

LAWS AND THE COMPLEX CONTROL OF BEHAVIOR

João Claudio Todorov¹
*Universidade Católica de Goiás, and
Instituto de Educação Superior de Brasília*

ABSTRACT: Laws are written to control behavior. Sometimes the control occurs immediately after its approval by Congress and the sanction of the Presidency. Sometimes the actual control is partial: only a part of the country obeys the law, or only a class of citizens, or the enforcement is slow in being established. The analysis of laws as metacontingencies, as sets of interlocked individual contingencies, helps in the study of how, when, and why laws control behavior. Data from individual cases of adolescents in Brasília who were penalized according to the Statute of Children and Adolescents (Estatuto da Criança e do Adolescente – ECA) were analyzed to show how the concept of metacontingency helps to understand flaws in the law and flaws in the application of the law.

KEYWORDS: contingency, metacontingency, cultural analysis, controlling agencies, aversive control

Laws are written to control behavior. In a perfectly democratic society where *the due process of law* is more than just verbal behavior, laws are the codification of the controlling procedures of governmental agencies (Skinner, 1953). In behavior analytic terms, control is not synonymous with coercion, but quite often we think of laws as implying aversive control. Laws also prescribe positive consequences for desirable behavior, as in tax exemptions, or negative income tax for parents who keep their kids in school. But what is a law? In *Science and Human Behavior* (1953), Skinner addresses the issue in Chapter XXII (Government and Law): what is the role of law in government control and what is the effect on behavior of the people and of persons in the controlling agency?

A law is thus a statement of a *contingency of reinforcement maintained by a governmental agency*. The contingency may have prevailed as a controlling practice prior to its codification as a law, or it may represent a new practice which goes into effect with the passage of the law. Laws are thus both descriptions of past practices and assurances of similar practices in the future. (Skinner, 1953, p. 339).

In most of the examples used by Skinner coercion is involved, and behavior is defined by its consequences, not its topography. But how does a law come to control behavior? Ignorance of the law is not an excuse; once in effect it is up to each person to

¹ Manuscript preparation was supported by a grant from CNPq. A previous version of this work was presented at the 31st Annual Convention of the Association for Behavior Analysis International, Chicago, May of 2005. (Brazil). Address: J.C. Todorov, SHIN QI 01 Conj. 09 Casa 11, 74505-090 Brasília, DF, Brazil. e-mail: todorov@unb.br

know it and *behave*, in the everyday language sense of it. Family, the ethical group, educational and religious institutions, the media, are in charge of teaching what is wrong and what is right under the law. The controlling agencies usually take no steps to advertise the contingencies of aversive control that are in their power to enforce; those involving positive reinforcement, on the other hand, usually receive special attention. In Brazil state governments are nowadays involved in a fierce competition to attract new business, offering tax exemptions. Their marketing techniques are superb.

Laws usually involve complex behavior—complex in the sense that their articles describe more than single responses, specify applicable circumstances, and sometimes point out attenuating conditions. Legal control involves a web of laws; a single unlawful act puts an entire apparatus into motion.

How codes of law affect governmental agents is the principal subject of jurisprudence. The behavioral processes are complex, although presumably not novel. In order to maintain or ‘enforce’ contingencies of governmental control, an agency must establish the fact that an individual has behaved illegally and must interpret a code to determine the punishment. It must then carry out the punishment. These labors are usually divided among special subdivisions of the agency. The advantages gained when the individual is ‘not under man but under law’ have usually been obvious, and the great codifiers of law occupy places of honor in the history of civilization. Codification does not, however, change the essential nature of governmental action nor remedy all its effects. (Skinner, 1953, p. 341).

A single unlawful act may represent the beginning of a behavioral chain involving dozens of agents over months or years. How can a society ensure that a new law, approved with the intention of promoting changes in cultural practices, will control new behavior of citizens and of government agents alike?

From a behavioral point of view, laws are constituted of three-term contingencies, interlocked into metacontingencies (Glenn, 1986; 1988; 1991; Todorov, 1987; Todorov & Moreira, 2004). Thus, one way of looking at how a law controls behavior is to begin with the analysis of the law as a written statement of interlocked contingencies that control individual behavior. Todorov, Moreira, Prudêncio, & Pereira (2004) studied the Brazilian law for the protection of children and adolescents. The general objective of the law is clear: to guarantee conditions for the healthy development of children and adolescents. It can be seen as a set of metacontingencies (complete or not, well described or not). Article 7 opens the section on the protection of life and health:

Children and adolescents have the right to protection, to life and to health through a public social policy that allows birth and healthy and harmonious development, in dignified conditions of living.

