How functional delegation increases bureaucratization

State-local relations and the ghost of Max Weber

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Abstract:

The present paper applies Michael Power’s conception of an “audit explosion” to analyze developments in state-local relations in Norway, with a focus on the system for inspection of the local governments. The underlying pattern is one of increasing bureaucratization, which involves a profusion of procedural rules that govern many aspects of local government activity and which seems to transform the ways in which the central government attempts to regulate the activities of the local governments.
Introduction

This paper investigates Norway’s system for inspection of the local governments. These inspections are carried out by regional branches of the national government, with the aim of identifying and correcting unlawful practice pertaining to welfare service provision, technical services and other legally mandated activities. Empirical observations of the inspections are used to illustrate an analysis of what is seen as a more general trend of bureaucratization of state-local relations. This general trend is decomposed with reference to its various causes: The shift to internal control systems, an increasing use of rights-based legislation and legal procedures in welfare provision as well as an increasing preference for codification of professional and political aims all seem to contribute to the total volume of rules which may in turn become objects for inspection. The theoretical point of departure is Power’s contentions about “the audit explosion”, but the analysis also applies ideas from the current debate on post-NPM public management and the “neo-Weberian state”.

The paper is based on research carried out by the author and associates on paid commission from (a) the Ministry of Local Government and Regional Development (Indset et al. 2011) and (b) The Norwegian Association of Local and Regional Authorities (Indset et al. 2012, Askim et al. 2013).

The audit explosion

Michael Power’s essay about an “audit explosion” and his subsequent book on the Audit Society (Power 1994, 1999) drew the attention to the spread of formal monitoring systems into new contexts, and they ways in which this represents a more profound transformation of the dominant ideas about administration and control (Bowerman et al. 2000, Humphrey and Owen 2000, Scott 2003). While using the term “audit” and taking departure in auditing as the “humble practice of bookkeeping and related low-level financial control practices” (Power 2003, 187), Power’s real concern was with the proliferation of monitoring and inspection arrangements on a broader scale. Expanding his discourse beyond that of the financial audit, the audit “proper”, Power argued that auditing has been given a key function in the “risk society” (Beck 1992), a society “which is increasingly conscious of its production of risks, in fields ranging from the environment, to medicine and finance” (ibid. p. 5).

In a later work (2003), he revisited this expansion of scope by discussing institutional and behavioral dimensions of the audit explosion:

Broadening the scope of the institutional definition of audit in this way has the merit of capturing a wider set of institutional transformations in terms of monitoring, but it also stretches the concept of audit beyond the domain of financial transactions to encompass monitoring in general (ibid. 188).

Including monitoring institutions not traditionally identified as “auditors”, including “inspectorates for prisons, health and safety in the workplace, educational, medical, and research quality” (ibid. p. 188) he identified two institutional dimensions of the “audit explosion”: (1) A perceived expansion of the oversight mandates of the financial audit to include not least performance-related indicators, and (2) the rise of non-financial inspection practices, prominently associated with “quality assurance” ideas. In addition to the institutional effects of the audit explosion, he also discussed certain behavioral effects of a somewhat less tangible nature (ibid. p. 190), including the decline of
organizational trust and a concurrent emphasis on strategic games of compliance and blamism (Hood 2002). “People may adapt their behavior to reflect the fact that they are not trusted and thereby confirm that they should not be trusted.” (Power 1994, p. 11)

In an in-depth discussion of Power’s 1999 book on The Audit Society, two professors of accounting took exception from Power’s choice of expanding on the scope and meaning of auditing in order to capture what he regarded as a more profound process of societal and politico-managerial transformation (Humphrey and Owen 2000). They noted that the book was rather ambiguous in terms of defining what is meant precisely by the terms auditing and auditability, and made a contention to the effect that “(...) we don’t have an audit society. Rather it is a performance measurement society” (p. 43), a contention that was supported by Bowerman et al. (2000) in their empirical study of audit activities in three branches of UK public service. Power (2000) responded to this critique not by supplying a more specific definition but, on the contrary, by stating that “vagueness is an essential part of the phenomenon. Once practices can be appropriated by the discourse of audit they can begin to acquire similarities and shared operational templates. In the audit society definitions of auditing are dependent variables.” (p. 116)

Power’s deliberate ambiguity in terms of defining his object of study comes in handy for the purposes of the present paper, as the issue in question – local government inspections – does not literally constitute “auditing”. It does however involve monitoring of a specific kind of performance, and is as such (in our view) indicative of the same broad trends that Power ascribed to the “audit society”. This point will be elaborated in the next section, following a brief presentation of the Norwegian local government system and the inspections institute. At present, however, we wish to highlight a few more items that will be used in the analysis of the Norwegian system later on.

Power was particularly interested in the abstract and non-contextual nature of auditing (taken in the broader sense). He noted that auditing normally takes the shape of “controls over controls”, a form of systems audit which relies not upon direct inspection of the auditee’s actual practice, but of the control systems used by the auditee to oversee his own practice himself – “the quality of the control systems rather than the quality of first order operations” (ibid. p. 15). The motive for this shift in focus is not least economy: The auditor needs not re-inspect vast amounts of financial transactions, because he has reason to assume that these are in good order so long as the auditee’s internal control systems appear to be adequate. But on a more profound level, he notes that this approach allows auditing to be carried out by non-professionals and to be largely non-contextual, in the sense that the same methods may be applied to very different sectors and industries. This can potentially contribute to the legitimacy and credibility of the audit, because the auditor is not embedded in the same profession as the auditees, which could otherwise impair his independence. Another effect of the “abstract” and non-contextual dimension to systems audit is that it may have facilitated the diffusion of this mode of auditing in society – and thereby also the profusion of the more basic changes in mentality and government mode associated with the “audit society”. Power refers to this as the “portability” of audit methodology, and claims that this very mechanism has “enabled audit to assume the status of almost irresistible cultural logic” (p. 16).

