

**Toward Managed Flexibility:  
The Revival of Labor Inspection in the Latin World**

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November 8, 2007

**Introduction**

A regulatory renaissance is underway in Southern Europe, North Africa, and Latin America. The renaissance is marked by the demise of the alleged Washington Consensus and the resuscitation of the age-old debate over the relative costs and benefits of labor market regulation. While policymakers in countries like Spain, Morocco, Brazil, and the Dominican Republic have devoted new resources and personnel to the enforcement of their labor and employment laws, and have thereby redoubled their commitment to the cause of worker protection, they have for the most part ignored two plausible—if by no means incontrovertible—objections to their efforts: first, that the regulations in question are likely to impede adjustment, job creation, and growth; and second, that the inspectors who are responsible for enforcing the regulations are at best incompetent and at worst corrupt. We draw a distinction between the former objection, which we label the “economic” critique of regulation, and the latter objection, which we label the “political” critique of regulation, and note that the political critique reinforces the economic critique

by suggesting that regulations that might redound to the benefit of workers in theory will almost certainly redound to the detriment of workers and their employers in practice—that is, when enforced by incompetent or corrupt public officials.

The economic critique is largely inapplicable to the model of labor market regulation that is gaining ground in the Mediterranean Basin and Latin America, however, for the so-called Latin model (Piore and Schrank 2006) not only gives the inspector the authority to weigh the costs and benefits of regulation at the firm level but simultaneously encourages him or her to look for ways to reconcile the allegedly incompatible goals of productive efficiency and worker protection more generally. By disseminating best practices from productive employers who are in compliance with the law to less productive employers who are not, for example, the inspector can make compliance good for business and thereby minimize resistance to regulation.

Unfortunately, however, the very aspects of the Latin model that militate against rigidity and stasis, and thereby blunt the force of the economic critique, place additional burdens on the inspectors, and thereby bolster the political challenge. For instance, the discretion that gives the inspector the authority to temper his or her enforcement effort to the exigencies of the individual enterprise makes conventional approaches to management through direct command or numerical performance targets difficult and opens the door to arbitrary, capricious or incompetent behavior.

A more promising approach would therefore redirect managerial and supervisory attention away from the inspectors themselves and toward the organizational cultures and structures that inform and guide their behavior. It would embrace and exploit a research agenda designed to evaluate, expand, and deepen the knowledge base upon which

inspection practices are currently based including the systematization of what is at present a largely tacit understanding of the relationship between labor standards and business practices. It would combine the flexibility of the Latin model with the integrity of an elite civil service. And it would thereby transform labor inspectors into the shock troops of a campaign for decent work and sustainable development more generally.

The following paper constitutes a brief for a research agenda which would support and sustain the inspectors in that role. It begins with a brief and necessarily incomplete history of the regulatory renaissance that is currently underway in France, Spain, and their former colonies; underscores the differences between the Latin approach to labor inspection and the more familiar Anglo-American alternative; evaluates the costs as well as the benefits of the Latin model; and offers a number of recommendations designed to minimize the costs while maximizing the benefits. Our goal is more programmatic than empirical. We hope that academics as well as practitioners will follow our lead and recognize the importance and centrality of labor inspection in the ongoing international campaign for decent work and sustainable development.

### **A Regulatory Renaissance?**

Over the course of the past two decades policymakers in France, Spain, and a number of their former colonies have made concerted efforts to regulate (or re-regulate) their labor markets (Murillo and Schrank 2005; Murillo 2005; Neumayer and de Sosa 2006; Piore and Schrank 2006). Quantitative data are sporadic, and the trend is neither universal nor irreversible, but the overarching pattern is clear. Chile, the Dominican Republic, and Guatemala have more than doubled the size of their respective labor inspectorates since

the dawn of the free market era. Argentina, Costa Rica, Honduras, and Uruguay have undertaken meaningful expansions of their own. And El Salvador and Peru have recently agreed to add dozens of new inspectors to enforcements agencies that had already grown precipitously since the late 1990s (Figueroa 2005; Piore and Schrank 2006; Schrank and Piore 2007; Sanchez 2007).

Nor is the trend limited to Latin America. Spain's labor inspectorate has grown by a third in the last three years alone. The French labor ministry plans to add 700 new enforcement agents to an existing corps of 1400 in the next three years (Albracht 2005, p. 72). And Morocco added 60 new inspectors to an existing corps of 300 in 2005.

The regulatory renaissance is simultaneously a product and a manifestation of the more general reaction against neoliberalism and the so-called Washington Consensus and their failure to make good on their promises of shared growth and prosperity in the late twentieth century. But it is also a product of pressures emanating from the developed world including labor, consumer, and human rights activism and, more recently, the United States Congress's insistence on the incorporation of labor standards into the various trade agreements negotiated by the Bush administration (Murillo and Schrank 2005; Piore and Schrank 2006). The latter is of course problematic and paradoxical given not only the US role in fostering the growth of the Washington Consensus in the first place but the Bush administration's commitment to dismantling or defanging worker protections at home. But it is also problematic because labor market regulations have been portrayed as singularly inflexible impediments to job creation and criticized for impeding the kind rapid adjustment in the productive structure that is required to compete effectively in the international marketplace.

We believe that much of that criticism arises from a failure to distinguish Anglo-American approach to labor market regulation from the model prevalent in the Francophone countries and Latin America, where much of the movement toward revival and reform has so far been concentrated. The Latin system actually gives rank and file regulatory authorities the flexibility to adjust their efforts to prevailing economic conditions, and it could be even more flexible if it were managed in a more self-conscious and deliberate fashion. But the Latin model has other characteristics that make it difficult to reconcile with concerns about democracy and the rule of law that are no less central to the political reaction to neoliberalism. It gives relatively low level officials enormous discretion over consequential economic activity, for instance, and thereby opens the door to the perception, and perhaps the reality, of corruption, incompetence, and malfeasance. A more thoroughgoing regulatory renaissance may therefore require the reinvention, rather than the simple reproduction, of the Latin model.

