PRESENTATIONS IN PLENARY

Regulating Business 'After' the Crisis: some observations from the UK

Steve Tombs
The Open University, United Kingdom

Introduction: Regulation as Social Protection

Regulation is 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 to provide some levels of 'social protection' for citizens, consumers and communities from the worst excesses of the industrial revolution. Thus, from the 1830s onwards, a rapidly industrialising Britain became the site of the earliest forms of social protection, won through inter- and intra-class conflict and compromise. The regulatory agencies formed in Victorian Britain formed the basis of regulatory regimes through to the present day. In outline, we can trace key dates in the emergence of the social protection state in Britain relatively clearly:

- In 1802, the Health and Morals of Apprentices Act was designed specifically to regulate the working conditions of 'Poor Law' apprentices in the textile industry. Then, from 1831 onwards, a series of Factories Acts were passed – regulating the hours and conditions of young workers and women, extending across industries and workplaces of different sizes, until the consolidation of existing legislation in the Factory Act of 1878.
- In 1842, Chadwick's Government-commissioned report into sanitation – *The SanitaryConditions of the Labouring Population* - was published. It directly linked living and working conditions with illness and disease. Chadwick's report was implemented via the Public Health Act of 1848, and was to prove "a powerful catalyst for the development of local government". (Fee and Brown, 2005: 887)
- 1863 saw the first thoroughgoing attempts to install and enforce environmental protection regulation, through the Alkali Act of 1863 (and, subsequently, of 1874, 1881, and 1892).

- In 1875, the passage of the Sale of Food and Drugs Act, to be enforced through the Local Government Board, was the culmination of the struggles of social movements for pure food, drugs and drink.

In sum, this was a key period in the emergence of key pillars of social protection, at least in the context of public health. (Tombs, 2016a) The nature and level of business regulation has since been a site of contest; the Victorian regime was chronically under-staffed, while social protection through regulation probably reached its high point in the 1970s/80s. Then, the emergence of neo-liberalism provided the context for a concerted attack on regulation in the name of freeing business from the burdens of red tape. It is this context which is the backdrop for the concerns of this paper.

I begin, in the following section, by outlining the emergence of a political initiative in the UK, under the rubric of 'Better Regulation', from 2004 onwards, three years after which the UK, as with much of the capitalist world, was the site of a seismic financial crisis, followed by recession. I discuss some of the ways in which this crisis was narrated, and what these framings implied for regulatory reform. Then, in a following section, I chart the progress and effects of Better Regulation, before concluding with some general observations.

The Emergence of Better Regulation

In 1997, after 18 years in opposition, an incoming Labour Government set itself on a concerted effort to *prove itself* as the party of business in a way the Conservative Party, as capital's natural representatives, have never had to do. Integral to this effort was New Labour's approach to the regulation of business under the over-arching rubric of 'Better Regulation', a concept which can be traced back to the 1990s, but which in the UK and in the EU received particular impetus from the first Blair Government.

Blair emphasised the bases for 'Better Regulation' in 1998 in the context of Britain's Presidency of the EU, committing that Presidency to ensuring that better regulation became "a priority for Europe." (Blair, 1998**)** In fact, it was to be Blair's second Presidency of the EU in 2004 which was to prove one of the pivotal moments in advancing Better Regulation through the EU. (Wiener, 2006) So much so that, by 2007, one commentator was able to note that, "Better regulation has become '*one of the most fashionable terms circulating in the corridors in Brussels*'" (Allio, 2007: 82, cited in Smith et al, 2014, emphasis in the original).

In the UK, the watershed moment for regulatory strategy came in 2004 when the Labour Government launched the Hampton Review, which sought no less than to reconstruct the "regulatory landscape". (Hampton, 2005: 76). The Review was charged with considering 'the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement without reducing regulatory outcomes". (Hampton, 2005) Its remit encompassed 63 major regulatory bodies - including the Environment Agency, the Food Standards Agency, the Health and Safety Executive, and not to forget the Financial Services Authority (Hampton 2005: 13) – as well as 468 local authorities (Hampton, 2005: 3); in other words, every agency which played a role in the mitigation of and response to corporate crime and harm.

Hampton's subsequent report – *Reducing Administrative Burdens: Effective Inspection and Enforcement*, published in 2005– 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 recommended that regulators make much more 'use of advice' to business. The report drew upon risk-based claims as the basis for withdrawing regulatory scrutiny from those that, in the terms used in the Hampton report, had 'earned' their 'autonomy'. The 'consensus' established in and through this review and report (Vickers, 2008: 215) marked the consolidation of the era of Better Regulation, the triumph of the policy shift from enforcement to advice and education, a concentration of formal enforcement resources away from the majority of businesses onto so-called high risk areas, and the consistent efforts to do more with less, bolstered by (somewhat Orwellian) claims that 'less is more' (Vickers, 2008).

