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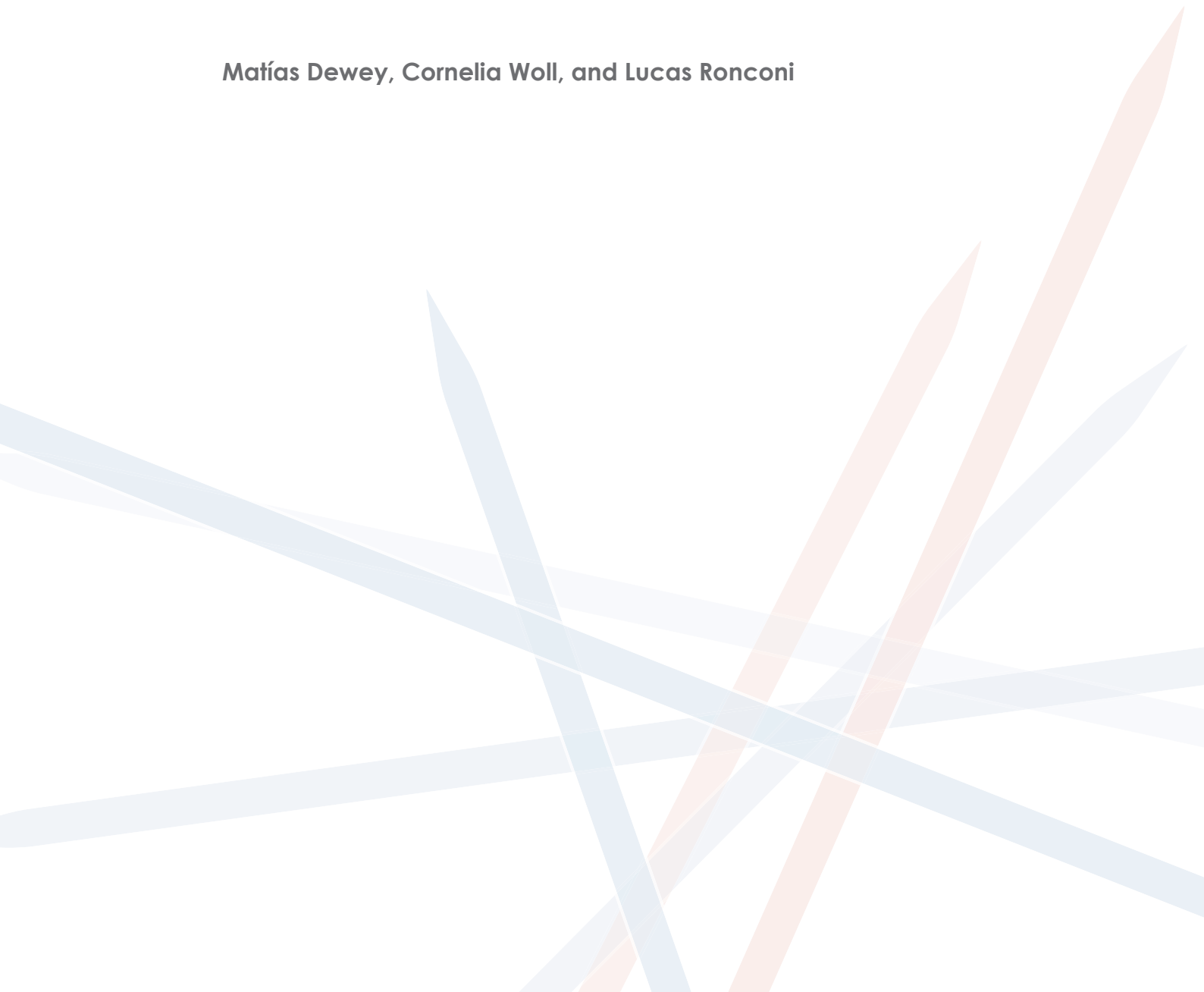
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The Political Economy of Law Enforcement

Matías Dewey, Cornelia Woll, and Lucas Ronconi



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The Political Economy of Law Enforcement

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Abstract

The legal order is the legitimate foundation of liberal democracy. Its incomplete enforcement of the law can therefore appear dysfunctional, reflecting weak institutions, state capture, and corrupt practices. This paper casts doubt on such categorical assessments by systematically examining the reasons for and intentions behind incomplete enforcement. It argues that law enforcement is part of the political process that is deeply affected by the constellation of actors concerned. Choices over law enforcement produce social order that is analytically distinct from the production of legal norms and their formal implementation. By analyzing different types of partial enforcement, its rationales, and intended effects, we propose an approach that studies law enforcement as an integral part of public policy analysis and of the study of socioeconomic orders.

Keywords: corruption, economic development, forbearance, informal institutions, law enforcement, policy implementation, state capacity

Résumé

Si l'on considère le droit comme fondement légitime de la démocratie libérale, son application partielle peut paraître dysfonctionnelle, témoignage de la faiblesse des institutions, de la capture étatique ou de la corruption. Cet article met en question une analyse aussi catégorique, en interrogeant les motivations et objectifs d'une mise en application juridique incomplète ou sélective. Nous concevons l'application de la loi comme partie intégrante de l'action publique, profondément façonnée par la constellation des acteurs concernés. Les arbitrages sur la mise en vigueur des lois sont une manière de produire de l'ordre social qui doit être analytiquement distincte de la production des lois et de sa mise en œuvre. En examinant différentes formes de l'application partielle de la loi, leurs motivations et leurs impacts, nous proposons une approche qui inclut la mise en application du droit comme partie intégrante de l'action publique et de l'étude des ordres socio-économiques.

