

# Functional Inconsistencies

## State Inspection of Agricultural Labour in Switzerland

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It is an ironic truism of our time that a bureaucratic apparatus often produces effects that conflict with bureaucratic goals. Such “unintended outcomes” result from complex governmental procedures that can create momentum and lead to developments that deviate from the original intent. While acknowledging the endless red tape that bureaucracies seem to generate, I aim to show analytically that it is misleading to define contra-indicated results of official practice as “unanticipated consequences” (Merton 1936; Merton 1968) or “unintended outcomes” (Foucault 1991) in reference to official government goals. As De Genova appropriately stresses, this interpretation expresses “good faith’ toward the state, and its underlying belief in the law’s transparency [and] does not allow for the possibility that the law may have been instrumental in generating parameters” (2002: 432). Or, as Frank De Zwart points out: “social scientists, eager to speak truth to power, should consider the possibility that those in power may know the truth, yet let bad things happen anyway because they fear worse” (2015: 295).

Analysis of “unintended” or “unanticipated” effects from the “good faith” perspective neglects the involvement of numerous actors with varying interests in the negotiating process and in the implementation of new practices. Foucault respects these complex motivations when he observes that actors respond to outcomes by calculating, capitalizing and integrating them into their future conduct (Li 2007: 287). Thus, we should not see bureaucratic practices as pursuing one well-defined, publicly articulated goal. Rather, as Shore and Wright emphasize, the process of policy building is one of negotiation by various actors and interests (Shore and Wright 2011). Thus, the final configuration of a concrete bureaucratic practice always reflects the power relations of the actors involved in the negotiation process.

To illustrate this, I refer to the concept of hegemony projects, developed by the “Staatsprojekt Europa” research group (2012; 2014) and based on Nicos Poulantzas’ neo-Gramscian approach (Poulantzas 2002). Under this view, social debates over hegemony can be structurally analysed by identifying contrasting hegemony projects, which are understood as strategic, socio-structurally framed actor-constellations that fight for interpretational sovereignty (Forschungsgruppe “Staatsprojekt Europa” 2012: 13). Thus, to understand the outcome of bureaucratic practices, we have to identify the various interests and goals that lie behind bureaucratic procedures. My approach comes close to the perspective of Laura Bear and Nayanika Mathur, who argue for remaking the public good in the anthropology of bureaucracy (2015). Referring to Osella/Osella (2001) and Ferguson (2013) in liberal thought, as the opposite of freedom. But the political anthropology of southern Africa has long recognized relations of social dependence as the very foundation of polities and persons alike. Reflecting on a long regional history of dependence ‘as a mode of action’ allows a new perspective on certain contemporary practices that appear to what we may call ‘the emancipatory liberal mind’ simply as lamentable manifestations of a reactionary and retrograde yearning for paternalism and inequality. Instead, this article argues that such practices are an entirely contemporary response to the historically novel emergence of a social world where people, long understood (under both pre-capitalist and early capitalist social systems, they see bureaucracy as “an expression of a social contract between citizens and officials that aim[s] to generate a utopian order” (Bear and Mathur 2015: 18).

This leads to the question of how to research and analyse governmental practices. According to Sharma and Gupta, “Mundane bureaucratic procedures provide important clues to understanding the micropolitics of state work, how state authority and government operate in people’s daily lives, and how the state comes to be imagined, encountered, and reimagined by the population” (Sharma and Gupta 2006: 11f.). It follows that governmental practice can only be examined by observing and analysing the everyday practice of state actors interacting with civil society. This approach has led to numerous anthropological studies of street-level bureaucrats (Lipsky 2010). State agents act within a set of legal rules and norms. But they also act within a specific institutional ethos (see the Introduction to this publication). We can go even further and acknowledge the individuality of different actors working in these institutions. As agents in state institutions, individuals

perform their jobs “in reference to a certain professional ethos” (Fassin et al. 2015: 6), but their work is also informed by individual ideology. Opposing values, ethics and ideas of the commonweal held by different actors (institutions and individuals) can come into conflict in daily work. One therefore cannot automatically assume that final results are unintended. Various perspectives and goals need to be taken into account if one is to accurately determine why an outcome might be considered as unintended.

