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77

Norms, regulations, and labour standards in Central America

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Abstract

This report addresses the organization, nature, and prospects for labour law enforcement in Central America and the Dominican Republic. It draws a distinction between the Anglo-American approach to enforcement, which is rooted in deterrence and punishment, and the Latin alternative, which is rooted in conciliation and training. And it argues that the Latin approach is—at least in theory—better able to reconcile the labour force’s need for protection with the economy’s demand for flexibility. Finally, it reviews recent changes in the subregion’s labour inspection systems, many inspired by transnational political pressure, and makes systematic recommendations for further improvements.

Executive summary

This report addresses the process of labour inspection in Central America and the Dominican Republic (i.e., the so-called CAFTA countries). It begins by drawing a distinction between the Anglo-American approach to labour law enforcement, which is designed to deter transgressions by raising the likelihood and cost of prosecution, and the Latin approach, which is designed to facilitate compliance by raising the knowledge, productivity, and sensitivity of the employer. While labour standards and competitiveness are potentially antagonistic or incompatible goals under the Anglo-American model, and thus force policymakers to make pernicious choices, they are potentially complementary outcomes in the Latin system—where government officials are expected to bring firms up to the standards imposed by their regulatory obligations rather than to bring regulatory obligations down to the knowledge and productivity levels characteristic of firms.

The question, therefore, is how to best tailor the Latin approach to the particular needs and capabilities of the CAFTA countries. We address the question by carrying out detailed case studies of the inspection arms of the Costa Rican Ministry of Labour and Social Security (MTSS), the Dominican Secretary of State for Labour (SET) and the Guatemalan Ministry of Labour and Social Provision (MINTRAB). Costa Rica represents traditional “best practices” in the subregion. The Dominican Republic has made remarkable gains in recent years. And Guatemala continues to lag behind. Nonetheless, we find valuable lessons and foundations on which to build in all three countries—and in other countries we have visited or studied. And we therefore provide a series of policy recommendations for the

recruitment (i.e., competitive examinations), training (i.e., life-long learning), and organization (i.e., preventive rather than post hoc inspections) of labour inspectors and inspection services. The centrepiece of our recommendations is a Central American Institute for Labor Inspection. Such an institute would be modelled upon (and draw upon expertise developed in) the academy for labour inspectors in Lyon, France and would fulfil at least three pressing needs. First, it would provide initial training and continuing education for inspectors and administrators from all of the CAFTA countries and thereby build capacity and esprit d'corps in the national inspection services themselves. Second, it would carry out research and performance evaluation that would facilitate the perfection of the Latin model more generally. And, third, it would help disseminate the best practices identified through the research and thereby inhibit beggar-thy-neighbour competition.

Introduction

This report focuses on labour inspection systems in Central America and the Dominican Republic. Labour inspection's growing importance to the region derives from provisions of the recently signed Dominican Republic-Central America Free Trade Agreement (DR-CATFA) that compel member countries to enforce their existing labour regulations. But labour inspection systems have broader implications for a series of debates about the relationship between the regulation of the labour market and international trade. These include the debate about the Washington Consensus and the general view, promoted by the United States and the international financial institutions, favouring not only free trade but the withdrawal of government from the control and regulation of economic activity more generally. These policies have encountered growing resistance in Latin American and have been targeted to varying degrees by a number of the region's governments (e.g., Argentina, Brazil, Bolivia, Chile, Uruguay, etc).

There is also a debate in the advanced industrial countries about the utility of conditioning trade agreements and market access on the willingness and ability of exporting countries to enforce labour standards—and a subsidiary debate among proponents of trade conditionality over the relative efficacy of governmental as opposed to private regulation. This emphasis on labour standards is at odds with the so-called Washington Consensus but has nonetheless spurred a broadly based movement of students, consumers, and union members in the advanced industrial countries that has arguably changed the terms of the debate over globalization and development. A principle

finding of this report, in fact, is that pressures generated in part by the “anti-sweatshop” movement fostered important reforms that strengthened Central American labour inspection systems even before the advent of CAFTA and the momentum of the domestic political reaction to free market reform began to come into play.

We argue that parties to both sides of the debate fundamentally misunderstand the nature of labour market regulation and inspection in Latin America and therefore underestimate their potential not only to improve social welfare but to actually strengthen economic performance. But to realize that potential, it is necessary to understand how the existing regulatory framework actually works and to design reforms that are consistent with its real nature and structure. Several of the countries in Central America have been moving in the direction we would recommend, albeit hesitantly. A more deliberate, better articulated, and coordinated approach by the CAFTA signatories as a group would speed this process, inhibit “beggar-thy-neighbour” competition among the member countries, and thereby contribute to the economic and social development of the region as a whole. The underlying thrust of this report is thus to reframe the policy debate, to refocus public concerns, and to redirect reform efforts at both the national and the international level.

The key to regulatory reform in Central America is an appreciation of the difference between labour inspection there (and in Latin countries more broadly), and labour market regulation in the United States, where so much of the pressure, both for neoliberal reform and for social regulation, originates. Labour inspection has for a long time been promoted and guided by the International Labour Office (ILO) and a whole jargon has grown up to characterize and foster effective and efficient public administration in this domain of government activity. In the language of the ILO, the US system of labour market regulation is both a specialized and a sanctioning system. It is specialized in the sense that each type of regulation is administered by a different agency: And it is sanctioning in that violations are punished by a penalty (usually a fine). In Latin America, by way of contrast, labour inspection systems are modelled on those of France and Spain. They are general or unified; they are conciliatory; and they are tutelary. They are unified in the sense that, in principle at least, the whole of the labour code is administered by a single agency and the inspector, when he or she enters an establishment, can look at any aspect of the business. They are conciliatory in the sense that the enterprise is expected to come into compliance with the law, and the role of the inspector is to initiate and supervise a process through which they do so. In so doing, the inspector can, and often does, play a tutelary role, acting as an advisor or consultant, to help the enterprise to develop a plan designed to bring practice into compliance with the code over time. Fines and penalties exist, but they are used to facilitate this process and in no sense relieve employers of their obligations.

Two points follow from the nature of the Latin American system. First, labour inspection is a “street level bureaucracy” (Lipsky 1980). The front line inspectors have enormous discretion over how they do their jobs. This discretion derives, in the first place, from the enormity of the labour code, with all its different provisions and dimensions, and the impossibility of monitoring every aspect of it in the amount of time an individual inspector could possibly devote to visiting a given enterprise and examining the particulars of its operation. Since, given the size of the code, nobody could possibly inspect for every single provision that falls under the agency’s mandate and jurisdiction the inspector must decide, when he or she enters an enterprise, where to focus his or her attention. But the inspector’s discretion resides, secondarily, in his or her obligation to bring the enterprise into compliance and in the related capacity to allow the process through which this happens to extend over a period of time. This discretion gives the system considerable flexibility to adjust to different economic and technical condition. The code can be administered differently in small and in large enterprises. It can be enforced more rigorously in a tight labour market, when business conditions are relatively favourable than a loose one when they are not. It can be adapted to the exigencies of particular firms and sectors. And the inspector is in a position to weigh the total

regulatory burden and to make trade offs among different aspects of the labour code in a way which is not possible in the US system; that is, to balance the benefits of enforcement in terms of social protection against the cost of enforcement in terms of employment and output. But it also means that the system cannot be managed by simple quantitative indices that gauge performance by the number of inspections that are made or the number of violations identified and fines assessed. It requires, as we shall see, a very different system of management that relies much more heavily on professionalism, training, and case audits.

The second point suggested by the way in which labour inspection operates in Latin America is that we need to rethink and understand the way in which compliance with standards is achieved. It has become conventional in North America to think of compliance in terms of a rational business calculus in which individual enterprises weigh the cost of compliance against the expected cost of non-compliance in terms of fines and other penalties that will be incurred if caught, discounted by the probability of actually being caught. The latter, of course, is dependent upon the number of inspectors relative to the number of enterprises which they oversee. In the Latin American context, where rates of productivity growth and profit are at best uneven and at worst stagnant, fines are rarely invoked; however, if they were invoked more frequently they would be more likely to induce bankruptcy than compliance, and one is therefore forced to look for alternative mechanisms. At least three such mechanisms can be identified. First, compliance might be the product of the broader moral climate in which business operates if that climate makes the violation of norms and standards virtually unthinkable. Labour inspection must then be evaluated in terms of its contribution to the creation and maintenance of that climate. Secondly, standards may be the outcome of a struggle between workers and employers; inspection would then be understood in terms of its impact on the balance of power in that struggle. Finally, if the production techniques and business practices associated with compliance are actually more efficient and effective than existing techniques, businesses may transgress standards under competitive pressures when they are uninformed or do not know how to implement more effective alternatives. In this case, labour inspection may actually be effective when it encourages or helps business learn how to compete in new and better ways. In short, professional labour inspectors can help facilitate compliance by *socializing* employers, *backing* workers, or *disseminating* best practices across firms. We believe that elements of all three mechanisms are visible, albeit dimly, in contemporary Central America and that more deliberate and coordinated efforts will help the region's labour ministries build upon their recent achievements.

We hope to illuminate and fortify their contributions in the following report and toward that end have carried out extensive interviews with labour ministry officials, businesspeople, trade union representatives, labour lawyers, non-governmental organizations, and international donors in Costa Rica, Guatemala, the Dominican Republic, France, Spain, and México—and have drawn upon related interviews carried out by our students in Honduras. We have divided our report into six principal sections. Chapter I draws the distinction between the Franco-Iberian and the Anglo-American approaches to labour market regulation and argues that the former is better suited to the Central American reality than the latter. Chapter II offers a brief introduction to the history of labour market regulation in Central America and traces recent reforms to the democratization, demilitarization, and/or diversification of the subregion's various political economies in the late twentieth century. Chapter III reconsiders the recent effort to adapt or fortify the Franco-Iberian model to the Central American context and pays particularly close attention to the achievements and inadequacies of Costa Rica, the Dominican Republic, and Guatemala. Chapter IV reconsiders the Central American experience against the backdrop of recent debates over labour inspection in France, where the Latin approach to labour inspection originated and has arguably reached its apogee. Chapter V concludes that the subregion's labour laws are in all likelihood more enforceable than their detractors realize and more desirable than their opponents know. And Chapter VI offers a

number of potentially valuable policy recommendations designed to reconcile improved labour standards with productive efficiency.

I. Models of labour market regulation

Public officials administer labour market regulation differently in different countries (Von Richtohofen 2002, Ch. 4; Jatobá 2002, p. 14). Anglo-American administrators assume an adversarial position toward their *adminstrés* and therefore constitute law enforcement agents *sensu stricto*. They hope to deter non-compliance by raising the costs and risks of exposure (Peacock 1984; as well as Stigler 1970, p. 527). By way of contrast, Franco-Iberian administrators assume a tutelary posture toward their *adminstrés* and therefore resemble teachers rather than police officers or prosecutors. They hope to bring employers and workers into compliance with the law through a judicious combination of pedagogy, persuasion, and punishment (Reid 1986, 1994).

