Strict Enforcement or Responsive Regulation? How Inspector–Inspectee Interaction and Inspectors' Role Identity Shape Decision Making

Kim Loyens, Carina Schott and Trui Steen

INTRODUCTION: PROBLEM STATEMENT

As inspectors safeguard public values, they are the face of government in their respective field. This makes uniformity in their enforcement of pivotal importance. Inconsistencies do not only jeopardize the legitimacy

Alphabetic sequence: The first and second author contributed equally to this chapter.

K. Loyens (✉) · C. Schott
Utrecht University, Utrecht School of Governance (USG), Utrecht, The Netherlands
e-mail: k.m.loyens@uu.nl

C. Schott
e-mail: c.schott@uu.nl

T. Steen
KU Leuven, Public Governance Institute, Leuven, Belgium
e-mail: trui.steen@kuleuven.be

and accountability of inspection services, but indirectly also the legitimacy of government. To stimulate uniformity in enforcement, inspection services try to steer the inspectors' actions by a growing number of instruments such as checklists and protocols, which provide structure and help the inspectors to make consistent decisions. At the same time, inspectors are expected to follow the principles of 'responsive' regulation, which stress the idea that 'after all, [that] there are no universal solutions' (Ayres and Braithwaite 1992: 5). These contradictory signals can make the work of inspectors difficult, but are by far not the only challenges inspectors have to deal with.

Inspectors often have limited contact with their colleagues, yet frequent contact with the people they are inspecting (Van Kleef et al. 2017). This makes interaction with inspectees a very important source of information for inspectors. Put differently, they often have to rely on information provided by inspectees in order to do their work. However, close interaction is a double-edged sword. On the one hand, it makes inspection work effective and efficient as information can be gained easily. On the other hand, it also entails the risk of being influenced or 'captured' by the interests of the inspectee (Robben 2010).

By reviewing relevant literature and reanalyzing our data stemming from two doctoral research projects, respectively on decision making processes of veterinary inspectors (Schott 2015) and of inspectors in four regional offices of a Belgian Labor Inspectorate (Loyens 2012), this chapter will look at how the characteristics and the behavior of an inspectee during an inspection provide the inspector with information about guilt and intentions, and how inspectors interpret this type of information. We will first discuss the general trend toward more responsive regulation that encourages inspectors to take inspectees' needs and demands in account when making decisions. Combined with the growing number of protocols and checklists to stimulate uniformity in decision making, inspectors are faced with contradictory signals. Second we will argue that in the context of these policy developments, not only inspectees' behavior and characteristics but also inspectors' professional role identity is critical to explain decision making on the ground. In other words, drawing on recent insights on street-level-bureaucracy and identity theory, this chapter argues that the information inspectors derive from encounters with inspectees does not only depend on *certain characteristics of the inspectees* but also on *the inspector's role identity*, i.e. the way inspectors view their professional role. We conclude this chapter

with key insights of existing research and an overview of unanswered questions about the remedies and implications of public encounters in the context of inspection work.

Shift Toward Responsive Regulation and Its Challenges

The last few decades have seen a shift from command and control-based inspection practices to responsive regulation (Bartels 2013; Rutz et al. 2017). This entails 'a differentiated style of regulation and enforcement that is more responsive to the behavior of the regulated parties than a system of general or uniform rules' (Westerman 2013: 80). Fueled by new public management reforms, aimed at increasing performance and legitimacy, this trend led to the reframing of inspector–inspectee relationships in which inspectors must not simply enforce rules and regulations but also take into account inspectees' needs and demands (Vigoda 2002; Mascini and van Wijk 2009; Raaphorst and Loyens 2018).