Power sees the audit explosion to no small degree as a fruit off the branches of New Public Management (NPM). As has been noted on many occasions, NPM reforms are marked by decentralization and devolution as well as centralization (Hood 1991, Pollit 1995, Pollit og Bouckart
A key assumption behind many NPM reforms is that devolution of discretionary powers may enhance the efficiency of public services by allowing decisions on day-to-day issues to be made at the local level. Such devolution however is seen to require a corresponding degree of centralization in terms of ensuring adequate control, mainly over outputs and goal achievement. Power notes that “the great attraction of audit and accounting practices is that they appear to reconcile these centrifugal and centripetal forces better than the alternatives” (ibid. 1994, p. 13). In other words, auditing may allow local discretion while maintaining central control. On the other hand, Power warns that the auditing systems may become excessive and thereby detrimental to the efficiency they were intended to preserve.

As noted above, Power regards audit as far from a “neutral” activity. Rather, auditing may entail the transformation of organizations and practices in order to make them “auditable”. This has potentially several effects. Power warns that the abstraction inherent in the “control over controls” logic transforms the audit into a self-referential “loop” by which the system observes itself (p. 28). This self-referential system may in time acquire a life of its own, largely decoupled from actual practice. Another related issue is the assumption that auditing may itself affect the standards used as point of reference in the audit. Power notes that “audits do as much to construct definitions of quality and performance as to monitor them” (p. 25). In the present context of local government inspections this issue is of particular salience, because the inspections are by law mandated to monitor observance of legal provisions only. If the inspectors play a role in defining the content of the law, they assume the powers vested by the legislature. This argument will be developed in the following section.

Before situating the local government inspection system relative to the rather broad phenomena discussed by Power and others, the following section provides a brief overview of Norway’s system of multi-level governance.

**State-local relations in Norway**

Norway belongs to Gösta Esping-Andersens (1990, p. 77) “Scandinavian” class of welfare regimes. These regimes are characterized by a high degree of “decommodification” – the extent to which welfare services are designated as “rights”, which as a consequence allows the individual to maintain a livelihood even in the absence of own income – coinciding with a high degree of universalism regarding the access to these rights. Indeed, Norway’s welfare state has been rated among the world’s most generous and extensive, a position it has retained not least due to Norway’s petroleum-bolstered relative degree of insulation from the impacts of the global financial downturn. The municipalities – currently 428 in number – serve as the primary instruments for welfare provision to individuals, and hold as such the key role for implementing the welfare state. Notable exceptions from this pattern include somatic hospitals, labor policy and the bulk of economic endowments to individuals, which are managed by the state. Primary schools and health care, kindergartens, care services for the elderly and disabled, social services and childcare are among the key mandatory welfare services provided by the local governments, in addition to spatial planning and local development, technical services and local infrastructure, environmental protection, sports and culture, and other tasks. The local government sector (primary and county municipalities) currently employs 19,3% of the workforce, and their total income equates 17,8% of mainland GDP.¹

¹ Source: Ministry of Local Government and Regional Development (2013)
At the same time, Norway is representative of what Hesse and Sharpe (1991) depicted as a unique combination of local functional capacity and local democracy in the “North and Central European” type of local government systems. The “values of local self-rule” has through the years frequently been evoked in governmental policy documents as well as in the academic debate on the local government system and state-local relations. These values are commonly represented as being threefold (Kjellberg 1991, 1995, Rose 2000). Firstly, local self-rule is interpreted as the value of autonomy – from central government intervention, as well as (in a positive sense) to enable local initiatives other than what is made mandatory by law. This latter dimension of autonomy is sometimes referred to as the local governments’ “negative mandate” (Smith 2011). Secondly, the values of political participation, political self-rule and identity underscore the long-standing idea that the local level may serve as a “school in democracy” and thereby bolster democracy at the national level (REF). Thirdly, local self-rule has been attributed the value of allocative efficiency due to its alleged potential for prioritizing resources in accordance with local wants and needs.

The present paper’s subject necessitates a few remarks concerning the legal status of the local governments vs. the state. Central government control over the local governments is based on the principle of legality (Bernt 1997, Smith 2011). Tasks and responsibilities may only be made mandatory by means of legislation, which means that the elected local councils are ultimately only subordinate to Parliament. As a consequence, a substantial number of laws have been passed in order to provide a legal mandate for local government service provision. These laws include mandates for “the king” or the ministries to issue supplementary regulations. The stipulations laid down in these regulations are legally binding to the same extent as the law itself. Obviously, the sheer volume of legally binding stipulations in laws and regulations delimit local government discretion considerably, as do other instruments for central government controls. Local governments are mainly funded through central government grants and local taxation in approximately equal measures, in addition to various fees and duties taken on a non-profit basis by the local governments for various services. Currently, the grants are largely allocated without specific stipulations concerning their use; however historically there have been periods marked by extensive use of earmarked grants and similar mechanisms. However, because all local governments use the maximum rate for local taxation, there is little room for discretion in terms of affecting the income. Due to the size of the local governments’ aggregated budgets and their consequent impact on the national economy, the regard for fiscal control has been a prominent justification for national political control over the local government sector (Kjellberg 1991, Hansen 2005)

Historically, the balance between local “self-rule” and central government control has oscillated considerably (Flo 1999, Fimreite, Flo og Tranvik 2002, Fimreite 2003, Flo 2003, Hansen 2005). The development of the welfare state in the period of post-war reconstruction and strong economic development represented a departure from the largely laissez-faire approach to state-local relations characteristic of much of the first century following the introduction of the first local government acts in 1837 (Fimreite, Flo og Tranvik 2002). A period marked by decentralization and devolution of powers through the 1980s and early 1990s – possibly attributable to the participatory movement in the 1970s as well as to the emerging emphasis on devolution in New public management (Fimreite 2003) – was displaced by a surge of central government welfare reforms, with a definitive

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² The Local Government act of 1992 states that municipalities may decide to take on tasks that are not by law relegated to another government body.
centralizing taint (Indset et al. 2012). Yet in the current period, a new rhetoric emphasizing the “equal standing” and “partnership” between the central and local levels of government has gained increasing prominence (Indset 2012).

The uneasy relationship between the values attributed to local self-rule on the one hand, and the demands for central government control due not least to the local governments’ key role in implementing the universal welfare state on the other, is probably bound to create tensions in state-local relations (Kjellberg 1991, Fimreite 2003). The following section will illustrate how the alternating currents of state-local relations in an advanced and extensive welfare state such as Norway is mirrored by its controlling practice, and by changes in the dominant conceptions of it.

