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Citation: Piore, Michael J. "Flexible Bureaucracies in Labor Market Regulation." Chapter 23 in: *The Idea of Labour Law*, edited by Guy Davidov and Brian Langille, Oxford: Oxford University Press, 2011. 456 p.

As Published: <http://ukcatalogue.oup.com/product/9780199693610.do#.UJqNQmfIY5s>

Publisher: Oxford University Press

Persistent URL: <http://hdl.handle.net/1721.1/74598>

Version: Author's final manuscript: final author's manuscript post peer review, without publisher's formatting or copy editing

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“Flexible Bureaucracies in Labor Market Regulation”

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Prepared for:
“The Idea of Labour Law”
International Workshop
April 8-9, 2010
St. Catharine's College, Cambridge, UK

This version: September 22, 2010

Abstract

This paper compares and contrasts the U.S. and French systems of labor market regulation. The U.S. system is specialized: Regulating authority is dispersed among a host of different agencies each with a relatively narrow jurisdiction, and as a result with responsibility for a very limited domain. Authority is further divided between the federal and the state governments. The French system is a unified or general system: A single agency is responsible for the enforcement of the whole labor code. As a result, the French system is a street-level bureaucracy in which considerable power and authority rests with the line agents, the work inspectors themselves.

The structure of the system (quite paradoxically in the light of the centralization generally attributed to the French state) gives the inspectors virtually complete autonomy in the geographic area to which they are assigned. As a result, and contrary to the contrast generally drawn between civil law and common law countries, at least in the literature of economics, the French system is considerably more flexible and able to adjust to variations in economic and social conditions across the territory but also over time than is the U.S. system. The contrast is of broader importance because the French system was adopted by Spain (and Italy) and from there spread to Latin America, where the issue of labor standards enforcement has become central to bilateral trade treaties with the United States. The paper goes on to discuss the various managerial issues posed by the two systems and the problems of reconciling their contrasting dynamics in a unified global trading regime.

The Problem: The Need for Flexibility in a Regulatory Framework

This paper is addressed to the problem of labor market flexibility. The problem arises most immediately in the context of the revival of labor market regulation and a renewed effort to enforce labor standards which have been allowed to atrophy over the course of time. The revival is part of a broader reaction against the neo-liberal agenda and the Washington Consensus, an approach to public policy which places almost exclusive reliance on the competitive market and simulated market mechanisms. The reaction is especially intense in Latin America, but it is actually very widespread. And the skepticism about market-based solutions has been reinforced by the current crisis which has drawn even the United States, the intellectual fountainhead of the old Consensus, into active intervention not only to limit and control the impact of the market, but actually to guide its operation. Even before the crisis, however, virtually every major country—with the notable exceptions of Mexico and the United States—had increased the resources and personnel devoted to labor inspection in the course of the last five years. In labor market policy, however, the reaction is taking place without addressing the basic problem to which the Washington Consensus was itself a response: The inflexibility and rigidity of governmental regulations and the way in which these led to inefficiencies in production and the allocation of resources, and which stifled economic development.

But while my initial concern is derivative of my colleagues' preoccupation with the impact of regulation adjustment within a market economy, it arises in a different way in the context of globalization, where rigidification (or the lack of flexibility) grows out of the pressures for standardization. In this sense, it appears to be inherent in the attempt to create a single global trading system out of national systems with different institutional traditions. The pressure for standardization comes from both the adherents of free trade and the competitive market and from its critics. For the former, it derives from their belief that one can define in a clear and meaningful way competitive market capitalism and the institutions associated with it, and that anything that does not fit this definition gives an unfair trading advantage and is thus an impediment to free trade. For the critics, trade standardization, particularly in labor standards, is an attempt to forestall competitive

pressures and, with them, a race to the bottom. Against these pressures for standardization is the sense that institutional differences reflect differences in culture and history which a global regime must respect and accommodate, and a fear of the institutional imperialism of the dominant economic powers, particularly the United States. This has been reinforced from a different direction by the tendency of international economic agencies to impose a single policy regime on all countries seeking their aid and support and the evident failure of that approach to produce neither economic stabilization nor growth and prosperity in the developing world. The basic argument of this paper is that the conflict between labor market regulation (and indeed regulation more broadly) and flexibility, in each of these domains in which it seems to arise, is in large measure artificial. It arises because we have conceived of it in terms of a model of labor market regulation that is prevalent in the United States. The system of labor market regulation in Southern Europe and Latin America is fundamentally different and provides much greater opportunity to address these issues of flexibility. This paper is concerned with:

- a. fleshing out the difference between the two models;
- b. suggesting the advantages of the latter for addressing the problems of flexibility and adjustment, but also some of the limitations of this form of regulation, at least as presently practiced;
- c. and, identifying some of the conceptual and institutional problems which need to be addressed to realize these advantages.

