— UNCERTAINTY AND THE GOVERNANCE OF STREET VENDING: A Critical Comparison Across the North/South Divide

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Abstract

Through a critical comparison of the spatial management of street vending in Ciudad del Este, Paraguay and New York City, USA, we show how uncertainty enables the management of vending and urban space. By uncertainty, we mean a condition characterized by legal complexity and negotiable enforcement of laws and regulations. Putting New York and Ciudad del Este in dialogue, we demonstrate that these negotiated legalities are not limited to Southern urbanisms, nor are they remnants of unmodern social forms. We find similarities in how vendors experience and negotiate uncertainty, even as divergent mechanisms link uncertainty and inequality. By claiming streets as sites of work, vendors challenge dominant notions of global urbanism which conceive of sidewalks as sites of circulation, rather than livelihood. Especially in Ciudad del Este, vendors know the biases of law, and ground their claims to livelihood in ethics rather than legal compliance. Yet vendors' claims can also reinscribe hierarchical relationships with frontline enforcers and reinforce exclusionary notions of rights based in productive citizenship. Understanding how uncertainty works as a logic of governing helps expose these unavoidable tensions and therefore to imagine and construct pathways toward more just urban economies.

Introduction

This article argues that uncertainty acts as a mode of governing street vendors in two very different cities, Ciudad del Este, Paraguay and New York City, USA. In both places the gap between legal codes and actually existing enforcement practice is as important for the livelihood of street vendors as the codes themselves. By uncertainty, we mean a condition characterized by unpredictable and negotiable enforcement of laws and regulations managing the use of urban space for vendors. Inspired by the convergence of our ethnographic observations, we argue that governing works through a politics of enforcement marked by uncertainty, thereby contributing to research of the management of informality.

By placing New York and Ciudad del Este in dialogue, we argue that uncertainty as a mode of governance is a widespread dynamic, not confined to the cities of the Global South. From where we sit, in US Universities, we note a geographic imagination that makes it easier to see the negotiability of law in Ciudad del Este, Paraguay—a frontier boomtown—than in New York City, an iconic world city. With a critical comparative methodology, we push back on this tendency, wagering difference does not foreclose comparison.

The histories producing uncertainty as a mode of governance are different in Ciudad del Este and New York. Yet, in both cities, its emergence as a technique of governance is not the result of underdevelopment or bureaucratic ineptitude. Rather, uncertainty is a governing logic. We find two sources of uncertainty, present in both

sites: complex, contradictory laws, on the one hand, and the discretionary powers claimed by frontline state officials at the moment of enforcement, on the other. In both cities, this uncertainty provides flexibility for state actors in managing street vending. It also allows officials to avoid taking a stance on vendors' rights to the city. However, uncertainty cuts both ways. Just as it is used by state officials, street vendors use it to claim space to work, sometimes bending rules to do so. Indeed, the uncertainties of enforcement enable the most marginalized vendors to stake out sites of work; without it they would be expelled. While these gains are often temporary and always revocable, they are still significant in urban landscapes of poverty and exclusion.

At the same time, across our sites, uncertainty as a mode of governance reproduces dynamics which make up the unequal city. While the field of uncertainty can be used by enforcement agents and vendors, these actors are not equally powerful. State agents or well-positioned vendors have a greater ability to take advantage of uncertainty than those with less political, economic or social resources. Uncertainty also produces particular kinds of political subjects and we find key differences in how uncertainty interacts with the political claims of vendors. In New York, vendors mobilize an immigrant ethos of hard work and individual sacrifice, embodying a neoliberal personhood unsympathetic to 'unproductive' city dwellers. In Ciudad del Este, municipal officials enroll vendors in lengthy negotiations, promising inclusion yet devaluing their work and social worth. These vendors become hopeful subjects of uncertainty. However, their clear comprehension of the negotiability of law, we suggest, helps some of them to make bold, ethical claims about the right to livelihood in unequal cities. In drawing out these processes, our comparison yields new insights for research on the government of precarity.

The article unfolds as follows. We begin by explaining our critical comparative method. Next, we ground our findings in critical theories of informality and spatial governance and describe the historical, political, economic and social conditions that produced uncertainty in each site. Our argument then proceeds in three parts. In the first two empirical sections, we demonstrate a convergence in the ways that vendors experience and negotiate uncertainty. Then we describe the divergent mechanisms through which uncertainty reproduces inequality in each city, highlighting its subject-producing effects. We contribute two insights. First, we describe how two very different urban political regimes mobilize uncertainty as a logic of governing. Second, we emphasize the subjectivity-producing powers of uncertainty as a key site of politics. In both contexts, vendors' claims both contest and reify structures of domination. We conclude by arguing that understanding the social mechanisms which regulate extralegal work is a precondition for intervening to construct more equitable urban economies, emphasizing the significance of grounding claims to livelihood in ethics rather than legal compliance.

Boundary-breaking critical comparisons

This article puts an iconic US city into conversation with a South American border town. At first, this comparison may seem unexpected, a departure from classical approaches which select strategically similar sites at the research design phase. Our comparative approach instead grew inductively out of our post-fieldwork discussions about street vending and urban governance. We built our comparative framework outward from our initial insights about the centrality of uncertainty, then worked to understand how the different contexts produced similar strategies of spatial management.

In this journal and elsewhere, many have argued more critical comparative research is necessary to grapple with the dynamism and unevenness of urban development, across many dimensions: social, imaginative, political and economic (Ward, 2010; Gough, 2012; Jacobs, 2012; Robinson and Roy, 2016). These works advance

an ethical and methodological 'comparative gesture' (Robinson, 2011). This gesture refuses to characterize differences between cities within developmentalist hierarchies. In our case, Ciudad del Este and New York City exist contemporaneously, as peers, in a 'world of cities' characterized by vast diversity which must be grappled with outside the misleading binaries of developed versus underdeveloped, modern versus non-modern and the like (Robinson, 2006). Methodologically, cites are not bounded units with discrete attributes which can be held constant or varied so as to force a comparison of separable variables. In contrast, we view cities as interwoven in a global field of urbanism. The goal then, is to draw out connections, similarities and differences by putting heterogeneous examples into conversation (Edensor and Jayne, 2012) thereby learning *through* differences as well as similarities (McFarlane, 2010; Jacobs, 2012).

