

Flexible Bureaucracies: Discretion, Creativity, and Accountability in Labor Market Regulation and Public Sector Management

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ABSTRACT

This dissertation is about state bureaucracies and the conditions under which they learn, innovate, and play a positive role in social and economic development. It takes issue with the extant literature on the topic, which has either looked at such organizations from the outside and prescribed the “essential” prerequisites for success (e.g. corporate coherence, cohesiveness, performance management, etc.) or examined such organizations from the inside and emphasized the obstacles for change and improvement (e.g. resistance to change and impediments for accountability in “street-level bureaucracies”).

In contrast to these approaches, this dissertation aimed at understanding how bureaucrats behave (what they do) when they actually promote development. Through what processes do bureaucrats manage to learn, change, innovate, and solve problems? Why in some cases they use their discretion to serve rather than, as previous literatures have asserted, to thwart the public interest? The research involved extensive data collection through on-site fieldwork on the Brazilian Labor Inspection Department, as well as detailed investigations of a sample of 27 cases of labor inspectors’ intervention in different economic sectors and states. This sampling strategy generated a series of subnational and controlled comparative analyses at three distinct levels: a) variation in behaviors at the street-level; b) management practices and structures, their effects on work routines and inspection practices; and c) the role of narratives about work and horizontal relationships within the organization.

The findings suggest that many of the descriptions and arguments in the literature about how bureaucracies operate and the processes through which they supposedly trigger development are at best myopic. In contrast to prevalent models that neglected or characterized discretion and variability in bureaucratic behavior as impediments for development, I argue *flexible bureaucracies* explore discretion as a condition for organizational learning and improvement. By discussing previously understudied links between *discretion, creativity, and accountability*, this dissertation elaborates on the processes through which internal heterogeneity and the seemingly organizational inconsistency resulting from discretion (e.g. coexistence of different understandings about work, practices, and behaviors within the same organization) create opportunities for experimentation, continual reflection on practice, as well as alternative forms of accountability on bureaucratic behavior.

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LIST OF ABBREVIATIONS AND ACRONYMS

ABC – Region composed of the municipalities of Santo André, São Bernardo, and São Caetano in São Paulo state.

AFT – Auditor Fiscal do Trabalho

BA - Bahia

BNDES – Banco Nacional de Desenvolvimento Econômico e Social

CAGED – Cadastro Geral de Empregados e Desempregados

CEF – Caixa Econômica Federal

CLT – Consolidação das Leis do Trabalho

DLI – Department of Labor Inspection

DR – Differential residual device

ECOFREM – Equipe de Combate à Fraude nas Relações de Emprego

EG – Experimentalist Govenance

ENAFIT – Encontro Nacional dos Auditores Fiscais do Trabalho

FGTS – Fundo de Garantia por Tempo de Serviço

FIEMG – Federação da Indústria do Estado de Minas Gerais

GDAT – Gratificação por Desempenho na Arrecadação Tributária

GIFA – Gratificação por Incremento de Fiscalização Arrecadatória

GNP – Gross National Product

GO-FGTS – Grupo Operacional do Fundo de Garantia por Tempo de Serviço

HDI – Human Development Index

ILO – International Labor Organization

LTC – Local Tripartite Committee

MG – Minas Gerais

MIT – Massachusetts Institute of Technology

MITI – Ministry of International Trade and Industry

MPT – Ministério Público do Trabalho

MTE – Ministério do Trabalho e Emprego

NGO – Non-Government Organizations

NPM – New Public Management

OECD – Organization for Economic Cooperation and Development

PE – Pernambuco

PPP – Public-Private Partnership

RIT – Regulamento da Inspeção do Trabalho

RSI – Repetitive Stress Injury

SAJ – Santo Antônio de Jesus

SAM – Santo Antônio do Monte

SIT – Secretaria de Inspeção do Trabalho

SFIT – Sistema Federal de Inspeção do Trabalho

SINDPD – Sindicato dos Trabalhadores de Processamento de Dados

SINDUSCON-PE – Sindicato da Indústria de Construção de Pernambuco

SRTE – Superintendência Regional do Trabalho e Emprego

TAC – Termo de Ajuste de Conduta

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INTRODUCTION

“I have come across men of letters who have written history without taking part in public affairs, and politicians who have concerned themselves with producing events without thinking about them. I have observed that the first are always inclined to find general causes, whereas the second, living in the midst of disconnected daily facts, are prone to imagine that everything is attributable to particular incidents, and that the wires they pull are the same as those that move the world. It is to be presumed that both are equally deceived.” (Tocqueville, 1896: 80)

Bureaucracy and Development: The larger context of inquiry and research questions

This dissertation is about state bureaucracies and the conditions under which they learn, innovate, and play a positive role in social and economic development. The last decade has witnessed important shifts in regards to the role of the state, its offices and agents in promoting welfare and development. The prescriptions coming out of the “Washington Consensus”¹ no longer serve as guiding principles for reform or cannot even account for ongoing transformations in developing states, economies, and societies around the globe.

The previously reigning paradigm that emphasized, since the late-1970s, the reduction of the state apparatus and of the role of governments in regulating economic and social interactions, and in providing goods and services has been discredited in many ways. Recent political shifts have clearly signaled these countertrends as the center-left and radical left has taken power in many Latin American countries and more recently in

¹ The term was originally coined by John Williamson to refer to the lowest common denominator of policy advice being addressed by the Washington-based institutions to Latin American countries as of 1989 (Williamson, 2000). Over the years, the usage of the term increasingly shifted from a reference to a set of liberalizing economic reforms (such as deregulation, privatization, trade and foreign direct investment liberalization, reduction of the tax burden, competitive exchange rate, among other measures) to a synonym for what is often called “neoliberalism” in Latin America or “market fundamentalism” elsewhere.

the United States. The most recent international financial crisis of 2008 has again demonstrated the dangers associated with the retraction of state regulation of market operations. The repeated financial crises and most recent episodes have generated enough critical mass and resistance to call for a revision of the previous consensus and for the recognition of a renewed role for the state in balancing the market economy with the protection of society from it. However, as the Washington Consensus loses political and ideological strength and neoliberal policies recede, expectations of the state's renewed role are playing out today in an intellectual vacuum. We currently lack the well articulated and intellectually coherent alternatives to the neoclassical vision of a market economy that had existed in the past (Piore, 2009).

This dissertation attempts to play inside that intellectual vacuum by advancing our understanding of how state bureaucracies actually channel and implement policies and regulations. It aims at uncovering the processes that transform state organizations and their bureaucrats into environments and agents of learning and innovation, rather than of rent-seeking and corruption, in the face of complex and continuously evolving social and economic problems.

When attempting to promote economic and social development, states interact with firms, citizens, civil society, and other parts of their own apparatus². The current scholarly literature offers a cornucopia of prescriptions for bureaucracies to succeed in triggering development: *developmental bureaucracies* are expected to exhibit corporate coherence,

2 The contribution of states to social and economic development has been recognized and analyzed at least since the works of Adam Smith (1776) and the Scottish Enlightenment. Later, the contributions of Marx, Weber, and Polanyi, among others, provided more insights into the different ways through which states support market exchange as well as moderate the impacts of the functioning of markets on social life. More recently the role of states in development has been revived by scholars in economics, political science, and sociology – some examples are North (1981) and Evans, Rueschemeyer and Skocpol's (1985).

merit-based recruitment and promotion, uniformity through predictable rule-bounded behavior, cohesiveness, and discipline (Evans, 1989, 1995; Johnson, 1982; Wade, 1990; Lange and Rueschemeyer, 2005); *efficient bureaucracies*, in the new public management tradition, should mimic the functioning of markets in the delivery of services to clients by incorporating competition across internal units, entrepreneurship, pecuniary rewards to bureaucrats, and other market signals into their daily operations (Osborne and Gaebler, 1992; Pollit, 1993; Dunleavy and Hood, 1994); finally, *inclusive or responsive bureaucracies* should take the shape of decentralized networks of organizations spanning through the public-private divide and involving citizen participation in decision-making, public-private partnerships, synergistic coproduction, among other modes of state-society relationships (Ansell and Gash, 2007; Evans, 1996; Ostrom, 1996; Avritzer, 2009; Fung and Wright, 2003; Sabel, 2005).

However, in practice, bureaucracies infrequently match these conditions; they may exhibit some of these features but not all of them together. More often than not, bureaucracies are fragmented and incoherent, insulated or distant from other actors, behave heterogeneously and unpredictably, and are rife with internal conflict, disagreements, and tensions³. The stark contrast between the prescriptions in the literature and the actual conditions of operation of working bureaucracies requires a new approach for understanding, theorizing about, and intervening in such organizations.

In contrast to the central themes in current literature on the topic, this dissertation begins by embracing the actual practices of bureaucracies (versus ideal-types and prescriptive models) and tries to learn from processes already underway. It seeks to

³ This perception is corroborated by analyses of recent state reform initiatives around the globe, which chronicle the obstacles, resistance, and short-lived political impetus leading to complexities in the implementation of the reforms and administrative models described above (Heredia and Schneider, 2003).

“perceive the whole range of the possible, to widen its perception, and even to sacrifice in the process, if necessary, the single-minded pursuit of the probable” (Hirschman, 1995: 134). By adopting such a “possibilist” approach⁴, this dissertation seeks to complicate and challenge the prevalent prescriptive scholarship by digging deep into the operation of bureaucracies to understand the mechanisms, processes and practices that actually do the work when these organizations play a positive role, learn and improve their own actions and policies – a task attempted by few scholarly efforts to date (e.g. Tendler, 1997; Joshi, 2000; Fox, 1992). With this larger objective in mind, this dissertation explores the following three sets of research questions:

- a) How do bureaucracies and bureaucrats behave when they promote development? What are the ways through which these agents learn how to solve problems even when coping with adverse and changing environmental and work conditions? To what extent do the observed variations in bureaucrats’ behaviors at the street level explain variations in the outcomes of public policies or regulations?
- b) What is the role, if any, of organizational structures and management models in promoting learning, experimentation, and problem-solving for development? How do these organizational procedures and managerial processes affect work practices, routines, and actions at the street level? How do they affect organizational outcomes?

⁴ For Hirschman, possibilism meant a refusal of the “realistic” approach to social science, which frequently leads to gloomy interpretations, focused on absolute obstacles to progress, or propositions of one-way sequences or sets of prerequisites that will never be perfectly in place in order to lay the ground for policy change and advance. At the same time, possibilism involves the search for proposals that could be adopted tomorrow or are already underway, in contrast to revolutionary and utopian proposals that require broad political change. The essence of the possibilist approach consists in figuring out avenues of escape from such straitjacketing constructs (realism and utopia). It focuses on increasing the number of ways in which occurrences of change and improvement can be visualized and nurtured (Hirschman, 1971; 1995).

c) To what extent do commonly shared understandings about work shape or provide resources for variation in bureaucratic behaviors? How can we think about accountability and control of bureaucrats' actions within heterogeneous membership, fragmentation in structure, and internal conflicts? Why, in some cases, does bureaucratic discretion serve the public interest while in other cases it does not?

Research design

In order to address these questions and investigate the processes through which bureaucracies and bureaucrats learn, change, and promote development – which involve implementation practices and behaviors, organizational structures, collective discourses and understandings about work – this study focuses on one single bureaucracy in one country. I selected the Brazilian labor inspection service for five main reasons: a) the organization is responsible for implementing labor norms and regulations (both wages and hours and health and safety) in the whole country, a highly sensitive policy as it involves complex technical-legal issues, high levels of political scrutiny and contestation, all playing out in conflictive situations involving labor and capital; b) the organization is a relatively large federal agency, with approximately 3,000 inspectors performing both street and office-work, as well as occupying management positions, distributed in offices located in all 27 states, which offers great potential for internal variation; c) it is an organization in a country with intermediary levels of development, which faces serious

challenges in terms of economic growth and social inequality but that has nonetheless made interesting progress in the last decades; d) the organization has a relatively long history – formally institutionalized in 1931, though some argue its inception dates from a 1891 presidential act; and finally, e) since its creation, the organization has gone through a rich life cycle, with important reforms implemented in the 1930s, 70s, and 90s, and with ups and downs in terms of its organizational strength, reputation and autonomy⁵.

The Brazilian labor inspectorate, in sum, offered suitable conditions, as well as critical tests, for the examination of the processes, practices, and mechanisms through which bureaucracies positively interact with social and economic development. On the one hand, its relatively long and rich life-cycle and considerable size create opportunities for subnational comparative analysis in which many important conditions – that usually vary and call into question the robustness of cross-country comparisons – are held constant, such as: political regime, legal tradition and structure, state administrative structure, historical development paths, colonial legacies, etc. (Snyder, 2001).

On the other hand, the focus on labor regulation and enforcement brings the examination of the role of bureaucracies in development to one of the most contested areas of state intervention: the regulation of labor markets. Labor market regulations (e.g. working hours, minimum wage, unemployment benefits, and social security) were some of the earliest forms of state regulation but have also been attacked as one of the main causes of slow economic growth, firms' inefficiency, and spur for the rise of informal sectors in developing countries⁶. Therefore, the investigation of the Brazilian labor inspectorate

⁵ More details about the organization, its history, structure, and characteristics will be presented in the following parts of the dissertation.

⁶ According to mainstream literature on the topic, intense labor regulation increases production costs and reduces firms' choices in the official economy, providing incentives for firms to join the shadow economy

institutes a critical test for the observation of bureaucracies and their impacts on development. The choice of such a case, which is more often than not associated with an obstacle rather than a driver of development (*less-likely case*), differentiates this research from previous studies that focused primarily on development agencies and ministries (i.e. “lead pilot agency”), such as Japan’s MITI (Ministry of International Trade and Industry) or Brazil’s BNDES (National Bank for Economic and Social Development).

Overview of the Dissertation: structure and main arguments

The analysis of the Brazilian labor inspectorate in this dissertation is composed of three independent studies – each of them with their own specific puzzles, literature reviews and debates, methodological strategies, data analysis, and findings – and a conclusion that brings together the main findings and elaborates on their implications for the theory and practice of bureaucracy. The three studies address the three sets of research question raised above, covering three distinct levels of analysis for the study of bureaucracies:

- a) the *street level*, understood as the domain of behaviors, practices, strategies implemented by bureaucrats in the performance of their job in interaction with client, regulated, or citizen populations;

(Scheneider and Enste, 2000). Recent studies have shown that countries with more regulation tend to have a higher share of the unofficial economy in total GDP - a one-point increase of the regulation index (ranging from 1 to 5), *ceteris paribus*, is associated with a 10-percent increase in the share of the unofficial economy, when controlled for the GDP per capita, for 76 developing, transition, and developed countries (Friedman et al., 2000; Johnson et al., 1998).

- b) The *managerial level*, comprising the supervisory tactics adopted by managers, administrative structures, and management systems that organize work routines, hierarchies, and relationships within an organization;
- c) The *occupational level*, which involves the construction and operation of understandings and narratives about work and about organizational goals that are commonly shared among members of the organization.

This analytic division was not predefined in the beginning of the project with the intent to set up a multi-level analysis of the Brazilian labor inspectorate⁷. Rather, this analytic approach is the result of the research process itself, which started at the street level and then moved up to management and organizational structures, and horizontally to patterns of social relationships and narratives about work. In this itinerary, I followed a sequence of next step questions, as the emerging findings gradually demanded more investigation at other levels of analysis. For this reason, the presentation of the arguments and research findings in this dissertation revives the same iterative process through which they emerged.

Part I starts off with the close observation and analysis of the work of labor inspectors with the goal of understanding the behaviors and practices adopted by these agents when they do promote compliance with the law. It engages with the literature on enforcement of regulation from the 1960s-80s to argue against standard perceptions of the operation of regulatory bureaucracies. The findings from comparative analysis indicate

⁷ Previous studies, such as Wilson (1989) and Hawkins (2002), have suggested multi-level analysis as indispensable in the rendition of a complete picture of how regulatory bureaucracies operate and implement the law. Wilson explored different levels of analysis by focusing on the work of different actors within the bureaucracy – operators, managers, and executives – in addition to the institutional and political contexts. Hawkins, in turn, suggested surround (macro-political-economic environment), field (organizational setting), and frame (immediate cognitive and situational elements that interfere with decisions) as three important levels of analysis.

greater variation in the ways labor inspectors implement regulation than one would expect within the same legal regime (wages and hours laws and health and safety norms) and organizational setting (the National Department of Labor Inspection). The variation in behavior observed in a diverse set of cases could not be predicted by the typologies of styles of regulation currently available in the literature (e.g. deterrence vs. compliance, or punishment vs. education, negotiation). I argue such typologies are self-limiting and frequently fail to capture important and nuanced variations in bureaucratic behavior, such as when labor inspectors combine different methods (sanctions and technical or legal assistance) in the same intervention, sometimes even varying the sequence of application of different tools.

In addition to empirically describing the variation in practices adopted by labor inspectors when performing their work, the comparative analysis also indicated that such variation in behaviors is consequential for the outcomes of labor inspection. By tracing the processes involved in different interventions, I demonstrate consistent causal links between the variation in behaviors and the variation in the outcomes, in terms of levels of compliance with the law in sectors and firms. That is, the cases in which labor inspectors implemented a combination of sanctions with technical or legal assistance, and exercised greater latitude (discretion) in deciding when and where to combine such methods, were precisely the ones in which they were more successful in developing compliance solutions that simultaneously improved working conditions and reduced the burden of legal compliance on firms. The recognition that the different practices and strategies adopted by labor inspectors systematically affect the outcomes of inspection raised questions about

the circumstances and conditions that favor the enactment of one style or pattern of bureaucratic behavior over another.

Part 2 attempts to address the issues raised in the previous analysis by looking at organizational formalities – such as structures, hierarchy, procedures, performance monitoring systems, and formal incentives – as potential determinants of variation in the uses of discretion and in bureaucratic practices. I review the traditional and contemporary approaches in the literature on public management that have identified these organizational formalities as “remedies” to the “problem of discretion”. In the course of my fieldwork on the Brazilian labor inspectorate, I observed two distinct but coexisting ways through which managers at the central level organized and controlled the work of inspectors at the street-level. Taking advantage of this methodological opportunity, a quasi-experiment, I compare across these two management methods, which clearly resemble two models discussed in the current literature on public administration – New Public Management (with its emphasis on individual work and performance-based incentives) and Experimentalist Governance (with its emphasis on open-ended processes and collaborations within and across organizations).

Using a series of controlled comparisons across cases – involving severance payments, fraudulent cooperatives, and safety in construction – I demonstrate that these two management models translate into very different strategies for dealing with discretion and also tools for evaluating bureaucrats’ performance. These models institute different work routines, inspire different inspection practices, and set in motion different control mechanisms for supervisors. They provide different incentives and opportunities (enabling and constraining factors) with direct impacts on inspectors’ motivation, their ability to

experiment with different styles of implementation, and respond to complex compliance problems. Finally, I discuss the advantages, shortcomings, as well as complementarities of the two management models or strategies for managing discretion and performance of frontline bureaucrats, drawing from concrete examples and cases.

After discussing how discretion creates conditions for the variation of implementation practices (and their consequences) and the options available to supervisors for managing discretion (e.g. restrict or expand it), Part 3 starts by asking what are the organizational sources from which individuals draw resources, inspirations, and justifications for the different strategies and behaviors enacted in the field? In this part, I explore the conditions, other than formal rules, procedures, and structures, which sustain the variation in practices, strategies, and behaviors within the Brazilian Department of Labor Inspection. In doing so, I describe the dynamic processes through which members of the organization learn, innovate their practices, and hold each other accountable for their actions in the performance of their job. In contrast to a widespread perception in academic debates and in the world of practice, which emphasizes coherence, cohesiveness, and consensus as key ingredients of organizational capacity and performance, I demonstrate the constructive role of internal contradictions, disagreements, and tensions in promoting continuous learning as well as mutual vigilance within organizations.

The historical evolution of the Brazilian labor inspectorate raises a puzzle: how was an organization rife with tensions along multiple internal cleavages and hosting a variety of internal structures (formal fragmentation) so successful in consistently improving its organizational capacity, public image, and reputation over the past two decades? By analyzing the stories told by the inspectors themselves and investigating the

historical construction of the Brazilian labor inspectorate, I identified the consolidation of two alternative narratives and understandings about what labor inspection is, what it should do, and how it should be accomplished. On the one hand, a *fiscal intelligence* narrative associates labor law enforcement with the collection of related tax revenues, through planning and construction of specific information systems that efficiently predict law-breaking behavior; on the other hand, a *social development* understanding of labor inspection emphasizes the improvement of actual working conditions by way of promoting change in social and productive practices, through the mobilization of resources and distribution of incentives generated in collaboration with a network of external partners and other government programs.

I argue that the coexistence of these two understandings of labor inspection within the same organization engenders a process of *accountable creativity*, through which individual inspectors are expected to justify their actions in terms of the two narratives. In doing so, they (a) learn from the differences across projects/actions (cross-fertilization) in terms of practices and strategies, and at the same time, (b) hold each others feet to the fire in terms of the productivity and performance of their innovations. Therefore, I demonstrate that, as much as the circumstances faced by individual bureaucrats in the field and the formal incentives provided by management structures, internal contradictions and multiple accounts of labor inspection work provide encouragement and resources as well as constraints for action, explaining important mechanisms for the improvement of organizational strength and performance.

In the conclusion, I bring together the findings from the three studies to extract their main implications to the development of a revised notion of bureaucracy, what I have

been calling *flexible bureaucracy*. I argue that many of the descriptions and arguments in the literature about how regulatory bureaucracies operate and about the processes with which they trigger development are at best myopic. The micro-level studies conducted under this research project sought to examine how bureaucracies do what they do when they are doing it – privileging the observation and understanding of variations in work routines and social practices of its members as they deal with concrete situations. This approach complements, and hopefully corrects, research that pictured bureaucracies from a more distant standpoint and offered models and prescriptions out of touch with the daily life of bureaucracies and bureaucrats.

Reflecting on the findings and main arguments developed in each of these three studies, an argument about *discretion, creativity, and accountability* emerged as the overarching conclusion and main thread running across the investigations at different but complementary levels of analysis. In the conclusion, I underscore the relevance of such finding by discussing the reasons why these three analytical concepts – discretion, creativity, and accountability – don't often go together when scholars and practitioners talk about public sector bureaucracies.

Discretion has long been marginalized in the mainstream studies on bureaucracy and development. Even in the scholarly communities and subfields that decades ago recognized its inevitability and pervasiveness, the topic has suffered from serious problems in its analytical treatment, since scholars have consistently emphasized its erratic, unsystematic, and idiosyncratic nature. These analytical limitations, coupled with longstanding normative perspectives emphasizing the control or economic inefficiency of state and bureaucratic activity, have handicapped our ability to investigate and understand

the bright side of discretion, that is, its potential for *creativity*, learning, and change. The exploration of the potential of discretion for creativity and learning requires, in turn, new perspectives on *accountability* (between bureaucrats and supervisors, politicians, and citizens) and the identification of control mechanisms not hostile to the execution of tasks (i.e. bureaucratic capacity). Such mechanisms hold the promise of *discretion in the public interest*, which means reaping the benefits of creativity and flexibility without at the same time nurturing the undesirable uses of discretion (e.g. corruption, favoritism, private gain, etc.).

In the conclusion, I argue with the support of empirical evidence discussed in previous parts of the dissertation that the combination of these three elements – *discretion, learning, and accountability* – should serve as the basis for a renewed notion of bureaucracy. *Flexible bureaucracy* involves: a) the combination of hierarchy and experimentation through the recognition that discretion is as much a defining feature of bureaucracy as rules and formal procedures; b) the acceptance that heterogeneity in membership, fragmentation in structures, and inconsistency in behavior – as opposed to corporate coherence, cohesiveness, and uniformity – are more frequently than not the outstanding features of real bureaucracies; and c) the exploitation of such conditions as an endowment of multiple sources of action (coexistence of different views, techniques, practices, beliefs, and behaviors within the same organization), which create opportunities for continuous learning and improvement of practice, as well as for holding bureaucrats accountable through means that are not harmful to their capacity to implement successfully public policy goals and address continuing social problems.

In addition to laying out the general lines, theoretical foundations, and supportive evidence for the notion of flexible bureaucracy, the conclusion discusses the limitations of the current approach and suggests future research work needed for the development and improvement of the main arguments and contributions of this dissertation.

Data collection methods and research strategies

Data collection for the project took place from December 2006 to August 2008 and involved interviews, observations of inspectors in action (both in the field and in the office), document and archival searches and sources. The data collection focused on the history of the agency, its management, and more specifically on the investigation of cases of intervention by labor inspectors in diverse economic activities. I conducted 114 *interviews*, two-hours long on average, approximately half of which (49) with labor inspectors in three states (Bahia, Minas Gerais, and Pernambuco)⁸ and at the central level in the federal capital, Brasilia. I complemented and cross-checked the stories and data collected from these labor inspectors by interviewing another 65 actors, including firm

⁸ The selection of cases in these three states intended to capture important variations in terms of local context and levels of social and economic development. On the one hand, two states (Minas Gerais and Bahia) are among the least likely states in Brazil for the implementation of labor-friendly development policies. Both have a long tradition of industrial policy based on the attraction of investments through fiscal incentives (more aggressively in Bahia), relatively strong public sector bureaucracies, and low levels of political contestation (center-right political parties have managed to keep office for the last two decades, except for Bahia in 2006). On the other hand, Pernambuco, a relatively less aggressive industrial policy coexists with strong labor movements in rural areas and a well organized business sector, as well as with high levels of political competition among the local elites (DFID/Melo, 2007). There are other important differences across the three states. Minas Gerais performs significantly better than Bahia and Pernambuco on most social indicators (e.g. HDI, illiteracy rate, mortality rate, among others) as well as most economic indicators, such as income distribution, Gini Index, GNP, etc. (UNDP, 2001). Moreover, previous studies (Avritzer, 2007) have demonstrated that civil society (including trade unions) is significantly more organized and vibrant in Minas Gerais and Pernambuco than in Bahia.

owners, managers, workers and representatives of business associations, trade unions and government agencies (e.g. National Health and Safety Institute, Attorney General's Office, the armed forces, development banks).

I also conducted *observations* of inspection work both in the office and in the field. In addition to following inspectors as they visited workplaces, I sat as an observer and sometimes participant in several internal staff meetings, in which inspectors and supervisors discussed ongoing investigations (including specific issues that emerged during operations), planned future actions, and discussed the repercussion of their projects and actions in the media. The observation of inspection work in the office and in the field helped me gain a very concrete perspective on the work routine of inspectors, their work environment, relationships to each other and to outside actors, as well as how they behave in different situations when performing their job. In addition to the information obtained through the interviews and observations, I also collected *data* in the form of agency records including database outputs, quantitative indicators, and internal documents and reports (both formal/published and informal notes for internal circulation, such as email exchanges among inspectors, etc).

The empirical material collected through these techniques provided not only information about the history of the organization and about labor inspectors' interpretations and accounts of their work routines, mission, and reputation, but also data about a relatively large set of *cases of intervention by labor inspectors* (see Table 1). The comparative analysis of these cases provided evidence of the variations in practices, behaviors, and styles adopted by labor inspectors, as well as of the outcomes of their actions. The sampling strategy purposefully selected a wide variety of cases

(heterogeneous sample) in terms of economic sectors, levels of organization of business (formal vs. informal firms, active business association, etc.), levels of organization of the labor force, geographic location (cities and states), and different types of violations of labor regulation (wages and hours laws as well as health and safety norms), because these variables have already been predicted by the literature to explain variation in regulatory behavior and outcomes (i.e. conventional hypotheses)⁹.

Given the ambition to describe the working practice of a state bureaucracy, the selection of such a varied sample is useful to rule out alternative hypotheses by isolating important variables associated with the external environment, as well as other variables not directly related to organizational structures, processes, and action. As indicated by Table 1, the sample includes sets of cases in which I could control for or emphasize variation in terms of variables already recognized to be important, for example, cases in which business and labor are equally well organized or disorganized. In addition, by introducing as much variation as possible in the sample in terms of the variables already identified in the literature to have an impact, the case selection strategy creates adequate conditions for searching, testing, and examining patterns of bureaucratic behavior across such varied cases, local contexts, and situations.

⁹ In the specific field of enforcement of regulation, the vast existing literature has identified several different factors that explain variations in the outcomes of regulation, including: the type/characteristics of the legal regime or legal system – civil law vs. customary law (Hawkins, 1992 and 2002; Braithwaite, 2006); political-cultural traditions and conceptions of society – liberal vs. corporatist (Piore, 2004; Kelman, 1984); political environment and characteristics of the conflict and capture of regulators by regulated industries (Silbey, 1984; Marvel, 1977; Hawkins and Thomas, 1984); characteristics of regulated industries (firm size, number of firms) and organization of the production chain (Lee, 2005; Shover et al., 1984; Weil, 2005); classification of firms in terms of underlying reasons for non-compliance – amoral calculation, civil disagreement or incompetence (Kagan and Scholz, 1984); firms' internal management systems and the role of firms' compliance professionals (Gunningham, Kagan and Thornton, 2006; Shover et al., 1984); the influence of professional ideologies, values and reputation (Hawkins and Thomas, 1984; Schrank, 2005b; Dobbin and Sutton, 1998); organizational cultures, incentives, and resources (Hawkins and Thomas, 1984; Bardach and Kagan, 1982); work circumstances faced by bureaucrats (Wilson, 1989); and types of relationships and networks with external partners – NGOs, trade unions, etc. (Ayres and Braithwaite, 1992; Pires, 2006).

Studies based on subnational comparisons in one agency in one country allow for a deeper look into the processes and functioning of bureaucracies. However, one could argue that such a narrow focus could severely limit the potential for generalization of the findings¹⁰. In the present study, these shortcomings, frequently observed in small-n studies, have been compensated for in two ways:

- a) The study of the Brazilian labor inspection service was part of a larger project entitled "*The rule of law, economic development, and modernization of the state in Brazil: lessons from existing experience for policy and practice*" in which I worked with two other colleagues: Salo Coslovsky and Mansueto Almeida, under close supervision of Judith Tendler, studying different organizations – respectively the Ministério Público and state and local level development agencies and business associations (Tendler, 2006). The simultaneity of our investigations and the very frequent and intense exchange of information and conversations about preliminary findings provided implicit comparative parameters for me to think my case in the broader context of bureaucracies in Brazil;

¹⁰ Another potential limitation of the current approach is its relatively superficial analytical treatment of the macro political and economic contexts. Variables such as the characteristics of the larger legal system, coalitions of political and economic actors more or less supportive of labor regulation, the politicization of public administration, or other contextual elements located outside the organization should have considerable influence on the opportunities and constraints for action and for the use of discretion by bureaucrats. Even though these issues were constantly in my peripheral vision, limitations of resources and time, as well as the focus on the organization and on its internal processes and variations, prevented a more thorough analysis and incorporation of these elements. These limitations will be dealt with in the continuation of this project with cross-country comparisons, which will shed light on the variations in macro political and economic contexts.