While the bulk of the argument here is directed at the economic debate about labor market flexibility, the last section of the paper turns specifically to the issues posed by globalization.

A Note about Analytical Ambition

The argument here is, however, not simply an attempt to move beyond U.S. institutions as a model of regulation but to move beyond the competitive market model in terms of which not only U.S. institutions but economic institutions in general have come to be conceived. The ambition is to build a conceptual framework in which approaches to public policy involving active government can, first, compete alongside the

competitive market framework and the structures which build off of it and are promoted by it (whether deregulation, privatization or simulated market mechanisms) and, second, which works, like competitive pressures are supposed to work, toward increasing efficiency or effectiveness. To do so, the paper seeks to go beyond the conventional economic focus on individual motivation and competitive pressures and to draw upon sociological and anthropological understandings of human motivation and behavior which stress the social context in which the economic actors operate. For these purposes, it attempts to recover a literature anchored in these understandings that has been eclipsed in the last twenty-five years by scholarly work grounded in economics and in the so-called new public management.

The moment is opportune, at least in the U.S., because the economic crisis has gone a long way toward discrediting the competitive market as an efficient, effective model of social organization, and the expansion of government in response to the crisis has limited the resources available to manage through monetary incentives even as it has increased the pressure for management of some kind. One might note, however, that the Obama Administration has been slow to take advantage of this opportunity and that so far its policies, and the way it has presented them to the country, have departed very little from the prescriptions of conventional economics (Alter, 2010).

A second note of caution about the analytical framework is important here. The study of labor market regulation in Latin America has historically been the province of lawyers and has stressed legal texts in which the regulations are embedded (see, for example, UNAM, 2008). The argument which is developed here is that the texts themselves are a misleading guide to how labor market regulation actually works. This is probably true in general but it is especially true with respect to labor market regulation in Europe and Latin America because the very nature of the institutions which govern the regulatory process place enormous power in the hands of the inspectors to interpret the law as they administer it: The inspectors on the line decide where and under what circumstances to apply the law. Hence, in order to understand the regulatory process and assess its impact, actual and potential, upon the economy, one has to focus upon and attempt to understand not the letter of the law but actual practice in the field, on the ground. This is a lesson which is important not only for analysts of the Franco-Latin

system but for commentators and critics in the United States as well; it upends the conventional distinction between common law and civil law which in recent years has been particularly prominent in the writings of American economists. The conventional belief is that civil law regimes like those of Southern Europe and Latin America apply legal doctrine much more strictly and interpret it more literally than common law countries such as the United States (Van der Veen and Altes, 2005). But in labor market regulation, the opposite is much closer to capturing the differences between the two regimes.

Two Models of Labor Market Regulation

Our starting point here is the contrast between the U.S. and the Franco-Latin systems of labor market regulation.

The U.S. system is specialized and sanctioning. Regulatory responsibility is divided among nearly a dozen different Federal agencies, each with a relatively narrow jurisdiction (Wages and Hours Division of the Department of Labor, OSHA, ERISA, EEOC, the NLRA, the Federal Mediation Service, the Justice Department [ICE], the State Department [immigration visas and work permits], etc). Many of these agencies also have counterparts at the state level and occasionally at the local level as well. Each agency is then supposed to identify violations of the laws in the narrow domain for which it is responsible and to impose penalties for those violations.

The Franco-Latin model is, by contrast, a general or unified system and is focused upon conciliation and/or remediation. The whole of the labor code is in this model administered by a single agency, the *Inspeccion de Trabajo* or *Inspection du Travail*. In principle, a single inspector has responsibility for overseeing all aspects of the legislation. The inspector can impose sanctions (or initiate a process which leads to sanctions), but the responsibilities of the employer cannot be discharged through penalties. The enterprise is expected to come into compliance with the law, and the responsibility of the inspector is to see that it does so. Toward this end, he or she is empowered to work out a plan which brings the enterprise into compliance over time, often by giving technical advice on how to make the requisite adjustments or pointing to consultants who can help to do so.