**The differences between the North American and the Latin approaches to labor market regulation.<sup>1</sup>**

We start from the observation that the Latin model of labor market regulation is broadly distinctive and fundamentally different from that of the US model in particular. Given the role that the US model has come to play in both the scholarly and the policy making literatures, it is virtually impossible to enter the debate about labor market regulation without distinguishing the Latin model in this way. But our focus in this paper will be

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<sup>1</sup> For a typology of systems of labour inspection see Von Richtenhofen, 2002.

upon the Latin model itself and not upon its effectiveness relative to the US approach.<sup>2</sup> From this perspective, the salient characteristic of the US model is that it is adversarial in nature. By way of contrast, the Latin model is pedagogical. The French *inspecteurs du travail* and their colleagues in organizations of similar design throughout the Latin world hope to coach, coax, and only occasionally coerce firms into compliance with the letter and the spirit of the law.

The two models depart from different interpretations of noncompliance. While US officials trace noncompliance to the rational calculations of utility-maximizing businesspeople, and hope to ensure respect for the law in the long run by punishing disrespect for the law in the short run, their Latin counterparts treat transgressions as, more often products of the ignorance, inefficiency, and poverty of employers—and recognize that punitive sanctions may actually aggravate, rather than ameliorate, the problem. The point is most assuredly not that employers are selfless actors but that whatever their personal values and preferences they are often ill-prepared for business as well—and that noncompliance is therefore a product of ignorance as well as avarice. Consequently, the early twentieth century French architects of the tutelary model “developed a collective identity as more than simply law enforcers,” in the words of historian Donald Reid, and adopted an “extra-regulatory” (Reid 1986, pp. 75-6; see also Reid 1994) approach designed at least in part to disseminate best practices and technologies from larger, compliant firms to their smaller, noncompliant counterparts.

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<sup>2</sup> A comparison of the effectiveness of the two approaches could be the subject of another paper and a different research project. Whether such a project would be a meaningful exercise is a different question which we cannot address here. We think it is important to recognize, however, that we are departing from a perspective in which the relevance of such a research project is not at all clear. And that point of departure is consistent with the broader view that is emerging as the dominant critique of, and alternative to, the Washington Consensus and its one size fits all approach to economic and social policy (see, e.g., Rodrik 2000). This critique, which we embrace, views particular institutions as embedded in, and reflective of, fundamental differences in the concept of government and the role of the state.

This means among other things that the Latin model is radically different in design and operation from the image of heavy handed government regulation that underlies the US-born neoliberal critique of government regulation of labor markets. The major differences are twofold: first the Latin model is a general (or unified) system of labor inspection; and second it is initially conciliatory and tutelary in the face of noncompliance. The US model is, by way of contrast, diffuse and punitive.

What these terms mean specifically is that in the US responsibility for labor market regulation is distributed across a number of different agencies, each of which is concerned with one aspect of the law: the Department of Labor's Wages and Hours Division enforces the Fair Labor Standards Act, OSHA deals with safety and health, the Employee Benefits Security Administration handles pensions, health insurance, and other fringe benefits, the Federal Mediation and Conciliation Service facilitates collective bargaining, the Equal Employment Opportunity Commission fights discrimination, the Immigration and Naturalization Service regulates migrant labor, etc. Many of these agencies also have analogues on the state and local levels with prior or overlapping jurisdiction. In France, by way of contrast, l'inspection du travail is not only responsible for the enforcement of the entirety of the labor code but has additional responsibility for enforcing certain provisions of collective bargaining contracts that are administered by labor and management alone in the US.

The second difference is that in the US violations of any of these standards are sanctioned. The employer generally pays a penalty in the form of a fine or other monetary assessment and these payments usually discharge the firm's responsibility. In the French system, again by way of contrast, employers are expected to come into

compliance with the law and the inspector, having identified the violation or violations, works out a plan with the employer designed to bring the enterprise into compliance over time. Fines and penalties may also be assessed but they are only instruments in the pursuit of compliance and the firm's obligations can in no way be discharged through their payment.

The result of these characteristics of the Latin model is that the labor inspectors have wide latitude or discretion in terms of how they do their jobs. This is not an accident. Such discretion is antithetical to the US model, in which deterrence is the overarching goal and each violation is treated as *sui generis* (Kelman, 1982). But the goal of the French system is rehabilitation rather than deterrence. And the inspector's responsibility for the entirety of the labor code is predicated on the notion that violations are interdependent. But the fact that they do have this broad responsibility makes a literalist approach to enforcement all but impossible in any event. The way in which the system operates in practice then comes to depend on how the inspector's discretion is exercised, and much of the research we've conducted in both France and Latin America has been an attempt to answer that question through interviews with the inspectors, individually and in groups, and with their supervisors.

### **The advantages of the Latin model.**

The advantage of the Franco-Latin model is the flexibility of the regulatory structure and the ability to adjust its impact to the peculiarities of particular enterprises and the broader socio-economic environment. That flexibility is inherent in the discretion of the line inspectors. It has two distinct dimensions. First, given the size and complexity of the



labor code, the inspectors cannot possibly apply the regulatory apparatus literally; they are therefore forced to decide which aspects of the code to enforce and under what circumstances. A second source of discretion, and thus flexibility, lies in the inspector's ability to develop a plan of compliance which comes into effect gradually over time. Latin labor codes typically make provisions for such compliance plans either explicitly or implicitly. In some countries, there is actually a third source of discretion that inheres in the inspector's ability to decide which enterprises to actually inspect and under what circumstances.

The wide latitude which the system gives to the inspectors in the enforcement of the regulations places them in a position to weigh not only the different regulations against each other but the total cost of the regulatory burden—in terms of the goods, services, and employment that the enterprise provides—against the benefits of various enforcement strategies. In the North American system, where each regulation or type of regulation is viewed in isolation, there is no single place or opportunity where the impact of the regulatory structure as a whole is regularly evaluated let alone weighed and taken into account. In principle, of course, the legislature is in a position to do this, but it is inherently less flexible than a decentralized inspectorate and in practice it too treats each regulatory domain separately, often acting in response to political pressures that focus on the impact of one particular dimension of activity, such as an industrial accident or a large and well publicized bankruptcy.

