

Enforcement Style in the Global South

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Abstract

This paper explores how the concept of enforcement style translates to the Global South. How and to what extent does it remain useful in understanding the social effects of regulatory enforcement in political economic contexts of developing countries? The paper first examines the concept of enforcement style as developed by Kagan and others. Drawing upon studies of environmental regulation in a set of Latin American and Asian countries, the paper then examines how enforcement style can be expanded to facilitate the empirical study of regulatory behavior and its social effects in the Global South.

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Introduction

Conceived in the early 1980s, the concept of enforcement style has weathered a quarter-century of scholarly definitions, applications, and reformulations. The concept has proven itself to be very useful in empirically examining differences in regulatory enforcement behavior across and within national jurisdictions. It has also been useful for relating such differences to the social outcomes of regulation. But the concept has not yet travelled much to the Global South.¹

In study after study of environmental regulation in developing countries, the factors limiting the effectiveness of regulatory agencies involve issues of regulatory autonomy and capacity. Agencies lack autonomy when they are influenced by regulated entities to the detriment of their regulatory mission. Agencies lack capacity when they are unable to energetically enforce the law because of a lack of staff and other resources. For enforcement style to become relevant to the study of regulatory effectiveness in the Global South, it must be expanded in ways that capture these kinds of variations.

The first section of this paper provides an introduction to the concept of enforcement style as it has most often been invoked and employed in studies of regulatory agencies in the Global North. Enforcement style is most commonly thought of as a spectrum between a legalistic approach and a conciliatory approach, and scholars have often considered how these variations in style relate to the primary measures of regulatory outcomes, effectiveness and efficiency.²

The second section of this paper reformulates the concept of enforcement style for deployment in studies of regulation in developing countries. It builds on past efforts to refine the concept by disaggregating it into dimensions. In particular, it proposes two new dimensions: the degree of autonomy and the degree of capacity. With these dimensions added, the concept of enforcement style has great potential for analyzing the complex relationships between regulatory style and regulatory effectiveness in the Global South as it has in the Global North.

Enforcement Style in the Global North

The concept of enforcement style captures differences in how regulators interact with regulated agencies as they seek to gain compliance with the law. Empirical research on enforcement style involves “an inquiry into the day to day interaction between the regulatory official and regulated enterprise” (Bardach and Kagan 2002: ix). While some studies have limited their focus to “front-line” field inspectors, most have also considered the regulatory officials that direct the agency’s enforcement process to also be within the ambit of the empirical inquiry (cf. May and Burby 1998). Enforcement style has been the most studied variant of regulatory style³, which can also be thought of as including the variants “policymaking style”⁴ and “national style.”⁵

¹ By Global South and Global North, I refer to the groupings of countries generally considered “industrialized” and “developing,” respectively. The latter terms are used in this paper as well.

² A regulatory style is effective if it contributes to improving the environment, and it is efficient if it does so at minimum cost (Gunningham, Grabosky and Sinclair 1998: 26).

³ Bardach and Kagan (2002: xix) define the overarching term regulatory style broadly: “the way in which social or protective regulations are drafted, implemented, and enforced.”

⁴ With “policymaking style,” the focus is on how agencies make rules and regulations. Both Kagan (1978) and Kelman (1981) set forth rulemaking and enforcement as the two basic activities of regulatory agencies, and they investigate both. Kagan (1978: 32-34) analyzes the “activation of the policy-making process,” showing how hard questions filter up to the highest levels of the agency for more formal resolution. Kelman compares the promulgation of regulations in Sweden and the US. In Sweden, he finds that parties with conflicting interests are brought together into small groups and encouraged to agree about the promulgation of new regulations, the resultant decisions are well-accepted by business. In the United States, agency policy-making procedures were instead modeled on adversary trials with few mechanisms to encourage agreement, and the resultant decisions were often

The concept of enforcement style was well-established by the mid-1980s, and it continues through the present to be empirically explored and theoretically extended.

A Spectrum of Style

Enforcement style is most often conceived as a spectrum between two ideal types. On one end of the spectrum is the legalistic style; on the other end is the conciliatory style. The legalistic style is based on “coercion and compulsion” and is concerned primarily with “the application of punishment for breaking a rule and doing harm” (Bardach and Kagan 1982: 71-77; Hawkins and Thomas 1984: 4). The conciliatory style, in contrast, relies primarily on techniques of education, advice, persuasion, and negotiation (Hawkins 1984; Hutter 1988). Regulators use communication and compromise rather than punishment to move offenders toward regulatory compliance.

