

## **A Multilevel Approach to Enforcement**

### *Forest Protection in the Argentine Chaco*

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#### **I. Introduction**

This book is based on the premise that formal institutions in several Latin American democracies are weak; they are unstable and their capacity to shape actors' behavior is limited. Institutional strength not only varies across countries, but also at the subnational level, as many institutions are unevenly enforced within countries (Bergman 2009; Amengual 2013, 2016; Holland 2017, this volume). Focusing on why some institutions take root in some places and not in others, we address the enforcement of forest protection legislation, a domain of environmental rules that has experienced important innovations in Latin America since the early 2000s.

As it boosted economic growth across the region, the commodity boom of the 2000s also intensified environmental degradation and sparked conflicts over the regulation of mining (see Amengual and Dargent, this volume) and the protection of forestlands jeopardized by the expansion of the agricultural frontier. Environmental damage and related conflict drove governments throughout the region to adopt new environmental institutions, including forest protection laws. Since the early 2000s, eleven countries in the region passed forest protection legislation, including some of the largest deforesters in the world, such as Argentina, Brazil, Bolivia, and Paraguay. While these institutions might be seen as "window dressing" (see Chapter 1, this volume), enacted to show concern for environmental damage while maintaining the status quo at a time of booming commodity prices, a key question concerns whether and under what conditions these institutions achieved higher levels of enforcement.

To address this question and contribute to our understanding of the sources of institutional strength, we focus on the implementation of national forest protection legislation in the Argentine Chaco, one of the world's deforestation hotspots. The Argentine Chaco represents 60 percent of the Chaco Americano, the second-largest forest in the Americas, and is primarily located within four

core provinces: Chaco, Formosa, Salta, and Santiago del Estero.<sup>1</sup> During the commodity boom, deforestation accelerated in the Argentine Chaco. From 2006 to 2016, these provinces lost 2.8 million hectares of forestland, propelled largely by the expansion of soybean cultivation. Forest loss in the Chaco explains why Argentina became one of the top-ten deforesters in the world.<sup>2</sup>

The adoption and implementation of a native forest protection regime (NFPR), approved by the Argentine Congress in 2007,<sup>3</sup> during the heyday of the commodity boom, provides an excellent case for investigating enforcement and institutional weakness more generally. The federal law mandated provinces to classify forestlands according to their conservation value and establish agencies to enforce forest regulations. Although the core Chaco provinces share many characteristics – they are forest-rich and economically poor, they have similarly low state capacity, and incumbents have comparable electoral power – they display significant variation in the enforcement of the NFPR.

In this chapter, we propose a multilevel approach to understand the politics of enforcement. Unlike much of the literature, which focuses on state capacity and the electoral incentives of local authorities in charge of rule enforcement, we argue that institutional weakness in decentralized federal systems can be better understood by focusing on the factors that affect the enforcement of a given law at different levels of government (national and subnational) and at different stages of the policy-making process (policy design and implementation). In the case of forest protection legislation, those bearing the costs of enforcement – i.e., subnational authorities and large agricultural producers – mobilized to dilute the national law’s impact by introducing ambiguities or opportunities for discretion in the law itself, which has allowed provincial governments in charge of implementation to significantly relax its enforcement without necessarily contradicting it.

Cross-provincial variation in enforcement among the forest-rich provinces of the Chaco resulted not from differences in state capacity but rather from governors’ incentives to enforce the NFPR. We find cases of open nonenforcement and of moderate enforcement depending on whether governors faced powerful large producers, who strove for lax provincial regulations and minimal enforcement of the forest protection regime, and/or a conservationist coalition formed by those affected by agricultural expansion, who mobilized for provincial regulations to be designed and enforced in accordance with the conservationist spirit of the NFPR. Governors primarily sought to *avoid*

<sup>1</sup> Forestlands represent at least 50 percent of the provincial surface area.

<sup>2</sup> Argentina ranks ninth and the other Chaco Americano countries rank as follows: Brazil, second; Paraguay, tenth; and Bolivia, eleventh. See Global Forest Watch, [www.globalforestwatch.org/countries/overview](http://www.globalforestwatch.org/countries/overview).

<sup>3</sup> Ley 26331. Presupuestos Mínimos Ambientales para la Protección de los Bosques Nativos. El Senado y Cámara de Diputados de la Nación Argentina.

*conflict* among competing interests, and they used specific tools in the law (e.g., zoning maps and sanctions) to respond to pressures, resulting in varying types of regulations and levels of enforcement.

In the following section, we discuss our multilevel approach to enforcement in federal systems. The third section then analyzes the design and implementation of the NFPR. We identify and account for the weaknesses in the national law that generated opportunities for variable levels of enforcement, and we assess the extent to which governors exploited these weaknesses and enforced the NFPR across the core Chaco provinces. The third section explains governors' choices in the implementation of the NFPR. We develop an original empirical strategy to measure institutional weakness that looks both at the stages of *rule writing* and *enforcement*. Finally, we illustrate the dynamics of enforcement in multilevel systems with the case of Salta, where a dramatic increase in deforestation originally drove large environmental nongovernmental organizations (NGOs) to lobby Argentina's national Congress for a forest protection regime. Implementation of the NFPR in Salta resulted in weak enforcement, as flawed provincial regulations allowed for "legal" noncompliance, as well as "nonpunitive enforcement," by which very low sanctions were imposed on infractions. The governor's choice to weaken the enforcement of the NFPR resulted from pressure from powerful large producers and the absence of a conservationist coalition that could counterbalance their power.

## II. Enforcement in Multilevel Systems

Scholars argue that in weakly institutionalized environments, existing formal institutions fail to generate the shared expectations that shape behavior. In this context, formal institutions, rather than taking root, are frequently changed and/or weakly enforced, if at all (Levitsky and Murillo 2013). Lack of enforcement is facilitated by low state capacity or by the purposive action of those in charge of enforcing formal rules to do so selectively (see Ronconi 2010; Levitsky and Murillo 2013; Amengual 2016; Holland 2017). Weak enforcement of formal rules therefore results from politicians being either unable to mobilize state infrastructure to achieve implementation, or from their inability to coproduce enforcement with societal actors (see chapters by Schrank and by Amengual and Dargent, this volume), or from subnational authorities being unwilling to enforce existing regulations. Intentionally weak enforcement has been explained by politicians' incentives to enforce regulations in the presence of potential electoral gains (Ronconi 2010) as well as by their electoral incentives not to enforce when their constituencies would bear the costs (Holland 2017).

Building on this literature, we propose a multilevel approach that highlights the complex political dynamics involved in the enforcement of national legislation by subnational actors in decentralized systems, an aspect of the politics of enforcement in weakly institutionalized environments that deserves further attention. Although it is not always stated explicitly, studies of enforcement

tend to view the politics of designing formal rules and the process of the rules' implementation as separate from each other (see Mahoney and Thelen 2015: 195). One arena, usually the executive or congress, writes a law that another arena, usually the bureaucracy or subnational entities, has to implement. The motivations and incentives of the actors involved in the formulation of the law are generally not analyzed in connection with the interests and incentives of the actors or agents in charge of implementation. We argue that this separation across arenas is either attenuated or nonexistent in multilevel systems. This is especially the case in decentralized federal polities, where subnational authorities have important policy-making responsibilities.

In federal systems, subnational units have constitutionally based powers that restrict the scope of national authority over specific issues, and subnational units participate, sometimes actively, in the design of national legislation that affects provincial interests (Stepan 1999; Gibson 2004, 2005). In the senate or territorial chamber, where malapportionment is common across Latin America and particularly acute in Argentina (Samuels and Snyder 2001), subnational organized interests seeking to block legislation or undermine its enforcement may have greater chances of influencing the content of the law. Rule makers in the territorial chamber may be strongly influenced or even directly represent those who resist a given law, and thereby strive to minimize its impact.

We propose a multilevel approach that establishes a stronger connection between the stages of policy design and implementation, of which enforcement is a key component. Our approach identifies (1) the domains of the policy-making process that shape the conditions for enforcement, and (2) the actors operating in these different domains who seek to influence both the law's design and its enforcement mechanisms. In this approach, the factors shaping the enforcement are therefore not circumscribed to the implementation stage. The enforcement of a given law may be deliberately limited by institutional features inserted during the design of the law by those who will bear the cost of enforcement. These actors may introduce ambiguities or inconsistencies between the national law and the implementation rules, allowing for what Thelen (2004: 36) calls "institutional conversion" – or the deployment of institutions toward new purposes without altering the letter of the national law. During implementation, and depending on subnational power configurations or "institutional environments" (see Pierson 2004: 138), these inconsistencies provide room for subnational variation in the enforcement of the law.