The inspection system

The laws that impose tasks on local governments include stipulations that mandate inspection.3 These inspections are carried out by regional units of central government ministries. A number of these are subsumed as departments under the County governors’ offices, 18 in all.4 The County governors are appointed by the government as the state’s regional representative. Yet in spite of efforts to amalgamate these offices as unitary organizations headed by the County governor, the individual departments have retained strong ties to their respective ministries. As will be shown, this is highly relevant in the present context, because the individual departments to a large extent perform inspections on behalf of, and on instructions issued by, their respective government ministries and their central-level agencies.

The County governor’s office is an institution with long-standing historical ties that go well beyond the constitution of Norway as an independent state.5 Yet the relationship between the County governor and the local governments has been surprisingly fluid during the last couple of decades, and the inspection system has been transformed rather dramatically.

The development of the inspections system has to some extent mirrored changes in dominant conceptions about state-local relations. In the late 1980s, as Norway was in the process of assimilating the broader trends of management reforms associated with New public management (Christensen 1991, Lægreid and Roness 1999), the predominant rhetoric on state-local relations emphasized a “management by objectives”-ideology, and a desire for “framework governance” (Øgård 2005). These reform elements are well known from the literature, and need not be belabored here.

A government-appointed commission on «the aims and directions for local governments» (NOU 1988:38) claimed that the state “should in principle stick to deciding on the overarching aims and leave it to the individual municipalities and county governments to solve the tasks” (p. 1). The commission recommended, in a similar vein, that arrangements for governmental inspection and

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3 There is also a general mandate for inspections in §60a of the local government act.
4 All inspections of stipulations that impose duties on local governments solely are carried out by the county governor. Most of the duties common to all employers, such as food security or security in the workplace, are (with the notable exception of environmental stipulations) as a general rule inspected by regional units outside of the County governor’s office.
5 The recently revised “County governor’s instructions” document replaced the existing instructions dated 7th of February 1685!
control should be replaced by internal controls and auditing mechanisms (p. 6). The following year, another commission noted that several arrangements for direct, in-detail governmental control had been disbanded in the preceding years – a development it found laudable (NOU 1989:5). The commission’s report, which in hindsight reads as something akin to a NPM handbook for governmental reorganization, called for “a thorough restructuring and disbanding of the extensive set of arrangements for governmental control- and inspection” (p. 49). These ideas were mainstream at the time, and illustrate how ideas emanating from NPM affected the discourse on state-local relations in the late 80s.

The revision of the Local government act in 1992 is commonly regarded as the high-water mark of devolution and de-regulation in state-local relations through the 1980s (Fimreite 2003). A notable development was the termination of several arrangements that involved in-detail legal inspection and control over the local governments by the County governors. These included a procedure for routinized inspection of all local council decisions, as well as several provisions that required the County governor’s approval of such decisions. As a consequence, the revision of the Local government act severely delimited the extent of governmental legal/hierarchical controls over the local governments (Indset et al. 2013).

The local government commission’s conceptions about the inspection system seem, in a current reading, to have been rather vague (NOU 1990:13). The commission depicted the inspections primarily as an activity involving professional and managerial guidance and counseling. Concerns were aired to the effect that such guidance might assume a binding status not mandated by law. The commission also expressed skepticism towards what it regarded as a tendency of excessively detailed steering associated with such guidance. Following this, the Local government commission restated the recommendations of earlier commissions regarding the displacement of governmental control and inspection arrangements by internal control systems (NOU 1990:13 p. 298).

During the two decades following the revision of the Local government act in 1992, however, the inspection system has in many ways developed in quite different trajectories. Several key developments can be traced back to a commission appointed with the specific mandate to recommend reforms in the inspection system (NOU 2004:17). Interestingly, the key recommendation of this commission was that the inspections should be delimited to “the control of the legality of the municipality’s adherence to duties superimposed by law or mandated by law” (p. 107). The inspectors would, as a consequence, assume the same delimitations as the courts of law concerning their mandate to overrule the municipalities’ free interpretation of the law. This recommendation was later made into law (Ot.prp. nr. 97, 2005-2006). A key implication of this stipulation is that

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6 The key subject of the report was drawing up a reform strategy for governmental agencies and enterprises. The strategy on the whole involves measures to increase the operational autonomy of these organizations, in many cases transforming them into firms or quangos.

7 The Norwegian constitution does not mandate the local governments. There is however a Local government act which includes stipulations on the political organization of local governments, decision-making procedures, local elections, management issues and so forth.

8 Prominent preceding reforms included devolution of spatial planning authority in 1985, and a reform in local government funding in 1987. The revised law notably granted local governments increasing discretion in terms of political organization.

9 The precise implications of the stipulation equating the inspection with the courts of law involve complex legal arguments that will not be addressed here (see Smith 2013).
providing recommendations, guidance and counseling is inadmissible during the course of inspections. Another implication is that parameters related to for instance the quality or efficiency of municipal service-provision may not be taken into account by the inspections, to the extent that such parameters are not legally mandated.

**Current practice**

Three assessments carried out by the authors and associates (Hanssen et al. 2004, Indset et al. 2011, Askim et al. 2013) provide the empirical basis for the following analysis of the development of the inspection institute during the last decade.\(^\text{10}\)

**Systems revision and “control over controls”**

A striking development has been the proliferation of systems revision as method of choice for inspections. “Systems revision” is a case in point of what Power terms “control over controls”. The basic idea behind systems revision is that the inspections should focus on the municipality’s internal control system, not on its actual practice. Indset et al. (2011) noted that systems revision differs somewhat depending on the context, and that it can be defined with reference to at least four sources in the Norwegian context. Firstly, systems revision can be taken as a generalized standard for inspections, with reference to ISO-standard 19011 (management systems auditing).\(^\text{11}\) Secondly, the relevant ministries and their subordinate agencies have to some extent developed systems revision independently, and each sector’s approach is defined through handbooks and manuals, instruction courses and the likes. Thirdly, systems revision is defined in the instruction documents that accompany each national round of inspections. Fourthly, there are elements of discrete regional practice which can result in slightly different approaches in different geographical contexts.

