

Explaining Regulatory Compliance

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Business Responses to Regulation

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10. Regulatory enforcement styles and compliance

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INTRODUCTION

The realities of regulation are shaped by the choices made by regulatory agencies and inspectors. This chapter considers variation in agency enforcement approaches, inspectors' enforcement styles, and their implications for compliance. Despite a substantial body of research about these topics, basic issues are largely unresolved as to what constitutes enforcement style and the effects it has on compliance. Consideration of this topic may seem old fashioned given that much of the literature has moved away from addressing enforcement to considering how to bring about compliance through less coercive means and how to foster voluntary actions that go 'beyond compliance' – topics addressed in other chapters in this volume. Nonetheless, the fact remains that the dominant approach to regulation throughout the world still consists of monitoring adherence to rules and taking actions to bring violators into compliance with those rules.

Confusion has been fostered by the way that scholars have used the term 'enforcement style' to refer to behaviors by different levels of actors in the enforcement process. These include consideration of differences in national styles of regulation (Day and Klein, 1987; Gormley and Peters, 1992; Vogel, 1986); variation in regulatory agency enforcement approaches (Braithwaite et al., 1987; Reiss, 1984; Scholz, 1994) and philosophies (May and Burby, 1998); and variation in the actions of inspectors (Kagan 1994; Mascini and Wijk, 2009; Nielsen, 2006) and the character of their interactions with regulated entities (Black, 1998; Lee, 2008; May and Wood, 2003; Pautz, 2009a). Though arguably each of these constitutes important aspects of regulatory enforcement style, greater parsimony in the use of the concept is necessary to allow further progress in understanding the effects of enforcement style on compliance.

In what follows we make a basic distinction between the choices made by regulatory agencies ('enforcement strategy') and their day-to-day

dealings with regulated entities (their 'enforcement styles'). Both are predicated on the existence of a regulatory design that specifies the goals and responsibilities of the relevant implementing organizations. The crafting of an enforcement strategy entails decisions by regulatory agencies about what to enforce, how to allocate resources for inspections, and the enforcement tools to emphasize. These embody the different philosophies about enforcement that are embedded in the regulatory design and reflect practical decisions about the management of enforcement processes. Sparrow (2000) discusses these as basic components of what he labels 'the regulatory craft' (also see Scholz, 1994). Enforcement styles, as employed here, concern the interactions of inspectors and regulated entities. At issue is the character of the interactions: Are inspectors strict or lenient? Do they go 'by the book' or seek to enforce the spirit of the rule? Do they attempt to explain the rules by acting as consultants, or enforce the rules by acting as police? The main focus of this chapter is inspectors' enforcement styles.

Clearly there is interplay between decisions made by agency officials about enforcement strategies and the styles that inspectors adopt. Yet inspectors are not functionaries who simply follow dictates from above in carrying out their inspections or in taking action once violations are found. Given that regulatory situations differ, inspectors necessarily have discretion in how to perform these functions. Moreover it is impossible in most situations to inspect for everything that is covered in relevant rules. All of this suggests that, even in the same regulatory setting, there is a good deal of variation in inspectors' enforcement styles (Gormley, 1998; Hawkins, 1984; Hutter, 1989; May and Winter, 1999; Nielsen, 2006). Scholars have attempted to explain this variation by pointing to various organizational, political, situational and personal considerations that shape inspectors' behaviors. The high degree of variation in enforcement styles and the limited ability to influence them also have important implications for agency efforts to foster consistent use of particular regulatory enforcement styles.

Differences in inspectors' styles mean little unless they can be shown to either directly or indirectly affect compliance. Given that the effect on compliance is ultimately the central issue, it is surprising that the literature is sparse in evaluating these effects and unsettled in drawing firm conclusions about them. The empirical evidence about these effects is considered here with particular attention to findings about the effects of enforcement strategies and styles. We do not consider the effects of choices about regulatory design and the various tools of regulation. This discussion should be considered a subset of the broader analysis of 'responsive regulation' and alternatives to it that are discussed by Gunningham in chapter 9 of this volume.

This chapter proceeds as follows. The distinction between agency enforcement strategies and inspectors' enforcement styles is first considered. The findings concerning patterns in different enforcement styles are addressed next. This leads to discussion of the effects of differing enforcement styles on compliance. The implications of this review for future research are addressed in the concluding section.

ENFORCEMENT STRATEGIES AND STYLES

A useful distinction can be made between agency enforcement strategies and inspectors' enforcement styles, although the two concepts are often commingled in studies of regulatory enforcement. The basic distinction is between what agencies do and what inspectors do. The label 'enforcement strategy' is best used when referring to the enforcement choices of regulatory agencies. 'Enforcement style' is best used when referring to the behaviors of inspectors when interacting with regulated entities.

Enforcement Strategies

As discussed by a number of scholars, regulatory officials face a variety of choices when fashioning an enforcement strategy (May and Burby, 1998; May and Winter 1999; Scholz, 1994; Sparrow, 2000). These include priorities for enforcement with respect to the selection of target groups and inspection emphasis, choices about the emphasis to give to the tools that are part of the regulatory design, and the degree of effort involved in carrying out enforcement. Some of these choices may be outside the direct purview of regulatory officials. For example, Firestone (2002) shows how the choices about prosecution of violators by the US Environmental Protection Agency (EPA) are shaped by choices made by attorneys who are separate from the regulatory monitors, and responsive to a different set of norms and incentives (see also Coslovsky, 2011; Hawkins, 1989).