Table 1 - Characteristics of the cases in the sample (continues, next page)

#	Economic sector	Economic activity	City/area and state	Main issue or violation of the law	Outcomes observed	Types of firms (predominantly)	Active business assoc.?	Active labor union?	Market: Intl. vs. domestic	Participation in Brazil production for product
1	Service	Telemarketing	Belo Horizonte / Minas Gerais	Repetitive stress injuries and mental health	No progress	Large and formal	No	No	Domestic	High
2	Manufacturing	Auto-assembly	Camaçari / Bahia	Repetitive stress injury	No progress	Large and formal	No	Yes	Domestic	Medium
3	Extraction	Ornamental Stone Quarrying	S.T.Letras, Papagaio / Minas Gerais	Silicosis and occupational accidents	No progress	Medium and small, formal and informal	Yes (cluster)	No	Domestic	Medium-low
4	Extraction	Ornamental Stone Quarrying	Southwest Espírito Santo	Silicosis and occupational accidents	No progress	Medium and small, formal and informal	Yes	No	Both	Medium-high
5	Agriculture	Sisal production	Valente and Northeast / Bahia	High rate of occupational accidents - mutilation	Little progress	Small and informal	No	Yes	Both	High
6	Manufacturing	Fireworks	Santo Antônio de Jesus / Bahia	High rate of occupational accidents - explosions	No progress	Small and informal	No	No	Domestic	Medium-low
7	Extraction	Charcoal production and reforestation	Camaçari area / Bahia	Illegal subcontracting and informality	Little or unsustainable progress	Medium and small, formal and informal	No	No	Domestic	Low
8	Manufacturing	Ceramics production	Camaçari area / Bahia	Informality and poor working conditions	Little or unsustainable progress	Small and informal	No	No	Domestic	Low
9	Agriculture	Soy and cotton production	Western Bahia	Informality	Formalization	Medium and large, formal	No	No	Domestic	Medium-low
10	Service	Software design	Recife / Pernambuco	Illegal subcontracting	Formalization	Small and medium, formal	Yes	Yes	International	High

Table 1 - Characteristics of the cases in the sample (continues, next page)

#	Economic sector	Economic activity	City/area and state	Main issue or violation of the law	Outcomes observed	Types of firms (predominantly)	Active business assoc.?	Active labor union?	Market: Intl. vs. domestic	Participation in Brazil production for product
11	Manufacturing	Footwear	Jequié / Bahia	Informality	Little or unsustainable progress	Large and formal	No	No	Domestic	Low
12	Manufacturing	Construction	Belo Horizonte / Minas Gerais	Occupational accidents	Little or unsustainable progress	Medium and large, formal	Yes	Yes	Domestic	Low
13	Extraction	Gold Mining	Nova Lima / Minas Gerais	Silicosis	No progress	Large and formal	Yes	Yes	Both	High
14	Manufacturing	Footwear	Nova Serrana / Minas Gerais	Informality	Little or unsustainable progress	Medium and small, formal and informal	Yes (cluster)	No	Domestic	Medium-low
15	Service	Tourism - Carnival	Salvador / Bahia	Informality, non-payment of wages	Temporary service provision contracts	Large and formal	Yes	No	Domestic	High
16	Agriculture	Grain and seed production	Paracatu and Unaí / Minas Gerais	Informality	Consortium of rural employers;	Medium and small, formal and informal	No	No	Domestic	Medium-low
17	Manufacturing	Auto-parts	Belo Horizonte metro area / Minas Gerais	High rate of occupational accidents - mutilation	Dissemination of protection kits	Medium and large, formal	Yes	Yes	Domestic	Medium
18	Manufacturing	Fireworks	Santo Antônio do Monte / Minas Gerais	High rate of occupational accidents - explosions	Compliance with health and safety standards	Medium and formal	Yes (cluster)	No	Domestic	High
19	Manufacturing	Galvanization	São Paulo metro area (ABC) / São Paulo	Exposure to zinc - occup. diseases	Collective bargaining agreement - compliance schedule	Medium and large, formal	Yes	Yes	Domestic	High
20	Manufacturing	Petrochemical	Camaçari / Bahia	Exposure to benzene - occup. diseases	Tripartite monitoring - compliance with OSH norms	Large and formal	Yes	Yes	Both	High

Table 1 - Characteristics of the cases in the sample (concludes)

#	Economic sector	Economic activity	City/area and state	Main issue or violation of the law	Outcomes observed	Types of firms (predominantly)	Active business assoc.?	Active labor union?	Market: Intl. vs. domestic	Participation in Brazil production for product
21	Agriculture	Various (mostly sugar cane)	Southern Pará	Forced labor	Special mobile group and the "dirty list" for financial credit	Medium and small, formal and informal	No	No	Domestic	Medium-low
22	Manufacturing	Auto-parts	Sao Paulo metro area (ABC) / São Paulo	Occupational accidents – mutilation	Collective bargaining agreement - compliance schedule	Medium and large, formal	Yes	Yes	Domestic	High
23	Manufacturing	Pulp and paper	Southern Bahia	Non-compliance with H+S and environmental norms	Collective bargaining agreement - compliance schedule	Large and formal	No	No	Both	Medium-High
24	Extraction	Iron-ore mining	Itabira/Brucutu / Minas Gerais	Illegal subcontracting	Formalization	Large and formal	No	No	Both	High
25	Manufacturing	Various	Recife metro area / Pernambuco	Severance payments	Improved rates of collection of severance payments	Large and formal	Yes	Yes	Both	Medium to high
26	Manufacturing	Construction	Recife / Pernambuco	Occupational accidents - electrocution	Compliance and reduction of accidents	Large and formal	Yes	Yes	Domestic	Low
27	Agriculture	Sugar and alcohol production	Northern and Southern Pernambuco	Informality and poor working conditions	Improvement of working conditions informality still high	Large, formal and informal	Yes	Yes	Both	Medium

b) Similarly, the limitation of focusing on a single country and producing findings with restricted applicability to other countries, regions, and contexts was compensated for by the frequent and ongoing interactions with colleagues working on regulatory bureaucracies and development agencies in other countries such as Argentina, Dominican Republic, Guatemala, Nicaragua, Mexico, Morocco, and France. These interactions created the type of exercise of identifying the similarities and differences running across such different countries and regions, which were incorporated in the analysis of the Brazilian labor inspectorate through the emphasis of its features that were particular or common across other experiences.

Finally, more details about the research design and data analysis strategies will be provided in each of the three parts following from this introduction. As each of these pieces addresses different specific questions, they took advantage of differently appropriate research strategies and data analysis techniques (which include cross-case and within-case comparisons, quasi-experimental design, narrative analysis, survey data, etc.). In addition, each part selected subsets of cases or different clusters of empirical evidence, which allowed for holding some aspects constant, while emphasizing the variation in the variables of interest.

Part I - The Street Level

Introduction¹¹

In the past two decades, government regulatory activity has been increasing in regions as diverse as southern Europe, North Africa and Latin America, in a movement that has been recently characterized as a “regulatory renaissance” over the receding waters of neoliberalism (Piore and Schrank, 2006 and 2007). Policy-makers in France, Spain, Morocco, Argentina, Brazil, Chile, the Dominican Republic and other Latin American countries have devoted new resources to the enforcement of their labor and employment laws, in some cases even doubling the size of their labor inspectorates (Piore and Schrank, 2008).

The increase in government regulatory activity has moved the debate between labor rights activists and business beyond considerations of the desirability of government regulation, and one can currently observe a revival of scholarly production about patterns of bureaucratic behavior and styles of inspection and enforcement of regulation. Scholarly attention to variations in the implementation of laws, regulations, and policies by bureaucrats at the street-level has increased as researchers have been trying to explain, for example, why and how regulatory agencies adopt a more stringent, punitive or a more flexible, educative approach in the performance of their legal mandates.

However, we still know very little about the causal links between these different styles or patterns of behavior adopted by bureaucrats and the developmental and

¹¹ A previous version of this chapter was published in International Labour Review, in 2008 (Vol.147, No.2-3:199-229), with the title “Promoting Sustainable Compliance: Styles of Labour Inspection and Compliance Outcomes in Brazil”.

compliance outcomes observed. The exploration of variations in bureaucratic behavior and its potential links to organizational outcomes is the focus of this part of the dissertation, which reports on the findings of subnational comparative research carried out in Brazil – a country often referred to a textbook example of the perverse impacts of labor regulation on economic development. These findings challenge established theories about firms' compliance with regulation and the behavior of regulatory agents. Explanations based either on raising the costs of non-compliance (deterrence model) or on providing advice and guidance to firms on how to comply with the law (pedagogical approach) fail to account for the behavior of inspectors when they bring up change and development in economic activities that have traditionally operated out of compliance. Rather, I suggest that sustainable compliance solutions – those capable of reconciling workers' rights with firms' performance, i.e. social and economic development – result from a combination of both coercive and pedagogical enforcement strategies (e.g. fines *and* education/assistance).

I argue that when labor inspectors combine different enforcement strategies (sanctions and assistance) in their interventions they are more likely to promote change and development because, as I will demonstrate empirically, this type of behavior creates opportunities for inspectors to learn about the obstacles preventing firms from complying with the law and to devise innovative local solutions. These local compliance solutions include technological improvements, adaptations of the regulation to local or industry circumstances, and the sorting out of unnecessary, costly and inapplicable bureaucratic requirements from relevant institutions protecting workers and organizing markets.

This study aims to contribute to the ongoing debate by improving our understanding of how different regulatory styles and practices (or different patterns of bureaucratic behavior) affect economic development and compliance outcomes. First, I review the debate in the literature about variation in styles of inspection and point out the lack of understanding about how inspection styles are causally associated with compliance outcomes. Next, I present the research design and data collection strategies, and describe the variation in the outcomes of labor inspection in Brazil with emphasis on the cases involving forms of sustainable compliance. In the subsequent section, I develop a micro-level analysis of the potential causal links between inspectors' behaviors and compliance outcomes based on cross-case and within-case comparisons. Finally, I conclude by assessing the explanatory power of the argument proposed and present some of the study's policy implications and next step questions.

Varieties of inspection style: The debate in the literature

Starting in the 1950s, a growing body of studies about regulatory bureaucracies revealed the important distinction between law-on-the-books and law-in-action. The finding of the inevitability of discretion (Davis, 1969; Silbey and Bittner, 1982; Lipsky, 1980, Hawkins, 1992) frustrated the expectations that legal mandates would automatically be translated into policy action and prompted a debate about the need to understand the regulatory process and potential variations in the way laws are implemented by regulatory agencies and their workers. Following this lead, observational studies (such as Bittner,

1967; Van Maanen, 1973; Wilson, 1968) penetrated regulatory bureaucracies and revealed that: (a) more often than not, the day-to-day activities of regulatory agents diverged significantly from the narrowly defined set of conducts prescribed in the law; and (b) the behavior of these regulatory bureaucracies varied significantly across different organizations as well as across enforcement agents within the same organization.

In a classic example of the pioneering studies to have documented variations in regulatory style, Wilson (1968) observed the behavior of patrol officers during the performance of their daily duties in eight communities in the United States (in three different states: New York, Illinois, and California) and found substantial variation in regulatory style. In some police departments, patrol officers were tolerant toward minor violations and emphasized orientation and order maintenance by balancing the application of the law according to the particular characteristics of the offence and groups involved; in other departments, patrol officers exercised their coercion power (punishment) for each and every deviation from the law, guiding their behavior by general and impersonal rules.

In the decades that followed, scholars in the fields of socio-legal studies, political science and economics extended the inquiry about variations in regulatory style to other organizations, e.g. occupational health and safety (Kelman, 1984), consumer protection (Silbey, 1980-81), environmental agencies (Bardach and Kagan, 1982; Gunningham, Kagan and Thornton, 2006). The variation in approaches to law enforcement observed in these studies was systematized by Reiss (1984) into two generic models of social control: deterrence and compliance.

According to the deterrence model, compliance with regulation is the result of a cost-benefit analysis in which firms give up violating the law when the probability of

being caught (surveillance) and the cost of punishment (fines) are higher than the benefits of non-compliance. Thus, under this model, inspectors are expected to find all possible sorts of irregularity and impose the prescribed penalty for each of them when they inspect workplaces (Becker, 1968; Stigler, 1971; Ehrlich, 1972; Tullock, 1974; Reiss, 1984; Polinsky and Shavell, 2000; Weil, 2005).

In turn, the compliance model emerged in the 1980s as a criticism of, and response to, the negative impacts of the first model. Proponents of the compliance model and its variations – Bardach and Kagan, 1982; Ayres and Braithwaite, 1992; Hawkins, 2002; Braithwaite, 2006; Gunningham, Kagan and Thornton, 2006 – argue that stringent enforcement practices based on adversarial and punitive relationships between regulators and regulated (deterrence model) lead to “unreasonableness” and create disincentives for compliance.¹² Instead of deploying sanctions, inspectors taking this approach are expected to understand the spirit of the law and seek to attain its objectives by adapting legal requirements to different types of firms, prioritizing persuasion and advice over adversarial and punitive means of law enforcement (Piore and Schrank, 2006). According to Ayres and Braithwaite (1992, p.19), “the more sanctions can be kept in the background, the more regulation can be transacted through moral suasion, and the more effective regulation will be”.

¹² According to this literature, stringent enforcement practices divert efforts away from addressing root-causes and solving problems by privileging the set of requirements listed in the manual, which are not necessarily the most serious sources of harm in each particular situation (“regulatory unreasonableness”). Moreover, stringent enforcement creates resentment and unwillingness to cooperate in regulated firms, failing to produce the incentive necessary for firms’ attitude to change. Finally, it creates a vicious cycle by fostering a culture of resistance and defensiveness in firms, which are thus induced to avoid penalties by curing the “symptoms” (violations) instead of the “disease” (production process), or by adopting minimum compliance strategies, i.e. compliance with only the strictly required measures (Bardach and Kagan, 1982).

The rediscovery¹³ of the compliance model prompted great enthusiasm among students of regulation and regulatory agencies and stimulated a relatively large body of scholarly work on the conditions under which regulatory agencies choose between deterrence or pedagogical enforcement approaches. However, both the deterrence and the compliance models are more normative than descriptive. They offer instruction on what ought to happen rather than describing what does happen on the ground. And, even though a lot of attention has been paid in the past decades to explaining when and why these models are adopted,¹⁴ we currently lack empirical knowledge about the causal links between different regulatory styles and actual compliance outcomes. Previous empirical studies repeatedly described variations in regulatory styles and variations in outcomes without establishing consistent correlations or without identifying the causal links between these two variables.¹⁵ As a consequence, we still have a very limited understanding about what kinds of regulatory practice and bureaucratic behavior are associated with the promotion of sustainable forms of compliance (i.e. lasting and economically viable).

The outcomes of labor inspection in Brazil: research, data collection and cases

The aim of this research is to contribute to filling the gap identified in the previous section by drawing from cross-case and within-case comparisons in Brazil, a country that

¹³ There is a body of research on British factory inspectors in the early nineteenth century that also highlights the use of persuasion and pedagogy as a strategy commonly employed to bring firms into compliance (see Marvel, 1977, Arthurs, 1980; Field, 1990; Peacock, 1984; Nardinelli, 1985; Bartrip, 1985).

¹⁴ By now, this line of inquiry has advanced considerably in terms of identifying a list of important variables (operating at various levels of analysis) that explain the variation in enforcement approaches. See footnote #9 (in the introduction to the dissertation), for a list of such variations and previous studies on the topic.

¹⁵ There are a few exceptions to this claim (e.g. Lee, 2005; Schrank, 2005a; Coslovsky, 2007; Almeida, 2007).

offers a favorable environment for investigating the association between different inspection styles and development outcomes for two main reasons. First, since the country's re-democratization in 1985, the Ministry of Labor's Department of Labor Inspection - DLI (*Secretaria de Inspeção do Trabalho - SIT*) and the career of labor inspectors have been subjected to significant reforms, leading to higher organizational capacity and professionalization.¹⁶ Second, more often than not Brazil is cited by mainstream development economists as one of the most heavily regulated labor markets in the world¹⁷ (Botero et al., 2004; World Bank/IFC, 2006; Almeida and Carneiro, 2007) and a textbook example of how extensive labor regulations damage the ability of firms to compete in increasingly globalized markets (Johnson, Kaufmann and Zoido-Lobatón, 1998; Schneider and Enste, 2000; Friedman et al., 2000; Batra, Kaufmann and Stone, 2003; Perry et al., 2007). These two characteristics define Brazil as critical case for the investigation of how variations in inspection style impact compliance and development outcomes.

¹⁶ Since the late-1980s, labor inspectors have been recruited through competitive exams and offered a rewarding career path (one of best-paid jobs in the federal civil service – executive branch). The authority for enforcing labor regulation is established at the federal level but its implementation takes place through a decentralized system and a relatively flat organizational structure. The work of approximately 3,000 labor inspectors, distributed across 27 state-level offices, is monitored by a computerized system (SFIT), which evaluates individual inspectors' performance against planned compliance goals while also giving them a relatively high level of discretion in terms of the means through which they achieve compliance. These inspectors are supposed to cover more than 78 million employed workers (both formal and informal) and 2.7 million registered firms in all 5,564 Brazilian municipalities. Given the magnitude of the task, the number of inspectors in Brazil is only half that recommended by the ILO and lower, per 100,000 workers, than in some of its Latin American neighbors such as Argentina, Uruguay and Chile (Piore and Schrank, 2007). However, even constrained by these resource limitations, Brazil's labor inspection service has received international acknowledgement for its outstanding and innovative programs to eliminate forced labor and child labor.

¹⁷ In Brazil, firms have to comply with 922 items of the labor code, in addition to 46 items written into the Constitution, 79 ratified ILO conventions, 30 health and safety norms (which add up to more than 2,000 items), and many other administrative acts and labor court rulings.

The data for this study were collected through in-depth interviewing, observation of inspectors' work routine, as well as archival search¹⁸. As a result of fieldwork, I identified 24 cases in which labor inspectors intervened more or less successfully, and also unsuccessfully, in promoting the reconciliation of labor standards and economic development (Table 2, below). The analysis of these 24 cases indicated three distinct types of outcomes.

The first type of outcome refers to situations in which labor inspectors failed to fulfill their mission as law-enforcers – i.e. their intervention did not bring firms into compliance with the law. For example, two years after Ford started operating its new auto-assembly plant in Camaçari (Bahia) in 2001, labor inspectors observed an upsurge of repetitive stress injuries among local workers. But, even though inspectors have been working on this case for more than four years, they have promoted very little change either in the way the factory operates or in the incidence of injuries. Similarly, granite quarrying firms in Papagaio (Minas Gerais) have long been known for environmental damage and occupational diseases caused by dust. Inspectors have been unsuccessful, over the past five years, in promoting compliance with basic items of the labor code among the mostly small firms operating in this area.

¹⁸ More details on data collection procedures and techniques are described in the introduction to the dissertation.

Table 2 - Patterns of outcome and cases investigated

Patterns of outcome	Number of observations and industry/location
<p>1 – <i>Non-compliance</i>:</p> <p>The intervention of inspectors does not result in significant improvements in firms' compliance with the law.</p> <p>$T_0:\text{non-compliance} \rightarrow T_1:\text{non-compliance}$</p>	<p>6 observations (25 per cent):</p> <ul style="list-style-type: none"> - Telemarketing, Belo Horizonte – Minas Gerais; - Repetitive stress injury in Ford plant, Camaçari – Bahia; - Ornamental stone quarrying, S.T.Letras and Papagaio – Minas Gerais; - Ornamental stone quarrying – Espírito Santo; - Sisal, Valente and region – Bahia; - Fireworks, Santo Antônio de Jesus – Bahia.
<p>2 – <i>Compliance</i>:</p> <p>The intervention of labor inspectors is successful at immediately bringing firms to compliance with the law, but does not create favorable conditions for firms to remain in compliance. In many of these cases, compliance leads to loss of competitiveness and productivity.</p> <p>$T_0:\text{non-compliance} \rightarrow T_1:\text{compliance}$</p>	<p>8 observations (33 per cent):</p> <ul style="list-style-type: none"> - Charcoal production and reforestation, Camaçari area – Bahia; - Ceramics production, Camaçari area – Bahia; - Rural Inspection (formalization) – Western Bahia; - Software workers' cooperatives, Recife – Pernambuco; - Footwear manufacturing, Jequié – Bahia; - Civil construction, Belo Horizonte – Minas Gerais; - Gold Mining (Morro Velho), Nova Lima – Minas Gerais - Footwear manufacturing, Nova Serrana – Minas Gerais.
<p>3 – <i>Sustainable compliance</i>:</p> <p>The intervention of labor inspectors not only brings firms to compliance but also creates legal and/or technical solutions which work as positive incentives for firms to remain in compliance with the law. Compliance does not harm – and in some cases even enhances – firms' competitiveness and productivity</p> <p>$T_0:\text{non-compliance} \rightarrow T_1:\text{sustainable compliance}$</p>	<p>10 observations (42 per cent):</p> <ul style="list-style-type: none"> - Carnival-cordeiros, Salvador – Bahia; - Grain and seed production (consortium of rural employers), Paracatu/Unaí – Minas Gerais; - Auto-parts, Belo Horizonte metro area – Minas Gerais; - Fireworks, Santo Antônio do Monte – Minas Gerais; - Galvanization, São Paulo metro area (ABC) – São Paulo; - Petrochemical (Benzene), Camaçari – Bahia; - Eradication of forced labour (special mobile group) – Pará; - Auto-parts, São Paulo metro area (ABC) – São Paulo; - Pulp and paper – Southern Bahia; - Iron-ore mining, Itabira/Brucutu – Minas Gerais;

The second type of outcome refers to situations in which labor inspectors do succeed in enforcing regulation, but at the expense of firms' productivity or competitiveness. This category of cases illustrates the trade-offs between workers' rights and firms' performance, because compliance typically increases firms' production costs. Therefore, firms find little incentive to remain in compliance over time, except for the continuing threat of sanctions which is unlikely to hold up for very long given the regulators' resource constraints. For example, since the mid-1990s, labor inspectors have been repressing the contracting out by firms of their end-activities (as opposed to administrative activities) to workers' cooperatives, which are considered as an illegal bypass of the labor code's requirements. In Recife, software firms have been arguing that directly hiring all workers – especially software designers who are paid by the products they develop – is not only inefficient but very costly. Accordingly, they resort to workers' cooperatives as a means of both reducing their costs and giving their designers more flexibility (e.g. working hours). By forbidding firms to resort to such cooperatives, labor inspectors have been successful at bringing firms in compliance with the law. However, as some firm-owners mentioned, they only need to wait until the inspector gets off their back in order to revert to the workers' cooperative arrangement. As firm-owners point out, it is cheaper to pay the fines if they are eventually caught by inspectors than to bear the costs of directly hiring all their workers.

Finally, some of the cases in the sample indicated the possibility of a third outcome, which I call *sustainable compliance*. In these cases, inspectors successfully promote the reconciliation of labor standards with economic development. In other words, inspectors bring firms into compliance with the law by finding legal and/or technical

solutions that create positive incentives for firms to improve working conditions and remain in compliance. In the cases that resulted in sustainable compliance, inspectors devised new forms of employment contract and hiring arrangements, as well as technical solutions that made production processes simultaneously safer and more efficient.

In order to provide the empirical evidence supporting the identification of sustainable compliance outcomes, four such cases are described below in greater detail. These four cases capture important variation in terms of:

- areas of regulation (wage, working time and occupational health and safety standards);
- economic sectors (manufacturing, agriculture and services);
- firm size (small, medium and large);
- urban and rural areas; and
- states (Minas Gerais and Bahia).

These variations, in turn, suggest that inspectors have been able to promote sustainable compliance – i.e. reconcile social protection (workers' rights) and firms' performance – under varied social and economic settings.¹⁹

Devising new hiring arrangements

Brazil's wage and working time regulations, instituted by a 1943 law largely based on the typical characteristics of manufacturing jobs (e.g. long-term relationships), are supposed to be universally applicable to workers and employers in all sectors of the

¹⁹ In contrast to other standard comparative methods, such as matched pairs, the methodology adopted in this study establishes controls through the variation between cases: if a process/mechanism (e.g. sequence of intervention, enforcement practices) observed within a case is consistent with that observed in other cases, which arise in very different contexts/situations (e.g. economic activity, state, etc.), we have a pattern with a relatively high explanatory power.

economy. As a result, firms whose business is affected by seasonality, such as those in the service and agricultural sectors, face costly and bureaucratic hurdles to formalize their temporary labor force.²⁰

The intervention of labor inspectors in the re-organization of the labor market in Salvador's Carnival indicates that formalization of workers is possible even in those industries that have traditionally grown by relying on informal labor.²¹ The Carnival's origin dates back to colonial times,²² but it took the shape of a commercial mega-event only in the past 20 years, when carnival groups (known as *blocos*) made the transition from cultural/recreational associations to business enterprises (known as *blocos de trio*). This transition involved the “privatization” of the *Trio Elétrico* – a truck equipped with a high-power sound system and a music group on top of it, playing for the crowd²³ – through the use of ropes separating and protecting from the crowd those who have paid to play carnival inside *blocos*.²⁴ Central to the creation of this new market are the men and

²⁰ In Brazil, a formal worker is a worker who possesses a work permit (known as *carteira de trabalho*) in which her/his employers must record all new employment contracts and any amendments to an existing contract, thereby building up the employee's employment history over time. The permit is the legal document that entitles workers to benefits paid for by the employer (e.g. wages, retirement benefits, unemployment insurance, etc.) while making firms liable to costs such as the taxes and contributions that finance social benefits.

²¹ Salvador's Carnival is the world's largest carnival (according to the Guinness Book of Records 2005), in which a total of 1.2 million people crowd 26km of streets during six uninterrupted days of celebrations, moving a total amount of US\$254 million and creating more than 130,000 temporary jobs, 75 per cent of which are informal (SECULT/SEPLAN-BA, 2007). According to Salvador's' Bureau of Tourism (EMTURSA), in the past four years, the number of temporary jobs created during the Carnival has ranged between 130,000 to 185,000, including *cordeiros* (rope-holders), cooks, receptionist, tailors, street-vendors, musicians, stage assemblers and many others. Impressively, these numbers are more than enough to offset the city's unemployment rate (ranging between 10 and 16 per cent in the last four years, according to IBGE). In other words, the Carnival promotes temporary full employment in Salvador.

²² See Miguez de Oliveira (1996) for an interesting retrospective of the origins of the celebration in Portugal and its evolution over the centuries up until its current structure in Salvador.

²³ The truck is driven around the city with the crowd following, dancing and singing. It was originally staged by three Salvador musicians – Armandinho, Dodo and Osmar – in the early 1950s (Miguez de Oliveira, 1995).

²⁴ The price of the *abadá*, the costume that differentiates those who have paid from those who have not, varies greatly across *bloco de trio*, ranging from US\$100 up to US\$900 per day for the most expensive ones.

women who hold these ropes and stand up as a human wall creating a “prime private street-party”. *Blocos de trio* have been growing steadily in number and size as professionally-managed enterprises since the 1980s,²⁵ and so has the demand for rope-holding laborers (known as *cordeiros*). In the past 10 years, *blocos de trio* have hired on average 70,000 people every year to work as *cordeiros*, approximately half of all the temporary jobs created during the Carnival.

The employment relationship between *cordeiros* and *blocos de trio* has traditionally been informal and mediated by firms specialized in recruiting these workers in Salvador’s poor neighborhoods. Working conditions have always been precarious, including non-payment or underpayment of wages²⁶ and lack of basic health and safety conditions (e.g. gloves, ear protectors, adequate food and water). As a result of this unregulated pattern of employment relationship, mistreated workers never had any mechanism for redress while *blocos de trio* could never rely on this labor force – *cordeiros* would leave their *blocos* at will during work hours to perform any better-paid work on offer.

The existing labor code falls short of providing a specific set of regulations for this kind of short-term labor. Under current law, *blocos de trio* would have to register these workers formally, pay all fringe benefits, and fire them (paying the prescribed penalty) after a few days of work. From the *blocos* perspective, this was not only costly but administratively challenging to process the bureaucratic requirements of hiring and firing 1,000 *cordeiros* (the annual average for large *blocos*). From the workers’ perspective, it

²⁵ In 2007, there were 43 *blocos de trio* (out of 207 carnival entities) servicing 194,000 partygoers.

²⁶ Even when they are remunerated for their services, *cordeiros*’ daily wages have traditionally been very low. For example, until 2004 *cordeiros* earned R\$14 for an 8–10 hours work day, the price of two slices of brie cheese sold in *camarotes* (VIP boxes for playing or watching carnival festivities).

was undesirable to get stigmatized by having such low-status and short-term employment permanently registered in their *carteira de trabalho* (work permit).

Labor inspectors started to address this situation in 2003, when they targeted the industry as a whole (and not individual firms) and developed, in consultation with workers and firms, an alternative formal arrangement for temporary hiring – namely, a service provision contract specific to *cordeiros*, which is basically made up of clauses concerned with minimum daily rates, breaks, food, gloves, insurance against accidents, etc. This temporary employment contract established basic protections for workers while giving firms a viable way to formalize their labor force and provide better quality service for their patrons (i.e. *Blocos*' organization and safety).²⁷ In the past three years, some 25,000 of these contracts have been concluded per year between firms and *cordeiros*.

Seasonal demand for harvest-workers creates a situation for rural employers that is very similar to that faced by Salvador's carnival firms – a mismatch between existing employment regulation and the context in which firms carry on their business. In Brazil, agricultural activities account for 21 per cent of the occupied labor force, and 70 per cent of all agricultural wage-workers are informal on average – reaching up to 85 per cent in the Northeast (IBGE, 2005). To counteract this situation, the Ministry of Labor defined inspection in rural areas as a national priority, and labor inspectors in Minas Gerais intensified inspections in the state's new agricultural frontier (the Northwestern grain-producing municipalities of Paracatu and Unaí) in the late-1990s. Inspectors found that the problem of labor informality was embedded in widespread illicit hiring arrangements – i.e.

²⁷ By researching internet blogs of usual carnival participants, I have found many stories in recent years of partygoers complaining about *cordeiros* who beg for spare change, water and food. There is even one case in which a *cordeiro* tried to steal the cap of a girl inside the *bloco*. By guaranteeing minimum conditions, *Blocos* prevented these situations from happening with their patrons.

fraudulent labor cooperatives and intermediaries (“*gatos*”) – all designed to bypass legal obligations and costs. Medium- and small-scale rural employers in this region adopted these arrangements because they considered prohibitive the financial and administrative costs of formally hiring, say, 2,000 workers to harvest beans for 15 days under the *carteira de trabalho* system.

Labor inspectors pioneered the implementation of a solution that respected the legal principle of extending formal employment, while offering an efficient way to allocate temporary labor in rural areas, namely, the consortium of rural employers. This is a formal association of individual rural producers whose sole purpose is the direct hiring of rural workers. Unlike a producers’ cooperative, a consortium is an association in which members’ liability is limited only to labor-related issues (i.e. excluding production, distribution, etc.). Consortia are also different from labor cooperatives, in which workers get together to sell their labor force as a service for contracting firms. They are “collective rural-employers” that hire individual workers in the same way that any firm formally hires a worker.

