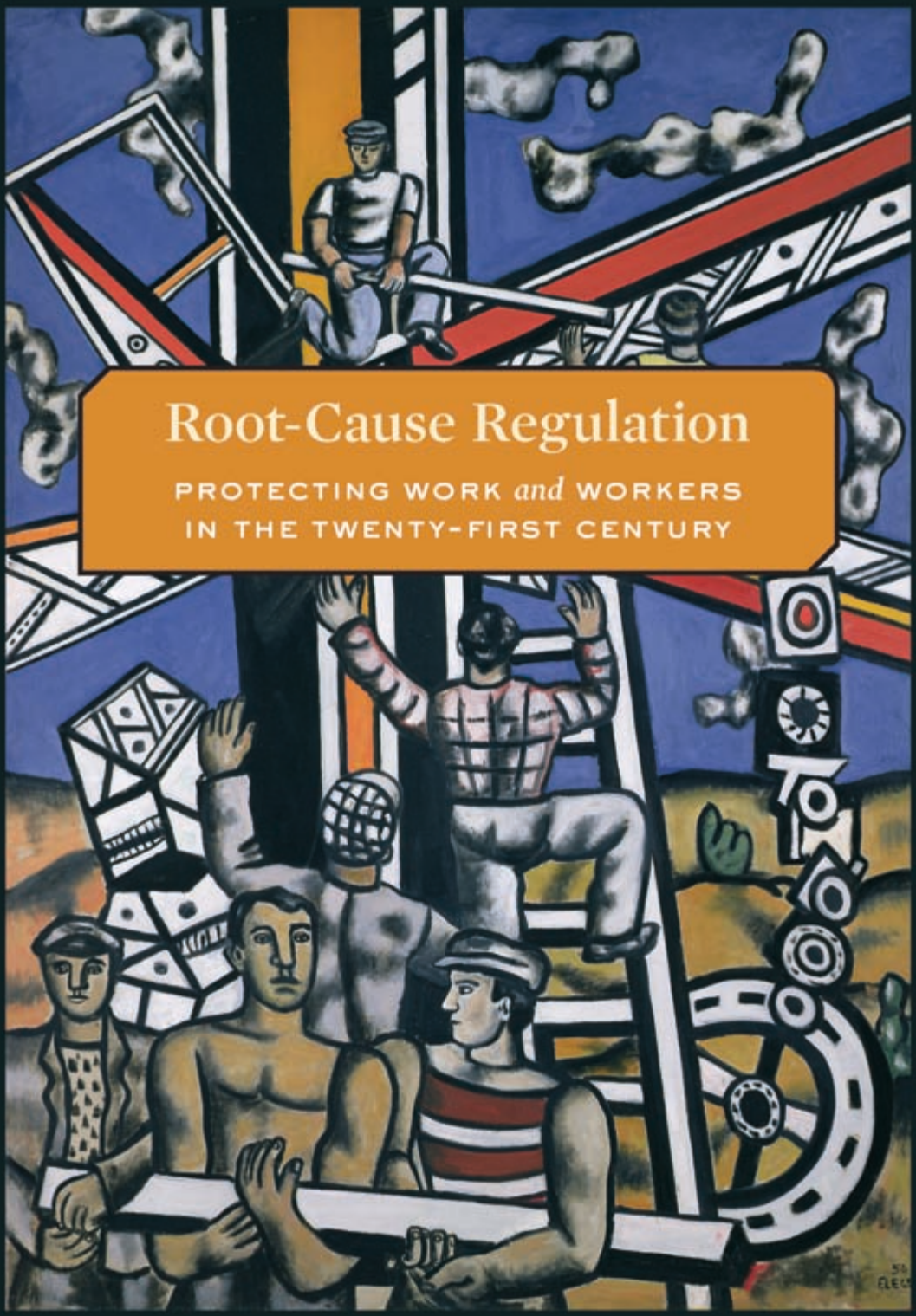

Root-Cause Regulation

PROTECTING WORK *and* WORKERS IN THE TWENTY-FIRST CENTURY

MICHAEL J. PIORE · ANDREW SCHRANK

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To Rodney and to Aeron

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PREFACE

This manuscript has been a long time in the making. It is the product of an extended chain of reflection and research. The chain stretches back to 1979, when a group of labor inspectors arranged an informal dinner party in a textile town in northern France, once the cradle of the country's industrial revolution. The town had by then come to be inhabited almost entirely by foreign workers; they could be seen approaching and leaving the old mills at the end of each shift. But the party itself had been prompted by two things: (1) the debate about "labor market rigidity" that was already under way at the time and that remains salient in contemporary France and (2) the requirement that the Ministry of Labor authorize large-scale layoffs in particular. While almost all of the requested layoffs were approved, the requirement was nonetheless disdained as a source of rigidity and contested by the business community—a seeming contradiction that prompted an obvious question: Why did business spend so much time combating a provision that seemed largely symbolic? As the officials who effectively authorized the layoffs, the inspectors resolved the apparent contradiction early in the evening when they revealed that, to obtain their approval, management had to invite them onto the premises for a site visit. But French labor inspectors are responsible for the entirety of an extensive labor code, and once they were on-site they could examine virtually any aspect of the firm's operation. What the inspectors actually reviewed, therefore, was entirely at their discretion, and this gave them enormous leverage over management.

Once on-site, they explained, they could use their leverage to open a negotiation over the terms of the firm's petition, and the petition ultimately submitted and approved would thus be the product of that negotiation. Often, for example, they would use their leverage to protect the jobs of the most vulnerable workers, who in their eyes would have the most trouble finding employment elsewhere in the economy if dismissed.

Having resolved the apparent contradiction of the layoff debate, the discussion quickly turned to the burden that this discretion placed on the inspectors not only in terms of layoffs but in all aspects of their work, a discussion that the inspectors were, it turns out, very anxious to have but that virtually never occurred. Nobody, it seemed, ever asked them how they felt about their jobs, and the discussion therefore moved from the issue of validating layoffs, which was actually a minor part of their responsibilities, to the question of how they exercised their discretion more broadly: how they decided what enterprises to visit and what to do when they got there; and how they dealt with the whole range of regulations for which they were responsible, including health and safety, wages and hours, collective bargaining, and migration. Their answers were complex and nuanced, but in some sense it seemed that they adjusted the regulations to the social and economic environments in which the firms operated, as that environment varied over time and space in a way that was actually similar to the ways in which the competitive market operated in the standard economic theory upon which the critique of labor market rigidity was based. When and where unemployment was high and jobs were scarce, for example, they applied potentially burdensome regulations more loosely; in tight labor markets marked by labor scarcity, however, they forced employers to remedy violations quickly. And the regulations that seemed so rigid in theory were thus quite flexible in practice.

This sense of de facto flexibility was reinforced later that year by a visit to Barcelona. At the time, Spain was in the throes of adjustment to the death of Francisco Franco and the demise of his fascist regulatory regime, which had, if anything, been strengthened in the final years of the dictatorship as a kind of poison pill for its democratic successor. Furthermore, the Spanish system of labor inspection was in many ways similar to the French system, on which it had originally been modeled, in that the inspectors administered the whole of the labor code and exercised enormous discretion in terms of which firms to visit and what to focus on when they got there. But in Catalonia, at least, the flexibility of the system was being used to smooth

the transition to a new regime of workplace governance. In the waning years of Francoism, a militant workers' movement had emerged on the shop floor in a number of manufacturing plants, and a proto–collective bargaining system had been established underground in an effort to mediate the conflict between labor and management. The emergent system operated in effect to adjust the stringent regulations imposed by the government to the exigencies of particular workplaces and environments. The labor inspectors who were nominally responsible for securing adherence to government regulations had come to use their power to facilitate the emergence of the new system and to smooth its operation. In effect, they were acting as mediators in collective bargaining disputes and as judges adjudicating conflicts over the application of collective agreements, expediting the development and enforcement of a set of rules that differed from those imposed by the government but made sense to stakeholders on the ground. Once again, therefore, the apparent rigidity of the system masked its actual flexibility, but it simultaneously raised the question of how this system had emerged and, as in the French case, how the new criteria had come to be accepted by society at large.

In the subsequent years, those questions remained on the back burner. They were relevant to a number of other projects, but only indirectly. They came to the fore, however, in the early years of the new millennium as the European debate about labor market rigidity reemerged in Latin America. The Latin American debate focused exclusively on formal rules and procedures and paid almost no attention to whether these rules were actually enforced—let alone to whether they might be enforced flexibly and selectively. In fact, the Latin American literature was marked by a contradiction of its own: Latin American governments were believed to be racked by corruption and inefficiency and thus thought incapable of enforcing pretty much any laws at all. But somehow labor laws were supposed to be inhibiting their growth and adjustment. Because the French approach to labor inspection had migrated to Latin America through Spain, and had most recently inspired a successful and comprehensive reform in the Dominican Republic, where corruption and inefficiency were widely believed to be the norm, we were led to explore the Franco-Latin approach as an institutional model more systematically and directly: first, through discussions with each other and with colleagues and students who were undertaking related research of their own; and, second, through field research focused on the organization and operation of labor inspectorates in specific

countries. That field research constitutes the raw material out of which the argument of this manuscript is built. It included multiple visits to France, Spain, the Dominican Republic, and Mexico, where we interviewed dozens of inspectors, their supervisors, and their interlocutors in the labor movement and private sector over the course of several weeks, as well as dedicated visits to Colombia, Costa Rica, and Guatemala, where we interviewed smaller numbers of informants with similar backgrounds over the course of several days. We also interviewed inspectors—but not their interlocutors—on brief visits to Chile, Ecuador, Morocco, Panama, and Peru. In France, most of our time was spent in regional offices in and near Paris and at the Ministry of Labor, but we also spent a day at the school for inspectors in Lyon. In Spain, we visited local offices in Madrid, Barcelona, and Seville, as well as the headquarters in Madrid. In Mexico, we visited the Federal District (*Distrito Federal*), or Mexico City, as well as the State of Mexico and the cities of Monterrey, Mexicali, Guadalajara, and Merida. In the Dominican Republic, we visited the capital of Santo Domingo as well as more than a dozen regional offices on several trips over the course of a decade. In Colombia, we interviewed ten inspectors in a provincial capital as well as nearby business owners and trade unionists. In Costa Rica, we visited one field office outside of the capital of San José, but in Guatemala our visit was confined to the capital of Guatemala City itself. Finally, in a number of countries we interviewed officials of ancillary agencies, including educational and training authorities in particular. In addition to our own research, moreover, we have drawn on the work of students and colleagues who carried out extensive studies of labor inspectorates in Argentina, Brazil, and Chile and understood (without necessarily sharing) our perspective.

These interviews underscore the differences between the prevailing approach to workplace inspection in the United States, which essentially assigns a different inspector (or inspectorate) to each law, and what we have come to call the Franco-Latin alternative, which assigns a different inspector not to each law but to each firm. While inspectors in the United States are therefore specialists, with narrow responsibilities, their Franco-Latin counterparts are generalists, with broad spans of control, and the lesson that emerges sharply and consistently, in our view, is that the latter are not only more flexible than the former but also less rigid than critics of labor market regulation imply more generally. However, that lesson inevitably opens the question of how labor market regulation came to be asso-

ciated with bureaucratic rigidity in the first place, and the answer seems to be that the debate on regulation has been driven largely by commentators trained in the United States who have applied analytical concepts designed to understand U.S. institutions to the world as a whole. But this answer merely generates two more questions. The first is the question of U.S. exceptionalism: How did the United States come to develop what turns out to be a peculiar—if by no means unique—approach to workplace regulation, and is that approach specific to workplace regulation or typical of regulation more generally? And the second concerns the management of the Franco-Latin system: If the analytical apparatus associated with the U.S. approach doesn't help us understand and manage the Franco-Latin alternative, what analytical tools would enable us to do so?

These questions animate our inquiry, but they lead to one final question that we can barely begin to answer: What explains the division of labor in the public sector more broadly, and what are its consequences? Why, for example, do some teachers specialize by grade level, when others specialize by subject matter? Why do different police departments have different specialist units, when some have none at all? Why do some countries fold patent and copyright oversight into a single agency, when others assign them to distinct offices? And what, if anything, are the consequences of these, and similar, decisions? An enormous body of literature has emerged to address the division of labor in the private sector, but as far as we know there is no analogous literature for the public sector, despite its obvious importance. We know that our inquiry will not answer these questions, but we hope that if nothing else it will inspire a new generation of scholars to begin to ask them.

It is an inquiry that we would never have been able to pursue alone. We are unable to do justice to the number of people who cooperated with us and contributed in one way or another to the field research and our efforts to interpret the results. The list is simply too long and our memories too short. We are especially grateful to the inspectors, officials, and colleagues in a number of countries who spoke freely and frankly to us about themselves and their work; however, most did so off the record. That said, we do want to acknowledge the particular generosity of Ken Dubin in Spain, Gilles Ravenaud in France, Mara Hernández in Mexico, and José Niño in Colombia, who not only participated in the interviews but also handled the bulk of the logistics for our trips to their respective countries; José Zapatero in Spain, who gave generously of his time on more than one visit;

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ROOT-CAUSE REGULATION

1

INTRODUCTION

IN MARCH 1911, THE TRIANGLE SHIRTWAIST FACTORY BURNED in New York City, killing 146 garment workers and precipitating the growth of the modern system of workplace regulation in the United States. The city responded by appointing a well-known activist named Frances Perkins—who, by sheer coincidence, had witnessed the fire from the street below—to oversee a newly established Committee on Public Safety. The state responded by establishing a Factory Investigating Commission responsible for both on-site inspections and the modernization of health and safety legislation more generally. And their joint efforts not only provided a model for other states and cities but opened the door to the adoption and enforcement of national labor legislation during the New Deal, when Perkins would assume control of the Department of Labor in Washington under President Franklin Delano Roosevelt (von Drehle 2003).

A little more than a century later, in November 2012, the Tazreen Fashion factory would burn in Dhaka, Bangladesh, killing 117 workers who assembled garments for global brands and buyers, including Sears, Walmart, and the U.S. Marine Corps. Experts would identify a number of parallels between the Triangle fire and the tragedy at Tazreen, including panic that made an orderly response impossible, locked exits that forced workers to choose between burning and jumping to their deaths, and protests by their survivors and compatriots. But the Bangladeshi protests would fall on deaf ears. Less than a year later, the country witnessed an even more dramatic

industrial tragedy: the collapse of the Rana Plaza building, which housed five garment factories, and the attendant deaths of more than one thousand of their workers (Manik and Yardley 2012; Yardley 2012; Stillman 2013).

The tragedies in Bangladesh are among the worst industrial disasters in recent memory. But they are by no means isolated events. Work is now more deadly than war, according to the director-general of the International Labour Organization, killing approximately 2.3 million people per year (International Labour Office 2014b, 1). Almost three hundred workers burned to death in a Pakistani garment factory in 2012 (Walsh 2012). A "suicide cluster" claimed the lives of more than a dozen disgruntled workers at Foxconn's Chinese electronics plants, where iPhones are assembled, in 2010 (Moore 2012). Scores of Mexican coal miners died at Pasta de Conchos a few years earlier (Thompson 2006). And a modern-day Frances Perkins would be shocked by wages and working conditions in the United States itself. Survey data suggest that more than a quarter of all low-wage workers in the country's largest cities are paid less than the legally mandated minimum wage (Bernhardt et al. 2009). Overtime violations are rampant (Crampton, Hodge, and Mishra 2003; Weil and Pyles 2005). We have one of the highest rates of occupational fatality—not to mention *the* highest rate of child labor—among the high-income members of the Organisation for Economic Co-operation and Development (Hämäläinen, Takala, and Saarela 2006; Moskowitz 2010). And union activists are threatened and intimidated with near impunity (Bronfenbrenner 2009).

Recent investigations have revealed both the extent and the intensity of abuse in the U.S. labor market. Consider, for example, the award-winning *New York Times* series on managerial practices in the city's two thousand nail salons, where a largely immigrant workforce toils away for hours and days on end earning little more—and often much less—than the subminimum wage for "tipped" workers, whether they are actually tipped or not. Wage theft is the industry norm, according to the author. Overtime pay is "almost unheard-of," despite workweeks that last sixty hours or more. Toxic chemicals are everywhere. And protective equipment—not to mention health insurance—is nowhere to be seen (Nir 2015b, 2015c; see also Bernstein 2015; Baquet, Jamieson, and Luo 2015; Dworzak 2015).

Nor are the victims limited to workers who can find jobs. Employment discrimination is so widespread in the United States that members of minority groups often have trouble finding jobs in the first place. By assigning matched pairs of equally qualified black and white men to apply for

similar—and in some cases the same—entry-level positions, for instance, Devah Pager and her colleagues demonstrated that many of the former are "weeded out" of the application process before they "have an opportunity to demonstrate their capabilities in person" (Pager 2008, 92; see also Pager, Western, and Bonikowski 2009), a fact that may go a long way toward explaining the consistently outsized unemployment rate among African American men.

In short, the gap between labor law and workplace practice is large and growing. While American employers frequently complain about the "excessive" burden of "unnecessary" regulation, and find receptive ears in both major parties, they are all but immune from regulation in practice. It would take at least fifty-eight years for the average workplace to be visited by the Department of Labor's Wage and Hour Division (WHD) (Ross 2004, 151). And the Occupational Safety and Health Administration (OSHA) fares no better—admitting that at current federal and state staffing levels, the average work site would be visited by a safety and health inspector no more than once every sixty-six years (Occupational Safety and Health Administration 2012). Other enforcement agencies have even fewer resources available than the WHD and OSHA.[1] And on those rare occasions when violators are discovered and sanctioned, they find that the penalties are light—often little more than a nuisance—in any event (Weil 2010). But U.S. employers nonetheless feel the need to go abroad in search of still cheaper labor (Cowie 1999; Paquette 2017), and in so doing ensure that the workplace—both in the United States and around the globe—becomes more despotic, dangerous, and disorderly.

How could this have happened? How could we have forgotten the lessons of history and, in so doing, failed to take the relatively straightforward steps necessary to preserve human dignity and prevent industrial tragedies at home and abroad? And what lessons *should* we draw from these abject failures of regulatory oversight? The immediate cause is almost certainly political: a shift in power and authority away from workers and their organizations and toward employers and their interests. But labor's disempowerment is as much a consequence as a cause of deregulation. Politically empowered workers are better able to demand and garner the protections they need, to be sure, but in the absence of regulation, workers lack the security they need to make demands on their employers in the first place. We therefore have to drill deeper if we want to understand the origins and manifestations of the collapse of global labor standards.

Two key sets of ideas underlie and justify—or perhaps rationalize—this collapse: first, the idea of the self-regulating market found in mainstream economic theory, which has been translated into economic policy in the form of neoliberalism and the Washington Consensus; and second, the idea that government regulation, in particular, has been rendered anachronistic by innovation, globalization, and the transformation of domestic and international markets. These themes have not only pervaded discussions of labor policy and workplace regulation, of course, but have been central to debates about the government's role in the economy more generally. In particular, they were salient to debates about macroeconomic policy and financial regulation in the early twenty-first century, and they provided the intellectual foundations for Alan Greenspan's stewardship of the Federal Reserve Bank in the run-up to the Great Recession.

Our goal, therefore, is to question both the idea that regulation is *by definition* unnecessary and the related sense that, if at times necessary, it has been rendered obsolete by innovations that provide their own protections, on the one hand, and competitive pressures that proscribe *any* protection, on the other. A more nuanced reading of history, we believe, and a more grounded understanding of workplace regulation, in particular, suggests that current regulatory *frameworks* may be out-of-date, especially in the United States, where they have arguably had trouble keeping up with new technologies, trade patterns, and trends in business organization, but that *regulation itself* has never been more necessary—insofar as it provides one of the few barriers to a global collapse of wages and working conditions. In short, we believe that the deterioration of labor standards in the United States and the deplorable state of the workplace in countries like China and Bangladesh cast doubt less upon the need for regulation per se than upon the types of regulation that emerged in the middle of the twentieth century and their adaptation to the contemporary period.

Moreover, we contend that, far from being self-evident, the regulatory—and even economic—impacts of globalization and innovation are ambiguous. Is trade a threat to working-class bargaining power or perhaps an opportunity in disguise? Does information technology heighten the possibility of evasion or lower the cost of enforcement? And where do new business models fit into an old regulatory structure? What we need is an approach that acknowledges, addresses, and perhaps even answers these questions—and many others—*in the course of the regulatory effort* itself,

not a model that presupposes the answers from the outset. It is toward this goal that our argument is addressed.

In our effort to design such an approach, to understand the myriad changes in the economy and society, and the ways in which they interact with the regulatory process, we have been informed less by standard economic theory than by the practical experiences of regulatory agents, including regulators in foreign countries in particular, and the broader social sciences. However insightful it may be in other policy domains, we worry that mainstream economic theory offers a limited view of the motivations and behaviors of economic actors and thus offers little insight into the ways in which alternative regulatory frameworks might operate, affect business operations, or be influenced by globalization and innovation. To address these questions, therefore, we need the richer framework provided by the other social sciences: norms and values from sociology, institutions from political science, space and territory from geography, and so forth. How exactly the insights of those other social sciences relate to economics—whether these different perspectives can be integrated or whether, for at least some problems, we must choose between them—is a question that we will discuss in the text but will not try to resolve. Instead, we will focus on the practical experiences of the frontline bureaucrats who administer and enforce labor and employment law in the United States and abroad.

Our starting point, therefore, is the contrast between two distinct models of workplace regulation, one epitomized by the U.S. system and the other originating in France and migrating to southern Europe and Latin America over time. The U.S. model is functionally specialized and deterrence-oriented. The regulations themselves are specified in a series of precise rules and, in most cases, distinct laws designed to address particular risks and abuses. Responsibility for the enforcement of these laws is distributed across dozens of different agencies at multiple levels of government, each with a relatively narrow jurisdiction linked to both the nature and the level of responsibility (e.g., the Occupational Safety and Health Administration, the Wage and Hour Division, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Federal Mediation and Conciliation Service, Immigration and Customs Enforcement, and their many state and local analogues). Violations of the law are sanctioned by a penalty—typically a fine, more rarely a criminal sanction—designed to

deter transgressions. And by paying the fine the employer discharges his or her responsibility.

The Franco-Latin model, by contrast, is generalist and compliance-oriented. The entire body of workplace regulation is embodied in a single labor code (the *code du travail* or *codigo de trabajo*), and the code is administered by a single agency (the Inspection du Travail or Inspección de Trabajo). Moreover, the inspectors who work for that agency are responsible not for levying sanctions per se but for bringing the enterprise into compliance with the law, and they have considerable discretion with which to do so. Sanctions are available and are comparable to those imposed in the United States, but they are used less as a first than as a last resort, and they in no way discharge the employer's responsibility for compliance with the law.

The U.S. system lends itself to analysis in terms of standard economic theory. Employers are presumed to maximize profit. Labor standards are portrayed as costly rules and regulations that limit their ability to do so. And the sanctions associated with their violation are designed to impose countervailing costs of their own. The employer is thus assumed to weigh these competing costs and to obey the law when the sanctions—discounted for the relative likelihood and timing of their imposition—are more costly than the cost of compliance itself. Given this calculus, compliance in the system as a whole is a function of the relative costs of compliance and noncompliance at the level of the individual enterprise, and the likelihood of the former can be raised either by increasing the monetary cost of the sanctions or by increasing the number, quality, or organization of the enforcement agents responsible for their imposition.

Moreover, the agents who administer the regulations are assumed to be as instrumental as the enterprises they are supervising, maximizing their personal utility and minimizing the time and energy they have to put into their jobs. The logic of this approach therefore lends itself to the "New Public Management" (NPM) (Barzelay 2001; Anechiarico 2007), a model of public administration that originated in the late twentieth century Anglo-American world (Pollitt 1990) and uses numerical benchmarks to evaluate regulatory bodies and compensate their agents. Performance benchmarks are easier to establish and monitor when jurisdictions are narrow and goals are limited, by all accounts, and the U.S. approach to labor law enforcement is thus particularly well suited to the NPM and vice versa.

The rules and regulations under such a system tend to be quite specific and are in that sense rigid and inflexible. They are especially so when compared to prices in a market, which vary in response to supply and demand and guide the choices of firms and workers in mainstream economic theory. In this sense, the U.S. regulatory system limits market adjustment and promotes inefficiency, giving rise to a critique that informs President Donald Trump's recent campaign against "job-killing regulations" and their architects in the "administrative state" (Korte 2017; Steinzor 2017).

But this critique did not originate with Trump. On the contrary, it took hold in the late twentieth and early twenty-first centuries (Malkin 1995; Coglianese and Carrigan 2013, 4; see also, e.g., Heckman and Pagés-Serra 2000) and, if anything, intensified in the Barack Obama years, when "media stories with the phrase 'job killer' spiked dramatically" (Dreier and Martin 2012, 2) in light of business efforts to discredit labor, environmental, and consumer protections, and the embattled president therefore ordered all federal agencies to eliminate "excessive, inconsistent, and redundant" regulations in an effort to unshackle small firms in particular. "Small firms drive growth and create most new jobs in this country," Obama argued. "We need to make sure nothing stands in their way" (Obama 2011).

President Obama's comments speak to the breadth as well as the depth of laissez-faire attitudes, which are no longer the exclusive province of the political right, but they also speak to the anachronistic nature of the U.S. regulatory system. When the system was established in the mid-twentieth century, it regulated—and perhaps implicitly presupposed—a "Fordist" (Sabel 1982) economy with distinct institutional underpinnings.[2] Mass-production enterprises not only had the knowledge and resources they would need to comply with the various regulations but also had enormous plants and payrolls, and thus allowed the different agencies responsible for their enforcement to exploit economies of scale by covering hundreds—or even thousands—of workers with each trip to the field. The macroeconomic stability afforded by the Bretton Woods system of fixed exchange rates, on the one hand, and countercyclical spending, on the other, allowed both firms and their regulators to anticipate their personnel needs and recruit specialists—like industrial hygienists, safety engineers, mediators, and labor lawyers—with an eye toward the demand for their services. And public as well as private agents had reason to believe that the future would look very much like their present—that is, that the "affluent society"

(Galbraith 1958) would not only serve as a model for other countries but would itself remain affluent for many years to come.

Little did they know that their expectations would soon be overtaken by events. The mass-production enterprise would be threatened by the spatial and organizational decentralization of production to both the small firms highlighted in former president Obama's speech and the nominally independent contractors who populate the "gig economy" (Torpey and Hogan 2016; Heller 2017)—not to mention offshore subsidiaries and subcontractors (Cowie 1999; Paquette 2017). Macroeconomic stability would be undermined by the growth of military and social spending, commodity price shocks, and the corresponding breakdown of the "Bretton Woods system of embedded liberalism" (Sørensen 2011, 118; see also Kapstein 1996, 20–21). And affluence would thus give way to austerity in developed and developing countries alike.

The results are apparent in places like Bangladesh and China, where workers are literally dying for their jobs. But they are no less salient in New York City, where salon owners who mistreat their workers are all but invisible to inspectors who are responsible for discrete regulations—and nonetheless have too many responsibilities, too few resources, and neither the opportunity nor an incentive to coordinate their myriad (or at times haphazard) efforts (Nir 2015a; *New York Times* Editorial Board 2015). To make matters worse, moreover, employment practices at the lower end of the labor market have outpaced the regulatory process itself, exposing many workers to practices that are almost certainly abusive but not formally illegal (Lind 2015). When New York officials responded to the nail salon exposé, therefore, by taking action against the salon owners, they found that many—if by no means all—of their abuses were permitted by federal and state law.

The nail salon example thus speaks not only to the role of boundary conflict in the U.S. system in particular but also to a broader historical dilemma: We have lost our sense for the contours of an "industrial society" and their likely evolution over time. Symptomatic of this loss is a debate over the *substance* of labor standards that parallels and intersects the broader debate over the legitimacy of government regulation of the market economy more generally. Are manicurists "workers," for example, and thus entitled to a full range of legal protection, or "independent contractors" with more narrow rights and remedies, as stipulated by the salon owners?

Are the potentially harmful chemicals they use innocent until proven guilty, as in the United States, or guilty until proven innocent, as in the European Union? And where do undocumented immigrants fit into the contemporary legal landscape? Are they entitled to the workplace rights and remedies afforded their documented counterparts and citizens, as implied by the National Labor Relations Board, or ineligible for these protections, as decided by the Supreme Court in *Hoffman Plastics* (Garrick and Schrank 2011)?

The information revolution is by no means responsible for this dilemma, but it certainly plays a part. Consider, for example, telecommuting by workers armed with personal computers. Are PCs best portrayed as new innovations that allow workers—and female workers in particular—to reconcile the often conflicting demands of their jobs and families or the modern-day analogues of the sewing machines that allowed employers to shift capital costs to industrial homeworkers in the early twentieth century and, in so doing, fostered long hours and low wages among immigrant workers in particular? Are "workforce optimization" routines that tailor staffing levels to consumer demand patterns at retailers like Walmart (Van Riper 2007) creating part-time jobs or killing full-time ones? And what do we make of Uber and Lyft? Are their drivers willing participants in the "gig economy" (Singer 2014), enjoying the fruits of flexibility and self-determination, or "digital sharecroppers" (Tett 2015) who simply lack better options?

The broader decentralization of employment from large, vertically integrated firms to armies of contractors and subcontractors raises similar questions. Is the "fissuring" (Weil 2014) of the traditional employment relationship the straightforward product of new managerial techniques that drive firms to focus on their core competencies, or a means of evading regulations by pushing the most labor intensive aspects of the production process onto smaller firms that are less accessible to enforcement agencies? Are independent contractors free-spirited entrepreneurs with limitless potential or disguised proletarians working at de facto piece rates? Are the market vendors, scavengers, and petty producers found in the developing world more akin to Silicon Valley tycoons or to their undocumented housekeepers? And is the growth of informality more generally an unintended by-product of austerity, a deliberate product of "de facto deregulation" (Itzigsohn 2000; International Labour Office 2013), or subject to different interpretations in different places and times?

Similar questions can be asked about collective labor law. In the United States, for example, worker centers bring workers who lack collective bargaining agreements the information, training, and social and legal services they need to defend their rights. Are they a "second-best" (Bobo and Casillas Pabellón 2016, 260) alternative to traditional collective bargaining, as their advocates argue, or a backdoor effort to make an end run around the National Labor Relations Act, as their critics fear (Chamber of Commerce 2014)? In Germany, by way of contrast, works councils adapt national collective bargaining agreements to local conditions. Do they represent the "next generation" (Finkin and Kochan 2014) of industrial relations in the United States, or an anachronistic holdover that is losing support back home (Mayer and Schweisshelm 2000, 17; Streeck 2008, 40)? And most labor and employment law draws a distinction between unionized and nonunionized workers. But does the "union/non-union dichotomy" (Mironi 2010, 367) do justice to the diversity of organizations that offer workers "voice and representation" in the world today?

These debates are not confined to the realm of workplace regulation but are simultaneously taking place in multiple regulatory arenas. They were pervasive, for example, in the early twenty-first-century financial services industry, when officials like Greenspan argued that New Deal regulations had been rendered obsolete by new financial instruments—themselves made possible by the growth of information technology—and that what in retrospect turned out to have been a speculative bubble was an expression of the creativity and potential that the new instruments had unleashed. And they in many ways resemble the debate over tradable emissions permits, which are portrayed as a more efficient means of combating pollution, on the one hand, and a license to pollute, on the other.

Which perspective is right? We suspect that there is an element of truth in each of these portraits—that telecommuting facilitates both inclusion *and* exploitation; that outsourcing is conducive to both efficiency *and* evasion; that independent contractors come in a *variety* of shapes and sizes; that worker centers protect low-wage workers *and* threaten the traditional collective bargaining model, and that noncompliance is a product of ignorance—including not only ignorance of the law but ignorance of modern production techniques that would allow employers to compete and comply with the law at the same time—as well as opportunism. But the existing regulatory system is unable to distinguish between and among these categories, in part because the regulators themselves have tunnel vi-

sion, and the debate therefore speaks to the anachronistic nature of the specialized U.S. approach to workplace oversight.

The Franco-Latin model, which foregoes specialists for frontline enforcement agents with broad spans of control, offers a sharp contrast. While they arguably seemed outmoded a half century ago, in the halcyon days of mass production and macroeconomic stabilization, broad spans of control are triply well-suited to the "post-Fordist" (Piore 2003) era of decentralization and volatility. First, they allow frontline agents to address more violations to fewer workers with each trip to the field, thus substituting *economies of scope* for the *economies of scale* that prevailed in the previous era. If an inspector responds to a complaint about overtime violations in a small factory, for example, and notices unsafe working conditions when she arrives, she is able to save time by dealing with the latter and the former simultaneously. Second, they allow enforcement *agencies* to prioritize different violations at different points in the business cycle, and to thereby make their staffing decisions without fear of economic volatility or redundancy. They may decide to focus on safety violations in upturns, for instance, when firms are running at full capacity and workers are tired and accident-prone, and wage violations in downturns, when employers are trying to cut costs by squeezing their payrolls. And finally, they give the inspectors both the breadth of vision they need to see the full range of violations—both at the level of the enterprise and across the economy as a whole—and the discretion they need to adapt their judgments and methods accordingly. Often the inspectors do so, moreover, with the support of experts (e.g., engineers, lawyers, and accountants) who are employed by their agencies not as frontline inspectors but as expert reinforcements.

Can French and Latin inspectors really tailor their interventions to both the complexities of contemporary labor markets and the benefit of their participants? The answer is not entirely obvious, for their discretion and breadth of vision derive less from first principles than from the fact that they are "street-level bureaucrats" (Lipsky 1980) who administer the whole of the labor code, a body of rules and regulations that is so extensive and complex that they could not possibly review each of its provisions in every enterprise they visit and therefore have little choice but to pick and choose their goals when they arrive (Reid 1986). Their discretion is further enhanced, moreover, by the model's emphasis on compliance, which allows them to negotiate a plan that brings the employer into conformity with the law gradually in lieu of imposing "first instance sanctions" (Kelman 1981;

cf. Reid 1994). And they exercise at least some discretion over which enterprises they visit in the first place—at least within their jurisdictions.

In theory, the inspectors could use their discretion and breadth of vision to adjust fixed or uniform standards to the peculiarities of both individual enterprises and the competitive and technological environments in which they operate and, in so doing, give the regulatory system the capacity to moderate or curtail the excesses of the competitive market without imposing the rigidities bemoaned by the neoliberals. They might even disseminate the best practices they have observed from productive firms that are compliant to less productive scofflaws over time. And French and Latin workplace inspectors thus have the potential to reconcile compliance with competitiveness in the course of the regulatory effort. We call the resultant process "root-cause regulation."

What they need to pursue root-cause regulation, however, is not merely the flexibility but the capacity to evaluate and address business responses that have never previously been encountered. The argument in favor of the competitive market does not extend to adjustments of this kind; that is, adjustments that are subject to "Knightian uncertainty" (Knight 1921) rather than mere risk. Businesspeople may be good at choosing among known alternatives, but there is no particular reason to believe that they are good at making choices among alternatives that have never before been encountered, let alone that their individual choices will inevitably aggregate to superior outcomes for society as a whole. We shall argue, however, that Franco-Latin labor inspectors are at least potentially flexible in this second sense as well; in other words, that insofar as their broad jurisdictions give them insight into both the *enterprise* and the *economy* as a whole, they can discern the root-causes of violations and begin to propose more comprehensive solutions.

Whether they take advantage of their flexibility in practice, however, depends on whether and how their discretion is managed. American political and economic theories are both cynical in this regard. The former is allergic to regulation, in general, and disdainful of the possibility that similar cases will be treated differently in practice. And the latter assumes that individual agents will use their discretion to maximize their own welfare rather than the welfare of society as a whole. If they are not constrained by strict rules and sanctions, therefore, regulators will at best decide cases in accordance with their own values and preferences and at worst accept bribes from the companies they are supposed to be regulating in the first

place. To prevent these outcomes, the U.S. theorists argue, regulatory agents need to be constrained by a powerful bureaucracy that places strict limits on their discretion. The behavioral assumptions that underpin mainstream political economy thus have the ironic consequence of portraying bureaucratic rules as both a necessary counterweight to the market's excesses and an impossibility, given that bureaucrats powerful enough to impose such rules would simultaneously be powerful and self-interested enough to abuse them.

Other social sciences hold that motivation and behavior are produced (and reproduced) in group context, and thus they hold out more hope that bureaucratic discretion will be exercised responsibly in the absence of hierarchical control. Sociologists, for example, hold that members of social groups, in general, and professional or occupational groups, in particular, develop common codes by which to understand and evaluate their own behavior and that of others (Stinchcombe 1959b; Abbott 1988). Individuals adhere to these codes because in doing so they command the respect of their colleagues and reinforce their personal and professional identities. Translated into the language of economic theory, therefore, the respect of the group enters directly into the calculation of individual utility where it competes with, and under certain circumstances trumps, more personal and individualistic values.

Sociologists also address the origins of these codes and how they evolve over time and thus speak to how they might be managed. While professional codes and occupational practices cannot be controlled by bureaucratic fiat, for example, they are influenced by the recruitment, training, and socialization of the agents themselves, and these processes thus constitute policy instruments on a par with—and in addition to—the parameters of the enforcement process suggested by conventional economic theory.

Sociological accounts also speak to the ways in which knowledge and technology evolve through interactive discussion and debate, and thus underscore the importance of "public spaces" in which such discussions and debates can flourish (Lester and Piore 2004). In so doing, moreover, they offer a potential solution to what we have already described as the "historical dilemma," that is, the dilemma posed by a fading sense of what an efficient economic order looks like, how it evolves over time, how it intersects with the regulatory process, and what an alternative economic and regulatory order might look like. By taking their historical roots seriously, the sociological approach helps regulators distinguish those developments

in work organization that reflect genuine innovation from those that are superficially innovative but actually little more than a revival and camouflaging of past abuses. Indeed, the sociological approach suggests regulatory institutions and structures in which this problem—that is, the ambiguity of work organization—is explicitly recognized and can thus be investigated and addressed in a systematic fashion. In this way, moreover, it points toward innovations and reforms that defend workers from the depredations of the market economy without compromising the flexibility and dynamism of the market mechanism.

In short, we argue that the specialized approach to workplace regulation made sense in the Fordist era, when it originally took hold in the United States, but has since been overtaken by events. When large-scale plants recruited armies of unskilled workers to pursue narrow tasks in a stable economic environment, that is, they could afford to play host to multiple regulators who could make their plans and allocate their resources accordingly. The system, therefore, worked—at least for the large-scale manufacturing plants that dominated the U.S. landscape. With the decentralization of production to small firms, subcontractors, and the self-employed, however, the costs of deploying—not to mention playing host to—dedicated specialists from multiple agencies grew to be prohibitive. Today's regulatory agencies would therefore be better off employing generalists who could reap economies of scope by covering more violations to a smaller number of workers with each trip to the field; focus on different violations at different points in the business cycle; and place a smaller burden on small and midsize employers, who lack the resources needed to entertain multiple inspectors per year.