Two considerations enter into the priority setting element of agency enforcement strategies. The first is the items that are inspected. Bardach and Kagan (1982) provide a compelling argument that emphasis on inspection of major categories of violations is an important aspect of effective regulation (see also Sparrow, 2000). Particularistic enforcement of minor rules is both petty and a time consuming waste of agency resources. The second consideration for setting priorities is the choice of particular categories of regulated entities for inspection. Here the enforcement literature is consistent in arguing that effectiveness is increased by going after the types of cases that historically have higher rates of violations, or by

other ways of identifying higher risk entities (Black and Baldwin, 2010; Scholz, 1994; Sparrow, 2000).

A second element of agency enforcement strategies is the tools they choose for enforcement. Studies of such strategies are based on data collected from agency officials about their enforcement approaches and their choice of tools. This differs from studies of inspectors and their interactions with regulatees, which we discuss below as part of enforcement styles. However confusion enters, since the agency strategies can also be considered higher-level components of enforcement style. For example, in studying regulatory stances of regulators for Australian nursing homes, Braithwaite et al., (1984) distinguish four tools or strategies: get tough, persuasion, education, and management advice. They find the most common stances are giving management advice and education. Braithwaite et al. (1987) advance this analysis in a study of the regulatory actions of 96 Australian federal, state and local government agencies involved in business regulation (see also Grabosky and Braithwaite, 1986). They find that the predominant enforcement approach is what they label 'perfunctory' – one of going through the motions of enforcement.

Along these lines, May and Burby (1998) studied enforcement 'approaches' of 819 American building code agencies. They found three different enforcement strategies that stem from agencies emphasizing different enforcement tools, including standardization and supervision, deterrent enforcement, technical assistance, discretionary enforcement, and use of incentives. Two of the enforcement strategies, 'strict enforcement' (employed by 30 per cent of the agencies) and 'creative enforcement' (used by 32 per cent of the agencies), correspond to previous conceptualizations of 'getting tough' and 'persuasion' respectively. A third strategy, employed by 38 per cent of the agencies, is an 'accommodative' enforcement strategy. The accommodative strategy is characterized by enforcement approaches that are highly unsystematic and only moderately facilitative, but entail little overall agency effort, akin to Braithwaite et al.'s (1987) 'perfunctory' category.

In more recent research, McAllister (2010) analyzed enforcement styles in a different setting – a developing country. She studied the state environmental agencies in two Brazilian states, São Paulo and Pará. McAllister extends the work of May and Burby (1998) by considering the degree of regulatory agency autonomy (independence in formulating goals) and regulatory capacity to act (how reactive or proactive they are in responding to violations). The result is a spectrum of possible enforcement approaches from retreatist, at the minimal end, to conciliatory, flexible, then perfunctory, and legalistic approaches at the more extensive end. The state of São Paulo is shown to have a perfunctory style, marked by

high degrees of formalism and coercion but low degrees of autonomy and capacity. The state of Pará is shown as having a retreatist style, characterized by low ratings on all dimensions, leading to avoidance of hard choices and a backing off in the face of opposition (Kagan, 1994). Braithwaite et al. (2007: 219–259) label such ‘strong-on-paper’ but ‘weak-in-practice’ enforcement approaches as characteristic of ‘regulatory ritualism,’ emphasizing literalism over substance.

A third element of regulatory agencies’ enforcement strategy is the effort that they spend on enforcement. Regulatory agencies vary substantially in the effort they spend on inspections. More frequent inspections are likely to increase regulated entities’ perceived risk that their violations will be detected. Several studies have shown that such perceptions increase compliance (Burby and Paterson, 1993; Gray and Scholz, 1991, 1993; Helland, 1998; Winter and May, 2001).

The diversity of characterizations of regulatory enforcement strategies and the differing labels that are employed underscore their lack of clear conceptualization. The important point for our discussion is how choices by agency officials affect the actions of their inspectors. Agency choices about enforcement strategies set the boundaries for inspectors by establishing priorities and inspection targets. Additionally, the choice of which enforcement tools to emphasize and how much effort to spend provides the toolkit for enforcement actions and limits the scope of actions of inspectors. Finally the choice of enforcement strategies serves as a means of ‘signaling’ to inspectors the desired tone to emphasize as they carry out inspections.

Enforcement Styles

The concept of enforcement style is easily understood in the abstract, but hard to pin down to specifics. It relates to the street level behaviors of inspectors and the way in which they relate to those they regulate. Are they friendly and helpful, skeptical and questioning, or threatening and picky? In studying the regulatory enforcement styles of agro-environmental regulation in Denmark, we conceptualized enforcement style as the character of the day-to-day interactions of inspectors when dealing with regulated entities (May and Winter, 1999, 2000). This definition is consistent with what Gormley (1998: 369) calls ‘inspector style,’ Kagan’s ‘legal style’ (1994: 387) and aspects of Hutter’s ‘varying styles of enforcement’ (1997, 1989).

