

The degradation of labour inspection in the UK

Regulation to mitigate the worst excesses of capitalist production first emerged in Great Britain in the early 1800s. Always a site of struggle, this regulatory regime has in recent years come under sustained political attack, particularly in the economic context of austerity. The result is a transformation – some might even say the end – of a system of social protection for workers.

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The United Kingdom – the first country in the world to enact legislation on workplace safety – is in the process of privatising its labour inspection system.

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In his classic book *The Condition of the Working Class in England*, Friedrich Engels refers to "social murder": the systematic, routine deaths of workers and citizens in the emergent horrors of industrial capitalism.¹ The conditions of this system not only generated social murder but also provoked inter- and intra-class struggle over the need for laws to regulate business and to mitigate their profit-driven, harmful effects. It is no coincidence, therefore, that a system of social protection through regulation was put into place in Britain during the 1800s.

The first formal realisation of social protection came with the passage, in 1802, of the Health and Morals of Apprentices Act, designed specifically to regulate the working conditions of "Poor Law" apprentices in the textile industry. Then, from 1831 onwards, a series of Factory Acts were passed which regulated the hours and conditions of children and women across industries and workplaces of different sizes, and culminated in the consolidation of existing legislation in the Factory Act of 1878.

Of course, the nature and level of business regulation has long been a site of contestation. The Victorian regime was chronically under-staffed, but it formed the foundations for a system of health and safety regulation eventually consolidated, updated and extended in the Health and Safety at Work Act of 1974, which also brought all existing health and safety inspectorates into one over-arching body, the Health and Safety Executive.

Since then, and particularly in the wake of the discursive onslaught of neoliberalism against state interference with private capital, regulation has become widely derided, a dirty word now equated with red tape, rules, burdens and bureaucracy. Yet we would do well to recall that regulation of business emerged ostensibly as a way to provide some level of "social protection" for citizens, consumers and communities from the worst excesses of the industrial revolution. Furthermore, it is worth emphasising that the phenomenon of "social murder" is not only a matter of historical record: the scale of contemporary harm is significant. There is now strong evidence that around 50,000 deaths per annum in Britain are work-related.²

Enter "better regulation"

Despite eighteen years of Conservative governments that had regulation in their sights, it was the second New Labour government which most zealously set about the task of transforming regulation and enforcement.

In 2004, Sir Phillip Hampton was appointed by Chancellor Gordon Brown to oversee a review of 63 major regulatory bodies as

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1. Engels F. (1845/1969) *The Condition of the Working Class in England*, Moscow, Panther.
 2. Tombs S. (29 October 2014) Hard evidence: are work-related deaths in decline?, *The Conversation*. <https://theconversation.com/hard-evidence-are-work-related-deaths-in-decline-33553>
 3. See Tombs S. (2016) *Social protection after the crisis*, Bristol, Policy Press, 111-6.

4. Hampton P. (2005) *Reducing Administrative Burdens: Effective inspection and enforcement*, London, HM Treasury/HMSO.
 5. BBC News (24 May 2005) *Brown pledges law to cut red tape*, http://news.bbc.co.uk/1/hi/uk_politics/4574229.stm
 6. But more generally, for example across food safety and pollution control, see Tombs S. (2016) *idem*, 137-180.

well as 468 local authorities, with a remit to propose ways to reduce regulatory "burdens on business". The review came during a period in which anti-regulatory rhetoric had been considerably ratcheted up amongst senior echelons of government and the civil service, as well as across a range of print and broadcast media outlets. "Health and safety", it was widely claimed, had "gone mad".³

Hampton's subsequent report⁴ proved to be a turning point in the trajectory of business regulation and enforcement across Britain. It marked the consolidation of what had already been termed "better regulation": a formal policy shift away from enforcement and towards advice and education, a concentration of formal enforcement resources away from the majority of businesses onto so-called high risk areas, and a consistent effort to do more with less. Gordon Brown summed up this new approach to regulation and enforcement pithily: "Not just a light touch but a limited touch."⁵ Health and safety regulation and enforcement, the *bête noire* of the neoliberal consensus against state interference, was singled out for the most vehement attack.

Five years later, by the time of the 2010 general election, changes to law coupled with downward pressures on inspection and formal enforcement meant that, both nationally and locally, much in the regulatory landscape across Britain had been transformed. Of course, in the intervening years, the financial crisis had erupted across much of the world, not least in Britain, resulting in massive bank bailouts and a tide of criticism against the low

level of their regulation. Yet, quite remarkably, the political consensus (at least in Britain) maintained that business was over-regulated, and all three mainstream political parties campaigned on manifestos to further reduce regulation. Over the following five years, the Coalition government acted on that commitment with a feverish intensity. The current Conservative government shows no sign of slowing down the attack on health and safety regulation and enforcement – quite the opposite, in fact.

The effects of better regulation can partly be seen via reference to some headline data on enforcement trends in occupational health and safety.⁶ Occupational health and safety regulation is divided between the Health and Safety Executive (HSE) at national level and Health and Safety Environmental Health Officers (EHOs) at a local level; the division is based on the main activity of any premises. Thus, in terms of enforcement trends, between 2003/04 (which marked the rolling out of the "better regulation agenda" in Great Britain) and 2014/15 (the most recent year for which data is available) we find, at national level, that HSE inspections fell by 69% and HSE prosecutions fell by 35%; meanwhile, at local level, EHO total inspections fell by 69%, EHO preventative inspections fell by 96% and local EHO prosecutions fell by 60%. Two observations are worth making on this data.