These characteristics give the labor inspectors an enormous margin of discretion as to which provisions of the law they will enforce and under what circumstances, and with what degree of stringency. Because the inspectors cannot possibly inspect for every provision of the code, they are effectively in a position to pick and chose which provisions they will look at, where to focus their attention. They can weigh the different aspects of law, and in effect the different goals of legislation, against each other and against the viability of the enterprise, adjusting the regulations to the particularities of each establishment and to the economic and social environment in which it operates. Their ability to work out the process through which the enterprise comes into compliance gives them further latitude to adjust the code. Thus, for example, they might enforce health and safety standards more stringently and allow less time to come into compliance in a tight labor market where unemployment is low and jobs are plentiful than in a recession, when imposing the costs of compliance risks driving the firm out of business and destroying jobs. This presents a sharp contrast to the U.S. system, where the jurisdiction of each agency is so narrow that there is very little scope to pick and choose among the which provisions of the code to enforce; and because the focus is on sanctions and deterrence, virtually no scope to focus on how compliance is to be achieved or over what time period. Nowhere in the system is the total burden which all these different agencies impose on the enterprises, and the associated costs, assessed and weighed against the value of the jobs which are at stake. In principle, the regulatory burden is assessed by the legislature when the provisions of the law are considered, but in fact even at this level the focus is generally on one provision at time, and very often new legislation is provoked by a dramatic event (e.g., a major industrial accident or a scandal concerning child labor or clandestine immigrant shops), which narrows the focus and limits deliberation ever further.

Of course there are exceptions here, but they are particular and generally viewed as a perverse reaction. For example, responsibility for enforcing provisions mandating equal pay for women was placed in the Wages and Hours Division of the Labor Department, which had jurisdiction over minimum wage and overtime pay, without a corresponding increase in budgetary resources. The Division responded by diverting resources from minimum wage enforcement to equal pay provisions.

Whether the flexibility inherent in the Franco-Latin system works in fact to address the problems we have outlined initially depends upon how it is used and whether it can be managed and directed to address the problem of reconciling regulation with growth and efficiency. On this score, we have two kinds of insights. One is a series of interviews with the inspectors themselves on how they manage their roles in practice. The second is a series of insights drawn from social science theory and from studies of other organizations with similar types of discretion.

In both of these respects we have drawn heavily on a literature for which we will use the shorthand term: street-level bureaucracy.

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

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

These types of organizations were an active area of research in the immediate postwar decades but were eclipsed after 1980 by the emphasis on privatization and simulated market mechanisms in what became known as the new public management (for a flavor of the older literature, see for example: Hawkins, 2001; Kaufman, 1960; Kelman, 1981). The older literature is now being resurrected and expanded by a generation of

younger scholars, many of whom are students at MIT (Silbey, Huising and Coslovsky, 2009; Pires, 2008). The lessons of that literature, as well as very recent material gathered in interviews conducted in France and in different Latin American countries, are discussed in several articles which Andrew Shrank and I have written separately and together (Piore and Schrank, 2006, 2008; Schrank and Piore, 2007; Piore, 2009).

Several key lessons emerge from this literature. The first and most important of these is that while there is a substantial idiosyncratic component to the way line officers (in our case, labor inspectors) make their decisions, there is nonetheless a core of tacit rules and procedures that govern their work and give it a certain consistency to the way the rules are enforced from one inspector to another and across time. We will argue that these tacit rules and their evolution in time must be the focus of public sector management. But before turning to this issue, it is important to address the question of idiosyncratic behavior, which tends to be stressed when these organizations are viewed through the lenses of the individual maximizing behavior assumed in conventional economic theory. Typical of the kind which emerged in interviews was a labor inspector who told about discovering that he had a reputation in his district as a “firebug”. It was known that he always looked first at fire safety provisions when he visited a plant. Upon reflection, trying to understand his own behavior about which he had not been conscious and that at first he found difficult to believe, he came to attribute it to his experience working in Sao Paulo the year just before he entered the inspectorate. The day he arrived, there was a fire in one of the large skyscrapers; the construction of the building created an inferno in which large numbers of people were trapped and suffered particularly horrific deaths; the newspapers reported on this in extensive detail throughout the following week. Other examples of idiosyncratic behavior which emerged in interviews were political, although not of the kind which have generally been attributed to inspectors by the employer associations who see them as out to undermine the capitalist system. Several inspectors in France, for example, said they never enforced immigration laws against individual workers (although they sometimes did against employers). Corruption, which is among the very first topics raised when one discusses the discretion of inspectors in Latin America, was seldom actually mentioned in interviews with people who had firsthand contact with the system: In most countries, the