In an advanced industrial country like contemporary France, the flexibility of the system is not unlike that of the market. The inspectors can enforce the regulations more stringently when economic conditions are good, unemployment low, and the cost of any

economic displacement minimal, in the sense that resources released in the process of adjustment could be readily absorbed elsewhere. When unemployment is high, however, in declining regions or at low points in the business cycle, for example, relations can be relaxed and compliance drawn out to preserve employment opportunities that otherwise might not be replaced. These adjustments are in certain respects *more* sensitive to the differences between the social costs of certain regulations (health and safety, for example, relative to wages and hours) or to the social climate itself than is the market.

In the developing countries of Latin America and North Africa, however, the problem is less the variability of the cost of regulation over the business cycle or across regions—although these considerations are not irrelevant—than the ever-present reality of underdevelopment and the growing pressure of globalization. In this sense, the contemporary developing countries bear a resemblance to France in the Belle Époque (see Reed 1986 and, more broadly, Cross, 1984, 1985; Dorr 1996 for the Japanese analogue; and, for much earlier analogues in France, Minard, 1998). Many already vulnerable firms find themselves unable to adjust to the changing business environment into which they have been thrown by the opening of their economies to trade and foreign investment, and these difficulties are often compounded by the withdrawal of government protection more broadly. Their relatively low wages are for the most part unable to compensate for their inability to meet the price, quality, and delivery standards of international clients. Indeed, in many cases, local producers cannot seem to understand what they are being asked to do in the first place. And with the arrival of international retailers such as Wal-Mart and Carrefour they face these competitive pressures even in their traditionally protected home markets. Violations of labor standards may therefore

emerge inadvertently as besieged employers attempt to compensate for their various deficiencies by increasing the pace of work, extending the working day, and/or cramming production into increasingly smaller and narrower spaces in order to reduce overhead costs. These enterprises are seemingly unaware of alternative approaches which would simultaneously raise quality and delivery standards, such as more efficient plant layout, careful production planning and accounting, techniques of quality control, etc. And while in principle they should be able to purchase private consulting services that would help them understand and make these adjustments on the open market, in practice this has simply not occurred.

Of course, this is not to say that businesses do not also try to compete by exploiting labor outright or deliberately violating the law. But the Latin model gives inspectors the discretion they need to distinguish these two types of violations and to encourage those who fall into a pattern of noncompliance inadvertently to rehabilitate themselves by upgrading their business and production practices. Indeed, their obligation to develop a plan which brings the enterprise into compliance, and their commitment to serve as tutor or conciliator in the process, virtually obliges them to do so.

Furthermore, the inspectors are actually in a good position to do this, for they are exposed to a wide range of business practice—wider perhaps than any other economic actor—in carrying out their responsibilities on the job and are thus able to play the role of business consultant by transferring best practices from leading to lagging enterprise. We have argued elsewhere that their ability to help in this regard could be greatly enhanced by closer ties with other governmental programs offering specific services in the form of training, industrial extensions services, financial intermediation, etc. (Piore and Schrank

2006). In several countries, the inspectors and inspectorates have already moved in this direction. For instance, Dominican inspectors broker relationships between employers and publicly subsidized training and educational programs (Piore and Schrank 2006). The Chilean labor ministry systematically and self-consciously offers non-compliant firms the opportunity to substitute training for fines (OIT 2006, p. 19). And the French *inspecteurs du travail* have been ensuring that “compliance is good business” (Reid 1986, p. 77) for nearly 100 years, and arguably much longer (Minard, 1998).

Our own research has focused particularly on small, family firms that are in dire need of such services. But similar deficits and problems are apparent even in companies that seem to drive international competition. Recent studies suggest that branded companies that have committed themselves under the threat of consumer boycotts to police the labor standards of their subcontractors have failed to effectively do so, despite the creation of elaborate internal mechanisms both in the parent companies and in the field (Locke and Romis 2006; Locke, Qin and Brause, 2006). The major problem appears to be that labor compliance in these companies is wholly separate from the surveillance of business practices that more directly and immediately affect their market positions, such as quality and delivery. The private labor inspectors employed by the companies—unlike their own quality engineers, for example—are therefore more concerned with monitoring compliance than with remediation. The brands’ own business practices are implicated as well; they wait for the last possible moment for market information before placing orders, and then order in quantities that their own records show exceed the capacity of the subcontractors who are in turn forced to increase the hours and pace of work to meet the demand.

Even here, though, we find examples of win-win alternatives. For example, Volkswagen has partnered with the ILO, the German Corporation for Technical Cooperation (GTZ), and the Mexican labor inspectorate in an initiative designed to upgrade safety and productivity standards among VW component suppliers in Puebla. The so-called Private Partnership Project on Occupational Safety and Health and Supply Chain Management is designed to lower absenteeism, improve safety and health, and foster cost savings along the VW supply chain (ILO 2005, p. 114; Takala 2005, p. 23). But the government inspectors who are trained by the project may well disseminate their lessons to other firms and inspectors.

A US Department of Labor financed initiative, the Regional Center for Occupational Safety and Health (Centro Regional de Seguridad y Salud Ocupacional, CERSSO), offers another example of an effort to exploit the potentially positive or complementary relationship between productive upgrading and worker protection in the developing world. Over the course of the past few years CERSSO representatives have trained more than 600 inspectors and technicians in eight different Central American and Caribbean labor ministries, and a growing body of evidence suggests that their efforts have paid off. A recent study of garment factories in El Salvador, Guatemala, and Nicaragua, for example, found that returns on safety and health investments engendered by the program ranged from four to eight times the costs of the initial interventions (Amador-Rodezno 2005; Rosenstock et al. 2006).