The tutelary model is a by-product of government efforts to combat corruption among regulatory officials in early twentieth century Europe. By limiting the “powers or rules of procedure” available to their labour inspectors, according to Michel Wallin, legislatures and labour ministries hoped to minimize the likelihood of “high-handed action” taken at the expense of their respective private sectors (Wallin 1969, p. 56), and continental labour inspectors therefore

had little alternative but to coax, cajole, and harass employers into compliance with the law (see, e.g., Reid 1994, pp. 297-98; Silvestre 2006, p. 48).¹

In fact, the French *inspecteurs du travail* who pioneered the tutelary approach more than a century ago not only viewed the inspection process as an opportunity “to assess the moral environment of the firm” (Reid 1986, p. 69; see also Piore 1980) but compensated for their admittedly limited—if by no means non-existent—disciplinary authority by trying to convince their private sector interlocutors “that compliance with labour legislation could be profitable” (Reid 1986, p. 77). They underscored the potentially complementary relationship between the development of labour standards and the automation of production (Cross 1984, 1985). They encouraged “often incredulous employers” to develop and take advantage of vocational education and training programs, labour-saving technologies, and improved productive practices more generally (Reid 1986, p. 78). And they participated in reform movements and propagated their message through official and unofficial channels (Reid 1986, p. 77; Cross 1985, pp. 266-7). By the middle of the twenty-first century, therefore, their arguments and approach had been adopted and disseminated by the International Labour Organization (Clark 1996).²

The tutelary approach to labour market regulation migrated to Latin America via French civil law and Iberian intermediaries as well as the ILO (Wiarda 1978), however, and the generalist enforcement agencies found in contemporary Central America are therefore direct descendants of their French forebears. They are responsible for the entire labour code. They have broad discretionary authority. And they are therefore able to tailor their enforcement efforts to the exigencies of particular firms, sectors, and time periods—at least in theory.

By way of contrast, the Anglo-American approach to labour law enforcement is inflexible and bureaucratic. Enforcement agents are divided into different bureaucracies with narrow jurisdictions (e.g., the Occupational Safety and Health Administration, the Wage and Hour Division, the Immigration and Naturalization Service, etc., in the United States). They are expected to go “by the book” at all times. And they are therefore unable to reconcile the at times incompatible goals of employment creation (or preservation) and job quality.

The differences between the Anglo-American and Franco-Iberian approaches to labour law enforcement are in part products of their distinct goals and philosophies. While Anglo-American inspectors treat non-compliance as a product of individual cost-benefit calculations, and therefore try to deter future transgressions by making examples out of current offenders, their Franco-Iberian counterparts treat non-compliance as a product of ignorance and inefficiency—and realize that sanctions alone may aggravate, rather than solve, the problem. By imposing sanctions, after all, inspectors place new legal and financial burdens on already vulnerable firms and their owners and thereby *decrease* their willingness and ability not only to come into compliance but perhaps to remain solvent as well.

This is not to suggest that enterprises can always be brought into compliance with labour standards without sacrifice to business efficiency or competitiveness, nor that violations are never the product of a wilful effort to take advantage of weak enforcement and profit by cheating workers of their legal entitlements or at the expense of their health and safety. And the very first task of a

¹ The mid-nineteenth century British factory inspectors studied by Marx suffered from a lack of police power as well (Arthurs 1980, pp. 230-231). By the early twentieth century, however, their authority had been expanded and even “British women factory inspectors had full powers to prosecute offenders” (Koven and Michel 1990, p. 1103; as well as McFeely 1988, Ch.7). See also Field (1990) on the evolution of the Anglo-American model as well as Wilson (1941) for a fascinating first-person account of changes in the British factory inspectorate over the first half of the twentieth century.

² The ILO’s first director, Albert Thomas, and his chief advisor, Arthur Fontaine, had championed the linkage between labour standards and productivity increase when they served as Minister of Munitions and supervisor of the *Inspection du Travail*, respectively, in early twentieth century France (Fine 1977; Cross 1985; Clark 1996).

labour inspector upon entering a new workplace, even under the Latin model – indeed particularly in the Latin model – is to make a judgment about the motivation of the proprietor. And there are obviously cases where heavy sanctions are the only remedy for labour standards violations. Whether or not they are actually available is, of course, another matter.

But there are actually a number of cases where compliance with labour standards need not come at the expense of efficiency or profitability, where violations are not wilful and deliberate or where the cost of compliance is considerably less than is generally recognized or than the managers themselves believe. This is especially true in the current period in Latin America, for traditional enterprises, suddenly denied the shelter of the trade barriers to which they are accustomed, are facing demands for quality and reliability in an international marketplace that they do not understand, where they have had very little exposure to the business practices of their competitors—who are, in any case, typically distanced and/or unknown. Recent research suggests that even the business practices of transnational branded producers such as Nike and Adidas inadvertently create incentives for their subcontractors to engage in illegal labour practices, pressures that could be relieved at little or not cost to the competitive position of the parent company.

In these cases, the Latin model is a real alternative to the sanctioning system. After all, Franco-Iberian inspectors not only offer the owners of noncompliant enterprises the opportunity to correct their transgressions prior to prosecution but simultaneously serve as consultants in the process—and thereby underwrite the costs of compliance without undermining the prospects for investment, job creation, and growth.³ Table 1 provides a stylized summary of the principal differences between the two approaches and implies that the Franco-Iberian alternative would be particularly well-suited to the Central American reality. After all, the CAFTA countries are not only poor but are almost entirely devoid of social safety nets, and their citizens would therefore pay a particularly high price for the job loss attendant upon an overly punitive approach to labour law enforcement (Trejos and Del Cid 2002, p. 7).

Table 1
LABOUR INSPECTION SYSTEMS: ANGLO-AMERICAN AND FRANCO-IBERIAN VARIANTS

Characteristic	Anglo-American	Franco-Iberian
Philosophy	Adversarial	Tutelary
Goal	Deterrence	Conciliation
Mechanism	Rational calculation	Socialization, training, and bargaining
Approach	Reactive	Proactive
Jurisdictions	Narrow/ division of labour	Broad/unified authority
Organization	Bureaucratic	Professional
Tools	Sticks	Carrots and sticks

By forcing individual inspectors to use carrots as well as sticks, however, the tutelary model makes a virtue of the necessity imposed by the insubstantial and at times unreliable sanctions available to Central American inspectors and therefore holds out the possibility—if by no means the inevitability—of paving the proverbial high road as well as blocking the so-called low road.

³ One potentially illustrative example comes from the Southern Cone of Latin America. The Chilean labour ministry offers noncompliant employers who agree not only to bring their firms into compliance but to participate in publicly sponsored training programs relief from punitive sanctions (OIT 2006, p. 85). The “training for fines” (Sustitución de Multas por Capacitación) program has been widely heralded as a success and has therefore been expanded to encompass a wider range of firms than originally intended.

The prospects for a salutary outcome are anything but self-evident, however, for Central America's commitment to the tutelary model has traditionally been more rhetorical than real. By depriving their labour ministries of human and financial resources, in fact, Central American policymakers have forced their labour inspectors into a reactive posture and have thereby grafted a time-consuming prosecutorial approach onto a nominally pedagogical system (Von Richthofen 2002, p. 97). Table 2 provides data on the number and the percentage of proactive inspections by Central American country in 2004.

The data are telling. Only a third of the inspections carried out in the region are proactive. Almost all of the proactive inspections occur in three countries: Costa Rica, the Dominican Republic, and Guatemala. And the ratio of proactive to prosecutorial inspections has actually been falling in Costa Rica, where an ambitious enforcement agenda has apparently been compromised by growing personnel shortfalls (MTSS 2005a, 2005b).

Table 2
LABOUR INSPECTIONS IN CENTRAL AMERICA, 2004

Country	No. inspections total	No. proactive inspections	Percent proactive
Costa Rica	12 264	5 034	41
Dominican Republic	46 196	19 535	42
El Salvador	3 729	347	9
Guatemala	19 420	5 096	26
Honduras	9 697	1 088	11
Nicaragua	1 513	707	47
Regional totals	92 819	31 807	34

Source: Unpublished data made available by Alfonso Carro, FUNPADEM, San José; and Washington Gonzales, SET, Santo Domingo.

Central American labour ministries are making at least nominal efforts to improve their enforcement efforts, however, for CAFTA demands not that member countries bring their domestic labour laws into compliance with internationally agreed upon norms and standards but that they adequately enforce their domestic labour laws *whatever they may be*. What are the likely consequences? We hope to answer the question in the pages to follow. We begin by illuminating the historical prelude to the procedural reforms undertaken by Central American policymakers over the course of the past two decades—democratization, demilitarization; and economic diversification—and subsequently examine the cases of Costa Rica, the Dominican Republic, and Guatemala in greater detail and through a French prism before making policy recommendations based upon interviews carried out not only in Central America and the Dominican Republic but in Mexico and Southern Europe as well.

II. The transformation of labour law in Central America

A substantial and growing body of literature underscores the one-sided nature of the traditional Central American employment relationship (Baloyra-Herp 1983; Rueschemeyer, Stephens, and Stephens 1992; Karl 1995, 2000; Vilas 1996; Murillo and Schrank 2006). According to Enrique Baloyra-Herp, the agro-export elites who dominated the subregion for the better part of the twentieth century demanded nothing less of their compatriots than the right “to accumulate capital without the constraints created by labour unions, competition, and regulation” (Baloyra-Herp 1983, p. 310), and their compatriots suffered accordingly. Table 3 includes data on a variety of social and economic indicators on the eve of the revolutionary decade of the 1980s and underscores the inauspicious legacy of the subregion’s traditional agro-export model.

Landed oligarchs and their foreign allies had not only impoverished Central America as a whole but had condemned their fellow citizens to lives of ignorance, servility, and effective political disenfranchisement (Weeks 1986; Vilas 1996). Only Costa Rica and the Dominican Republic, where authoritarian rule had already fallen victim to civil war and popular insurrection, deviated significantly from the broader pattern—and neither country had been able to transcend the subregion’s broader developmental malaise.

Table 3
ECONOMIC AND HUMAN DEVELOPMENT IN CENTRAL AMERICA CIRCA 1980

Country	GDP/capita (US\$ 2 000)	Rural population (% total)	Adult literacy (% total)	Regime type
Costa Rica	3 314	53	88	Democracy
Dominican Republic	1 517	49	67	Democracy
El Salvador	1 898	56	58	Authoritarian
Guatemala	1 732	63	45	Authoritarian
Honduras	954	65	51	Authoritarian
Nicaragua	1 109	50	54	Authoritarian
Central America mean	1 754	56	61	NA
Rest of Latin America	3 388	36	78	NA

Source: World Bank (2005); Mainwaring, Brinks, and Pérez Liñán (2001). GDP per capita is calculated in 1980 at constant year 2000 US dollars. Literacy represents the literate percentage of the population aged 15 and over in 1980. And regime classifications are from Mainwaring, Brinks, and Pérez Liñán (Table 1). The cross-regional differences in all indicators other than GDP/capita are significant at $p < .01$; GDP/capita is significant at $p < .10$.

In fact, Costa Rica and the Dominican Republic arguably differed from the rest of Central America in degree rather than kind. While the Costa Ricans established a remarkably effective social security system in the early 1940s, and thereby made great strides against poverty and informality (Itzigsohn 2000), they repressed organized labour and rebuffed the International Labour Organization throughout the period (Fruendt 1998), and thereby demonstrated that democracies need not offer their workers comprehensive safeguards. In fact, the democratically governed Dominicans had a higher rate of informality and a lower level of union density than their authoritarian Central American neighbours until the early 1980s (see Table 4).

Table 4 includes data on three admittedly crude indicators of the status of industrial and labour relations in Central America in the early 1980s: ILO ratifications, the level of informality, and union density. ILO ratifications track the formal rights and privileges inscribed in national labour legislation (Chau and Kanbur 2002, p. 22). Are Central American labour laws in line with internationally agreed upon standards? The level of informality is indicative of the government's willingness and ability to translate formal guarantees into substantive safeguards. Do Central American governments make good on their formal commitments? And, finally, the rate of union density captures the force or vigour of freedom of association. Are Central American workers allowed to organize, strike, and bargain collectively? The answers to all three questions have traditionally been negative.