One issue in characterizing enforcement style is whether it varies along a single, or multiple dimensions. One strand of scholarship, summarized by Kagan (1994), suggests that it varies along a single dimension, the

rigidity with which rules are applied. This ranges from inspectors who act like consultants, with a friendly, facilitative approach, through to those who act like cops, with a more reserved, legalistic approach. An example of this one-dimensional depiction is the classic distinction that Reiss (1984) makes between 'compliance oriented' and 'deterrence oriented' approaches to bringing about regulatory compliance. Similarly, Shover et al. (1984) distinguish 'results oriented' and 'rule oriented' enforcement styles.

Other theoretical and empirical research suggests that there is more to enforcement style than a single dimension. Gormley (1998) notes that it is possible for an inspector to be stringent while also being flexible in deciding what to enforce. Extending that theory, he characterizes inspectors as differing in degrees of stringency, flexibility and willingness to provide assistance. However he does not provide a conceptual or empirical foundation for choosing between these components.

Our research regarding different enforcement styles (May and Winter, 1999, 2000; May and Wood, 2003; Winter and May, 2001) adds empirical evidence that variation in enforcement styles is best depicted by two dimensions, rather than one. We have labeled these two dimensions 'formalism' and 'coercion.' This characterization of enforcement style is based on inspectors' ratings of their typical approach toward regulated entities when considering a set of polar opposite approaches, each rated on a five point scale: (1) written versus verbal communication; (2) enforcement through strict rules versus negotiation; (3) compliance through formal rules versus influencing attitudes; (4) rules versus results oriented; (5) consistent versus flexible; (6) skeptical versus trusting; and (7) using, versus avoiding using, threats of sanctions. Inspectors' ratings on these items provide separate indicators of different aspects of enforcement styles that can be analyzed for their underlying dimensional structure using principal component analysis.

In the initial study, we had municipal inspectors in 216 Danish municipalities rate their enforcement interactions using the above paired items for their enforcement of agro-environmental regulations (May and Winter, 1999). The resulting principal component analysis provided the two-dimensional representation that forms the underlying structure of enforcement style. The first dimension loads highly on items that denote the formality of enforcement. It varies from an informal, flexible style to a formal, inflexible style. The second dimension comprises items concerning inspectors' willingness to issue threats and the degree of trust they place in regulatees. It varies from trusting inspectors, who avoid threats of sanctions, to skeptical inspectors who use threats of sanctions to induce compliance. For these data, the formalism dimension dominates, in that

it explains the larger degree of variation. This result is not surprising, as threats are typically viewed as inappropriate in the Danish culture.

A different way of considering enforcement style is to consider what regulated entities perceive inspectors' approaches to be. As a follow up study of agro-environmental regulation in Denmark, we asked a sample of 1562 farmers who were subject to the regulations to rate their perceptions of municipal inspectors' enforcement styles (May and Winter, 2000). Here we employed the same set of paired items as in the above inspector study, and also a similar statistical approach for identifying underlying dimensions. The most interesting aspect is that despite the different survey respondents – municipal inspectors in the first survey and farmers in the second – both studies revealed very similar underlying dimensions of formalism and coercion. As with the inspector study, so with the farmer study the formalism dimension was dominant, explaining 49 per cent of the variation in style. The coercion dimension explained 14 per cent of the variation in style.

In a study of the enforcement styles of local governmental building inspectors for residential home construction in the United States, May and Wood (2003) also employed surveys of the regulated entities. The particular items to characterize enforcement style differed to some extent from those used in the Danish agro-environmental studies. Given that homebuilders worked in multiple jurisdictions, a referent was added asking homebuilders how the approach taken by building inspectors for a designated city compared with those of other cities in the region. The items measured inspectors' trustworthiness, fairness, helpfulness, knowledge, the ease of working with them, extent of threats, rigidity and thoroughness. The principal component analysis revealed two meaningful underlying dimensions, 'facilitation' and 'formalism'. The facilitative dimension explains 47 per cent of the variation and loads highly on items that relate to trust, fairness, helpfulness, knowledge, ease of working and lower use of threats. It roughly corresponds to the opposite of the coercion dimension of the Danish studies (that is a reversed scale). The formalism dimension explains 22 per cent of the variation and loads highly on pickiness, rigidity, and thoroughness. It corresponds to the formalism dimension of the Danish studies.

These various studies of the dimensions of enforcement style point to important differences in the degree of facilitation and formalism in the interactions of inspectors and regulatees. These dimensions distinguish the helpfulness of inspectors from their rigidity in applying rules. One empirical issue for further research is the extent to which inspectors' knowledge of rules and of regulated entities affects their enforcement style. May and Wood (2003) include the extent to which regulated entities perceive

inspectors as knowledgeable as an indicator of facilitation. But as suggested by Nielsen (2006), it may well be that inspectors' knowledge is a prior variable that makes facilitation possible (see also Pautz, 2009b).

PATTERNS AND CHOICES IN ENFORCEMENT STYLES

Characterizing the underlying dimensionality of enforcement style identifies the components of the concept but does not identify how these go together in practice. What mixes of facilitation and formalism are employed by inspectors in enforcement? Also relevant is consideration of the factors that influence the choice of different enforcement styles. Each of these is addressed in what follows.