We propose three mechanisms through which enforcement may be shaped by legislative design. First, formal rules themselves may limit the power of the national agencies in charge of monitoring compliance and sanctioning noncompliance at the subnational level. Even if this does not override the possibility of attaining compliance in other ways, it makes enforcement more difficult.

This is especially problematic in the case of the forest protection regulations created during the heyday of the commodity boom, when compliance with anti-deforestation rules was hard to attain in the absence of decisive enforcement of the law.

Second, opportunities for discretion and ambiguity in the law may allow for variable levels of enforcement to take place (see; North 1990: 59; Thelen 2004; Brinks, Levitsky, and Murillo, Chapter 1, this volume). This is in line with the literature on bureaucratic delegation in wealthier democracies (Huber and Shipan 2002), which relates variable levels of ambiguity in the law to politicians' calculations of who has control over implementation. Our framework speaks to this scholarship as it connects aspects of enforcement with strategic decisions by policy makers at different levels of government, yet it applies to contexts of weak institutions, such as those characterizing the Chaco provinces (see Amengual 2013; Ardanaz, Leiras, and Tommasi 2014).

Finally, when subnational governments are responsible for establishing the exact procedures for implementation within their jurisdictions (e.g., the design of forest zoning maps, setting the rates of fines), the enforcement of the national law may be undermined at this second, provincial-level *design* stage. This is even more likely if the national law leaves some room for discretion or is ambiguous on important matters affecting enforcement, thus allowing provincial governments to establish regulations that deviate from the law's statutory goals.

The following examples illustrate these mechanisms. Representatives from the Chaco provinces in Congress vehemently argued that the provincial ownership of natural resources established in the constitution barred a national-level agency from overseeing the enforcement of the NFPR. As a result, the NFPR awarded limited powers to the federal environmental agency to fix misclassifications of forest areas (i.e., zoning maps) and to sanction infractions. At the same time, senators fought against the establishment of standardized fines and eventually compromised on a broad range of rates that have allowed provincial governments to set exceedingly low fines, which producers easily internalize as production costs. With respect to land use, legislators from forest-rich provinces opposed an exhaustive definition of activities permitted in areas suitable for sustainable management in which clearings are forbidden. Provincial governments often exploited this ambiguity by permitting economic activities that involve some level of deforestation.

In sum, our multilevel approach advances three main points concerning the politics of enforcement in decentralized systems. First, we emphasize the importance of not only paying attention to the politics of enforcement of a given policy or law by analyzing its implementation, as much of the literature on Latin America has done, but also of investigating the stage of policy design. Second, we argue that it is crucial to consider whether specific mechanisms contained in the letter of the law limit its enforcement, such as ambiguity that may result in implementation rules or behavior that undermine the

law's statutory goals without necessarily violating it. Finally, analyzing how national-level actors affect implementation and how subnational actors affect the design of a national law are important aspects of the study of enforcement. Just as power struggles and political conflict shape the inception of institutions (Knight 1992; Thelen 2004), they also affect implementation, as subnational actors, sometimes represented in the design of the national law, struggle to further adapt subnational rules to their interests.

### **III. The National Forest Protection Regime: National Design and Subnational Implementation in the Core Chaco Provinces**

In this section, we analyze the design of the NFPR and measure its implementation across the core Chaco provinces. When analyzing the national law, we identify critical weaknesses – e.g., ambiguities – that could undermine its statutory goals and that resulted from concessions to opponents of forest protection in the Chaco region. When measuring the implementation of the NFPR across the Chaco provinces we gauge the extent to which the content of provincial-level regulations is consistent with the NFPR and assess the enforcement of the law.

#### **Designing the NFPR**

High commodity prices drove soybean cultivation and cattle ranching into the Chaco Forest, increasing clearings and triggering social conflict. As deforestation accelerated, national environmental NGOs mobilized for the adoption of a forest protection regime to regulate land use. As a result of intense societal pressure, Congress approved the NFPR in 2007. The new legislation substantially altered the status quo in the Chaco. It required provincial legislatures to enact a territorial classification of native forests (OTBN) in accordance with the NFPR. The OTBN would include land-use regulations and a zoning map classifying forests according to their conservation value into three categories allowing for different levels of economic transformation – no transformation in high-conservation (red) areas, sustainable management in medium-conservation (yellow) areas, and agriculture in low-conservation (green) areas. The NFPR also required that the design of the OTBNs be subject to social participatory processes and that prior to an OTBN's approval, provincial authorities could not issue deforestation permits.

The original NFPR bill was submitted to Congress by center-left legislators from Buenos Aires in 2006 and met vigorous opposition from representatives of the Chaco provinces. These legislators raised two fundamental critiques to the bill. First, they argued that the bill was an attempt by the wealthier provinces that had exhausted their forests to curtail unprecedented economic

opportunities benefiting the less developed forest-rich provinces.<sup>4</sup> Second, they posited that by imposing federal rules on land use, deforestation permits,<sup>5</sup> and sanctions for noncompliance, the law would truncate their constitutional right to administer natural resources in their territories.<sup>6</sup>

The bill was approved unchanged in the lower chamber, where its proponents were allied to the governing Front for Victory-Peronist Party (FPV-PJ). In the Senate, where Chaco provinces had greater weight due to overrepresentation, two crucial concessions to forest-rich provinces ultimately enabled the passage of the law. First, senators agreed to create a compensatory fund to pay producers for their environmental services and to build provincial enforcement capacity.<sup>7</sup> This fund would receive at least 0.3 percent of the national annual budget plus 2 percent of the revenue collected from duties on agricultural, forestry, and livestock exports, which represented a huge positive incentive for the Chaco provinces to implement the law. Second, having blocked a unified sanctions regime, which could be a formidable negative incentive for compliance, the Senate bill established a wide-ranging – and far lower – scale of fines,<sup>8</sup> allowing governors to impose more modest penalties for infractions. Compromises across opposing interests resulted in an NFPR that both preserved the conservationist spirit of the bill and contained ambiguities regarding sustainable management and sanctions that could undermine its enforcement.

### **Subnational Implementation of the NFPR**

Provinces in charge of establishing implementation regulations and zoning maps defined these rules more or less consistently with the NFPR. Below we measure the consistency of provincial implementation regulations with the NFPR and assess its enforcement.

<sup>4</sup> Cámara de Diputados (2006); Cámara de Senadores (2007); authors' interview with Marta Maffei, Legislator for the province of Buenos Aires (2004–2007), Vice-president of the Natural Resources and Environment Committee, Buenos Aires, July 1, 2015; authors' interview with Juan Carlos Díaz Roig, Legislator for Formosa (2005–2017), Buenos Aires, July 1, 2015; Comisión de Recursos Naturales y Conservación del Ambiente Humano y de Población y Desarrollo Humano, Honorable Cámara de Diputados. 2006. Orden del Día 1479.

<sup>5</sup> Whereas the bill as a whole was approved with 156 votes in favor and only two opposed, the article forbidding the extension of clearing permits until after the OTBN's approval received eighty positive and sixty negative votes.

<sup>6</sup> The national government establishes environmental standards that provinces have to follow.

<sup>7</sup> Salta PJ senator Sonia Escudero, who proposed the fund, noted: “[I]t was a very tough fight within the PJ caucus where we, the senators from the northern provinces [...] stood firm and, without the fund, it was impossible to have the necessary votes to pass the bill. So [the fund] was an imposition from the legislators of the provinces with forests” (authors' interview with Sonia Escudero, Senator for Salta (2001–2013), Salta, July 10, 2015).

<sup>8</sup> Fines range from three hundred to ten thousand times the lowest national public-sector salary. In the original bill, the highest fine was thirty thousand times that salary.

