena related to the development of civil society, spaces for professional or sectoral self-regulation, market autonomy, etc., and in terms of their normative density, and I refer significantly to the proliferation of soft law formulas, recommendations, normative application guidelines, etc. In short, the culture of legality demands the quality of the legislative product, but emphasizes its social dimensions in terms of regulatory effectiveness, the effectiveness of its sanctions and the ability to create new law based on its greater regulatory effectiveness.³⁴

This fourth dimension of the culture of legality in the *condition of legality* opens up space for a more flexible social and legal structure in the sense of finding, alongside State regulations, more plural and dynamic forms of social regulation.

³⁴ CANO 2010, 17

For José Maria Cano, the third and final lexical context in which the term culture of legality is used refers to the *conditions of legitimacy*. The author explains the need for legitimization processes and among these processes he points out, on the one hand, the need to deepen democracy and, on the other, “the need to project it in formulas of good governance”³⁵.

As to the rooting of democracy, he advocates the broadening and deepening of participatory democracy, through greater and broader popular involvement and citizens, with the promotion of the flourishing of civic virtue. He also argues that, in the field of legitimacy conditions in relation to good governance, there should be a duty to respect ethics both in public power and in other sectors of society, with rules of professional ethics, for example.

For the author, “the ethical impulse of the culture of legality linked to the dimension of good governance would crystallize in three dimensions: transparency, trust and responsibility³⁶”. Transparency represents access to quality, trustworthy information, based on respect for publicity as a guideline. Trust is linked to the dimension of loyalty, “both in its political and institutional aspects, predictability, integrity, capacity or competence, as well as benevolence³⁷”. Responsibility, on the other hand, is related to the not only legal but also moral duty to render accounts, with a view to legitimizing public activity and the use of public money.

³⁵ CANO 2010, 18.

³⁶ CANO 2010, 19.

³⁷ CANO 2010, 20.

In the light of all the reflections presented by the authors José Antonio Crespo and José Maria Cano, it is worth highlighting that the culture of legality manifests itself in the belief that collective, public and institutional responsibility would maintain social harmony in a *modus vivendi* that leads the social body to respect the laws. This belief makes it possible to create and consolidate an expressive collective identity based on the social and collective union of values that are essential for building freer, fairer and more democratic societies.

4. CONTEMPORARY CHALLENGES FOR BUILDING A CULTURE OF LEGALITY IN BRAZIL

Faced with the many and complex contemporary challenges of building a culture of legality in 21st century Brazil, this study presents four objectives that are understood as essential to this end.

First of all, one needs to rescue or even build and strengthen Brazil's national identity. This is a major challenge, given the authoritarian, patriarchal, discriminatory, racist history and the profound social and economic inequalities, in which a large portion of society does not have its most basic rights materialized, a facet of the culture of violence perpetuated or neglected by the State itself.

This reality reveals the difficulty in constructing the national identity of Brazilian people, as well as the precariousness of their own identity, which has so far been malformed. Disunity, distancing, rivalry and the failure to recognize the other in the face of a lack of empathy, realities and worlds that are so distant and diverse, lived and experienced by a society that is somewhat fragmented and divided, predominate in the socio-cultural sphere.

In the words of Cristian Bravo Gallardo, strengthening a people's identity presupposes a: “complex process made up of cultural, historical, social and political aspects. This process involves continuous and dynamic construction, which requires the active participation and commitment of the whole of society³⁸”. The author continues:

Among the aspects that contribute to strengthening a country's identity are civic education, cultural diversity, heritage preservation, the promotion of cultural tourism, respect for human rights, democracy, social justice, the construction of narratives and pluralistic dialogue, among others. Added to these, there are basic principles such as the Rule of Law, accountability, cooperation and the common good; fundamentals that allow for the cohesive functioning of a society, common well-being and peaceful coexistence.³⁹

The second purpose for building a culture of legality in the current Brazilian scenario is to strengthen democratic values and the democratic regime. Legally and politically, Brazil's symbol of re-democratization is the promulgation of the 1988 Constitution, which inaugurated the current Democratic Rule of Law.