Responsive regulation emphasizes cooperation, trust, and dialogue between parties rather than strict top-down enforcement, and encourages inspectors to adapt to inspectees' behavior during inspector–inspectee encounters when making decisions (Mascini and van Wijk 2009). Persuasiveness is the preferred enforcement style and a punitive style should only be used 'when businesses consistently refuse to cooperate', as Mascini and van Wijk (2009: 29) based on Ayres and Braithwaite (1992) explain. However, when this shift needs to be made becomes difficult to assess at case level. According to Stivers (1994), responsive regulation therefore also involves 'reflexivity' (p. 364), 'hear[ing] neglected voices […], remain[ing] open to emerging perspectives' (p. 367), and taking into account differences between inspected clients. The responsive regulation approach is based on the assumption that inspectors' responsiveness and horizontal inspector–inspectee relationships, are seen as legitimate and fair, and therefore increase voluntary compliance in the future (Braithwaite et al. 2007, Feld and Frey 2007; Leviner 2008; Nielsen and Parker 2009; Braithwaite 2011). However, ethnographic studies have shown that in practice it is not that straightforward (Mascini and van Wijk 2009). There is a 'tendency [that] regulatees […] perceive the enforcement style as more punitive than intended by inspectors' (Mascini and van Wijk 2009: 43), and a formal relationship between

inspectors and inspected clients is sometimes seen as positive (e.g., Soss 2005), which contradicts the assumption of responsive regulation. Both examples are illustrative for the ambiguity in inspector–inspectee relationships (Etienne 2013).

Despite the promising democratic ideals responsive regulation entails, this approach is faced with some difficult challenges. Previous research has pointed to the risk of inappropriate political bias (Rourke 1992; Stivers 1994), inconsistent decision making (May and Wood 2003; Loyens and Maesschalck 2010), and lack of transparency about how inspectors assess inspectees' trustworthiness (Raaphorst and Van de Walle 2017). These challenges are directly linked to the reliance in responsive regulation on inspectors' sense of responsibility in using their discretion, that implies (possibly too much?) trust in their professional skills (Stivers 1994).

It is therefore not surprising that many regulatory agencies have decided to counter these challenges by (re)introducing command and control mechanisms, such as checklists, digital (performance management) systems, and increased managerial control (Raaphorst and Groeneveld 2018). In the UK, for example, the Care Quality Commission (CQS)—set up in 2009 as a regulator of various social care and health services like hospitals, community health centers, and dentists—at first was an important advocate of responsive regulation. The CQS model encouraged responsive regulation, and therefore expected inspectors to take specific characteristics of inspected care services into account (Rutz et al. 2017). However, the commission received severe criticism because of a lack of uniform decision making, which led to 'inspection methods [being] scripted' and the introduction of top-down control by a national panel, to stimulate consistency between inspectors (Rutz et al. 2017: 86). Various studies have shown that such control measures result in inspectees' needs being overlooked because less responsive inspectors only 'tick […] the boxes' (Rutz et al. 2017: 82), and in addition decrease inspectors' motivation. The latter was, for example, observed among Belgian food inspectors who had a higher education or university degree, but were only authorized to complete checklists during an inspection, while decisions were made by back office employees (finding based on, but not reported in, Loyens 2012). While these inspectors acknowledged the need for some uniformity in decision making, they pointed at the necessity of discretionary decision making to take specific contextual elements into account, which is not possible if you have to use standard forms that encourage, as one inspector calls

it, '*auto-pilot decision making*'. A similar trend toward more uniformity was also seen among Dutch veterinary inspectors (Schott 2015). Notwithstanding the adoption of responsive regulation as a policy strategy in 2006 (Mascini and van Wijk 2009), a respondent in this study explains in the following quotation that strict enforcement has become much more important than a decade ago, which shows the conflicting signals inspectors in this agency are confronted with:

> Strict enforcement has also become more important than say ten years ago. Of course we also had to enforce the rules, but in cases where we wrote a fine report, we already had warned the company ten times and the offense was relatively high. I supervise a lot of new interns and I notice that these new veterinarians immediately write a fine report when they see an offense. There thus has been a shift in how we enforce. I really have to get used to that. […] I don't have a problem with writing fine reports or enforcement, but only if it feels right.