The neo-Gramscian hegemony projects (Forschungsgruppe “Staatsprojekt Europa” 2014) provide helpful orientation via their top-down reading of state power. From the perspective of political science, they perform a discourse analysis of the political debates within various projects as factions fight for interpretational sovereignty in society. Here, I reverse their methodological approach by using a bottom-up anthropological perspective to analyse the effects of bureaucratic practices with regard to the various actors involved and goals pursued. My questions are simple: Who finds the effects unintended? Who finds the effects attractive? How does meaning change for different actors? What measures are implemented in reaction to the results and why (or why not)? In my following empirical study of vegetable production in Switzerland’s central plateau, I focus on the agents responsible for labour market inspections and use an anthropological approach to interpret the results of their efforts.

## The association for labour market inspections

In 2008, the new Federal Act on Illegal Employment (*Bundesgesetz gegen die Schwarzarbeit* BGSA) came into force in Switzerland. According to the Act, “illegal employment should be combated. To do this, administrative improvements and measures concerning inspections and sanctions [have been] designed” (BGSA, Abs. 1, Art. 1). Upon its implementation, every Canton in Switzerland was directed to create an institution responsible for inspections in the labour market. This law and the regulatory institutions it established were also related to the free movement of people within Europe. To prevent transnational enterprises from systematically undermining Swiss labour standards, so-called “accompanying measures” allowed authorities to impose sanctions on employers who were not domiciled in Switzerland. Thus, the legal requirement of equal treatment was fulfilled: all working rela-

tionships in an economic sector in Switzerland were to be treated equally, independent of the employer's legal residence.

In the Swiss canton where I performed my ethnographic fieldwork,<sup>1</sup> an association was soon established with the task of inspecting labour conditions in various economic sectors. Associated with the canton's Office for the Economy, it now functions as a para-state institution under the leadership of government representatives and employer and employee organisations. The association's executive board consists of representatives of the canton and of joint committees<sup>2</sup> from various business sectors. The association has a staff of nine, including six inspectors.<sup>3</sup> In addition to the Act on Illegal Employment, the regulatory work of the association also involves other pieces of legislation, including the Federal Act on Measures Accompanying the Free Movement of Persons (*Flankierende Massnahmen*), the Collective Employment Contracts (*Gesamtarbeitsverträge GAV*) and the National Collective Employment Agreements (*Landesmantelverträge*) regarding employment relationships. The numerous migrant workers employed in low-wage sectors that the association is responsible for regulating mean that laws pertaining to residence and asylum also matter. Finally, as a regulatory body within the labour market, the association has the task of identifying actions necessary to improve labour conditions.

In the following, I will focus on the inspection practice of this association and the effects this has on vegetable farmers in the Swiss agricultural sector, my field of research. In my fieldwork, I observed people employed on farms, describing recruitment procedures, labour conditions and daily life. The vast majority of employees on these farms are migrants. Some of them have settlement permits, others have temporary residence permits and still others have no permission to stay or work in Switzerland at all. The regulation of migrant labour is mostly the responsibility of two government departments,

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1 In my research, I documented numerous irregular labour contracts, whereby the labourers are mostly illegalised people in Switzerland. In my thesis, I also describe existing networks acting as informal employment agencies. Therefore, I anonymise the region of my research and all the involved actors to protect the autonomy of these people (cf. Düvell, Triandafyllidou, and Vollmer 2009).

2 "Joint Committee" is a translation of the Swiss term "Paritätische Kommission," which addresses Swiss labour rights. The Paritätische Kommission is composed of equal numbers of employers and employee representatives.

3 "Inspector" is the official term for persons who conduct control procedures.

with different areas of responsibility: The Office for Migration is responsible for granting residence permits and several kinds of work permits; the Department for Economic Affairs grants several other kinds of permits and monitors conditions in the labour market. Hence, the Association for Labour Market Inspections represents the nexus between the two governmental departments even as it represents state authority in the agricultural sector.