Consortia are not only a legal solution, alternative to illicit arrangements: they also allow for the reduction of labor costs for each individual producer. Consortium members share the burden of administrative costs, mandatory payments for workers’ benefits (e.g. retirement benefits, unemployment insurance), and compliance with health and safety standards. For workers, consortia offer opportunities for longer-term employment, as they move on from farm to farm, and the right to enjoy all statutory benefits (e.g. minimum wage, vacations, unemployment insurance, etc.). Moreover, consortia simplify relationships between producers and inspectors, since the latter can monitor the operation

of consortia (through monthly reports), instead of inspecting every single rural property, thereby reducing the “pressure” on farmers.²⁸

As a result of these advantages, the establishment of consortia contributed to the formalization of 22,000 workers in 2000 (Miguel, 2004). In the following year, the numbers increased to approximately 65,000 workers and 3,500 rural producers in 103 consortia (Zylberstajn, 2003). Today, there are more than 150 consortia, including 46 in Minas Gerais, especially in irrigated areas or regions with diversified crops that allow for the staggering of harvests, where consortia have worked best.

Bringing health and safety into the production process

In Brazil, approximately 410,000 occupational accidents happen every year – i.e. 1,100 accidents every day, eight of which cause death (Baumecker and Faria, 2006).²⁹ One of the reasons for these numbers is the disconnection between health and safety norms “on-the-book” (legal requirements) and the productivity and competitive requirements to which today’s firms are subject. In many cases, the adoption of health and safety measures, as prescribed in the legal norms, significantly reduces the ability of firms to attain higher productivity levels.

This situation is especially acute in the auto-parts industry, which has undergone significant restructuring worldwide in recent decades as a result of trade liberalization

²⁸ According to a labor inspector in Minas Gerais, inspectors generally receive fewer complaints from workers and unions in areas where consortia have been established. Consortia also contribute to the social responsibility certification of many farmers, as reported by a representative of the National Confederation of Agro-producers (CNA).

²⁹ The cost of these occupational accidents amounts to US\$16 billion every year, i.e. 3-4 per cent of Brazil’s GDP. According to ILO data, these figures match the world average of 4 per cent of global GDP, i.e. 20 times more than the total amount of official development aid (Agência Brasil, 2007). In other words, Brazil’s occupational safety record occupies an intermediate position between most Asian and African countries, on the one hand, and OECD countries, on the other (Baumecker, Faria and Barreto, 2003).

policies and the implementation by auto assemblers of non-inventory strategies (e.g. “just-in-time” production). In Brazil, firms in this industry segment, which employs 309,400 workers, have been struggling to survive foreign competition by keeping high levels of production in order to meet their supply contracts with auto assemblers (Tewari, 2006).³⁰

As a result, occupational accidents are very common: 48 per cent of all accidents involving machines in Brazil are caused by punch-presses, the equipment used to stamp auto-parts on sheet metal (Piancasteli, 2004).³¹

However, the intervention of labor inspectors in the auto-parts industry in Belo Horizonte metro area indicates possibilities for reconciling safer working conditions with firms’ productivity. In 1999, Minas Gerais labor inspectors decided to prioritize the reduction of the number and severity of accidents involving punch-presses and similar equipment, since the state hosts the second largest agglomeration of firms in the metal-mechanic sector in Brazil (approximately 15 per cent of domestic production and more than 35,000 local jobs). In order to comply with the existing norm (NR12, 1978), auto-parts firms would have to replace all obsolete but operating punch-presses by more modern and safer equipment. And that was clearly beyond most firms’ financial capacity. The alternative to machine replacement was to fit protective equipment on existing punch-presses. But firms were also reluctant to do that: although the fitting of protection was not too costly (approximately US\$300 per machine), productivity loss was considerable once protections were installed (ranging from 15 to 30 per cent).

³⁰ In Brazil, South Africa and Mexico, for example, intensified competition between assemblers’ global supply sources and domestic component producers has pushed established domestic auto-industry players out of the top segments of the value chain altogether, into other sectors, or out of the market (Tewari, 2006).

³¹ These accidents – involving laceration and amputation of fingers, hands and arms – are due in part to the obsolescence and lack of safety of the punch-presses in operation in the Brazilian metal-mechanic sector. A 2001 study found that none of the punch-presses traded in São Paulo state (including used and new machines) had adequate protection to minimize workplace accidents (Mendes, 2001).

In response to this situation, labor inspectors have been emphasizing widespread adoption of protection kits (instead of enforcing the replacement of existing machines) and 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). As a result of such efforts, by the end of 2005, 70 per cent of the 350 firms inspected in the Belo Horizonte metro area had adopted adequate protection for their punch presses, including the auto-assembler FIAT, which replaced all its obsolete machines by newer ones. In 2003, the number of accidents officially recorded in the auto-parts industry was reduced by 66 per cent in comparison to 2001 figures.³²

Productivity loss is not the only obstacle to firms' compliance with health and safety standards. In many situations, uneven competition between firms that invest in the safety of their production processes and their non-compliant domestic and foreign competitors prevents the spread of health and safety measures. This is especially true of the traditional or non-modern manufacturing activities performed mostly by small and medium-sized firms in Brazil's countryside (e.g. shoes, garment, etc.), which have been facing fierce competition from cheaper Chinese products in the past decade.

However, labor inspectors' intervention in a cluster of fireworks firms in Santo Antônio do Monte (SAM), in Minas Gerais, demonstrates that linking health and safety standards with product upgrading is not only possible but also a viable competitive strategy in internationalized markets. Brazil is the world's second largest producer of fireworks, following China, with 5 per cent and 85 per cent market shares, respectively. The cluster of approximately 100 fireworks firms located in five municipalities (each with

³² The perception of both the metal-mechanic trade union and the inspectors (who keep track of incoming complaints from workers) corroborate the significant reduction of accidents since 2001.

approximately 20,000 inhabitants) around SAM accounts for 90 per cent of Brazil's domestic production of fireworks and provides employment for more than 17,000 workers (direct and indirect).

The SAM fireworks cluster grew steadily during the 1990s in terms of both numbers of firms and tons of products. But by the early 2000s, SAM's mostly small but formal firms faced two challenges. First, they had acquired a bad reputation in Brazil because of the high number of accidents not only in their own factories (with an average rate of six deaths per year due to explosions), but also in the hands of end-users (crackers and pyrotechnic shows). Second, with the elimination of all trade barriers over the 1990s, they were struggling to compete in their domestic markets with low-priced Chinese imports, which had gradually been pushing fireworks producers out of the market all over Latin America.

The high number of deadly accidents attracted labor inspectors' attention in 1998, who found that the SAM firms were all out of compliance with health and safety regulations. Starting in that year, the team of labor inspectors learned about the industry's prevailing conditions and technicalities so as to be able to propose concrete and specific changes in the production process (e.g. substitution of dangerous chemical inputs, changes in the lay-out of facilities). As a result, the number and severity of accidents were reduced significantly (to an average rate of one death per year by 2005) and the quality of final products was improved. But product upgrading measures increased production costs – albeit only slightly – and therefore made competition with cheap and lower quality Chinese products even more difficult. Nevertheless, with the support and incentive of labor inspectors, SAM's firms have set up since 2006 a quality certification scheme

leading up to a technical barrier for international trade (requiring the same quality standards for imported products). This initiative has been a major step towards improving the firm's ability to compete with Chinese products without lowering the industry's standards.

In this section, I presented four cases in which labor inspectors devised technical and/or legal innovations that produced sustainable compliance outcomes in varied social and economic settings (table 3). However, more important than pointing out concrete policy alternatives or models,³³ this research aims to identify the inspector behavior and practices that lead to the development of compliance solutions, such as those described above, capable of positively affecting business operation and working conditions. Accordingly, the next section considers whether there is a causal link between styles of inspection and sustainable compliance outcomes.

³³ The technical and legal innovations developed by labor inspectors in each of the situations described in this study are concrete policy alternatives that could easily be extended to other sectors of economic activity. For example, the consortium of rural employers could be a potentially useful tool not only in rural areas, but also for dealing with informality in the urban construction industry, where demand for labor peaks during certain stages of the construction process. The type of employment contract developed in the *cordeiros*' case could also be applied to other kinds of day-labor work. And finally, the certification scheme and technical barrier developed in the fireworks case could be adapted to other sectors that face uneven competition with foreign firms abiding low standards (such as footwear, furniture, garments, etc.), promoting domestic investments in the quality of products and production processes without loss of market share.

Table 3 - Summary of cases: Initial conditions and sustainable compliance outcomes

Economic activity/sector	Initial conditions	Outcomes
Carnival (service/tourism), Salvador – Bahia	Informality, poor working conditions (health and safety, and non-payment of wages), and problems with safety and organization of “ <i>blocos de trio</i> ”.	Temporary employment contracts (formalizing 25,000 workers per year), improved working conditions (e.g. minimum daily wage) and better quality service offered by “ <i>blocos de trio</i> ”.
Grain and seed production (agriculture), Unaí and Paracatu – Minas Gerais	Informality, poor working conditions and illicit hiring arrangements (fraudulent labour cooperatives and “ <i>gatos</i> ”).	Development of alternative hiring arrangement (less costly to farmers) for temporary harvest workers: consortium of rural employers, which formalized 65,000 workers in 2001.
Auto-parts (manufacturing), Belo Horizonte metro area, Minas Gerais	Non-compliance with health and safety standards (e.g. machinery protection) due to productivity loss.	Widespread adoption of machinery protection (approx. 250 firms in 2005), management (reduction) of productivity loss, and reduction of occupational accidents by 66 per cent in 2003.
Fireworks production (manufacturing), Santo Antônio do Monte – Minas Gerais	Poor working conditions, high-rate of occupational accidents (six deaths/year), and low-quality and low-safety products.	Compliance with health and safety standards, improved working conditions (with reduction of accidents to one death/year), and product upgrading (quality certification and technical trade barrier).

Inspection styles and sustainable compliance

In order to explore the potential causal links between styles of inspection and sustainable compliance outcomes, I adopted a two-pronged strategy for comparative analysis. First, I analyzed the data through cross-case comparisons (across 24 cases drawn from the original sample) in order to search for patterns running across different cases and to identify what it is that distinguishes the cases in which labor inspectors produced sustainable compliance solutions. Then, I engaged in process-tracing and in-depth within-

case analysis³⁴ of the cases resulting in sustainable compliance in order to assess the causal links between labor inspectors' enforcement practices (independent variable) and the compliance outcomes (dependent variable) observed in each experience.

These comparisons revealed variations not only in terms of compliance outcomes but also in terms of the strategies and practices employed by inspectors in each case. I identified three distinct patterns in terms of inspection style that aligned in most cases with the outcomes. The first two patterns confirm the observations in the current literature, that is, inspectors behave either as policemen/punishers, administering sanctions as prescribed by the deterrence model, or as advisors/consultants as described by compliance approaches. But I also observed, in approximately one-third of the cases, that inspectors used a combination of these two approaches. Surprisingly, both cross-case and within-case evidence suggest that the combination of sanctions with some form of technical/legal assistance was crucial to the development of the sustainable compliance solutions described in the previous section (e.g. reduction of the costs of compliance or upgrading into higher-value-added market niches). The following sub-sections present the empirical evidence supporting these findings. And table 4 contrasts the cases involving sustainable compliance outcomes with other cases in which labor inspectors were not willing or able to combine sanctions with assistance.

³⁴ Process-tracing and within-case analysis involve the evaluation of evidence about the causal processes and mechanisms that link the independent variable to the dependent variable, searching for the specific ways through which the first (e.g. inspection practices) is connected to the second (e.g. compliance outcomes). In contrast to cross-case analysis, process-tracing uses tools for causal inference (evidence collected from interviews, documents, etc. that exposes the links between independent and dependent variables) that do not depend on examining relationships between variables across cases. Within-case process tracing allows researchers to go beyond making inferences about the extent to which the hypothesized cause was found across cases, exploring how and the extent to which that cause produced the outcome for each case. A more detailed discussion of these methodological techniques can be found in Brady and Collier (2004), and George and Bennet (2004).

Table 4 - Enforcement strategies and examples of cases

		<i>Sanctions</i>	
		Yes	No
<i>Legal and/or Technical Assistance</i>	Yes	<p>1 – <i>Combined strategy:</i> e.g. Fireworks-SAM (Minas Gerais), Carnival-Cordeiros (Bahia), Consortium of Rural Employers (Minas Gerais), Auto-parts (Minas Gerais)</p>	<p>2 – <i>Assistance only:</i> e.g. Sisal (Bahia), Fireworks-SAJ (Bahia)</p>
	No	<p>3 – <i>Sanctions only:</i> e.g. Telemarketing (Minas Gerais), RSI in Ford (Bahia), Rural Inspection (Bahia), footwear manufacturing (Minas Gerais and Bahia)</p>	<p>4 – <i>No intervention:</i> Empty</p>

Cross-case comparisons

Cross-case comparisons indicate that cases in which inspectors used only coercive practices (table 4, cell 3) or only pedagogical strategies (cell 2) did not evolve as successfully in terms of the development of sustainable compliance solutions as the cases in which inspectors mixed sanctions with assistance (cases in cell 1). Examples of cases in which inspectors were not able or willing to employ sanctions against non-compliant firms/producers include interventions in the sisal-producing region (northeastern Bahia) and in the fireworks-manufacturing cluster of Santo Antônio de Jesus (SAJ), in mid-western Bahia. The sisal-producing region has long been known for its high rate of mutilations among rural workers operating a primitive rotating grinding machine that extracts the pulp material from the sisal fiber. But inspectors have been reluctant to impose sanctions in this case, given the difficulty of clearly identifying who is the employer and

who is the worker in this region inhabited by small-scale rural producers and poor rural workers. Similarly, fireworks production in SAJ is based on small and informal domestic units. This makes it difficult for inspectors to identify and impose sanctions on firms in which accidental explosions occur. As a result, in both cases, inspectors have limited their intervention to pedagogical strategies – typically workshops on preventive techniques, educative materials, and training sessions for workers and firm-owners – and have achieved only very small reductions in accident rates, without promoting a climate of change or any significant improvements in business practices and production processes.

In turn, the cases in which inspectors employed only sanctions, without following through with the provision of technical and legal support (pedagogical/assistance strategies), also evolved toward insignificant changes in the way non-compliant firms traditionally operate. In some of these cases, inspectors failed to promote any improvement in firms' compliance with the law. For example, labor inspectors in Minas Gerais identified an upsurge in repetitive stress injuries and mental health problems among workers in the telemarketing sector in Belo Horizonte's metro area. Violations of the health and safety regulations included denial of breaks (workers not allowed to leave their station to use the restroom outside of a few predetermined breaks) and excessive pressure on workers to work faster (they were expected to end each call within 30 seconds, under the penalty of losing bonus on their salaries). Inspectors issued fines against the largest telemarketing firms based in Belo Horizonte, but the latter started to move their operations out of the state in order to avoid inspection. I observed similar results in inspectors' attempts to deal with repetitive stress injuries at the Ford plant in Camaçari (Bahia) and silicosis and occupational accidents in ornamental stone quarrying in the states of Minas Gerais and

Espírito Santo. In all these situations, inspectors issued sanctions but did not follow through with any sort of assistance, guidance or support. Therefore, these firms usually preferred to pay the fines – or pay lawyers to contest them in courts – rather than to invest money and time in changing the way they operated.

In other cases in which inspectors also limited their intervention to the imposition of sanctions, levels of compliance did increase in the aftermath of the intervention, but these outcomes proved unsustainable over time as most firms tended to backslide into non-compliance in the absence of inspectors' attention.

Routine rural inspection in western Bahia is an example of forms of compliance enforcement that decrease firms' competitiveness or productivity and, therefore, tend to be short-lived.³⁵ Inspectors from the Bahia State Labor Office (SRTE) designed a very sophisticated information system (by unifying relevant databases) through which they were able to predict rural labor demand peaks during harvest time and plan ad hoc enforcement actions to catch the greatest number of informal workers and farmers at once. After identifying the “hot spots”, a group of inspectors is assigned to crack down on rural producers employing informal workers by issuing all possible sanctions. They require farmers to formalize (*carteira assinada*) their temporary workforce immediately, and by doing that Bahia's SRTE has become the “national champion” for its number of “formalizations”. However, as the inspector in charge herself confessed, “we only achieved that when we were closely monitoring farmers. Every year the same farmers are back again hiring informal workers for harvesting periods”.

Similarly, in interventions in the footwear industry, both in Jequié (Bahia) and Nova Serrana (Minas Gerais), inspectors adopted solely coercive tactics to force the

³⁵ Another example was an intervention in software workers cooperatives in Recife.

formalization of all workers in the factories. But since this increased firms' production costs without any apparent gain, firms started subcontracting pieces of their production process (the sewing of shoe parts) to former employees working informally from their homes. In another case, involving charcoal production and reforestation, inspectors understood that small steel mills in the Camaçari area were liable for labor code violations committed by their subcontractors because the latter operated under exclusive contracts. Accordingly, inspectors used sanctions to force steel mills to end subcontracting practices and "verticalize" production, thereby incurring the costs of producing charcoal and reforestation without reaping any benefit from compliance with regulation in terms of their business operation.

In sum, by resorting to sanctions, inspectors have been successful in these cases in driving firms' behavior temporarily away from informality, but the lack of any form of legal and/or technical assistance has prevented the development of more sustainable compliance solutions – such as those described in the previous section (e.g. consortium or rural employers, new forms of hiring, etc.) – in which firms find incentives to remain in compliance.

Within-case and process-tracing analysis

The cross-case differences analyzed above indicate that the combination of coercive and pedagogical strategies might play a significant role in explaining sustainable compliance outcomes. In this subsection, I engage in process-tracing analysis within each of the four successful cases (table 3, cell 1) to confirm the causal links between the

combined use of sanctions and technical/legal assistance, and the development of sustainable compliance solutions.

“Sanction as the first step of a good advice”

The interventions in the SAM fireworks production clusters and in the Paracatu/Unaí grain-producing region (consortium of rural employers), both of them in Minas Gerais, are good illustrations of what a labor inspector once told me: “sanction is the first step of a good advice”.

In both cases, the inspectors in charge told me they anticipated adverse conditions in the field and realized that they had to create a climate of change in these districts and find forceful ways to convey that the current ways of doing business would no longer be tolerated. Up to 1998, fireworks production in SAM was still very artisanal and unprofessional. The labor jurisdiction prosecutor (MPT-*Ministério Públíco do Trabalho*),³⁶ who was brought in on the case by the labor inspector, also reported that: “when we got there we noticed that in almost all factories they had little images of saints hanging on the wall at the most dangerous stages of the production process. These were their protection and safety measures.” The inspector in charge complemented:

“They were accustomed to the average of six deaths every year. That was part of the town’s culture. They believed that accidents were unfortunate, but natural. And the fireworks activity was necessarily risky; sometime someone would die. They often compared the risks in their activity with deaths in transit and roads. They used to tell me that more people die in the roads than in the fireworks industry. We had to break with this complacency. … We had to show them that such a risk ratio was unacceptable.”

Up to the late-1990s, grain and seed producers in Minas Gerais’ northwestern region had been spared from labor inspection for decades due to jurisdictional disputes

³⁶ The *Ministério Públíco do Trabalho* (MPT) is a prosecutor’s office dedicated to the enforcement of the labor code, with the prerogative of bringing class-actions suits in the labor courts.

within the inspection service (between Minas Gerais and Distrito Federal State Labor Offices). In the absence of law enforcement in this region of relatively recent agricultural expansion, labor relations have traditionally been precarious: in 1998, when labor inspectors came in, they even found forms of forced labor in grain and seed producing farms in the municipalities of Unaí and Paracatu. Medium-sized grain producers, who represented the economic and political powers in this region, were openly averse to the formalization of rural labor.

Again, in both the fireworks cluster and the grain-producing region, given the initial condition of widespread non-compliance and the weakness of local trade unions, inspectors: (a) adopted an encompassing strategy of targeting all firms/farmers within their respective municipality/region; and (b) came down heavily on firms/farmers, strictly applying the labor legislation. This resulted in the issuance of hundreds of fines upon firms/farmers, and in threats of criminal lawsuits against fireworks firms and of seizure of farmers' estates for purposes of land reform. These "sector-wide" coercive shocks created an atmosphere of uncertainty and signaled the need for change, prompting discussions between regulated and regulators about the direction of such change. In the two cases, firms and farmers contested inspectors' enforcement actions by arguing about how each specific item of regulation could or could not be adopted by firms/farmers if they wanted to remain in business (examples in the following paragraphs). This was the point at which technical and/or legal assistance provided by inspectors played a decisive role in promoting compliance solutions in these two stories.

In the SAM fireworks episode, as a result of such contentious interactions, inspectors re-evaluated, flexibilized or even backtracked in the short-term from some of

the legal requirements they were enforcing.³⁷ By doing so, they got approximately 90 per cent of the firms (including lead-firms in the cluster) to sign a collective consent decree (*Termo de Ajustamento de Conduta*, hereafter referred to as TAC), which included a compliance schedule for a set of basic health and safety requirements varying by firm size³⁸ and instituted even more severe penalties (than those initially administered) in case of non-compliance. For some of the requirements included in the TAC, inspectors went beyond just offering a compliance schedule and provided direct technical assistance in partnership with a chemical engineer from *Fundacentro* – the Government's national research institute of occupational health and safety, linked to the Ministry of labor. One example of such assistance is the advice and training provided to firms about the substitution of potassium perchlorate for the potassium chlorate traditionally used in the explosives manufactured by SAM firms but officially banned in many other countries. The inspector and the chemical engineer guided firms through the process of adjusting previous formulae and mixtures in order to make SAM fireworks safer without lowering product quality. The firm-owners interviewed unanimously agreed that the replacement of potassium chlorate by potassium perchlorate had been a key measure in reducing the number of accidents without substantially increasing production costs.

Similarly, in the consortium case, equally contentious interactions between regulated and regulators sensitized inspectors to the fact that alternative forms for formally hiring temporary rural workers were needed because the existing regulation imposed

³⁷ Examples, mentioned by firm-owners, of requirements re-evaluated by regulators included: signs indicating evacuation routes in case of explosion (“when there is an explosion it is like a stampede, no one looks for signs”, narrated a firm-owner), specific anti-static boots not available in the domestic market, and washing of employees’ uniforms everyday “in-house” by the firm.

³⁸ In general, labor inspectors granted the smaller firms longer deadlines, and all firms benefited from extended deadlines for the more technically complex requirements (e.g. construction of new facilities, laboratory for tests, etc.).

unduly heavy financial and bureaucratic burdens on producers. Minas Gerais inspectors had heard from their peers in the states of São Paulo and Paraná and from MPT attorneys about unsuccessful attempts to formalize rural employers' consortia. In 1999, they planned a technical site visit to Rolândia, Paraná, where a group of sugarcane producers were fighting in court for the validity of their hiring arrangement. The inspectors realized that they could adapt and improve upon that arrangement to remedy the situation they were facing in north-western Minas Gerais. With technical support and legal assistance from MPT attorneys and two labor attorneys from Paraná, they turned the consortium into a legal instrument (a formal agreement among producers) which: (a) respected the basic principles of the labor code and other laws regulating rural employment; (b) guaranteed mandated protections and benefits for workers (e.g. retirement benefits, unemployment insurance, etc.); and (c) reduced the burden of formalization on each individual producer, since consortium members could share the administrative and financial costs of formally hiring workers (as described above). According to one inspector, "we beat them up with fines, but we also offered the consortium as an alternative to the basic provisions of the labor code. We showed them that the adoption of the consortium would be a cheaper way to comply with the law."³⁹ After dozens of consortia had been established in the Paracatu/Unaí area, inspectors organized workshops in ten state capitals and drew up a detailed step-by-step manual on how rural producers in other parts of the country could set up consortia of rural employers.

³⁹ Since the late 1990s, Minas Gerais has been the state with the highest number of established rural consortia in Brazil. It is also the state with the highest number of fines issued during inspection in rural areas. For example, in 2005, its inspectors issued nearly three times as many fines as their peers in São Paulo, Mato Grosso, Maranhão, Pará, Goiás and Tocantins, and six times as many as inspectors in Bahia, which are all states with large agricultural sectors.

“Why should I care about your advice? This is how I’ve been doing business since...”

In contrast to the two experiences analyzed above, the sequence of interventions was just the opposite in the cases of the carnival-*cordeiros* and the auto-parts industry (punch-press protection), respectively in Bahia and Minas Gerais. The interventions in these cases started out with pedagogical strategies, but they only produced meaningful results later, when inspectors combined their ongoing efforts with heavy sanctions.

In the carnival case, the inspectors initially attempted to discuss the issue of formalizing *cordeiros* work with the three existing associations of *blocos de trio* in Salvador. They sent out a notification inviting the *blocos* and their subcontractors to a meeting and requesting from them the lists of workers to be hired for the upcoming 2003 festivities. As the *blocos de trio* in Salvador had always hired *cordeiros* informally, their associations were neither willing to nor interested in changing the status quo, and they never responded to the inspectors’ notification. Bahia’s SRTE therefore sent out 40 inspectors to verify working conditions during the street celebrations. They issued fines for every irregularity they found (amounting to US\$100,000 in the case of the largest *bloco* in Salvador, for a total of 400 fines due to lack of formal registration on *cordeiros’* work permits).

Only then did *blocos* respond through their associations, still resisting and contesting inspectors’ enforcement actions.⁴⁰ They argued that formalizing hundreds of *cordeiros* for a few days under the system *carteira de trabalho* was administratively impossible and financially too costly. The *cordeiros* themselves also resisted the

⁴⁰ Many firms contested the fines in court. But early in 2007, Bahia’s labor court decided to uphold the fines, which has enhanced the credibility of inspectors’ threats upon firms.

formalization of their work. According to the vice-president of the recently formed *cordeiros*' trade union,⁴¹

Many of us don't want to have a formal contract registered in our work permit [*carteira de trabalho*]. Many *cordeiros* don't even have a work permit or any of the other documents needed to go through the bureaucratic process of having our contracts formally registered in our work permits. Most people don't want to be stigmatized by having the word "*cordeiro*" written in their work permit and by having been hired and fired within a few days.

In response, the SRTE created a study group composed of inspectors to consider and analyze the options for resolving this conflict, because as one inspector commented "[we] didn't know how to use the law in this specific case, involving such an atypical form of labor". After a three-month series of meetings with the associations of *blocos de trio* and workers' representatives, the inspectors decided to give up the *carteira de trabalho* requirement provided that all *blocos* signed a collective agreement establishing a new hiring arrangement. As an alternative to the *carteira* requirement, the agreement recognized the possibility of classifying *cordeiros* as "individual service providers" (instead of directly employed workers), thereby allowing them to conclude service contracts with *blocos* or their subcontractors.⁴² The collective agreement was signed by 178 for-profit and non-profit *blocos*, with distinct provisions for each type of organization.

⁴³ It included a template service contract made up of clauses related to terms of employment and working conditions, such as minimum daily wages, health and safety conditions (gloves, ear plugs, sunscreen, etc.), and insurance covering any accidents and

⁴¹ The *cordeiros* trade union was established in 2003, after inspectors intervened in carnival labor relations.

⁴² The current interpretation of the labor courts in Brazil forbids the subcontracting of end-activities (as opposed to auxiliary/administrative activities, in which subcontracting is allowed). But labor inspectors took the view in this case that, since there is no personal relationship between the *blocos*' managers and *cordeiros*, the latter can be considered as service providers, as opposed to regular workers.

⁴³ The collective agreement is signed every year, to allow for new negotiations (on matters such as raising the minimum daily wage), and inspectors monitor compliance with its terms. In 2007, inspectors drew MPT attorneys into the operation, increasing their sanctioning power (amount of fines) by transforming the collective agreement into a "consent decree" (TAC).

health care needs.⁴⁴ After the signing of the agreement, inspectors in collaboration with Salvador's health department distributed a flyer on the streets describing *cordeiros'* labor rights and the content of the collective agreement.

The auto-parts case reflects a similar experience, as inspectors invested first in providing technical assistance to firms in order to improve compliance rates. They insisted in doing so even after a failed attempt to mediate a collective bargaining agreement over the protection of punch-presses between the metal-mechanic trade union and the Minas Gerais State Federation of Industries (FIEMG) in 1999-2000.⁴⁵ In 2001, they set up a task team composed of nine inspectors, an MPT public attorney and *Fundacentro* researchers, with the aim of overcoming their lack of technical knowledge on how these machines work and at standardizing their enforcement procedures so as to avoid any inconsistencies (which could be used against them in court). According to one of the inspectors on the team,

we used to hold regular meetings during this operation to discuss inspection practices and accumulate technical knowledge from each other's experience; our team also worked as a study group and we studied the functioning of these machines, the catalogues of protective equipment producers, all in order to know the best alternatives to manage productivity loss, and all materials written on fellow inspectors' experiences in other states, such as São Paulo and Rio Grande do Sul.

As a result, they invited 120 auto-parts firms (the target group) to a workshop at *Fundacentro*, in which firms received a collective notification of non-compliance and detailed technical instructions on what they must do to bring their machines into

⁴⁴ The insurance was included in the contract as a way to compensate for the administrative difficulties of paying the required social security contribution for each worker (many *cordeiros* did not have a social security registration number). So, whenever it was not possible to pay social security contributions, *blocos* or their subcontractors had to purchase insurance for each *cordeiro* in order to cover individual accidents or health care needs.

⁴⁵ According to some interviewees, the collective bargaining failed because the trade union wanted to include demands other than machinery protection, such as job stability and steward committees. According to others, the agreement never materialized because the FIEMG did all it could to delay its conclusion and demanded a very long period for full compliance (protection of all machines).

compliance with safety standards (actually describing what specific equipment was required and how to install it).

But even though inspectors provided technical instructions and assistance to firms, they found out a few months later that 98 per cent of the firms in the target group still had unprotected machines, and the accident rate was still very high (averaging 2 accidents per month involving mutilation, in the Belo Horizonte metro area). The inspectors responded by shutting down the operation of all unprotected punch-presses and similar equipment. By 2005, approximately 400 punch-presses or similar equipment had been suspended from use in 59 firms – i.e. 50 per cent of the target group – with some firms having 100 per cent of their machines suspended.⁴⁶ While forbidding the operation of these machines, inspectors also collected more evidence and documentation to be used by the MPT attorneys and relatives of accident victims in the filing of criminal lawsuits against firms. As a result of such “heavy-handed” enforcement, firms fixed their machines and got clearance from inspectors for approximately 70 per cent of all the suspended punch-presses: in some cases, machines were fixed in less than a week. The labor inspector in charge of the intervention commented:

It was necessary to put a lot of pressure on firms to get them to change their practices ... forbidding the operation of their machines, which represented a major problem for suppliers to fulfill their contracts with FIAT, finally made firms realize that change was necessary; previous notification letters and fines did not “touch” them.

⁴⁶ An Italian director of production of an auto-parts firm complained: “In Italy there is not one punch press with a light sensor [protection required by labor inspectors] ... this place [Brazil] is not in the third world, this is the Germany of South America”. At the same time, however, he noted that: “enforcement has been very intense upon us but inspectors have been very supportive in the process of adapting our production processes to meet regulations”.

Inspectors are still working to improve the firms' productivity while continuing to monitor them.⁴⁷ As a result of this ongoing process, a market for consulting and technical assistance has emerged in the past five years, and commercial consultancies have been assisting auto-parts producers in dealing with the challenge of improving both machinery safety and productivity (through training, protection project design, ergonomics, more modern protection equipment, maintenance, etc.).