Responses to the UK Financial Crisis

In September 2008, one issue presented itself as "an unconditional imperative which must be met with immediate action": the "banks", for which read finance capital in particular and the global neo-liberal order in general, had to be saved (Zizek 2009b: 80). In the UK, 'golden parachutes' (Žižek, 2009a: 12) were handed out to the UK banking system: a National Audit Office (2009) "overview of the government's response to the crisis" which showed that "the purchases of shares by the public sector together with offers of guarantees, insurance and loans made to banks reached £850 billion [€1100 billion], an unprecedented level of support". The financial commitments made by Governments since September 2008 have included purchasing shares in banks to enable re-capitalization, indemnifying the Bank of England against losses incurred in providing liquidity support, underwriting borrowing by banks to strengthen liquidity, and providing insurance cover for assets. The Government "cash outlay" is said to have peaked "at £133 billion, equivalent to more than £2,000 for every person in the UK". (House of Lords and House of Commons, 2013: 14). Subsequent financial commitments by the UK Government to the sector included: purchasing shares in banks to enable re-capitalisation; indemnifying the Bank of England against losses incurred in providing liquidity support; under-writing borrowing by banks to strengthen liquidity; providing insurance cover for assets; creating £375bn [€500 billion] of new money via Quantitative Easing programmes between 2009 and 2012. This financial outlay marked the beginning of a new "age of austerity" characterized by sovereign debt, where the already most vulnerable within, and across, societies are targeted as the price worth paying for capitalist recovery.

Amongst the mass of literature which has sought to explain the aetiology of the crisis in the UK, and elsewhere, one of the most common elements has been to cite a failure in the nature and level of regulation of the financial services sector prior to 2007. However, despite this there has emerged in the UK a dominant set of *consensual* political responses which have obscured or ignored the question of regulation. Indeed, these responses may provide the basis for the further march of neo-liberal ways of organising and seeing the world. It is to some of the ways in which this remarkable outcome could be achieved that this paper now turns.

Here I consider some of the ways in which the crisis has been politically and popularly *framed*. The focus is upon various discursive initiatives and narratives which were constructed and utilised as, and since, the crisis unfolded. My rationale is the claim that, "Narratives are important instruments … because they co-construct and legitimize regimes by framing the way we see the world. Narratives are not author-less discourses, but represent specific, powerful interests" (Hansen, 2014: 636).

Identifying Blameworthy Subjects

In the aftermath of the crisis, several types of blameworthy subjects were identified.

First, there emerged a series of morality plays which had their origins in regarding individual bankers as "villains that brought down the world" (Whittle and Mueller, 2012: 119). Whittle and Mueller's (2012) analysis of the UK Treasury Select Committee hearings of 2009 into the banking crisis and in particular the questioning of four senior bankers therein demonstrates clearly that these were processes of moral condemnation. The conduct and substance of the Select Committee is typical: within these generalised morality plays, senior individual figures at the head of financial services companies – prime examples being Fred Goodwin, Stephen Hester, Andy Hornby and Tom McKillop[1] - were identified and vilified, often over very long periods of time. Moreover, such processes took place on both sides of the Atlantic (Froud et al, 2012: 44-5). Indeed, these were effectively quasi 'degradation ceremonies' (Garfinkel, 1956) - *quasi* because although there were clearly for a were clearly ceremonial, and certainly involved formal denunciation, not least in moral terms of blame and shame, lacking was either any formal calling to account nor, crucially, any

[1] The appearance of bankers before the Select Committee prompted a stream of vitriolic press headlines, most infamously in *The Sun* which ran the front-page headline 'Scumbag Millionaires' alongside images of Sir Tom McKillop, former Chairman, and Sir Fred Goodwin, former Chief Executive of RBS Group. (Stanley, 2012)

transformation of the identities of those vilified (see, for example, Harris, 2012). A variation of this ceremonial denunciation of specific, named individuals involved intermittent, less focused, much broader swipes at the guilty men of the City or Wall Street. This in turn drew upon distinct, but not entirely unrelated and hence utilisable, discourses of *rogue* traders (Pludwin, 2011: 470-2), itself a common discursive mechanism for separating out harms and crimes perpetuated in the corporate world from the normal functioning of that world.