Patterns in Enforcement Styles

Various scholars have suggested that regulatory enforcement in practice can be arrayed along a continuum. At one end is what has been labeled 'punitive', 'rule oriented' or 'strict' enforcement (Bardach and Kagan, 1982; Shover et al., 1984). A middle point is what Kagan (1994: 388) has labeled a flexible style that is 'legalistic and tough in some cases, accommodative and helpful in others, depending on the reliability of the particular regulated enterprise and the seriousness of the risks at hand'. This notion of flexibility also embodies what Scholz (1984) has proposed as a desirable 'tit for tat' style of interaction. Ayres and Braithwaite (1992: 35) characterize the same style as the use of a pyramid of enforcement actions in responsive regulation, and Hawkins (1984: 129) describes it as adaptive, serial enforcement. The other end of the continuum has been labeled an 'accommodative' style of enforcement, also known as a 'conciliatory' style (Shover et al., 1984). Inspectors in this category trust regulatees and sympathize with the difficulties the latter face in attempting to comply with regulations. As a consequence, inspectors are helpful in providing advice and responsive to the issues that are raised by regulated entities. This is evidenced in research by Pautz (2009a) that addressed interactions of state environmental enforcement personnel and regulated entities in Virginia. Pautz found that 82 per cent of inspectors and 76 per cent of facility personnel reported positive interactions along with high levels of trust.

However our research on different underlying dimensions of enforcement styles suggests that the degree of formalism and coercion employed by inspectors need not go hand in hand (May and Winter, 2000). In practice, we identified three clusters of inspection patterns within the

two underlying dimensions of enforcement style. The largest category of inspectors (40 per cent) was identified as having an 'insistent' enforcement style, made up of moderate scores on formalism and relatively high scores on coercion. The second largest group (37 per cent) scored low on formalism and moderately on use of coercion, constituting a 'token' enforcement pattern. The remaining 23 per cent scored high on formalism but varied in coercion, constituting a 'rule bound' enforcement pattern.

These findings and those by other scholars concerning patterns in regulatory enforcement styles suggest several points. One is that the patterns of enforcement are varied. Across the range of studies of enforcement style over several decades, evidence can be found for each of the patterns scholars have identified. A second point that follows from this is that such patterns do not fall along a single dimension. Rather, they reflect mixes of at least two dimensions, as found in our research. A third point is that, as we found in studying patterns in enforcement styles, and as Mascini and Wijk (2009) also found, within any broader category of enforcement style there can be considerable variation among inspectors in their choice of emphasis.

Why Do Enforcement Styles Vary?

Inspectors, at least implicitly, make choices when deciding which style to adopt for enforcing regulations. What explains these choices? It turns out that regulatory scholars have not studied this question as systematically as they have the variation in inspection styles. No doubt this lesser attention is due to the difficulty of discerning the interplay of different considerations. The various studies of this issue provide an understanding of potentially relevant factors, but they tell us relatively little about how different combinations of these come into play in shaping inspectors' choices.

The considerations that scholars have identified include the influence of the regulatory problem, the organizational setting, inspectors' attitudes and backgrounds, and responses of regulated entities to different enforcement interactions. Kagan and Scholz (1984) provide a classic treatment of how the nature of the regulatory problem shapes (or at least, should shape) the enforcement approach to be employed (see also Coombs, 1980). Kagan and Scholz argue that not all regulated entities are 'bad apples' that require sanctions or other punitive efforts to bring them into compliance. Indeed a variety of scholars have suggested that compliance with regulations is far more common than noncompliance (Bardach and Kagan, 1982; Hawkins, 1984), although some studies such as Brown (1994) question this. Shortfalls in regulatory compliance can also be attributed to a failure of the regulated to recognize the existence of the problem (requiring

information and persuasive approaches), failure to understand what can be done to address the problem (requiring education) or a lack of capacity to take the desired actions (requiring financial or technical assistance).

Several scholars have considered how the organizational setting might affect enforcement styles. As part of a study of environmental and health inspectorates in England, Hutter (1989) addressed the role of superiors in signaling expectations and the role of organizational norms about enforcement. Hutter (1989:162) also discusses how higher level review and approval of inspectors' enforcement actions shape the realities of the available enforcement tools. In particular, she suggests rejections of recommendations for prosecution leave 'almost by default' the choice of control by persuasion. In settings where accommodation is promoted as an organizational norm, formalism is deemed a failure; in other settings, where a measure of accomplishment is the number of cases referred for prosecution, the organizational bias is clearly toward insistent or legalistic enforcement. Hawkins (1989: 370) further elucidates organizational pressures concerning prosecution, arguing that regulatory agencies have incentives to prosecute cases that are 'quick, straightforward and unlikely to be defended.' In more recent research in Brazil, Pires (2010) shows how the different actions of regulatory agencies in directing and controlling the discretion of inspectors affect inspection behaviors and outcomes.

One related issue is the extent to which managers or political superiors attempt to shape directly the regulatory styles of inspectors, rather than leaving this to organizational norms or received wisdom. In a study of agro-environmental inspection in Danish municipalities, Winter (2003) found limited evidence that political superiors' desires directly affect regulatory styles. In particular he found that local politicians' support for the national policy might have signaled a desire to get tougher, but did not as expected increase inspectors' use of a more formal enforcement style. He attributes this limited impact to the low visibility of inspectors' regulatory styles to political managers. Inspectors thus retained considerable latitude in their choice of enforcement interactions. By contrast, Winter suggests that more visible enforcement actions by inspectors (e.g. applying sanctions for violations) are more closely monitored by political superiors.