Back to the debate on inspection styles: challenging explanations about bureaucratic behavior

The findings presented in this chapter suggest that both the deterrence and the compliance models are limited or, at best, incomplete in explaining the promotion of compliance with regulation and the reconciliation of labor standards and firms' performance. In contrast to these models, the previous section demonstrated that the achievement of sustainable compliance outcomes requires a well-engineered combination of sanctions and advice/assistance, for the following reasons. *First*, my findings corroborate the pedagogical critique of the deterrence model and indicate that coercion alone is not enough to change business practices. In many instances, firms are ill-prepared and lack the capacity to change and upgrade their products and production processes even under the heaviest sanctions. Yet firms themselves are usually unaware of measures they

⁴⁷ Since 2003, when labor inspectors participated in a public hearing in the state legislature's labor committee to discuss the problem and raise awareness about the need to improve working conditions in the auto-parts sector, they have been promoting workshops and seminars about protection of punch-press and similar equipment.

could easily implement to facilitate compliance or to transform compliance into good business. *Second*, in contrast to the arguments of the proponents of the “pedagogical turn” implied by the compliance approach, my findings suggest that inspectors are ill-equipped and often unprepared at the beginning of their interventions to teach, convince or advise firms on what they should do to comply with the law and modernize their business practices. Inspectors have a broad mandate and typically do not know all industries well enough to intervene and solve critical compliance problems. For these reasons, firms are not always open to inspectors’ advice, nor are they willing to change the way they are used to doing business at the inspectors’ request.

I therefore argue that the interpretations underlying both the deterrence and the compliance models fail to understand how sustainable compliance outcomes are achieved. Indeed, only the combination of these inspection styles can explain the processes through which: (a) firms open themselves up for change; (b) inspectors learn about the obstacles inhibiting firms’ compliance (the specific characteristics of each industry and their markets); and (c) inspectors identify – or support the development of – such legal and/or technological solutions as may be needed to reconcile compliance with economic efficiency.

A key point neglected by both the deterrence and pedagogical approaches is that sanctions (e.g. fines, debarments, etc.) can also serve as symbolic and expressive devices (Hawkins, 2002), especially when labor inspectors administer them through sector-wide strategies (i.e. not against individual/isolated firms). Beyond their strict cost-impinging character, sanctions work as a moral statement on an undesirable and offensive practice, thereby also constituting an organizational strategy for focusing public attention and

shame on a specific situation, as demonstrated by some of the cases above. As symbolic and expressive devices, sanctions also elicit firms' arguments for resisting the unfairness of punishment and thus work as a strategy for concentrating their concern on the specific aspects of the regulation which are unreasonable and do not lead to the mitigation of the problem or harmful working condition at issue.

As a result, sanctions and the resistance they provoke generate a productive (though often contentious) dialogue and a learning process through which many of the obstacles and/or disincentives for compliance are brought up. These various obstacles, in turn, become the central focus for the provision, by inspectors collaborating with other government agencies, of the technical and/or legal assistance necessary to bring firms into compliance with existing regulations. Such conflictive interactions between regulated and regulators, involving both coercion and advice/assistance, is the very process through which inspectors promote a climate of change and learn about the particulars of each industry and how they should adapt the law (through its implementation) to match them.

The comparative analysis developed in this study aimed at explaining the variation in compliance outcomes in Brazil by identifying the causal links between observed outcomes and labor inspection styles. Looking at the entire sample of cases investigated for this research, table 5 shows the high correspondence between patterns of compliance outcomes (described in table 2) and inspection styles (described in the last section). The high correspondence between the observed outcomes and the explanatory conditions provides a relatively strong explanation for the impact of inspection styles on the variation of compliance outcomes.

The sample of 24 cases is not meant to be representative of all the cases Brazilian labor inspectors deal with. Rather, the purpose of this sample is to capture as much variation as possible in order to test the claims about causal links between inspection styles and compliance outcomes under the most diverse conditions. Out of the sample, I chose four cases of sustainable compliance for in-depth analysis. However, these were not the only cases illustrating the association between combined inspection strategies (sanction and pedagogy) and sustainable compliance outcomes. During the course of my fieldwork, I also identified sustainable compliance outcomes in industries as diverse as petrochemicals (Camaçari, Bahia) and galvanization (ABC, São Paulo), and in the eradication of contemporary forms of forced labor in rural areas in northern Brazil (mainly in Pará state). In the petrochemical and galvanization industries, very low levels of compliance with health and safety regulations coexisted with relatively high rates of occupational disease (including cancer) due to workers' exposure to benzene and zinc-based chemicals. In these two cases, labor inspectors used their coercive power – by issuing sanctions and summoning other regulatory agencies, such as the State Attorney General's Office, to do the same – and worked together with the largest firms in these industries to build a tripartite system for monitoring the handling of dangerous chemicals by these firms' suppliers and subcontractors. The case of forced labor in the rural areas of Pará state is another example in which labor inspectors combined heavy sanctions on farmers with other strategies such as the creation of a “dirty list” – a list of the employers involved in cases of forced labor – which is used by banks and credit institutions to deny agricultural loans for non-compliant producers.

Table 5 - Correspondence between cases' outcomes, inspection styles, and explanatory conditions

<u>Type of Outcome</u> <u>Inspection Style</u>	<u>Sustainable Compliance</u>	<u>Compliance</u>	<u>Non-Compliance</u>	<u>Number of cases (each inspection style)</u>	<u>Associations matching explanatory conditions</u>
<u>Combined (coercive + pedagogical practices)</u>	1. Carnival- <i>cordeiros</i> , Salvador – Bahia; 2. Grain and seed production, Paracatu/Unaí – Minas Gerais; 3. Auto-parts, Belo Horizonte metro area – Minas Gerais; 4. Fireworks, Santo Antônio do Monte – Minas Gerais; 5. Galvanization, São Paulo metro area (ABC) – São Paulo; 6. Petrochemical (Benzene), Camaçari – Bahia; 7. Special mobile group on forced labour – Pará;	8. Construction, Belo Horizonte – Minas Gerais;		8	7
<u>Punishment / sanctions only</u>	9. Iron-ore mining, Itabira/Brucutu – Minas Gerais;	10. Charcoal production and reforestation, Camaçari area – Bahia; 11. Ceramics production, Camaçari area – Bahia; 12. Rural Inspection – Western Bahia; 13. Software workers' cooperatives, Recife – Pernambuco; 14. Gold Mining (Morro Velho), Nova Lima – Minas Gerais; 15. Footwear manufacturing, Jequié– Bahia; 16. Footwear manufacturing, Nova Serrana – Minas Gerais.	17. Telemarketing, Belo Horizonte – Minas Gerais; 18. Repetitive stress injury in Ford assembly line, Camaçari – Bahia; 19. Ornamental stone quarrying, S.T. das Letras and Papagaio – Minas Gerais; 20. Ornamental stone quarrying – Espírito Santo;	12	11
<u>Guidance / Pedagogy only</u>	21. Auto-parts, São Paulo metro area (ABC) – São Paulo; 22. Pulp and paper – Southern Bahia;		23. Sisal, Valente and region – Bahia; 24. Fireworks, Santo Antônio de Jesus – Bahia	4	2

In another case in the sample, inspectors also employed a combination of sanction and assistance, but failed to achieve the expected sustainable compliance outcomes. Even though their intervention – aimed at improving safety conditions in the construction industry in Belo Horizonte – involved fines, negotiation and training, firms still had incentives to evade compliance in order to reduce production costs. Conversely, there are also cases in which inspectors employed only sanctions or only pedagogical strategies, but still ended up producing sustainable compliance outcomes. These include the collective agreements mediated by inspectors in the auto-parts industry (ABC, São Paulo) and the pulp and paper industry (Southern Bahia); and the termination of subcontracting practices in Vale’s iron ore mining in Itabira, Minas Gerais, once the firm realized the cost-saving advantages of directly hiring miners.

The fact that these cases do not confirm the association between combined enforcement practices (sanctions and assistance) and sustainable compliance suggest that the argument developed in this study is not “deterministic”, but rather “probabilistic” – i.e. combined enforcement practices are more likely to lead to sustainable compliance than non-combined strategies (see table 5). The margin of error implied by the above cases is a reminder that many other variables not examined in this study – e.g. the level of organization of business associations and unions, market upturns and downturns, pressures from domestic and foreign buyers, among others – might interfere by creating new opportunities and constraints for both firms and inspectors to agree on the promotion of sustainable compliance. However, the strength of the present argument – which suggests a strong (albeit non-deterministic) association between the combination of practices and sustainable outcomes – lies in its ability to challenge existing models of regulation and

provide a grounded understanding of the process through which different inspection practices affect firm behavior.

Conclusion

The first part of this dissertation involved close observation and analysis of the work of labor inspectors and explored the behaviors, practices, and strategies implemented by these bureaucrats when they perform their job. The findings from comparative analysis (cross-case and within-case comparisons) indicated greater variation in the way labor inspectors implement regulation than one would expect within the same legal regime (wages and hours laws and health and safety regulations) and organizational setting (the National Department of Labor Inspection). Existing typologies in the literature on styles of regulation (e.g. deterrence vs. compliance, or punishment vs. education, negotiation, for example) could not predict the observed variation in behavior in the diverse set of cases investigated. Such typologies fail to capture important nuances, such as when labor inspectors combine different methods (sanctions and technical or legal assistance) or vary the sequence of application of such methods in the same intervention.

In addition, the comparative analysis also indicated that such variation in behaviors is consequential for the outcomes of labor inspection and regulation. By tracing the processes involved in different interventions, I demonstrate consistent causal links between the variation in behavior and the variation in the outcomes, in terms of levels of compliance with the law in sectors and firms. That is, the cases in which labor inspectors

implemented a combination of sanctions with technical or legal assistance, and had a greater latitude (discretion) in deciding when and where to combine such methods, were precisely the ones in which they were more successful in developing compliance solutions that simultaneously improved working conditions and reduced the burden of legal compliance on firms.

These findings, however, raise questions about the circumstances and conditions that favor the enactment of one style or pattern of bureaucratic behavior over another. That is, what explains such variation in behavior? More specifically, what are the features of organizational structures and management systems that create incentives and opportunities for the types of bureaucratic behavior or inspection practices that spur learning and development processes? These questions take the current investigation to a different level of analysis and are the focus of the next part of this dissertation.

Part II – Managing Discretion from Above

“Managing discretion is at the heart of the problem of street-level bureaucracy.”
(Lipsky, 1980, p.196)

“If you ride a horse, sit close and tight. If you ride a man, sit easy and light.” (Poor Richard’s Almanack, 1734)

Introduction⁴⁸

Regulatory inspection in areas as diverse as labor, environment, food and drugs, among others, has often been depicted as legalistic and bureaucratic; inspectors, apparently arrested in the “iron cage” of bureaucratic control cannot do much more than “go by the book” (Bardach and Kagan, 1982). Alongside this standard account, a number of studies (e.g. Silbey, Huisng, and Coslovsky, 2008; Piore and Schrank, 2008, Pires, 2008) have documented instances in which inspectors nonetheless used a systemic perspective of their limited actions within a network of interconnected firms, organizations, and government agencies to produce technological, legal, and managerial solutions to the obstacles preventing firms from complying with the law. Why do bureaucrats sometimes limit themselves to the narrow boundaries of their formal mandate strictly implementing the law as written on the books, while in other cases they refuse to be confined by legalistic interpretations of legislative intent and instead adopt innovative strategies, working collaboratively with other organizations to solve complex problems?

⁴⁸ A version of this chapter, entitled “Taming the Beast: Discretion, performance and accountability in two models of labor inspection work,” is forthcoming in *Regulation & Governance* (2010).

The recognition of such variation in the behavior of law enforcement agents raises two larger questions: what accounts for variation in bureaucratic behaviors at the street-level? Under what conditions are bureaucratic agents more likely to behave in ways that are conducive to learning and development? There are many hypotheses and potential lines of inquiry to address these questions, such as the investigation of legal traditions or the type of legal regimes, organizational cultures, social networks, characteristics of local industries and firms, or bureaucrats' prior experiences, among many other possibilities. This part of the dissertation, in turn, contributes to the ongoing debate by exploring one specific set of variables of repeated policy relevance: organizational models for managing discretion and the performance of bureaucrats at the street-level. I argue that variations in organizational structures and strategies for managing discretion and performance create opportunities for bureaucrats to perceive the root causes of compliance problems, as well as the incentives for them to adopt inspection practices that promote learning, innovation, and problem-solving.

The chapter proceeds by first reviewing the fear of discretion that has characterized debates in legal studies and political science since the mid-20th century. Then, I briefly describe how two contemporary models in public administration – namely, New Public Management and the Experimentalist Governance approach – differ from traditional responses promoting administrative law and oversight as remedies for the problem of discretion. By comparing these two models, I identify variations in the strategies they offer to reconcile organizational performance with accountability on the misuses of discretion. After contrasting these theoretical models, I present a quasi-experiment⁴⁹ empirically

⁴⁹ A quasi-experiment involves naturally occurring instances of observable phenomena which approximate or share some of the properties of controlled scientific experiments, with the exception of random

comparing these two models within the same organizational setting. Using data collected through on-site fieldwork (conducted between December/06 and August/08) in the Brazilian Department of Labor Inspection, I show how each model shapes inspection work and the outcomes of these different inspection practices. Finally, I outline some of the most salient aspects of these comparisons, proposing in conclusion more general hypotheses about the relationship between forms of accountability and staff motivation, and between collaborations, problem-solving, and responsiveness.

The fear of discretion and contemporary responses in public administration

The discretion enjoyed by bureaucratic agents in daily decision-making processes has received insufficient attention in the social sciences (Davis, 1969; Hawkins, 1992)⁵⁰, as the Weberian view of bureaucracy as a system of impersonal and dispassionate rule-oriented behavior prevailed as the hegemonic framework of analysis,⁵¹ with but a few dissenting voices (for example, Gouldner, 1954; and Crozier, 1964). Research in different

assignment of groups (to be discussed later). The quasi-experimental research design allows for the comparison of different groups (e.g. management models) and their potential effects on outcomes (e.g. performance of inspectors), minimizing threats to external validity. Since quasi-experiments are natural experiments, findings in one may be applied to other subjects and settings, allowing for some generalizations to be made about the population. Quasi-experiments are attempts to uncover a causal relationship (based on the differences across the groups examined), even though the researcher cannot control all the factors that might affect the outcome (McDermott, 2002; Gibson et al., 2002; Gibbons and Herman, 1997).

⁵⁰ According to Davis (1969), before the 1970s there were many studies around the theme of discretion, but very few (or none) approached it as the central object of inquiry. According to the author, traditionally, jurisprudence studies focused too much on the law; public administration studies denied the human/individual value-oriented component of organizations' management; and administrative law focused the small percentage of actions that involved formal proceedings and judicial review.

⁵¹ In Weber's formulation (1946), bureaucracy was an ideal-typical kind of social organization based on the rationalization of the administration and the law, in contrast to patrimonial and charismatic forms of government. Bureaucratic organizations – characterized by meritocratic recruitment (competitive exams and promotion by merit) and long-term rewarding career paths – perform their tasks according to predictable and impersonal rules.

fields – such as socio-legal studies (Wilson, 1968; Bittner, 1967, 1990; Brown, 1981; Van Maanen, 1973, 1978) and policy studies (Leonard, 1977; Lipsky, 1980; Silbey and Bittner, 1982; Wilson, 1989; Maynard-Moody and Musheno, 2003) – has empirically demonstrated that bureaucratic discretion is pervasive and possibly indispensable in legal and administrative systems. Despite what appears to be the inevitability of discretion, debates have more often been characterized by the fear of bureaucratic tyranny and the risks of unchecked decision-making, than by the potential benefits of responsible exercise of discretion.

Scholars writing within the tradition of liberal legalism interpreted discretion as a threat to the rule of law – a breach of the “social contract” – creating space for inconsistency and arbitrariness, and consequently, the potential for injustice. According to this liberal tradition, discretion needs to be confined, structured and checked by administrative law – procedures and rules regulating the conduct and practices of administrative agents (Davis, 1969; Handler, 1986; Bryner, 1987; Hawkins, 1992). For political scientists, more concerned about democratic structure than legal process, discretion also posed a challenge to the idea of political accountability (between bureaucrats and elected officials), and called into question the liberal structure of constitutional separation of powers (checks and balances). Within this tradition of constitutional democracy, much attention has been devoted to limiting bureaucratic discretion by instituting procedural mechanisms and oversight on agency performance by Congress, the President, and civil society (Calvert et al., 1989; McCubbins et al., 1987; McCubbins & Schwartz, 1984).

Retrospective evaluations have demonstrated that legal procedures and oversight do reduce levels of discretion. However, they also showed that the remedy has been as bad as, if not worse than, the disease. For example, Bryner (1987) and Handler (1986) documented how excessive and misdirected actions to reduce discretion have damaged the capability of public sector organizations to accomplish delegated tasks, by making administrative processes more confusing and reducing the ability of agencies to function effectively. As a result, additional attention to bureaucratic procedures has undermined parallel attention to aiding bureaucracies make the complex decisions necessary for the implementation of policies and regulation.

In the last several decades, as the efforts to limit discretion *at the expense of* organizational capacity have proved increasingly inefficient as well as ineffective, two bodies of literature in public administration have offered models that purport to balance the control of bureaucrats' discretionary decision-making with a concern for bureaucratic capacity and competence. In contrast to the earlier efforts, these new models for public administration emphasized organizational structure and managerial practices rather than rules and legal procedures, administrative law, and oversight, as more pragmatic and effective means for managing discretion⁵².

First, the New Public Management (NPM) paradigm became one of the mantras of public sector reform throughout the world in the 1980s and 1990s. Against the breakdown of bureaucratic capacity in the previous decades and widespread discontent with government performance, NPM brought the hopes of improving bureaucracies' efficiency

⁵² Yet another strand of literature on "controls" on bureaucratic discretion, characterized by a sociological perspective, emphasizes forms for managing discretion other than formal rules/law or organizational structure, including: organizational culture, context, social norms, groups, etc. (see, for example, Hawkins, 1992; and Baumgartner, 1992).

and responsiveness to political principals and citizens, with its orientation towards outcomes and optimization of the public budget. The literature on the topic identifies three main characteristics of public sector reforms categorized under the rubric of NPM: a) decentralization, with the disaggregation of subnational government actors, splitting up of large hierarchical structures, and separation of core vs. other functions of government; b) privatization and competition, with the deregulation, creation of quasi-markets for most public services, and public-private partnerships (PPP); and c) performance management, with the institution of targets and output indicators to measure the performance of organizations and their bureaucrats, and a strong emphasis on pecuniary-based, specific performance incentives such as pay-for-performance schemes (Osborne and Gaebler, 1992; Dunleavy and Hood, 1994; Pollit, 1995; Bresser-Pereira and Spink, 1999; Barzelay 2001).

The NPM solution to the problem of discretion claimed to avoid the mistakes of the past by emphasizing the measurement of outputs rather than control of means via legal and administrative procedures. Under this model, public sector organizations should define a short list of performance targets that can be narrowly defined, quantified, and measured. Each and every bureaucrat is assigned a piece of the overall target. Supervisors constantly monitor bureaucrats in terms of their performance in meeting these targets, in reference to quantitative output indicators. In order to provide the right incentives, managers administer bonuses (pay for performance schemes) on the salaries of only those workers who meet the target periodically. Thus, the NPM solution restricts bureaucrats' discretion primarily by providing strong incentives (significant increase in salaries) only for the desired actions/outcomes without severely limiting the capacity of bureaucrats to

pursue policy goals (i.e. less paperwork, greater latitude in ways to deal with problems, etc).

The second model, the Experimentalist Governance (EG) approach, emerges as a criticism by EG scholars (C.Sabel, J.Zeitlin, M.Dorf, and W.Simon, among others) of the untenability of the economic, rational framework at the heart of NPM proposals, most specifically the assumptions about principal-agent relationships. Drawing from institutional economics, NPM models in general separate conception from execution and assume the existence of *principals* (be they civil society actors, political parties, elected officials, etc.) who already know what needs to be done to solve collective problems. Supposedly, these principals are ready to translate public goals into detailed performance targets – for example, a 50% increase in the formalization of labor, a 20% decrease in the school drop-out rates, etc. In contrast, EG scholars argue that there are no such principals in the polity with the robust and panoramic knowledge, nor unchallenged consensus assumed for this directive role. Therefore, the main problem for reform is not to determine performance targets and the right incentive system, but to determine ways actors can interact, discover, and learn together what needs to be done, and how to do it (Sabel, 2004; 2005).

Thus, in this second management model, the solution requires experimentalist organizations “that assume the provisionality of their goals and institutionalize social learning by routinely questioning the suitability of their current ends and means, and by periodically revising their structures in light of the answers” (Sabel, 2004: 4). Experimentalist organizations display the attitude of constantly detecting and correcting errors at the lowest levels, and then adjusting the higher level structures to generalize

successes and encourage more refined error detection. Through constant reflexive adjustment, EG scholars argue public sector organizations can simultaneously: a) expand their capacities to solve complex problems by adapting to rapidly changing conditions and by tailoring their responses to diverse clienteles; and b) heighten accountability of the front-line bureaucrats to their supervisors and the larger public consistent with the rule of law. As the example of state child protective service systems reform in the United States indicates:

“The reforms do not achieve accountability by constraining frontline decisions through rules. Rather, frontline discretion is increased, but joined to the requirement that, in the course of establishing and adjusting plans for children, frontline workers and the professionals and stakeholders with whom they collaborate explain the choices they make in terms of the governing values of the program. Review of these explanations in turn allows administrative superiors and outside oversight bodies to detect and begin considering how to correct misjudgments by individual case workers, systemic flaws in operating routines at the local office or program level, and even ambiguity or mistake in the agency’s own conception of its key commitments and plans for achieving them. Thus, the agency learns to improve while monitoring what it does, and the same process that makes customization of services effective makes it accountable as well. We call such learning-by-monitoring institutions “experimentalist”. (Noonam, Sabel, and Simon, 2007: 3)

Recent developments in experimentalist institutions have been documented in different countries and areas of public service.⁵³ In all these cases, analysts attributed the successful outcomes observed to the greater autonomy of front-line bureaucrats to adapt policy/project goals during their implementation in each specific situation, and to the establishment of mechanisms for continuous error detection and correction based on arguments and reports from the front-line (usually peer review, benchmarking, etc.), culminating in periodic revisions of framework goals and procedures.

⁵³ Reform of public schools and rolling rule regimes (meta-regulation) in the regulation of food safety in the US (Sabel, 2004); reform of state child protective services systems in Alabama and Utah (Noonam, Sabel, and Simon, 2007); welfare services in the Netherlands, Denmark, and Ireland (Sabel, 2005); systems of social protection, occupational health and safety, drug and food safety, telecommunications, electricity, maritime safety, and financial services in the European Union (Sabel and Zeitlin, 2008).

These models offer two very different solutions to the notion of unchecked autonomy of government agents. The NPM solution to managing bureaucrats' discretion emphasizes narrowing programs and holding bureaucrats accountable to the attainment of specific and quantifiable performance targets. The EG solution suggests a process through which bureaucrats are constantly required to give reasons through peer and/or public review procedures for their discretionary decisions in resolving problems.

Debate concerning the efficacy of these models is ongoing and the volume of research keeps increasing. However, efforts to compare these two models (NPM vs. EG) side by side and their implications for governance and the management of regulatory bureaucracies remain scarce. This chapter seeks to fill in this gap by expanding our knowledge of how these two models are enacted by comparing: a) how they organize the work of regulatory inspectors; b) the impacts of each approach on inspection outcomes; and, finally, c) the strengths and weaknesses of different solutions to the problem of managing discretion.

Two models for managing regulatory discretion within the same organizational setting: research design and methods

This research deploys of a quasi-experimental research design⁵⁴ by observing the operation of both managerial models working in the same governmental agency: the Department of Labor Inspection (DLI), within the Brazilian Ministry of Labor. The agency's mission is to assess compliance with and enforce the national labor regulation, including both wages and hours laws and health and safety norms. The authority to enforce labor regulation is established at the federal level but its implementation takes place through a decentralized system, through which approximately 3,000 labor inspectors are distributed across 27 state-level offices. These inspectors have jurisdiction over more than 78 million workers employed across the formal and informal labor markets, in 2.7 million registered firms, and untold unregistered firms, across all 5,564 Brazilian municipalities. Even though the agency is under-staffed and under-resourced given the magnitude of the task, the career of labor inspectors has been significantly reformed since the country's re-democratization in 1985, leading to higher organizational capacity and professionalization by recruiting inspectors through competitive public service exams and rewarding career performance and longevity in one of the best-paid jobs in the federal civil service.

⁵⁴ The study involves the systematic observation of distinct phenomena (management models) occurring under approximately stable and controlled conditions (organizational setting). However, even though many relevant variables are held constant (as it will be described below), the current research design does not control for the individuals selected to participate in each group. Differently than an experiment in which groups/cases are randomly assigned by researchers, in a quasi-experiment the groups to be compared are naturally-occurring or pre-existing. Unlike the true experiment then, groups in a quasi-experiment are not probabilistically equivalent; rather the assumption is that such groups will differ from the outset on some essential quality: e.g. routines of work, and management procedures and structures (Gibson et al., 2002). Therefore, rather than focusing on the characteristics of individuals, this study examines whether different management models are more or less likely to influence the behavior of bureaucrats at the street-level.

As I conducted fieldwork⁵⁵ on the organization trying to understand the variation in bureaucratic behavior at the street-level (Part 1), I realized there were two different systems operating simultaneously through which management (at the central level) supervised or monitored the work of inspectors. The first system follows closely the dictates of NPM models and is based on individual and territorially circumscribed inspections monitored on the basis of individual performance targets (e.g. number of workers formally registered). It includes a pay-for-performance compensation system, reaching up to a 45% bonus on inspector' salary, being one-third tied to individual performance and two-thirds tied to the collective performance of inspectorate. I also noticed a second system, resembling the EG approach; it was based on teams of inspectors working on projects organized around themes, sectors, or problems (e.g. child labor, illegal subcontracting, or silicosis in the mining sector), monitored on the basis of team progress reports and their ability to address sector-wide problems.

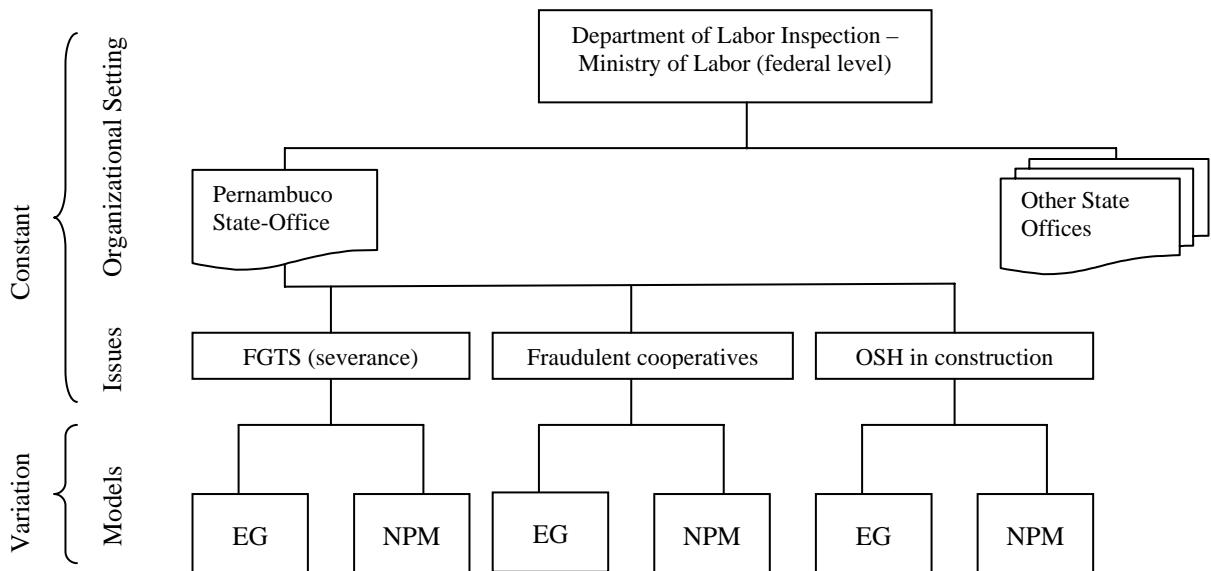
The coexistence of the two models offered a unique opportunity to compare these two forms of organizing inspection work⁵⁶. As depicted in Figure 1, on the one hand, many important variables are held constant: the same organization and group of professionals (i.e. same career, status, legal mandate, salaries, etc.), enforcing the same regulations in the same country and state (for example, Pernambuco), while dealing with

⁵⁵ More details on data collection procedures and techniques are described in the introduction to the dissertation.

⁵⁶ It is not the goal or focus of the present chapter to explain how these two different methods for organizing inspection work emerged within the same organization. This is the object of the next part of this dissertation (Part 3), in which I explore how historical internal cleavages between factions of inspectors with different interpretations of the role of labor inspection (revenue-collection vs. social development) shaped the development of competing models and their respective organizational structure (inspections practices, monitoring systems, etc.). As a result of the internal struggle, fueled or moderated by central management and external actors (e.g. ILO, Ministry of Planning, unions, etc.), it is possible to observe a constantly renegotiated balance between the forces of fragmentation (coexistence of two models) or convergence (the supremacy of one model over another) in the last 15 years.

the same specific issues (cases involving both wages and hours and health and safety regulations)⁵⁷. On the other hand, under this relatively constant organizational setting, there are two different methods for organizing and supervising the street-level work of inspectors (i.e. different strategies for managing discretion – NPM and EG). Therefore, the comparisons under this quasi-experiment allow for the “isolation” of the effects of the independent variable “management models” on *inspectors’ routines of work* and on the *outcomes of their actions*.

Figure 1 – Research Design and Case Selection



⁵⁷ The selection of this subset of cases for comparison employed a technique to select the best possible sample when we do small sample qualitative studies: statistically non-representative stratified sampling (Trost, 1986; Miles and Huberman, 1994). The goal of the sampling strategy is not to build a representative sample in the statistical sense, but to maximize variation along the independent variables. Differently than the samples of quantitative studies that tend to be random (and yield few variations when the sample is small), the sample for this study is purposive and stratified; that is, it identifies subgroups and facilitates comparisons across cases to explore the links between the dependent and the independent variables.

New Public Management vs. Experimentalist Governance: discretion, work routines, and outcomes

Looking closely at the inspection agency in the state of Pernambuco, I compare the work of labor inspectors divided in two groups, one managed following the NPM model and the other through EG. I look at how these two groups handled a common set of issues: severance payments, fraudulent cooperatives and illegal subcontracting, and workplace safety in the construction industry. Although I focused on Pernambuco, with the purpose of controlling for relevant differences in political and economic environments across states in Brazil, these issues and the two management models were equally present in the ordinary work of labor inspectors in others states. For each of the three issues, I compare a) how the different management models organized inspection work, (formal inspection procedures, practical routines, and enforcement strategies); and b) the impacts of these organizational similarities and/or differences on the labor inspection outcomes in Pernambuco.

