A deadly consensus: worker safety and regulatory degradation under New Labour

Journal Item

doi:10.1093/bjc/azp063 BRIT. J. CRIMINOL. (2009) 1 of 20

A DEADLY CONSENSUS[1]

Worker Safety and Regulatory Degradation under New Labour

Steve Tombs* and David Whyte

This paper documents the vulnerability of the UK workplace safety regime to 'regulatory degradation'. Following a brief overview of this regime, the paper examines the dominant arguments within academic literature on appropriate and feasible regulatory enforcement, arguing that the approaches to regulation thereby advocated have been easily degraded as a result of their compatibility with neo-liberal economic strategy. A subsequent analysis of empirical trends within safety enforcement reveals a virtual collapse of formal enforcement, as political and resource pressures have taken their toll on the regulatory authority. Finally, the paper indicates that the increasing impunity with which employers can kill and injure is particularly problematic as we enter sustained economic recession, and underlines the urgent need for regulatory alternatives.

Keywords: safety crimes, regulation, deregulation, enforcement, health and safety, neo-liberalism, risk

Introduction

The near collapse of banking systems and the ongoing economic crises across the globe have called into question some of the mantras of neo-liberalism regarding the most appropriate and feasible forms of regulating business activity. In particular, the current crisis highlights the unsustainability of any set of politico-economic arrangements in which states actually attempt to do as neo-liberal ideology claims they should do—to withdraw from what is in fact a *necessary* role of states, namely regulation.

The focus of this paper is with the neo-liberal assault upon the regulatory structure governing worker safety in the United Kingdom. In some respects, this article follows on from a debate within the pages of this journal (Hawkins 1990; 1991; Pearce and Tombs 1990; 1991). Through its discussion of regulatory trends—in discursive, policy and practical terms—over a 15+ year period, it develops the critique of the 'compliance school', set out in that debate, though does not re-enter the details of that debate nor wider reactions to it (see, e.g. Gray 2006; Hopkins 1994; Johnstone 1999).

We argue here that the (pluralist) philosophy underpinning the UK system of safety regulation is based upon a set of unsupported assumptions that render the system highly vulnerable to a process of regulatory degradation. After exploring how this philosophy has facilitated the rise to dominance of a neo-liberal regulatory strategy, the paper then moves to a more focused analysis of empirical trends within safety enforcement in the

*Professor of Sociology, School of Social Science, Liverpool John Moores University, Clarence Street, Liverpool, L3 5UG, UK; s.p.tombs@ljmu.ac.uk.

[1]This title owes an acknowledgment to Dalton's (2000) phrase 'consensus kills'.

United Kingdom over a 12-year period.[2] This period, incorporating as it does the first 11 years of Labour government, is perhaps the key period in which the Thatcherite claim to there being 'no alternative' to neo-liberal capitalism was consolidated.

'Consensus' and the Potential for Regulatory Degradation

The principle of 'common interest'—the key idea in which the Western liberal tradition of social regulation is embedded, discernible in early forms of social regulation in the nineteenth century (Tucker 1995)—is that which formally underpins the UK Health and Safety at Work Act (HSWAct) 1974. Thus, over 30 years ago, reviewing the existing state of occupational safety and health legislation in the United Kingdom, the Robens Committee that safety is an area in which there is a far greater 'identity of interests' between the 'two sides' of industry than other aspects of workplace relations. Concluding that the 'primary responsibility' for improving occupational safety lay 'with those who create the risks and those who work with them' (Robens 1972: 152), the Robens Committee urged the establishment of a 'more effectively self-regulating system' (Robens 1972: 152). Robens' recommendations concerning the nature of this self-regulating system were formalized in the subsequent HSWAct, and later provided a model for occupational safety legislation in Canada and a number of Australian states.

The self-regulatory philosophy of Robens and subsequent UK safety law did recognize non-compliance with safety regulations, and the possible need to *force* this upon employers. This pressurizing role was assigned to trades unions within the workplace and to regulators as a source of external pressure. Thus, this tripartite system of regulation is *necessarily vulnerable to degradation* if any of its partners is unable to fulfil the role that is assumed to it—so that in the absence of external enforcement or internal pressure from organized labour, it is liable to descend into either a form of de facto deregulation (Tombs 1996) or a form of regulation based upon 'market' mechanisms.

The emerging academic interest around questions of regulatory enforcement that followed the rolling out of social regulation from the 1970s onwards tended to reflect Robens' assumptions regarding a basic 'common interest'. Thus, the dominant strand of studies on regulation has been a range of works, focusing across business sectors and discrete areas of legislation, which documents the extent to which the compliance-oriented approach[3] is the predominant one amongst regulatory bodies. Some have argued since that there is a generalized convergence across enforcement bodies, jurisdictions, bodies of law and so on, towards a compliance-oriented enforcement approach (Hutter 1997: 243; see also Sparrow 1994; Braithwaite 2000: 99–106; Braithwaite 1987).

An intimately related body of literature on regulation, associated in particular with Braithwaite and various colleagues, makes the claim that appropriate enforcement is always a combination of techniques or a 'regulatory mix'. Self-regulation is prescribed upon a 'carrot and stick' basis: where self-regulation proves ineffective, the next

[2] It does so by using, for the most part, publicly available data, both quantitative enforcement data produced by HSE, as well as a range of policy documents and statements regarding regulation in general and enforcement in particular, from government, HSE and various commentators upon safety enforcement activities.

[3] See debate through the pages of the *BJC* at the start of the 1990s (Hawkins 1990; 1991; Pearce and Tombs 1990; 1991; also Pearce and Tombs 1998: 223–46).

preferred regulatory tactic is 'enforced self-regulation', this requiring a company to develop a tailored set of rules by which it intends to comply with law which, once approved by external regulators, would then be 'enforced' internally; where evidence of non-compliance emerges, the potential of punitive external intervention remains (Braithwaite 2000: passim; Ayres and Braithwaite 1992: 102–16). Thus, deterrence is 'integrated into a strategy that tries persuasion first, then deterrence when that fails, then incapacitation where deterrence fails' (Braithwaite 2000: 114).

A later variation on such an approach is twin- or two-track regulation, where regulatory interventions are targeted at the worst offenders, through a risk-based approach to targeting necessarily inadequate regulatory resources. Firms are offered a choice—between 'traditional' (track one) regulation, or the adoption of a safety management system (track two). The latter in particular focuses upon performance and principle-based approaches rather than prescribed specification standards, and places the onus for determining compliance and how to achieve it upon employers and workers—subject to third-party, though not necessarily state-based, oversight. Incentives play a key role within each regulatory strategy (for a key critical discussion, see Davis 2004).

More recently, an increasingly dominant set of voices regarding regulatory policy and enforcement has coalesced around the ESRC Centre for Analysis of Risk and Regulation (CARR)[4] within the LSE. Thus, CARR 'has rapidly established itself as an international reference point'[5] for 'risk regulation studies'—and what is particularly of interest for us is the very couplet 'risk-regulation'. For here are the simultaneous ideas that risk is ubiquitous, that regulation always needs to be balanced against risk and that determining this balance is not necessarily, or even, the task of government or regulatory agencies per se (Hutter and Jones 2006). Thus, 'Risk regulation refers to the governance, accountability and processing of risks, both within organizations as part of their risk management and compliance functions, and also at the level of regulatory and other agencies that constitute "risk regulation regimes"'.[6] Regulation extends beyond and indeed is 'de-centred' from the state (Black 2002)—to various non-state bodies within the economic sphere, not least operating through market-based relationships, and through civil society (Hutter 2006). 'At a minimum', determining the risk-regulation balance 'entails the use of technical *risk-based tools*, emerging out of economics (cost–benefit approaches), and science, (risk assessment techniques)' (Hutter 2005: 3, emphasis in original).

