1. Introduction

GOVERNOR. I have called you together, gentlemen, to tell you an unpleasant piece of news. An Inspector-General is coming.

AMMOS FIOD. What, an Inspector-General?

ARTEMY F. What, an Inspector-General?

GOVERNOR. Yes, an Inspector from St. Petersburg, incognito. And with secret instructions, too.

AMMOS. A pretty how-do-you-do!

ARTEMY. As if we hadn’t enough trouble without an Inspector!

Nikolai Gogol – *The Inspector General* (1842)

As in Gogol’s quote, the arrival of a government inspector still elicits instant fear and worry in a number of countries – including Russia, and most of the former Soviet Union. Most of these inspectors nowadays, by contrast with Gogol’s, come to inspect and control not state institutions, but private ones, particularly businesses. ‘Inspectors’ and ‘inspections’ come under different names – ‘control’, ‘surveillance’, ‘supervision’ – so the notion may require ‘translation’ into the appropriate words for each country. The reality, however, in most parts of the world, is that inspections (under whichever name) are one of the most frequent and important ways in which businesses interact with state authorities. While scholars and governments often look at ‘regulations’ in an abstract way, businesses will typically relate more to their actual experience of regulations, which arises through procedures such as permits and licences, and through inspections – particularly if the latter are frequent, burdensome or otherwise problematic.

This is not unique to regulations affecting businesses, and for most citizens ‘laws’ likewise are often distant abstractions, and are experienced primarily through concrete processes: obtaining documents, marrying or inheriting, and of course dealing with the police. Just as inspections can be seen as essential and beneficial, or as burdensome and inadequate, the police are to some an indispensable defensive wall against crime, to others a body that oppresses some citizens regardless of what they have done.
Inspections and other enforcement practices are thus inherently ambiguous. Inspections and control are absolutely necessary for some, oppressive and hostile for others. Many – from environmental defenders through trade unions to anti-corruption groups – will clamour for more inspections and control, while others – businesses, ‘better regulation’ bodies, libertarians – will tend to argue for less. The same ideological and interest-based divisions can be seen as for law enforcement by the police – some asking for more, others pointing out its downsides, limits, unintended consequences etc. What is striking is that many discussions, at least in the particular case of inspections, take place with a lack of investigation and understanding of what inspections actually are, how they function in practice, and what impacts they have. Preconceptions abound, analysis is scarce.

Many questions deserve to be asked. What are inspections exactly, are they just a form of ‘law enforcement’? What is their place in a broader range of actions aiming at implementing regulations? How are they organized, planned and conducted in practice? What is their impact on compliance, public welfare and economic growth? Without some answers, trying to decide the question of ‘more or less’ inspections is meaningless.

The past decade has seen a growing interest in inspections (and, more broadly, in enforcement and ‘regulatory delivery’, i.e. all activities and tools that can be used to make regulations better implemented and complied with). Major steps were the 2005 Hampton Review in the United Kingdom, and the publication of the OECD’s Best Practice Principles for Regulatory Enforcement and Inspections in 2014. Going further east, interest in the question started earlier, with various post-Soviet and post-Communist governments initiating reforms of government inspections from the late 1990s. Much of this work was (and still is) supported by the World Bank Group.

Inspections and enforcement appear relevant for economic development, to achieve public welfare goals, and to strengthen the rule of law. From an economic perspective, the importance of the ‘burden’ from regulations and enforcement is disputed. Still, there is some consensus that the broad complex of ‘institutions’ (which include rules and their enforcement) is crucial to economic development (Rodrik 2003), and that ‘reforming’ or ‘improving’ (making more efficient and flexible etc.) regulations (in particular for product markets) has important benefits for productivity and long-term growth (Bourlès et al. 2013, Organisation for Economic Co-operation and Development (OECD) 2015a, Schindler et al. 2014 etc.). Regulations and inspections also have important effects on integration in international trade (see Rodrik 2003 for the interaction
between ‘trade’ and ‘institutions’). For public welfare, the evidence of regulatory effects is mixed but there is generally a strong ‘social demand’ for regulatory protection against risks, solid economic (Ogus 1994) as well as non-economic (Feintuck 2010) justifications for regulations in a number of areas. Ensuring that regulations reach their stated purposes more effectively, and at lower cost, is thus important. Finally, just as effective practices in enforcement and inspections are an important element to foster legal compliance (Kagan 1994, Ayres and Braithwaite 1992, Tyler 2003), bad inspection and enforcement practices can lead to breakdowns in legitimacy, regulatory capture and corruption (Djankov et al. 2002). Thus, ‘good’ inspections contribute to a range of public benefits (economic growth, protection against risks, consolidation of a sound legal order), whereas ‘bad’ ones can endanger all these simultaneously. While the magnitude of such effects is difficult to assess, they are nonetheless real and make the object well worthy of investigation.

