

I

Introduction*The challenge of enforcement*

A labor inspector, flanked by a union leader, rang the doorbell of an industrial laundry hidden in a residential neighborhood of the city of Córdoba, Argentina, to conduct a routine check of working conditions. When they entered, they found the building was so damp that water had accumulated on the ceiling and was raining back down on the dozen workers who moved sheets and towels in and out of large machines. The inspector explained to the workshop supervisor how the lack of ventilation had created hazards, and informed the supervisor that officials who specialize in health and safety would conduct a follow-up investigation to ensure that conditions improved. Meanwhile, the union leader gathered information from workers about pay, hours, and benefits. Conducting brief interviews with workers, the union leader compared worker responses to the requirements of labor law and the collective bargaining agreement.¹ This particular industrial laundry was given thirty days to comply with a variety of standards before it would be fined or possibly shut down. In this case, officials from the state regulatory bureaucracy worked closely with the union to ensure that these workers benefited from the rights specified in labor laws, including being paid their full wage and having the opportunity to be included in the social welfare system.

Although Córdoba's labor inspectorate was riddled with features that are generally understood to undermine regulation – officials hired by virtue of their political connections instead of merit, uncompetitive salaries for public sector workers, conflicts of interest, and a shortage of resources – this inspector had helped workers in similar laundries recover thousands of pesos in back pay and gain legally mandated protections. Not all workers in Córdoba, however, benefited from inspections. There were pervasive violations of basic standards

¹ I directly observed this inspection during fieldwork in 2008.

in the brick-kilns scattered outside the province's capital city, some resulting in the deaths of children on worksites. Labor inspectors, however, repeatedly failed to take substantive action. Consequently, workers in this industry continued to have their wages stolen, to be exposed to unsafe working conditions, and to be left out of social welfare institutions.

Similar unevenness in enforcement is also evident in the control of pollution from industry. In the province of Santa Fe, an industrial food-processing plant continually blanketed the community with noxious air pollution. Safety lapses in the plant resulted in explosions that were uncomfortably close to a residential area. People living near the plant had increased rates of respiratory diseases and worried that a large-scale industrial accident would tear through their neighborhood. In response to their complaints, regulators from the provincial environmental agency worked with the plant to install pollution control technologies. Regulators also served as intermediaries between the plant and the community, facilitating a negotiated process by which the plant could come into compliance. Similar to Córdoba, the regulatory bureaucracy in Santa Fe lacked most of the features generally associated with capable states – officials were patronage employees, were not insulated from political interference, and had an extreme lack of resources. Yet, as a result of enforcement, community leaders said the incidence of respiratory diseases declined, and plant managers said that they do not have to worry about disruptive protests. While this particular community benefited from environmental protection, nearby agro-industrial plants (under the same regulatory laws and jurisdiction) continued to pollute with impunity. State regulators did little in these cases to ensure that policies have tangible effects, and the communities around these plants continued to live with high levels of contamination.

In the 1990s in the neighboring province of Tucumán, environmental regulations were largely not enforced. Officials took samples of water pollution from sugar mills producing ethanol and found contaminants at levels more than one hundred times the legal limits. Until 2003, there were few, if any, steps taken either to punish violators or to enable firms to comply. Efforts to improve compliance increased gradually, and by 2008 the local environmental agency began a far-reaching campaign to enforce regulations. Officials enforced regulations even in places where community groups did not immediately mobilize. The resulting action led to more than fifty million dollars in investments by the industry to reduce pollution. This substantial increase in enforcement is puzzling because politicians remained ambivalent about environmental protection, and Tucumán had a substantially lower level of economic development compared to that of Santa Fe (where enforcement did not increase). Moreover, in Tucumán regulators achieved broad enforcement without forming a traditionally strong bureaucracy. Instead, the province hired officials with preexisting ties to the industry and gave them short-term contracts with few career prospects within the state bureaucracy – organizational features that left the agency open to political interference.

Why do states enforce regulations in some places, and in some industries, and not in others? How can states that lack many of the features considered necessary for state capacity – such as meritocratic and politically insulated bureaucracies – enforce regulations? The answer to this puzzle, I argue, lies in recognizing that even porous states have informal structures that allow some societal organizations to influence the bureaucracy and deflect other organizations. I do not contradict the claim that forming strong bureaucracies can help advance enforcement. Rather, I argue that the different ways in which states are porous to political influence can determine how enforcement occurs. In places where these structures allow pro-enforcement groups to form linkages with officials, these groups are able to influence state action and to provide resources to officials. Under these conditions, enforcement can become possible, even when regulatory agencies have not undertaken conventional reforms to become politically autonomous bureaucracies.