A further, common observation made by some academic commentators is that law in this area, in its 'command-and-control' forms, retains a key *symbolic* role, important, for example, in responses to multi-fatality disasters or high-profile work-related deaths (Almond 1997; 1999). And it is in this context that we can best understand the passage of the Corporate Manslaughter and Corporate Homicide Act 2007, the key recent example of a 'command-and-control' state response to safety crimes in the United Kingdom. Yet, closer scrutiny of this instance of 'command and control' underscores its exceptional nature. First, the Act is of interest *precisely because* it is an anomaly in the context of the more general trend away from state 'command-and-control' regulation.

[4] CARR was established in October 2000 with £2.5m ESRC funding, repeated in 2005 and furthered by hundreds of thousands of pounds of corporate donations from sources including AON, BP and Deutsche Bank.

[5] www.lse.ac.uk/collections/CARR/aboutUs/Default.htm

[6] *Ibid.*

Second, any scrutiny of the development of this law from its first proposal by the Law Commission in 1996 to the form in which it was finally enacted reveals a consistent emasculation of its potential to pierce the corporate veil (Tombs and Whyte 2003), culminating in the explicit removal of any personal liability for directors. Thus, the likely impact of the Act needs to be considered in the government's own Regulatory Impact Assessment, which projected that the Act will not generate more than 10–13 successful prosecutions per annum (Home Office 2006). Third, it should also be emphasized that here we are dealing with the most egregious consequences of risks that cross the 'factory fence'. As Almond himself puts it:

> The enforcement of work related fatality cases has become an increasingly high-profile issue in the United Kingdom in recent years, due to the influence of a number of major transport disasters upon the consciousness of policy-makers and the public . . .. (Almond 2007: 285)

This shift in focus from *workers* to the general *public* is partly a crossing of a class divide—from workers exchanging their labour power for a wage to middle-class, suburban commuters paying significant sums for season tickets (Pearce and Tombs 1997)—with all that entails in the context of dominant constructions of the 'ideal victim' (Whyte 2007*a*).

Now, there are clear differences in what regulation is, ought to be and can be, between each of the views we have discussed in this section. But, at the same time, there are fundamental similarities—and, in the terrain they traverse, we can see the scope of a regulatory received wisdom.[7] Each can be understood as advocating a form of voluntarism: they assume that offending on the part of the regulated is relatively marginal and aberrant rather than widespread and routine—so that the majority of corporations for the majority of the time comply with law voluntarily, either on the basis of some form of enlightened self-interest or through some essentially moral commitment to doing what is right simply because it is right. Since offending is marginal and aberrant, they advocate a voluntarism, as regulation can be most effective when it singles out and targets the small minority of troublesome firms in need of external regulation.

Yet, in our view, the dominant influence of these positions has been achieved as a result of the political convenience of the prescribed approach, rather than in the light of any empirical evidence supporting its likely success. Crucially, voluntarism is supported by a hegemonic view of regulation that rests upon a very particular set of assumptions about the nature of the social order, for it supports a 'consensus' (Whyte 2004) or 'co-operative' (Snider 1990) model of regulation, in which a series of fundamental, pluralist commitments are shared. This model is based upon the idea that power in modern social orders is dispersed rather than concentrated, that a variety of interests can be mobilized to influence the formal political agenda, and that social change, through mobilization of those interests, is possible (see Pearce 1976: 38–41).

It is important, further, to recognize the mutual compatibility of this pluralist position with neo-liberalism. Consensus or cooperative models of regulation, on the one hand,

[7] None of this is to claim that such views *exhaust* the spectrum of academic views on regulation. Far from it: thus, for example, work in the United Kingdom by Croall, Fooks, Tombs and Whyte and, in North America, by Pearce, Snider, Glasbeek and Tucker, to name but a few, has developed a quite different perspective upon regulation, central to which is the view that this is an outcome and object of struggle between essentially antagonistic social forces. The point that is being made here is that the views referred to in the paper are dominant and, as we shall argue, and relatedly, cohere closely and indeed have informed governmental policies towards regulation.

and neo-liberal political economy, on the other hand, are each reducible to the view that a mutually beneficial co-incidence of interests amongst apparently antagonistic parties can be reached via relatively little or no state intervention. Thus, whether consciously or not, both consensual/cooperative models of regulation and neo-liberal approaches to regulation provide a closely coherent theoretical justification for currently dominant strategies of regulation. And, in these claims, the model coheres perfectly with the view of the world enshrined in the Robens philosophy and institutionalized in the UK system of safety regulation. In so far as common interest theory provides common ground between apparently disparate consensus/cooperative and neo-liberal perspectives, then, it remains the theoretical fulcrum of the dominant approach to business regulation in Western liberal democracies.

Put simply, self-regulation is necessarily vulnerable to regulatory degradation: if government withdraws from regulatory enforcement—making it less likely that workplaces will be inspected, less likely that inspections will result in enforcement, less likely the enforcement is of the more rather than less punitive type—and in the absence of countervailing power of trades union within and beyond workplaces, then regulation becomes increasingly reliant upon market-based mechanisms.

In the remainder of this paper, we consider the policies towards regulation and enforcement developed under recent, successive Labour governments and, in particular, focus upon how those governments have presided over a crucial period of consolidation for a 'burdens on business'/'anti-red tape' agenda. Through these initiatives has emerged a system of occupational safety regulation that relies increasingly upon market forces rather than the process of law enforcement as a form of regulatory control.

Revitalizing Market-Based Regulation

An early indication of New Labour's enthusiasm for market-based regulation came in 1997 when the position of the Conservative's flagship Deregulation Unit was consolidated under a new name, the 'Better Regulation Unit', with the Better Regulation Task Force established in the Cabinet Office. Regulatory impact assessments (RIAs) were introduced the following year. In 1999, the role of the Better Regulation Unit (renamed the Regulatory Impact Unit) was extended with a remit to ensure that RIAs were being implemented across government departments. RIAs aim to measure the costs and benefits of reforms on business, consumers, third-sector organizations and public authorities of all proposed policy and legislative reforms. Yet, they contain structural biases towards less rather than more regulation in at least two ways. First, their very rationale is the need to consider 'the impact of any new regulations, before introducing them, to ensure any regulatory burden they add is kept to a minimum';[8] second, their economic form is likely to produce a financial argument for less rather than more regulation, since the costs of meeting new regulatory requirements on the part of businesses are generally more calculable than are the economic or social benefits of such regulation (Cutler and James 1996). Thus, their emergence and inclusion at the heart of the government's burdens on business/anti-red tape agenda are a clear indication that a key function of RIAs in practice has been to pre-empt and minimize

[8] *Scrutinising New Regulations*, at www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/page44076.html.

legislative and regulatory cost impacts upon business by formalizing a business-sensitive cost–benefit analysis in the legislative process.