1.1 RISK-BASED INSPECTIONS: MORE EFFECTIVE AND EFFICIENT?

Answering conclusively all questions regarding nature, methods and effects of inspections would be a very tall order, probably impossible to achieve with existing data. What this book aims at is more modest, and draws on two sources. The first is existing research on regulatory enforcement and compliance (spanning over 40 years of work in a variety of fields). The second is ‘practical experience’ as constituted where possible by hard (quantitative) data, but also by the specifics (qualitatively described) of inspection structures, practices, visions and first-hand accounts of practitioners and stakeholders.

The central question this book is looking at is whether inspections structures and practices can be considered separately from the regulations they aim at enforcing, and whether there are methods that seem to allow inspections to achieve better outcomes both for public welfare and safety and for economic growth.¹ Which methods could allow for a ‘win-win’

¹ There are data limitations, both on the economic and on the effectiveness sides. As a proxy for economic impact, we will mostly consider the administrative burden created by inspections (excessive burden being generally to some extent a drag on growth), the availability of guidance to businesses and the coherence and predictability of inspections and enforcement (both counting as positive). For effectiveness, we will focus on inspection functions where at least
result, whereby the goals of inspections are better achieved (assuming, of course, some clarity on the said goals) and the entities and people subject to inspections (mainly businesses) experience less burden from these inspections (and possibly even some support, that helps rather than hinders growth)?

For a number of years, ‘risk-based’ and ‘smart’ approaches to inspections have been touted as a way to achieve better outcomes at a lower cost. This book will investigate whether this seems to be the case in practice – while also defining better what exactly these approaches consist of. It will also look at whether risk-based inspections can help strengthen trust – between economic and social actors, and trust by citizens in the state, regulations and their enforcement – or whether they threaten to undermine it, as some claim.

‘Smart inspections’ refers to ‘smart regulation’ – a concept first proposed by Neil Gunningham, himself building on Ayres and Braithwaite’s 1992 Responsive Regulation, subtitled ‘transcending the deregulation debate’. ‘Smart regulation’, however, has been given many definitions, including references to ‘responsiveness’ and ‘cooperation’ and to ‘protecting’ and ‘enabling’ – but also to the ‘usual’ meaning of ‘smart’ in management jargon, i.e. ‘specific, measurable, achievable, realistic and timely’. At its core, ‘smart regulation’ is based on the idea that regulation can be simultaneously more effective and more flexible, more efficient, and more friendly to growth and innovation. Reforms to make inspections more risk based have clearly been designed with the same aim: ‘more effect, less burden’, as per the Dutch motto, or ‘prosperity and protection’, as per the English one. What these mottos really mean, and how they translate into practice, is the first question.

some outcome data is available and reasonably reliable (e.g. occupational safety), but will not look into questions of attribution, which would go beyond this research.

2 A number of inspection agencies have mandates defined purely in terms of implementing legislation, without consideration of what public welfare interests they should aim at supporting. Assessing (and improving) their effectiveness is, without redefining their goals, very difficult (if not impossible).


4 The Dutch motto can be found in the documents presenting the inspections reform programme (Vernieuwing Toezicht), e.g. here: http://www.inspectieloket.nl/english/; and the English one in Better Regulation Delivery Office (BRDO) publications, e.g. here: https://www.gov.uk/government/publications/local-regulation-ensuring-prosperity-and-protection.
The second one is even more important: does ‘smart regulation’ actually deliver on its promises?