inspectors themselves cannot impose monetary penalties and the process of imposing sanctions is considered so arduous and time consuming that the inspectors generally reported it is not usually worth initiating, especially if problems can be handled in other ways (a similar finding emerges in studies of the police and their use of formal arrest and prosecution [Wilson, 1968]). For the most part, however, the street-level bureaucrats in general (and work inspectors in particular) explain their decisions in interviews in terms of a set of general standards and operating procedures which they share with their colleagues. It is in this sense that one can speak of the tacit codes which govern their behavior.

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

Such organizations are difficult to manage by fiat, or through monetary incentives, almost by definition because to do so is to reduce the flexibility in the application of the rules.¹ It is possible, however, to manage the culture and the

¹ This is conventionally illustrated in police work by the example of traffic tickets. This is the one aspect of the work which can be easily controlled by issuing quotas. But the role of the police is actually to ensure

commitment of the agents to it. In terms of managing the culture itself, there are basically three points of entry for managerial control. First, management has control over the recruitment and selection of new members of the organization and hence, over the background—the education, skills and attitudes—which they bring into the organization from the outside. In Morocco, for example, entry requirements for new inspectors were raised in one shot from high school degrees to a masters degree in Human Resource Management, creating a cleavage between the new inspectors and the old, and a professional rapport not only among the new inspectors themselves, but also between the inspections and the large, multinational firms which the country was seeking to attract as part of its development process. Second, management controls the process of training and socialization which prepares members for organizational membership. Here the ability to actually change the culture once it is established is limited by the role of apprenticeship in the training process; it is difficult to imagine sending new inspectors cold into the field without some prior experience working with experienced agents. In the course of that experience, the new agents are bound to pick up much of the approach and attitudes which the older inspectors bring to their work. Management does, however, control the classroom component of the training process and, moreover, can adjust its importance to counteract the impact of apprenticeship. Third, management can enter into and try to guide and direct the ongoing discussion within the organization as the agents review their work and confront novel situations. The discussion of ongoing practice can take place on a variety of levels. Among the inspectors themselves, without outside management and structure, the discussion is very much rooted in practice. The discussion which ought to take place with the professional hierarchy and with the political leadership is the relationship between practice and the different, and often conflicting, goals of the organization. For example, how should the inspectors view the enforcement of various regulations which can involve substantial cost to the enterprise against the value of the jobs which might be lost if the enterprise were forced by these costs to curtail employment. The organization which seems to be most adept at doing this is the *Inspeccion de Trabajo* in the Dominican Republic. The ministry officials meet

the smooth flow of traffic, and quotas tend to lead the police to block traffic in the attempt to issue enough tickets to meet their quota (Wilson, 1968).

with the rank-and-file inspectors several times a year and develop through these discussions the government's priorities and plans for implementing them. To be effective, however, these meetings require rapport and mutual confidence between the inspection corps and their bureaucratic and political superiors. This exists in the Dominican Republic because the corps as it now operates is the product of a major administrative and legal reform conceived and implemented by the Minister of Labor, who subsequently became Vice President, and the current corps of inspectors along with their bureaucratic and political supervisors lived through these reforms together and are essentially the product of them (Schrack, 2008). This rapport, however, is unusual. In other countries, the management of the inspectors has been clumsy and created a distance between the inspectorate and the ministry which has later proven to be difficult or impossible to overcome. One of the worst countries in this regard is France, where one would have expected a particularly deft and enlightened management of the public sector, but where instead the neoliberal discourse of the political class had already created enormous resentment and suspicion on the part of the inspectors, which was then aggravated by the failure of the government to swiftly condemn the killing of two young inspectors by an irate peasant whose farm they were attempting to inspect. (The contrast to the way that Nicolas Sarkozy secured the loyalty of the police when he was Minister of Justice by going to the hospital to visit the men who were shot by rioters in the slums is particularly striking.) In Morocco, the government missed a similar chance to gain the loyalty and respect required to lead the inspection corps when it failed to support one of the newly recruited business school graduates who was sued, and then convicted and jailed, for false arrest by a company he had found to be in willful violation of the statutes.