Critical comparative research requires deep contextual knowledge of multiple, diverse places, a challenge for any single scholar. Breaking the boundaries of traditionally defined silos of area studies amplifies these challenges. Yet these boundary-breaking comparisons may help produce critical theory adequate to the complexity of contemporary urban transformations. Thus, we offer our collaboration as one model capable of producing useful theory without claims of universality.[1] A small number of other studies produce critical comparison through academic collaboration (Rosen and Grant, 2011; Hilbrandt *et al.*, 2017; Rodgers and Young, 2017). Rather than presenting cases sequentially, we integrate our arguments and findings by themes: producing uncertainty, experiencing uncertainty and claiming rights. Thus, we emphasize collaborative practices of writing as an important addition to this body of work.

We both draw from extended ethnographic fieldwork. Between 2011 and 2015, Jennifer conducted fifteen months of participant observation, including over 100 in-depth interviews in Guaraní and Spanish with street vendors, business leaders and state officials at different levels of government. Ryan's fieldwork took place over 22 non-contiguous months between 2004 and 2008 and involved participant observation with vendor organizations both in meetings and on the streets and nearly 50 in-depth interviews with street vendors, government officials, politicians and business interests.

The spatial management of street vending

Most research on informal or extralegal work focuses on the global South. Yet across the North/South divide, economic insecurity is increasingly the norm (Neilson and Rossiter, 2008; Standing, 2011; Breman and van der Linden, 2014). Street vending is a pragmatic response to livelihood need, often expanding counter-cyclically with economic downturns (A. Brown, 2006) and holding the possibility of substantial, though unpredictable earnings (Bromley, 2000; Bhowmik, 2012). The earning potential, security of tenure and work rhythms of vending vary considerably, heterogeneous dynamics which exist within and across cities (ILO, 2014). For example, in Ciudad del Este very poor hawkers sell socks and flash drives from shoulder bags alongside established, upwardly mobile vendors with stalls, on-site storage and semi-secure claims to space.

Despite documentation of extensive links to state-regulated markets, planning and policy research persists in misidentifying informality as unregulated activity operating outside the state, conflating the prevalence of so-called informal work with a lack of state capacity.[2] For instance, UN Habitat argues that 'insufficient institutional capacity' is a key source of urban challenges (Habitat, 2001: xxvi). The problem with this approach is its 'evolutionary view of institutions' (Hart, 2002: 817), in which forms of governing that diverge from the ideal-types of canonical state theory are viewed as perpetually 'catching up' to Western versions. This approach can blind researchers to a

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1   There are other non-positivist models, including relational comparison (Hart, 2006; 2016) and other variants of global ethnography (Burawoy *et al.*, 2000).
2   For instance, informal economies are often defined as 'income generating activities operating outside the regulatory framework of the state' (Meagher, 2013: 2).

world of governmental *capacities* as bureaucrats and front-line officials claim expansive authority to interpret rules, police activities, negotiate provisional deals, overlook infractions or transgress the law themselves. It also can reinforce false dichotomies between 'developed' and 'underdeveloped' urbanism, finding what it anticipates: more predictability and effectivity in state action in the North than the South. Critical urban research refutes the state incapacity approach, demonstrating that informalization and formalization are power-laden social processes allocating land, resources, speculation opportunities, vulnerability and exposure to violence (Yiftachel, 2009). More than the official power to draw and redraw the line between legal and illegal (Portes *et al.*, 1989) state practice itself works through 'unceasing negotiability' (Roy, 2002: 18), deal-making (Pieterse, 2013), and the 'inherent ambiguities of everyday statehood' (Haid, 2017: 289).

Street vending is a *placed* urban-economic practice. In Latin America, where public space is a key site of work, street vendors are managed through intense negotiability over the use of urban space (Tucker, 2017a), electorally useful forbearance (Holland, 2015), and the privatization of public space (Crossa, 2009). In US cities too, contradictory regulations structure conflict over the publicness of sidewalks (Loukaitou-Sideris and Ehrenfeucht, 2009) and the ways street vendors are organized and governed in public space (Devlin, 2011). Street vendors' claims for urban belonging often clash with projects of renewal, redevelopment and economic growth that seek to maximize property values. Based in revanchist discourses that construct the poor as urban interlopers from whom the city must be reclaimed (Smith, 2001), these projects often simply remove the poor (Watson, 2009; Gillespie, 2016). The drivers of these evictions include campaigns reclaiming high-value urban space, desires for racial 'whitening' (Swanson, 2007), or discourses of national unity (Van Eijk, 2010).[3]

Frontline enforcers mobilize uncertainty, but the state is not a unified entity with coherent aims. We draw from political theorists and anthropologists demonstrating that the domain called the state is an unbound, fragmented, internally contradictory terrain made up of countless everyday encounters between rulers and ruled.[4] Our ethnographic focus on the everyday state is important for two reasons. First, it centers the creative responses of street vendors as a means to analyze how urban governance works, rather than solely focusing on how 'informal survivalism' strips labor of historical agency, as tough competition fractures the working class (Davis, 2006: 178). The political possibilities of vendors' strategies are situational, rather than predetermined by their structural location in precarious labor markets.