A fundamental challenge in answering these questions is that ‘outcomes’ of inspections are difficult to measure reliably. From an instrumental (utilitarian) perspective, desired outcomes would be reduced/mitigated risks, resulting in higher public welfare for the population (better health, reduced deaths and injuries from preventable accidents, a protected environment, but also higher state revenue allowing for better funding of public priorities etc.). Inspections can also have negative outcomes: reduced business activity, higher prices and lower choice on the market etc. – particularly when practices are poor. In many cases, attributing outcomes to inspections is very problematic, and thus attributing evolution in outcomes to changes in practices is similarly difficult. This is both because the phenomena observed are complex and multi-causal, and because of limitations in available data. Nonetheless, this book will use existing data, and cross-country comparisons, to try and assess how risk-based, ‘smart’ inspections are performing compared to other practices.

1.2 PRIOR RESEARCH AND SOURCES

Research on inspections is not new, even though it has not necessarily always been formulated as the object being studied. The earliest publications considered here date back to the 1960s, and considerable work has been done in the last four decades – thus, way before government or international programmes targeting ‘inspections reform’ started. This book tries to fill a specific gap: considering the combination of different issues and aspects of inspections, in a systematic way, to try and compare methods and outcomes across countries, and assess the performance of different approaches. It draws on a considerable body of scholarship on regulation and rules, risk-based regulation, and compliance drivers, and aims to combine perspectives which have often remained separate, e.g. the Responsive Regulation model of Ayres and Braithwaite (1992) and ‘procedural justice’ as developed by Tom Tyler (1990) and others. The combination of in-depth research on inspection practices (e.g. Hawkins 2002) with more ‘horizontal’ perspectives and the attempt to reconcile divergent theories of compliance5 form an important part of this work.

5 Both have strong parallels with Hodges (2015a and 2015b), but also differences in focus of research, and in the overall perspective.
The review and consideration of existing research and literature is one of the key elements of its study, but its deeper foundation is in the consolidation and analysis of inspection practices (and reforms) across a wide range of functions and countries. This includes research and guidance produced by international institutions (World Bank Group and OECD) and national ones (e.g. the United Kingdom’s ‘Regulatory Delivery’ team, under various successive names) in order to support ‘better practices’ in inspections.

This research makes extensive use of personal experience leading or supporting reform work on inspections for the past 11 years in a number of countries. This work included frequent, in-depth discussions with ‘inspections practitioners’ in close to 30 countries. While this work also draws strongly on publicly available data and documents, these first-hand discussions are what brings it the strongest connection with practical experience. The ‘Note on sources’ at the end of the book includes a summary of the countries covered, and of the types of interactions, persons interviewed and consulted etc.

Different sources allow different aspects to be captured:

- actual practices – how inspectors conduct their work, but also how it is planned, how often different kinds of establishments are visited etc.;
- goals and visions – what inspecting institutions are expected to achieve, and how they themselves conceive of their mission, but also how they understand and conceive ‘risk’, ‘compliance’ and other key elements of their work;
- impacts and outcomes – how effective are inspecting activities in terms of reaching their stated goals, reducing and mitigating risks, increasing social welfare etc. – and what are the effects of their activities in terms of compliance, trust, legitimacy etc.?

The chapter considering practical examples includes both examples of more risk-based approaches, and of the opposite – and of systems in varying stages of transformation.

1.3 STRUCTURE OF THE BOOK

There are many ways in which such research may be organized. One could have looked in each chapter at a specific case, or a specific field of inspections, but there would have been too much to repeat from one chapter to the next. Rather, this book follows a thematic structure.
Chapter 2 provides an overview of the historical origins of the current systems of regulatory inspections and of the variety of institutions, fields and practices. It is limited to a couple of functions, selected for their importance in modern inspection systems and because they were the first to be developed in the 19th century: occupational safety and health, and food safety. This historical investigation, however limited, helps shed some light on the relationships between inspection systems, risks (real and perceived), and trust – and on path dependency issues.

