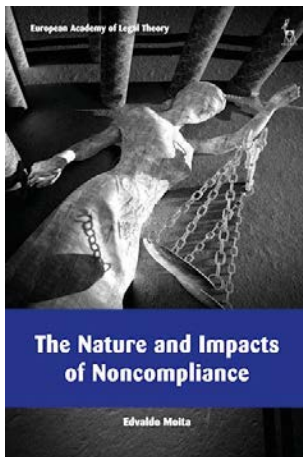




Review of *The nature and impacts of noncompliance*.
Edvaldo Moita. Hart Publishing, 2023.

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1. INTRODUCTION



Over two billion people (61% of the world's employed population) work in the informal economy. Edvaldo Moita, a Professor of Legal Theory and Philosophy of Law at the Fluminense Federal University in Brazil, pays attention to this phenomenon as the starting point of this book. In a world where legalism seems to be ruling our activities as a society, how is it that the informal economy is still such a vast part of the employed population? Starting from the world of informality, the book focuses on a phenomenon often missed when analyzing it: the noncompliance with the law. Moita argues, despite the attention showed by the discipline of economics to this topic, little interest has been paid by legal research. This can come as a surprise, considering the strong relationship noncompliance and informality have with the Law. Luckily, this book has paved the way on research about noncompliance from the legal point of view.

The book is based on research the author conducted from 2016 to 2020 for his doctoral dissertation, that he successfully defended in February 2021. His research has attracted a well-deserved praise and has won two awards: the European Award for Legal Theory 2022 from the European Academy of Legal Theory (EALT) and the Prêmio Abrafi de Teses 2022 from the Brazilian Association for Philosophy of Law and Sociology of Law (Abrafi).

The strength of this book is not only to explore a topic that has been often overlooked by the legal scholarship, but also to pair theory with a case study. By doing so the author provides an account of Law and Context about the topic of noncompliance with the law. For the review of this book, I would like to focus on three key – but not exclusive – elements

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addressed by this book: noncompliance and street vending in Brazil (ii), the levels of compliance (iii) and the importance of arenas and space (iv).

2. NONCOMPLIANCE AND STREET VENDING IN BRAZIL

This book aims at giving some answers and taking some steps forward on the topic of informality, and noncompliance with the law more specifically. Despite being unnoticed in the legal scholarship, this ambitious and well executed work looks at noncompliance and informality from the legal lens. The author of this book clearly shows one element of informality is noncompliance with the law. Thus, he explores this aspect by asking what can be conceived as noncompliance and by which forms can noncompliant behavior be assessed. Using the example of street vending in Brazil - street vending, street markets, and the case study of *Feira da Sé* more specifically - the author raises several fundamental theoretical questions about the Norm and its efficacy, as well as the notion of illegality.

The reader is immersed in the world of informal economy of Brazil, through street vending and discovers how this economy operates: how they perform their selling, their place of work, their occupation of public space... As a matter of fact, the space these vendors occupy is analyzed further by Moita, since it constitutes in his view a matter of private and public control.

When stepping into the field, with examples of street vending, the author explains nuances that would go unnoticed to the untrained eye: the reader learns about the grey areas of the regulation of this economic activity such as selling boiled or roasted corn, but also learns about the case of lottery - prohibited under federal law-, with the animal game (*jogo do bicho*). The book manages to clearly explain the dimensions of street vending in Brazil to someone who, like the reviewer, has never set foot there. Considering the many layers of informal street vending, it is worth applauding how clearly this book explains the intricacies of this activity.

The author goes on to explain the tension existing between the political power and the vendors, as well as the role of the press concerning this matter. The example of *Fortaleza* (Ceará, Brazil) shows the everyday tension between the vendors who are displaced, the fight against the noncompliance by the municipality, and the repeated failures to apply the law. Furthermore, this example also concerned a case brought to the Courts and, after a long period of attempts, was dismissed in May 2020. With this case analysis, the book highlights the limits and peripheries of the c. In addition, with the case study of the *Feira da Sé*, the author already identifies key actors in matters of noncompliance with the law: regulators, law enforcement operators and court decisions.

The idea that lots of actors play a role when talking about the noncompliance issue of street vending in Brazil seems crucial to understanding the multiple layers that this entails. Indeed, Moita shows noncompliance is a multilevel phenomenon.

3. LEVELS OF NONCOMPLIANCE

Throughout the book, the author emphasizes the different actors that engage in the realm of noncompliance with the law. The book shows when analyzing noncompliance, we should not only focus on the behavior of the norm addressees (the users of norms) but also on the actors that create, enforce, and adjudicate the norm (the norm creators). We, as scholars should not fall into the trap of thinking illegality, informality or noncompliance should be merely addressed from the point of view of the norm recipients. It is key to understand - and this book shows it- that law and its application involve multiple actors, at multiple ends of the norm: from the creation to the enforcement, to the usage.