Mots clés: application du droit, autorité discrétionnaire, capacité étatique, corruption, développement économique, institutions informelles, mise en œuvre des politiques publiques

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The Political Economy of Law Enforcement

1 Introduction

Law applies equally to everybody. This equality is a founding principle of liberal democratic orders, guaranteed in constitutions and bills of rights. Indeed, the rule of law is a defining principle of the modern state. Max Weber famously argued that the legitimate authority of the legal system rests in the universal application of a body of rational formal rules over a specific jurisdiction. His much-quoted definition suggests that “an order will be called *law* if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a staff of people in order to bring about compliance or avenge violation” (Weber 1978, 34).

Interestingly, while much has been written about the formal rationality of legal orders, much less attention focuses on the “probability of physical or psychological coercion” on which it rests. This is the domain of law enforcement, a system of state efforts to achieve compliance. Law enforcement entails a great variety of institutions, actors, and mechanisms, which can develop logics independent from the body of formal rules. For law enforcement to be effective, the state must establish institutions for uncovering and sanctioning violations, in a manner that brings the behavior of the concerned population in line with the legal rules, both through deterrence and rehabilitation. Law enforcement covers not just the police but also the specialized agencies tasked with communicating and monitoring the application of legal procedures and standards, collecting and evaluating data, analyzing and judging the nature of the violation, or executing the sanctions. The complexity of state-society relations this requires in practice and the fluid lines between legality and illegality that are well known to the legal professions create room for a wealth of variations that require explanations in their own right.

For those that view only the legal order as politically legitimate, incomplete enforcement of the law is dysfunctional. It might exist empirically, but it reflects either weak state capacity to follow through on its legal norms, outright corruption, or state capture. We cast doubt on such categorical assessments by systematically examining the reasons for and intentions behind incomplete enforcement. In doing so, we argue that law

This paper has been developed in the course of two workshops on “The Political Economy of Law Enforcement” held at the Max Planck Institute for the Study of Societies in Cologne on November 12–13, 2019, and organized virtually by the Max Planck Sciences Po Center in Paris on October 7–9, 2020. We are indebted to all participants for the lively discussions, their insights and thoughtful criticism. We are equally grateful to both institutions for supporting the organization of the two events.

enforcement is part of the political process that is deeply affected by the constellation of actors concerned. Choices over law enforcement produce social order that is analytically distinct from the production of legal norms and their formal implementation. As such, law enforcement needs to become an integral part of public policy analysis and of the study of socioeconomic orders.

There is consensus in the enforcement literature that politics matters but “little scholarly convergence on what politics is or rigorous theorization and empirical testing of how politics matters” (Short 2019). We offer an analytical framework to study variations in law enforcement as the result of specific constellations of actors that struggle over the distribution of resources within a given institutional setting. This allows us to interrogate the intentions of actors, the costs and benefits they take into consideration, and their relative power within the institutional constraints that shape their choices. Such an actor-centered perspective, which is rather common in public policy analysis, has not been sufficiently probed in the area of law enforcement broadly defined. The attention to the organizational setting for individual decisions is also compatible with cognitive explanations based on meaning and social-psychological phenomena.

Our approach builds on insights from socio-legal studies interested in the difference between law in the books and law in action (see Feenan 2013; Halperin 2017), the sociology of law, and the field of law and economics, which conceive of enforcement as a set of social practices. Even though sociology of law and law and economics differ in their theoretical priors, they share an interest in how social interactions affect the use of legal tools. Bureaucratic agents within the state make strategic use of legal rules for scholars as different as Pierre Bourdieu (1990), who conceives of public administration as a dialectic of law and exception, and George Stigler (1971), who suggests in his economic theory of regulation that governmental rules are imposed or waived in exchange for a set of tangible benefits. In the economic literature, this has produced a better understanding of enforcement incentives (Becker 1968), the challenge of delegation (McCubbins, Noll, and Weingast 1987; Moe 1982), and enforcement from both a game theoretical and a pragmatic perspective (Coslovsky, Pires, and Silbey 2011; e.g., Scholz 1984). In sociology, not just the strategies of individual actors but also the meaning and negotiation of legal norms have been central to our understanding of formal and informal institutions (Helmke and Levitsky 2006).

More recently, uneven enforcement has attracted renewed attention as an empirical phenomenon that appears to be more than just dysfunctional exceptions. Studies of a wide variety of policy domains in both developed and developing countries point to the relevance of law enforcement as an under-researched and under-theorized process in the production of economic, political, and social order (Holland 2017; Short 2019; Milmanda and Garay 2020; Huisman 2019; Ronconi 2012; Dewey and Di Carlo 2021). In proposing a political economy framework for the study of law enforcement, we bring together scholarship across disciplines that seldom speak to each other, from economics, political science and sociology to anthropology. Our aim is to highlight the

relevance of a more nuanced understanding of law enforcement as an integral part of governance and public policy. This requires studying uneven enforcement in its own right, rather than discounting it as failure, weakness, or corruption.

The remainder of this paper is divided into six sections. In Section 2, we discuss common explanations of incomplete enforcement and show its limitations. Section 3 defines law enforcement, emphasizes the role of discretion as a crucial feature of state action, and describes four objectives that may motivate law enforcement manipulations. Section 4 elaborates one typology of different modes of enforcement, and one that combines modes and strategies of enforcement. Section 5 discusses the methodological implications of our approach.

2 Common explanations for variations in law enforcement

Why is the law not always enforced? Since law-making is the legitimate process to bind the actions of members of a society to the will of the collective, the state appears to have no reason to undermine its own will. Yet, law enforcement can be weak, partial, or simply non-existent. Theoretical explanations of such phenomena have traditionally focused on (1) weak state capacity or (2) state capture and corruption. Let us consider each of these in turn before offering the alternative explanation we have labeled “the political economy of law enforcement” (Section 3).

