23 The pragmatic politics of regulatory enforcement

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This chapter describes regulatory enforcement as an intrinsically political endeavor. We argue that regulatory enforcement, as enacted daily by front-line enforcers around the world, consists of the production of local agreements and arrangements that realign interests, reshape conflicts, and redistribute the risks, costs, and benefits of doing business and complying with the law. We argue that, through their transactions, both the regulators and the regulated reshape both their interests and the environment in which they operate, reconstructing their perceptions of and preferences for compliance. We call this phenomenon the "sub-politics of regulatory enforcement," and claim that it provides a springboard for a pragmatic approach to better regulation.

We begin by tracing the trajectory of the field of regulatory enforcement to identify some of its current boundaries. Next, we explore recent research on inspectors and street-level regulatory agents, introducing the notion of "sub-politics of regulatory compliance." This construct evokes a conception of politics that differs from the idea that predominates in the regulatory enforcement literature. Contrary to those who see enforcement styles and strategies as independent variables determining compliance, we posit that enforcement agencies and regulated entities engage in an indeterminate exploration of their institutional surroundings to create legal, technological, and managerial artifacts and agreements to address practical problems of doing business and complying with law. These agents move beyond imposing fines, issuing warnings, or educating their subjects. Rather, they engage in what we describe as a terrain of sub-politics by building agreements that reshape conflicts and reapportion risks, costs, and benefits among various agents so as to make compliance tolerable, sometimes even advantageous, to all involved. We conclude with a discussion of theoretical implications and suggestions of potentially new directions for research on the politics of regulatory enforcement and compliance.

23.1 RULEMAKING VERSUS RULE ENFORCEMENT

Much of the literature on regulation treats rulemaking as inherently separate from rule enforcing. Indeed, there are several reasons for such a distinction. Ideally, rules are abstract and universalistic and assign general, publicly available rights and responsibilities. In states claiming to operate under the rule of law, regulations are produced through visible and participatory processes based on public consultation and open debate. Conversely, enforcement acts are concrete and particularistic; they take place in private settings far from public scrutiny, and result from an exercise in interpretation in which enforcers assign legal labels to facts on the ground.

Still, this distinction is not absolute. Crucially, it is inaccurate to claim that rulemaking is political while rule enforcing is the mechanical application of predetermined

and unambiguous rules. Enacted policies are the consequence of competing interests, often embedding oppositions within the law (Kolko 1965; Silbey 1984). Even where the authorizing mandate is uncontroversial, ambiguity is likely to prevail in prescriptive rules, and thus enforcers will always find interstitial room for maneuver, moving beyond interpretation to engage either overtly or covertly in the prioritization and redistribution of power and resources (Davis 1972).

The political nature of enforcement is well known to those being regulated. As stated by Scott (1969: 1142, emphasis in the original):

> A large portion of individual demands, and even group demands . . . reach the political system, not before laws are passed, but rather at the enforcement stage . . . [and while] . . . influence before the legislation is passed often takes the form of "pressure-group politics"; *influence at the enforcement stage . . . has seldom been treated as the alternative means of interest articulation which in fact it is*.

Interestingly, the elision of politics from enforcement tracks the evolution of studies of implementation, an activity that was once seen as "technical" while the policy deliberations that preceded it were considered "political." Pressman and Wildavsky, in their classic study *Implementation* (1973), lamented that faulty technical implementation subverted legitimate political goals, or, as they put it, "how great expectations in Washington are dashed in Oakland." Ultimately, Pressman and Wildavsky identified such a large number of occasions on which public policies could be derailed during implementation that they expressed surprise that government programs worked at all. Lack of adequate funding is a common concern, but, as suggested by Freundenburg and Gramlin (1994), bureaucratic slippage, which they define as "the tendency for broad policies to be altered through successive reinterpretation" (p. 214), is an even more insidious source of variation between plan and reality. For this reason, scholars ought to "devote far greater attention to the 'details' of implementation," since these details "have the distinct potential to be not just administrative, but effectively political" (1994: 214).