Generally speaking, systems revision is carried out as a sequence of relatively standardized steps. Having received notification about an upcoming revision, the municipality will be required to submit a rather extensive set of documentation of its practice pertaining to the subject matter of the inspection. This documentation is processed by the (regional) inspection authority. Following this, a team of inspectors will visit the municipalities, to conduct interviews and discuss findings from the documentation. An important point is that the inspectors will conduct their assessment in specific service delivery locations (schools, nursing homes and the likes) as well as in the city administration itself. Following the visit, a draft report is produced by the inspection authority. This municipality is allowed to submit comments to the draft report before it is finalized. If the inspectors find instances

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\(^\text{10}\) The first assessment (Hanssen, Heløe and Klausen 2004) was carried out on paid commission from the governmentally appointed Commission on the Inspection System, and the Commission based its conclusions partially on the findings from this assessment (NOU 2004:17). The second assessment (Indset, Klausen and Winsvold 2011) was commissioned by the Ministry for Regional Development and Local Government with a focus partially on the effects of changes in legislation originally recommended by the 2004 commission. The third assessment (Askim, Baldersheim, Klausen, Renå, Smith and Zeiner 2013) was a research project commissioned by The Norwegian Association of Local and Regional Authorities (KS), with the primary aim of assessing the effects of inspections for the municipalities and local self-rule. [NB, information on data and methods here]

\(^\text{11}\) The International Organization for Standardization, ISO, defines management systems auditing as a device to provide “guidance on auditing management systems, including the principles of auditing, managing an audit programme and conducting management system audits, as well as guidance on the evaluation of competence of individuals involved in the audit process, including the person managing the audit programme, auditors and audit teams.” Source: ISO 19011:2011
of unlawful practice, the report will include one or several notices of unlawfulness (“avvik”). The municipality is required to present a plan on how it intends to “close” these defaults and report back. Although the purpose of systems revision is to inspect the internal control systems of the municipality, the reports may also include notices of unlawful practice related to first order activities and not to inadequate internal control. These are, however, primarily regarded as indications of a malfunctioning internal control system.

Indset et al. (2011) examined 2079 inspection reports from the period 2004-2011, and found that about 95% of all inspections (carried out with an identifiable method) based on the social care act or the health- and social service acts used systems revision. The method was also found to be used, less extensively, in inspections pertaining to the child care act, the kindergarten act and the education act. The usage of systems revision in highly different sectors of welfare provision to some extent illustrates the non-contextual dimension of auditing noted by Power. While systems revision has a long-standing tradition in health inspection, the method has spread to numerous other sectors. Indset et al. (2011) found the relative proliferation of systems revision in education especially striking. In an earlier assessment (Hanssen et al. 2004) inspections pertaining to primary education were predominantly of a dialogue-based nature. The ideal was to carry out dialogues based on professional values. Informants confirmed that there had been an orthogonal shift in the mode of inspections at around 1997, and systems revision in education at least for some years came to be regarded as even more judicial and court-like than in other sectors. For instance, notices of unlawfulness in education sector systems revision would use the term “unlawful” (“lovbrudd”) whereas other sectors would use the term “deviation”. A former cabinet minister currently serving as County governor remarked that the school inspectors were probably contemplating teaming up with the police!

**Standards for auditing**

Power (1994, 2000) noted that auditing is hardly any «neutral» activity: The inspectors often play an active role in terms of determining the standards used as point of reference in the audit. Audits, in Power’s words, “do as much to construct definitions of quality and performance as to monitor them” (1994, p. 25). Power illustrates this by reference to financial auditing, where the auditor may play a role in terms of defining the standard of “quality” of the accounts.

In the present context of state-local relations, this question assumes a particular salience. Because the inspections, as noted, are delimited to control of the legality of actual practice, non-statutory standards of quality and quantity are inadmissible for use in inspections. However, the problem becomes acute due to the fact that Norwegian law makes frequent use of vague, programmatic expressions such as “tilstrekkelig” (“adequate”), “verdig” (with dignity”) or “nødvendig” (“necessary”) to describe the mandatory quality and standards of welfare services (Smith 2013). There is, as a consequence, a need for a more specific frame of reference to determine the lawfulness of municipal practice in each particular case, and this “operationalization” in many cases needs to be made outside of the legislative process. Haugland (2010) has argued that the law in such cases refers to standards that are defined through professional and scientific processes related to the field in question and are, as a consequence, evolving. Askim et al. (2013) underscored the key role of agencies subsumed under the ministries in terms of defining such standards. Such agencies have proliferated during the last two decades, due to an administrative reform policy with the aim of
achieving a more clear-cut separation of functions in which the ministries are supposed to act as “political secretariats” for the ministers, while specialized and professional functions were removed to operationally autonomous agencies subsumed under the ministries (Christensen and Lægreid 2006, Difi 2013). These agencies more or less continuously issue guidance materials in which standards for service provision is defined, and these materials are routinely made available to the local governments. While such materials are strictly inadmissible in terms of defining the lawfulness of local government practice, Indset et al. (2011) as well as Askim et al. (2013) found that they tend to assume considerable normative weight.

Furthermore, these guidance materials are commonly used as basis for developing the documents that guide the implementation of national rounds of inspection. These inspections represent the bulk of inspections carried out by the County governors’ departments, because each department is required to perform inspections in a predetermined number of municipalities, a duty which commonly exhaust most of each department’s inspection capacity (Askim et al. 2013). The national rounds of inspection focus on the adherence to one or a few specific legal provisions, and are performed using a methodology prescribed in the guidance documents. The County governors’ departments are, as a consequence, left with highly delimited degrees of freedom in terms of prioritizing between subjects of themes for inspection, deciding what methods to use during inspections and balancing the relative use of administrative capacity for inspections with other tasks (such as guidance and dialogue).

Informants in the local governments have reported that conflicts of interpretation occasionally arise between themselves and the County governor’s office (or other regional state agencies) during the course of inspections, but that such differences of opinion is often settled by the County governor’s office itself. In Norway, there are no independent judicial bodies set up to adjudicate legal differences between different levels of government (Nguyễn-Duy 2011). Smith (2013) has argued that this situation is highly unsatisfactory because it fails to protect the integrity and autonomy of local councils as representative and legally mandated bodies.