First, while the trends in relative declines are uniformly striking, the data also indicates some absolute low levels of enforcement activity; for example, in 2014/15, HSE only conducted about 18 000 inspections and undertook 650 prosecutions.

Secondly, these are also very low relative levels of enforcement. HSE enforces the law across about 900 000 workplaces; meaning that, on the basis of 18 000 inspections per annum, the "average" workplace can now expect to be inspected just once every 50 years.

Better regulation plus austerity equals further degradation

During the latter half of this period (2003/4–2014/15), it is clear that the politics of better regulation became substantially over-determined by the "economics" of austerity. The macro-level trends pointed out in the

previous section are of great significance, yet beyond stating that they create greater freedom from oversight for private business, and thus facilitate greater harm in the workplace, their effects are often hard to gauge. One way of examining what these new politics of regulation mean in the context of continuing austerity, however, is to focus on enforcement capacity at the local authority level.

What we find here is in fact a virtual collapse of enforcement capacity. In some local authorities there are now no dedicated health and safety inspectors – even, for example, in a city the size of Liverpool where in 2010 there had been four such inspectors. In general, health and safety regulatory bodies are haemorrhaging staff, and particularly experienced staff. They are under pressure not to take enforcement action, are demoralised even while being aware that worker and public protection is at risk, and, more generally, are witnessing the transformation of their enforcement function, to the point of being uncertain about how long that function will even continue to exist.

Recasting regulation

This transformation of health and safety protection is not simply about non-enforcement; it also involves a concerted effort to change the relationship between the state, the private sector and regulation. A paradigmatic example of this is the Primary Authority (PA) scheme, introduced by the Labour government in 2009 but given considerable impetus by the coalition government from 2010, notably following the establishment of the Better Regulation Delivery Office (BRDO) in 2012, for which oversight of the scheme was a key priority.

PA allows a company (and, since April 2014, franchises and businesses in trade associations) operating across more than one local authority area to enter into an agreement with one specific local authority to regulate all of its sites, nationally. Thus, for example, a supermarket like Tesco may have stores in every one of the local authorities in England and Wales. Under the PA scheme, it can reach an agreement with one local authority to regulate its systems for complying with a relevant body of law (occupational health and safety or food hygiene, for example) across all of its stores in every local authority. To regulate its systems, the company makes a payment to the specific local authority, agreed through contract. The benefit for the company, of course, is the absence of effective oversight in the vast majority of its outlets. These can be visited in other areas, but any enforcement action needs to be undertaken in consultation with and with the

agreement of the local authority which is the PA. Should a local authority wish to prosecute a company in a PA agreement, for example, it can only do so with the permission of the local authority which is party to that agreement. Then, under the scheme, any consideration of a potential prosecution must entail prior notice being given to the company; the company can then request that the matter be referred to the Better Regulation Delivery Office (BRDO) for determination.⁷

The scheme has mushroomed in recent years. In April 2014, 1,500 businesses had established PA relationships across 120 local authorities; by October, 2016, there were 16,757 "partnerships" across 179 different local authorities.⁸ Moreover, PA now applies across a vast swathe of regulation areas, including food safety and pollution control, and a wide range of regulators, from EHOs and trading standards to fire and rescue services and port authorities. However, it is most significant in the context of occupational health and safety. It is a classic better regulation initiative and, at local level, is the agenda's key formal initiative. It "marketises" regulation, basing it upon contractual relationships with financial incentives for local authorities and the incentive of protection from enforcement for businesses.

While the PA scheme is instituting marketised regulation across local authorities, some have taken this process even further. A handful have now formally privatised their environmental health regulatory functions, all of which include the health and safety function. In October 2012, North Tyneside Council⁹ announced the transfer of 800 employees to the consultancy companies Balfour Beatty and Capita Symonds. Alongside full scale privatisation, outsourcing of services is becoming increasingly common; "outsourcing" being an umbrella term which includes diverse arrangements such as the use of Strategic Service Partnerships (SSPs), Joint Venture Companies (JVCs), shared services and collaborative outsourcing. In August 2013,

the "One Barnet" model was unveiled by Barnet Council, which entailed certain services being outsourced to Capita: "business services" in a ten-year contract worth £350m, and others, including regulatory services, in a £130m ten-year contract. In January 2016, Burnley Council's environmental health services were outsourced to Liberata, a company that provides business process outsourcing (BPO) services to UK central and local government agencies. Meanwhile, councils in Bromley, Chester West, Cheshire and Wandsworth have all publicly considered wholesale privatisation of regulatory services.

The end of social protection?

Taken together, the trends set out above may mark the beginning of the end of the state's commitment to, and ability to deliver, social protection. They send a message to business that poor and dangerous working conditions will be tolerated. Moreover, since regulation can always get "better" (or "worse", depending on one's perspective), there is no logical end point to "better regulation". It is no exaggeration to say that we are witnessing the transformation of a system of regulation – social protection – which has existed since the 1830s. Despite its political framing, however, this is not a story about rules, regulations or red tape. It is a story about social inequality and avoidable business-generated, state-facilitated violence: that is, social murder.

Of course, the best guarantor of workers' health and safety has always been the collective organisation and activity of workers themselves, within and beyond workplaces. But a crucial element of pro-health and safety struggles has been and must be the ability to call upon an independent inspection function with credible enforcement capacities; something that is now almost entirely absent from the British occupational health and safety landscape. ●

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7. Williams C. (10 April 2013) Tesco gave green light to prosecution, *Environmental Health News online*, www.ehn-online.com/news/article.aspx?id=8790

8. Primary Authority Register, at <https://primaryauthorityregister.info/par/index.php/home>

9. The local authority of North Tyneside in the North East region of England.