Building on this insight, we can account for differences of enforcement by examining the way the structures of linkages between state and society interact with resources inside the state apparatus. Furthermore, we are able to gain insights into a broader set of questions related to institutional weaknesses and to the functioning of states that depart from the strong state ideal-type that is pervasive in the literature. In the following sections, I introduce the problems of uneven enforcement and weak institutions, outline dominant approaches to account for differences in enforcement, and provide an initial elaboration of an alternative theory (developed in detail in Chapter 2). The remainder of this introduction situates the problem of enforcement in the two policy areas that are the subject of the analysis – labor and environmental regulation – and outlines the plan of the book.

UNEVEN STATES AND WEAK INSTITUTIONS

Unevenness in state responses to regulatory violations is an issue not only in Argentina. The gap between promised protections of regulations and the realities on the ground is all too evident in many countries and industries. In Bangladesh, for example, the horrific Rana Plaza factory collapse in 2013 that claimed the lives of more than 1,000 workers might have been prevented if government regulators enforced basic safety codes.² In China, air pollution levels, which are consistently double of China's own legal standards, have been tied to widespread declines in life expectancy and have become a political issue. While there is enforcement of policies meant to reduce pollution in China, such enforcement varies tremendously across regions and municipalities.³ Even countries with ample resources often fail to identify and mitigate violations.

² Jim Yardley, "Garment Trade Wields Power in Bangladesh," *New York Times*, 7/24/2013

³ Van Lo Rooij, Benjamin, and Carlos Wing-Hung 2010; Chen, Ebenstein, Greenstone, and Li 2013

A survey of workers in low-wage industries in three major cities of the United States found that more than a quarter of the workers were paid less than the minimum wage and three-quarters were underpaid for overtime.⁴ Most of these violations go undiscovered and uncorrected by regulators. Yet, in some cases in the United States, regulators have taken far-reaching action to protect workers from labor standards violations. A partnership between janitorial workers and regulators in Los Angeles, for example, recovered millions of dollars in back pay for workers and brought thousands of jobs into the formal sector.⁵ A similar story can be found in environmental regulation in the United States; enforcement rigor varies by community poverty levels, resulting in inequalities in the *de facto* protections afforded by environmental policies.⁶

The illustrations above are cases of variation in state responses to violations of rules that are meant to structure the way the economy and society function. The uneven character of state enforcement of legislated rules, however, is pervasive across a wide variety of issue areas. An analysis of intellectual property protections in China, for instance, found substantial disparities in the quality of enforcement. While China does, at times, take steps to protect intellectual property, the process is fraught with politics and is often not effective.⁷ Studies of immigration administration in the United States and Germany have also shown stark variation in the way the deportation laws are enforced, with informal processes influencing which migrants are removed from the country and which are given clemency.⁸ Similarly, researchers have found systematic differences in the judicial responses to police killings in Latin America; police who violate rights of citizens are only sometimes held into account.⁹ Finally, a study of street vendors in Colombia, Peru, and Chile found pervasive, but not universal, nonenforcement of laws governing public space. In these countries, some politicians used “forbearance” as a strategy for subsidizing their poor constituents (and thereby maintaining electoral support).¹⁰ These examples from diverse policy areas and politics illustrate the breadth of the phenomenon in which violations of basic laws are widespread, and the parts of the state charged with enforcement act in a highly uneven fashion, selectively applying the rules.

Unevenness in enforcement has tremendous implications. For individuals, enforcement can make the difference between health, prosperity, life, and death. At a broader level, enforcement plays a key role in the way institutions function. It has long been established that institutions matter profoundly in the ways societies and economies function, but the presence of formal institutions is only loosely connected to actual behaviors in much of the world.¹¹ In all of

⁴ Bernhardt, Milkman, Theodore, Hackathorn, Auer, DeFiilippis, González, Narro, Perelshteyn, Polson, and Spiller 2010. On the broader enforcement challenge in the United States, see: Weil 2014

⁵ Fine and Gordon 2010 ⁶ Konisky 2009 ⁷ Dimitrov 2009 ⁸ Ellermann 2009

⁹ Brinks 2008 ¹⁰ Holland 2015 ¹¹ O'Donnell 1993; Levitsky and Murillo 2013

the examples above, whether dealing with intellectual property, immigration, labor standards, or environmental pollution, rules that were meant to structure social relations broke down to varying degrees. When the state apparatus does respond to violations in basic rules with enforcement, weak institutions can become “activated,” and rules that were previously ignored can have a substantial impact.¹² As such, enforcement often plays a key role in mediating the relationship between formal rules and actual practices. Thus, to develop a more complete understanding of the way institutions function in much of the world, we must explain enforcement.