In any case, what emerges from this generalised framing of specific - or a 'class' of - individuals is that, if there were 'lessons to be learned', they were about eliminating bad apples, or 'tricksters', (Kelsey, 2014) and not, therefore, about the necessity of the external restructuring of markets, sectors or fundamental practices within them through re-regulation. Thus, for example, reflecting upon the causes of the global credit crisis and the international recession, Lord Myners, the then Financial Services Secretary in Gordon Brown's Labour Government was able to state,

> The failures have not been failures of the market economy. They have been failures of men and women who forgot that market discipline meant that they had to be disciplined in order to get results out of the marketplace. Too many people got complacent and lazy – and the market responded as we should have predicted ... (Myners 2010).

That this was a protracted process of blaming is indicated by the fact that 'banker bashing' entered the popular lexicon. Indeed, some sought to call it to a halt: in January 2011, within days of taking over as CEO of Barclays, Bob Diamond told a parliamentary committee that he thought "There was a period of remorse and apology for banks and I think that period needs to be over." (Treanor, 2011) As Werdigier put it, he argued that it was time "to move on from criticizing and to let banks and the private sector create jobs and economic growth" (Werdigier, 2011). For Diamond, the question was "how do we put some of the blame game behind" (cited in Werdigier, 2011). It has become a common refrain by the industry and its apologists. Fraser Nelson, editor of right-wing magazine *The Spectator, lamented in 2013 that* "It has been almost five years since the crash and still the guilty men are being tracked down and subjected to what seems like a never-ending trial for financial war crimes"(cited in Cohen, 2013), while Anthony Browne, chief executive of the British Bankers' Association and his former hatred of rent-seekers has vanished. "We need to put banker bashing behind us" (ibid.)

As intimated, this generalised opprobrium took some dangerous (from the point of view of capital) turns. At a most general level, there was a long term popular and political outrage at 'executive pay' – an issue that has certainly erupted from time to time in the UK, not least under conditions of neo-liberalism in which the UK has experienced widening levels of income and wealth inequalities, trends exacerbated under conditions of post-crisis austerity which the Government was attempting to impose under the rubric 'we're all in this together'. Government responses to this both sought to acknowledge, even to claim at times to share, the popular discomfort but to represent such levels of remuneration as unavoidable in a globalised market – UK Plc had to attract and retain the best people at the head of their largest companies in order to continue to compete effectively in globalised market-places, and thus to facilitate recovery from recession. This latter claim appears to hold considerable sway – perhaps through repetition and a simplistic understanding of labour markets – despite there being absolutely no evidence for it (Bolchover, 2013). Were this actually to be the case, then it might be noted that, compared to its European counterparts, the City of London must have some exceptionally talented people: a 2013 report by the European Bankers' Association found that there were 2,400 bankers in the City paid over €1m in 2011 – a total which was more than three times as many as in the rest of the EU put together (Treanor, 2013).

A second moral dichotomy which has circulated widely in the UK has been between retail (good) versus investment (bad) forms of banking, a discourse which gained such power that it sits at the heart of the major reform to the sector which has resulted from the crisis, the so-called ring fence to be erected within banks to protect the former from the risks of the latter (see below, on Vickers). This rather conveniently obscures the fact that the three major waves of consumer victimisation that have occurred in the sector in the past three decades – private pensions, then endowment mortgages, then payment protection insurance 'mis-selling' – all occurred within the retail sector (Tombs, 2013).

A third way in which blame has been apportioned is via the construction and use of a series of further moralistic dichotomies – notably, between 'good' and 'bad' borrowers (the latter being the sub-prime borrowers in particular) and predatory as opposed to responsible lenders (Brasset and Vaughan-Williams, 2012; 35). Such divisions have class-based and, in the US, racialised and gendered dimensions – and, while pernicious, these also have resonance as they bear an (albeit distorted) relationship to reality, since saturated markets for mortgages saw less financially able groups exploited as a new, untapped source of super-profit for business.

While there are elements of the bad apple claims here, this applies to wider populations, so that this resort to endless victim-blaming discourses (Weissman and Donahue, 2009: 9) created the basis for a wider encompassing of "suspect citizens" and their "culture of debt" (Pludwin, 2011: 472). In some ways this used the suspect lending practices of financial services forms and turned responsibility on its head. As Dymski et al have noted of the post-2007 exposes of sub-prime lending in the US, "The defining aspect of the crisis was not that subprime loans and other forms of predatory lending disproportionately victimized minorities and women, but that borrowers were myopic, overly greedy, or both." (2013: 125). This also created the basis for a further, useful slippage, one that then allowed moral blame to be attached to many of us, itself related to a slightly wider claim that 'we' were all somehow personally responsible for borrowing too much, enjoying easy credit, living beyond our means, and so on (Brasset and Vaughan-Williams, 2012). Thus, in general,