Two hundred and sixty seven (267) articles of the law were examined in order to see how general objectives like those stated in Article 7 were related to articles which specified antecedents, behavior, and consequences (i.e., full statements of the

contingencies involved). An article may deal with behavior of a child, a teenager, policemen, district attorneys, judges, nurses, physicians, teachers, or anyone else. Children and youth never are described with terms that the judiciary system uses with adults. A child never is a criminal; he may be in conflict with the law. He will never be sent to prison; at most a judge will prescribe some time at a public establishment destined for socio-educational rehabilitation (prisons for children, actually, in some cases, but it is politically incorrect to say that).

A first result of that analysis was the finding that the sequence of articles in the law is not organized based on contingencies and metacontingencies. A contingency may have its antecedents described in an article that follows another describing consequences for behavior specified in another place. Surprisingly, however, almost half of the articles included three-term contingencies. Another third were made of statements of behavior and consequences. Some included descriptions of antecedents and behavior, but no clear consequences. Other articles were just general statements about what is desirable.

The articles in the law are divided by themes, ranging from Health, Freedom, and Family, to Procedures and Resources. The analysis showed that articles on themes like *Health* and *Prevention* tended to be complete, that is, they specified antecedents, behavior, and consequences. Under *Prevention* are articles destined to protect the young people from exposure to movies with sexual content or drugs, including alcohol. *Health* includes articles describing in detail the rights of children to medical assistance, including hospitalization, from conception to adulthood. Other themes well covered from the behavioral analysis point of view are Family, Education, Sports, Infringement Act, Freedom, and Guardianship. Those including incomplete contingencies (contingencies with only one or two terms of a three-term contingency) include Professional Training, Protection Measures, Judge, Auxiliary Services, Procedures, Infringement of Administrative Rules, District Attorney, Lawyer, and Protection of Rights.

The law is better written when it deals with undesirable behavior of adolescents and the desirable behavior of governmental agents when dealing with that undesirable behavior. With other issues, however, the law is not clear. Who will have custody of a child caught infringing the law? This depends on a personal decision of the judge, helped by advice from psychologists and social workers, for instance (when the State provides those services in that locality).

An incomplete contingency opens the possibility of different interpretations, and sometimes of inaction. Article 4 of the law specifies that it is the duty of the family, of the local community, of society in general and of the government to assure the rights of children to food and health, without specification of consequences. As a means for controlling behavior, this statement is of no value.

The analysis of the ECA as a metacontingency began with an undergraduate research grant from CNPq (Brazil) to Máisa Moreira, under the supervision of J. C. Todorov. Mara Regina A. Prudêncio and Gisele Carneiro Campos Pereira are psychologists working with the judge of the court of children and adolescents of Brasília, and students in the Master's Program at the University of Brasília, also under the supervision of J. C. Todorov. Mara Prudêncio and Gisele Campos studied the records of

actual cases of adolescents in conflict with the law, analyzing each step of the process according to the contingencies specified in the law. Preliminary results show clearly why laws should be clear, detailed, and specific. Practically every time a judge can choose freely between two possible contingencies, one specifying consequences for those governmental agents who do not act as the law prescribes, the other described in general and almost fuzzy terms, this second alternative is chosen. In almost every case the process is finished and archived without the acts of judges, district attorneys, policemen, teachers, or technicians occurring as the law prescribes. The following is an example:

PROCRASTINATION

A girl committed attempted murder at the age of 15. The judge decided to send her to a socio-educational institution for rehabilitation, but she never went there. She was called to the office of the public attorney to explain why she was not going to school. She argued that she was taking care of her newborn baby and besides that she didn't have the money for the bus ticket. She was then required to attend a second institution, but never appeared there. She was called a third time, and was referred this time to a third institution and provided with a free bus ticket, but again never went. An audience was marked for the girl to be admonished by the judge, but she didn't appear. The judge decided that she should be brought to the court under coercion, but that never happened. Some days later she went to the court on her own initiative, to say that she had given birth to a second child. She was admonished and sent to a fourth institution, but again never went there. Given that by then she was much older, the time in a socio-educational institution was changed into a fine. All attempts to get in contact with the girl so she would pay the "donation" failed. In February of 2005 she had her 21st birthday, and the process under the ECA was considered extinct. In the six-year period she committed four minor infringements, three physical assaults, and as an adult, a felony.