Another respondent sees a similar trend. In her opinion, stimulating uniformity in decision making is positive, but it tends to overlook the specific context and type of company that is involved, while taking into account differences between inspectees is at the center of responsive regulatory practices:

> I think that the approach is good as such, and that the quality of the beef has much improved because of it. The reason is that it encourages uniformity, and making agreements about what to do when you encounter certain offenses. I only have a problem with not taking into account the type of company that is involved. How the relationships lie, and what the history is with that company.

In a two-year ethnographic study within a Belgian labor inspectorate (Loyens 2012), it was observed that whereas responsive regulation was not part of the official policy, most inspectors in practice applied a very responsive style. Particularly, inspectors had built a long-term relationship with inspectees, and took into account previous experiences with these inspectees when making decisions. Because this resulted in quite inconsistent decision making between inspectors of the same office, the inspectorate introduced guidelines to stimulate consistency. These were, however, not always accepted by more experienced inspectors, as the following quotation of an older inspector shows:

> Honestly I think, I am not sure actually, but I suspect that people who are new here follow these guidelines better than me or X [another older colleague] for example. Not X in particular, but just people who have so much experience [laughs]. Because when we started, we did not get any guidelines from Brussels. I have always remembered that they said: 'You can choose how you decide in a particular case'. […] Through the years, management in Brussels has tried to decrease our individual discretion [laughs], but I have to admit that it did not really affect my work.

Because the guidelines did not result in consistent decision making, one of the regional managers tried to more subtly affect inspectors' use of discretion by regularly addressing the common inspection culture within his regional office during team meetings and informal lunches. He often said things like 'it is not part of our culture to make decisions in this or that way'. In an interview, he explains that falling back on this so-called 'inspection culture'—which is in fact a vision rather than a real culture—can be a way to 'avoid excesses of an individualistic use of discretion'. Only a few inspectors in the studied regional offices acknowledged the problematic nature of these excesses and pleaded for the use of standard forms or strict guidelines to stimulate consistent decision making. One inspector explains:

> This [the introduction of standard forms] would make our work more uniform and also more just towards employers. Now decisions are made in an arbitrary way, because inspectors say 'I do my work like this, someone else does it like that', and the result is entirely different.

It is striking that in this agency, decisions during joint multi-agency inspections (with inspectors of different agencies) are made in a more consistent manner. Labor inspectors explain that they use a more strict enforcement style, and are less lenient and responsive in joint inspections then during individual inspections. One inspector, for example, explains that in a one-on-one encounter with an inspectee, she often tries to bargain with the employer by offering to only give a warning for a social fraud violation if the employer agrees to pay overdue wage to his employees. Interestingly such offers are almost never made to the employer during joint multi-agency inspections. Although the importance of strict enforcement and consistent decision making was not explicitly discussed in these joint inspection teams, inspectors felt the implicit need to apply a different style during these inspections than in one-on-one encounters with inspectees.

Overall, street-level bureaucrats inspectors thus seem to be faced with conflicting signals. Responsiveness is increasingly expected, both in society and in regulatory policies, but at the same time organizational control mechanisms are installed to ensure uniform decision making. As will be discussed in the following part, inspectors deal with this ambiguity by basing their decisions, on the one hand, on client characteristics and behavior, and on the other, on their professional role identity.

Guilty or Not? Inspectees' Characteristics and Inspectors' Role Identity

The behavior and the characteristics of an inspectee during an inspection provides the inspector with important information about guilt and intentions. This information enables inspectors to make decisions in situations in which both responsiveness and tight oversight are expected from them. In this section, we argue that the question of how inspectors interpret the information about guilt and intentions they derive from encounters with inspectees does not only depend on *certain characteristics of the inspectees* but also depends on *the inspector's role identity*, i.e. the way she or he views her or his role as an inspector. We will discuss both factors below.