If, on the normative level, many advances have been made with the constitutional text and its developments, on the real level there has also been important progress that needs to be recognized and honored. However, there is still a long way to go to achieve a consolidated and mature democracy in Brazil. A legitimate feeling of hopelessness,

³⁸ GALLARDO 2024

³⁹ GALLARDO 2024

indignation and frustration can be seen in a significant portion of society, especially among the most vulnerable social classes, in the face of precarious access to basic rights such as safe food, education and health.

In addition, corruption and the misuse of public money are also perceived and felt by part of Brazilian society as a diagnosis of a profound civilizational backwardness, which generates disbelief in the State, its institutions, as well as the legal and justice system. However, the responsibility of each individual as a citizen in this process is not always perceived and recognized, nor is the potential transforming agent of each individual in society. In a sense, it is as if there were a blind side to the power and duty of citizens.

According to data produced by Transparency International, the corruption perception index – the main indicator of corruption in the world and which evaluates 180 countries –, they point Brazil in 107th place in 2024. This is the country's worst score and worst position in the index's historical series, which began in 2012. According to the data, Brazil is currently tied with Algeria, Malawi, Nepal, Niger, Thailand and Turkey.⁴⁰

Corruption leads to the distortion of the purposes of the common good and the public and social interest. In this sense, in a mature and advanced democracy, the public space is recognized as belonging to no one, because it belongs to everyone, in other words, it belongs to

⁴⁰ Transparência Internacional – Brasil. (2025). **Brasil registra pior nota e pior posição da série histórica do Índice de Percepção da Corrupção.** <https://transparenciainternacional.org.br/posts/brasil-registra-pior-nota-e-pior-posicao-da-serie-historica-do-indice-de-percepcao-da-corrupcao/>.

the collective. In a precarious democracy, however, public space is often appropriated by private and selfish interests, distorting the essence of the public interest. And it is precisely when there is room for the distortion of the public space that corruption becomes presentⁱⁱⁱ. Corruption reveals in the field of ethics and social and community relations what is most anti-republican and, consequently, averse to citizenship.

The third purpose for building a culture of legality in Brazil is to strengthen citizenship, one of the basic foundations of the Republic and of the Brazilian Democratic Rule of Law, by express provision of Article 1, item II, of the Constitution.

It is noted that citizenship in Brazil, conceived as the effective exercise of a wide scope of human rights, and in the words of philosopher Hannah Arendt, as the right to have rights⁴¹, has been making slow progress, with some advances but also setbacks. There is still no deeper awareness of the importance of cultivating and strengthening citizen relations, in the sense of social cohesion for the common good.

Citizenship, recognized as one of the foundations of Brazilian democracy, primarily represents the broadest ownership and exercise of fundamental rights, be they those of liberty, equality or fraternity, with the aim of everyone enjoying a dignified life. However, in addition to the wide scope of rights and duties inherent in citizenship, it must also be, as Eduardo Bittar says, "active and participatory, interactive and critical, liberating and self-conscious, productive and

⁴¹ JOVCHELOVITCH 2009

dynamic"⁴². In addition, the construction of citizenship generates civic and national awareness, as well as the strengthening of various bonds and ties, be they historical, ethical, cultural, social and community, among others, all of which are essential for social cohesion and harmony.

There are many challenges and demands to achieve citizenship, especially in Brazil. Regarding the current challenges, it is worth highlighting the words of Núria Beloso Martín:

The new challenges of citizenship are complex, numerous and difficult to deal with, but they must be faced from an attitude of cooperation and solidarity 'with the other' and 'not at the expense of the other' or 'against the other'. Citizens must feel that they are participants and protagonists in the political and legal projects that accompany the globalization paradigm. Citizenship requires an attitude from everyone.⁴³

Furthermore, in order to achieve citizenship, it is essential to guarantee quality education for all. And therein lies the fourth purpose for building, strengthening and appreciating the culture of legality: the effectiveness of the right to quality education for all. Within the broad universe of education, human rights education is more than directly linked to the construction of citizenship.

