Simple Rules for the Developing World

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Abstract: Much of the discussion in favor of simplicity of legal rules and against complex regulation is rooted in economically developed countries with strong state capacity. With economic development and state capacity comes the presumption that complex rules will be enforced. Therefore, analysis focuses on the administrative and error costs, and the unintended consequences of complex rules that are enforced. This paper argues that the Epsteinian insight is even more relevant to the developing world which lack state capacity to even take on simple governance tasks. Developing countries often have less than 20 percent of the state capacity of developed countries. However, this does not mean they limit the regulatory structure to a fifth of the tasks. Under-enforcement or non-enforcement of complex rules imposes different costs and unintended consequences on society. Using examples from regulatory systems in less developed countries, this paper highlights problems of enforcement swamping, deadweight loss, and corruption arising from the under-enforcement of complex rules. To avoid these problems, the paper concludes that less developed countries should favor simple rules.

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I. Introduction

In *Simple Rules for a Complex World*, Richard Epstein argues that the complexity imposed by the American regulatory system, in virtually every area of economic activity, creates private costs of compliance, public costs of enforcement, and social costs related to uncertainty; which, in aggregate, are likely to exceed the benefits from regulation, and undermine the overall functioning of the market system. There is a large literature analyzing the "optimality" of individual rules in different fields of law, while Epstein argues that aiming for optimality with individual rules in each situation might lead to an overly complex system overall. Since its publication twenty-five years ago, these ideas have become an integral part of the economic analysis of the regulatory state in the US.

Outside the US, the insights from the *Simple Rules for a Complex World* framework, have mostly been applied to the developed world, like the European Union (Elert, et al. 2019) or Australasia (Teicher and Svensen 1997), which have espoused a much more complex regulatory and welfare state in the last few decades. With economic development and strong state capacity comes the sound assumption that the complex rules in question will be enforced. Because of this assumption, the law and economics literature mainly focus on the incentives associated with any given rule and the unintended consequences.

In this paper we extend Epstein's insights to the 6 billion people in the world who live in weak or fragile states. A majority of the global population encounters governance systems that lack the capacity to enforce complex rules. We argue, that Epstein's insights are even more applicable to countries with weak state capacity, and problems related to underenforcement or non-enforcement of complex rules in these conditions.

There are three main concerns posed by complex rules in weak states. First, these rules are not fully enforced, and there are unintended consequences of non-enforcement or arbitrary enforcement of existing rules. Second, creating and complying with these rules, even partially, imposes additional stress on the administrative and enforcement systems. Consequently, there is premature load bearing (Tabarrok and Rajagopalan), enforcement swamping (Klieman 1993) and increased subversion and corruption of the political system (Glaeser and Shleifer 2003) – under-recognized costs and consequences of a complex regulatory framework. And third, because premature load bearing leads to poor consequences, and too many violations, to compensate for weak state capacity, these states impose further complex regulation, especially with criminal

penalties. Andrews et al (2017) argue that the gap between the capability required to implement the complex regulation and the capability achievable in weak states imposes significant stress on the system. And this stress pushes these developing countries into a path of even lower state capability. In other words, prematurely adopting complex rules with limited state capacity can reduce the ability of weak states to actually develop greater state capacity.

In the following sections, we first review Epstein's argument of the costs associated with complexity in a world where complex rules are enforced or expected to be enforced in strong states. Second, we discuss weak and fragile states, where the state capacity cannot possibly enforce such a complex regulatory framework, though they might feel pressure to adopt complex regulatory rules. Third, we discuss the three consequences and costs related to non-enforcement of complex rules in weak states. We conclude with a simple message – when there is weak state capacity, Epstein's message of presumptive laissez-faire, is even more relevant.

II. Complex Rules in Strong States

Individuals are vulnerable to predation by other individuals and predation by the state. Typically, structures, and rules at a higher, perhaps constitutional, level are written to protect individuals from public predation. The purpose of law, viewed from this point of view, is to create desirable incentives for individual action, such that they minimize private predation, usually within a broader institutional/constitutional framework that limits public predation. A bulk of legal rules and regulation, especially the rules codified from the common law tradition, help protect individuals from private predation and nuisance. The regulatory state in most developed countries has moved beyond the simple common law system to complex regulation trying to reduce if not completely prevent socially undesirable behavior by individuals and firms.