WHO CARES?

A teenager in conflict with the law is seen as a person in a peculiar condition of development, needing special protective measures. Article 101 of the Statute dictates conditions for protective measures, but there are no consequences for the agents in charge when nothing happens. In the work being developed by Gisele Pereira, involving 100 cases recorded in the year 2002, in 11 the judge decide in favor of protective measures. In all 11 cases nothing happened. After varying periods of time, 10 processes were archived without any additional decision by the judge, manifestation by the public attorney, or by any other person. The case was simply closed. In the single exception, a technical officer reported that the teenager did not require protective measures.

A socio-educational measure, a contingency described in Article 112, could be the decision of the judge. In such case, punishment for the agent who fails to act in accordance with the article is included. The teenager should be in school and psychologists and social workers should follow his development and give assistance to

the family. But that, it seems, will imply much more work for the judge, the attorney, and policemen. So, no behavior occurs.

THE JUDICIARY AS A CULTURAL SYSTEM

Glenn (1993) once described ABA, the Association for Behavior Analysis International, as a cultural system. Likewise one can see the judiciary system of a country as a cultural system, or as a subsystem of a larger international cultural system comprised of all those national systems influenced by the ancient Greeks and Romans. From the behavioral point of view, a judiciary system exists in the interlocking behavioral contingencies that define its particular cultural practices. The judiciary system is composed of physical and organizational structures, and of its members, judges, lawyers, attorneys, and the like. But as a cultural system, the judiciary is entirely dependent on the behavioral repertoires of its members. When a new law just describes ongoing cultural practices in a certain community, enforcement of the law does not conflict with the behavioral repertoires of the governmental agents in charge of that enforcement. But in a different region of the same country, that new law is a technological metacontingency (Glenn, 1986). Changes in cultural practices of the community will certainly be slowed by the necessity of prior changes in the behavioral repertoires of those who are to enforce the law.

In a national judiciary system that is already slow, if not archaic, decision making by judges and attorneys sometimes follows the line of least effort. Police brutality, even with children, is seen in some parts of the country as a necessary educational measure; some mothers approve the beating of their adolescent sons because that is what they would like to do if they were strong enough to face the young man. In other cases the protection measures determined by the law are costly in terms of resources and manpower, so nothing happens. Thus, for a technological metacontingency to produce new cultural practices, other agencies besides the judiciary must act, like the educational system and nowadays the media, especially television, with society as a whole acting as external control of governmental agencies.

REFERENCES

- Glenn, S. (1986). Metacontingencies in Walden Two. *Behavior Analysis and Social Action*, 5, 2-8.
- Glenn, S. (1988). Contingencies and metacontingencies: Toward a synthesis of behavior analysis and cultural materialism. *The Behavior Analyst*, 11, 161-179.
- Glenn, S. (1991). Contingencies and metacontingencies: Relations among behavioral, cultural, and biological evolution. In P. A. Lamal (Ed.), *Behavioral analysis of societies and cultural practices* (pp. 39-73). Washington, DC: Hemisphere.
- Glenn, S. (1993). Windows on the 21st Century. *The Behavior Analyst*, 16, 133-151.
- Skinner, B. F. (1953). *Science and human behavior*. New York: MacMillan.
- Todorov, J. C. (1987). A Constituição como metacontingência. *Psicologia: Ciência e Profissão*, 7, 9-13. (Portuguese)

- Todorov, J. C. & Moreira, M. (2004). Análise experimental do comportamento e sociedade: um novo foco de estudo. *Psicologia: Reflexão e Crítica*, 17, 25-29. (Portuguese)
- Todorov, J. C., Moreira, M., Prudêncio, M. R. A., & Pereira, G. C. C. (2004). O Estatuto da Criança e do Adolescente como metacontingência. In M.Z. S. Brandão, F. C. S. Conte, F. S. Brandão, Y. K. Ingberman, V. L. M. Silva & S. M. Olinari (Eds.), *Sobre comportamento e cognição: contingências e metacontingências, contextos sócio-verbais e o comportamento do terapeuta*. Santo André, SP, Brazil: ESETEC. Vol. 13, pp 44-51. (Portuguese)