

Beyond the fear of discretion: Flexibility, performance, and accountability in the management of regulatory bureaucracies

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Abstract

This study explores the implications of different approaches to performance management for inspection work and regulatory outcomes. It assesses to what extent variations in methods for controlling discretion explain why in some cases regulatory inspectors limit themselves to the narrow boundaries of their formal mandate, while in other cases they work collaboratively with inspected firms and other organizations to develop innovative strategies that solve complex regulatory and business problems. After reviewing alternative approaches to the management of discretion, I present a natural experiment that offered an opportunity for controlled comparisons of two current attempts to reconcile bureaucratic performance with accountability: New Public Management and Experimentalist Governance. Case comparisons in the area of labor inspection in Brazil – involving severance payments, fraudulent cooperatives, and safety in construction – suggest that these two approaches to the management of regulatory bureaucracies produce considerably different inspection strategies and regulatory outcomes. The different accountability mechanisms and investigation strategies inspired by each of these approaches create different sets of incentives with direct effects on inspectors' motivation and their ability to resolve compliance problems.

Keywords: bureaucratic discretion, labor inspection, performance management.

Introduction

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 & Kagan 1982). Alongside this standard account, a number of studies (e.g. Piore & Schrank 2008; Pires 2008; Silbey *et al.* 2009) have documented instances in which inspectors have nonetheless recognized relational interdependence within a network of interconnected firms, organizations, and government, and have used a systemic, or sociological, perspective to produce technological, legal, and managerial solutions to the obstacles preventing firms from complying with the law. Why do regulatory inspectors limit themselves in some cases to the narrow boundaries of their formal mandate and to the strict implementation of law as written, while in other cases they

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refuse to be confined by narrow legalistic interpretations of legislative intent and instead adopt innovative strategies, working collaboratively with other organizations, including the subjects of regulation, to solve complex business and regulatory problems?

If law enforcement agents vary in the degree to which they collaborate with others to solve regulatory dilemmas, what accounts for this variation? Why do some law enforcement agents recognize organizational interdependence and use this to forge collaborative solutions to regulatory and business problems and others do not? What are the factors triggering the systemic – inter-relational – perception of social action? And how, if at all, does this perception affect regulatory enforcement outcomes? One might explore the specific and more general questions by investigating variations in legal traditions (Kelman 1984), legal regimes, types of laws (Botero *et al.* 2004; Braithwaite 2006), and characteristics of regulated entities – for example, firm size, technology, and structures of productive chains (Shover *et al.* 1984; Lee 2005; Weil 2005) as well as firms' internal management systems and compliance professionals (Dobbin & Sutton 1998; Gunningham *et al.* 2006) – or the regulators' experiences and resources (Hawkins & Thomas 1984; Wilson 1989), among other issues. This article contributes to this ongoing debate about regulatory administration and enforcement by exploring one specific set of intervening variables of repeated policy relevance: organizational approaches for managing discretion and performance of regulatory inspectors. **I argue that, under certain conditions, structures and strategies for managing discretion and performance create opportunities and incentives for the perception, and incorporation in work routines, of relational interdependence within and across organizations.**

Therefore, the study focuses on regulatory administration and seeks to understand how different management practices affect enforcement work. The article proceeds by first reviewing the “fear of discretion” that has characterized debates in legal studies and political science since the mid-twentieth century. I briefly describe how two contemporary perspectives on regulatory administration, which bear resemblance to the main principles advocated by the New Public Management and the Experimentalist Governance approaches to public administration,¹ differ from traditional approaches promoting administrative law and oversight in response to the problem of discretion. I contrast these two management approaches in terms of the strategies they offer to reconcile organizational performance and capacity with accountability and controls on the misuses of discretion. After contrasting the variations in these theoretical models, I present a natural experiment² that created conditions for the empirical comparison of two models within the same organizational setting. Using data collected through 10 months of fieldwork in the Brazilian Department of Labor Inspection, I show how each model shapes labor inspection work and its outcomes. 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 bureaucrats in daily decisionmaking processes has long been treated as a residual category by analysts of the modern state (Davis 1969; Hawkins 1992),³ because the Weberian view of bureaucracy as a system of impersonal

and dispassionate rule-oriented behavior prevailed as the hegemonic framework of analysis, with but a few dissenting voices (Gouldner 1954; Crozier 1964; Blau 1970).⁴ Research in different fields – such as socio-legal studies (Bittner 1967, 1990; Wilson 1968; Van Maanen 1973, 1978; Brown 1981; Silbey & Bittner 1982) and policy studies (Leonard 1977; Lipsky 1980; Wilson 1989; Maynard-Moody & 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 decisionmaking than by the potential benefits of responsible exercise of discretion.