The first appearance of the term enforcement style was in Bardach and Kagan’s (1982) path-breaking work, “Going By the Book.”⁶ In a chapter conclusion, they state that “[s]trict legal provisions and rights to protection are difficult to remove, and enforcement styles, once structured by law, are slow to change” (Bardach and Kagan 1982: 52). Without developing the term, the chapter is about the legal underpinnings of enforcement styles – how the federalization and increasing stringency of regulation in the United States set the stage for a reduction in the exercise of discretion by inspectors. As the authors state, “the law has been deliberately structured to prevent capture, to program inspectors to apply regulations strictly, to pressure enforcement officials to apply formal penalties to violations, and to adopt a more legalistic and deterrence-oriented stance.” (Bardach and Kagan 1982: 57).

By 1985, the core ideal types had been specified and employed in various empirical studies. While different authors used different terminology in their ideal typologies, there was a great deal of confluence and convergence in findings among the cross-national body of research. Hawkins (1983: 36) conceptualized two contrasting “strategies” or “systems” of enforcement: compliance and sanctioning. He makes clear the ideal-typical nature of his strategies, remarking that they are “just for analytical contrast” and the “world is not so neat.” In his monograph that soon followed, Hawkins (1984) dedicated a chapter to “compliance strategy,” with a focus on how field inspectors evaluate the culpability of polluters and the central role of bargaining.

The volume edited by Hawkins and Thomas (1984) made great strides in the conceptual development enforcement style and its terminology. Reiss (1984: 23) described what he called “two generic forms of social control”: compliance systems and deterrence systems, noting that most systems are a mixture. Shover et al. (1984: 122) titled a section of their chapter, “Enforcement Styles” and described the “legalistic style” and the “conciliatory style,” with discussion of the theoretical limitations of these ideal constructs. In his contribution to the volume, Kagan (1984) also includes a section on “Enforcement Style” that contrasts formal enforcement, which is slow, labor-intensive and procedurally dense, with informal enforcement, which may involving extracting

fought by business (Kelman 1981:221). See also Melnick (1983) on policymaking style in the implementation of the United States Clean Air Act.

⁵ With respect to “national styles” of regulation, the researcher identifies patterns in enforcement and policymaking styles that appear to be generalized across a particular country. For studies of national regulatory style, see especially Kelman (1981); Brickman, Jasanoff, & Ilgen (1985); Badaracco (1985); Vogel (1986); Wilson (1989); Kagan and Axelrad (2000); and Kagan (2001).

⁶ It is worth noting that Kagan (1978), also had a great deal to say about how regulators interact with regulated entities in the course of enforcing the law. Foreshadowing conceptual developments to come, Kagan set forth a typology of modes of rule application including the judicial mode, legalism, unauthorized discretion, and retreatism, and in the conclusion, Kagan (1978: 97) refers to it as a “typology of styles.”

a promise of future compliance but is prone to accusations of legal impropriety or favoritism (Kagan 1984: 41-42).

In another important book, Braithwaite (1985) set forth an early version of ideas that he would develop more fully in his 1992 book coauthored with Ayres (1992). Braithwaite takes as his objective to “define an optimal mix of punishment and persuasion... to maximize the protection of coal miners” (Braithwaite 1985: 2) He introduces the idea of an “enforcement pyramid” in which regulators are equipped with a “hierarchy of regulatory response” such that the regulator progressively escalate punishment as deemed necessary to gain compliance (Braithwaite 1985: 120, 142). Several years later, Ayres and Braithwaite would assert that this idea of an enforcement pyramid provides an answer to the “barren disputation... between those who think that corporations will comply with the law only when confronted with tough sanctions and those who believe that gentle persuasion works” (Ayres and Braithwaite 1992: 20). While overstating the extent to which other scholars had set forth these ideal types as mutually exclusive, their contribution very usefully articulated how the legalistic approach and the conciliatory approach can be mutually operative and complementary.

Style and Social Effects

The concept of enforcement style has been the key element in the development of an impressive comparative regulatory institutions literature. It has thrived as a concept in the Global North because it has been very useful in identifying variations in regulatory behavior that have meaningful social effects. Indeed, the comparative regulatory studies literature is a terrific poster-child of what Kagan has called the social effects agenda of sociolegal studies. Standing in contrast to the bulk of sociolegal research that has sought to explain the design or behavior of law and legal institutions, the “social effects” agenda seeks to explain the actual effects or impacts of law and legal institutions on social life (Kagan 1995: 144). Given the inherent difficulties of studying such effects, this agenda has been the least emphasized within sociolegal studies despite its practical and theoretical importance (Kagan 1995: 144; Kagan and Axelrad 2000: 7).