FGTS Collection

In Brazil, national labor law establishes that formal workers have the right to severance payments⁵⁸ when dismissed or retired, by accessing a special job security fund: FGTS (*Fundo de Garantia por Tempo de Serviço*). Every month, employers contribute 8% of a worker's wage to this fund, which accumulates while the worker is still employed by the firm (i.e. proportional to the worker's tenure). As an important source of revenue for

⁵⁸ In Brazil, all formal employment relationships must be recorded by employers on the employees work permit (*carteira de trabalho*). This permit entitles the worker to several wage and non-wage benefits paid for by the employer, such as retirement benefits, unemployment insurance, and severance payments.

the federal government,⁵⁹ the FGTS was instrumental in the fiscal adjustment of 1990s. The Ministry of Planning put pressure on and provided incentives for labor inspectors to focus on the violations of FGTS payments, especially non-payment or under-payments by firms, in order to raise federal revenues. Thus, for a decade, since the mid-1990s, the Department of Labor Inspection (DLI) defined FGTS collection as one of the main priorities for labor inspection in Brazil. Nonetheless, the effort of collecting these contributions through labor inspection has been organized in two different yet coexisting ways in DLI's Pernambuco State Office.

The first strategy took shape as soon as FGTS collection became a national priority, and following NPM reforms, DLI determined that every individual inspector anywhere in the country had to meet performance targets in terms of collecting such revenue. DLI instructed inspectors to verify conformity with FGTS in every single inspection, even in the cases in which inspection was motivated by other types of labor law violation. The impacts of defining FGTS collection as a priority and establishing performance targets were considerable – the collection of such revenue by inspectors in the entire country increased fourfold from 1996 to 2005 (Table 6).

Table 6 – Total FGTS collection by labor inspectors in Brazil, 1996-2005

Year	Amount (US\$)	Year	Amount (US\$)
1996	114.202.231,20	2001	368.500.063,09
1997	225.119.264,87	2002	480.284.704,85
1998	275.295.590,83	2003	398.969.690,00
1999	307.418.537,60	2004	414.483.525,00
2000	411.332.339,08	2005	411.443.815,00

Source: MTE/SIT

⁵⁹ FGTS is the main source of funding for housing, sanitation, and infrastructure projects, as well as social policies, in the whole country. And, in public accounting terms, this fund plays a major role in balancing federal debts vs. revenues.

At the same time, since the mid-1990s, inspections in Pernambuco (as well as in other Brazilian states) have been organized according to a zoning system. The state-level office assigns pairs of labor inspectors to a geographic district within the state. Inspectors are expected to cover their area by going in effect door to door, business to business, searching for firms violating labor regulation in their jurisdiction. In the absence of any special form of planning (e.g. diagnostic instruments, investigation schedules), workplace inspections and investigation strategies lack a strategic focus and are diverse, varying by each pair of inspectors. Inspections are triggered primarily in response to complaints received from individual workers and unions (cf. Silbey 1980-1981). In addition to having a FGTS collection target, each individual inspector is also expected to inspect a minimum number of firms each month. These performance targets (monetary and number of inspections) create incentives for inspectors to meet their goals by focusing their enforcement efforts on many small firms with small FGTS debts, because these are easier and quicker to process, leaving aside larger firms with potentially larger but more complicated debts. As a result, a large number of inspectors, virtually all, have been investing most of their time on one single issue: collecting FGTS. The result is not very efficient in terms of FGTS collected (in US\$) per inspection when compared to the strategy employed by a small group of inspectors under an alternative management system (see Table 7, below).

In 2006, DLI authorized the creation of a pilot project in the Pernambuco State Office: the FGTS Operational Group or GO-FGTS⁶⁰. Four, out of the 145 inspectors in the State Office, were assigned to the GO-FGTS. As these inspectors formed the group, they

⁶⁰ In 2007, the project is scaled up and operational groups become mandatory for all state offices.

were automatically discharged from meeting the performance requirements assigned to ordinary inspectors. DLI classified them as performing “special activity”, thus immune from typical NPM performance measurements. By grouping these inspectors together and by freeing them from predefined quantitative performance targets and inspection procedures, they were also no longer confined to geographic districts. In effect, they were given more organizational space for devising enforcement efforts with a strategic focus on economic activities and firms with potentially higher FGTS debts.

The first step taken by the newly created group was to interact with CEF (*Caixa Econômica Federal* - the federal bank that administers FGTS deposits). The group of inspectors requested access to information with which to develop a system capable of identifying the firms with larger unpaid debts and the sectors with greater propensity to have indebted firms. With a data analysis system in place, the GO-FGTS identified a short list of 1,000 firms with higher potential for FGTS collection out of the universe of 62,000 firms in Pernambuco. These firms together employ approximately 40% of all formal workers in the state; individually, they have relatively large workforces of their own or operate in sectors that have traditionally violated severance payment norms (e.g. beverages, hotels, sugarcane processing). Targeting these firms made the task more manageable and, according to a member of the operational group, “... we can not only inspect but also monitor compliance in 1,000 firms.” In addition to monitoring, focusing on this target group allows the operational group to tailor enforcement strategies to each economic sector, adapting procedures to take advantage of particular circumstances, in order to produce greater impacts in terms of bringing a large number of firms into compliance and collecting as much revenue as possible in each intervention.

Before the development of this informational system, it would take up to 8 months for one inspector to audit a large firm with approximately 3,000 employees, for example, and then to identify only the FGTS debts and irregularities. As a result, large firms with complex debts were frequently ignored or under-inspected. With the new data analysis tools, it takes only a few hours to identify FGTS irregularities in a firm. After obtaining such information, inspectors can perform workplace audits, having in hand the numbers and documental evidence indicating the amount and potential causes of debt. In the course of these inspections, firms can choose to pay the debt right away, negotiate a payment schedule, or refuse to pay and bear the respective sanctions. In order to increase the coercive power of their operations, the group of inspectors reached out and partnered with the federal treasury attorneys, who can bring lawsuits resulting in heavy fines against debtors of the national treasury.

Finally, in contrast to the responsive approach that often deals with one firm at a time employed by the pairs of inspectors working under the district/zone system, the operational group developed a standardized procedure for inspection. Through repeated, almost continuous conversations among its members and partners about different strategies for inspection, the group developed a repertoire of tactics that proved efficient and effective. The group has periodic meetings to constantly discuss results and revise these practices as situations change. This relative standardization has had positive impacts for firms: it creates predictability and a sense of justice to the degree that firms discover that inspectors are using the same procedures for all firms in the same sector. The relative consistency, as compared to the district-pair system also creates greater legitimacy and

more positive decisions when cases are appealed in court because inspection work appears coherent and uniform.

The GO-FGTS procedures go beyond the strategic targeting of large firms. They also involved continued interactions with relevant partners, such as banks and federal treasury attorneys, leading to even better diagnostic information and a customized approach for each economic sector, which cumulatively produced enforcement with greater impact. When compared to the outcomes of the zone system (Table 7), the GO-FGTS, which employs only 3% (4) of the inspectors in the Pernambuco office, collected 65% of the total FGTS collected by all inspectors in the state. When the group was created, Pernambuco FGTS collection doubled from 2005 to 2006. In 2007, the Pernambuco GO-FGTS collected the highest absolute amount of FGTS (higher than in the most industrialized states) and benefited the largest number of workers among Brazil's state offices. As the members of the group were freed from meeting predefined performance targets and had more latitude to develop more complex actions by collaborating with other government agencies, they were able to be more productive using minimal internal resources.

Table 7 – Comparing the outcomes of FGTS collection by labor inspectors in the Pernambuco State Office, 2007

	Number of inspectors	Inspected firms	Total FGTS collected and notified by inspection (US\$)	% of firms inspected	% of total FGTS collected	Avg. FGTS collected per firm (US\$)	Avg. FGTS collected per inspector (US\$)
<i>Zone System (indiv. performance)</i>	141	12,959	12,583,883.16	98.57%	34.81%	971.05	89,247.40
<i>GO-FGTS</i>	4	188	23,568,255.16	1.43%	65.19%	125,363.05	5,892,063.79
Total Pernambuco	145	13,147	36,152,137.96	100%	100%	2,749.84	249,325.09
Total Brazil	3,174	285,462	566,486,244.08	--	--	1,984.45	178,477.08

Source: MTE/SIT and SRTE-PE.

Fraudulent Cooperatives and illegal subcontracting

Cooperatives of workers or producers have existed in Brazil since 1891, but first received legal status in the 1970s; the 1988 Constitution further consolidated and stimulated this arrangement for work and production. However, in 1994, seemingly minor changes introduced in a paragraph of the labor law created ambiguity and uncertainty. Very quickly, cooperatives sprang up all over as a low-cost method for firms outsourcing labor-costly activities (e.g. from cleaning and maintenance services to administrative staff, doctors and nurses in hospitals). In the context of worldwide restructuring of production, firms have been systematically ending historical legally contracted employment relationships and re-contracting the same group of workers through a labor cooperative. For firms, outsourcing to cooperatives represented a way to bypass labor regulations, avoiding labor costs and the payment of employees' benefits, as they established service,

rather than labor, contracts with the group of workers in a cooperative. For workers, these cooperatives represented continual employment, albeit with the loss of all prior employment rights and benefits; they become members, not employees, of service provision cooperatives.

Because the cooperatives seemed to exploit an unintended legal loophole, and because they signaled a decline in both work protections and FGTS collections, current judicial interpretations of labor law in Brazil disallow the use of cooperatives for outsourcing “end-activities” (e.g. software designer in a software development firm) and for the mere intermediation of labor (e.g. cooperatives that produce nothing but the labor force of its members). As a result, these fraudulent cooperatives have been an object of intervention by labor inspection. And, as in the previous example of FGTS collection, inspectors have been dealing with the problem of fraudulent cooperatives simultaneously through two different approaches in the Pernambuco State Office.

The first approach is also based on the organization of inspection work in pairs of inspectors according to a geographic zoning system. Following the same lines of FGTS inspection (above), inspectors are expected to meet performance goals with regard to the formalization of employment relationships. As firms have been resorting increasingly to outsourced labor from cooperatives, several inspectors in the Pernambuco office started to notice the frequency with which workers who previously had formal and direct jobs were being pushed into these service provision cooperatives, thus undermining the office’s targets for increasing formalization rates (i.e. the number of jobs created under formal contracts and with all the legally mandated rights and benefits).

However, these fraudulent cooperatives are not easy to deal with under the quick and mechanized inspections anticipated by the performance measurement system of predefined and quantified goals. Thus, once they spot such frauds, pairs of inspectors have dealt with them with non-uniform understandings and inspection procedures – e.g. collection of accounting records on-site or by formal request from the office, interviews with workers during work hours or out of the workplace, investigation of subcontracted cooperatives or only hiring firms – resulting in sanctions (notifications and fines) easily overruled when appealed by firms⁶¹. In addition to the growing number of complaints arriving from workers and unions on the spread of these fraudulent arrangements, labor prosecutors (MPT – *Ministério Público do Trabalho*) have also been demanding more effectiveness from labor inspectors in dealing with the issue (i.e. developing detailed investigations and producing the evidence necessary for prosecutors to file lawsuits against firms).

In response to these external demands and also to internal pressures from an informal pioneering group of inspectors struggling with the issue of fraudulent cooperatives in the Pernambuco State Office since 2000, state and federal managers authorized the creation of ECOFREM – a group of 7 inspectors dedicated to the investigation of frauds in employment relationships. Recognizing the complexity of the problem and the need for a special approach, federal managers granted “special activity” status for the members of the group, exempting them from the standard performance measures. In order to be effective, the work of the group required a more open-ended process, detailed investigation to produce the documental proofs that characterize the

⁶¹ This is the type of behavior and inspection practice employed in the interventions on software development cooperatives in Recife that led to “unsustainable compliance” outcomes, such as described in Part 1.

fraudulent employment relationship. To create sustainable cases against employers and fraudulent cooperatives, the group used diverse tactics including affidavits from workers, negotiation with firms, partnerships with unions, professional associations, and government organizations (including judges and state attorneys). To check misuse of this open-ended mandate, state-level managers monitor ECOFREM's performance on the basis of periodic written progress reports that are then used to justify the continuation of the project.

Since its creation, ECOFREM has maintained intense dialogues with MPT prosecutors (for the characterization of frauds and employment relationships) and with labor unions (exchanging specific information about hiring practices in each sector) in order to devise common strategies and procedures for intervention and monitoring. The application of such standardized procedures provided the same treatment for firms in the same sector and strengthened the consistency of the regulatory effort. Since the creation of ECOFREM, no single fine has been overruled in Pernambuco labor courts. Moreover, the investigation strategies and practices are periodically reassessed by inspectors together with MPT prosecutors, who strengthen the coercive power of the group by filing lawsuits against firms and cooperatives that fail to comply with consent decrees. As a result of these exchanges, the group started undertaking sector-wide operations for each economic sector. The main goal was to promote change in hiring practices in entire sectors, sector-by-sector, especially those sectors with large numbers of firms traditionally engaged in illicit forms of subcontracting.

From 2001 to 2002, ECOFREM launched an operation to tackle fraudulent hiring arrangements in the software industry in Recife (Pernambuco), as they realized that 32%

of all complaints filed about “cooperatives” were in the local IT industry. According to the coordinator of the group:

“The union [SINDPD] came after us and the MPT saying they had identified that the sector was growing but formal employment and the wage mass were decreasing. There was something happening. They had heard from some workers about the growth of cooperatives in the sector. We knew by experience that, in previous years, workers were mostly formal in this sector.”

Firms were resorting to cooperatives as a strategy to cut production costs as they were facing fierce competition from IT firms in India. As the investigations evolved, the group realized that nearly all firms in the sector had some kind of arrangement involving subcontracting of software designers, systems engineers, and other professionals, in the form of “cooperatives”. These workers labored everyday in the same office, subordinated to the same boss, all of which constitute the employment relationship, according to Brazilian regulations.

The inspectors and their partners were aware that the cost of formally hiring all these workers (retroactively) was so high for the mostly small and medium-sized firms facing international competition that could put them out of business. Nonetheless, they could not ignore the situation. To meet the various interests of the firms, the workers, and the state, the group of inspectors held a series of meetings with 35 firms. Through a course of eight months and more than 50 meetings, they negotiated a compliance schedule through which firms gradually re-hired workers directly, as demands for productions increased. Between 2001 and 2003, the operation led firms to re-hire 2,215 workers previously involved in fraudulent cooperatives.

Between 2002 and 2006, ECOFREM developed an operation in the health care sector. In addition to receiving a significant number of complaints from workers, the group of inspectors had already diagnosed an acute problem in the sector through the analysis of

official data on the termination of formal labor contracts in hospitals and clinics, especially for doctors, nurses, and other health care professionals. In Recife, hospitals, physiotherapy clinics, and laboratories, have long been misclassifying workers as members of service provision cooperatives. As a result of this “hiring culture” in the sector, health care professionals were unprotected by laws restricting excessive overtime or granting rights to vacations. Medical workers suffered from sleep deprivation due to double night shift, drugs addictions, and mental problems, which cumulatively undermined the quality of the health care treatment for patients. In an effort to change the traditional hiring practices in this sector, ECOFREM administered a series of workshops attended by over 195 professionals to explain the law and what firms’ managers could and should do to comply with regulations. They inspected 64 health care facilities. In collaboration with the Ministério Público do Trabalho, ECOFREM secured 177 consent decrees with firms and unions. In a four year period, they formally registered 2,067 formerly unregistered workers, including doctors, nurses, and medical assistants.

In addition to the concrete results of thousands of newly registered workers, these sector-specific operations became demonstration models with spill-over effects in other sectors. For example, following from the success of ECOFREM in the computer and health care sectors, the DLI created a national operation in 2006 to investigate similar frauds in banks in seven different states, all designed to drawing from the experience of Pernambuco inspectors. Based on information from workers and from the government databases of formal employment contracts (CAGED), inspectors report that many firms comply with the regulation just because they heard of other firms being inspected and punished. For example, a group of hospitals that had not yet been inspected registered

more than 300 doctors, in the months immediately following after the ECOFREM operation. In addition to creating an effective procedure for dealing with such a complex problem as fraudulent cooperatives that bypass labor protections and regulations, the members of the group fare better than ordinary inspectors even when measured in terms of standard individual productivity indicators. While, on average (for 2007), each ordinary inspector formalized 15 jobs per month, each ECOFREM member formalized 25 jobs per month.

Safety in Construction: The Pernambuco Tripartite Committee

In general, the construction sector has historically been a major source of employment as well as of occupational accidents, due to inherent risks as well as poor health and safety conditions. In Brazil, approximately 5.4 million workers were officially employed in construction and accounted for 13% of all fatal occupational accidents in the country in 2004, according to the International Labor Organization⁶². In the mid and late-1990s, the state of Pernambuco experienced a rapid expansion of the sector (which employed approximately 48,500 workers in 2000), not matched by the adequate improvement of safety conditions. As a result, the state ranked top in number of accidents in the construction sector in Brazil (26 deaths in 1996, and 15 in 2000). Falls and electrical shocks were the mains forms of fatal accidents. As in the two cases already discussed, two different strategies for health and safety inspection in the construction sector evolved in the Pernambuco State Office.

⁶² The same rate for the United States and Japan are respectively, 19.5% and 38.7%. Brazil ranks seven in the world, in numbers of fatal occupational accidents (ILO).

In Pernambuco, as well as in other states in Brazil, inspectors in the health and safety area have been organizing their enforcement efforts by economic sectors since the early-1990s, even before the inspectors specialized in wages and hours issues began to organize their activities sector by sector. In recognition of the greater risks associated with construction work, Pernambuco inspectors dedicated, on average, 30% of all their health and safety inspections to the construction sector. Even though they have traditionally organized their work with a strategic focus on the most risky economic activities, workplace inspections have nevertheless been conducted by individuals or pairs of inspectors pursuing quantitative targets, such as an X number of inspections resulting in Y fines and covering Z number of workers per month/year.

Under this model and in response to the high number of accidents in construction, Pernambuco inspectors are among the Brazilian inspectors who apply more frequently the strictest sanctions – such as the shutting down of construction sites (interdictions), in addition to issuing fines and notifications of violations. However, as one inspector reported “...we came to believe, over time, that sanctions alone do not tackle the roots of problems, the risks workers are exposed to.” They noticed in many cases that construction firms would pay the fines without making any change in the working conditions on their construction sites. In other words, the periodic inspections and fines were treated as a cost of doing business, so long as business continued.

However, an alternative form of organizing inspection work for the construction sector also developed in Pernambuco. In 1998, the National Tripartite Committee for Health and Safety Norms revised the norm for construction at the federal level, and allowed, albeit not making it mandatory, the State Offices to create local tripartite

committees (LTC). The Pernambuco State Office took the lead in creating a LTC in 1999.

The local tripartite committee brought together inspectors, the labor unions, the construction firms' association, and other government agencies (such as Fundacentro – the national health and safety research institute). Twice a month, since 1999, the representatives of these groups sit at the same table to discuss occupational health and safety issues.⁶³ Since its creation, the LTC has become the main channel of lively and open interaction among inspectors, labor unions, business associations, and other government actors.

In my interviews with unions and business representatives, virtually all informants referred to the LTC as a place for exchange of information and productive discussion. As I could observe in some meetings, discussions can be heated, conflict often emerges, but most of the time inspectors mediate the back and forth talk that leads to agreements between the parties. That regular meeting with successfully mediated agreements has been sustained over almost ten years is yet more impressive, if we take into consideration that before the creation of the LTC, relationships between the construction labor union and firms were adversarial and often violent, involving strikes, public accusation, and constant litigation. Before the LTC, union and firms interactions were limited to the annual negotiation of wages and *ad hoc* negotiations over strikes and other work actions. Today, they negotiate the details for implementing health and safety norms in construction sites. Finally, the members of the committee have agreed that all issues settled in the LTC automatically become items of the annual collective bargaining agreement of the sector.

⁶³ Every month, they meet first for an internal, closed meeting and later for a seminar-type of meeting open to the public.

Other instances also illustrate the positive consequences of the LTC (in comparison to ordinary inspections strategies). For example, the LTC worked to identify measures to reduce the number of fatal accidents due to electrocution in construction sites. The issue of deaths caused by electrical shock had been in the minds of labor inspectors for sometime and under discussion in the LTC for over a year. In general, inspectors did not know exactly what to do about the accidents beyond issuing sanctions against firms. The LTC started to make significant progress on the issue when the Fundacentro representative – who had read in professional journals about the Japanese experience in reducing fatal electrocutions in construction sites – invited someone he knew from the Brazilian office of Siemens to make a presentation about their safety devices for electrical circuitry. The guest presented a version of a differential residual device (DR), and said his firm was about to release a new line of products that were not only more suitable for construction sites but also cheaper (ranging from US\$20-100, each). Once installed in the construction site electrical circuitry, the DR cuts the flow every time it detects energy escaping or short-circuits, which is precisely what happens in the instance of electrical shocks. By shutting off the power, the DR prevents the electrocution of workers and other accidents involving electricity.

After the technical device became available, the subsequent challenge was to improve the conditions of electrical circuitry in construction sites, because the DR would malfunction (causing energy cuts and delays) if installed in poor quality circuits. Thus, labor inspectors convinced one particularly progressive firm owner to pioneer the adoption of the DR, since no firm owner in Recife knew how to make the device function properly. Together, the inspectors and the firm took on the challenge, arranged for a training

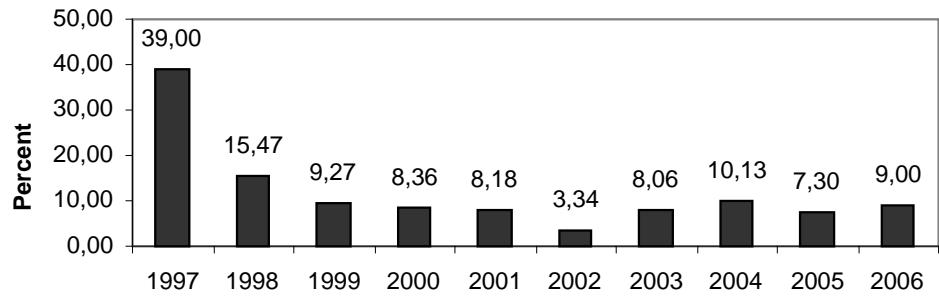
program for electricians with the help of the state federation of industries, and made the necessary adjustments to the infrastructure and routine of construction sites in order to make the DR viable for other firms.

As a result of such an open-ended process (lasting three years from discussion, testing and adaptations to consensus among members of the LTC – regulators, firm association, and labor union – to adopt the device), inspectors had the empirical evidence to convince other firm owners why they should adopt the DR and how to install it⁶⁴. In February 2004, LTC deliberated that all new construction projects must install DR devices. A 2006 survey conducted by the construction firms association found that only 0.71% (of a sample of 700 construction sites) did not have DR installed (Sinduscon-PE, 2007). As a result, in 2006, 2007, and 2008, the average number of fatal accidents reported was reduced to two deaths per year, with accidents occurring only in firms that did not comply with LTC's resolution.

In addition to significantly reducing the risk of death by electric shock, the development of the solution and the consensus achieved in the LTC had significant effects in terms of the improvement of electrical circuitry in construction sites (a pre-requisite for the well functioning of the DR). Compliance rates with all related legal requirements increased sharply from 1997 to 2006. As a consequence of such improvement, construction projects also became more energy efficient and firms reduced their energy costs.

⁶⁴ Another similar episode took place in the LTC in relation to adaptations in passenger and load elevators in construction sites in order to minimize falls and other accidents involving the equipment.

Figure 2 - Construction Sites with electrical circuitry out of compliance



Source: Sinduscon-PE

Discussion: management approaches, bureaucratic behavior, and outcomes

The matrix below summarizes the main patterns running across the comparisons within the three pairs of cases above. Based on the empirical evidence (similarities across different issues in the matrix rows and differences across models in the matrix columns), it becomes clear that the two different methods for organizing inspection work (NPM and EG approaches) involve significantly different tools through which supervisors control the work of inspectors, as well as different inspection practices, routines, and strategies. The comparisons also suggest a plausible causal association between these practices and the outcomes of inspection work.

Table 8 – Matrix: Cross-case comparisons

<i>Elements of comparison</i>	<i>Methods for organizing inspection work</i>	<i>Issues of inspection (cases)</i>		
		FGTS Collection	Fraudulent Cooperatives	Safety in Construction
Accountability / control by supervisors	NPM	Measurement of predefined outputs – “FGTS collected by inspector”; “number of firms inspected”; “number of labor contracts formalized by inspector”; “number of fines per month”, etc.		
	EG	Assessment of progress reports justifying the continuation of the operation or the revision of goals and procedures (based on quantifiable and non-quantifiable results).		
Inspection practices, routines, and strategies	NPM	Zoning system. Responsive and random inspections of firms in geographic jurisdictions. Non-uniform (inconsistent) procedures for firms in the same sector. No detailed investigations (evidence collection)		
	EG	Continual interactions between inspectors and relevant business, labor, and government partners (co-production and revision of strategies, plans, etc.). Use of diagnostic information (databases, partners, etc.). Sector-wide operations (strategic focus on economic sectors). Customized inspection procedures by sector (with standardization in each sector operation).		
Outcomes	NPM	Increased FGTS collection relying on labor of most of the agency inspectors.	Little impact in changing firms' hiring practices. Difficulties in investigation.	High number of sanctions with little reduction in risks to workers.
	EG	Efficient and productive FGTS collection, mobilizing minimum resources (optimization).	Change in hiring practices (underlying reasons for non-compliance). Detailed investigations. Demonstration effects.	Development of technical and managerial solutions linking health and safety with production quality/costs.

It is possible to draw three main conclusions from the collation of the three different issues by the two different methods, summarized in Table 8. First, each managerial model offers a different strategy for supervisors to control the performance of front-line inspectors. As each of the cases indicates, the different ways through which supervisors monitor the work of inspectors also seem to affect their motivation and job performance. After more than two decades, even sympathetic analysts acknowledge NPM-

inspired reforms have failed to meet expectations for improved public administration. Perhaps NPM reforms have simply “middle-aged,” unable to sustain the early energy (Hood and Peters, 2004; Dunleavy et al., 2006); yet, abundant criticism cites the paradoxical and dysfunctional effects of predefined quantitative performance measures (Bouckaert and Balk, 1991)⁶⁵. My interviews and observations confirm the claims by inspectors that the introduction of quantitative performance indicators from higher-level management interferes with professional autonomy, undermining both commitment and performance. The predefinition of specific and narrow goals by managers far removed from inspection routines and field work favors mechanistic, bureaucratic check list inspections, because the official indicators, in effect, tell inspectors *a priori* what they should consider relevant and what they should ignore, proscribing other potentially important observations and actions. Some inspectors report their frustrations in not being able to develop cases more complexly (over long time periods, and in partnership with other knowledgeable and interested organizations), and having to move on before achieving noticeable improvements in business practices.

In contrast, inspectors working on teams or special groups emphasized their ability to develop a more contextual and sector-specific understandings of violations, business practices, and legal norms. As one inspector stated “inspection activities become less about law enforcement and more about how to stimulate employers and workers to continually improve work environments.” Moreover, it seems that special groups and teams have a different relationship with the administrative centers. Instead of primarily

⁶⁵ Studies on doctors in the UK and US revealed that these professionals felt more pressured, less motivated when monitored in terms of quantitative performance indicators, and also developed the practice of masking numbers when elaborating reports (E.McDonald and L.Miller oral communication entitled “Tensions between Managerialism and Autonomy” at the 2008 Annual Meeting of the Society for the Advancement of Socio-Economics - SASE, San Jose, Costa Rica, July 23.)

reporting achievements or failure according to predetermined numerical goals, they are granted the freedom to argue for the redefinition of goals, as well as procedures, and strategies as they develop their cases. Although subject to central and local supervision, the work of groups is also subject to other control mechanisms: peer pressure from inside the labor inspectorate and external pressure from partners who – through their collaborations – build positive expectations concerning inspectors' performance. These elements have already been identified in other studies as important sources of government workers' motivation even under adverse conditions (Tendler, 1997; Justice, 1986).

Second, the strategies and related routines and procedures developed by inspectors under each model influence the pattern of inspectorial interventions and outcomes. As the cases indicate, unplanned and complaint-driven inspections organized by the zone system of geographic jurisdictions employed non-uniform procedures for firms in the same sector/condition and usually failed to produce detailed investigations or legal evidence of wrongdoing. Even though the pay-for-performance system yielded improved outcomes in one case, FGTS collection, the process of establishing quantifiable targets, measures to monitor its attainment, and rewards for those bureaucrats who meet the goals failed to reduce unregistered workers, illegal cooperatives or workplace accidents. Critics suggest that the definition of narrow and quantifiable performance targets where regulatory enforcement is necessarily fragmented into several agencies reduces the scope of action and will likely push bureaucracies away from addressing complex and interrelated problems.⁶⁶

⁶⁶ Critical reactions to NPM reforms come not only from scholars but also from public sector workers and professionals themselves. Current criticism on NPM reforms (and its disaggregation of organizations – core vs. other functions – and narrowing of programs and tasks to the extent that they can be written into a contract) recognizes its inability to deal with complex, interrelated, or cross-cutting problems, such as

Conversely, the organization of inspection work through teams, groups, and special projects eliminates some of the obstacles to the development of sector-wide operations and favors continued interactions between inspectors and diverse but relevant partners. Sector-wide operations demand diagnostic information about the underlying causes of non-compliance, that is, contextual understanding of violations, while encouraging the customization of enforcement actions to sector-specific social and productive dynamics. As articulated by a number of inspectors, they begin to move away from thinking about how to catch more and more lawbreakers as they gain greater latitude to think about why firms break the law in the first place.

In addition, enforcement teams with sector-wide orientations push inspectors towards addressing more complex problems and towards practicing relational interdependence through open-ended processes. As the cases demonstrated, groups are more prone to seek collaborations within and across organizations, as they recognize their actions cannot by themselves deal effectively with a complex problem. Also, as indicated by the empirical material, these collaborations frequently lead to some combination of legal, managerial, or technological solution for compliance problems (such as the adaption of the DR device in construction sites to eliminate electrocutions). These “open-ended conversations” (Piore, 2009; Lester and Piore, 2006) between inspectors and other government and non-government actors are the source of these innovations leading to effective problem-solving in sectors as diverse as health care, information technology, and construction. Therefore, in contrast to the “technical” specification of outputs and the mimicking of market performance incentives, the EG approach emphasizes “deliberative

preventative health, school reforms, child care services, social assistance programs, all of which require the coordination of local knowledge with a range of different services provided by different government organizations.

administration,” bringing in elements of dialogue, negotiation, sequential agreements, and collaborations across different units of the administration and external partners as key features promoting creative solutions for complex collective problems (Fischer and Forester, 1993; Evans, 2002 and 2005; Brugué, 2004; Baccaro and Papadakis, 2009).

Additionally, case comparisons in the previous section suggest that inducing improved performance might be more associated with valuing bureaucrats’ autonomy to innovate and learn from reflection (justification) on their practices than with creating formal incentives and pressures for greater productivity on a narrow set of outcomes⁶⁷.