Weak, fragile, or limited institutional capacity is a common explanation for incomplete enforcement. Prominent analyses of state reactions to violations of the rule of law in developing countries, for instance, define weakness or strength in relation to the probability that state institutions produce a real institutional outcome which differs from the initial institutional objective or ambition (Brinks, Levitsky, and Murillo 2019). As in scholarship that revolves around Michael Mann’s notion of “infrastructural power” (Mann 1986; Soifer and vom Hau 2008), this literature understands weakness in terms of lacking capacity to implement policy, which in the end points to the classical problem of state authority in society. From this perspective, lacking implementation or incomplete enforcement are identified as a deviation from statutory institutional goals: if those in charge of enforcing the law for some reason (e.g., lack of resources or corruption) do not perform their duty, the institutions they represent become weak.

Closely related to the weak institutional capacity explanation is the argument that non-enforcement is the consequence of state capture or corruption.¹ In fact, established definitions of corrupted behavior entail the idea of nonenforcement: a third party (usually

1 A distinction can be made between state capture and corruption. The former usually emphasizes the agency of the regulated actor and sees public agents as passive, while the latter insists

the regulated), interested in evading the enforcement of the law, offers a bribe to a state agent (the corrupted), who, by taking the bribe, violates an already established contract with the principal (a person, a state organization, or the citizenry; Della Porta and Vannucci 1999; Gambetta 2002; Johnston 1997; Philp 2015; Rose-Ackerman 1978). From that perspective, state servants' corrupt behavior impedes the proper enforcement of regulations and undermines state institutions. This weakening effect of corruption, however, has been downplayed in accounts of developmental states (see also Darden 2008). In this literature, nonenforcement of the law is assimilated into the strategy of developmental states because, as Kang (2009, 3) asserts in his study on South Korean cronyism, corruption can reduce transaction costs and make long-term agreements and investments more efficient. Hence, nonenforcement, corruption, and economic growth are not necessarily seen as contradictory phenomena and public goods may be "the fortunate by-product of actors competing to gain the private benefits of state resources" (2009, 6).

From a variety of perspectives, scholars have recently tried to show that state weakness and corruption are not enough to explain incomplete enforcement. We offer some preliminary observations to introduce our perspective. First, as we will see, there are cases in which states considered "strong" do not enforce the law in certain spheres, and cases in which supposedly "weak" states are capable of effective law enforcement. Second, marked swings in compliance with the law indicate that often state agencies are perfectly capable of enforcing the law at specific moments in time. Behind the continuous changes in the minimum levels of cash payments, as observed in Italy (Dewey and Di Carlo 2021), we can often observe electoral dynamics that affect how and to what extent the law is enforced. Such situations differ from those in which the state is not capable of enforcing the law, a structural condition that we would expect to remain constant over time. On the contrary, swings in compliance, which may be related to swings in the will to enforce the law, tend to be responsive to changes in the government's political attitude. In that sense, if state weakness suggests that the state plays a passive role when confronted with implementing policies or enforcing the law, the decisions not to enforce the law indicates an active role, since they can be understood as responses to specific socioeconomic or political problems.

One can also question the link between incomplete enforcement and institutional weakness theoretically. Drawing on state-society approaches and looking at subnational power and electoral dynamics, scholars have first observed that qualifications like "weak" or "strong" usually derive from conceptions in which institutions have well-defined, unambiguous goals. The weak state argument is here based on the idea that "the quality of the state apparatus determines outcomes" (Amengual 2016, 5). A cursory review of the literature shows that the focus is usually on specific outcomes, such as the

on the initiative of these public agents in soliciting and accepting private benefits. For other purposes, however, the difference is irrelevant since both situations imply that (lack of) enforcement is the instrument used by powerful and concentrated groups to benefit themselves at the expense of the population.

levels of taxation, that are explained by different degrees of state ability to impose its rules or implement policies. Brinks, Levitsky, and Murillo (2019, 10–11), for example, have recently argued that institutions are designed to produce specific declared outcomes and that the strength or weakness of such institutions depends on whether the original institutional ambition or purpose produces desired outcomes.

Central to this type of argumentation is the idea that institutions are designed to do something specific and that this purpose is statutory. However, as various studies on state institutions show (e.g., Head 2008), we contend that the weak institutions argument tends to simplify the complexity of state institutions' functioning, since institutions usually pursue various objectives at the same time and are governed by multiple frameworks, each defining specific incentives and limits (Lascoumes and Le Bourhis 1996). In addition, not only do institutions pursue various objectives, some of them sometimes contradictory, they are also governed by sets of informal rules which, far from being an anomaly, are constitutive of any organization (Luhmann 1995; Mayntz 1973). Whether informal rules (Helmke and Levitsky 2006) support or contradict formal institutional objectives cannot be assumed *a priori* but has to be the object of empirical analysis. To do so, Bourdieu (1990) suggests breaking with the technocratic platitude that assumes a first distinction between a legitimate political center and a governed periphery and a second distinction between a state apparatus guaranteeing the defense of the public interest and the rest of society necessarily defending private interests.

We use these insights to contribute to research on uneven law enforcement by providing an approach that moves beyond accounts of weak institutions or corruption. These simplistic perspectives neglect that 1) state-society boundaries are often blurred and state agencies are permeable to political influence, and 2) informal institutions and politics are key elements in the construction of social order. As such, they need to become central elements in explaining variations in law enforcement and nonenforcement in particular (Amengual 2016; Dewey 2018a; Holland 2017; Ronconi 2012; Short 2019).