A main debate within the literature has been whether the legalistic style or the conciliatory style results in better regulatory outcomes. Kagan (1994: 388) suggests two spectra of regulatory outcomes. The first spectrum runs from ineffective to effective, referring to the extent to which regulatory program goals, such as pollution reduction, are fulfilled. The second incorporates the notion of efficiency, running from excessively lenient to excessively stringent. He then makes an important effort to relate style to efficiency, hypothesizing in effect that while either the legalistic or conciliatory style may produce an welfare-maximizing outcome, a flexible style that combines the two styles is most likely to.

Cross-national comparisons have been particularly useful in examining the linkages between style and effectiveness. American regulatory agencies, particularly in the fields of environmental regulation and health-and-safety regulation, have been found to be more legalistic than their European counterparts (Vogel 1986; Kagan and Axelrad 2000). Calling the American way of law “adversarial legalism,” Kagan (1991; 1997; 2001) finds that policymaking and regulatory enforcement are characterized by relatively high degrees of formal legal contestation, interest group participation, aggressive judicial review, and substantive legal uncertainty. European regulatory agencies, in contrast, tend to employ the conciliatory approach, avoiding legal contestation and punitive legal sanctions.

The majority of empirical studies indicate that the involvement of lawyers and the judiciary that is characteristic to the American regulatory system tends to increase the time, cost and

adversarial character of the regulatory process without a compensating increase in the levels of compliance or environmental improvement (Badaracco 1985; Braithwaite 1985; Kagan and Axelrad 2000). In other words, the legalistic American system may be less efficient without being more effective (Vogel 1986: 146-162). However, some studies have cut in the other direction by finding that a legalistic approach may be more effective. Harrison (1995) concluded that the legalistic American approach has been more effective than the Canadian cooperative approach in reducing water pollution from pulp and paper mills. Welles and Engel (2000: 161) conduct a cross-national comparison of the landfill siting process and find support for the proposition that the US siting process provided more environmental safeguards in landfill construction and enabled local communities to negotiate for other tangible environmental benefits such as a donation of open space.

Taking Enforcement Style South

While enforcement style has been a central concept in empirical inquiries about regulation and regulatory effectiveness in industrialized countries, it has been little utilized in studies of regulation in developing countries.⁷ In part, this is simply due to the fact that there are relatively few studies of regulation in developing countries – a great deal remains to be learned about how regulatory agencies implement and enforce laws, and how effective they are. Yet it is also due to the fact that the classic spectrum of enforcement styles doesn't capture the essential elements for understanding the social effects of regulation in this context. A study of whether inspectors in a approach enforcement in a more legalistic or conciliatory manner might say very little about whether or not the agency effectively enforces the law.

For the concept enforcement style to be useful in the context of most developing countries, the concept must be expanded to incorporate variations in regulatory autonomy and capacity. This section first describes empirical findings relating to the lack of autonomy and capacity in regulatory agencies in the Global South. It then suggests the reconceptualization of enforcement style as a set of dimensions rather than a single spectrum, and sets forth the most relevant dimensions.

Regulatory Agencies in the Global South

There are several common refrains about the enforcement of environmental law in the Global South.⁸ In many countries, it is said that the laws have a strong and clear environmental protection mandate, but they are weakly implemented and enforced by governmental environmental agencies (McAllister 2008). Environmental agencies tend to lack power vis a vis the regulated entities and other political interests. Relatedly, environmental agencies are often underfunded and understaffed. Agency salaries tend to be low, and corruption is a constant concern. In sociological terms, environmental agencies in developing countries often lack the requisite autonomy and capacity to implement and enforce environmental laws.

⁷ The primary exception is found in the work on China of Lo and co-authors (see, e.g., Lo, To and Chee 2000; Lo and Fryxell 2003; Tang, Lo and Fryxell 2003). As described below, their work similarly seeks to expand the term enforcement style to accommodate the characteristics of enforcement approach that they view as most relevant to effectiveness.

⁸ This paper focuses on environmental regulation in developing countries as opposed to other forms of regulation. Gormley (1998: 363) observes that most of the literature on regulatory enforcement has focused on environmental regulation and other highly complex forms of regulation such as worker health and safety.