### **The limitations of the Latin Model**

The Latin model's flexibility derives from the discretion of the line inspectors. But the correlate of that discretion, and the downside of the model, is the difficulty of monitoring and evaluating the inspectors' decisions in a way which ensures consistency and equity of treatment across enterprises and over time. This is a problem of particular concern in Latin America, where a history of clientelism, nepotism, and personalism—compounded at times by outright corruption—has left people suspicious of government and leery of regulation of any kind. Fear of regulation generates a concern with institutional restraints upon governmental action and with the rule of law, which parallels economic liberalism but which is actually quite separate from it. Performance evaluation is also a major (and unresolved) problem in France, where the concern is less one of personalism and clientelism, let alone outright corruption, than of anti-business political biases among the inspectors and the obstacles which their discretion presents to the introduction of new, objectively based budgeting and evaluation procedures which have recently been adopted by the French state. We hasten to add and to underscore the fact that our own interviews do not necessarily support these concerns either in Latin America or in France. North American observers frequently confuse improvisational activity on the part of labor inspectors who are legitimately endowed with discretionary authority as corruption. But we found that in Latin America outright corruption is less common or consequential than is generally believed, largely because in most countries inspectors are not in a position to levy fines or penalties; their assessments and recommendations are typically reviewed in a separate judicial procedure and it is here that corruption is more likely to manifest itself. Similarly in France the political bias of the inspectors seems to have been exaggerated. The inspectors do see their role as one of rectifying an imbalance of power between the

workers and their employers but this is certainly consistent with the history of the institution and its legislative intent. The inspectors are also conscious of the fact that they are operating in a capitalist system where the viability of any enterprise and the jobs which it offers is predicated upon its ability to operate efficiently and to earn a profit, although it is certainly true that some inspectors would happily support fundamental changes in the underlying system if they were available. Still, in the long run, in both Latin Europe and Latin America, the ability to preserve or enhance the traditional role of the system of work inspection depends on the capacity to address the downside to inspector discretion.

### **Reinventing the Latin model of labor inspection**

The key to doing so is the recognition that the discretion of the line officers is not unique. It contrasts with the popular image of rule-bound bureaucratic management and with the image that underlies much of the discussion of government regulation in the literature that inspires neoliberal prescriptions for deregulation. But it is fairly typical of a number of public service bureaucracies, notably the police, classroom teachers, social workers and the like. These are known as “street-level” (Lipsky 1980) bureaucracies and there is a considerable literature on how organizations of this kind operate and can (or cannot) be managed.

Street-level bureaucracies differ from traditional bureaucracies in that their line officers have as much or more discretion than their superiors. Much of the power in these organizations therefore lies at the base of the bureaucratic hierarchy, and the line officers at the base ultimately become something of a cross between a bureaucrat and a

professional (or craft person). They have the kind of discretion that we normally associate with doctors or lawyers in private practice. But because they are embedded in a hierarchical organization they are nominally at least supposed to exercise that discretion in accordance with the standards and values of their hierarchical superiors. They are governed by a set of bureaucratic rules, but they tend to use those rules instrumentally as means rather than treating adherence to the rules as an end in itself. When, as in our case, they are also government employees, they are supposed to be responsive to the society and its values as expressed through the politicians who typically stand at the apogee of the hierarchy. But while originally found in the public sector, organizations of this type are increasingly characteristic of decentralized decision making in the private sector as well, where they are again unlike the hierarchical bureaucracies typical of mass production systems; the parallel to street level bureaucracies is seldom recognized in the private sector, but the growing literature on these emergent organizational forms parallels and expands on the insights drawn from the public sector. We have drawn upon both literatures in selecting those aspects of the organization which we have examined and in framing, and ultimately interpreting the interviews which we've conducted.

The public sector literature treats the police as the paradigmatic case (Wilson 1968). Its starting point is a sharp distinction between the ostensible mission of police organizations, the enforcement of the law, and their actual mission, the maintenance of social peace. The law is a means toward an end in the latter endeavor and not an end in itself. And the police therefore like vague laws, which they can deploy as necessary to handle situations that threaten peace (e.g., "stop and frisk" laws, which enable them to detain "suspicious" characters on the street without compelling them to do so). This



view of the law as an instrument to be deployed situationally is one source of the line officer's discretion. But the other major source is that the definition of social peace is also situational. Thus, for example, public drunkenness may be tolerated outside of a football stadium on a game day, when social norms allow for celebration, but sanctioned in the very same neighborhood on off days, when a different ethos prevails. Similarly, speeding may be tolerated to a greater degree on a superhighway than on a crowded, downtown street where the police may even stop cars traveling well below the speed limit when they threaten pedestrian traffic; or they may seek to control the situation by stopping or redirecting pedestrian traffic. The managerial problem is one of how to influence the criteria upon which these judgments are made and monitor the way those criteria are applied.

The judgments involved in labor inspection are a little harder to classify. Labor laws are almost invariably riddled with adjectives, like "reasonable," "acceptable," and "safe," that are by their very nature context-dependent (Symons 1953, p. 51). The inspector's job is therefore one of translation or interpretation—finding the proper fit between law and context. One French inspector described the decisions she faces in her job as triage. She is responsible for all of the establishments in the geographic territory she is assigned by the ministry. She culls information about what is going on in those establishments primarily from complaints received in letters, email messages, and personal visits from workers and from journalists, union offices, NGOs, etc. From these she constructs a picture of compliance in her territory and then tries to allocate her time in the way in which it will be most effective. In the week in which we interviewed her she had basically reduced the problem to three potential targets: a large manufacturing

concern with a strong but contentious union and a continuing series of disputes which attracted a good deal of local publicity and periodically erupted in short strikes and demonstrations; a nest of small garment manufactures employing undocumented immigrant labor with multiple wage, hours, and safety violations; and a contract cleaning company with a labor force dispersed over multiple sites, which had little contact with each other, a weak union under strong management pressure, and, like the garment manufacturers, multiple wage and hours violations. She chose to devote her time to this third company. The workers in the first company were well represented, she reasoned. The labor disputes were irksome to the ministry, which would have approved of her intervention, but mediation would have been extremely time consuming and she thought that it was unlikely to have much of an effect in reducing tensions; the plant, despite the dispute, seemed to operate effectively and efficiently. The garment shops, on the other hand, clearly had the worst labor conditions, but in the end they would have simply responded to pressure by closing down and opening elsewhere, probably in a different district; the workers would resurface in other shops. So she focused her efforts on the contract cleaner who were held in place by the immobility of their clients and where the workers were too dispersed to organize and maintain an effective organization of their own. It was here that she reasoned she would have the greatest impact on labor conditions.