In terms of health and safety policy, a key shift towards market-based regulation came with the publication of *Revitalising Health and Safety* (Health and Safety Commission and Department of the Environment, Transport and the Regions 2000; henceforth *RHS*), a new regulatory strategy launched jointly by the government and the Health and Safety Commission (HSC) in June 2000, with 10-year targets for major reductions in injuries and ill health caused by work. It is clear from *RHS* that the overwhelming focus is upon developing partnership rather than enforcement, and is consistent with Robens-style common interest assumptions: *RHS* is based upon the idea that health and safety practice is best achieved by appealing to the good will of employers; only when this good will fails should law enforcement be considered.

Organized around 44 'Action Points', the strategy prioritizes the motivation of employers by explaining the benefits to industry of a good health and safety regime, while at the same time noting the need to 'legislate to make the punishment fit the crime' when 'health and safety standards are flagrantly ignored'. In other words, enforcement should only be brought into play after encouragement and education have failed. This approach has been famously characterized by Braithwaite in terms of the need for regulators to 'walk softly but carry a big stick'. The problem is that when this principle is applied in practice, compliance styles of regulation typically endorse walking softly; the carrying of big sticks is generally discouraged. This much is clear in the *RHS* strategy, which observes that 'while appropriate enforcement and deterrence is crucial, this must not be at the expense of promoting voluntary compliance and models of excellence. The government wishes to build on 25 years of successful partnership between employers, employees, trade unions and consumers'. What is important here is that although there is a recognition that enforcement of the law has a place in the regulatory system, it is set against its notional opposite: 'partnership'; and enforcement is conceptualized as something that might *compromise* 'partnership'. A partnership based upon 'education' and 'encouragement' is therefore positioned in opposition to law enforcement. In practice, compliance styles of regulation pose a choice between walking softly *or* carrying a big stick, with the latter featuring always as a resort of the very last option.

In effect, *RHS*, for all its talk of enforcement and the punishment fitting the crime, represented a significant shift closer to a market-based system of regulation. It was the first significant policy document to formally establish a 'risk-based' approach to health and safety—an approach that relied upon businesses themselves weighing up the costs and benefits of good health and safety management. This is essentially the effect of the 'ready reckoner' that is proposed as Action Point 1 in the document—a tool that is available online as a method of deriving actuarial calculations used in the insurance industry. In so far as this tool relies solely upon an economic methodology to achieve legal compliance (rather than a moral or legal case), it is based upon a technique of market-based regulation in the purest sense.

Other proposals for market-based regulation in *RHS* include: involving the insurance industry more closely in the work of the HSC (mechanisms that bring actuarial markets into play); a clients' charter to encourage contractors in the construction industry to improve working practices (linking safety improvements to economic competitiveness); the better education of workers, consumers and businesses in concepts of risk

management (reducing safety management to the way individuals are equipped to manage particular 'risks'); and the introduction of a new government grant scheme to encourage investment by small firms in health and safety management (using economic incentives directly to enhance compliance). *RHS* did include some proposals that cannot be simply considered as encouraging 'market-regulation', such as new proposals on enforcement (see below), training for safety representatives and a focus on the health and safety responsibilities of the public sector. But, taken together, the proposals in the Action Plan strongly emphasize market-based solutions and incentives to business, as opposed to strengthening the regulatory role of workers or state regulatory agencies.

Perhaps the greatest prospect of a shift towards more innovative use of enforcement is summed up in Action Points 7 and 8 of *RHS*. The former dealt with extending the application of prison sentences and the latter with new 'name and shame' provisions. Despite the apparent promise of those measures, it is significant that, on one hand, they constitute fairly minor and peripheral aspects of the strategy and, on the other, are hardly supported by clear political will. The latter point is confirmed by a subsequent review of regulatory penalties published in November 2006, *Regulatory Justice: Making Sanctions Effective* (McRory 2006), which, despite some of the punitive rhetoric that accompanied its commissioning and subsequent publication, was framed by the assumption that whilst 'Regulatory sanctions are an essential feature of a regulatory enforcement toolkit and are central to achieving compliance by signalling the threat of a punishment for firms that have offended . . . many regulators are heavily reliant on one tool, namely criminal prosecution, as the main sanction should industry or individuals be unwilling or unable to follow advice and comply with legal obligations .... The availability of other more flexible and risk based tools may result in achieving better regulatory outcomes' (McRory 2006: 3). The conclusion of the McRory report was the highly questionable assumption that regulators over-rely upon prosecution. Now, this simplification masks the complexities and differences that we find in different regulatory agencies (the McRory report considered 650 regulatory bodies within the scope of its review). Moreover, it is a simplification that, as we will see later in this paper, can hardly be applied without qualification to the Health and Safety Executive (Tombs and Whyte 2007; 2008).

Added to this, we find in McRory a regulatory defeatism that eshews any call for added resources for enforcement and prosecution. The likely result is therefore that the cheaper options offered by McRory will replace more costly forms of enforcement. For those reasons, the McRory report effectively supported measures that are, in the context of the wider Hampton Review, likely to further sideline the role of court prosecutions. Thus, this review proposed a new system of pre-court orders ('Statutory Notices') aimed at diverting cases from prosecution and a new system of on-the-spot fixed fines ('Monetary Administrative Penalties') in addition to providing the courts with new sentencing options ('Corporate Rehabilitation Orders' and 'Publicity Orders'). The latter proposals may yet prove to be significant, but the likely effect is that they will shift the courts further towards relying upon market mechanisms. Those publicity orders rely upon a secondary impact: namely that shaming provisions provoke a market reaction that causes the company to suffer commercially as a result of bad publicity.

In sum, then, the concept of risk established in *RHS* provides support to a system of market-based regulation or self-regulation in which compliance is secured as a result of appeals to good business sense. The consolidation of market/risk-based approaches to

regulation in the Hampton/McRory reviews has certainly occurred at the expense of 'strict enforcement' and prosecution.

The 'Burdens on Business' Agenda

This general shift away from enforcement has undoubtedly had a profound impact on the work of the Health and Safety Executive for some time. Thus, for example, the growth in activity on stress at work is almost entirely focused upon promoting awareness and educating employers, as opposed to developing enforcement mechanisms or tightening up law in this area. This approach was secured by the business lobby's successful prevention of legal reform on workplace stress early in the first Labour term of office (*Hazards*, 63, July–September 1998). A similar focus on education in other HSE priorities such as the Musculoskeletal and Disease Reduction Programmes has consistently emphasized advice and education rather than enforcement.

But it was not until Labour's second period of office that the extent of New Labour's long-term plans for a reconstructed system of business regulation became fully apparent.[9] The crucial moment came in March 2004, when the Treasury, under Gordon Brown, established the Hampton Review, to 'consider the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement without reducing regulatory outcomes' (Hampton 2005). The report—published a year later and tellingly entitled *Reducing Administrative Burdens: Effective Inspection and Enforcement*—called for more focused inspections, greater emphasis on advice and education and, in general, for removing the 'burden' of inspection from most premises. Specifically, Hampton called for the reduction of inspections by up to a third—across all regulatory agencies, this would equate to one million fewer inspections—and instead recommended that regulators make much more 'use of advice' to business. The basis of the Hampton Agenda was thereby laid—an agenda based upon the use of pseudo-scientific, risk-based claims to withdraw regulatory scrutiny from those that, in the terms used in the Hampton report, had 'earned' their 'autonomy'. This agenda itself was based upon a series of underlying commitments: that most businesses are law-abiding, likely to comply when faced with a combination of persuasion and market incentives, and that only the minority of recalcitrant businesses need to be monitored via inspection regimes. Such assumptions regarding business offending and offenders enable the Hampton report to endorse enthusiastically twin-track regulation, whereby regulatory interventions are 'targeted at the worst offenders'.