Strong Laws, Weak Agencies

Studies from Brazil, India, China, Vietnam, and Egypt suggest similar realities regarding the enforcement of environmental laws: laws are strong, but regulatory agencies are weak (McAllister 2008: 20). Many Brazilian scholars of environmental law and foreign commentators consider Brazil's legal framework to be thorough and sophisticated. The law provides for the use of environmental impact statements and environmental permits; sharing of regulatory power among the various levels of government with a tendency toward decentralization; strict liability for environmental harm; and a uniform system of environmental crimes and administrative penalties. Moreover, comprehensive municipal, state, and federal legislation is bolstered by a constitution that devotes an entire chapter to environmental protection. As stated by one Brazilian commentator, "It can be said that Brazil today has one of the most advanced systems of legal protection for the environment" (Benjamin 1999).

Yet the implementation and enforcement of these laws by environmental agencies has been limited in effectiveness. Brazil's federal environmental agency has not developed a regulatory presence in pollution law, leaving it largely to state governments that vary tremendously in their regulatory development. Its most significant role has been the management of forest resources in the Amazon, but it has often been criticized for ineptitude and corruption. As described by Drummond and Barros-Plataiu (2006: 100), the federal government is "still closely tied in with some of the biggest polluters," and there is no "significant political effort to make executive agencies more efficient." In Brazil's most industrialized states, state environmental agencies were strengthened in the 1980s to confront industrial pollution, but experienced budgetary and organizational decline in the 1990s. In less economically developed regions of Brazil, state environmental agencies have remained too small and disorganized to deal with the extent of their environmental problems (McAllister 2008: 21).

Environmental agencies in India suffer similar problems. As described by Bell et al. (2004: 26-27), the environmental agency in India's capital, Delhi, announced a number of new policies in the 1980s and 1990s to address the city's air pollution problems, but "none of these had much tangible impact." Such policies were often ineffective because the government lacked emissions testing equipment and established standards were considered "inadequate, easily manipulated, and often simply fraudulent." In the authors' words, environmental regulatory agencies "lack the political will to effectively implement policies... They seem to lack regulatory self-confidence – or even much practice in the actual act of regulating" (Bell et al. 2004: 35-36). Another study tells of an environmental agency in Ankleshwar that "cannot hope to monitor or control pollution effectively" and "may not even know a polluter exists" in a significant minority of cases (Kathuria and Sterner 2006: 492).

With respect to China, van Rooij (2006: 61-64) argues that environmental law lacks local legitimacy and local environmental agencies often don't enforce it. Characterized by a lack of funding and unbridled discretion, agencies may be unable to carry out enforcement tasks and may simply ignore them. Studying environmental impact analysis regulation in Shanghai, Lo et al. (2000: 316) find that "environmental agencies are weak institutions" that find it "difficult to obtain active support and cooperation from other bureaucratic authorities in charge of economic development." Tang et al. (2003) similarly note that enforcement work by municipal environmental agencies in China is undermined by factors such as their inferior bureaucratic status and tight control by city mayors more concerned with economic growth. Lo and Fryxell (2005) confirm the existence of a "gap between promulgation and enforcement" and examine the importance of governmental and societal support to effective environmental enforcement.

In Vietnam, O'Rourke (2003: 49) notes that many laws and governmental institutions have been established regarding environmental protection, but "it is surprising how little attention has been paid... to actual implementation and enforcement." O'Rourke cites the common reasons: low agencies budgets, inadequate staff, and the influence of politics. Moreover, environmental protection policies "remain peripheral or subordinate to the dominant dynamics of industrialization and urbanization." (O'Rourke 2003: 50). Regarding Egypt, El-Zayat et al. (2006) describe a "soft" enforcement of environmental regulations. The law provides for industry closures and imprisonment in the case of noncompliance, but these penalties are not used. In turn, regulated companies have adopted an "adaptive strategy of 'soft' implementation of these regulations" consisting of just enough compliance to avoid "harsh reaction" from enforcement authorities.

Regulatory Autonomy and Regulatory Capacity

These findings reflect weaknesses in state autonomy and state capacity, terms developed in the sociological literature on state-society relations (Skocpol 1985: 10-17). State autonomy is the ability of the state to formulate and pursue goals that are not simply reflective of the demands of social groups or classes. State capacity refers to the state's ability to implement its policies.

