

Toward the *Inspeccion de Trabajo* as an Instrument of  
Economic Growth, Development and Efficiency

Michael J. Piore

*David W. Skinner Professor of Political Economy*  
*Department of Economics*  
*Massachusetts Institute of Technology*

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Abstract

The revival of labor market regulation in Latin America is occurring largely in reaction to neoliberalism and the exclusive reliance on market mechanisms in economic and social policy which it has promoted. Positive ideological and analytical foundations for this revival have yet to be articulated. This paper is an attempt to begin to fill this vacuum. It argues that the *Inspeccion de Trabajo* has the potential to become an instrument for the promotion of economic efficiency, growth and development. That potential lies in the discretion which the institution places in the line officers, the inspectors themselves. To realize that discretion, however, the institution needs to be managed in a more deliberate and self conscious way. In particular, management has to work to surface the tacit criteria which the inspectors use in exercising their discretion and then subject these criteria to discussion and debate within the organization and to more rigorous evaluation and experimentation. In this process, two bodies of scholarly literature are particularly relevant: one on the relationship between labor standards and business practices; the second on the variation in normative standards in different types of production systems. Finally, labor standards administration has to recognize that deterrence alone will never be sufficient to maintain a regime of labor standards; such a regime depends ultimately on the normative framework in which business operates. The neoliberal ideology has undermined that framework; a more positive case for standards as an instrument of development will help to restore it.

This paper is addressed to the revival of labor market regulation in Latin America and the role of the *Inspeccion de Trabajo*. The revival is part of a broader reaction against the neo-liberal agenda and the Washington Consensus, an approach to public policy which places almost exclusive reliance on the competitive market and simulated market mechanisms. The reaction is especially intense in Latin America, but it is actually very widespread. And the skepticism about market-based solutions has been reinforced by the current crisis which has drawn even the United States, the intellectual fountainhead of the old consensus, into active intervention not only to limit and control the impact of the market, but actually to guide its operation. Even before the crisis, however, virtually every major country—with the notable exceptions of Mexico and the United States—had increased the resources and personnel devoted to labor inspection in the course of the last five years. In labor market policy, however, the reaction is taking place without addressing the basic problems to which the Washington Consensus was itself a response: the inflexibility and rigidity of governmental regulations and the way in which these led to inefficiencies in production and in the allocation of resources, and stifled economic development. The critique of labor market regulation, however, was formulated in the main by scholars, policy analysts, and managers whose experience was confined to the United States and was based on an interpretation of the regulatory process as practiced there. Labor market regulation in Latin America differs in certain basic ways from that in the United States and lends itself to exactly the kind of flexibility which the critique of government regulation calls for and which the U.S. model lacks. Indeed, labor inspection in the Latin model could become an instrument for promoting efficiency and fostering development.

The bulk of this paper is devoted to exploring the difference between the two systems and the ways in which Latin America might take advantage of these differences to fashion a more effective approach to regulation. This leads naturally to two other related issues which are explored in later sections of the paper. One of these is the relationship between labor standards and business practice, both in production and in marketing strategies. The second is the relationship between standards enforcement and the broader moral climate in which business operates.

### A Cautionary Note about the Way We Think about Public Policy

An important theme implicit in this endeavor is that we must go beyond the neo-liberal framework not only in the public policies which we are prepared to entertain but also in the framework we draw on to conceive of those policies and to analyze their operation. In particular, we seek here to go beyond the conventional economic focus on individual motivation and competitive pressures and to draw upon sociological and anthropological understandings of human motivation and behavior which stress the social context in which the economic actors operate. For these purposes, we attempt to recover a literature anchored in these understandings that has been eclipsed in the last twenty-five years by scholarly work grounded in economics and in the so-called new public management.

A second note of caution about the analytical framework is important here. The study of labor market regulation in Latin America has historically been the province of the lawyers and has stressed legal texts in which the regulations are embedded (see, for example, UNAM, 2008). The argument which is developed here is that the texts themselves are a misleading guide to how labor market regulation actually works. This is probably true in general but it is especially true with respect to labor market regulation in Latin America because the very nature of the institutions which govern the regulatory process place enormous power in the hands of the inspectors to interpret the law as they administer it; the inspectors on the line decide where and under what circumstances to apply the law. Hence, in order to understand the regulatory process and assess its impact, actual and potential, upon the economy, one has to focus upon and attempt to understand not the letter of the law but actual practice in the field, on the ground. This is a lesson which is important not only for analysts in Latin America but for commentators and critics in the United States as well; it turns on its head the conventional distinction between common law and civil law which in recent years has been particularly prominent in the writings of American economists. The conventional belief is that civil law regimes like those of Southern Europe and Latin America apply legal doctrine much more strictly and interpret it more literally than common law countries such as the United States. But

in labor market regulation, the opposite is much closer to capturing the differences between the two regimes.