Firstly, education is in itself a political act, but not a party-political one, as it seeks to awaken political and ethical awareness related to the demands for freedom and equality. While the purpose of education is

⁴² BITTAR 2004, 108.

⁴³ MARTIN 2005.

wide-ranging and has several directions, the focus of human rights education is to awaken ethical awareness, and to work towards forming citizens with autonomy, subjects of rights and duties, imbued with a commitment to the public interest and the common good⁴⁴.

In the regulatory sphere, the federal government's National Plan on Human Rights Education establishes human rights education as a process:

a systematic and multidimensional approach that guides the education of the subject of rights, articulating the following dimensions: • grasping of historically constructed knowledge about human rights and their relationship with the international, national and local contexts; • statement of values, attitudes and social practices that express the culture of human rights in all areas of society; • formation of a citizen's conscience capable of being present at the cognitive, social, ethical and political levels; • development of participatory methodological processes and collective construction, using contextualized languages and teaching materials; • strengthening of individual and social practices that generate actions and instruments in favor of the promotion, protection and defense of human rights, as well as reparation for violations.⁴⁵

In this sense, human rights education aims to guarantee educational tools for the emancipation of the human person, with a view to developing skills that allow people to think for themselves, with

⁴⁴ BITTAR 2004, 94.

⁴⁵ Brasil. (2018). **Plano Nacional de Educação em Direitos Humanos**. Brasília: Ministério dos Direitos Humanos.

autonomy, in a critical and reflective, challenging, constructive and investigative way. It seeks to awaken creativity, stimulate the imagination, develop personal autonomy, openness, and interaction with the new, respect and appreciation for differences, a democratic spirit for dialogue, sensitivity for empathy, social responsibility and engagement with social issues, among others.

Therefore, we need to conceive of education as a broad and holistic process of learning, experiences and reflections, in which the various dimensions of the human person are developed, whether they are individual and emotional competencies, or social and collective ones.

5. ANALYSIS OF RESEARCH RELATED TO THE CULTURE OF LEGALITY

It is important to present two studies that are directly related to the theme of the culture of legality and which, therefore, complement this study with current data. Between 2013 and 2015, researchers from the Getúlio Vargas Foundation Law School (Brazil) conducted a study with the aim of systematically assessing, through the "law enforcement perception index" (IPCL Brasil), the understanding of Brazilians regarding respect for the laws and regulations of certain authorities directly involved in law enforcement.

According to the survey, measuring Brazilians' perception of obedience to the law does not mean measuring the degree of effective compliance with the law, but only ascertaining their perception of the duty to comply. In this sense, the objective of the survey is to: to contribute to the discussion on the degree of effectiveness of the rule of law in Brazil, based on measuring how Brazilians perceive

society's behavior in relation to *compliance with the law*. This measurement is a first step towards understanding why people comply or do not comply with the law, which is essential for the rule of law. Understanding these reasons contributes not only to assessing the possibilities and limits of legal solutions to Brazilian social and economic problems, but also to thinking about public policies that are more appropriate to solving these problems.⁴⁶

The survey covered the following states: Amazonas, Pernambuco, Bahia, Minas Gerais, Rio de Janeiro, São Paulo, Rio Grande do Sul, and the Federal District, with a total of 3,300 participants. It was based on a study conducted by Tom R. Tyler in the United States of America, entitled: "Why do people obey the law?" (New Haven, CT: Yale University Press, 1990). The main argument of the US research is based on the idea that people obey the law because they believe it is legitimate, not because they fear punishment^{iv}. This argument was also tested in the Brazilian study, based on five indicators:

(i) behavior, which reflects the frequency with which respondents reported engaging in conduct that violated the law; (ii) instrumentality, which measures the perception of losses associated with violating the law, especially the fear of punishment; (iii) morality, which measures the perception of how right or wrong it is to engage in certain conduct that violates the law; (iv) social control, which measures the perception of social disapproval of certain types

⁴⁶ FGV Direito SP. (2015). **Relatório IPCL Brasil. 1º semestre.**

of behavior that violate the law; and (v) legitimacy, which measures the perception of respect for the law and certain authorities.⁴⁷