While much of the literature on state autonomy and capacity has focused on the state's ability to intervene in the economy in order to facilitate economic and industrial development, these terms are adaptable to regulatory agencies (Rueschemeyer and Evans 1985: 49). Regulatory autonomy can be understood as the regulatory agency's ability to formulate and pursue goals that are not primarily reflective of the interests of the regulated entities. In other words, an autonomous regulatory agency maintains a focus on its regulatory mission, which is likely to be in some opposition to the status quo that industry would otherwise follow. Autonomy is reduced when industry interests take precedence over the regulatory mission.

Regulatory capacity, in turn, involves the regulatory agency's ability to implement its policies. To implement policies, a certain level of staff and budget resources must be available. Agencies must have the resources to complete the basic tasks of rule-enforcement. An agency must have enough staff such that consistent communication and interaction occurs between regulator and regulated. If such interaction is not occurring, there is little use in talking about whether enforcement style is legalistic or conciliatory.

Given its use almost exclusively in studies of industrializing countries, the concept of regulatory style has developed with fairly scant attention to issues of autonomy and capacity. In this sense, certain assumptions about the state and state-society relations are embedded in the concept. It is assumed that agencies enjoy the requisite degree of regulatory autonomy, i.e. that in some meaningful sense, the agencies are capable of representing generalized societal interests and not just the interests of certain elite sectors of society. It is also assumed that agencies enjoy the requisite degree of regulatory capacity. Whether deployed in a legalistic or conciliatory manner, the resources to implement regulatory policies are assumed to be available to the agency.

An exception is found in the literature on agency capture. Capture theory predicts that regulatory agencies, though repeated contact with industry representatives, come to favor the concerns of the industry they regulate over the public interest concerns that motivated the agency's creation (Huntington 1952; Bernstein 1955).⁹ In the United States, capture theory has been undermined as a general proposition by studies showing that interest group participation may remain strong in various areas of protective legislation, particularly environmental regulation

⁹ For a good overview of the political, social psychological, and economic reasons that capture may occur, see Shapiro (1988).

(Wilson 1989: 83-84; Dwyer 1990: 309-310; Lazarus 1991: 365). However, where interest group organization is low, as it tends to be in developing countries, the capture of an environmental agency by regulated industries may be more likely. As used herein, regulatory autonomy encompasses capture but also a wider range of ways in which agencies can lose focus on their regulatory mission.

Dimensions of Style

The spectrum of styles utilized in the comparative regulatory institutions literature identified the differences that seem likely to matter most for effectiveness in the Global North. However, to understand regulatory behavior and its social effects in the Global South, it is incomplete. The concept must be expanded to incorporate information about regulatory autonomy and capacity. This can be accomplished by understanding style as multidimensional. Notably, the literature has already begun to recognize the multidimensionality of enforcement style. Several scholars have found it useful to distinguish between how agencies approach regulated entities, referred to as the degree of formalism, and how agencies respond to violations, referred to as the degree of coercion. Thinking in terms of two new dimensions, namely the degree of autonomy and the degree of capacity, has the potential to greatly enhance the applicability of the concept in the context of developing countries.

Degrees of Formality and Coercion

While the dominant conceptualization of enforcement style remains a spectrum, several scholars have sought to distinguish its dimensions or components. Most importantly, scholars have viewed the degree of formality with which agency enforcement officials approach regulated parties as separable from the degree of coercion with which they respond to identified violations. The former involves how inspectors approach regulated entities – with a rulebook-bound approach or more willing to accommodate particularized situations. The latter involves how inspectors deal with a violation once they identify it – do they impose a sanction or threaten to do so, or do they adopt a helpful, educational posture toward the violator (see Table 1).

In the first effort of this sort, Braithwaite et al. (1987: 342) constructed an “enforcement taxonomy” based on the practices of almost one hundred regulatory agencies in Australia. They categorize agencies into seven types along two dimensions. One dimension captures differences in the extent to which agencies treat regulated entities in a detached rule-book application manner or with consideration to the “particularistic” problems that the entities face. Another dimension captures differences in the punitiveness of agencies, the extent to which they emit sanction when they identify violations.

Kagan (1994: 387-88) picks up on this idea of multidimensionality in his overview chapter on regulatory enforcement. He explains that there are “two activities embedded” in the description of agencies as legalistic or conciliatory. The first “concerns the way that officials assess compliance or noncompliance” -- whether with “bureaucratic literalness” or more flexibly. This approximates Braithwaite’s first dimension. The second activity “concerns what officials do once they have decided that the regulated enterprise’s actions constitute ‘violations’” – similar to Braithwaite’s second dimension.