3 The political economy of law enforcement

If variations of law enforcement are not necessarily the outcome of weak institutions or corruption, a focus on actors, organizational (formal and informal) goals, and constellations of interests is needed. All modes of incomplete enforcement need to be understood as the attempt by public organizations and actors to establish themselves as legitimate authorities and to respond to competing objectives. Weber's "probability of physical or psychological coercion" is in the hands of enforcers who can apply existing legal rules in one way or another, do so selectively, or suspend them completely. This is

associated with the nature of the enforcement task, which has a salient characteristic: it has a much lower visibility than other forms of regulation such as the production of laws or the design of institutions.²

A point of departure for our analysis is the acknowledgment that enforcing the law entails discretion or discretionary power. We assert that discretion over the laws' reach is constitutive of state organizations and that state servants' discretionary power "involves the power to exert choice among a range of alternatives between which the law does not discriminate" (Zacka 2017, 33). By bringing discretion to the fore, we acknowledge two important features of law enforcement measures. First, enforcing the law is a bureaucratic and political choice that involves a flexibility to interpret and execute actions. As we argue later, such discretion accounts for different forms of law enforcement: full or effective enforcement, selective enforcement, forbearance, or nonenforcement. Departing from the common definition of law enforcement as a system of state efforts to achieve compliance, we further define actions that tamper with enforcement, especially those that lead to nonenforcement, not in terms of inaction ("turning a blind eye") but as a series of practices that make use of discretionary power. Such practices block, alter, modify, falsify, distort, or eliminate actions prescribed by law, often relying on gaps or loopholes. Studying these practices becomes possible when one no longer sees law enforcement as either complete or failed, but instead understands it as a fluid spectrum of options.

Second, the exercise of discretionary power over law enforcement mechanisms also means an exercise of sovereign power (Sarat and Clarke 2008, 390). Drawing on research that focuses on professions such as those of prison guards (Liebling, Price, and Shefer 2011, chap. 6), prosecutors (Sarat and Clarke 2008; Joseph 1975; Gelsthorpe and Padfield 2003), and other street-level bureaucrats (Lipsky 1980; Gutiérrez and Costantino 2020; Johannessen 2019; Forteza and Noboa 2019), we maintain that decisions about the different ways of enforcing the law "participate in, and exemplify, the logic of sovereignty and its complex relationship with legality" (Sarat and Clarke 2008, 390). In that sense, choices about enforcing the law are decisions aimed at establishing a specific social order, whether in the context of organizations such as prisons, bureaucracies, police stations, or courts, or when they come into contact with "society." This insight has long been established in organizational sociology (Meyer and Rowan 1977; March and Olsen 1983), but it often slips out of focus. Taken together, these two features of law enforcement decisions – embedded in discretionary power and aimed at establishing social order – shift the conversational register from a problem of weak institutions and corruption to the domain of political decisions and the need of actors to achieve specific objectives or solve pressing problems.

2 This low visibility is linked to the fact that we can only talk about law enforcement with information about actual breaches of the law, which is notoriously difficult to come by. Note that the enforcer usually has the option to make enforcement actions visible (e.g., inviting the media to record a crackdown on drugs). The key characteristic of enforcement, vis-a-vis other forms of regulation, is that it can go more easily unnoticed.

For the study of the political economy of law enforcement it is essential to focus on the actors and organizations to which oversight has been delegated, in order to understand the objectives they need to reconcile and the constraints they face. This allows understanding that incomplete enforcement can be a conscious strategy serving to uphold certain legal norms over others or reconciling competing societal objectives. It can reveal, as we show later, that the misuse of a publicly imbued mandate is not always for private gains but to serve collective interests. In fact, the political motivation not to enforce the law often does not necessarily involve the appropriation of public funds or private benefits. Rather, decision-makers can aim to benefit extended segments of society with partial or nonenforcement.

Schematically, discretionary law enforcement can be used to achieve the following objectives:

1. *Steer social order*: Using different methodological strategies, scholars have recently provided solid evidence about government and state interests in tinkering with the enforcement of the law in order to provide responses to specific structural socioeconomic problems. For instance, agencies in Latin America appear to have chosen not to enforce labor regulations as a political response to increasing competitive pressures produced by trade opening (Ronconi 2012). Similar findings can be made both in Bavaria and Italy. In the former, local politicians react to pressures stemming from tax competition among federal states in Germany reducing the number of inspections in the segment of small and medium-sized enterprises. Meanwhile, in the latter, politicians react to their electorate by tinkering with law enforcement mechanisms such as the limit on cash payments or tax regulations (Dewey and Di Carlo 2021; see also Beqiraj, Fedeli, and Giuriato 2020; Sabrow 2020; Beyers and Nicholls 2020; Berger 2020; Huisman 2019; Gordon and Hafer 2013; Forteza and Noboa 2019; Tanasescu, Wing-tak, and Smart 2010). Finally, empirical evidence points to a purposefully selective enforcement and nonenforcement of labor and safety regulations in the garment industry in both Italy (Ceccagno 2017) and Argentina (Dewey 2018a, 2020). In these two cases, lifting enforcement mechanisms or using them selectively is not only part of political calculations but a response to structural configurations characterized by high levels of unemployment, widespread labor informality, massive foreign migration, and a rapidly changing sectorial type of business.
- 2) *Extract economic resources*: Regarding the phenomenon of corruption, as some authors argue, research has typically taken for granted the fact that corruption tends to weaken the state and pervert governance (Christophe 2015; Darden 2008; Schuppert 2011). The higher the proportion of pervasive “corrupt exchanges” (Della Porta and Vannucci 1999) in society, it is assumed, the more the functions of the state are endangered. However, as a series of studies based on ethnographic fieldwork have revealed (Smart 1985; Baker and Milne 2015), the manipulation of enforcement is a key element for understanding the routes connecting illegal economies, state agencies, and their capacity to provide goods and services. By tracing the flows

of economic resources, scholarship on state performance in Cambodia (Milne 2015) and Vietnam (To 2015) shows that generalized nonenforcement directed towards economic activities linked to the violation of environmental laws served to improve governance and the provision of essential goods and services: corruption schemes worked as extractive mechanisms whereby governments have been able to fund armed forces and civil servants, the construction of office buildings, and other construction projects for roads, schools, and wells, among other things. Something similar has been observed in Argentina where authorities refuse to enforce labor law in order to stimulate consumption and the creation of informal jobs (Dewey 2018a). By adopting a disaggregated perspective of the state, one that considers the peripheries and the local level, these studies provide evidence about the role of nonenforcement in the production of political stability and social order. In addition, they show that what is usually referred to as the capacity or presence of the state can be the result of a systematic manipulation of the law aimed at capturing formal resources that are channeled into state structures.