### *Consistency of Provincial Rules with the NFPR*

To measure NFPR–OTBN consistency in the classification of forestlands, we focus on three indicators. First, we assess the level of conservationism of provincial zoning maps. Toward this end, we compare whether provinces attributed similar conservation values to forests that cut across provincial borders. A study by García Collazo, Panizza, and Paruelo (2013) systematically selects points on provincial borders to evaluate whether zoning maps of adjacent provinces categorize their share of the same forestland equally. The study reveals low levels of agreement across core Chaco provinces. The highest comparability is found on the Santiago del Estero–Chaco border, where forest areas are defined similarly at 58 percent of the selected locations. The study concludes that Santiago del Estero attributed higher conservation values to forest areas than did Chaco, Salta, and Formosa, in that order (Table 8.1). Second, we measure NFPR–OTBN consistency in land-use regulations focusing on yellow areas. These areas constitute the most challenging aspect of the NFPR, as sustainable management allows for economic activities but not for changes to land use (i.e., forest clearings). With the exception of Formosa, which classified 74 percent of its forest area as green, most of the forestland of the remaining core Chaco provinces is classified as yellow.<sup>9</sup> The NFPR provides no guidelines as to what sustainable management entails. OTBNs allow for two types of activities: forest grazing – selectively clearing undergrowth to breed cattle – and controlled timber extraction, both of which draw a thin line between legal and illegal forest management. Governors often also issued resolutions and decrees allowing for clearings in yellow areas for pasture. In some provinces, these clearing allowances are significant (up to 20 percent), with Formosa, Salta, Santiago, and Chaco, in that order, being the most flexible with regard to clearings in yellow areas (Table 8.1).

Finally, we assess whether OTBNs allow for the recategorization of individual farms to lower conservation levels, which Formosa, Salta, and Santiago del Estero all do. Salta even defined its zoning map as “guidelines,”<sup>10</sup> and unlike Santiago del Estero, which established a plural council to determine recategorizations, it gave its environmental agency – which is politically dependent on the governor – the power to evaluate requests. Salta’s governor eventually repealed this provision in 2014 in response to dubious recategorizations denounced by national NGOs.<sup>11</sup> In Formosa, where most forestlands were classified as low conservation value (green), indigenous communities, which control most yellow areas, can request the recategorization of their lands.

#### **(Table 8.1. here)**

<sup>9</sup> Between 63 and 74 percent.

<sup>10</sup> Law 7543 Ordenamiento territorial de bosques nativos de la Provincia de Salta defines the OTBN as *orientativo*.

<sup>11</sup> Authors’ interview with Juan Manuel Urtubey, Governor of Salta (2007–2019), Salta, July 8, 2015.

### *Enforcement of the NFPR*

If the NFPR were successfully enforced, there would be no deforestation within red and yellow areas, in which clearings are forbidden. Combining deforestation in both red and yellow areas, Santiago is the worst performer, with 71.3 percent of total deforestation in these areas (Table 8.1). In Formosa, where most forestlands, as noted, have been (mis)classified as low conservation value, deforestation in red and yellow areas represents only 2 percent of the total forest lost.

Our enforcement score also considers total deforestation because provinces (mis)classified some forestlands into lower conservation categories and the NFPR forbade new clearings until the OTBN was approved. Overall scores show that deforestation continued after the enactment of the NFPR (Table 8.1). Yet there is important variation across provinces, with total forest loss ranging from 7.3 percent in Chaco to 12.9 percent in Santiago.

Collectively, these different measures reveal remarkable variation across provinces and dimensions of implementation (i.e., design of provincial regulations and enforcement), which is summarized in Table 8.1. Salta and Santiago designed OTBNs with different levels of consistency with the NFPR – low and moderate, respectively – but both had low enforcement, with high levels of deforestation. Chaco, in turn, displays a high OTBN–NFPR consistency and moderate enforcement. Finally, Formosa displays both low consistency and low enforcement. Together with Salta, this case illustrates how the design of subnational regulations may impede the effective enforcement of the NFPR.

## **IV. Explaining governors' implementation choices**

To understand variation in the implementation of the NFPR, we focus on governors' incentives to favor or dilute its conservationist spirit in the design and enforcement of the OTBNs. Governors are fundamental actors because they have the formal power to draft regulations, push them through local legislatures, and use veto and decree powers to modify them. They also establish – fund, staff, and locate – the agencies in charge of enforcing these regulations. Scholarship on Argentina's federal system has generally emphasized the limited division of powers at the subnational level, which allows governors to control institutional resources and amass power (see Gibson 2005; Ardanaz, Leiras, and Tommasi 2014).

In line with studies of decentralized forestry management (Andersson et al. 2005), we assume that subnational executives have no inherent preferences regarding forest protection. We argue that governors choose to exploit opportunities for discretion in the NFPR depending on two factors: (1) the power of large producers seeking to expand production into forestlands and (2) the existence of groups resisting the expansion of the agricultural frontier, what we here call a *conservationist coalition*.

## Large Producers

Large producers are understood as landowners and investors with parcels of at least 2500 hectares.<sup>12</sup> During the commodity boom, large producers drove soybean cultivation into previously unexploited areas. The expansion of the agricultural frontier favored real estate speculation, incentivizing forest clearings as land prices climbed. Producers were lured by the relatively lower land prices in the Chaco, the availability of large farms – which allowed them to increase production and maximize profit margins – and the absence of actual restrictions on forest clearing before the sanctioning of the NFPR.

Large producers have sought to avoid regulations that would curtail massive expected profits. They have preferred OTBNs with lax regulations and light enforcement and have lobbied, both collectively and individually, provincial governments to minimize the conservationist aspects of the OTBNs.

The comparative literature distinguishes between two sources of power, political (or instrumental) and economic (or structural) (Lindblom 1977; Hacker and Pierson 2002; Fairfield 2015). Given the importance of agriculture and cattle ranching for provincial economies, both sources of power are intertwined in the core Chaco provinces: large producers have political power because of their economic weight. Large producers channel their political power in different ways – lobbying the executive and/or the legislature, financing political campaigns, running for office, occupying state positions, or through informal and personal contacts with policy makers.

Given the intertwined nature of large producers' instrumental and structural power, we assume that large landowners have greater capacity to influence policy-making in provinces in which they control a larger share of productive land. Specifically, we consider large producers to be powerful if they concentrate at least 50 percent of a province's total farmland, and they thus constitute the main rural economic actor. Table 8.2 displays the share of provincial land in large farms at the beginning of the commodity boom. In Salta, large producers are especially powerful, as they control 75 percent of total farmland. At the other extreme, Chaco has a relatively small share of land in large farms (31 percent), comparable to its share in small farms (29 percent); thus, large producers are not dominant actors in rural politics as they are in Salta.

## Conservationist Coalitions

Conservationist coalitions are organized societal and economic interests opposing the expansion of the agricultural frontier over forests.<sup>13</sup> In the core Chaco provinces, conservationist interests primarily consist of sectors concerned about the negative effects of soy expansion on their own economic

<sup>12</sup> About five times the size of the average farm in Argentina (588 hectares).

<sup>13</sup> For a similar use of the term *coalition*, see Murillo (2001).

Table 8.2. *Large producers, core Chaco provinces, 2002*

	<b>% Productive Land in Small Farms</b>	<b>% Productive Land in Large Farms</b>	<b>Average Farm</b>
	<b>(&lt;=500 ha)</b>	<b>(&gt;2500 ha)</b>	<b>(ha)</b>
Chaco	29	31.7	375.8
Formosa	11.1	46.2	575.7
Santiago del Estero	14.1	58.1	498
Salta	6.1	75.1	765.8

*Source:* Based on Barsky and Fernández (2008) and INDEC (2002).

activity and livelihoods, i.e., timber producers, peasants, and indigenous communities. These groups constitute a conservationist coalition when they press for the strict implementation of the NFPR, which they perceive as a critical tool for protecting themselves from agricultural expansion.

These organized interests do not necessarily act together in favor of forest protection, but each group's collective action – even if not concerted – puts pressure on governors to design and enforce the conservationist aspects of the NFPR. Conservationist groups have connected forest protection to property rights, the recognition of indigenous communities, and the preservation of indigenous cultures and livelihoods – forming what scholars have called the “environmentalism of the poor.”<sup>14</sup> Despite the common challenges that conservationists face across the Chaco, these groups share with other environmental groups the local nature of their demands (Svampa 2015), the absence of cross-provincial solidarity with actors affected by similar processes, and the difficulty of scaling up and connecting in a sustained way with national and transnational movements (Anguelovski and Martínez-Alier 2014).