Since there are no collective bargaining or other obligatory agreements for wage labour in the agricultural sector, there is no joint committee of employer and employee organizations responsible for ordering inspections. It is therefore up to Canton authorities to determine an annual quota, assigning the association to investigate specific abnormalities detected in documents filed during the process of obtaining a work permit. Before a work permit can be issued, the Office for the Economy must review the employment contract to check whether it complies with labour-law provisions. Binding legal norms may exist in the form of a national collective bargaining agreement (*Gesamtarbeitsvertrag GAV*) or a standard employment contract (*Normalarbeitsvertrag NAV*) with binding minimum wages. For the agricultural sector, however, no national contract exists, only Canton NAVs without binding minimum wages. Farmers are “Swiss Employers whose activity does not fall under the scope of an average GAV or NAV with binding minimum wages and will not be sanctioned automatically if they undercut the usual wage. If the TPK [tripartite commission] discover the usual wages are being undercut, a mutual agreement procedure is conducted with the relevant employer” (SECO 2015: 27, author’s translation). In mutual agreement procedures, the aim is to set an appropriate wage increase in accordance with the existing standard employment contract. The Swiss Code of Obligations provides the legal basis for this procedure (Art 360b, para. 3.):

The commissions monitor the labour market. If they observe abusive practices within the meaning of Article 360a paragraph 1, they normally seek to reach agreement directly with the employers concerned. Where this cannot be achieved within two months, they petition the competent authority to issue a standard employment contract fixing a minimum wage for the affected sectors or occupations (SECO 2015: 27, author’s translation).

Thus, the results of inspection activities can influence labour law. If institutions carrying out inspections detect standard wages regularly being

undercut in a particular sector, a NAV with binding minimum wages can be issued. At the national level, this has only happened for domestic workers. The federal government's 2008 study made clear that domestic workers from low-wage countries were generally employed for wages lower than for comparable work in other sectors.<sup>4</sup> As a result, an NAV with binding minimum wages was drafted in 2010 and has been in force since early 2011.

In the agricultural sector, no such contract exists, nor was there ever a powerful push for one. There are several reasons for this. First of all, migrant farm workers are not represented by a powerful interest group. In Switzerland, standard wages are negotiated on a sector-by-sector basis according to the tripartite neo-corporatism model (where negotiations are held among representatives of labour unions, employers and the government). In annual negotiation processes, they define recommended wages and working hours in the agricultural sector. This non-binding NAV is mainly negotiated between the Farmers' Association and the small ABLA union that represents farm employees. I had an opportunity to talk with the union president, Paul Sommer. He explained to me that it is very hard to negotiate with other labour unions, because they "have no idea about the conditions in agriculture" and therefore would price labour out of the market. He agrees that wages should be raised in the sector, "but not in a way that is disproportionate to the conditions in agriculture". Here, he does not identify with the numerous migrant labourers in this sector, but rather places himself strongly on the side of the farmers and the problems farmers face. The reason for this became clear when he explained that his union mainly represents skilled agricultural labourers: the president himself oversees farm production at one of Switzerland's bigger prisons.

Because systematic labour inspections have never been enforced in the agricultural sector, the sector is underrepresented in discussions of statistical data. With only 243 companies and 723 workers subject to inspection nationally, agriculture has among the lowest inspection numbers of any sector (SECO 2017: 18). Thus, it is not a priority for governmental authorities, nor for regulatory associations. This lack of statistical data makes it almost impossible to identify agricultural labour conditions that do not correspond

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4 "Le travail domestique en Suisse – Calcul d'un seuil de salaire en usage en vue de l'édition d'un contrat-type de travail au sein du secteur des Services domestiques en Suisse", Prof. Yves Flückiger, Observatoire Universitaire de l'Emploi (OUE), Université de Genève.

with the NAV. The activities of the Association for Labour Market Inspections resemble pure data collection. Because of the low number of inspections, limited capacity to undertake checks, and the lack of binding legal norms in this sector, the scope of regulatory activity is quite limited. Nevertheless, the little data that is collected is statistically evaluated and collated in the annual report on labour inspections, where it adds credence to the interpretation that labour law is well respected in practice in the agricultural sector. It follows that the agricultural sector is never the focus of labour market inspections, and no effort has been made to adopt binding contracts for agricultural labour. There is another effect: the comparatively low number of deviations from the law in the data contributes to the perception that working conditions are satisfying for agricultural employees. Therefore, the low wages and excessive working hours compared with almost every other sector are not questioned.