Scholars 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 (McCubbins & Schwartz 1984; McCubbins *et al.* 1987; Calvert *et al.* 1989).

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 in general reducing the ability of agencies to function effectively. As a result, additional attention to bureaucratic procedures has undermined parallel attention to aiding organizations making the complex decisions necessary for the implementation of policies and regulation.

In the past 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 decisionmaking with a concern for bureaucratic capacity and competence. In contrast to the earlier efforts, these new approaches to 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 discretion.⁵

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 and responsiveness to political principals and citizens, with its orientation toward 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:

(i) decentralization, with the disaggregation of subnational government actors, splitting up of large hierarchical structures, and separation of core versus other functions of government; (ii) privatization and competition, with the deregulation, creation of quasi-markets for most public services, and public–private partnerships (PPP); and (iii) 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 & Gaebler 1992; Dunleavy & Hood 1994; Pollitt 1995; Pereira & 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 (such as C. Sabel, J. Zeitlin, M. Dorf, and W. Simon) of the untenability of the economic, rational framework at the heart of NPM proposals, most specifically the principal–agent relationship.⁶ 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 or a 20% decrease in school drop-out rates. In contrast, EG scholars argue that there are no such principals in the polity with the robust and panoramic knowledge or 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 managerial model of regulation, the solution to achieving regulatory efficacy 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, p. 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 (i) expand their capacities to solve complex problems by adapting to rapidly changing conditions and by tailoring their responses to diverse clienteles; and

(ii) heighten accountability of the frontline 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 US 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." (Noonan *et al.* 2009, p. 525)

Recent developments in experimentalist institutions have been documented in different countries and areas of public service.⁷ In all these cases, analysts attributed the successful outcomes observed to the greater autonomy of frontline 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 (e.g. usually peer review, benchmarking), culminating in periodic revisions of framework goals and procedures.

These approaches offer two very different solutions to the notion of the 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.

It is not the goal of this study to provide a comprehensive review of how these two approaches have evolved, as debates concerning the origins, boundaries, and efficacy of these models are ongoing and the volume of research on these issues keeps increasing (Barzelay 1992, 2001; Aucoin & Heintzman 2000; Parker 2002; Aucoin & Jarvis 2005; Simon 2010). Also, the analysis developed in this study does not deny the possibility that the insights associated with the EG perspective could be well integrated into a more sophisticated version of the NPM approach. However, given the goal of comparing the impacts of the two management approaches, the study focuses on stylized versions of NPM and EG that highlight their differences in terms of strategies for managing bureaucrats' discretion; that is, pre-specification, narrowing of goals, and introduction of formal incentives versus constant revision of goals and reason-giving.⁸ Therefore, this article contributes to expanding our knowledge of how these two approaches are translated into actual practice by comparing (i) how they organize the work of regulatory inspectors; (ii) the impacts of each approach on inspection outcomes; and, finally (iii) the strengths and weaknesses of different solutions to the problem of managing discretion.

Two approaches for managing regulatory discretion within the same organizational setting: Research design and methods

This research takes advantage of a natural experiment to observe the operation of both managerial models working in the same government agency:⁹ 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 wage and hour 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,¹⁰ the career of labor inspectors has been significantly reformed since the country's re-democratization in 1985. The recruitment of inspectors through competitive public service exams and a rewarding career path – labor inspector is one of the best-paid jobs in the federal civil service – gradually resulted in higher organizational capacity and professionalization.