Conservationist coalitions are present in Chaco and Santiago but have not formed in Formosa and Salta. In Chaco, the conservationists include the timber industry and indigenous communities. The timber industry – which represents 6.6 percent of private formal employment in the industrial sector, 10.3 percent of the province's industrial gross product, and 20 percent of its exports – has opposed the expansion of soybean cultivation into forestlands.<sup>15</sup> Its associations are well connected to the government and to the forest agency through formal and informal ties. Indigenous communities, which are numerous and well organized, have also pressed for a

<sup>14</sup> See Martínez-Alier (2013).

<sup>15</sup> Ministerio de Economía y Finanzas Públicas (2015).

conservationist OTBN, especially through the Chaco Indigenous Institute (IDACH) (Fernández-Milmanda and Garay 2019). In Santiago del Estero, the absence of property titles among small peasants has led to the emergence of the Santiago del Estero Peasant Movement (MOCASE), whose mobilization capacity grew during the commodity boom (De Salvo 2014). This movement has forcefully pressed for conservationism in the design and enforcement of the NFPR (Fernández-Milmanda and Garay 2019).

Conservationist coalitions have not formed in Formosa and Salta. In Salta, NGOs working with indigenous communities, universities, and national environmental groups have tried to influence the design and enforcement of the NFPR, but their ability to sustain collective action and pressure the provincial government has been limited, as we show below. In Formosa, our fieldwork showed that the timber industry and the peasant movement are small and co-opted.<sup>16</sup>

### **Governors' Choices: Implementation as Conflict Avoidance**

Why did some governors choose to design their OTBNs in accordance with the NFPR while others did not? Why do some governors enforce the NFPR more strictly than others? We argue that the power of large provincial producers and the presence or absence of a conservationist coalition shaped governors' choices to exploit ambiguities in the law for or against conservation. While the NFPR affects relevant economic interests, it also provides governors with distributive tools (e.g., regulations, sanctions) that can be used to appease conflict. Governors have used critical *design features* (e.g., zoning maps, land-use regulations) as well as *positive incentives* (e.g., subsidies) and *negative incentives* (e.g., sanctions) to induce compliance, not simply as tools to advance forest protection but primarily to ensure their own continuity in power by reducing potential instability and discontent among contradictory interests. Therefore, the design and enforcement of these tools is not guided by environmentalism but rather by power dynamics, resulting in variable levels of deforestation.

Governors deploy a *conflict avoidance* strategy in implementing the NFPR, granting concessions to competing conservationists and agricultural interests in the design of provincial regulations and enforcement of the national law. Schematically, when governors face large producers with formidable vested interests in the expansion of agriculture, they have strong incentives against conservationism. With the tools available in the NFPR, governors are likely to design an OTBN that includes a lax definition of land use in yellow areas, low penalties for infractions, and zoning that allows for significant expansion

<sup>16</sup> On the peasant movement, see Lapegna (2016).

Table 8.3. *Governors' choices: Design of provincial regulations and NFPRenforcement*

		Conservationist Coalition	
		Yes	No
<b>Powerful Large Producers</b>	<b>Yes</b>	Moderate consistency; low enforcement <i>Santiago del Estero</i>	Low consistency; low enforcement <i>Salta; Formosa</i>
	<b>No</b>	High consistency and enforcement <i>Chaco</i>	

Source: Adapted from Fernández-Milmanda and Garay (2019).

of agriculture and ranching. Governors may relax enforcement by failing to build adequate monitoring capacity and apply sanctions. By contrast, when governors face a conservationist coalition, they are motivated to design a stricter OTBN, consistent with the conservationist spirit of the NFPR, and to develop monitoring capacity and impose sanctions on illegal clearings.

These two factors combine as displayed in Table 8.3, resulting in the following incentive structure and outcomes across provinces. When they face powerful large producers and no conservationist coalition (top, right), governors are pressured to dilute the conservationist spirit of the NFPR in response to producers' demands and/or their perceived preferences (i.e., structural power) out of fear that they might lose investments and public support if opposing such powerful interests. In these cases, governors are likely to exploit ambiguities in the NFPR by assigning to forest areas lower conservation value, allowing for recategorizations of individual farms – something producers demand as a way to avoid the strictures of the law – and/or approving land-use regulations that are in violation of the NFPR. They are also likely to establish minimal sanctions. In the context of weak institutions, the absence of a strong conservationist coalition reduces the incentives to abide by the NFPR, and executive agencies in charge of enforcement are likely not empowered to monitor and sanction forest clearings. The cases of Salta and Formosa exemplify this dynamic.

Where governors face a powerful conservationist coalition in a context in which large producers do not control a substantial share of the province's productive land, they are motivated toward conservationism (bottom, left). In these cases, governors are likely to design an OTBN that is more consistent with the NFPR and that incorporates the demands of conservationist groups. They are also more likely to invest in capacity building to enforce the law by monitoring forest clearings and imposing sanctions, as the conservationist coalition is more or less actively involved in denouncing illegal forest clearings

and producers are not sufficiently powerful to undermine enforcement. This is the case of Chaco, where a conservationist coalition of forestry producers, local environmental groups, indigenous communities, and small-scale producers influenced the OTBN and pressed for the law's enforcement.

Governors may also face both powerful large producers and a conservationist coalition (top, left). In these cases, they are likely to cater to both sectors, as conflict and the threat of instability emerge forcefully in the context of the rapid expansion of the agricultural frontier. Facing a conservationist coalition, governors likely design an OTBN consistent with the NFPR as watchful conservationist interests make it difficult for the government to relax its design. However, governors respond to producers by relaxing enforcement, which satisfies producers and is harder for conservationists to control, even if they actively denounce clearings. This is the case of Santiago del Estero, which approved an OTBN that was moderately consistent with the NFPR, including exceedingly high penalties, yet failed to enforce it, as producers were lightly monitored and sanctioned.

Overall, implementation resulted in cross-provincial variation in both the design of subnational regulations and the enforcement of the NFPR. In some cases, governors catered to powerful producers by designing subnational OTBNs that even allowed them to violate the NFPR without breaking the law (Salta, Formosa). Governors would then lightly enforce these flawed regulations, resulting in widespread (and often legal) deforestation. In other cases, governors were not only confronted by large producers but also by a powerful conservationist coalition, which prompted them to design an OTBN consistent with the NFPR (Santiago). In order to cater to powerful producers, governors relaxed enforcement. Finally, where governors faced a powerful conservationist coalition but weak producers, they designed subnational regulations consistent with the NFPR and expanded the territorial reach of the forestry agency to monitor its effective enforcement (Chaco). In all four cases, governors prioritized their political goals of stability and continuity over environmental concerns.

No case among those studied here features the absence of both a conservationist coalition and large-scale producers. Forest-rich provinces in the context of a commodity boom are likely to see both or either pressure from investors to open up land and/or from a conservationist coalition seeking to protect the forest from the threat of clearing.

## V. Multilevel Dynamics in Salta

We apply our multilevel approach to enforcement to the case of Salta, a province with large forestland areas and high rates of deforestation propelled by the expansion of agriculture and cattle ranching. We show how Salta's powerful large producers strove to influence the design of the NFPR, and how Salta's governor exploited the resulting ambiguities and opportunities for discretion in the NFPR to shape provincial regulations to the

advantage of extremely powerful producers in order to avoid conflict. Among other institutional mechanisms, the governor engaged in what the editors of this volume call “nonpunitive enforcement” by applying light sanctions on infractions. Based on interviews with key informants, document analysis, and deforestation data, we show how the governor’s strategy resulted in the weak enforcement of the NFPR.

### **Salta’s Organized Interests and the Design of the NFPR**

One of the central claims of this chapter is that in federal systems, subnational organized actors seeking to undermine the enforcement of national regulations that affect their interests do so by engaging in the legislative design process through their representatives in congress. Instead of circumscribing their influence to the subnational implementation of the NFPR, Salta’s large producers sought to influence the NFPR bill in the Senate, where, as previously discussed, their chances of blocking or modifying it were higher.<sup>17</sup>

Salta’s large producers commissioned the Fundación para el Desarrollo Sostenible del Noroeste Argentino (FUNDESNOA), a local think tank with strong ties to grain producers,<sup>18</sup> and whose director was Romero’s former secretary of environment, to draft an alternative bill to the NFPR. Senator Sonia Escudero, an ally of Romero’s, introduced FUNDESNOA’s bill in the Senate.<sup>19</sup> This bill departed from the one that had been approved in the lower chamber. It granted more autonomy to the provinces to define native forests and did not identify any criteria for determining levels of conservation value, thus allowing provinces to define their zoning maps unconstrained. Critically, unlike the NFPR, it did not suspend the extension of deforestation permits until the OTBNs had been approved, a particularly sensitive issue in Salta. The only innovation proposed by FUNDESNOA that made it into the NFPR, however, was the compensatory fund to pay for environmental services. The elements that producers could not introduce in the text of the NFPR – the classification of forestlands, regulation of land use in protected areas, and the suspension of clearing permits – were fought for during the law’s implementation at the provincial level.