In short, Central America's industrial and labour relations have been woefully inadequate not only by world but by regional standards. While political parties and individual politicians actively courted organized labour in the more inclusionary polities of continental Latin America, where unions and their members simultaneously encouraged and exploited industrialization and democratization in the mid-twentieth century, they aggressively repressed organized labour in the more exclusionary confines of Central America, where agro-export oligarchies had survived the Great Depression intact and neither industrialization nor democratization had kept pace (Murillo and Schrank 2006). Consequently, Central America lagged the rest of Latin America on all three indicators in 1980.

Table 4
INDUSTRIAL AND LABOUR RELATIONS IN CENTRAL AMERICA CIRCA 1980

Country	ILO ratifications (No. conventions)	Informality (% labour force)	Union density (% labour force)
Costa Rica	34	51,6	14
Dominican Republic	26	88,7	12
El Salvador	4	88,4	8
Guatemala	39	66,9	8
Honduras	19	85,6	20
Nicaragua	41	81,1	32
Central America mean	27	77,1	16
Rest of Latin America	49	52,4	21

Source: Portes and Schaufler (1993); Blanchflower (2006); ILO (2006). ILO ratifications represent the number of ILO conventions ratified in 1980. Informality represents the percentage of the labour force not covered by social security in 1980; data for Paraguay missing. And union density represents the unionized percentage of the labour force as a whole in the early 1980s. The cross-regional differences in ILO ratifications and informality are significant at $p < .05$; the union density differences are not statistically significant.

By offering their peasants and workers neither a voice at the workplace nor a seat at the proverbial political table, however, Central American employers created “the classic conditions for revolution” (Feinberg 1982; see also Rueschemeyer, Stephens, and Stephens 1992, p. 245), and thereby sowed the seeds of their own demise. Central American workers and peasants adopted radical postures vis-à-vis their employers and governments in the mid-to late 1970s. Public and private officials responded in kind. And the isthmus descended into a brutal decade of civil war. While agro-export elites and their North American allies rebuffed their radical rivals in El Salvador, Guatemala, and post-revolutionary Nicaragua, and thereby derailed the forces of revolutionary socialism in the subregion, they would be forced to make a number of major concessions that would impinge upon industrial and labour relations well into the next century.

1) *Democratization*. By the early twenty-first century all six CAFTA countries had put paid to authoritarian rule. While substantive freedoms vary markedly across the region, and democracy is arguably more robust in Costa Rica and the Dominican Republic than El Salvador, Guatemala, Nicaragua, and Honduras, reactionary despotism (Baloyra-Herp 1983) is no longer the subregional norm.⁴ Elections occur at regular intervals. Incumbents frequently lose. And contestation is consistently vigorous. The question is why. According to Jeffery Paige, the revolutionary upsurge that engulfed the isthmus in the 1980s divided the traditional agro-export elite into two rival factions: a modernizing “agro-industrial” alliance of traders, processors, and financiers; and a retrograde “agrarian” coalition of traditional landlords (Paige 1997; see also Wood 2000; Peceny and Stanley 2001). While the agro-industrialists possessed mobile capital and dominated the more profitable market niches, and could therefore afford to offer concessions, their agrarian counterparts lacked mobile capital and occupied competitive market positions, and therefore had little alternative to the *ancien regime*. By abandoning their agrarian brethren and embracing the peace process, therefore, the agro-industrialists opened the door to liberal democracy and conflict resolution.⁵

⁴ For example, Freedom House classifies Costa Rica, the Dominican Republic, and El Salvador as “free” and the rest of the region as “partly free” (Freedom House 2006). However, Marshall and Jagers rank El Salvador, Honduras, and Nicaragua below Guatemala and the Dominican Republic (Marshall and Jagers 2002).

⁵ Guatemala embarked upon reconciliation and democratization after—and in a more tentative fashion than—El Salvador and Nicaragua, and Paige therefore excludes the case from his analysis. However, Suzanne Jonas underscores the importance of private sector division in her subsequent account of Guatemalan democratization (Jonas 2000, p. 14). And Mark Peceny and William Stanley portray the Guatemalan and Salvadoran transitions as different in degree rather than kind (Peceny and Stanley 2001, p. 171)

2) *Demilitarization*. Central American workers expected to benefit not only from the substance but from the process of democratization. After all, Central America's democratic transitions derived from the aforementioned peace processes and therefore occurred under the watchful eyes of international observers from the United States, the United Nations, and the Organization of American States (Peceny and Stanley 2001). UN officials played a particularly important role in bringing organized labour into the negotiating process and incorporating labour rights into post-war peace settlements (see, e.g., Argueta 2005, p. 110). While negotiators planned to bring labour's concerns to the bargaining table, and thereby raised expectations among unions and their members, they encountered a number of important stumbling blocks including US indifference—or perhaps open hostility—to the labour movement's more radical elements. "Yet as peace efforts increased," according to Henry Frundt, "unions became a decisive force in negotiating political and economic proposals. In some countries, they gained a voice on commissions setting the minimum wage and aided in constructing other democratic social institutions" (Frundt 2002, pp. 20-21).

3) *Diversification*. Central America is no longer a land of "coffee republics." The more dynamic members of the traditional agro-export elite responded to declining coffee prices, growing US pressure, and the constant threat of expropriation in the 1980s by abandoning their traditional agricultural pursuits for cost-sensitive industries marked by acute capital mobility like offshore manufacturing and financial services (Riding 1981; Petersen 1992; Paige 1997; Peceny and Stanley 2001). By the late 1990s, therefore, Central America had made the transition "from the *finca* to the *maquila*" (Pérez Sainz 1999) and had thereby set the stage for fundamental transformations in industrial and labour relations. While offshore manufacturers are notoriously mobile, and therefore tend to discourage or defeat strikes and organizing drives, they are decidedly dependent on unilateral US trade preferences, and therefore tend to invite foreign labour pressure and transnational human rights campaigns. After all, the US Trade and Tariff Act of 1984 not only demands that recipients of "better than most favoured nation" access to the US market acknowledge and defend international labour standards but also allows interested parties like labour and human rights activists to petition the United States Trade Representative to review their records, evaluate their laws, and eventually even withdraw their access to the Generalized System of Preferences (GSP) for non-compliance. North American labour and human rights organizations therefore petitioned the USTR on behalf of their Central American allies and associates throughout the late 1980s and 1990s (Frundt 1998; Anner 2002; Murillo and Schrank 2005). Central American policymakers responded to their efforts. And by the early twenty-first century, therefore, five of the six developing country parties to the CAFTA agreement had made substantial changes to their labour codes.⁶

The reforms are by no means perfect. The ILO acknowledges a number of "pending" issues including impediments to freedom of association (ILO 2003, p. 3). And the ILO's approach to international standard setting is controversial in any event (Caraway 2006). But the laws on the books today are vastly superior to their predecessors by almost any metric. The average Central American country has ratified 44 ILO conventions (ILO 2006). The subregion actually outperforms the rest of Latin America on the ILO's newly established "intentions and commitments index" (ILO 2002, pp. 57-58, Table 1b). And proponents of international labour standards tend not only to praise

⁶ The sole exception is Honduras. It seems worth noting, in light of our discussion so far, that Honduras is the only country in the region to avoid civil war or popular insurrection in the half century between the 1940s and the 1990s. Costa Rica's civil war gave birth to democracy and the welfare state in the 1940s. The Dominican Republic's civil war ushered in an era of reform and democratization two decades later. And the civil wars in El Salvador, Guatemala, and Nicaragua gave way to demilitarization and democratization at century's end.

the “new and improved labour codes” (Douglas, Ferguson, and Klett 2004, p. 298) on their merits but to acknowledge their all but revolutionary nature as well.⁷

Nevertheless, the existing literature tends to assume that the recent reforms are cosmetic in nature. For example, Daniel Erikson of the Inter-American Dialogue worries “that enforcement remains problematic and that labour abuses are widespread” (Erikson 2004/5, p. 23). And Human Rights Watch describes non-enforcement as “egregious, systematic, and, in some cases, largely attributable to a lack of political will” (Human Rights Watch 2003, p. 4). Are they correct? While public officials admit that procedural reform has outpaced resource re-allocation, and that non-compliance is therefore pervasive, they simultaneously maintain that they “have taken numerous actions to improve their implementation of fundamental labour standards” including but not limited to “various strategies to improve the capacity of the labour inspectorate” (Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic 2005, pp. viii and xi). Table 5 offers data on the ILO’s standard measure of enforcement effort—the number of inspectors per 100,000 workers (ILO 2004, p. 13)—for 16 Latin American countries and appears to corroborate their claim.

Four of the six CAFTA countries are above the median and a fifth, El Salvador, will in all likelihood join their ranks following the fulfilment of a recent commitment to add 69 new inspectors (Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic 2005, p. 33). Central America’s superior performance is not only a relatively recent phenomenon (i.e., the Dominican Republic and Honduras have tripled and Guatemala and El Salvador have doubled the size of their respective inspectorates over the course of the past decade and a half) but is particularly striking in light of the region’s poverty. After all, the primary correlate of labour law enforcement cross-nationally would appear to be per capita income.

What are the likely consequences of the various reforms? While labour and human rights activists question the probity and proficiency of the new inspectors, and therefore worry that the laws are unenforceable (Polaski 2003; Athreya 2005), their critics emphasize the unforgiving nature of comparative advantage (Bhagwati 2005), and therefore assume that they are undesirable. We hold that the former perspective is incomplete and the latter argument is inaccurate, however, for not only the activists but their critics have fundamentally misinterpreted the goals and nature of the tutelary approach to labour law enforcement at the heart of the Central American reform effort. While the activists tend to assume that improvisational behaviour on the part of “street level bureaucrats” (Lipsky 1980) like labour inspectors constitutes *prima facie* evidence of corruption, and thereby misrepresent potentially valuable efforts to reconcile the market’s demand for efficiency with society’s need for protection, their critics tend to ignore street level bureaucrats in their entirety, and thereby overlook the principal advantages of the tutelary approach including flexibility, productivity, and protection. Of course, the reforms are embryonic and the system is therefore far from perfect. Inspectors are at best callow. Corruption is widespread. And threats to comparative advantage are palpable. The real questions are: What gains have been made? How many more are possible? And what policy measures would ensure a positive outcome? We look for answers in the cases of Costa Rica, the Dominican Republic, and Guatemala.

⁷ The reforms are by no means comprehensive. The International Labour Organization’s recent study of Central American labour law has provoked competing interpretations from rival parties (ILO 2003). While CAFTA’s champions hold that Central American labour laws are for the most part in line with ILO guidelines, and that the principal shortcomings are related to enforcement (Elliott 2004; Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic 2005), their critics underscore the ILO’s persistent concerns over procedural shortcomings, and therefore demur. “Yes there are problems with enforcement,” they argue, “but there are problems with the law too” (Vaughan 2005, p. 3; see also Polaski 2003; Human Rights Watch 2004). Nevertheless, the ILO would appear to concur with the former interpretation (OIT 2005).

Table 5
LABOUR LAW ENFORCEMENT RESOURCES IN LATIN AMERICA

Country	Inspectors per 100 000 workers	Country	Inspectors per 100 000 workers
Chile	19,25	Paraguay	2,70
Guatemala	7,53	Brazil	2,45
Uruguay	5,79	El Salvador	2,28
Panama	5,60	Mexico	1,72
Dominican Republic	5,54	Nicaragua	1,58
Costa Rica	4,66	Peru	1,34
Honduras	3,97	Colombia	1,24
Argentina	3,05	Ecuador	0,57

Source: Estimated by combining World Bank (2006) data on the size of the labour force in the relevant year and data on the number of inspectors per country from the following sources: Argentina (MTSS 1999, p. 20); Brazil (Cardoso and Lage 2005, p. 26); Chile (Figueroa 2005, p. 27); Colombia (US&FCS 2001, p. 82); Costa Rica (MTSS 2005, Annex A); Dominican Republic (Albuquerque 2005, p. 16); Ecuador (Tapia 2006); Guatemala (Tobar 2004, p. 9); Honduras (US DOS 2005); Mexico (ICFTU 2002); Nicaragua (US DOL 2005a, p. 12); Panama (MITRADEL 2006); Paraguay (US DOL 2005b); Peru (USTR 2003, p. 45); Uruguay (Cabrera 2006).