The ultimate goal, however, is not simply to enter into the process through which the tacit rules and procedures evolve but to actually surface the rules which govern the inspectors' decisions, make them explicit and subject them to systematic evaluation, and then in the light of that evaluation, to revision. An example of how this might be done is provided in the medical care industry by an effort to promote more consistent approaches to patient care and management in a large hospital (Adler et al., 2003). The doctors in a hospital setting are essentially street-level bureaucrats. They nominally work under the supervision of the hospital but they retain complete control over the treatment of the

patients under their care. Patients are diagnosed when they enter the hospital and assigned, on that basis, to a specialist who manages the case. In an attempt to standardize treatment, the doctors in each specialty were asked to develop a list of the most frequently treated conditions. For each condition, they then developed a standard protocol for treatment. The protocol was circulated among all of the doctors in the specialty for comment and amendment, and the amended protocol was then adopted by the group. Once adopted, doctors were expected to refer to the protocol when managing the patient. They were not required in any sense to adhere to the protocol, but when they departed from it, they were expected to explain the reasons for the departure. In this way, each group built up a file of exceptional cases which was then used periodically to revise and amend the protocol. The use of protocols never went further in this particular example, but one could imagine using them as the basis for the evaluation of various treatments and as a basis for evaluating and compensating doctors as well.

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

medical practice, can be surfaced and made the subject of explicit review and discussion, and that through discussion we can obtain both more consistency in the way in which the regulatory process treats different enterprises and reduce the conflict among various regulatory objectives. But it is not clear that it can be reduced to a set of standard protocols.

Nonetheless, the medical example and its limits when applied to labor inspection does help to clarify some of the issues in the distinction between specialized labor inspection as it is practiced in the United States and the general inspection model in Latin America. First, it suggests that it is not so much the division of labor standards regulation into specialties which makes the U.S. model so rigid, but the way in which the specialties are defined. The divisions within the U.S. administrative system appear to be only loosely related to the factors causing labor standards violations, and it is thus not very useful in either diagnosing problems or fashioning solutions. The Latin American model does in fact recognize certain specialties, but they are not based upon the standards themselves. Thus, for example, a number of countries have services specialized in particular industries, typically agriculture, mining, and transportation. France, among others, made a distinction between large and small enterprises, and has specialized agents (the *contrôleurs*) who inspect enterprises with less than fifty employees. In Guatemala, there is a separate small unit of inspectors that deals exclusively with *maquilas*. A number of countries have units which specialize in child labor.

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

Some actually assign general inspectors with different backgrounds to local offices (France and Brazil do this for example) so that the inspectors can turn informally to their colleagues for advice.

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

A Scientific Foundation for Labor Inspection

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

Labor Standards and Business Practice

The literature on production systems and business strategies is extremely dispersed over time and over different fields of study. But its import can be illustrated by four strands. The most basic of these in the context of the still-developing countries of Latin America is Max Weber’s classic observation that the key to industrial development is the creation of a realm where activity is evaluated rationally, in terms of economic efficiency, separate and distinct from the affective, personalistic or charismatic standards which typically govern relationships in the household, the family, or in political life

(Weber, 1958; 1978). This observation is particularly germane in the traditional industries (e.g., textiles, clothing, shoes, furniture, and the like) which have been the subject of my own research in Italy, Mexico and Central America (Piore, 2004). Production in these industries typically takes place in the household and in outbuildings once used for agriculture, and the layout and flow of production is dictated not by economic efficiency and the standards of quality demanded by the marketplace but rather by the original uses for which the structures were built and the need to accommodate ongoing household activity or residual agriculture. Children are pervasive in these shops, sometimes actually engaged in production or learning about production (informal apprenticeship) but often they are simply there because that is where they live, perpetually underfoot and a distraction from the production process in which their parents and older siblings are engaged. The household finances are intertwined with those of the business, defying rational accounting, precluding cost analysis, and placing working capital hostage to household emergencies. Business transport doubles for the household as well, and the delivery of supplies to the shop and finished goods to clients is frequently delayed by household chores.

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

at all. The alternative to the reorganization of the business in this way is the development of a separate set of standards for the traditional sector, a point to which we turn below.