- 3) *Extract information*: Several law enforcement agencies, such as security forces, the secret service, and the military, base at least part of their workings on information-gathering practices in order to achieve their institutional goals. These practices, however, may involve the selective or nonenforcement of the law as a mechanism to extract vital information from informants and selected allies. What probably best epitomizes this phenomenon is referred to in the literature as “dual state” (Fraenkel 1969), “parallel state” (Briscoe 2008; Cucchiarelli and Giannuli 1997; Paxton 2004; Sain 2016), or “deep state” (Mérieau 2016; Söyler 2013; Tunander 2009). The parallel state alludes to a group of state agents holding positions in different branches of the state apparatus, usually the military, police forces, and judiciary, over which civilians have limited or no control. Because of the nature of these state agencies, the parallel state is particularly concerned with security issues and closely bound to the military-industrial complex (Söyler 2013, 311). These state agents are not accountable for their actions and, moreover, their participation in deep-rooted patronage networks grants them ongoing impunity. The covert nature of their work creates high levels of autonomy and provides room for informal rules to grow. Over time, the autonomy, unaccountability, and the informal organization of actions create an asymmetry between the parallel and formal states: a tutelage function over democratic policies. These parallel formations within the state have close relationships with outlawed groups or people that function as a source of different “resources,” such as information or actions aimed at manipulating the political agenda, for instance.
- 4) *Negotiate governance*: The manipulation of enforcement mechanisms, and especially nonenforcement, has also been investigated as a mechanism that opens a space for negotiating governance. A case in point here is the relationship between the state and organized crime and the decision of state officials to negotiate tolerance of unlawful behavior in exchange for a reduction of violence, for example. Drawing on firsthand data, Stephenson (2017) for instance argues that instead of a pattern of

elimination or subjugation of Russian organized crime by the state, a mutually reinforcing ensemble of both is observable. A similar depiction is made by Volkov (2002), who shows for the Russian case a continuous process of negotiation and incorporation of “violent entrepreneurs” into state structures in which tinkering with law enforcement mechanisms is also crucial. If neutralizing violence in society is key in government’s attempts to produce order, state-sponsored protection rackets need to be investigated. Snyder and Duran-Martinez (2009) analyze different levels of violence in contemporary Mexico and Burma taking the existence of what they call “institutions of protection,” and show that illicit markets can be peaceful if these institutions are in place. A similar argument is made by Flores Pérez (2013), who dissected the links between the so-called Gulf Cartel and the political elites of the Mexican state of Tamaulipas. In this case, the nonenforcement of different laws was meant not only to extract monies that ended up in private pockets (corruption) but also to reduce the levels of violence, to facilitate the workings of other state functions, and to reintroduce resources into state structures.

These four objectives help to categorize why we observe so many instances of partial or nonenforcement that do not seem to be motivated by private rent-seeking and that are not necessarily indications of institutional failure. Still, it would be overly optimistic to assume that all these cases only aim to further a collective or public interest. The empirical examples teach us that the manipulation of enforcement commonly produces new asymmetries of power and novel modes of social domination. This is fundamentally due to the revocable nature of lenient enforcement decisions (Dewey 2012; Holland 2017). In studies centered on the interfaces between the state and illegal markets, informality, or criminal groups, we can observe a similar situation at the micro-level: governments or state agencies that decide to allow behavior outside the law have the prerogative to return to full enforcement whenever they consider it necessary. New power relations arise from the fact that enforcers have at least two possibilities: to enforce the law “properly” or not to enforce the law along with the possibility to revoke the decision. Meanwhile, rule takers can either comply with the law or follow enforcers’ “permission” not to comply with the law. The asymmetry of power consists in enforcers having the possibility to control rule takers’ options either by enforcing the law properly or signaling the end of informal permission not to comply with the law.

Studying law enforcement in this more comprehensive perspective unveils three sets of complexities that will shape the room for maneuver of public agents and therefore affect how laws will translate into practice. First, there is jurisdictional complexity, which refers to the potential overlap of effective jurisdictions, requiring the coordination of various state agencies and opening up the room for varying interpretations of the law (Alter and Raustiala 2018; see Woll and Jacquot 2010). Second, human activity might fall into several domains and thus be subject to different types of law enforcement without a clear hierarchy. Third, the organizational chain might be particularly complex, with a series of delegations of mandates and coordination necessary to achieve effective law enforcement.

Taken together, these complexities reveal the importance of observing law enforcement processes as chains of actions and focus on discretion, since actors have the “universally human capacity for doublethink, double standard, double deed and double incentive” (Ledeneva 2018, 4). To identify sources of biases or selective execution, we suggest taking into account conflict or opportunities that arise from jurisdictional complexity, domain complexity, and organizational complexity.

4 Typologies of enforcement

Our perspective proposes that the study of the political economy of law enforcement has to account for the universe of all those cases in which governments and bureaucracies see an economic or political advantage from adapting or tinkering with law enforcement mechanisms. This might be in response to electoral pressures or socioeconomic constellations in which regulation imposes significant political hurdles. To begin with, we distinguish between different state strategies of law enforcement. These range from situations characterized by full enforcement to others featuring a permanent lifting of enforcement actions. We assert that this is a sliding scale and strategies can adopt different forms over time. Table 1 shows four different state reactions as well as the beneficiaries.

If enforcement is understood as a system of state efforts to achieve adherence to the law, a first ideal type would constitute actions through which the state achieves full enforcement. We would expect such a situation of full enforcement to lead to full compliance. While situations like these seem to be obvious and simple to understand, full enforcement appears to be the exception rather than the rule (Givelber 1973; Pound 1910). Indeed, full enforcement implies high levels of social legitimacy, i.e., the widespread “belief in the legitimacy” of those who impose the rules, and significant infrastructural power (Mann 1986; Soifer 2008). Domains in which the state is fully legitimate and enforcers are fully equipped to police and sanction all violations are rare, even if one takes the state’s willingness to do so for granted.