I first started investigating this organization in December 2006, conducting fieldwork for 10 months (over a period of two years) in three Brazilian states (Bahia, Minas Gerais, and Pernambuco), **trying to understand the variation in regulatory styles (coercion or assistance)** adopted by labor inspectors and the impacts of such variation on regulatory outcomes (Pires 2008). **As I carried out data collection, observation, and interviews,¹¹ I began to realize that there were two different systems operating simultaneously through which management (at the central level) supervised or monitored the work of the inspectors. The first system resembles a simplified version of the NPM approach 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 included a pay-for-performance compensation system (reaching up to a 45% bonus on inspectors' salary, being one-third tied to individual performance and two-thirds tied to the collective performance of the inspectorate). **I also noticed a second system, consistent with 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.**

I was able to observe myself the coexistence of these two models in three different states, but my interviews confirmed their presence in virtually all other state offices. The first manifestation of such dualism dates back to the mid-1990s, when the pay-for-performance scheme was introduced almost simultaneously with the creation of special groups and projects focused on child and forced labor issues (Pires 2009). Initially created by central management, these special groups aimed to promote reflection and devise new tactics and strategies for problems considered to be of a special nature. Nevertheless, more and more issues have gradually been classified as deserving special approaches, such as silicosis in the mining sector in Minas Gerais, informal temporary labor in rural Bahia, and occupational health and safety in the sugarcane fields in Pernambuco, among others.¹²

The coexistence of the two approaches offered a unique opportunity to compare these two forms of organizing inspection work. As depicted in Figure 1, on the one hand, many

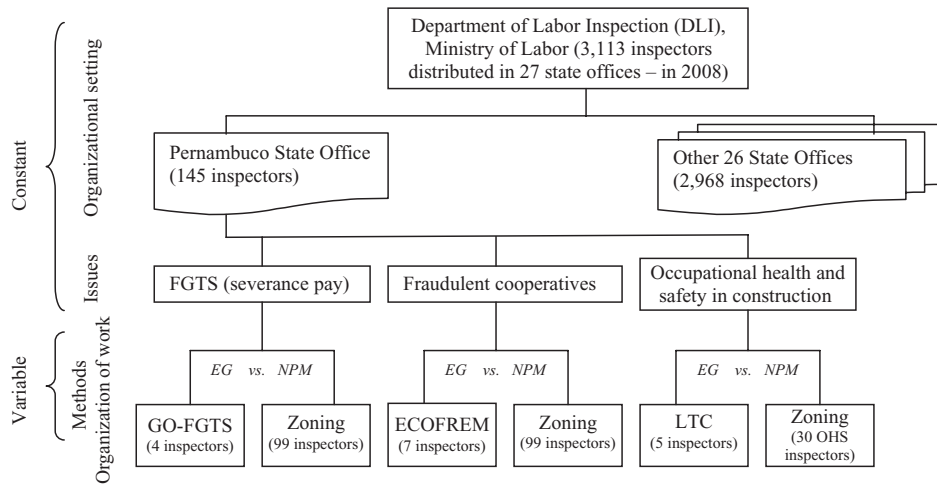


Figure 1 Research design and case selection.

important variables are held constant: the same organization and group of professionals (e.g. same career, status, legal mandate, salary), enforcing the same regulations in the same country and state, while dealing with the same specific issues (cases involving both wages and hours and health and safety regulations).¹³ 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). What is more, in most cases (and surely in the ones analyzed for this study), inspectors are assigned to work under only one of these methods. That is, when dedicated to special projects or groups, inspectors are removed from the pay-for-performance system and frequently take part in one of these projects at a time. Therefore, the comparisons under this natural 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*.

New public management versus experimentalist governance: Discretion, work routines, and outcomes

Looking closely at the inspection agents in the state of Pernambuco, I compare two groups of labor inspectors: one managed following the NPM model and the other through EG. I look at how the groups handled a common set of issues: severance payments commonly referred to in Brazil as FGTS, fraudulent cooperatives and illegal subcontracting, and workplace safety in the construction industry. Although I focused on Pernambuco, these issues were equally the focus of inspection efforts in other Brazilian states (such as Bahia and Minas Gerais). For each of the three issues, I compare (i) how the different management models organized inspection work (formal inspection procedures and enforcement strategies) and (ii) 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 payments¹⁴ when dismissed or retired, by accessing a special job security fund: *Fundo de*

Table 1 Total FGTS collection by labor inspection in Brazil, 1996–2005

Year	Amount (US\$)	No. notifications issued by inspectors
1996	114,202,231.20	9,385
1997	225,119,264.87	19,040
1998	275,295,590.83	18,709
1999	307,418,537.60	17,062
2000	411,332,339.08	16,316
2001	368,500,063.09	15,523
2002	480,284,704.85	15,328
2003	398,969,690.00	14,403
2004	414,483,525.00	13,404
2005	411,443,815.00	15,481

Source: MTE/SIT (Ministério do Trabalho e Emprego/Secretaria de Inspeção do Trabalho).