The third and final conclusion we can draw from the matrix (Table 8) adds a cautionary note to the benefits of organizing inspection through groups and special projects. Since the planning and execution of sector-wide operations and the respective interactions with potential partners take time to hit the ground, the work of groups and special projects becomes unresponsive to the more immediate demands of workers, as well as of policymakers and politicians. Even though in the medium-to-long term the work of groups is more likely to solve complex and relevant problems, in the short run, hazardous and illegal situations experienced by workers may remain unnoticed and unremediated (cf. Silbey 1980-1981; 1984). In contrast, under the zone system, inspectors are free to respond immediately to workers’ complaints, even if the intervention is less likely to promote long-term changes in business practices or affect the underlying causes of non-

⁶⁷ Innumerous cases and anecdotal evidence demonstrate that managing performance through the definition of specific targets and the measurement of their attainment often leads bureaucrats to finding ways to convert the things they can actually do into the outputs desired by managers. A recent example came out in a New York Times article that describes how a US immigration and customs administration program specifically designed and authorized by Congress to target only immigrants with outstanding deportation orders and suspects of crimes and terrorism ended up arresting a vast majority of illegal immigrants with no criminal record, many of which had no deportation orders against them. In order to meet arrest quotas and demonstrate performance to supervisors, immigration officers started shooting at easier targets (Bernstein, 2009).

compliance. For public sector bureaucracies such as the labor inspectorate, responsiveness is an important attribute for building a good reputation and public image, as well as for harvesting political support. Therefore, the possibility of combining both models under the same service seems promising as a way to reconcile problem-solving with responsiveness, and reaching a desirable balance, as described by March (1991), between the organizational functions of *exploration* of new possibilities (experimentation / innovation) and *exploitation* of old certainties (efficiency / mass production).⁶⁸

Conclusion

The comparative analysis developed in this study indicated that variations in the strategies adopted by management to control the discretion and performance of street-level officers have important implications when it comes to explaining why bureaucrats in some cases behave in ways that are conducive to learning and development. The cases analyzed indicate that certain features of management models and the ways they organize street-level work – such as predefined performance targets vs. open-ended processes and constant revision of goals, performance measures, and inspection procedures; individual vs. team work; etc. – affect the extent to which inspectors see the relevance and possibilities for working collaboratively within and across organizations in the development of effective

⁶⁸ Of course, then the question becomes how much resource to allocate for each model within the same service. In the Brazilian experience, we currently observe a gradual shift away from the prevalence of the pay-for-performance system and towards a greater emphasis on the organization of inspection work based on groups and special projects. Responsive and geographically bounded inspections should still remain, but as a residual category, only enough to cover for emergency complaints received from workers in vulnerable situations (e.g. non-payment of wages, eminent risk of death of accident, etc.)

solutions for compliance problems. The empirical material also provides supportive evidence for the claim that improving bureaucratic performance is not only about defining the right incentive system but should primarily focus on: a) setting in motion processes for constant revisions of goals and their measures, and b) redefining the mechanisms and procedures to reform work routines every time they become hostile to the achievement of desired goals; both of which necessarily require interactions with a wide array of potential partners. Therefore, a deeper understanding of how management practices evolve in bureaucracies and how officers incorporate such practices in their work routines should be an indispensable aspect of the quest for explaining bureaucratic behavior and outcomes.

Part III – Narratives about Work, Horizontal Controls, and Accountable Creativity

“A single type of bureaucracy is not adequate, either for scientific purposes or practical political action, in a bureaucratized world. A type which includes within itself as much as Weber’s does leaves no room for the discriminations without which choice is impossible, scientific advance difficult, and pessimism probable”
(Gouldner, 1950).

Introduction

The discretion and the relative autonomy enjoyed by labor inspectors in Brazil create a set of opportunities for development and customization of local solutions, as well as considerable challenges for managing such a bureaucracy to prevent the potential misuses of that creative flexibility. In the previous parts of this dissertation, I first demonstrated how variations in styles of inspection (coercive, pedagogical, and combinations of the two) explain a great deal of the variation observed in compliance outcomes and in the development of sustainable compliance solutions. I then analyzed, in the second part, different options available to supervisors to manage the discretion of labor inspectors, indicating how different models (New Public Management and Experimentalist Governance) and their respective organizational structures influence inspection practices, work routines, and outcomes.

This part of the dissertation, in turn, addresses the question: what are the sources or reference points, other than formal rules and procedures, which inspire the actions of inspectors and help them make sense of their agency and their work? This part of the dissertation explores the conditions that sustain heterogeneous practices, strategies, and

structures within the Brazilian Department of Labor Inspection (DLI). In doing so, I describe a dynamic process through which members of the organization learn and innovate their enforcement practices, and at the same time hold each other accountable for their actions in the performance of their job.

In contrast to common accounts that emphasize coherence, cohesiveness, and consensus as key ingredients of organizational capacity and performance, I demonstrate the constructive role of internal contradictions, disagreements, and tensions in promoting continuous learning as well as mutual vigilance within organizations. First, I describe the development and then consolidation of two alternative narratives and understandings about what labor inspection is, what it should do, and how it should be accomplished. While, on the one hand, a *fiscal intelligence* narrative associates labor law enforcement with the collection of related tax revenues through planning and construction of specific information systems that predict law-breaking behavior and expected revenue income; on the other hand, a *social development* narrative of labor inspection emphasizes the improvement of actual working conditions by promoting change in social and productive practices by mobilizing resources (e.g. financial, administrative, technical, etc.) and distributing incentives generated in collaboration with external partners and other government programs.

I argue the coexistence and common circulation of these two understandings of labor inspection within the same organization engenders a process of *accountable creativity* through which individual inspectors: a) are expected to justify their actions in terms of the two narratives above; b) in doing so, they learn from the differences across projects/actions in terms of practices and strategies (cross-fertilization); and c) at the same

time hold each others' feet to the fire in terms of the productivity and performance of their innovations. Analysis of interviews, observation notes, and documents, reveals the processes and conditions under which internal contradictions and tensions are associated with consistent improvements in organizational strength and performance.

The chapter is organized in four sections. Section one briefly reviews some of the current scholarly interpretations about public sector bureaucracies and their role in public policy and development that emphasize organizational homogeneity, cohesiveness, and coherence. The review points out our limited understanding of the constructive role of internal tensions, conflicts, and disagreements in organizational performance and development. Next, I describe the historical evolution of the Brazilian labor inspectorate to raise the puzzle of how an organization rife with tensions along multiple internal cleavages and hosting a variety of internally fragmented formal structures was successful in consistently improving its organizational capacity as well as its public image and reputation over the past two decades. In the third section, I argue the organization was successful because it offered multiple accounts about its goals and practices accumulated over history. I make that point by developing the notion of *accountable creativity* and presenting the empirical evidence of the processes through which the coexistence of these alternatives narratives lead to improved performance over time. The last section of the chapter concludes by examining the implications of the findings for both academic literature and development practice.

Bureaucratic Capacity and Performance: homogeneity versus heterogeneity

Organizational homogeneity, structural coherence, and internal cohesiveness have long been described in a large body of studies on the role of bureaucracies in public policy and development as essential ingredients for successful policy implementation, as well as organizational reputation and performance. This association has been observed in policy areas as diverse as industrial policy, public services, and regulatory enforcement.

Kaufman's 1960 study of the American Forest Service is a classic example. Kaufman sought to explain how an agency that was scattered among 792 administrative parcels, covering the contiguous forty-eight states, Hawaii, Alaska, and dispersed island territories, could still achieve what Congress and the executive branch asked of it. Countering powerful tendencies towards fragmentation, Kaufman described how a range of internal procedures – such as recruitment and training, internal communications, promotion policies, surveillance by higher officials, and the movement of personnel across different units – worked to produce conformity and a uniform organizational culture from top to bottom. Back in the 1960s, a homogeneous membership – the vast majority of the service was white, male, with professional background in forestry – functioned alongside these internal procedures and accounted, according to Kaufman, for the organization's reputation for excellence and successful implementation of its mandate.

More recent studies on organizations as diverse as the World Bank (Wade, 1996), industrial policy agencies and ministries in East Asia (Amsden, 1992; Evans, 1989, 1995; Evans & Rauch, 1999), as well as schools, police, hospitals, and counsel (Wilson, 1989; DiIulio, 1994; Maynard-Moody & Musheno, 2003) have similarly emphasized the

procedural and cultural mechanisms through which organizations develop what appears to be internal coherence and conformity, and effective, quality performance.

In addition to studies specifically focused on organizational performance, similar arguments are also present in the policy and planning literature. Comprehensive reviews of this literature indicate that the historical evolution of the policy and planning field has been marked more by an emphasis on harmony, consensus, and agreement than by attention to the creative role of conflict, tensions, and disagreements (Sanyal and Mukhija, 2001). While the high-modernist paradigm of rational and scientific planning of 1950s-60s assumed disagreements and disputes would be resolved through indisputable technical reason, recent manifestations in the field, under the rubric of deliberative planning, emphasize a continuous quest for consensus as well as public-private cooperation (Goodin, Rein, and Moran, 2006; Dryzek, 1993; Healy, 1993; Forester, 1999). The dangers posed and the damage caused by historical conflicts and crises, especially in the first half of the 20th century, have been most of the time so obvious and overwhelming that the major effort of social thinkers has gone into the search for order, peace, harmony, and equilibrium (Hirschman, 1995).

Thus, within organizational and policy studies, heterogeneity, disagreements, and conflict have traditionally been described as signals of failure, outcomes to be ultimately avoided, or even impediments to development and progress (Ingram, 1993). Notable studies have empirically documented the potentially negative role of conflict and tensions in the implementation of policies and projects, leading to paralysis, delays, increased cost, as well as diversion of original policy goals (Pressman and Wildavsky, 1973; Bardach, 1977). Since conventional wisdom has emphasized homogeneity, coherence, and

cohesiveness, the role of tensions, disagreements, and conflict within organizations has received little attention in the field of planning and policy studies and their significance to histories of advance is seldom developed⁶⁹.

A wealth of detailed empirical descriptions and case study narratives of design and implementation of public policies demonstrate that conflicts and tensions of a varied sort are not only unavoidable but also fundamental for triggering advances. For example, some studies (such as Sanyal, 1991; Tarrow, 2000) demonstrated that more frequently than we would expect tensions and conflicts between actors inside and outside organizations coexist side-by-side with cooperation efforts – i.e. groups can be highly critical of each other and yet agree to act together in order to make specific things happen. Other studies provide examples of how acute tension between organizations (inter-organizational conflicts) can lead to better policy outcomes or improved performance (Sanyal and Mukhija, 2001; Bunker, 1988). Yet another stream of scholarly efforts has pointed out to the importance of conflicts and disagreements between service provision organizations (often in the public sector) and their clients, target populations, or suppliers (Joshi, 2000; Crook and Ayee, 2006; Connors, 2007; Fox, 1992). Finally, and most relevant to the present analysis, others have demonstrated how intra-organizational conflicts, internal cleavages and disagreements have contributed to: challenging existing internal arrangements (e.g. patronage, favoritism) (Schrank, 2005b); improving policy procedures,

⁶⁹ Tensions and conflicts between politicians, parties, and interest groups (not within bureaucracies) are the focus of a large body of scholarly work in political science (see Geddes, 1993; Chavez, 2004). Scholars of management and organizations have also explored the role of “paradox” both in hampering and encouraging organizational development – see Lewis (2000) for a discussion and review of previous studies on the topic. More broadly, the idea that conflict can play a constructive role in social relationships has a long history, going back to Greek philosophers. In the last century, it is important to mention the contribution of Georg Simmel, Ralf Dahrendorf, Max Gluckman, Albert Hirschman, Alvin Gouldner, and Michel Crozier in making the point about crises, imbalances, and conflicts in promoting social advancement and change. These contributions offered different insights into the conditions under which conflict acts predominantly as glue or solvent in different societies.

promoting innovations, and mutual control (Damiani, 1999; Chaia, 1992); and protecting policy implementation from the interference of petty politics and clientelism (Bianchi, 2002).

However, these contributions have not yet been adequately incorporated into public policy theories and models. Kaufman himself, in a 2005 afterword to his 1960 book, recognized that the very processes ensuring consistency and uniformity in the Forest Service handicapped the organization's capacity for adaptation, learning, and coping with the changing environment, leading to its decadence in the second half of the 20th century. Therefore, we still know little about the conditions, mechanisms, and processes through which often unavoidable tensions, disagreements, and conflicts lead to desired advances in bureaucratic capacity, learning, and performance. The present study is an attempt to improve our understanding of these issues.

Heterogeneity, Learning, and Performance in the Brazilian Labor Inspectorate: a puzzle

The Brazilian labor inspectorate does not possess the essential prerequisites for success described in this literature, and yet, in the last three decades, the organization has systematically improved its capacity and performance. This section elaborates on this seeming paradox. In sharp contrast to some of the main prescriptions in the literature, the historical evolution of labor inspection in Brazil, first instituted in 1891⁷⁰, reveals the

⁷⁰ In 1881, a presidential act required the inspection of factories in Rio de Janeiro (then capital of Brazil) that employed under-aged children (Miguel, 2004; Cardoso & Lage, 2007). The act also established minimum

construction of a *heterogeneous and diversified staff* of inspectors operating under a *fragmented organizational structure*.

Heterogeneity in membership

As I began fieldwork on the Brazilian labor inspectorate in December 2006, attending the Minas Gerais state-office lunchtime Christmas reunion, I could not help but to notice heterogeneity: young and old, male and female inspectors, introducing themselves as medical doctors, engineers, lawyers, and talking so variously about their own work routine, motivations, and achievements. During the course of research, I systematically reviewed internal documents, secondary data, and interviews about the history and evolution of labor inspection in Brazil. The evidence collected reinforced the initial impression of an organization internally divided and diversified.

Sequential and relatively energetic recruitment drives, since the 1970s,⁷¹ have not only contributed to the numerical expansion of the inspectorate but also to the gradual constitution of a diversified corps of inspectors composed of individuals with different social, cultural, political, and educational backgrounds. Diversity in professional backgrounds and previous occupation are probably the most salient of all internal divisions. Since the formal creation of the civil service position and career of labor

conditions of hygiene, work hours, a list of dangerous tasks, as well as fines for each irregularity found during inspection. The National Department of Labor was created in 1918, a period in which most countries in the Americas created their labor inspection service – among the first ones Canada (1900), Argentina (1907), Chile (1907), Uruguay (1907), Mexico (1911), United States (1913) (Jatobá, 2002). In the first decades of the 20th century, the yet incipient Brazilian inspection service, similarly to what occurred in other countries, wandered around the administrative structure of the state, under different ministries such as the Ministry of Industry and Transport and later the Ministry of Agriculture, Industry, and Commerce (Manrich, 1991; Jatobá, 2002). For more details about the institutional history, see: Miguel (2004), Cardoso and Lage (2007), and Cavalcante (2008).

⁷¹ Since the 1970s, the Ministry of Labor held entrance exams in 1974, 1983, 1985, 1994 (1,300 recruits), 1998 (100 recruits), 2003 (225 recruits).

inspector in 1944, the rank and file has been composed primarily of three occupational groups: wages and hours inspectors, occupational health doctors, and safety engineers (and a much smaller group of social workers). Between 1944 and 1984, only people with college degrees in law, accounting, economics, and management were eligible to take entrance exams for the position of wages and hours inspector, and only medical doctors and engineers could take exams for health and safety inspectors⁷². The internal differences across occupational groups of inspectors in terms of their social, cultural, political and educational backgrounds can be observed with the data from a survey of labor inspectors in Brazil in 1997-98⁷³.

Table 9 shows considerable differences across occupational groups in terms of: family structures and sizes, religious affiliations, educational background and professional training, membership in professional associations, and sympathy for political parties (even though there is a general trend towards the left and center-left). While on average only 34.5% of the inspectorate has graduate school diplomas, the rate is much higher for doctors and engineers than for wages and hours inspectors. Doctors also read

⁷² The formal occupational distinctions were later dissolved in 1998, as labor inspectors began a gradual process of integrating the different occupations into one single career in order to take advantage of an opportunity to improve their salary and status. In 2002, inspectors with different specializations and backgrounds became “labor-fiscal auditor,” (*auditor-fiscal do trabalho*) incorporating the same benefits, wages, status, and stability of the tax and social security inspection careers. Despite the formal unification of the different specializations and occupations under the same title, the labor inspectorate remained a diversified group of individuals. Furthermore, also in the late 1990s, by force of judicial decision, people with any college degrees were eligible for taking the entrance exams for all labor inspection positions.

⁷³ The survey was performed by the University of Brasilia and commissioned by the labor inspectors’ union with the goal of gathering information about labor inspectors’ socio-economic, political and cultural profiles, as well as satisfaction at work, using a representative sample of 432 inspectors (approximately 17% of the total population of labor inspectors in Brazil at that time) (Dal Rosso, 1999). Unfortunately, there is no newer or longitudinal data about the characteristics of inspectors in Brazil. However, the time when the survey was performed is instrumental for the purposes of the present analysis, because it represents a snapshot halfway-through the process of transition to the current structure of the labor inspectorate in Brazil.

Table 9 – Characteristics of Brazilian labor inspectors and main differences across occupational groups

Question	All labor inspectors	Differences across groups
<i>Gender</i>	26% female 74% male	---
<i>Family</i>	69% married; 18% have no children or dependents, 42% have one or two, and 35% have three or four.	Marriage rate is much higher among doctors and engineers than among wage and hour inspectors.
<i>Religion</i>	60% catholic, 18% non-religious, 10% spiritualist, 8% evangelical, 5% others.	Doctors score higher among the non-religious and spiritualists, in comparison to engineers and wage and hour inspectors.
<i>Newspaper reading</i>	59.3% have the daily habit of reading the newspaper.	Doctors (77.4%), W&H inspectors (59.9%), and engineers (44%).
<i>Educational Background</i>	All have college degrees: law (54.4%), management (13.8%), accounting (10.6%), medicine (8%), economics (7.6%), and engineering (5.7%). 89.1% have taken at least one professional training course.	34.5% have graduate school diploma. Graduate diplomas are more common for doctors (93%) and engineers (82%) than for W&H inspectors (22.6%)
<i>Membership in associations</i>	82% are members of the labor inspectors' union; and 90.7% are members of at least one professional association	---
<i>Party identification</i>	45.4% identify with some political party (though only 13.4% are formal members), from which 68.4% referred to leftist and center-left parties (PT, PSB, PDT, PC do B)	Doctors are more identified with the Workers' Party-PT (81.2%) than engineers (54.2%) and W+H inspectors (59%).
<i>Management positions (access to administrative power)</i>	13.4% of all inspectors occupy management positions	89.6% of such positions are occupied by W&H inspectors versus doctors (5.2%) and engineers (5.2%)

Source: Dal Rosso (1999)

more newspapers and are more inclined towards leftist parties (in especial, the Workers' Party) than engineers and wages and hours inspectors. In contrast, when we look at access to administrative power, a much higher number of wages and hours inspectors have more frequently occupied management positions (in comparison to doctors and engineers)⁷⁴.

⁷⁴ Quantitatively smaller, health and safety inspectors have always rebutted their limited access to higher managerial positions by claiming the primacy of their function in labor inspection. In many of my interviews, they referred to themselves as the ones who avoid people from dying, getting sick or mutilated in

Female inspectors have also predominated in the last 20 years in leading managerial positions (national secretary and directors), indicating some kind of compensation for the lack of gender balance.

Table 10 indicates below yet another dividing line for the Brazilian inspectorate: differences between generations of labor inspectors. In terms of age and time in job, it is possible to distinguish two larger groups: one of them is composed by younger professionals (less than 35 years old) with 1 to 4 years in the job; and the other is a larger group with relatively older inspectors, who have been in the service for more than 10 years. The generational difference is also confirmed by a discussion among labor inspectors (in their email listserv – AFT-BR) about the potential threat posed by the outsourcing of the Ministry of Labor's information technology systems and databases. One inspector from the older generation said: "So, you, who are the new generation of labor fiscal-auditors, should adopt a more vigorous attitude and abandon the subservience that characterized my generation." The younger inspector then replied in the next email: "I totally agree with your observations, except for charging the 'new' generation of AFTs with the challenge of dealing with CAIXA's (Caixa Econômica Federal) treachery..."

Table 10 – Generational Differences

Question	All labor inspectors	
Age	78% older than 35 (greater concentration between 35 and 54)	22% less than 35 years-old
Years in the job	42% up to 10 years (mostly concentrated between 1 and 4 years)	58% more than 10 years (mostly concentrated between 11 and 15, and 21 and 25)

Source: Dal Rosso (1999)

the workplace, according to them, the primary reasons why labor inspection was first created in England in the early-1800s.

These data provide important measures of heterogeneity among Brazilian labor inspectors. Such heterogeneity is openly recognized by inspectors. In the many discussions among inspectors in their email listserv (AFT-BR), the perception of internal social fragmentation, and its negative consequences, is frequently voiced: “we should stop fighting among ourselves and unite and react against the external threats.” “I believe our mission as AFTs [acronym for labor-fiscal auditor] and the mission of DLI [Department of Labor Inspection], as an institution, are noble enough for us to forget our differences in the name of the common good.” “Our necessities unite us, but our opinions separate us; while we stay in this permanent tug-of-war, in permanent competition, no actions will be realized.”

Disagreements were not simply generally acknowledged but regularly enacted in discussions concerning policy and implementation. For example, a string of email exchanges (AFT-BR listserv) concretely enacts inspectors’ internal divergences, not only as a general feature, but in terms of day-to-day work. The reaction of inspectors to a newspaper article (Folha de São Paulo, 3-10-03) commenting on a decline in the number of fines issued by inspectors in 2002 (as compared to previous years) illustrates the coexistence of different perspectives about such central issues as whether the agency should emphasize sanctions or negotiate compliance, as well as the utility of quantitative versus qualitative performance measures. Interestingly, these diverging perspectives cut across the main dividing lines distinguishing occupational groups and generations. The two following comments are from wages and hours inspectors from different generations:

“(...) in relation to the newspaper article, what I have to say is: we have to use all forms of pressure [sanctions and negotiation] to harvest the social fruits of our labor as inspectors, and these results cannot be simply measured by the volume of fines issued every year.” (AFT-BR message #6, new generation wages and hours inspector)

“I would never think about giving up the coercive character of labor inspection, it would be just like removing all our strength in forcing compliance with the labor regulations. But I also understand that, on the other hand, when we use negotiation mechanisms, we’re not giving up our authority, to the contrary, it is because of our legal prerogatives [threats of sanctions] that employers accept the deal and comply with it, in most cases.” (AFT-BR message #4, older generation wages and hours inspector)

An older generation health and safety doctor replied:

“(…) on the one hand, I find no difficulty in combining the two attitudes [coercion vs. negotiation], and that’s what I see most my colleagues doing!!! But when I think about the fines alone, I consider it as depressive as a surgeon must feel when, not being able to save a limb or a sick organ, he’s forced to amputate it!!!” (AFT-BR message #5)

Finally, a young wages and hours inspector who manages an inspection unit in the countryside commented:

“Unfortunately, the rule is to show numbers. The quality of what is done is hard to be measured when the system [SFIT] doesn’t include indicators that allow for the inclusion of the real results achieved through these two excellent tools [fines and negotiation].” (AFT-BR message #7)

Fragmentation in the organizational structure

In addition to heterogeneous membership, the historical construction and development of the labor inspectorate in Brazil created important divisions and fragmented responsibilities within the organizational structure itself. After a long and gradual process of developing a bureaucratic structure with the typical Weberian features⁷⁵, the challenges and pressure accompanying the re-democratization process of the 1980s and 90s induced a marked split in the organizational structure of the Department of Labor Inspection.

⁷⁵ In Weber’s formulation (1946), bureaucracy was an ideal-typical kind of social organization based on the rationalization of the administration and the law, in contrast to patrimonial and charismatic forms of government. In bureaucracies, the behaviors and decisions of bureaucrats are conditioned by predictable and impersonal rules and statutes that define the goals and procedures under which the organization operates. Other typical features of bureaucracies, such as meritocratic recruitment (competitive exams and promotion by merit) and long-term rewarding career paths, have been more recently emphasized in attempts to explain the impacts of bureaucracy on economic development (Evans and Rauch, 1999).

Over the course of five decades (1930-85)⁷⁶, different governments supported the growth of the organizational structure of labor inspection, putting in place laws and norms (written rules) governing its administration and the operation of its agents, including meritocratic career lines from nation-wide entrance examinations, stable life-time employment, and reasonable salaries. The Ministry of Labor, Industry, and Commerce in Brazil was first created in 1930⁷⁷ and in 1931 the National Department of Labor comes under control of the Ministry. Between 1932 and 1940, the Vargas government installed labor offices in each state (*Superintendências Regionais do Trabalho e Emprego* - SRTE), incorporating some previously existing state-level departments and labor inspection services (Cavalcante, 2008). In 1943, President Vargas consolidated the laws and rules created in the previous decade into one single Labor Code (*Consolidação das Leis do Trabalho* – CLT), instituting mandatory public service entrance exams for labor inspectors (including health and safety doctors and engineers), and assigned the National Department of Labor and its labor inspection service the responsibility of enforcing such laws. The Labor Code provided inspectors with the power to intervene in private businesses and sanction violations of workers' rights.

In the following decades, the military government (1964-1985) promulgated the Law on Labor Inspection Rules and Procedures (*Regulamento da Inspeção do Trabalho* – RIT, 1965), under the influence of ILO Convention #81 (on labor inspection)⁷⁸. In the last

⁷⁶ Between 1891 and 1930, labor inspection in Brazil lacked both legal institutionalization and organizational capacity to function with minimum effectiveness.

⁷⁷ 1930, is the first year of the Vargas Government – after a coup supported by the military to overthrow the political regime of ruling rural oligarchies. The President assigned to the Ministry the mission of crafting the first labor, union, and social security laws, as the means for instituting a corporatist system of state-society relationships (French, 2004; Schneider, 2004).

⁷⁸ Nevertheless, during the military dictatorship, the Ministry of Labor had a limited role, restricted only to intervening in labor unions and controlling the autonomous organization of workers. In 1971, the military government denounced ILO Convention #81 (passed in 1947), first ratified by the country in 1956, under the

phase of the military regime (1974-1985) – marked by a gradual transition towards democratic rule – an escalating number of occupational accidents created international embarrassment. In response, the government expanded the corps of inspectors, especially in the area of occupational health and safety, through a large public service recruitment drive in 1974, followed by smaller recruitment drives in 1983 and 1985⁷⁹. The military government also created, in 1976, the Secretary of Occupational Health and Safety within the ministry of labor, with occupational health and safety legislation and technical implementing regulations following within two years (Cavalcante, 2008).

By the 1980s, both international conventions relative to the autonomy and professionalization of labor inspection and internal statutes providing solid procedures and norms for inspection work had begun to be implemented with some noticeable effect. The number of inspectors increased steadily, especially between the 1970s and late-1990s, through a series of large recruitment drives and meritocratic, nation-wide selection. Inspectors' wages increased over time, at present coming close to the highest paying careers in the federal public service.

In the early 1990s, under the new democratic constitution of 1988⁸⁰ and in the context of fiscal crisis and economic restructuring under the Washington consensus, as well as profound transformations in the global and local organization of production, the

Kubitschek government. By arguing for the existence of technical-legal problems in the convention, the military government was excused from complying with its main provisions. The convention is re-ratified by the country in 1987, during the process of re-democratization.

⁷⁹ In the early 1970s, there were about 50 health and safety inspectors (including medical doctors and engineers), half of which based in Rio de Janeiro, while most of the other states did not have a single inspector specialized in health and safety issues. In 2001, as a result of the recruitment drives of the 1980s and 1990s, there were more than 600 health and safety inspectors out on the streets (out of 2,527 inspectors, excluding those occupying administrative positions, licensed, or temporarily away from service) (Santos, 2001).

⁸⁰ The new democratic Constitution (1988) underwrote the existing Labor Code (CLT) and incorporated some fundamental labor rights and job protections in its own text. It freed union activity from the tutelage of the Ministry of Labor, re-energized the labor inspectorate with new competences (e.g. collection of FGTS – severance payments) and the mandate to promote a safe and decent workplace.

labor inspectorate faced two types of pressure from its external allies and enemies. First, there was pressure to increase its efficiency while nonetheless maximizing scarce state resources. Pressures came from diverse sources; from the labor unions worried about ineffective and lax enforcement of labor laws and conservative sectors of government worried about fiscal crisis, state reforms, and Brazilian firms' competitiveness in the global economy. The second challenge came from pressures to expand social rights and assistance, especially for those marginalized by the globalization of production. Domestic and International NGOs, social movements, and the International Labor Organization (ILO) urged the labor inspectorate to pay attention to informal work, child labor, forced labor, workplace discrimination, precarious working conditions and extensive subcontracting. These widespread practices called into question the Brazilian government's commitment and enforcement efficacy.

In 1995, in response to these pressures, labor inspection management and rank-and-file members of the agency urged reorganization, in effect creating a structural bifurcation implementing two different models or "technologies" for performing labor inspection work. These reforms were not necessarily regarded at the outset as competing strategies but rather as coordinating mechanisms for difference enforcement foci. One part of the agency would be composed of special groups – teams of inspectors – assigned to deal with child and forced labor, and a second part of the agency would put its efforts into collecting, storing, and analyzing information about inspected firms as well as inspectors' individual productivity on the job (the Federal System of Labor Inspection - SFIT).

The supposedly coordinated responses to the crisis of the early 1990s set up very distinct modes of organizing labor inspection work. The first consisted of assigning

specific problems (sectors, issues, regions, etc.) to a team of inspectors, granting them autonomy to devise enforcement strategies, seek collaborations (with government and non-government organizations), and conduct the necessary negotiations to solve compliance problems. The second response, despite its focus on data collection and analysis, nonetheless instituted a model of inspection based on individual events and complaints, circumscribed to geographic jurisdictions, and oriented towards meeting performance targets defined by central management (for more details about these models, see Part 2 of this dissertation).

In the following years, these two different models of organizing inspection work became entrenched and coexisted with each other within the same organization. With intense support from the ILO, domestic NGOs, and local social movements, the experience of the special groups on child and forced labor extended to other issues and areas – new groups were created both at the federal and state-levels to deal with issues such as gender and racial discrimination, fraudulent labor cooperatives, inclusion of disabled people, safety in construction, informal rural labor markets, among others. In turn, as New Public Management reforms advanced in the federal government during the late-1990s, the Ministry of Planning provided career improvement incentives for the labor inspectors to implement a pay-for-performance scheme⁸¹. The SFIT – data collection and analysis system – became the main tool for such scheme, linking the planning and prioritization of enforcement targets and economic activities to measures of inspectors’

⁸¹ In charge of such reforms, the Ministry of Planning had been putting pressure, since the mid-1990s, on all federal inspections services (tax, labor, and social security inspectorates) to adopt performance targets and pay-for-performance schemes tied to increases in tax revenue collected by them. In addition, the strong government deficit in the mid 1990s led the Ministry of Planning to search for alternative ways to collect revenue, and labor inspectors began to be seen also as important tax collectors, because of the job security contributions (FGTS), unemployment insurance, and other revenues under their jurisdiction.

productivity in the field. As these changes evolved, the typical coherent, hierarchically managed civil service bureaucracy gradually constructed in the previous decades split up into two different organizational structures, management models, and supervising tactics.

A recipe for disaster?

As I investigated the institutional evolution of the labor inspectorate in Brazil, an emerging picture of a fragmented organization rife with tensions and conflict among its heterogeneous staff became increasingly clear. According to prevalent interpretations in the literature, the conditions observed in this case should most likely lead to dysfunction: inconsistent organizational behavior, paralysis in decision-making and overall poor performance and reputation.