Nowhere is the view that rule enforcement is inherently political clearer than in studies of front-line organizations where street-level bureaucrats go beyond implementing to actually making policy. "The decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively *become* the public policies they carry out" (Lipksy 1980: xii, emphasis in original).[1] Enforcement agents, just like policy- and rulemaking agents, engage in the allocation and redistribution of resources, inevitably benefiting some groups or interests over others. "Choosing among courses of action and inaction, individual law enforcement officers become the agents of clarification and elaboration of their own authorizing mandates. Bureaucrats become lawmakers, freely creating . . . law beyond written rules or courtroom practices" (Silbey 1980–81: 850).

Despite these long-standing observations, the politics of regulatory enforcement remains understudied. In a review, Schneiberg and Bartley (2008) suggest that future work on regulatory dynamics in the contemporary world should "address how rules, models, and conceptions of compliance get reshaped in the process of implementation" because "legal and organizational blueprints rarely emerge unscathed from a trip from one setting to another" (p. 49).

23.2 UNPACKING ENFORCEMENT

The bulk of the literature that addresses regulatory enforcement focuses primarily on a deceptively straightforward question, namely "When enforcing the law, what is it that regulators actually do?" To answer this question, researchers have strived to establish a consensually agreed taxonomy of regulatory practices and consequences, with the main challenge concerning the mode of aggregation. Empirically, the only observable manifestation of regulatory enforcement is the "enforcement act," i.e. the discrete signal conveyed by a law enforcement official when interacting with the regulated enterprise. Examples include verbal admonishments, written warnings, and the imposition of a fine, and the universe of these acts is immense. Hunter and Waterman (1992) studied how the US Environmental Protection Agency (EPA) enforces water regulations and discovered that EPA agents deploy at least 60 different techniques.

Clearly, none of these enforcement acts means much by itself, when considered in isolation from other acts and from the context in which it is deployed. Ultimately, the challenge is to make a forest out of these trees. To accomplish this goal, scholars of regulatory enforcement aggregate the enforcement acts performed by a given unit of analysis – ranging across individual inspectors (May and Burby 1998; May and Winter 2000; Locke et al. 2009), enforcement agencies (Silbey 1980–81; Hawkins 1984; Braithwaite 1985), countries (Kelman 1981; Badaracco 1985; Brickman et al. 1986; Vogel 1986), and major political and legal traditions (Piore and Schrank 2006) – into either static, hard-wired "styles" and/or dynamic, interactional "strategies."

To this end, and historically, scholars of regulatory enforcement started out by assuming a uni-dimensional space that led to early distinctions between means-oriented and result-oriented approaches (Bardach and Kagan 1982). Subsequently, others separated the arm's length detection and punishment of violations (the so-called "deterrence," "sanctioning," "adversarial," or "policing" model of enforcement) from the transactional processes of cooperation and negotiation (the "compliance," "cooperation," "pedagogic," "bargaining," or "persuasive" model) (Hawkins 1984; Braithwaite 1985; Day and Klein 1987; Hutter 1989; Hunter and Waterman 1992; Zinn 2002; Piore and Schrank 2006; Locke et al. 2009). Eventually, researchers started plotting phenomena on a multi-dimensional space that took into account how enforcers interpret the legal code (ranging from a narrow-legalistic code to a broad, general mandate) and how facilitative (or "friendly") the enforcers are, i.e. whether they emphasize correction or punishment (Braithwaite et al. 1987; May and Burby 1998; May and Winter 2000).

As part of this same program, some researchers incorporated contextual variables into their models and thus, instead of attempting a taxonomy of static styles, have described, and prescribed, dynamic strategies in which regulatory agents act in a way that counterbalances the enterprises' intrinsic inclinations and prior responses (Sparrow 2000; Baldwin and Black 2008). While identifying and then assessing these strategies, some suggest that enforcers temper their cooperation with the credible threat of punishment (Zinn 2002), follow a tit-for-tat approach (Scholz 1984), or adopt an escalating strategy, in which the remedy is tailored to offset the nature of the violations and the prior responses from the regulated enterprise (Ayres and Braithwaite 1992). Ultimately, this debate created a conceptual vocabulary lacking mutually exclusive categories to

characterize a range of enforcement practices, from accommodative, flexible, persuasive, and creative to insistent, strict, legalistic, retreatist, and more.