Second, studying the relational interface between state officials and urban entrepreneurs illuminates how uncertainty becomes one key form of governance. Anthropologists show how state power is made real *not only* through projects of visibility, ordering and mapping as suggested by scholars like James Scott and Michel Foucault, but also through ambiguities, confusions and rule-breaking. Akil Gupta shows how arbitrariness infuses the allocation of welfare benefits, normalizing the slow violence of poverty management projects that both let live and let die (Gupta, 2012). Das and Poole (2004: 14) argue 'the frontier between the legal and extralegal runs right within the offices and institutions that embody the state'. These analyses draw from Giorgio Agamben's (2005) work on the state of exception—spaces or spheres of action in which the law is suspended. The mark of sovereign power is this capacity to construct itself as outside the law. The result is a confused, liminal, doubled relationship between the state and law, Agamben argues, because the state is at once inside and outside the law, infused

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3   Others note more ambivalent state strategies of poverty management alongside ambitions for hygienic cleansing (DeVerteuil, 2006; Huang *et al.*, 2014).

4   Critical state theory sees the state as a 'significantly unbound terrain of powers and techniques' (W. Brown, 1995: 174). Elites can mobilize the 'idea of the state' to underwrite domination and rule (Abrams, 1988), a fictive ideal type that academic research helps to produce (Mitchell, 1991). Further, states, and not just nations, are important sites of cultural production with 'affective lives' (Krupa and Nugent, 2015; Stoler, 2004).

with an inherent unaccountability. Yet our focus is different than those who emphasize a core illegibility of the state (Das and Poole, 2004), reflect on the source of its 'alien authority' (Asad, 2004: 287), or analyze the metaphysical, paradoxical relationships between law, violence and justice (Derrida, 1992). Instead we focus on the everyday politics of enforcement whose outcomes are uncertain and obliquely related to the dictates of law. While unpredictable and often unaccountable, everyday enforcement politics are still patterned. In power-laden negotiations, state officials and subject alike can reference situationally useful legal codes as bargaining chips. Thus, ambiguity and uncertainty better capture the key dynamics than arbitrariness or illegibility.

We focus on uncertainty as an emergent condition produced through unpredictable enforcement encounters. Rather than resulting solely from the machinations of state actors, site-specific dynamics interact to produce uncertainty. State officials then harness the condition of uncertainty to achieve specific, contingent ends. Recent research finds that state projects can 'govern through uncertainty' using biopolitical logics of risk to manage urban development (Zeiderman *et al*., 2015: 283).[5] Yet, urban workers can still sometimes leverage uncertainty as a 'social resource' (Agbiboa, 2016: 936).[6] Our focus is somewhat different, focusing on the uncertainties produced by everyday enforcement politics.

Context: producing uncertainty in two cities

Despite different political trajectories, in both cities uncertainty is a mode of governance. Historically specific political, legal, economic and social practices condition how vendors experience uncertainty. In both places, confusing laws and the broad discretion claimed by state officials during enforcement produces uncertainty.

Ciudad del Este's history of transnational trade shapes vending politics and state techniques of spatial management. The profit potential of Ciudad del Este's grey economy is substantial. At its peak in the 1990s, analysts estimated its value at around US $10 billion, more than the GDP of the nation (Abínzano, 2005). Traders buy goods at rock bottom prices in Ciudad del Este to later resell them to middle-class consumers in Brazilian and other South American cites. Rule-breaking is commonplace. Contraband mixes with legal trade rooted in price differentials, enabled by Paraguayan state policy of very low taxes and tariffs. The border trade depends on regional conditions outside Paraguayan state control, like a porous Brazilian border and a lower tax burden than Brazil. This external dependency introduces a volatility not present in New York City's street economy driven by local consumer demand. Unsurprisingly, the profits of the border trade are unevenly divided. Diaspora Chinese, Korean and Lebanese businesspeople own stores or sprawling discount shopping galleries. In contrast, small-scale Paraguayan entrepreneurs work from the streets. Yet, Paraguay's frontier economy is crucial for the nation's poor, offering opportunity amidst deep economic inequality and social exclusion.

Ciudad del Este was founded in 1957 as Puerto Presidente Stroessner. It was named after the fearsome authoritarian President Alfredo Stroessner (1954–1989) and built to establish a Paraguayan presence on the frontier. The city also increased access to the border trade. After 1965 traders could cross the International Friendship Bridge on foot, rather than fly private planes loaded down with whiskey and cigarettes. To participate in the border economy, rural migrants and politically connected elites alike claimed space along the main thoroughfare leading into Brazil. These claims

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5   Recent critical scholarship also considers uncertainty as a constitutive condition of the contemporary mega-city (Simone, 2013), a new epochal phase marked by the hyper-fast reorganization of social structures (Bauman, 2013) or as a form of state knowledge enabling particular interventions (Rabinow and Samimian-Darash, 2015; Zeiderman, 2015).

6   In spaces of poverty, the urban poor capitalize on uncertainties, forming temporary alliances, connecting to unstable economic flows, or harnessing relational potentialities 'between' elements in the urban milieu (Simone, 2013: 243).

often broke laws, secured by deals with authorities in Stroessner's Colorado party. The regime claimed vast, unaccountable powers, including the power to allocate and revoke permission to occupy urban space.[7] Elite claims benefited from more secure political backing than the appropriations of poor vendors. Stroessner benefited from significant US support. Thus, the regime's illiberal claims to power were relationally produced, enabled by US foreign policy, rather than a result of 'non-Western' cultural predispositions.

This logic of negotiability survived Stroessner's 1989 fall, alongside and through legal procedures, like recognizing vendors who paid a small precarious use tax. In the 1990s and 2000s, the Municipality often managed street space through forbearance, that is, through non-enforcement, and through deals cut with vendors or their associations. Vendors use street protests and bridge blockages to defend against recurrent threats of mass evictions.