Epstein's argument on the costs of complexity describe the trade-offs involved (1995, p. 30-36). No rules, or too few rules, governing individual behavior may mean a very simple legal system with low cost of enforcement, but one with socially undesirable behavior and high costs associated with private predation. On the other extreme, too many rules, and too much complexity associated with the interplay of those rules, change the problem to one with potentially very little socially undesirable individual behavior, but very high cost of enforcing those rules, and a relatively high degree of power exercised by the state over the individual. The problem is expressed as a trade-off

while considering any regulation is between increased enforcement costs and the costs of private predation.

First, are the private costs of compliance taken on by every individual. All else held equal, simpler rules that are clear and well publicized will require low private costs of compliance. The more complex the rules, the greater the cost of compliance. Second, is the cost of administration by the state. Once again, the simpler the rules, the lower the public cost of administration - all else held equal. In both cases - of the private cost of compliance and the public cost of enforcement - it is not a linear increase of costs with the increase in complexity. This also depends on the precise nature of the complexity.

An additional element here is error costs. Epstein (1995), for simplicity, includes these in the cost of administration. But we believe error costs merit greater attention as they are one major element of the costs of public predation, whether or not intended maliciously by the state. In any regulatory system, there will be two kinds of potential error: Type I error or false positives, and Type II errors or false negatives. Total error cost is the sum of all false positives and false negatives produced by the system.

It is possible that while regulating civil violations, the two kinds of errors are symmetric. The errors of wrongful fines or (false positive) may proportionately reduce the costs associated with false negatives or not fining the wrongdoers. But the regulatory state also imposes criminal sanctions and they are not symmetric. For criminal law enforcement, the costs of a false positive that results in wrongful imprisonment is greater in magnitude than a false negative (erroneous acquittal), as reflected in the ancient aphorism that "it is better that 'n' guilty men go free than one innocent man be wrongly convicted."

There is a trade-off between the two types of error, which is of key importance while designing the regulatory system. Usually, for criminal sanctions that involve a prison sentence, the systems are designed to minimize false positives. On the other hand, regulation related to taxes and revenue collection, tend to minimize false negatives. Finally, there are deadweight costs, associated with any particular regulation or regulatory system. The simplest way to think about deadweight costs is the loss of desirable economic activity because of a particular regulation or tax.

Complex immigration rules illustrate the tradeoff between errors, and the deadweight losses. Let us say that the systems seek to minimize false positives (whatever be the social context ranging from terrorism to illegal immigration, etc.). Usually this is achieved by requiring a very long personal

history and a lot of proof of personal, professional, and financial details along with visa application forms, etc. This, while minimizing the chances of false positives, will also result in a lot of false negatives because of erroneous or non-standardized paperwork. This tradeoff is quite clear. But there is another impact on turning those who might have applied into non-applicants on the margin. Stringent visa procedures will also discourage a number of people from applying for a visa for legitimate business or tourism purposes - a net loss to economic activity, which is not directly regulated by immigration, but indirectly through the deliberately complex visa procedure.

III. Weak States

While discussing each of these costs – private cost of compliance, public cost of enforcement, error costs, and deadweight losses – the central assumption is that these rules are mostly or fully enforced by the state. And more importantly, individuals in these societies expect that these rules will be enforced. In weak states neither of these assumptions hold true which will change the analysis of complex rules, reducing some costs but increasing others.

State capacity is the ability of the state to effectively design and implement its own policies. There are strong states, which can execute almost all of their rules, no matter how complex, effectively. On the other extreme, are countries usually categorized as very weak or fragile states, with little to no ability to execute any policies. In the middle are weak states.

But how does one measure capabilities of states and more generally efficiency of the government in executing policies which are different in scale and complexity? One particularly simple and elegant study to understand differences in state capacity is by Chong, et al (2014) which examines the differences in how well countries handle international mail. 159 countries in the world are signatories to the Universal Postal Union Convention, which specifies a common policy for the treatment of undeliverable international letters. Among other requirements, they are to be returned to the sending country within thirty days. A functional postal service and returning an undeliverable letter back to the sender is not a complex in terms of regulation, but it does require state capacity to execute the rules as intended. More importantly, the de jure policy on returning letters is exactly the same across all 159 countries, so the difference in the efficiency and performance of each countries postal system is not about differences in rules.

To examine governmental effectiveness, Chong, et al (2014) mailed 10 deliberately misaddressed letters to five different cities in each of the 159 countries and waited and counted how long, if at all, each letter took to return. Measured by the number of letters which were returned within ninety days (already more than the official policy of thirty days), the performance ranged from zero to 100. In countries like Finland, Norway, and Uruguay, 100 percent of the letters came back within 90 days. In 25 of 157 countries, no letters came back within 90 days (in 16 countries, none of the letters came back ever). These zero performance countries included unsurprising places like Somalia, Myanmar, and Liberia but also included "middle-income" countries like Egypt, Fiji, Ghana, and Honduras.