III. Labour market regulation in contemporary Central America

Costa Rica, the Dominican Republic, and Guatemala illustrate three different approaches to labour market regulation and reform. Costa Rica's labour ministry has traditionally provided the regional benchmark. While the country's labour laws offer individual workers more protection than their unions, and have therefore been found wanting from the standpoint of organized labour (Frudnt 1998), they are nonetheless enforced with vigour, and José Itzigsohn has therefore drawn a distinction between the "protective" regulatory regime found in Costa Rica and the "repressive" regulatory regime found in the Dominican Republic (Itzigsohn 2000, p. 21). "In the Dominican Republic," he argues, "the law formally protects workers and there is no repression of union activities, but the law is not implemented and unions are very weak" (Itzigsohn 2000, p. 21).

By the same token, however, the two countries have been moving in opposite directions of late. While the Dominicans made a concerted effort to bolster their enforcement efforts in the late 1990s (SET 2000; SET-ONAP-OIT 2000), and thereby earned the praise and respect of international observers, the Costa Ricans pursued a broadly similar agenda with decidedly inferior results a few years later (MTSS 2005b; Quesada 2005). By early 2006, therefore, the Costa Ricans had turned to the Dominicans to absorb their lessons (Carro 2006).

Finally, Guatemala offers something of a "worst case" scenario. The Guatemalan labour ministry has traditionally been deprived of respect and resources. Labour inspectors and employers have therefore

been trapped in a vicious circle of extortion and evasion. And recent efforts to improve the situation have been halting—if by no means invisible (Maldonado 2005). A decade after the negotiation of the peace accords, and the allied effort to bolster the process of labour law enforcement, one well-known Guatemalan labour lawyer describes conditions in the Ministry of Labor and Social Provision (Ministerio de Trabajo y Previsión Social, or MINTRAB) as “precarious” (Morales Díaz 2005, p. 96).

In short, the Costa Ricans have found it difficult to improve upon their existing best practices. The Dominicans have moved from repression toward protection in short order. And the Guatemalans remain mired in repression. What accounts for the differences? We hope to answer the question by drawing upon data gathered in extensive interviews with labour inspectors, public officials, businesspeople, and representatives of international and non-governmental organizations in all three countries. We find that the prospects for tutelary labour law enforcement are circumscribed by: (1) the nature, degree, and timing of international pressure; (2) the organization and governance of the domestic political economy; and (3) the nature and legacy of the pre-existing system of labour law enforcement.

1. Costa Rica

Costa Rica has traditionally provided the benchmark against which the rest of the region has been judged. The Costa Rican labour ministry has not only limited the extent of informality and unemployment but has simultaneously endowed workers with *de facto* bargaining power and thereby forced the “upward equalization” of wages and working conditions in the informal and low wage formal sectors (Itzigsohn 2000, pp. 102-106; see also Gindling and Terrell 1995). In fact José Itzigsohn found that Costa Rican workers who threatened to report their noncompliant employers to the Ministry of Labor (MTSS) in the early 1990s achieved a variety of wage and non-wage benefits whatever their sectoral location (Itzigsohn 2000, pp. 103-4).

By the late 1990s, however, the labour ministry found itself confronted by three interrelated challenges. First, Costa Rican employers began to decry the “burdensome” nature of their country’s labour regulations and to make a concerted effort to amend or avoid their reach (Itzigsohn 2000). Second, Costa Rica’s trading partners began to ask whether the country’s regulations were burdensome or protective enough and to demand the adoption of *more* safeguards and *stricter* enforcement (Frundt 1998). And, finally, Costa Rican planning authorities (the Ministerio de Planificación, or MIDEPLAN) declared the country’s regulatory apparatus hidebound and inefficient and began to call for thoroughgoing administrative reform (Benavides 2000).

MIDEPLAN and the labour ministry therefore joined forces to adopt four broad categories of reform. First, the process of labour inspection would be decentralized. The MTSS would maximize efficiency and flexibility by granting regional offices and their inspectors actual—rather than nominal—decision making authority. Second, the process of labour inspection would be made more pedagogical. While labour inspectors would continue to respond to complaints emanating from employers and workers, and thereby retain their traditional prosecutorial role, they would simultaneously carry out proactive inspections and take preventive measures. Third, the labour ministry would encourage employers and workers to take an active part in the formulation and implementation of regulatory policy. ILO-style tripartism was to be the order of the day. And, finally, the labour ministry would use information technology, strategic planning, and human resource upgrading to maximize the efficiency of the inspection process. While agency budgets were unlikely to increase in the short run, especially under the centre-right Rodríguez administration, the MTSS felt that resources could be deployed more rationally under the new system.

The authors of the reform described the growth of pedagogical activity as the “main axis” of their campaign (Benavides 2000, p. 44), however, and realized that their efforts would necessarily rise or fall on the backs of the labour inspectors. MTSS officials therefore attempted to professionalize the already reasonably competent inspectorate by: (1) treating inspectors as skilled professionals with a wide span of authority rather than cogs in a bureaucratic machine; (2) offering inspectors new incentives including better salaries, improved career prospects, and performance bonuses; and (3) making every effort to ensure that the inspectors would be up to the task by adopting more restrictive recruitment criteria, frequent training exercises, and incentives for continuing education.

Nevertheless, the results have been ambiguous at best. While public officials have been able to adopt “stroke of the pen” reforms like decentralization, planning, and human resource upgrading, and have thereby produced what appear to be modest gains in the efficiency of the inspection process, they have been unable to alter the behaviour of their street level bureaucrats or their private sector interlocutors in meaningful ways. Inspectors continue to pursue a largely prosecutorial approach to their jobs. Proactive inspections, though numerous, are determined with the accessibility of the target rather than the likelihood or nature of the transgression in mind. Inspections tend to be concentrated in and around the capital of San José. And efforts to bolster tripartite negotiation have foundered on the shoals of suspicion and indifference (MTSS 2005).

2. Dominican Republic

The Dominican Republic offers a marked contrast. Over the course of the past decade the island nation’s labour ministry has been transformed from a bastion of patronage and corruption to a model of professionalism and probity—an “exception to the rule” in the otherwise patrimonial Dominican Republic (ALEPH 2002, p. 32; see also Jatobá 2002, p. 34; OAS 2003, pp. 16-17).

What accounts for the difference? The Costa Rican and Dominican reform efforts have broadly similar roots. Like Costa Rica, the DR entered the 1990s increasingly dependent on international trade and decidedly vulnerable to pressure from transnational human rights activists. After all, the island nation’s export processing zones (EPZs) played host to almost 300 apparel and footwear manufacturers, employed well over 100,000 workers, constituted the US market’s fifth largest source of apparel by value and leading source of leather footwear uppers, and depended on conditional trade preference for their very survival (Murillo and Schrank 2005). While octogenarian President Joaquín Balaguer adopted a new, worker-friendly labour code in 1992, and thereby earned a temporary respite from US pressure, his Ministry of Labor “had no enforcement power” to speak of (Frundt 1998, p. 219) and therefore invited continued North American scrutiny.

Balaguer and his successor, Leonel Fernández Reyna, made a concerted effort to allay the USTR’s concerns by appointing and retaining a well-respected labour lawyer to direct the labour ministry (Secretaría de Estado de Trabajo, or SET) in the 1990s. Rafael Alburquerque—who had been trained in France and retained strong ties to the ILO—assumed office over the objections of the business community in 1991, found an understaffed bureaucracy (e.g., no more than 70 inspectors) governed by traditional patronage politics, and began to combat the problem by imposing new recruitment criteria, hiring more than new inspectors, and providing new career incentives. By the year 2000, therefore, fully 55 percent of the country’s 203 labour inspectors had received their law degrees; more than a third had passed a competitive civil service examination; and more than three-quarters had been incorporated into the country’s embryonic civil service (SET 2000; Jatobá 2002; Alburquerque 2005).

The new inspectors are distributed across 36 different offices (Representaciones Locales de Trabajo) in the Dominican Republic’s 30 different provinces and districts. They participate in frequent training exercises. They have a good deal of autonomy. And they are expected to use their discretion and judgment not only to foster compliance but to “preserve harmony and ensure that

conflict between the parties does not foster a breakdown of the employment relationship” (Albuquerque 2003, p. 157). Thus, the Dominican system of inspection would appear to follow the pedagogical French model rather than the adversarial Anglo-American one (Albuquerque 2003, p. 169).

Inspectors carry out two types of investigations: special and regular. While the former are solicited by managers or workers, and are therefore *post hoc* and corrective by nature, the latter are inaugurated by the ministry itself, and are therefore pedagogical. Labour ministry officials choose a sector or subregion, draw up lists of firms to be inspected, and assign inspectors to carry out the task. So, for example, sugar growers who are known to use illegal immigrant labour may be targeted during the period of peak labour demand (i.e., the *zafra* or harvest); rice farmers who utilize child labour for the same purpose may be targeted during the labour-intensive planting season; and maquila owners who exploit and abuse their disproportionately female workers in periods of peak demand might be targeted in the pre-Christmas rush. Neither the inspectors nor the firms in question are given notice of the targets and dates, however, and the scope for malfeasance is thereby minimized.

The success of the pedagogical approach to enforcement is ultimately premised upon the growth of proactive or preventive inspections. By offering his or her services prior to the onset of complaints, after all, the regulator earns the trust of the regulated and undercuts the likelihood of evasion and extortion. And the ratio of preventive to post hoc inspections therefore constitutes a valuable—if by no means comprehensive—measure of the efficacy of the reforms in question (see Table 6).

Table 6
THE GROWTH OF PROACTIVE INSPECTION IN
THE DOMINICAN REPUBLIC, 2000-2004

Year	Regular (Proactive)	Special (Post Hoc)	Ratio (Regular/Special)
2000	4 626	32 451	0,14
2001	5 495	31 657	0,17
2002	12 355	30 824	0,40
2003	17 535	34 692	0,51
2004	19 535	26 661	0,73

Source: Proprietary data provided by the SET (March 2005).

Inspectors are obligated to attend to complaints (*denuncias*) prior to carrying out their regular inspections, and the data in Table 6 therefore suggest not only that proactive inspections are on the rise but that they are beginning to prevent conflict and undercut the need for special inspections in the first place.

3. Guatemala

Guatemala’s reforms are similar in origin and distinct in outcome. North American labour and human rights activists compelled Guatemala to undertake a series of labour law reforms in the 1990s and to begin to pay attention to the enforcement question at the turn of the millennium. Alfonso Portillo, who ruled Guatemala from 2000 until 2004, had vaguely populist inclinations and therefore offered proponents of labour market regulation a relatively receptive audience. And the labour supporters he appointed labour ministry—an all but unprecedented move in the traditionally authoritarian country—adopted several measures designed to bolster the enforcement process. First, they expanded their enforcement division from approximately 150 to almost 300 inspectors (Tobar 2004, p. 9). Second, they began to recruit their inspectors from the nation’s leading law school

(Tobar 2004, pp. 17-18). And, finally, they granted inspectors the authority to impose administrative sanctions (Argueta 2005). Consequently, Guatemala wound up with a stronger but in some ways more punitive inspectorate than one might have imagined.