Then, in March 2005, the Cabinet Office's Better Regulation Task Force published its review of regulation, *Less Is More: Reducing Burdens, Improving Outcomes* (2005). This document proposed a crude mechanism for controlling the regulatory 'burden': a 'one in, one out' approach to regulation, whereby all new regulations were to be accompanied by the withdrawal of existing regulations.

The recommendations of these reports came together in the Legislative and Regulatory Reform Act, which passed into law in November 2006. The aim of the law is to 'enable delivery of swift and efficient regulatory reform to cut red tape' (Cabinet Office 2006). The Act itself therefore is framed by 'burdens on business' rhetoric—a rhetoric that

[9]For example, in November 2003, the government finally abandoned its long-proposed and much trumpeted 'Safety Bill' (*Hazards*, 89, January–March 2005).

juxtaposes economic health and success as a counter-balance to over-bearing investigation and enforcement.

The Hampton reforms have at their heart a very carefully constructed rationale that defines regulation first and foremost in terms of its *economic* burden on business. Thus, s. 1 of the Act creates a remarkable new power for a Minister of the Crown to make an order that removes from government a 'regulatory burden', defined in the Act as a 'financial cost', an 'administrative inconvenience' or 'an obstacle to efficiency, productivity or profitability'. There is a very unashamed and open honesty about the language being used here; we now find in legislation and in policy a very open admission that there is a direct relationship between the shift towards self-regulation and a neo-liberal profit-maximizing agenda.

The explicit economic rationale at the heart of the Hampton reforms reached their high point in the new *Regulators Compliance Code*,[10] published in December 2007, by the newly formed Department for Business, Enterprise and Regulatory Reform, the creation of this tellingly named Department being one of Gordon Brown's first initiatives when he finally made it to Number 10 in the summer of 2007. This Regulatory Code was introduced to address how 'the few businesses' (Para. 8) that break the law should be handled. In general, regulators, including the HSE, were advised: 'By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions' (Para. 8); they 'should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, including lighter inspections and less onerous reporting requirements' (Para. 8.1); they should also 'take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance' (Para. 8.1). If the rationale for these new realities of regulation was not clear enough, the document formalized the emerging conflict of interest for regulatory bodies when it emphasized that '[r]egulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection' (Para. 3). Thus, the Hampton Review and the reforms that followed have extended the scope and reach of the burdens on business agenda directly into the day-to-day work of inspectors, further marginalizing the enforcement role of the HSE and giving renewed momentum to New Labour's pro-business trajectory.

The harmony of voices across business and government in the post-Hampton climate is remarkable. The triumphalist declaration of the Legislative and Regulatory Reform Act's aim to 'cut the burden of regulation and embed a light-touch, risk-based approach to regulation . . . to improve our status as one of the world's most attractive places to do business . . .' came not from the Institute of Directors (IoD) or the Confederation of British Industry (CBI), but from Cabinet Office Minister Jim Murphy (Cabinet Office 2006). If government has promoted the Hampton Agenda with spurious references to global competitiveness, the IoD and the CBI had very specific targets in their sites. John Cridland, CBI Deputy Director-General, championed the Hampton Agenda because it 'seeks to bring about a lasting culture change in officials' attitudes to risk and regulation, which is the real prize for business' (Cabinet Office 2006). James Walsh, Head of Regulation at the IoD, welcomed government measures to 'slash costly over-regulation

[10] See www.berr.gov.uk/files/file45019.pdf.

. . . provided it is accompanied by the necessary culture change across Whitehall' (Cabinet Office 2006).

Dangerous Times for Safety

Aside from receiving praise in the business world, perhaps the key effect of the 'burdens on business' agenda as it has gained momentum through this past decade has been to precipitate a major shift in the work of HSE. For example, in March 2004, a HSC internal document noted tellingly that 'there has been deregulatory pressure from within government to reduce burdens on business . . . HSE has responded positively'.[11] And, in July 2005, the HSC launched its own review of regulation under the rubric of 'a debate on the causes of risk aversion in health and safety'; in its draft 'simplification' plans, published four months later, it outlined its strategy to follow to the letter the Hampton recommendations. In this document, HSC promised a 'risk-based, targeted approach to enforcement' that was to be supported by a 33 per cent reduction in inspections (HSC/E 2005).

Prior to the emergence of the Hampton agenda—and long before the pressure on public sector resources brought on by government corporate welfare policies and bank bail-outs—HSE had begun to experience intense pressure on staffing numbers.[12] This pressure can be pinpointed to the beginning of the second Blair government. In each of the years following 2001–02, the HSE began to face real-terms cuts in funding from the government's grant-in-aid budget (see Figure 1).[13] At its peak, in 1994, the number of HSE staff in post was 4,545. Since that time, numbers have fluctuated, but there has been a clear decline in the total number of staff employed by HSE since 2001–02. On 1 April 2002, there were 4,282 staff in post and on 1 April 2008, there were 3,753 staff in post (a reduction of 12 per cent in the past six years).[14] There were 1,508 frontline operational inspectors on 1 April 2003. By 1 April 2008, HSE had 1,333[15] frontline operational inspectors (a 12 per cent reduction in the past five years). To put this figure into perspective, the number of frontline HSE inspectors equates to less than 9 per cent of the number of new police community support officers that the government set aside funding for between 2004 and 2008.

The steady erosion of HSE resources has certainly had an impact on the morale of the organization and its confidence to lobby government for the resources it needs. One indication of this lack of confidence is that the HSE has in recent years refrained from making any budgetary demands upon government, with the most senior HSE figures

[11] Health and Safety Commission (2004) '*Becoming a Modern Regulator*', unpublished memo, March 2004, cited in *Hazards*, 91, August 2005, www.hazards.org/commissionimpossible/protectionracket.htm.

[12] The same trend can also probably be identified in local authority enforcement teams, though the lack of published figures providing evidence of such trends makes it difficult to say this conclusively.

[13] See HSE data supplied to the CCA, www.corporateaccountability.org/HSE/resources/table97to06.html.

[14] One hundred and eighty staff were transferred from HSE to the new rail regulator, ORR, on 1 April 2006 (HSC 2006–07). The transfer of responsibilities from the HSE to the Pesticides Safety Division on 1 April 2008 involved the transfer of 174 staff (HSC Health and Safety Commission Annual Report & Health and Safety Commission/Executive Accounts 2007/08). We have included 354 'lost' staff in this figure to allow longitudinal comparisons.

[15] Ninety-five inspectors were transferred from HSE to the new rail regulator, ORR, on 1 April 2006 (*Hansard*, 15 January 2007, col. 888W). The transfer of responsibilities from the HSE to the Pesticides Safety Division on 1 April 2008 has no effect on this figure (HSC Health and Safety Commission Annual Report & Health and Safety Commission/Executive Accounts 2007/08). We have included 95 'lost' inspectors in our calculations to allow for comparisons to be made across time.