Table 1.1 offers a diagrammatic representation of the argument, noting that regulatory specialization that was functional in the Fordist era is dysfunctional under post-Fordism, but it simultaneously sets the stage for perhaps the greatest advantage of the Franco-Latin model: the street-level bureaucrat's ability to reconcile compliance with competitiveness by pursuing root-cause regulation. This potential is foregone in the U.S. system, where specialists lack both the broad jurisdictions and the discretionary authority they would need to understand and address the underpinnings of abuse and exploitation, and are thus left with little choice but to address symptoms rather than causes. But it is possible in the Franco-Latin system, where inspectors with broad spans of control and experience in both compliant and noncompliant enterprises have both a more holistic perspective

Table 1.1 Economic paradigms and regulatory models

	Economic Paradigm	
Regulatory Model	*Fordist*	*Post-Fordist*
Specialist	Functional: economies of scale achieved by dedicated inspectors who address a small number of offenses to many workers on each visit to relatively large plants in a stable macro environment	Dysfunctional: high-cost specialists forego both the scale economies found in mass-production economies and the scope economies available to generalists
Generalist	Dysfunctional: ill-prepared generalists have neither the knowledge nor the time to cover larger, sophisticated firms and factories that employ compliance specialists of their own	Functional: economies of scope achieved by generalist inspectors who address many different offenses to a small number of workers on each visit and tailor their efforts to the macro-economic and organizational context

and the potential to put it to use on behalf of workers and employers simultaneously. Whether they take advantage of this potential will depend on their recruitment, training, and socialization, not to mention their day-to-day management, but if they do so they can go a long way toward protecting workers without putting their jobs at risk.

This is a functionalist argument to be sure. It basically posits an elective affinity between task specialization and Fordism and task integration and post-Fordism among regulators in the public sector as well as producers in the private sector, and for the most part that is what we should expect to see in the real world. The contemporary United States is thus an outlier on our account, and insofar as there are nascent steps toward collaboration—if not necessarily integration—between and across federal, state, and local agencies, they are consistent with our predictions. If these steps continue, moreover, they should bolster both the plausibility of our argument and the prospects for the American worker.

We develop these arguments and explore these themes in seven chapters. Chapter 2 explores the origins and consequences of the specialized model of workplace inspection found in the United States. It treats specialization as a product of government efforts to keep pace with private enterprise in the mid-twentieth century, when large industrial enterprises

began to entrust their regulatory obligations to their own specialists, including lawyers, doctors, accountants, and engineers, and underscores three all-but-necessary conditions of the public sector's ability to respond in kind: mass-production enterprises that allowed regulatory specialists to exploit economies of scale in the field; macroeconomic stabilization that allowed their supervisors to anticipate the demand for their services and plan accordingly; and industrial unions that allowed workers to augment the government's efforts by defending their own rights at work. Chapter 3 reconsiders the French approach to workplace inspection in light of the U.S. experience in the twentieth century. While the French flirted with specialization in the postwar era, when they came late (and somewhat laconically) to both mass production and macroeconomic stabilization, they ultimately maintained their generalist posture and are therefore able to reap economies of scope by covering more violations on each trip to the field than their American counterparts, to adjust their priorities over the course of the business cycle, and to assume a holistic approach to workplace regulation today. But the French system is also beset by managerial challenges, and Chapter 4 therefore turns to another practitioner of the holistic approach, Spain, to see whether France's problems are products of the model or the milieu. After determining that they are more likely products of the French milieu than the Franco-Latin model, we invoke comparative data from across contemporary Europe to establish an elective affinity between large-scale enterprise and regulatory specialization and smaller scale enterprise and task integration, and we subsequently turn to Latin America, in Chapter 5, to see whether the latter model travels to the developing world, where "small firms and self-employment are the dominant forms of business enterprise—even in the manufacturing sector" (Gollin 2008, 219). We find that the root-cause regulation made possible by task integration is particularly well suited to developing country labor markets and works best when inspectors are professional civil servants and their supervisors learn to manage their discretion. Chapter 6 therefore asks how to manage inspector discretion and draws lessons from the literature on street-level bureaucracies, the professions, and innovation. We ultimately conclude that policy makers have more tools at their disposal than they (or the literature) recognize and that by invoking their various tools they could empower their inspectors in a more systematic and productive fashion. Chapter 7 asks where the newly empowered inspectors will find the knowledge they need to take full advantage of root-cause regulation,

concluding that much of the requisite knowledge lies tacit in their organizations already and therefore needs to be illuminated and, to the extent possible, systematized by supervisors. Chapter 8 concludes by discussing the prospects for systematization and codification—not only in labor market regulation but in the public sector more generally—in developed and developing countries alike in the twenty-first century.

2

THE UNITED STATES

IMAGINE YOU ARE A WORKER WITH A GRIEVANCE. Where do you go for relief? In the United States, the answer is "It depends."

It depends in part on the nature of the grievance. Which law has been violated? Wages and hours? Safety and health? Collective bargaining? But it also depends on the kind of work you do. Are you a miner, a farmworker, a clerk, or a clerical worker? And due to the vagaries of federalism, it also depends on *where* you work. So, for example, if you believe your employer is violating safety regulations, you would turn to the Occupational Safety and Health Administration (OSHA), which oversees safety and health in the workplace, unless you're employed in a state like California, which runs a state plan, or you're a miner, in which case you'd turn not to OSHA but to MSHA, the Mine Safety and Health Administration. Are you working overtime hours but not seeing any overtime pay? Issues related to wages and hours are overseen by a federal agency, the Wage and Hour Division of the Department of Labor, except in states like Michigan, where state agencies also have jurisdiction, or New Mexico, where you would turn to the euphemistically named Department of Workforce Solutions—which is currently facing a lawsuit for its failure to provide any solutions to the state's epidemic of wage violations.[1] Have you been subject to employer harassment while trying to organize a union at your workplace? Collective bargaining is overseen by the National Labor Relations Board in the private sector—where collective bargaining is almost nonexistent these days—but

by state authorities in the public sector, where it is now under siege. Have you faced discrimination because of race, gender, or—in some places—sexual orientation? The Equal Employment Opportunity Commission (EEOC) fights discrimination, in general, but federal contractors come in for additional oversight by the Office of Federal Contract Compliance Programs, and so on.

The United States divides responsibility for labor and employment law enforcement across dozens of different agencies employing armies of different specialists (lawyers, mediators, accountants, industrial hygienists, and so on) at multiple levels of government. And while federalism makes the United States an extreme case, task specialization of this type is actually fairly common in much of the world. The United States thus offers an outstanding example of a functionally specialized approach to workplace inspection. The complexity entailed by this approach is striking—it's hard to imagine a workplace bulletin board large enough to contain the poster that would capture all its variations. But byzantine though it may now appear, we argue that there was a historical logic to the emergence of the functionally specialized approach. This chapter describes the origins, evolution, and institutional underpinnings of the U.S. model in the middle of the twentieth century and goes on to discuss the disappearance of those underpinnings at century's end. We focus on three institutions in particular: (1) large-scale, or Fordist, enterprises, which allowed the different specialists to maximize the return on the state's investment in their recruitment, training, and deployment by addressing the needs of thousands of individual workers with each trip to the field; (2) unions, which allowed organized labor to serve as a regulatory "force multiplier" in the halcyon days of collective bargaining; and (3) macroeconomic stabilization, which allowed the authorities to predict and maintain a stable level of specialized staff. After all, as Duncan Watts has suggested, the gains from specialization "derive from the frequent repetition of a limited range of tasks, and repetition is only possible if the tasks themselves don't change" (2003, 267). When macroeconomic stabilization insulated Fordist firms from extreme volatility, therefore, specialized agencies made sense. They could anticipate the demand for industrial hygienists, lawyers, accountants, and the like with some degree of certainty; know that they would interact with similarly trained specialists in corporate divisions of health and safety, human resources, and industrial relations when they got to the field; receive support from unions and their members along the way; and thereby

attend to the needs of many—perhaps most—American workers by repeating the same tasks on a regular basis.

When Fordism gave way to neoliberalism and globalization, however, the foundations of the U.S. model began to evaporate, for the authorities had trouble matching the relatively fixed supply of specialists with the increasingly volatile demand for their services. They found that small firms and subcontractors had more violations and fewer workers—and were thus more defiant and less rewarding targets—than their Fordist predecessors, and they received less and less support from unions, which were themselves trapped in what Ruth Milkman and Kim Voss have described as a "vicious circle of demoralization and decline" (2004, 4) that continues to this day. The unfortunate result is a mismatch between a twenty-first century economy and a twentieth-century regulatory system, with all that implies for the health, well-being, and living standards of American workers.

We have divided the chapter into four principal sections. The first section describes the division of regulatory labor in the first half of the twentieth century and pays particular attention to the birth of "regulatory institutions that meshed with corporate forms" (Dorf and Sabel 1998, 242) not only in the New Deal era but in the Progressive prelude to the New Deal as well. The second section discusses standard accounts that equate specialization with modernity and finds them unable to explain the *reintegration* of formerly specialized inspectorates in a number of unambiguously modern countries. "These functional mergers have as their leitmotif not only the drive for greater efficiency (i.e., rationalization)," according to Wolfgang von Richthofen of the International Labour Organization, "but rather that of greater effectiveness: mainly to establish, develop and strengthen the system's capacity for prevention" (2002, 42). The third section develops an alternative account by drawing a distinction between the reasons for specialization, including the growing importance of expertise in the mass production economy, and the requisites for specialization's success, including large plants that allowed specialists to exploit economies of scale when they entered the field, powerful unions that offered specialists an ally and backstop in their campaign for compliance, and macroeconomic stabilization that helped smooth the demand for specialists over time. And the final section discusses the breakup of the large, vertically integrated firm; the breakdown of macroeconomic stabilization; the col-

lapse of collective bargaining; and their collective consequences for workplace inspection, and worker protection, in the twenty-first century.

The Division of Regulatory Labor in the United States: Process and Outcome

American labor inspection was not born specialized. On the contrary, the factory inspectorates established at the state level in the late nineteenth century had a broad range of ill-defined responsibility and a narrow body of professional expertise at their disposal. When Florence Kelley of Hull House was named chief factory inspector for the state of Illinois, for example, her brief included child labor, occupational safety and health, industrial home work, and laws designed to protect women, in particular, from real and imagined dangers at work (Harmon 1981, 166)—tasks that today might fall under the purview of the Department of Labor, OSHA, and the EEOC at the very least. Nor was Kelley atypical. Her contemporaries in nearby and northeastern states like Indiana, Ohio, New York, and Massachusetts had similarly broad responsibilities, motivated in part by a shared sense that the "demoralization, disorganization, and degradation" of the sweatshop were mere symptoms—and that the "sweating system" itself constituted the underlying disease that must be attacked in its organic entirety (Kelley 1895, 38–39).[2]

By the dawn of the First World War, however, "lay investigators" (Sellers 1997, 40) like Kelley had been eclipsed by specialists like Dr. George Moses Price, who had worked in a garment factory as a young man, earned a medical degree as an adult, made pioneering contributions to the field of industrial and sanitary inspection, and had been asked to "make an investigation of the administration of labor and factory inspection in certain European countries in the summer of 1913, after nearly two years of activity as director of investigation of the New York Factory Investigating Commission" (Price 1914a, 11; see also Bender 2004; Greenwald 2005) in the aftermath of the Triangle fire. On his return from Austria, France, Germany, and the United Kingdom, among other countries, Price acknowledged the "superiority of European inspection" (Price 1914a, 25) in a report to the Department of Labor, drawing a particularly unflattering contrast between the professionals he had observed overseas and "the rank and file of our

own inspectors" (Price 1914a, 25; see also Price 1914b, 531–532). But he nonetheless identified progress in the United States, including the growth of specialization in states like New York, Pennsylvania, and Illinois. "In some of our best organized factory-inspection departments," Price argued, "we find a form of organization and a functional specialization that is certainly not behind the best examples of European inspection departments" (Price 1914a, 24), including the United Kingdom in particular (Prince 1914a, 13). Examples included the appointment of "special inspectors" (Price 1914b, 527) for fire, safety, and ventilation in New York and the simultaneous recruitment of engineers, chemists, and physicians by the state's Division of Hygiene.

Nor was Price alone. When his Factory Investigating Commission asked a sample of prominent New Yorkers whether they would assign responsibility for all manufacturing establishments to a single "Bureau of Inspection," for example, they responded "no" by a wide margin, and Kelley—who had relocated to New York City more than a decade earlier—was among the most vocal opponents. "The State Department of Labor should administer exclusively those provisions which deal with labor, that is, provisions related to hours, children's working papers, machine guards, etc.," she explained (1912, 612). "Sanitary inspection of all kinds in all buildings is properly the function of the local health authorities and should be made mandatory."

Other prominent progressives shared Kelley's support for adding agencies and limiting their mandates, and sociologists Jeffrey Haydu and Caroline Lee have identified a broader "link between reform-minded urban elites and a bureaucratic ideal in both politics and the workplace" (2004, 193) during the Progressive Era.[3] While they take pains to "avoid any strong claims about causal sequencing" (193), their content analysis of the business press speaks to the importance of cultural and discursive factors. "Most likely," they argue, "both managerial and political discourse belong to a common ideological movement" mediated by "social networks through which ideological clichés could travel between political and business circles" (93). Nor are Haydu and Lee alone. On the contrary, historian Robert Wiebe portrayed the growth of the Progressive movement as a "triumph" for a new middle class with a "bureaucratic mentality" (1966, viii) in the 1960s, and the history of U.S. factory inspection is broadly consistent with this interpretation.

The point is neither to exaggerate the degree of consensus nor to imply that specialization was inevitable. In fact, no less a progressive icon than

institutional economist John R. Commons called the superiority of the specialists into question (Commons 1913, 443–444), derided the growth of different "bureaus and departments, all dealing with labor law by different methods" (Commons and Andrews 1920, 470), and maintained that "administrative efficiency and enforcement effectiveness" would be enhanced by "housing responsibility for labor law in one centralized department or agency, such as an industrial commission" (B. Kaufman 2003, 23; see also, e.g., Andrews 1912). But his appeals fell on deaf ears, and the division of regulatory labor therefore expanded not only during the Progressive Era, when the scope of worker protection grew to include "specific legislation and rules" (Price 1916, 66; see also Price 1919) covering safety and health in different industries and occupations, but throughout the New Deal, when congressional Democrats established a dedicated enforcement agency for each new labor law they adopted (Kaufman 2003, 23; Chasse 2004, 56). For example, the National Labor Relations Board (NLRB) recruited a corps of field examiners to investigate charges of unfair labor practices under the Wagner Act (Gellhorn and Linfield 1939, 344). The Department of Labor (DOL) hired dozens of inspectors to enforce the wage and hour provisions of the Fair Labor Standards Act (Richter 1943). And the Children's Bureau at the DOL recruited a small proprietary staff "to inspect establishments exempt from the wage and hour provisions of the Act, to investigate complaints of child-labor violations in all types of establishments, and to make inspection in industries where it is believed minors are likely to be employed" (Beyer 1941, 83). The pattern of proliferation would intensify during the second great wave of labor lawmaking in the 1960s and early 1970s (Morris 1972; General Accounting Office 1994; Weil 1997), and by the early twenty-first century, therefore, the United States would take the specialization of labor inspection to an unparalleled extreme, assigning thousands of individual investigators to dozens of different agencies at multiple levels of government. In addition to agencies that multiplied under the auspices of the Department of Labor, including OSHA and MSHA, and independent agencies that have direct workplace responsibilities, like the EEOC, the United States assigns distinct tasks to different agencies with specialized expertise, including the Office of Federal Contract Compliance Programs (OFCCP), which combats employment discrimination among federal contractors (International Society for Labour and Social Security Law 2011; Schrank 2013), Immigration and Customs Enforcement, which oversees employment eligibility on behalf of the Department of

Homeland Security (Crouse 2009, 597–598), the Federal Mediation and Conciliation Service, which endeavors to "solve what might otherwise be irreconcilable conflicts" (Federal Mediation and Conciliation Service 2011, 2) between workers and managers, and a host of state and local authorities that have responsibility for analogous activities in their own jurisdictions (Schiller and DeCarlo 2010).

The Conventional Wisdom: Functional Specialization as a Manifestation of Modernity

It is tempting to join in chorus with those Progressive Era voices who viewed specialization as self-evidently forward looking, both a sign of modernity and a necessity for modernization. After all, the linkage of specialization and modernization has a powerful scholarly pedigree, beginning with Max Weber, who portrayed "functional specialization" (Gerth and Mills 1946, 229) as a rational—and in some sense inevitable—feature of modern bureaucracy. And U.S. regulatory history is at least superficially consistent with his claims: Price welcomed the "functional specialization" (1914a, 24; 1914b, 527) of state-level factory inspectors in the early twentieth century. Cass Sunstein, who left Harvard Law School to run the White House Office of Information and Regulatory Affairs under President Obama, found that "the complicated character of modern regulation vastly increased the need for technical expertise and specialization" (1987, 440) in the New Deal era. J. Ronald Fox, who oversaw procurement and contracting for the U.S. Army before joining the faculty at Harvard Business School, drew a distinction between the "functional specialists" recruited by agencies like OSHA, MSHA, and the EEOC and "their counterparts in the old-line regulatory agencies" (1981, 98) in the Reagan years. And a growing body of literature portrays specialization—and the empowerment of "single-purpose" regulatory agencies in particular—as part of a "new regulatory orthodoxy" (Lægreid, Roness, and Rubecksen 2008, 20) with distinctly Weberian roots (Gregory 2007, 228–229).

But the rationality—let alone superiority—of functional specialization is by no means obvious. In recent years the Organisation for Economic Co-operation and Development has decried the assumption "that each and every rule issued by the state needs to have a specific enforcement unit following up on compliance by businesses" (2013, 7), and instead lays out a

number of alternatives, including coordination and consolidation designed to "ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness" (14). Inspectors can specialize not only by function (wages and hours versus safety and health), for example, but also by industry (agriculture versus manufacturing), sector (small versus large firms), region, or territory (von Richthofen 2002). So, for example, France has until recently assigned *inspecteurs* to large firms and *contrôleurs* to small firms but has given members of both groups responsibility for the full range of labor and employment law in their individual jurisdictions (EPSU 2012, 38–39).

In fact, the tide of history appears to be turning against the functional specialization of labor inspectors and toward their reintegration. "If there was one dominant trend in labour inspection systems development in the 1990s," explains von Richthofen, "it was the integration, accumulation or concentration of functions under one single state labour inspection service" (2002, 42). Examples would include the Health and Safety Executive's assumption of responsibility for working hours in the United Kingdom, the integration of health and safety inspection with social security administration in Australia and New Zealand, the creation of new inspectorates "to take over functional responsibilities of former trade union inspectorates" (von Richthofen 2002, 41–42) in transition countries like Hungary, and the adoption of a "1 inspector to 1 enterprise" (P. Weber 2005, 2) policy in Luxembourg.

Efforts to "enlarge the competencies of labor inspectorates" (Vega 2009, 3) in an era of crisis and uncertainty are hard to reconcile with an account that treats functional specialization as the epitome of modernity, and we therefore need an alternative that can explain both the nature and the degree of specialization and their development—and apparent retreat—over time and space; that is, an alternative that treats specialization less as a concomitant of modernity itself than as the product of a particular place and time. We begin to provide the necessary alternative by tracing the consolidation of the U.S. approach back to the New Deal era, when public officials built a regulatory system that presupposed *large-scale enterprise*, a *unionized labor force*, and *macroeconomic stability*, and we note that the functional specialization thereby engendered had costs as well as benefits. These costs included, first, the additional fixed costs (setup and overhead) entailed by creating and staffing multiple inspectorates with dedicated personnel and equipment; second, the additional variable (transportation and

transaction) costs produced by sending multiple inspectors to the same enterprise in a disjointed and uncoordinated fashion; and, third, the intangible—but no less real—costs of managing distinct agencies that might work at cross purposes from each other or fall victim to "a kind of institutional self-oblivion" (Dorf and Sabel 1998, 295) that occurs when specialists begin to substitute routines for reflection. "When the routines become entrenched as the inevitabilities of common sense," explain Michael Dorf and Charles Sabel, "the organization is the prisoner of its history, choosing within the limits imposed by its forgotten initial choices" (1998, 296).

An Alternative Account: Functional Specialization as the Fruit of Fordism

Why did the *nationalization* of U.S. labor law accelerate the *specialization* of the country's inspection regime? Experts have long portrayed the New Deal nationalization of labor law as a product—and necessary concomitant—of Fordist mass production. Laws like the Fair Labor Standards Act and the National Labor Relations Act gave workers the purchasing power they would need to consume the fruits of their own labor, experts argued, and in so doing linked mass production to mass consumption in the immediate postwar era (see, e.g., Piore and Sabel 1984; Barenberg 1994; Block 2011). But a careful review of the historical record reveals that the growth of mass production influenced not only the adoption but the character of U.S. labor laws—and their enforcement—by rendering regulatory specialization more advantageous to the public sector and more acceptable to the private sector in the first half of the twentieth century.

The advantages to regulatory specialization are at least in part products of the complexity of mass production. While the small firms that employed the bulk of the U.S. labor force until the First World War (Blackford 1991, 5) made use of relatively simple production and accounting techniques, and therefore placed few technical demands on the early factory inspectors, their multidivisional successors deployed the latest technologies not only on the shop floor but also in the corporate office and therefore proved all but inscrutable to inspectors who lacked specialized training. Progressive Era reformers therefore responded to the growing sophistication of production and management by abandoning the broad understanding of workplace hazards that had given the early factory inspectors responsi-

bility for everything from wages and hours to occupational safety and health in favor of a narrower approach that would provide "a firm scientific basis for negotiation with industry, whose experience in and emphasis on safety measures provided a more reductionist, measurable model" (Hepler 2000, 35).

The campaign against occupational illness illustrates the shift prompted by new scientific and technological challenges. As Christopher Sellers has argued, industrial hygiene would become the first professional and technical field "to develop a more exclusively biological strategy towards environmental hazards" (1994, 73) in the United States and would eventually set the stage for the development of OSHA in the 1970s. The field's emergence, he suggests, may be traced in part to the tension that emerged between factory inspectors, who addressed "the most egregious physical hazards" (74) to the exclusion of more diffuse threats, and physicians and engineers, who favored a "toxicological" approach to worker safety and health in the early twentieth century. "Originally," he continues, "they devised this toxicological approach to discern and prevent industrial disease with a rigor and effectiveness comparable to that of bacteriology. Today, this same set of concepts and strategies undergirds the ways we understand and control air and water pollution as well as occupational health; it has become fundamental to the efforts of both the Occupational Safety and Health Administration and the Environmental Protection Agency" (56).[4] The point is not simply that experts like physicians and engineers had good reason to stake their claims to distinct jurisdictions in the Fordist era, however, but that once they had done so they had an incentive to reproduce specialization both by defending their turf and setting a precedent for similar claims-making among other professionals in an inherently interdependent regulatory system (Abbott 1988).

The results would become apparent in the late 1930s, when the Department of Labor would establish the Wage and Hour Division to enforce the Fair Labor Standards Act. While industrial hygienists underscored the "scientific" nature of their trade and thereby translated expert knowledge into regulatory power (Sellers 1997), their counterparts at "wage-hour" (Donahue 1999, 49) achieved compliance by invoking their *legal* authority and *judicial* precedent. "Every federal agent," explained Peter Blau in a classic study of an unnamed government agency that was almost certainly the Wage and Hour Division (Wilson 1989, 166), "possessed a manual containing over a thousand pages of regulations, to which he constantly referred.

Often this manual did not suffice, and agents consulted the volumes of administrative explications and court opinions, which occupied two library shelves" in the district office (Blau 1955, 123).[5] By defining safety and health as scientific and technical issues, therefore, industrial hygienists left wage and hour violations to *legal* experts who would eventually be only too happy to affirm—and in so doing reproduce—their preferred division of labor.[6]

Industrial and labor relations provide a final example. While mediation and conciliation frequently fell to factory inspectors in the late nineteenth century (see, e.g., Ames 1899, 63)—and continue to fall to their descendants in France, Spain, and much of Latin America—they were monopolized by professional arbitrators in the mid-twentieth-century United States, when experts declared that their execution would demand "not only familiarity with the adjudicative process but seasoned exposure to that process in some meaningful manner" (Stockman 1967, 714) and established degree programs and specialized agencies dedicated to their pursuit. By the early 1980s, therefore, Deborah Kolb could report that "the full-time practice of mediation" in the United States was largely the province of "the Federal Mediation and Conciliation Service (FMCS) and various state mediation and conciliation agencies" (1981, 3).

A public-private spiral of specialization has thus put paid to regulatory holism over time. Government enforcement agencies began to employ experts in an effort to come to grips with the complexities of the mass-production economy in the early twentieth century (Andrews 1911, 365; Mulready 1918, 171; International Labour Review 1923, 378). Unions gained a vested interest in the system and began to employ experts of their own, including lawyers and industrial hygienists who had good reasons—both personal and professional—to defend their turf (Wolfson 1950; Segal 1958; Berzon 2003; Senn 2011). And employers began to *demand* experts and disdain generalists in due course. "No employer has respect for a factory inspector if he does not know as much as he does," explained Price in 1922 (94)—a challenge in a complex, technologically sophisticated workplace that made expertise on the part of regulators compulsory. And policy makers therefore intensified their efforts to divide regulatory responsibility and demand technical expertise—including expertise *developed* in the business world (Gellhorn and Linfield 1939, 344)—in an effort to earn the respect of their private-sector interlocutors in the middle of the twentieth century.

In short, the mass-production economy engendered no less specialization in the regulatory than in the productive sphere, and by the late twentieth century the generalists favored by Commons "as a matter of economy to the state and convenience to employers" (1913, 442) had been replaced by specialists with narrow jurisdictions and training. While experts like Price portrayed the growth of specialization as a product of the private sector's demand for inspectors with specific skills, and thereby filled in one-half of the historical puzzle, they overlooked an organizational variable that was no less important: the growing power and prevalence of large firms (and their unions) in the mass-production era. After all, the division of regulatory labor engendered by the growth of dedicated enforcement agencies imposed a particularly large burden on small firms with limited human and financial resources. Proprietary employers therefore *opposed* specialization. Wage and Hour Administrator Philip Fleming described the roots of the problem in the context of the administration of employment standards in 1941.

> To the average business man any inspector is a 'government man' and it is difficult for him to understand the overlapping of state and Federal jurisdictions and functions. Every time an inspector comes in to examine payrolls or time records, regardless of the purpose for which he is examining them, the employer chalks up the fact in his mind that the Government has been in. And if one inspector follows closely upon another, regardless of the fact that he is looking for something else, the employer assumes the government is after him again. He assumes this to be duplication and feels that labor laws are poorly administered. (quoted in A. Davis 1941, 23)

In other words, the owners of smaller firms who, in effect, perform multiple functions have a more integrated idea of their operations and thus fail to recognize either that different regulations pertain to distinct domains of activity or that different inspectors are looking at different things. They perceive multiple visits as duplication of effort, pure and simple, and feel that the "government" is simply harassing them—if not wasteful and corrupt.

The multidivisional enterprises that dominated the mass-production economy were run not by their owners, however, but by professional managers who had both the skill and the resources needed to interact with

multiple regulatory agencies and would eventually adopt structures and procedures dedicated to doing so. Manufacturers tried to discourage regulators, lawsuits, and litigators by establishing their own medical departments in the early twentieth century (Sellers 1994; Hepler 2000). They responded to the adoption of regulations like the Fair Labor Standards Act by introducing new accounting and personnel procedures in the New Deal era (Jacoby 1984, 53; Baron, Dobbin, and Jennings 1986, 371). And they adapted to the "employment rights revolution of the early 1970s" by establishing "entire new departments" dedicated to the protection of equal opportunity, safety and health, and employee benefits (Dobbin and Sutton 1998, 442; see also Osterman 1982; Piore and Safford 2006).

The point, therefore, is not to deny the myriad relationships between personnel managers and the regulatory officials with whom they interact on a daily basis but to reconsider their foundations. While Thomas Kochan and Peter Cappelli identified a "symbiotic relationship" (Kochan and Cappelli 1984, 136) between managers and regulatory officials in the early 1980s, and thereby underscored the growing specialization of the personnel function in U.S. firms, they portrayed the public sector as the driver, and thereby ignored the fact that U.S. regulators had themselves adopted "strategies that resembled business's increasingly specialized production methods" (Hepler 2000, 19) decades earlier—and, in so doing, ignited a spiral of regulatory specialization that persists to the present day.

But the fact that specialists are desirable need not imply that they are practical or cost effective, and we would therefore do well to distinguish the *reasons* for specialization from the *requisites*, or underpinnings, of specialization. Why did the division of regulatory labor not only grow but succeed in protecting workers from exploitation and abuse in the mid-twentieth century? Why was specialization accompanied by the compression, rather than the expansion, of the wage distribution? And what are the implications for the reversal of fortune that has occurred more recently, as both inequality and wage-theft intensify (Bernhardt 2012; Kochan and Riordan 2016)? While division and specialization were spurred by the growing demand for expert knowledge, we argue, the three features of the twentieth-century political economy that supported them—large plants, powerful unions, and macroeconomic stabilization—have all but vanished.

Large-scale enterprise. Labor inspectorates spend almost all of their money before their personnel reach the front doors of the enterprises they are inspecting. By that point, they have built or rented buildings, pur-

chased cars, recruited personnel, and paid their salaries. When responsibility for labor law enforcement is divided across multiple agencies, moreover, these costs are multiplied as a matter of course. The question, therefore, is how to maximize the state's return on the high cost of "getting the inspector to the front door" (von Richthofen 2002, 102) of the enterprise in the first place.

When factory inspectors had broad spans of control in the era of proprietary capitalism, they could do so by investigating a relatively large number of offenses to a relatively small number of workers with each trip to the field, in effect exploiting economies of scope. When specialization took hold in the era of Fordism, however, they would investigate a smaller number of offenses to a larger number of workers with each trip to the field—in effect substituting the economies of scale made possible by the growth of Fordist enterprise for the economies of scope pursued by their predecessors. Perhaps unsurprisingly, this was precisely the period in which the U.S. income distribution experienced a "Great Compression," induced in part by the very labor and employment laws the inspectors were sworn to uphold—including wage controls that limited executive compensation and collective bargaining laws that protected unions (Krugman 2007, 137; Piketty and Saez 2003, 29–31). But the breakdown of mass production has trapped today's inspectors in a double bind. While their targets have multiplied and divided over time (see, e.g., Weil 2014), leaving them unable to exploit economies of scale, their jurisdictions have remained narrow, leaving them unable to exploit economics of scope.

Consider, for example, Kim Bobo's data on the Wage and Hour Division (WHD) of the Department of Labor. She estimates that in 1941 the division's 1,769 investigators had responsibility for 15.5 million workers distributed across 360,000 locations. By 2011, however, WHD employed a mere 1,000 investigators and had responsibility for approximately 130 million workers in 7 million locations, in part due to the passage of new laws that cover more workers and in part due to the organizational and spatial decentralization of employment itself (Bobo 2008, 113–119). In other words, the number of workers per covered establishment had fallen from more than forty to less than twenty, on average, but the number of investigators responsible for protecting their rights and interests had been cut by 40 percent—perhaps due to the growing presence and influence of small employers who are positively allergic to regulation. Not surprisingly, Bobo also concludes that the problem of wage theft has reached "epidemic"

proportions and that "millions of workers are having billions of dollars of wages stolen each and every year" (xii). She gives the example of a food service worker in Houston who was paid "well below the state minimum wage" but was afraid to file a formal complaint "for fear of losing her job" (34)—and we heard an almost identical story from an immigrant waitress in New Mexico more or less simultaneously (Schrank and Garrick 2013, 4). Given that Wage and Hour investigators have until recently targeted the vast majority of their inspections in response to complaints, and seem likely to move back in that direction in the years ahead (Greenhouse 2017), the costs of these fears are steep. Employers who cheat their workers are simply unlikely to be investigated by the Department of Labor.

Even in the New Deal era, however, the probability that a given employer would be investigated in a given year was low. For instance, Bobo found that Wage and Hour investigators visited approximately 12 percent of the enterprises in their jurisdiction in 1941 (115)—definitely better than their descendants but unlikely to account for all of the difference in compliance outcomes between the two time periods, especially given the short-term demands for profitability and the fact that most new businesses would go bankrupt before their first inspection.

Why, then, did so many employers comply with New Deal labor legislation? Part of the answer lies in the fact that the rational actor model underpinning the U.S. approach is at best incomplete. Not all employers are coldly calculating, after all, and at least some of those who are coldly calculating comply with labor and employment laws for reasons that have nothing to do with deterrence—for example, by paying decent wages they recruit more productive workers and combat costly turnover (Yellen 1984). But another key factor was the growth of union organization and collective bargaining in the mid-twentieth century, when approximately one-third of the private-sector labor force was covered by union contracts and not only the inspectors but the workers themselves began to participate in the enforcement process.

Mass industrial unionism. Mass industrial unionism, like the federal regulation of the workplace, did not emerge until the 1930s, and ultimately it constituted both cause and consequence of the U.S. regulatory model. Before the Great Depression, after all, U.S. employers were extremely hostile to worker organization, and the country as a whole was characterized by low union density. Collective bargaining was atypical, to say the least, and the craft-based unions that did emerge and survive in activities like

carpentry and printing were for the most part populated by skilled workers who not only understood their businesses and expected to open shops of their own one day, but were as likely to think of themselves as independent businessmen, or entrepreneurs in embryo, as dependent workers in the modern sense of the term. Unions themselves were decentralized, moreover, and the contracts they negotiated were loosely interpreted and freely tailored to the specific contexts in which they were applied.

In the early twentieth century, therefore, union control in the United States had a number of unexpected parallels with the Franco-Latin model of workplace regulation. The business expertise of the craft workforce and the flexible interpretation of contract terms lent themselves to the identification and rectification of the root causes of workplace problems. This approach survived in the postwar period in what were essentially enclaves of traditional industry characterized by large numbers of small firms. The Amalgamated Clothing and Textile Workers Union maintained an industrial engineering department that helped employers redesign their shops to facilitate compliance with union contracts, for example. The Teamsters made loans to trucking firms for similar adjustments.[7] And to this day, the construction unions negotiate side agreements to adapt their contracts to the particularities of large jobs.

When the craft-based model gave way to mass industrial unionism in the 1930s, moreover, many of the newly formed unions experimented with similar approaches by monitoring business practices and taking an active role in personnel decisions. But their efforts were ultimately derailed during the Second World War, when a very different model of industrial and labor relations took hold under the auspices of the War Labor Board. Wartime conditions not only lent themselves to long runs of standardized products but encouraged the development of unambiguous contract provisions that would facilitate rapid dispute resolution without the interruption of production on the shop floor. A sharp distinction was thus drawn between contract negotiation and contract administration. Contract language became increasingly specific and legalistic, and disputes during the course of an agreement were ultimately decided in formal arbitration with the arbitrator acting like a judge. As the war came to an end, moreover, a veritable army of lawyers and economists whose careers had begun in the War Labor Board moved into key positions in firms, agencies, and unions, not to mention roles as university-based arbitrators, mediators, and public policy advisers, and in so doing disseminated the board's practices into the

broader U.S. system of collective bargaining and industrial relations. The wartime system was thus carried into the postwar period and reinforced by judicial interpretations of the National Labor Relations Act. As a result, collective bargaining, which might have given the U.S. system the flexibility to adjust to changes in the economic and social environment, instead reproduced the rigidities associated with specialized labor regulation.

But the rule-based U.S. system of industrial relations ultimately tied unions to mass production in an even more profound way, for it was based on a set of engineering and management principles developed by Frederick Taylor in the early twentieth century that disaggregated the labor process into a series of distinct, well-defined jobs that could be linked to specific performance standards. Those job definitions and procedures were already in place when industrial unions arrived on the scene in the 1930s, and the rules governing the pricing and allocation of work that they negotiated under the auspices of the War Labor Board were readily attached to those definitions. When plants were not already organized in this way, moreover, the procedures for doing so were well established, and the newly emergent system thus created pressure for their further utilization. In this sense, unionization was rendered compatible with the pursuit of economic efficiency, at least insofar as the technological and economic environment remained stable in the immediate postwar era.

As the economic environment became increasingly volatile, however, and more flexible systems of management emerged, job-control unionism began to constrain adjustment in potentially damaging and costly ways. Whether industrial unions could have accommodated themselves to a more flexible system of collective bargaining, modeled perhaps on the traditional craft model, is by no means obvious. The limited efforts to develop and implement such an approach, for instance at the auto manufacturer Saturn, were not encouraging in this regard, and the business community ultimately decided not to revive the craft model but to establish a union-free environment instead—and succeeded in doing so in the 1980s and 1990s. As that strategy played out, moreover, and the union threat virtually disappeared from the workplace, the pressure it had created for both compliance with government regulations, on the one hand, and empowering government regulators, on the other, disappeared as well.

Macroeconomic stabilization. The problem lies not only in the decline of union influence, however, but in the U.S. approach to regulation itself, which like collective bargaining bears the persistent scars of specialization.

Given that they will never be able to visit every covered workplace, after all, inspectors might wish to allocate their time differently at different points in the business cycle. For example, they might wish to focus on safety and health violations in good times, when factories are running around the clock and the pressure to cut corners on maintenance is high, and on wage and hour violations in bad times, when employers are tempted to skim and squeeze in an effort to compensate for demand shortfalls. But the specialized model inhibits not only the pursuit of economies of scope over the short run but the reallocation of human resources over the medium to long run as well.

When macroeconomic stabilization prevailed in the postwar era, the costs of specialization were much lower. The authorities may not have had enough specialists to cover every workplace, but they could allocate the specialists who were available to them with some degree of certainty as to the demand for their various services. But with the breakdown of the Bretton Woods system, the growth of macroeconomic volatility, and the globalization of the world economy, planning along these lines became impossible. Workers in the United States therefore find themselves trapped in a twenty-first-century labor market with a twentieth-century regulatory model.

Specialization in an Era of Instability: The Post-Fordist Malaise

The New Deal regulatory model presupposed centralized employment structures that allowed regulators to amortize (and firms to absorb) the costs of multiple inspections by distinct specialists by addressing the needs of hundreds (or even thousands) of workers with each visit; macroeconomic stabilization that allowed policy makers to anticipate (and meet) the demand for different *types* of regulators over time; and trade barriers that allowed firms to pass the costs of regulation onto their customers in any event. For a while, moreover, the system worked reasonably well, at least by historical standards. Workers organized. Wages rose. On-the-job injuries declined. And women and minorities gained at least some ground on their white, male compatriots.

In that sense, moreover, the New Deal regulatory order went from strength to strength. Wage and Hour investigators closed down sweatshops that were difficult to organize (Blau 1955, 242–243). The NLRB allowed unions to organize the firms that remained. And unions defended the

wages and working conditions of almost half the labor force—forcing up wages throughout the economy as employers tried to forestall the unionization of their own shops.

But the growth of economic volatility, the opening of the U.S. labor and product markets to foreign competition, and the decentralization of employment from large, vertically integrated enterprises to small firms, subcontractors, and the self-employed have undercut the foundations of the New Deal model, with predictable consequences for American workers. Real wages have stagnated or declined. Inequality has intensified to nineteenth-century levels. And violations of labor laws are not only rampant but concentrated, leaving Annette Bernhardt and her colleagues to suggest "that non-compliance with employment and labor laws may have become a standard business practice" in certain industries and occupations (2009, 39).

Efforts to portray "functional specialization" (Gerth and Mills 1946, 229), in particular, as the essence of efficiency are therefore particularly hard to credit, especially in light of the apparent *inefficiency* of functional specialization in the contemporary United States. Consider, for example, the issue of employment discrimination. "It is often assumed that discrimination cases concerning employment of minorities, where there is a union on the premises, can be settled without reckoning with the collective bargaining and arbitration process," explained Charles Morris in the early 1970s. "In reality such cases are labor relations cases in the fullest sense" (Morris 1972, 509). The division of labor between the NLRB and the EEOC therefore imposes unnecessary costs on their adjudication.