Explaining enforcement

What explains variation in enforcement? This is the central question of this book. In the broadest sense, there are many factors at play – including the level of economic development of the country, the degree of the breakdown in institutional order, and the historical legacies of state development. Yet, even within these structural conditions, there is puzzling variation in enforcement. For example, an analysis of labor regulation using firm-level data from seventy two developing and middle-income countries found only a very weak correlation between country wealth and the probability of a firm being inspected.¹³ Thus, the focus of this book is to explain the politics of enforcement within societies. Such variation has tremendous practical implications because it determines who gains the benefits (or pays the costs) of policies that have already been selected. Moreover, accounting for this variation provides an opportunity for theoretical development in the functioning of uneven states and weak institutions.

There are broadly two sets of explanations that can account for enforcement. On the one hand, scholars analyze state capacity, contrasting “strong” and “autonomous” states with those that are “fractured,” “flailing,” and “weak.” Drawing on a long theoretical tradition, the central argument is that the quality of the state apparatus determines outcomes. The most common form of analysis focuses on a single task (many studies, for instance, focus on industrial development) and explains distinct outcomes based on the degree of state capacity.¹⁴ Thus, the expectation is that variation in state action should be determined by the quality of the state apparatus; places that have bureaucracies characterized by meritocracy, political insulation, and rationality (i.e., approximating the Weberian ideal) should perform better than those that lack these features. An extension of this theory holds that in order to be effective, states also need to have close ties to society.¹⁵ Yet, even in many state-society approaches, “coherent” bureaucracies are treated as a necessary condition for

¹² Levitsky and Murillo 2013 ¹³ Almeida and Ronconi 2012

¹⁴ For example: Evans and Rauch 1999; Kohli 2004 ¹⁵ Evans 1995

capacity. The policy implication for this line of argument is that the best and, in many ways, the only solution to improving enforcement is to reform bureaucracies to make them more closely approximate the ideal.

On the other hand, researchers often point to political control as key for explaining the behavior of the state apparatus. Whether or not the state takes actions toward any particular goal hinges on which groups gain power and become the “principals” that direct the state’s “agents” in various bureaucracies. The role of the state bureaucracy, according to this model, is to respond to political signals from principals and to adjust its action accordingly. Political support is fundamental; even if the state has the capacity to enforce rules, enforcement may not occur when those in power stand to gain from violations of the rules.¹⁶ Thus, the key causal factors are the preferences of political principals and their ability to use various levers of control, such as budgets and appointments, over the bureaucracy.

In many ways, these accounts of differences in state action are radically different from one another. Statist approaches tend to deemphasize politics by focusing our attention on the agency of officials who are insulated from self-interested players outside the state and who have organizational incentives to pursue programmatic objectives. By contrast, political approaches deemphasize agency within the state and highlight the role of political winners and losers in directing subordinates. Despite these differences, both sets of theories hold a set of common commitments: first, states must have internal coherence (e.g., they must have bureaucracies that are meritocratic and hierarchical) and, second, politics takes place primarily outside the state apparatus (either in the creation of the autonomous and strong state, or in the realm of formal institutions of external bureaucratic control). While the role of coherence in the statist perspective is obvious, coherence is no less important in principal-agent approaches. If the bureaucracy is subject to influence or weakness in internal organization, it cannot reliably respond to signals by formal external principals.¹⁷ Such bureaucracies are common in “politicized” states that are weakly institutionalized in the sense that there is a high degree of fluidity in the way power is exercised outside of formal hierarchies.¹⁸ All states are politicized to some extent, but they vary on the degree of direct influence that groups can assert outside of formal channels. Highly politicized states are often characterized by widespread patronage, corruption, or weak hierarchical control. Under conditions of substantial politicization, dominant theories posit that there is insufficient internal coherence of the bureaucracy for either state autonomy or formal external control to function. Both sets of theories described above expect that such political interference within the state apparatus will only undermine enforcement of laws and prevent the activation of institutions.