### Two Contrasting Regulatory Regimes: How Labor Market Regulation Works

We first turn to the differences between the U.S. and Latin regulatory models and to the opportunities which the latter offers for economic adjustment and development. The basic difference is one between on the one hand a specialized and sanctioning system and on the other a general (or unified) system, oriented less toward punishing offending enterprises and more toward bringing them into compliance. The U.S. system is composed of a number of specialized agencies, each with a narrow jurisdiction: (the Wages and Hours Division of the Department of Labor, OSHA, ERISA, EEOC, the NLRA, the Federal Mediation Service, the Justice Department [ICE], the State Department [immigration visas and work permits], etc). Responsibility is further divided between the federal government, state governmental agencies, and, in some areas, local government as well. Each of these agencies is charged with uncovering violations and imposing fines or other penalties in its own area, without reference to other aspects of the labor law. The penalties (i.e., sanctions) in most cases discharge the obligation of the offending enterprise under the law (Von Richthofen, 2002; Albracht, 2005).

The supposition is that each labor market regulation is *sui generis* and requires its own specialized knowledge to understand and regulate. The underlying model is one of deterrence; compliance is thought of as a business decision. The enterprise weighs the costs of compliance against those of non-compliance. The latter are a product of the chances of getting caught and the penalties likely to be invoked. The role of labor inspection is to raise these last costs to a level sufficient to induce the enterprise to adhere to the law (for example, see Amador-Rodezno, 2005; Schrank, 2008).

In the Latin model, by contrast, a single agency, the *Inspeccion de Trabajo*, is responsible for the administration of the whole labor code. The basic aim of inspection is compliance; inspectors are thus supposed to seek to understand the underlying causes of violations and are empowered to work out a plan which addresses those causes and which brings the enterprise into compliance over time. While sanctions can be invoked, they are understood as a means toward that broader aim. Violations could be the product of a

deliberate business calculation, but they may also result from poor management, misunderstanding, a desperate attempt to survive a temporary turn in business fortunes, or simple ignorance, each of which needs to be address in its own way. This is a perspective which leads one to expect violations of different aspects of the code to be interrelated and to require remedies which are dictated by the underlying cause of the violation and not by the particular section of the code under which the violation falls. We return to these specific points below.

The Latin approach to regulation originated in France and was adopted by Spain (and other Southern European countries as well); the Spanish model was in turn adopted by virtually all of the countries in Latin America. The original French-Spanish model was modified in various ways as it migrated across the Atlantic: each country in the Americas has fashioned its own version. But the essential characteristics which distinguish it from the U.S. approach have been preserved throughout the region. The most salient characteristic in the present context is the discretion which it places in the hands of the individual inspectors.

Because the inspectors are working toward compliance and not simply concerned with sanctions or punishment, but also—and in some ways more basically—because their responsibility is so broad they could not inspect for every possible violation of the code when they visit an establishment, the inspectors are in virtually every case forced to actually decide upon what aspects of the law they will focus and how they will treat the violations they encounter. This discretion allows them to adjust the code to the peculiarities of individual enterprises and the environment in which it operates. They can, for example, ignore certain kinds of violations and focus on others. The nature of this discretion and the way in which it is exercised is illustrated by the comments of one inspector explaining the decisions she was faced with at the beginning of a work week: a choice between a large, unionized establishment which she knew to be violating restrictions on the use of temporary labor; a complex of small clothing shops using undocumented immigrant labor; and a private security firm paying substandard wages and working excessive hours. She chose to focus on the third of these firms. The unionized establishment she reasoned was in technical violation the law, but had an agreement with the union to convert a certain number of temporary jobs into permanent

positions, which was after all the aim of the legal rules and probably achieved more permanent jobs than her intervention would have. The garment firms would have merely moved to another location under a different jurisdiction, probably hiring the same workers in the same conditions as before. The employers of the security firm were, on the other hand, operating without a union, dispersed over a number of geographic locations making communication and organization very difficult, but the firm itself was actually tied to these locations and could not escape her intervention. Here she thought she could really make a contribution to social welfare.

A final important point is that inspectors operating in the Latin system actually engage in a set of different activities entailing a broad range of skills. These include the investigation and sanctioning activities, with which inspectors in the U.S. are exclusively concerned, but also conciliation, pedagogical activities, teaching offending enterprises how to better manage their affairs so as to comply most economically with the law, and finally entrepreneurial activities which actually change the market environment in which the enterprise operates. In one Brazilian case, the inspectors went so far as to promote a treaty with China which relieved the competitive pressures on Brazilian fireworks companies which had made it impossible for them to comply with safety regulations.

The most important attribute of the Latin inspections in terms of the debate about the economic impact of labor market regulation, however, is the way the system places them in a position to weigh the total regulatory burden against the viability of the enterprise and the value of the employment opportunities which it offers. This is something which virtually never happens in the U.S., where each regulation is considered in isolation. Labor inspectors are also in a position to advise the enterprise about changes in business practices which might reduce the cost of compliance to the firm, and to the society more broadly. They are in a particularly good position to carry best practices from one enterprise to another because their job exposes them to a very broad range of practices across firms and indeed industries as well. In these ways the discretion of the line officers creates a potential for adjusting the regulations to the exigencies of a market economy and the needs of economic development. But whether that potential is realized depends on how that discretion is exercised and whether or not it can be managed and directed toward these ends.