Labour inspections generate data that disguises precarious labour conditions and protects the agricultural sector from critical public debate. This has already influenced the outcome of a political intervention. In 2014, the Canton of Geneva applied for a regular working contract with binding minimum wages. Geneva's representatives argued that different working conditions in the cantons lead to uneven market conditions. In its answer, the Federal Council referred to the collected labour control data:

The Tripartite Commission of the Confederation is aware of the fact that downward pressure on salaries occur and that workers from low-wage EU countries bear the brunt of this. But the volume of reported cases is not at a level that would justify the establishment of national minimum wages. [...] such a contract for fixing minimum wages can only be realised at the request of the Tripartite Commission of the Confederation. [...] Labour costs affect the prices of products, and the poor wage conditions and/or downward pressure on salaries lead to unfair competition in the agricultural market, which increases price pressure. This unacceptable situation is jeopardising farms that deliver locally produced food and create jobs. This entails the risk that a part of the local agricultural production disappears and is replaced by imports, all in all an absurd situation.<sup>5</sup>

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5 <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20140308> [accessed 25 October 2016, author's translation].

As we see, the collected data constitutes an instrument to legitimate the *status quo* for farm employees. Potential improvements in labour conditions for farm workers in Switzerland are discussed in economic terms, comparing the competitiveness of national agricultural products with imported products from low-wage countries. Agricultural competitiveness rather than living wages had become the focus of the discussion.

The Association for Labour Market Inspections operated under these conditions in the Canton where I did my fieldwork. There, I talked with the chief inspector about the activities of the association and accompanied another inspector on his trips in the field.

This association was originally established under pressure from labour unions seeking to inspect labour conditions in the construction industry via an independent institution specifically designed for that purpose. Besides these activities, the institution ensured compliance with the GAVs and documented labour conditions for wider public and political usage, as the union representative in the canton explained me (interview from 20 February 2014). Chief inspector Simon Heine [name changed], who coordinated inspection activities in the association, has been on the board since its early days. At that time, Heine was already a member of the relevant labour union, having previously worked in the construction industry. In his work as an inspector, he saw an opportunity to put his labour union ideals into action and combat serious shortcomings in the construction industry.

Before the association took over inspection activities, the Canton's farmers' association had carried out the relevant inspections in the agricultural sector. For the farmers' association, this mandate meant a conflict of interests, a representative told me (interview from 18 January 2014). The farmers' association represents for the interests of farmers in their dealings with cantonal and national authorities. Thus, it is effectively an employers' organisation for the agricultural sector and unsuitable for inspecting labour conditions. The canton's farmers' association was pleased when the mandate for inspecting the labour market was handed over to an independent institution.

As Chief Inspector Heine explains, the association's workload is generally very heavy. It currently carries out some 80 inspections each year in the agricultural sector under the Canton's mandate. The chief inspector explains that agricultural operations play a special role in the labour market, and people working as association inspectors need to have an appropriate profile. People with no idea of working conditions in the agricultural sector lack suffi-

cient understanding to undertake farm inspections and deal with the farmers. For example, on most farms working hours are not recorded. In such circumstances, one must “simply trust in the farmers” (Interview from 11 January 2014). Generally, inspectors have an adequate understanding of the circumstances, although the agricultural sector is a “tough industry”. When I remarked that this is also the case in other sectors where the association is responsible for controls, Heine immediately compared it to the construction industries where he worked for years and “knows, what he is talking about”. Construction work is also very tough, “this is absolutely the case”. But in the agricultural sector it is difficult “to keep the farm alive”. In the context of labour inspections, farmers are not perceived as employers, as are owners in other sectors of the economy. Due to difficult market conditions for agricultural products, farmers have acquired a special status. Within the association, the perception and motivation for inspections in agriculture are different from those in the construction industry, for example. In construction, Heine wants to “affect something with the controls”, he wants to fight “illegal, inhuman and often mafia-like” practices.