Wood (2003) highlights the influence of regulatory context on the behaviors of building inspectors. As part of this research, Wood studied inspection practices in four jurisdictions in the United States. Like Hutter (1989), he found that organizational context is important in setting the tone of enforcement, but how it does so varied in the four jurisdictions (Wood 2003:88–89): in one setting, a strong administrative orientation toward customer service, along with necessary resources, created 'a focused, effective department with consistent, coordinated enforcement

between inspectors.’ In another he observed conflicts between inspectors of different ages that led to a ‘less efficient and more diverse enforcement approach.’ A third setting was, due to a scandal some twenty years earlier, still more concerned than the other cities about rules and procedures. In the fourth city, lacking consistent signals and support from city leaders, inspectors ‘are pressured from many directions at once and must continually justify their actions, never knowing if their decisions will be upheld or rescinded by political officials courting the building community.’

The backgrounds of inspectors and their attitudes also affect the choice of enforcement styles. Gormley (1998) considered the enforcement styles of 104 child care inspectors in four American states. Based on interviews with the inspectors, he attributes variation in their enforcement styles to a combination of prior work experience (those who formerly worked as child care providers having stricter approaches), inspectors’ degree of satisfaction with the job (leading to more attention to problems), and age (older inspectors as tougher critics). Other research on inspectors’ regulatory enforcement choices highlights the role of their attitudes about regulated entities and their sense of the efficacy of different enforcement tools. Winter (2003) found that agro-environmental inspectors’ enforcement styles were affected by their attitudes about the national regulatory policy goals, the target group, their workload, and particularly their sense of the efficacy of the tools they employed. Wood’s (2003) empirical examination of building inspectors’ willingness to apply sanctions draws attention to the behavioral norms among inspectors within a jurisdiction and to inspectors’ beliefs that threats are effective in dealing with difficult situations. These findings suggest that factors relating to individual inspectors may be as important as the organizational setting, if not more so, in affecting enforcement styles (see also Hedge et al., 1988; Mascini and Wijk, 2009; more generally see May and Winter, 2009).

The literature on ‘responsive regulation’ (discussed more fully in Gunningham’s chapter 9 in this volume) highlights how inspectors adjust to regulatees’ responses to prior interactions and enforcement actions. Suffice to note that the literature about regulatory responsiveness does not clearly identify the forces that shape different regulatory responses on the part of inspectors. One reason for this is the variety of potential responses to a given situation. Nielsen (2006) demonstrates this in research concerning regulatory responsiveness for four different regulatory areas in Denmark. Overall, Nielsen (2006: 411) finds inspectors ‘are in one way or the other reacting responsively to the “conduct” of the regulatee.’ But because the responses are varied, she finds it difficult to sort out the factors that contribute to different responses. In studying Dutch food inspectors, Mascini and Wijk (2009) find inconsistencies in enforcement styles that

result from differences in inspectors' perceptions of the regulatory situation and their sense of the efficacy and political acceptability of different actions.

Most of the discussion of enforcement styles assumes intentionality on the part of inspectors in choosing to adopt a particular style in dealing with a given situation. But it may be that some, if not a good deal, of these behaviors are learned ones that inspectors apply more or less automatically as unconscious habits. These responses may embody their experiences over time based on trial and error learning. The responses may also reflect the norms of the organization and common practices of peers with whom a given inspector works. This suggests new avenues for research concerning the adoption of enforcement styles, similar to Wood's (2003) research.

EFFECTS OF DIFFERENT ENFORCEMENT STYLES

Differences in inspectors' styles mean little unless they can be shown to either directly or indirectly affect compliance. Given that effect on compliance is ultimately the central issue, it is surprising that the literature is sparse in evaluating these effects and unsettled in drawing firm conclusions about them. As we will show, the studies concerning effects of different enforcement styles point to limited but detectable impacts directly affecting compliance. They find greater impacts of enforcement style on such things as regulated entities' knowledge of rules and cooperation with inspectors.

Compliance effects

Several challenges arise when attempting to assess the effects of differing enforcement styles on regulatory compliance. One is gauging compliance, given that it is rarely independently observed and is often multi dimensional. The typical approach is to rely on either self-reports of compliance behaviors by regulated entities, or inspectors' reports of their perceptions of compliance. A second challenge is measuring the inspection style that is employed in any given circumstance. It is not feasible for larger-n empirical studies to observe regulatory interactions. Instead investigators typically rely on surveys of regulated entities or of inspectors to gauge 'typical' inspection styles. This approach necessarily blurs how inspectors respond to particular circumstances. Some researchers have attempted to recreate the circumstances of regulatory encounters by asking regulated entities about how a recent inspection experience unfolded over time. However,

inspectors and regulatees may perceive the inspection experiences differently and report different styles. A third limitation is in the ability to know what would have happened in the absence of the use of a given enforcement style or effort.

The findings of the various studies of the impacts of enforcement styles suggest that style (as opposed to enforcement strategy) has only a limited, albeit detectable, impact on compliance. The failure to detect stronger effects may partially reflect the blurring of the measurement of differing styles. But as we suggest here, the absence of strong effects of enforcement style on compliance is probably primarily a result of the diversity of regulatory situations and the conditional nature of any effects that do occur.