The firewall between the NLRB and the EEOC nonetheless intensified in the decade to follow. The Supreme Court ruled that "the Board was under no duty to counter discrimination if doing so would frustrate its core statutory mission" (Sophia Lee 2014, 15), while President Carter signed a law that "centralized enforcement of nearly 40 different equal employment requirements handled by nearly twenty different agencies under the EEOC" (Lee 2014, 16). The labor and civil rights movements not only would come to support the division of labor thereby engendered (Lee 2014, 19) but also would provide the different agencies with their core constituencies when, down the road, they all but inevitably came into "conflict with one another, weakening all in the process" (Frymer 2008, 10).

Nor is discrimination an isolated example. Whereas statutory hours of work are considered to be occupational safety and health issues in most of

the world (von Richthofen 2002, 41), they are entrusted to the Wage and Hour Division in the United States and are thereby decoupled from industrial hygiene. The consequences are potentially deadly, for involuntary overtime has been implicated in a number of recent industrial accidents, including the explosion that killed twenty-nine miners at the Upper Big Branch coal mine in West Virginia in 2010 (Harris 2010; Rafter 2010).[8]

Federal contract compliance provides a final example of the inefficiency produced by regulatory fragmentation. According to the General Accounting Office (GAO), the federal government has the right to deny public contracts to firms that violate health and safety regulations "and could use this authority to influence contractors to undertake remedial measures to improve workplace conditions" (1999, 26). But neither OSHA nor the OFCCP—which is responsible for contractor compliance with equal employment laws but not health and safety standards—provides information on the distribution of health and safety violations by firm, and federal purchasing agents therefore have "no way of knowing which federal contractors have violated safety and health standards" (General Accounting Office 1999, 27). Consequently, the federal government awarded almost $40 billion in contracts to "employers already found to be violating workplace safety and health standards" in 1994 alone (26), and in so doing effectively rewarded firms for exploiting their workers.

The problem is not simply that different laws and jurisdictions shade into each other, however, but that the same employers often violate multiple laws and nonetheless limit their liability to the particular violations discovered by specialist inspectors with narrow jurisdictions and training. In the late 1980s, for example, a GAO survey of more than one hundred enforcement officials undertaken at the behest of then-Representative Charles Schumer found that "multiple labor law violators were a serious problem in all but three states" (General Accounting Office 1988b, 2) and that the problem had "either stayed about the same or increased in severity" over the previous decade (49)—due in part to the fact that "the responsible federal agencies (INS, OSHA, Wage and Hour) in general put little emphasis on referring suspected violators to each other and rarely engage in joint enforcement efforts aimed at multiple labor law violators" (2). While compliance officers were well aware of the advantages of coordination, they lacked not only the incentives but the training they would need to recognize violations that fell outside their respective jurisdictions and therefore failed to take advantage of the opportunities provided by

their visits to chronic violators. In fact, the GAO found that nine out of ten regional offices of the Wage and Hour Division made referrals to OSHA less than once a month—and that referrals from OSHA to WHD were no more frequent (37).[9]

The GAO was by no means the only organization to bemoan the prevalence of multiple labor law violators in the late-twentieth-century United States. The country's newspapers were full of stories about vulnerable workers toiling in perilous conditions for subminimum wages (Serrin 1983; Inman 1988; Freitag 1987; Dixon 1989; Joselow 1989). Democrats like Schumer portrayed the return of the sweatshop—which the GAO treated as a synonym for "multiple labor law violator" (General Accounting Office 1988b, 1)—as "the ugly side of the Reagan legacy" (Schumer in Mesce 1988; see also Branigin 1995; Fenner 1995). And the so-called Dunlop Commission on the Future of Worker-Management Relations expressed similar concerns (Commission on the Future of Worker-Manager Relations 1994, 124) and worried that the problem was compounded "by: (1) the large number of different agencies, enforcement regimes, and remedies available under the different statutes; and (2) the varying scope of judicial review accorded agency decisions" (127).

By the mid-1990s, therefore, a "consensus" had emerged that the federal government had to "find a less costly, more effective means of ensuring worker protections" (General Accounting Office 1995, 6). While the Dunlop Commission asked whether "there should be more integrated administration" of federal labor and employment law and implied an affirmative answer (Commission on the Future of Worker-Manager Relations 1994, 125), the GAO called for the consolidation of the country's largest enforcement agencies—including the Wage and Hour Division and OSHA—into a single "Office of Workplace Modernization, Reorganization, and Safety" in an effort to disseminate new techniques and technologies and, in so doing, pursue something like root-cause regulation *avant la lettre* (General Accounting Office 1995, 67). Neither proposal would come to fruition, however, and the contemporary United States therefore plays host to an "alphabet soup" (Bobo 2008, 99; see also Hirsch 2010) of enforcement agencies that tend to work in isolation from each other.

Opponents of the proposed reforms were not only "entrenched and powerful" but also "fearful of change" (Hodges 2005, 625). They decried "shotgun marriages" between agencies that in their eyes had "little historical or functional connection" to each other (Barnicle 1995, 109), and wor-

ried that calls for consolidation would be used to justify not the efficiency gains advertised by their champions but cost-cutting and downsizing plain and simple—with workers and unions paying the price. Given the profoundly anti-labor climate of the times, moreover, it's hard not to take their concerns seriously. But the functional connections are deeper than they realize, and the missed opportunity is therefore striking. "Employers who steal wages from workers are often the same ones who do not adequately protect workers from injuries and illnesses in the workplace," explains Kim Bobo of Interfaith Worker Justice in Chicago (Bobo 2008, 173–174). Worker centers like hers therefore tend to treat the problems holistically by offering workers a "one-stop" shop that provides information, training, and legal assistance. In fact, Bobo quotes the director of another worker center who notes that he "almost never" sees a wage theft case "in which there isn't also some kind of health and safety problem" (Bobo 2008, 171). But when she tried to repeat the GAO's inquiry into referrals between the Wage and Hour Division and OSHA in 2008, Bobo found that neither agency could so much as answer her question. "I suspect there are far fewer referrals back and forth than there should be," she concludes, "given the workers centers' experience with workers facing both wage and health and safety problems simultaneously" (Bobo 2008, 65).

Post-Fordist enforcement agencies would therefore seem to have little choice but to cross-train their inspectors, coordinate their investigations, and substitute economies of scope (the search for a larger number of violations to a smaller number of workers on each visit to the field) for economies of scale (the search for a smaller number of violations to a larger number of workers on each field visit). There are some hopeful signs. New York State's response to the recent nail salon scandal, for instance, includes the establishment of a multiagency task force with responsibility for fourteen low-wage industries, including salons and spas. But it simultaneously speaks to the magnitude of the impending challenge, for it not only demands coordination among ten state agencies but also leaves out the federal government, which by all rights should be involved.

Unfortunately, however, Washington is running in the opposite direction. Long known for its byzantine organizational structure, the Department of Labor has recently taken it a step further by dividing the aforementioned Employment Standards Administration, formerly the largest agency within the Department of Labor, into four distinct subagencies: the Wage and Hour Division, the Office of Labor-Management Standards, the Office

of Federal Contract Compliance Programs, and the Office of Workers' Compensation Programs. Moves like these have been portrayed as part of an effort to conserve valuable resources by eliminating unnecessary bureaucracy. But in reality they are the opposite, and in the long run they will neither save the taxpayer money nor spare the already beleaguered American worker from further injury and abuse. A better approach would endeavor to learn from countries that never embraced the functional approach to specialization that dominated the United States, and we begin to do so in Chapter 3.

3

FRANCE

A NUMBER OF U.S. REGULATIONS DEMAND THAT EMPLOYERS display posters telling workers about their rights under the law. The Department of Labor (DOL) offers copies of the posters mandated by the federal government and hosts a website designed to help employers determine which mandates apply to their specific businesses. But the site "only provides information about Federal DOL poster requirements" (United States Department of Labor 2017), and it goes on to warn visitors that they may want to contact their state department of labor to learn about any additional requirements.

Perhaps unsurprisingly, in light of Chapter 2's discussion of small business, most employers perceive these poster requirements as burdensome intrusions into their private affairs, at best, and as threats to their viability, at worst. When the House Committee on Small Business explored the impact of DOL and National Labor Relations Board rulemaking in 2011, for example, Representative Mick Mulvaney of South Carolina declared that he had "run a couple of small businesses" prior to entering Congress and was "always afraid" of these notice requirements in particular. "I was too busy running my business to try to follow the regulatory actions of the Federal Government," he argued by way of explanation. "And for that reason, I will continue on this topic that some folks might find to be trivial" (2011). If U.S. employers dread their own regulatory requirements, however, they would be absolutely horrified by their French counterparts. The *New*

York Times, reading it in exactly this way, describes the French system by invoking a labor code that's "a mind-numbing 3,324 pages long and growing," and went on to note that "170 pages govern firings, 420 regulate health and security, 50 temporary work and 85 collective negotiations. Hundreds more are devoted to wages, specific industries and overseas departments" (Nossiter 2017). Paradoxically, however, the French equivalent of the crowded bulletin boards and complex websites mandated and maintained in the United States is a single poster, which tells workers that if they're worried about wages, hours, safety, health, discrimination, collective bargaining, or any other workplace violation, the *inspecteurs du travail* are there to help. The contrast is particularly striking, moreover, in light of the conventional portrait of a "liberal" U.S. labor market and a French labor market that's drowning in red tape (Botero et al. 2004; Poole and Wall 2004). Evidently, French labor regulation doesn't translate directly into American terms. It must instead, we will argue, be understood in its own terms.

Others have challenged the conventional portrait as well, pointing to the role of labor force dropout in depressing the U.S. unemployment rate and exaggerating the country's relative economic performance (Baker 2013), and we will touch on this debate in the pages to come. But few have explored the origins and consequences of the holistic regulatory system that makes a single poster possible, and we therefore do so at some length in this chapter, highlighting both its functional and its dysfunctional elements. While the French system seems to address many of the deficiencies identified in Chapter 2, especially the U.S. model's inability to adapt to the changing economic and social environment in the twenty-first century, it poses a number of distinct managerial challenges, including the risk of bias, corruption, and internal conflict. In subsequent chapters, therefore, we explore the model's operation in other countries that have adopted a holistic approach in an effort to identify whether the dysfunctions are peculiar to France or inherent in the model itself and, if the former, how they have been addressed by France's imitators.

We have divided the chapter into four principal sections. The first section distinguishes the French and American approaches to regulation and discusses the historical and institutional underpinnings of the former. While mass production, macroeconomic stabilization, and large-scale collective bargaining allowed for regulatory specialization in the United States, and thereby limited the inspector's autonomy, they came late—and

less consistently—to France, and therefore had little effect on regulatory institutions that originally took hold in the late nineteenth century and allow for root-cause regulation today. The second section discusses the autonomy of the French inspectors and their ability to tailor their efforts to the needs of different employers and workers in distinct times and places. While American inspectors have little choice but to "go by the book," we have argued, their French counterparts have traditionally been more "responsive to the local social and political climate" (Piore 1980, 392). The third section discusses the challenges posed by inspector autonomy—malfeasance, bias, and organizational conflict—and the prospects for their transcendence in the twenty-first century. And the fourth section rereads the French case against the backdrop of the U.S. experience in an effort to draw lessons not only for both countries but for the process of workplace regulation more generally.

Root-Cause Regulation in France: Rationale and Practice

In the literature on workplace regulation, we have argued, the French approach is generally portrayed as more expansive and generalist than the allegedly specialized U.S. model. But these terms are both too broad and too narrow to fully capture the differences between the two systems. They are too broad because the U.S. system is specialized relative to the French system only insofar as in the United States the different provisions of labor and employment law (for example, wages and hours, safety and health, pensions, immigration, and so on) fall under the jurisdictions of different agencies, whereas in France they are administered by a single agency with responsibility for the entire labor code. This is what the experts mean when they portray French labor inspectors as generalists and their American counterparts as specialists. But the French do not eschew specialization *tout court*; on the contrary, they make distinct provisions for agriculture, mining, and transportation, as in the U.S., and have traditionally deployed different inspectors not only to different regions but to small and large businesses, at least until the adoption of reforms in the past decade.

At the same time, the broad jurisdictions that distinguish the French system produce unintended consequences for the practice of the inspectors themselves—consequences that, we suggest, are as fundamental to defining the French model as its breadth. These are, first, the enormous

discretion that French inspectors enjoy and, second, their remedial or pedagogical (tutelary) approach to enforcement. After all, the French labor code is so extensive that the inspectors cannot possibly review each of its provisions in a single visit; indeed, they would be unlikely to know or remember all of the provisions in the first place. They are therefore forced to choose not only where to focus their energies when they arrive at an establishment but how to tailor their enforcement actions in the case of a violation—which range from the provision of advice to the delivery of warnings to the introduction of sanctions—to the peculiarities of the case at hand (Kornig et al. 2015, 50).

The administrative discretion that inheres in the French model therefore allows and reinforces an emphasis on compliance and remediation. When an inspector discovers a violation, for example, he is expected to devise a plan that will bring the firm into compliance with the law, and because that plan can be implemented gradually, over time, he can effectively suspend the application of the labor code and temporarily exempt the firm from sanctions or punishment during the remediation period. In France, his discretion is further enhanced, moreover, by his responsibility for a distinct geographic territory and by his ability to decide which enterprises to visit, when to do so, and under what circumstances. But this last characteristic seems more particular to the administrative practices of the French labor inspectorate than intrinsic to the approach itself.

More basic to the underlying model is its distinctive approach to noncompliance, an approach that is simultaneously remedial and pedagogical. The general nature of their mandate, the fact that they are responsible for multiple violations at the same time, and the fact that they are supposed to correct those violations, not merely punish them, encourages the inspectors to address the root causes of noncompliance. They are in a good position to do so, moreover, because they arguably come into contact with as broad a range of working conditions and managerial practices as any other actor in the economy, and they are therefore well placed to identify which practices are associated with noncompliance and what can be done to correct them.

The contrast to the U.S. system is striking. Social dialogue involving collaboration at the enterprise level is not only a source of "sustainable preventive action," according to Wolfgang von Richthofen of the International Labour Organization (ILO) (von Richthofen 2002, 65), but "is more common in the French- and Spanish-speaking world than in Anglo-Saxon

countries" (86), where agencies like the Occupational Safety and Health Administration (OSHA) subordinate diplomacy to the quest for deterrence. "This is because the drafters of the legislation setting up OSHA were dissatisfied with earlier state-level safety and health based on collaboration and 'voluntary compliance,'" explains Steven Kelman (1977, 19). "And our system of administrative law—with its emphasis on publicity, dramatic adversary hearings and court challenges—encourages confrontation rather than agreement among the parties." OSHA inspectors have therefore been told not to discuss business practices with management and above all not to suggest changes in practice that might facilitate compliance for fear that in doing so they would compromise their cases by shifting responsibility from management to themselves.

But even when the terms *specialist* and *generalist* are qualified in this way, one cannot begin to capture the contrast between the U.S. and French systems without acknowledging differences along two other dimensions. One of these is the contrast between social rights and individual rights. In the United States, employment standards are treated as something like individual rights. Workers are *entitled* to a minimum wage, to health and safety on the job, to the freedom to join a union, and so on. These entitlements may not have the same standing in law (or the same popular support) as the constitutional rights to free speech, press, religion, and the like, but they are seen by many as basic rights in the same sense, and the inspector's job is to ensure their availability and enforcement. By defining the issue in this way, moreover, the U.S. system lends itself to a focus on individual complaints and remedies that compensate individuals when their rights have been violated: back pay in the case of wage violations, compensation for personal injury and illness in the case of health and safety violations, punitive damages in the case of employment discrimination, and so on. In certain periods, for example, the Wage and Hour Division of the DOL has responded exclusively to individual complaints and has treated back pay as more akin to individual compensation than to a penalty likely to deter subsequent violations.[1]

The French, by contrast, make a sharp distinction between individual rights and social law (*le droit social*), and labor inspection is designed to pursue (or enforce) the latter. Standards also give rise to individual rights, to be sure, but they are pursued through a totally separate system of labor courts, and complaints are thus viewed by labor inspectors less as individual wrongs to be righted than as a source of information about working

conditions more generally. While the *inspecteurs* meet with aggrieved workers, therefore, and tend to set aside at least one day a week for that purpose, they are more likely to respond by trying to correct the situations that gave rise to the grievances in the first place than by offering individual remedies above and beyond references to the labor courts. When they do act on specific complaints, moreover, they tend to be looking for patterns and practices, and they therefore go to considerable length to conceal the names of the individuals who sparked their inquiries in the first place. They typically begin their investigations by examining aspects of employment practices that have nothing to do with the initial complaints in order to protect their sources from discovery or retaliation, and they use fines and penalties less as remedies than as a means of establishing their authority, when it is called into question, or as a punishment for deliberate noncompliance. By the 1990s, in fact, more than half of the *inspecteurs du travail* had joined the Villermé Association, an organization of inspectors, doctors, judges, trade unionists, and academics dedicated to the "consideration of the system as a whole" (Reid 1994, 310) rather than the mere prosecution of individual scofflaws. But the separation of individual rights and social responsibilities makes it possible for the French inspectors to tolerate violations of the law in light of broader social goals—whether those goals involve the ability of the enterprise to correct the violations gradually over time or much more basic efforts to preserve jobs in a period of high unemployment—without forcing the individuals affected, who can seek compensation through other channels, to pay the price.

The final distinguishing characteristic of the French model lacks an obvious name or label. But we might say that the French approach has an "aspirational" component that is largely absent in the United States. After all, the U.S. standards are absolute; you are either compliant or noncompliant, and the standards thus represent—a better term might, in fact, be *impose*—a set of conditions that define what a modern economy not only owes its citizens but must provide through the enterprise and the employment contract. By way of contrast, the French approach recognizes that employment standards represent at least in part goals toward which society is moving, or hopes to move, and regulation is thus understood as part of a process by which that movement is encouraged. The most concrete manifestation of this characteristic is the inspector's ability to work out a plan of action designed to bring a noncompliant enterprise into compliance over time.

The aspirational character of the French system is also manifest in the normative vocabulary—what is, to an American ear, the preachy tone—of the inspectors when they interact with management. In one discussion of a mass layoff, for example, an inspector lectured the manager about how irresponsible he was to be dismissing a disabled worker—although the dismissal itself was not in fact illegal. One cannot imagine a U.S. inspector using this tone with a manager, let alone entering into a dialogue about management practices that were not actually covered by the law. This example underscores the difference between the U.S. and French concepts of the rule of law. In the United States, the law is a set of prohibitions and obligations; in France, it's not just a series of restrictions and obligations, but a broader moral framework that guides individual and collective decision making (Brunet 2012; Supriot 2012).

Recent historiography suggests that the aspirational, or hortatory, character of French labor market regulation has deep roots and that the inspectors themselves bear the legacy of a long tradition of industrial oversight that dates back to the *inspecteurs des manufactures* introduced by seventeenth-century finance minister Jean-Baptiste Colbert (Lenoble 1908). While Colbert's inspectors were nominally responsible for quality control and consumer protection, they served the broader mercantilist purpose as well, and they pursued their regulatory ends through a decidedly pedagogical means: the hands-on demonstration of the latest manufacturing techniques. "The policy of industrial encouragement was intensified in the eighteenth century," explains historian Philippe Minard, "and inspectors were charged with encouraging innovation and the spread of new processes, primarily to meet the challenge of English competition" (2000). From the very outset, therefore, French regulatory inspectors pursued a tutelary approach that combined enforcement with pedagogy and set the stage for root-cause regulation.

In fact, the *inspecteurs du travail* who pioneered the tutelary approach to labor market regulation more than a century ago attempted not only to coax, cajole, and harass employers into compliance with the law (Reid 1994, 297–298) but also to undercut their opposition by demonstrating that compliance could be lucrative (Reid 1986, 77). They underscored the potentially complementary relationship between the development of labor standards and the automation of production (Cross 1984, 1985). They encouraged skeptical employers to develop and take advantage of vocational education and training programs, labor-saving technologies, and improved

productive practices more generally (Reid 1986, 78). And they participated in reform movements and propagated their message through official and unofficial channels (Reid 1986, 77; Cross 1985, 266–267). Take, for example, the campaign for the eight-hour day in the 1920s. French labor inspectors set out to assess the consequences of the new standards in the metal, wood, textile, and precision instrument industries and concluded the most definitive study undertaken to that point by noting that "the increase in hourly output was sufficient to cause an increase in the daily output" in more than 75 percent of the establishments studied (Milhaud 1925, 830–831).[2]

The *inspecteurs du travail* therefore reconciled regulation with modernization by pursuing the "three Cs" introduced by their Colbertist predecessors: controlling, counting, and counseling (Minard 2000, 482). They could not do so, however, without *skill* and *autonomy*. Their skill was a product of their education and training. "Outside of Prussia and Saxony," wrote one North American observer in the early twentieth century, "there is no country in the world in which labor inspectors are selected with as much care as in France" (Ogg 1918, 405; see also Price 1914a, 190). They had not only demonstrated their ability in a demanding entry competition but had in many cases published original scientific research as well. Their autonomy derived not only from their job security but from their doubly broad jurisdiction: first, over the country as a whole and, second, over the entire labor code. Inspectors could therefore set and enforce standards in one part of France without fear of tilting the playing field against the rest of the country. They could address noncompliance in one part of a firm (for example, personnel) with an eye toward the implications for the enterprise as a whole. And, by no means least importantly, they could command the respect of their private-sector *administres* and change with the changing times.

They would not change their overall approach to inspection, however, for the "archaic" (Lipietz 1987, 117; see also Howell 1992, 52) industrial structure that survived in France militated against their specialization and thereby reinforced the very personnel policies that made their "generalist" (Reid 1994, 297) approach more rational in the first place. "While such specialization may be advantageous in some cases," the inspectors explained to the ILO in the early 1920s, "it may, on the other hand, have some disadvantages by subjecting establishments to visits of inspection from a number of inspectors, and this might be vexatious to employers and give rise to disputes" among the inspectors themselves (International Labour Office 1923,

123; see also 34). So the French maintained their generalist posture into—and beyond—the late twentieth century and thereby discouraged the growth of specialization in the private sector as well. In fact, Frank Dobbin and John Sutton have argued that by centralizing the "administration of employment policy" in the Ministry of Labor, rather than "in a series of autonomous agencies" (1998, 446), the French inhibited "the fragmentation of the employment function within firms" (see also Dobbin 2002, 830)—a finding that not only is consistent with our own approach to the U.S.-French contrast but also speaks to the apparent synergies between the public and private divisions of labor more generally (Dorf and Sabel 1998; Haydu and Lee 2004).

Contemporary French inspectors therefore have no less—and perhaps more—authority than their predecessors, and their responsibilities are described at some length in a recent quasi-governmental report that bears consideration. The key text defines the inspector's mission as the "controle" or the application of the labor code and the prevention of occupational risks as well as the improvement of working conditions and social relations more generally. This principal mission is enriched by efforts to (1) offer employers and workers information and technical advice on the most effective means of complying with their legal obligations, (2) call the attention of the authorities to deficiencies or abuses that are not specifically covered by the existing legal documents, and (3) prevent and regulate (labor) disputes and conflicts by means of advice and mediation (Bessiere 2005, 1).

In short, the French model gives the inspector the autonomy and authority she needs to pursue root-cause regulation. But it is hard to fully appreciate the range of activities in which French inspectors are engaged without underscoring the fact that many more dimensions of the employment relationship are subject to law—and thus the focus of government surveillance and, one might add, tutelage—in France than in the United States. Thus, for example, working hours are strictly regulated in both France and the United States, but in the former country overtime requires administrative approval that is provided by the labor inspectors. Employers are permitted to work their shops overtime if they can convince the inspector that they have a compelling economic case for doing so. Wage and Hour investigators in the United States have no such authority. Plans for mass layoffs, which are not reviewed at all in the United States, also require the review of the *inspecteurs* in France; in certain periods in the past, they

Table 3.1 Workplace inspection in the United States and France

	United States	France
Organization	Specialized	Generalist
Jurisdictions	Narrow	Broad
Goal	Deterrence	Compliance
Philosophy	Adversarial	Pedagogical
Responsibilities	Individual rights	Social rights
Standards	Literal	Aspirational
Focus	Superficial symptoms	Root causes
Efficiencies	Expertise, economies of scale	Flexibility, economies of scope
Natural habitat	Fordist economies	Pre- or post-Fordist economies

have also required their approval—and we are familiar with at least one case in which the manager told the workers that the inspector was actually selecting the individuals to be laid off, and if they felt aggrieved that should voice their concerns to the ministry rather than to management.

Table 3.1 summarizes the key differences between U.S. and French inspectors, and it adds two additional elements. While U.S. inspectors address a relatively small number of violations and therefore have to economize on travel and transaction costs by covering a relatively large number of workers every time they inspect an enterprise, French inspectors address a larger number of violations on every trip to the field and thus have the ability to seek efficiencies by substituting economies of scope for economies of scale. They are also more flexible over the business cycle, if perhaps less expert than their U.S. counterparts, and the French model is therefore particularly well suited to post-Fordist economies that are populated by small firms and prone to large shocks.

The Merits of the French Model: Root-Cause Regulation as a Product of Autonomy and Authority

The breadth of regulatory responsibility in France not only allows the inspectors to reap economies of scope—by covering more violations with each trip to the field—but ensures that they have considerable discretion over how to organize their work, which aspects of the labor code to enforce, and under what circumstances. Their discretion is further enhanced by the fact that they have historically been assigned to distinct territories

in which they choose which enterprises to visit, when to do so, and where to devote their attention when they arrive. This autonomy is limited only by the priority given to cases of industrial accidents, especially ones in which lives are lost, and their responsibilities to review requests for departures from legal standards (for example, the prohibitions against mass layoffs, or limits on overtime and Sunday work) within a specific time limit.

The French system is a "street-level bureaucracy" (Lipsky 1980), one in which effective decision-making authority is located at the base—rather than at the top—of the hierarchy. Street-level bureaucracies differ from their more familiar Weberian counterparts in several ways, and their discretion and the ways in which it can be effectively managed, directed, and used to reconcile allegedly conflicting goals are among the key lessons we draw from our comparison of the two inspection models. Because discretion is so central to our argument, moreover, it will be useful to describe several specific examples that emerged during the course of our interviews and the ways in which our subjects themselves seem to understand its exercise.

The first, and in many ways most revealing, example of the constructive potential of this approach to regulation, comes from an interview with a French inspector responding to a question about what kind of discretion she had and how she utilized it. Describing her current workweek, she said, "I really had a choice between three different options. One was a large, unionized plant in my district that was abusing temporary contracts by hiring a lot of temporary workers and keeping them on the payroll for too long. The second was a series of garment operations that used principally undocumented immigrants who were underpaid and working in basement shops in dangerous and unsanitary conditions. The third was a group of security workers spread throughout the area, but working for a single firm, also overworked and underpaid." She decided to focus on the security guards. The union at the plant had already negotiated an accord in which the company moved a specific number of temporary workers onto the permanent payroll every month, and she doubted that she could achieve any more permanent jobs—which was, after all, what the regulations were designed to achieve—by intervening. The garment factories had the most serious violations, of course, but if she intervened they would simply close down and reopen in another location outside her jurisdiction. Nonintervention may have been less than ideal for the current workers, but intervention would have meant that they would pay costs of a different sort.

But the security guards were too dispersed and too isolated from each other to organize any kind of collective resistance, while at the same time they were bound to a given location and their work could not simply be transferred elsewhere. Given the discretion to manage her labor time and attention, she chose the option that made the most of her power as an individual inspector.

Another example of constructive discretion was offered by a French *contrôleur*—an inspector who specializes in enterprises with less than fifty workers—who discussed the delicacy of his job. Unlike larger establishments, which had dedicated human resource managers, he explained, small businesses tended to be managed by their owners, often craftsmen, who saw their companies as extensions of themselves. When one of his machines was a danger to his workers, the *contrôleur* continued, you could not simply tell him to fix it. That would, he argued, be like saying, "Your baby is ugly." So instead you had to find a more tactful approach.

And, finally, we have historical evidence of more ambitious strategies. For instance, Donald Reid discusses a departmental inspector in Rennes who "facilitated ententes among firms in the same trade" in an effort to facilitate the harmonious implementation of new labor legislation, and Reid suggests that his efforts were far from exceptional (1986, 78). "Inspectors became proponents of cooperation among businesses and the possibilities inherent in technological progress," he explains. "They took these ideas, mainstays of the Second Industrial Revolution which big business in France was undergoing at the time, and spread them among smaller firms" (78).

The Downside of Discretion: Corruption, Bias, and Internal Conflict

These examples illustrate the constructive potential of the inspector's autonomy when it is exercised in a thoughtful and deliberate way by seasoned professionals. And the managerial approaches that we will discuss in subsequent chapters are, in a sense, designed to ensure that discretion is used in this way. But it is not necessarily used in this way, or to this effect: discretion can be abused or mismanaged as well as used for the common good.

The first question that tends to arise in discussions with laymen is the issue of corruption and bribery. Does discretion open the door to malfeasance or abuse? This is obviously difficult to explore in interviews and not something that we have addressed in detail, but corruption rarely came up

in our discussions with inspectors or their managers who, as we shall see, are troubled by their inability to control the system. Nor are scandals involving inspectors common in the French media, perhaps because the inspectors are relatively well-paid and well-trained civil servants, and perhaps because they themselves do not actually impose financial, or even administrative, penalties on firms—and they tend to believe that the legal system involves such delays, and is so hostile to their own judgment, that sanctions are at best a last resort.

A problem that is mentioned more often than corruption is the potential for political bias among the inspectors themselves. We will return to this issue later, but since the inspectors tend to want more laws and regulation than either their superiors in the administrative hierarchy or the politicians at the top of the system, concerns about their failure to enforce the law are less common than complaints of zealotry voiced by employers and occasionally supervisors (Pfanner 2002). The principal exception lies in the realm of immigration law, where one inspector we interviewed refuses to enforce prohibitions against individual immigrant workers (although he was willing to do so against the enterprises that hire them) and the union representing the inspectors demands an exception from obligations to enforce these regulations more generally.[3]

More common than ideological biases or outright corruption, we suspect, are biases that the inspectors themselves are hardly aware of. An example was offered by an inspector who had recently been promoted from a street-level to a supervisory position and discussed a return to his home district in which he had the opportunity to reminisce with colleagues and managers of local firms whose plants he had visited in his former charge. He discovered that he was known as a "firebug," because the first thing he looked at whenever he was called to a plant, for whatever reason, was the fire escape. At first he insisted that this could not possibly be true, but in trying to understand how it might have come to pass he was reminded that just before joining the inspectorate he had spent two years working in Sao Paulo, Brazil, and that on the day he arrived there was a fire in a skyscraper in which hundreds of people were trapped and burned. It was a front-page story for a month after he arrived and apparently left an indelible impression on him.

Another example, which lies at the border of conscious and unconscious bias, emerged in a detailed study of the ways in which inspectors operate in practice. The inspectors in the study acknowledged that they tend to

focus their more deliberate or creative efforts on those aspects of the enterprise in which they have effective expertise and default to sanctions when and where they reach the limits of their legal or technical knowledge. Similar considerations underpin their decisions as to whether or not to lodge a formal legal complaint.

But other aspects of the job make it hard to fully evaluate the implications of discretion, not least of all the unpredictable nature of many of the inspector's responsibilities. This is especially true of industrial accidents and labor disputes. When the former occur, for example, the inspector has to drop everything and visit the worksite, especially if the accident in question is life threatening, fatal, and/or politically consequential. And large-scale labor disputes are almost inevitably politically consequential and are thus even more complicated. For the political establishment, in fact, dispute resolution and the maintenance of order have traditionally been the inspectorate's raison d'être, and when a dispute is threatened, the inspectors are therefore under considerable pressure to intervene and mediate the conflict. The inspectors themselves are nonetheless resistant to this pressure for reasons adduced in our interviews: "You can't really mediate these disputes," one explained. "Such conflicts have a life and dynamic of their own. There may be a moment in the evolution of a conflict when you could actually interfere and work out a settlement," he continued, "but those moments are rare and unpredictable, and meanwhile you have all sorts of other responsibilities where your time and energy would be better spent. Hence, if possible, you should resist the ministry's pressure," he concluded. "Of course, that is not always easy to do." (This inspector's doubts about mediation, incidentally, contrast sharply with the prevailing view in the United States, where there is a specialized federal agency, the Federal Mediation and Conciliation Service, not to mention a number of parallel state agencies, dedicated to mediation, in addition to a vast academic literature and curriculum devoted to the topic.)

These comments are especially noteworthy because a good deal of the inspectorate's legitimacy in France, at least in the eyes of the political establishment, lies in its role in resolving social conflicts that, at critical moments in the country's history, have been threatening to the status quo order, most notably after the First World War, the Second World War, and between the wars in 1936. They played a less central role in May 1968, but workplace regulation was nonetheless expanded in the decade that followed the events of that spring, in part in response to the general strike

and the breakdown in social order more generally, and the inspectorate was not only strengthened numerically and materially but also given administrative control over layoffs (Haubry 2010, 14–15).

This brings us to the final challenge faced by the French labor inspectorate, which is conflict between the inspectors and their supervisors. French labor inspectors—like their counterparts in almost every country we have visited—love their jobs. They love the variety and unpredictability of their day-to-day experience and the sense of mission that follows. And much of what they love about their job is connected, directly or indirectly, to their autonomy and independence. As one inspector wrote, looking back over his experience:

> I loved the job with a passion, in a way that I could never love the work of a lawyer. I loved the confidence which the workers placed in you. I loved the visits to building sites and to factories. I loved the meetings of the committees on health and safety in the plants. I loved the independence of the Inspection du Travail. I loved the inspections conducted at night when people worked without the formal rules and procedures of the day. I loved the collective work in the bosom of the Villermé Association where we discussed our field experiences and professional practice. Certainly I felt bad when I signed hundreds of authorizations for economic layoffs in the period when administrative authorization was required. And I will never escape the memory of a worker who told me that "the boss told us that you were going to choose which of us was put out on the street." But above all I spent ten years of my life knowing that my work was socially useful. (Thierry 2012)

The Inspection du Travail is not, however, a happy institution. It is beset by a sharp, and at times bitter, cleavage between the inspectors at the base of the organization and the administrative and political hierarchy of the Ministry of Labor in which it is housed. The division manifests itself in a variety of ways.

It begins at the school in Lyon where the inspectors are trained and socialized and where new recruits are drawn into conflict with management from the moment they begin their service. Inspectors are civil servants, and like all higher-level civil servants in France, they begin their careers in a specialized school that allocates jobs to graduates by means of a standard

system: The students take a test at the end of their two-year course of study and are ranked in order of their test scores. The ministry submits a list of job vacancies, and the students choose their preferred jobs from the list in order of their ranking. But the newly minted inspectors in Lyon agree by consensus to circumvent this procedure by creating a committee of their colleagues that then allocates the jobs on the ministry's list on the bases of student preferences, joint careers, and family needs in toto, regardless of test scores. In some years, moreover, they have actually sent the list of vacancies back to the ministry demanding a broader selection of posts—a move that reduces horizontal conflict among the students and heightens vertical tension with their supervisors. Similar tactics have been employed by students in other elite schools, to be sure, but mainly in 1968 and its immediate aftermath; as far as we know, they have never become standard practice elsewhere.

The conflict continues once the inspectors assume their posts. The ministry maintains a staff of experts on labor law, for example, whom the line inspectors are supposed to consult when in need of specialized legal advice. By offering legal experts "advisory jurisdiction" in this way (Abbott 1988, 75–76), the ministry tries to capture some of the advantages of specialization without abandoning the generalist model. But the line inspectors are loath to refer cases to the ministry's lawyers for advice. They prefer to turn to their fellow inspectors or, failing that, to focus on issues in which they feel confident in their own expertise and use the threat of sanctions to deal with less familiar concerns. While the tensions between the base and the hierarchy date from the late 1960s and 1970s, when an "influx of *jeunes inspecteurs* created a *corps* deeply divided by age" and experience (Reid 1994, 303), and intensified in the 1980s, when the ministry provoked a backlash among the young inspectors by trying to "specialize and standardize" their work (Reid 1994, 313), they were further aggravated in 2004, when two inspectors—including a student at the school in Lyon—were shot and killed by an angry farmer and it took the government two weeks to condemn their murders. And they are reinforced annually on the anniversary of the murders, when the ministry denies the inspectors time off to commemorate their deaths.

The resultant hostility remained clear a few years later, when the president of the French tire-manufacturing behemoth Michelin drowned in a boating accident and the president of France offered his condolences on

national television: "I have nothing against M. Michelin," explained an inspector we interviewed at the time. "In fact, I think it is a tragedy that he died so young, leaving two small children behind. But why didn't the President made a similar address, and condemn the attacker, when the inspectors were shot in the back on the job?"

And, finally, the conflict intensified in 2011 and 2012, when two inspectors committed suicide and their union engaged in a very public dispute over whether their deaths should be classified as "work-related accidents" and thus be eligible for compensation. While the union attributed their deaths to job-related pressures, including budget cuts, personnel shortages, and the use of quantitative performance metrics that effectively intensified the pace of work, the labor ministry demurred and only gave in after the inspectors went on strike ("Suicides d'Inspecteurs du Travail" 2012; "Fronde des inspecteurs du travail après le suicide de deux agents" 2012; "Le Suicide d'un Inspecteur du Travail" 2014; "Manifestation des Inspecteurs du Travail" 2012).

The cleavage also manifests itself in a sharp division within the Labor Ministry over organizational reform, a conflict that shades into the broader debate about labor market regulation alluded to at the beginning of this chapter, albeit indirectly. The business community and the mainstream of the economics profession tend to believe that the French labor market is overregulated, and the political class tends to share their view and blame the rigidities induced by regulation for the country's persistently high rates of unemployment. But nobody seems to contemplate a completely unregulated market, or even a market as open (or "flexible") as that of the United States. And there has been a fairly broad consensus within France that the labor inspectorate, as opposed to the regulations themselves, should be strengthened rather than reduced. Beginning in 2001, for example, France began a major overhaul of public personnel management, and the budgetary process in particular, inspired by the New Public Management (that is, the *loi organique relative aux lois de finance*, or LOLF)—an approach that in later chapters we will argue is consistent with specialized labor inspection but fundamentally in conflict with general inspection. While the new approach has been applied to the labor ministry as a whole, it has not been applied to the management of individual inspectors; on the contrary, they have been shielded from its impact by higher-level officials in conservative governments. Moreover, the conservative government of Nicolas

Sarkozy proposed a reform that *increased* the inspectorate's budget and personnel.

Other reforms have reduced specialization within the service and made it more general rather than less so. Perhaps the biggest organizational reform, at least as it is felt in the daily lives of the inspectors themselves, is the elimination of the *contrôleurs* mentioned earlier, who specialized in small business and nominally operated under the supervision of full-fledged inspectors but in reality exercised a good deal of independence. Incumbent *contrôleurs*, who generally had fewer formal educational requirements than the *inspecteurs* and were given less formal training, are being upgraded and incorporated into the ranks of the latter.

In the last decade, labor inspection has placed increasing emphasis on *la prévention des risques*. Employers are not simply responsible for compliance with specific health and safety regulations under the law but are also expected to identify and move to prevent risks that have not been anticipated, and the inspectors are responsible for enforcing this law. But the definition of preventable risk is controversial, and the actions required to prevent them are subject to interpretation. It is clearly impossible to eliminate all risks to occupational safety and health, and, in any event, the benefits of risk reduction must be weighed against the costs of prevention—which are not at all obvious in cases where the processes and technologies generating the risk are relatively new. In the U.S. system, these problems would be resolved through the formulation of a set of rules, promulgated by the higher levels of the organization, after a period open for review and comment by the general public and subject to subsequent review by the courts. The rules would then be administered by the inspectors. But in France, the interpretation is left completely in the hands of the inspectors, who are expected to address the problem through consultation with employers and other experts, public and private. In effect, the employer's obligation to prevent risk has been reduced to forced cooperation through a process of consultation and negotiation on a plant-by-plant basis. Several studies focus on how the inspectors deal with this issue, and despite the managerial problems in the French system to which we turn shortly, they imply that the discretion inherent in a general system of labor inspection can be exercised in a constructive and creative way (Dodier 1988, 1989; Tiano 2003; Mias 2015).