Chong, et al (2014) demonstrates a rare case when all 159 countries have the identical de jure rule, as signatories to the Universal Postal Union Convention. Further, "return to sender" is a rule that requires little to no interpretation and can be quite easily put in place in any postal service. So, the difference in performance is only because of a difference in the effectiveness of a government in implementing its own rules.

Various studies have measured other essential state functions. The answer tends to be the similar – developing countries with weak state capacity are unable to enforce their own rules. One can argue, that the postal rules requiring a "return to sender" in a foreign country, may go unnoticed, because it does not directly benefit the citizens of the country, and there may be very little feedback from the constituents that the rule is not followed. However, countries with weak state capacity also lapse on enforcing rules and duties directly affecting citizens.

A 140 countries are signatories to the Global Convention on the Rights of the Child and committing to register all children at birth. However, even twenty-five years after this international commitment, countries such as Bangladesh, India, Mozambique, Nigeria, Pakistan, and Uganda still register less than 40 percent of children at birth. A most important document, used for identification and targeting for virtually all other government programs, the inability to accurately count and record births and deaths is a classic example of weak state capacity. These weak governments have policy ideas and commitments in place that have been successful in other countries, but weak states cannot implement the policy in a consistent and effective manner.

The inability of a state to ensure that people with driver's licenses are actually competent drivers is another example of a weak or flailing state (Pritchett 2009). According to India's road transport and highways minister Nitin Gadkari (ET Bureau 2019), for example, 30 percent of India's driver's licenses are fake. This may actually underestimate the problem as many real licenses are

obtained in a routinely fraudulently manner without taking a test which many people would fail (Bertrand et al. 2007).

To measure state capacity across countries globally, Andrews et al. (2017) create a simple average of the scaled index of three different data sources - Quality of Government (QOG) data, Failed State Index (FSI), and World Governance Indicators (WGI). After scoring the developing countries using these three, they categories the countries as strong, middle, weak and very weak. According to Andrews et al. (2017), most people in the world live in middle or weak capability states and almost half (49 of 102) of the historically developing countries have very weak or weak capability (2017, p.11). Only eight of the historically developing countries have attained strong capability. Moreover, as these eight are mostly quite small (e.g. Singapore, Bahamas, United Arab Emirates), fewer than 100 million (or 1.7 percent) of the roughly 5.8 billion people in historically developing countries currently live in high capability states. (*Ibid*). Just the number of people living in weak states makes this a prevalent and important problem.

This is a snapshot at a moment in time. But state capacity can be built, and perhaps signing these conventions or adopting complex regulatory systems in labor, health, anti-corruption etc. today will be enforced well in due time as developing countries develop capacity. Unfortunately, weak states are not growing in capacity.

Andrews et al. (2017) also calculate the number of years each country will take (at their current rates of capacity growth) to become a state with strong capacity. They find a few unambiguous successes in building state capability like South Korea, Chile, and Singapore. But only another eight countries are, if current trends were to persist, on a path to reach strong capability within this century. Andrews et al. (2017) conclude that at current rates, less than 10 percent of today's developing world population will have descendants who by the end of this century are living in a high capability country. For the other 90 percent the situation is bleaker. The "business as usual" scenario would end the twenty-first century with only 13 of 102 historically developing countries attaining strong state capability. At the other extreme, seventeen countries are at such a low level of capability that even "stateness" itself is at constant risk—in Somalia, Yemen, and DRC, and more recently added Syria.

Andrews et al (2017, p.25) find that for the middle states there is an even more disturbing trend. Among those countries with minimally viable states, fifty-seven of the seventy-seven (three-quarters) of the weak and middle capability countries have experienced a trend deterioration in state capability since 1996. Twelve of the sixteen largest developing countries—including China, India,

Pakistan, Brazil, Mexico, Egypt, Vietnam, the Philippines, Thailand, and South Africa—had negative trends in state capability.

In other words, weak state capacity is the norm and not the exception. And there are very few states on the path to build capabilities to overcome the problem. This has important consequences for complex regulation. A state that cannot follow simple and universal rules like "return to sender", or implement the basic policy of recording births, will scarcely be able to implement and enforce complex environmental regulation, labor regulation, or health and safety protocols.

IV. Weak States Have Complex Rules

There is little chance that weak and middle countries can actually enforce a complex regulatory system. But does that mean these countries de facto operate in the Epsteinian world of simple rules? In other words, does weak state capacity solve the problem of moving these countries from de jure complex rules to de facto simple rules? Unfortunately, no.