Chapter 3 covers the most relevant theoretical perspectives. It starts by looking into what scholarship sees as the proper use of regulation, and what can be said of its relevance for economic growth. This is followed by a review and attempt at reconciliation of the research on drivers of compliance. The last section is a summary of existing research on risk and regulation.

Chapter 4 then considers the actual practice of inspecting institutions, and starts with several case studies, the most significant of which compares practices and outcomes of occupational safety and health (OSH) inspections in Britain, Germany and France. It also considers the example of post-communist countries to show what the opposite of risk-based practices can produce, and what can be the result of reforms. Finally, it looks at existing studies of OSH inspections in the US, and uses them to discuss theoretical and actual limitations of available data, in terms of allowing us to capture the effects of inspections and of changes in methods.

The conclusion considers the evidence for the contention that risk-based inspections are more effective and more efficient, i.e. produce better (or constant) public welfare outcomes (and trust) at constant (or reduced) costs. In addition, it briefly discusses what further work could be undertaken in order to produce better, more conclusive data and findings.

The selection of cases and examples used in this research was guided by a combination of criteria. First, cases were selected for their relevance. Regulatory domains studied (food safety, occupational safety and health) are both among the first to have seen the emergence of ‘modern inspectorates’, among the most important from a public ‘risk perception’ angle, among the most significant in terms of institutional size etc. Thus, they are acceptable proxies for the rest of the regulatory fields. Countries selected for the historical review are some of the most important economies in the periods considered and cover the most influential legal and administrative traditions. Cases selected in Chapter 3 illustrate strongly the different approaches to inspections and enforcement. Since a
limited number of examples had to be chosen, the intention was to select cases with a high significance and sufficiently contrasting practices.

Second, availability of data. Since the purpose of the research was to attempt a comparative study of inspections across time, countries and regulatory domains, it was inherently impossible to also undertake to ‘construct’ data. Thus, the cases chosen were all instances where publications existed, quantitative data was easily available, specific surveys had been done and their findings released etc.

Finally, familiarity. Because the study focuses largely on methods and practices, it was important that the author be as knowledgeable as possible about the practices in the cases used. To some extent, therefore, the selection of these cases was ‘path dependent’ on the author’s professional activities over the past 14 years, which allowed more detail and in-depth insights.

1.4 LIMITATIONS IN SCOPE

There are a number of important topics that, due to the need to somewhat limit the scope of this research, this book will only superficially touch – for instance the related issues of corruption and capture, which are discussed only briefly, while suggesting some directions for further research. One very important question is left largely unanswered: the economic impact of risk-based inspections in comparison with other approaches. One of the main contentions of regulatory and inspections reforms is that they will allow for stronger (and/or more sustained) growth (and more/better jobs), as a result of increased investor confidence, greater innovation and technology adoption, stronger competition etc. For some countries, these growth benefits can also result from better access to foreign markets – when such access was constrained by regulations that did not conform to World Trade Organization (WTO) and/or European Union (EU) requirements, for instance. Sceptics, however, point out that whatever changes to competitiveness are induced by such ‘micro-level’ reforms are dwarfed by the effects of ‘macro-level’ policies (both fiscal and monetary), and of more ‘fundamental’ growth drivers (demography, geography, capital etc.). Seriously considering the merits of both perspectives would require an entirely different, major research undertaking – and economic skills that the author of this work clearly does not have. What we limit ourselves to is based on a modest assumption: that, all things being otherwise equal, the advantages provided to economic activity by a ‘better’ or ‘smarter’ inspections regime will give economic benefits (including because the administrative burden
from these inspections is smaller, but also because they are more effective at promoting compliance, provide more regulatory certainty etc.). These may be at the margin, but nonetheless real. For smaller economies, less integrated into international markets, the benefits may be stronger. We refer to some of the existing research that backs this up (such as Koedijk and Kremers 1996, Djankov et al. 2006, Loayza et al. 2005) and consider a few concrete examples.

A final note is that in this research we have attempted to present findings for a double audience: academics and researchers on the one hand, and ‘practitioners’ (regulators, regulatory reformers) on the other. This may make the book more imperfect but also, hopefully, more interesting.