Table 1: Dimensions of Enforcement Style

Dimension	Description	Spectrum of Ideal Types	
Degree of Formalism	How flexibly agencies apply rules	Rule-bound, rigid	←→ Flexible, particularistic
Degree of Coercion	How agencies react to identified violations	Threatening, punitive	←→ Friendly, helpful
Degree of Autonomy	Extent to which agency goals are influenced by regulated entities	Mission-dominated	←→ Client-dominated
Degree of Capacity	How much effort agencies make to identify violations	Energetic, active	←→ Restrained, inactive

May and Winter (2000) solidify this distinction and use the term dimensionality in describing enforcement style.¹⁰ They hypothesize that “enforcement style is best depicted by two dimensions comprising (1) the degree of formalism, and (2) the degree of coercion in inspectors’ dealings with regulated parties” (May and Winter 2000: 147). The degree of formalism involves whether inspectors are rule-bound or flexible in their interpretation of the law. The degree of coercion involves the extent to which agencies are threatening in their interactions with regulated parties. In other words, it is possible for inspector to be both rule-bound in interpreting the law, but helpful and supportive in responding to an identified violation (cf. Gormley 1998: 369; May and Winter 2000: 147).

Degree of Autonomy

The first additional dimension that warrants consideration in characterizing the enforcement style of environmental agencies in developing countries is their degree of regulatory autonomy (see Table 1). An inquiry into autonomy involves an analysis of the extent to which enforcement goals and actions are influenced by regulated entities. Such influence might come directly from the regulated entity or might be channeled through a sympathetic governmental institution such as one concerned with promoting economic development.

Two ideal types can be identified to represent the extremes of the degree of autonomy. First, agency enforcement may be mission-dominated. Mission-dominated enforcement would be constituted by enforcement activities and attitudes that consistently support the achievement of the regulatory goals. Mission-dominated agencies would exude “regulatory self-confidence” – they would feel well-supported by other governmental agencies and the public in carrying out their enforcement priorities.

Alternatively, agency enforcement may be client-dominated. Client-dominated enforcement is structured to minimize inconvenience or offense to the agency’s clients, the regulated entities. Agency officials would tend to defer to experts within or associated with the regulated entity and be very sympathetic to the economic objectives of the industry. In some cases, client-dominated

¹⁰ May and Winter (2000) follow Gormley (1998: 369) in using the language of dimensionality.

agencies may essentially assume the role of a permit vendor in which the agency serves the client industries by receiving their requests for permits and supplying them with permits for a fee. As such, the permitting process would be a purely bureaucratic affair, set up to facilitate government collection of permit fees which may then fund the budget of the agency. An extreme of client-domination would be signaled by widespread corruption: bribery is a direct means of undermining the agency's pursuit of its mission.

To a greater extent than the degree of formalism or the degree of coercion, the degree of autonomy captures aspects of the pervasive tension between economic development and environmental protection in the Global South. The regulatory autonomy of environmental agencies is undermined when the argument prevails that economic development should be the government's first concern. In this political economic context, environmental agencies have difficulty defending their regulatory mission as against other private and governmental actors. Rather than being a strong actor within its domain, the regulatory agency is timid in asserting its authority and jurisdiction. Where the tensions between regulatory mission and economic development are not as pervasive, as in industrialized countries, agencies are more likely to enjoy a sufficient degree of autonomy to pursue their regulatory mission.

Even so, some studies in industrialized countries have highlighted aspects of regulatory behavior that relate closely to issues of autonomy. Gunningham et al. (1987: 84), for example, identify an "extreme 'advise and persuade strategy'" in which the agency embraces the conciliatory strategy and lacks credible sanctioning power to the extent that the outcome is "negotiated non-compliance." While Gunningham et al. use the terms of the established dimensions of enforcement style, their observation can also be understood in terms of the regulatory agency's degree of autonomy – the agency they describe was client-dominated rather than mission-dominated.

To the extent scholars concerned with developing countries have attempted to talk about regulatory style, they too have found it necessary to consider issues of regulatory autonomy. In their study of regulatory styles in China, Lo et al. (2000) set forth variables that influence regulatory behavior, several of which are closely related to autonomy. The authors emphasize the significance of a 'policy ideology' that prioritizes economic development over environmental protection. The authors also emphasize that the regulatory process involves a great deal of input from regulated entities, but virtually no public participation. In other research on China, Lo and Fryxell (2003: 84-87) identify "external influence" - along with prioritization, formalism, and coercion – as dimensions of enforcement style. By external influence, the authors refer to the pressure exerted on agency enforcement processes by political leaders and their constituencies: regulatory autonomy, by another name. Similarly, when van Rooij (2006: 70) emphasizes that local factories in China are often able to pollute with impunity because of their importance to the local economy, he might have said that the agency lacks regulatory autonomy.