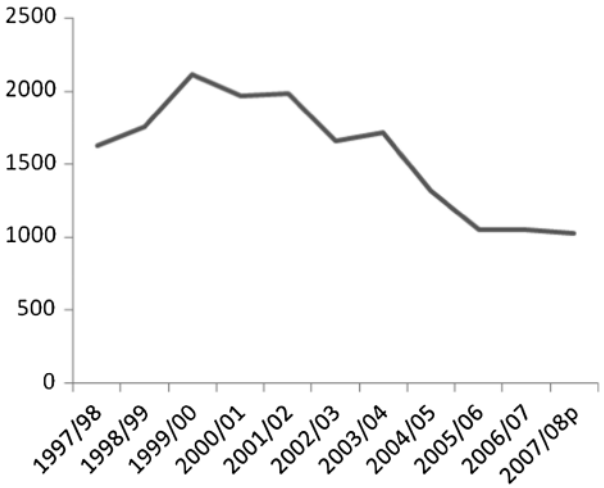

FIG. 1 HSE prosecutions[19]

prepared to assert that no extra resources are needed to 'do the job'.[16] It is both a measure of its own demoralization and confirmation by the HSE's own assessment (no matter how misguided) that to argue for increased resources from the current government is futile. It is hardly a view shared by Prospect, the union that represents frontline inspectors. Back in 2004, Prospect recommended to the Department for Work and Pensions Select Committee that the numbers of field inspectors should be doubled—a proposal that the Committee endorsed;[17] thus, last year, Prospect claimed that the HSE 'cannot meet its public expectations to advise, inspect and enforce workplace health and safety'.[18]

The position adopted by senior management at the HSE appears even more remarkable in the context of wider debates on police funding. It is difficult to imagine any senior police officer in any police force area in the country relinquishing a claim to more officers or a larger budget—despite the fact that numbers of police officers are at an all-time high. Indeed, a plea for greater resources is almost a *sine qua non* of organizations.

Such a combination of political and resource pressures is likely to have a measurable impact upon the work of the HSE. However, we need not conceive of these effects working mechanistically, since to do so is both simplistic whilst also undermining the integrity and efforts of men and women on the ground who work within the organization. Rather, such pressures create a series of new realities within which regulators have to operate and which, in a sense, have to be translated into a way of doing what they are charged with doing.

[16] See, e.g. the exchange between Geoffrey Podger, HSE chief executive, and Michael Jabez Foster, MP, at a sitting of the Department for Work and Pensions Select Committee, in May 2006, cited in CCA (2007).

[17] House of Commons, Work and Pensions Committee, 2004, recommendation 9.

[18] Mike Macdonald, negotiations officer with Prospect, cited at www.hazards.org/enforcement/whodoeshseprotect.htm.

[19] Source: HSE published enforcement statistics, available at www.hse.gov.uk/statistics/enforce/index.htm, downloaded 17 February 2009; 2007/08 figures are provisional.

Insight here is provided by the work of a key compliance theorist, Keith Hawkins. In a typically rich ethnography, based upon extensive access to HSE, Hawkins (2002) has examined prosecutorial decision making in HSE, placing such decisions into 'their broad environment and particular contexts' (Hawkins 2002: 47). His analysis is revealing beyond this specific key regulatory moment of deciding whether or not prosecute, the latter being simply the moment where we find in sharpest focus the decision-making processes, and their contexts, within which regulators operate. For Hawkins, these contexts are understood through the concepts of 'surrounds', 'fields' and 'frames', where: 'surround' refers to the broad economic, political and social settings within which organizations, including legal organizations, do their work—and, here, the vulnerability of the HSE to changes in this broader surround is noted (Hawkins 2002: 48–9); an organizational 'field'—ideas as to how the organization should pursue its ends—ranges from the formal (the organizational mandate, internal policy documents) to the informal (assumptions and expectations of staff at various levels); and 'frame' helps to describe how features in a particular problem or case are understood, placed and accorded relevance—frames are, according to Hawkins, 'reflexive in the sense that they both constitute "reality" and selectively identify the facts that sustain a social reality' (Hawkins 2002: 53). Through these concepts and their interaction, Hawkins seeks to understand regulatory decision making in a way that integrates micro-level interactions, the construction and maintenance of meso-level organizational realities and a macro-level political economy.

The period in which Hawkins undertook his work, and that covered by this paper also—that is, prior to the recent economic collapse and a generalized questioning of business activities—was one in which business interests—by definition, sectional interests—were widely represented as 'general' or 'national' interests (Whyte 2007*b*). This high point in the 'moral capital of capital' (Tombs 2007) and its deepening significance across all aspects of economic, political and social life must, utilizing Hawkins' own concepts and analyses, have impinged significantly upon inspectors' decisions to prosecute or not: '. . . [t]he inspector is by no means immune to the broader political and economic pressures and constraints affecting regulatory agencies, even though they may not be taken up as a matter of agency policy. The former forces exist in a consciousness of broad climates of opinion about regulation and punishment or public expectation . . .' (Tombs 2007: 308). Yet, if these aspects of wider political economy are virtually ignored by Hawkins (save for cursory discussion, see Tombs 2007: 117–19), it is precisely such meso and macro-level factors that are the focus of this paper and which, in our view, are central to understanding the nature, level and outcomes of regulation. If, then, as in previous work, Hawkins remains within his naturalistic paradigm (and thus ends up re-presenting the world he should be describing and analysing as a social scientists almost exclusively through the views and practices of its central participants, namely regulators), it is possible to utilize elements of his analytical framework without ending up in a simplistic validation of what even then were highly conservative, if understandable, prosecutorial practices:

> . . . [t]he nature of the work is characterized by a constant preoccupation with practical solutions to immediate and concrete problems. Inspectors are involved in face-to-face encounters with those whom they regulate; they have to deal with particular problems and precise issues, and compliance itself (or at least what an inspector may decide as an acceptable degree and kind of compliance) usually demands the expenditure of time and money. This leads to compliance acquiring a negotiated character. (Tombs 2007: 198)

The combination of individually negotiated solutions to a series of very pressing problems within an altered, and increasingly restrictive, set of political realities is likely to have very real effects. And, indeed, political and resource pressures *are* having a measurable impact upon the work of the HSE as a whole. Figures released recently following a Freedom of Information request to the HSE by *Hazards Magazine* show how, in the Field Operations Directorate, the largest division of the HSE, there was a 26 per cent fall in inspections and a 19 per cent fall in regulatory contacts between 2002–03 and 2004–05. More recent research reveals a yet more dramatic collapse in regulatory activity over a longer period of time. This research shows that investigations of major injuries fell by 43 per cent between 2001/02 and 2006/07. In 2006/07, HSE investigated only a third of the number of over three-day injuries they investigated in 2001/02 and only a quarter of major injuries to members of the public that they investigated in 2001/02 (UNITE/CCA 2008).

It is clear, then, that in the early 2000s, the HSE found itself under pressure as a result of the government's burdens on business agenda. This culminated not only in the shift away from inspection and investigation, but in wholesale cuts in resources that have resulted in substantial reductions in staffing levels. This is the political context within which we can appreciate the reduction in inspections and changes in the form of regulatory intervention—features of the regulatory climate that the next section of the paper addresses in more detail.