### Managing the Latin Model: Work Inspectors as Street-Level Bureaucrats

Here there is a scholarly literature which suggests how this might be done. Organizations where the line officers have substantial decision-making authority, like the Latin American labor inspectorates, are street-level bureaucracies (Lipsky, 1980; Piore, 2009). The canonical street level bureaucrats are policemen on the beat (Wilson, 1968; Van Maanen, 1973). While nominally charged with enforcing the law, their actual role is to maintain social order; they use the law as an instrument toward this end and invoke it situationally, depending on circumstances. Thus, for example, laws against prostitution are enforced in suburban residential neighborhoods but, although formally just as illegal in urban “adult entertainment” districts, there prostitution is typically tolerated. When a policeman is called in a domestic dispute, literal application of the law would require him to make an arrest for disorderly conduct or threatened violence but typically he will do so only if he cannot otherwise calm the situation and restore order. The police are probably the most studied class of street-level bureaucrats, but such organizations are pervasive throughout the public service sector. Other typical street-level bureaucrats include classroom teachers, social workers, and forest rangers (Lipsky, 1980; Kaufman, 1960).

These types of organizations were an active area of research in the immediate postwar decades but were eclipsed after 1980 by the emphasis on privatization and simulated market mechanisms in what became known as the new public management (for a flavor of the older literature, see for example, Hawkins, 2001; Kaufman, 1960; Kelman, 1981). The older literature is now being resurrected and expanded by a generation of younger scholars, many of whom are students at MIT (Silbey, Huising and Coslovsky, 2009; Pires, 2008). The lessons of that literature, as well as very recent material gathered in interviews conducted France and several Latin American countries, are discussed in several articles which Andrew Shrank and I have written separately and together (Piore and Schrank, 2006, 2008; Schrank and Piore, 2007; Piore, 2009).

Several key lessons emerge from that literature. The first and most important of these is that while there is a substantial idiosyncratic component to the way line officers (in our case, labor inspectors) make their decisions, there is nonetheless a core of tacit rules and procedures that govern their work and give it a certain consistency in the way

the rules are enforced from one inspector to another and across time. We will argue that these tacit rules and their evolution in time must be the focus of public sector management. But before turning to this issue, it is important to address the question of idiosyncratic behavior, which tends to be stressed when these organizations are viewed through the lenses of the individual maximizing behavior assumed in conventional economic theory. Typical of the kind which emerged in interviews was a labor inspector who told about discovering that he had a reputation in his district as a “firebug”. It was known that he always looked first at fire safety provisions when he visited a plant. Upon reflection, trying to understand his own behavior about which he had not been conscious and that at first he found difficult to believe, he came to attribute it to his experience working in Sao Paulo the year just before he entered the inspectorate. The day he arrived, there was a fire in one of the large skyscrapers where the construction of the building created an inferno in which large numbers of people were trapped and suffered particularly horrific deaths, which the newspapers reported in extensive detail throughout the following week. Other examples which emerged in interviews were political, although not of the kind which have generally been attributed to inspectors by the employer associations who see them as out to undermine the capitalist system. Several inspectors in France, for example, said they never enforced immigration laws against individual workers (although they sometimes did against employers). Corruption, which is among the very first topics raised when one discusses the discretion of inspectors in Latin America, was seldom actually mentioned in interviews with people who had firsthand contact with the system: In most countries, the inspectors themselves cannot impose monetary penalties and the process of imposing sanctions is considered so arduous and time consuming that the inspectors generally reported it is not usually worth initiating, especially if problems can be handled in other ways (a similar finding emerges in studies of the police and their use of formal arrest and prosecution). For the most part, however, the street-level bureaucrats in general (and work inspectors in particular) explain their decisions in interviews in terms of a set of general standards and operating procedures which they share with their colleagues. It is in this sense that one can speak of the tacit codes which govern their behavior.



These rules, and the way in which they evolve over time, can be managed so as to minimize the idiosyncrasies of individual inspectors and increase the responsiveness of the organization to the social goals which in principle it should be designed to serve. The key here is the recognition that the tacit rules and procedures are embedded in the culture of the organization, and evolve as that culture evolves over time through contact with the environment in which it operates. The line agents adhere to that culture because they are basically professionals, whose identity and self-conception are bound up with the roles which they play within the organization and the judgments of their colleagues about their performance in these roles. The culture itself is passed on from one generation of inspectors to another through the process of training and socialization when new inspectors enter the service. It is reinforced and refined through the continual discussions, both formal and informal, among the inspectors about particular cases in the course of the work day, and in war stories told in social gatherings after work. And it evolves over time, influenced in part by ideas and attitudes which new members of the corps bring with them from the outside and as the inspectors encounter new situations and try to figure out how to mold existing practice to accommodate them (Piore, 2009; and more generally, Van Maanen 1979; Schein, 1999; Kunda, 1992).

Such organizations are difficult to manage by fiat, or through monetary incentives, almost by definition because to do so is to reduce the flexibility in the application of the rules.<sup>1</sup> It is possible, however, to manage the culture and the commitment of the agents to it. In terms of managing the culture itself, there are basically three points of entry for managerial control. First, management has control over the recruitment and selection of new members of the organization and hence, over the background—the education, skills and attitudes—which they bring into the organization from the outside. In Morocco, for example, entry requirements for new inspectors were raised in one shot from high school degrees to a masters degree in Human Resource Management, creating a cleavage between the new inspectors and the old, and a professional rapport not only among the new inspectors themselves, but also between the inspections and the large, multinational firms which the country was seeking to attract as