According to part of the results of the Brazilian survey, it appears that “fear of sanctions is not the strongest factor in compliance with the law, but rather than legitimacy, indicators of morality and social control are the strongest factors in explaining why people obey the law in Brazil”⁴⁸

At the international level, there is important and interesting research on the *World Justice Project's* Rule of Law Index, conducted since 2008. The 2024 survey analyzed 142 countries and jurisdictions around the world and found, for the seventh consecutive year, that the rule of law has declined in most countries. The survey covers more than 214,000 households and 3,500 legal professionals and experts. It is the world's leading source of original and independent data on the rule of law. The index seeks to provide a snapshot of the rule of law in 142 countries and jurisdictions by providing scores and rankings based on eight factors: “Restrictions on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Enforcement of Regulations, Civil Justice, and Criminal Justice”⁴⁹

According to data from the aforementioned survey regarding the limits of government power: “Global authoritarian trends continue,

⁴⁷ FGV Direito SP. (2012). **Produtos de Pesquisa de IPCL - Índice de Percepção do Cumprimento da Lei no Brasil.** *cit.*

⁴⁸ FGV Direito SP. (2012). **Produtos de Pesquisa de IPCL - Índice de Percepção do Cumprimento da Lei no Brasil.** *cit.*

⁴⁹ World Justice Project. (2024). **Rule of Law Index 2024 Insights.**

with controls on government powers declining in 59% of countries between 2023 and 2024. Worldwide, the executive branch is less likely to be constrained by civil society and the media, legislatures, courts, and elections.”⁵⁰

With regard to the deterioration of human rights protection, the survey points out that more than 5.4 billion people live in countries where human rights lost protection last year. It reveals that between 2023 and 2024 “people lost fundamental rights in 63% of countries. Freedom of expression, freedom of assembly, and privacy rights declined, while discrimination worsened.

Regarding the long-term trend, the survey shows that the global recession of the rule of law continues but is slowing down: “Initially driven by a global rise in authoritarianism, the annual decline in the rule of law has become widespread during the COVID-19 pandemic. The global crisis continues, but overall scores are falling in a small majority of countries.”⁵¹

Regarding elections and the rule of law, the survey found that where the rule of law is stronger, people generally vote for change. It points out that:

The ruling party remained in power in most of the 41 countries that held national elections between June 2023 and May 2024. But these countries also tend to have weaker rule of law, less democratic control, and more fragile electoral systems. Among countries with the

⁵⁰ World Justice Project. (2024). **Rule of Law Index 2024 Insights**.

⁵¹ World Justice Project. (2024). **Rule of Law Index 2024 Insights**.

strongest rule of law, people voted for change more often than against it.⁵²

According to general data from the survey, the Scandinavian countries Denmark, Norway, Finland, and Sweden are the countries with the highest levels of respect for the rule of law. The lowest-ranked countries, in positions 138 to 142, are Myanmar, Haiti, Afghanistan, Cambodia, and Venezuela. Brazil ranks 80th.

Regarding regions, in East Asia and the Pacific, the top five are New Zealand, Australia, Japan, Singapore, and South Korea. The bottom five are Vietnam, China, the Philippines, Myanmar, and Cambodia. In Eastern Europe and Central Asia, the top five are Georgia, Montenegro, Kosovo, Moldova, and Kazakhstan. The lowest ranked countries are Serbia, Kyrgyzstan, Belarus, Russia, and Turkey. In the European Union, European Free Trade Association, and North America, the top-ranked countries are Denmark, Norway, Finland, Sweden, and Germany. The bottom-ranked countries are Romania, Croatia, Greece, Bulgaria, and Hungary.

In Latin America and the Caribbean, the top five are Uruguay, Costa Rica, Barbados, Chile, and Antigua and Barbuda. The bottom countries are Mexico, Bolivia, Nicaragua, Haiti, and Venezuela. Among the 32 countries or jurisdictions analyzed, Brazil ranks 17th. In the Middle East and North Africa, the ranking of countries is as follows: United Arab Emirates, Kuwait, Jordan, Tunisia, Algeria, Morocco, Lebanon, Iran, and Egypt. In South Asia, respectively, one has Nepal, Sri Lanka, India, Bangladesh, Pakistan, and Afghanistan. In

⁵² World Justice Project. (2024). **Rule of Law Index 2024 Insights**.