Garantia por Tempo de Serviço (FGTS). 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 the federal government,¹⁵ the FGTS was instrumental in the fiscal adjustment of the 1990s. The Ministry of Planning put pressure on and provided incentives for labor inspectors to focus on the violations of FGTS payments, especially under-payments by firms, in order to raise federal revenues. Thus, for more than 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, 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 1).¹⁶

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 regulations in their jurisdiction. In the absence of any special form of planning (e.g. diagnostic instruments, investigation schedules), workplace inspections and investigation routines 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 1981). In addition to having an 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 (Table 2).

In 2006, DLI authorized the creation of a pilot project in the Pernambuco State Office: the FGTS Operational Group or GO-FGTS, which one year later (2007) became mandatory for all state offices. Four out of the 145 inspectors in the State Office were assigned to the GO-FGTS. As these inspectors formed the group, they were automatically discharged from meeting the performance requirements assigned to ordinary inspectors. DLI classified them as performing “special activity,” thus immune to 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 larger firms with potentially higher FGTS debts.

The first step taken by the newly created group was to interact with *Caixa Econômica Federal* (CEF), 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 large unpaid debts and the sectors with a greater propensity to have indebted firms. With a data analysis system in place, GO-FGTS identified a short list of 1,000 firms with high 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, for example, up to eight months for one inspector to audit a large firm with approximately 3,000 employees 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 the 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.

Table 2 Comparison of the outcomes of FGTS by labor inspectors in the Pernambuco State Office, 2007

	No. inspectors	No. inspected firms	Total FGTS collected and notified by inspection (US\$)	% of firms inspected	% of total FGTS collected	Average FGTS collected per firm (US\$)	Average FGTS collected per inspector (US\$)
Zoning system (individual performance targets)	99	12,959	12,583,883.16	98.57%	34.81%	971.05	127,109.93
GO-FGTS	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	3,113	285,462	566,486,244.08	–	–	1,984.45	181,974.38

†The total number of labor inspectors in the Pernambuco State Office includes inspectors who are also allocated in administrative functions and other special projects, and inspectors specialized in occupational health and safety.

Source: MTE/SIT (Ministério do Trabalho e Emprego/Secretaria de Inspeção do Trabalho) and SRTE-PE (Pernambuco State Labor Inspection Office).

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 involve 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 produce enforcement with greater impact. When compared to the outcomes of the zone system (Table 2), the GO-FGTS, which employs only 3% (four) of the inspectors in the Pernambuco State 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.

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 to outsource labor-costly activities (e.g. cleaning and maintenance, management, medical practice, and nursing). 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 employee benefits, as the firms establish 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. a 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, 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 State 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 pre-defined and quantified goals. Once they spot such frauds, pairs of inspectors have dealt with them with non-uniform understandings and inspection procedures – for example, 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 firms. In addition to the growing number of complaints arriving from workers and unions on the spread of these fraudulent arrangements, labor prosecutors *Ministério Público do Trabalho* (MPT) 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 seven inspectors dedicated to the investigation of fraud 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 and detailed investigations to produce the documental proof that characterizes the fraudulent employment relationship. To create sustainable cases against employers and fraudulent cooperatives, the group used diverse tactics including affidavits from workers, negotiation with firms, and 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 dialogue with MPT prosecutors (for the characterization of fraud and employment relationships) and with labor unions (for the exchange of 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 every day in the same office and subordinated to the same boss just as before the creation of the cooperatives, both of which constitute an 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 it 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 the course of eight months and more than 50 meetings, they negotiated a compliance schedule through which firms gradually rehired workers directly, as demands for production increased. Between 2001 and 2003, the operation led to firms rehiring 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, drug addiction, and mental problems, which cumulatively undermined the quality of 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 more than 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 labor prosecutors (MPT), 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 spillover 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 fraud in banks in seven different states, all designed drawing from the experience of Pernambuco inspectors. Based on information from workers and from the government database of formal employment contracts (CAGED), inspectors report that many firms comply with the regulation just because they have heard of other firms being inspected and punished. For example, one group of hospitals that had not yet been inspected registered more than 300 doctors in the months immediately following ECOFREM's 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 ECOFREM 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 Labour Organization.¹⁷ 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 first in the number of accidents in the construction sector in Brazil (26 deaths in 1996 and 15 in 2000).¹⁸ Falls and electrical shocks were the main forms of fatal accident. 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.