Despite important advances, the effort to identify enforcement strategies correlated with degrees of regulatory conformity is undermined at its origin. First, there is a significant amount of measurement error and limited generalizability. As mentioned earlier, this literature pivots on the challenge of aggregation, i.e. collating discrete enforcement acts so they can be catalogued as styles or strategies. However, some enforcement acts may be misleading and difficult to code. An instance of "strict enforcement" – such as referral to criminal prosecution – may not be strict if everyone involved knows that the prosecutor is unlikely to indict. Likewise, criminal prosecution could mean interminable delay and thus, instead of being a sign of severity, such a referral would be a boon to the defendant, creating opportunity to gather profit that exceeds the ultimate losses (cf. Ewick 1985). And then, even if any given enforcement act can be usefully coded, other aggregation problems arise. The same inspector can be strict today and lenient tomorrow, focused on deterrence when dealing with a large corporation and focused on compliance when dealing with a mom-and-pop shop, or vice versa. Analogously, the same bureaucracy can harbor people with different orientations. This means that aggregation forcibly eliminates certain details, inadvertently obscuring the existence of internal variation, pockets of deviance, and the interaction among different styles or strategies.

Second, the existing literature assumes that enforcement relationships are dyadic and mutually exclusive, i.e. each enforcement agent is supposed to engage with one regulated enterprise at a time and in the absence of any other intervening institution. This view describes two parties to each transaction communicating exclusively through discrete enforcement acts. This assumption makes some amount of aggregation possible, but it obscures the possibility of agency that is intrinsic to front-line work, as will be described below.

Finally, the existing approach does not take sufficient account of the conflicting interests, ambiguities, and indeterminacies embedded in regulatory law itself. At a broader level, the literature on regulation rarely provides general or contextualized accounts of how interests are formed, channeled, and reshaped through regulatory enforcement, and how the desirability of compliance can be constructed as a result of ongoing and evolving transactions between regulators and those being regulated. In other words, existing attempts at understanding regulatory enforcement too often overlook the politics of regulatory enforcement.

23.3 THE (SUB)POLITICS OF REGULATORY ENFORCEMENT

Surely, existing analyses have paid some attention to a certain "politics of regulatory enforcement." However, where there has been notice, the "politics of regulatory enforcement" has been defined narrowly as the enabling or constraining environment in which inspectors and their counterparts work. As part of this effort, researchers have compiled a long list of variables that determine the styles and strategies that regulators will adopt and the likelihood that they will be effective in fostering compliance. This list includes: the characteristics of the legal regimes in which relevant actors operate, for example civil law versus customary law (Hawkins 1992, 2002; Braithwaite 2006); the prevailing

political-cultural traditions and conceptions of state–society relationships, for example liberal versus corporatist (Kelman 1984; Piore 2004); the local political environment, for example conflictive or insulated, and the degrees to which regulators may be explicitly or tacitly captured by the regulated (Marvel 1977; Hawkins and Thomas 1984; Silbey 1984); characteristics of the regulated industries and their production processes, for example firm size and number of firms (Shover et al. 1984; Lee 2005; Weil 2005); firms' internal management systems (Gunningham et al. 2003); and types of relationships and networks linking the various actors involved, including business associations, NGOs, trade unions, and others (Ayres and Braithwaite 1992).

The attention paid to these contextual variables notwithstanding, the existing literature has often overlooked the processes through which the different actors construct and reformulate their alliances, preferences, and willingness to comply. In other words, it has overlooked what, following Vries (2007), we call "the sub-politics of regulatory enforcement." The labor inspectors we study are involved in politics "because they . . . translate[d] a wide range of conflicting views and interests into a common good." But, "for the simple reason that their political work took place outside the official institutions and arenas of state politics, we may qualify their role as a 'sub-political' one" (Vries 2007: 798).

The next section moves into this neglected space with two cases illustrative of what has been repeatedly found in the enforcement of labor, as well as environmental regulations, in countries such as Brazil (Coslovsky 2009; Pires 2009). These cases show how regulators, regulated enterprises, and other parties and institutions co-produce local agreements and arrangements that can facilitate or hinder compliance (cf. Jasanoff 1996). In other words, we describe how these labor inspectors engage in the sub-politics of regulatory enforcement.