In studying farmers' compliance with agro-environmental regulations in Denmark, we relied on municipal inspectors' reports of the effectiveness of their enforcement efforts, and also other reported measures of enforcement styles and agency actions (May and Winter, 1999). Inspectors were asked to rate the 'total effect' of their enforcement efforts on a ten point scale, with end points of 'no effect' to 'has caused all farmers to comply.' The median score was an eight, with 20 per cent reporting a score of six or less. In considering different aspects of an agency enforcement strategy, the research shows that compliance is enhanced through greater reliance on third party intermediaries (in this case agriculture consultants), more frequent inspections and setting priorities for inspection of major items. These findings are consistent with the broader literature on enforcement strategy, which shows the critical factor is not the overall effort *per se*, but the frequency with which inspections are undertaken (Burby and Paterson, 1993; Gray and Scholz, 1993; Helland, 1998).

We found generally modest impacts of different enforcement styles on compliance, in the order of a few percentage points difference in perceived compliance depending on the particular style and situation (May and Winter, 1999). The effects of some aspects of enforcement strategies were twice as strong, especially those of involvement of agricultural consultants, percentage of farms inspected and percentage of farms for which injunctions were issued. The results regarding style suggest that it is necessary to get tough up to a point, but beyond that the threat of coercion can be counterproductive. In particular, for these data the effect of coercion is negative when the degree of formalism in inspection is high. The findings of this study cast doubt on the effectiveness of overly legalistic enforcement styles, but also give grounds for caution about cooperative enforcement styles.

A variety of other studies assess the effects of different enforcement styles by investigating the perceptions of regulated entities of their inspection experiences. For example, as part of our research in Denmark on

agro-environmental regulation (Winter and May, 2001) we gauged the effects of enforcement styles on farmers' reports of their compliance behaviors. As with May and Winter's (1999) study, the effects of enforcement styles are relatively modest but nonetheless nuanced. In particular, the effects of formalism were positive and somewhat stronger when awareness of rules was low. In such circumstances the use of formalism gives regulatees more certainty about what is expected from them. The use of coercion had a negative effect, but only when farmers had low awareness of rules. In contrast to the Danish studies of agro-environmental research, May and Wood (2003) fail to find a direct effect of inspectors' enforcement style on homebuilders' compliance behaviors. This research did reinforce the importance of knowledge of the rules in affecting compliance, however. May and Wood attribute the lack of an enforcement style effect to inconsistencies in the way inspectors interact with homebuilders, and note that 68 per cent of their respondents cited such inconsistencies as a problem.

One other relevant empirical study is the work of Nielsen and Parker (2009) on the effects of 'restorative justice' and 'tit for tat' enforcement on the compliance behaviors of businesses in Australia as it concerns competition and consumer protection. The unique aspect of this study is their approach in asking regulated entities how a recent inspection experience unfolded over time, allowing them to gauge their responsiveness to different enforcement styles. The relevant dependent variable is the reported compliance management efforts in the practices of the regulated entities, measured on the basis of responses to a set of 14 questions about compliance actions. About one third of the respondents report a tit for tat enforcement approach (that is, inspectors responding in kind to behaviors of regulated entities). Among these there is some evidence of better compliance outcomes, but no evidence of learning. The research failed to find any effect of a restorative justice approach (i.e. cooperating with regulated entities to bring them into compliance) on overall compliance efforts.

Perhaps the most important thing to note about the effects of enforcement style on compliance is that they are not uniform. The negative effects of coercive styles on compliance are arguably more consequential than the positive effects of facilitation. The evidence suggests that coercive styles whereby inspectors threaten regulated entities, or 'tit for tat' styles, in which inspectors respond with threats in response to recalcitrant regulatees, can backfire. When regulated entities are not aware of rules and do not understand why inspectors issue what they perceive as unnecessary threats, they are much more likely to regard those threats as bullying. More aware regulated entities may see the threats as hollow given the rarity of sanctions being issued.

Similarly, the effects of the use of formalism are disjunctive. Though formalism has the potential to be overdone as ‘by the book’ enforcement (Bardach and Kagan, 1982), the research reviewed here suggests formalism as a component of enforcement styles can be beneficial in some circumstances. When used without excess, it provides greater predictability in enforcement actions and helps build awareness of rules and compliance actions. But when it is overdone it can backfire as regulated entities react negatively to the way they have been treated. The difficulty is that what constitutes overdoing it is a matter of perception. Future research about the effects of regulatory styles needs to more clearly delineate different contexts and thresholds of effects.

Other Effects

The extant research also suggests a variety of potentially beneficial indirect effects of the use of different enforcement styles. Two aspects have been highlighted in the literature – the effects on regulated entities’ awareness of rules, and on the degree of cooperation between regulatory officials and regulated entities. With respect to the former, May and Wood (2003) found that increased formalism in inspection had an influence (to a point) on homebuilders’ knowledge of rules, with facilitative efforts helping somewhat those with less knowledge of the rules. The formalism provides predictability but, as noted above, can be off-putting especially to less knowledgeable regulatees. These findings are consistent with those of Pautz (2009b) and other researchers in showing that regulated entities value inspectors who ‘work with you’ and who have experience and knowledge. These indirect effects of enforcement style are noteworthy given the importance of knowledge of rules and how to comply with them for regulatory compliance.