A second strand of the literature on production processes suggests that it may be possible to induce some of these changes without engaging in the reorganization of production directly. Labor standards in the garment industry are a laundry list of separate regulations concerning child labor, health and safety standards, wages and hours, etc. They seem to have grown up piecemeal, in reaction to particularly dramatic events which moved public opinion such as the Triangle Fire in New York City in the early twentieth century. But they are actually all related to each other as distinct aspects of a single production system, the sweatshop. The sweatshop in turn appears to be characteristic of an extremely labor intensive industry in which wages are paid by the piece. The piece rate system equalizes the cost to the employer of virtually all types of labor (skilled and unskilled, children and adults); all labor costs become variable costs, which are directly proportional to output. When production takes place in the factory setting, the major fixed cost, virtually the only cost which is not directly proportional to output, is the cost of space, i.e., rent. As a result, the employer has an incentive to crowd as much work into a given space as possible. The crowding may reduce labor productivity but that cost is born by the workers under the piece rate system. The crowding also leads to major health and safety risks, especially that of fire, and the dangers of fatalities in case of fire are magnified by aisles clogged with materials and blocked exits, a further attempt to conserve real estate. The piece-rate system also encourages child labor since the employer is indifferent to the low productivity of children or the fact that the children distract the adults and slow down the pace of the work overall. Ultimately, it also encourages industrial home work and the integration of the factory and the household about which Weber was concerned, since by moving production into the household the employer escapes even the fixed cost of space. But by the same token, the whole system of production, and the complex of associated standards violations, can be rectified by imposing a minimum hourly wage rate and enforcing it strictly (Piore, 1990).

A third more contemporary literature relating labor standards to production systems grows out of the adjustment to the pressures of international competition among industrial countries, particularly the emergence of Japan as a major competitive threat in

the 1980's. The literature is built around a distinction between the "high" road and the "low" road to industrial adjustment. The low road involves adjustment by draconian cost cutting; especially by squeezing the labor force through lower wages, longer hours, the use of untrained and/or temporary workers (who have a higher propensity for industrial accidents), as well as the crowding of more workers into limited space, which are characteristics of sweatshops. The high road involves a more deliberate attempt to change production practices, typically in a way which enables the firm to move up-market and to manage more flexibly with lower inventories. In work practices, it involves a broadening of job responsibilities, so that each worker is responsible for a wider range of tasks (or operations), and a decentralization of power and authority within the enterprise in a way which encourages more self-supervision but also more cooperation among the line workers. It typically increases efficiency and product quality and can facilitate compliance with wage standards, hours regulations, and health and safety standards. But the new work practices have also been accompanied by an increased use of temporary employees and a blurring of the line between supervisory and production workers, and more work at home in ways which make compliance with formal labor regulations problematic and have fed a debate about whether traditional standards, most of which date from the time when the economy was dominated by manufacturing, are consistent with modern technology.

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

Finally, closely related to the high road/low road are separate literatures on supply chains and industrial districts. These literatures often focus on traditional industries as well, but on sectors within them which are competitive in, and integrated into, the global marketplace. Industrial districts and supply chains are often discussed together, although

in fact they are quite distinct. The supply chain literature emphasizes the hierarchical relationship among firms which are tightly integrated but located at different stages of the production process, and typically cross establishment and national boundaries (Gereffi and Korseniewicz, 1994). The industrial district literature, in contrast, emphasizes flexible relationships among essentially equal partners in a well defined and delineated geographic region (Pyke, Becattini and Sengenberger, 1990; Schmitz and Nadvi, 1999; Saxenian, 1994). Both literatures are concerned with how the institutional configuration is related to business strategy and economic welfare. They were not initially focused on labor standards but there is work in each literature related to standards, and both lend themselves to extension in that direction.

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

retail firm, especially the coordination among designers and sales reps, on the one hand, and the procurement department and the department responsible for monitoring the subcontractors, on the other. The third finding of this research is that the power in the supply chain is actually more diffuse than the literature suggests. Rather than being concentrated in the retailers with brand names who are subject to consumer pressure, it sometimes lies with the suppliers, some of whom are themselves large international companies who work for enough different clients that they are able to resist pressure exerted by any one of them (but might at the same time make them more responsive to regulatory efforts exerted by their own governments or those at their production locations – as opposed to pressures emanating from consumer boycotts and exerted through brand-name retailers).