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 or year.

Under this model and in response to the high number of accidents in the construction sector, 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 introduced a few changes in the norm for construction (NR-18) at the federal level, first passed in 1978 and thoroughly revised in 1995. The changes allowed, albeit not making it mandatory, all State Offices to create their own local tripartite committee (LTC). The Pernambuco State Office took the lead in creating an LTC in 1999 and assigning a group of five inspectors to oversee and facilitate meetings, as well as to implement the committee’s decisions. The LTC brought together inspectors, the labor unions, the construction firms’ association, and other government agencies (such as Fundacentro, the national occupational safety and health research institute). Since 1999, the representatives of these groups sit at the same table twice per month to discuss occupational health and safety issues.¹⁹ 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 observed in some meetings, discussions can be heated and conflict often emerges, but most of the time inspectors mediate back and forth talk that leads to agreements between the parties. That regular meeting with successfully mediated agreements has been sustained over almost 10 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 on 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.

Other instances also illustrate the positive consequences of the LTC (in comparison to ordinary inspection strategies). For example, the LTC worked to identify measures to reduce the number of electrocutions on construction sites. The issue of deaths caused by electrical shock had been in the minds of labor inspectors for some time and under discussion in the LTC for more than a year. In general, inspectors did not know 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 on 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 was not only more suitable and cheaper than traditional devices (ranging from US\$20 to US\$100 each). Once installed in the electrical circuitry

on construction sites, 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 power, the DR prevents electrocution of workers and other accidents involving electricity.

After the device became available, the subsequent challenge was to improve the conditions of electrical circuitry on construction sites, because the DR would malfunction (causing energy cuts and delays in construction) if installed in poor quality circuits. Thus, labor inspectors convinced one particularly progressive firm to pioneer the adoption of the DR, making the necessary adjustments in Recife's construction sites in order to create the conditions for the proper functioning of the device. 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 adaptation to consensus among members of the LTC to adopt the device), inspectors had the empirical evidence to convince other firms that they should adopt the DR and instructions on how to install it. In February 2004, LTC deliberated that all new construction projects must install DR devices on their sites. Later, in 2006, a 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 per year, with accidents occurring only in firms that did not comply with LTC's resolution. Although prior to 2005 there are no reliable official records of accidents in Pernambuco (disaggregated to economic activity and cause of death), representatives of the constructors' association and of the labor union and inspectors were unanimous in affirming, in my interviews, that the average number of electrocutions was three to four times as high in the 1990s and early 2000s.

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 on construction sites (a prerequisite for the DR to function well). From 1997 to 2006, compliance rates with all legal requirements involving electrical circuitry increased sharply (Fig. 2). The adoption of the DR took place amidst a larger process of increasing compliance with safety norms in the construction sector. In 1995, new requirements introduced by the revised health and safety norm

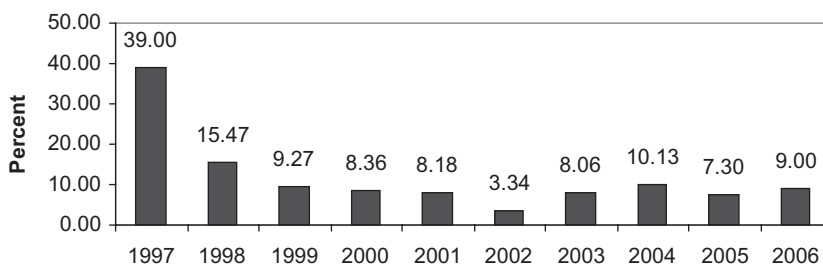


Figure 2 Construction sites with non-compliant electrical circuitry.