¹⁶ Berliner, Greenleaf, Lake, and Noveck 2015

¹⁷ Huber and McCarty 2004

¹⁸ Chalmers 1977

This theoretical expectation renders the actions of many states puzzling, including the examples from Argentina described above. Enforcement occurred in these cases despite the fact that the bureaucracies lacked all basic features of internal coherence – officials were patronage hires, and direct interference in the bureaucracy that diluted the command of political principals was the norm. Differences in enforcement cannot be accounted for simply by virtue of a combination of political support and a state's approximation to coherence. This puzzle is found not only in Argentine regulation; states around the world act in highly uneven ways that are not reducible to differences in average levels of capacity or political support.

Argument in brief: an alternative explanation of enforcement

This book advances an alternative explanation for variation in state action to enforce basic laws through a study of labor and environmental regulation. Unlike the theories summarized above, the account of state action does not hinge on bureaucratic coherence. Instead, building on insights from research on state-society relations, a central claim in this study is that, to explain variation, it is necessary to examine the ways informal structures that make the state porous to society influence the way state bureaucrats generate resources for enforcement. Not all states are politicized in the same way; informal avenues for political access may privilege some actors over others. By unpacking both the varied role of political influence inside the state as well as the way politics interacts with the operational aspects of administration, it becomes possible to understand puzzling differences in state enforcement. In brief, the argument makes three analytical claims.

First, combinations of state-society linkages and administrative resources within the state apparatus are crucial for explaining enforcement. Linkages consist of routinized processes of consultation and agreements that facilitate direct interaction between officials and organizations in society that have interests in enforcement (e.g., unions in labor regulation, community groups in environmental regulation). Linkages structure access to the politicized state, determining which groups can influence and operationally support officials, and which groups cannot (even when there are no functioning formal institutions governing access to the state). These structures are both political and operational because groups in society can exercise power to influence outcomes of state action while simultaneously providing material support and information about social conditions. For example, in the description of the inspection at the beginning of this chapter, the union leader both helped the inspector collect information and advocated for application of regulations that would benefit his members (importantly, business leaders did not have the same access to the inspector).

For enforcement, linkages are particularly important. When bureaucrats have linkages with societal groups that have capabilities for, and interest in,

enforcement, regulators can better access information about violations that is diffused throughout society and often purposefully hidden. Moreover, regulators may not have a clear interest in enforcement, either due to corruption or to political resistance by powerful groups that stand to lose from state intervention. Linkages with groups that have interests allied with policy goals enable the state to undertake certain tasks against these strong headwinds, even when the organizational features of the state apparatus are insufficient to counter this resistance.

The ultimate influence of linkages is contingent on levels of administrative resources. Distinct from the political insulation of the bureaucracy, the degree of administrative resources is crucial in determining the state's contribution to the operational tasks of enforcement. Bureaucracies that have little or no administrative resources will leverage linkages with allied groups differently from bureaucracies with ample resources (as described below). In sum, to explain enforcement we must examine combinations of linkage structures and administrative resources.

Second, I propose a conceptual typology of distinct patterns of enforcement. The typology allows us to move beyond thinking about broad averages of “strong” or “weak” states and shift to understanding differences in the ways that states are uneven. The key differences across the patterns of enforcement are the triggers of state action, as well as the determinants of intensity and distribution of enforcement. The first type is *society-dependent enforcement*, which has three attributes: enforcement is triggered by the demands of linked-groups outside of the state apparatus; the intensity of enforcement is determined by the resources societal groups have to offer state officials; and the distribution of enforcement closely matches the distribution of power among societal organizations that have linkages with the state. While enforcement is made possible through societal action, it has real limits – most notably it is focused on relatively narrow segments of the economy and can empower groups to pursue interests that only partially overlap with the objectives of policy. I expect society-dependent enforcement to occur when regulators lack administrative resources but have linkages with groups that seek enforcement.

By contrast, when there are greater levels of administrative resources internal to the state as well as linkages between regulators and allies in society, bureaucrats can use societal resources strategically to supplement the state. This combination leads to a pattern of *co-produced enforcement*.¹⁹ In this pattern, particular instances of enforcement are triggered both by societal groups and bureaucrats. As a result, co-produced enforcement has greater breadth than society-dependent enforcement and does not simply follow the distribution of resources in society. Additionally, the intensity of enforcement should be particularly high as the capabilities of the allied societal groups are combined with resources in state bureaucracies.