The New Realities of Regulatory Enforcement

There is no claim being made here that an exact causal relationship between the fluctuations in enforcement policy and particular political decisions or events can be projected. However, conclusions can be drawn from the general patterns that can be observed across enforcement data; and these are patterns only explicable in the context of the unfolding political strategy outlined above. We have already noted that there are clear signs of a general decrease in HSE resources and frontline inspector numbers in particular around 2002–03, as well as a downturn in inspection and particular forms of regulatory activity since 2002–03. Figure 1 indicates two clearly differentiated periods of decline in prosecution, following an initial rise in the period after the election of the first Labour government. The first occurred roughly between 1999–2000 and 2003–04 (a 16 per cent fall) and the second was a sharper decline between 2003–04 and 2005–06 (a 38 per cent fall).

The data on enforcement notices, indicated by Figure 2, appear to tell a slightly different story. The steady rise in the number of notices reaches a peak in 2002–03 and then begins to fall back to a point roughly around 1996–97 levels. We can therefore make an interesting observation about the data that have been examined so far: that while enforcement notices are at roughly the same levels as they were when Labour came to power, prosecutions have collapsed. Indeed, between the high point in 1999/00 and 2007/08, HSE prosecutions have halved. Trends in enforcement notices are rather more volatile.

Trends in enforcement notices rise by 33 per cent between 1997/98 and 2002/03, before exhibiting a steep decline of 42 per cent between 2002/03 and 2007/08. Prosecution rates in the same period exhibit a slight rise between 1997/98 and 2002/03, before exhibiting a comparable decline (of 38 per cent) between 2002/03 and 2007/08.

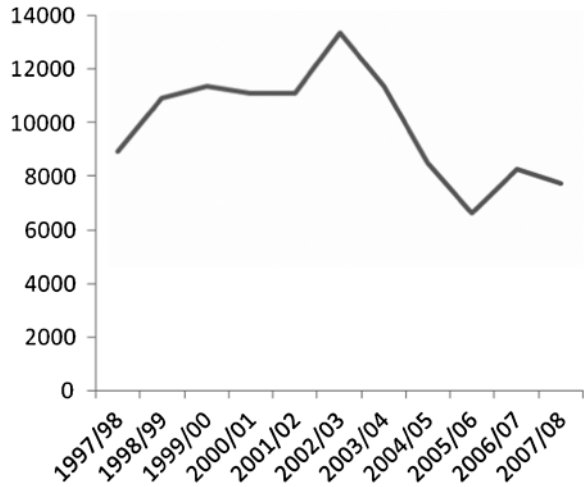

FIG. 2 HSE enforcement notices[20]

We can surmise, then, that all forms of enforcement action began a collapse at the beginning of New Labour's second period in office, just as the burdens on business agenda were coming to fruition.

If we contrast the different patterns revealed by trends in improvement notices and prohibition notices, we can discern a slight difference between those forms of enforcement action. There appears to have been a sharp increase in the use of improvement notices from the beginning of the first Labour government to the beginning of the second (an increase of 46 per cent between 1997/98 and 2002/03). The use of prohibition notices does not exhibit the same steep rise in 1997/98, but remains constant for five years or so. There follows a slight rise from 2001/02, and then a four-year decline, before the trend appears to stabilize at a relatively low rate in the past couple of years. The data on prohibition notices reveal it to be a more stable form of enforcement action than prosecutions or improvement notices, albeit one that has declined substantially since 1997/08.

Improvement notices, despite appearing to be the most volatile form of enforcement action, have actually risen by 2 per cent since 1997/98. This compares to a 29 per cent decline in prohibition notices and a 37 per cent decline in prosecutions in the same period.

The slowing of the rate of prohibition notices issued, as shown in Figure 3, may therefore indicate a tendency to use such notices (even in a less enforcement-minded context) in place of prosecutions. A frontline HSE inspector in personal correspondence brought our attention to this tendency. This inspector, unsurprised by findings reported in an earlier paper (Tombs and Whyte 2008: 10), noted that, in the current period, 'being a good thief taker counts for nothing' (Tombs and Whyte 2008). That is, where pressure on resources is intensifying, and where there is a political mood against the use of prosecutions, it may be increasingly difficult for frontline inspectors to justify the reasons for, and the costs entailed in, taking a prosecution. Rather less resource-intensive,

[20] Source: *ibid.*

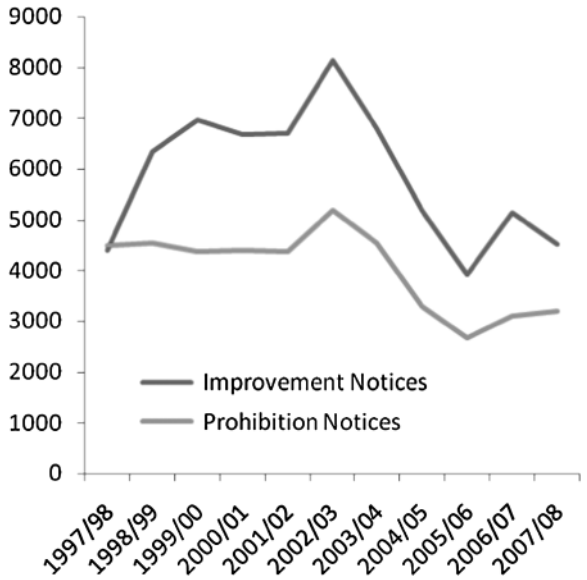

FIG. 3 HSE prohibition and improvement notices[21]

and less politically difficult, is the option of a prohibition notice rather than a prosecution. This would account for the decline in prohibition notices being less marked than that for prosecutions.

Somewhat differently, trends in the period under scrutiny suggest that improvement notices have been a more durable enforcement option in comparison to both prosecutions and prohibition notices. This may well reflect the dominant assumptions underpinning pluralist/consensus approaches to securing compliance: because improvement notices do not impose an immediate cessation of work, unlike prohibition notices, nor are they likely to lead to criminal prosecution, these offer a more conciliatory and less antagonistic option for HSE inspectors when uncovering breaches or potential breaches of the law—a more consensual than adversarial option. Indeed, improvement notices, because they provide an opportunity to remedy the breach before more punitive action is taken, provide duty holders with an opportunity to show inspectors their willingness and preparedness to self-regulate (even though their preparedness in this respect may have been tarnished by the breach in the first place!). Improvement notices therefore constitute the type of enforcement option that is more consistent with the Hampton agenda. But, these points being made, we find that improvement notices—the most commonly used formal enforcement response by inspectors—have, if we return briefly to Figure 3, fallen by 44 per cent between 2002/03 and 2007/08. In comparative terms, improvement notices have fallen more steeply than prosecutions or prohibition notices in this period.

When considered together with the prosecution data, these figures indicate that improvement notices—a more discretionary form of enforcement action than prohibition notices—have been equally vulnerable to New Labour's burdens on business

[21] Source: *ibid.*

policies. What this indicates is that the current political climate has undermined both prosecution *and* less adversarial forms of enforcement at the same time. This is significant, since it provides evidence that compliance approaches, rather than simply under-writing discretionary enforcement decisions, are more likely to lead directly to a regulatory degradation in which expediency, or the political and/or resource consequences of enforcement decisions, is the key influence upon regulatory decision making. A climate that has undermined the social and moral credibility of enforcement has produced a process of regulatory degradation in which there has been a collapse in prosecutions *and* in the use of more discretionary, 'light touch' responses to safety crimes.