Inspectees' Characteristics as an Indicator of Guilt

From research on street-level workers, such as police officers, teachers, and rehabilitation counselors, we know that public servants often base their decisions on the 'worth of the individual citizen-clients' rather than on rules, training, and formal procedures (Maynard-Moody and Musheno 2000: 349). This means appealing clients are treated differently than clients who are perceived as undeserving. This raises the question of what makes that a citizen is experienced as good or bad? How do street-level workers in general and inspectors in particular know whether a client or inspectee is guilty of not?

Jilke and Tummers (2018) recently argued that the notion of worthiness of clients is determined by the perceptions of three cues: earned deservingness, needed deservingness, and resource deservingness. The results of their experimental study among US teachers showed that needed deservingness and earned deservingness are important cues that trigger helping behavior. Resource deservingness, in contrast, did not

play a role. This means, clients who are perceived to be 'hardworking' or 'needy' are treated differently than clients who are seen as 'lazy' or 'have high resources'. Gender and race, in contrast, did not trigger any different type of helping behavior. In line with this, Maynard-Moody and Musheno (2000: 350) found that cops go as far as ignoring 'serious offenses committed by someone they see as a good person – for example, the minor drug dealing of a poor, hard-working immigrant – while treating harshly the trivial offenses of someone they see as a threat to society'. These findings fit well with research on welfare spending. Citizens strongly oppose welfare spending benefiting individuals they regard as lazy, while they are generally supportive of policies that benefit people who have been unlucky—i.e. those whose disadvantaged position is due to circumstances beyond their personal control, such as poor health or the death of a partner (Petersen 2012).

Research focusing on inspectors shows comparable results. For example, Schott (2015) who studied the decision making processes of Dutch veterinary inspectors in the context of dilemma-situations found that information about guilt and inspectees' intentions were influenced by the inspectors' interpretation of the inspectees' characteristics and behavior. If inspectees who broke or bended a rule were perceived as hard-working and cooperative, they were not considered as guilty in the eyes of the inspector, but they were given extra time to fix problems. On the contrary, if inspectees talked back and did not cooperate, they were perceived as guilty and legal sanctions were applied immediately. Similar results were found in an ethnographic study in a Belgian labor inspectorate (Loyens 2012). Clients who were seen as cooperative and friendly were treated more leniently than those perceived as 'annoying inspectees'. In a particular joint inspection by a Belgian labor inspector and food inspector (Raaphorst and Loyens 2018), an inspectee who was perceived as 'doing his best' to fix the food safety problems that were discovered in the first inspection, was in the re-inspection not sanctioned for a severe social fraud violation, which he did not correct, even though social fraud recidivism was by inspectors in this labor inspectorate consistently responded with a report to law enforcement. In addition to these forms of earned deservingness, need deservingness also played a role in decision making by these labor inspectors. Firms with financial problems were, for example, treated leniently based on the argument that 'it is not our intention that the firm will go bankrupt, because that is not helpful for anyone'.

Additional support for the importance of perceived client characteristics for inspectors' decision making comes from a recent study on Dutch tax officials. Raaphorst and Groeneveld (2018) found that inspectors rely on a range of cues to evaluate the entrepreneurs' trustworthiness. In line with double standards theory, the tax official looked primarily at the entrepreneurs' appearance and belongingness to a social group to make interferences about his or her intentions. The entrepreneur's bookkeeping, in contrast, seemed not to influence the inspectors' judgments of the entrepreneur's worthiness.

Inspectees' Guilt and Inspectors' Role Identity

Next to the inspectors' interpretation of the inspectees' behavior and characteristics resulting in their view on the inspectees' deservingness, we argue on the basis of insights from identity theory that the *role identities* inspectors hold in their work influence the way in which they interpret the encounter with and characteristics of inspectees. This is the case especially in situations which are characterized by conflicting signals, for example when inspectors are expected to be responsive, on the one hand, and to use a checklist, on the other hand.