23.4 THE ENFORCEMENT OF LABOR REGULATIONS IN BRAZIL

This section reports on two cases involving respectively the enforcement of wages and hours, and occupational health and safety regulations in Brazil. The first case concerns the temporary employment of low-skilled workers during carnival in Salvador, Bahia. For six consecutive days in February or March every year, an estimated 1.2 million people occupy 26 kilometers of streets in Salvador to celebrate carnival. This activity generates upwards of US$250 million in revenue and creates 130 000 to 185 000 additional jobs in the city (Secult/Seplan-BA 2007). Approximately 70 000 of these people are recruited among the low-skilled to act as *cordeiros* (rope-holders) for one of the many *trios elétricos* (roving carnival bands). Their job is to lock arms with each other around a thick rope and form a compact human shield that encircles paying customers, separating them from the non-paying audience. Not surprisingly, most of these workers are hired informally and granted none of the guarantees prescribed by Brazilian labor laws.

Employers in the sector operate in highly competitive markets and are chronically pressed to reduce costs. They perceive existing wage and hour regulations as burdensome, claiming that formalization of contracts and compliance with wage and hour regulations are likely to drive them out of business. To preserve profits, many of them recruit their workers through labor contractors who ignore practically all Brazilian labor laws.

As a result, actual work conditions tend to be precarious, the non-payment or underpayment of wages is widespread, and workers are not afforded safe working conditions or access to grievance mechanisms through which to seek redress.

In response to this situation, in 2003, labor inspectors moved in to impose fines on individual violators. Inspected firms pushed back and pointed out that compliance posed economic risks when competitors did not also comply. Thanks to this initial exchange, inspectors learned that regulatory infringements were so widespread that they could not be fixed one firm at a time. To move forward, inspectors decided to check on carnival promoters during the festivities to fine large numbers of violators simultaneously. Thanks to this aggressive and coordinated move, firms that had previously ignored warnings or refused to talk agreed as a group to start meeting with the labor inspectors.

These meetings, held in 2004, were heated, often hostile. Firms raised multiple justifications for existing practices, and inspectors responded with an equally diverse set of arguments for improving labor conditions. Thanks to this collective engagement in a process of justification and reason-giving, the firms, regulators, representatives from local business, and workers' associations exchanged what turned out to be pertinent technical, legal, and commercial information, developing through the discussions a shared account of local market conditions. For instance, inspectors found out that carnival promoters often had problems with *cordeiros* who abandoned their post for better jobs during the festivities, got drunk or otherwise intoxicated during their shifts, or even mugged or intimidated paying customers.

Eventually, participants started to inch towards a mutually acceptable solution. Inspectors recognized that it was unreasonable to require carnival promoters to process all the paperwork to formally hire and then fire tens of thousands of workers within a single week. Likewise, employers accepted that they could not continue to avoid all provisions of the labor laws and that workers merited some protections. Together, inspectors and carnival promoters developed a standardized contract that reproduced many of the mandatory provisions already included in Brazilian labor laws but with modifications appropriate to the brief employment relationship typical of this industry. These service provision contracts (SPCs) stipulated minimum daily wages, a minimum number of breaks during the shift, the provision of food, gloves, and other protective equipment to *cordeiros*, and insurance against accidents. These contracts also automatically lapsed at the end of carnival. Early adopters soon realized that their workers provided better services, and some of these enterprises started advertising services of higher quality to their prospective customers. Since 2005, more than 25 000 SPCs have been signed each year, and just about all contracting parties have found themselves to be better off.

The second case examines the enforcement of health and safety regulations in the auto-parts industry, in Minas Gerais. The wave of trade liberalization that swept the world during the 1990s increased pressure on manufacturers in all sectors to reduce costs and increase productivity. This trend was particularly acute in the auto-parts industry, which had undergone significant restructuring worldwide in previous decades, including the widespread adoption of just-in-time production strategies (Tewari 2006).

In Brazil, auto-parts manufacturers, an industry that employs an estimated 310 000 people, responded to these pressures by increasing production targets and "sweating" their labor. A large proportion of these firms use punch-presses, the equipment that stamps auto-parts out of sheet metal. These machines are intrinsically dangerous, and

occupational accidents in this industry, including the laceration and amputation of fingers, hands, and arms, soared to the point where they represented 48 per cent of all industrial machine accidents in the country (Piancastelli 2004). To a large extent, the problem rested on the absence or obsolescence of safety devices. A contemporary study found that none of the punch-presses traded in Sao Paulo state had adequate protection to minimize workplace accidents (Mendes 2001). And yet manufacturers resisted upgrading their machines as mandated by labor regulations not only because of the large capital investment required, but also because they feared that safety devices would reduce overall productivity.