However, empirical evidence demonstrates the contrary: over the years, the organization has been subject to continuous improvement in its capacity and reputation. In addition to the positives outcomes demonstrated through comparative analyses in previous parts of this dissertation, the historical evolution of the organization provides empirical support for perceived improvements in terms of:

- *Organizational capacity:* the number of inspectors has increased gradually and steadily since 1943 (in special, after the 1970s) through meritocratic recruitment processes, forming a cadre of committed professionals⁸². The undersigning of international conventions and development of domestic regulation and laws (Constitution, labor code, and specific statutes and acts)

⁸² In a 1999 survey with a national sample of labor inspectors, 77% declared themselves satisfied or very satisfied, while 72% responded they do not wish to change jobs (Dal Rosso, 1999). These satisfaction rates are relatively very high. Pffefer (2007) analyzed the results of numerous attitudinal surveys and reported that for the United States and Europe, on average, the percentage of staff motivated and committed to the job is less than 40% and is declining in the last decades.

formally organized the career, authorized new competences and prerogatives for labor inspectors, and provided solid norms and procedures for inspection work. In addition, labor inspectors' wages have substantially increased over time coming closer nowadays to the highest paying careers in the federal public service⁸³.

- *external image and reputation:* in the last 15 years, inspection efforts on areas such as forced labor, child labor, racial and gender discriminations, among others, have received domestic and international recognition and wide press coverage, and were instrumental in building a strong public image and reputation for the inspectorate. The forced labor program, in special, has been considered best practice in ILO's global reports. The inspectorate's official commitment and an impressive record of freeing 30,000 workers from forced labor conditions (since 1995) have definitely contributed to the social legitimacy of the organization and its professionals.

How can we explain this puzzle? How do we account for this unexpected combination of supposedly undesirable organizational features (heterogeneity and fragmentation) with consistently positive outcomes (improvement of capacity and

⁸³ Especially in the two last decades, labor inspectors have successfully lobbied for pay increases, stability, and higher status within the federal government. They have successfully demonstrated to the government's economic core (Ministry of Planning and Budget) their important role in collecting federal tax revenues and demanded the leveling up of their career to that of tax inspectors (higher wages and status as "core state function"). In order to do so, labor inspector decided in 1999 to unify their own career (previously divided between health and safety, and wage and hours inspectors), under the name of "labor fiscal-auditor", approximating their function to that of a typical tax collector. As they turned "labor fiscal-auditor" and were leveled up to the same benefits of tax inspectors, labor inspectors submitted themselves to a pay-for performance scheme (GDAT, and later GIFA, in 2004), which granted bonuses to those who met revenue collection targets through their inspection work. Although the group was unified (same career and same department - DLI) under the under the banner of "career upgrading", differences in conception of the role of inspection remained acute.

reputation)? Why is internal heterogeneity and tensions apparently playing a constructive role in terms of organizational strength and performance? The next section will describe the processes and conditions through which tensions and disagreements led to positive outcomes in this case.

Multiple understandings and *accountable creativity*

I argue that heterogeneity in membership and structural fragmentation in the Brazilian labor inspectorate created conditions for the development of different views, understandings, and narratives about what labor inspection is about and how it should be practiced. As a socially, politically, and educationally heterogeneous office experimented with different technologies or methodologies of inspection work (i.e. open-ended team work and individual productivity arrangements), they ended up constructing different meanings, goals, and ways of understanding and narrating labor inspection.

The idea that the characteristics of an organization's structure and of its membership influence the ways individuals understand, describe, and practice their work is not a new insight in organizational studies (Perrow, 1972; Gouldner, 1954; Crozier, 1964). According to Gouldner, individuals' exposure to different work environments (e.g. administrative units and structures) and interaction patterns within bureaucracies accumulate into different social organizations of work. Crozier, in turn, emphasized the "cultural givens" (e.g. values, beliefs, and habits acquired through participation in social groups other than the organization) brought in to the organization by its members as the

potential sources of individuals' resistance to rationalization and standardization processes inherent to bureaucratization. According to Crozier, these tensions between individuals and the bureaucracy lead to the constitution of subcultures and commonly shared sets of values and practices related to work. More recently, Barley (1996) called attention to a necessary revival of the analyses of the implications of work and actual behavior to technological and structural developments in organizations.

Therefore, in contrast to perspectives emphasizing the classical definition of bureaucracy as uniform rule-oriented behavior (Weber, 1946; Evans and Rauch, 1999), these theoretical developments demonstrate social and cultural stratification within these organizations, revealing the coexistence of different or even contradictory organizing perspectives, goals, and references for action under the very same and seemingly rational-universal organizational rules and structures.

In the case of the Brazilian labor inspectorate, these different understandings about what labor inspection is and how it should be done became recognizable as I systematically reviewed more than 100 interviews – conducted in different states as well as at the central level with a heterogeneous sample of labor inspectors – in addition to internal documents and communications, approximately 30 catalogued cases, and observation notes taken as I participated in several working meetings as well as informal (non-institutional) gatherings. As a result, two interpretive schemas (Ewick and Silbey, 1998) emerged as patterns running across all the idiosyncratic stories I heard from labor inspectors (and other related actors)⁸⁴. These schemas were recurrently mobilized in one

⁸⁴ The idea of “interpretive schemas” (Ewick and Silbey, 1998) offers an explanation of how social interaction produce distinguishable systems of meanings. As the interactions between individual and groups become repetitive, patterned, and stabilized over time, they integrate an interpretive schema – a coherent system of pre-interpretations, explanations, arguments, symbolic resources and shared values – which is

way or another when inspectors talked about their organization, their individual roles, experiences, and the events and situations surrounding them.

The two interpretive schemas described below (table 11) reconstitute different understandings or organizing perspectives of labor inspection practice. Each of these understandings assigns different goals and expresses different justifications and descriptions of what constitutes labor inspection – capacity, constraints, time/place (Ewick and Silbey, 1998; 2002). As such, they are both coherent and legitimate understandings that inspire very different practices and organizational behavior. These two interpretations are summarized below.

In the first narrative, labor inspection is described as the state's instrument to efficiently enforce labor laws and collect the related tax revenues, which fund some of the policies with the greatest impacts on the livelihood of the poor⁸⁵. This account carries the image of a labor inspector sitting in her office deploying powerful informational systems and sophisticated planning tools, which tell her where lawbreaking behavior is going on and how she should optimize her scarce resources to target such occurrences. The main objects of her work are the documents (or lack thereof) that attest to the formality of labor. Labor inspectors often express this vision by pointing out to the similarities they share with their “sister” inspection service in the federal government, the tax inspection, and by

deployed by individuals when they interpret organizational goals and provide justifications for their role performance. For example, in their study about legality in everyday life, Ewick and Silbey (2002) identified three interpretive schemas: before the law; with the law, and against the law. In addition, they also describe interpretive schemas in other social settings, such as medical education, professional sports, and science in the media. They use normativity, capacity, constraint, and time/space as conceptual dimensions with which to analyze cultural schemas and narratives.

⁸⁵ Labor inspectors are in charge of inspecting the non-payment or underpayment of the following legally mandatory contributions: unionization contribution (paid by workers, but collected by firms), social contribution of 0,5% of the wage bill, FGTS contributions (paid jointly by workers and firms, but collected by firms). Furthermore, labor inspectors are in charge of monitoring the adequate use of resources from the following funds: unemployment insurance fund and vocational training and qualification funds (PIS/PASEP, FAT, etc.)

emphasizing how similar they are both inspecting and collecting important revenues for the treasury.

Table 11 – Different understandings of labor inspection goals and practice

<i>Narrative / Elements</i>	Fiscal Intelligence	Social Development
<i>Normativity, values, ultimate goals</i>	Enforcement of labor laws (and collection of related tax revenues). Efficient public service	Improvement of working conditions. Devotion to social justice.
<i>Capacity</i>	Threat of coercion Information technologies Anticipatory planning	Threat of coercion Discretion/deviation from standard procedures Collaborations with external partners and links to other government programs
<i>Constraint</i>	Regulations and legal procedures Planning tools and performance targets.	Lack of resources (material, financial, informational, etc.) or the inability to partner with well connected and resourced actors outside.
<i>Time/place</i>	Office-work (“indirect or remote inspection”)	Field-work (direct contacts with workers and meetings with potential partners)
<i>Archetype</i>	Tax inspector Prototypical case: FGTS collection	Social worker / development agent Prototypical case: child and forced labor

The archetypical empirical instance that serves as the icon for such efficient public service schema is the inspection and collection of revenues associated with severance payments, required by law to be deposited by employers in a special job security fund: FGTS (*Fundo de Garantia por Tempo de Serviço*)⁸⁶. The 1988 Constitution and

⁸⁶ Employers must deposit 8% of worker's wage to this government fund, which accumulates while the worker is still employed by the firm (i.e. proportional to the worker's tenure). Workers access the accumulated deposits when they are dismissed or retired. In the mean time, this fund is an important source of federal revenues for policies such as for housing, sanitation, and infrastructure projects for the poor in the whole country. And, in public accounting terms, this fund plays a major role in balancing federal debts versus revenues.

subsequent legislation granted labor inspectors the authority to inspect firms' compliance with such deposit requirements. Since the mid-1990s, inspectors have been referring to advances in the inspection and collection of FGTS as "fiscal intelligence". This label, fiscal intelligence, reflects the agents' understandings that addressing law-breaking behavior can be achieved efficiently by remote detection of violations (from the office) and targeting (optimization) of inspection efforts in geographic areas or economic sectors that concentrate the most serious problems, when facilitated by the use of informational tools – systems that draw relevant information from numerous databases. The same rationale has been expanded over the years to other areas of inspection. For example, the Bahia State-Office developed a system that can predict peaks of demand for temporary (and informal) labor in the state's new agricultural frontiers. Based on this information, state officers can plan operations (to the level of estimating the amount of gas needed to drive inspectors to the site), producing at once the greatest possible number of formal labor contracts and associated revenues⁸⁷.

Equally present in the accounts of inspectors, a second organizing perspective emphasized labor inspection as a vehicle for social justice through changes in social and productive practices. Operating within severe constraints in their ability to achieve such end, labor inspectors are expected to work out in the field and use their position of perceived autonomy (vis-à-vis supervisors) to seek out the partners and resources necessary (including other government programs) to reorganize labor relationships and productive processes. When in direct interaction with workers and employers on the shop

⁸⁷ In Brazil, all formal employment relationships must be recorded by employers on the employees work permit (*carteira de trabalho*). This permit entitles the worker to several wage and non-wage benefits paid for by the employer, such as retirement benefits, unemployment insurance, and severance payments.

floor⁸⁸, the inspectors' definition of employment relationships accommodates a much wider range than standard/formal work arrangements. In this perspective, the ideal labor inspection draws from the implicit models of social workers and development agents.

The working model is the child labor eradication program, an example often offered by inspectors to symbolize this particular understanding of labor inspection. Motivated by international embarrassment in the mid-1990s, the project was created as an inter-institutional effort to undermine the causes leading families to put their children to work. Realizing they could not achieve this by themselves, labor inspectors forged the links between the detection of child labor and the social assistance, education, and conditional cash transfer programs offered by other ministries, as well as other state- and local-level projects run by NGOs and governments. Since its early stages, this program turned into a paradigmatic reference on how to conduct inspection in many other areas such as gender and racial discrimination at the workplace, domestic work, forced labor, inclusion of people with disabilities, as well as other efforts to extend access to rights, services provided by the state, and social security protection to the vast number of workers laboring informally (two of such examples are the cases about *cordeiros* in Salvador's carnival and the consortium of rural employers in Minas Gerais countryside, discussed in Part 1).

The perception of these narratives and organizing perspectives was further reinforced by my observations in the 2007 Annual National Meeting of the Labor

⁸⁸ The following two quotes provide examples of the comparisons inspectors make between work in the office and in the field: “(...) when my colleague says that ‘negotiation roundtables’ are more stressing... I don’t know which are his experiences and conduct doing fieldwork... but, what I can say based on my experience, having done both [office- and field- work], is that it is way much easier to think and act when sitting on a negotiation table in a room with air-conditioning.” Another inspector affirmed: “the immediate results achieved by the intervention [in the field] of labor inspectors make our profession much more satisfying!... I compare it to the satisfaction that only the Obstetrician has in the medical profession, because his direct intervention can contribute to life, and only rarely to diseases!!!”

Inspectors' Association (ENAFIT), in Belo Horizonte (Minas Gerais). During the three-day long event, which took place in a hotel where most of the approximately 600 participants from the four corners of the country were staying, I recognized many of my interviewees (with their different generational, professional, political, and education backgrounds) occupying the same crowded conference rooms. However, as I attended the sessions, it became more and more evident that there were two main images they constructed and reinforced about themselves. The first of them emphasized their successful initiatives in introducing information technologies and planning tools to optimize inspection work. In some of the sessions, they showcased and exchanged information about their local advances in these areas. These presentations inevitably ended by concluding how similar they are in levels of professionalization and performance to their supposedly peers tax inspectors, therefore deserving the same status, salary, and benefits. The second image, in turn, emphasized their positive and growing national and international visibility in eradicating forms of forced labor in the countryside and child labor in urban and rural areas. Inspectors in the event were clearly enthusiastic about the recognition, reputation, and legitimacy they have been developing through the work of special groups created to deal with violations in these areas.⁸⁹

The two different ways through which labor inspectors see and describe their work are not mutually exclusive and do not strictly represent groups of people within the inspectorate⁹⁰. Rather, they are sets of commonly shared interpretations that are rooted in

⁸⁹ A female health and safety inspector commented: "I am really enthusiastic about the repercussion of the forced labor eradication program; we cannot close our eyes to the reality that surrounds us, we have to provide responses to the expectations society holds for us".

⁹⁰ At first impression, the alignment of the different groups of inspectors (along occupational and generational lines) with the evolution of two organizational structures would seem plausible – i.e. doctors could prefer to work in teams or older generation inspectors would be more used to individual work, or wage and hour inspectors espoused quantitative performance measurement, etc. Yet, there is no empirical evidence

practice and cannot be separated from each other. Even though they involve disagreements on essential issues such as organizational goals and work routines, the different narratives and understandings constitute and enable each other as the recognizable sides of an enduring contradiction within the inspectorate⁹¹. As indicated here and demonstrated in previous chapters, both narratives have equally inspired actions or projects (e.g. GO-FGTS in Pernambuco vs. Fireworks and auto-parts cases in Minas Gerais) that consistently produced good results for the organization over time as well as harnessed the support of relevant actors and political players outside the organization (e.g. from the International Labor Organizations and NGOs to the Ministry of Planning and the tax inspectorate).

The main point is that the coexistence and constant tension between these different images of labor inspection set in motion a process here defined as *accountable creativity*. The different understandings and narratives about inspection work operate as different sources of action, creating at the same time the potential for creativity and contestation, in contrast to the situation in which only one hegemonic view is available. At the same that more explanations, solutions and justifications are made available, each of them is subject to competition and mutual control by the other. Therefore, the simultaneous operation of these two forces (accountability and creativity) engenders a system of opposition and technical vigilance that subjects new ideas, experiments, and innovations to peer scrutiny, demanding their justification in terms of one or both understandings/narratives of inspection work. In order to question the work of others, one has to be diligent about one's

supporting the matching of structures (and their emergence) with such groupings. Rather, the data collected in this research shows a much more dynamic picture, as groups of inspectors mobilize and dissolve relatively quickly, depending on the situation or when issues are raised by external agents and events.

⁹¹ According to some interviewees, every year around January and February, during the process of defining the projects and planning targets for the year, the tensions come up again, as inspectors discuss and value goals and targets differently.

own performance, what induces serious and honest work on all sides of the equation.

Accountable creativity operates within the organization in similar ways as the more familiar accountability mechanisms located at the outside (clients-citizens, NGOs, controlling agencies, etc.) when it comes to putting a check on misbehavior or pressures for improved agency performance.

It was possible to observe two main manifestations of accountable creativity in the investigation of the Brazilian labor inspectorate. In the first one, accountable creativity resembles a continuous process of reason-giving through which groups or individuals are impelled to justify their actions or projects in terms of the commonly shared understandings. In so doing, they learn ways to improve their own performance, as cross-fertilization occurs between the alternative narratives and their associated practices or projects.

For example, interviews and observations indicated that inspectors who develop initiatives that have no immediate connection to the collection of federal revenues – for example projects aiming at reducing occupational health and safety risks in selected industries (mining, metallurgy, construction, etc.) – feel obliged to demonstrate the ways through which their action also produces positive impacts on government finance. Inspectors in charge of the projects cited above as examples gathered information to justify their inspections as relevant in avoiding government expenses through social security, workers' compensation, and health care. So, even though their inspections did not result in revenues effectively collected, they felt pressured to make the point about the positive financial impacts of their work (i.e. avoidance of potential state expenditures).

More recently, inspectors in charge of analyzing occupational accidents are also moving beyond their intervention in the workplaces and investing time and resources in documenting the links between accidents in the workplace and firms' negligence in complying with health and safety regulations. By strengthening the proofs of guilt, these inspectors have been supporting the work of federal treasury attorneys in recovering (from the guilty firms) all the money spent by the state with workers' health care and retirement benefits.

A similar process has been happening to the initiatives to eradicate child labor, as increasingly the inspectors involved with them have incorporated information technologies and strategic planning tools to optimize inspection resources. One concrete example was the development of a 300-pages compendium, the "child labor indicative maps". These maps synthesize information gathered through partnerships with various actors (from state and local-level agencies and federal social assistance programs to NGOs) and points out, for each state, the places/regions and economic sectors which exhibit the greater propensity for child labor as well as the potential impacts for children's health and development of each activity in which they are engaged. Since its creation in 1999, the database has become a major input in the planning of child labor inspections and the partners in its construction turned into key allies in the enforcement efforts. As one inspector reported:

"We got tired of hearing others saying all we did was talking and spending hours and hours in meetings, as if we took no effective action. We needed to show that these conversations are a key part of the work we do, and not a waste of time." (Inspector leading a team focused on child labor)

Conversely, initiatives typically associated with the "fiscal intelligence" narrative of labor inspection have been gradually realizing the importance of collaborations with

external partners and the inherent limitations of their coercive and informational tools. One of such examples is the GO-FGTS, the Pernambuco state-office operational group on severance payments. GO-FGTS achieved positive results with the incorporation of information technologies that allowed the targeting of firms with potentially larger debts in selected sectors (see Part 2). Nevertheless, the team of inspectors realized they could increase the coercive power of their actions, thus putting more pressure on inspected firms, if they collaborated closely and harnessed the support of treasury attorneys in threatening firms with lawsuits, such as emphasized by the social development narrative.

Inspired and motivated by initiatives typically associated with the social development narrative (child labor, informal sector, discrimination, etc.), other inspectors (and their projects) have been realizing that interactions, conversations, and meetings with strategic partners outside the inspectorate are important “tools” for their work. Another example is the intervention of labor inspectors in the jeans laundries in Toritama, Pernambuco. By resorting to information systems that can contrast data on economic versus employment growth, inspectors identified a relatively small number of formal workers in the town hosting a burgeoning garment cluster – a perfect case for enforcing formalization and collecting the associated tax revenues. However, as they investigated deeper and made field inspections, inspectors realized that labor informality was embedded in a larger problem: widespread informality in terms of firms’ registration and environmental licensing, including many home or backyard operations. Mimicking successful cases in their office involving collaborations and interactions with outside partners, inspectors in this case only started making progress in terms of achieving their initial goal (formalization) in 2002, after engaging in a concerted effort along with the

state environmental inspectors, the state attorney-general, and the local firms association (Almeida, 2007).

These processes of reason-giving (or justifying my own work through the lens of the others) and cross-fertilization of practices bring along with them important pressures for improved performance on each side of the exchange. As the “fiscal intelligence” narrative has been instrumental in the last decade in the struggle for career improvements and pay hikes, inspectors involved in actions that produce direct impacts in revenue collection tend to describe their internal role as “carrying the agency on their back,” and “having to work harder and harder in order to keep up the high salaries and status of the others.” Even though “the others” are frequently involved with projects that are important for the public reputation and image of the organization, the former often describe their work as “superfluous” (*perfumaria*) in the bargaining for career upgrading with the government’s economic core (Ministry of Planning). As one inspector affirmed:

“(...) eradication of child labor, forced labor, discriminations, etc. are important, but do not justify alone our salaries. If we dedicated ourselves exclusively to these areas, we should not be surprised if we lose our status as tax-revenue inspection and the GDAT [the acronym for the bonus on salary granted by the Ministry of Planning for their performance in revenue collection].”

As a consequence, inspectors involved in projects that sustain a social-development perception of labor inspection have to find ways of showing how the flexibility and the creativity they need in order to work is linked to outcomes that also correspond to the improvement of their career and organization. One example is the group involved with inspections on fraudulent cooperatives in the Pernambuco state-office, ECOFREM. Their work demands enough flexibility to, on the one hand, identify and support the development of legitimate workers’ cooperatives and, on the other hand, to detect and eliminate those cooperatives often created by employers to bypass employment

obligations. For this reason, the outcomes of such project are infrequently linked to collection of state revenues. However, ECOFREM members have been showing that by doing their work effectively, using the necessary flexibility and creativity, they can reach productivity levels similar if not higher than their fellow inspectors dealing with formalization of job contracts. By identifying and eliminating fraudulent cooperatives, each ECOFREM member formalized an average of 25 jobs per month in 2007, while the same average for other inspectors was 15 jobs per month. As result, the antagonism between the shared perceptions of labor inspection imposes explicit limits on unproductive creativity, demanding a necessary connection with concrete results.

Finally, the second way through which accountable creativity manifests itself in the Brazilian labor inspectorate is the gradual reinforcement of diversity in the organizational structure. Since 1995, as the different images of labor inspection – “fiscal intelligence” and “social-development” – became widely recognized and shared, elements of their narratives have gradually institutionalized in the form of short and long term plans and internal documents containing both fiscal and social performance targets, as well as new structures and units corresponding to the expansion of these different views within the organization (e.g. tripartite committees, strategic planning offices, etc.).

The institutionalization (as structures or formalities within the organization) of these different narratives and understandings of labor inspection further strengthens them as mutual checks. A confirmation of such dualistic evolution in the labor inspectorate took place in 2004 and 2005, in the face of a proposal by congressmen to merge the labor, tax, and social security inspectorates into a single agency (the Brazilian Revenue Service – or “*super-receita*”). This situation created intense debate and polemic inside the labor

inspectorate, as some labor inspectors advocated for taking part in the merger and consolidating the process of unification with the tax-collection inspectorates, while others advocated for not joining the merger because that would ruin the social character of labor inspection. In the impossibility of reaching a workable consensus in the body of inspectors, the Department of Labor Inspection finally withdrew from the merger in 2006.

Conclusion: reaping the benefits of contradictions

This chapter presented empirical evidence that constructs the perception of the Brazilian labor inspectorate as an internally heterogeneous and diverse organization. It also showed that, contrary to the expectations in the literature, the organization consistently improved its capacity and performance in the last decades. These conditions, heterogeneity, fragmentation, disagreements, and tensions, are not at all infrequent in real life organizations. And yet they have been recurrently left out of the prevalent explanations for organizational and policy advances. In part, this has happened because we still lack an adequate conceptual apparatus that can trace the place of conflict in successful trajectories and stories. Most frequently, policy scholars avoid conflict or pretend it is not so relevant, even though a long tradition in the sociology of organizations has approached conflict as an element of social organization (staff vs. line; workers vs. managers, formal vs. informal groups/cliques, etc.)⁹². By doing so, policy scholars and development

⁹² Prominent examples include the works of Robert Merton, Melville Dalton, Michel Crozier, and Alvin Gouldner.

practitioners fail to understand when and how intra-organizational tensions and disagreement promote positive change⁹³.

This chapter sought to address these shortcomings in the literature by exploring some of the conditions and processes through which heterogeneity, fragmentation, and tensions inside organizations set in motion processes of improvement, rather than failure. I argue here that the positive developments discussed in previous chapters – such as innovation in inspection practices and structures of work, dynamic learning processes, and the use of discretion in the public interest – can be explained by the coexistence and mutual control of different narratives about work within the same organization. The contradictory quality of these understandings and their anchoring in actual practice actually creates pressure for constant reflection and improvement of inspection procedures, structures, and its outcomes.

In sum, the coexistence of these different narratives triggers “reflection in- and on-action” (Schon, 1983)⁹⁴ and supports different ways of doing labor inspection, which in turn sets in motion a process of *accountable creativity* that creates continuous sources for learning (cross-fertilization) as well as pressures for performance. As inspection efforts associated with each of the different narratives continue producing relevant results for the

⁹³ Tendler’s work (2006; 1995) on reform fractions, as associated with the gradual constitution of professional/occupational identities, is surely an exception in the field of development studies in respect to addressing cleavages and conflicts as drivers of organizational improvement. Reform fractions can play an important role in making disagreements explicit and promoting an ongoing debate through the years about different views on how to improve policy. Sometimes these cleavages paralyze action, but other times they create dynamic tensions with positive results (Tendler, 2006). Tendler’s work pointed out to many examples of such processes in Brazil, such as that of the public-health physicians and of nurses with respect to health reforms, and the sanitary engineers with respect to water-and-sewerage reforms (the *condominial* system), and agricultural engineers and agricultural-extensionists dedicated to small-farm agriculture and agribusiness operations.

⁹⁴ According to Schon (1983) the reflective practitioner reflects on the phenomenon before him, and on the prior understandings which have been implicit in his behavior. He carries out an experiment which serves to generate both a new understanding of the phenomenon and change in the situation.

organization (e.g. public legitimacy and support from government), their presence and operation is further institutionalized in organizational structures and procedures, reinforcing their ability to put checks on each other. Therefore, I argue that the Brazilian labor inspectorate would not have achieved its current strength and relative success in terms of professionalization and service delivery if it were not because of its internal complexity and the interplay of its multiple groupings, structures, understandings, and actions.

The current research takes a perspective on organizations “not as chiseled entities, but as shifting sets of contained and ongoing counter phases of action” (Dalton, 1959 p.4). In contrast to the prevalent views in the literature emphasizing the importance of coherence and conformity, this study shows evidence of the potentially constructive process of formation and consolidation of internal contradictions. Differently than approaches that exorcise conflict and disagreement from bureaucracies by instituting standardized goals, procedures and protocols, this research shows that there are benefits with serious policy implications to be reaped from the coexistence of multiple interpretations of the organization’s function and operation.

CONCLUSION

“...if the world of theory is grey and foredoomed, the world of everyday life is green with possibilities that need to be cultivated.” (Gouldner, A. 1954, p.29)

Towards “Flexible Bureaucracy”: reflections on discretion, creativity, and accountability

The empirical data analyzed in this dissertation suggests that many of the descriptions and arguments about how regulatory bureaucracies operate and about the processes through which they supposedly trigger development are at best myopic. Scholarly work on bureaucracy and development is replete with prescriptions of the right ingredients and prerequisites for bureaucracies to positively affect economic growth and social development – such as predictable rule-bounded behavior, corporate coherence, uniformity, cohesiveness, discipline, and the right kind of relationship to society, whether embedded autonomy, synergistic, participatory, etc. Similarly, debates on enforcement of regulation have privileged explanations of what regulatory bureaucracies ought to do, instead of what they actually do on the ground. Finally, the academic production on public administration has emphasized the development of normative models (New Public Management, Experimentalist Governance are some examples) without necessarily looking at how they restructure actual work, office and street-level practices, as well as occupational relations associated with understandings about the job and its performance.

Bureaucracies infrequently match these prescriptions and models, and if they exhibit some of the features of the models, they almost never display all of them together.

More often than not, bureaucracies are fragmented and incoherent, display heterogeneous behaviors, and are rife with internal conflict and disagreement. The micro-level studies conducted under this dissertation examined bureaucracies with a focus on the observation and understanding of the work routines and social practices of their members as they deal with concrete situations. This research aimed at digging deep into the life of one-single organization, the Brazilian Labor Inspection Department, in search for the mechanisms, processes, or practices that actually do the work when bureaucracies play a positive role in development. Therefore, it offers complements and corrections to perspectives that pictured bureaucracies from a more distant standpoint, out of touch with the ordinary life of bureaucracies.

This conclusion brings together the findings and arguments from the previous parts of this dissertation to extract their main implications for the development of a revised notion of bureaucracy. It consists of a reflection on the issues that cut across the analyses in previous parts (Table 12, appendix), the limitations of the current approach, and on the paths for research on *Flexible Bureaucracy*. The purpose of this conclusion is not to fully develop a new model, but rather to point to its beginning. I lay out some hypotheses and proposals based on the study of the Brazilian labor inspectorate. I see them as guides for future research on the processes through which state bureaucracies trigger socio-economic development, with potentially interesting implications for theory and practice.

In this dissertation, the Brazilian labor inspection service was analytically disaggregated into a series of comparisons across: cases and interventions by labor inspectors; management models, supervisory practices, and organizational structures; and narratives about work and their competing “versions” of the organization and its mission.

The previous parts of the dissertation explored these comparisons in three different levels of analysis: the street-level, the structural/managerial level, and the intermediary level of ideas, values, and understandings formed within the inspectorate as a result of their different experiences at work. Together these comparisons and the findings and arguments developed through them tell a story about *discretion, creativity, and accountability*, concepts and analytical categories that don't often go together when we talk about the state and its bureaucracies. There are at least three reasons why these elements don't often go together:

- First, there is often a disconnection (or lack of interchange) in the literature and debates between empirical descriptions and normative views of bureaucracies that prevents a productive analysis of *discretion* and its incorporation in theory as an active element for the improvement of bureaucratic capacity and performance;
- Second, and as a consequence of the first point, scholars frequently avoid the systematic analysis of the potential for *creativity*, learning and innovation, and problem-solving stimulated by discretion because they fear its potential misuses (or because they cannot analytically separate the conditions leading to the good and bad uses of discretion);
- Third, shortsighted or static perspectives on *accountability* (between bureaucrats and supervisors, politicians, and citizens) frequently fail to realize available control mechanisms via organizational and social processes that are not hostile to the execution of tasks, and which hold the potential for promoting *discretion in the public interest* by reaping the benefits of creativity and flexibility at the same time

as preventing their uses for undesirable ends (e.g. corruption, favoritism, private gain, etc.).

This concluding chapter addresses each of these points and attempts to integrate *discretion, creativity, and accountability* into a notion of *flexible bureaucracy*. For each of the three components, I discuss why they have been absent (or even neglected) in previous scholarly work, describe how they have emerged in the study of the Brazilian labor inspectorate, and present the implications of the findings of this dissertation for theory and practice, drawing where appropriate from the empirical material and examples analyzed in previous parts of this dissertation.

Discretion: from marginalization to recognition and analysis

Discretion has long been treated as residual category by analysts of bureaucracies in the modern state (Davis, 1969). This is due primarily to the wide acceptance of and relatively narrow interpretations of Max Weber's work on bureaucracy. For Weber, bureaucracy represented the organizational form of a sociopolitical system (system of domination) that stood in sharp contrast to other ideal-types of organization, namely charismatic and patriarchic domination. In the latter two systems, the exercise of power was legitimated, respectively, by the extraordinary characteristics of the leader or by tradition. In contrast to this historically more prevalent systems of domination, Weber described bureaucracies (and rational-legal domination) as the rule of law, in which formal rules establish a clear line of command through hierachal structure; prescribe the

eligibility criteria, duties, and competences attached to positions within the organization; promote a division of labor (specialization); define the procedures and scope of decision-making processes at all levels of the organization (including the decisions about changes in rules); and specify the processes for succession in power. These features of rational-legal organization cumulatively lead to the control of individual and personal inclinations, desires, and opinions, and the minimization of their effects in the machine-like functioning of the organization (Weber, 1968).