Taking over the mandate for the agricultural sector meant an increase of the annual quota of inspections without a rise in the number of association inspectors. It is therefore necessary to prioritise among the sectors when determining where inspections should be carried out. Because there are no public reports of illegal employment and few abnormalities have been monitored by inspections, the agricultural sector is not treated as a priority. This has a strong impact on the practice of inspections in this sector, as inspectors try to reach the commissioned annual quota as efficiently as possible. Chief Inspector Heine explained to me that inspectors pay attention to the number of workers in the fields when carrying out in spontaneous checks. They tend to perform inspections on fields with many workers, not on fields with only a few people working. This practice can be seen in annual statistics: in 2016, 156 checks of people were carried out on 25 farms, corresponding to an average of 6.2 checks per farm. For smaller farms, a working group of six people is a lot. Thus, efficient practice means that the Association primarily performs inspections on larger farms.

When I accompanied an association inspector on his inspection trip in the agricultural sector, I noticed right away his obvious strategies to circumvent conflicts between personal and professional ethics. The activities he carried out while performing inspections scarcely resembled the officially

communicated goals. I will discuss these inconsistencies in terms of my theoretical approach at the end of the chapter.

## Inspection practice in the field

“I imagine how the farmer must answer questions from his colleagues in the evening at the regulars' table”

Association inspector Frank Gubser (name changed) often carries out inspections in the agricultural sector. He learned carpentry after school, then switched to nursing a few years later, and finally completed an apprenticeship as a lumberman. After ten years working on reconstruction projects in Latin America, he returned to Switzerland and is now employed by the association as an inspector. The work is well suited to his philosophy of life, Frank explains. His life expectancy is over 80 years, and his time should be filled up usefully with social engagement. In his opinion, too much stress is placed on the role of the individual these days. He may not revolutionise the labour market with his work, but he can uncover cases of abuse, and thus contribute to the improvement of working conditions.

On the day I accompanied him, Gubser brought along two portfolios with work permits for farms he wanted to inspect. In one case a young French woman is working on a horse farm for a gross wage of 2,200 Swiss Francs per month (about the same in US dollars at 2019 exchange rates).<sup>6</sup> Frank calls this a “bourgeois” case. The employer is abusing the dreams of a young woman who loves to work with horses and would do anything for that opportunity. The second case is a farm that grows berries. The farmer applied for five work permits, a “highly unlikely” number for berry harvesting. Berries are extremely labour-intensive and the harvest “cannot be managed with only five employees”. In addition to these two cases, Gubser also planned to perform a number of spontaneous inspections that day.

First we visit the berry farm. Inspector Gubser looks at the berry fields next to the farmer's house as we driving by. We cannot see anyone working

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<sup>6</sup> The NAV stipulates a gross monthly wage of 3,200 Swiss Francs. This is still 1,000 Swiss Francs lower than the wage for an unskilled worker in the building industry.

on these fields. Then, we drive directly to the farm and park in the backyard, where the farmer's wife immediately welcomes us. Our identification as association inspectors makes her a little nervous, she explains, because the timing of the inspection is extremely unfavourable since there is a lot of work to do. Frank asks the woman about the berry fields: how is it possible to harvest the berries with only five employees? The woman replies that their customers pick the berries themselves. For Gubser, this explanation is satisfactory and the two talk about how self-picking can benefit a farmer's operation. Then Frank asks where the employees are working at the moment. The woman refers us to an older Polish employee who was just driving off in a small van. After briefly consulting with the farmer's wife, he leads us to the "lower field". Other people were also working "up the hill", but that field was not easily accessible by car. After a short drive we arrive with Jacek (name changed) at an asparagus field. Five employees are planting new seedlings. The "group leader" calls the employees together and explains what the inspection is for. He is the only one of the foreign workers to understand some German. All the employees carry copies of their passports, which is why the procedure is completed rapidly. All the names are recognised by the system and each worker has a short-term residence permit. Finally, Gubser asks the group leader about working conditions on the farm. He asks suggestive questions, such as "Did the farmer organise an apartment for you on the farm? How many hours do you work per week, 52?" and so on. All suggestions are affirmed by the group leader without exception. After this control procedure, we talk a little about planting asparagus and the harvest. Then we leave these people and drive on.