In another interview in France, an inspector reported a case of a company which he knew to be violating restrictions on the number of temporary workers. He nonetheless decided not to pursue the issue and to instead allocate his time to other companies. His reasoning: The purpose of the restriction on temporary work was to increase the number

of permanent jobs. He knew that the company had an informal agreement with the union to move a certain number of temporary employers onto the permanent payroll each month. He realized that he would be unable to create a larger number of permanent jobs through intervention than the union had already achieved through the informal agreement, and he therefore decided that his energies would be best utilized elsewhere.

If this is the nature of the decision-making process underlying regular inspection in France, imagine how much more complex it becomes when the inspector is involved in administrative control over layoffs, and must weigh the short run value of the jobs immediately at stake against the survival of the enterprise itself, or in developing countries, where inspectors have frequently been deprived of the authority to decide which enterprises to visit by rigid supervisory authorities and nonetheless—and all but unavoidably—exercise discretion over the duration, focus, and findings of the inspections themselves. It is more complicated still if the already overburdened inspectors take their advisory functions under the ILO's labor inspection convention (Convention 81) seriously by supplying “technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions.”

In sum, labor inspectorates modeled on the French system are street level bureaucracies. As such, they have an advantage in the administration of labor law in their ability to weigh the multiple values which are at stake in workplace regulation and the flexibility of adjust to varying economic, social and technological conditions. But they are nonetheless difficult to direct and manage. The discretion of the line officers, which gives the system its flexibility, simultaneously makes it hard to evaluate and control their behavior and to ensure consistency of treatment across cases. Standard

managerial techniques, like the use of simple, quantitative indices (e.g., the number of cases processed or the specific violations uncovered) to measure performance, are not only inadequate, as practitioners have long realized (see Symons 1953, p. 50), but tend to have perverse consequences, because they overlook the complexity of the street level bureaucrat's job and the underlying nature of the decisions the line officer is expected to make.

Thus, in police work, for example, a frequent managerial device is to impose quotas on the number of traffic tickets officers are required to issue, and perhaps to link bonuses to these quotas as well. But this typically leads officers to focus on the quotas at the expense of the underlying goal of facilitating the smooth flow of traffic, and a preoccupation with tickets may in fact lead them to stop cars in rush hour or in places where the issuance of the tickets actually causes traffic jams. Similarly, performance might be measured in terms of the number of drunk and disorderly conduct citations issued, but this will cause officers to focus attention on places where public drunkenness is typically concentrated (e.g., football stadiums), which are exactly those places where it is least problematic, and drive hardcore alcoholics into areas where they are not only more difficult to find but are much more disruptive to the prevailing sense of social order.

In labor inspection, it is even more difficult to identify relevant quantitative indices. A measure which is often proposed is the number of violations detected or sanctions imposed, but in our triage example this would have encouraged the inspector to focus on the small garment shops, which would most likely have simply closed down and opened for business elsewhere, rather than the immobile—and therefore potentially accommodating—contract cleaner. But measures that focused on the number of shops

visited or even the number of workers in those shops would have encouraged the inspector to concentrate on the garment shops as well. And alternative measures that focused on labor management conflict would have led the inspector to focus on the firms with the most well organized and militant unions, where the workers were already better able to defend themselves and therefore in less need of the inspector's support than their counterparts at the contract cleaner.

These examples point to a more general pattern. Quantitative performance standards tend to create perverse incentives. Productivity measures that emphasize the number of inspections carried out give inspectors an incentive to execute a multitude of cursory inspections rather than a smaller number of high quality inspections. And productivity measures that emphasize the number of sanctions issued foster an overzealous approach which might well compromise the interests of workers as well as their employers.

It becomes even more difficult to conceive of relevant quantitative indices when administrative control over lay-offs is added to the picture or, as in the case of Latin America, where the inspector might play a critical but time-consuming and difficult to quantify role in upgrading the production capabilities and business strategies of the firms in question. How do you measure and evaluate the inspector's ability to make the proper trade-off between the quantity and the quality of the available job opportunities? Or to adjust his or her calculations in the light of the shifting political context as, for example, that created by recent demonstrations against the French government's efforts to shift the balance in the youth labor market? Or to build relationships between employers and publicly subsidized training programs?

*Organizational culture.*

In the absence of hierarchical control exercised in a conventional bureaucracy, the work of the inspectors tends to be guided primarily by the culture of the organization. That culture provides the framework in which the inspectors decide individual cases and produces whatever unity and consistency there is among the decisions they make on the job. It develops through an interaction between the values and experiences which new inspectors bring with them when they enter the service and the values, experience, and collective memory of the corps already there, which are passed on from one generation to the next through apprenticeship training on the job and through the ongoing discussion and debate about particular cases as inspectors seek each other's help and advice in the course of the work process and in the exchange of "war stories" by inspectors who interact with each other informally in their free time.

Ultimately any attempt to manage an organization of this kind depends on the ability to gain some control over its culture and the way in which it evolves over time. The literature on how to do this is limited; it blends into a larger and more diffuse, but not very operational, literature on organizational culture more generally (see, for example, Wilson 1968, Kaufman 1960, and Lipsky, 1980 on the public sector; and on the private sector, Kunda 1992, Schein 1992 and Schein 2004) and suggests that higher level managers basically have two sources of leverage over the culture: first, they can control recruitment, and hence the "cultural predispositions" which new entrants bring with them from the outside; and, second, they can control the education and training—and thus the socialization—of the new recruits, whatever their origin. The two strategies may prove

complementary, of course, and the opportunities for socialization are presumably greatest among new recruits who have not yet been exposed to the existing organizational culture or “indoctrinated” by the generations that precede them (Schrank and Piore 2007). But a certain amount of control can presumably be exercised by continuing education programs for experienced inspectors as well.