Table 1 Scale of law enforcement

	Full enforcement	Selective enforcement	Forbearance	Nonenforcement
<i>Who</i>	Everybody	Some groups	Some groups	Nobody
<i>When</i>	Always	Always	Temporarily	Ever

In what follows we define three scenarios with lower degrees of law enforcement. They part from the assumption of full enforcement and enter into a dialogue with the body of literature that seeks to explain the unevenness of state reactions to violations of the law (Amengual 2016; Holland 2016; Milmanda and Garay 2020; Ronconi 2010; Rooij and

Lo 2010). However, with our typology we want to bring the motivation of the actors to the fore and outline forms of state reaction in which the mechanisms of enforcement become instruments to reconcile interests, negotiate the distribution of resources, or produce social order.

Selective enforcement of the law refers to the state attempting to produce adherence to the law but targeting certain social groups rather than others, according to extralegal criteria. Social sciences have extensively investigated the selective enforcement of the law with systematic categorical biases such as race or gender (e.g., Weitzer and Tuch 2002; Meier and Nicholson-Crotty 2006; Soss and Weaver 2017). Most commonly, selective enforcement, once uncovered, sparks social outrage because of its discriminatory nature. But it is equally possible to imagine selective enforcement that is considered legitimate, for example because it grants informal exceptions to vulnerable groups, or because the selective enforcement follows other consensual political categories.

Forbearance, as Holland (2017, 10) defines it, is revocable “state inaction toward legal violations.” In the field of finance, forbearance refers to deliberate temporary measures that allow nonperforming borrowers to regain financial health (i.e., by losing conditionality of loans or postponement payments). By contrast, political science scholarship highlights that forbearance may be an “off the books” political strategy aimed at achieving specific goals. In this perspective, uneven enforcement may result from politicians’ intention to use forbearance as a mechanism to “redistribute” goods and services (Holland 2017). Also referred to as informal “bargains” (Desai, Olofsgård, and Yousef 2009) or “social pacts” (Harders 2003) in authoritarian regimes, forbearance has distributional effects, facilitates the appropriation of public resources, and may become an inexpensive electoral strategy. To a certain extent, forbearance is similar to selective enforcement because it benefits specific groups. However, forbearance plays more explicitly with the notion of revocability: the law is accepted, but a conscious decision has been made to be more lenient due to a given set of circumstances, which also means that authorities can revoke that decision at any time and enforce the law properly. We thus take from the finance literature that this is most likely a temporary action and that the state reserves for itself the possibility of returning to full enforcement. Whether the temporality of forbearance is specified explicitly, as in the action of central banks in times of financial crisis, or implicit and open-ended may vary empirically.

Both forbearance and selective enforcement entail the nonenforcement of the law, at least partially or at certain moments in time. Full nonenforcement – where nobody is ever subject to enforcement – has structural traits that set it apart from the two other aforementioned alternatives. We point here to social constellations in which nonenforcement is the result of informal institutions established by governments along with non-state actors. For instance, informal taxation systems are extralegal institutions established by state and non-state actors that not only allow penalty-free unlawful behaviors or the expansion of illegal economies. In exchange, it also informally furnishes states with resources of a different kind. Recent work conducted in Asia (Baker 2015;

Milne 2015; To 2015; Verbrugge 2015), Africa (Gallien 2020; van den Boogaard, Prichard, and Jibao 2019), and Latin America (Dewey 2018b) has shed light on these social structures that neutralize the enforcement of the law and establish a completely different set of incentives for state and non-state actors. Nonenforcement has been studied by political comparativists and anthropologists as a feature of “standoffish states,” contrasting with “standardizing states” that one would assume to be universal (Baraybar Hidalgo and Dargent 2020; see also Scott 2011; Slater and Kim 2015).

Considering law enforcement as a fluid scale makes it possible to see that the law can be fully enforced, partially enforced for either some groups or some time, or not enforced. The challenge is then to determine why the courses of action were chosen and by whom. A political economy perspective points us to the rationale and the benefits reaped by those charged with enforcement. Table 2 exhibits a typology of different enforcement strategies distinguishing between private, organizational, and public benefits.

In Section 3, we have argued that political decision-makers sometimes adapt law enforcement in order to create benefits not for themselves but for extended segments of society, by attempting (1) to steer social order in reaction to specific socioeconomic challenges, (2) to extract economic resources from informal economic exchange to provide public services, (3) to extract information to achieve specific institutional mandates, or (4) to recreate governance by opening up a negotiation space between state officials and competing groups. If we add to these insights the lessons from the literature on corruption about the wealth of private benefits that can motivate the abuse of entrusted mandates, it is possible to provide a typology of strategies. By crossing the scope of enforcement with the primary rationale, a political economy perspective allows a fresh reading of various forms of nonenforcement.

The extraction of private benefits through partial and nonenforcement are classical cases of corruption.³ By targeting specific groups that are exempted from law enforcement, or allowing for the negotiation of nonenforcement for a given period of time, enforcement agents can reap material payments or extract information that is valuable to them personally, i.e., for career advancement. In cases of full nonenforcement, the private benefits may be rooted in a fully-fledged alternative system in contradiction to legal provisions. We acknowledge the existence of such petty or widespread corruption in law enforcement, but point to cases where benefits are collective: either at the organizational level or for the wider public.

At the organizational level, partial and nonenforcement can help organizations meet their tasks and manage specific challenges in their immediate environment. Enforcement agencies can build reputation by manipulating techniques for uncovering violations or being particularly stringent in the most visible cases only. They can also negotiate with

3 We set aside non-cognitive reasons for partial enforcement, because they would require a quite different analysis rooted in social psychology.