Source: Sinduscon/PE (2007).

for construction proved quite demanding for Pernambuco construction firms,²⁰ many of which were found to be non-compliant in 1997. After the initial period of adjustment to numerous simpler requirements of the new norm (1997–1999), in 1999 the LTC initiated discussion about compliance with the items that required more complex adjustments in construction practices and sites, such as the negotiation around the adoption of the DR (2001–2004), as well as other issues such as adaptations in passenger and load elevators on construction sites in order to minimize falls and other accidents involving the equipment. In 2003, revision of norm items on earthing systems for machines and equipment on construction sites raised again levels of non-compliance, even though compliance with the DR, as already noted, reached a peak in 2006. Overall, increases in compliance rates, facilitated by the adoption of the DR, have made construction projects more energy efficient, allowing firms to reduce their energy costs while also producing better quality and safer electrical circuits.

In sum, when compared to the work of the 30 inspectors who pursue individually or in pairs quantitative targets in specified geographic zones, **the work performed by the team of five inspectors involved with the LTC introduced an important qualitative shift.** It complemented inspectors' ample use of sanctions, increasingly absorbed by construction firms as a regular cost of doing business, with a dialogic process of root-cause analysis and problem solving dedicated to each of the controversial and often poorly understood items of regulation.

Discussion: Management approaches, bureaucratic behavior, and outcomes

Figure 3 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 figure rows and differences across models in the figure columns), **it becomes clear that the two different methods for organizing inspection work (NPM and EG) involve significantly different tools through which supervisors control the work of inspectors, as well as different inspection strategies and procedures. The comparisons also suggest a plausible causal association between these strategies and the outcomes of inspection work.**

It is possible to draw three main conclusions from the collation of the three different issues by the two different methods, summarized in Figure 3. First, each managerial model offers a different strategy for supervisors to control the performance of frontline inspectors. As each of the cases indicates, the different ways by 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 become “middle-aged,” unable to sustain the early energy (Hood & Peters 2004; Dunleavy *et al.* 2006); yet abundant criticism cites the paradoxical and dysfunctional effects of predefined quantitative performance measures (Bouckaert & Balk 1991).²¹ **My interviews and observations confirm the claims by inspectors that the introduction of quantitative performance indicators from high-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. In effect, these official indicators tell inspectors a priori what they should consider relevant and what they

Elements of comparison	Methods for organizing inspection work	Issues of inspection (cases)		
		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 strategies and procedures	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 and costs.

Figure 3 Cross-case comparison matrix.

should ignore, proscribing other potentially important observations and actions. Some inspectors reported their frustrations with such reductionism and with the unreflective bias caused by the predefinition of goals. They repeatedly complained of not being able to develop cases more complexly (over longer 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 more complex judgments, sensitive to 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 reporting achievements or failure according to predetermined numerical goals, they are granted the freedom to argue for the redefinition of goals, 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 control mechanisms offer interesting insights for thinking about accountability for frontline public bureaucratic practice. In addition, these elements have

already been identified in other studies as important sources of government workers' motivation even under adverse conditions (Justice 1986; Tandler 1997).

Second, the strategies and related procedures developed by inspectors under each model influence the pattern of inspectorial interventions and their outcomes. As the cases indicate, unplanned and complaint-driven inspections organized by the zone system of geographic jurisdictions employ non-uniform procedures for firms in the same sector/condition and usually fail 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 their 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.²²

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 other words, they engage in “root-cause analysis” as they trace through the causal chain to determine whether there is a problem or obstacle at any stage of the compliance process.

In addition, enforcement teams with sector-wide orientations push inspectors toward addressing more complex problems and toward practicing relational interdependence through open-ended processes. **As the cases demonstrated, groups are more prone to seek collaboration 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, this collaboration frequently leads to some combination of legal, managerial, or technological solution for compliance problems (such as the adoption of the DR device on construction sites to eliminate electrocutions). **These “open-ended conversations” (Lester & Piore 2006; Piore 2009) 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 administration,” bringing in elements of dialogue, negotiation, sequential agreement, and collaboration across different units of the administration and external partners as key features promoting creative solutions for complex collective problems (Fischer & Forester 1993; Evans 2002, 2005; Brugué 2004; Baccaro & Papadakis 2009). In addition, 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 outcomes.²³

The third and final conclusion we can draw (Fig. 3) adds a cautionary note to the benefits of organizing inspection through groups and special projects. **Because the planning and execution of sector-wide operations, and the respective interactions within and across organizations, 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 term, hazardous and illegal situations experienced by workers may remain unnoticed and unremediated (Silbey 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-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).