Vendors in New York are often immigrants, both documented and undocumented, arriving from as close as Mexico and as far away as China (Devlin, 2015). As in Ciudad del Este, legal negotiability structures New York's vending landscape. Vending regulations are a mix of municipal legislation, administrative agency rulemaking, New York State legislation and Federal case law built up over years of contestation. Regulations reflect both the policy priorities of specific historical moments and challenges posed by vendors. Municipal laws passed in the late 1970s and early 1980s aimed to limit vending, capping vending licenses and spatially restricting vending in the central city. These initiatives reflected a shift toward exclusionary public space management (Smith, 1998; Greenberg, 2008; Vitale, 2008). Vendors challenged these regulations in court by invoking rights enshrined at other levels of government. In 1990, military veterans successfully challenged city laws excluding them from Midtown by citing a nineteenth-century New York State law exempting them from municipal vending regulations. In the early 1990s, art vendors filed a federal lawsuit against the city, claiming vending restrictions violated their Constitutional rights to free speech, eventually winning a ruling that exempted art vendors from licensing requirements and other regulations. Deeply contested, vending law freezes political conflict. On the street, vending is managed provisionally, on a case-by-case, block-by-block basis through negotiations that partially, temporarily thaw legal stalemates.

Legal complexity, negotiability and discretionary enforcement are present in both Ciudad del Este and New York. In both places, site-specific development trajectories produced convoluted, internally contradictory regulations that are difficult to consistently enforce. The disjuncture between written laws and actually existing governance practice means vendors' claims to urban space are made and remade through everyday negotiations. We reiterate, this is not an unintended consequence of state dysfunction, remedied simply by better state practice. Rather, the uncertainty in the gap between law and everyday practices of enforcement is a key, underappreciated source of state power.[8] Thus, its everyday negotiation reveals important information about the nature of the state. The emergence of uncertainty as a mode of governance in both Ciudad del Este and New York City underscores its centrality.

Uncertainty as a mode of governance

We turn now to our ethnographies of everyday state practice, building a fine-grained understanding of how uncertainty works as a mode of governance.[9]

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7   The Stroessner regime ruled under a near permanent *estado de sitio*, 'state of emergency', in which the regime granted itself vast authority, constructing itself as unaccountable to law. The *estado de sitio* was ritually lifted for sham elections every 5 years.

8   As Joe Painter notes, 'the gap between state institutions' claims about their effectiveness and their actual effects' is strikingly understudied (Painter, 2006: 761).

9   We use the first person to refer to both Ryan Devlin's fieldwork in NYC and Jennifer Tucker's research in Ciudad del Este.

–   The experience of uncertainty

NEW YORK CITY

Wendy, a flower vendor in Manhattan, constantly negotiated the uncertain nature of enforcement.[10] An immigrant from Hong Kong, for 15 years she sold flowers and fruit for offerings to local Buddhist temples in Chinatown's historic core just off Canal Street in relative peace. Then store owners began harassing her with vague legal threats. Eventually, police officers told her to leave her longtime corner. She pleaded with the officers, saying she had nowhere else to go and needed to support her family. As a diminutive, friendly and soft-spoken older woman, Wendy likely presented a sympathetic figure and the officers agreed to help her find a new spot. What followed was an odyssey of police-induced moves across Chinatown.

> Sergeant X[11] he say so. So I must follow his order. I start in the Mott Street, but then I move to the uh, Lafayette [Street], and then move to the Centre [Street], and move to the Mott Street, and later I move to the Canal [Street], and Canal move me back to the Mott Street, and Mott Street now move me here. So many times I moved. It's the police who move me. They say, 'here no good', move me. But here no good, move me. Another, there no good, move me. Always I follow the police orders.

I met Wendy in her eighth or ninth spot. By now her semi-official relocations had become so routine that she directed complaints from building owners directly to the police:

> And the building people. They tell me to move. Yeah, they talk to me first. They say, 'I don't like you here'. I know, but I can't move, because the police they move me here. If you don't like me here, you talk to the police (personal communication, July 2007).

Front-line state agents wield considerable power over the lives and livelihoods of vendors like Wendy. At the moment of enforcement, state agents interpret complex laws, including how case law might interact with city vending regulations. Wendy sells both oranges and flowers, and different rules regulate food vendors and merchandise vendors. What kind of vendor is she? Buddhists buy oranges and flowers for religious offerings, and so her sales might be protected under the First Amendment. Wendy's legal status thus depends on how enforcement agents decide to interpret the law. Vacillating between promises of accommodation and threats of displacement, these front-line enforcers pull from a range of options, responding to the conundrum at hand. Wendy's experience is typical, exemplifying how legal complexity fosters the flexible, provisional management of street vending.

CIUDAD DEL ESTE

In Ciudad del Este a wave of formalization projects in the 2000s reconfigured the basis for vendors' claims to urban space. The main formalization project, called the Pilot Plan, promised to order the street market by providing state-owned vending stalls and a pathway toward legalized status through paying a small 'precarious use tax'. On paper, the Pilot Plan promised certainty, a means for vendors to secure their claims to space outside the old politics of negotiation and deal-making. In practice, however, formalization reconfigured uncertainty, rather than banished it (Tucker, 2017b).

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10   We follow standard ethnographic practices of anonymization, using pseudonyms and changing identifying details for all interlocutors, with the exception of elected public officials.
11   Wendy knew the police sergeant by name.

The municipality promised to use a census to allocate space in the Pilot Plan upgrades. In theory, the census should operate as a tool to engender certainty, a classic technique of state power to render space and subjects knowable through measurement (Scott, 1998; Mitchell, 2002). In interviews, officials invoked the census as a technical instrument cataloguing an external object: the spatial distribution of vendors. However, I found the power of this census lay in its capacity to cultivate uncertainty.