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<sup>1</sup> This is conventionally illustrated in police work by the example of traffic tickets. This is the one aspect of the work which can be easily controlled by issuing quotas. But the role of the police is actually to ensure the smooth flow of traffic, and quotas tend to lead the police to block traffic in the attempt to issue enough tickets to meet their quota (Wilson, 1968).

part of its development process. Second, management controls the process of training and socialization which prepares members for organizational membership. Here the ability to actually change the culture once it is established is limited by the role of apprenticeship in the training process; it is difficult to imagine sending new inspectors cold into the field without some prior experience working with experienced agents. But management does control the classroom component of the training process and, moreover, can adjust its importance to counteract the impact of apprenticeship. In that experience, the new agents are bound to pick up much of the approach and attitudes which the older inspectors bring to their work. Third, management can enter into and try to guide and direct the ongoing discussion within the organization as the agents review their work and confront novel situations. The discussion of ongoing practice can take place on a variety of levels. Among the inspectors themselves, without outside management and structure, the discussion is very much rooted in practice. The discussion which ought to take place with the professional hierarchy and with the political leadership is the relationship between practice and the different, and often conflicting, goals of the organization. For example, how should the inspectors view the enforcement of various regulations which can involve substantial cost to the enterprise against the value of the jobs which might be lost if the enterprise were forced by these costs to curtail employment. The organization which seems to be most adept at doing this is the *Inspeccion de Trabajo* in the Dominican Republic. The ministry officials meet with the rank-and-file inspectors several times a year and develop through these discussions the government's priorities and plans for implementing them. To be effective, however, these meetings require rapport and mutual confidence between the inspection corps and their bureaucratic and political superiors. This exists in the Dominican Republic because the corps as it now operates is the product of a major administrative and legal reform conceived and implemented by the Minister of Labor, who subsequently became Vice President, and the current corps of inspectors along with their bureaucratic and political supervisors lived through these reforms together and are essentially the product of them (Schrank, 2008). This rapport, however, is unusual. In other countries, the management of the inspectors has been clumsy and created a distance between the inspectorate and the ministry which has later proven to be difficult or

impossible to overcome. One of the worst countries in this regard is France, where one would have expected a particularly deft and enlightened management of the public sector, but where instead the neoliberal discourse of the political class had already created enormous resentment and suspicion on the part of the inspectors, which was then aggravated by the failure of the government to swiftly condemn the killing of two young inspectors by an irate peasant whose farm they were attempting to inspect. (In contrast, the way that Nicolas Sarkozy secured the loyalty of the police when he was Minister of Justice by going to the hospital to visit the men who were shot by rioters in the slums is particularly striking.) In Morocco, the government missed a similar chance to gain the loyalty and respect required to lead the inspection corps when it failed to support one of the newly recruited business school graduates who was sued, and then convicted and jailed, for false arrest by a company he had found to be in willful violation of the statutes.

The ultimate goal, however, is not simply to enter into the process through which the tacit rules and procedures evolve but to actually surface the rules which govern the inspectors' decisions, make them explicit and subject them to systematic evaluation, and then in the light of that evaluation, to revision. An example of how this might be done is provided in the medical care industry by an effort to promote more consistent approaches to patient care and management in a large hospital (Adler et al., 2003). The doctors in a hospital setting are essentially street-level bureaucrats. They nominally work under the supervision of the hospital but they retain complete control over the treatment of the patients under their care. Patients are diagnosed when they enter the hospital and assigned, on that basis, to a specialist who manages the case. In an attempt to standardize treatment, the doctors in each specialty were asked to develop a list of the most frequently treated conditions. For each condition, they then developed a standard protocol for treatment. The protocol was circulated among all of the doctors in the specialty for comment and amendment, and the amended protocol was then adopted by the group. Once adopted, doctors were expected to refer to the protocol when managing the patient. They were not required in any sense to adhere to the protocol, but when they departed from it, they were expected to explain the reasons for the departure. In this way, each group built up a file of exceptional cases which was then used periodically to revise and amend the protocol. The use of protocols never went further in this particular

example, but one could imagine using them as the basis for the evaluation of various treatments and as a basis for evaluating and compensating the doctors as well.

Work inspection differs from medical practice in two important respects. First, there is no standard list of “conditions” which place enterprises in violation of the law comparable to the standard medical specialties and the conditions which they treat. Second, the goals of work inspection are a good deal more complicated than those of medical practice and the weights placed upon different goals more fluid. Thus, medical practice is generally concerned with curing the patient. To be sure, the doctor is also concerned with the quality of life during and after treatment, and with the cost of treatment; but generally these are secondary concerns. Work inspectors, in contrast, must weigh the value of the employment opportunities which the enterprise offers the community and the income which it generates against a long list of working conditions including not only health and safety, but also industrial peace, wages and hours, the rights of national workers and immigrants, equal employment opportunity, etc. The relative importance of these different goals will vary over the business cycle with the level of economic development and with the social relations in the community. The weights will also vary depending on the political party in power. The supposition in the street-level bureaucracy literature, which is essentially confirmed by the inspectors themselves in interviews, is that there is an underlying pattern to the way these issues are understood and the conflicting goals weighted by the inspectors; that the pattern, like the pattern in medical practice, can be surfaced and made the subject of explicit review and discussion, and that through discussion we can obtain both more consistency in the way in which the regulatory process treats different enterprises and reduce the conflict among various regulatory objectives. But it is not clear that it can be reduced to a set of standard protocols.

