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From chasing violations to managing risks: origins, challenges and evolutions in regulatory inspections.

Blanc, F.O.M.

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Author: Blanc, F.O.M.

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Propositions relating to the dissertation *From Chasing Violations to Managing Risks – Origins, challenges and evolutions in regulatory inspections* by Florentin Blanc

1. Regulatory inspections and the set of related activities are an issue that can and should be studied not only in relation to applicable laws and regulations, but also independently of them, as their organisation, methods and practices have autonomous effects, which can be separated from the effects of the underlying regulations and laws.
2. An emerging consensus can be identified among practitioners (inspection agencies, institutions tasked with improving regulatory systems etc.) about how risk-based approaches to inspections and enforcement (as well as more broadly “smart inspections and enforcement”) should be designed and implemented, even though there still are major differences in practice, and the consensus among academics is rather less well defined.
3. While inspections and enforcement can also have an important symbolic effect, inspection institutions are explicitly created (and resourced) to achieve instrumental effects – as such, it is appropriate that their goals should be defined in instrumental terms, and their performance measured in terms of achieving these goals, which in turn has a major influence on what methods they follow, and which results they achieve.
4. Risk-based inspections and more broadly “smart inspections and enforcement” appear to result in significantly superior outcomes in terms of the instrumental goals the inspecting agencies are supposed to aim at (e.g. safety and health), while often requiring substantially less inspection visits (and thus burden on businesses, costs for the state) – while correlation (let alone causation) cannot be fully established, there is a strong set of examples and data suggesting major advantages of these approaches.
5. Assessing impact (effectiveness) of regulatory inspections and enforcement is possible, within important limitations. First, the reliability of data varies considerably between different regulatory domains, and even more so between different countries or regions. Second, reliable attribution of absolute levels or of changes in impact (outcome) indicators to regulatory activities is not possible. What is, however, possible is to conduct comparative studies where other conditions are to the highest possible extent similar (or close), and where the main variation appears to be regulatory inspection practices, and see whether a pattern of variations in impact can be found as well.
6. When legislation and regulations explicitly have an instrumental perspective, it is legitimate to assess their effects, and the actions of inspection and enforcement institutions, from an instrumental perspective. The possible symbolic value of such regulations and enforcement action should not distract from such an assessment, and when effectiveness is demonstrably low, this can be taken as an indication of serious issues not only with regulatory design, but with regulatory delivery (inspections, enforcement etc.).

7. Bringing together insights from practitioners and international institutions working on regulatory issues (such as the World Bank Group, the OECD etc.) with findings from academic research and literature is very fruitful, because they have focused on different perspectives, and have to some extent “black spots” that are also in different places. Hence, combining both allows to achieve a better understanding of issues in regulations, regulatory delivery, and their effects.
8. Understanding drivers of behaviours and of behavioural change, which are simultaneously psychological, social and economic, is essential for a meaningful analysis of legislation with an instrumental intent, and of the enforcement activities that support it. Without such understanding, untested assumptions about the expected effect of rules, inspections and enforcement are used for both academic writing and policy decisions, and research findings suggest that these assumptions are often misleading.
9. Since regulatory discretion is, in practice, unavoidable (regardless of what legislation, legal traditions and case law foresee), and since risk-based inspections and enforcement appear to have significantly better outcomes than other practices, using risk as an instrument to “frame” discretion in a transparent, consistent and predictable way may be appropriate.
10. “Risk” is most appropriately defined as the combination of the likelihood of an adverse event or effect occurring (which the regulation is designed to prevent), and of the potential severity and magnitude of such event or effect. Definitions of risk which do not combine these two dimensions tend to yield inferior results from an instrumental perspective.
11. Given the considerable variations in outcomes (e.g. health and safety) between otherwise highly comparable countries (similar economic development level, regulations etc.) sporting very different approaches to inspections and enforcement, evidence-based review of inspection systems appears to have a high value from both a research and a policy perspective.
12. Bringing together insights and findings from different fields (criminal law enforcement, policing, regulatory issues) as well as different regulatory domains, countries etc. allows to build a better understanding of drivers of compliance, and one that suggests that the emphasis on control and sanctions that is frequently dominant may be misguided at least from an instrumental perspective.