This example shows what Simon Heine indicated in my first conversation: It is important to trust the farmers when performing control procedures in agricultural sectors. In this example we were deliberately piloted to a specific field to question the workers there. Whether the people working on the other field "up the hill" all had residence and work permits was not known. Nor were the original concerns that led to this farm being inspected followed up, even though Frank Gubser is absolutely aware of them. But "complete verification of a company is just simply impossible in the course of my work", as he told me after this visit. Otherwise, only one operation could be conducted in a working day. Thus, the quality of inspections is subordinate to the quantity of inspections conducted per day. This is not surprising. The heavy association workload and performance agreements with the Canton define the number of inspections per year.

Next, Gubser wants to visit the “bourgeois case”. Again we study the case documents. The employment contract for the French woman indeed notes a gross wage of CHF 2,200. Frank explains to me that this is a classic case: employers often mix up the kind of employment contract that should be given to the normal work force with those that apply to au pairs. The inspector defines “hybrid contracts” of the kinds often given to au pairs as problematic. They set improper standards in the labour market and therefore offer false incentives. When we examine the French woman’s employment contract more closely, we notice that it had expired two weeks earlier. We therefore cancel the farm visit, even though Gubser is disappointed that this case “slipped through his fingers”. It is important to “make a mark” in such situations, he says, because such cases have barely any consequences for the employer, according to the law. The problem is that most employment relationships of this kind are not considered abusive by the employees. It is remarkable that Frank does not evaluate regular employment contracts in the agricultural sector in the same manner, since working hours, wages and working conditions in general are significantly worse than in every other sector. Frank explains that he absolutely lacks the time to perform inspection activities satisfactorily in the agricultural sector. This was why the current case had been lying on his desk for a long time. Throughout the previous few weeks, he had been totally absorbed in a large construction site.

In the afternoon, Gubser shows me the procedure for a spontaneous inspection in the fields, what he calls a “field inspection”. We are driving on a country road when we see two workers weeding in a field. Frank stops the car and explains to them that we are inspectors from the Association for Labour Market Inspections. Both workers come from Poland and do not speak any German. Since one of them is working his third season on that farm, he finally understands what he has to do. He explains what is happening to his colleague and together we drive to the farmer’s house – the two Polish workers on the tractor in front and Frank and I following in the car. When we arrive at the farm, we are friendly. Although he is a little frightened and scared, the farmer welcomes us. Frank explains that it is only a standard check of work permits for his employees and that nothing has happened. The farmer then calls his wife out of the house. As the farm’s business manager, she brings the required documents in a ring binder. The inspection of the two workers’ documents is quickly performed: both have work permits for six months. The farmer tells us that he finds it very important that

such checks are performed. Otherwise in the village, many farmers would have been employing people illegally. He would never do that, but he might be an exception. Many of his colleagues would not care about the law, they would just search for cheap labour. This leads to a discussion between the inspector and the farmer about the negative effects of illegal employment for both employees and employers. Both men have the same opinion about illegal employment, share anecdotes and discuss consequences. After a warm goodbye we drive off.