The observable trend in the Brazilian experience involves the gradual shift away from the prevalence of the pay-for-performance system toward a greater emphasis on the organization of inspection work based on groups and special projects, as many of these groups and projects have been scaled up to the national level and their lessons have been diffused within the inspectorate. Responsive and geographically bounded inspections are expected to remain, given the need to cover emergency complaints received from workers in vulnerable situations (e.g. non-payment of wages, imminent risk of death by accident) and the need to keep the continuous flow of certain services. As a result, it is likely that the organization will reach an interesting balance between the standardization of operating behaviors on the one hand and the stimulation of learning and innovation on the other.

Conclusion

This study focused on the administration of regulatory bureaucracies and investigated the role of management practices (or the strategies adopted by management to control the discretion and performance of street-level officers) in explaining variations in enforcement activity. The comparative analysis indicated that the variable "management model" has important implications when it comes to explaining why regulatory inspectors perceive relational interdependence in the development of their work. As frequently happens with natural experiments, the empirical cases analyzed might not do full justice to or provide a balanced comparison between the two models (NPM and EG).²⁴ However, the cases analyzed indicate that certain features of the management models and the ways they organize street-level regulatory work – such as predefined performance targets versus open-ended processes; constant revision of goals, performance measures, and inspection procedures; individual versus team work – affect the extent to which inspectors see the relevance and possibilities for working collaboratively within and across organizations in the development of effective 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 also**

should primarily focus on (i) setting in motion processes for constant revisions of goals and their measures and (ii) redefining the mechanisms and procedures to alter 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 regulatory bureaucracies and how street-level officers incorporate such practices in their routines should be an indispensable aspect of the quest for explaining regulatory behavior and outcomes.

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Notes

- 1 This study is essentially an empirical project and therefore I mobilize the notions of New Public Management and Experimentalist Governance as representatives of two different general approaches to the administration of regulatory bureaucracies, one that emphasizes efficiency and another that focuses on learning and continuous revision of goals and practices.
- 2 A natural experiment involves naturally occurring instances of observable phenomena that approximate or share some of the properties of controlled scientific experiments (with the exception of random assignment of groups, to be discussed later). Natural experiment research designs allow 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. Because these experiments are natural occurrences, findings in one may be applied to other subjects and settings, allowing for some generalizations to be made about the population. 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 (Gribbons & Herman 1997; Gibson *et al.* 2002; McDermott 2002).
- 3 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 on the small percentage of actions that involved formal proceedings and judicial review.
- 4 This is due primarily to the wide acceptance and relatively narrow interpretations of Max Weber’s work on bureaucracy. For Weber, bureaucracy represented the organizational form of a socio-political 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 legitimized, respectively, by the extraordinary characteristics of the leader or by tradition. In contrast to these 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 hierarchical 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 decisionmaking 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 1946). 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 & Rueschemeyer 2005, p. 241).

- 5 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, e.g., Baumgartner 1992; Hawkins 1992).
- 6 The criticism and arguments developed by EG scholars find parallel in (and in many cases are consequences of) efforts in the public administration literature to bring discussions about deliberation and pragmatism to the debates on public sector management, such as Hood and Jackson (1994), Barzelay (1992), and Brugué (2004).
- 7 Examples include 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 (Noonan *et al.* 2009); welfare services in the Netherlands, Denmark, and Ireland (Sabel 2005); and systems of social protection, occupational health and safety, drug and food safety, telecommunications, electricity, maritime safety, and financial services in the European Union (Sabel & Zeitlin 2008).
- 8 It is important to note that, in fact, the concept of NPM has been shown to incorporate many positions about the output side of government. In order to set up the contrast with the EG approach, the characterization of NPM presented here does not reflect the divergence of positions in this literature. The analytical strategy of describing these models as simplified versions that highlight some of the model's main features that are commonly observed in concrete experiences is not uncommon. For example, Simon (2010) summarized different management and regulatory approaches discussed in the literature in terms of two contrasting notions, “optimization” and “reliability”, in his analysis of regulatory design in the financial sector.
- 9 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 will be described in the text), the current research design does not control for the individuals selected to participate in each group. Differently to an experiment in which groups/cases are randomly assigned by researchers, in a natural experiment the groups to be compared are naturally occurring or pre-existing. Unlike the true experiment then, groups in a natural experiment are not probabilistically equivalent; rather, the assumption is that such groups will differ from the outset on some essential quality, such as routines of work, management procedures, or 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.