The Municipality implemented the Pilot Plan in four segments, over 12 years. The prolonged timeline extended the horizon of worry for vendors. Each stage required removing thousands of ad hoc stalls, pushing vendors out of their old spaces onto the street as they waited for construction of the upgrades. Before each round of demolitions, municipal authorities recorded vendors' claims in this census, promising to distribute upgraded space based on the claims documented therein. Yet even in the Pilot Plan's formalized zones, the Municipality sometimes evicted vendors with supposedly regularized status, vendors who had paid the precarious use tax. The leader of a block association explained these evictions, saying: 'While they [the Municipality] do accept tax payment, you are legal, but when he doesn't accept payment the next month, then you are *immediately illegal*' (personal communication, July 2013; emphasis added). As expressed by this vendor, municipal officials can unilaterally stop accepting precarious use tax payments, rendering the vendor 'immediately illegal'. Here, legality is produced via municipal discretion.

In an interview, the municipal director Santiago Torres tried to dissuade me from pursuing the census. In our disorienting conversation, the status of the census shifted. First, Torres described the census as belonging to the Municipality and therefore not available to the public. Then he claimed vendors' associations had the census. Most strikingly he described the census as *unnecessary* to his program of organizing claims within the street market 'I know each and every one of them', he explained (personal communication, August 2013). Rather than rely on the census, Torres argued, his comprehensive knowledge of vendors enabled him to adequately differentiate legitimate vendors from interlopers, claiming a mode of state 'seeing' grounded in his relational knowledge of vendors and in expansive authority to authorize or expel them. By denying access to information which could be used to hold municipal officials accountable as they distribute valuable upgrades, the census works through authoritarian logics of secret state documents and Torres's claims to unchecked discretionary authority.

I pressed the issue of the census, suspecting more was at stake than a simple lack of transparency. In one meeting, Torres conferred with a lawyer, discussing the various difficulties of making the census public. Torres twice commented, 'with names, impossible', explaining that the vendors 'change daily'. These comments refer to the fluidity of claims in the street market and the tacit municipal toleration of certain forms of flexibility and forbearance. As elsewhere, poor families in Ciudad del Este rely on multiple livelihood strategies, including renting out their street claims to family and friends. In theory, the municipal formalization process proposed a fixed relationship between a specific vending space and a specific individual vendor. Actually existing social practice was much more flexible. The shifting landscape of vendors' claims cannot be accurately captured in a census.

While the census does not objectively map claims to space, it still impacts vendors' livelihood possibilities, holding a mysterious sway in the final allocation of vending spaces in the Pilot Plan. What then does the census enable? Like vending law in New York, part of the census's power lies in its instability, its capacity to mean different things in different circumstances. Municipal officials use the census as a tool to claim fair allocation of vending upgrades. Yet the ambiguity of the census provides municipal officials with the raw material for promises of inclusion in the Pilot Plan. The census keeps vendors negotiating for inclusion, on terms set by the Municipality.

The ambiguity of the census in Ciudad del Este and the convoluted nature of vending laws in New York suspend vendors in a state of simultaneous toleration and condemnation, a state described by Oren Yiftachel (2009: 224) as one of 'permanent temporariness'. The dynamics of discretionary authority claimed by front-line state agents works differently in Ciudad del Este and New York City. Yet in both places vending is authorized or denied through patterned decisions of police officers and municipal officials such that negotiable enforcement produces uncertainty as a constitutive dynamic of government. This convergence suggests that uncertainty is key to governing urban spaces of extralegal livelihood.

–   Negotiating uncertainty

In this section, we describe vendors' strategies for negotiating uncertainty, demonstrating how uncertainty conditions street vendors' agency. Vendors in New York and Ciudad del Este use different strategies to challenge uncertainty and claim urban belonging. Differentiation among vendors in both sites—in terms of status and tenure security—influences these strategies. The effort vendors invest in negotiating uncertainty demonstrates its force as a mode of governing.

CIUDAD DEL ESTE

In Ciudad del Este, tenure security varies significantly among different groups of vendors. The prolonged rollout of the Pilot Plan over a decade repeatedly redrew the boundaries of inclusion, that unstable line separating those who received municipal authorization to stay and those exposed to expulsion. The Municipality claimed to use the census to allocate upgraded space, but in practice its role in procedures to secure an upgrade was unclear. Rumors swirled about the back-room price of securing a spot in the Pilot Plan and vendors associations organized competing lists of their membership rolls.

One group, La Collectiva, organized a self-census to contest possible evictions and counteract the uncertainty surrounding the official census. The group's president, Emilio Sosa, introduced the self-census to vendors crowded into a stuffy back room on the periphery of the market saying, '*es para la certeza*' (it's for our certainty).[12] The self-census, Sosa stressed, would serve multiple purposes. First, it would help members assert claims to specific vending spaces during negotiations over inclusion in the final stage of the Pilot Plan. Secondly, if the Municipality tried to relocate new vendors into their midst, they would have a way to show that person did not belong. The assembled vendors also voted to send a letter demanding the Municipality provide official notification—as required by law—before relocations or temporary evictions. Sosa said, 'We deserve official notice and the Municipality, as a public institution, has an obligation to give us this respect'. This letter sought to nudge municipal officials away from capricious practices of uncertainty as a mode of governance.

Calling his project, the 'Third Front', Sosa differentiated his strategy from two other common approaches: the patronage strategies of the largest vendors' association, The Federation, and the confrontational protest tactics of the most marginalized vendors who lacked documented claims to street space. Like The Federation, members of La Collectiva had semi-formalized status with registered claims to space. However, their self-built stalls lacked the aesthetics of formality and they could not claim the additional security of looking legal. Furthermore, their claims were located outside the zone of the Pilot Plan upgrades.

With the self-census, La Collectiva pushed for a new brand of claims-making, a self-conscious reworking of state–subject relationships. The self-census rejected legitimation through political loyalty, the primary strategy of The Federation. Sosa

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12   This and all subsequent quotes are from participant observation conducted in March 2015.

emphasized his proposal was public and followed official municipal procedures as he also sought to cultivate new sorts of political subjects, ready to claim rights rather than make deals for inclusion. Sosa mimicked the language a vendor association president might use with his members: 'let's just pay US $2,000 and secure our spot' (*japaga 2000i jasegurahagua nande puesto*).[13] Sosa argued that municipal strategies of governing produced the uncertainty and fear behind this impulse to negotiate. As Sosa named fear as a motivator of action, the assembled vendors cried out in agreement; the woman next to me repeated to herself, 'yes, fear and anxiety'. If his members learned to advocate for their right to dignified work, Sosa wagered local officials would need to respond with a different set of governing practices. Thus, the self-census was a pedagogical project aimed at vendors and the local state alike.