In 2015, the French industrial relations community was shaken when two of the country's most prominent labor lawyers, and aggressive cham-

pions of unions and workers, published a book arguing that labor legislation was indeed excessive and burdensome. They proposed a reform that at least superficially seemed to align them with employers in the broader debate about labor market regulation. But their basic proposal was to replace the detailed labor code with a set of general principles that could be applied selectively according to circumstances; their intent was apparently to strengthen plant-level collective bargaining; and their description of how their proposed system would work bears a striking resemblance to the aforementioned role of the inspectors in the *prévention des risques* (not to mention the role of French labor inspectors as described by the literature more broadly). In other words, it is hard to distinguish their proposed reform from the way the current system operates in practice, though it would of course bring the system de jure into harmony with the system de facto. That said, the book's publication and broadly favorable reception by the public underscores the degree to which the general approach to labor inspection, with its tolerance of discretion and potential for root-cause regulation, is rooted in French administrative culture (Badinter and Lyon-Caen 2015; Bissuel 2015).

The real debate in France today centers neither on the discretion of the inspectors at the workplace nor on their broad, general competencies, however, but on their ability to operate independently of the broader organization in which they are embedded. The managers at the top of the hierarchy see reform proposals as part of an effort to increase both the efficiency with which existing resources are being used and their ability to establish and pursue broad national priorities. They have therefore increased the number of inspectors in an effort to get "boots on the ground" and cut their administrative support staff—whose work, they believe, has been obviated by the arrival of the personal computer (PC). The inspectors, however, doubt that the PC offers an adequate substitute for their support staff, who traditionally freed them from providing information to the public and steering complaints into the proper channels and left them to deal with the social dimensions of labor laws, and they therefore worry that the absolute increase in their numbers actually masks a reduction in effective personnel.

It is not clear how these divisions should be understood and interpreted, as there appear to be several distinct forces at play. To some extent such tensions are a common feature of street-level bureaucracies and are particularly likely to arise when organizations pursue conflicting goals with limited resources. But the tensions that infuse the Inspection du Travail are

products of (and threats to) the very autonomy we have discussed and have thus provoked predictable responses from the inspectors—both individually and through several different, and competing, organizations.

The tensions have certainly been aggravated in recent years by the increasing dominance of neoliberal ideology, especially in the business community and among the political class, who seem to view the inspectors as little more than communist ideologues and workplace regulation as an unnecessary restraint on growth—a view that has been encouraged by international agencies like the International Monetary Fund, the World Bank, and the Organisation for Economic Co-operation and Development (OECD) and that is widely shared by policy makers in the rest of Europe and, of course, North America. The inspectors, on the other hand, have day-to-day contact with rank-and-file workers, including the most vulnerable workers who toil in the worst conditions for the most abusive employers and see little, or no, alternative to doing so. In fact, the inspectors perceive French managers as trying to evade or undermine the law in order to enhance their own autonomy and power. Almost everybody we interviewed discussed the tension between inspectors and their supervisors, and it is impossible to dismiss the issue in light of their comments—though it seems likely that both sides exaggerate the depth of their disagreement and downplay their similarities. Very few of the inspectors are actually communists, after all, and even those who are communists acknowledge that, however they feel about capitalism in the abstract, France is a market economy and by imposing too many restraints they will jeopardize the very jobs and working conditions they are trying to protect. Many of their supervisors have been promoted out of the rank and file and share their normative commitments, experiences, and familiarity with vulnerable workers. In fact, the state's role in protecting the less fortunate is more widely shared in France than the rank and file would seem to believe.

Finally, the conflicts within the labor inspectorate can also be interpreted in terms of a literature on the particularities of French culture and their impact on the country's institutions (Pitts 1957, 1963; Crozier 1964; Maurice, Sellier, and Silvestre 1986). France is known for its highly centralized governing structure. The extreme decentralization of authority in the Inspection du Travail is unusual, indeed almost unique, in French institutions. At the same time, however, French culture is highly individualistic; people are resistant to personal authority and offended by direct orders telling them how to behave and what to do not only in the realm of

labor inspection but in the field of regulatory politics more generally. They are therefore attracted to impersonal organizational mechanisms such as bureaucratic rules and impersonal systems of distribution, typified by the ways in which exam scores are used to allocate jobs in the *grandes écoles*. By the same token, however, the converse is a distrust and resistance to direct authority. That resistance is reflected in a labor relations system characterized by class conflict and a refusal to compromise; unions are resistant to signing contracts, for example, and are admired for their integrity. In the French school system, it is argued, similar sentiments create tight peer groups in which the students band together against the teachers in a way that very much resembles the polarization in the inspection school in Lyon. In the context of this literature, therefore, the resistance of the individual inspectors is understood not as an assertion of their own expertise and impartiality but rather as an extension of their own individuality and resistance to authorities who would limit their personal autonomy.

In sum, there are actually four distinct accounts of the contemporary French reality, each of which is probably relevant to at least some degree, and their interaction no doubt explains what many observers view as a pathological situation. But in trying to understand what France represents as a model of an approach to labor market regulation, and what it offers as an alternative to the U.S. system at the current juncture in our economic evolution, it is important to try to distinguish among them. In particular, we would like to distinguish the challenges posed by street-level bureaucracy in general and their particular manifestations in the French model of labor inspection from the peculiarities of both our particular historical moment (the ideological conflict generated by neoliberalism) and the French cultures of centralized government and individual autonomy. To do so, therefore, in Chapters 4 and 5 we examine the ways in which the French model of integrated inspection has been instantiated and operates in other national contexts, and then we turn to social science in an effort to identify the key determinants of the variation that we observe in the following chapters.

4

SPAIN

WHEN AN *INSPECTEUR DU TRAVAIL* TAKES ISSUE WITH his supervisors or refuses to crack down on North African immigrants, is it because of the distinct properties of the French model of inspection or because he is French? As we suggested in Chapter 3, the question is not easy to resolve. The managerial challenges we have identified are by no means unique to the labor inspectorate but are common to French bureaucracy—and French culture—more generally. When graduates of the labor inspection school in Lyon take control of their own destinies, perhaps they are demonstrating the same assertion of independence and expertise whose flourishing is permitted by the French model of inspection—or perhaps they are simply demonstrating that they are French students, inhabiting the "culture of refusal" that has defined that species for decades. Tensions between inspectors in the field and their central supervisors, similarly, characterize not just the inspectorate but also the broader French bureaucracy, where conflicts between "Paris and the provinces" (Gourevitch 1980), or between elite bureaucrats in the capital and the "regional and departmental field services" (Cole 2014, 106) that are supposed to put their dictates into action, are well known.

Spain therefore provides a useful reality check. After all, the Spanish labor inspectorate (Inspección de Trabajo) is a direct descendant, if by no means a rigid copy, of the French Inspection du Travail (Espina 2007, 58–59). Established by Chief Deputy José Canalejas in 1906 (Seco Ser-

rano 2003, 36), when labor unrest triggered acute anxiety among his liberal associates, it owes an explicit debt to Alexandre Millerand, the acknowledged father of the French model, who offered Canalejas ideas and inspiration (Espina 2007, 59; Valverde 2012, 8n26; see also F. Fuchs 2010 on Millerand). In fact, Canalejas self-consciously identified with his French counterpart and was known as the "Millerand español," or "Spanish Millerand," in his day (Buylla, Posada, and Morote 1902, 140; see also Rodríguez 1916, 125; Marco 1988, 27; Domenech 2003, 110). While his successors would adopt a number of reforms and would even flirt with specialization in the mid-twentieth century (Rodríguez-Sañudo 2003, 139; Díaz Aznarte 2009, 366), they left the core of his model intact, and Spanish labor inspectors—like their French counterparts—therefore boast broad responsibilities that allow for root-cause regulation. They not only are responsible for the entirety of the labor code but also oversee social security and immigration, and they are allowed to apply "both advice and sanctions" as they see fit (Casale 2012, 13; see also von Richthofen 2002, 29). In an effort to decouple the model from the milieu, therefore, we explore labor inspection in Spain.[1]

We have divided the rest of the chapter into four principal sections. The first section distinguishes Spanish personnel policies from their French counterparts. Where the French approach to recruitment, training, and management is rigid and hierarchical, and is thus prone to insubordination and conflict, the Spanish approach is decentralized and collaborative, and is thus compatible with the development of a more cohesive agency. The second section discusses the sources of noncompliance in Spain and their relationship to both the macroeconomic environment and the inspection process. We find that different *types* of violations are more (and less) prevalent in different macroeconomic climates and that—despite their reputed rigidity (see, e.g., "La patronal" 2013)—Spain's "multi-functional" (von Richthofen 2002, 41) labor inspectors are able to adjust their efforts accordingly. The third section addresses the limits to the Spanish system in practice. While the inspectors at the base of the hierarchy have broad jurisdictions (European Federation of Public Service Unions [EPSU] 2012, 11) and an abundance of skill, we argue, their principals are more interested in tax collection than transformative projects and therefore let much of this skill go to waste. Finally, we place the Spanish case against the backdrop of the U.S. and French cases and try to tease out more general lessons for the relationship between regulatory theory and practice.

Spanish Inspectors in the French Mirror: Recruitment, Training, and Organization

The architects of the Spanish labor inspectorate drew their primary inspiration from their predecessors in belle epoque France and Belgium, both of which played host to broadly generalist inspectorates. But they expressed a slight preference for the Belgian model on the grounds that it was even *less* specialized and more open than the French (Buylla, Posada, and Morote 1902, 39; Espina 2007, 58–59). The Spaniards did initially establish dedicated inspectorates for immigration in 1907 and social security in 1921, but they eventually recognized the limits to such specialization and consolidated responsibility for all aspects of labor and employment law in a single national agency, the Cuerpo Nacional de Inspección de Trabajo (or National Labor Inspection Corps), in late 1939 (Díaz Rodriguez 2006, 140; Díaz Aznarte 2009, 366). While their successors would tinker with their creation in the Franco era, and would gradually decentralize authority to regional and provincial governments after his death, they preserved the system's generalist orientation, and inspectors are therefore responsible not only for the enforcement of all aspects of labor and employment law in contemporary Spain—including their immigration and social security provisions—but also for the provision of advice and information that make compliance with their dictates possible. The result is a generalist system that is designed to balance the prosecution of violations with their prevention (Albesa Vilalta 2000, 3; Díaz Aznarte 2009, 365; cf. Martin, Linehan, and Whitehouse 1996, 176) and is conducive to root-cause regulation.

The differences between labor inspection in France and Spain are not only, or even primarily, formal and institutional, however, but also procedural and even cultural. The two countries recruit, train, socialize, and ultimately *reward* their inspectors differently. Spanish inspectors are members of "an elite force within the Civil Service" (Martin, Linehan, and Whitehouse 1996, 172; see also Ballart 2008, 192; Kickert 2011, 809), and they frequently occupy key positions in neighboring ministries as well (see, e.g., "El felipista Jose Antonio Griñán" 1992; Vega 2006), whereas French inspectors are not only a notch below their Spanish counterparts on the prestige gradient (Badie and Birnbaum 1976, 310; see also Kesler 1979) but are currently embattled in crisis (Sémillard 2001, 151; Monnier 2003, 116). What explains the differences between the two agencies? We address the

question by examining their different approaches to recruitment and training, organizational structure, and operating procedures.

Recruitment and training. Requirements for entry into the Inspección de Trabajo are among the most demanding in the world. They include a university degree and a competitive exam that is administered over a four-day period and divided into four parts: a written exam on labor and employment law and occupational safety and health, an oral defense of the written material, a written practicum, and a foreign language test. The exam is not only competitive but highly selective, and qualified candidates therefore tend to study on their own, intensively, for an average of three years after they finish their degrees—which are typically, but not necessarily, in law—and before they try their luck (Hidalgo 2005).

Until recently, however, successful candidates have gone into the field with virtually no training beyond a brief orientation in Madrid. They would usually accompany experienced inspectors in their initial workplace visits, but their "apprenticeships," for lack of a better word, were typically ad hoc and limited to brief periods that varied from inspector to inspector but, according to our interviews, never lasted more than six months. One of the inspectors we interviewed passed the exam at the dawn of the crisis of 2008 and was sent into the field on her own with no apprenticeship at all. The system has recently been reformed, however, and inspectors are now required to attend a special school, which was opened in 2009 in an effort "to provide information and training to new labour inspectors but also to help existing inspectors to *refresh* their knowledge" (EPSU 2012, 22).

Organizational structure. The management structure of the Inspección de Trabajo both reflects and reinforces the flexibility of the generalist approach to labor inspection. The agency boasts a flat hierarchy that has traditionally included three basic levels of management: the director general in Madrid; the provincial directors in each of the country's fifty-two different provinces; and subdirectors who oversee distinct regulatory arenas within the various provinces (for example, safety and health, social security, labor relations, and irregular employment). While the autonomous communities, or regional governments, have gradually been insinuating themselves between the central and provincial governments, their efforts to do so have been opposed and delayed by directors who hope "to keep the inspectorate as unified as possible" (Martin, Linehan, and Whitehouse 1996, 171).

The director is a political appointee who is almost invariably drawn from the ranks of the inspectors. Until recently, he or she was appointed by the central government, but in the wake of recent reforms appointments by regional governments have been more common. The subdirectors are appointed by the director and are almost always drawn from the ranks as well. These supervisory appointments are relatively brief; they change when the government changes, at which point the director and subdirectors return to the ranks.

The modest salary differences between the inspectors and their superiors are insufficient, in and of themselves, to make the higher-level jobs attractive, a fact that smooths the frequent rotation between the managerial positions and the base. Moreover, the fact that the managers are drawn from—and expect to return to—the ranks makes for a very close, even comradely, relationship between the line inspectors and their superiors at any given point in time. As one young inspector explained: "I discuss many of my cases with the managers; when I first came on the job, I thought of these discussions as kind of an exam, but now [after three years] they are much more collegial, a real discussion and interchange." The contrast with France, where the relationship between the street-level inspectors and management is for the most part antagonistic, is particularly sharp.

The Spanish inspectorate actually features a fifth level of hierarchy made up of almost a thousand sub-inspectors who are theoretically able to compete for positions among the inspectors but tend to pursue careers of their own (Hidalgo 2005). While their original responsibilities were limited to social security and employment matters (Díaz Rodriguez 2006; EPSU 2012) and explicitly excluded occupational safety and health, they have recently been divided into two distinct subgroups in an effort to better address the realities of the contemporary Spanish labor market: the original corps of social security and employment sub-inspectors; and a new group of sub-inspectors dedicated to the promotion of occupational safety and health in particular (Bandera 2015). Members of both groups operate under the direction and coordination of full-fledged inspectors, however, and their emergence thus reinforces the status and authority of the latter.[2]

Operating procedures. The subdirectors who are responsible for the day-to-day operations of the inspectorate are divided into broad task areas (for example, social security, irregular employment, and immigration), but the inspectors themselves are generalists who are legally entitled and qualified

to address violations of any and all aspects of Spanish labor and employment law. In some offices, they are actually assigned to one of the specialized divisions, and told to focus the bulk of their efforts accordingly, but in others they are responsible for a geographic territory rather than a particular form of noncompliance. Some inspectors have both a geographic territory and a substantive specialty of some kind, but inspectors tend to rotate among different assignments and thus maintain their generalist credentials over time. Finally, once the inspectors arrive at a work site, they can check for compliance with any aspect of the labor code, whether it is part of the original motivation for the visit or not, and they are therefore encouraged to think in terms of families of violations rather than in terms of isolated incidents or discrete transgressions. The structure and the operating procedures of the inspectorate therefore create a degree of specialization while at the same time preserving the possibility—and principal advantages—of root-cause regulation.

The Management of the Spanish Model: Target Selection in Good Times and Bad

The actions of the Spanish inspectorate are divided into two broad categories: inspections that are solicited by judges, tribunals, public officials, unions, or workers (*actividad rogada*), and inspections that are planned and carried out by the inspectorate itself (*actividad planificada*). The inspectorate maintains dozens of offices throughout the country, and solicitations (or complaints) can be brought to the relevant office by any individual or organization (for example, workers, employers, the police, unions, the health department). Upon receipt, the requests are registered and assigned to one of the three responsible subdirectors, who in turn assign the inquiries to specific inspectors. The inspectors respond to their requests by investigating, consulting with colleagues or the subdirector if need be, taking whatever actions are deemed appropriate (for example, warnings, sanctions, cease and desist orders), and eventually reporting back to the subdirectors who originally assigned their cases. The subdirectors periodically review requests and resolutions in their areas in an effort to ensure that similar cases are handled similarly. In this sense, the organization acts like a specialized system, but the fact that both the director to whom the subdirectors

report and the line inspectors whom they manage are generalists militates against excessive specialization for the inspectorate as a whole and the risks of tunnel vision that specialization entails.

Planned inspections differ from solicitations in that they are focused on particular sectors and/or problems, such as the construction industry, social security registration, or discrimination. In this sense, they are specialized as well, but the specialization is flexible in that the programs change to reflect the shifting social and political priorities of the inspectorate, which are themselves influenced by the evolution of technology and the economy. This flexibility is also predicated on the fact that the inspectors themselves are generalists who can move to new programs as they are created rather than specialists who become redundant as priorities change.

The inspectors also have additional responsibilities, including, most notably, the approval of collective dismissals; that is, dismissals involving ten workers or more in firms with fewer than one hundred people, 10 percent of the workforce in firms that employ from one hundred to three hundred people, and thirty workers or more in firms that employ more than three hundred people. While administrative controls over layoffs have frequently been portrayed as burdensome impediments to adjustment, especially in hard times, layoffs have routinely been granted, and even expedited, during downturns—albeit most recently by means of negotiation and the indemnification of the unemployed.[3]

The labor inspectors are also called on to mediate labor disputes. This was a particularly important role during the transition to democracy, when free trade unions were a relatively new force in society and management lacked experience in collective bargaining or negotiation, and veteran inspectors who lived through this period portray it as a particularly satisfying and meaningful time in their lives (Aragón Bombín 2006, 30; Ballart 2008, 7). But mediation—though still technically part of their competency—is no longer central to the workings of the labor inspectorate, in part because both labor and management are more accustomed to dealing with each other, and in part because new institutions have been established to mediate collective disputes.[4]

Table 4.1 includes annual data on the GDP growth rate, the number of visits, the number of violations of different types, and their distribution (as a percentage of visits) between 2003 and 2013 and, in so doing, speaks to the flexibility of the Spanish system. As the table makes clear, the collapse of the Spanish economy in 2008 occasioned a drop in the percentage of

Table 4.1 Macroeconomic conditions and labor inspection patterns in early twenty-first-century Spain

Year	Growth	Visits	Social Security	Violation % Visits	Safety and Health	Violation % Visits	General Employment	Violation % Visits	Labor Relations	Violation % Visits
2003	3.19	388,990	41,294	10.62	29,813	7.66	5,446	1.40	4,124	1.06
2004	3.17	362,682	34,816	9.60	25,633	7.07	6,619	1.83	4,371	1.21
2005	3.72	366,769	28,841	7.86	24,875	6.78	4,612	1.26	3,859	1.05
2006	4.17	388,677	33,650	8.66	24,074	6.19	7,220	1.88	4,116	1.06
2007	3.77	349,917	32,815	9.38	32,020	9.15	7,080	2.02	5,496	1.57
2008	1.12	352,922	28,827	8.17	27,926	7.91	7,049	2.00	5,246	1.49
2009	−3.57	362,058	38,903	10.74	16,737	4.62	5,533	1.53	5,408	1.49
2010	0.01	360,252	39,264	10.90	14,197	3.94	4,254	1.18	5,134	1.43
2011	−1.00	356,535	40,112	11.25	13,149	3.69	4,126	1.16	5,176	1.45
2012	−2.93	364,134	41,582	11.42	11,899	3.27	3,610	0.99	4,739	1.30
2013	−1.71	344,046	42,523	12.36	10,518	3.06	3,720	1.08	4,787	1.39
Correlation				*−.72 (.01)*		*.80 (.03)*		*.58 (.06)*		*−.53 (.09)*

Data: Inspección de Trabajo y Seguridad Social (various years) and World Bank (2017). P values in parentheses.

inspections resulting in safety and health and employment (including immigration) violations, and a corresponding spike in the percentage of visits resulting in social security and labor relations violations. The former arguably reflects the collapse of the dangerous and migrant-intensive construction industry, not to mention the slowdown of the economy more generally, and the latter apparently reflects the growth of informality and industrial action during the downturn. In fact, the correlations between the GDP growth rate and the percentage of each type of violation are invariably significant at the 10 percent level and signed in the predicted directions: good times yield safety and health and migration violations; bad times yield social security and labor relations violations.

But the number and share of violations reflect not only the variable prevalence but also the variable propensity to target different types of violation in different macroeconomic environments. In good times, the inspectors believe that workers and unions can fend for themselves and that safety and health are at risk, and they therefore target high-risk construction sites and factories that are running at full capacity. In bad times, however, they worry more about informality and industrial conflict than safety and health, and they plan their actions accordingly. And the data in Table 4.1 thus reflect not only (or even primarily) the variable *distribution* of different types of violations in different macroeconomic environments but also the inspectorate's ability to *adapt* to the environment in relatively short order by targeting different types (or patterns) of violations in different time periods.

From Torchbearers to Tax Collectors: The Decline of the Spanish Labor Inspectorate

The Spanish government, and in particular the Partido Popular (PP) government elected in 2011, responded to the crisis that began in the mid-2000s by combating the underground economy (Fariza 2015). In the words of PP labor minister Fátima Báñez, fraud and informality threaten not only workers, who lose their wages and benefits to unscrupulous employers, but also taxpayers, who have to make up the lost revenue, and honest employers, who are forced to confront unfair competition from their dishonest rivals ("Báñez anuncia un plan contra el empleo irregular y el fraude," 2012). In an effort to crack down on fraud, therefore, the ministry recruited dozens of

new inspectors and sub-inspectors, bringing the national total up from 748 and 795, respectively, at the dawn of the twenty-first century (EPSU 2012, 78) to 970 and 874, respectively, in 2013 (Inspección de Trabajo y Seguridad Social, 2014, 34).

In some sense, this campaign was successful. The ministry claims that tens of thousands of workers have been formalized; wages and benefits have been recovered; and tax revenues have been collected ("El Plan Contra el Empleo Sumergido" 2012). But veteran inspectors bristle at the notion that they have been reduced to mere tax collectors, when they have much more to offer (Aragón Bombín 2006). Rather than being afforded the time and latitude to diagnose the situation at each individual workplace and make recommendations for comprehensive solutions, they say, they are forced to adopt a checklist approach—moving onto the next enterprise in an effort to collect more revenue by raising the costs of noncompliance (cf. Martin, Linehan, and Whitehouse 1996, 176).

At first glance, this focus on formalization might foster comparisons to the U.S. system, since it drives inspectors to pursue a rather narrow task by means of a largely punitive approach. But the most relevant comparison for our purposes is not the specialized, sanctioning approach of the United States but alternative institutions of workplace regulation that had long been established in Spain itself, institutions that nonetheless resembled the U.S. system in some ways. After all, the Spanish inspectorate was initially created in 1906, after a period during the nineteenth century in which reactions to labor conditions for women and children, in particular, had produced a series of judicially enforceable legal restrictions aimed at distinct work practices and conditions. The resultant influx of cases overwhelmed the courts, and relative to this hodgepodge of regulation, an institution like the inspectorate seemed to be both more effective and more coherent.

But today's labor inspectors are best understood in terms of the transition to democracy at the end of the Franco era in the late twentieth century. Labor and management had been bitter antagonists in the Spanish Civil War, and the conflict persisted, albeit tacitly, for the better part of the next half century. The relationship between labor and capital was thus viewed as a key to the political rapprochement that would necessarily underpin the stability of the post-Franco era. If open conflict were to occur, many believed, the whole democratic transition would be at risk. But the detailed workings of the economy had been tightly controlled by the *franquista*

state, and labor and management thus had little experience dealing with each other.

Into this combustible mix stepped the labor inspectors, who took advantage of an unforeseen circumstance to assume a proactive role in resolving the conflict (Aragón Bombín 2006, 30; Ballart 2008, 7). Labor laws had been deliberately extended by Franco and his associates as a kind of poison pill for their successors. But some provisions in those laws, in particular their employment protections, placed the labor inspectors in a key position in the workplace. They used their position to gain leverage as mediators and conciliators and, in so doing, helped labor and management work together to develop new institutions of collective bargaining—institutions that would ultimately transform collective bargaining into an alternative to government regulation of the workplace.

As the new institutions of collective bargaining developed in the 1980s and 1990s, in fact, the labor inspectorate receded into the background. Similarly, as Spain's regulatory, judicial, and social institutions have developed over the last twenty years, they have encroached on many of the functions that the labor inspectorate fulfilled in the period of transition to a more open economy and a democratic regime. For instance, the administrative control over layoffs that once gave inspectors tremendous authority at the firm level has been eclipsed by the proliferation of temporary contracts with low dismissal costs, on the one hand, and indemnified dismissals of workers on indefinite contracts, on the other (Lahera Forteza 2009; Dubin 2012). And the conciliation of collective labor disputes is no longer pursued on an ad hoc basis by individual inspectors but has instead been formalized under the auspices of a publicly subsidized, privately managed organization known as the Servicio Interconfederal de Mediación y Arbitraje (Inter-confederation Mediation and Arbitration Service, or SIMA) at the national level, with similar institutions in each of the autonomous communities (see Ferrer Dufol 2002; Welz and Kauppinen 2005). Finally, in 1995, the courts assumed a growing role in both individual and collective disputes, a role that has continued and even expanded to the present day. As a result of these reforms, labor market regulation in Spain is considerably less flexible today than it was in the past, and the labor inspectors themselves are overqualified and underutilized.

The fact that the alternative to government regulation is not so much the market but rather less flexible government and parastatal institutions obviously differentiates the Spanish debates from their French counter-

parts. And the alternatives themselves reflect the very different political configurations and histories of the two countries, as the Spanish right is associated less with neoliberalism and the market—the touchstones of the French right—than with the legacy of *franquista* state control.

It should nonetheless be noted that the current debate in Spain centers not only on the nature and degree of regulation but on decentralization to the autonomous communities, and most of the reforms in the inspectorate of late have been centered on devolving control to regional governments (notably in Catalonia and the Basque country, but eventually in every region) without losing the coherence of a centralized system (Martin, Linehan, and Whitehouse 1996, 171). This theme is somewhat tangential to the argument we are making, however, and we shall therefore set it aside for the time being.

Spain in Comparative Context

France and Spain offer a suggestive contrast. They not only demonstrate the myriad ways in which differences in personnel policies and history play themselves out over time, but they also suggest that adjustments to personnel policy could be used to change the ways organizations operate, especially insofar as recruitment, training, and socialization offer public-sector organizations policy levers with which to shape the behavior of their personnel. Whereas French policies and institutions tend to provoke debilitating hierarchical conflict, the Spanish approach tends to discourage the development of a strong group consciousness among the inspectors (or even sub-inspectors) at the base of the system and instead encourages them to turn to their supervisors for support and advice where needed.

In Spain, as we have seen, candidates for the inspectorate tend to study for the exam alone, at home, for approximately three years and, until recently, lacked any formal training when they entered the service. Instead, they were trained and socialized by shadowing more experienced inspectors on site visits or, in several cases we encountered, were sent out into the field on their own. Absent strong ties to their colleagues, therefore, they are virtually forced to turn to their supervisors for support and advice, and their willingness and ability to do so are bolstered by the fact that the supervisors are themselves inspectors, drawn from the base, and serving in their supervisory roles for relatively short periods before returning to work as

line inspectors. The latter point, in particular, minimizes the social as well as institutional distance between the inspectors and their supervisors. Experienced inspectors do work in teams, of course, especially on special projects (for example, sex discrimination), but their foci and organization are determined at the top of the hierarchy, which in this sense exercises a strong influence on the lateral contacts that develop among the inspectors on the job.

The French organization, by contrast, encourages lateral relationships among the inspectors but has relatively little control over how they develop or the content they impart. Once they have passed the entrance exam, for instance, the French inspectors enter a two-year program of study and training that has both a classroom component and an apprenticeship. The former component takes place at a residential facility located in the suburbs of Lyon, at some distance from the town, and the students thus spend a lot of time in close proximity to one another with relatively little outside contact. The latter component encourages the new inspectors to bond with their senior colleagues and transmits the codes of conduct and standards of judgment from one generation to the next. (The classroom component draws heavily on experienced inspectors and thus tends to work to the same effect.) Supervisory positions in the administrative hierarchy are often filled by promotion of inspectors from the base, but once promoted, their careers are focused on promotion within the hierarchy itself; they virtually never return to the inspection corps. Because supervisory positions are not confined to those who have actually had experience as inspectors in the field, moreover, they are at times occupied by "outsiders" who are particularly likely to draw the ire of the inspectors. Both the distance between the inspectors and their supervisors and the bonds among the inspectors themselves have been strengthened by the aforementioned murders of the inspectors on the job in 2004 and the suicides of line inspectors more recently, and the ways in which ministry officials and the political class reacted, or rather failed to react, to these events.

Somewhat ironically, given the strong group cohesion among the French inspectors, there is virtually no teamwork in France. The inspectors have their geographic territories and in their territories have virtually complete autonomy as to how to organize their jobs. To the extent that they do consult with their colleagues, therefore, the consultations are informal and offer little opportunity for outsiders, and particularly for ministerial officials, to shape their direction. Indeed the hierarchy has no direct influence over what topics are actually discussed in the first place.

Table 4.2 Employment centralization and inspection models in late twentieth-century Europe

Specialist	Large Firm Employment	Generalist	Large Firm Employment
Austria	34%	Belgium	31%
Denmark	31%	France	33%
Germany	40%	Greece	13%
Ireland	33%	Italy	20%
Netherlands	39%	Luxembourg	29%
Sweden	39%	Portugal	20%
United Kingdom	44%	Spain	20%
Average	37%	Average	24%

Data: European Commission (1999, 73–74) on specialist versus generalist approaches and Beck, Demirgüç-Kunt, and Levine (2005) on the large firm sector's share of overall employment when the cutoff for large firm status is 250 employees. The differences between the two groups are statistically significant at $p<.01$ under standard tests; the between-group differences in per capita income (not shown) are statistically insignificant.

The differences between France and Spain pale in comparison to their similarities, however, for both countries have resisted specialization in favor of a generalist posture that is potentially well suited to the needs of their small-firm economies. Nor are they alone. The European Commission divided the labor inspectorates of fourteen member states into equally sized "specialist" and "generalist" camps in 1999, and we found an affinity between the former and more centralized employment structures. While large firms employed approximately 37 percent of the workers in the average "specialized" country, they employed no more than 24 percent of the workers in their "generalist" counterparts (see Table 4.2).

Some might trace the variation to regional differences, noting that small firm economies and specialization are both found disproportionately in Southern Europe, where legal and cultural differences abound; or to correlates of region, like the level of economic development. But the specialist countries, though a bit wealthier on average, were not significantly wealthier than their generalist counterparts in the late twentieth century, and specialization actually came late to both regions. When George Moses Price carried out his survey of European inspectorates in 1913, for example, he found that Great Britain was the one country he visited "in which the specialization of functions is carried very far" (1914a, 13) and that even the British had originally imbued their inspectors with "extraordinary powers, legislative as well as executive" (41), in the early nineteenth century. Only

later did they add specialists and, eventually, a division of labor to the mix.[5] "In other countries," Price continued, "there is no such specialization or division of labor, and each inspector performs all the complex functions of labor inspection" (13).

Continental countries would eventually follow Britain's lead in protecting the health and well-being of their workers. "Sometimes this was done in the same way as in Britain," writes George Rosen (2015, 249), "sometimes in other ways, depending on the state of industrial development as well as on the political and social organization of the country." While industrialization and specialization advanced in tandem in northern Europe, for instance, they both lagged in southern Europe, where small-scale industry and task integration remained the norm until at least the mid-twentieth century. And insofar as they did *flirt* with mass production in the postwar era, the French and Spanish would flirt with the specialization of their labor inspectors as well (Reid 1994, esp. 312; Rodríguez-Sañudo 2003, 139; Díaz Aznarte 2009, 366; as well as Vázquez Mateo 1995; Hidalgo 2005)—only to rededicate themselves to regulatory integration later on, when problems of small enterprise again began to loom large in their respective labor markets. When the Spanish began to recruit sub-inspectors for occupational safety and health in 2015, for example, they simultaneously reinforced the integrated character of the system as a whole and underscored the primacy of the generalists (Boletín Oficial del Estado 2015; Panizo Robles 2015; see also Bessiere 2005 on France).

The point, therefore, is not only that for all of their myriad differences France and Spain share the same basic regulatory institutions but also that the institutions in question are particularly well adapted to contemporary employment structures. Whereas specialization worked well in the halcyon days of Fordism, when inspectors could reap economies of scale and their supervisors could plan accordingly, functional integration is better suited to a post-Fordist era marked by "the deconcentration of production to small firms and smaller units of big firms" (Geddes 1994, 163), for it allows regulators to tailor their efforts to the case at hand and avoid multiple visits to the same enterprise (Siffermann and Weber 2008, 45). It is in all likelihood better suited to developing country labor markets that are dominated by small firms and self-employment as well, and we therefore explore the model's diffusion to Latin America in Chapter 5.

5

LATIN AMERICAN VARIANTS

THE CASES WE HAVE DISCUSSED SO FAR TREAT specialization and functional integration as key aspects in a typology. The United States offered insight into specialization. France spoke to the risks and rewards of integration. Spain decoupled the logic of integration from the French sociocultural milieu. And the Franco-Latin model began to look better suited to post-Fordism than the specialized U.S. model but subject to distinct challenges nonetheless: hierarchical conflict in the French case and excessive deference to authority in Spain.

It is against this backdrop that Latin America looks particularly interesting. The region as a whole adopted the generalist model from France and Spain in the early twentieth century (Vega Ruiz 2009, 13–15), but the model is used differently by different Latin American governments. Some have fully embraced the French and Spanish scripts of task integration, remediation, and pedagogy. The Chileans have been known to "sentence" violators to legal and managerial training, for example, while the Dominican Republic has overhauled its entire inspectorate with the help of the Spanish government. Others have moved in the opposite direction by grafting elements of specialization onto their traditionally Franco-Latin institutions. So Argentina and Mexico employ dedicated health and safety inspectors in addition to generalists who address wages and hours, working conditions, child labor, and the like (McGuinness

1998, 375; Amengual 2016, 66–70). And, finally, Latin America is marked by urbanization, underdevelopment, and unemployment—that is, the very contextual conditions that gave rise to the Franco-Latin model in the first place.

In this context, we suggest, France and Spain offer developing countries—in Latin America and beyond—a better approach to labor market regulation than the more specialized and punitive United States, despite the myriad day-to-day problems that the Franco-Latin model presents. In fact, we argue, this model exemplifies regulation's capacity to act as a powerfully generative force—a sharp contrast to its image as the restrictive red tape that leaves otherwise nimble and entrepreneurial employers hamstrung. Because the Franco-Latin model allows inspectors to disseminate best practices from productive, compliant employers to their less productive, noncompliant counterparts, it has the potential to reconcile the needs of incumbent workers with the demands of their unemployed counterparts—and may thus foster, rather than foil, development more generally.

To achieve these expansive ends, however, it's crucial to get the organizational structures and practices right. In an effort to figure out how to do so, therefore, we've divided the rest of the chapter into three principal sections. The first section introduces the debate on labor market regulation in Latin America, and labor-surplus economies more generally. While the current scholarship addresses the desirability of de jure regulation and tends to focus on the symptoms of noncompliance, we address their root causes by prioritizing the lived experiences of regulators, employers, and workers. The second section discusses the actual practice of labor inspection in six Latin American countries and finds that they have adapted—or been forced to adapt—the Franco-Latin model to their particular needs and circumstances: corporatist legacies and federal institutions in Argentina and Mexico (Bensusán 2006, 24); the relatively robust bureaucracies and prosperity of Brazil and Chile; and patronage politics and "political trade-dependence" (Manger and Shadlen 2014) in the Dominican Republic and Guatemala. And the third section reflects on the broader lessons of the Latin American experience and highlights three in particular: the opportunities and challenges posed by globalization and democratization in the twenty-first century, the advantages of the Franco-Latin model in the developing country context, and the importance of civil service development if those advantages are to be reaped.

Labor Market Regulation in Latin America: Beyond the Current Impasse

Labor market regulation is hardly a new issue on the Latin American policy agenda. After all, the protective labor laws that legitimated the region's corporatist regimes and empowered their working-class supporters in the mid-twentieth century not only survived the neoliberal 1990s more or less intact (Murillo and Schrank 2010) but have been blamed for their failure to usher in more robust income and employment growth. By way of illustration, Norman Loayza and Luisa Palacios of the World Bank worried that labor market reform was the issue area in which Latin America had made "the least progress" by the late 1990s (Loayza and Palacios 1997, iv), and they went on to join a chorus of commentators who advocated the elimination of regulations that in their eyes made "labor too costly and risky relative to its abundance" in the region (12). While their recommendations made sense in theory, due in part to their rigorous microfoundations, they fell short in practice—given the complexities of the region's labor markets and politics—and the result is a theoretical and political stalemate that continues to the present day.

Existing accounts of Latin American labor market regulation are vulnerable to three related criticisms. First, they tend to treat regulation as a unidimensional rather than a multidimensional process. For instance, Loayza and Palacios collapse information on payroll taxes, dispute resolution, dismissal costs, and public employment into an ordinal "labor market liberalization index" (1997, 53). J. Luis Guasch and Robert Hahn draw a distinction between more and less flexible labor markets by way of reference to payroll taxes, severance payments, and the nature and extent of collective bargaining coverage (1999, 145). And David Kaplan treats labor market regulation as a function of minimum wages, the costs of hiring and firing, collective bargaining, military conscription, and business perceptions of the importance of employment protection and collective bargaining in the labor market (2008, 9; see also Furceri, Bernal-Verdugo, and Guillaume 2012, 3). These authors clearly recognize that regulation is a multidimensional process (e.g., employment protection versus minimum wages), but they nonetheless treat it as unidimensional in developing their concepts and measures.

Second, they tend to focus on de jure regulation, or law on the books, to the exclusion of de facto regulation, or law on the ground (see, e.g.,

Heckman and Pagés-Serra 2000; Campos et al. 2009). The consequences are potentially profound, for the alleged effects of labor standards—whether positive or negative—are premised on their enforcement (Guidotti 2000, 150; Albagli, García, and Restrepo 2004, 15; Sangheon Lee, McCann, and Torm 2008, 423; Egaña and Micco 2011, 20; Murillo, Ronconi, and Schrank 2011, 804), and enforcement is not only highly uneven over space and time (Organización Internacional de Trabajo 2014b; Organización Internacional de Trabajo 2015) but also ignored—or at least downplayed—by the current literature. When they do take it into consideration, moreover, existing accounts tend to do so with the help of models and indicators that raise more questions than they answer. For instance, Ricardo Caballero and his colleagues (2004) measure enforcement with indicators derived from surveys of employers that are at best poorly explicated and at worst systematically biased against the interests of workers (Kurtz and Schrank 2012).