The situation would change once again, however, with Portillo's departure and the inauguration of Óscar Berger in 2004. Berger not only appointed representatives of the business community to the labour ministry but appointed judges who stripped the inspectors of the right to impose administrative sanctions in late 2004 (Maldonado 2005). While their reasoning has been widely criticized (Argueta 2005), and almost certainly reflects political rather than constitutional considerations, the judges who populate the Constitutional Court are unlikely to reverse course anytime soon.

The Guatemalan inspection system is therefore in flux. The callow inspectors who entered the service in the late 1990s and 2000s have been deprived of their primary deterrent but have yet to learn how best to persuade. We observed the consequences when we accompanied a pair of inspectors responding to a complaint from a skilled machine operator in one of the countless Korean-owned garment factories that ring Guatemala City in the spring of 2006. The inspectors visited the factory and took testimony from both sides. The Guatemalan worker maintained that he had been denied his legally mandated vacation time; the Korean owner pleaded ignorance of the law; and the Guatemalan plant manager admitted that he had denied the worker's request and justified his transgression by noting that he simply could not afford to lose the worker—who was allegedly 50 percent more productive than the next available candidate for his job—for a week. While the inspectors were able to guarantee the worker his vacation, and corrected a similar transgression affecting a second worker at the same time, they did nothing to help the manager solve his impending productivity shortfall. Asked what he would do when the worker—who was quite literally on the way out the door—was on vacation, the manager looked despondent, shrugged, and said something to the effect of, "Slow down."

The manager's effort to avoid a slowdown by violating the rights of a vulnerable—if by no means the most vulnerable—Guatemalan worker may not elicit much sympathy. But the international garment trade is unavoidably cutthroat. The direct and indirect cost of such a slowdown could in fact be enormous. And the Guatemalan story would therefore appear to vindicate the arguments of mainstream economists who view international labour standards as threats to developing country jobs and living standards.

By the same token, however, inspectors elsewhere in Latin America have not only recognized but addressed the potential tension between social protection and private profitability in embryonic, but by no means unimportant, ways. A number of the inspectors we've interviewed in the Dominican Republic, for example, not only inform owners and managers of their legal obligations but disseminate information on the most efficient ways to comply with their obligations as well, and thereby build bridges between individual employers and publicly subsidized human resource development programs designed to resolve the very dilemmas that emerged in the Guatemalan case.⁸

Nor do their pedagogical activities stop at the factory gates. The SET has made a number of formal efforts to exploit the synergies between labour law enforcement and human resource upgrading and labour inspectors therefore play a key role in the struggle against ignorance and informality by drawing underage workers out of the labour market and into school and encouraging adolescents found in the informal sector to enrol in publicly subsidized training and placement

⁸ Schrank (2006) documents the positive relationship between labour law enforcement and human resource development in the DR with quantitative evidence.

programs. The DR's vocational and training programs have been described as models of their kind and labour inspectors play a key role in disseminating the breadth and depth of their services (Schrank 2006).

The point is most certainly not to disparage Guatemala's efforts. We interviewed labour lawyers, policymakers, businesspeople, and representatives of international and nongovernmental organizations and found near unanimous recognition and appreciation of recent improvements to the quality and integrity of the inspection process. We even found one "wildcat" example of serious pedagogical activity—an inspector who arranged a plant-level staffing experiment as part of an effort to upgrade productivity in the aftermath of a successful union organizing drive. But the Guatemalan system is almost entirely reactive in nature. Plans for proactive inspections have been put on hold. And inspectors are therefore oriented toward investigation and mediation rather than instruction or socialization—an orientation that has proven doubly misguided in light of their denuded sanctioning authority and their inability to rely upon the labour courts for support.

Comparative analysis

The differences between the three cases are attributable to three interrelated factors: the nature and timing of foreign pressure; the structure and administration of the local political economy; and the legacy of the pre-existing system of labour inspection. The Dominicans pursued their major reforms in the late 1990s and therefore reaped the rewards of intense foreign pressure, centre-left governance at home and in the US, and a small and therefore vulnerable labour inspectorate. The Costa Ricans pursued their principal reforms in the early 2000s and therefore paid a price for limited international pressure, centre-right governance at home and in the US, and an entrenched inspection bureaucracy that proved resistant to change. And the Guatemalans made surprising strides under Portillo's populist regime but experienced backsliding with the inauguration of conservative presidents both at home and in the United States.

1. The Dominican Republic

Alburquerque was able to use the leverage provided by international pressure, the favourable context offered by centre-left President Fernández's presidential victory in 1996, and the small size of the existing bureaucracy to carry out a wholesale overhaul of the country's inspection apparatus. The massive increase not only in the size but in the salaries and qualifications of the inspectors proved critical. The new inspectors were not only skilled professionals with stable career paths but also outnumbered their predecessors by more than two to one and therefore set the tone for the process of labour law enforcement throughout the country.

Alburquerque did not rely upon formal rules and procedures alone, however, but made an active effort to convince honest lawyers of his own acquaintance to apply for positions in the labour ministry, visited the regional offices with great frequency, and did everything in his power to build esprit de corps. And his efforts appear to have paid off. Alburquerque is now the Vice President of the Dominican Republic and the inspectors we interviewed speak of him in all but reverential tones. They take pride in their positions as pioneers of civil service reform in the DR. They boast of their achievements and prospects. And they appear to enforce the law with vigour and good judgment.

2. Costa Rica

Ironically, the Costa Ricans paid a price for their relatively propitious initial conditions. While US activists filed six petitions on behalf of Guatemalan workers, and three petitions on behalf of Dominican workers, between 1987 and 1996, they filed only one petition on behalf of Costa Rican workers over the course of the same period (Murillo and Schrank 2006, Fig. 2). By the time the

MTSS decided to undertake serious reform, therefore, a centre-right administration had taken power at home and George W. Bush had been inaugurated in the US.

The consequences were palpable. Neither the Bush nor the Rodríguez administration welcomed the notion of labour market regulation. Washington offered transnational activists and their GSP petitions a particularly hostile reception. And reformers in San José therefore lacked the leverage that their counterparts in Santo Domingo had used in the late 1990s.

Consequently, the Costa Ricans pursued reform with no infusion of new resources. On the contrary, the number of inspectors affiliated with the MTSS has declined by approximately 10 percent over the course of the past five years (MTSS 2005a, p. 22). The labour force has grown simultaneously. And the inspectors who have stayed on fear and resist reform “in part due to the natural fear of change and in part due to their association of the word ‘restructuring,’ which was in circulation during the Figueres Olsen administration, with ‘dismissals’” (MTSS 2005a, p. 4; our translation).

3. Guatemala

Guatemala’s admittedly modest and tentative gains are arguably a manifestation of the “advantages of backwardness.” The Arzu administration had agreed to carry out reform as part of the peace accords in the late 1990s, and the labour ministry therefore absorbed a good deal of advice from foreign and international agencies like the UN, ILO, and the US Department of Labor as well as an infusion of new blood. Portillo’s commitment to reform was more genuine, however, and derived from his populist orientation and constituency. His tax reform proposal provoked a business strike in August of 2001 and his efforts to enforce the Guatemalan labour code proved only marginally more palatable to the country’s powerful private sector. When he was ousted in late 2003, therefore, his replacement made sure to defang the new inspectors—most of whom are lawyers and many of whom appear to share the commitment of their Dominican predecessors—by taking away their sanctioning authority. The question for the future, therefore, is whether the inspectors will find a way to move from a reactive and prosecutorial approach to a more proactive and preventive model without leadership from above.

IV. Lessons from the recent French experience

To understand the potential of the Latin American model of labour inspection, but also its limits, it is useful to review the recent French experience. Labour inspection in France offers two types of lessons for Central America. First, it offers an example of what a high quality administrative service organized in accordance with the same underlying model actually looks like. That is, it provides a target toward which the countries of the region might aim. But, second, it points at the same time to a series of continuing problems that are *inherent* in the Latin model, even its most advanced version. Two problems seem particularly important: (a) the problem associated with operating in an environment in which the political discourse is dominated by the neoliberal, market ideology and hostile to administrative regulation of business and the economy; and (b) the question of how to insure consistency and equity in a regulatory process that is inherently dependent on qualitative judgments made by the organization's line officers. More broadly, this is the problem of how to manage and control a street level bureaucracy.

In addition, the government in France has recently proposed a major reform to the system of labour inspection. The proposed reform is of some interest in and of itself. But of greater interest is the debate surrounding that reform which has exposed a series of continuing issues or controversies in the design and implementation of the basic model. It is not clear that there is a "solution" to any of these problems

but similar organizations and in particular those in Central America need to be conscious of their existence and sensitive to their potential consequences.

The key features of the French system compared to those that we observed in Central America are the following: First, the French inspectors are highly qualified. They all have a secondary education and advance post-secondary professional training or experience, principally in law or engineering, before entering the service. In terms of formal qualifications and background they are equivalent to judicial magistrates, and many students choose between labour inspection and a judicial career when they graduate from the university with a degree in law. Secondly, they have a relatively high rank and status within the French administrative system. Their rank is equal to that of a tax or social security inspector or to the judicial magistrates who share their qualifications, although their actual salaries are somewhat lower due to the various premiums awarded to the latter officials. Thirdly, they are recruited into the inspectorate through competitive examinations. While Dominican inspectors are recruited via examinations, they are the exception rather than the rule in the CAFTA region. Fourth, once they enter the service, they have civil service status and cannot be discharged except for cause. Again, only the Dominican Republic affords its inspectors similar status. Fifth, they are given extensive formal training in a dedicated school; two years for the inspectors and 18 months for *controleurs*, lower ranked colleagues who work with the inspectors handling enterprises of less than 50 employees. Of the various features of the French system, the school we will argue is of most immediate interest for Central America. Finally, the inspectors are supported by an extensive infrastructure. Each inspector has his own personal laptop, acquired initially as a student in the school, and their offices are equipped with a fleet of cars which the inspectors can use for site visits (although they are also reimbursed for mileage in their own vehicles).

Three major organizational issues are debated within all labour administrations built around the French model. First is the issue of general versus specialized inspections. Second is the treatment of particular industries and geographic territories. And third is the treatment of small business and, by extension, the informal sector. The last is of particular concern in Latin America. The French divide responsibilities between the inspectors themselves, who handle enterprises with more than fifty employees, and the *controleurs*, who handle smaller enterprises. This arrangement does not appear to have been reviewed in the design of the recent reform proposal, but interviews with the inspectors themselves suggest that it does pose certain problems. The major problem is that the *controleurs* are both less qualified and less well trained (and overall of lower rank, status and pay) than the inspectors and yet in many ways their job requires more skill and delicacy. Larger enterprises tend to have a specialized staff which handles human resource management; that staff is trained to deal with government regulations and expects to do so; when the inspector arrives therefore, his or her visit is facilitated by the staff and the requisite documentation is generally on file, in order, and accessible. Small, proprietary enterprises are not necessarily prepared for a visit, however, and a good deal more personal finesse is required to deal with them effectively. As one inspector put it, “The proprietor has often created the enterprise on his own and sees it as an extension of his self. He views the enterprise as his baby. When you tell him that one of his machines is dangerous and likely to injure a workman, it is like saying to him, ‘The baby is ugly.’” Thus the French experience seems to confirm the widespread supposition in Latin America that a separate regime is required for dealing with small business but not necessarily, as is often implied, because the regulations should be less stringent in the small business sector but because the task of obtaining compliance from small businesspeople necessitates different skills and approaches.