¹⁹ On co-production, see: Ostrom 1996

These two patterns differ from the only pattern generally recognized in the literature: *state-driven enforcement*, which is allocated by formalized planning processes within the bureaucracy and which entails mobilization only of capabilities internal to the state. This pattern obtains when there are few linkages between officials and allies in civil society, but where there are administrative resources. In this pattern, intensity is determined completely by the resources internal to the state apparatus. Therefore, our expectations converge on those in the literature – political support from principals and organizational coherence within the state are necessary for enforcement.

These three patterns of enforcement are not self-reinforcing equilibria. Nor are they institutionalized in the proper sense of the term. Rather, they are underpinned by particular combinations of state-society linkages and administrative resources that shift over time. In the third part of the argument, I propose a hypothesis for transitions among these patterns that recasts political control theories and highlights the way linkages with pro-enforcement groups can be used as imperfect substitutes for investments in administrative resources. Congruent with standard political control theories, I argue that interests, preferences, and partisan alignments of those appointed to run bureaucracies influence state action. In contrast to these theories, in the context of highly politicized states, the results of political support from “above” are contingent on the existence of groups in society that have resources to make enforcement happen on the ground. Thus, political principals indirectly promote (or reduce) enforcement through interventions in the bureaucracy that open up the opportunities for linkage formation. In other words, political leaders do not directly determine where enforcement takes place, but instead they influence which groups are able to support enforcement.

As such, political leaders who support enforcement potentially have a choice between allowing linkages to form or allocating scarce resources to augment the administrative resources of the state. Thus, under certain conditions, politicians have the opportunity to use linkage formation in order to avoid allocating scarce resources to an agency that entails budgetary cost (money that could be allocated elsewhere). In these cases, support for enforcement should translate into the society-dependent pattern. All things being equal, investment in administrative resources is more likely to occur under two sets of political conditions. One condition is the combination of political support for enforcement with a set of preexisting political alliances that block linkage formation. For instance, the organizations in society that have resources to help with enforcement may be in a coalition with political opponents, making linkage formation with these groups intractable. In these cases, I expect increases in political support for enforcement to lead to transitions from the society-dependent to the state-driven pattern. Second, ties with specific societal groups might not be able to quell a broad conflict. As a result, investments in administrative resources become necessary to respond to political demands, even if linkages are politically attractive to leaders of

bureaucracies. Therefore, in these conditions, co-produced enforcement should be the result. In sum, I recast political control theories to parse out the diverse outcomes of political support for enforcement. In doing so, I highlight the relationship *between* linkages and administrative resources, identifying the conditions under which political demands for state action will translate into one, or the other, or both.²⁰

Scope conditions

What are the scope conditions of this argument? First, I expect the theory to hold where there are at least some societal organizations that have interests broadly aligned with specific policy goals. If groups that support a policy have been completely decimated (or have never existed in any form), there is little reason to think pro-enforcement interests will ever be powerful enough to form linkages with state officials. Second, while all states have some unevenness, the full range of patterns described above occur in states with medium levels of resources (that is, those that are not completely failing and those that do not have overwhelmingly strong bureaucracies and potentially unlimited resources) that constitute the majority of countries throughout the world. These scope conditions explicitly exclude countries with absolutely no resources to enforce policies; in these cases, the state apparatus is less important and only societal power determines outcomes. In addition, I expect the dynamics described above to be most evident in places with highly politicized states; where states are highly impervious and all influence is formalized, linkages will simply not form.

Third, I expect this argument to function for policies that are politically contested and that involve large numbers of transactions as well as high levels of discretion during implementation.²¹ In other words, this theory applies to the part of the state apparatus responsible for maintaining institutions constituted by complex sets of rules that may (or may not) be followed in a broadly distributed population. In addition to labor and pollution regulation, this set of policies includes intellectual property rights, immigration control, and natural resource management. In all of these issues, there are some groups that mobilize for, and others that mobilize against, implementation. Under such contestation, the various ways in which the state is porous to society will play a role in determining which groups prevail. While the focus of this book is on regulation,

²⁰ This relationship is substantially different to the one that has been theorized in contexts of bureaucratic autonomy. For example, Carpenter's study of bureaucracies in the United States found that ties between officials and civil society organizations could enhance autonomy and resources inside the state. This relationship was contingent, however, on the officials having strong reputations and demonstrated capacity – conditions that are absent in much of the world. See: Carpenter 2001

²¹ These policies can be described as “discretionary” and “transaction intensive.” See: Pritchett and Woolcock 2004