The actual control which the labor ministry exercises over these two instruments varies widely. In most of Latin America, selection is relatively uncoordinated and training tends to occur on the job. New inspectors come from backgrounds similar to those of inspectors already in the service and are as a result predisposed to accept their values and the judgments to which those values lead. And since they learn on the job by accompanying experienced inspectors, practice is transmitted directly from one generation to the next. At the other extreme is the French inspectorate. Here candidates are expected to have an advanced university degree and are then subject to a competitive written examination. Thus the ministry has control over both the credentials and the examination and could presumably use them to change the composition and orientation of each generation of inspectors.

Once admitted, the new inspectors attend a special 18 month long training program which is also designed and managed by the ministry. The training includes both formal classroom and on the job components. But the classes are conducted at a dedicated, campus-like residential facility, which lends itself to the creation of a distinctive esprit d’corps among the new inspectors which would differentiate them from the old and tie them more closely to the goals and values of the ministry.

In fact, however, the culture of the inspection corps in France is almost completely autonomous of the ministry and is in fact one of independence from, and opposition to, the administrative hierarchy. The adversarial relationship seems to begin within the school itself, where our interviews with inspectors suggest that each new class quickly develops a strong, cohesive identity in opposition to the school administration which, if it has its own peculiarities which create special bonds among the students in each cohort, also predisposes rookie inspectors toward the adversarial stance which marks the culture of the corps as a whole relative to the ministry. On a number of occasions in recent years the hierarchy has had the opportunity to express solidarity with the inspectors in a way that might have moderated the adversarial culture. A textbook model of how to do this is offered by the French President Nicolas Sarkozy who, as Minister of the Interior in the period when the suburbs of Paris and other large cities erupted in riots in 2005, repeatedly visited the police on the front lines and personally, but also publicly, expressed his concern and support for the role which they were called upon to play.

By way of contrast, the Ministry of Labor and the hierarchy of the inspectorate were conspicuously slow to respond when a student-inspector was shot and killed on the job by an irate employer, and in subsequent years the ministry has repeatedly refused to let the inspectors take the day off to commemorate their colleagues at events ranging from the trial of the employers responsible for the murder to the anniversaries of the killing itself. Similarly, in the period when a reform in the structure of the inspectorate designed to give the hierarchy greater control in the setting of priorities for inspection, one of the officials responsible for its design went out of his way to express opposition to



student demonstrations against proposed changes in French labor law which had become symbolic of the regulatory regime that the inspectors represent. In these ways, occasions that offered an opportunity to reduce the distance between the hierarchy and the rank-and-file of the inspectorate have served instead to increase it.

Nevertheless, the ongoing reaction to neoliberalism, and the growth of efforts to re-regulate the labor market, are creating new opportunities to influence the background and training of the line inspectors and to thereby reshape, or at the very least gain greater control over, the organizational culture. The Dominican Republic provides an example. Under pressure from US unions, human rights activists, and diplomats, the Dominicans dramatically increased the qualifications and training of their labor inspectors in the mid-to late 1990s. All new inspectors are therefore lawyers who have passed a competitive civil service exam (Schrank and Piore 2007).

The Dominican reforms were designed and implemented by Rafael Albuquerque, a highly respected labor minister who later went on to become the country's vice president. By taking an active role in the reform process, and staying committed to the inspectorate over the course of more than a decade, Vice President Albuquerque has fostered a collegial relation between the line inspectors and their supervisors. These relations have been fortified, moreover, by regular meetings and training sessions designed to build esprit d'corps as well as expertise and by the formation of a functional career ladder within the inspectorate itself. Line inspectors who hope to ascend the hierarchy have every incentive to maintain good relations with their supervisors.

Other potentially promising reforms have ultimately increased the isolation and intransigence of the inspectorate, however, and therefore need to be taken into account.

In Morocco, for example, the labor code was reformed in 2004, and in 2005 40 new inspectors with the equivalent of a six year university and professional education were recruited through competitive examination and added to an existing corps of 300 inspectors who had required nothing more than a high school education. Our interviews with some of these new inspectors made clear that there was a rupture between the new and the older generation, but one effect was to increase the cohesion of the new inspectors and their sense of dependence on each other. One of these new inspectors was subsequently brought to court by an employer on charges of false indictment; the young inspector was convicted and sentenced to 10 years in prison. The failure of the ministry to provide protection and support in this case infuriated his colleagues and created a gap between the new inspectors and the ministry comparable to gap between the older and new generation of inspectors which will surely work to undermine the control and leadership of the ministry over time.

The French and the Moroccan examples suggest that in the management of culture, as in the design of specialized units and in the development of quantitative performance indices, there is a need for a program which at least seeks to increase the awareness and sensitivity to this dimension of management and probably of a broader research program which seeks to identify the range of practices and evaluate the factors which contribute to the different approaches and outcomes. The ILO could play a critical role in both respects, heightening the awareness of national ministries of the organizational culture and encouraging research on how to manage it.

*Specialization*

A second way in which management can gain some leverage over the organizational process and increase the consistency across cases is by grouping cases into more homogeneous categories where the problems which arise and the ways in which they are handled are more directly comparable. Those categories can be—and often are—reflected in the organizational structure itself in which case a kind of subculture which fosters greater consistency of treatment is built up around specialized units. But even when not reflected in the actual structure of the organization, the categories are useful as a frame for guiding thinking and discussion of the inspectors' work, among the inspectors themselves, and between the corps and higher authority.

In police work, the conventional divisions include criminal investigations, juvenile delinquency, and drugs. The question is, What would a comparable approach to labor inspection look like? The terminology we have adopted suggests that it would imply moving away from the Latin model toward a US type system. But a closer look suggests that the problem with the US system is that the special administrations into which it divides labor regulation are coincident with neither the underlying causes of noncompliance nor the appropriate remedies but instead with individual laws and regulations (e.g., safety and health, wages and hours, immigration). They are not, in other words, analytical but at best “functional” (Symons 1953, p. 62 ) and in fact often simply the product of the separate histories of particular pieces of legislation.