La Collectiva was an important force during field work in 2013, but by a return visit in 2015 Sosa's project of forging new political relationships with the Municipality had stumbled. Several affiliate organizations had peeled away, casting in their lots with The Federation. On different occasions, three association presidents recounted to me their decisions to leave La Collectiva and join The Federation. Two presidents made the decision after meetings with Santiago Torres in which he laid out the stakes: 'you are either with us or against us', a discourse of friend and enemy that marks populism (Laclau, 2005). I chatted with one of Sosa's former associates, Samuel, in front of his stall stacked high with fake leather jackets. Samuel regretfully recounted his decision to leave La Collectiva. He spoke warily, a change from our earlier friendly conversations. Samuel said he had no complaints about Sosa or La Collectiva, 'it's a pleasure to work with Emilio, he knows how to manage documents, how to develop a project proposal; he knows how to work'. Yet Samuel felt there was no choice. He concluded that officials would interpret affiliation with La Collectiva as alignment with the Municipality's opposition. Samuel wagered that distribution of upgraded vending stalls would flow toward those with demonstrable political loyalties to the current Municipal administration. Sosa sought to counter the discourse of friends and enemies, saying 'We aren't opposed to them [the Municipality] we just want them to do their job well. We aren't going to let them evict our people as if we are nothing'. Yet, in the end, the uncertainty infusing the distribution of stalls in the final state of the Pilot Plan spurred Samuel's decision to abandon La Collectiva, pointing to the power of uncertainty to condition political strategies and subjectivities.

NEW YORK CITY

As in Ciudad del Este, different groups of vendors in New York experience and push back against uncertainty in different ways. A key divide is whether vendors possess a license. Licensed vendors tend to make appeals for more consistent enforcement while organizations of unlicensed vendors favor negotiating with enforcement agents. Unlicensed vendors mobilize notions of needs, mercy and fairness, relying on the willingness of enforcement agents to exercise forbearance.

Made up mostly of licensed vendors, the Street Vendor Project (SVP)—New York's largest city-wide vending advocacy organization, attempts to mitigate legal uncertainty. The organization helps vendors contest tickets in administrative court and educates vendors about vending laws and their rights. Among other strategies, SVP uses role playing exercises during monthly meetings. In one, a vendor plays a police officer while others practice responding to intimation. All vendors participate, shouting suggestions, booing, scoffing knowingly at police orders, and asking questions.

At one meeting, Munnu, a licensed Bangladeshi peanut vendor, mentioned that a police officer often intimidated him away from his legal location. Organizers invited

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13   Sosa spoke in Guaraní, widely spoken as the language of family and friends for the popular Paraguayan classes while Spanish is the language of bureaucracy and power.

Munnu to role-play interacting with the police. One vendor played the officer, complete with police officer's hat, a thick fake mustache and reflective sunglasses. Confronting Munnu, the 'officer' barked, 'look, you have to move. You're blocking this advertisement here, and Coca-Cola paid good money for that ad'. Many of the watching vendors chuckled knowingly at the audacious threat. Munnu trod lightly. 'No sir', he muttered, 'I have a right to be here, this is not a rule'. 'Well look', the officer replied, 'the building wants you to move, so you have to get out of here'. With more confidence, Munnu responded, 'this is not the building's sidewalk, they didn't pay for this. This is the city's sidewalk. And the city gives me a right to be here'. The officer then threatened Munnu with expensive fines, writing an imaginary ticket on a notepad. The vendors in the audience shouted, 'You have a right to stay if you are in a legal spot!' 'Don't move! If he makes you move, who is going to feed your family?' A vendor sitting near me muttered under his breath, 'If he don't move, he'll just lock him up'.

Applying his new knowledge, Munnu pretended to take pictures of the officer's badge and his cart, documenting the incident. Some vendors asked questions, 'Can you take pictures of the police?' 'No, you are not allowed, they do not let you do that!' another responded. The director of SVP broke in, 'You *are* allowed to take pictures if a policeman is giving you a ticket. It's critical that you take pictures so that you have evidence to contest the ticket. You need to be respectful but stand up for your rights'. The skit ended after Munnu accepted the officer's ticket, but stayed put, planning to challenge the citations with his photographic evidence. Everyone clapped. Then Munnu broke with his earlier hesitancy, perhaps channeling frustration with past police encounters, and shouted defiantly, 'I'll see you in court!'.

Vendors in SVP seek to be regulated by consistent legal criteria, rather than the unpredictable whims of enforcement agents. Its members demand clear delineation of and respect for their legal rights. But unlicensed vendors, like a group in the Bronx, experience and respond to uncertainty differently. Fordham Road is a bustling mix of low-cost chain stores and small businesses catering mostly to a lower-income Latino and African American clientele. On weekends, foot traffic rivals Manhattan's busiest streets. Street vendors, mostly recent Mexican immigrants, are an established presence selling everything from toys, to flowers, to fresh mangos.

After years of abusive treatment by the police, vendors along Fordham Road formed *Vendedoras Ambulates Movilizando y Organizando en Solidaridad Unidos* (VAMOS Unidos) in 2007. VAMOS Unidos advocates legal change, but focuses on negotiating agreements regarding enforcement norms with local police precincts. The director of VAMOS Unidos, Rafael Samanez, describes the approach:

> At the moment, we're going to four precincts, soon to be five. Our capacity is extremely limited but it's important, that part of the work, to go to the precincts. Sometimes we're very badly received, you know? But once we put forward the human part of it—that these are workers and they need to be respected, that these are single mothers, this is their only source of income, they don't have any other income—the police are kind of forced to start talking to us on a one to one level. So we ask for a meeting. Usually the captain talks to us and says, 'we have to give tickets'. And there are some times that we've had to threaten with direct action and we have done direct action like protests, press conferences, with our target being the precinct, to expose what's going on. Once that press starts coming in, the reality of what's going on, it makes the multiple summonses, the arrests, the abuse of vendors, stop (personal communication, April, 2008).