Role identities are the interpretations that individuals bring to the different roles (e.g., role of a professional, role of an organizational member, role of a daughter or son, etc.) they hold in society (Burke and Stets 2009). These role identities do not only serve as cognitive schemas—'internally stored information and meanings serving as frameworks for interpreting experiences' (Stryker and Burke 2000: 286) but also guide behavioral choices and decision making processes across time and situations. This means, role identities are stable principles that help to deal with ambiguity such as conflicting signals from, for instance, the employing organization. The mechanism explaining the relationship between role identity and behavior, on the one hand, and decision making, on the other, has been described as identity verification (Burke and Stets 2009). People are expected to engage in activities that are in line with the set of meanings (identity standards) they hold for themselves in a particular role in order to demonstrate to themselves and others who they are.

From this it can be expected that inspectors interpret the intentions and behavior of inspectees differently depending on which meanings they attach to their professional role. Put differently, if inspectors view

responsiveness as an important aspect of their role, they are likely to react differently to the very same behavior and attitude of an inspectee than colleagues who consider strict role enforcement and the use of checklists as key aspects of being an inspector. For example, Van Kleef et al. (2015) studied how Dutch veterinary inspectors interpret their professional role by means of interviews and found large differences in the inspectors' attitude toward the people they are inspecting. While some believe that most inspectees have good intentions, but are just not always able to live up to them due to lack of money and/or lack of knowledge, others hold a distrusting attitude toward inspectees no matter what and try to distance themselves as much as possible from them. Put differently, the same type of misconduct is seen as inevitable and excusable by some inspectors yet as intentional and avoidable by others. These differences in the inspectors' attitude toward inspectees are illustrated by the following two interview statements:

> From a transporter you cannot expect knowledge about veterinarian medicine, knowledge about suffering like you have as a veterinarian. (Taken from Van Kleef et al. 2015: 139)

> We keep distrusting them. That is our mind-set. (Taken from Van Kleef et al. 2015: 139)

Indirect support for this line of reasoning also comes from a quantitative study on the same case: Dutch veterinary inspectors. Schott and colleagues (2018) found evidence that veterinary inspectors who stress the act of safeguarding public health as a key aspect of their professional role were more likely to immediately disqualify all animals from the production process in situations in which rules were not followed and were less likely to do additional medical research or to wait for information about the vaccination history. We carefully argue that the results give rise to the assumption that inspectors with this type of a professional role identity more easily conclude that an inspectee is guilty when rules are violated than individuals with a different type of professional role identity.

This role identity can also be influenced by previous job experiences. Loyens (2012) observed that Belgian labor inspectors who had worked for a labor union or had a social work background, more actively than inspectors with a different background tried to convince employers to pay undue wages to their (former) employees, sometimes by offering a 'deal' to dismiss a social fraud violation if the employer would pay the

undue wages. These inspectors explain in interviews that they consider protecting disadvantaged employees against exploitative or bad employers the most important aspect of their work. On the contrary, inspectors who had worked in a social secretariat's office were less prone to bargain with employers to help deprived employees.

These findings can also be explained by insights from a relational signaling perspective. Raaphorst and Van de Walle (2017) who studied bureaucratic encounters from this perspective, argue that trustworthiness and guilt are subjective concepts, which are determined by frames used by officials to make sense of their clients' characteristics. Put differently, the authors show 'that the signals and cues do not have a meaning on their own, but are dependent on different frames from which officials interpret these cues' (p. 2). Applied to the context of inspection work, this implies that inspectors do not only look for cues that help to determine whether an inspectee is guilty or deserving, but the interpretation of these cues is influenced by the dominant frames—or role identities in terms of identity theory—used by the inspectors as guidelines to distinguish good from bad.

Together these findings help to explain the often observed role of street-level bureaucrats in general and inspectors in particular as policy makers (Lipsky 2010). Inspectors use the discretionary space, which is inherently linked to their work, to align their judgment of the people they have to inspect with the interpretation of their professional role. In doing so they reduce the ambiguity in their work, which results from conflicting organizational signals: the need to be responsive, on the one hand, and make use of tight control mechanism, on the other hand. However, we also need to be aware of opposing findings. Carter (2017) who studies organic inspectors in the context of US organic food regulation, found little evidence that organic food inspectors, even though they experience commitment to multiple role obligations, do approach their responsibility in ways that would weaken program objectives.