Many general systems of labor inspection actually do have within them specialized divisions which seem to make more sense in terms of the underlying problems which labor market regulation is attempting to address. Inspectors in such systems specialize by “field” (Symons 1953, p. 62) rather than by function. For example,

the French inspectorate distinguishes between small and medium sized establishments (those with less than 50 employees) and larger employers. The latter are handled by the inspectors; the former are handled by “controllers” who are under the supervision of the inspectors. The controllers are less highly educated and trained than the inspectors. But interviews suggest that the problems they confront are qualitatively different from those faced by the inspectors and call for different approaches and strategies.

Nor is France unique. The Guatemalan labor ministry has developed a small team of carefully recruited inspectors who deal with the export-oriented garment industry (i.e., the maquilas). Most countries also have specialized inspectorates for agriculture, mining and transport. And many countries decentralize their inspectorates geographically and thereby create regionally specific responsibilities and expertise. For instance, the Dominican Republic’s inspectors are distributed across three dozen regional offices. Each office tends to concentrate its efforts on the particular industries found in its jurisdiction (e.g., maquilas, family farms, sugar plantations, etc.) and to develop expertise accordingly.

Other countries have developed specialized divisions that deal with particular transgressions. Child labor projects are fairly common, for example, but they tend to suffer from the same problem as functional divisions in the US model; that is, they encourage the inspector to combat individual violations across firms rather than to confront the full array of violations within firms and, as a result, undercut his or her ability to engage in the sort of balancing engendered by the ideal-typical Latin model. They also subject the firm to multiple inspections, often with competing goals and recommendations, and thereby heighten employer hostility and resistance to the

regulatory process. And they run the risk of overlooking transgressions that fall into the boundaries between different functional specialties (Symons 1953, p. 62).

In other words, specializations follow jurisdictions. The US model grants jurisdiction over particular laws, and US inspectors and inspectorates therefore impose *particular laws on heterogeneous* arrays of firms. By way of contrast, the Franco-Latin model grants jurisdiction over particular types of firms, and French inspectors and their imitators therefore enforce the *labor code as a whole* on relatively *homogeneous* aggregations of firms. Specialization by size, sector, or region yields several potential advantages in the Latin model. It not only gives the individual inspector authority over the entire enterprise, and thereby affords him or her the opportunity to balance competing interests at the firm level in a way that is impossible in the US system, but simultaneously allows and encourages the inspector to develop expertise in the particular problems confronted by the specific types of firms he or she confronts on a daily basis, and thereby gives him the knowledge to do so. Supervisors can plan and evaluate their strategies more readily when employers are homogeneous than when they are heterogeneous. Line inspectors are more likely to develop esprit d'corps if they feel they are engaged in a common project. And employers are more likely to cooperate if they are subject to fewer inspections.

### *Participation*

Popular participation constitutes a final source of external control over the organizational culture that informs and guides inspector behavior. Employers and especially workers who have ready access to their labor ministries are able not only to seek redress for their

own grievances but to insure that inspectors are accountable to both their supervisors—who receive valuable information from inquiries, complaints, and denunciations—and the public at large. They are also able to offer the inspectors critical insights into the sources, locations, and consequences of noncompliance and to provide information about possible enforcement strategies.

Open channels of communication are particularly valuable in countries with low union density, for they insure that workers who are disorganized are not necessarily disempowered. In France the inspectors build their understanding of their territory through complaints, written and verbal, from individual workers (even though they are not charged with the rectification of individual grievances) and one of the exercises in their training program is organizing and analyzing bags of mail actually received by inspectors in the field. In countries like Guatemala, Costa Rica and the Dominican Republic, we observed and talked to numerous workers waiting to discuss various complaints with their inspectors. Some had been illegally dismissed. Others had been denied their legally mandated severance payments. And still others had questions about their various rights and responsibilities under the labor code. In almost all cases they had pocket guides to the labor code in their possession and in many cases they had been made aware of the inspectorate's presence and location through posters and public service announcements. By self-consciously advertising their existence, making their presence felt in provincial towns as well as capital cities, and actively courting such participation, labor ministries can go a long way toward making them publicly accountable.

*Policy preferences vs. technical relationship*

As we have repeatedly emphasized, the inspector's job involves the balancing of a variety of different, often conflicting goals which the procedural regulations themselves seek to achieve. These goals include qualitative as well as quantitative aspects of employment (i.e., employment and wage levels, job security, chances of advancement, house of work, health and safety, etc.). Striking the right balance involves two fundamentally different types of considerations. One is the technical relationship among the goals themselves. Will jobs be lost if a particular safety norm is enforced and if so how many? How many full time jobs will be created for each temporary or part time job restricted? These trade-offs may be difficult to predict or measure but they are in principle objective, imposed by the technology and the competitive environment. But there is a second set of judgments which the inspector makes which involve values and norms: How much do we care about employment relative to safety? Or about permanent full time jobs relative to unstable, insecure, temporary work? In principle, the inspectors are public servants and the values which they are pursuing on the job ought to be those of the society at large. Those values are, or should be, expressed in the political process, introduced into the organization by elected or appointed officials at the apex of the hierarchy, and communicated by middle managers to inspectors at the base. In this process, the abstract values should be made operational by combining them with the objective relationships so that they guide practice and translate into the kinds of choices which the inspectors actually make on the job.