In 2008, after a year of discussions, VAMOS Unidos reached an unofficial agreement with one Bronx precinct. The vendors, mostly undocumented women, defended their work as necessary to support their families, emphasizing it was

their only option. Officers listened to stories of the devastating effects of arrests, merchandise confiscation and $1,000 fines. In response, the precinct agreed to less punitive enforcement, like tickets with fines as low as $25. The temporary, stop-gap deal, Samanez argued, was more pragmatic than the remote possibility of gaining formal rights through legislative change. Unlike their licensed counterparts, vendors with VAMOS Unidos negotiate tentative détentes with police, in hopes of gaining provisional security rather than legal rights.

In both cities, vendors with more secure claims to space name predictability as a desirable but absent quality of local enforcement practice, and then develop proposals to call it forth, to nudge state practice away from negotiability toward predictability and consistent application of law. Yet more precarious vendors benefit from the gaps between law as written and enforced; their presence on the street depends on it. These vendors are constituents of uncertainty, seeking to negotiate provisional arrangements with frontline enforcement officials to secure their claims.

Political subjects of uncertainty

In this section, we discuss how uncertainty as a mode of governing generates particular political subjectivities and contributes to the reproduction of inequality. Street vendors in both cities claim public space as a legitimate site of livelihood, a challenge to policymakers and planning theorists alike. They protest evictions and vending restrictions with signs and chants saying, 'we want to work!'. This discourse of the work ethic helps vendors claim space in cities with anti-poor policies. Yet they also cast vendors as small business people oriented to work, rather than as citizens with rights to the city. Thus, these discourses can reinforce contingent notions of belonging and rights, only applicable to sufficiently entrepreneurial vendors.

CIUDAD DEL ESTE

In Ciudad del Este, municipal officials enroll vendors in extended negotiations. These negotiations produce vendors as subjects of a fickle state, one that suggests, without committing to, possibilities for protection and caretaking. In this context, I was surprised that vendors spoke often of hope. Nine months had passed since the Municipality demolished Fabiana's self-built vending spot to make way for the final stage of the Pilot Plan. Most vendors in Fabiana's zone belonged to block associations affiliated with The Federation, hoping membership would secure their spot in the upgrades. Fabiana recounted how the president of her block association explained she needed pay US $200 to get her name on The Federation's list. But Fabiana did not have $200. Fabiana mimed the president's response when she did not pay, vigorously striking a name from the registry of associated vendors, saying, 'you are not approved!' Angry at this threat to her livelihood, and unsure of the power of The Federation's list, Fabiana joined La Collectiva. Fabiana speculated that the honesty and bureaucratic dexterity of Emilio Sosa could counter the back-room politics of pay-to-play lists. She recounted her calculations and worries saying, 'but one must have hope'. Unsurprisingly, I never witnessed Federation officials requesting irregular payment for inclusion on their counter-lists. However, I could see and study the persistent rumors of counter-lists, and vendors' widespread belief in their power. Both dynamics point to uncertainty as an atmospheric presence.

Another evicted vendor, Ricardo, helped me understand this politics of hope. Ricardo explained the status of his legal case against the Municipality as he carefully arranged rows of prescription eyeglasses in his vending cart. The Municipality had evicted 25 vendors from a stretch of sidewalk in front of a high-end clothing store. Usually, evicted vendors tried to negotiate for relocation to a different spot in the market, an unpredictable process that could stretch for months and land vendors in undesirable locations. In a rare move, Ricardo's group brought a legal case against the Municipality.

In 2011, the courts found the Municipality had improperly evicted some of these vendors, ordering the Municipality to recognize vendors' rights to occupy sidewalk space. Yet in 2015 the Municipality still refused to return vendors to their original vending spaces, claiming the power to act outside the law. Yet, as Ricardo explained the stalled process of his legal case, he used the imperative form to say, 'one must never lose hope'.

As we talked further, Ricardo described hope as a political resource, as a necessary emotional orientation that enabled ongoing action in the face of uncertainty. He described hope as a cautious openness to the possibility that contingency might align in his favor. Ricardo was poised for possible openings during elections or other moments of conflict, when shifting political alliances and negotiable enforcement meant he might be able to strike a deal for a better vending space. Rather than interpreting this hopefulness as naiveté, I see this hope as a Spinozan bodily capacity (Anderson, 2014), an epistemological orientation enabling future-oriented action (Miyazaki, 2006). Hope helped vendors maintain lines of connection to power brokers, potentially useful resources in the flux of political changes. Vendors see clearly the slant of state practice is not in their favor. Yet, the contingency of governing through uncertainty means that openings may arise, moments when vendors' claims might gain traction.

NEW YORK CITY

In New York uncertainty also produces both anxiety and hopefulness, a sense that nothing is guaranteed but that things change and so better outcomes might be possible. Many vendors in New York identify as entrepreneurial risk-takers, working hard for their success and providing for their families through their business savvy and street-smarts. The rhetoric of many vendors—especially those with The Street Vendor Project—does not seek a caretaking state or certainty of result. Rather they ask for fair and consistent application of the rules.

Vendors in New York thread their hopefulness into the well-worn yarn of the 'American Dream'. This narrative promises future comfort for immigrants who demonstrate discipline, self-sacrifice and prudence today. Vendors write themselves into the American Dream, mobilizing narratives of the US as a country of immigrant inclusion and success, arguing that they too deserve the chance to reap the promised rewards. Vendors argue that unfair laws and shifting enforcement norms block their pathways to opportunity. While they challenge dominant notions of spatial order set forth by business and property interests, they are also reinforcing neoliberal notions of citizenship and rights.