CONCLUSION AND SUGGESTIONS FOR FURTHER RESEARCH

In this chapter we first showed that recent policy developments in the field of inspection makes the work of inspectors ambiguous. In many inspection agencies, there has been a shift from command and control-based inspection to responsive regulation with typical challenges as inconsistent decision making, inappropriate political bias, and lack of

transparency about how inspectors respond to specific cases. To counter these challenges, some inspectorates have reintroduced direct and indirect control mechanisms. The result is that inspectors are faced with conflicting signals. Whereas responsiveness is increasingly expected, both in society and in regulatory policies, organizational control mechanisms are installed to avoid excesses of this inspection style. We therefore argued in the second section that inspectors have found ways to deal with this ambiguity. Particularly, decision making is based on information that inspectors derive from inspector–inspectee interactions. Several studies conclude that inspectees' characteristics and behavior during inspector–inspectee interactions play an important role in how decisions are made. We found evidence of the impact of perceived earned and needed deservingness of inspectees on decision making in specific cases. Interestingly, some studies in addition found that in the interpretation of information in inspector–inspectee interactions, inspectors' professional role identity is a critical factor. In other words, how inspectors view their role shapes the information inspectors draw from encounters with inspectees.

Because there is still limited research on what happens precisely in inspector–inspectee encounters and how it impacts decision making (see also, Raaphorst and Loyens 2018), this chapter concludes with important questions for further research. First, differences in role identities are often seen as something negative because uniform rule enforcement is jeopardized. Although inspectees behave in a very similar way and there are no contextual differences, inspectors with different professional role identities can be expected to draw different conclusions from encounters with these inspectees. As a consequence, the legitimacy and accountability of inspection services is threatened and incomprehension among inspectees and citizens increases. However, we would like to raise the question whether some degree of heterogeneity might be a good thing. Based on insights from Schneider's and colleagues' (1995) Attraction-Selection-Attrition model and research on diversity, we argue that homogeneity entails the risk of being unable to react and detect changes in the environment. The ASA model proposes that 'the outcome of three interrelated dynamic processes, attraction–selection–attrition, determines the kind of people in an organization, which consequentially defines the nature of an organization, its structure, processes and culture' (Schneider et al. 1995: 748). People are *attracted* by an organization on the basis of a perceived value congruence, and are *selected* or employed if they suit the organization. The process of *attrition* refers to the idea that

employees leave the organization if they do no longer experience a fit with the organization. As a result of these three interrelated processes, homogeneity is predicted to increase over time. However, homogenous groups have been found to increase the risk of premature decision making on issues that require careful consideration by engaging in the process of 'groupthink' (van Knippenberg et al. 2004). Particularly in the context of ambiguity and conflicting signals from the employing organization, heterogeneity might help to balance conflicting signals. Put differently, this implies to have inspections service that are all in all responsive as well as strict in the use of control mechanisms.

Second, as we have found indications of the impact of previous job experiences on inspectors' professional role identity, more research is needed to analyze which role the professional background plays precisely in drawing the right or wrong conclusions from encounters with inspectees. Also, while inspectors who have the same professional background as the people they are inspecting might be better able to 'read' the behavior and the intentions of their inspectees correctly, sharing the same professional background may also increase the risk of being influenced or 'captured' by the interests of the inspectee. Inspectors may develop a more understanding attitude toward inspectees and their problems thereby losing their objectivity.

Finally, we also like to draw attention to methodological issues that should be considered when studying the questions raised above. Given that inspector–inspectee relationships are characterized by ambiguity (Etienne 2013), ethnographic research is needed to unfold how the combination of responsive regulatory practices and control mechanisms impacts how inspectors 'read' inspectees' behavior or attitudes. Particularly helpful for such research would be the relational signaling approach that analyzes how in various encounters inspector and inspectee perceptions about their relationship may change in positive or negative ways (Etienne 2013).

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