Conclusions and Discussion

Seeking to 'advance the debate concerning the most appropriate forms of OHS regulation for the twenty-first century', Gunningham and Johnstone (1999: 11) have noted that although there is little evidence that the elements of self-regulation strategies actually *work*, then the same could be said for more punitive-based strategies. But, this conclusion is a difficult one to sustain, since experiments in more punitive approaches are rarely, if ever, proposed and, if they are, are not adopted by policy makers. More fundamentally, one might turn Gunningham and Johnstone's point around—rather than there being of a lack of knowledge regarding the *success* of forms of self-regulation, the continual toll of workplace death, injury and disease clearly indicates their consistent *failure*, given that self-regulation as a broad term encompasses dominant regulatory approaches across a whole swathe of states, notably Australia, North America and the United Kingdom.

Indeed, we might describe this approach as reckless and highly risky in itself given that lighter-touch regulation is likely to impact profoundly not only on patterns of compliance, but on the ability of regulators to *know* whether compliance is indeed being secured or not—such knowledge being central to the 'risk-based' decision-making process that allows companies to earn autonomy, and thus exemption from external intervention: put simply, how are regulators to know about company performance if the latter are left to self-regulate, and thus able to distort or withhold evidence of non-compliance/poor performance from regulators? Thus, there is a great deal in these arguments that needs to be taken on trust. We do not deny value in thinking seriously about developing 'risk' factors per se, since, clearly, there are indicators that can indicate the likelihood of offending—for example, worker participation and active trade union membership are consistently linked to good health and safety performance. But, in the current climate, risk-based approaches have been translated as market-based approaches, which, in effect, has meant a shift further towards self-regulation and wholesale regulatory disengagement from large numbers of firms. Because all regulators have to do is allocate resources to investigating the worst offenders, the assumption is that other forms of 'reflexive' and 'voluntarist' market-based regulation will do the job of regulating the 'good corporate citizen'.

HSE, then, has at best failed to resist the imposition of a twin-track regulatory agenda, with its emphasis upon targeting the worst performers, and the wider context of deregulation within which this has circulated. Its acquiescence to the Hampton agenda has never been in question. In March 2004, a HSC internal document noted that 'there has been deregulatory pressure from within government to reduce burdens on business . . . HSE has responded positively' (Hazards 2004).

Through such positions, HSE is unwittingly exposing at best the vulnerabilities, at worst the contradictions, that lay at the heart of a Robens model of self-regulation, based upon a compliance-seeking enforcement style. HSE's conceding to policies of neo-liberalism, as well as key tenets of its ideology, such as any external regulation constituting a burden, has so ideologically and materially undermined its enforcement capacity that it is now, we would submit and have argued at length elsewhere (Tombs and Whyte 2007; 2008), unable to fulfil what it is tasked to do and maintain a credible threat of enforcement. In this context, then, the enthusiastic embracing of a targeted enforcement policy, legitimated by risk-talk, which conjures of claims to scientificity (Tombs and Whyte 2006), is in fact a necessary pragmatism—*for it is the only legitimate post-Hampton discourse which will allow the HSE to represent itself as fit for purpose*. Yet, what it means in effect is that the vast majority of workers in the vast majority of workplaces are subject to a form of regulation that has been degraded by the market. Self-regulation merges with compliance-oriented enforcement merges with neo-liberalism.

The consequences of this process could hardly be clearer. It is certainly no exaggeration to describe the trends alluded to in this paper as a *collapse* of enforcement. Investigations and inspections have fallen at an unprecedented rate as political and resource pressures have taken their toll on the day-to-day work of the inspectorate: the percentage falls in enforcement activities, already from low absolute levels, can hardly be described as anything other than a collapse. The extent of this decline would simply not be sustainable in most other areas of law enforcement—imagine the efforts of a Chief Constable, for example, to defend declines in investigations of violent interpersonal assault, or falls in prosecutions of apprehended burglars, where these certainly would be represented as collapses in enforcement, which, no doubt, would prove cause a political furore.

By contrast, it remains to be stated that the trends described in this paper have generated no political or popular outcry. Indeed, one function of the collapse in enforcement is that safety crimes may be subject to a process of decriminalization that renders them less visible in the public eye. But, if the collapse in enforcement has failed to attract any meaningful *public* attention, it *is* noticed by some: for it is sending a clear, calculated message to corporate criminals that, under Labour, they will be even freer to kill and injure with impunity. This does not mean that the trends described in this paper will see more workers killed or injured. Increased harm *may* indeed be a product of such trends, yet one would need a longer-term analysis in order to consider this, and, in any case, occupational injury data, even fatality data (Tombs 1999), are so flawed that it is virtually useless for any such analysis. But, there can be no doubt that the trends we are describing here are trends that institutionalize *impunity* in the sense that inflicting death and injury is less and less likely to result in investigation, or provoke any form of enforcement response, let alone prosecution—even in comparison to previously very low levels.

Nor, to return to where this paper began, could the messages herein be rolled out at a more difficult time. For, in the midst of recession, public and political attention focuses more on the need to keep people in work, less on the conditions of that work. As employers cut back on basic maintenance, training, replacement of hardware and software, and as work is intensified in general, it is little wonder that recessions kill and injure, as our recent experience testifies: between 1981 and 1985, for example, fatal and major injury rates increased across British manufacturing by 31 per cent and in construction by 45 per cent (Tombs 1990). And these effects were felt at a time when, arguably, the other key partner

in the formal tripartite nature of the Robens regulatory structure, organized labour, were better laved to resist attacks on safety protection than is the case now (Tombs 1996), thus rendering the contemporary role of external enforcement even more significant. Meanwhile, a response of governments increasingly cash-strapped after unprecedented levels of corporate welfare is likely to be two-fold: first, as with all public sector funding, to further restrict resources for enforcement activities; and, second, to further undermine enforcement per se, seek as 'burdens' are removed from the entrepreneurial activity upon which all bets for economic recovery are placed. This pincer movement upon a system of safety regulation already in disrepair will undoubtedly produce further death, injury and misery for working men and women and members of the public.

Yet, in these times, there is much for workers' movements to struggle *for* as well as *against*. The financial crisis has perhaps fatally undermined the legitimacy of the neo-liberal regulatory settlement. Whilst, clearly, the financial climate is set to weaken workers' organizations, to place economic pressures upon the trade union movement, and—through rising unemployment and downward wage pressures—is likely to heighten the disciplinary power of the state over workers, capitalist states are also at their most vulnerable.

Space has therefore been opened up for a challenge to the state on all fronts: for those who would further erode the administrative apparatuses of the state and open yet more public services to privatization; for those who see the public sector as the necessary victim of the corporate welfare that has come in the form of bank bail-outs; and for those who see state vulnerability as an opportunity for a political challenge to neo-liberalism. If we follow the argument developed in this paper to its logical conclusion, the challenge to neo-liberalism must also contain a challenge to (consensus/cooperative) pluralism. The financial crisis may provide us with more opportunities than before to mount a challenge to the suicidal self-regulatory policies of the past, but such a challenge will count for little if it is not a challenge that recognizes that people are killed at work as a result of an antagonistic relationship that cannot be resolved by 'partnerships', negotiation or cooperation.