Nonetheless, the medical example and its limits when applied to labor inspection does help to clarify some of the issues in the distinction between specialized labor inspection as it is practiced in the United States and the general inspection model in Latin America. First, it suggests that it is not so much the division of labor standards regulation into specialties which makes the U.S. model so rigid, but the way in which the specialties are defined. The divisions within the U.S. administrative system appear to be only

loosely related to the factors causing labor standards violations, and it is thus not very useful in either diagnosing problems or fashioning solutions. The Latin American model does in fact recognize certain specialties, but they are not based upon the standards themselves. Thus, for example, a number of countries have services specialized in particular industries, typically agriculture, mining, and transportation. France, among others, made a distinction between large and small enterprises, and has specialized agents (the *contrôleurs*) who inspect enterprises with less than fifty employees. In Guatemala, there is a separate small unit of inspectors that deals exclusively with *maquillas*. A number of countries have units which specialize in child labor.

A second point that emerges in pursuing the medical analogy is that the underlying rationale here is the division of knowledge, and this may or may not be reflected in the actual organization of the work itself or the separation of organizational units. We can, in other words, make a distinction between the specialization of knowledge and the specialization in its application. One of the advantages of keeping even the specialized units within a single organizational entity is that one can take advantage of the specialized knowledge and adjust national priorities in the administration of the law. One might thus want to vary the enforcement of standards in small enterprises with the level of economic development, nationally or in the region. Typically, Latin (and French) labor inspectorates have units specialized in labor law, engineering and industrial medicine which the line inspectors can call upon for advice. Some actually assign general inspectors with different backgrounds to local offices (France and Brazil do this for example) so that the inspectors can turn informally to their colleagues for advice.

Nonetheless—and this is the third general point—one would still like not only to codify the knowledge upon which the inspectors' judgments are built but also to examine it in a form which enables it to grow and improve over time. Can we, in other words, go beyond the rules and procedures implicit in the decisions of the inspectors themselves and subject them to systematic evaluation and improvement, making them not only more consistent with the shifting values of the society as a whole, or the weights placed on different values as these shift with economic and social conditions, by actually reducing the conflict between the standards and the economic goals of efficiency and

development? For this purpose, we turn to the scholarly literature for clues as to how we might do so.

### A Scientific Foundation for Labor Inspection

Two bodies of scholarly literature appear particularly relevant, especially in developing countries, for organizing knowledge about labor standards and for the endeavor of surfacing the tacit knowledge of the inspectors themselves, formalizing it and subjecting it to evaluation. The first of these literatures concerns the relationship between labor standards and business practice. The second concerns the relationship between business practice and the normative system governing the workplace. We will discuss them sequentially.

### Labor Standards and Business Practice

The literature on production systems and business strategies is extremely dispersed over time and over different fields of study. But its import can be illustrated by four strands. The most basic of these in the context of the still-developing countries of Latin America is Max Weber's classic observation that the key to industrial development is the creation of a realm where activity is evaluated rationally, in terms of economic efficiency, separate and distinct from the affective, personalistic or charismatic standards which typically govern relationships in the household, the family, or in political life (Weber, 1958; 1978). This observation is particularly germane in the traditional industries (e.g., textiles, clothing, shoes, furniture, and the like) which have been the subject of my own research in Italy, Mexico and Central America (Piore, 2004). Production in these industries typically takes place in the household and in outbuildings once used for agriculture, and the layout and flow of production is dictated not by economic efficiency and the standards of quality demanded by the marketplace but rather by the original uses for which the structures were built and the need to accommodate ongoing household activity or residual agriculture. Children are pervasive in these shops, sometimes actually engaged in production or learning about production (informal apprenticeship) but often they are simply there because that is where they live, perpetually underfoot and a distraction from the production process in which their parents

and older siblings are engaged. The household finances are intertwined with those of the business, defying rational accounting, precluding cost analysis, and placing working capital hostage to household emergencies. Business transport doubles for the household as well, and the delivery of supplies to the shop and finished goods to clients is frequently delayed by household chores.

The organization of these shops invariably entails violations of a long list of formal labor standards ranging from elementary health and safety regulations to those governing wages and hours, and, of course, child labor. But the separation of the business from the household is a prerequisite for determining what these are, let alone for bringing the enterprise into compliance on anything more than a momentary basis. Thus, for example, so long as the shop is in the family's living quarters it is really hard to tell whether the children there are working or simply being kept close to their parents' watchful eye and maybe being entertained by participating in a piece of the production process. Without separate business accounts, it is hard to say what people are being paid, indeed if they are being paid at all. A separation of the household from the business would, of course, also promote economic development and a more efficient flow of production and quality -- a prerequisite for participation in the global marketplace which requires compliance with a set of standards associated with statistical quality control, on-time delivery and the like. There is a sense in which the integration of the business and the household makes it difficult to adhere not just to labor standards but to any standards at all. The alternative to the reorganization of the business in this way is the development of a separate set of standards for the traditional sector, a point to which we turn below.