And, third, they tend to treat violations as distinct products of discrete choices rather than as interrelated symptoms of backward managerial practices, and in so doing, they address the symptoms rather than the disease. So, for example, scholars assume that employers and workers "weigh the costs and benefits" of compliance (Perry et al. 2007, 47; Almeida and Poole 2013, 11) and decide whether to comply, when in reality many—perhaps most—Latin American employers would have trouble meeting their legal obligations if they wanted to do so. Survey data not only suggest that the vast majority of Latin American citizens feel "little" to "no" protection from their labor laws but—in a stirring testimonial to the mismatch between the region's productivity levels and its labor standards—reveal that citizens of the region's poorer countries feel the least protection of all (Schrank 2014), indicating that compliance is higher in better-off countries, where employers can afford to meet their legal obligations, and lower in their poorer counterparts, where compliance would pose a threat to solvency.

These analytical predispositions have been accompanied by a familiar chorus of calls for deregulation and the rollback of labor laws in the region. But as we have already noted, efforts to eliminate the region's labor standards have been singularly unsuccessful, and workplace protections are among the few regulations that survived the neoliberal 1990s intact. In some cases, in fact, they even expanded (Murillo and Schrank 2005), and there is no reason to believe they're going to disappear now. This persistence suggests, to us at least, that if economic efficiency and social welfare

really are in tension, the tension would be better managed by addressing the forms regulation takes than by eliminating regulation itself. Unfortunately, the way the debate has been structured to date blinds us to the fact that regulation can take qualitatively different forms.

Comparative Case Analysis

To identify these forms and what they imply for developing countries in particular, we turn to a series of specific cases. There are more than a dozen countries in Latin America, and despite common themes and awareness of one another's experiences, they display considerable variety in the way workplace regulations are administered. We have tried to capture that variety by looking at a series of paired comparisons: Argentina and Mexico; Brazil and Chile; the Dominican Republic and Guatemala. We have visited, observed, and interviewed labor inspectors in most of these countries; in several, they have been studied by students or colleagues who share our perspective. Of course, these comparisons cannot capture all of the region's alternatives; each country has its own story, and we make no pretense of capturing all of them. But we believe that our cases represent the major alternatives and give a sense for the choices that are realistically available in the region.

Argentina and Mexico: Corporatist Legacies and Federal Polities

Argentina and Mexico are both large, federal democracies that are more industrialized and urbanized than is typical of Latin American countries. Unlike the region's smaller countries, for example, they boast heavy as well as light manufacturing and—more than a quarter of a century of deindustrialization notwithstanding—concentrate almost a quarter of their respective labor forces in industry, as opposed to a regional average of 20 percent. Approximately 20 percent of their respective populations are found in and around their largest cities, Greater Buenos Aires and Mexico City, and their largest secondary cities (for example, Córdoba and Rosario in Argentina; Guadalajara and Puebla in Mexico) each contain more than a million inhabitants.

In both countries, industrialization and urbanization went hand in hand with unionization and the rise of labor-backed political parties (Collier and

Collier 1991, 63–67). In Argentina, the Peronists assumed power on the backs of industrial workers in the 1940s, and organized workers have continued to provide their core constituency ever since (Murillo and Schrank 2005; Etchemendy and Collier 2007). At their peak, Argentine unions represented approximately half the country's labor force (K. Roberts 2014, 100). Meanwhile, the Confederation of Mexican Workers (Confederación de Trabajadores de México, or CTM) provided the Institutional Revolutionary Party (Partido Revolucionario Institucional, or PRI) with one of its three official pillars, the others being associations of peasants and "popular" organizations (for example, artisans, bureaucrats, professionals, students) that offered the party electoral as well as non-electoral support. Every member of the CTM was automatically enrolled in the PRI, and the party and the unions—which at their peak enrolled approximately one-third of the labor force (K. Roberts 2014, 100)—thus had a natural alliance.

In both countries, moreover, workers were generously rewarded for their support. Argentine workers received an array of formal protections, including a minimum wage, paid holidays, safeguards against dismissal, severance pay, accident insurance, collective bargaining rights, and—perhaps most importantly—*ultractividad*, or the stipulation that if no new collective contract was reached by the time an existing contract expired the existing contract would remain in force indefinitely. Not surprisingly, the latter ensured that collective contracts tended to grow *more* favorable to labor over time. Meanwhile, Mexican workers received a broadly similar array of benefits, including not only laws governing wages and hours, health and safety, collective contracts, and labor disputes (Middlebrook 1995, 45–46) but also representation on the boards that established the wages, governed the contracts, and mediated the disputes (Levy and Bruhn 2006, 74)—not to mention seats in Congress, governorships, and key posts in the bureaucracy (Collier and Collier 1991, 240).

These benefits were not cost-free, of course. They went hand in hand with—and were often the source of—constraints on union activity. Privileges like monopolies of representation were only granted to unions with links to the governing parties, for example, and upon accepting them the unions in question became "less responsive to the needs of the workers than to the concerns of state agencies or the political elite" (Collier and Collier 1979, 970). Outright repression was another option, to be sure, but it was not only less common in Argentina and, especially, Mexico than in neighboring countries that lacked powerful labor movements but also, for

the most part, unnecessary (Collier and Collier 1979, 976; Torre 1989, 548). Labor leaders were unlikely to oppose politicians who protected their monopolies of representation or to resist regulators who oversaw their dues checkoff procedures (Murillo 2001, 32).

In both Argentina and Mexico, however, the legacy of these large, party-allied unions is a dualistic labor market. Workers who are subject to collective contracts—or even just employed in the formal sector—receive an array of protections and safeguards that are unavailable to at least half the labor force, including not only domestic workers and the self-employed but also "all other waged workers without a labor contract or protection" (Tokman 2008). Well under half the workforce is covered by social security, for example, and the percentage actually declined in the 1990s (Saavedra and Tommasi 2007, 296). Coverage rebounded in early-twentieth-century Argentina, to be sure, but it's falling again today (Jueguen 2016), and informality is therefore the rule rather than the exception in both labor markets.

The extent of informality is not entirely surprising, however, for neither country comes close to the ratio of one inspector for every fifteen thousand workers recommended by the International Labour Office (ILO) for industrializing economies (2006, 4). Whereas Argentina deploys approximately one inspector for every twenty-five thousand workers, according to the ILO, in Mexico the ratio is markedly lower and falling (15; Bensusán 2006, 357). Nor does either country impose rigorous hiring criteria (McGuinness 1998, 382–383; Amengual 2016, 62), though Mexico apparently recruits more university graduates than Argentina (Bensusán 2006, 357). And neither country offers generous salaries or material support. Inspectors tend to take public transportation to their inspections, for example, or to use their own vehicles, making visits more costly and less frequent. And many wind up moonlighting (Amengual 2016, 88; McGuinness 1998, 383), especially in Argentina, making inspection less a career prone to esprit de corps than an element in a broader approach to income generation.

Of course, Argentina and Mexico are not alone in this regard; the commitment to labor inspection is tenuous throughout the region (Bensusán 2006; Vega Ruiz 2009, 25–26). But the Argentine and Mexican deficits are at least partly produced and to some extent compounded by federalism, for both countries divide responsibility for inspection between their central governments and provincial or state governments that are resource-poor and, in so doing, allow specialization to creep back into the Franco-Latin system

through the proverbial backdoor. So, for example, Argentina assigns responsibility for most labor law enforcement to the provinces but leaves health, safety, and social security inspection to the federal government (von Richthofen 2002, 152; Bensusán 2009, 1020; Ronconi 2010, 720; Amengual 2016, 60). And Mexico offers a broadly similar federal-state division in general but adds strategic industries, state-owned enterprises, and enterprises subject to collective contracts that "are obligatory in more than one federal entity" to the federal roster as well (McGuinness 1998, 374).

The implications are profound, for not only the capacities but also the priorities of the different agencies are highly variable. Inspectors go door-to-door in Monterrey, for example, but tend to ignore the rest of the state of Nuevo León, where the northern city is located, and in many states there is little or no coverage at all (Bensusán 2008, 123). While Quintana Roo had only two state inspectors for a population of just over a million in 2008, the neighboring state of Yucatán had no state inspectors at all—for a population that was almost twice as large (Romero Gudiño 2008, 131–132). And the problem is not limited to the impoverished south. More prosperous states like Querétaro and Aguascalientes to the north were similarly understaffed. Meanwhile, Argentina exhibits similar imbalances. Provinces like Entre Ríos, La Rioja, and Santa Cruz employ more than fourteen inspectors per hundred thousand workers—approximately double the number recommended by the ILO for industrializing countries (2006, 4), while provinces like Buenos Aires, Formosa, and Salta employ fewer than two inspectors per hundred thousand workers (Ronconi 2010, 725).

The problem is not only that human resources are in short supply, however, but that the "backdoor specialization" produced by federalism has resulted in their inefficient deployment. For instance, the Mexico City inspectorate found itself staffed in part by doctors and nurses, despite ceding authority for health and safety enforcement to the federal government (Bensusán 2008, 125). The Argentine labor ministry (Ministerio de Trabajo, Empleo, y Seguridad Social, or MTESS) has been criticized for portraying hundreds of auditors hired to enforce social security provisions as "labor inspectors" despite the fact that they are unable to address common violations of labor law, including "non-payment of wages, illegal overtime, unsafe working conditions, and violations of the terms of collective bargaining agreements" (Amengual 2016, 60). And in both countries coordination between and among the various inspectorates at different levels of government has proven difficult (Bensusán 2006, 124).

The system-wide problems are widely recognized in Argentina and Mexico, but there is no consensus on their solution. Workplace regulation is but one item on a long list of their economic and bureaucratic inefficiencies and deficiencies. Nobody knows how the various items fit together. And efforts to address these problems have for the most part been the contingent products of crisis and scandal—like the mining disaster that killed sixty-five Mexicans in February 2006 (Bensusán 2008, 93; Secretaría del Trabajo y Provisión Social 2011) or the sweatshop fire that killed a family of Bolivian immigrants in Buenos Aires a month later (Sánchez 2006; Amengual 2016, 78)—rather than deliberation and consensus building.

The consequences of moving from crisis to crisis in a federal system are perhaps best illustrated in Argentina, where the enforcement effort is invariably colored by partisan politics as well as political fragmentation (Ronconi 2010; Amengual 2016). When protests and denunciations followed the sweatshop fire, for example, the Subsecretary of Labor for Buenos Aires (Subsecretaría de Trabajo de Buenos Aires or STBA) blamed the "incomplete power transfer" (Amengual 2016, 132) from federal to local authorities in the late 1990s when the capital of Buenos Aires gained autonomy from the federal government and the STBA was formed. "Even after the STBA was created," explains Matthew Amengual (2016, 132), "the MTESS continued to regulate the 'putting out' agreements that were the norm in the garment workshops," depriving the local authorities of the responsibility and authority they would need to intervene (Amengual 2016, 298; see also Rocha 2006).

The costs of this decision would become obvious in the wake of the fire, however, for the federal labor ministry had an enormous staff, including the aforementioned tax auditors, but most lacked the authority and expertise needed to clamp down on home-based sweatshops. With the support of allies in government and associates in civil society, therefore, the STBA breached the formal barrier that kept its personnel out of sweatshops and sent an army of inspectors into the textile zone—eventually negotiating an agreement with the labor ministry and assuming formal control of the industry as well (Rocha 2006; Amengual 2016). The STBA not only shut down scores of clandestine workshops but also encouraged employers to upgrade their productive practices and workers—who had been displaced from the workshops they closed down—to build a garment-making cooperative with the support of the Instituto Nacional de Tecnología Industrial (National Institute of Industrial Technology, or INTI), an industrial

extension service administered by the Ministry of Industry. "The cooperative sold the clothing under the brand 'No Chains' in the fashionable Palermo neighborhood of Buenos Aires," Amengual explains, "and it was also given a contract to make uniforms for the police and Ministry of Defense" (2016; see also Bergel et al. 2006; Vera 2007).

In other words, the STBA tried to address not only the symptoms but also the root causes of the problem by modernizing the garment workshops and giving their workers an exit option (D'Ovidio 2007; "Nace la Primera ONG" 2007). While these initiatives showed some promise (Amengual 2016), and the cooperative in particular is still a going concern (Giambartolomei 2015), they were largely dependent on the good graces of the city's Peronist government, and they were thus cut off at the knees in December 2007, when the inauguration of Mayor Mauricio Macri resulted in "a clear decline in enforcement" (Amengual 2016). Macri was not only a political conservative who lacked ties to the civil society organizations that had promoted and helped with the enforcement effort under the Peronists, but also the brother-in-law of the owner of one of the country's largest—and most notorious—apparel brands (Toledo 2014), and his inauguration thus had predictable consequences. "Inspections continued in the industry," explains Amengual, "but there were no more efforts to take a strategic approach to getting at the root causes of violations by enforcing up and down the supply chain." Nor were there efforts to collaborate with civil society organizations, and inspectors who closed hundreds of workshops in the year after the 2006 fire therefore closed a mere twenty in 2013—in the aftermath of more than five thousand inspections (Toldeo 2014). Despite mounting claims from inspectors and activists (Rebossio 2012; Veiga 2013), neither the industry nor the Macri administration seemed interested in getting rid of sweatshops or the putting-out system. When a similar fire claimed the lives of two more immigrant children in 2015, therefore, few were surprised—despite the fact that their sweatshop had recently been exposed by activists. On the contrary, a senior safety inspector intimated that the Macri administration had been conspiring to protect underground factories instead of their workers (C. Rodríguez 2015).

In short, efforts to protect Argentine workers are subject to the whims of whichever party—or at times whichever politician—is in power at the time. When Macri was elected president of the republic at the end of 2015, therefore, his opponents expressed concern (Wainfeld 2016), and their concerns appear to have been warranted. Informality has spiked nationally (Jueguen

2016). Labor rights are at risk (Arredondo 2017; Meyer 2017). And protest has intensified accordingly (Varela 2017).

Even when pro-labor politicians are in power, however, the fragmentation of the Argentine regulatory system limits their ability to protect workers and their jobs. By assigning different violations to different agencies, for example, the Argentines turn their inspectors into special-purpose resources and thus ensure that they are inflexible, myopic, and unlikely to be deployed in the most efficient manner possible. By doing so at different levels of government, moreover, they compound the problem.

Unfortunately, similar problems emerge in Mexico, where in recent years the question of informality, in particular, has provoked two competing policy proposals. The first establishes a parallel system of social security for the informal sector, and the second would try to extend formal coverage to the rest of the economy but simultaneously reduce the regulations and requirements to a much shorter and simpler list than the extant one (cf. Van Ginneken 1999; Espinosa-Vega and Sinha 2000; Bosch, Cobacho, and Pages 2012; Antón, Hernández, and Levy 2012). While the former proposal is currently in effect and has been subject to criticism by proponents of the universality, the latter is complicated not only by political opposition to the tax increases required to fund universality ("The Reform That Got Away" 2014) but also by the fact that many of the current requirements are dictated by the constitution, which is all but sacrosanct in Mexico.

In the meantime, however, the debate proceeds very much as if the way to think about the current system is in terms of a list of specific regulations, just as one thinks about workplace regulation in the specialized U.S. approach. Discussions of administrative reform certainly proceed in this way. One experiment in the early 2000s therefore asked companies to self-report their compliance on forms that were to be audited at random by the labor inspectorate, essentially the way the personal income tax is administered in the United States. More recently, the labor ministry has introduced a sophisticated information technology system and asked inspectors to follow a checklist; they are given quotas of the number of enterprises that they are supposed to visit in a given time period; reports of their visits are filed on a computer, more or less as they were in the case of the self-reports; and inspectors are followed in the field through global positioning systems.

But a broader view of Mexican workplace regulation gives a very different perspective on the problems, their origins, and their potential solutions.

Mexico's basic regulatory structure is embodied in its constitution of 1917 and reflects the understanding of economic development that prevailed at the time, an understanding that equated "development" with "industrialization." Underdevelopment, on the other hand, was associated with traditional peasant agriculture and is better portrayed as "predevelopment." Constitutional provisions on worker protection—which included a minimum wage, the rights to organize and strike, safeguards against accident and illness, and a comprehensive social security system, among other things—were thus focused, at least implicitly, on the industrial sector; workers in the traditional sector were ostensibly protected by family and community and were supposed to be strengthened by agrarian reform and the *ejido*, or peasant commune.

As development proceeded, of course, it was imagined that peasants would move out of the traditional sector into the modern sector, where they would be covered and protected by workplace regulation. But the smooth transition anticipated by the constitution was completely disrupted by a demographic revolution marked by rapidly declining mortality and lagging declines in fertility. When the rapidly growing rural population overwhelmed traditional community supports—and agrarian reform failed to keep pace—in the middle of the twentieth century, therefore, traditional peasants were thrown into urban areas in numbers that the expanding industrial sector could not possibly absorb, and a large and growing informal sector emerged between the traditional and the modern economy.

In other words, Mexico's system of worker protection made a certain amount of sense given the assumptions prevailing at the time it was established (see, e.g., Castillo Murillo 2012, 36), but it has been overtaken by events. Neither the regulations themselves nor the institutions created to enforce them were designed with rural or informal workers in mind. Outsourcing and subcontracting pose additional problems, generating growing disputes as to which inspectorate is responsible (Del Pilar Martínez 2015). And the problems they pose are complicated by the combination of federalism, which decentralizes a good deal of the enforcement effort to the states, and liberalization, which shifted the development process from heavy industry in large urban centers like Mexico City and Monterrey to light industry in peripheral areas competing on the basis of low-cost, unskilled labor. While the former limits federal responsibility to health, safety, social security, and state-owned or strategic industry, the latter ensured that light industry, services, and peripheral areas would be the source of much

of the country's employment growth. So, for example, Baja California is one of the country's fastest-growing states, with more than three million inhabitants and seventy thousand productive units—including the low-wage manufacturing plants, or maquilas, of Tijuana and Mexicali. But a recent report bemoaned the fact that the state had only three federal inspectors—who were responsible for the maquilas—and 15 local inspectors; that none had sufficient resources; and that jurisdictional conflicts complicated their efforts (Rodríguez Cebreros, Lacavex Berumen, Sosa y Silva García 2012, 12–13).

Unfortunately, however, the problems are not limited to the borderlands. Over the past few decades the State of Mexico has grown far more rapidly than Mexico City, as people and businesses have fled the high-cost urban core for the lower-cost surrounding areas, and the former is now more than 50 percent larger than the latter in demographic terms. But Mexico City has more inspectors than the State of Mexico—and despite this imbalance the state was ignored when the federal government recently allocated one hundred new inspectors (Romero Gudiño 2008, 131). As a result, the largest state in the country has nowhere near enough inspectors to safeguard the well-being of its workforce, and the inspectors it does have available are condemned by poverty and poor training to pursue little more than cosmetic efforts (Bacilio González 2008, 209–210).

The problem, therefore, is how to work out a system of regulation for a much more diverse set of activities and enterprises than was originally contemplated, when Mexico was believed to be on a Fordist path. It arises, moreover, from shifts in technology and business organization that make Mexico's tendency toward a specialized inspection system outmoded—indeed, that make specialization outmoded even in the United States, the land of the system's birth. And it potentially lends itself to a Franco-Latin model, one in which the inspectors have the skill, commitment, and discretion they need to adapt their efforts and tailor their regulations to the peculiarities of the different types of workers and enterprises they now encounter. But instead of embracing and exploiting the Franco-Latin model of root-cause regulation, Mexico has undertaken a process of backdoor specialization that limits the system's effectiveness. So even when policy makers *are* committed to labor inspection—and this can by no means be taken for granted given the realities of Mexican politics—they are left to coordinate the efforts of more than ten different agencies with different, often vague or competing, jurisdictions ("Secretaría del Trabajo Inicia"

2014). Improving inspection is a daunting task under the best of circumstances, and these are by no means the best of circumstances.

Brazil and Chile: Meritocratic Ministries in Distinct Regulatory Contexts

The Brazilian and Chilean governments are relatively efficient and effective by Latin American standards, and their civil services receive the highest ratings in the region on the indices of meritocracy and capacity developed by Laura Zuvanic and Mercedes Iacoviello for the Inter-American Development Bank (2010, 17–21). In terms of labor law, however, they differ markedly. While Chile has been widely portrayed as the Latin American "leader in labor-market liberalization" (Loayza and Palacios 1997, 17), Brazil has almost invariably been invoked as the opposite: "a textbook example of the perverse effects of labour regulation on economic development" (Pires 2008, 200).

The basis of this portrait is perhaps obvious. "At least on paper," explain Rita Almeida and Pedro Carneiro of the World Bank, "Brazil has one of the least flexible labor market regulations in the world" (2007, 5). And the alleged rigidity is not merely "on paper": the Brazilian government has increased the number of inspectors from approximately twenty-four hundred a decade ago to more than three thousand today (cf. Cardoso and Lage 2006, 18; ILO 2010), and the country therefore ranks near the top of international surveys of wage and employment rigidity (see, e.g., Schwab 2010, 445–447).

Are these rigidities a threat to employment and income, if not entirely responsible for Brazil's underperformance in recent years (Chu and Delgado 2010)? The empirical literature is largely consistent with that idea. Almeida and Carneiro (2007, 2009) found an inverse relationship between labor law enforcement and employment across Brazilian cities in the early 2000s. Judith Tendler more or less simultaneously found that light manufacturing firms had relocated from southern to northeastern Brazil in large part to escape unions and regulations in the south (2002, 58). And Roberto Pires has identified firms in the north as well as the south that have responded to aggressive labor law enforcement by going underground or moving to more hospitable environments (2008, 215–216).

But Pires has also identified several cases of "sustainable compliance" engineered by more creative inspectors who facilitate either cost reduction or product upgrading as part of their enforcement efforts (see, e.g., 2008,

214). Some of the most interesting examples are consortia of rural producers organized by the inspectors in a successful effort to formalize the status of thousands of temporary agricultural workers in the state of Minas Gerais. The consortia not only foster the regularization of the labor force through collective recruitment efforts, Pires explains, but also allow their members to "share the burden of administrative costs, mandatory payments for workers' benefits (e.g., retirement benefits, unemployment insurance), and compliance with health and safety standards" (2008, 209). The results include lower labor costs, more extensive worker protections, and more amicable relations between inspectors and producers.

Efforts to combat industrial accidents in the Belo Horizonte auto parts industry provide a second example. Almost half "of all accidents involving machines in Brazil are caused by punch-presses, the equipment used to stamp auto-parts on sheet metal," Pires explains (2008, 210). While manufacturers are unable to purchase newer, safer, and more expensive punch presses, they are unwilling to retrofit their existing presses with protective kits that cost very little but engender a 15 to 30 percent productivity loss. So inspectors have been "developing ways to minimize the loss of machinery productivity (ranging from the search for more efficient protective equipment and ergonomics to the offer of subsidized credit for machinery protection)" in a successful effort to lower the rate of industrial accidents (211).[1]

Nor is Pires the only scholar to identify examples of root-cause regulation (or sustainable compliance) in Brazil. Octavio Damiani traces the recent growth of fruit exports from Petrolina-Juazeiro in part to labor standards and practices that not only forced but facilitated a move from a temporary labor force ill-suited to the demands of global markets to a more stable labor force capable of meeting international demands for quality, reliability, and delivery (2003; see also Tendler 2007, 8). Mansueto Almeida holds that labor inspectors and small business support agencies have "acted together to help firms upgrade and comply with the law" in a number of Brazilian manufacturing clusters (2007, 22). And Salo Coslovsky documents synergies between labor law enforcement and productive upgrading in the Brazilian charcoal and pig iron complex in particular (2009, 73).

The point is most assuredly not to imply that root-cause regulation occurs through pedagogy or tutelage alone. On the contrary, Pires (2008) maintains that sustainable compliance results from the combination of inducements provided through pedagogy and tutelage and constraints imposed by sanctions (or the threat of sanctions). By offering noncompliant

firms managerial or technical support, however, inspectors can decrease the cost and increase the appeal of compliance simultaneously—and in so doing begin to reconcile worker protection and development.

Many would view these efforts as mere compensation for Brazil's "unnecessarily burdensome" regulations. Some would defend liberalization as an alternative. And Judith Tendler thus bemoans the existing literature's "preoccupation with reducing the size of the public-sector bureaucracy" (2006, 52). But Chile combines the most liberal labor market in the region with inspectors who pursue similar strategies, albeit for different reasons, and the Chilean case thus suggests that root-cause regulation might be a product of the Franco-Latin model itself—at least when executed by competent civil servants.

How did Chile come to combine liberal labor markets with aggressive workplace inspectors? The answer would seem to lie, at least in part, in the "legalistic" Chilean approach to labor and employment relations, which entrusts worker protection less to unions by means of collective bargaining than to the state by means of legal and administrative tools, including workplace inspection (Ugarte Cataldo 2010, 384; see also Ugarte Cataldo 2008). Some portray the legalistic approach as an artful product of the Pinochet dictatorship, which set out to crush organized labor between 1973 and 1990 (Ugarte Cataldo 2010, 384) and used the labor ministry in part to do so. Others trace legalism not to Pinochet but to the period of socialist rule that precipitated his takeover, when Chilean "workers were in a favorable position" in the political economy (J. Rodríguez 2010, 428; see also Ietswaart 1981–1982, 642), or even to the first half of the twentieth century, when employers were allegedly marginalized vis-à-vis workers and the state (J. Rodríguez 2010, 428). While Pinochet would by all accounts succeed in his mission and leave the labor inspectorate, in particular, "in tatters" (Rosado Marzán 2010, 506), his democratic successors have done much to undo the damage. When they passed a labor reform in 2001, for example, they not only "doubled the number of inspectors" but also allowed the Labor Directorate (Dirección de Trabajo, or DT) "to apply higher fines in cases of unjust dismissal and to become a party to cases that involved unfair labor practices sent to labor tribunals" (Cook 2007, 137; see also Murillo 2005, 450). Chile is therefore the Latin American leader in terms of workplace regulation today. The Chileans field the most inspectors per worker in the region (International Labour Office 2006, 15; see also Schrank and Piore 2007, 22; Rosado Marzán 2012, 362); appoint skilled civil

servants to a career inspectorate on the basis of technical, rather than political, criteria (Vega Ruiz 2009, 25); and give their inspectors broad coercive authority. In the event of noncompliance, explains César Rosado Marzán, "they can fine the employer, order the suspension of work activities, and even close a workplace if there is an immediate hazard to the life and health of employees, or if employers are otherwise violating the labor laws" (2010, 502).

But Chilean inspectors are not limited to punishment and deterrence. They also have pedagogical tools at their disposal, including everything from informal mechanisms of diffusion and dialogue (Organización Internacional de Trabajo 2011) to a formal effort to encourage small employers to enter a government training program in lieu of paying their fines in the event of noncompliance. The original "substitution of training for fines" (*sustitución de multas por capacitación*) program was designed to foster "greater knowledge of labor law and better internal management of microenterprises" (Feres Nazarala 2003, 1, our translation) and was therefore limited to employers of fewer than nine workers who agreed to rectify their violations, as long as they received authorization from an inspector and had not taken advantage of the program within the previous year. But the program has been so successful that a variant has gradually been opened to firms with as many as forty-nine workers (Silva Meléndez 2005; International Labour Office 2015a; Dirección del Trabajo 2016), and it is potentially the tip of the iceberg. After all, the Labor Directorate already runs a number of similar programs (see, e.g., Vergara del Rio and Feres Nazarala 2012, 12–13; International Labour Office 2014a, 8), and there are calls to mimic European countries that use their integrated inspectorates to address the root causes of noncompliance more generally (Consejo Asesor Presidencial Trabajo y Equidad 2011, 125).

We lack universally agreed-on indicators of worker protection. But Brazil and Chile would appear to be doing a better job at protecting their workers than most developing countries. They have not only experienced sustained and substantial reductions in informality (International Labour Office 2015b), but also are among a small number of countries—including rich countries—to see collective bargaining coverage expand, rather than contract, in recent years (Visser, Hayter, and Gammarano 2015, 9). And their rates of occupational injury and fatality are below the Latin American average (Hämäläinen, Takala, and Saarela 2006, 152) despite their reliance on heavy and extractive industries that are by their very nature perilous.

Our point is not to ascribe all of these, admittedly inadequate, achievements to the Franco-Latin model of labor inspection or to the root-cause regulation that tends to be its byproduct; their causes are complex, to say the least. But their apparent indifference to restrictive labor laws in Brazil and liberal labor laws in Chile would seem to underscore the de facto flexibility of Latin American labor market regulations, at a maximum, or place the burden of proof on critics of labor market regulation, at a minimum.

The Dominican Republic and Guatemala: Global Labor Standards in Traditionally Predatory Polities

It is perhaps not surprising to find that Brazil and Chile tend to reconcile worker protection with job creation, at least in part by pursuing root-cause regulation. They have not only embraced the Franco-Latin mode of labor inspection but are among the best-governed countries in the region, at least in terms of civil service capacity. But is root-cause regulation possible in a less auspicious bureaucratic environment? The Dominican Republic (DR) provides a particularly demanding test, for the island nation scores well below the Latin American mean on most indicators of bureaucratic capacity (Zuvanic and Iacoviello 2010, 39), and Dominican governing institutions—including the labor ministry (Itzigsohn 2000, 22)—have traditionally been portrayed as "predatory" (Lundahl and Vedovato 1989).

Over the course of the past two decades, however, the Dominicans have responded to trade-related labor standards imposed by the United States by undertaking an almost complete overhaul of their labor market institutions. They adopted a worker-friendly labor code in 1992. They tripled the number of labor inspectors, decentralized their administration, rationalized their recruitment, and dramatically increased their salaries in the 1990s and early 2000s. By the mid-2000s, therefore, well over half of the 203 inspectors in the labor ministry's 36 regional offices had graduated from law school, had been recruited by means of a competitive examination, and had been incorporated into the country's fledgling civil service (Schrank 2009). Confidence in the inspectors grew rapidly ("Alburquerque Dice Sistema de Inspección" 2008), and their reputations and responsibilities grew accordingly (Iacoviello and Rodríguez-Gustá 2006, 453). When the Dominicans reformed their social security laws a few years later, for example, they placed the labor inspectors in charge of their enforcement (Consejo Nacional de Seguridad Social-Contraloría General 2012, 22/41).

The results have been nothing short of striking. Informality has fallen dramatically (Organización Internacional de Trabajo 2014, 7; International Labour Office 2006). Child and adolescent labor are down as well (Oficina Nacional de Estadística 2011, 41), drawing praise from the ILO for a systematic approach to the problem (Olivo Peña 2013) that involves the formation of multidisciplinary committees of key stakeholders (educators, agricultural extension agents, employers, and so on) organized by local labor inspectors (Azcona de la Cruz 2013; see also Schrank 2013). The ILO has also celebrated the inspectorate's "protection of trade union rights" (International Labour Office 2010, 42), an effort that has apparently gone hand in glove with an increase in union density (Blanchflower 2006, 3).

What were the consequences for the Dominican economy? While the reforms were portrayed as a serious threat to the country's competitive advantage in the 1990s (Méndez 1993), they were followed by a period of unprecedented growth and adjustment, and the Dominican economy has therefore outperformed the rest of Latin America for the better part of the 1990s and 2000s (Lozada 2003; Sánchez-Ancochea 2005). Maquila exports not only grew but diversified. Tourism flourished. The countryside experienced a nontraditional agricultural-export boom. And Dominican labor inspectors arguably contributed to—rather than impeded—the gains by brokering relationships that helped firms, farms, and families comply with the new labor code in the most efficient manner possible. They connected manufacturers in both the maquilas and the national customs areas to public training authorities that introduced new techniques and technologies and thereby helped bring their productivity into line with their rising labor costs (Schrank 2009).[2] They introduced farmers to rural development banks and extension agencies and thereby facilitated their adaptation to the loss of child labor (Schrank 2013). And they drew adolescents and young adults into a variety of apprenticeship programs and thereby elevated their long-term employment and earning prospects ("INFOTEP" 2011).

The point is not to imply that compliance and competitiveness are always compatible. Low-cost foreign competition has been particularly threatening in the tradable sectors, and job losses in the 2008 recession have been severe. But the inspectors have responded to the dismissals by brokering new relationships between laid-off workers and a wide array of government service providers, including vocational education and training authorities, microlending institutions, temporary employment programs, and employment referral services designed to help the newly unemployed

get back on their feet. And ministry officials have supported their efforts by consolidating their employment, training, and enforcement services into integrated "territorial employment offices" that will effectively become "one-stop shops" for workers and employers in need of assistance (see, e.g., Batista 2007; "Ministerio de Trabajo" 2010).

In short, the experience of a relatively poor country like the DR suggests that the Franco-Latin model is relevant not only in developed market or upper middle income countries like France, Spain, and perhaps today's Chile but in their peripheral counterparts as well. By assigning social security to their labor inspectors, for example, the Dominicans exploited their economies of scope. By adapting their efforts to the recent downturn, they underscored their flexibility over the business cycle. And by pursuing systematic—rather than superficial—solutions to problems like child labor and rising costs, they highlighted the advantages of root-cause regulation more generally.

If the DR speaks to the imitability of the Franco-Latin model, however, Guatemala speaks to its limits, for the Central American country adheres to generalist principles, but its inspectors are employed by an underfunded and largely ineffective state. The inspectorate lacks not only a stable career path—relying instead on ad hoc or political appointments—but also basic infrastructure, including physical plant, information technology, and vehicles. The inspectors we visited in the capital share a large, open office space in a dangerous part of a dangerous city, interview their clients in public, write up their reports on manual typewriters, and are forced to take public transportation to their inspections—meaning that enterprises that are not accessible by public transport are not visited at all. It is hard to do justice to the contrast not only with France and Spain, for instance, but with the DR, where inspectors have information technology, fuel subsidies, and increasingly modern office spaces at their disposal.

But resources are not the only constraint—perhaps not even the major constraint—on the Guatemalan inspectors. While they are nominally responsible for the entire labor code and could in theory tailor their enforcement efforts accordingly, they are in practice consumed by a single concern: disputes over the severance pay of laid-off workers. By their own estimates, more than 40 percent of their time is absorbed in processing, mediating, and ultimately adjudicating complaints about these indemnities, which sustain individuals in an economy that lacks both stable industrial

employment and a formal system of unemployment insurance. In fact, if the inspectorate's physical plant is decidedly less welcoming than its French counterpart, its ambience resembles the offices where French workers go to file unemployment insurance claims—or, for that matter, unemployment claims offices in the United States. It is unclear how the inspectorate came to be sidetracked in this way, but the agency seems unlikely to change unless and until an organized constituency demands that its resources, limited though they may be, are devoted to other tasks.

The maquiladoras provide an exception to the rule, however, for the Guatemalans responded to trade-related labor standards by creating a special task force devoted to their labor concerns at the turn of the last century. The unit was able to attract high-caliber personnel at relatively low cost by recruiting law students who were well-trained and professionalized but had not yet written the theses that would complete their degrees and were thus unable to seek employment as lawyers in the private sector. They pursued a much more comprehensive approach than the typical Guatemalan inspector, at times even competing with their European counterparts for ingenuity. For instance, one Guatemalan inspector responded to a garment maker's concerns about prospective productivity losses attendant on coming into compliance with regulations about the length of the workweek by arranging an in-plant staffing experiment. The employer would lay out half the plant according to his incumbent, but noncompliant, approach, and the other half according to the inspector's proposed compliant approach, and compare their productivity figures. When the inspector's proposed system was revealed to be at least as productive as the employer's preferred approach, the employer agreed to come into compliance.

Examples like this are by no means common, however, and Guatemala thus continues to receive poor marks on worker protection. Informality is rampant (International Labour Office 2006). Child labor is apparently rising rather than falling (cf. United States Department of Labor, International Labor Affairs Bureau 2002, 154, and 2015, 364). And union density is falling—from a low starting point—rather than rising (Blanchflower 2006). "Unfortunately," explained U.S. Deputy Secretary of Labor Chris Lu in 2014, "Guatemalan workers remain unable to exercise their rights under Guatemalan law to organize and bargain collectively and are still subject to unacceptable conditions of work, violating Guatemala's own standards" (2014).

Lessons from Latin America

Latin American labor inspectorates stand at a crossroads. From one perspective, they are trapped between limited government resources and commitment, on the one hand, and a diverse array of enterprises and work practices, on the other. There is a huge gap between the law and reality; enforcement is uneven; and informality—and attendant workplace problems—are common under the best of circumstances, the norm under the worst. But this portrait is at least in part produced by looking at the system through the lens of an Anglo-American regulatory approach.

An alternative approach would recognize that Latin America plays host to a remarkably diverse array of enterprises and institutions, ranging from large informal sectors, at one extreme, to gigantic industrial enterprises, at the other, and each is associated with different workplace practices and challenges. Some of their informal workers would like to be formalized, for example, with full access to their legal rights and benefits, while others are happy to avoid paying taxes, among other things, by flying under the radar. To be sure, some of their large-scale enterprises are owned by potentially footloose foreigners who might be quick to move their enterprises elsewhere if regulated, but others are domestically based with deep local roots and firm national commitments. And in between these two extremes one finds a mélange of small and medium-size enterprises, some with relatively sophisticated equipment and employment relations, others on the margins of economic viability—surviving only by exploiting the vulnerability of their desperate workers.

Latin American labor inspectorates are no less variegated. Some are relatively well endowed and organized; others are little more than patronage outlets for opportunistic politicians. But even the best of them are constrained by resource deficits and political challenges. There is nothing new about this, of course, but it was once possible to think of the variable employment and regulatory practices one finds in Latin America in light of a conceptual framework that distinguished "traditional" institutional forms, which were products of preindustrial society and would thus atrophy in the course of development, from those that were products of the development process itself and would thus need to be managed if development was to contribute to the general welfare.

Needless to say, this distinction is no longer tenable. Informal employment is certainly more common in the country than in the city and is thus subject to decline over time as the population becomes more urban, but it seems destined to survive in some form in the modern economy, as do small firms, subcontractors, and self-employment more generally. They survive in part because the formal economy is unable to expand rapidly enough to absorb the growing labor force in late-developing countries, and in part because macroeconomic volatility militates toward dualism in Latin America no less than in the developed market economies—and because information technology and new managerial practices allow for the decentralization of production to smaller firms and subcontractors in particular.

At the same time, however, globalization extends the reach of this decentralization from the developed market economies to their developing counterparts, generating supply chains that reach from "global cities" like New York and Los Angeles to maquiladoras in countries like the DR, Guatemala, and Mexico. While the maquilas originally lured investment with promises of tax and regulatory relief, their viability increasingly depends on their respect for trade-related labor standards that are in tension with their marketing campaigns, leaving their stakeholders with little choice but to consider compliance. Meanwhile, industrial accidents that went largely unnoticed in an earlier era are simultaneously harder to hide in an era of instant and widespread communication and more consequential in democratic than authoritarian societies, creating additional pressure to take workplace enforcement more seriously. And by empowering workers and voters—who tend to be workers—democratization has the same effect.

Given the variety and volatility of the Latin American economy and the limited resources devoted to workplace inspection, the generalist and remedial Franco-Latin model would seem to have at least three advantages over the specialized and punitive Anglo-American alternative. First, while Latin American inspectors are unable to exploit economies of scale by covering thousands of workers with each trip to the field, as presumed by the Anglo-American model, they are able to compensate by addressing multiple violations in every enterprise; that is, by substituting economies of scope for economies of scale, as allowed by the Franco-Latin model. Second, whereas specialists are at risk of redundancy (or undersupply) in an era of economic volatility, their generalist counterparts are relatively easily reallocated over the business cycle—making it easier to match their

supply to the demand for their services. And, finally, where dualism and diversity pose additional challenges, by confronting specialists with a diverse array of different economic and employment situations, the Franco-Latin model allows generalists to tailor their regulations to the needs of particular enterprises and thus to reconcile potentially competing goals, like job quality and job quantity, over time. In other words, Latin inspectors have a number of advantages over their Anglo-American counterparts, and their advantages are particularly well suited to the Latin American context. While their first two advantages—economies of scope and adaptability, for lack of a better word—are products of their broad jurisdictions, however, and could in theory be coupled to a punitive approach, their third advantage is no less the product of their remedial orientation and is hard to decouple from root-cause regulation.