Needless to say, Weber recognized that rules were not originally perfect control devices and could neither predict nor confine all situations and behaviors. However, for Weber, bureaucracy not only involved the formalization and prior specification of permissible social relations but, just as importantly, also an incessant, ongoing process of rationalization of the administration (means and ends) and of the law. Therefore, gaps in the rules, that is situations and behaviors not described or dictated by formal rules, should eventually become subject to organizational rules as a result of the inexorable tendency towards bureaucratization and formal rationalization of all spheres of social life (Mommesen, 1989). Of course, if rationalization proceeds as Weber anticipated, we would have created, as he also predicted, an iron cage of our own making.

Weber's ideal-typical conceptualization of bureaucracy, which – only as an ideal-type – envisioned a gapless institutional framework dictating how agents act under all possible circumstances and thereby making state agents impersonal cogs within a preprogrammed organizational machine, provided the theoretical framework for interpretations of actual bureaucratic organizations as having “rule of law rather than personal discretion at their heart” (Lange and Rueschemeyer, 2005: p.241).

Based on this interpretation, many scholars, especially those in political science interested in the interface between bureaucracy and development, came to emphasize impersonality, rule-bounded behavior, predictability and corporate coherence as the essential characteristics of the modern state that would allow it to play a positive role in socio-economic development (Johnson, 1982; Amsden, 1989; Deyo, 1989; Evans, 1989, 1995; Wade, 1990; Evans and Rauch, 1999; Lange and Rueschmeyer, 2005; Doner, Ritchie, and Slater, 2005). If one thinks about bureaucratic organization in contrast to patrimonial or charismatic leadership, such advocacy of legal-rational bureaucratic governance makes sense as a means of managing socio-economic development in the modern world. However, a focus on bureaucracy simply as an alternative to charismatic or patrimonial rule, as too many have done, fails to take account of the variations within bureaucratic management and as such ignores some inherent, perhaps inescapable features that were not central to Weber's ideal-type. In following this intellectual trajectory, contemporary approaches to "bureaucracy and development" have failed to recognize discretion as an integral part of bureaucracies.

This study sought to overcome these limitations with the support of a relatively large body of scholarly work both in legal sociology and in policy studies, from the 1950s to the 80s. These empirical studies had already challenged these more theoretical assumptions about bureaucracy and exposed the limitations of the predecessor normative approach, demonstrating that formal rules and policies were not the only guides for bureaucratic practice. In previous parts of this dissertation, I reviewed these contributions and incorporated their theoretical developments in two moments.

First, the debates in sociology of law (and regulation) revealed the important distinction between law-on-the-books and law-in-action. As observational studies (such as Bittner, 1967; Van Maanen, 1973; Wilson, 1968; Brown, 1981; Silbey, 1980-81) penetrated law enforcement bureaucracies, they provided empirical evidence for the perception of bureaucratic action as: (a) responsive to particular situations rather than to general prescriptions or recipes of the task; (b) involving decisions and procedures not always authorized or described by law, sometimes diverging significantly from the set of formally prescribed conducts; (c) consistently reflecting the encompassing social structure and organizational and cultural factors; (d) perceiving the law as a resource to handle situations and solve problems; and (e) varying across different organizations as well as across enforcement agents within the same organization⁹⁵ (Silbey, 1985; 1989). These findings frustrated the expectations that legal mandates would automatically, seamlessly be translated into policy action and prompted these scholars to acknowledge the pervasiveness and the inevitability of discretion in bureaucracies (Davis, 1969; Silbey and Bittner, 1982; Lipsky, 1980, Hawkins, 1992).

Second, similar discoveries emerged in the field of policy studies as scholars puzzled over the problem of implementation - the existing gap between the stated goals of public policies and the ways in which outcomes are achieved. Some of the first attempts in this direction highlighted the complex web of constraints and difficulties in the execution of policy goals (Pressman and Wildavsky, 1973; Bardach, 1977). But a few years later,

⁹⁵ In a classic example of the pioneering studies to have documented variations in regulatory style, Wilson (1968) observed the behavior of patrol officers during the performance of their daily duties in eight communities in the United States (in three different states: New York, Illinois, and California) and found substantial variation in regulatory style. In some police departments, patrol officers were tolerant toward minor violations and emphasized orientation and order maintenance by balancing the application of the law according to the particular characteristics of the offence and groups involved; in other departments, patrol officers exercised their coercion power (punishment) for each and every deviation from the law, guiding their behavior by general and impersonal rules.

studies of workers in the front lines of policy implementation, the so called “street-level bureaucrats” (Lipsky, 1980)⁹⁶, demonstrated how the decisions these workers make on the spot to cope with the conditions (uncertainties and pressures) they face effectively become the public policies they carry out on behalf of their organization (Leonard, 1977; Lipsky, 1980; Wilson, 1989; Silbey 1980-81; Maynard-Moody and Musheno, 2003).

These findings undeniably cast doubt on the usefulness of an ideal-typical description in understanding real world organizations in which agents necessarily have room to maneuver, given inevitable difficulties arising from imperfect monitoring and imprecise regulatory rules. Nonetheless, this perception did not lead to the systematic analysis of discretion as a researchable phenomenon or object of scientific scrutiny. More often than not the recognition of discretion in studies about bureaucracy ended up with the description of its seemingly contingent, chaotic, disorganized, and idiosyncratic nature, which excluded discretionary decision-making from the short list of central topics of interest to social scientists⁹⁷. Thus, discretion has been commonly described as necessarily inconsistent, unpredictable or as an amorphous phenomenon because it is contingent on, for example: who the client or regulated entity is and what he deserves (Maynard-Moody and Musheno, 2003; Kagan and Scholz, 1984), circumstances and situational imperatives (Wilson, 1989), different (and self-interested) ways individual bureaucrats cope with

⁹⁶ For Lipsky, street-level bureaucracies are public service agencies that employ a significant number of workers who interact directly with citizens in the course of their jobs (such as school teachers, nurses, policemen, social workers, law enforcement personnel, among others). These workers have a lot of discretion due to ambiguity in agency goals, the fact that they work in complicated situations that cannot be reduced to programmatic formats and perform tasks away from close supervision, in addition to chronic inadequacy of resources. For all these reasons, Lipsky argues “the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures effectively become the public policies they carry out [on behalf of the organization]” (1980, p.xii).

⁹⁷ The collection of articles on the “uses of discretion” in Hawkins (1992) is an exception. There are some scholarly efforts in political science trying to investigate discretion at the agency level (e.g. Huber and Shipan, 2002), but rarely at the level of individual bureaucrats and their decisions about policy implementation at the front lines of public service.

adverse work conditions (Lipsky, 1980), or the political and constituency demands of offices in the public's eye (Silbey, 1980-81).

For this reason it has traditionally been easier for scholars to move from a perspective that denies the relevance (or even existence) of discretion to one that readily associates or restricts discretion to its perverse manifestations, rather than to developing the conceptual tools and analytical strategies to explore the potential positive side of the same phenomenon. As a consequence, discretion became commonly defined by what it lacks instead of by what it is, or could be. For example, in one of the first studies to examine discretion in the administration of justice, Davis (1969) defined discretion as "where rules and principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made" (p. v). As a result of such perceptions, discretion was naturally associated with the potential for uncoordinated action and abuse of office for private gain.

Creativity and Learning: the bright side of discretion

Creativity, learning, and change have not traditionally been described as typical characteristics of bureaucracies. In the ideal-typical Weberian bureaucracy there is very little or no room for creativity and experimentation as all behaviors, as well as organizational change, are supposed to be increasingly predetermined by rules, procedures, and protocols (Kalberg, 1980; 2001; Mommsen, 1989). For many analysts, the

stability of this system of social organization constituted the very condition allowing for corporate coherence, integrity, and predictability, supposedly essential aspects of bureaucracies' developmental role. As a consequence of the arguments described above, previous studies on discretion have not gone very far, either due to methodological limitations or ideological orientation, in exploring the potential benefits of discretion for organizational development and performance.

For example, even the literature that recognized a critical role for the so called "street-level bureaucrats" and advanced our understanding of front-line bureaucrats as ultimate policymakers (as opposed to managers), tended to portray discretion as an obstacle to change and improvement in public sector bureaucracies. For instance, Lipsky's (1980) argued discretion created the opportunity for resistance of isolated individuals against organizational directives and managers. According to him, as street-level bureaucrats use discretion to limit access and control demand for service (e.g. rationing, queuing, and "creaming"), husband organizational resources (e.g. screening, rubber stamping, and referrals), and modify their conceptions of work and clients to a case-processing mentality, lowering their expectations and motivations about service. The studies developed by Maynard-Moody and Musheno (2003) and Goetz (2001), respectively about cops, teachers, and counselors, and loan officers, demonstrated that the gap of formal rules and procedures represented by discretion was often filled in by moral judgments based on values, norms, and beliefs shared within the communities subscribed by individual bureaucrats (religion, civic associations, etc.), consistently leading to prejudice and discrimination.

In contrast, I argue that the exploration of the potential of discretion for creativity, learning, and experimentation requires escaping from the traditional perception in the literature of the contingent and unpredictable nature of discretion. It involves understanding, for example, how the reaction of isolated individuals (idiosyncratic behavior) accumulates over time and crystallizes into visible patterns or styles of behavior within bureaucracies⁹⁸, and the links between variations in bureaucratic behavior and policy/regulation outcomes. A focus on the empirical observation of work and how it is performed in concrete settings creates conditions for the categorization of the seemingly random and unsystematic variation in bureaucrats' behavior into sets of practices, which are patterned enough to allow for the analysis of their relationship to organizational outcomes.

As I investigated the patterns in terms of work practices and routines of labor inspectors running across 24 cases in distinct industries, states, and involving different types of violations and regulations (Part 1), it was possible to observe that all the variation in bureaucratic behavior consisted mainly of three different styles of inspection. In some cases, inspectors behaved like policemen, issuing sanctions for every irregularity found in the workplace. In other cases, inspectors' behavior resembled the practices of consultants or educators, as they sought to inform rather than punish business for infractions of the law. And finally, in another set of cases, inspectors combined in the same intervention sanctions with technical and legal assistance.

As patterns of discretionary behavior became apparent, I could explore their links to the outcomes of labor inspection in Brazil. In previous parts of this dissertation (Parts 1

⁹⁸ Silbey, Pires and Coslovsky (2009) review the current literature on enforcement of regulation and show how scholars in this field have struggled with the problem of aggregating discrete acts into styles or strategies of enforcement, as well as the measurement errors frequently involved in these analyses.

and 2), I provided evidence of how discretion created opportunities for labor inspectors to learn, innovate, and solve problems. For example, detailed cross-case and within-case comparisons suggested that the cases in which labor inspectors combined sanctions with assistance were precisely the ones in which they were able not only to bring firms into compliance but also to make compliance good for business (or at least to create favorable conditions for firms to remain in compliance). By combining sanctions with assistance, as opposed to only punishing or only educating firms, inspectors created simultaneously a climate of change (pressure on firms) and provided relevant inputs for the process of change, leading for example to the upgrading of fireworks products as a result of compliance with health and safety regulations, or to lessening the burden of formal employment contracts on rural producers without compromising the rights and protections of rural workers.

Other examples include cases as diverse as the production of grains and seeds, and auto-parts, in Minas Gerais, or service provision during carnival festivities in Bahia, or the construction sector in Recife, Pernambuco. In all these cases, labor inspectors faced situations in which the current regulation and norms did not take account or anticipate the kinds of violations observed or provide the appropriate remedies for compliance problems that arose in these situations. Without a predefined protocol or solution, inspectors in these cases were driven into open-ended searches to find ways to adapt existing norms and legal principles, or shape the conditions of actual production processes in order to produce compliance without harming firms' abilities to survive in competitive markets.

In order to meet the law's general mandate and be responsive to business and labor interests, the inspectors had to learn and experiment with new legal, managerial, and

technological instruments, such as the consortiums of rural employers and individual service provider contracts during carnival (legal), the reorganization of production lay-outs in fireworks factories (managerial), and protective devices for punch-presses and electrical circuitry that did not jeopardize productivity and product quality both in auto-parts and construction firms (technological). The learning process involved acquiring information about the firms and markets in which they function, about other existing laws that could be helpful, and collaboration with other government organizations (e.g. the health and safety research institute, development banks, etc.) and non-government organizations (business associations, NGOs, and unions). The development of these legal, managerial, or technological innovations provided solutions that helped firms stay in compliance with the law, even in the absence of constant inspection.

The positive impacts of discretion in organizational performance in the public sector have already been documented in other studies and in different fields – for example Handler (1986, 1992) in socio-legal studies and Tendler (1997) in development studies. However, the empirical evidence and analyses provided in this dissertation contribute to our understanding of the links between discretion, experimentation, learning, and improved outcomes (problem-solving). These findings suggest that embracing discretion and exploring its consequences for organizational behavior and outcomes do not inevitably lead to the perception of randomness and unpredictability in frontline behavior, as suggested by previous studies on the topic. Rather, they suggest that if we accept that formal rules and procedures are only one among many references for action available to bureaucrats as empirical literature has shown, then it becomes easier to recognize bureaucratic behavior as necessarily heterogeneous, and adaptation, experimentation, and

change as possible and likely occurrences in bureaucracies. Embracing discretion, in other words, works as a window through which substantive considerations enter the universe of formal rules, guiding their interpretation and application in concrete situations (personal or local problems, industries characteristics, productive practices, market conditions, etc.).

In sum, the findings and argument presented in this dissertation challenge and complement previous studies. They indicate that tracking the determinants or the circumstances and conditions under which discretion leads to adaptive and creative practices (the “good side of discretion”) is an indispensable task in the quest of understanding how bureaucrats learn, change, and improve over time.

Accountability: bureaucratic discretion in the public interest

The exploration of the benefits of discretion has long been obfuscated by the fear that discretion will necessarily undermine the system of liberal-legal controls on state intervention, creating the conditions for bureaucrats to maximize their private interests, rather than serve public ones. The fear of discretion has a long tradition in political thinking and in public sector management. Liberal legalism, democratic, and federalist theories interpreted discretion as a threat to the rule of law, a breach of the “social contract”, creating space for arbitrariness, inconsistency, abuse of power, and consequently, injustice. As a result of these interpretations, public administration has been recurrently redesigned around the need to confine, structure, and put checks on discretion

through administrative law and oversight – procedures and rules regulating the conduct and practices of administrative agents.

However, excessive and misdirected actions to reduce discretion have damaged the capability of public sector organizations to accomplish delegated tasks, suggesting that traditional remedies might have been as bad as, if not worse than, the disease.

Administrative law and oversight achieve bureaucratic control at the expense of making administrative processes more confusing and reducing the ability of bureaucracies to function effectively. In other words, in order to improve the control of bureaucrats' discretionary decision-making, these measures inevitably handicap the capacity of organizations to make complex decisions and implement solutions to existing problems, instituting a trade-off between control and capacity.

I argue here that such trade-off is not an inevitable one and it takes place most often because the traditional control apparatus regards discretion as a threat rather than as essential to bureaucratic action. Thus, when aiming to reduce discretion, policymakers actually reduce the potential for action. As a complement or corrective to such traditional control mechanisms, this research has elaborated on two alternative sets of checks on discretionary decision-making that are not hostile to the execution of tasks, that is, controls that do not reduce but actually improve bureaucratic capacity over time.

The first accountability method involves vertical mechanisms, such as the organizational structures and supervisory practices suggested by the Experimentalist Governance approach to public administration (Sabel and Zeitlin, 2008; Noonan, Sabel, and Simon, 2007). Starting from the recognition that collective problems and policy goals are not well understood, experimentalist organizations assume the provisionality of their

goals and institutionalize a learning process that is based on constant error detection and correction at the lowest levels of the organization, with the potential for generalization of such adjustments into higher level structures. As described in greater detail in Part 2, this organizational arrangement accepts and even expands frontline discretion with the condition that discretionary decisions, especially those affecting provisionally defined goals, must be explained and justified in the form of review processes or written reports. The examination of such explanations allows administrative superiors and outside oversight bodies to detect and begin considering how to correct misjudgments by individual bureaucrats, systemic flaws in operating routines at the local level, and even ambiguity or mistake in the agency's own conception of its key commitments and plans for achieving them.

The cases involving severance payments collection, eradication of fraudulent cooperatives, and improvement of safety conditions in construction sites (Part 2) illustrated how these supervisory tactics allowed for customization and service innovation at the local level, at the same time that they created effective checks on discretionary decision-making by bureaucrats. For example, managers in the labor inspection office in Pernambuco expanded the discretion of frontline inspectors in charge of collecting severance payments. They discharged a group of four inspectors from traditional bureaucratic controls (predetermined inspection procedures) and narrow productivity measures (pay-for-performance system). With greater autonomy to organize and plan their work, these inspectors devised data analysis systems and sector-specific enforcement strategies, in collaboration with other government organizations, which greatly improved the office's capacity for severance payments inspection. Throughout this process managers

monitored the work of these inspectors in periodic meetings (qualitative reviews) and written progress reports containing quantitative performance indicators. Instead of limiting inspectors' capacity for action, these monitoring tools triggered inspectors to reflect about their enforcement actions in the field, stimulating a learning process that culminated in innovations in enforcement strategies – such as off-site detection of debts and irregularities and the tailoring of investigation procedures to different economic activities – with unprecedented levels of severance payments collection by the office.

Similarly, inspectors had discretion to decide what to do (and how to do it) in their interventions in the construction sector in Recife. Managers granted greater autonomy to a team of inspectors as they became involved in continual discussion and justification of their enforcement actions in a tripartite committee, set up to discuss the implementation of occupational health and safety norms in the construction sector. As a result of their participation in the committee, inspectors had greater latitude to innovate – such as in the adoption of the differential residual device (DR) that dramatically reduced electrocution rates in Recife (Part 2) – as long as they could justify and convince construction labor unions and firms about the potential benefits of their interventions. These two examples suggest that, instead of limiting the capacity of bureaucrats to innovate and solve problems, alternative control procedures can actually trigger reflection on practice, collective learning, and accountability in bureaucracy.

The second accountability process, *accountable creativity*, involves horizontal mechanisms that establish demands for justification and performance demonstration among peers. As a result of the combination of membership heterogeneity and external pressures requiring organizational action on substantively different problems, conditions

frequently observed in many bureaucracies, two different narratives have emerged and consolidated over time in the Brazilian labor inspectorate – “fiscal intelligence” and “social development” (Part 3). These narratives involve different sets of understandings of what labor inspection is, the practices and strategies through which it should be implemented, and the goals it should pursue. The coexistence of these two understandings and narratives about inspection work provides both: a) inspirations for action through the cross-fertilization of practices (e.g. usage of information technologies in “fiscal intelligence” vs. experience with collaborations with external partners in “social development”); and b) a benchmark and pressures for improved performance through mutual vigilance by individuals and groups as they enact one or another narrative in the course of their work. *Accountable creativity*, in sum, puts checks on bureaucrats’ discretion by creating a social environment that continuously demands justification and performance in exchange for autonomy in making decisions about how to conduct work. It stimulates learning, creativity and innovation, at the same time as it discourages the misuses of discretion.

This process was clearly illustrated by the adoption of geographic information systems in the development of diagnostic maps for child labor inspections and the active search for collaborations with external partners to increment the coercive power of severance payments (FGTS) inspections (Part 3). In the first case, inspectors involved with child labor, an initiative traditionally associated with the social development narrative, observed the positive results and mimicked the projects more aligned with the fiscal intelligence perspective that long deployed information technologies for diagnostics and planning of enforcement efforts. In parallel, inspectors involved with severance payments

inspection and collection, one of the landmarks of the fiscal intelligence narrative of labor inspection, learned from the experience of projects on child labor the benefits of collaborations with partners outside the agency, such as government banks and local-level non-government actors. Finally, as these projects compete for their prevalence and status within the agency, inspectors involved with each of them are constantly raising the standards of good performance as well as continually questioning the creative adaptations of others. As these cases suggest, as well as evidence discussed in previous parts, accountable creativity engenders learning as well as vigilance within the organization.

These two alternative modes of accountability, supervisory review and accountable creativity, raise important challenges for previous studies about bureaucracies. The recognition of discretion as a pervasive and inevitable phenomenon led some scholars to assert the impossibility of accountability in bureaucratic organizations. For example, Lipsky (1980) asserted “street-level bureaucracies lack the basic prerequisites for bureaucratic accountability” (p.161)⁹⁹. Given the ambiguity in the definition of goals and conflicts in the definition of performance that often characterizes these organizations, he argues “bureaucratic accountability is virtually impossible to achieve among lower-level workers who exercise high degrees of discretion, at least where qualitative aspects of the work are involved.” (p.159)

Lipsky, as well as many other scholars of bureaucracy, conceive of accountability on discretionary decision-making only in legal terms or through the means of traditional performance measurement. They tend to focus too much on the tensions between the individual and the bureaucracy and fail to recognize the participation of such individuals

⁹⁹ Even in the cases in which performance measurement is possible, Lipsky argues that such accountability mechanisms “may undermine rather than enhance service quality and may systematically decrease service quality when certain conditions of public bureaucracies prevail.” (p.161).

in groups, the existence of work communities, and social processes related to the construction of shared understandings, work practices, and patterned behaviors (such as discussed in Part 3). The findings from this research bring light to other social and organizational forces that put effective checks on bureaucrats' uses of discretion. The findings revealed by this research corroborate arguments in previous studies in legal sociology, which asserted that discretionary decisions are rarely unconstrained:

“The use of rules involves discretion, while the use of discretion involves rules...much of what is often thought to be the free and flexible application of discretion by legal actors is in fact guided and constrained by rules. These rules, however, tend not to be legal, but social and organizational in character.” (Hawkins, 1992, p.12-13).

Social and organizational constructs assist the use of discretion by bureaucrats, granting it some significant degree of regularity and predictability¹⁰⁰. It is in this context that the notion of accountable creativity and the learning by monitoring structures suggested by experimentalist governance scholars¹⁰¹ offer interesting contributions to the debate about bureaucracies and discretion because they open the floor for exploration of the creative side of discretion providing at the same time accountability mechanisms on its misuses.

In sum, current work on bureaucratic control needs to move beyond a shortsighted view of formal accountability mechanisms (whether administrative law, agency oversight,

¹⁰⁰ These social and organizational constructs and the way they discipline discretionary decision-making include, for example: work routines, rules-of-thumb, and simplification devices (Feldman, 1992); stereotyping, classification, and discrimination (Baumgarten, 1992); morality and ideologies (Handler, 1992); and precedent and prior experiences (Hawkins, 1992); teamwork arrangements (Brown, 1981); and the construction of social expectations (by beneficiaries or communities) of bureaucrats' work (Tendler, 1997).

¹⁰¹ It is worth noting that, although “accountable creativity” and “learning by monitoring” mechanisms share the principle that monitoring and support for action can go hand in hand, the processes suggested by these notions take place in different domains and involve different actors. While accountable creativity involves horizontal relationships (bureaucrats-bureaucrats) with reference to the adherence of individuals to collectively constructed understandings, learning by monitoring involves vertical relationships (supervisor-bureaucrat) and the review of workers' behaviors in reference to the agency stated (even if provisional) goals.

or participation of civil society) and incorporate a diverse array of tools that include managerial processes (vertical controls), as well as participation in groups and construction of collective meanings and understandings that circulate within organizations (horizontal controls). The findings about alternative accountability processes that are not hostile to the expansion of bureaucratic capacity clearly indicates the feasibility of making discretion work in the public interest, by reaping the benefits of flexibility, creativity, and innovation without at the same time creating conditions for the degeneration of public administration.

Flexible Bureaucracy: main proposals and hypotheses for future research

The findings from this research indicate opportunities for reexamination of the theory and practice of bureaucracy. The arguments and re-elaborations developed along the lines of *discretion, learning, and accountability* have emerged from the three empirical studies and levels of analysis. Together, these arguments reinforce each other and gain enough strength to serve as the basis for a renewed notion of bureaucracy. The idea of *flexible bureaucracy* does not aim to represent a new prescriptive model, rather it takes on “possibilism” (Hirschman, 1971) as a strategy to reconstruct, complement, and maybe correct existing perspectives, potentially leading to: a) a perception of bureaucracies that is closer to what they look like on the ground (as opposed to normative models), as well as b) to the perception of processes already underway and present in most organizations

(rather than essential prerequisites) that explain organizational learning, change, and advance.

I argue flexible bureaucracy requires a shift away from standard views of bureaucracies and involves a sequence of three proposals:

The first proposal is the recognition that discretion is as much a defining feature of bureaucracies as are rules. Bureaucrats spend as much time with rules as with discretion in their daily routines, since discretion is heavily implicated in the use of rules: “interpretive behavior is involved in making sense of rules and in making choices about the relevance of rules” (Hawkins, 1992). If we fail to account for discretion (and its effects) we are missing a key piece of the operation and structure of the state, with serious implications for social and economic development outcomes.

Bureaucracies involve both *hierarchy and experimentation*, two apparently contradictory characteristics that account for two important functions for the improvement of organizations as social systems: stability and change. The main implication of this proposal for practice is that organizations and their managers should spend less time trying to figure out how to reduce or confine discretion at the street level and more time understanding, rewarding, and disseminating the instances in which discretion was put at the service of innovation and problem-solving.

Second, as we accept discretion as constitutive of bureaucracy, then we will more likely acknowledge that heterogeneity in membership, fragmentation in structures, and inconsistency in behavior are more frequently than not the outstanding features of bureaucracies, as opposed to corporate coherence, cohesiveness, and uniformity.

Consequently, homogenizing accounts of bureaucracies lose traction and become unhelpful in understanding the creative and innovative uses of discretion.

Alternatively to the perspectives that see internal heterogeneity and diversity as malformations that require some type of correction (e.g. standardization of behaviors and procedures), the findings from this research suggest that these features can stimulate learning and improvement, because they require practical reconciliation of the interests of the different actors that compose an organization. As the works of Gouldner (1954) and Crozier (1964) demonstrated, different groups within the bureaucracy can have different ends, goals, and perceptions of role performance and organizational mission. A rule can be rational and expedient for one group or faction but not for another, as ends may vary and even be contradictory across groups, leading to multiple sources of action within bureaucracies. Similarly, Hirschman argued that “diverse groups hold together because they practice politics, not because they agree about fundamentals” (1995: 238). Thus, I argue that internal diversity – involving disagreements and coexistence of different views, techniques, and ways of practicing work, for example – operates as an endowment of multiple sources of understanding and action, leading to potentially constructive internal dialogues, compromises, as well as resistance (conflicts/disagreements).

The third proposal involves the exploitation of heterogeneity and internal divergences among work groups, and their understandings about the organization and their work, as opportunities for continuous learning, improvement of practice, and accountability. In contrast to perspectives that emphasized the construction of a “strong” and homogeneous organizational culture and the standardization of procedures and protocols, *flexible bureaucracy* calls attention to the fact that we need not assume that

different internal groups and units agree on the goals and practices adopted by the organization. Rather, flexible bureaucracies involve processes through which internal groups, units, projects, or individuals are expected to justify and provide reasons for their actions, be it through vertical (review processes) or horizontal (peer pressure) mechanisms. When engaged in such dynamic, bureaucrats reflect on their practice, transmit potential innovations to others, and are subject to scrutiny within the organization. One of the key implications of these proposals is that managers should allow for diversity in recruitment and create an environment that favors groups' formation, differentiation, and constant interaction, so that each of these "versions" of the organization and their understandings about work become sources of inspiration as well as of vigilance on bureaucratic behavior.

In sum, this research adds to ongoing scholarly efforts to understand how bureaucratic organizations learn, change, and improve over time. *Flexible bureaucracy* is an argument about discretion as a condition leading to creativity, experimentation, and social learning, as well as to accountability mechanisms that ensure discretion's use in the public interest. Rather than conceiving discretion as an individual and discrete act, as previous studies tended to emphasize, *flexible bureaucracy* portrays discretion as a collective experience, a social process, involving sequences of decisions that take part in a network of relationships (Hawkins, 1992). This and previous studies (e.g. Wilson, 1969; Handler, 1986; Brown, 1981) have already demonstrated that discretion creates the conditions for internal heterogeneity¹⁰², understood as a multiplicity of operating styles

¹⁰² For example, Wilson (1969) demonstrated how the location of police departments in the communities as well as the expectations and styles of different managers/chiefs introduced variations in police behavior across departments. Brown's findings (1981) pointed in the same direction in the sense that conflicting cues on how to act lead to a multiplicity of operating styles in any police department.

and patterns of behavior and as different sets of shared understandings and perceptions about organizational goals and ways of achieving them.

On the one hand, discretion and heterogeneity, often described in the literature as obstacles for change and improvement of organizational performance, create the conditions for innovation mainly through reflection and cross-fertilization of practices, as individual and groups of bureaucrats have the latitude to experiment new techniques and solutions locally. In case these innovations show good results, they raise the standards of what constitutes good performance and inspire other bureaucrats in the same agency to try it out in their own interventions. The possibility of variation in practices and behaviors, thus, becomes a powerful source of collective learning in the organization. On the other hand, the same elements set up a dynamic of competition and mutual vigilance across work groups, as they contrast their different understandings and narratives about the organization's mission and the best ways to accomplish it.

Understanding the emergence and functioning of flexible bureaucracies requires further theoretical elaboration and empirical research on the processes that link discretion to learning and accountability. I believe this constitutes a potentially fruitful research agenda towards rethinking the state, its bureaucracies, and their role in the current context of revision and reconstruction of development paradigms.

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Appendix: Table 12 – Summary of main arguments for Parts 1, 2, and 3

Part of the Dissertation	Entry point and main question	Take issue with / debates	Main findings
Part I	<p>State regulation (labor) is increasing and we need to know more about how regulations are enforced and implemented by regulatory bureaucracies</p> <p><i>To what extent differences in the way bureaucratic agents behave/operate at the street-level (i.e. styles of implementation, inspection practices, work routines, etc.) explain the variation in the outcomes of public policies and regulations?</i></p>	<p>Engages with the literature about styles of regulation and inspection. The existing debates recognize variation in styles but describe them normatively (rather than empirically) and, in doing so, it fails to explore the causal links between styles of inspection and regulatory outcomes</p>	<p>It provides an empirical description of the variation in styles, showing more possibilities than originally predicted in the literature. And it describes the causal links between styles and outcomes</p>
Part II	<p>How can we account for variation in behavior (e.g. going by the book vs. relational interdependence)</p> <p>It aims at evaluating the influence/effect of management models in the variation of behaviors, practices, and outcomes of inspection</p>	<p>It reviews traditional and contemporary approaches to the management of discretion</p>	<p>It concludes that different management models shape the work routines, practices, and outcomes of inspection. It describes alternatives forms of accountability between supervisors and front-line workers, and their impacts on staff motivation and performance.</p>
Part III	<p><i>How do we account for the diversity in practices/behaviors and structures within the same organization?</i> What are the organizational sources of variation in behavior and in structures?</p> <p>The constructive role of tensions, disagreements and multiple understandings</p>	<p>It takes issues with the literature on bureaucracy and development (coherence / homogeneity)</p>	<p>Accountable creativity as a process of learning/cross-fertilization and mutual vigilance</p>
<p>Main thread running across the analyses in each part: <i>discretion, creativity, and accountability.</i></p>			