<sup>17</sup> In the lower chamber, where the NFPR’s passage was secured by the governing coalition, however, the only two representatives to vote against it were aligned with Salta’s PJ governor Juan Carlos Romero (1995–2007), a politician with strong ties to rural elites.

<sup>18</sup> Some of the largest agricultural producers in the province (e.g., CRESUD, Desde el Sur) sponsored FUNDESNOA.

<sup>19</sup> Senado, Diario de Asuntos Entrados Expediente 0716-S-2007; authors’ interview with former president of PROGRAMA, Salta, July 8, 2015.

## Designing Salta's OTBN

Large producers put pressure on Salta's governor to dilute the impact of the NFPR. When the NFPR's approval was imminent, Governor Romero quickly issued clearing permits that covered close to 435,000 hectares, equivalent to 5 percent of Salta's forestlands and comparable to the total area authorized for clearing in the previous three years.<sup>20</sup> Acknowledging that clearing authorizations would be harder to obtain under the NFPR and that this would negatively affect land prices, Romero sought to protect large producers' property rights and their expected profits. In November 2007 alone, there were public hearings to clear 130,000 hectares under the regulations established by the preexisting provincial environmental law (Leake and de Ecnomo 2008; Schmidt 2010b: 8), which was lenient toward deforestation.

The October 2007 gubernatorial election pitted Romero's favored candidate (his vice governor) against his former secretary of state, Juan Manuel Urtubey, who sought to differentiate himself from Romero by criticizing his environmental policy.<sup>21</sup> Although Urtubey's victory might have increased producers' uncertainty, contributing in some way to the spike in clearing permits triggered by the approval of the NFPR, Urtubey, like Romero, belonged to a traditional family of landowners and PJ politicians, and his administration did not significantly threaten producers' interests.

Once he was in office, Urtubey set out to design the OTBN. The governor faced intense pressure from producers to reduce legal uncertainty over their investments and properties, as well as to end the temporary ban on clearings that the NFPR had established. Salta's landowners are mainly local, and during the design of the OTBN they advanced their demands through direct legislative representation, positions in government, and powerful lobbies such as PROGRANO and Sociedad Rural.<sup>22</sup> National environmental organizations, alerted by Romero's clearing permits, put additional pressure on the government to abide by the NFPR. However, in the absence of a well-organized conservationist coalition in Salta, their power to influence provincial-level politics was significantly more limited than their ability to mobilize public opinion nationally.

Partly in observance of the participatory requirement in the NFPR, Urtubey held public forums to discuss the OTBN in early 2008. However, he held separate meetings for each sector involved in the process (e.g., indigenous communities, peasants and small producers, and large producers), and the

<sup>20</sup> "La cicatriz que Juan Carlos Romero dejó en la Provincia de Salta," *El intransigente*, May 8, 2013.

<sup>21</sup> Authors' interview with Juan Manuel Urtubey, Governor of Salta (2007–2019), Salta, July 8, 2015.

<sup>22</sup> According to a key informant, "producers finance political parties ... politicians' campaigns" and "with the exception of the *Partido Obrero* [a minority left party] no politician here would oppose producers." Authors' interview with anonymous informant, Salta, July 10, 2015.

plural debate prescribed by the NFPR did not take place. Because disagreements among these actors as well as resistance to the NFPR from sectors of large producers were especially strong, the OTBN bill sent by the executive to the legislature in November 2008 lacked a critical component: a zoning map. The bill was indisputably favorable toward large producers, as it established that the zoning map would be “for guidance” only and allowed for the recategorization of individual landholdings, which was forbidden in the NFPR.

Even so, Urtubey’s bill met fierce resistance from large producers led by Senator Alfredo Olmedo, the son of Salta’s “soy king,” who had benefited from Romero’s scandalous concession of massive amounts of provincial land during his tenure as governor. Olmedo submitted an alternative bill that was based on existing provincial legislation and classified 5.8 million hectares or 63 percent of Salta’s forestlands as green (Redaf 2008; Schmidt 2010a, 260–264). Although Olmedo’s proposal was not endorsed by the main producers’ organizations, it did signal the preferences of a sector of large producers and pressured Urtubey to compromise on a watered-down zoning map. A former head of PROGRANO, the main provincial producers’ organization, noted that he opposed Olmedo’s bill because it completely disregarded environmental criteria and was politically unfeasible.<sup>23</sup>

Salta’s OTBN bill was passed in December 2008, incorporating features from Olmedo’s proposal. The OTBN established that 19 percent of Salta’s forests would be classified as green, 65 percent yellow, and 16 percent red. This distribution of conservation areas was closer to Urtubey’s proposal, but far from the benchmark of 10 percent green areas that experts advising the provincial secretary of environment had proposed to the governor (see Luft 2013: 191). The OTBN further allowed for a broad range of activities in yellow areas, which cattle ranchers demanded and which constituted a potential source of clearings that the NFPR banned.

Most crucially, Salta’s OTBN had two unique features: First, it was approved without a zoning map, which the governor was supposed to produce within two months after the law’s enactment; and second, and most important, it stipulated that this map would be “for guidance,” and that the reclassification of individual farms to lower conservation values (e.g., from red to green) would be allowed.<sup>24</sup> The OTBN, which was approved with almost unanimous support, was therefore fundamentally flawed. Because the bill lacked a zoning map, the classification of forestlands within each conservation category became a matter upon which the governor would decide with “discretion,”<sup>25</sup> behind closed doors, withdrawing zoning decisions “from the public debate ... to keep them as private as possible.”<sup>26</sup> This map, moreover, would have little strength, as it

<sup>23</sup> Authors’ interview with former president of PROGRANO, Salta, July 8, 2015.

<sup>24</sup> Concretely, the zoning map would be “orientativo.”

<sup>25</sup> Authors’ interview with Claudio Del Plá, Provincial legislator (2003–), Salta, July 7, 2015.

<sup>26</sup> Authors’ interview with Sonia Escudero, Senator for Salta (2001–2013), Salta, July 10, 2015.

constituted “guidelines” only and would be subject to case-by-case amendments, via recategorizations. Senator Escudero, who had played a critical role in the approval of the NFPR, understood that Salta’s producers only accepted the OTBN because of the possibility to recategorize individual farms. In her words, “That was the key ... Producers wanted to decide how their farms would be classified. Think: forty, fifty thousand hectares...”<sup>27</sup> The weakness of the OTBN was noted by the former head of PROGRANO: “Legally speaking, there are no hectares of forest that are red, no hectares of forest that are yellow, no hectares of forest that are green. The map is for guidance. So if you want to sue the province for classifying your farm red, then [they say] ‘no, there is no red forest, where did you get that your land is classified red? ... the map is for guidance’ ... this is a mess without a solution.”<sup>28</sup>

Urtubey’s strategy can be viewed as one of *conflict avoidance*. Facing intense pressure from powerful producers, some of whom adopted radical positions regarding the OTBN, he created a legal mechanism that allowed him to decide which forestlands would be affected by environmental restrictions on a case-by-case basis, thereby defusing producers’ pressures with discretion. By doing so away from the public eye, he sought to avoid reactions from national level NGOs in the face of concessions. In reference to the OTBN, Urtubey asserted, “Is this a great law? No. It is what was possible to accomplish ... the maximum level of consensus we could reach.” Regarding the role of the executive in its implementation, he noted: “The executive ended up being a player in this game when this should not be so. The state has to structure the game ... But [instead] they [large producers] put you in the game because of the level of intransigence that they have.”<sup>29</sup>

Soon after the approval of the law, and while the executive appeased producers’ demands through the design of the zoning map behind closed doors, the Supreme Court agreed to rule on a lawsuit (*amparo*) from indigenous and peasant communities – which had been marginalized from the debates over the OTBN – against the provincial and national governments. With the backing of religious organizations, these groups challenged the clearings authorized at the end of the Romero administration on the grounds that they would have cumulative deleterious environmental and social consequences. The Supreme Court temporarily stopped the clearings in the four departments where the holdings affected by the permits in question were located.<sup>30</sup>

<sup>27</sup> Authors’ interview with Sonia Escudero, Senator for Salta (2001–2013), Salta, July 10, 2015.