It is worth emphasizing the prior point — that the peculiarities of small business do not justify a less stringent regulatory regime. A basic characteristic of the Latin model is that regulations are always tailored to the peculiarities of the particular businesses to which they are applied and environment in which they are operating. This follows from the fact that the labour

code is so vast and complex that the inspector literally cannot check out or enforce every provision when he or she visits the shop. Instead the inspector must decide which provisions of the code are relevant. To do so, he or she uses some system of classification. Initially he or she must decide whether the enterprise is likely to be engaged in deliberate, wilful violations of the code, knowingly exploiting the workforce for personal gain, or simply falling into violations out of ignorance or competitive pressure, and could effectively come into compliance and survive through the introduction of better business practices. For enterprises that potentially fall into the later category, the inspector then has to use some system to classify the business in a way that enables him to figure out what kind of practices would be most appropriate given the nature of the production system and the business environment in which it is operating. Our own interviews suggest that the inspectors use a more or less tacit typology, drawn out of their own experience and the collective lore of their colleagues, to make these judgments. And one of our recommendations will be a research program that makes these typologies explicit and subjects them to more systematic review and evaluation. But for present purposes, the important point is that small businesses tend to use a different production system and to operate in a different business environment than larger enterprises. They are, for example, more often family businesses that need to make a more effective separation between the household and the enterprise in order to manage their affairs and organize production in a more rational and efficient way. And the inspector will treat them and the labour standards prevailing there accordingly. But the differentiation is ultimately based not on the size of the business but rather on its character.

A second issue that arises in French debate is that of general versus special inspectorates. The French invariably resolve this debate in favour of generalists but there are in fact special inspectorates for certain industries (agriculture, mining and transportation), although the inspectors themselves receive the same basic training in the school for labour inspectors. The ministry also maintains a staff of experts (e.g., in engineering, medicine, the law, etc) in Paris which the inspectors at the base are expected to call upon for technical assistance. This staff is being expanded and strengthened in the proposed reform. It is clear from interviews in the field, however, that the location of these experts administratively and geographically, and their status, is an issue of great importance, probably determining the role they play and the degree to which they actually help resolve the tension between general and special expertise. At the moment, the local inspectors distrust the expert staff; they claim that the staff is composed primarily of contract employees who, as a result of their contract status, do not have the autonomy and independence of the inspectors and impose the values of the ministry. The local inspectors therefore avoid using the ministry staff and instead turn to their local colleagues who have expertise in particular matters when that is required. But since the local offices are not staffed with this in mind, there is no insurance that the requisite expertise will be available when required. This is part of the larger issue of the independence of the line officers and how their power and discretion is managed.

A final issue in France is geographic specialization. Each inspector is assigned to a geographic territory and handles all the establishments within that area. But as the economy becomes increasingly integrated nationally and internationally, local establishments are increasingly likely to be subunits of multi-establishment enterprises in which the decision-making power actually resides outside the geographic territory. At the moment, the only mechanism for handling this problem is informal contact among the inspectors themselves. This was an issue which was discussed in process leading up to the reform but never resolved.

The two other major issues surround the organization of the labour inspectorate in France: first, the neoliberal commitment to labour market flexibility and employment; and, second, the power, discretion, and autonomy of the line inspectors. These became linked in proposals for reform presented last spring. In assessing their lessons for Central America, however, they are best

understood separately, before looking at the way in which the reforms sought to resolve them together.

In many ways, the most striking point that comes through in interviews with the line inspectors in France is the extent to which they see their power as essentially based on moral authority rather than the ability either to sanction (as would be the case in the US) or to advise and conciliate, which we have argued distinguish the Latin model. They are preoccupied with the sense that their moral authority has been undermined by the neoliberal rhetoric that currently dominates high-level political discourse. Even left wing politicians express concern that the “overregulated” labour market is responsible for France’s persistently high unemployment rate and express their continued support for these regulations not out of conviction but political necessity.

The inspectors, however, feel this pressure not in elections but in their daily routine, as the rank-and-file workforce continues to look to them as representatives of the state who will not only maintain respect for the human rights of which the labour code is an expression but make up for the inherent power imbalance between the workers and their employers in the work place. Their position is symbolized an event that occurred two years ago when a student inspector who was making a field visit with a senior college as part of an internship was shot in the back and killed by a farmer whose farm they were attempting to inspect. The inspectors compare the government’s tepid and long delayed reaction to the tragedy to the President of the Republic’s immediate and very public expression of condolences when the president of the Michelin tire company drowned in a boating accident last spring.

Even in a country like France, where the inspectorate is well funded and staffed, the chances of violators getting caught and the penalties when they are exposed are so small that a cold cost-benefit calculus will never induce compliance on its own. And this is infinitely more the case in Central America. The way in which the policy debate is conducted thus becomes a critical variable in the effort to promote labour standards. The international debate about economic policy has not been helpful in this regard. But, ironically, it has probably had a clearer impact in a country like France than it has in Central America, where the pressures in fact work in contradictory directions. Official US policy, and that of the international financial and trade agencies, work in favour of deregulation, but they are balanced or offset by the antiglobalization movements in Europe and North America and the threat of consumer boycotts. The impact in any particular country depends very much on the domestic political debates and contexts through which they are refracted. In this sense, the contrast between the policies under different governments in Guatemala or between the Dominican Republic where the government emphasized the threat of boycotts and sanctions to reinforce regulation, to Mexico, where the NAFTA negotiations were used as an excuse to weaken regulation, offer critical lessons.

The second issue in the French labour reform concerns decentralization and autonomy. Ironically —given that France is one of the most centralized administrative states— French inspectors have complete autonomy within their geographic regions to organize their work as they see fit in accordance with whatever priorities they deem appropriate. Ironically, their ability to do this is the source of the flexibility of the system. But in the debate in France it has become associated with a view of regulation as arbitrary. The proposed reform would thus impose priorities from the centre in return for a commitment of much greater resources in the form of more inspectors and an enlarged support staff of experts. Unaddressed in the reform proposal, however, is the issue of how compliance would be monitored. And the question of monitoring has been compounded by the pressure of the broader reforms which have been introduced in French budgeting and compensation practices, which are based on explicit quantitative objectives. A central need, in France as in Central America, is thus for qualitative performance measures that have some of the

objectivity of quantitative measures used to monitor other government activities, and research that contributes to the construction of such measures by surfacing the tacit knowledge applied by inspectors is described and encouraged below.

V. Lessons from (and for) Central America and the Dominican Republic

We have argued that social protection and market efficiency are rendered compatible —and perhaps even complementary— by the Franco-Iberian system of labour inspection. General labour inspectors who pursue a tutelary approach to enforcement can simultaneously raise standards and bolster productivity by socializing employers, backing workers, and disseminating best practices across firms. Furthermore, the three mechanisms are potentially complementary: assertive workers foreclose the low road of sweated labour and repression; professional inspectors pave the high road by disseminating best practices across firms; norms of compliance are more likely to take root among productive than unproductive employers; and by rendering non-compliance “unthinkable,” the new norms open the door to continued worker activism and perhaps even systematic, tripartite efforts to simultaneously improve wages, working conditions, and productivity.

Obviously, Central America and the Dominican Republic are a long way from achieving this ambitious goal. But the unanticipated conjuncture of anti-sweatshop activism, trade conditionality under CAFTA, antipathy toward the Washington Consensus, and long term shifts in the structures of the Central American economies provide a propitious opportunity for reformers intent upon strengthening the current system. What would a reform agenda look like? Our interviews suggest that the efficacy of the Latin model of inspection ultimately

depends upon three broad factors: the identities of the inspectors; the involvement of the workers; and the incentives facing the employers. We discuss each factor in turn and conclude by offering a series of policy recommendations designed to maximize their availability and efficacy in contemporary Central America.

1. Inspector identity

The Franco-Iberian approach to labour inspection takes decision making authority out of the hands of elite policymakers and places it in the hands of street-level bureaucrats. If they are skilled and honest, the street-level bureaucrats will use their discretion to tailor their enforcement efforts to the specific needs of particular firms and their stakeholders. If they are unskilled or dishonest, however, the street-level bureaucrats will make a mockery of the system. Thus, the success of the model depends upon quality of personnel available to the labour ministry.

In France, inspectors are recruited meritocratically, paid well, trained in a dedicated academy in Lyon, and guaranteed job security. No Central American country has anything close to a similar system. Perhaps the closest analog is the Dominican Republic. Dominican inspectors are recruited through competitive examinations. Only lawyers are eligible to take the exams. And they are granted genuine employment guarantees—a rarity in a country where patronage politics are the exception rather than the rule. Once they are incorporated into the inspectorate, moreover, Dominican inspectors are expected to attend frequent training exercises on dedicated topics (e.g., social security law, child labour, health and safety inspections, etc.).⁹ The more capable and trusted inspectors are promoted to the rank of “local representative” and administer the SET’s 36 regional offices. The most capable and trusted inspectors are given authority over the offices in the largest cities and provinces. And a number of local representatives have ascended into the upper echelons of the SET’s bureaucracy. Thus, the Dominicans have created a genuine civil service in their inspectorate.

Neither Costa Rica nor Guatemala has come so far as the Dominican Republic. However, both countries have made real efforts to improve the recruitment as well as the training of their enforcement personnel. During the Portillo administration, the Guatemalan labour ministry initiated an informal agreement designed to recruit inspectors from the law school at the University of San Carlos. Thus, most of the Guatemalan inspectors we interviewed were law students who had yet to complete their licenciatures. One former director of the inspectorate who now serves as a labour lawyer to several prominent Guatemalan firms suggests that the quality of the inspectors has increased dramatically as a consequence of the agreement. Costa Rican inspectors are not, for the most part lawyers; however they are almost all college graduates with degrees in fields like business, engineering, and the social sciences. Furthermore, the MTSS offers inspectors who wish to complete or further their educations scholarships and subsidies—thereby further bolstering the quality of its personnel. Finally, both countries offer their inspectors frequent opportunities for mid-career training akin to those offered in the Dominican Republic. The training exercises not only build the capacity and skill of the inspectors but also, and by their own admission, serve to foster esprit de corps that constitutes an essential bulwark against malfeasance.

Salaries constitute another potential bulwark against malfeasance. If inspectors are tempted by the bribes and blandishments of the employers they are expected to regulate, they have to weigh the gains from any bribes against the costs and risks of losing their jobs in corruption scandals. The higher the inspector’s salary, *ceteris paribus*, the lower is the likelihood that he or she will accept a bribe. Unfortunately, however, inspectors’ salaries are low throughout the region. In the Dominican

⁹ Estimates of the frequency of the exercises ranged from “monthly” to “seasonally” and appeared to depend upon the experience, rank, and location of the inspector in question.

Republic and Costa Rica, for example, they reach a maximum of approximately (US) \$500 per month. In Guatemala and the rest of the region, they are even lower.

Nevertheless, the Dominicans have figured out a seemingly innovative method of raising the incomes—if not the salaries—of their inspectors. The Dominican labour code allows the lawyers who staff the inspectorate to practice non-labour related law in their spare time. Since inspectors are only on duty until mid-afternoon, they have several hours a day in which to practice divorce law, criminal law, tax law, and the like—and many do. Thus, the inspectors describe an income maximization strategy that combines a stable but modest government income with a volatile but potentially lucrative private income. They also suggest that their law degrees and private practices actually constitute a dual bulwark against corruption. First, they hold that by raising their overall standards of living “moonlighting” in private practice mitigates the temptation to accept or solicit bribes from employers. And, second, they note that their ability to make money in private practice is for several reasons dependent upon a reputation for honesty in their public positions. If they are reputed to be dishonest inspectors, after all, they may scare away customers for their other services, alienate law firms that might otherwise offer them full time jobs one day, or even lose their license to practice law entirely. Thus, lawyers have asset-specific investments in their law degrees that make them more likely to adhere to the letter and spirit of the law than non-lawyers.¹⁰

2. Worker involvement

A substantial body of literature suggests that worker involvement is an indispensable component of effective labour market regulation. Workers who are willing and able to exercise voice at the workplace not only constitute a bulwark against collusion between dishonest inspectors and employers but simultaneously offer honest inspectors a vital ally in ensuring compliance. And workers who are organized in unions or works councils can bring vital scale economies to the inspection process more generally.