Empirical work that seeks to get at the regulatory agency's degree of autonomy in enforcement would collect data about both the activities and attitudes of the field-level inspectors as well as other enforcement officials in the agency (cf. May and Burby 1998). One would want to understand the extent to which enforcement officials share the characteristics of the Weberian bureaucrat - a sense of pride about their work, a sense of esprit de corps, loyalty, purpose – and whether they approach interactions with regulated entities with these characteristics on display. In their work on China, Tang et al. (2003: 78) refer to this as "organizational commitment" and hypothesize that it is positively related to enforcement effectiveness.¹¹ Relatedly, inquiries would

¹¹ Tang et al. (2003: 78) argue that the literature on regulatory enforcement in industrialized countries has rarely considered commitment, implicitly assuming that regulators are highly committed to their job and organization.

focus on how agency officials regard the regulated entities, for example whether they regard them as socially responsible or not (Braithwaite, Walker and Grabosky 1987) and whether they feel that their work is valuable in improving the behavior of regulated entities (cf. Kelman 1984: 109-110) and otherwise furthering the goals of environmental law.

Officials could be asked questions that allow the researcher to assess their views on the relationship between economic development and environmental protection. Agency officials could also be asked to opine on the extent to which the sanctions available to them are “credible” sanctions about which regulated firms are truly concerned, and about the extent to which they believe that other enforcement officials in their agency might be prone to corruption. The researcher would be interested in collecting data about the characteristics of regulated industries (e.g. number and size of firms) and the ways in which they interact with the agency, as well as characteristics of the inspectorate, including the extent to which they project confidence and a sense of mission.

While it seems likely that in most contexts, a mission-dominated style would produce better regulatory outcomes, there are ways in which it might also detract. There is strength in the idea that close sharing of knowledge between industry and regulators is necessary for good policy outcomes (Kagan and Axelrad 2000: 404), and a client-dominated style may be more effective and efficient in some situations. Relatedly, a mission-dominated approach may veer into “crusaderism” and hostility toward regulated entities such that regulators may become “steamrollers” that lose perspective on the economic constraints that companies face (Kelman 1984: 109-111).

Degree of Capacity

Another dimension that should be considered in characterizing the enforcement style of environmental agencies in developing countries is the degree of regulatory capacity (see Table 1). Regulatory capacity, as explained above, pertains to the ability of an agency to implement regulatory policies. It might be that an agency is energetic and active in its enforcement – it is out in the field, with a reasonable number of inspectors, performing the common tasks of an inspectorate. It actively processes and resolves enforcement cases. Alternatively, it might be that an agency is restrained and relatively inactive in its enforcement: it doesn’t have the people or resources to carry out its work in a reliable and consistent manner.

The idea of considering capacity as part of enforcement style is not new, but has not been emphasized in the comparative regulatory institutions literature. Kagan (1994: 387) insightfully includes in his visualization of enforcement style a spectrum from “inactive/unresponsive” to “active/responsive” alongside the more common legalistic/conciliatory dimension. He comments that the inactive-to-active dimension of regulatory behavior “unfortunately has received little scholarly attention.” In good part, it has received relatively little attention because researchers have been able to assume that environmental agencies in the industrialized countries they have studied have the requisite degree of capacity. As such, it understandably would not be a significant factor in explaining variation in the social effects of enforcement style.

A very low degree capacity and autonomy seems likely to correspond to what Kagan (1994: 388) has labeled “retreatism” and viewed as an extreme form of conciliation and accommodation. In a retreatist mode, “officials avoid hard choices, backing down at the least sign of opposition, postponing decisions, or generating meaningless paperwork that creates only the appearance of regulatory enforcement.” As Kagan explains, regulatory officials may lapse into retreatism because they lack leadership, time or legal power; because they are corrupt or intimidated by political officials sympathetic to the regulated industry; or because they believe the law is unjustified or

unfair. In a similar vein, Shover et al. (1986: 15) note a linkage between an agency's lack of capacity and its interest in avoiding legalistic enforcement: "Insufficient budgets, inadequate personnel (in terms of either quantity or quality), and lack of adequate information tend to push agencies toward adopting negotiated compliance strategies."