Table 2 Typology of enforcement strategies

	Selective enforcement	Forbearance	Nonenforcement
<i>Private benefits</i>	Payments or information extracted from exempted groups	Payments or information extracted temporarily or from exempted groups	Systematic corruption: widespread informal alternative in contradiction with the law
<i>Organizational benefits</i>	Status Recreating governance	Extract information through privileged access	Management of work load Recreating governance
<i>Public benefits</i>	Steering social order (focus on balance between groups)	Managing cycles of economic up and downturn Extract resources	Steering social order (focus on regional or local development)

competing groups, for example organized crime, in order to reduce violence through selective enforcement. In many cases, enforcement agents have the explicit discretion to forbear sanctions if the violator offers information that helps to uncover additional offenses. Finally, systematic nonenforcement can be a simple decision to manage the organization's workload, by deciding not to apply legal provisions that require too many resources to be monitored effectively. It can also be a broader strategy to recreate governance through negotiated nonenforcement, just like selective enforcement.

A more directly public benefit aimed at improving government quality for large segments of society are partial or nonenforcement strategies that seek to steer social order and manage economic resources in the face of socioeconomic challenges. Such strategies allow decision-makers to adapt the stringency of legal provisions when the world changes. Selective nonenforcement focuses specifically on the balance between target groups, for example with the decision that small and medium-sized businesses should be exempted from regulation they are not able to shoulder during economic downturns. Forbearance can be explicitly used to manage financial flows during a crisis. It can also be used to build an alternative system for extracting resources from informal economic activities. Comprehensive nonenforcement is more likely an attempt to steer social order with respect to a specific local, regional, or national setting. One may imagine the decision to undermine international obligations that had been ratified in the past, or to diverge at the regional level from federal statutes.

In sum, it is essential to understand the motivations behind partial and nonenforcement, because it gives insight not only into the nature of the rule of law but also into the social order that can both maintain or threaten political and economic development.

5 How to study uneven enforcement

The difficulty with law enforcement is that it is notoriously difficult to study. Examining varying degrees of enforcement requires two remarkably elusive social facts to be established: (1) unlawful behavior and (2) public inaction. Theoretically, we would need to know the actual extent of criminal activities or legal violations and compare it to enforcement efforts. Empirically, this is a challenge. Information about legal violations is difficult to come by, enforcement agents are often the ones producing the most comprehensive data, and studying inaction presents all the difficulties of counterfactual research.

In this final section, we therefore discuss some methodological implications of our approach. First, we ask how to identify social constellations that lend themselves to a study of the political economy of law enforcement. Second, we justify the idea that research in this field has to depart from hypothetical situations of complete enforcement. In connection with this, we clarify the notion of state inaction and discuss its implications for empirical research. Third, based on the current state of research, we address two methodological strategies.

How to detect nonenforcement

In the absence of full information about actual legal violations and enforcement actions, it is useful to identify promising constellations for the study of law enforcement. In what follows we present three ideal typical situations: (1) observable noncompliance; (2) unexplained comparative discrepancies in enforcement patterns; and (3) unexplained variation in enforcement patterns across time.

First, we have social constellations in which widespread unlawful behavior is observable. Noncompliance in the form of generalized tax evasion, the infringement of security and labor regulations, or the violation of property rights can take place in certain economic sectors or segments of society. Rather than simply analyzing the behavior of those breaching the law, we can inquire about enforcement patterns as part of a broader political logic (see, for example, Portes, Castells, and Benton 1991 on informal labor regulation) or moral constellation (Schmoll 2020). Similarly, the vested interests around the nonenforcement of regulations prohibiting land occupation (Holland 2017; Smart 1985; Sun 2015) or the expansion of sweatshops can be directly investigated (Dewey 2020).⁴ However, this should not mean that every observation of widespread noncompliance is explained by the manipulation of enforcement, but simply that it is a promising starting point for inquiry.

4 Special attention must be paid to cases in which economic regulations impose substantial costs on companies. In such cases, the costs of compliance are directly associated with the incentives for producers to violate regulations. An increase in the costs means an increase in the incentives.

Second, one can use variations across comparable units of analysis to inquire about enforcement patterns. If legal rules are identical in two different cities, regions, or countries, but criminal sanctions are strikingly different despite other comparable socio-economic conditions, one may interrogate directly whether the discrepancy is due to enforcement patterns. For instance, one study examines racial discrimination of traffic controls across suburbs in Detroit (Bates and Fasenfest 2005). Similarly, in a study of largely comparable anti-cartel rules and economic activity, Foster (2020) finds that US antitrust authorities sanction foreign firms to a larger degree than European authorities.

A third strategy for investigating enforcement patterns begins with time series analysis, where one can detect notable evolutions in monitoring, policing, or sanctioning of crimes despite stable legal provisions. This has been done in the case of domestic violence, for example, where data on increased police reports revealed the effect of female police officers on improving the quality of enforcement (Miller and Segal 2019).

Once situations of widespread observed discrepancy have been identified, the next step is to evaluate how incomplete enforcement can be analyzed. Previously, we have argued that enforcement should be observed not as a single effort but as a chain of efforts or actions. The idea of a chain is useful because it refers to the interdependencies of acts that lead – or not – to effective enforcement. In this sense, Bozçağa and Holland (2018) have proposed “enforcement process tracing” as a strategy to “identify the intervening causal process that leads to an outcome by following each step in a decision sequence.” Nevertheless, as stated before, the manipulation of enforcement does not belong to the set of actions that are easy to observe, a phenomenon that poses an obvious problem: in the case of nonenforcement or incomplete enforcement, there is a need to collect evidence about and attribute intentionality to actions that are difficult to observe.

How to study the absence of public action

An analysis that investigates the reasons for the incompleteness of enforcement is not based on a value judgment about the desirability of state action, but on the fact that any state’s departure from full enforcement has consequences. In many instances, the decision not to enforce the law is difficult to observe, and analysts will encounter difficulties comparable to studying nondecisions or inaction (Bachrach and Baratz 1963; Lukes 1974; Woll 2014). As Lukes (1974, 53) asserts in his analysis of power, “inaction need not be a featureless non-event”: even if we cannot observe state intervention, inaction may well have specifiable consequences. From that perspective, observation of consequences such as the emergence of noncompliance may be a hint of the existence of incomplete enforcement.