This last point became abundantly clear to us in a recent interview with a particularly savvy group of labor inspectors in rural Colombia. When discussing their campaign against child labor, which happened to bear a striking resemblance to the multidisciplinary approach pursued in the DR, they were quick to point out that the problem they're confronting is as much cultural as economic. Most underage workers are employed by their families, noted one inspector, and their impoverished parents are simply reproducing their own experiences. "You can't just fine them for this," she continued. "It's part of their culture. You have to change the culture." And this effort to change the culture almost necessarily involves collaboration with educators to promote school enrollment, training authorities to promote the use of new techniques and technologies, and development banks to make the latter affordable as well as desirable.

The point is not simply to abandon sticks for carrots. We want to be absolutely clear: *Some miscreants deserve and will respond to nothing less than punishment, if that, and even potentially corrigible employers may need some additional incentives to turn their potential into a reality.* But deterrence alone will *never* be enough. Even the best-endowed Latin American countries lack the resources they would need to mount a credible deterrent threat, after all, and it thus makes more sense to think of enforcement—using a judicious and flexible balance of carrots and sticks—as an investment in developing and spreading managerial techniques and values that link improved human resource practices to better wages and working conditions than as a process of deterrence through negative sanctions more narrowly.

As we have argued, the Franco-Latin model is part of Latin America's institutional heritage, and in all of the countries we visited, with the possible exception of Mexico, we found examples of inspectors who made use of their discretion to pursue root-cause regulation in this way. At times their efforts were encouraged by their superiors. Occasionally they were ad hoc adjustments from below. And sometimes they were formalized by farsighted labor ministries through programs like Chile's "training for fines" process or the child labor committees organized by the Dominicans. But discretion offers risks as well as rewards and is likely to be abused by inspectors who are ill-trained, ill-paid, or otherwise lacking in commitment to the cause. It is therefore worth noting that Brazil, Chile, and the DR, which we have held out as our most positive examples, are among the few Latin American countries to appoint all of their inspectors to a career civil service on the basis of "strict selection criteria," including exams and degrees (Vega Ruiz 2009, 25).[3]

But there is by no means a consensus that remediation, for lack of a better term, is the best approach, and there are powerful actors pushing for a purely punitive, arm's-length alternative. This is in part a product of the influence the United States has exerted, directly and indirectly, on the region, but it is no less related to the fact that the conceptual tools for thinking about enforcement have been so dominated by the Washington Consensus and by standard models of rational-choice decision making in a market economy and that there is no equivalent conceptual apparatus to support and sustain the alternative. It is to the development of such a framework that we turn in Chapters 6 and 7, in part to make better sense of workplace regulation and in part to shed light on decentralized regulatory bureaucracies more generally.

6

MANAGING DISCRETION

IN THE CLOSING DECADES OF THE LAST CENTURY, workplace regulation was subject to serious criticism in both the developed and the developing worlds. Much of that criticism concerned the alleged rigidity of the regulations themselves and their role, or purported role, in inhibiting adjustment to changing times and technologies—adjustment that would by all accounts prove necessary to growth and efficiency in the twenty-first century. This criticism has diminished, if by no means evaporated, in recent years, in part because the 2008 financial crisis has illuminated more important determinants of economic performance and in part because tragedies like the collapse of the Rana Plaza factory building have exposed the high costs of laissez-faire labor markets more generally. But workplace regulation continues to operate under a cloud of suspicion in both the Organisation for Economic Co-operation and Development (OECD) countries and the Global South, where politicians and journalists continue to rail against allegedly "costly" labor and employment laws (see, e.g., Roy 2014).

The force of that criticism derives, however, from an understanding of the regulatory process that is almost entirely based on the specialized model of workplace regulation found in the United States. After all, the U.S. model is punitive and reactive in nature; it is *designed* to raise the costs of—rather than to lower the need or desire for—noncompliance, and it therefore tends to provoke both a "gotcha" mentality among inspectors and suspicion and hostility among employers—especially the small and

midsize employers who loom increasingly large in the twenty-first-century economy.

As we have seen, however, the general-purpose regulatory model common to southern Europe, the Mediterranean Basin, and Latin America is potentially more flexible and less vulnerable to criticism than the U.S. approach. While North American inspectors have almost no discretion or autonomy to speak of, and are thus all but forced into rigidity and inflexibility, their Franco-Latin counterparts are able to tailor their efforts and interpretations to the needs of particular enterprises, environments, and time periods and are thus able to imbue the system with a certain elasticity—an elasticity that is in many ways comparable to the elasticity of the market itself. But the autonomy and discretion that imbue the inspectors with flexibility, on the one hand, allow for inefficiency and corruption, on the other: they may use their discretion to pursue the common good or to limit their workloads or line their pockets. Franco-Latin labor inspectorates and their personnel must therefore be managed in a self-conscious and deliberate manner if they are to reach their constructive potential.

To understand what such a management strategy might look like, a purely historical or descriptive account will not suffice, and we thus set out to develop a more sophisticated analytical framework in this chapter by juxtaposing efforts to manage the U.S. model by manipulating individual incentives to an alternative that acknowledges and takes advantage of the individual's identity as a member of an organization or community. While the former treats the individual inspector as the point of analytical departure and tries to control his or her behavior directly, the latter begins with the inspectorate itself and tries not only to understand but also to shape its evolution over time.

We have divided the rest of the chapter into four principal sections. The first section discusses conventional analytical models—including the New Public Management in particular—and their limits, particularly in regard to the management of the Franco-Latin model. We revisit points made in the Introduction, now illustrated with examples drawn from the descriptions of different inspectorates in the intervening chapters. The second section draws on the literature on street-level bureaucracies, the professions, and technological innovation in an effort to develop alternative, and more powerful, ways of thinking about the organizational and managerial challenges associated with root-cause regulation, and it concludes by illustrating these challenges with examples drawn from the French and

Spanish inspectorates. The third section tries to move from illustrating to addressing the challenges by developing an account of the relationship between organizational boundaries, or jurisdictions, and organizational learning, or adaptation. And the final section summarizes the argument and concludes with a call to illuminate and—insofar as it is possible—systematize the knowledge underpinning the labor inspector's task and the organizational structure that can best facilitate the inspector's work.

The thrust of our argument is straightforward. The architects of the specialized U.S. model focus on the individual inspector and attempt to control his or her behavior by means of material incentives. But the agents in the Franco-Latin model are best understood less as individuals than as members of communities that are themselves the products of regulatory agencies and are therefore all but inseparable from—and inscrutable outside the confines of—their broader group contexts. In other words, the organization is as much the source as the product of individual behaviors and decisions. Inspectors are likely to be as loyal to one another as to their supervisors. And their supervisors therefore have little choice but to learn how their communities are developed and evolve over time if their managerial efforts are to prove fruitful.[1]

Mainstream Approaches to Public-Sector Management

Specialized labor inspectorates are typically treated as Weberian bureaucracies, and their underlying models of organization and management therefore presuppose command and control. Like all Weberian bureaucracies, moreover, they confront two related challenges. The first involves the formulation of the commands that direct the agents in the first place. They theoretically grow out of the regulations themselves, which are in principle dictated by the law, but the administrators still have a good deal of latitude in determining how they are to be implemented, who will be investigated, and whether and how they will be sanctioned in the event of noncompliance. The second challenge therefore involves getting the agents at the base of the hierarchy to obey their principals or act on their commands. They might instead give in to indolence, apathy, or corruption, for instance, and their principals are thus advised not only to recruit qualified specialists by means of rigorous entrance examinations but also to reward the winners with job and income security over the life course, raising the

opportunity cost of dismissal and thus serving as an obstacle to dishonesty and fraud. Specialization is another means to address this second challenge: because it is easier to monitor agents with narrow spans of control, it allows for both productivity on the part of the inspectors and oversight by their supervisors.

In the last thirty years, however, the Weberian model has been called into question by skeptics who worry that it is too rigid to adapt to local conditions and circumstances, albeit in different ways and toward different ends in the public and private sectors. In the private sector, doubts about the Weberian model reflect doubts about mass production and its tendency to treat each task in isolation, in contrast to so-called Japanese management practices that presuppose task interdependence, allow for decentralized decision making, and in this respect have much in common with a general-purpose system of workplace regulation (Womack, Jones, and Roos 1990; MacDuffie 1995). After all, the Franco-Latin model is all but premised upon task integration, and Richard Florida and Martin Kenney have portrayed task integration as one of the "defining features of the Japanese model" (1991, 395).

In the U.S. public sector, however, doubts about the rigidities of bureaucratic management have led not to task integration but to the New Public Management (NPM), whose architects hope to extend the neoclassical model of "self-interested actors governed by price and incentives" (Olsen 2004, 70) to the agents who enforce the law themselves. By subjecting public officials to private competition and performance criteria, they believe, governments can cut their costs and improve their services simultaneously.

The assumption of self-interest makes a certain amount of sense when applied to the private sector, for the market arguably recruits, rewards, and reinforces individual utility maximizers who mimic their textbook counterparts (Hirschman 1982, 1465–1466; Ostrom 2007, 195). When applied to the public sector, however, the self-interest assumption poses a dilemma, for the very individualism that allegedly drives the public official to take risks and solve problems simultaneously raises the possibility of opportunism and malfeasance in an agency subject to the NPM. "The public entrepreneur's penchant for rule-breaking and for manipulating public authority for private gain has been, and continues to be, a threat to democratic governance," explains one prominent critic (Terry 1998, 197). "The danger is intensified by the emergence of public entrepreneurs of the neomanagerialist persuasion."

The NPM confronts this dilemma by giving public officials the freedom to decide how to allocate their time and resources by linking their pay to their performance—that is, to their ability to meet goals or metrics established by their superiors. In health and safety regulation, for instance, they might receive bonus pay when accidents or illnesses in their jurisdictions fall below a certain benchmark. In minimum wage enforcement, on the other hand, they could be rewarded with a percentage of the back wages collected from noncompliant employers.

Such an approach is meaningful, or at least plausible, in a regime of specialized labor inspection, where each regulation constitutes a separate goal, or target, that lends itself to a distinct enforcement strategy, and the relevant strategies are both linked to models of human behavior and known or available to the responsible specialists. Whether these assumptions are realized in practice, however, is likely to depend on both the nature of the world in which the regulations are being administered and the organization of the administrative system itself. The system can certainly be organized so that the different regulations are administratively independently of each other, but if the regulations and/or the activities they are designed to combat are in fact interdependent, the system is unlikely to be globally effective, let alone efficient, and the Franco-Latin approach is likely to prove superior. Consider, for example, an inspector who is rewarded with a percentage of back wages and thus focuses her efforts on large employers who systematically underpay their workers to the exclusion of smaller firms where underpayment is worse—not to mention symptomatic of more deadly violations—but harder—and thus less profitable—to combat on a per capita basis. In this situation, the NPM runs the risk of distorting the priorities and behavior of the bureaucracy as a whole. By way of contrast, the Franco-Latin approach allows the inspector not only to reap economies of scope by addressing *multiple* violations with each field visit and *different* violations at different points in the business cycle but to take the employer's situation and strategy into account in doing so. The result is a potentially flexible alternative to both traditional "command and control" regulation (Braithwaite 1981-1982) and feckless neoliberal alternatives like the NPM.

But the NPM and the neoclassical model of human behavior are at best distractions to the Franco-Latin model, for their analytical categories are not easily translated into decision making criteria that are relevant to the

management of an integrated system of workplace inspection, one amenable to root-cause regulation. Such a system has goals, of course, but those goals are complex, interrelated, and multiple; and their weight and importance vary with the political and economic climate. For instance, the goals of wage and employment protection are potentially in conflict with each other (Organisation for Economic Cooperation and Development 2004), and the former might weigh more heavily in good times—when stable employment is readily available—than in bad times, when good jobs are hard to find. And the enforcement of immigration restrictions or collective bargaining rights might put equal opportunity at risk (see, e.g., Knoblauch 1999; Frymer 2008; Beardall 2010; Kugler and Oakford 2013), with the ultimate balance to be determined by political as well as economic considerations. Such a system also has enforcement strategies, including the use of carrots as well as sticks, but the relevant strategies are likely to be context-dependent; to vary from case to case; and to depend on both the inspector's ingenuity and her relationship to the particular enterprise.

Needless to say, the causal model that links the means to the ends, or the enforcement strategy to the agency's goals, is much more complex and demanding in the Franco-Latin system than in the specialized alternative. While the generalist is supposed to find a solution that will bring the enterprise into compliance with the labor code as a whole, and is thus compatible with management's business strategy and/or production process, the specialist need do nothing more than invoke a big enough penalty to get the employer to pay attention. Whether the specialist can do so or not is an open question, of course—and depends in part on legal and organizational considerations that are beyond his control—but the *theoretical* relationship between means and ends is obvious to everyone concerned.

What is the theoretical relationship between goals and strategies in the Franco-Latin system? The answer is anything but obvious. Consider, for example, the French inspector who needed to choose to prioritize either the unionized plant that violates temporary help provisions, the garment shops that employ undocumented aliens, or the security guards. The goals she would be pursuing in each of these cases are very different. They all contribute to the broader goal of worker welfare in principle, but if she needs to choose among them, how does she weigh the welfare of the security guards against that of the garment workers or against the permanent

jobs that are at stake in the unionized plant? She avoids this problem by focusing on the means she has to affect change in the three situations. But how does she actually know what those means are? It seems like the garment plants would simply move elsewhere. But if France and Italy were able to coordinate their inspection efforts in an effort to combat social dumping in the early twentieth century (Bauer 1919, 9; United States Department of Labor, Bureau of Labor Statistics 1920, 138–139), couldn't their successors do so today?

To take a very different case, consider the inspector who is called to consider the request of a store that hopes to open on a Sunday. If the inspector is a "reflective practitioner" (Schön 1983), he will immediately ask himself a series of questions: Why is Sunday work limited in the first place? How do workers weigh the income foregone on Sunday versus the benefits of time with their families and friends? If it were allowed, would Sunday work be voluntary or de facto coercive? What is the impact of Sunday shopping on the lives of the customers, many of whom come from the same backgrounds as the workers and would be unable to shop on any other day? Will approval of one store's request create competitive pressure that in turn forces inspectors to permit this practice more broadly? And, if so, how are the broader consequences evaluated? One can certainly cast this problem in terms of an objective function in which the inspector is trying to protect the workers from burdensome work hours while at the same time facilitating the development of local commerce, but we doubt this formulation is helpful in understanding how the inspector thinks about his work or how the organization in which he is working should be managed.

Alternative Approaches to Public-Sector Management

Efforts to address questions like these are best understood not in the framework of the New Public Management, we argue, but in terms of three other literatures. The first is the literature on decentralized, or "street-level," bureaucracies, particularly in the public sector. The second is the operation and management of professional communities, such as doctors, lawyers, and engineers. And the third is the literature on new product development and technological innovation. Together, we believe, they will give us insight into the management of both general-purpose labor inspectorates and decentralized regulatory agencies more generally.

Street-Level Bureaucracies

Street-level bureaucracies are nominally hierarchical organizations (that is, Weberian bureaucracies) in which the agents at the base of the hierarchy nonetheless maintain substantial power and discretion. The concept has been applied to police, social workers, classroom teachers, immigration authorities, and similarly positioned public servants in federal, state, and local agencies throughout the United States. A foundational study concerned the U.S. Forest Service's efforts to combat "centrifugal tendencies" that induced rangers to "deviate from promulgated policy" (H. Kaufman 1967, 196) in the mid-twentieth century by developing a number of innovative countermeasures, and similar themes tend to pervade the growing literature on street-level bureaucracy in other countries.

The term *street-level bureaucracy* itself was coined by Michael Lipsky in an eponymous 1980 book that explored the dilemmas of individual public servants who work at the frontlines of perpetually underfunded and overburdened organizations. Because they lack the resources they would need to achieve all of their goals and responsibilities, he argues, street-level bureaucrats inevitably have to decide how best to allocate whatever resources they do have available—not to mention how to deal with the feelings of guilt or inadequacy that tend to accompany their perceived inability to fulfill their obligations to their needy or dependent clients. Similar feelings of guilt or inadequacy are manifest in our interviews with labor inspectors and also resonate with the aforementioned suicides of two French inspectors in 2012.

Lipsky's emphasis on the emotional challenges of underfunded and overburdened agencies thus implies that street-level bureaucracies are pathological forms of organization. But the discretion of the frontline agents need not be pathological; it can instead be an inherent feature of certain types of organizations or a deliberate way of managing an organization with complex and interrelated goals. We shall therefore use the term *street-level bureaucracy* in the extended sense to cover all organizations in which the line agents have a wide margin of maneuver.

At least three elements of this broader view are also rooted in French law and culture. The first is the view that regulations are not ends in themselves but are designed to upgrade industry in one respect or another and, for this reason, need not be enforced literally. In France, this view can be traced back to Jean-Baptiste Colbert's regulation of quality standards in the

textile industry, which were adopted in the seventeenth century and administered differently in different markets, time periods, and economic climates (Minard 2000, esp. 495), and it is no less salient in the twenty-first century—for instance, in the aforementioned French inspector's decision not to challenge the temporary work arrangements negotiated by the union when she concluded that, though illegal, they were likely to create as many permanent jobs as she could have created by means of intervention. The second element is the notion of law as at least in part hortatory, promoting norms and goals that are considered socially desirable but for the time being unattainable. This view, which is no less deeply rooted in Colbertism (Minard 2000, 483), underlies the contemporary French willingness to endorse labor standards promulgated by the International Labour Office (ILO), which the United States rejects as threats to national sovereignty. And the third element is a view of compliance as a process that plays itself out over time rather than a condition that either is or is not being met at a particular point in time. Enforcement thus comes to be seen as a process rather than as an event as well.

The canonical street-level bureaucrats are the police. Their ostensible mission is to enforce the law, but a considerable part of their job involves the maintenance of order, and they have therefore been known to invoke the law selectively in an effort to pursue the latter goal rather than consistently in pursuit of the former. In fact, James Q. Wilson not only drew a distinction between the "order maintenance" and "law enforcement" functions of police work in his classic exploration of *Varieties of Police Behavior* but also held that the order maintenance functions were actually more "central to the patrolman's role" (Wilson 1968, 17) than law enforcement, in part due to their prevalence, risk, and inherent ambiguity. "Statutes defining 'disorderly conduct' or 'disturbing the peace' are examples of laws that are not only ambiguous," he argued, "but necessarily so" (21).

His broader point is that "social order" is a subtle concept that varies from one place and time to another. In the United States, for example, prostitution is generally illegal, in all times and places, and a prostitute soliciting in broad daylight in a middle-class suburb will almost certainly be arrested and detained. But at night in the "red light" district, or the downtown core of the city, the police might well ignore the same activity in an effort to focus on what they perceive—rightly or wrongly—to be more important problems.

Such decisions are not "results" that can be readily monitored and directed through performance benchmarks of the New Public Management. In local police work, the literature implies, the only things that can be, and at times are, managed in this way are traffic violations. Officers are allocated quotas of traffic violations that they are expected to issue in a given work period, for example, and they are evaluated accordingly. But if the real goal is order maintenance rather than law enforcement per se, the crackdowns that accompany this approach can prove counterproductive. Imagine, for instance, how a push to meet a quota might block the flow of traffic during the morning or evening commute.

Effective traffic control, like vice control, thus demands discretion. Police officers must be imbued with the ability and willingness not only to recognize violations when and where they occur but also to understand their implications and the implications of their punishment or redress. The existing literature therefore addresses the nature and origins of the standards that the officers use to make their judgments, whether, how, and to what effect they reflect the standards of the communities in which they work, and how they can be monitored and managed so as to prevent abuse—which is altogether too common and frequently has catastrophic results. For instance, Christopher Muller has traced the origins of racial disparities in incarceration to abuses by white police officers in northern U.S. cities in the late nineteenth and early twentieth centuries (2012), and similar abuses are commonplace today—with catastrophic results that show up on the nightly news (Coaston 2017). We know much less, however, about the potentially constructive uses of discretion. Might the police be recruited, trained, rewarded, and socialized so as to use their discretion in an unbiased and productive manner? Unfortunately, there is enough variation across police departments to make these researchable questions.

The Professions

Andrew Abbott defines the professions as "exclusive occupational groups" that apply "somewhat abstract knowledge to particular cases" (1988, 8), and he holds that by competing for the right to address individual and social problems they have come to "dominate our world" (1). Like street-level bureaucrats, professionals have independence and autonomy, but they have typically, or at least stereotypically (8), operated independently of larger

organizations. If the police officer is the classic street-level bureaucrat, therefore, the medical doctor is the classic professional. And even today, when most doctors in the United States work for hospitals or health maintenance organizations, they not only retain more autonomy and authority than their colleagues who lack medical degrees but have more prestige and legitimacy than street-level bureaucrats—whose independence and autonomy are treated as problems to be solved rather than opportunities to be exploited.

The medical profession's prestige is predicated on the notion that doctors have a monopoly over a certain domain of expert knowledge. Their knowledge is allegedly acquired through a process of education and training that is typically a prerequisite for entry into the profession. And medical communities are thought to be uniquely capable of certifying the educational institutions that transmit that knowledge and evaluating their students and graduates. The individual doctor's independence in the exercise of his or her profession is therefore accompanied by a set of independent institutions that formalize and monitor the standards by which the profession is governed. Because abstract knowledge plays a part in the very definition of a profession, moreover, the literature opens a series of questions that are for the most part absent from studies of street-level bureaucracy. Where does knowledge originate? How is it evaluated? And when and how does it expand or, perhaps, contract? Despite the centrality of knowledge to their operation, in fact, medical practices vary by doctor, hospital, and community, and their variation—like the variation among police departments—is the focus of a body of scholarly research.

What that research suggests is not only that there is an important social (or sociological) component to the ways in which both professionals, such as doctors, and street-level bureaucrats operate but that the New Public Management fails to recognize and exploit this dimension because it focuses on individual decisions and abstracts from the social contexts in which they are made. Labor inspectors—like most public servants—belong to communities of practice, i.e., professional communities, whether or not they are recognized as professions. Such communities tend to generate standards by which their work is performed and evaluated, to allocate respect and status in accordance with those standards, and to motivate their members accordingly. In other words, the individual agents try to meet the community standards not only because they want the respect and admiration of their colleagues but because they internalize—and

evaluate their own performance in light of—the community's performance criteria.

This need not imply that community standards are the only ones that motivate behavior. People may also be motivated by distinct codes (e.g., religious values) or the codes of different groups to which they belong or hope to belong (e.g., civil society organizations). And they can most certainly be motivated by monetary rewards, as they are in mainstream economic models and the NPM. But the key insight is that their motivations and behaviors are at least in part governed by the standards and roles they play in their communities and that their behaviors therefore have to be understood not only at the individual level but in terms of the ways in which their communities emerge and evolve over time. Are these communities cohesive or conflictual? If the former, what unites the different stakeholders? If the latter, what are the axes of division? And what, if anything, can their principals do to influence their values and behaviors going forward? Public policy must therefore be conceived not only in terms of motivating and directing individual behavior, as it is in economics, but as a matter of organizing and directing the communities and conversations in which individuals are embedded.

To do so, however, one must begin by asking where the standards that govern community behavior originate and how they evolve over time. The most likely answer is that individuals are already imbued with values and standards when they enter the service. In the 1950s and early 1960s, for example, French inspectors were drawn disproportionately from the more educated members of less educated, or working-class, families—many of whom would have entered religious orders in an earlier era. Mid-twentieth-century inspectors therefore had a commitment to protecting workers and redressing the imbalance of power between labor and management, albeit in a nonmilitant, conciliatory way. By way of contrast, the inspectors who entered the service in the aftermath of the social unrest of the 1960s were much more militant, confrontational, and skeptical of employers than their predecessors, and their successors—that is, those who entered the service during the more conservative era of the early twenty-first century—were decidedly less so.

Whatever their attitudes when they enter the service, however, the inspectors and their values are transformed by the process of socialization and training that occurs when they are inducted into the organization, including not only their formal education and training but their eventual

apprenticeships with experienced inspectors. And their attitudes are further reinforced, or perhaps recast, by their interactions with their colleagues on the job.

The standards of the group thus evolve over time as new agents with different backgrounds and experiences enter the service, older agents leave or retire, and the composition of the community against which the agents are calibrating their own behavior changes. They also evolve in light of changes in the contexts in which they are being applied and when the agents responsible for their application are confronted with new problems or older problems that are posed in new ways. But the key point is that the organization has direct, albeit limited, control over the key processes involved, and that their parameters thus constitute managerial tools that are no less—and perhaps more—valuable than the quantitative performance measures and monetary rewards used in the New Public Management. After all, the organization controls the recruitment, screening, and selection of candidates, their training and orientation, and the ways in which they interact on the job when reviewing standard cases and discussing new and unusual ones.

A key difference between street-level bureaucrats and the professions is that the latter are formally accredited; their status is recognized not only by their colleagues on the job but by society at large. This tends to reinforce their commitments to their professional roles while simultaneously giving society as a whole the statutory authority needed to define (and hence design) codes of conduct governing their behavior—though this need not imply that the formal standards of professional behavior take precedence over the standards which the profession generates internally. Street-level bureaucracies exercise an analogous authority over their job definitions and behavioral standards, to be sure, and face comparable competition from informal standards produced by the bureaucrats themselves—otherwise, the management problem would involve little more than deciding what the formal standards should be.

The openness of the bureaucracy or profession to the outside world offers management still another set of policy instruments. In many countries, the military constitutes an extreme example in which the organization can operate in a self-contained fashion. For instance, the U.S. military not only creates careers, which allow people to spend the entirety of their professional lives within the organization, but also offers soldiers and their

dependents access to military housing, schools, medical care, pensions, and even commissaries for shopping.

In workplace inspection—and public service more generally—people's careers are typically less bounded by the organization. They often involve movement from the regulatory organization to the organizations being regulated, which admittedly opens the door to corruption, capture, and conflicts of interest, but simultaneously creates opportunities for social integration, communication, and shared understandings across organizational boundaries. For instance, Matthew Amengual (2016) holds that by recruiting union activists into their inspectorates, Argentine officials fostered linkages that redounded to the benefit of enforcement.

Labor inspectors have not only been known to go back and forth in this manner, however, but have also been known to combine their public roles with distinct private-sector careers. In the Dominican Republic, for example, they are members of the bar and are thus allowed to take non-labor-related cases on the side as a means of supplementing their incomes. Today's inspectors are reasonably well compensated and therefore tend to focus on their public roles. When the agency was first being professionalized, however, inspectors not only maintained private practices but portrayed their ability to do so as a dual bulwark against corruption. First, they held that, by raising their overall standard of living, moonlighting in private practice mitigated the temptation to accept or solicit bribes from employers. And second, they noted that their ability to make money in private practice was for several reasons dependent on a reputation for honesty in their public positions. If they were reputed to be dishonest inspectors, after all, they would scare away customers for their other services, alienate law firms that might otherwise offer them full-time jobs one day, or even lose their licenses to practice law entirely. Thus, independently of any value commitments they might have had, lawyers had asset-specific investments in their law degrees that made them more likely than nonlawyers to adhere to the letter and spirit of the law.

Technological Innovation

Labor inspectors are not, however, blind conformists who simply adopt and adhere to a set of group norms. Like most public servants, they are deliberately and self-consciously pursuing a mission. Their missions may not

always coincide with the official mission of their organization, or with the goals of their supervisors and managers, but they nonetheless give the inspectors purpose and direction.

Their actions are also guided by knowledge of the environments in which they are operating, and they are actively trying to evaluate, expand, and use their knowledge to pursue their individual and organizational goals. The process through which this takes place is ongoing and, at least in part, autonomous; that is, it has a life of its own. But their principals (or supervisors) have a certain degree of influence over the knowledge base upon which the agents draw, the ways in which their knowledge is deployed, and the ways in which it evolves over time—and in exercising that influence they are simultaneously influencing the norms of behavior that govern the agency itself.

It is nonetheless misleading to think of that knowledge base in rational choice terms. In contrast to the "oversocialized" view, in which the agent is blindly following a set of exogenously given norms, rational choice theory offers an "undersocialized" view (Granovetter 1985), in which the agent is essentially solving a problem by drawing a distinction between ends (her goals) and means (or the instruments available to her) and developing a causal theory connecting the means to the ends (for example, the production function). "Knowledge" in rational choice theory is thus reducible to a causal model.

But labor inspectors, and public servants more generally, necessarily draw on tacit as well as explicit knowledge (M. Polanyi 1966). They need not know how they know what they know. They might not even be aware that they know it. And they would almost certainly have trouble incorporating it into a causal model. But this need not undercut—and may well enhance—its veracity and value. Knowledge is not necessarily independent of the context in which it is deployed, after all, and is not easily separated from the ends to which it is put.

Consider, once again, the French inspector who decides to focus not on the underground garment shops that have the most egregious violations but on the security guards who lack alternative means of redress. Her decision may well have been based on the fact that the shops would simply move away and reopen outside her jurisdiction, as she claims, and a rational choice theorist would thus be satisfied to note that she simply lacked the means to achieve her ends. But she might also have wondered whether the immigrants who formed the core of the labor force in the garment shops

deserved less weight or attention than French nationals; or whether they would lose their jobs—rather than gain their benefits—if she were to crack down; or whether and how she could deal with the immigrants who owned the garment shops and might not speak her language or respond to moral claims or legal sanctions in a familiar manner.

Any or all of these factors might have been in play when she made her decision, and she need not have distinguished among them when doing so. But if she operates outside of a rational choice framework, if she cannot easily make the distinctions that rational choice theory seems to require, how does she decide what to do, and how might her decision-making process be improved?

Our answer, which is necessarily preliminary, draws on case studies of product design and development in the private sector and a study of project management at the Defense Advanced Research Projects Agency (DARPA) in the United States, where it seems that ends, means, and their causal connections are no more easily distinguished. But it also draws on a relatively diffuse literature on learning and cognition in nonacademic settings where the knowledge involved is informal or incompletely codified. Both the case studies and the broader literature imply that the knowledge base coevolves in conjunction with the day-to-day routines and decisions of the agents themselves and that the key to exerting managerial influence over the knowledge base is to appreciate the fundamentally *reflective*, *interpretive*, and *social* processes through which their day-to-day decisions are made.

Insofar as the agents try—perhaps in vain—to distinguish means from ends and to think through the relationships between and among them, the process is "reflexive" in Donald Schön's sense of the term (Schön 1983). The agents might not think about their problems in rational choice terms, after all, but their problems and decisions might nonetheless be illuminated by rational choice categories.

The process is interpretive in the sense that the distinction between means and ends, and the ways in which they relate to each other, are necessarily context-dependent. Are wages best thought of as a means of subsistence, a method of allocating labor, or an indicator of social status, for example, and—if the latter—are they less a means to an end than an end in themselves? Does the principle of "equal pay for equal work" matter primarily because it equalizes women's status relative to men or because it allows them to provide for themselves and their families, and would the

latter rationale loom larger in the absence of an adequate system of public assistance? Questions like these should inform not only the priority afforded different violations and workers but also the solutions envisioned when wrongdoing occurs.

Reflection and interpretation are neither internal nor individual, however, but occur in a social context. They are produced by means of interactions and conversations among colleagues who are almost always engaged in discussion and debate. But their discussions and debates are not necessarily formal and explicit; often, they are subtle, tacit, or unconscious, and we must therefore reflect on the internal, day-to-day life of the organization.

Agents in most organizations spend a good deal of time socializing with one another on an informal basis. They tend to discuss both the work they are doing and the environments in which they are doing it. Some organizations and groups encourage more interaction than others, but virtually everybody engages in this type of behavior to some degree. The agents themselves often characterize their informal interaction as "gossip"; in some groups—particularly engineers—it is portrayed as "politics." But the participants use these pejorative terms to describe their behavior, in part, because they are unconsciously wedded to a rational choice model in which they can and should be able to distinguish the objective world from their subjective interpretations of that world, when, in point of fact, the conversation almost inevitably moves back and forth between the substance of the work, the criteria that are used to understand and evaluate the work, and the ways in which those criteria—and, therefore, understandings and judgments—are shaped by contextual factors (for example, the personalities of the participants, the idiosyncrasies of the ways in which they make their decisions, and the degrees to which their personal self-interest and ambition shape and distort their decisions).

We first used the term *conversation* to describe this process when studying product design in the private sector and military research and development (Lester and Piore 2004; Schrank 2011). These are obviously distinct domains of activity, but the problems they are addressing are nonetheless similar in the sense that they do not fit readily into a rational choice framework that assumes fixed goals and flexible means. It is difficult to separate means and ends in the course of innovation; they coevolve and reconstitute each other as the process unfolds; and the interpretation of the one is constantly shifting in the light of the other as the potential product or process is redefined and viewed from different angles.

Our canonical example is the cellular telephone, which started out as a car-mounted instrument for voice communication, modeled on police and taxi radios, and gradually evolved into a smaller, handheld instrument that incorporated a camera, a computer, a music player, video games, a video recorder, navigational equipment, and so on. It evolved in this way, moreover, by means of ongoing conversation, debate, and discussion among product managers and engineers, many of whom were initially drawn from two industries—radio and telephone—with fundamentally different business and engineering traditions. Much of their early interaction, therefore, involved the development less of common products than a common language. Only when that language had cohered, and a degree of trust and understanding had developed, could they begin to develop realistic product ideas. And their open-ended conversations about what cell phones are and might become continues to the present day.

A similar story explains the development of the programmable insulin pump, which literally grew out of a conversation between an endocrinologist at the University of New Mexico and an electrical engineer at nearby Sandia National Laboratories during a summer barbeque. "Why hasn't anyone built an implantable insulin pump?" asked the engineer, whose daughter had recently been diagnosed with diabetes. "Because it would require remote operation," said the endocrinologist, "and that technology is not available." "No," responded the engineer, "we design and build that type of thing all the time at Sandia for the nuclear weapon and satellite research and development programs," and the resultant five-hour-long conversation gave birth to a decade-long collaboration that would result in the development of a device that today improves the lives of more than a million diabetics around the world (Eaton 2005, 2–3).

By the time products like these are brought to market, of course, their development has begun to look like the process of optimization envisaged in management and engineering textbooks that are premised on rational action. Product developers are pursuing relatively stable ends through more or less self-conscious means. But if the manager's role in the commercialization phase is basically technical, his contribution to development is very different indeed—less like engineering and more like entertaining. In the course of our interviews, in fact, we came to see his role in the development phase as analogous, in many ways, to the role of the host or hostess at a cocktail party: inviting the guests, encouraging them to come, introducing them to one another once they have arrived, suggesting topics

of conversation at the outset, making adjustments when they flag, offering distractions if the conversation becomes antagonistic, and deciding when it is time to politely pull the plug and close things down. This is, in effect, the way we understand the manager's role in street-level bureaucracies, in general, and in the Franco-Latin model of labor inspection, in particular.

The management of the conversation actually takes place at two levels: first, through the design of the institution; and second, through direct intervention in the conversation itself. Institutional design, in turn, has two subdimensions: the social structure and the physical structure of the organization. Together they determine who talks to whom and what they talk about spontaneously in the course of ordinary events.

French and Spanish Applications

The contrast between the French and Spanish inspectorates not only illustrates the ways in which their social and physical structures influence their conversations but also suggests that by changing their structures we might change the ways in which they operate. While the French model builds (lateral) solidarity among the inspectors and (vertical) hostility toward their supervisors, Spain's hierarchical approach militates in the opposite direction. And Spanish inspectors are therefore more disciplined, if perhaps less creative, than their French counterparts.

The differences between the two agencies and their inspectors are apparent from the moment of their incorporation. After they have passed the entrance examination, the formal classroom component of French recruits' two-year program of education and training takes place at an isolated residential facility located in the suburbs of Lyon, at some distance from the town, and the new recruits are thus forced to spend a good deal of time with one another, largely unmediated by contacts in the outside world. They not only develop a strong sense of group (or lateral) solidarity, as a result, but also simultaneously develop deep ties to their senior colleagues, who often serve as their instructors and socialize them into the corps. Upon graduating, moreover, their socialization continues, for they serve the apprenticeship portion of their training with their senior colleagues and, in so doing, internalize their codes of conduct and standards of judgment. By the time they have completed their apprenticeships, therefore, French inspectors are imbued with an acute sense of identity and solidarity as members of a cohesive corps of regulatory officials.

They are less responsive to management, however, for there is an understandable—if unfortunate—break between street-level inspectors and their supervisors. Supervisory positions are not necessarily occupied by inspectors who have been promoted from the base of the hierarchy, and inspectors and at least some of their supervisors therefore lack common identities and experiences. When they are occupied by inspectors who have been promoted from the base, moreover, supervisory positions open the door to job opportunities throughout the ministry, and their occupants begin to focus on their roles and prospects within the broader hierarchy. They almost never return to the front line of the inspectorate itself, and the very act of their promotion thus serves to reinforce the gap between supervisors and street-level bureaucrats.

The gap has been further reinforced, of course, by the recent challenges the inspectorate has faced, most notably the 2004 murder of two inspectors on the job and the more recent suicides of two more inspectors, and by the ways in which the labor ministry and the political class reacted, or rather failed to react, to these events. When riots broke out in the Paris suburbs in the middle of the decade and several police officers were injured, Interior Minister—and later President—Nicolas Sarkozy rushed to the *banlieues* in a self-conscious show of support for his troops, visiting police officers on the job and later in the hospital (Sciolino 2005, 2007). When their own colleagues died at more or less the same time, however, labor inspectors received no such show of support, and thus they grew even more alienated from their supervisors and the system as a whole.

They are further alienated, moreover, by the nature of their assignments. While they are imbued with a deep sense of solidarity and are thus well suited to project teams, French inspectors almost never engage in teamwork. They are instead assigned to fixed geographic territories in which they operate more or less autonomously, and to the extent that they consult with their colleagues, therefore, they tend to do so informally—offering ministry officials little opportunity to enter and steer their conversations. In fact, their supervisors have almost no direct influence over the topics they discuss or the content of their discussions, and they make little to no use of their indirect influence, that is, by self-consciously structuring their work, arranging their offices, or organizing their schedules in an effort to shape their conversations.

Spain offers a striking contrast. Candidates for the Spanish inspectorate study for the entrance examination on their own for approximately three

years and, until recently, had almost no formal education or training once they had passed the exam but were instead incorporated into the service and sent into the field with the briefest of possible orientations. At times they were accompanied by more experienced inspectors on their initial site visits, but even this kind of orientation was erratic, and we encountered several new inspectors who had, in their own words, been thrown into the field on their own. In the absence of strong ties to their colleagues, moreover, novice inspectors are virtually forced to turn to their supervisors for support and advice, and their ability and willingness to do so are facilitated by the fact that the supervisors are themselves inspectors, drawn from the base, serving for relatively short periods of time, and eventually returning to work as line inspectors, thereby minimizing the distance between themselves and their subordinates. While project teams are relatively common, especially for dedicated campaigns (for example, sex discrimination or undocumented migration), their foci and composition are dictated by managers, who thereby exert tremendous influence over the lateral contacts that develop among inspectors on the job. The Spanish structure thus tends to discourage the development of group consciousness among the inspectors and to encourage the development of vertical ties—precisely the opposite direction of the French organization.