**Behavioural effects**

Power (1994, 2000, 2003) claimed that auditing often incur behavioral effects, strategic games of compliance and “blamism”. The auditing process may become increasingly decoupled from first-order practice in the sector being subjected to audit, due to the use of indicators that relate to rule compliance and adherence to procedure. This auditing strategy is, as noted, related to the idea of internal controls and the “control of controls” which is supposed to economize the resources spent on inspections while at the same time avoiding unnecessary intervention in the operational autonomy of the auditee. The problem is that demonstrated fulfillment of such abstract indicators may become a viable strategy for organizations that want to provide a favorable representation of themselves in the eyes of the auditor, even if actual performance is below standard:

> We are beginning to see how different games of ‘creative compliance’ are being played around the audit process, games which both frustrate official intentions and which also lead to dysfunctional behavior. (Power 2000, p. 115)

Indeed, Askim et al. (2013) found that inspections focus solely on specific indicators to do with rule compliance and adherence to procedure, and not on measures of actual performance. This will be
illustrated in the following section. Several municipal informants expressed doubts concerning the efficacy of this type of indirect inspections. Informants claimed that in some cases the inspectors would issue a notice of non-compliance with legal stipulations, and the municipality would be able to achieve compliance by “shifting the papers” even without making actual alterations in practice (ibid, p. XX). In such cases, the inspections obtain a ritualistic character and will do little to improve actual service delivery.

In other cases, informants claimed that even actual adherence to all the rules and procedures being inspected would not always resolve the problems that those procedures were laid down to address in the first place. On salient example noted by Askim et al. (2013) relates to the national round of inspections of legal provisions in the Education act §9-a, which provides pupils with the right to a “good physical and psycho-social learning environment” (author’s translation). One particular issue taken up by the inspectors was the degree of “active, continuous and systematic” (§9a-4) effort put down by each school in terms of securing these rights, not least in order to prevent bullying – an effort which would entail planning. Informants noted that “we became very proficient in terms of planning, but the incidence of bullying behavior did not abate” (ibid, p. 33).

In a nutshell, the inspection system appears to be a case in point of “control over controls”; a system predominantly geared towards inspecting procedural adherence to standards that are to no little extent defined by the very authorities that are in charge of the inspections and that retain, according to some informants, a tenuous relationship to first-order activities and actual problem solving. The procedural and legalistic approach fits well with Power’s contentions about the “abstractness” of audits, as does his observations about the “portability” of auditing methodology, which is apparent in the diffusion of systems revision to a growing number of sectors of welfare provision. The institutional and territorial distinction between the regional agencies in charge of carrying out the inspections on the one hand, and the central government agencies that seem very much to hold the power of definition in this scheme on the other, would appear to add further dimensions to the abstractness and the risk noted by Power of a decoupling between an increasingly self-referential auditing system, and actual first-order practice.

What the inspections reveal about bureaucratization

The term “audit explosion” was coined to signal a dramatic increase in auditing and monitoring practices (Power 1994, 1997), and several possible causes have been out forward to explain this development. Power (2000, p. 112-113) cited three such causes in the context of the UK in the late 1980s. Firstly, the rise of “New public management” as a reform ideology (Hood 1991) increased the demand for financial auditing and “value for money” auditing. Secondly, societal demands for greater transparency and accountability were on the rise in the same period, and auditing systems were perceived as the correct response by political and managerial leaders. Thirdly, the concurrent rise of quality assurance practices implied an increasing attention to continuous self-monitoring and reporting, a practice that paved the way for the “control over controls”-approach. This development fit smugly with the change in regulatory practice away from “command and control” and towards more indirect methods (p. 113).

How well do these causal assumptions translate to the context of state-local relations in Norway in the 21st century? An analysis of inspection reports carried out by Askim et al. (2013) offers an
empirically based approach to answering this question. This approach allows us to discuss the possible causes for the “inspection explosion” in state-local relations based on observations of what issues the state actually sets out to inspect and correct.

The analysis of inspection reports was carried out by a research assistant using a methodology determined by the authors. Three out of Norway’s 18 County governors’ offices were selected, based on a moderate degree of geographical stratification. All inspection reports from 2007 and 2011 were obtained from a web-based database maintained by the County governments’ competent ministry. All reports originating from the departments for Education and Health, respectively, were coded (252 reports in all).

Table 1: All governmental inspections carried out by three County governor’s departments for Education and Health in 2007 and 2011 (N=252). Source: Reports from County governor’s inspections (Indset et al. 2013)

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<th>County/ Year</th>
<th>EDUCATION</th>
<th>HEALTH</th>
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<td>Inspections (n)</td>
<td>Notice (%)</td>
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<td>75,00 %</td>
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<td>47,40 %</td>
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<td>100,00 %</td>
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<td>Troms 2011</td>
<td>25</td>
<td>72,00 %</td>
</tr>
<tr>
<td>Vestfold 2007</td>
<td>22</td>
<td>77,30 %</td>
</tr>
<tr>
<td>Vestfold 2011</td>
<td>15</td>
<td>86,70 %</td>
</tr>
</tbody>
</table>

Inspections: Total number of inspections carried out by the department in each county/year. Notice: Share of inspections resulting in at least one notice of unlawfulness. Mean: Average number of notices of unlawfulness in each inspection.

While the first column in each of the two sections of the table presents the number of inspection reports coded in each county/year, the second column presents the share of inspections resulting in

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12 Earlier research has indicated that inspection practice to some extent is affected by variations in geographical distance and the number of local governments in each County governor’s jurisdiction, because of ensuing variations in capacity demands (Hansen et al. 2004, Indset et al. 2011). Furthermore, earlier case studies seemed to indicate that the inspections play out differently in sizeable cities as compared to smaller municipalities, because the latter category includes municipalities with relatively small administrations of varying degrees of specialized administrative competencies. Following these considerations, the researchers chose a small county in central-eastern Norway containing several medium-sized cities (Vestfold); a predominantly agrarian county with no large city in central Norway (Nord-Trøndelag) and a county containing the largest city in the northern region of Norway, as well as several small and remote municipalities (Troms).