More scholarly attention has been paid to the effect of enforcement style on cooperation. In this area the findings are uniform in suggesting that more facilitative approaches enhance perceptions of cooperation, and that greater use of formalism in inspection undermines it. This is evident from Nielsen and Parker’s (2009) study of Australian business compliance in showing the beneficial effects of the restorative justice approach in enhancing cooperation. May and Wood (2003) cite a 17 per cent increase in perceptions of cooperation among homebuilders with increased use of facilitation, and a corresponding 7 per cent decrease in perceived cooperation with increased use of formal enforcement styles. These findings are straightforward in suggesting that a friendly, facilitative style fosters mutual respect and trust. By contrast a more formal style creates distance between regulators and regulatees and thereby undermines cooperation.

Though the findings about the effects of enforcement styles on knowledge and cooperation may seem fairly obvious, more in depth observations of regulatory interactions underscore how difficult it is to apply consistent enforcement styles and how differently they can be perceived by regulatees. Black's research (1998, 2002) in particular addresses these points, developing an analysis of what she labels 'regulatory conversations' between regulatory officials and regulated entities. One aspect of this is the challenge of setting shared expectations about compliance, given different uses of discretion in enforcement. Another aspect is the shaping of regulatory relations. An example of the variation in outcomes is provided in Lee's (2008) study of Korean dry cleaners' regulatory compliance. Lee contrasts the negative relationships established with regulators in southern California and the more positive ones in Massachusetts. In the former context, the regulators were viewed as adversaries, and in the latter, as friends. As Lee (2008: 761) notes, the important point is that 'the sharply contrasting views of regulators as adversaries or friends led drycleaners to interpret identical regulatory actions in radically different ways because an adversary tends to harm whereas a friend does not.' These considerations, along with the different roles of the relevant trade associations, go a long way to explaining the much greater rates of compliance with environmental regulations amongst drycleaners in Massachusetts than in Southern California, according to Lee (2010).

CONCLUSION

The study of regulatory enforcement strategies and styles is one of the more developed aspects of the literature on regulation and regulatory compliance. This makes sense given the historic preference given to enforcement, as opposed to other mechanisms, for gaining compliance. Despite this, it is surprising to see how unsettled the literature is about basic issues concerning the concept of regulatory style and the effects of different enforcement styles on compliance. Following consideration of some of the regulatory scholarship on these topics, it is appropriate to conclude by considering the broader themes suggested by this review.

A starting point for this review is a basic distinction between the enforcement strategies of regulatory agencies and the enforcement styles of regulatory inspectors in their day-to-day dealings with regulatees. Both are predicated on the existence of a regulatory design that specifies goals, the tools to be employed and the responsibilities of relevant implementing organizations. The research on agency enforcement strategies is not particularly satisfying in providing a clear depiction of alternative strategies

or their import. The variety of strategies suggested by the literature is no doubt a function of both the diversity of choices that agencies make and the variety of enforcement settings. The broad categories of enforcement strategies suggested in the literature (e.g. punish or persuade) are too simplistic to adequately reflect what happens in reality.

The research about inspectors' enforcement styles and their underlying dimensions leads to similar findings across a range of studies. The various studies show that the character of day-to-day interactions between inspectors and regulated entities is not one dimensional. Rather, enforcement style varies along two dimensions that can be labeled formalism and facilitation (the latter being the opposite of coercion). The results are reasonably robust, given that the studies use different approaches – in examining inspectors' reports of their style and regulated entities' perceptions of style – and are based on research undertaken in very different settings. As discussed in this review, different combinations of formalism and facilitation lead to a variety of potential patterns in the use of enforcement styles.

The findings concerning the use of different regulatory enforcement styles underscore the importance of regulatory context, as it plays out in several ways and affects the choice of enforcement style. One aspect is the regulatory setting, as defined by the organizational and political context. Though inspectors often have considerable discretion, how they exercise that discretion is affected by their attitudes and by the regulatory setting. Inspectors, not surprisingly, are pragmatic in thinking about their behaviors and how their actions will affect their situation. A key aspect of the regulatory setting is the situational conditions that inspectors face in dealing with particular regulated entities or classes of entities. The relevant considerations are the responsiveness of the regulated entities and inspectors' assessments of their capability and willingness to comply, as conditioned by inspectors' attitudes about regulatees. A third aspect of regulatory setting is the nature of the 'regulatory game' and the regulatory expectations fostered in the process.

The various findings of the studies of the impacts of enforcement strategies and styles on compliance lead to three general observations. The first is that aspects of agency enforcement strategy generally have stronger effects on compliance, than those of inspectors' enforcement styles. The caveat to this observation is that very few studies address the relative importance of both agency enforcement strategies and inspectors' styles. With respect to enforcement strategies, the research is generally consistent in showing that frequency and targeting of inspections for 'at risk' regulatees have high payoffs.

The second observation is the bifurcated effects of different enforcement styles. The use of threatening styles in response to recalcitrant regulatees

can backfire, especially with regulatees that do not understand the rules. The use of more formal styles can be beneficial to the extent that it provides greater predictability in enforcement actions.