For some time, labor inspectors tried to crack down on these violations and to entice firms to replace obsolete punch-presses with new ones. This effort mostly foundered, so a team of labor inspectors reached out to labor prosecutors and researchers from FUNDACENTRO, a health and safety institute associated with the Ministry of Labor, to explore alternative approaches to improving safety conditions. These officials soon realized that they did not know much about the design and functioning of punch-presses, which safety devices actually existed, and whether worker safety could be improved without compromising productivity. According to a labor inspector, "we studied the functioning of these machines, the catalogues of protective equipment producers, all in order to know the best alternatives to manage productivity loss."

Instead of pursuing what seemed like the utopian goal of replacing all existing machines with newer and safer models, the regulators searched for more efficient protective devices, conducted ergonometric studies, and tried to convince public banks and financial authorities to provide subsidized credit for retrofitting existing machines. Eventually, they developed a set of comprehensive protection kits that effectively improved worker safety without compromising overall productivity. In 2003, the number of accidents recorded in the auto-parts industry fell by 66 percent when compared to 2001 figures. By 2005, 70 percent of the 350 firms inspected in the Belo Horizonte metropolitan area had adopted adequate protection for their punch-presses.

Together, these two cases illustrate how far regulatory enforcement agents can move from conventional practices of visiting firms, detecting violations, and issuing citations. As these cases show, the agents also explore options, convene allies, enable collective action, and create room for maneuver within prevailing statutes to propose innovative routes to compliance. In one instance they developed novel legal contractual forms, namely the service provision contract for *cordeiros* in Bahia. In another instance, they helped fairly sophisticated auto-parts firms develop safety devices that protected workers while preserving productivity. Importantly, these arrangements also required the inspectors to recruit additional institutional allies such as FUNDACENTRO (punch-presses), labor prosecutors (service provision contracts), and others. Clearly, this kind of intervention is not captured by existing portrayals of regulatory enforcement agents either enacting particular styles or pursuing a recognized strategy – whether of deterrence or education. They certainly use the "standard" tools of the trade, but they also go beyond the conceptions of politics as a competitive game and enforcement as conformity with legal instruction that underlie the existing literature. Rather, they engage in a type of subpolitics of regulatory enforcement that stimulates participation in local agreements, in the process constructing novel legal, technological, and managerial objects and arrangements that can travel beyond the local origin. More pointedly, these agents go beyond

existing conceptions of regulatory enforcement as a zero sum outcome and transform compliance with the law into a positive sum.

23.5 PRAGMATISM AND THE SUB-POLITICS OF REGULATION: CONCLUDING REMARKS ON THE RELEVANCE OF POLITICAL AND LEGAL THEORY

Although the existing literature on regulatory enforcement certainly recognizes that enforcement agents have at their disposal a multitude of tools, tactics, and strategies, it too often embeds the conception of the multi-dexterous agent within a narrowly instrumental conception of law and of actors as proto-rational calculators. These enlightenment conceptions depict laws as expressions and uses of state power for purposively organizing social relations to produce specific conditions. In constitutional polities, laws – whether expressions of popular or merely elite will – are created through predictable and visible processes of legislature, court, or regulatory agency. The resulting decisions are purported to be binding for all members because that is what constitutionally established democratic institutions and procedures are for: the people rule themselves, take responsibility for their own laws, and – as rational beings – conform to the law or are held responsible when they fail to do so.

Eschewing equally valid conceptions of law as symbolic articulations of general or group norms (Gusfield 1963, 1981; Edelman 1964), or as available devices for diverse and unpredictable uses (Silbey and Bittner 1982), the regulation literature has cornered itself into narrow models of competitive politics, albeit with a long and prestigious lineage from Hobbes to Weber and Schumpeter, the founders of what turn out to be forms of naïve rationalism and democratic elitism. This historical understanding of politics is modeled on a conception of human agency that identifies action with the execution of an individual's (or a collectivity's aggregated) will: preferences, interests, aims, and plans (Unger 1975 [1981]). This pervasive, if often subtly, instrumental conception of law limits our understandings of regulation, by making it coincident with conceptions of politics as the activities of "only the leadership, or the influencing of the leadership, of a political association, hence today, of a state" (Weber 1946 [1917]: 506).