Les Economies de la Grandeur

A last scholarly literature which is relevant in providing a framework for the systematization and evaluation of the judgments of labor inspectors is a literature on moral judgment growing out of the conventionalist school of economics and sociology (Boltanski and Thévenot, 1987). The central tenet here is that rather than applying a single system of moral standards, people judge economic relations – and in fact social relations generally – in terms of a series of distinct and different moral systems. Each of these systems entails its own set of values, its own system through which people are evaluated and ranked, its own set of procedures or tests for making that evaluation, etc. In a sense, this is an extension of Max Weber's argument, discussed above, of economic development involving the creation of a realm separate and distinct from the family with its own standards of judgment and evaluation. But the conventionalists identify five such realms, which they call *cites*. In addition to the family or domestic realm, they identify an inspirational realm, a civic realm, an industrial realm and a market realm. The industrial realm roughly corresponds to the bureaucratic systems of large corporate enterprises; the civic realm to the relationships among skilled workers in a craft or profession. The realms involve different authority relationships and different standards of worth, and hence presumably different rules for compensation, promotion, job allocation, etc. The norms governing the workplace will thus vary from one realm to

another, and one can imagine that just as the police in a large city apply the law differentially depending on the neighborhood in which they are working, the labor inspector is sensitive to the type of workplace he or she is controlling and picks different parts of the labor code to inspect for and enforce. The conventionalist literature will then help to clarify what the different moral realms are, which particular rules are appropriate in each, and how one should decide whether to accept the standards prevailing there or, as we implied in discussing traditional family firms above, whether to encourage them to adopt a different approach to work and in effect alter the norms which govern work relations.

The Moral Foundations of Labor Standards

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

There is actually not a single analytical framework which captures those ‘other’ forces. But two modifications in the standard economic model point toward what these are likely to be. First, the standard model is one of the rational man maximizing his material wellbeing on all margins of the endeavors in which he is engaged. Even the most rational actor does not and cannot operate on all margins at once, however. Business managers, in particular, typically focus on a few particular points in the business process which they judge key to success in the market. A good deal of what is

done in the rest of the operation is dictated by standard routines or practices borrowed from somewhere else in the system or inherited from the past.² The role of labor inspection in this view is thus one of policing those routines, making sure that they are consistent with prevailing labor standards and held in place. Violations develop when that policing function fails.

The key processes here are illustrated by the case of the New York State investigation of minimum wage violations at grocery stores in Manhattan. Such groceries are located on virtually every corner in the city, and for at least the last ten years virtually all of these groceries have been owned and operated by Korean immigrants. The state agency discovered that all or nearly all of the groceries were paying wages below the statutory minimum. In the investigation of how this had happened, they learned that the owners all belonged to a single association; the association provided a list to their members of the laws and regulations with which they were expected to comply (health standards, building codes, taxes, etc.). Nowhere on this list were labor market regulations. The labor code was simply not a standard which self-respecting Korean groceries were expected to uphold. The process through which labor standards fell off this list (or failed to get on it in the first place) then becomes key to understanding compliance. To explore this story completely would require more space than is available in a paper of this kind. But we know from other studies that Korean businessmen are extremely sensitive to their prestige and moral standing both in the Korean community and the larger American society, and see the role of their business associations as furthering their position in this regard (Lee, 2005). This suggests that one needs to look to the way in which labor standards violations have come to be viewed in the society at large to understand the lack of attention devoted to them by the association from which the grocers took their clues.

The second set of amendments to the standard economic model which appears helpful in understanding labor standards enforcement are those which we drew upon earlier in understanding the behavior of the labor inspectors themselves. Entrepreneurs and managers, like inspectors, live in a broader community composed of their colleagues

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

and fellow business executives, but also of civil society more broadly. The communities have a set of expectations about how people should behave in their business roles, and their identity and self-respect is dependent on how their behavior is evaluated in the light of these expectations. Because they value the opinions of their colleagues, those opinions operate to modify the behavioral patterns promoted by the pursuit of narrow material wellbeing. One can call these community expectations a set of moral or normative values, although these are very general terms for a complex set of factors.

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

But the felt sense of justice is only one level at which morality operates. Labor market regulation has also been buttressed historically by a higher level of morality which justified the intervention of the state into this domain as being in the interest of the society as a whole, irrespective of the way in which the specific codes were viewed in the shops and offices to which they applied. It is this broader moral justification which was undermined by the neoliberal ideology. That ideology, moreover, has done so not simply on the intellectual and ideological level but in the way in which it has permeated the rhetoric and symbolism of politics. This is no doubt how the Korean grocers association came to neglect labor regulations in its list of standards to which it felt its members were

obliged to adhere. But the way in which this has operated is most vividly illustrated from an interview in France where the inspectors have a strong sense of being caught between the high rhetoric of the political class (on the left as well as the right) and the pressures from the rank-and-file workers for protection by the Inspectors as the agents of the State. Thus, one of our interviews occurred the day after the president of the Michelin Tire Company had died in a boating accident. The President of the Republic went on television that night to express the condolences of the nation to the family. One of the inspectors in the interview bitterly pointed out the contrast to the death of the two inspectors shot in the back by a peasant whose farm they were inspecting; it took several weeks before government officials made any comment at all.