<sup>28</sup> Authors’ interview with former president of PROGRANO, Salta, July 8, 2015.

<sup>29</sup> Authors’ interview with Juan Manuel Urtubey, Governor of Salta (2007–2019), Salta, July 8, 2015.

<sup>30</sup> Salas, Dino y otros c/ Salta, Provincia de y Estado Nacional s/ amparo; CSJN, “Derecho Ambiental,” November 2012.

Although large producers were by far the most influential sector on Urtubey's decisions, and despite their efforts to establish a law that legalized violations to the NFPR, the judicial activism of indigenous and peasant communities, which brought the question of deforestation to the national media, generated some concern. A mudslide that ravaged the northern department of Tartagal in February 2009 further attracted national-level media attention to Salta. This event, which was immediately connected by public opinion and environmental NGOs to deforestation, built up pressure on the provincial government.

In June 2009, after the Supreme Court's decision to suspend clearing permits in affected areas, Urtubey promulgated Salta's OTBN and the zoning map was made public. The map classified as yellow all of the holdings that were disputed by the indigenous communities in the Supreme Court case, and the clearing permits affecting those areas were reversed. The governor further issued a decree temporarily banning clearings in forestlands claimed by indigenous or peasant communities until both a survey of indigenous communities and negotiations with those making claims on the land had been carried out. This measure sought to avoid conflict with indigenous communities and prevent the emergence of more powerful organizations out of their reaction to clearings, as had happened with the peasant movement in neighboring Santiago. These areas came to be labeled by government officials as "social yellow," and the ban continued to be extended beyond the initial period of three years, given that neither the survey nor the negotiations were carried out.

Although it may seem at first sight that the groups that spearheaded legal action nationally constituted a *conservationist coalition* capable of imposing higher consistency with the NFPR, this was not the case. These interests had little influence on provincial politics, and precisely for that reason, they operated at the national level in order to pressure the governor by making their case visible and engaging national authorities. Moreover, the effect of their pressure was geographically circumscribed to the disputed areas. After their case was decided by the court, the coalition's power diluted. Furthermore, as discussed below, these groups had no impact on enforcement. While the Supreme Court's suspension was in effect, 53,202 hectares affected by the ruling were deforested (AGN 2014: 113; Defensoría del Pueblo 2014: 4).

These measures, which aimed at fixing some of the abuses in the OTBN, generated vigorous opposition from producers led by Olmedo and FUNDESNOA.<sup>31</sup> In response, Urtubey set up an advisory council for the implementation of the OTBN that was entirely made up of representatives of large producer groups. Indigenous communities, small-scale producers, and environmental NGOs were not included. One of the advisory council's critical tasks was to issue

<sup>31</sup> Authors' interview with Gustavo Paul, Salta's Secretary of Environment, Salta, July 8, 2015; authors' interview with former president of PROGRAMO, Salta, July 8, 2015.

monthly recommendations on recategorizations.<sup>32</sup> In 2010, moreover, Urtubey issued another decree that further specified the conditions under which recategorizations would be done. This decree was eventually repealed by the governor in 2014 – and recategorizations were suspended – in response to accusations by environmental NGOs pointing out that decisions benefited producers with political connections.<sup>33</sup>

Overall, Salta’s OTBN radically departed from the NFPR and undermined its statutory goals. In designing the bill, the governor pursued a conflict-avoidance strategy to accommodate pressures from extremely powerful producers who controlled over 70 percent of provincial land, and whose power was not counterbalanced by a conservationist coalition capable of pushing for regulations that would be consistent with the NFPR. As a result, the OTBN allowed for “legal” violations to the spirit and the letter of the NFPR, which, together with lax “non-punitive enforcement” – analyzed below – resulted in wide deforestation.

### **Enforcing the NFPR in Salta**

Due to producers’ pressures, and to the absence of a conservationist coalition capable of counterbalancing those pressures, the enforcement of the NFPR in Salta has been weak. As noted above in the subsection entitled “Enforcement of the NFPR,” the most direct indicator of NFPR enforcement is the extent to which the law is able to prevent deforestation in what the OTBN defines as protected areas (yellow and red areas). Salta was the second-worst performer in the Chaco provinces, with 37.8 percent of its total forest loss between 2009 and 2016 occurring in protected areas. Another measure of enforcement is the share of land deforested without clearing permits. According to the provincial ministry of environment, between 2008 and 2014, Salta lost 465,406 hectares of forest, 55.4 percent of which was cleared without permits (SAS 2015: 149–151). Data on authorized and nonauthorized deforestation in Figure 8.1 indicate that the implementation of the NFPR had no significant impact on reducing nonauthorized clearings until 2014, when they dropped considerably. However, total deforestation did not drop, as authorized clearings spiked that year.

Because enforcement of the NFPR in Salta was weakened by design features that “legalized” irregular clearings, focusing only on deforestation in protected areas or on nonauthorized clearings may provide an incomplete measure of enforcement. Deforestation in areas recategorized to low conservation value, for example, is another indicator of weak enforcement. Data are only available for 2014, when recategorized forestlands represented 25,442 hectares, a

<sup>32</sup> Decree # 2211, 2010.

<sup>33</sup> Authors’ interview with Claudio Del Plá, Provincial legislator (2003–), Salta, July 7, 2015; authors’ interview with Juan Manuel Urtubey, Governor of Salta (2007–2019), Salta, July 8, 2015.

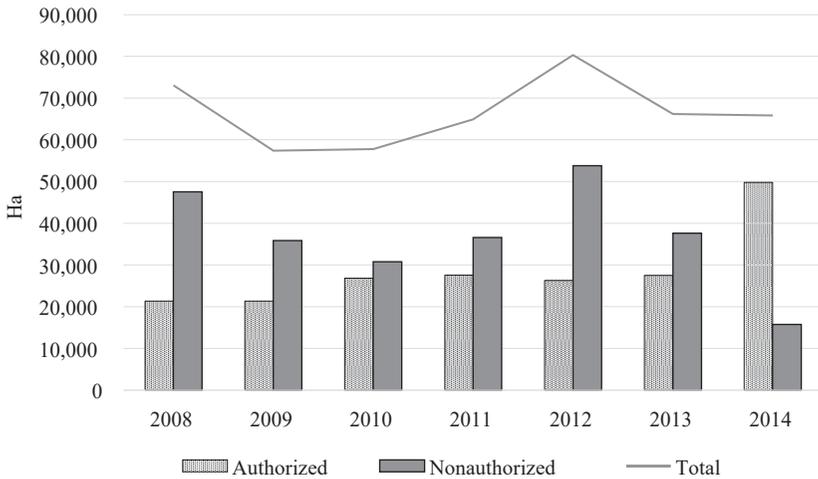


Figure 8.1. Authorized, nonauthorized, and total deforestation, Salta, 2008–2014(hectares).

*Source:* Authors' elaboration, based on SAS (2015).

significant amount, equivalent to 37 percent of the total forest loss that year, and 1.6 times the area cleared without permits.

Finally, total deforestation rates provide an indirect measure of enforcement. Figure 8.2 shows that the implementation of the NFPR did not deter deforestation in Salta. It was only in 2015, six years after the enactment of the OTBN, that deforestation dropped to pre-commodity boom levels. The data clearly show exceptionally high levels of deforestation in 2008, between the sanction of the NFPR and its implementation in the province, when several of the fraudulent clearing permits awarded by the Romero administration in anticipation of more stringent regulations were executed.

As proposed in our framework, the governor used design features to respond to producers' pressures and passed an OTBN that was tailored to their demands. The governor further weakened enforcement of the NFPR, and thus lightened its impact on producers, both by failing to build capacity to monitor and sanction noncompliance and by unevenly applying low fines. Despite the fact that Salta received the second-largest share of the compensatory fund, 30 percent of which was supposed to fund NFPR enforcement (MAYDS 2016: 16–17),<sup>34</sup> there is no evidence of improvement in state capacity. According to the secretary and experts at the provincial ministry of environment, the fund has been primarily used for salaries and equipment at the ministry headquarters in the capital city. The province built no new facilities to monitor forestlands in the interior,

<sup>34</sup> This amounted to 152.4 million pesos between 2010 and 2015.