Back in the car, I ask Frank Gubser about his experiences with “field inspections” in the past. Having seen no abnormalities in this control, I ask about situations where irregularities were noted. Frank enters a narrative mode. His stories are exciting and a motivating aspect of his job. The most tragic situation he encountered during his controls was on a small farm with a restaurant on the premises. There, a woman from Mongolia had been working for five years. The woman milked the cows in the morning, then prepared meals for the restaurant and did domestic work as well. She was regularly raped by the farmer and sometimes even by his son, when he visited. Frank is very involved in this story. This situation shows what can happen if a female worker is not protected by labour laws, Frank tells me. This leads me to ask about the consequences of this shocking story, and about the involvement of inspectors in procedures following inspections. Gubser sees this as a problem. According to formal process, inspectors are completely excluded from procedures following inspections and receive no information about them. But Frank Gubser has an extensive network of contacts among the institutions that prosecute cases arising from inspections, and can always inform himself about cases where he was the in-field inspector. In the case of the Mongolian woman, the procedural results were very double-edged, as Frank calls it. Because she was in Switzerland illegally, the woman was deported despite her tragic story. Here, the limits of his work come very clearly to light. Although it is critical that abuses be uncovered, his working relationship ends with discovery. Penalties for malefactors are not always satisfactory: for the Mongolian woman, this was definitely true.

How Gubser assessed this and other cases leads to the question of what can be called a “good inspection activity”. Frank has a clear answer and explains it to me in reference to another case. Two years earlier, he wanted to carry out checks on two workers in a field. But when he stopped his car and opened the door, the two men dropped everything and ran off. He was happy to let them

run. The reason was clear to him: they had no work permits and very likely no residence permits. He documented the situation by photographing the full and empty vegetable crates, tools and other traces of activity. This is important, he explains, because he needed exhibits for the report. Otherwise, one could simply deny that the two men had been working in the field. Although it was late, he called the police requesting immediate assistance because the two men had fled. He wanted to make a “real spectacle” out of it with “police cars, sirens and uniforms”. Frank loved imagining “how the farmer must [have] answer[ed] questions by his colleagues in the evening at the regulars’ table”<sup>7</sup> about the incident. Something like that has an effect, Frank thinks. The two underprivileged men were not punished because of their illegal status. Frank’s personal goal was not to detect illegal workers. The aliens law is not as important to Frank as working conditions and employers who abuse employees. These are what he wants to detect in his work. When telling this story, Frank smiles: “This is the ideal situation for me”.

## From “unintended consequences” to questions of power

As we can see, governmental labour inspection practice in my field of research is characterised by various inconsistencies. But inconsistency does not make a bureaucratic practice dysfunctional. From an administrative standpoint, the inspection procedure works well. The proposed number of checks can be achieved satisfactorily, the data collected is relevant and can be analysed. But this practice does nothing to improve labour conditions in the agricultural sector nor to represent them accurately for political and public debate. Instead, it supports the interpretation of labour law as “highly respected”, and validates the perception that agricultural work carried out under regular work contracts is “fair”. This can be explained using Handelman’s important analysis of bureaucracy as fundamentally built on categories (Handelman 2004). Compared with other categories, the category of legal working conditions appears to be the best, and “fairest” option. Except

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7 The “regulars’ table” (*Stammtisch*) denote a specific table in a restaurant which is reserved for regular guests. Often, the table is frequented by different groups of people during the day. In the evening, it is the place to meet friends after work. In general, it is a man’s place.

for wages, contract compliance is not the main focus of the inspections, and inspection practice is limited to examining residence and work permits.

Labour inspections in the field pursue various interests and goals. Federal authorities have the overarching goal of combatting informal work, because undeclared work contributes to the loss of public funds. At the same time, inspections are supposed to be a means of improving labour conditions. This is apparent in Frank's practice in the field and in his understanding of his work. Professional morals and personal morals are almost entirely congruent (Fassin 2015). But the goals and interests of various groups also shape inspection practice and interpretations of the resulting data.

The belief that agriculture is a "hard business" is ubiquitous: this interpretation is applied not just to the work of employees, but also to the practice of agriculture itself. Farmers are not seen as employers and managers, because they are still highly involved in the labour process. Furthermore, the ongoing transformation of the agricultural sector towards larger, more industrialised farms jeopardises smaller family farms. For these reasons, there is widespread acceptance that sanctions should not be existential. A certain tolerance should be encouraged even if it is inconsistent with labour law. This hegemonic perspective is deeply rooted and contributes to political debates.