The importance of worker involvement was brought home to us when we accompanied two Guatemalan inspectors on their rounds in the spring of 2006. Over the course of two days the inspectors responded to two complaints in two different establishments in two different parts of Guatemala City. The first—to which we referred briefly above—concerned the denial of vacation benefits to a worker and his wife in a maquiladora. The inspectors visited the factory and took testimony from both sides. The husband was vocal in defence of his rights; his wife was timid if not quite scared; the Korean owner pleaded ignorance of the law; and the Guatemalan plant manager admitted that the husband, a skilled machine operator, was at least 50 percent more productive than the next available candidate for the job and that he had therefore denied his request for time off. The inspectors eventually convinced the owner and manager to grant the workers their vacation and when the time came for the workers to sign the relevant paperwork the husband’s fluid script, and his wife’s borderline illiteracy, became clear. We asked the husband where he had learned about his rights, and how he knew where to find satisfaction, and he said that he had recently heard a public service announcement on the radio describing the labour law and the services provided by the inspectors. The inspectors later informed us that the advertisement in question was only a few weeks old and had been paid for by US aid granted as part of the CAFTA labour agreement.

What lessons do we draw from this experience? On the one hand, the fact that the dissemination of information in such a seemingly mundane manner can encourage workers to stand up for their rights is encouraging. Unions may be a superior vehicle for the expression of worker voice. But unions are not available to most Central American workers—that, after all, is part of the

¹⁰ Some, but not all, of the same dynamics appear to be at play in Guatemala, where inspectors are for the most part law students on hiatus from their studies.

problem—and formal and semiformal channels of individual representation may therefore provide a second best alternative for the time being. On the other hand, ignorant or illiterate workers seem unlikely to pursue their rights in large numbers no matter how widespread the relevant information. After all, illiteracy is not simply an obstacle to reading and writing but a barrier to personal efficacy and empowerment as well. And illiterate workers, like the timid wife in the background of our story, seem unlikely to stand up for their rights under any circumstance.

Our second visit concerned a private school's failure to pay social security tax or provide maternity leave to a pregnant teacher. Ignorance and illiteracy were not the problem in this case. The teacher in question was educated and empowered, to say the least, and was persistent in the defence of her rights. Her employer, on the other hand, was recalcitrant, initially barring the inspector's entry and subsequently dissembling in the face of interrogation. While a combination of threat and conciliation ultimately convinced the employer to make the proper payments and allowances, the entire episode took the better part of a full day—a remarkable expenditure of time on what is ultimately a relatively minor, if by no means unimportant, case.

This is where collective representation of various sorts could have a real effect. By aggregating the interests and concerns of workers, after all, unions, works councils, and health and safety committees allow and encourage inspectors to target their enforcement efforts toward particularly widespread or consequential transgressions.

This is also where preventive inspections focused on particular sectors or regions could yield significant payoffs. In the Dominican Republic, local representatives send inspectors out to conduct preventive inspections at targeted enterprises in hopes of deterring or correcting multiple violations simultaneously (e.g., targeting farmers who use child labour during the rice harvest or maquilas that speed up production during the pre-Christmas rush). While labour ministry officials in Guatemala and elsewhere in Central America would like to move toward a preventive approach, they tend to face a Catch-22: They cannot allocate resources to prevention until they have successfully responded to complaints; however, complaints continue to mount in the absence of preventive inspections. How might Central American inspectors turn this vicious circle into a virtuous one? We believe that part of the answer derives in part from the incentives facing employers.

3. Employer incentives

Central American employers are unlikely to be deterred from non-compliance for several reasons. First, they are unlikely to be inspected in the first place for reasons we have already elaborated. Enforcement resources, while growing, are still scarce and worker empowerment is still the exception rather than the rule. Second, they are unlikely to be sanctioned even if they are inspected. Administrative sanctions are unavailable in most countries and the judicial enforcement process is time-consuming and subject to a distinct layer of bureaucracy and bribery. And, third, most violations are products not of wilful disregard for the law but of either ignorance or incapacity. After all, Central American firms are neither particularly productive nor particularly profitable, and most could not afford to comply with the law even if they wanted to. A sanctioning approach would encourage these firms not to comply but to go bankrupt. Take, for example, the aforementioned Guatemalan maquiladora. While the skilled machine operator we met received his rightful vacation, the manager had no backup plan for the loss of his most productive worker. When asked what he would do during the worker's vacation, he despondently said, "Slow down."

The manager might not elicit much sympathy. After all, in his quest to avoid a slowdown he had transparently violated the rights of a vulnerable—if by no means the most vulnerable—Guatemalan worker. But in the cutthroat international garment trade, the cost of such a slowdown could be enormous, not only for the owner and manager but for the other workers in the plant as well. And the Guatemalan story would therefore appear to vindicate the arguments of economists

who view international labour standards as threats to developing country living standards and therefore bemoan Latin America's persistent penchant for regulation.

By the same token, however, inspectors elsewhere in Latin America have not only recognized but addressed the potential tension between social protection and private profitability in embryonic, but by no means unimportant, ways. A number of the inspectors we interviewed in the Dominican Republic, for example, not only inform owners and managers of their legal obligations but disseminate information on the most efficient ways to comply with those obligations as well, and thereby build bridges between individual employers and publicly subsidized human resource development programs designed to resolve the very dilemmas that emerged in the Guatemalan case.

Inspectors are in a good position to play this role because in their work they visit a wide variety of different enterprises and are in perhaps a better position than any other economic actors to compare business behaviour and disseminate best practices. But general labour inspection agencies do not rely on the experience of the inspectors alone to develop compliance plans. They usually also have specialists who play a staff function, providing expert advice when called upon by the line officers. Typically, these specialists include not only labour lawyers but doctors, engineers, and industrial hygienists who are intimately familiar with the production process and are therefore particularly adept at reconciling the needs of workers with the demands of the market. A US Department of Labor financed initiative, the Regional Center for Occupational Safety and Health (Centro Regional de Seguridad y Salud Ocupacional, CERSSO), has endeavoured to exploit these synergies by training more than 600 inspectors and technicians in eight different Central American and Caribbean labour ministries over the course of the past few years, and a growing body of evidence suggests that their efforts have paid off. A recent study of garment factories in El Salvador, Guatemala, and Nicaragua, for example, found that returns on safety and health investments engendered by the program ranged from four to eight times the costs of the initial interventions (Amador-Rodezno 2005; Rosenstock 2006).

Even modest improvements like better lighting or noise reduction can have a positive impact on output, absenteeism, and turnover. More substantial interventions can yield even greater payoffs. And even costly reforms can be rendered palatable if adopted throughout a given sector or labour market—thereby taking worker protection out of competition. But price signals alone will not lead employers to protect their workers. Nor will altruism. In the absence of meaningful government intervention, ignorance, self-interest, and short-termism will rule the day. And professional labour inspectors are therefore needed to not only to block the so-called low road but to pave the proverbial high road as well.

The Latin model of inspection is more likely to facilitate such an outcome than the US model for several reasons. First, it features a flexibility that the US system does not have, a flexibility which is in many ways comparable to that of a market system. Inspectors can use their discretion to tailor their efforts to the exigencies of particular firms, sectors, and time periods. Second, it allows the inspector to weigh in the process of implementation, the total regulatory burden against the cost in terms of employment and competitiveness, and to adjust enforcement to achieve a greater balance. In the US, as we have noted, there is no single place or point in the system where the total regulatory burden is weighed. Third, it creates the potential for the inspectors to identify, and possibly even develop, new business practices that reduce the conflict between standards and efficiency and to disseminate these practices throughout the economy.

What is needed is the expertise required to discover and disseminate this knowledge. We have argued that part of this expertise already resides in the inspectors themselves, who see a range of business practices as they move from worksite to worksite than perhaps any other actor in the economy. They are thus already in a position to pick up on the best practices and spread them to non-compliant enterprises. The ability to use what is now essentially a kind of tacit knowledge, acquired inadvertently and informally, could be increased through specialized training, and

augmented by a growing body of research on the relationship between standards and business practice of the kind just cited. The underlying Latin model allows for additional expert support in the staff functions to which the line inspectors turn for advice and specialized assistance. And one sees the traces of this model in almost all of the labour inspection organizations in Latin America. The range of policy instruments available to the labour inspectors in promoting compliance could be broadened still further by enabling them to draw on the full gamut of programs for economic adjustment which are now housed in other parts of the government: labour force training and education programs, financial assistance and tax credits, and industrial extension services (IADB 2001; Schrank and Kurtz 2005).

This last step crosses the threshold from a conception of labour inspection narrowly focused upon work standards to a notion of labour inspection as a much broader approach to social and economic policy. The agency then becomes a bridge between economic and social forces, at least one piece of an alternative to the Washington Consensus, or rather to the vacuum in which the reaction to the Washington Consensus is emerging.

VI. Conclusion

Central American labour standards are often disparaged by commentators who justifiably decry the gap between what they promise and what they deliver. We need to draw a distinction, however, between inadequate standards and imaginary standards. All of the CAFTA signatories have extensive labour codes and active enforcement agencies; however none of their enforcement agencies are fully staffed or adequately financed. Consequently, the quality of the enforcement effort varies wildly from place to place and the law is enforced unevenly over time.

Nonetheless, the labour inspectors who administer the code in virtually all of the signatory countries are a real presence in the lives of workers and employers and constitute a fulcrum around which a much more effective regulatory structure could be built. Take, for example, Honduras, where aggrieved workers frequently take underpaid and ill-equipped inspectors to their workplaces by taxi at their own expense. On the one hand, the example illustrates the bias and inadequacy of the Honduras system. Only employees who have the resources and faith to pursue their claims at great personal cost have any chance of redress. On the other hand, the example underscores the fact that, in spite of their resource and quality deficits, Honduran inspectors still have a degree of legitimacy on the eyes of their constituents. After all, Honduran workers do show up at the ministry and do pay the cab fare on a more or less frequent basis. Our visits to labour ministries and field offices in Costa Rica, the Dominican Republic, and Guatemala revealed countless similar examples: laid-off workers waiting in line

for hours hoping to receive their severance payments; wildcat strikers calling their local inspectors in hopes of arbitration; and seemingly put-upon day labourers coming to remote field offices wondering why they weren't being paid the minimum wage.

The workers were not alone, however, for employers were frequent visitors as well. And the fact that workers and employers throughout the region continue to turn to their inspectorates despite decades of not-so-benign neglect on the part of ministerial authorities and policymakers suggests, to us at least, that Central American labour inspectors continue to command the respect and legitimacy of their compatriots—and thereby provide a foundation upon which a more effective approach to labour market regulation could be built.

The Central American regulatory systems were modelled on those of France and Spain, and are thus very different from that of the United States. Each also has its peculiarities and unique features, but all of the countries we visited exhibited the basic features of the underlying Latin model and in every one of them there is a core agency which provides the foundation upon which an effective and efficient system of labour market regulation might be built. An example of what such a system would look like is provided by the inspection du travail in France and in the region itself by the inspección de trabajo of the Dominican Republic, which was reformed, drawing on the French model, in the early to mid 1990s. The Dominican reforms are particularly apposite, moreover, for they self-consciously adapted the inspectorate and the inspection process to the particular circumstances of an economy that is in many ways typical of the CAFTA countries, one that continued to grow incredibly rapidly throughout the reform period.