States with weak capacity could conserve their capacity on the most essential functions and ignore more complex regulatory issues either de facto or de jure (Rajagopalan and Tabarrok 2019). But in practice weak states have as much or more regulation than strong states (Djankov et al. 2002) and try to enforce everything (Pritchett 2009, Andrews et al. 2017). In the process, they fail not only at enforcing complex regulations but also degrade many fundamental state functions (Rajagoplan and Tabarrok 2019). It's not surprising from this perspective that Andrews et al. (2017) find that in many states with low state capacity, state capacity is diminishing. In this sense, there is a massive social cost to non-enforcement of complex rules, which are different from the costs of enforcing complex rules.

As an example, consider India, home to 1.35 billion. India has essentially all of the regulations of a country such as the United States and then some. For example, India has some of the most restrictive and inflexible labor laws in the world (Organization for Economic Cooperation and Development 2007; Joshi 2017). For the last seven decades, the Indian Parliament has passed over 40 different statutes governing employer-labor relations.[1] Each state has additional protections

[1] The Minimum Wages Act, 1948; The Payment of Wages Act, 1936 ; The Payment of Bonus Act, 1965 ; The Equal Remuneration Act, 1976; The Trade Unions Act, 1926; The Industrial Employment (Standing Orders) Act, 1946; The Industrial Disputes Act, 1947; The Weekly Holidays Act, 1942 ; The Factories Act, 1948; The Plantation Labour Act,

through state level statutes, as well as several amendments to the federal level statute. Multiple efforts to streamline and simplify these rules have been tried but so far labor complexity is the mainstay in Indian industrial relations. In a recent attempt to "simplify" labor laws the Indian Parliament consolidated 29 labor statutes into 4 streamlined labor codes. However, simplicity is not just about ease of finding the rules, but the ease of implementing the rules. On this count, India still suffers from the complexity disease in labor regulation.

The goal of most of this regulation is to ensure that labor is treated "fairly" and to ensure that workplace safety, wages, etc. meet global standards while exploitation of labor is eliminated. The Industrial Disputes Act of 1947, as amended in 1976 and 1982, for example, made it compulsory for any firm with one hundred or more workers to obtain the state government's authorization before closing down or laying off any of its employees. The new Industrial Code 2020, which us yet to be implemented, has the same provision, requiring permission from the government before laying off any employees, but for firms with over 300 employees. In both codes, if a firm chooses to close operations and lay of all its employees, then the firm also needs permission from the government shut down.

India's maternity regulation requires that firms of ten or more workers provide women with twenty-six weeks of paid maternity leave, up from the twelve weeks mandated earlier. India now requires firms to pay for more weeks of maternity leave than the United States or France. In fact, only Canada and Norway—with a gross domestic product (GDP) per capita that is twenty-seven and forty-seven times higher, respectively, than India's—have longer required paid maternity leaves.

1951; The Mines Act, 1952; The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996; The Motor Transport Workers Act, 1961; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 ; The Contract Labour (Regulation and Abolition) Act, 1970; The Bonded Labour System (Abolition) Act, 1976; The Sales Promotion Employees (Conditions of Service) Act, 1976 ; The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981; The Dock Workers (Safety, Health and Welfare) Act, 1986; The Child Labour (Prohibition and Regulation) Act, 1986; The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; The Working Journalists (Fixation of rates of Wages) Act, 1958; The Employees' Compensation Act, 1923; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employees' State Insurance Act, 1948; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Unorganized Workers' Social Security Act, 2008; The Building and Other Construction Workers Cess Act, 1996; The Mica Mines Labour Welfare Fund Act, 1946; The Cine Workers Welfare (Cess) Act, 1981; The Cine Workers Welfare Fund Act, 198; The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972; The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess)Act, 1976; The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act,1976; The Beedi Workers Welfare Cess Act, 1976; The Beedi Workers Welfare Fund Act, 1976; The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988; The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

Overall, India has a few hundred labor related statutes at the federal and state levels, and no one, perhaps not even government officials responsible for enforcing them, are aware of all the details.

To implement the Minimum Wages Act, 1948, (and the future Wage Code 2020), toughly 3171 inspectors were expected to cover an estimated 7.7 million establishments i.e. 2428 establishments per inspector (data for 2012 released by the labor bureau). At two labor inspections a day, each establishment would be inspected once every five years.

Despite being an ILO signatory and having one of the most elaborate labor protections in the world (see footnote 1), India is far from the ILO-prescribed labor inspector-working population benchmark ratio of 1:40,000 for under developed countries but in India the ratio is 1:120,000.