Sub-Saharan Africa, the top-ranked countries are Rwanda, Namibia, Mauritius, Botswana, and South Africa. The lowest-ranked countries are, respectively: Ethiopia, Mauritania, Cameroon, Sudan, and the Democratic Republic of Congo. Among the many criteria analyzed in the survey, commitment to fundamental rights is one of the evaluation criteria. In the survey ranking, the best-rated countries are Denmark, Norway, Finland, Sweden, and Germany, respectively, the same countries that have the highest scores in the overall assessment. The lowest-rated countries are Afghanistan, China, Egypt, Iran, and Myanmar, respectively. Brazil ranks 85th among the 142 countries assessed.⁵³

The two surveys are fundamental in proving the importance of the relationship between the consolidation of the rule of law and the protection of human rights. In this sense, the results of the international survey place the four Scandinavian countries at the top of the list in terms of commitment to the rule of law. These are countries that are strongly committed to human rights and the distribution of collective wealth through high-quality public services such as education, health, transportation, and housing. This generates social well-being, a sense of belonging, and greater social cohesion, which leads to an appreciation for the values of a culture of legality.

6. CONCLUSIONS

Appreciation of the culture of legality, as a form of mindset, awareness and individual, collective, public and institutional action, based on

⁵³ World Justice Project. (2024). **Rule of Law Index 2024 Insights**.

democratic values, the *res publica*, respect for public institutions, the community, justice, freedoms and equality, when consolidated, shows the solidification of historical, social, political, cultural, ethical and humanist ties, which are essential for social cohesion and harmony, based on a feeling of recognition and belonging.

It also represents the idealization and proposal for the construction of a social contract, supported by both the legal and political dimension, as well as the collective, intersubjective and relational one, with the aim of building social harmony, based on collective awareness and coexistence with respect and appreciation for the law, because it is the result of a minimum consensus of balanced coexistence. It is legally based on the principle of legality and the Constitutional State, which is also the foundation of the Democratic States of Law of the 21st century, despite the current weakening of democracies and the international human rights system.

One also concludes that even in the face of a Brazilian history and scenario quite marked by authoritarianism, patriarchy, discrimination, racism, as well as profound social and economic inequalities, one cannot accept, under any circumstances, the thesis of a supposed dishonesty or lack of integrity as qualities inherent to the Brazilian national identity, which make it impossible to achieve a culture of legality and, consequently, an effective Democratic Rule of Law.

Given all these facts, this study proposes four purposes that are understood as essential for building and strengthening a culture of legality in Brazil. The first purpose is to rescue and strengthen Brazil's national identity, which is still somewhat precarious, marked by fragmentation and often extremism.

The second is the strengthening of Brazil's democratic values and regime. If, on the one hand, there has been progress, especially on the legal front, with the promulgation of the 1988 Constitution, on the other hand, there is still a long way to go, especially in the field of the effectiveness of human rights, in the fight against corruption and the misuse of public money.

The third purpose is to strengthen citizenship, which is still taking slow steps on the national scenario. In this sense, there is little awareness and action to strengthen the bonds of cohesion in favor of the common good and the public interest.

The fourth purpose, in turn, is investment in human rights education, aimed at awakening ethical awareness, developing autonomy, openness and interaction with the new, respect and appreciation for differences, a democratic spirit for dialogue, sensitivity to empathy, social responsibility and engagement with social issues.

One ends with the full conviction, optimism and determination that there are real, effective and readily accessible ways of building and strengthening a culture of legality in Brazil. But we are also aware of the countless difficulties that are present and have been widely presented in this study. Thus, one should end with the reflections of the thinker Eduardo Galeano: "Utopia is on the horizon. I move two steps closer, it moves two steps further away. I walk another ten steps and the horizon runs ten steps further away. As much as I may walk, I will never reach it. So, what's the point of utopia? The point is this: to keep walking⁵⁴".

⁵⁴ GALEANO 1994.

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