To realize the potential of the Latin model, however, it is important to recognize its key features and advantages but also some of the problems which it entrains. Its critical characteristic is that it is both a general system, in which the whole of the labour code is administered by a single agency, and a compliance system, in which the enterprise cannot discharge its obligation by the payment of a fine or penalty and the labour inspectors are expected to advise employers on how to come into compliance with the law and to work out a plan by which they can do so over time. When operating at their best, we've argued, inspectors are in a position to help employers see the relationship between their business practices and production process and their propensity to contravene labour standards and to suggest, on the basis of their experience in other enterprises, reforms which can improve both productivity and employment relations simultaneously. They thus give the Latin system considerable flexibility and adaptability, particularly in the process of economic development and the opening to trade.

This flexibility derives from the discretion of the line inspectors. But the counterpart of that discretion, and the downside of the model, is the difficulty of monitoring and evaluating the inspector's decisions in a way which insures consistency and equity in treatment across enterprises and over time. This is a problem of particular concern in Latin America, because the long history of clientelism and corruption in virtually every country has made people suspicious of government and leery of regulation of any kind. We have seen that performance evaluation is also a major (and unresolved) problem in France, where the concern is less one of outright corruption than of perceived anti-business bias on the part of the inspectors and the obstacles it presents to the introduction of new objectively based budgeting and evaluation procedures that have recently been adopted by the French state.

Underlying this problem is the fact that the criteria upon which the inspectors base their judgment, in France no less than in Latin America, are basically tacit, based on the experience which the inspectors have acquired moving across the economy and comparing practices among many different kinds of business operating with various degrees of success, then enhancing this experience through informal discussion and debates with their colleagues and passing it from one generation of inspectors to another through on-the-job training and story telling. The key to addressing the problem is thus to draw out the tacit knowledge upon which the judgments rest,

uncovering it and rendering it explicit so that the criteria upon which the inspectors make their judgments can be evaluated, monitored and ultimately enhanced through systematic research, either scholarly or applied.

The need to do so is reinforced if, as we argued in the text, adherence to labour standards ultimately depends on the moral code within which business operates. This is a particularly likely reality in the CAFTA region given that labour inspection there is so seriously unfunded and government resources are going to remain limited for some time to come. But in fact no country in the world funds labour inspection at a level which would make a business enterprise obey the law solely in order to avoid the cost of the penalties they are likely to incur if they don't do so. Ultimately, regulatory agencies must be judged by the way they contribute to the moral climate in which business operates. And the inability to systematically review, monitor, and justify the inspector's decisions against explicit criteria undermines the moral authority upon which compliance ultimately depends.

We propose a two pronged approach to the problem. One is to upgrade the quality of the inspectors in each of these countries drawing upon the experiences of France and the Dominican Republic. The goal here is not only to increase the effectiveness of the corps of inspectors but also to increase their social standing and authority in the business community and among workers. The second is to create a Central American Institute for Labor Inspection. The institute would be modelled on the school for inspectors in France and the training programs offered by the ILO and it would draw upon the French government and the ILO for advice and hopefully for technical and financial support. It would provide a common base of education and training for inspectors throughout the region, but at the same time, it would serve as a vehicle for surfacing the tacit criteria underlying the judgments of inspectors and rendering them explicit, and then using those criteria to build instruments to evaluate and monitor the inspector's performance, while at the same time evaluating and enhancing the criteria themselves by reference to research and scholarship.

1. Upgrading the labour inspection

The key elements in upgrading the quality of the existing labour inspectorates, which emerged in our field interviews in Central America and in France, are:

a) **Competitive examinations.** Entrance examinations for the recruitment of new inspectors have multiple benefits. Some are more obvious than others. Well-designed exams can screen inspectors for aptitude and competence to be sure. But they also tend to discourage applicants who are looking for patronage positions and to draw in applicants who benefit from and are committed to meritocracy. For instance, the Dominican inspectorate has been rapidly feminized in recent years. When asked why so many inspectors, and so many local representatives in particular, are women, officials suggest that qualified women who have frozen out of "old boy" networks elsewhere in the Dominican government have gravitated to the meritocratic inspectorate and, having done so, defend (and exploit) its meritocratic bona fides with a ferocious intensity. Furthermore, and on a related note, the exams themselves go a long way toward building esprit de corps, especially in public sectors where exam-based recruitment is the exception rather than the rule. Experimental evidence suggests that loyalty to a group is a function of the intensity of initiation. And inspectors who are united by the shared experience of initiation through a difficult exam appear to be particularly loyal to their agencies and each other.

b) **Professionalization.** In both Guatemala and the Dominican Republic, the quality of the enforcement regime has apparently grown as lawyers have taken over the inspectorate. While many believe lawyers make better inspectors because they are more familiar with the law, others disagree, nothing that the law itself is not that difficult to learn and that the real gains from the recruitment of lawyers derive from their corporate identity, desire to retain the good faith of private employers and clients, and fear of being disbarred for corruption. In reality, the truth probably lies closer to the

latter than the former perspective. One Dominican inspector told us that it “could have been any profession.” The important factor was recruiting inspectors with a unified corporate identity who would therefore build a shared language and community. Engineering is an obvious candidate. But given the traditional “oversupply” of lawyers in Central America, and that lawyers seem to be doing a good job in the countries where they have been recruited, we believe that law schools are as good a place as any to start.

c) Job security and insulation from direct political pressures. Job guarantees, like examinations and corporate identities, provide multiple benefits. First, they offer an instrumental bulwark against corruption by raising expected lifetime earnings and thereby rendering the cost of job loss in a scandal higher than it might otherwise be. Second, they offer a normative bulwark against corruption by raising the inspector’s attachment to or investment in his or her job. And, finally, they lower inspector turnover and raise the inspectorate’s institutional memory—both essential tasks given the knowledge and experience-intensity of the Latin approach to labour inspection.

d) Training and education. Inspectors who are expected to exercise their discretion wisely must adapt to the ever-changing realities of a competitive market economy. Lifelong learning is therefore an integral part of effective inspection efforts. And toward that end Central American governments must undertake constant efforts to train and educate their inspectors.

e) Preventive inspections. One key lesson from France as well as Central America is the importance of preventive inspection. By adopting a preventive approach, after all, inspectors can not only achieve scale economies but can also go a long way toward repairing relations with employers and workers simultaneously. Inspectors who arrive in a plant to investigate a complaint are almost necessarily entering into antagonistic relationship with their private sector interlocutors. But inspectors who arrive preventively at least hold out the prospect of cooperation and collaboration.

f) Interministerial cooperation. Cooperation and collaboration are, of course, more likely where the inspector has something to offer the employer or worker. In and of themselves, however, inspectorates have little to offer except the accumulated knowledge of the street level bureaucrats who constitute their staffs. While this knowledge can be quite valuable, as we have argued, it is ultimately most rewarding when it serves to link the firm to providers of valuable resources in other branches of government. Almost all Central American governments provide at least some institutional support for business ranging from loan guarantees to industrial extension programs to vocational education and training institutions. Inspectorates should not only build formal channels of communication to these institutions but should encourage their street level bureaucrats to use such channels in working out compliance agreements. We have seen individual examples of this in Guatemala and the Dominican Republic, where inspectors mentioned sending noncompliant employers who were not profitable enough to comply with the law to government human resource development programs (i.e., INTECAP and INFOTEP). And the Dominicans have a formal program, Juventud y Empleo, designed to draw youth and adolescents out of the labour market and into vocational education programs. But there is room for much more. Chile, for example, systematically offers noncompliant small and mid-sized employers who agree to enrol in training programs immunity from sanctions under its “Programa de Sustitución de Multas por Capacitación,” and similar such programs could and should be adopted on at least an experimental basis in Central America.¹¹

¹¹ A final example of interministerial collaboration comes from Costa Rica, where labour inspectors sidestep their lack of transportation by making the rounds with social security inspectors who are better endowed due to their revenue collecting functions. Similar such efforts might be tried elsewhere in the region transportation permitting.

g) Information and involvement. Worker involvement and empowerment are indispensable elements of effective labour market regulation. Workers who are able to exercise voice provide checks on both recalcitrant employers and corrupt (or negligent) inspectors. But worker involvement and empowerment are precisely what have been missing in Central America. If the region's workers had been empowered, after all, their employers would not have provoked the opprobrium of the anti-sweatshop movement in the first place, and CAFTA would not, in all likelihood, include labour standards. The question therefore is not whether but how to promote worker involvement. It seems unreasonable to expect these countries to go from exclusionary to inclusionary overnight. That may be too much to ask. But the experiences of Guatemala and the Dominican Republic suggest that even minor interventions can markedly expand the realm of worker voice. As we have already seen, public service announcements have already raised Guatemalan workers' awareness of their rights. And the Dominican labour ministry's willingness to publish and distribute pocket sized guides to the labour code has had a similar effect. On our visits to the SET's offices we invariably encountered workers waiting with their pocket guides to inquire about perceived (and often real) transgressions of their rights. And the correlation between the rate of literacy and the propensity to complain to the SET at the provincial level is remarkably high—implying that literate workers really can exercise voice when opportunities to do so are made available.

h) Provision of physical infrastructure including computers and transportation. Despite the fact that inspectorates throughout the region are understaffed, it appears that it would be more effective in virtually all countries to reduce (or at the very least freeze) the number of inspectors and allocate the savings to increase the provision of transportation and information technology to support the work of the inspectors who remain.

2. A Central American Institute for Labour Inspection

The Central American Institute for Labor Inspection would be a permanent research and training institution located in the region. It would employ a small permanent faculty composed of academics and former inspectors from Latin Europe as well as Latin America as well as contingent faculty on an “as needed” basis. The Institute would be designed to standardize inspector training and practice across the region and would therefore offer the following services:

a) Introductory classes for new recruits. Upon entering their respective national inspectorates, new recruits would take part in a basic training regimen modelled on the French program in Lyon. The program would not only introduce rookie inspectors to the basic norms and practices of the inspection process but would also help build esprit de corps.

b) Continuing education for veteran inspectors. The Institute would also offer continuing education for veteran inspectors and dedicated classes on specific problems and sectors (e.g., child labour, safety and health, agriculture, etc.). Inspectors would be required to return to the institute for periodic “refresher” courses, as well as specialized instruction, as they rose through the ranks in their national inspectorates.

c) Performance evaluation. We have argued that inspectors and the inspection process will benefit from periodic efforts to review, monitor, and justify their decisions and decision making criteria. The Institute provides the setting in which such efforts can occur. By bringing field-level inspectors from different countries together for discussions, debriefings, and role playing exercises, the Institute staff can begin to reconcile, evaluate, and standardize their behaviour so as to bolster their moral authority in their domestic labour markets.

d) Research and dissemination. Finally, the Institute provides an ideal locus for the pursuit of ongoing research not only on the processes of regulation and inspection but upon their intersection with industrial upgrading and development. By drawing together information on

business practices, production processes, and their potential synergies with improved industrial and employment relations in different sectors and regions, the Institute can provide the informational basis of improved business and employment practices back home.

We realize that the Latin model's success or failure will ultimately derive from the efforts of national governments, and national efforts will take time as well as vision. By establishing a school for labour inspectors by the end of the decade, however, Central American policymakers and their foreign backers can not only signal their commitment to the domestication and perfection of the Latin model in the short run but can go a long way toward making their domestic efforts more tractable in the medium- to long run. After all, the fixed costs of research, training, and evaluation are higher than the typical Central American government can bear, and in the absence of external inducement inertia seems likely to take over. By developing policy recommendations, legitimating policy reforms, and training (as well as socializing) their public sector protagonists, however, a Central American Institute of Labor Inspection can defray the necessary start-up costs and thereby inhibit the propensity toward "beggar they neighbour" strategies of low road competition.

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Annex

Annex

Interview subjects

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Inspector-Heredia
Costa Rica

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