V. The Consequences of Complex Rules in Weak States

Many of the problems of complex rules in strong states are amplified in weak states. Given weak state capacity, for example, there is a higher chance of error in enforcing complex rules. And error costs can be disproportionately high i.e. if there are 10 percent fewer inspectors doing inspections that does not mean there is only a 10 percent error rate. Depending on the complexity of the tasks, the error rate could be quite high. As more regulations come with criminal penalty, the number of false negatives in Indian's weak judicial system keeps increasing.

In India, in particular, there is a high error rate, mostly caused by the pendency of the judicial system. Indian courts have a backlog of cases that will take decades to resolve, meanwhile a lot of disenfranchised Indians are in jail, waiting to face trial. According to National Judicial Data Grid over 3.7 million (around 10% of the cases) have remained pending for over a decade before high courts and district/trial courts across India. Over 660,000 cases have remained pending for over two decades; and 131,000 for more than three decades (Krishnan 2020).

There is the additional issue of unintended consequences and deadweight losses. This certainly plays out given India's labour regulation as over 80 percent of the working population in India is employed in the "informal" sector i.e. the firms that operate without the requisite licenses and inspections and violate most, if not all, labour regulation. This is possible by creating informal contracts, though middlemen, to avoid and evade the labour regulation, as well as bribing factory inspectors etc. And about 50-60 percent of India's GDP comes from the informal sector. Informal firms find it much harder to raise financial capital, attract the best human capital, and are vulnerable to arbitrary government action and closure. But the biggest opportunity lost in remaining informal is

that these firms cannot achieve scale and must remain small. So, firms never grow to enjoy the economies of scale to compete nationally or globally.

In addition to the problems of complex rules in strong states, weak states have additional problems. For example, a weak state's inability to enforce complex regulations naturally leads to corruption. India's strong labor regulations are inconsistent with its economic reality and create a demand for corruption while India's weak state supplies. In a world where all of India's 40 federal labor statutes and hundreds of state level statues were fully enforced, the private cost of compliance would be extremely high. And private actors may want to avoid or evade those costs. This is also true for a country like the United States but the United States can both better afford its regulations and better enforce them. Consider the payment and monitoring of various "inspectors". In the United States the chances of getting caught giving and taking a bribe are fairly high, with a high chance of punishment. Moreover, in the US inspectors can be paid a relatively high "efficiency" wage, making bribes less attractive. Knowing that inspectors are less likely to take bribes means that firms are less likely to offer bribes which in turn makes it less likely for inspectors to accept bribes even when offered. The resulting package tends to result in a low corruption equilibrium.

However, in a country like India, the circumstances are different. First, the private costs of compliance for firms are relatively high and therefore the incentive to bribe labor inspectors is fairly high. Second, India has far fewer "inspectors" per-capita than the United States (e.g. police, judges etc.) and they are not generally paid high wages. As a result, firms are more willing to offer bribes and inspectors are more willing to take them. A secondary effect is that as the number of bribes increase, because of enforcement swamping (Kleiman 1993), the chances of getting caught taking or giving a bribe reduce. Bribes to over-look bribe taking are themselves not uncommon. The system resolves into a high-corruption equilibrium. A recent survey, for example, found that bribing officials in India was considered "part and parcel of daily life" with 50 percent of Indians reported paying a bribe in the last year (Yeung 2019).

In an equilibrium with high corruption, the public costs of enforcement increase. There are two elements to the costs of public enforcement. First as the complexity of the regulatory system increases, ideally the state needs to spend more to enforce complex rules. However, if state capacity does not increase, the opportunity cost of enforcing labor inspections increases as it means not enforcing health inspections, or providing clean water, or murder investigations. For a given, weak, state capacity, each additional regulation or complexity in regulation increases the opportunity cost

of enforcing existing regulation. In the Indian case, more onerous labor regulation clogging the system, pending in court, filing appeals means less attention on other crimes.

The unevenness of development aggravates the problem of subversion and corruption. As Henry Adams (1887) said about growing corruption in the United States:

> "[A] weak government placed in the midst of a society controlled by the commercial spirit will quickly became a corrupt government." Adams (1887)

India, for example, must deal with some firms that are as large a those in the United States but it must do with far lower state revenues or capacity. The influence of "big business" on government policy in the United States is widely decried. But how well would antitrust policy in the United States work if the government budget were $1/20^{th}$ its current level, as India's budget is relative to the United States?