References

Almond, P. (2007), 'Regulation Crisis: Evaluating the Potential Legitimizing Effects of "Corporate Manslaughter" Cases', *Law & Policy*, 29: 285–310.

——— (2009), 'Understanding the Seriousness of Corporate Crime: Some L for the "Corporate Manslaughter" Reform Project', *Criminology and Criminal Justice*, PAGES.

Ayres, I. and Braithwaite, J. (1992), *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: Oxford University Press.

Better Regulation Task Force (2005), *Regulation—Less Is More: Reducing Burdens, Improving Outcomes*. London: Cabinet Office.

Black, J. (2002), *Critical Reflections on Regulation*, Discussion Paper 4. London: London School of Economics and Political Science.

Braithwaite, J. (1987), 'An Enforcement Taxonomy of Regulatory Agencies', *Law and Policy*, 9: 323–51.

——— (2000), *Regulation, Crime, Freedom*. Aldershot: Ashgate.

Cabinet Office (2006), *New Bill to Enable Delivery of Swift and Efficient Regulatory Reform to Cut Red Tape—Jim Murphy*, Cabinet Office News Release, 12 January 2006. London: Cabinet Office Press Office, www.egovmonitor.com/node/4164.

Cutler, T. and James, P. (1996), 'Does Safety Pay? A Critical Account of the Health and Safety Executive Document: "The Costs of Accidents"', *Work, Employment & Society*, 10: 755–65.

Dalton, A. (2000), *Consensus Kills: Health and Safety Tripartism: Hazard to Workers' Health*. London: AJP Dalton.

Davis, C. (2004), *Making Companies Safe: What Works?* London: Centre for Corporate Accountability.

Gray, G. (2006), 'The Regulation of Corporate Violations: Punishment, Compliance, and the Blurring of Responsibility', *British Journal of Criminology*, 46: 875–92.

Gunningham, N. and Johnstone, R. (1999), *Regulating Workplace Safety: Systems and Sanctions*. Oxford: Oxford University Press.

Hampton, P. (2005), *Reducing Administrative Burdens: Effective Inspection and Enforcement*. London: HM Treasury/HMSO.

Hawkins, K. (1990), 'Compliance Strategy, Prosecution Policy and Aunt Sally: A Comment on Pearce and Tombs', *British Journal of Criminology*, 30: 444–66.

——— (1991), 'Enforcing Regulation: More of the Same from Pearce and Tombs', *British Journal of Criminology*, 31: 427–30.

——— (2002), *Law as a Last Resort: Prosecution Decision Making in a Regulatory Authority*. Oxford: Oxford University Press.

Hazards (2004), *Making Safety Dangerous Again*, 88, October–December, www.hazards.org/commissionimpossible/nov04.htm.

Health and Safety Commission and Department of the Environment, Transport and the Regions (2000), *Revitalising Health and Safety Strategy Statement*. Wetherby: Department of the Environment, Transport and the Regions.

Health and Safety Commission/Heath and Safety Executive (2005), *Initial Simplification Plan (Draft)*, available online at www.hse.gov.uk/consult/condocs/simplification.htm.

Home Office (2006), *Corporate Manslaughter and Corporate Homicide: A Regulatory Impact Assessment of the Government's Bill*. London: Home Office.

Hopkins, A. (1994), 'Compliance with What? The Fundamental Regulatory Question', *British Journal of Criminology*, 34: 431–43.

Hutter, B. (1997), *Compliance, Regulation and Environment*. Oxford: Clarendon Press.

——— (2005), *The Attractions of Risk-Based Regulation: Accounting for the Emergence of Risk Ideas in Regulation*, Discussion Paper 33. London: London School of Economics and Political Science.

——— (2006), *The Role of Non-State Actors in Regulation*, Discussion Paper 37. London: London School of Economics and Political Science.

Hutter, B. and Jones, C. (2006), *Business Risk Management Practices: The Influence of State Regulatory Agencies and Non-State Sources*, Discussion Paper 41. London: London School of Economics and Political Science.

Johnstone, R. (1999), 'Putting the Regulated Back into Regulation', *Journal of Law and Society*, 26: 378–90.

McRory, R. (2006), *Regulatory Justice: Making Sanctions Effective*. London: Cabinet Office.

Pearce, F. (1976), *Crimes of the Powerful: Marxism, Crime and Deviance*. London: Pluto.

Pearce, F. and Tombs, S. (1990), 'Ideology, Hegemony and Empiricism: Compliance Theories of Regulation', *British Journal of Criminology*, 30: 423–43.

——— (1991), 'Policing Corporate "Skid Rows": A Reply to Keith Hawkins', *British Journal of Criminology*, 31: 415–26.

——— (1997), 'Hazards, Law and Class: Contextualising the Regulation of Corporate Crime', *Social & Legal Studies*, 6: 107–36.

——— (1998), *Toxic Capitalism: Corporate Crime in the Chemical Industry*. Aldershot: Ashgate.

Robens, Lord (1972), *Safety and Health at Work, Report of the Committee 1970–72,* Cmnd 5034. London: HMSO.

Snider, L. (1990), 'Co-operative Models and Corporate Crime: Panacea or Cop-out', *Crime & Delinquency*, 36: 373–90.

Sparrow, M. (1994), *Imposing Duties: Government's Changing Approach to Compliance*. Westport, CT: Praeger.

Tombs, S. (1990), 'Industrial Injuries in British Manufacturing', *Sociological Review*, 38: 324–43.

——— (1996), 'Injury, Death and the Deregulation Fetish: The Politics of Occupational Safety Regulation in UK Manufacturing', *International Journal of Health Services*, 26: 327–47.

——— (1999), 'Death and Work in Britain', *Sociological Review*, 47: 345–67.

——— (2007), 'Globalisation, Neoliberalism and the Trajectories of Public Policy: Closing (and Reopening?) Political Possibilities', *International Journal Management Concepts and Philosophy*, 2: 299–316.

Tombs, S. and Whyte, D. (2003), 'Two Steps Forward, One Step Back: Towards Corporate Accountability for Workplace Deaths?', *Policy and Practice in Health and Safety*, 1: 9–30.

——— (2006), 'Work and Risk', in G. Mythen and S. Walklate, eds, *Beyond the Risk Society*. London: McGraw Hill.

——— (2007), *Safety Crimes*. Cullompton, Devon: Willan.

——— (2008), *The Crisis in Enforcement: The Decriminalisation of Death and Injury at Work*. London: Crime and Society Foundation.

Tucker, E. (1995), 'And Defeat Goes On: An Assessment of Third Wave Health and Safety Regulation', in F. Pearce and L. Snider, eds, *Corporate Crime: Contemporary Debates*, 245–67. Toronto: University of Toronto Press.

UNITE/CCA (2008), *Lack of Investigation 2001/2007*. London: UNITE, www.corporateaccountability.org/dl/HSE/investig/unite.pdf.

Whyte, D. (2004), 'Regulation and Corporate Crime', in J. Muncie and D. Wilson, eds, *Student Handbook of Criminal Justice and Criminology*. London: Cavendish.

——— (2007a), 'Victims of Corporate Crime', in S. Walklate, ed., *A Handbook of Victimology*. Cullompton, Devon: Willan.

——— (2007b), 'Market Patriotism and the War on Terror', *Social Justice*, 35: 110–31.