The third observation is the importance of considering the indirect effects of enforcement style on compliance, which the research demonstrates are stronger than the direct effects. In particular the use of formalism, to a point, helps build awareness of rules and compliance actions. The use of facilitative styles helps to foster cooperation and build trust among regulators and regulatees.

The studies reviewed here show a range of methodological approaches, yet still evidence the difficulty of empirically characterizing regulatory enforcement styles and their effects. A variety of statistical studies have proven useful for depicting the components of regulatory styles, their patterns and effects. But such studies typically obscure how inspectors respond to particular situations, and overlook the nuances of the interactions with regulated entities. In addition, they inevitably rely on reports by inspectors about the perceived impact of their actions or by regulatees about their perceptions of enforcement styles. Qualitative studies that are based on observations of interactions between inspectors and regulated entities provide a more nuanced understanding of 'regulatory conversations,' but come at the expense of depicting the broader terrain. Though some studies provide comparisons of different regulatory agencies and their inspectors, few provide systematic comparison of the implications of differences in regulatory contexts.

This latter point is particularly important since as a whole the research reviewed in this chapter underscores the importance of regulatory settings. Future research should more fully take into account differences in regulatory settings. Regulatory situations clearly differ in how they structure compliance relationships. One aspect of this, which has been addressed in the responsive regulation literature but bears further examination, is how differences in the knowledge and attitudes of the regulated affect the choice of enforcement style. It is one thing to enforce compliance with simple rules by knowledgeable and committed regulatees. It is quite another to bring about compliance with complex regulations by uncommitted and less knowledgeable regulatees. As the research reviewed here has shown, an enforcement style that is mismatched to the regulatory situation may do more harm than good, if only because it confuses the regulated entity.

Another question for future research concerns how regulatory settings condition the responsiveness of regulated entities to enforcement actions. For this, it is useful to consider differences in the nature of the 'contract' with regulated entities, and how context shapes the evolution and interpretation of it. The manner in which regulatory contexts condition expectations

governing the regulatory contract affects the roles of different regulatory tools and the relevance of different enforcement styles (May, 2005). It makes little sense to attempt to enforce regulations using threatening styles and coercive approaches when the regulatory context establishes norms of good faith efforts to comply and compliance can be easily monitored. Moreover, the situation is very different where there are repeated interactions among inspectors and regulated entities, compared to circumstances where there are episodic and more arms-length relationships. The former situation can foster shared expectations that constitute a 'social contract' that in turn enables cooperative approaches to solving compliance problems; the latter leaves little leeway for negotiating regulatory expectations.

Consideration of the nature of the regulatory responsiveness and the influence of regulatory settings on enforcement and compliance also raises the issue of the appropriate unit of analysis. The regulatory responsiveness literature is concerned with the evolution of the one-to-one relationship between regulatory authorities and regulated entities as they interact over time. But such relationships are not necessarily dyadic. Many regulated entities are subject to inspections by multiple regulators at any given point in time, or by different inspectors over time from the same agency. How do regulated entities respond to different enforcement styles in such circumstances? Some research suggests potential confusion arising from such circumstances, which undermines the positive effects of facilitative enforcement styles (May and Wood, 2003). More research needs to be undertaken to characterize and understand the joint effects of multiple enforcement efforts for a given regulated entity or sector.

Another consideration concerning the unit of analysis is moving from studies of individuals to consideration of organizations and groupings of regulated entities. Chapter 6 by Gray and Silbey in this volume makes the point that for many regulated entities, few of the individuals who are subject to regulations have any direct contact with regulators. Instead, many regulatees' understanding of regulation and compliance is shaped by the organizations in which they work, and by other non-regulator sources. This highlights the importance of considering norm transmission concerning regulatory compliance within and among organizations. In this regard Lee (2010) shows the important role of 'interest intermediaries,' such as professional associations, in affecting the character of regulatory relationships. The broader issue is the extent to which these third parties can fill gaps in enforcement roles and help foster compliance (Koski and May, 2006; Winter and May, 2002; Gunningham and Grabosky, 1998).

In sum, future research about regulatory strategies and enforcement style needs to progress from looking for general effects across all settings to identifying disaggregated effects for particular settings. A key difficulty

in accomplishing this is delineating different types of settings in terms of attributes such as the knowledge of regulators and regulatees, the complexity of regulations and the degree of acceptance and trust that regulatees have for regulators (Pautz 2009a, 2009b). Though such disaggregation adds to the methodological challenges of studying the effects of enforcement strategies and styles, it is critical for advancing the understanding of how enforcement style and strategy enter into the compliance equation. Simply saying that the effects are varied and limited is insufficient, given the practical need for advice about effective strategies and desirable enforcement styles. Especially important is the identification of situations for which particular inspection styles or enforcement actions are counter-productive, rather reducing the willingness to comply and undermining the regulatory social contract.

As with much of the literature on regulation, that which concerns regulatory enforcement styles does not lead to simple prescriptions. As suggested in these concluding remarks, the particulars of the situation and the context for regulation matter a great deal in shaping the appropriateness and effectiveness of different styles. Regulatory scholars have begun to sort out, although not all that systematically, the conditions under which some enforcement styles are more effective than others, and the relevance of different aspects of agency enforcement strategies. All of this needs to be put into perspective of other chapters in this volume in recognizing that regulatory enforcement is but one consideration for achieving compliance with regulations and for making progress toward desired outcomes.

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