One can think in this sense of the professional levels of the hierarchy as mediating between the political process and the line inspectors. A critical aspect of the organizational culture thus becomes the nature of the relationship between these three

levels of the organization and the communication that occurs across them. In the limited range of organizations which we have encountered in our own research, the two extreme cases are France and the Dominican Republic. In the Dominican Republic, the priorities of the inspectorate are worked out in a series of meetings between the line inspectors and their supervisors who together discuss the rationale for these priorities and what they imply for the day to day practice of the inspectors on the job. In this process the inspectors and supervisors benefit from the fact that the reform of the labor inspectorate was initiated by the political party that is currently in power and that party leaders established the criteria used to select the inspectors in the first place and are therefore responsible for whatever independence and decision-making autonomy the inspectors now enjoy. In France, by contrast, there is a sharp cleavage between the line inspectors and the hierarchy of supervisors and political appointees. The inspectors suspect the political class of seeking to undermine administrative regulations and replace them with the market and view their superiors in the hierarchy as sharing these values and goals. These differences reflect the differences in the organizational cultures of the inspectorates in the two countries and an effort to overcome the cleavages in France, preserve the relationships in the Dominican Republic, and draw lessons that would be relevant to other countries would therefore require a fuller understanding of those cultures.

### *Research and evaluation*

The objective relationship between business practices and labor standards presents a different set of problems. Because they are “objective,” they can be the subject of a research and evaluation program. It is possible in principle to study how temporary jobs



translate into full time employment opportunities and what effect health and safety regulations have on the viability of a business. In designing such a program of research, however, it is important to recognize two critical points. First, the research results are only useful to the extent that they are accepted and utilized by the line inspectors themselves. And the inspectors can no more be directed to use these results than to do any other aspect of their jobs. Second, the inspectors do not necessarily recognize the need for this kind of research; they themselves already have a set of criteria or beliefs which they use in evaluating cases, a set of criteria which they have built up through experience on the job. One of our more surprising findings, in fact, is how consistent these beliefs are across space as well as time. We've interviewed inspectors in several countries who maintain that maquila workers are particularly militant, ill-educated workers are particularly difficult, and private security companies features the worst wages and hours violations. Beliefs about which firms or types of firms are more or less prone to violations tend to transcend national boundaries as well. And the consistency of these beliefs, whether they are entirely accurate or not, suggests to us that there is an underlying logic to the inspector's relationship to his or her private sector interlocutors.

This suggests a research program which begins with existing practice and the schema which the inspectors themselves use in classifying cases. These schema are basically the foundations of a clinical practice, and this is essentially the approach which artificial intelligence has taken to regularizing the clinical practices of doctors in hospitals (Adler, et al. 2003). The first step in this process would be to expose the frameworks which are now in use and make them explicit. Following the hospital example, this could be done in the first instance through interviews with the inspectors in which they were

asked to discuss a series of their own cases. Those initial interviews could then be used to construct a series of standard case scenarios which a larger sample of inspectors could then be asked to analyze in order to determine the range of responses and the degree of consistency across inspectors, first within a given organization, and then across geographic territories and national boundaries.

## **Conclusion**

Our argument forms a ready complement to the ILO's campaign for "decent work." The ILO coined and embraced the term at the height of the neoliberal era, when other international agencies were promoting the "free market" and limited government, and the organization has explicitly committed itself to "promoting decent work for all" over the course of the subsequent decade.

The term is at best ambiguous, however, and it has therefore provoked no shortage of debate and consternation (ILO 2001, pp. 13-5). At one level, "decent work" is essentially meaningless; it is vague and abstract; it has no programmatic content; and it is hard to imagine how it could be used to set the goals or measure the performance of an organization. But, for all of that, decent work is not a neutral term. On the contrary, it is an overtly and explicitly normative one in that it constitutes an assertion that the quality and the content of job opportunities can and should be judged. In this sense, it offers a direct challenge to the widespread assumption that work is a response to technical and economic constraints, constraints which are inherent in nature and expressed by the market, and the concomitant assertion that attempts to legislate normative standards are naïve, misguided, or perhaps even counterproductive.

The latter beliefs lie at the heart of the neoliberal agenda, of course, for neoliberals believe that efforts to impose standards through public policy will simply impede the functioning of the market and reduce overall social welfare. They may increase the welfare of particular groups, to be sure, but they will do so only at the expense of others and in this sense the imposition of normative standards is little more than an extension of the politics of income distribution.

As a challenge to these propositions, in fact, the vagueness of “decent work” has the added advantage of flexibility. It can take on different meanings in different contexts, whether industrial, regional, national, or cultural, and can vary with regard to economic and technical conditions. This poses an ideological challenge to neoliberalism, to be sure, but not an operational one. And for this reason, no doubt, it has attracted neither a great deal of attention nor widespread opposition.

The Latin model of labor inspection, as we have characterized it, is in effect an operationalization of the policy of decent work for all. The discretion inherent in a street level bureaucracy gives the inspector’s role and mission a vagueness very much like the vagueness of decent work. But the inspector’s job and the standards and norms which govern his or her behavior are defined in and through practice. They are embedded in the culture of the organization and passed from one generation to another in training and on the job. They evolve as the nature of the people in the organization evolves in response not only to the evolution of the broader economy and society from which they are drawn but also in response to the specific recruitment, training, and political priorities of the organization itself. In this sense, the inspectors can be thought of as the agents or foot soldiers of the campaign for decent work.

What we are proposing can therefore be understood as a more deliberate approach to prosecuting that campaign by improving the management of its agents and the base of knowledge upon which they draw. The key features of that proposal are the identification and codification of the tacit understandings underlying the inspectors' judgments, trying to separate the normative values from the objective relations which inform those judgments, and making the latter the subject of a research program focusing on the relationship between business practice and the conditions of work. The full promise of such a research program lies neither in the extension of the concept of decent work nor the regulation of the labor market but in a much more general approach to bureaucratic management. Public sector management was an area of active scholarly research a generation ago, when academics paid careful attention to the causes of public sector performance differentials, but it atrophied in the late twentieth century, as scholarly attention shifted from the improvement to the contraction of public sector organizations. In the meantime, however, the problems of bureaucratic evaluation and control have not gone away. On the contrary, they have reemerged with a vengeance and now pervade the literatures on the decentralization of power and responsibility in large, bureaucratic corporations and the management and control of professional and craft workers as the organizations in which their services are provided too become larger, more complex, and bureaucratic. Our approach to the pursuit of decent work is therefore very much a part of the effort to surmount the challenges of the current era, not only in the labor market, but in the emergent global economy as well.

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