13 These two years were selected because 2007 and 2011 were the first and last year available in the database containing complete data. Note that the same delimitations in terms of empirical reliability noted in footnote 13 apply to these data as well. The figures are tentative because they are based on the historical reporting practices of the County governor’s office, the consistency of which cannot be assessed with any great degree of accuracy. While this deficiency of reliability precludes their usage for quantitative analysis, the fact that the data originates from a governmental inspection authority provides grounds for assuming that they illustrate a general tendency.
at least one notice of unlawfulness. Such notices are presented in the reports as “avvik” (deviations, term used by health department) or “lovbrudd” (breach in lawfulness, used by education department). The third column presents figures for the average number of notices of unlawfulness issued in each inspection.

Although the figures are, as noted, tenuous, they provide an overall impression of the outcome of the inspections. It can be stated with a fair degree of certainty that the inspections tend to reveal unlawful practice in the majority of cases. Furthermore, inspections carried out by the health departments in these three counties do not seem to have resulted in any degree of increased lawfulness; there seems rather to be an increasing tendency of default. Note also the increasing annual numbers of inspections reported by the County governors in five out of the six four-year intervals.

Our key concern in the present context is not, however, to draw statistical inferences about the inspections. Rather, we are interested in discussing probable causes for this Norwegian version of the audit explosion. The common denominator in this discussion is the apparent drive towards rule profusion in state-local relations. While assumptions of such profusion are commonplace in the Norwegian debate, reliable data to gauge the total volume of rules that the local governments are subjected to seems non-existent. The inspection reports, however, provide useful data to rectify this deficiency at least to a limited extent. As noted above, the inspections are by law mandated to determine the lawfulness of local government practice only. For this reason, inspection reports will always refer to specific rules, and as such they enable insights into the nature of the rule-oriented mode of governance that the inspection system is based on.

In the following section we use observations from the inspection reports to illustrate three causes of rule profusion in state-local relations which is discussed in the literature, illustrated by inspection reports.

**The rise of quality assurance practices**

Power’s note of the rise in quality assurance practices as one of the causes of the audit explosion is mirrored in developments in Norway. A report to Parliament on governmental inspections in 2003 noted a shift in inspection systems from a traditional approach based on sporadic, external inspection towards a strategy of inspecting continuous internal control systems. An early application of such internal control systems were the Regulation on Internal Control (in a later version, the Regulation on Health, Security and Environment) of 1992. This regulation required all employers to implement systematic measures to ensure that provisions in a number of laws on pollution, fire and explosions, work environment and the likes were followed in actual practice. Such regulations have since been put in place related to other laws, for instance in Child Care Services and (as guidelines) in Health and Social Services. The Child Care Services internal control regulation among other things requires local governments to ensure that employees know of relevant laws and provisions, that they assess areas with potential risk for unlawful practice and that they “develop, implement, control, evaluate and improve upon necessary procedures, instructions, routines and

14 St.meld. nr. 17 (2002-2003)
15 FOR-2005-12-14-1584.
other measures to identify, correct and prevent defaults related to child care legislation” (§4-f). The proliferation of internal control regulations since the early 1990s has clearly been a driving force behind the above noted rule profusion in state-local relations in Norway.

Such internal control systems have commonly been associated with New public management reforms, for instance in the form of concepts such as “Total quality management” (TQM).

Pollitt and Bouckaert (1995) trace the development of TQM back to manufacturing in Japan and the US in the 1970s, noting “an emphasis on avoiding mistakes or defects before they occur rather than correcting them retrospectively” and “the generation of real commitment and enthusiasm for quality all the way down the line from top management to the shop floor” among its defining qualities (ibid., p. 4). Pollitt and Bouckaert (1995) regard the application of TQM in the public sector as an element of neo-liberal reform in the 1980s and early 1990s, at least in the UK. Adler (2012) however, interestingly relates quality concepts such as the Toyota production system to Weber’s concept of rationalization and the current debate on bureaucratization (du Gay 2000, Olsen 2005). In the present paper’s context of state-local relations, this angle seems especially appropriate. The profusion of internal control regulations and other procedural requirements represents a transformation of the workplace of public service providers – schools, clinics and nurseries – into Weberian bureaus in the sense that each individual act of service provision is embedded in a set of legal regulation and practices for control and accountability – similarly to Weber’s prescriptions for ideal-type bureaucratic practice, notably that action is taken based on written rules within a hierarchical system of delineated lines of authority with fixed areas of activity (Weber 1922). The setting of a syringe or the provision of an hour of special education is transformed into something akin to official acts, subject to requirements for application of legal procedures and written case management.

As noted, the primary focus of systems revision is on the existence and application of rules, procedures and routines to ensure lawful practice. Inspection reports frequently refer to internal control systems, or legal provisions that serve such functions. A pertinent example is found in an inspection report issued by the County governor of Troms in 15/3 2011, following an inspection of Ibestad municipality’s primary school and its efforts to ensure that the students’ legal rights to a beneficial psycho-social learning environment were satisfied. The report included several notices of unlawfulness, and required that the municipality corrected a number of issues, including the following:

- See to it that the schools have plans and routines that present goals and measures to promote beneficial learning environments and that shows how and when the efforts are to be evaluated;
- Be able to document how results from charting, observations and dialogues are being followed up;

17 Pollitt and Bouckaert (1995) cite several reasons why the transformation of this concept to the public sector may not be quite straight-forward. Notably, all public services may not be as appropriate for standardized quality designs as are many regular consumer products, because service provision frequently involves the making professional judgment in light of local contingencies and circumstances.
- Establish a system of internal controls with emphasis on the obligation to act [in case of bullying] and that defines what bullying is.\textsuperscript{18}

These and other notices of unlawfulness illustrate the profoundly procedural nature of the governmental inspections. Nowhere in the full list of deviations is there any mention of defaults in the actual achievement of beneficial learning environments. These notices of unlawfulness could have been issued even in the total absence of bullying in the Ibestad school.

This almost exclusive focus on plans, routines and documentation is commented by the headmaster of a primary school in Asker municipality:

\begin{quote}
The County governor is very much preoccupied with documentation (...) you need a document that shows where the routines are; it is a situation of documents on documents on documents. Obviously we need routines and documentation of them, but how many documents preceding these routines do we need in order to demonstrate that we do have a routine? (Headmaster, primary school).\textsuperscript{19}
\end{quote}

In contrast to auditing, the local government inspections are as noted delimited to assessing lawfulness of practice. Legal provisions on internal control differ in this sense from Total Quality Management regimes, in the sense that such limitations do not apply to quality controls. Yet the effects in terms of bureaucratization appear to be similar.