For analyses of regulatory enforcement, however, this political theory seems to make a crucial but unsubstantiated assumption that will formation and the execution of decisions are clearly separated, conceptually as well as temporally, with processes of will formation preceding execution (Vries 2007). Drawing from this prevalent conception of politics, discussions of regulatory efficacy – as we discussed at the outset – focus on practices, styles, and strategies as the means through which regulatory and policy goals, functioning as predetermined conceptions of compliance, are achieved. With such an instrumental conception of policy and action, it is not surprising that researchers looking for consistency between law and action declared through the 1980s and beyond that the regulatory state was a failure (Sunstein 1990). A consensus developed among mainstream scholars that things never quite work out as they ought when legislation is translated into administration. Rather than focus on what kind of practices were nonetheless achieved, the research depicting regulatory inadequacies became fodder for normative projects decrying public regulation alongside policy to deregulate (Besley and Burgess

2004; Botero et al. 2004; Alesina et al. 2005). While scholars may have sought regulatory reform, their work was appropriated to fuel regulatory retreat.

In contrast to the efforts to document the ways in which law enforcement meets or escapes authorizing regulations, the empirical material we presented above and elsewhere (Pires 2008; Coslovsky 2009) takes up the focus abandoned by earlier research to observe what is actually accomplished through regulatory enforcement and how what is done is actually performed. Specifically, we described a process of regulatory enforcement that is more dispersed and not necessarily limited within the confines of the state or predetermined procedures. The examples suggest the co-production of compliance at the local level and not the execution of predetermined mandates. The solutions devised in each case did not result from the mere accumulation of preferences and interests of the different actors involved, or from a simple compromise among the parties. Of course, these were present, but the actual solutions for each case involved exploration, discovery, invention, and agreement around the creation of new technological, managerial, and legal solutions, some institutionalized in contracts and organizations, and others incorporated almost seamlessly into the production process.

This type of regulatory enforcement evokes a different conception of politics, one that has equally deep and generative roots in Aristotle and more contemporarily in Arendt, Habermas, and most importantly Dewey. Without insisting that these theorists can be made mutually consistent, their work, individually and collectively, offers an alternative to the model of law as prescription and governing agents as means–end calculators. According to Aristotle, politics refers to any form of governance that explicitly takes into account the plurality of interests and opinions among participants. Politics, in this pragmatic sense, involves the search for actions that can reconcile conflicting experiences. Dewey (1927) analogized this conception of politics to scientific experimentalism, where policies, decisions, and actions are revisable in light of experience and new evidence. Dewey believed that democracy was a form of politics uniquely suited to the 20th century precisely because "the democratic community replicates the community of broadly conceived scientific inquiry that serves as the prototype of instrumental reasoning" (quoted in Westbrook 1998: 130). Importantly, for Dewey, instrumental reasoning means something quite different than the standard rational calculation model. He is invoking not only a more capacious notion of politics but also a conception of empirical and collaborative reasoning far from the legalistic model of command and control characteristic of more traditional conceptions of politics, law, and regulation. For Dewey, instrumental reasoning refers to processes in which "free and creative individuals, in democratic as in scientific communities, collectively test hypotheses to find out what works best. These communities set their own goals, determine their own tests, and evaluate their results in a spirit of constructive cooperation" (Kloppenberg cited in Westbrook 1998: 130). This conception of politics, and by implication regulatory enforcement, includes and goes beyond the give-and-take of "normal" politics, or the command and control of legal prescription and agent implementation; it requires creativity, flexibility, and joint problem-solving in the construction and articulation of new solutions and policies for emergent collective problems.

Although one can understand law as a tool, an instrument for both enabling and confining action, it is also a system of meanings (Ewick and Silbey 1998). Rather than beginning with the notion that law exists independently and outside of the subjects it purportedly regulates (e.g. persons, workplaces, firms, and business associations), the

examples we presented above of the sub-politics of regulation illustrate the practices through which agents and firms collaboratively crafted distinctive institutions (new forms of contract, new packages of safety equipment, new labor and management collaborations) and new forms of subjectivity. Moreover, the negotiations that developed between agents and firms did not merely re-inscribe moral values or economic interests that existed independently or prior to the enforcement collaboration. Neither the law nor the regulations guided agents that ran like trains on their tracks. Rather, as noted in the classic studies of routine regulatory enforcement, the agents' decisions "effectively [became] the public policies they [are empowered] to carry out" (Lipsky 1980: xii), and "the individual law enforcement officers [became] the agents of clarification and elaboration of their own authorizing mandates" (Silbey 1980–81: 850).