When confronted with such situations, governments can use selective enforcement or even its suspension as a mechanism to weave alliances with economic sectors or specific actors.

Table 3 Variations in nonenforcement interactions

		<i>Public actors support alternative rule</i>	
		No	Yes
<i>Private actors are organized</i>	No	Laissez-faire <i>e.g. fare evasion in public transport</i>	Petty corruption <i>e.g. driver license sale</i>
	Yes	Colonization <i>e.g. land occupation</i>	Tolerated illegality <i>e.g. black markets</i>

A second step to address this issue is to recognize that state inaction is characterized by its opposite: a series of intended actions that seek to alter, modify, falsify, block, delay, or accelerate actions or processes related to the enforcement of the law. In other words, what in analytical terms is defined as inaction is in empirical terms necessarily observed as manipulation that results from political intentions. Taken together, our approach combines, first, the identification of situations characterized by incomplete enforcement with, second, special consideration of the political and economic actors' vested interests, the costs and benefits they take into consideration, and the institutional constraints they face. This logic, centered on individuals who are thought to have agency and the ability to manipulate resources, is markedly different from the widespread "institutional weakness" hypothesis that commonly leads researchers to assume all too quickly a lack of resources or knowledge, or a culture of corruption when incomplete enforcement is observed.⁵ In order to gauge the nature of inaction, we recommend focusing on the interaction between public and private actors, as shown in Table 3. One needs to ask whether public actors simply fail to uphold the law or actively engage in supporting an alternative mode of action. In addition, we can distinguish cases where societal actors breaching the law are organized or merely acting individually.

When the state does not support an alternative rule, incomplete or nonenforcement is likely to reflect a situation where the social costs of enforcement are higher than the benefits or the state simply lacks the necessary resources to find and penalize non-compliers. In some countries, incomplete eviction of squatters or lack of tax inspection among subsistence self-employed fall into this category. When some state actors have an alternative objective, lack of enforcement could simply be corruption (as when a police officer turns a blind eye to a traffic violation in exchange for a bribe). But it could also be the result of specific constellations of actors that struggle over the distribution of resources within a given institutional setting.

5 It is worth stressing, however, that our approach does not exclude any of these explanations and considers them to be empirical questions, but it prioritizes the analysis of individual choices and organizational logics, assuming that governments and state actors have discretionary power and are continually facing problematic situations.

Promising research strategies

The scarce literature available at the intersection of incomplete enforcement, political intention, and fieldwork shows two strategies to tackle the aforementioned problem. On the one hand, qualitative studies, especially ethnographic ones, demonstrate that the investigation of political intention and state actors, as well as of the vested interests present in institutional settings, is supported by extensive fieldwork in terms of time in the field and trust relationships with the interviewees. Particular constellations of interests and how different social actors deal with problematic situations can be scrutinized through interviews and observant participation, techniques that may reveal, for example, the alignment of interests between noncompliant actors and authorities not interested in enforcement. In general, qualitative evidence can be a very good complement to large-N econometric studies that usually have stronger external validity but at the cost of not clarifying the motivations behind actors' behavior.

On the other hand, a second strategy has been to combine qualitative techniques such as interviews with quantitative techniques such as statistical distributions. With regard to the latter, the goal is to specify counterfactuals, that is, representations of enforcement situations where it is assumed that there is no political manipulation of enforcement. These counterfactuals serve as a baseline for observing deviations and understanding the origin of manipulations (Bozçağa and Holland 2018, 301; Holland 2017). In either case, it is crucial to understand that enforcement in fact comprises a broad set of resources that can be used at the enforcer's discretion at each stage, for instance, through actions that comply more or less with written regulations; that play more or less with reporting or complaint deadlines; or that consider strategically the consequences of enforcement. In other words, empirical research on the political economy of law enforcement has to consider that resources, situations, and actors involved in enforcement processes are part and parcel of institutional logics that both government and state actors know and can purposefully use to their advantage.

6 Conclusion

We have argued for the political economy perspective of law enforcement to reveal the various ways in which public actors exercise discretion when upholding legal provisions and executing their mandates. Contrary to the literature on corruption and weak institutions, our perspective adds that tampering with the law can happen in the pursuit of collective benefits, not just private rent-seeking. We also suspect that partial enforcement or nonenforcement is far more common than full enforcement. A comprehensive understanding of when and how enforcement will not happen is therefore necessary for any scholar of public policy, be it in the developing world or in advanced industrial societies.

Our discussion has focused mainly on public enforcement and aligns in many parts with insights from the public policy literature on implementation (Wildavsky 1987). In the policy cycle, the production of legal statutes and regulation happens in response to an identified problem, and implementation and enforcement cannot be taken for granted. The great variety of stakeholders and decision-makers makes it likely that a given law does not address a problem adequately, that local actors undermine or alter its application, or that political actors formulate a policy in anticipation of these difficulties in quite specific ways. Put differently, the policy process is by definition highly political, murky, and characterized by “muddling through” strategies. Any analysis of effective regulation must take into account that implementation and law enforcement are notoriously difficult to achieve. For the sake of clarity, we have not extended our discussion to the whole policy cycle. We do believe, however, that this is a promising exercise for future investigations.

We have also stopped short of integrating private enforcement into our discussion. In many countries, private enforcement plays an important role in many legal domains. Trade unions or employer organizations, for instance, can be delegated important functions on labor issues in countries with corporatist traditions. In the US, private enforcement through litigation is explicitly enshrined in many regulatory provisions. Understanding the ways in which public and private enforcement interact may give further insights into the social dynamics behind partial or nonenforcement in many instances.

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