Agriculture has a unique position in the political landscape of Switzerland. To ensure food security for the national population, production is highly subsidised by the state (Tanner 1992; Moser 2011). As part of the global food regime, however, agricultural production endures permanent competition with imports from low-wage countries (McMichael 2013). Therefore, precarious labour conditions are officially acknowledged as a precondition for competitive and sustainable national farms. This interpretation also influences labour's engagement with farm work. None of the powerful labour unions is active in the agricultural sector, although the small, specialised ABLA union negotiates regular working contracts with the farmers' association. As I have shown, this union shares the perception that agriculture cannot be compared with other economic sectors. What we thus see is a neo-corporatist model of labour union engagement, reflecting a hegemonic view of the place of agricultural work within society and the economy (Jessop 2015). In this process, no substantive representation exists for unskilled, seasonal employees, most of whom are migrants.

In a further interpretation of inspection practices formulated by a different state actor, an agent from the Office of Migration told me in an interview

that labour market inspections can also be used to detect illegal residents. Labour inspection practice thus becomes a means of residency control, as it identifies people living and working without permits on state territory. But, as already shown, association inspectors circumvent this function when it conflicts with the individual morality and ideology of professional action.

Describing these effects as unintended is thus misleading, rather it becomes a question of integrating the perspectives and manifold interests of various actors. Some inspectors develop strategies to diminish the effects of their work that clash with their personal ethics. Nationally, agricultural inspection procedure seems to have “unintended” (in terms of *unwanted*) effects regarding the improvement of labour conditions. The Federal Council statement on the political initiative to define binding minimum wages (cited above) shows that collected data from agricultural labour inspections effected just the opposite: it was used to justify non-intervention in the labour-law provisions of the agricultural sector.

But this unintended and unwelcome outcome for agricultural workers becomes an attractive outcome if we shift perspective. As I have written elsewhere, the data collected by the inspection practice is not representative of the highly hierarchical and ethnicised labour market in the sector (Affolter 2013; Bopp and Affolter 2013). Generally, precarious working conditions ensure cheap production. Because of intensive national and international price pressure on fresh fruit and vegetable markets, cheap production is a precondition for economic success. The farmers integrate workers with irregular working contracts into their personnel by engaging (illegalised) people in labour intensive phases during the harvest season. But in doing this, they pursue the strategy of not letting these people work with those employed on regular contracts in the fields. Irregularly engaged workers mostly work separated on secluded fields to prevent checks by inspectors or the police. This strategy, together with the protectionist agenda of numerous political actors, including the farmers' association, is what James C. Scott calls the art of not being governed (2009). This is why it is vital to stress who it is that reaps the economic benefits of low-wage work when analysing production relations in a given sector. Rather than dismissing the effects presented here as “unintended,” I highlight and analyse the inconsistency of this bureaucratic practice. Different ideals of the public good and formal goals of bureaucratic practices may converge in such a way that the hierarchy of goals

and laws becomes obvious: the goal of decent labour conditions contravenes the wider economic goal of protecting the Swiss agricultural sector.

This leads us back to my original question about intention and bureaucratic practice. When the effects of bureaucratic practice do not correspond with officially declared goals, we should not immediately assume this is unintended. First we need to ask: Who finds the effects unintended? Who finds the effects attractive? How does meaning change for different actors? What measures are implemented in reaction to the results and why (or why not)? Here, the bureaucratic procedure followed by agricultural labour inspectors produces statistical data that is used to protect the status quo of agricultural production in Switzerland, and to discourage public and political interventions to improve labour law in the sector. Better working conditions with higher wages and fewer working hours would challenge the value chain of agricultural production. This shows that bureaucratic procedures have functional outcomes often determined more by ad hoc assumptions and agreements than by written law. Anthropological analysis from the bottom up gives us insights about hegemonies inherent in negotiation processes that determine state practices. State tolerance of precarious work (by mainly non-citizens) in the agricultural sector does not reflect bureaucratic ineptitude, but rather represents prioritisation of economic aspects of national agricultural production. This prioritisation of economic interests, in combination with migrant workers' lack of political representation, guarantees cheap production costs and contributes to the continuing precariousness of these workers' working and living conditions.

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