- 10 The number of inspectors in Brazil is only half that recommended by the International Labour Organization (ILO) and lower (per 100,000 workers) than in some of its Latin American neighbors such as Argentina, Chile, and Uruguay (Piores & Schrank 2007). However, even constrained by these resource limitations, Brazil's labor inspection service has received international recognition for its outstanding and innovative programs to eliminate forced labor and child labor.
- 11 The interviews added up to a total of 114, averaging two hours long. I conducted approximately half (49) of the interviews with labor inspectors in the three states and at the central level in Brasília. I complemented and cross-checked (triangulation) the stories and data collected from these labor inspectors by interviewing another 65 actors who were involved in specific cases, including firm owners, managers, and workers, as well as representatives of business associations, trade unions, and government agencies (e.g. National Health and Safety Institute, Attorney General's Office, and development banks).
- 12 It is not the goal or focus of the present study to explain how these two different methods for organizing inspection work emerged within the same organization. This is the object of a forthcoming article, in which I explore how historical internal cleavages between factions of inspectors with different interpretations of the role of labor inspection (revenue collection versus social development) shaped the development of competing models and their respective organizational structure (inspection practices, monitoring systems, etc.). As a result of the internal struggle, fueled or moderated by central management and external actors (e.g. the ILO, Ministry of Planning, unions), 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 (Pires 2009).
- 13 The selection of cases for comparison under this study employed a technique to select the best possible sample for small sample qualitative studies: statistically non-representative stratified sampling (Trost 1986; Miles & 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.
- 14 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.
- 15 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 versus revenues.
- 16 The collection of FGTS is highly dependent on the growth rate of the formal labor market and therefore on the performance of economic activity in general. Table 1 shows that, independently of the variation in the amount collected each year, there was a very clear trend in terms of the increase of FGTS collected by labor inspectors from 1996 to 2005. In terms of the notifications issued by inspectors, they peaked in 1997 and 1998, the first years after the introduction of the pay-for-performance scheme, and later reached an average of around 15,000 per year, which indicates, together with the amounts collected, that these notifications have become more efficient in terms of collecting larger FGTS debts from firms.
- 17 The same rate for the US and Japan are, respectively, 19.5% and 38.7%. Brazil ranks seventh in the world in numbers of fatal occupational accidents (ILO).
- 18 Accident records for the years cited were analyzed by Fundacentro (the national occupational safety and health research institute) researchers, who were interviewed for the project and

- affirmed that numbers of occupational accidents in Brazil are, in general, under-reported; that is, employers fail to officially communicate accidents to authorities in order to avoid potential sanctions and legal process.
- 19 Every month, they meet first for an internal, closed meeting and later for a seminar-type meeting open to the public.
 - 20 In 1997, the Pernambuco construction firms' association (Sinduscon/PE 2007) judicially appealed the application of the new construction sector's health and safety norm, arguing that the national norm was based on São Paulo construction firms' standards and required from Pernambuco's firms the quality and safety standards of firms operating in the richer and more developed regions of the country. Their appeal was rejected in the same year by the court, but nevertheless caused uncertainty and delays in the implementation of the new norms' requirement in Pernambuco. The level of anxiety around the new rules was such that, in 1997, both the construction firms' association and the labor union created internal units and hired professionals for understanding and monitoring the implementation of the norm.
 - 21 Studies on doctors in the UK and the US revealed that these professionals felt more pressured and 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," 2008 Annual Meeting of the Society for the Advancement of Socio-Economics (SASE), San Jose, Costa Rica, 23 July 2008).
 - 22 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 versus 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 crosscutting problems, such as preventative health, school reforms, child care services, and social assistance programs, all of which require the coordination of local knowledge with a range of different services provided by different government organizations.
 - 23 Innumerable 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 whom 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).
 - 24 One could argue that some of the cases analyzed are representative of inferior versions of NPM or EG, or that these two models are, in fact, not fully incompatible or mutually exclusive.

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