A HISTORICAL APPROACH TO REGULATORY COMPLIANCE RESEARCH: THE CASE OF RULE 1421 IN CALIFORNIA

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This research responds to a question of regulatory compliance: Why do regulated entities breach regulations, despite an increased magnitude of formal threat? The research provides theoretical accounts of circumstances under which the anticipated effect of formal threats does not occur. Our task is carried out by examining a deviant case that runs counter to the prediction of deterrence theory. Unlike a majority of deterrence studies adopting statistical analysis, this research employs historical analysis that has great potential to diagnose the intrinsic problems that plague policy implementation. The research suggests that effective regulatory persuasion needs to be based on an analysis of the evolution of the ideas and beliefs internal to regulatees in the historical context in which they have been situated, rather than on purely instrumental reasoning.

Key Words: Regulatory compliance, Deterrence, Historical context

INTRODUCTION

One of the great responsibilities of regulatory agencies is to ensure compliance with statutes, since the level of compliance could be viewed as a proxy of effective regulation and a fair test of state authority (Tyler, 1990). The primary enforcement strategy to promote industry compliance has traditionally been to establish sufficient deterrence; that is, to create formal punishment that exceeds economic gains from violating regulations.

The deterrence strategy is premised on the assumption that an increase in the cost of an activity results in a shift from that activity toward relatively cheaper activities. This
assumption provides the analytical justification for generalizability of the deterrent effect (Ehrlich, 1972). Gordon Tullock (1974) elucidates this logic with simple but powerful economic reasoning: “Demand curves slope downward. If you increase the cost of something, less will be consumed. Thus, if you increase the cost of committing a crime, there will be fewer crimes” (pp. 104–105). He goes on to say, “The punishment variable […] has the unique characteristic of being fairly easy to change by government action. Thus, if it does have an effect, we should take advantage of that fact” (p. 105).

While justifiable in light of legal interventions, this emphasis on the effect of punishment has been controversial from the policy-relevant perspective. It might be true that the punishment variable has some effect on violators (i.e., specific deterrence). However, what we are concerned about is not only the direction of regulatees’ response, but also the “magnitude” of such response (Ehrlich, 1972). Given that the primary purpose of imposing sanctions is not to avenge illegal activity already committed but to deter the same or similar future activities, it remains unclear whether formal threats—sending an unmistakable warning signal to those who have not yet violated formal rules—are the most effective way to prevent potential illegal activities (i.e., general deterrence).

Early deterrence research therefore focused largely on the twin questions of whether and to what extent formal deterrent threats affect compliance behavior. Voluminous empirical research produced mixed results. Whilst some studies demonstrated the substantial impact of formal threats on compliance predicted by deterrence theory, others did not find evidence of a general deterrent effect. Scholars attributed the disparity between the two bodies of research to methodological problems (e.g., Braithwaite and Makkai, 1991; Grasmic and Busrik, 1990; Paternoster et al., 1982; Piliavin et al., 1986; Williams and Hawkins, 1986).

Implicit within the contemporary deterrence literature utilizing statistical analysis are assumptions regarding how deterrence threat is actualized. For one, the subtext of much existing research is that a deterrent effect can be isolated and researchers are able to catch it in the act, as it were (Williams and Hawkins, 1986). This is predicated on the assumption that there exists a single process of deterrence responsible for compliance. Despite significant contributions to broadening our understanding of the subject, working within this tradition has glossed over the importance of social context and the problem of multiple causations.

Formal deterrence does not fail to work in the abstract; it works or fails in a particular setting. In this regard, we aim to uncover “under what circumstances regulatees breach regulations, despite the increased magnitude of formal threat,” rather than seek the definitive answer as to whether a deterrent effect actually exists. To answer the question, we analyze a deviant case whose outcome is not explained adequately by deterrence theory. The case runs counter to the prediction of the theory in that we observe the occurrence of prevalent violations despite increased formal threats.