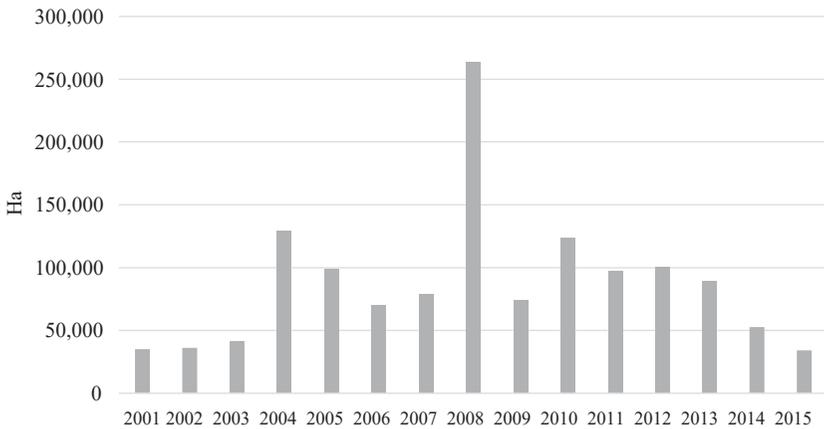


Figure 8.2. Annual deforestation, Salta, 2001–2015 (hectares).

Source: Authors' own calculations, with data from Global Forest Watch.

especially in forest-rich departments.<sup>35</sup> A report by the national ombudsman further indicates that in 2012, only one team monitored deforestation on the ground (Defensoría del Pueblo 2014). Convergent with the chapters by Schrank and by Amengual and Dargent (this volume), the case of Salta shows how low state capacity is a product rather than a cause of nonenforcement. Not building monitoring capacity is part of the enforcer's strategy to ameliorate the costs of noncompliance for large producers.

Sanctions are a crucial tool for enforcement. When the cost of violation ( $V$ ) offsets the cost of compliance ( $S$ ), fines create powerful negative incentives to obey the law. As we discussed above in the section "Designing the NFPR," the NFPR was weakened on this aspect by producers' resistance to a nationally standardized sanctions regime, which they voiced through their representatives in Congress and lobbied against at the provincial level. Key informants, including producers and public officials, acknowledged that sanctions were extremely low.<sup>36</sup> In the words of the governor:

[In Argentina, fines], not only environmental ones, are almost symbolic. Well, I do not want them to be symbolic, I want fines to "break your head." Then you will say "well, if it costs me two or three harvests to pay a fine, then I won't do it." But if you can pay for it with 20 or 10 percent of your yield then, what's the problem? You'll pay for it.<sup>37</sup>

<sup>35</sup> Authors' interview with Gustavo Paul, Salta's Secretary of Environment, Salta, July 8, 2015.

<sup>36</sup> The president of Salta's rural producers' federation, Carlos Segón, recognized that illegal clearings continued in Salta because fines were ridiculously low and recategorizations were discretionary (Carlos Segón, "En Salta hay desmontes ilegales y multas irrisorias," *El tribuno*, September 1, 2014).

<sup>37</sup> Authors' interview with Juan Manuel Urtubey, Governor of Salta (2007–2019), Salta, July 8, 2015.

Between 2013 and 2015, the province issued ninety-six infractions on 88,900 hectares, which represented on average a penalty of fifty-nine liters of gas per cleared hectare, for nonauthorized clearings identified between 2006 and 2014 (SAS 2014: 43–47; SAS 2015: 49–52). These fines are not only small in number given the high rate of deforestation; they are also extremely low. Consider the following example. An illegal clearing of 715 hectares of high and medium conservation value forests in the department of Anta in 2014 was fined with 35,000 liters of gas, or approximately US\$50,000 at the time. The value of a cleared hectare in Anta can sell for as high as US\$7,000, whereas a hectare of forest sells for at most US\$1,800. If the landowner were to illegally clear the land, pay the fine, and sell the farm, she could still make a profit of approximately US\$3.7 million.<sup>38</sup> In other words, violators can easily absorb the costs of noncompliance.

In sum, in the face of massive pressure from large producers to undermine the enforcement of the law, Salta's governor pursued a strategy of conflict avoidance. He did not simply accept the most radical positions of large producers seeking to attribute low conservation value to most forestlands because of fear of exposure and denunciation by environmental NGOs. However, the effect of the NFPR on deforestation until 2014 was limited. In the absence of a conservationist coalition that could effectively influence policy design and vigorously denounce weak enforcement, producers' preferences prevailed. The rates of deforestation grew in 2008 in anticipation of constraints on land use owing to the passage of the NFPR and the expected concomitant effect on land prices. Lack of resources does not explain this outcome, as Salta had significant funds for monitoring compliance and did a worse job than other provinces in the region, such as Chaco, which expanded and strengthened monitoring capacity and infrastructure throughout its forest areas despite having received fewer funds.<sup>39</sup>

## VI. Conclusion

This chapter has used the case of the implementation of the NFPR in the Argentine Chaco to contribute to our understanding of the sources of institutional weakness. We contend that to account for the politics of enforcement in multilevel systems, we should consider not only whether and why sanctions are applied by subnational authorities, which is the focus of a broad literature, but also analyze the different arenas – national and subnational – in which a law's enforcement may be shaped.

<sup>38</sup> Authors' estimates with data from Compañía Argentina de Tierras. Land prices correspond to August 2012.

<sup>39</sup> Authors' assessment based on provincial documents and fieldwork. See Fernández-Milmanda and Garay (2019).

The design and content of national and subnational implementation regulations is critical to the politics of enforcement. Ambiguities and opportunities for discretion embedded in the national law – lobbied by the actors that would pay the cost of enforcement – allowed subnational authorities in the Argentine Chaco to design provincial regulations that undermined the enforcement of the NFPR. Thus, weak enforcement may result not only from whether and how sanctions are applied, but also from how implementation regulations are designed. These regulations may allow for “legal” violations of the law (e.g., permitting clearings in yellow areas) or for “nonpunitive enforcement” (e.g., setting extremely low fines).

The case of Salta illustrates how violations of the NFPR were legalized in provincial regulations, resulting in both “legal” noncompliance and “nonpunitive” enforcement. The governor exploited ambiguities in the national law and embedded discretionary provisions in provincial regulations to respond to extremely powerful producers seeking to dilute the NFPR’s impact. Conservationist interests were poorly organized on the ground and thus unable to counterbalance the influence of producers. When conflict with indigenous communities emerged, localized exceptions rather than systematic decisions to protect these communities were made in order to avoid conflict.

## References

Auditoría General de la Nación (AGN). 2014. “Implementación de la Ley 26331, 2007-2013.” Buenos Aires: AGN.

Amengual, Matthew. 2013. “Pollution in the garden of the Argentine Republic: Building State Capacity to Escape from Chaotic Regulation,” *Politics and Society* 41, 527-560.

------. 2016. *Politicized Enforcement in Argentina*. New York, N.Y.: Cambridge University Press.

Anguelovski, Isabelle and Joan Martínez-Alier. 2014. “The ‘Environmentalism of the Poor’ Revisited: Territory and Place in Disconnected Global Struggles.” *Ecological Economics* 102: 167-176.

Defensoría del Pueblo de la Nación. 2014. “Informe de Comisión.” Buenos Aires: Defensoría del Pueblo.

De Salvo, María A. 2014. El MOCASE, “Orígenes, Consolidación y Fractura.” *Astrolabio* 12:271-300.

Ardanaz, Martín, Marcelo Leiras and Mariano Tommasi. 2014. "The Politics of Federalism in Argentina and its Implications for Governance and Accountability." *World Development* 53:26-45.

Barsky, Osvaldo and Leonardo Fernández. 2008. *Cambio Técnico y Transformaciones Sociales en el Agro Extrapampeano*. Buenos Aires: Teseo.

Bergman, Marcelo. 2009. *Tax Evasion and the Rule of Law in Latin America*. College Park, P.A.: Penn State University Press. 2009.

Boletín Oficial de la República Argentina. 2009. Decreto 91/2009 "Protección Ambiental de los Bosques Nativos. Apruébase la Reglamentación de la Ley 26331". Año CXVII, número 31595.

Camara de Diputados, Diario de Asuntos Entrados, multiple years (2000-2014).

Cámara de Diputados. 2006. Diario de Sesiones (November 22th (session 29), November 23th (session 30), November 29th (session 30))

Cámara de Diputados. 2007. Diario de Sesiones (March 14th (session 1), November 28th (session 17))

Camara de Senadores, Diario de Asuntos Entrados, several years (2000-2014).