The discourse of the entrepreneurial immigrant resonates with the public. It paints a flattering narrative of New York as a welcoming place, conducive to immigrant advancement. For instance, during the 2008–09 economic crisis, the Street Vendor Project organized a protest of unlicensed vendors, demanding the city lift the cap on licenses in order to create jobs. Vendors carried signs that read 'Create Jobs, not Criminals!' and 'I want to work!'. Evoking the language of economic stimulus, SVP co-director Michael Wells told the *New York Times*, 'This is "shovel-ready" to provide jobs for New Yorkers'. In this telling, uncertainty is correctable through lifting the vending cap and regularizing enforcement. Further, mitigating the aberrant conditions that produce uncertainty, rather than structural reform, will enable immigrant street vendors to rise like their predecessors.

As I argue elsewhere (Devlin, 2015; 2018), this line of vendor discourse carries weight in conflicts over public space in the city. However, it produces its own exclusions. The discourse of the hard-working, deserving immigrant implicitly delegitimizes claims to substantive citizenship and urban space made by groups who do not exhibit entrepreneurialism. Vendors commonly define themselves in opposition to groups like the unemployed, the homeless or the welfare-dependent. A Bangladeshi food vendor near Times Square commented:

> The city don't give me nothing. I don't take any money from the city …. I make money, I go pay the city my tax dollars, my income tax dollars (personal communication, June, 2008).

Similarly, an Egyptian halal food vendor in Midtown said:

> You know, [vending] is a step. But even now … I own my business and I am making money. I have good life. I don't need any … I never go to the city to ask for help. Except the Medicare, that's it. I don't like asking city for some food, some money. Like the other people, you know, different people, they do (personal communication, April, 2008).

Juxtaposing their self-discipline to the improvidence and dependency of 'different people', these vendors imagine upward mobility through fair enforcement as a dividend for their economic productivity. Freed from legal unpredictability, these vendors hope to rise under conditions of fairness and regulatory consistency. While these vendors seek fair application of the rules of the game, their discourse implies not everyone deserves to win.

Uncertainty shapes the outlooks and goals of vendors. Through everyday encounters with state officials, ordinary urban residents come to understand what the state is supposed to be and who they are in relation to it. In New York, vendors seek to trade uncertainty for possibility. Mobilizing values of self-help and entrepreneurship, these vendors reinforce exclusionary notions of rights based primarily on productive citizenship. In contrast, in Ciudad del Este everyday enforcement politics produces vendors as hopeful subjects of uncertainty, as subordinated beneficiaries rather than rights-bearing citizens. While the processes of subjectification are different, responding to specific relationships between law, rights claims, and urban politics, both reinforce unequal power relationships.

Conclusion

In Ciudad del Este and New York City the law does not provide a reliable blueprint for socio-spatial action. Through a critical comparison of the spatial management of street vending, we show that state officials manage vending through uncertainty. We also show that negotiated legalities are not limited to Southern urbanisms, nor are they a remnant of lingering, unmodern social forms. Rather than state incapacity, uncertainty is key to state strategies of spatial control and management across the North/South divide. Thus, our comparison helps challenge tenacious narratives that governing forms in places like New York are somehow 'ahead' of practices found in places like Ciudad del Este.

The energy vendors invest in negotiating uncertainty points to its power as a practice of government. In both sites, the most marginalized vendors have little to gain from clarifying and codifying law. These vendors are constituents of uncertainty. Only through the gaps between law and enforcement are they able to claim the urban space necessary to eke out a living. Yet rights claims work differently in our sites. In New York, formal rights are an important part of the political imaginary. Established vendors seek legal certainty and trust the law to provide secure backing for rights. In Ciudad del Este, tenure security has historically been backed by political deals and party loyalty. The legacy of the dictatorship is just three decades back. Standard interpretations suggest this creates weaker democratic forms. While this is partly true, it misses how this experience can help expose how legal practice quite often represents the whims of the powerful. Rather than seeking equal rights before the law, vendors turn to ethics.

Street vendor claims to the city are insurgent when they destabilize elite representations of public space and expose neoliberalism's contradictions. By claiming

streets as sites of work, vendors challenge dominant notions of global urbanism which conceive of streets and sidewalks as sites of circulation, rather than spaces of livelihood. This ethical injunction mobilizes urban visions that foreground livelihood over profit, use value over exchange value. Their ethic expands dominant visions of who belongs in the city, even if it falls short of a radical democratic redistribution of the right to shape urban space. Yet, street vendor politics can reinforce what Kathi Weeks describes as the hegemonic linking of productive labor with socially constructed understandings of the valuable person, despite the chronic job scarcities endemic to capitalism (Weeks, 2011). Vendors' claims can thus also reinforce exclusionary notions of legitimacy and hierarchical relationships of dependency. Seeing clearly how uncertainty works as a logic of governing helps expose these tensions within efforts to govern precarity.

We align ourselves with scholarship that insists on going beyond interpreting the world, seeking instead to change it. Boaventura de Sousa Santos (2015: 182) suggests a 'sociology of emergences' will help bridge the gap between today and a more just tomorrow. This involves excavating already existing, counter-hegemonic practices of everyday life and stoking those embers that move us toward liberation, justice, and a redistribution of social resources. We suggest that vendors' ethical claims to livelihood outside the law contain useful embers. We especially highlight how vendors in Ciudad del Este refuse to look to law as a sufficient ground for justice. These practices need not be flawless to be useful for our sociology of emergences. Vendors do not directly contest the logics of capital and sometimes themselves police the boundaries of urban inclusion. However, by centering a right to urban livelihood, street vendors contribute to our sociology of emergences.

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