\textit{“Legalization” and individual rights in welfare provision}

Several authors have noted increasing incidence of legal stipulations providing individual rights to welfare services in Norway (Fimreite, Flo og Tranvik 2002, Fimreite 2003). This form of legislation deviates from the traditional form of welfare service legislation, by which municipalities were required to provide services to certain groups, such as students, the elderly, patients and so forth (Fimreite 2003, p. 342). The provision of individual legal rights to specific welfare services alter the legal status of the citizen vs. the local government, and enables citizens to take legal action against the local government based on allegations of inadequate service provision. In some cases, the courts have ruled that a local government must pay substantial fines to individuals based on such legal actions. For instance, a number of adults have won such cases because the court found that the municipal child care services had failed to take adequate measures to protect them during a difficult childhood.

The interest in these developments from the perspective of local government research in Norway has primarily been with their consequences for local democracy and self-rule. Individual rights delimit the budgetary powers of discretion vested with local councils because such rights cannot be prioritized related to other services. In the context of the present paper, however, we wish to highlight a related development. The local governments are in many cases required to make decisions on individual service provision using procedures laid down in administrative law.\textsuperscript{20}

\textsuperscript{18} Author’s translation. The term «bullying» is a translation of “krenkende atferd”, which refers to conduct that impose on a person’s integrity.

\textsuperscript{19} Asker municipality, interview 8th May 2013.

\textsuperscript{20} To our knowledge it has not been demonstrated empirically that this trend is increasing, yet such is our impression.
An example of this is found in the Education act of 1998. The §9a-3 states that in cases where a student or a pupil makes a request for measures against demeaning behavior including bullying, discrimination, violence or racism, the school is required to manage the case in accordance with the provisions on single case management in administrative law. In other words, the education act refers to provisions in another law, namely the “law on public management” (forvaltningsloven). This law includes provisions on case management and administrative procedure, including (chapter IV) provisions on case preparations in single case decisions (“enkeltvedtak”, decisions that relate to the rights and duties of one or several distinct persons). The provisions in chapter IV includes mandatory written notification to implicated parties, a duty to ensure that the case is sufficiently illuminated, obtaining the views of implicated parties, allowing these parties access to case documents and so forth.

In other cases, similar requirements for single case decisions are laid down in the law on the particular service in question. For instance, the provisions in the Education act §5-1 grants students the right to special education, provided they cannot profit from the regular educational activities. §5-3 provides in-detail specifications of the contents of a mandatory expert review on the need for special education, which is to be done in advance of the single case decision to grant such education. In addition to these legal requirements, there is a separate regulation that provides supplementary provisions. As a result, special education can only be granted following a rather extensive legal-administrative procedure.

Several municipalities have received notice of unlawfulness from defaults pertaining to such provisions. For example, the County governor of Vestfold 28/3-2007 inspected Nøtterø municipality and found that the municipality failed to satisfy the legal requirements pertaining to special education:

- The municipality has in several cases failed to make it sufficiently clear whether or not its decision is in line with the expert recommendation or not. In case the decision deviates from the expert recommendation, the municipality is obliged to justify this explicitly, and the municipality has failed to do this.
- One decision did not specify the volume or contents of the special education to be provided to one student.
- Decisions were made in absence of an expert recommendation.

Again, there is no explicit mention of the quality and adequacy of the special education services that has actually been provided. Several informants voice criticism concerning the various mandatory requirements for single case decisions on welfare service provision. The chief officer of one municipality claimed that mandatory single case decisions provides insufficient flexibility and does not necessarily result in the optimal solution for the student in question:

If there is a need for special education, there are various legal provisions that you have to follow. If you get inspected by systems revision they check these procedures very carefully, instead of checking if the student has profited from this service. If you communicate well with the parents and the teachers at an early stage, you might conclude that the resources

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21 LOV-1998-07-17-61
22 LOV-1967-02-10
would be better spent by adjusting and improving the situation in the classroom and keep the student with his peers, rather than going through the process with single case decision. But the inspectors would identify this practice as unlawful. (...) The formal procedures that they require are very resource-intensive but may not result in better education just the same. (Chief Officer, municipality, interview 5/3-2013)

Although it is difficult to assess the volume of such provisions, it is clear that the legally required procedures for single case decisions represent a significant cause for bureaucratization in local government activity.

**Codification of professional and political standards**

A drive towards *codification* of professional standards and political aims has been seen as a hallmark of Weberian bureaucratization. As noted by Wrong (1970 p. 26, quoted by Gregory 2007, p. 222), “rationalization” refers to “the process by which explicit, abstract, intellectually calculable rules and procedures are increasingly substituted for sentiment, tradition and rule of thumb in all spheres of activity” — a substitution that includes “the replacement of traditional judicial wisdom by abstract, systematic statutory codes”. In the present context, one could add “the replacement of the professional judgment of the welfare provider by codified and auditable procedures”. The various branches of welfare service provision in Norway abound with examples of this development.

Judith Kafka (2009) illustrated this tendency poignantly in her analysis of the teachers’ role in the bureaucratization of school discipline in postwar Los Angeles. While the traditional teacher role involved disciplining the students based on the doctrine of *in loco parentis*, in the place of the parents and based on own professional judgment, an increasing degree of social and ethnic diversity in the classrooms combined with a general feeling of being overcrowded by rapid population rise led the teachers to demand regulations “that would codify disciplinary rules, roles, and procedures for all students, parents, and educators”.

The County governor of Troms found, in an inspection 21/11-2006 that Salangen municipality was in default in terms of observing the provisions in the regulations to the Educational act on

> The municipality is lacking an adequate system for assessing whether or not the requirements of the educational act are fulfilled. The municipality is required to possess a system orally or in writing, that is “alive” in an organization. The system must be known and ordered by certain principles. All levels in the municipal organization needs to be able to describe the system.