A second strand of the literature on production processes suggests that it may be possible to induce some of these changes without engaging in the reorganization of production directly. Labor standards in the garment industry are a laundry list of separate regulations concerning child labor, health and safety standards, wages and hours, etc. They seem to have grown up piecemeal, in reaction to particularly dramatic events which moved public opinion such as the Triangle Fire in New York City in the early twentieth century. But they are actually all related to each other as distinct aspects of a single production system, the sweatshop. The sweatshop in turn appears to be characteristic of an extremely labor intensive industry in which wages are paid by the piece. The piece

rate system equalizes the cost to the employer of virtually all types of labor (skilled and unskilled, children and adults); all labor costs become variable costs, which are directly proportional to output. When production takes place in the factory setting, the major fixed cost, virtually the only cost which is not directly proportional to output, is the cost of space, i.e., rent. As a result, the employer has an incentive to crowd as much work into a given space as possible. The crowding may reduce labor productivity but that cost is born by the workers under the piece rate system. The crowding also leads to major health and safety risks, especially that of fire, and the dangers of fatalities in case of fire are magnified by aisles clogged with materials and blocked exits, a further attempt to conserve real estate. The piece rate system also encourages child labor since the employer is indifferent to the low productivity of children or the fact that the children distract the adults and slow down the pace of their work as well. Ultimately, it also encourages industrial home work and the integration of the factory and the household about which Weber was concerned, since by moving production into the household the employer escapes even the fixed cost of space. But by the same token, the whole system of production, and the complex of associated standards violations, can be rectified by imposing a minimum hourly wage rate and enforcing it strictly (Piore, 1990).

A third more contemporary literature relating labor standards to production systems grows out of the adjustment to the pressures of international competition among industrial countries, particularly the emergence of Japan as a major competitive threat in the 1980's. The literature is built around a distinction between the "high" road and the "low" road to industrial adjustment. The low road involves essentially adjustment by draconian cost cutting; especially by squeezing the labor force through lower wages, longer hours, the use of untrained and/or temporary workers who have a higher propensity for industrial accidents, as well as the crowding of more workers into limited space, which are characteristics of sweatshops. The high road involves a more deliberate attempt to change production practices, typically in a way which enables the firm to move up-market and to manage more flexibly with lower inventories. In work practices, it involves a broadening of job responsibilities, so that each worker is responsible for a wider range of tasks (or operations), and a decentralization of power and authority within the enterprise in a way which encourages more self-supervision but also more



cooperation among the line workers. It typically increases efficiency and product quality and can facilitate compliance with wage standards, hours regulations, and health and safety standards. But the new work practices have also been accompanied by an increased use of temporary employees and a blurring of the line between supervisory and production workers, and more work at home in ways which make compliance with formal labor regulations problematic and have fed a debate about whether traditional standards, most of which date from the time when the economy was dominated by manufacturing, are consistent with modern technology.

There is now a literature developing these alternatives and comparing the high and low roads in a number of specific industries (Osterman 1994, 2000, 2006; Appelbaum and Batt, 1994; in cars, Kochan and Rubinstein, 2000, MacDuffie, 1995; in steel, Ichniowski, Shaw and Prenzushi, 1997; in restaurants, Bernhardt, McGrath and DeFilippis, 2007). The literature does not specifically focus on labor standards but it is explicitly concerned with work practices and hence could easily be extended to standards. And it should be possible to link the inspectors' own observations to this literature as well.

Finally, closely related to the high road/low road are separate literatures on supply chains and industrial districts. These literatures often focus on traditional industries as well, but on sectors within them which are competitive in, and integrated into, the global marketplace. Industrial districts and supply chains are often discussed together, although in fact they are quite distinct. The supply chain literature emphasizes the hierarchical relationship among firms which are tightly integrated but located at different stages of the production process, and typically cross establishment and national boundaries (Gereffi and Korsewicz, 1994). The industrial district literature, in contrast, emphasizes flexible relationships among essentially equal partners in a well defined and delineated geographic region (Pyke, Becattini and Sengenberger, 1990; Schmitz and Nadvi, 1999; Saxenian, 1994). Both literatures are concerned with how the institutional configuration is related to business strategy and economic welfare. They were not initially focused on labor standards but there is work in each literature related to standards, and both lend themselves to extension in that direction.

The supply chain in particular has been the focus of efforts emanating from NGO's in advanced industrial countries to monitor and upgrade labor standards in those parts of the chain located in developing countries. These efforts play upon a characteristic which receives particular emphasis in the literature: That power and authority in a given chain typically resides at one stage of the production process (e.g., retailers in apparel, assemblers in automobiles) and hence the exercise of economic pressure at this point, even from afar, can police the whole chain. This contention has proven to be disappointing on several grounds, but a few very prominent brand names have been forced by consumer boycotts to monitor labor conditions in their suppliers' shops. The data collected in this process—which is now being analyzed by a research group under the direction of Richard Locke at MIT—provides a potential source for a detailed understanding of the determinants of labor conditions (Locke and Romis, 2006; Locke et al., 2007). Three results stand out from initial studies. First, there is substantial variation in labor standards across firms at similar positions in the supply chain, working for the same buyers, and hence with cost structures that are apparently competitive with each other. The research has not established what the differences among these firms are but presumably it could be extended to do so and integrated with a typology abstracted from interviews with labor inspectors. Second, a major factor in the ability of subcontractors to adhere to labor standards, in terms of hours and the pace of work, are the business practices of the retailers, and particularly the lead time they allow between placing and filling orders. This, in turn, depends on the business practices within the retail firm, particularly the coordination among designers and sales reps, on the one hand, and the procurement department and the department responsible for monitoring the subcontractors, on the other. The third finding of this research is that the power in the supply chain is actually more diffuse than the literature suggests. Rather than being concentrated in the retailers with brand names who are subject to consumer pressure, it sometimes lies with the suppliers, some of whom are themselves large international companies who work for enough different clients that they are able to resist pressure exerted by any one of them (but might at the same time make them more responsive to regulatory efforts exerted by their own governments or those at their production locations

– as opposed to pressures emanating from consumer boycotts and exerted through brand-name retailers).