Perhaps surprisingly, the optimal response to problems of subversion and corruption in a weak state is less regulation. Glaeser and Shleifer (2003) offer a model and conclude:

> "In situations of extreme vulnerability to influence, corruption or intimidation, appropriate institutions might involve no legal or regulatory restrictions at all, as the alternative is a socially costly regime in which law enforcement is simply subverted." (2003, p.404)

Finally, there is a big impact on economic growth. Developing countries need the ability to enforce rules that foster greater economic activity and economic growth. Andrews et al (2017) argue that the gap between the capability required to implement the complex regulation/best practices and the maximum achievable implementation at given levels of state capability, imposes significant stress on the system. And this stress pushes these developing countries into a path of even lower state capability under stress. In other words, prematurely loading given state capacity with complex rules adopted by developed countries can have very poor consequences on the ability of weak states to actually develop greater state capacity.

The greatest potential casualty of complexity prematurely loaded on weak state capacity is thus a world where there is insecurity of property rights as the state cannot enforce basic rules to protect property from theft, externalities, and fraud. Simultaneously, weak states also do not control their agents effectively, making the possibilities of public predation, like bribes, expropriation, etc. much higher. And both private and public predation hamper economic growth.

VI. Reasons for Complex Regulation in Weak States

The problem of weak states is so ubiquitous, one may ask, why do weak states espouse complex regulations? The answer is three-fold.

A. Enforcement Swamping and Endogenous Complexity

As we argued earlier, weak state capacity can lead to a high-corruption equilibrium and the same logic can explain high-crime equilibria. Diminished deterrence because of weak state capacity tends to generate more criminal activity, further reducing expected punishment per crime. Mark Kleiman (1993) called this phenomenon 'enforcement swamping'. When increasing crime reduces expected punishment so much that crime increases even further we call it a riot (Tabarrok 1997). In essence, weak capacity states are in a sustained riot equilibrium.

To try to break out of the riot equilibrium, legislators often demand higher punishments which increase complexity, especially if the state has some commitments to fairness and justice. Citizens, NGOs, legislators, and even judges, routinely demand stricter criminal sentences. The hope is that the severity of the punishment can make up for the low probability of punishment due to weak enforcement caused by capacity constraints (Becker 1968). This is true for India where most regulation carries a criminal penalty for violation. For instance, in India, if employers violate the Maternity Benefits Act, 1961, or obstruct the work of the labor inspector, they can be punished with imprisonment of up to three months. This is not the exception but the rule. In the state of Delhi, to protect the environment, individuals and municipal agencies need to seek permission of the state forest department for cutting or pruning trees in their areas. And failure to acquire permission before cutting a tree carries a penalty of up to one-year imprisonment (Delhi Preservation of Trees Act, 1994).

All Indian trains have an emergency stop button/chain. Often people misuse the emergency stop provision, or may play a prank, or delay an entire train and inconvenience thousands of passengers. So, there are rules against emergency stops, with a monetary fine and punishment with imprisonment of up to three months, with train inspectors to enforce these rules. But Indian Railways, like every other institution in India, has too few inspectors. So, there are too many "illegal" emergency stops, and often the criminal penalty is invoked. In March of 1997 two major movie stars in India, Sunny Deol and Karisma Kapoor, were accused of violating Section 141 of the Indian Railways Act, 1989, and making an illegal emergency stop and delaying the train by 25 mins. The

criminal case went on for 22 years at the trial court until they were acquitted in 2019 (Criminal Revision No.1379 of 2019).

Another absurd case of food adulteration took 38 years to resolve on appeal all the way to the Supreme Court of India (*Prem Chand v State of Haryana*). On 18 August 1982, the state food inspector, upon testing, allegedly found four living meal worms and two live weevils in a sample of haldi (turmeric) powder taken from Prem Chand's shop. He was charged under the Food Adulteration Act, 1954, for selling adulterated turmeric powder, and for selling without a license, punishable with imprisonment for 1-6 years and a monetary fine. The case went through a trial court, which acquitted Prem Chand after 13 years on 31 August 1995. Inexplicably, the State of Haryana appealed this decision. The high court took another 14 years to rule, and, reversing the trial court's decision, convicted Prem Chand on 12 September 2009. Prem Chand appealed the high court's decision, and after almost a decade, on 30 July 2020, the Supreme Court acquitted him. It found the procedure followed for testing impeachable—there is no receipt for the sample sent for testing the next day, and no evidence that it was not tampered with during the 18-day delay in report submission by the office of the public analyst.