Again, the notification of unlawfulness is silent concerning the actual quality of education in the municipality. Nor does it note deviations from the laws governing first order activities in the schools. Notably, it does not claim that the teachers and others in charge of providing education are

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23 Interesting incidence was noted by the author during a recent meeting for parents of students in his youngest son’s (born 2004) class. Reading skills are measured through the codified procedure SOL – “systematically observed learning”. Efforts against bullying are carried out by means of PALS - (Positive behavior, supporting learning environment and communal action), a concept imported from the USA (School-Wide Positive Behavioral Intervention and Support). The concept even involves the posting of behavioral rules for the students on the walls of the classroom. It was also noted that parents who make claims of inadequate intervention on part of the school in the incidence of bullying are entitled to demand a municipal single case decision on the matter.
incompetent or otherwise professionally incapable of ensuring a reasonable standard. The fault is solely their apparent lack of a system to ensure that the standards are met. Indset et al. (2013) found that many informants voiced reservations concerning the efficacy of this approach:

Do we need a routine for putting a band-aid on a student? (Headmaster, primary school).

“We may be working with a perspective more predominantly oriented towards the systems and the forms than towards the users. Because it becomes more important not to be put on display [for uncorrect action] than to do a good job.” (Mayor, municipality, interview [date])

**Where does this leave the local governments?**

In 1991, Hesse og Sharpe noted "manifest general tendencies, most evident in the North and Central European group [of local government systems], to redesign the structures of the traditional welfare state along more decentralist lines as a conscious act of policy to counter over-bureaucratic tendencies" (1991, p. 621). Similarly, Page and Goldsmith (1987, p. 166) noted that:

Smaller local government units may also tend to produce administrative rather than statutory control: statutory control suggests a faith by central state actors in the competence and willingness of local governments to provide services without the direct supervision of the state authorities, and this faith may be less strong where local authorities are so small that they cannot afford much by way of a full-time staff, let alone a professional one. The evidence for this comes from the Scandinavian countries, which shifted strongly towards statutory rather than administrative control in the postwar period, following the expansion, consolidation and subsequent ‘bureaucratization’ of local government”.

The observations made in this paper, taken from the vantage point of the inspection system, suggests that these observations of “manifest decentralist tendencies” and the concurrent “shift away from bureaucratization” came to a rather abrupt hold during the two decades that passed since they were made. As was noted above, the period in which Hesse and Sharpe as well as Page and Goldsmith made their observations coincided with what is regularly referred to as a high-water mark of local autonomy and central state deregulation (see page 7). We furthermore suggested that this development can historically and conceptually be related to the rise of New public management at the time, with its emphasis on deregulation. In the current period, however, strong claims have been made to the effect that this management ideology is “not a viable concept anymore” (Drechsler 2005 p. 2) and that we are entering a period of “post-NPM governance” (Kostakis 2011). While there is no consensus about the profile and contents of the emerging management ideology (Christensen and Lægreid 2007), it has been claimed that “maybe it’s time to rediscover bureaucracy” (Olsen 2005), that the “ghost of Max Weber” survived New public management largely unscathed (Gregory 2007) and that the “neo-Weberian state” may provide a fruitful avenue for defining a new reform movement (Pollitt and Bouckart 2004, Drechsler and Kattel 2008).

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24 Interestingly, Drechsler (2005) calls for “a modernization of the relevant laws to encourage a greater orientation on the achievements of results rather than merely the correct following of procedure” as part of a strategy of designing a “neo-Weberian” reform strategy (p. 7).

25 Asker municipality, interview 8th May 2013.
While these rather general headlines may seem to resonate with the general tendencies of bureaucratization revealed by the study of the inspection system, Power’s claims about an “audit explosion” certainly seems appropriate for describing the developments of state-local relations in Norway during the last two decades. In earlier sections we traced the profusion of systems revision (page 8) and quality assurance (page 13) as well as the replacement of long-standing legal control systems by an inspection system delimited to lawfulness (page 7). One could contend that this has given state-local relations a renewed emphasis on formalized, hierarchical control that seemed to be declining in the earlier period of decentralization and deregulation.

On a general level, this development could be interpreted as a result of the inexorable progression of Weberian rationalization – a historical development that locks society into an “iron cage” from which there is no escape. Somewhat more pointedly, one could perhaps explore the influences of welfare state developments in terms of the ways in which increasing demands for quality and output drives the state towards an increasingly active role vs. the local governments in their role as welfare state implementers. Cabinet ministers tend to be made responsible for perceived breaches in service quality and output although the services in question are actually provided by the local governments. In this sense, the combined usage of procedural regulation, codified quality assurance programs and formalized inspections of lawfulness may represent a political survival strategy for beleaguered ministers.

Alternatively, one might investigate the forces of propulsion inherent in the voluminous and highly professionalized body of central state agencies in terms of pushing towards ever higher ambitions of quality and standards. This drive is, not least, evident in the rather massive volume of professional guidance materials produced on a continuous basis by these agencies. For instance, the Norwegian Labour Inspection Authority has published no fewer than 65 “brochures” on labor security on its webpage. Correspondingly, the currently 788 employees of the Norwegian Directorate of Health have provided no fewer than 160 items of “guidance” on matters ranging from “Ways of promoting physical activity among children and young people” to “Opioid maintenance treatment in pregnancy”. The accumulation of contextualized and operationalized professional standards that these and other materials represent provides policy-makers and government officials with a point of reference for ever increasing ambitions in terms of obtainable standards of welfare service provision. If so, it could be contended that Esping-Andersens “Scandinavian” universalist welfare regimes in the end fits uneasily with the decentralist tendencies associated with “North and Central European” group of local government systems.

References


26 Source: http://tinyurl.com/nhwsejv (accessed 19/11-2013)
27 Source: The Norwegian State Administration Database
28 «Veileder», a non-binding professional form of guidance material. Source:
29 For an interesting analysis of this question in a selection of OECD countries, see Sellers and Lidström (2007)


Drechsler, Wolfgang (2005): The Re-Emergence of ‘Weberian’ Public Administration after the Fall of New Public Management: The Central and Eastern European Perspective. *Halduskultuur* 6, 94-108


Public documents:


NOU 1988:38

NOU 1989:5

NOU 1990:13

NOU 2004:17

Ot.prp. nr. 97, 2005-2006

St.meld. nr. 17 (2002-2003) *Om statlige tilsyn*