Braithwaite et al. (1987: 340) also seem to explore aspects of capacity when they talk of "regulation by going through the motions." Agencies that regulate in this way deal with their potentially formidable regulatory tasks "by just being there, giving the appearance of regulatory oversight." Regulated firms may simply be able to ignore such agencies, because they aren't very active or energetic. Braithwaite et al. (1987) and Kagan (1994) refer to the distinction between proactive and reactive agencies. The former "patrol and seek out regulatory violations" (Braithwaite, Walker and Grabosky 1987: 327), the latter may only conduct inspections upon receiving a public complaint, and then maybe only slowly or inadequately (Kagan 1994: 387).

Studies of enforcement style in China have considered aspects of regulatory capacity. One study asked agency officials from three municipal environmental agencies to rate their agency in terms of financial resources, manpower resources, administrative support, and the extent to which there were conflicting rules and requirements (Lo, Fryxell and Wong 2006: 396). The study found that these measures of "organizational capacity" strongly influenced agency officials' perceptions of their enforcement effectiveness in two of the three agencies surveyed (Lo, Fryxell and Wong 2006: 399).

Empirically studying regulatory capacity involves collecting data about the resources and capabilities of an agency. How much enforcement is actually performed: how often are enforcement inspections made? What are the rates of violations and sanctions? How much communication occurs between regulator and regulated? Does the enforcement official feel that there are enough other inspectors and agency office locations such that together they are able to reasonably cover the regulated universe? How has agency staffing, agency budgets, and rates of sanction varied over time?

The researcher would also want to know about the competence of the staff. To what extent is the agency able to recruit educated and competent inspectors and provide them with continuing education? (cf. Bardach and Kagan 1982: Chap. 6) Do inspectors feel that they have ample resources to perform their jobs, including monitoring equipment and means of transportation? Does the agency have the resources to enable its inspectors to specialize in certain enforcement areas when necessary? Does the agency dedicate adequate resources to overseeing and directing the activities of its field-level inspectors, and do the inspectors feel that their supervisors are knowledgeable and competent? In wealthy countries, it may often be assumed that training and supervision will be adequate to enable inspectors to do a job, but it cannot be taken for granted in poorer countries.

The degree to which the agency is active in setting priorities and carrying them out is also an indicator of the degree of capacity. Notably, in their study of the relationship between enforcement styles and effectiveness in China, Tang et al. (2003: 90-93) find that prioritization and organizational commitment, an aspect of autonomy as described above, have the strongest effects on environmental agency officials' perceptions of their enforcement effectiveness.¹²

¹² Lo et al. (2006: 391) define "enforcement effectiveness" as "success in securing compliance from the regulated; in other words, in closing the enforcement gap."

Conclusion

As developed through twenty-five years of empirical study of regulatory agency behavior, enforcement style has been a very successful concept. A spectrum of styles ranging from legalistic to conciliatory has been used to describe and classify enforcement behavior in a wide range of local and national contexts in the Global North. Scholars have been concerned not just with identifying variations in enforcement style, but also in trying to understand the social effects of different enforcement styles.

To travel to the Global South and explain the social effects of regulation there, the concept of enforcement style must be expanded. This article suggests, as other scholars have, that enforcement style can be thought of as having more than one dimension. Most often, this conceptual refinement has come in the form of distinguishing between two dimensions of style: the degree of formalism and the degree of coercion. To be most useful in developing countries, however, enforcement style must be expanded to include dimensions pertaining to state autonomy and capacity. The degree of autonomy, from mission-dominated to client-dominated, is intended to capture aspects of how much influence industry has on the enforcement process. The degree of capacity, from energetic to restrained, is intended to be a measure of the level of enforcement activity and the availability of resources to support enforcement.¹³ In other words, to assess a dog's bite, it is useful to look not just at how indiscriminately and loudly he barks, but also how motivated and large he is.

While much has been done to understand the relationships between enforcement style and its social effects, much work remains. As noted by Kagan (1994: 386) style “does not bear any single, invariable relationship” to effectiveness,” and the task is to specify more carefully the conditions under which agencies adopt different styles and “what impact, under particular conditions, administrative style has on programmatic effectiveness, viewed in all its dimensions.” With a multidimensional conceptualization of the enforcement style, the comparative regulatory institutions literature can continue to cross national borders with the goal of understanding the social effects of law and, hopefully, improving regulatory outcomes.

¹³ While this article has focused on enforcement style, these new dimensions may also be useful in capturing variation in policymaking style and national style.

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