In one sense, these extended cases are a failure but in another they represent two opposing but legitimate and indeed creditable forces. The failure of the state to prevent private predation increases the demand for punishment. But the consequence of such demands is a low-capacity prone-to-error state with enormous power to imprison almost anyone. The demand for rules, formalities, and checks and balances, which slow the punishment process, is a natural response to imbuing a low-capacity state with power it cannot exercise responsibly. Similarly, the enormous power of the state in the high-punishment equilibrium, motivates bribery and corruption both to escape and even worse to control punishment. Paradoxically the solution may involve reducing punishment. A motorist caught speeding is far less likely to pay a bribe when the fine was 400 rupees than when 2000 rupees, the new and increased penalty for speeding. It could even be the case that a paid fine of 400 rupees reduces speeding more than a 200 rupee bribe.

B. Transition Economies

Developing countries transitioning in their economy might have highly complex rules, because it is difficult to start from a clean slate. Erstwhile colonies, or socialist economies, may have

the baggage of past rules that are difficult to reform. And in the process of moving from one kind of economic system to another, simplicity might be sacrificed in the process of building democratic consensus. While building consensus may increase complexity in any country, transition economies have the particular burden of moving from one kind of economic system and its regulation towards another. It is difficult to generalize this case, because each country's local context is so different, but an example might be illustrative of the difficulty posed by transitioning systems for simplifying rules.

India On July 1, 2017, India made a major shift in its taxation policy and subsumed almost all its indirect taxes and moved towards a unified Goods and Services Tax (hereinafter GST) which is essentially a value added tax (VAT). The GST reform took almost a decade, as all Indian states needed to form consensus over giving up their individual taxes levied within the state and actually moving towards a uniform system of value added tax. This is part of the long running post-liberalization reforms process in India moving towards market systems and away from erstwhile planned economy. India's constitution was amended to reflect the change. So, in addition to a large number of federal and state taxes becoming a single GST, the effect of GST was to turn India into one large free trade zone, with a single tax rate. It was marketed to citizens, businesses, investors, and multilaterals as the "Good and Simple Tax."

However, by the time the reform was complete, it was neither good nor simple. Pursing several different goals, all masked as increasing or furthering a bouquet of equity but furthering interest groups seeking rents, tax concessions, and privileges. As a result, India now has seven different GST rates – 0 percent, 0.25 percent, 3 percent, 5 percent, 12 percent, 18 percent, and 28 percent. According to the World Bank India Development Update 2018, of the 115 countries with a GST regime, 40 countries use a single rate, and 28 countries use two rates. India is an exception and keeps rather poor company with Italy, Ghana, Pakistan, and Luxemburg - countries with four or more rates.

While the intention in India was to have a good and simple tax. One major roadblock in having a single GST rate across the country and all goods and services was perceptions of equity. The idea that a country with predominantly poor people would pay the same rate for their bread as the rich for their porches, was politically and publicly untenable in a functioning democracy. And soon enormous pressure came from different sectoral lobbies. The main issue was that given the proliferation to dozens of central and state rates and hundreds of exemptions over the decades in India, virtually every sector had some special tax concessions and provisions hard-won by lobbies. Now with a potential single rate GST and no exemptions, the main issue was that some goods and

services would end up having their tax rate increase while other goods, especially luxury goods, would see the tax liability decrease. Every single lobby within the economy wants its tax rates to decrease and not increase and this is quite naturally impossible while moving towards a single rate.

So, India ended up with a GST of 7 different rates. Each taxpayer must navigate the 438-page long HSN code-book with its 18,306 entries to identify which of the 7 tax rates apply to the good or service. Any additional cess, sometimes levied by individual states, must also be added. This is no small task, and there are disputes and notifications, to be tracked, almost daily, to even calculate the criterion for the tax burden under GST.

In India, despite the best intentions to have a simple and unified goods and services tax, the very process to achieve that reform and transition, makes the regulation complex.

C. Importing and Exporting "Best Practices"

Complex regulation in developing countries is a consequence of both push and pull forces. The push is the "exporting of rules" where global aid and governance institutions like the World Bank, United Nations, and more specific international agencies dealing with the environment, wildlife, women and children etc. preach the desirable, though complex rules and regulations, from developed nations with strong state capacity where these rules are successful, to other countries with entirely different contexts. There are rules evangelists at these major agencies, who take it upon themselves to proselytize the regulatory framework across the world, irrespective of context or capacity. In order to satisfy external actors, weak states which are also usually recipients of foreign funding often prematurely imitate the complex regulatory systems of the donor countries. Even if aid is not linked to rules, there is a tendency to push for "best practices" to be adopted by developing countries, because of the misconception that the poor outcomes are linked to lack of regulation, and not linked to problems of governance capabilities. Examples include wildlife protection bureaus and anticorruption bureaus.