Organizational Boundaries and Organizational Learning

Franco-Latin labor inspectors are street-level bureaucrats who nonetheless tend to be drawn from—and have much in common with—the liberal professions. Many have backgrounds in law, medicine, or engineering, for example, and Florence Kelley went so far as to label factory inspection itself a profession in 1914 (1914a, 2683), before the U.S. system had fully specialized, a view echoed by her contemporary George Price (1914a, 17) and, more recently, by Wolfgang von Richthofen of the ILO (2002). We have also seen that the specialists who dominate the U.S. system tend to be drawn from distinct professional groups (such as law, industrial hygiene, or labor relations) and that their professional backgrounds and credentials are both products and sources of their specialization. Members of different professions had reason to monopolize different aspects of the regulatory effort, that is, and their efforts to do so allowed new professions to lay claim to residual

aspects that had not yet been so monopolized—and in so doing to reproduce the cycle of specialization.

Unlike their specialist counterparts, however, Franco-Latin inspectors are not professionals in the narrow sense of the term. While they apply "abstract knowledge to particular cases" (Abbott 1988, 8), like traditional professionals, the origins and evolution of their knowledge are obscure, and we have therefore linked the literature on street-level bureaucrats and professionals to the literature on innovation, language, and learning in an effort to illuminate their development.

The first point that emerges from this exercise is that the dichotomy between specialized and general-purpose labor inspectorates—which we ourselves have adopted—is overdrawn. After all, the medical profession is organized into a number of different specialties and is in that sense distinguished from the so-called specialized labor inspectorates we have studied not by the *absence* of specialization but by the fact that the patient typically *enters* the domain of medicine through a general practitioner who at times refers (or better yet "assigns") him to a specialist and in principle (if not always in practice) continues to coordinate his care when several different specialties are involved. The general practitioner and the general-purpose labor inspector thus have much in common with another well-known generalist: the general contractor in the building trades.

The definitions of the specialties pursued by professionals are no less complex. Doctors specialize by disease (for example, oncologists, allergists), organ of the body (dermatologists, cardiologists), technique (surgeons, anesthesiologists, radiologists), and the age of the patient (pediatricians, gerontologists), and legal specialties are defined in terms of the statute in question (for example, criminal, civil), task involved (prosecution, litigation), identity of the client (disability law, juvenile law, international law), and social problems (poverty law). These specialties are justified and reproduced, moreover, by their monopolies over different domains of knowledge. In that sense, they mimic the professions themselves (Abbott 1988), but the knowledge involved in each case is as much the product as the source of the specialty; they almost necessarily coevolve and develop.

The key difference between the U.S. model and the Franco-Latin alternative is not the degree of specialization, therefore, but the definition, management, and coordination of the specialties themselves. While the U.S. specialties are defined in terms of discrete symptoms that not only

ignore but in some sense obscure their inherent interconnections (for example, on-the-job injuries, wage theft, unfair labor practices), the French system tends to highlight the links between labor law and industrial practice. "Inspectors often complained that they were bound by restrictive lists of infractions, which became quickly outdated as a result of frequent changes in industrial processes," explains historian Donald Reid in a study of the origins of the French system (1986, 74). "If labor inspectors really possess the technical knowledge required by the admission examinations," argued one of his late-nineteenth-century sources by way of illustration, "it's a little much to treat them like lowly agents charged with applying narrow rules; I would go so far as to say like fools led by a guide ass" (74). But this is more or less the way inspectors are treated in the U.S. system, especially if they are subject to the New Public Management (see, e.g., Jacobs and Cordova 2005, 23).

The comparison of labor inspectors to medical professionals forces us to ask what constitutes the "disease," or the analogue of disease, in workplace regulation, a question to which we will soon turn. But before we do so we need to address the origins and—more precisely—definitions of the diseases in medical practice. Where do they come from? How are they translated into specialties? Are they objective and obvious or, to at least some degree, products of the different specialties themselves (see, e.g., Amsterdamska and Hiddinga 2003, 430; "New Food Allergy Guidelines" 2010)? Of course, these are mere variants of the broader question of the origins and definition of professional knowledge: Where does it come from? How is it validated? How does it evolve? And most importantly, in the present context, is it really different from the knowledge developed and used by street-level bureaucrats?

There may be no universal answer to this question; that is, one that is valid for all professions and time periods. But at least for the case of modern medicine we can identify a number of elements out of which an answer could be composed. Knowledge in medicine exists and operates on two levels (or perhaps, more accurately, comes in two varieties): The first kind of knowledge is *scientific*, and it is subject to codification, empirical validation, theoretical understanding, and communication through formal educational processes associated with classrooms, laboratory exercises, and textbooks. The second kind of knowledge is *clinical*, and it is derived from experience, embedded in practice, and dependent on hunches or instincts that the practitioner may not be able to articulate—let alone validate in an

objective and convincing way. Clinical knowledge is typically passed on from one generation to the next less through classroom instruction and textbooks than through apprenticeships or mentorships that rely on demonstrations, observation, and nonverbal communication.

To understand clinical knowledge and how it differs from scientific knowledge, we turn more self-consciously to the extensive—if inconclusive—literature on *tacit knowledge*, a term originally coined by Michael Polanyi to describe knowledge that is "embodied in people rather than words, equations, or diagrams" (MacKenzie and Spinardi 1995, 44). The underlying notion is not only that "we can know more than we can tell," in Polanyi's words (1966, 4), but that we inevitably trust and use knowledge that we cannot articulate or explain. Polanyi's chief example is our ability to recognize faces despite our inability to say how we do so, but he also invokes the processes of swimming, cycling, and picking out his "macintosh among twenty others" (1958, 91).

Mainstream economics tends to assume that knowledge is not only "explicit and held by individuals" (Amin and Cohendet 2004, 2) but deployed by rational actors in pursuit of fixed and transparent goals, often by breaking the process down into a series of discrete tasks that can be reduced to a list of decision rules or instructions (Amin and Cohendet 2004, 25; see also Cowan 2001). Where goals are neither fixed nor transparent, however, the mainstream approach is inadequate. "Activities that involve significant amounts of pattern recognition, generalisation, and use of analogy are more difficult," explains Robin Cowan by way of illustration. "Here a deep abstract knowledge of the system being 'repaired' is part of the expertise, and this becomes difficult to model and thus to codify" (2001, 1371). The difficulties multiply, moreover, when the goals are not only irregular but interconnected and, perhaps, inconsistent with one another. "This involves a vision of the system at an even higher level of abstraction," continues Cowan, "and this aspect of expertise is extremely difficult to codify" (1371).

The knowledge bases of the U.S. and Franco-Latin models thus differ markedly. While the former addresses fixed and discrete goals (such as occupational safety or gender equity) and is therefore at least broadly compatible with decision rules and checklists, the latter involves tradeoffs among conflicting, connected, and unstable goals and therefore demands deeper—and often tacit—knowledge of the root causes of noncompliance. What does this imply for the management of Franco-Latin labor inspectorates?

The degree to which tacit knowledge is *inherently* tacit or could *potentially* be made explicit and codified is controversial (cf. Nonaka and Takeuchi 1995; Ray and Clegg 2007). Certainly some tacit knowledge can be articulated and codified. Whether all such knowledge could be rendered explicit is another question entirely, however, and whether doing so would enhance the professional's or bureaucrat's ability to achieve his or her goals is by no means obvious. We therefore ask not how tacit knowledge can be *codified* in the pursuit of fixed and transparent goals but how it can be *managed* in pursuit of unstable and potentially conflicting ones.

One potentially useful model or method is reported in a study of American hospitals that wanted to "standardize care in ways that challenge[d] traditional beliefs of physician autonomy in clinical decision making" (Adler et al. 2003, 19). The standardization process worked best, according to the authors, when physician independence was replaced not by hierarchical, or top-down, control but by "collaborative interdependence" (27) involving the collective development of protocols for the treatment of common diseases, on the one hand, and dialogue among key stakeholders when deviations from the protocols seemed necessary, on the other. "Collaborative interdependence is also a matter of everyday cooperation across unit boundaries," they continued, "breaking down the 'silos' that isolate medical specialties, occupational categories, and work units" (27).

Several features of this endeavor are relevant to our purposes. First, the leitmotif of reform is neither traditional independence nor hierarchical control but collaborative interdependence, in which doctors, nurses, and their colleagues in "previously siloed departments" join forces "to improve cost-effectiveness and quality" (Adler, Kwon, and Heckscher 2008, 368). Second, peer review is central to the process. "Professional colleagues regularly review each other's cost-effectiveness and quality to identify and disseminate best practices" (367). And third, and perhaps most striking for our purposes, is the establishment of a common, generally accepted starting point—a typology of the territory the professionals are trying to control. This point of departure is the analogue of the typology of diseases that is currently missing in the case of labor inspection, and that makes it difficult to apply the lessons of medicine or the literature on the professions more generally. But there is a fragmentary literature on the underlying determinants of working conditions and standards with which we can begin to fill this gap, and it is to that literature that we turn in Chapter 7.

Conclusion

General-purpose labor inspectorates are ill- suited to both the traditional Weberian approach, which is premised on a rigid division of labor, and the New Public Management, which assumes fixed and transparent goals. They not only address multiple goals and potentially competing values, which render the NPM a nonstarter, but also attach different weights to the different goals depending on their political and economic conditions and contexts. Such bureaucracies can nonetheless be managed, we believe, and improved over time, we hope, by recognizing that the agents who staff the organization form a relatively cohesive group; that groups of this kind generate standards for the determination of priorities and the resolution of cases; and that their members adhere to these standards not only (or primarily) for pecuniary reasons but because they value the respect and admiration of their colleagues. Moreover, the standards themselves reflect the values the recruits bring to the job, the nature of their training and socialization, and the discussions and debates that take place on the job, especially when new or unusual cases present themselves. Management can therefore influence the standards in question by recruiting different types of candidates, recasting their training and socialization, reshaping the conditions under which their discussions and debates occur, and reorganizing the agency itself—and the degree to which it invites the influence of people on the outside with different perspectives and values in particular. Ultimately, however, the organization's ability to improve over time rests on the quality of the information and knowledge the agents use to make their decisions and how much they know about the ways in which productive practices and workplace organization influence labor standards and worker welfare. Most labor inspectors have clinical knowledge of these issues, especially in general-purpose systems, and the managerial challenge is therefore to make that knowledge, and the decisions informed by that knowledge, as explicit and self-conscious as possible.

7

DEVELOPING GUIDELINES

WHAT DO WE KNOW ABOUT THE DETERMINANTS OF labor standards and working conditions? How do we know it and, no less importantly, communicate it? What, in other words, is the knowledge base underpinning and guiding the regulation of the workplace? Could it make for a *profession* of labor inspection, in the traditional sense of the term, or must we think of workplace inspection as a street-level bureaucracy drawing on clinical knowledge and practical experience? More specifically, does our formal knowledge enable us to address key policy questions, like whether individual workplace regulations are anachronistic or whether regulation as a whole is outdated?

In 1960, a leading Harvard economist named Sumner Slichter published a mammoth volume entitled *The Impact of Collective Bargaining on Management* with his then-junior colleagues James Healy and Robert Livernash (Slichter, Healy, and Livernash 1960). The book consisted of thirty-one chapters addressing what, at least at the time, seemed to be every conceivable workplace practice, the forms they took, and the ways in which they were regulated through collective bargaining. It is in many ways comparable to the diagnostic manuals used to evaluate and treat diseases in the medical profession, and if medicine—for better or for worse—constitutes the "universal archetype of a profession" (Kimball 1996 320), *The Impact of Collective Bargaining on Management* would seem to qualify labor inspection for that status.

But the book has never been updated, let alone replicated. Nobody has tried to incorporate new research on changing employment practices into a similar volume, and the original focused on manufacturing, construction, and transportation to the exclusion of services, where jobs are increasingly concentrated in developed and developing countries alike. In fact, the service industry does not so much as merit an entry in Slichter, Healy, and Livernash's otherwise comprehensive index.

More seriously, their book is primarily descriptive. They link the disparate employment practices neither to each other, in an effort to uncover underlying patterns, nor to the technologies and business strategies that arguably constitute their underlying determinants or root causes. And their book thus offers a compendium of symptoms but lacks a theory or account of disease.

The current chapter is designed less to fill that gap than to set the stage for such an effort down the road. It is divided into two principal sections. The first addresses what we know about the relationship between production systems and labor standards at present, paying particularly careful attention to household production and the putting-out system, mass production and the sweatshop, Japanese management techniques, and services. The second section asks how we know what we know, and it concludes that much of our knowledge comes from labor inspectors themselves and their interlocutors in trade unions and civil society organizations. Finally, the conclusion argues that, if recognized and exploited by management, the informal, tacit, and diffuse understanding of labor standards and their relationship to production processes could prove an asset rather than a liability in the Franco-Latin mode of workplace inspection in particular.

Production Systems and Workplace Standards

There is, to be sure, a scholarly literature that links workplace symptoms to something like an underlying disease. It is organized around a limited number of production systems. But it is most developed for early modern industry and becomes increasingly fragmentary and incomplete as we approach the contemporary period. We suspect that this fragmentation followed, and was in some sense produced by, the fragmentation of workplace inspection itself—a subject to which we return in the next section. But for the time being we will do our best to distill what we currently know, or

think we know, about the relationship between production systems and workplace—or labor and employment—standards.

Household Production and the Putting-Out System

Our points of departure are household production and the putting-out system. Max Weber argued that the separation of the household and the enterprise, and the application of cost accounting procedures to the latter, constituted critical steps in the development of modern capitalism (Weber 1927). Cost accounting and related practices that maximize formal rationality are alien to household production systems, and it is in this sense that the latter are preindustrial or precapitalist in orientation. As in peasant agriculture, for example, production takes place in the household living space and is mixed not only physically but temporally with activities that we now think of as housekeeping. Women are watching and caring for their children while simultaneously engaged in production for the home and, perhaps, the market. At first, their children are simply playing games with "toys" composed of tools and working materials; eventually they are drawn into the productive process, but it would be hard to say exactly when they have started to be workers and are actually engaged in productive labor. Initially, their work is light and may not differ in spirit from the games they have been playing when left to their own devices; over time, however, they assume more and more responsibility for ever more difficult tasks, and in so doing become key parts of the productive unit. But the household makes no distinction between work and play, or between play and what we would today call "skill formation." On the contrary, the two go hand in hand, and household and business finances are similarly comingled, making it impossible to distinguish profit from loss or to calculate the rate of return on capital.

As a result, decisions about the marketing of the product or the purchase of equipment are not fully rational from a business perspective. Indeed, they could not be fully rational in the sense that rationality is understood today. Working capital is easily drained by shocks and family crises, including pregnancies, illnesses, and the like, inhibiting capital accumulation and, at times, putting the viability of the operation itself at risk.

Studies of household production date back to the early nineteenth century. Our own perspective has been fundamentally shaped, however, by our studies of Mexican artisans trying to adjust to the pressures of free

market reform and international competition in the early 1990s. Labor standards in Mexican handicraft industries had traditionally been governed by custom, embedded in community norms and structures, and amended and updated through experience—and for all of their obvious problems they had provided some protection, albeit limited and context-dependent, from the worst workplace abuses. When their traditional markets collapsed in the face of foreign competition, however, Mexican artisans abandoned their standards and suffered accordingly. Families tried to make up for their declining incomes by working harder; women paid more attention to production and less attention to their children; children were drawn into the productive process prematurely; and the pressure to make up for falling prices with increased output produced injuries and illnesses that, if treated outside the household, consumed capital and thereby aggravated the very problems that had engendered the crisis in the first place—producing a vicious circle of destitution and decline.

Household production has not always given way to such downward spirals; at times, it has given birth to the putting-out system and, eventually, the modern factory. When early modern European artisans had more demand than they could meet with their own household labor, for example, they were tempted to "put out" raw materials to neighbors who worked on them in their spare time—when not preoccupied by their own farm or household tasks—and were in turn paid by the piece for the finished products. The advantages included low start-up costs, a broad division of labor, and flexibility: "entrepreneurs could take on or lay off labor according to market demand" (Clarkson 2003, 101). As the market for standardized products expanded, however, and the division of labor intensified, work was put out further and further into the countryside; the dispersion of production became too difficult to manage; and production was eventually recentralized into a factory staffed by an increasingly modern industrial proletariat. Marx thus saw the European putting-out system as a historical interlude between household production and the factory system (MacKenzie 1984, 482).

Industrial Production and the Factory System

The question of labor and employment standards arose with the growth of modern industrial production and the evolution of the factory system. A critical development was the more or less simultaneous growth of mass

production in continuous-process industries and the sweatshop in the needle trades in the late-nineteenth- and early-twentieth-century United States. Today we tend to read the history of workplace regulation in modern industrial production in terms of a series of discrete standards that correspond to the jurisdictions of different agencies and levels of government: threats to safety and health, long hours and low wages, child labor, union-busting, and so on. But the discrete standards and specialties are a by-product of both mass production, on the one hand, and the sweatshop, which was originally viewed as a single system that gave birth to a host of unfortunate symptoms, on the other. We have already discussed the relationship between mass production and regulatory specialization at some length in Chapter 2, and we will therefore simply note that the former both *motivated* and *facilitated* the latter. In terms of *motivation*, large-scale, capital-intensive firms possessed and demanded more formal expertise than their smaller-scale, labor-intensive counterparts. They employed engineers, lawyers, doctors, and accountants, for example, and regulatory agencies had to respond in kind to stay credible and competitive. But mass production—and the macroeconomic stabilization that underpinned it—simultaneously *facilitated* specialization by allowing regulators to anticipate the demand for specialists, staff their agencies accordingly, exploit economies of scale during their site visits, and foster collective bargaining agreements that would serve as additional barriers to abuse and exploitation. The growth of mass production thus improved wages and working conditions in the country's most dynamic industries, at least for a little while.

But the growth of mass production in heavy industry went hand in glove with the growth of the sweating system in the needle trades, the key features of which were described by Florence Kelley, who served as chief factory inspector for the state of Illinois in the mid-1890s and went on to lead the National Consumers' League's campaign for state and national labor legislation in the decades to come. "Everywhere steam, electricity, and human ingenuity have been pressed into service for the purpose of organization and centralization," Kelley argued, "but in the garment trades this process has been reversed, and the division of labor has been made a means of demoralization, disorganization, and degradation" (1895, 38–39). Sweatshops were found in the basements or attics of ghetto buildings, she noted, where underpaid, overworked, and largely immigrant workers used

outdated equipment to produce ready-made garments for wholesale firms. And sweatshop owners not only deprived their own workers of skill and bargaining power, she explained, but put out work to subcontractors, including families working in filthy tenements, and thereby placed downward pressure on piece rates and working conditions in the industry as a whole.

Under the putting-out system in Illinois, just as in early modern Europe, the subcontractor received raw material from the contractor, produced the finished goods at home according to the contractor's specifications, and was paid by the piece upon delivery of the final product. And in theory, at least, the system would allow workers, particularly female workers, to reconcile their family responsibilities with their pecuniary needs in a sensible and desirable manner. But Kelley found that conditions in the tenements were "the worst and most crowded" she had seen (33), and her observations have been confirmed time and again in different eras and contexts.

Overcrowding, underpayment, and unsafe working conditions are mere symptoms, however, for their common cause lies in the incentive structure generated by the piece-rate system itself. When direct labor costs per unit of output are constant, after all, the employer has no incentive to maximize hourly productivity and instead tends to minimize his fixed costs, for example, his monthly rent, and maximize the size of his workforce by scouting out the lowest-cost buildings and recruiting as many workers as possible. This explains Kelley's veritable obsession with "the avoidance of rent" on the part of sweatshop operators (2005, 51) and the corresponding absence of fire escapes, electricity, and running water in most garment shops.

When work is put out to people in their homes, of course, the employer is effectively relieved of the burden of rent as well, albeit at the risk of "infecting the purchaser with disease prevalent in tenement-house districts" (Kelley 1895, 41). And the expansion of the putting-out system therefore raised "the question of why the clothing manufacturer should be permitted to eliminate the item of rent from his expenses, at the cost of the trade and of the purchasing community" (41). He was also permitted to eliminate the cost of purchasing tools and equipment, for manufacturers not only asked their workers to provide their own sewing machines, on occasion, but had access to a large rental market for machinery, thereby minimizing both the need for capital investment and corresponding barriers to entry. As a result, the industry was marked by rapid turnover, for a "man may be an operator to-day, a sweater on a small scale next week, may move his shop in

the night to avoid the payment of rent, and may be found working as an operator in an inside shop at the close of the season" (31).

The incentives that create and sustain such a system are, of course, eliminated by the establishment of a meaningful hourly wage—whether by means of a collective bargaining agreement or a statutory minimum (Kelley 1911, 308)—which encourages the employer to maximize hourly output per worker. Wage floors have therefore gone hand in glove with the creation of well-defined work stations and regular, rational workflows that have not only gone a long way toward eliminating the worst of sweatshop conditions but have also boosted productivity and extended the employer's span of control more generally. And the latter has enabled the broader monitoring of the workforce demanded by health and safety regulations—something that was all but impossible in the chaotic conditions of the sweatshop.

A similar dynamic will, of course, be engendered by an increase in equipment costs or the value of in-process materials, which all but force employers to maximize productivity in an effort to spread their fixed costs over an ever-growing volume of output per hour. The sweatshop is therefore all but unknown not only in heavy industries like steel and petrochemicals but in segments of the garment trade that involve high-end fabrics and the like.[1] Where fixed costs are low, however, employers have less reason to worry about hourly productivity and more incentive to "sweat," or exploit, their workers.

Kelley illustrates the point by comparing the footwear and garment trades, which were "more or less equally placed" at the end of the Civil War, diverged markedly in the Gilded Age, and by the dawn of the Progressive Era stood in sharp contrast to each other (1895, 39–40). "In the shoe industry," she observed, "the products have been cheapened by developing the plant, perfecting the machinery, and employing relatively well-paid, high-grade labor. In the garment trade," by way of contrast, "there is no plant. Under the sweating-system, with the foot-power sewing machine, cheapness is attained solely at the cost of the victim."

Some have portrayed Kelley as a proponent of scientific management (Schachter 2002), and she would eventually join the Taylor Society in an effort to "promote less exploitative industrial standards" (Sklar and Palmer 2009, 424), including the prohibition of child labor. But she was hardly a naive Taylorist, for she rejected the acute division of labor promoted by Taylor's so-called efficiency movement in favor of an alternative in which

workers would "come into contact with every process for which they are not mentally or physically incapacitated" (Kelley 1914b, 107) in an effort to foster their skill and creativity. "Whenever the workers with hand and brain grasp the possibilities that lurk in this idea," she argued, "they will undoubtedly make it the complement to the present sordid 'efficiency' movement" and, in so doing, enhance "the efficiency of the manual worker as a human being, not merely his efficiency in producing goods as means to profits" (108).

Kelley's ideas thus anticipated the "lean" manufacturing model the United States adopted from Japan in the 1980s and 1990s, which emphasized job rotation, project teams, and cross-training designed to foster flexibility, creativity, and quality control on the shop floor (Osterman 1994, 2000; Doeringer, Lorenz, and Terkla 2003, esp. 278). Ironically, however, the Japanese approach had itself grown out of an effort to adopt U.S. manufacturing techniques after the Second World War, when Japan felt the need to cut costs and raise quality simultaneously. Japanese management practices have thus been portrayed as flexible and adaptable alternatives to Fordist mass production. After all, Japan's highly skilled, cross-trained workers are able to pursue different tasks at different times, and in so doing adapt to different markets and macroeconomic conditions, and also to pursue multiple tasks at the same time, and thereby economize on scarce labor (Cusumano 1988; Tolliday 1998). They are also inclined to cooperate not only with their managers and coworkers but with their suppliers and customers, and Japan's political economy has thus been portrayed as a coherent model of "alliance" (Gerlach 1992) or "coordinated capitalism" (Steinmo 2010, 20; Thelen 2014).

The adoption of Japanese management practices has also given rise to a broader debate over the prospects for "high-road" and "low-road" adjustment strategies in the United States and beyond. While proponents of the Japanese model associated lean production with high-road strategies, and anticipated beneficial consequences for American workers, their critics worried that the United States would instead "pave the low road" by cutting wages, gutting regulations, and breaking unions (Luria and Rogers 1999, 18; see also Knauss 1998). And the debate is, if anything, more complicated in cross-national context. We have a substantial body of case study material underscoring the distinction between high- and low-road management, for example, and we know that distinct productive practices can be used to produce similar products to be sold in the same markets. But it

is not at all clear that the high- and low-road approaches form discrete alternatives, as opposed to a continuum or perhaps menu of productive practices that can be recombined in different ways—let alone that the alternatives, whether discrete or not, can be clearly ranked in terms of their impact on labor standards or worker welfare.

Take the staffing of textile plants by migrants from rural areas, another contemporary process about which there is a substantial historical literature. The early American textile industry and contemporary China both adopted a system in which young women were recruited from agricultural families on fixed-term contracts, housed—some would say virtually imprisoned—in dormitories owned and operated by their employers, and subject to exploitation and abuse by their employer-cum-landlords. By way of contrast, the late-nineteenth-century American and the late-twentieth-century Mexican industries recruited young women from the countryside but took no responsibility for their housing or lives outside the workplace. They were simply left to their own devices in the chaotic urban conditions fostered by rapid industrialization, free of family and employer oversight and/or protection, and vulnerable to crime, vice, and the like. Whatever its merits, the distinction between high- and low-road approaches has little to say about the choice between these two approaches to staffing what are essentially the same jobs.

The high/low road distinction further implies that employment practices are best understood as systems, and there are undoubtedly correlations—and perhaps causal relationships—among the different practices and behaviors (see, e.g., General Accounting Office 1988b; Schneideret al. 2010; Bernhardt, Spiller, and Theodore 2013; Schrank and Garrick 2013). We have certainly suggested as much in our descriptions of early modern production systems, including the sweatshop, and have argued that the relatively tight coupling of employment practices counsels for a general, as opposed to specialized, system of workplace inspection. If violations are merely the symptoms of deeper pathologies and tend to cluster by enterprise, region, or sector, specialists will prove inefficient. But how should we understand the relationships among the different employment practices? Paul Milgrom and John Roberts offer one answer: in their model, the marginal cost of introducing any single practice in a system decreases as the number of associated practices in the system increases, meaning that incremental adoption is theoretically suboptimal. But survey evidence on the introduction of high-performance work practices in the United

States and Europe suggests that in practice they tend to be introduced piecemeal. "Even Japanese 'transplants' in Western countries rarely adopt the complete system of management practices found in large enterprises in Japan" (Doeringer, Lorenz, and Terkla 2003, 266); American-owned plants are even more likely to pick and choose from the Japanese menu (Doeringer, Evans-Klock, and Terkla 2004).

Another possibility, therefore, is that employers will amalgamate and deploy these allegedly high-road practices differently depending on their different goals, values, and interpretations. Proponents of the Japanese model, for example, tend to portray lean production as a means of empowering production workers and building closer ties between labor and management. But the very same practices can be interpreted and used to shift costs onto workers or suppliers in a decidedly low-road manner. One consultant illustrated the difference between the two interpretations with examples drawn from General Motors plants that had adopted the *kanban* system of on-time delivery. In the high-road interpretation, the *kanban* system eliminated in-process inventories, which had traditionally buffered assemblers from the shortcomings of their suppliers and, in so doing, forced both parties to develop a collaborative relationship to avoid costly breakdowns and delays. But some GM plants that had eliminated buffer stocks and closed their storerooms were now surrounded by trucks filled with spare parts that were being maintained and paid for by their suppliers. In these plants, therefore, the *kanban* system had been interpreted and used not to build collaborative partnerships but to shift costs onto the suppliers (see Womack, Jones, and Roos 1990, 160).

Other themes that deserve more attention than they have received to date include the relationship between the production system employed by the firm and the various components of the environment in which it operates. Take, for example, product markets themselves and the constraints they impose on employers. Richard Locke, asking why private codes of conduct fail to protect workers from abuse in the global garment industry, traces at least part of the answer to the industry's inherently fashion-sensitive nature. Buyers tend to hold their orders to the last possible minute, he argues, in an effort to keep up with the latest fashion trends, and in so doing they produce a delivery schedule that can only be met by forced overtime, stress, and speedups (2013). But Kelley offered a slightly different interpretation. While she agreed that "the consequence of the concentration of the manufacture of garments into short, recurrent seasons

is an extreme pressure upon the contractor" (1895, 32) and is related to his disregard for wage and hour laws, she treats considerations of fashion and taste as little more than an "excuse for the manufacturer" to collapse the production season for reasons that have more to do with capital and labor costs than consumer demand. "In a short season," she argued in 1895, "the turn-over of the capital invested is quick and comparatively sure; and a more sinister consideration is that the sweaters who have long been without work, and whose coming season threatens to be very short, are ready to take work upon any terms offered them" (32).

Our goal is less to adjudicate than to highlight the debate. After all, Kelley first identified the consequences of the concentration of garment making into "short, recurrent seasons" (32) more than a century ago, and the number of seasons continues to expand in the era of "fast fashion," when branded retailers deliver new products to their stores more than once a week (Roberts 2010). But the extent to which short product cycles are inherent to the industry, endogenous to the behaviors and choices of firms (see, e.g., Fichter 2015), or mere excuses for "management by stress" (Parker and Slaughter 1990; Moody 2014) that would have occurred anyway is by no means obvious. Further research is required.

Production systems are also influenced by characteristics of the societies in which the firm operates, including their attitudes toward work and workers. Consider, for example, child labor. Successful efforts to combat child labor demand the creation of a school system to absorb the children who would otherwise join the labor force, and no less an authority than Kelley portrayed "the presence of children in school" as the first "objective test" of the success of labor law enforcement (1907, 51). Some have argued that school systems are a product of economic development, which tends to allow families to forego child labor and governments to build and staff schools. But Myron Weiner argues that, at least in India, the development of the school system actually anticipated the decline of child labor and that the substitution of education for employment was a by-product of the demographic transition and attendant cultural shifts regarding the behaviors of different members of society at different points in the life cycle (1991, 114). As we noted in Chapter 5, similar changes seem to be under way in Latin America today, perhaps encouraged in part by fertility decline but in some countries by increasingly assertive labor inspectors.

Nor are the developing countries unique. After all, the "humanitarian progressives" (Wiebe 1967, 169) who drove the original campaigns for labor

standards in the United States not only did so in an era of fertility decline but justified their efforts by way of reference to children and their needs. "Female wage earners—mothers in absentia—received far closer attention than male," explained historian Robert Wiebe, while "movements for industrial safety and workmen's compensation invariably raised the specter of the unprotected young, and child labor laws drew the progressives' unanimous support" (1967, 169).

Conservatives worried that laws protecting children and their mothers would provide the "entering wedge" for a broader array of workplace protections (Koven and Michel 1993, 6; Boris 1994, 118; Sallee 2004, 134; Barzilay 2008, 181; Hindman 2010, 14), and history has proved them right. "If nothing else," explains Hugh Hindman, "the laws provided a pretext for inspectors and reformers to go around knocking on doors and asking questions" (2002, 209). And they would eventually serve to justify and animate a "male breadwinner" model that increased men's wages, limited women's hours, and established a precedent for further regulation (Humphries 2003; Schrumpf 2003; Weisbrot, Naiman, and Rudiak 2010).

This brings us to our final example: the relationship between production systems and social services, especially in regard to the sexual division of labor. Welfare politics have profound effects on the labor market—and not always in the anticipated directions. For instance, Hadas Mandel and Moshe Semyonov have identified a "welfare state paradox" marked by an inverse relationship between "family-friendly policies," like paid maternity leaves and flexible working hours, and women's occupational advancement in Organisation for Economic Co-operation and Development (OECD) countries. "These policies," they argue, "discourage employers from hiring women for managerial and powerful positions and foster women's attachment to female-typed occupations and jobs with convenient work conditions." While they admit that they cannot distinguish "employer discrimination from women's employment preferences" with their data, they hypothesize "that the two are interrelated and jointly have detrimental consequences for women's occupational achievements" in advanced welfare states (2006, 1942).

The Service Economy

The most dramatic development in the world of work has been the worldwide shift in employment from manufacturing to services. "Even in the

Global South," explains Peter Evans, "manufacturing employs a shrinking minority of the population. Most people's livelihood depends on delivering intangible services. For a small minority this means highly rewarded 'business services.' For most it means poorly-rewarded personal services" (2008, 2).

The regulatory implications are enormous, for the entire framework of modern workplace regulation was conceived with the manufacturing sector in mind. While specialist systems assumed the growth of Fordism, their generalist predecessors presupposed a smaller modal employer. But neither anticipated the demise of manufacturing and the growth of services that are under way today.

The shift toward services has not, of course, gone unnoticed in the academic and policy literatures, and a growing body of scholarship has, in fact, begun to explore the ways in which service work is distinguished from work in manufacturing. But like the aforementioned studies of workplace organization in manufacturing itself, the existing literature is fragmentary and for the most part ignores or brackets the question of workplace regulation. Perhaps the best-known contribution is the "cost disease" identified by William Baumol in the realm of personal services. "Most such services," he explains, "have indispensable handicraft attributes: they require direct personal contact between those who provide the service and those who consume it" (2005, 176) and have therefore been more or less immune to innovations that have boosted productivity in manufacturing and, perhaps, business or producer services (see, e.g., Krueger 2001, 223). The alleged results are ambivalent. While the number of service jobs will presumably grow, at least in relative terms, their quality will apparently decline, for employers will be forced to compensate for cost increases in "labour-intensive personal services" by placing "downwards pressures on wages and other working and employment conditions" (Grimshaw and Lehndorff 2010, 32).

But Baumol's distinction between producer and personal services is at best incomplete and at worst inadequate, and his broader argument is no less controversial. Security is primarily a producer service, for example, but security guards are almost invariably poorly paid and ill-treated. Healthcare professionals provide personal services and tend to receive better pay and more social status (Vidal 2013). And the rate of productivity growth in the service sector more broadly—and the corresponding likelihood of improved wages and working conditions—is subject to dispute (Triplett and Bosworth 2003; Jones 2004; Hartwig 2008; Bates and Santerre 2013; Cohn 2013).

The broader point, however, is that many of the themes that emerge in the manufacturing literature reappear in the literature on services. Particularly striking are the complementary notions that there are different ways of organizing the same work, on the one hand, and that the choice of organizational form reflects differences in production systems, business strategies, and sociocultural contexts, on the other. A prominent example is the contrast between the relatively low-road strategy pursued by Walmart, the largest U.S. employer, and the ostensibly high-road strategy found at Costco, a similar mass-market retailer that performs better on virtually all aspects of labor and employment standards (Vidal 2013, 592). Other contrasts include comparisons of retail workers in the United States and Europe (Carré et al. 2008), casino croupiers in the United States and South Africa (Sallaz 2009), and mutual funds in New York and Boston. But the literature on service employment, like the literature on manufacturing, is fragmentary. It offers few diagnostic criteria, let alone insights into the root causes of the abuses and exploitation that are by now common in the service sector in the United States and beyond. One recent study found that 40 percent of personal service providers in New York, Los Angeles, and Chicago were paid less than the minimum wage (Bernhardt et al. 2009), a finding that underscores the persistent need for regulation in the United States. And anecdotal evidence suggests that similar patterns are present in developing countries as well (see, e.g., "Max Puig" 2009).

But fewer analysts have paid attention to the requisites of regulation in the postindustrial economy. After all, the existing regulatory framework addressed—and at least in some sense presupposed—large-scale industrial employment, especially in the United States. It is arguably ill-suited to a postindustrial (or for that matter preindustrial) economy dominated by small firms, subcontracting, and self-employment.

Probably the greatest enforcement challenge posed by service work is the spatial, temporal, and organizational dispersion of employment. Many service providers work in isolation not only from their fellow workers and management but from the broader population as well. They often work alone, at odd hours, and/or in remote locations. Security guards are a canonical example, and we were shocked by how consistently inspectors in different countries and contexts underscored their mistreatment. Truck drivers, delivery workers (for example, FedEx drivers, mail carriers), and home healthcare providers are no less isolated. And the impediments to their protection include not only their inaccessibility to regulatory agents—whose numbers

have declined in relative, and in some cases absolute, terms—but their inability to form common bonds that would underpin unionization and collective bargaining on their own behalf.[2]

Production Systems and Workplace Standards: Relationships and Remedies

Where does this review of the scholarly literature leave us? The literature is not *negligible*, to be sure, but it is *fragmentary*. It offers neither a clear and unambiguous solution to the crisis of labor and employment standards nor the knowledge base necessary to develop an appropriate solution. Whereas the implications are more clear for early modern systems like the sweatshop, moreover, where the knowledge base is most complete, they have for the most part been ignored to the detriment of workers and their families. Take, for example, the recent factory collapses in Bangladesh, which could have been predicted and perhaps prevented by an analysis of the sweatshop as an institution. After all, the principal cost to sweatshop owners in contemporary Bangladesh, no less than to their predecessors in nineteenth-century New York or Chicago, is rent, and they are therefore forced, on pain of bankruptcy, to seek out the lowest-cost, most marginal buildings.

Of course, the contemporary sweatshop faces its own particular challenges as well. The problems inherent in sweatshop production were aggravated in Bangladesh by the abrupt end of the Multifibre Arrangement (MFA), for instance, which led to a sudden concentration of production and left little time for the Dhaka real estate market to adjust, and they were further compounded by the preferences and power of branded manufacturers and retailers in the developed market economies, which insist on just-in-time delivery. Contractors who fail to meet their delivery schedules are permanently blackballed, say the experts, and thus have little time to move to safer quarters or to improve their own facilities, and their tendency to put their workers at risk is thus an entirely predictable by-product of the production system.

Self-exploitation by small producers in the Mexican handicraft industries was no less predictable in light of our knowledge of proto-industrialization and the putting-out system in early modern Europe. When Hans Medick wrote that the system of household production in eighteenth-century Eu-

rope presupposed "the inclination of the poor, landless producers to fall back on 'self-exploitation' in the production of craft goods, if this was necessary to ensure customary family subsistence and economic self-sufficiency" (1976, 299), he could easily have been writing about late-twentieth-century Mexico.

The problem is not simply that we have ignored the lessons of history, however, but that the lessons of history offer an incomplete road map to the current era. Compare, for example, the laptop computer and the sewing machine. Will the laptop imprison women and their children in their homes in the twenty-first century the way the sewing machine did in the nineteenth century? Or might the laptop allow women to balance competing obligations and preferences and in so doing reduce the tensions among their different roles in society? Where do men fit into the picture? Will the laptop at long last allow (or encourage) them to pick up their fair share of the domestic burden? Or will the laptop have different implications for men and women? Or men and women of different sexualities? The answers will in all likelihood depend, at least in part, on the growth of women's autonomy and political power, and attendant changes in social norms, but history offers little guidance as to their resolution.

The fragmentary nature of the literature on workplace regulation, and the limited connections it draws between the practices we hope to eliminate (i.e., the symptoms), on the one hand, and the production systems they accompany (i.e., the diseases), on the other, suggests that it would be difficult to accord labor inspection—let alone Franco-Latin inspection in particular—the status of a profession comparable to the medical profession. There is no *International Classification of Workplace Diseases.* But the very absence of such tools, and the corresponding limits to our knowledge base, underscore the need to understand the ways in which regulators acquire, develop, and use their clinical knowledge to deal with ambiguity, and whether their efforts to do so can be managed in a productive manner.