As an important corollary, the interests and aspirations exchanged and negotiated among agents and the firms did not exist in pristine independence of the aspirations and purposes encoded in law. The goals of any law (e.g. labor regulations and standards) are a significant part of the commonly circulating understandings of what constitutes labor or workplace safety (Gray 2002, 2009). What we expect of each other, of the state, and of business is in part shaped by law, even if those goals are not fully achieved in practice. In both its ideals and its practices (Silbey 1985), law is part of everyday social transactions without which those relations would not be decipherable or interpretable.

This pragmatic, cultural perspective on the sub-politics of regulation challenges the conception of policy as a linear aggregation of individual actions. As Dewey and Habermas suggest, the law is not the outcome of independently self-determining individuals collecting their wills for mutually self-interested ends. This pragmatic framing argues that the interests, desires, and compliant or resistant actions are mediated (produced and articulated) through legal (and non-legal) symbols, institutions, and organizations without which they are indecipherable and meaningless. This is a reciprocal and recursive process of mutual construction; neither legal regulations nor their implementation exists independently of the social relations (transactions and subjectivities) which they help to compose and in which they are embedded.

Of course, there are dangers in the kind of emergent, pragmatic, and collaborative problem-solving we have described as the pattern of Brazilian labor regulation. At its extreme, it hints at ungoverned power, lawlessness, and unlimited discretion. Recall, however, that these regulatory successes were achieved through painstaking, sometimes hostile negotiations and sometimes participatory deliberations. No one agent or group acted independently or autonomously, although the labor inspectors certainly had some authority to do so. These observations demand further inquiry, in which we and others are actively engaged.[2] For example, Pires (2009) investigated the conditions under which the same Brazilian labor inspectors use their discretion to serve, rather than to thwart, the public interest, calling attention to the possibility of "flexible bureaucracies" as organizations that reconcile accountability of bureaucratic behavior with creativity and innovation. Likewise, Coslovsky (2009) examined how Brazilian prosecutors use their discretion to enforce labor and environmental laws in a way that preserves, and in some cases even enhances, the competitiveness of offending firms. He identifies an internal ideological dispute between conservative and reformist prosecutors within the procuracy, as well as the reformists' reliance on NGOs and community groups for political backing, technical data, and logistical support, as overlooked sources of accountability

that ensure that discretion will be used to advance the public good. Rodrigo Canales (2011) has followed the work of micro-credit loan officers in Mexico, documenting the ways in which greater financial stability and economic productivity are achieved when loan offices include agents who vary in their strategies, some legalistic and following the letter of the law, and others using discretion to respond to individual needs and situations. Finally, Huising and Silbey (2011) and Haines (2011) examine front-line officials operating in a variety of settings, identifying an emerging "sociological citizenship" among those who apprehend "the relational interdependence that constitutes [their] life-world" and use "this systemic perspective to meet occupational and professional obligations" (Silbey et al. 2009: 223).

In conclusion, we reiterate that this cultural, essentially pragmatic conception of the sub-politics of regulation has a rich and diverse genealogy. Studies of regulatory enforcement would clearly benefit by careful excavation and recuperation. Hirschman (1995) offered just such a pragmatic account. In contrast to conventional views of politics that assumed a shared idea of the common good as a prerequisite for policy, Hirschman argued that the common good is itself the result of a process of reconciliation among the various groups or actors touched by local problems. "Diverse groups hold together because they practice politics, not because they agree about 'fundamentals,'" (Dubiel quoted in Hirschman 1995: 238–9). According to this proposition, the meanings and practices required for compliance with the law by firms and economic actors are not some mysterious quality that precedes or soars above politics: it is the activity of politics, sub-politics, itself.

NOTES

1. However, Lipsky (1980) also claims that front-line officials are so overwhelmed with the demands of the job that they are forced to renounce their discretion (and public spirit) and adopt coping routines. In the end, they affect policy, but not in a conscious and proactive manner – indeed, this is the "dilemma of the individual in public service."
2. See Noonan et al. (2009) for a discussion of how welfare programs can be adaptive and responsive and yet meet rule-of-law criteria.

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