The idea that lots of actors play a role when talking about the noncompliance issue of street vending in Brazil seems crucial to understanding the multiple layers that this entails. Indeed, the book shows noncompliance is a multilevel phenomenon. In fact, helped by legal scholarship, Moita can list the following: noncompliance is necessarily a multilevel phenomenon, each level has different addressees, and these levels have a distinct nature.

The author shows different degrees of compliance he has extracted from his case study of street vending in Brazil. By using a set of statutes which together prohibit the use of public squares for itinerant commerce, unless the individual obtains the proper permit from the mayor and sells only specific types of goods - that he refers to as *Norm A*- he is able to show how we can extract different levels of compliance. Following his reasoning, the first degree of compliance would be that the norm is directly followed; the second degree of compliance would be a noncompliance in the form of disobedience, and, finally, the third degree of compliance with a norm would be, when the interpretation of the norm at the level of adjudication is made by a very specific process of legal argumentation. These three degrees of noncompliance already shows the multilayered characteristics of noncompliance.

The author elaborates further and explains there are three forms of compliance with norms, and that two of them are made by law enforcement acts: firstly, there is the general act of compliance with primary norms whose result is another norm, followed by the execution as a strict form of imposition of the norm; thirdly the compliance is made through the adjudication which is a form of compliance delegated to courts. These three forms of compliance of norms point out that there are different actors (from actors who enforce the norm, to the courts who decide on the issues of noncompliance) that play a role in the noncompliance with the law.

4. THE IMPORTANCE OF ARENAS AND SPACE

One key element presented by the book for the understanding of noncompliance with the law is the “arenas” of noncompliance. These arenas are places where noncompliance is located. The book defines them as being a “sort of social space” where there is a high grade of disobedience, with a significant distance between law creation and law enforcement (or norm execution). In addition, this book shows the “arenas of noncompliance” are a sort of social space that are also characterized by high grades of inconsistency in judicial decision-making. In fact, in the arenas of noncompliance this book details how despite a norm being

usually effective, it is not obeyed, not enforced, and usually inconsistently adjudicated as well.

The analysis of arenas of noncompliance reveals the importance of researching noncompliance through the legal lens, since it shows a failure of the legal system, emphasizing the importance of this book into shedding light into this topic.

Linked to the arenas, the book demonstrates there are “stages” where the conflicts of these “arenas of noncompliance” take place. Yet, we must keep in mind the “stage” can refer to any space, physical or not. In the case at hand, concerning street vending, the open-air market becomes the territory of this “arena of noncompliance,” but so does the court where the cases concerning street vending issues are decided. An interesting element of the stage of the “arena of noncompliance” of street vending in Brazil, in the case of *Feira da Sè*, is that the selling activity takes place in a public space – the street- where interactions happen face-to-face and are spatial stages where law enforcement actors can also face physical confrontation and danger.

The book also points out at the role of mass media that reports the issues of street vending in *Feira da Sè* have as “issue amplifiers.” The media covering the issue brings pressure and can therefore be another stage of the arena of noncompliance.

The reasons behind the structural noncompliance can be difficult to assess, and one case study cannot give all the answers, but in this book, Moita manages to provide a hint as to why this happens in Brazil. Bartering could be one of the elements explaining the lowering of the binding force of the law in Brazil since it creates more opportunities for noncompliance. The book explains the importance of bartered agreements in transforming a binding law into a mere token: it lowers the standards of compliance, the terms agreed are prone to noncompliance themselves, creating a persistent need for new agreements, and it opens the door to those who perform a noncompliant behavior to justify it as being right in doing so. In a nutshell, bartered agreements lower the standards of compliance with the law. It is even more worrisome since it expands to other spheres of non-bartered norms, producing a stabilization of noncompliance.

5. CONCLUSION

All in all, this book could be summarized as a book about noncompliance with the law: the author makes an account of the nature of noncompliance and maps out the most salient impacts of noncompliance, notably explaining it in the context of street vending in Brazil, showing the gaps of noncompliance in this context.

The book shows the multilevel interaction between the legal system and the noncompliance with the law in the case of street vending in Brazil. It highlights areas of the lack of the rule of law and focuses on a much-needed study of an area of informality that we need to research beyond the economic sciences. The book, via its case study, assesses the issue of noncompliance with the law, displaying the deflation of political power that results from it. The author brilliantly narrates the high grades of disobedience of street vending sellers on the one hand, and the disengagement of the actors in charge of institutionally binding decisions. In other words, he describes how structural noncompliance results in a

disengagement between the law creation and law enforcement, the distance and/or tension between norm users and norm givers.

The book lives up to the challenges of researching a topic often forgotten in the field of legal scholarship despite being often found in other disciplines. He has hopefully started a path where more legal and sociolegal scholars will pay attention to this part of informality.