Fortunately, clinical practice is well-positioned to encourage precisely this sort of discussion—one in which practitioners bring their case-based knowledge and experience to bear in an effort to supplement their training or compensate for ignorance. And we have ample reason to believe that the clinical practitioners of workplace inspection, the inspectors themselves, have the necessary knowledge at their disposal. Our confidence derives not only from our interviews with scores of inspectors and supervisors

in more than a dozen countries but from intellectual history itself, for a shocking proportion of our existing knowledge of production systems and employment practices has been gleaned from the writings of their predecessors. Marx's well-known reliance on the reports of the British factory inspectors is the most obvious example (Gilbert 1983, 140; Smith 1996, 196). But Kelley's experiences as an inspector in Illinois obviously informed her own assessments of the sweatshop, the putting-out system, Taylorism, and child labor, which remain relevant to the present day. And her contemporaries in Europe, the Antipodes, and Japan were no less insightful. After all, R. Whatley Cooke Taylor, a former British inspector who would go on to write a monumental volume, *The Modern Factory System* (1891), has been described as "the first real historian of the factory movement" (Sorenson 1952, 247). Else von Richthofen, who served as the first female inspector in Baden, wrote a dissertation on protective labor legislation under the mentorship of Max Weber and debated the merits of the putting-out industries with his geographer brother Alfred (Radkau 2009; Roth 2010). Agnes Milne used her position as a factory inspector to carry out a "campaign against sweating" (Damousi 2004, 23) in turn-of-the-century Australia. And Yoshino Shinji, the well-known "architect of the industrial rationalization movement" (Tsutsui 2001, 449) in Japan, served as a factory inspector before ascending the heights of the Ministry of Trade and Industry (Chalmers Johnson 1982, 97), eventually becoming "the great postwar senior (*senpai*) of all MITI officials" (Chalmers Johnson 1975, 13).

The French system still seems to produce organic intellectuals of this sort (see, e.g., Tiano 2003) and to draw on their expertise on occasion. But as far as we can tell, they are absent in the United States, where the links between production systems and workplace abuses are more likely to be observed by academics or oversight agencies (Schneider et al. 2010; Bernhardt, Spiller, and Theodore 2013; Schrank and Garrick 2013), if they are noticed at all (General Accounting Office 1988b). The difference, we believe, lies in the division of regulatory labor and the corresponding tendency to privilege symptoms and obscure the diseases that constitute their root causes. In the U.S. system, no single agency or agent sees all of the potential violations, let alone the way they fit together into a coherent whole with systemic causes. In the French system, by way of contrast, the *inspecteurs du travail* are all but forced to confront these relationships and, in so doing, to make sense of them. The potential result is a more coherent approach to workplace regulation and enforcement.

Even Franco-Latin inspectorates, however, could do more to harness their clinical knowledge toward that end. To do so, they would need to encourage their inspectors to identify, explicate, and debate their experiences in a community of informed practitioners. This is currently the latent function of training exercises in some of the best-managed Franco-Latin agencies. But it should ultimately be a self-conscious strategy, with a clear name and role, to be coordinated by management in the service of agency goals.

Conclusion

This chapter has explored the formal knowledge base on work practices and labor standards. At one level, it is addressed to the immediate policy question of whether labor standards inherited from an earlier era are anachronistic today. But it simultaneously addresses the question of whether there is enough formal knowledge of the relationship between production systems and workplace standards to support a "profession" of labor inspection or whether, instead, labor inspectors should be organized and managed as street-level bureaucrats: a vocation that is imbued with enormous discretion and operates largely on the basis of clinical knowledge—albeit recognizing that the distinction between a profession and a craft is somewhat artificial and that the autonomy granted professionals like medical doctors is in many instances as questionable as the bureaucratic limits placed on street level bureaucrats.

Our conclusion is that formal knowledge about the determinants of work standards is available but fragmentary. It cannot provide direct answers to policy questions about the relevance of inherited standards in the current business environment, and it is certainly not comparable to the knowledge base supporting the practice of modern medicine. Taken together, moreover, the existing, fragmentary scholarship makes the impact of recent changes in the business environment—including, not least of all, the development of information technology, the globalization of markets, and the shift from manufacturing to services—more rather than less ambiguous. In many ways, however, the grounded material collected (or accumulated) by street-level bureaucrats in the course of their work seems better positioned to resolve this ambiguity than formal scholarship, at least if filtered through discussions and debates that will in all likelihood occur

spontaneously but potentially prove more fruitful if self-consciously managed and directed. Whatever its myriad limits, after all, the scholarly literature provides a rich source of material with which to stimulate the debate and to help orient it away from a narrow focus on particular practices, or symptoms, and toward a search for both the underlying determinants of workplace abuses and policies and procedures with which to address them.

8

CONCLUSION

IN THE CONTEMPORARY ERA, FEW INSTITUTIONS ARE MORE central to more people's lives and livelihoods than the labor market. When they are lucky, modern adults spend much of their waking time performing jobs they have acquired through labor markets. When they are unlucky and unemployed, they wish they could work. And they almost invariably want their labor markets to provide jobs that are not only numerous but remunerative, rewarding, safe, and secure. This importance, and this very human desire, provided the initial, obvious reasons for the focus of our study: the regulation of the labor market, in general, and the role of labor inspection in workplace regulation, in particular. But the labor market is simultaneously a domain of public policy that is linked to a broader debate about the role of government in the regulation and guidance of productive activity more generally—and is in some sense emblematic of that debate. We thus believe that our conclusions have implications not only for how we provide and protect employment in modern societies but for how we think, or should think, about food and drug safety, environmental protection, financial regulation, and the government's regulatory role more generally. In addressing these issues and policy domains, moreover, we are led to a third set of questions about the organization of the public sector and the division of labor between government agencies and their agents, questions that have until now been obscured by the focus on the division of labor between the public and private sectors and, perhaps, the division of labor within the private

sector itself. And finally, in none of these areas can we avoid asking what kind of conceptual apparatus is required to think through and understand the issues of economic organization that are animated by these debates and, most particularly, the limits of standard economic theory as a frame for their resolution. Our task in this conclusion is therefore to draw together the strands of the argument in a way that speaks to both the narrow debate about workplace regulation and the broader debate about regulation, the state, and the market in general.

The chapter is divided into four sections. The first section focuses on labor market regulation in the context of the broader debate about the respective roles of state and market. It pays particularly careful attention to the mismatch between the existing regulatory apparatus and the evolving labor market structure in a world marked by innovation and globalization. The second section turns to the division of labor within the public sector. It highlights the rationale for the division of labor, argues that—in the United States at least—the process has gone too far, and thus makes the case for the reintegration of tasks that had been separated by the mid-twentieth century. The third section discusses the implications for administrative reform, first, in the specialized regulatory model of the United States and, second, in the generalist models of southern Europe and Latin America, noting that their different structures militate toward different problems and perhaps solutions. And the last section concludes by calling for a broader, multidisciplinary debate over the role of labor market regulation in the twenty-first century.

Regulation and the Market

The debate over the relative merits of market and state coordination, and the latter's role in regulating the former, dates back at least to the Industrial Revolution at the beginning of the nineteenth century (Polanyi 1944), but the contemporary variant is largely rooted in the Great Depression of the 1930s. The Depression was widely viewed as the product of an unregulated market economy run amok, and most of the regulatory institutions debated today grew out of a reaction to the unregulated market in that period. In the interim between their origins in the 1930s and the current era, opinion has oscillated in what Karl Polanyi, reflecting on prior centuries at the end of the Second World War, called a "double movement" between

state and market orientations. So, for example, the prosperity of the immediate postwar period, which was mediated by the legacy of the New Deal institutions in the United States and the dawn of the Marshall Plan in Europe, seemed to vindicate the regulatory movement that preceded it. The stagnation of the 1970s produced a reaction not simply against regulation but against government in general. And the elections of Margaret Thatcher in England and Ronald Reagan in the United States ushered in a process of deregulation that continued through the next three decades, regardless of which major party held power. With the financial crisis of 2007–2008, however, the pendulum has swung back in the other direction. There is a widely shared perception that deregulation has gone too far, that the market necessarily operates in an institutional framework created by government and managed by government agencies, and that the failure to maintain that framework leaves society vulnerable to a variety of excesses and abuses. In this sense, there is agreement about the need for some regulation. But there is nothing like a consensus on the nature and shape of the regulatory framework. While the arguments for and against regulation have oscillated wildly over the postwar period, depending on macroeconomic conditions among other things, their underlying features have for the most part been unchanging.

The case for laissez-faire is rooted in the idea that, on the one hand, the unregulated market leaves prices free to reflect relative scarcity and forces businesses, on pain of bankruptcy, to use their scarce resources as efficiently as possible, and that, on the other hand, regulation introduces rigidities that interfere with private adjustment mechanisms and in so doing limit the economy's ability to respond to the variations in supply and demand occasioned by accidents of weather, changes in taste, the ebb and flow of activity over the business cycle, and technological change, among other factors. Workplace regulation is thus portrayed as a potentially pernicious source of wage and employment rigidities that will destroy jobs, impose costly distortions, provoke evasion or informality, and leave their most visible marks at the bottom of the labor market, where they will take the largest toll on the income distribution—especially in light of economic and technological changes that have allegedly rendered the specific regulations adopted in the 1930s and thereafter anachronistic or irrelevant.

Our own reading of the empirical evidence is quite different. We believe, for example, that most statistical studies of the impact of regulation on the level or type of employment are suspect. They are based on quantitative

indices of institutions that account for neither the ways the inspectors operate in practice nor the interrelationships among the different regulations, a failure with particular importance for analyses of institutions operating in the Franco-Latin tradition (see, e.g., Botero et al. 2004). They pay no attention to production systems and thus ignore the very real possibility that evasion is a by-product, or symptom, of deeper determinants involving management, technology, and the like. When scholars have attempted to understand the underlying determinants of workplace practices, moreover, the results have been mixed. They certainly point in a different direction, toward potential synergies between protection and productivity at the workplace, but they are too disparate in focus and methodology—not to mention rare—to yield definitive conclusions.

Labor standards are nonetheless under threat from globalization and innovation. Globalization is clearly shifting production, and manufacturing in particular, from the advanced industrial countries to the developing world, albeit with indeterminate consequences, and pulling workers in the opposite direction. While the most vulnerable jobs are for the most part considered underpaid, unsafe, or unappealing by workers in rich countries, they may well be more attractive than the available jobs in poor countries. But they have nonetheless introduced labor and production practices that are alien to the latter and ill-suited to their institutions, while enabling business to escape restraints that had evolved over the course of a century in the former. In this sense, therefore, globalization has created the regulatory vacuum epitomized by the recent tragedies in Bangladesh and the abuses in New York's nail salons.

At least three developments have emerged to fill this regulatory vacuum: corporate codes of conduct and their attendant private monitoring schemes; free trade agreements and preference arrangements that include international labor standards; and efforts to scapegoat immigrants for the problem, especially in wealthy countries.

The author of the most comprehensive assessment of corporate codes of conduct undertaken to date finds improvements in some apparel, footwear, and consumer electronics factories, especially in the realm of safety and health, and stagnation or even deterioration in other factories, especially in regard to working hours and freedom of association. He notes that whatever gains have been made "appear to be unstable in the sense that many factories cycle in and out of compliance over time" (Locke 2013, 21). He

goes on to trace the instability, in part, to the strategies of firms based in the United States that own the brands and contract out their production to suppliers in developing countries. They are almost invariably fashion-sensitive enterprises that wait until the last possible moment to place their orders in an effort to catch last-minute developments in consumer taste and fashion, thus forcing their contractors to work overtime to meet the resultant deadlines. Improvements in labor conditions would thus demand fundamental changes in their business strategies and a shift in power and prestige within the firm from the designers and product developers to the officials dealing with compliance—two constituencies that currently have almost no direct contact with each other. At a minimum, therefore, private monitoring efforts would seem to demand reinforcement from government and from public pressure that seeks to address the root causes of abuse and exploitation in particular.

The right kind of pressure may be forthcoming from the second effort to fill the regulatory vacuum—that is, the evolution of trade-related labor standards in the United States. These include not only the "core labor standards" that are linked to unilateral trade benefits like the Generalized System of Preferences maintained by the United States (for example, restrictions on child labor, forced labor, discrimination, and union busting) but also labor-related provisions of bilateral and multilateral trade agreements. While the labor standards linked to the North American Free Trade Agreement (NAFTA) have been notoriously weak, their successors have been much more demanding, and several countries like Colombia, the Dominican Republic, and Morocco have recruited new and more qualified inspectors in an effort to ensure their incorporation into U.S. trade agreements. But these efforts are nonetheless in their infancy, at best, and would seem to speak to the need for more, and continuous, trade pressure in the future.

The final response is xenophobia, and it is partly responsible for the growth of anti-immigrant sentiments like those that recently catapulted Donald Trump to power in the United States. But expelling unskilled immigrants is simultaneously inhumane and impractical: inhumane because it punishes the poor for their poverty, and impractical because the rich countries have not only grown dependent on immigrant workers but arguably lack the bureaucratic capacity to get rid of them if they wanted to do so. What talk of expulsion is more likely to do, therefore, is leave undocumented

immigrants even more scared and vulnerable than they were previously, and this would intensify the problems of abuse and exploitation in the labor market—not resolve them.

Innovation poses another threat to workplace standards. Information technology facilitates long-distance production and allows workers to work at home. But insofar as it opens the door to industrial (or postindustrial) homework and the corresponding abuses of the sweatshop, the personal computer is very much like the sewing machine in the late nineteenth and early twentieth centuries. It has certainly contributed to what David Weil (2014) calls the "fissuring" of production among firms and individuals—even if that fissuring is motivated by distinct considerations—and has thereby made government regulation of the labor market more difficult, at least in the United States. After all, the specialized regulatory model that emerged in the New Deal era presupposed large, oligopolistic enterprises that allowed specialists to exploit economies of scale when they made their plant visits, policy makers to anticipate the demand for specialists when they staffed their agencies, employers to recruit specialists of their own in an effort to keep up with (or get ahead of) their public-sector counterparts, and unions to organize and defend their workers. While the New Deal model is still in place, it is ill-adapted to an era of small firms, subcontracting, and self-employment in which none of these conditions can be taken for granted, and the current conflict—in which regulators are portrayed as too mild by workers and too aggressive by employers—should therefore come as no surprise.

Meanwhile, the income distribution is drawing renewed interest in rich and poor countries alike. For much of the postwar period, people believed that inequality would decline more or less naturally over time (Kuznets 1955) and that efforts to speed the process through wage regulation would simply raise unemployment and lower efficiency. And in the mid-twentieth century, income inequality did in fact diminish in most developed, and many developing, countries (Hanesch 1998; Cornia and Addison 2003). But in the last half century, any tendency toward equalization has been reversed, and faith in the future has diminished accordingly. For a time, the growth of inequality could be interpreted as a shift toward a new equilibrium that reflected changes in technology and market structure, and inequality could be expected to diminish as the skills of the labor force adjusted, wages rose, and worker protections were extended in the newly developed economies. But there is little evidence that the trends are playing

themselves out in this way. The relative incomes at the very top of the distribution continue to increase at the expense of middle and lower tier wages and salaries, at least in middle and upper income countries. And it now seems likely that the gains in the immediate postwar decades were at least in part the product of wage regulations that have since been eliminated or evaded, especially in the United States—where the increase in inequality has not only been most dramatic but has coincided with the end of income policies that had governed wage determination from the Second World War until they were undone by the Reagan administration in the early 1980s. But the heart of our argument is less that labor market regulation was compatible with equity and employment in the postwar era than that the alleged regulatory threat to efficiency and employment, even if plausible for the U.S. case, need not apply to the Franco-Latin model, which offers, at least potentially, a more flexible—and thus more creative—response to new systems of production.

The immediate source of the Franco-Latin model's flexibility lies in the fact that a single agency administers the entirety of the labor code. Since inspectors are unable to investigate every single provision, they have little choice but to pick and choose among them at different moments of time and venues. In making these choices, moreover, they are all but forced to consider the peculiarities of the enterprises and their environments, as well as the various goals the society is trying to achieve through workplace regulation and the different weights they are assigned at different moments in history. Franco-Latin inspectors can therefore tailor their actions to the context, pursuing different approaches in different types of enterprises and at different moments in the business cycle.

But a second, no less important, difference lies in the Franco-Latin approach to wrongdoing. The United States operates a sanctioning model that is designed to deter discrete violations of distinct laws by imposing fines in the event of noncompliance. Deterrence works best if punishment is swift, certain, and severe, and flexibility is in that sense at odds with the U.S. model's modus operandi. But the Franco-Latin model is designed to foster compliance through a broader array of tools and tactics, and it therefore allows inspectors to develop plans with which to bring enterprises into compliance over time—in part by treating violations as mere symptoms and looking for their root causes in underlying technological or business practices.

Whether the Franco-Latin model actually operates in this way—whether it in fact leads the inspectors to identify and combat the root causes of

noncompliance—depends in part, we have argued, on how it is managed. And the key to the model's management lies in the recognition that the inspectors themselves are embedded in a social group; that their identities, and their self-concepts, derive in large part from their positions within that group and their relationships with their fellow members; that the standards they use to make their decisions grow out of a complex code of behavior that groups like this tend to generate; and that they are therefore difficult to control by means of individual incentives or bureaucratic directives. The decisions are simply too complex and the weights attached to the different goals too volatile—shifting, as the case may be, with subtle variations in the economic and political environment.

But management does exercise at least some control over the workgroup by means of the recruitment, training, and socialization of group members. By determining who is allowed into the workgroup in the first place, how they are trained on arrival, and where and how they interact with one another once they get there, we have argued, management can go a long way toward influencing the culture of the organization. The interactions and conversations of the agents, particularly their discussions of unusual cases, are especially important—for they would seem to affect the ways they adjust their standards to changing political, economic, and technological circumstances.

Other considerations that impinge on the management of the Franco-Latin model are essentially cognitive, albeit less well understood. What is the relationship between production systems and employment practices? Do inspectors understand the relationship? How do the inspectors know what they know in the first place? And how do they communicate their knowledge among themselves, whether synchronically or over time? We have tried to address these questions by drawing insights from the literature on street-level bureaucracy and the professions, and in so doing we have paid particularly careful attention to the interplay between formal knowledge that is subject to abstraction and codification, on the one hand, and tacit knowledge that is derived from—and embedded in—clinical practice, on the other. The professions rely more heavily on the former, and the inspectors appear to rely more heavily on the latter, but this is less because they lack detailed knowledge of work and employment practices—on the contrary, they are responsible for much of what we do know on the subject—than because very little effort has been made to harness and systematize their knowledge and connect it to the broader scholarly literature.

The task of doing so is complicated, moreover, by the fact that the scholarly literature is spread out over a number of different disciplines and has never been directed at a well-defined audience of practitioners. But it could nonetheless be used to inform discussions among the inspectors, and a more self-conscious effort to manage inspection through this kind of discussion and debate might lead the academic research to evolve in a more supportive direction. The key to doing so would be to shift attention from compliance with individual regulations to the relations among the different regulations and their compatibility with different technological and business practices, in much the same way that medical practice seeks to look beyond the symptoms that the patient presents to the disease that is generating those symptoms.

The Division of Labor in the Public Sector

A substantial body of literature addresses the underpinnings and consequences of the division of labor in the private sector (see, e.g., Stigler 1951; Amsden 1985). But the division of labor in the public sector—its logic, features, and results—is all but overlooked. Take, for example, the United States and France. The United States assigns responsibility for food and drug safety to a single agency (the Food and Drug Administration), the regulation of financial markets to different agencies (the Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Reserve, and so on), and the protection of the environment to a single agency (the Environmental Protection Agency) that tends to delegate responsibility for different elements (air, water, waste, and so) to different inspectors. By way of contrast, France divides responsibility for food and drug safety across two different agencies (the Agence Française de Sécurité Sanitaire des Aliments and the Agence Française de Sécurité Sanitaire des Produits de Santé), incorporates responsibility for financial markets into a single agency (the Autorité des Marchés Financiers), and gives responsibility for environmental protection to "generalists" (Organisation for Economic Co-operation and Development 2009, 61) who work for a single agency and have the right to call on technical specialists when necessary. We have no theory to explain these patterns of public organization.

And France and the United States are hardly unique in this regard. We have already seen that in the realm of workplace regulation countries not

only adopt generalist and specialist approaches but embrace hybrid alternatives that combine elements of both models. Nor are their choices irreversible. In recent years, a number of countries have abandoned specialization for more integrated approaches, and the International Labour Office (ILO) maintains that "more and more countries" are following their lead in an effort to augment the efficiency and effectiveness of their own inspectorates (2006, 29).

What explains the variation across countries, issues, agencies, and agents, not to mention historical epochs? We have identified an elective affinity, if by no means a perfect relationship, between the division of labor in the public sector and the division of labor in the private sector. When Fordist firms recruited industrial hygienists, labor lawyers, and personnel managers to oversee and safeguard their employees in the mid-twentieth-century United States, for example, their public-sector interlocutors had little choice but to follow suit, and their ability to do so was facilitated by the growth of mass production, on the one hand, and the success of macroeconomic stabilization, on the other. While the huge workplaces typical of mass production allowed the state to recoup the high cost of regulatory specialization by covering thousands of workers during each inspection, thereby exploiting economies of scale, the smoothing out of business cycles ensured that demand for different specialists would be relatively stable and predictable and would thus allow for their effective recruitment and management over time.

By the late twentieth century, however, the private sector had been transformed, and the public sector was lagging behind. The breakdown of both mass production and macroeconomic stabilization meant not only that private firms in the United States had to dismiss (or do without) their compliance specialists in an effort to shed costs and focus on their core competencies, but also that their counterparts in the public sector could no longer count on either economies of scale when conducting inspections or stable demand for their services when recruiting inspectors. Rates of inspection fell precipitously, and noncompliance skyrocketed.

By the early twenty-first century, therefore, southern European and even Latin American countries that had been latecomers to Fordism, and had thus preserved their generalist inspectorates, were in some ways better positioned to regulate their labor markets than their Anglo-American counterparts. They could address multiple violations on each visit to the field, thus substituting economies of scope for economies of scale, and they

could simultaneously adjust their enforcement priorities over the course of the business cycle, thus accommodating themselves to the volatile post-Fordist world. Of course, these agencies had problems of their own and did not always exploit their advantages to the fullest, but they were structured in such a way to at least make such exploitation possible.

The broader point is that the division of labor within the public sector is no less, and in some sense more, important than the division of labor between the public and private sectors, a fact that has too often been obscured by debates over the latter in the United States. Consider, for example, education, where proponents of school consolidation "drew their inspiration from the modern corporation" (Berry and West 2010, 2) in the late nineteenth century. While their efforts to exploit "economies of scale" by building huge schools and "increase instructional specialization" (Berry 2006–2007, 49–51) in an effort to take advantage of the division of labor have arguably gone too far by half (Boyd and DeYoung 1986; O'Looney 1993; Walberg and Walberg 1994; Hampel 2002), they are by now taken for granted, and we therefore debate the relative merits of public and private education and take the size and shape of the schools themselves for granted. "What is important to realize is that models of education and models of production will tend to mirror each other," explains John O'Looney. "Our education system, with its small number of advanced and gifted classes (i.e., potential managers and designers) and large numbers of students in basic classes (i.e., potential assembly-line workers), is a good match for mass production manufacturing" (1993, 376). It is less well suited to post-Fordism, however, and O'Looney therefore goes on to advocate an "overhaul" designed to bring American education into "line with future production needs" (376). A similar case can be made for the American public sector more generally. "Excessive specialization" (Yessian and Broskowski 1977, 268–269) has been a risk in the social services since at least the late 1970s, and similar problems have been identified in the Senior Executive Service since the turn of the century (National Academy of Public Administration 2002, 19). Even policing has traditionally been beset by "excessive specialization" (Murray 2005, 354).

We therefore suggest that the division of labor in government has gone too far and lasted too long, and that public officials need to reintegrate and recombine tasks that are currently divided and fragmented. While the growing mismatch between the public and private sectors is part of the problem, however, it is not the whole story, for the transformations under

way in the latter raise more fundamental questions about specialization and the division of labor. After all, the rationale for the division of labor has traditionally been grounded in a stylized portrait of Robinson Crusoe. Marooned on a desert island, he is by dint of necessity the consummate generalist: a jack-of-all-trades, master of none. When his island is open to trade, however, Crusoe is able to focus on a more limited range of activities, reap the resultant efficiency gains, and trade his surplus for the remainder of his consumption basket.

The market in this parable plays a dual role. It is simultaneously a geographic space that defines the limits over which Crusoe can trade, and hence the degree to which he can specialize (that is, "the division of labor is limited by the extent of the market," Stigler 1951), and a coordinating mechanism that allows him to exchange goods and services with his trading partners. But the Robinson Crusoe parable has never been entirely convincing—even when technical development was in large part dependent on the division of labor. Analysts from Marx to Alfred Chandler to Adam Smith himself, in certain passages, argued that the division of labor had been carried too far and that tasks had become so specialized that they could no longer be coordinated by the market (that is, that highly specialized resources are price inelastic, in the jargon of economics) and that alternative coordinating mechanisms are therefore necessary.

Implications for Administrative Reform

The implications of the division of labor in the public sector have broad global relevance. But we want to close by turning back to the United States, where the mismatch between the existing division of labor in the public sector and new economic practices is so glaring that a reconsideration may prove especially fruitful. What would administrative reform imply for the United States? Could we develop alternative coordinating mechanisms? And what might they look like in the realm of workplace standards? It is hard to imagine a wholesale reform of the U.S. approach to regulation, especially one that would unify the different agencies and create a single inspectorate. The business community is too hostile to workplace regulation and has no real reason to contemplate reform, and each of the different agencies has its own constituency in Congress and society at large, which has a vested interest in preserving its independence and autonomy. Nor does

federalism help, since these obstacles are compounded at multiple levels of government. But we can imagine measures short of wholesale integration that would at least shift our focus from symptoms to root causes, for instance, by creating alliances among the different agencies with an eye toward strategic coordination and perhaps even joint enforcement. Consider, for example, the accord between the Immigration and Naturalization Service and the Customs Service that governed the staffing of border controls before the relevant agencies were consolidated into the Department of Homeland Security in 2002. Under this arrangement, agents in both agencies were cross-trained, and the borders were staffed by the two agencies together (GAO 1993, 4). Immigration agents functioned as customs officers, and vice versa, and they could shift their emphases from one set of regulations to another in light of the broader social and economic climate, generating some of the flexibility of the Franco-Latin model.

An accord like this could potentially be used toward ignoble ends, especially by the Trump administration, and would at best be suboptimal in any event. Shifts in emphasis would have budgetary implications, among other things, and each agency would likely favor its natural jurisdiction. But it would nonetheless prove more efficient than the current, fragmented system.

A common research program focused on "multiple labor law violators" (General Accounting Office 1988b) and their roots would also foster cooperation among different agencies. This would, of course, be easiest to develop within the Department of Labor (DOL), which houses both the Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division, and the department took tentative steps in this direction under the Obama administration. In theory, the Equal Employment Opportunity Commission (EEOC) would have an incentive to join such an alliance, since it is responsible for the equal pay provisions of the Fair Labor Standards Act and thus brushes up against the Wage and Hour Division's jurisdiction. But insofar as their overlapping jurisdictions put them in direct competition with one another for resources, cooperation between the DOL and EEOC might be more difficult to achieve.

A bottom-up path toward coordination would involve workplace organizations—for example, trade unions and/or immigrant worker centers—bringing complaints about the same employer or group of employers to multiple agencies in an effort to provoke a coordinated response. Because they address multiple violations simultaneously, workplace organizations tend to have a more holistic perspective on workplace management

and labor standards, one that parallels in many ways the Franco-Latin model.

Unfortunately, however, most of the reforms that are currently in vogue tend to move in the other direction, strengthening the tendency to treat each regulation in isolation and rendering the system as a whole less flexible. This is particularly true of reforms rooted in the New Public Management, which tend to link agency budgets and/or individual pay to blunt performance metrics and their evolution over time. The problem is not only that such metrics are crude, however, but that they differ by agency, and they therefore tend to focus attention on discrete violations, or symptoms, rather than to production systems, or root causes.

A final set of proposals would shift from complaint-based to targeted (or proactive) enforcement. The targets would be selected on the basis of survey (or related data) that pointed to sectors or regions marked by high rates or risks of noncompliance. Proponents of targeted enforcement rightly note that workers in the least compliant sectors are often too vulnerable or ignorant to complain and that complaints therefore paint an inaccurate portrait of the pattern of violations in the labor market as a whole. But complaint-based enforcement also reinforces the tendency to treat regulations as akin to individual rights requiring individual remedies rather than as threats to compliant employers and their workers, and targeting might therefore place a floor under workplace standards more generally. It will be less likely to do so, however, if the relevant agencies operate in silos, focusing on their own jurisdictions, and more likely to do so if they coordinate their efforts and begin to look for root causes.

The implications of our analysis differ, of course, for countries that already have general systems of labor inspection. They should recognize, first and foremost, that their approach to workplace regulation is not subject to the kinds of criticisms that have been directed at the specialized regulatory model but is nonetheless subject to a series of distinct concerns. This should in turn lead them to see themselves as part of a broader family of organizations and institutions whose experiences they can draw on in seeking to improve their own operations. A major step in this direction is the recent formation of *Red Iberoamericana de Inspección de Trabajo* (Ibero-American Network for Labor Inspection, or RIIT), an international organization of agencies that follow the Franco-Latin model and feel ill at ease in the more established International Association for Labour In-

spection (IALI), which is to their mind dominated by more specialized safety and health inspectors (Schrank 2015). A central thrust of our argument is to provide a vocabulary and conceptual framework for thinking about the Franco-Latin model on its own terms, and by forming their own organization, the agencies that adhere to the generalist model are already doing so.

A threat to their approach is posed, however, by new information technologies and GPS, which allow for the close supervision of inspectors in the field and thereby tempt management not only to reassert hierarchical control but also to compare the disposition of cases in an effort to ensure uniformity and consistency. While uniformity and consistency are desirable in theory, they tend to involve checklists of particular regulations in practice and thereby forego the Franco-Latin model's principal advantages: flexibility, holism, and a focus on the root causes of noncompliance.

Broader Implications: Reframing the Debate

The immediate implications of our analysis extend beyond workplace regulation and labor inspection to street-level bureaucracy in general. They are most directly applicable to agents who work in defined institutional structures with clear boundaries and borders. The institutions control the processes that are the key to management: recruitment and selection, training and socialization, the degree to which lives and careers are contained within the organization's boundaries and insulated from the outside world, and ongoing conversations about the work itself. The relevance to street-level bureaucracy is not of course surprising, given that we had drawn so heavily on the literature on this kind of institution in interpreting our own interview material and constructing an analytical framework through which to understand it. What is perhaps more surprising (or at least not widely recognized) is how widespread and important bureaucracies of this kind are: they include not only the police, classroom teachers, and social workers on whom the scholarly literature is based but also a broader palette of ancillary agencies and agents responsible for distinct tasks (food and drug safety, consumer protection, government contracting, tax collection, prosecution, and so on). More broadly still, arguably any set of rules and regulations requires some interpretation in practice and, in

this sense, virtually all government agencies, no matter how narrow their jurisdictions, can gain insight from the managerial lessons of street-level bureaucracy.

In the very broadest sense, however, our goal is less to impart particular lessons for how to manage government agencies than to broaden the debate about the role of regulation and government in a market economy by expanding the analytical and conceptual apparatus used to think about this problem. The debate has until now been dominated by the discipline of economics, in part because economists have tried to speak directly to public policy in an instrumental and operational way and have thus created a vocabulary and an analytical framework for doing so. But in their efforts to create the necessary framework economists have also limited the debate. They have done so in part by deploying an analytical apparatus that was designed to analyze a competitive market economy and is thus biased toward market institutions and against government. But this bias is far from the most central problem and is, in some sense, a caricature, for economists have traditionally paid a good deal of attention to the limits of the competitive market and the functions it can perform without deliberate government intervention (see, e.g., Friedman 1962). We have therefore focused on a very different limitation: the economist's tendency to think about behavior as the outgrowth of a series of discrete, rational, self-interested decisions made by individual agents divorced from the social context in which they live and work. Our approach starts, instead, from a recognition that human beings are by their very nature social beings. They live and work in communities and are as much the products as the producers of their surroundings. If we are distinguished from other creatures by our rationality, after all, we are no less distinguished by language: our ability to speak and be understood. And this not only binds us to others and makes our behavior dependent on social interaction but creates mutual obligations and dependencies that, properly understood and exploited, widen dramatically the range of policy instruments available to governments and organizations. But if this is the most general lesson we seek to draw, it also points back to the importance of the specific lessons about work regulation. For if the social character of human existence creates obligations as well as opportunities, none of those obligations are stronger or more important than the obligation to treat each other fairly and equitably in the domain of work, where we spend so much of our daily lives.

NOTES

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NOTES

1. Introduction

1. For instance, OSHA boasts approximately 2,200 inspectors for "more than 8 million worksites around the nation—which translates to about one compliance officer for every 59,000 workers" (Occupational Safety and Health Administration 2016), whereas the Employee Benefits Security Administration deploys a mere 385 investigators to oversee about 3.2 million pension and health plans (Government Accountability Office 2007, 10) and "does not conduct routine compliance examinations or comprehensive risk assessments to direct its enforcement practices, as do other federal agencies that share similar responsibilities" (21).
2. By "Fordist" we mean the productive system that linked mass production to mass consumption in the advanced industrial countries, particularly the United States, in the middle of the twentieth century. See Jessop (1997, 290) for more detail.

2. The United States

1. Of course, if you're a farmworker, you might turn to the Wage and Hour Division for safety concerns as well, since the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is overseen by the Wage and Hour Division and has safety provisions, but that is a much longer story (United States Department of Labor 2008).

2. See Bender (2004) for a more detailed treatment of the sweatshop, including the frequent racialization of anti-sweatshop rhetoric, in the Progressive Era.
3. For instance, former Tenement House Commissioner Robert W. De Forest, former Mayor Seth Low, and Benjamin C. Marsh of the Committee on Congestion of Population opposed the creation of a Bureau of Inspection as well. Otis Graham (1967, 15) includes Kelley, De Forest, Low, and Marsh on his "eclectic list" of four hundred major Progressive Era reformers.
4. Of course, this opens the question of timing. If industrial hygienists were the first workplace regulators to specialize, why was the Occupational Safety and Health Act delayed until 1970? Our suspicion is that the Roosevelt administration focused on workplace regulations that contributed to demand management (for example, wages and hours, collective bargaining) in an effort to combat the Great Depression and left ancillary concerns to subsequent administrations.
5. By way of contrast, EEOC investigators frequently abandon their compliance manual in favor of "informal rules" (O'Connell 1991, 124–125) designed to pacify employers, satisfy workers, and meet performance objectives imposed by their supervisors (General Accounting Office 1988a, 31). The result is a conservative approach to antidiscrimination enforcement that minimizes "both ambiguity and investigator effort" (O'Connell 1991, 127).
6. It is perhaps worth noting that the first two specialties to declare their independence traced their origins to the "major" or "learned" professions of law and medicine, which lay claim to proprietary knowledge rooted in formal education and limit entry to degree holders (Glazer 1974, 347–348).
7. This practice eventually came to be discredited by its association with bribery and corruption.
8. Child and adolescent labor also interacts with occupational safety and health, for thousands of young workers are injured—and even killed—on-the-job every year, but OSHA "investigates industries that employ large numbers of children only when there is a fatality or an incident of multiple injuries" (Stancill 1993).
9. More recent studies have found similar patterns at the state level. See, for example, Schrank and Garrick (2013) on New Mexico.

3. France

1. For instance, David Weil found that in 2010 approximately 75 percent of wage and hour investigations were triggered by complaints (2010, 3).
2. Inspectors had identified and publicized a similar response to the adoption of the ten-hour day two decades earlier (see Veditz 1910, 198–200).
3. Others have therefore found that even "employers face minimal risk of being sanctioned by the state for hiring illegal immigrants because labor inspectors

tend to overlook illegal work that benefits the national economy and helps employers increase labor flexibility" (J. Watts 2002, 97).

4. Spain

1. Our understanding of the Inspección de Trabajo derives from a thorough review of the historical literature (e.g., Seco Serrano 2003, 36; Espina 2007, 58–59) and a series of interviews conducted in the fall of 2010, the spring of 2011, and the winter of 2015. The subjects included individual inspectors, their supervisors, and their interlocutors, including the faculty of the school for labor inspectors being established by the Ministry of Labor and Social Security (Ministerio de Empleo y Seguridad Social), academics, and representatives of commercial enterprises (lawyers, human resources managers, and the like) and trade unions.
2. See Abbott (1988, 72) on "subordinate professions" and their tendency to reinforce the status and authority of their superordinates.
3. *El País* recently reported that 94 percent of all solicitations had been approved in 2011 and that 92 percent had the approval of both the employers and the (presumably indemnified) workers ("Trabajo ha Autorizado" 2011).
4. Like collective dismissals, this is an area that deserves more attention than we devoted to it in our brief visit, both in terms of understanding labor inspection and the role that it might perform in the evolution of the Spanish economy.
5. See Bartrip (1982, 612; as well as Field 1990, 447) on the "vast authority" of the first generation of British inspectors and Eves (2016) for a detailed account of the evolution of their authority over the next two centuries.

5. Latin American Variants

1. Pires notes that 70 percent of the metal-mechanical firms inspected in Belo Horizonte in 2005 had installed protective equipment on their punch presses, and he traces a 66 percent reduction in accidents between 2001 and 2003 in part to these efforts (2008, 211).
2. Schrank (2011) regresses an indicator variable that takes on a value of 1 for manufacturing firms that take advantage of the services provided by the public training authority on an indicator variable that takes on a value of 1 for firms that were inspected in the previous year and finds a substantial positive effect net of a full battery of controls. While inspections are obviously not randomly distributed across firms, they are targeted at firms that are at high risk for noncompliance—a population that is not normally prone to human capital formation.

3. In the Dominican Republic, moreover, the adoption of meritocratic recruitment criteria had the positive side effect of transforming a male-dominated inspectorate into one that was approximately half female. In addition to whatever egalitarian consequences this may have had, interviews suggest that female inspectors—who are less likely to get a fair shake in the traditionally patriarchal private sector—are therefore particularly dedicated to their jobs (Schrank 2017).

6. Managing Discretion

1. It is perhaps worth pointing out, in this context, that employers are also members of communities who take their cues in part from their fellow employers and that insofar as regulators can understand those cues and communities they can do a more effective job of achieving their regulatory goals.

7. Developing Guidelines

1. A similar logic militated against the use of child labor in the heavy or continuous-process industries that were taking off in the Progressive Era. Because the work "required greater attention to productive efficiency," in the words of Hugh Hindman, children were either excluded from the labor force entirely or limited to ancillary roles as "errand boys or water boys in service to the core workers" (2002, 122).
2. In addition to the fragmentary literature on labor standards and production systems in manufacturing and services, there is a renaissance of scholarly interest in agricultural labor, especially in the Global South. Efforts to understand different forms of agricultural enterprise and their impacts on worker welfare obviously have deep roots and varied motivations (see, e.g., Stinchcombe 1959a; Page 1975), but they have been reinvigorated in recent years by efforts to raise product quality in low income, developing countries in an era of intense international competition. Concerns about labor standards in the countryside are therefore a byproduct of concerns about a broader array of standards (sanitary and phytosanitary standards, intellectual property rights, and so on), and their potential impact on agricultural production and export. But their research implications are clear and consistent with the implications of the literature on manufacturing and services. We need to understand not only that producers in the same sector and region frequently treat their workers differently but that the variation in question is related to production technology, business strategy, and the sociocultural context and has implications for the design and enforcement of regulation.

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