To satisfy external actors states and organizations in the developing world mimic the rules and organizational forms of developed states, engaging in what Pritchett (2011) dubs 'isomorphic mimicry'. He takes this phrase from evolutionary theory (that animals sometimes use deception to look more dangerous than they are to enhance survival) via the sociology of organizations to fragile states. Pritchett argues that is much easier to create an organization that looks like a police force—with all the *de jure* forms organizational charts, ranks, uniforms, buildings, weapons—than it is to

create an organization with the *de facto* function of enforcing the law. The danger of isomorphic mimicry is that it creates a powerful dynamic in which what survive are not functional organizations and institutions, but mimics, which can adopt the camouflage of capable organizations without any of the associated drive for performance. The result is Potemkin organizations that *look like* they follow the rules and structure of organizations in more developed nations but actually operate in very different ways that are not just worse than those in developed countries but worse than they would have been without the investment in mimicry.

Equally, there are pull forces at play. The second way by which regulation from developed countries makes it way to the rest of the world is elite imitation. Rajagopalan and Tabarrok (2019) argue that elites in developing countries (in their study in India) often live at a standard of living comparable to that in developed countries and participate in cultural and intellectual conversations in the United States, Britain, and Europe. These elites' education, worldview, and international orientation have important consequences for policy decisions. Imported experts may mimic the policy debates and issues that belong to a different environment, usually one with higher state capacity. The most uncharitable interpretation is that the ruling elite make rules that benefit them, as, for example, maternity laws and labor protection that apply in practice only to elites in large, formal and often multinational organizations and firms. But the reason for the vast majority of the complex regulation imported from developing states may have more to do with elite thinking, beliefs and concerns – in politics, bureaucracies, universities, think tanks, foundations, etc.—that is more closely connected with Anglo-American elite thinking, beliefs and concerns than to the thinking, beliefs and concerns of the Indian populace. It's notable, for example, how much Indian elite concern there is over issues such as single use plastic straws and demands to replace it with paper straws. More seriously, labour protection, environmental protection, financial regulation, housing regulation, anti-corruption bureaus, wildlife protection agencies, etc., are all proliferating across the developing world, even in weak states, that do not have the capability to execute complex regulation.

For instance, as signatories to the International Labor Organization conventions, many developing countries have labor regulation that is so complex and myriad, it probably rivals the "good" rules of the developed world. India, which is unable to register births, or provide clean drinking water, sewage systems, and law and order to its citizens, nevertheless has one of the highest protections for labor, applicable to a fraction of its labor force.

This is not unique to India. To give just one example, Uganda has had its anti-corruption laws rated 99/100—on paper Uganda is the best anti- corruption country in the world. Yet Uganda

is also rated as having the largest gap between law and practice and is regularly beset by corruption scandals (Andrews et al 2017, p.30).

Both India and Uganda have complex regulatory system that, on paper, will rival the complex regulatory system of the United States. However, if the capabilities are compared, then India and Uganda are far behind, not only to present day United States, but also the past. Andrews et al (2017, p.58) calculate and compare the revenues of India and Uganda in 2006 to revenues of United States in 1902 (all in 2006 dollars). Government revenue in India per capita in 2006 was $102 and in Uganda was $120. But in 1902, the government revenue per capita in the United States was $526! But India and Uganda are not attempting to follow the regulatory system of the United States of 1902, which would still be hard given the gap in fiscal capability, but the complex regulatory system of present-day United States!

VII. Conclusion

Simple rules for a complex world argued the need to consider the tradeoff between the kinds of social incentives imposed by complex rules against the costs of public enforcement and private compliance imposed by these rules. Of course, the ability of a complex rule to bring about the socially desirable individual behavior depends on enforcement of those rules.

Given the inability to enforce these complex rules, states with limited capacity should rely more on markets even when markets are imperfect—presumptive laissez-faire. Rajagopalan and Tabarrok (2017) argue that the market test isn't perfect, but it is a test. Markets are the most salient alternative to state action, so when the cost of state action increases, markets should be used more often.

In these conditions, the Epsteinian presumption towards simple rules and towards laissez-faire is the optimal form of government for states with limited capacity and also the optimal learning environment for states to grow capacity. Under laissez-faire, wealth, education, trade, and trust can grow, which in turn will allow for greater complexity of regulation, if desirable, in the future. This is the trajectory of almost all developed countries, who had a long period of laissez-faire and simple rules governing the market system, until they got rich enough to develop the capacity to enforce complex rules.

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