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

These issues may actually be more relevant to the advanced industrial societies of United States, Western Europe and Japan than to the still developing world. Take for example the North and South of the Western Hemisphere. Post-industrial society in the North has entailed the movement of traditional manufacturing abroad and led in Mexico, Central America, and the Caribbean to economies which more closely resemble those in which traditional labor standards were relevant. This is probably less true in the more southern countries of Latin America, but even there transition has been less dramatic than in the advanced industrial countries. By the same token, the historic pressures for state intervention to protect workers against market pressures remain much stronger in Latin America. Thus, while the decline of the Soviet Union and the communist parties has

reduced the threat of class warfare and revolution, civil unrest and class conflict still are very real concerns in much of Latin America, and have been powerful forces promoting the revival of labor market regulation, most notably in Chile and central America (e.g., Guatemala), but in much of the rest of the continent as well. Similarly, Catholic ideology remains an important factor, perhaps most interestingly in Mexico where it was the guiding ideology of reforms in the Ministry of Labor under the PAN, albeit not enough to overcome the generally *laissez faire* bias of that regime.

Still the technical case for labor inspection as part of a broader economic policy would provide a new justification for labor standards. That case would be strengthened by a more deliberate approach to the management of labor inspection, by a greater emphasis on the pedagogical and entrepreneurial functions of the service, and by drawing upon and extending the scholarly literature on the relationship between production processes, business practices and labor standards which we reviewed in preceding section.

Conclusions: Globalization

While the focus here has been primarily upon the implications of the flexibility of the Franco-Latin model of labor market regulation for economic adjustment and efficiency, I would like to conclude with a brief discussion about the implications of that model for institutional standardization in a global trading regime. The major effort to address this issue historically has been through the ILO, where the emphasis had been upon a set of norms or standards adopted by the governing body of that organization to which member nations are then expected, in their turn, to subscribe. It is an approach in which individual standards are considered in isolation from each other, and which fits readily with the U.S. system of regulations rather than the Franco-Latin model. These norms have accumulated over the years into a substantial body of regulations, and in recent years have come under severe criticism, in part as part of the neoliberal critique of labor market regulation in general. The norms have also been criticized as increasingly obsolete in the context of the changes in economic organization and in technology. One of the problems in addressing the question of global norms has been the difficulty of separating out these two types of criticism. In so far as the ILO has responded to these

criticisms, however, it has been largely by retreating from the elaborate list of standards which have accumulated over the years to an abbreviated list of core standards. But the core standards continue an approach to standardization which requires the international community to adopt a common set of very specific regulations with no flexibility to adapt to differences in economic conditions or levels of economic development, let alone to the peculiarities of history and culture which differentiate national institutions.

The Franco-Latin model suggests a more organic approach to standardization which focuses not on the norms themselves but instead upon the evolution of culture, both of business culture and the culture of regulatory institutions. Presumably, trade itself promotes a degree of cultural convergence, particularly in business and consumer cultures. An international organization like the ILO could seek to influence the evolution of the regulatory cultures of different national contexts so as to bring them into harmony with each other in much the same way that management seeks to gain influence over the culture of a street-level bureaucracy. Of the several instruments for doing so which we noted earlier (recruitment, selection, training and socialization, etc.), the one which seems to lend itself most readily to this would be training. One might, for example, create an international institution in which work inspectors from different countries were trained together at a single location using a common curriculum. New recruits could be brought together before they went into the field in their own country, but both new recruits and experienced inspectors could also serve apprenticeships in other countries. An international organization could also bring experienced inspectors together on a regular basis to discuss specific cases and/or to conduct research along the lines suggest earlier about the relationship among labor standards, production systems and business practices and their impact upon economic development and social welfare.

What this approach does not address is the fundamental incommensurability of the Franco-Latin model of labor market regulation and that of the United States, and here I have no obvious solution to propose.

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