Cámara de Senadores. 2007. Diario de Sesiones (June 6<sup>th</sup> (session 7), August 22th (session 11), November 14<sup>th</sup> (session 13), November 21th (session 13)).

Collazo, M.A., A. Panizza and J.M. Paruelos. 2013. "Ordenamiento territorial de bosques nativos: resultados de la zonificación realizada por provincias del norte argentino," *Ecología Austral* 23, pp. 97-107.

Comisión de Recursos Naturales y Conservación del Ambiente Humano y de Población y Desarrollo Humano, Honorable Cámara de Diputados. 2006. Orden del Día 1479.

Consejo Provincial de Bosques. 2008. "Propuesta de OTBN de Santiago del Estero." Santiago del Estero: Audiencia Pública, Dirección General de Bosques y Fauna.

Fairfield, Tasha. 2015. *Private Wealth and Public Revenue in Latin America*. New York, N.Y.: Cambridge University Press.

Fernández Milmanda, Belén and Candelaria Garay. 2019. "Subnational Variation in Forest Protection in the Argentine Chaco." *World Development* 118:79-94.

Gibson, Edward (ed.). 2004. *Federalism and democracy in Latin America*. Baltimore, M.D.: Johns Hopkins University Press.

-----, 2005. "Boundary Control: Subnational Authoritarianism in Democratic Countries" *World Politics* 58:1 101-132.

Hacker, Jacob and Paul Pierson. 2002. "Business Power and Social Policy." *Politics and Society* 30(2):277-325.

Hansen, M. C., P. V. Potapov, R. Moore, M. Hancher, S. A. Turubanova, A. Tyukavina, D. Thau, S. V. Stehman, S. J. Goetz, T. R. Loveland, A. Kommaredy, A. Egorov, L. Chini, C. O. Justice, and J. R. G. Townshend. 2013. "High-Resolution Global Maps of 21st-Century Forest Cover Change." *Science* 342 (15 November): 850–53.

Holland, Alisha. 2016. "Forbearance". *American Political Science Review*.

Huber, John and Charles Schippan. 2002. *Deliberate Discretion? The Institutional Foundations of Bureaucratic Autonomy*. New York, N.Y.: Cambridge University Press.

Instituto Nacional de Estadística y Censos (INDEC). 2002. *Censo Nacional Agropecuario*. Buenos Aires: INDEC.

Knight, Jack. 1992. *Institutions and Social Conflict*. New York, N.Y.: Cambridge University Press.

Levitsky, Steven and M. Victoria Murillo. 2013. "Building Institutions on Weak Foundations." *Journal of Democracy* 24 (2): 93-107.

Ley 26331. Presupuestos Mínimos Ambientales para la Protección de los Bosques Nativos.

Lindblom, Charles. 1977. *Politics and Markets*. New York, N.Y.: Basic Books.

Mahoney, James and Kathleen Thelen. 2015. *Advances in Comparative-Historical Analysis*. Cambridge University Press.

Martínez-Alier, Joan. 2013. "The Environmentalism of the Poor." *Geoforum* 54:239-241.

Ministerio de Agricultura, Ganadería y Pesca. Sistema Integrado de Información Agropecuaria, Programa de Servicios Agrícolas Provinciales. <http://www.sia.gov.ar/>. Access on November 11, 2014.

Murillo, Maria Victoria. 2001. *Labor Unions, Partisan Coalitions, and Market Reforms in Latin America*. New York, N.Y.: Cambridge University Press.

North, Douglass. 1990. *Institutions, Institutional Change and Economic Performance*. New York, N.Y.: Cambridge University Press.

Pierson, Paul. 2004. *Politics in Time: History, Institutions, and Social Analysis*. Princeton, N.J.: Princeton University Press.

REDAF. 2008. "Informe Monitoreo OTBN. Salta" <http://redaf.org.ar/descargas/>

Ronconi, Lucas. 2010. "Enforcement and Compliance with Labor Regulations in Argentina." *Indus. & Lab. Rel. Rev.* 63: 719-736.

Samuels, David and Richard Snyder. 2001. "The Value of a Vote: Malapportionment in Comparative Perspective." *British Journal of Political Science* 31(4):651-671

Secretaría de Ambiente de la Provincia de Salta. 2014. Informe Anual Sobre el Estado General del Ambiente. Año 2014. Salta: Secretaría de Ambiente.

-----, 2015. Informe Anual Sobre el Estado General del Ambiente. Año 2015. Salta: Secretaría de Ambiente.

Secretaria de Ambiente y Desarrollo Sustentable. 2013. "Informe Sobre el Estado del Ambiente 2012". SAYDS.

-----, 2015. "Monitoreo de la Superficie de Bosque Nativo de la República Argentina. Periodo 2013-2014". SAYDS- Dirección de Bosques.

Stepan, Alfred. 1999. "Federalism and Democracy: Beyond the U.S. Model," *Journal of Democracy* 10:19-34.

Svampa, Maristella. 2015. "Commodities Consensus: Neoextractivism and Enclosure of the Commons in Latin America." *South Atlantic Quarterly* 114(1):65-82.

Thelen, Kathleen. 2004. *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States and Japan*. New York, N.Y.: Cambridge

University Press

**Interviews Cited (conducted by the authors)**

Claudio Del Pla. Provincial legislator (2003—). Salta, July 7, 2015.

Juan Carlos Díaz Roig. Legislator for Formosa (2005-2017). Buenos Aires, July 1, 2015.

Sonia Escudero. Senator for Salta (2001-2013). Salta, July 10, 2015.

Marta Maffei. Legislator for the province of Buenos Aires (2004-2007). Vice-president of the Natural Resources and Environment Committee. Buenos Aires, July 1, 2015.

PROGRAMO. Former President. Salta, July 8, 2015.

Gustavo Paul, Salta's Secretary of Environment. Salta, July 8, 2015.

Juan Manuel Urtubey. Legislator (1999-2007) and Governor of Salta (2007-2019). Salta, July, 20

Table 8.1. *Implementation of the NFPR: Consistency of design and enforcement, core Chaco provinces, 2007–2016*

	Design				Enforcement			
	Conservation Ranking (Zoning Map)	Regulation of Yellow Areas <sup>a</sup>	Discretion to Recategorize Farms?	Consistency Score <sup>b</sup>	Deforestation in Protected Areas (% of Total Deforestation) <sup>c</sup>	Total Deforestation (% of Forest) <sup>d</sup>	Enforcement Score	Implementation Score <sup>e</sup>
Chaco	2	High	No	<i>High</i>	33.3	7.3	<i>Moderate</i>	<i>Moderately high</i>
Formosa	4	Low <sup>f</sup>	Yes: high <sup>f</sup>	<i>Low</i>	N/A <sup>f</sup>	7.6	<i>Low</i>	<i>Low</i>
Salta	3	Low	Yes: high	<i>Low</i>	37.8	9.3	<i>Low</i>	<i>Low</i>
Santiago	1	High	Yes: low	<i>Moderate</i>	71.2	12.9	<i>Low</i>	<i>Moderately low</i>

*Notes:*

<sup>a</sup> Scores based on percent of farmland that can be (1) cleared, and (2) used for grazing, and the farm size threshold after which an environmental impact evaluation is required for sustainable management projects.

<sup>b</sup> *High*: conservationism and regulation of yellow areas are high, and recategorizations are prohibited. *Moderate*: (1) conservationism and regulation of yellow areas are high and power to recategorize is limited; or (2) conservationism and regulation are both moderate, or one dimension is high and the other is moderate, regardless of whether recategorizations are allowed; or (3) conservationism is high, regulation is low, and recategorizations are prohibited. *Low*: (1) conservationism is high, regulation is low, and power to recategorize is high; or (2) conservationism and regulation are both low, or one dimension is moderate and the other is low.

<sup>c</sup> From the OTBN's enactment through 2016.

<sup>d</sup> From the NFPR's enactment through 2016.

<sup>e</sup> Combined consistency and enforcement score.

<sup>f</sup> The OTBN does not follow the NFPR and assigns low conservation value to three-quarters of its forestlands.

*Sources:* Elaborated with data from SAyDS, national and provincial legislation, and Garcia Collazo, Panizza, and Paruelo (2013). Adapted from Fernández-Milmanda and Garay (2019).