### Les Economies de la Grandeur

A last scholarly literature which is relevant in providing a framework for the systematization and evaluation of the judgments of labor inspectors is a literature on moral judgment growing out of the conventionalist school of economics and sociology (Boltanski and Thévenot, 1987). The central tenet is that rather than applying a single system of moral standards, people judge economic relations – and in fact social relations generally – in terms of a series of distinct and different moral systems. Each of these systems entails its own set of values, its own system through which people are evaluated and ranked, its own set of procedures or tests for making that evaluation, etc. In a sense, this is an extension of Max Weber’s argument, discussed above, of economic development involving the creation of a realm separate and distinct from the family with its own standards of judgment and evaluation. But the conventionalists identify five such realms, which they call *cites*. In addition to the family or domestic realm, they identify an inspirational realm, a civic realm, an industrial realm and a market realm. The industrial realm roughly corresponds to the bureaucratic systems of large enterprises; the civic realm to the relationships among skilled craftsmen. The realms involve different authority relationships, different standards of worth and hence presumably rules of compensation, promotion and job allocation, etc. The norms governing the workplace will thus vary from one realm to another, and one can imagine that just as the police in a large city apply the law differentially depending on the neighborhood in which they are working, the labor inspector is sensitive to the type of workplace he or she is controlling and picks different parts of the labor code to inspect for and enforce. The conventionalist literature will then help to clarify what the different moral realms are, which particular rules are appropriate in each, and how one should decide whether to accept the standards prevailing there or, as we implied in discussing traditional family firms above, whether to encourage them to adopt a different approach to work and in effect alter the norms which govern work relations.

## The Moral Foundations of Labor Standards

The conventionalist typology points toward the broader question of the underlying legitimacy of labor standards. The centrality of that question has been obscured by the deterrence model through which the emphasis on economic incentives has taught us to think about government regulation. But, in the case of labor standards at least, a close examination of the implications of that way of thinking points toward its limits as well. Compliance in that model is understood as a business decision. Each enterprise weighs the cost of compliance against the cost of noncompliance and adheres to labor standards only if the former outweighs the latter. The cost of noncompliance reflects the chances of being inspected and hence getting caught. A back of the envelope calculation dividing the number of enterprises by the number of inspectors reveals, however, that even in countries with the largest relative inspection corps the chances of getting caught are minimal, too small to make deterrence in this sense a credible enforcement mechanism. Evidently other forces come into play.

There is actually not a single analytical framework which captures those ‘other’ forces. But two modifications in the standard economic model point toward what these are likely to be. First, the standard model is one of the rational man maximizing his material wellbeing on all margins of the endeavors in which he is engaged. Even the most rational actor does not and cannot operate on all margins at once, however. Business managers, in particular, typically focus on a few particular points in the business process which they judge key to success in the market. A good deal of what is done in the rest of operation is dictated by standard routines or practices borrowed from somewhere else in the system or inherited from the past.<sup>2</sup> The role of labor inspection in this view is thus one of policing those routines, making sure that they are consistent with prevailing labor standards and held in place. Violations develop when that policing function fails.

The key processes here are illustrated by the case of the New York State investigation of minimum wage violations at grocery stores in Manhattan. Such groceries are located on virtually every corner in the city, and for at least the last ten

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<sup>2</sup> This is a central point of the economic models of Nelson and Winter (1982) or of Simon (1957). The sociologist’s concept of institutional isomorphism captures part of this process as well (DiMaggio and Powell, 1983).

years virtually all of these groceries have been owned and operated by Korean immigrants. The state agency discovered that all or nearly all of the groceries were paying wages below the statutory minimum. In the investigation of how this had happened, they learned that the owners all belonged to a single association; the association provided a list to their members of the laws and regulations with which they were expected to comply (health standards, building codes, taxes, etc.). Nowhere on this list were labor market regulations. The labor code was simply not a standard which self-respecting Korean groceries were expected to uphold. The process through which labor standards fell off this list (or failed to get on it in the first place) then becomes key to understanding compliance. To explore this story completely would require more space than is available in a paper of this kind. But we know from other studies that Korean businessmen are extremely sensitive to their prestige and moral standing both in the Korean community and the larger American society, and see the role of their business associations as furthering their position in this regard. This suggests that one needs to look to the way in which labor standards violations have come to be viewed in the society at large to understand the attention devoted to them by the association from which the grocers took their clues.

The second set of amendments to the standard economic model which appears helpful in understanding labor standards enforcement are those which we drew upon earlier in understanding the behavior of the labor inspectors themselves. Entrepreneurs and managers, like inspectors, live in a broader community composed of their colleagues and fellow business executives, but also of civil society more broadly. The communities have a set of expectations about how people should behave in their business roles, and their identity and self-respect is dependent on how their behavior is evaluated in the light of these expectations. Because they value the opinions of their colleagues, those opinions operate to modify the behavioral patterns promoted by the pursuit of narrow material wellbeing. One can call these community expectations a set of moral or normative values, although these are very general terms for a complex set of factors.

Morality here must operate on at least two levels (or perhaps one could say with respect to two communities). One is at the grass roots: Do the people whom these standards directly affect, and the employers and managers who are responsible for

adherence to them, think of the standards as fair and violations as wrong? Are the standards, in other words, consistent with the felt sense of justice? Here there are at least two separate issues: One is whether the regulations are just; the second is whether they are fairly administered. For the first of these questions, the normative distinctions which form the basis of conventionalist's *cite*, which we have just discussed, should be critical, and the ability of the inspectors in the Latin system to adjust enforcement to different normative standards would seem to enhance their legitimacy. It follows that any systematic reflection within the corps of the inspectorate which strengthens their capacity to do this effectively will strengthen the adherence. The second issue, that of administration, underscores the importance of the processes which we discussed in the first part of the paper, which operate to maintain a sense of consistency in the treatment of cases.

But the felt sense of justice is only one level at which morality operates. Labor market regulation has also been buttressed historically by a higher level of morality which justified the intervention of the state into this domain as being in the interest of the society as a whole, irrespective of the way in which the specific codes were viewed in the shops and offices to which they applied. It is this broader moral justification which was undermined by the neoliberal ideology. That ideology, moreover, has done so not simply on the intellectual and ideological level but in the way in which it has permeated the rhetoric and symbolism of politics. This is no doubt how the Korean grocers association came to neglect labor regulations in its list of standards to which it felt its members were obliged to adhere. But the way in which this has operated is most vividly illustrated from an interview in France where the inspectors have a strong sense of being caught between the high rhetoric of the political class (on the left as well as the right) and the pressures from the rank-and-file workers for the protection by the Inspectors as the agents of the State. Thus, one of our interviews occurred the day after the president of the Michelin Tire Company had died in a boating accident. The President of the Republic went on television that night to express the condolences of the nation to the family. One of the inspectors in the interview bitterly pointed out the contrast to the death of the two inspectors shot in the back by a peasant whose farm they were inspecting; it took several weeks before government officials made any comment at all.

This brings us back to a question raised in the introduction. The neoliberal ideology has clearly collapsed and this is the proximate cause of the rise of labor standards. But is it enough to sustain that revival of labor standards? Is there not a need for a positive ideological justification? And, if so, where would such an ideology come from? This, as it should be said, is not simply a question of labor market regulations in the abstract, but—an issue which we have not thus far discussed—the justification of the particular standards which are currently enforced. That justification has been undermined considerably by the notion of a post-industrial society and the idea which it implies that the standards currently on the books are the product of some earlier moment in industrial history which new technologies and associated modes of organization have rendered obsolete.

These issues may actually be more relevant to the advanced industrial societies of United States, Western Europe and Japan than to Latin America. Post-industrial society in the North has entailed the movement of traditional manufacturing abroad and led in Mexico, Central America, and the Caribbean to economies which more closely resemble those in which traditional labor standards were relevant. This is probably less true in the Southern parts of the continent, but even there transition has been less dramatic than in the advanced industrial countries. By the same token, the historic pressures for state intervention to protect workers against market pressures remain much stronger in Latin America. Thus, while the decline of the Soviet Union and the communist parties has reduced the threat of class warfare and revolution, civil unrest and class conflict still are very real concerns in much of Latin America, and have been powerful forces promoting the revival of labor market regulation, most notably in Chile and central America (e.g., Guatemala), but in much of the rest of the continent as well. Similarly, Catholic ideology remains an important factor, perhaps most interestingly in Mexico where it was the guiding ideology of reforms in the Ministry of Labor under the PAN, albeit not enough to overcome the generally *laissez faire* bias of that regime.

Still the technical case for labor inspection as part of a broader economic policy would provide a new justification for labor standards. It would be strengthened by a more deliberate approach to the management of labor inspection, by a greater emphasis on the pedagogical and entrepreneurial functions of the service, and by drawing upon and

extending the scholarly literature on the relationship between production processes, business practices and labor standards which we reviewed in preceding section.

This, of course, leads to the question of how to move regulation in the region in this direction, especially in a period of crisis when resources are particularly limited and countries start from widely different levels of economic development and administrative capacity. Obviously, each country could move on its own, at its own pace, drawing on the experience of others in an ad hoc fashion or perhaps with greater aid from the ILO or other international agencies. But a more effective form of coordination, without compromising the independence and autonomy of the separate states in the region, would be to create a regional institute for labor inspection. The institute could serve as a clearinghouse for sharing experience and practice. But it could also serve as a training school, providing classes either on an ad hoc or a regular basis, perhaps limited at first to managers but potentially training the inspectors themselves in the long run. Perhaps most importantly and interestingly, the institute could also promote research into the relationship between labor standards and business practice, and in this way build the base of systematic knowledge upon which the judgments of the inspectors rests. A last, and perhaps most important, the role of such an institute would be to move the region – informally at first but possibly over time through formal treaties and protocols – toward a common labor market floor which would forestall a race to the bottom.

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