> The relationship between individuals, their houses/homes and their investment and saving habits was suddenly produced as a category of moral analysis in the public sphere. Fear, guilt, shame and anger were mobilised and sovereign responses, typically couched in the humanitarian vocabularies of salvation and helping victims, as we have seen, were not only justified but seen to be necessitated. (Brasset and Vaughan-Williams, 2012: 41)

The emphasis upon bad borrow*ing* as opposed merely to bad borrow*ers* also opened up discursive space for the emergence of the 'credit card analogy' (Broome et al, 2012: 5), which was to prove crucial in the institution of the idea that nation-states had overspent. In 2008, whilst in opposition, Cameron used the *News of the World*[2] to claim that the Labour Government "has maxed out our nation's credit card—and they want to keep on spending by getting another. We believe we need to get a grip, be responsible and help families now in a way that doesn't cost us our future." (Conservative Home, 2008) Thus, although such an analogy is empirically (Reed, 2012) and conceptually (Pettifor, 2012) ludicrous, it had power since it resonated with the relatively successful balanced household budget analogy deployed over thirty-five years ago by both Thatcher and Reagan as they ideologically softened up their respective populations for monetarist experiments. Such a claim proved pivotal in the very quick shift from the construction of the crisis as one of private, capitalist institutions to one of national debt, especially debt incurred through public sector and welfare spending, and thus a more general, public lassitude (Robinson, 2012). More generally, then, this renewed attention to a diet of good monetary and fiscal governance via belt tightening on behalf of a gorged population helped to make austerity not just palatable but necessary, both economically and indeed morally (Blyth, 2013: 1-15).

Such discourses also segue into a further group of morally-condemnatory frames, namely those which we can reduce to the claim that everyone and everything was to blame for the crisis (McLean and Nocera, 2011). Thus, "Who's not to blame? The mortgage brokers were out of control. Regulators were asleep. Home buyers thought they were entitled to Corian counters and a two story great room … This was an episode of mass idiocy." (Pludwin, 2011: 472). If there was idiocy, claiming that this was ubiquitous is important: *if* we were all to blame, then no-one or nothing in particular was to blame; and *if* we were all to blame, then it follows we should all share the pain of 'recovery' – hence, again, the UK Government's easy refrain that we are all in this together, albeit a claim always somewhat vulnerable in the context of clear empirical evidence as to the distribution and effects of austerity measures. The ubiquity of blame coupled with the facile credit card analogy are

[2] In 2009, the News of the World had a *readership* of just under eight million people.

double movements under-pinning the representation of private as public debt and ideologically fuelling the legitimation of austerity.

Beyond Blame Discourses

A distinct discursive response to the crisis, one which transcends the paradigm of blaming, entailed the generalised use of the language of the *tsunami*, a force of nature which in fact made victims of individual bankers just as much as financial institutions, governments and taxpayers (Brasset and Vaughan-Williams, 2012, Broome at el., 2012, Whittle and Mueller, 2012). This invoking of the tsunami was so strong and generalised that it became metaphorical – the financial crisis *was* a tsunami. Thus, giving evidence to a Congressional Committee in 2008, Alan Greenspan, Chairman of the US Federal Reserve until 2006, while acknowledging a long list of "regulatory mistakes and misjudgements", referred to the crisis as a "once in a century credit tsunami" (BBC 2008). As Greenspan spoke, fears were expressed that the tsunami which had started in the US and "rolled across the UK" would then move on to "the Continent" (Priest, 2008). Within a year, political leaders of developing countries were telling the G20 that "All the warning signs suggest that the financial crisis has produced a tsunami heading directly towards some of the most vulnerable parts of the world." (Woods, 2009) Months later, within the Eurozone, the crisis in Greece, formally defined as one of national debt, was generating fears of a "Lehman-style tsunami" as the crisis was seen to threaten Spain and Portugal (Evans-Prichard, 2010). More latterly, within the UK, the Coalition Government has sought consistently to represent the UK as a safe haven from the after-shocks of the tsunami affecting Eurozone states – after-shocks now represented as storms, presumably because of their longevity and creating the idea that *some* protection could be offered by nation-states. At the same time, of course, demonstrating that ideological frames need not be consistently drawn upon, the failures of the UK economy to 'recover' were consistently explained, at least partially, by the Coalition Government via references to external, uncontrollable shocks *upon* the UK economy *as a result of* 'the crisis in the Eurozone'.

This metaphor has several related effects and elements, albeit not necessarily, at least on face value, consistent with eachother. First, it renders us all as victims – and this status as victims in the face of uncontrollable external events was one of the moral appeals made by UK bankers to evade responsibility (Whittle and Mueller, 2012: 126-129). Second, it depicts that which has victimised us as somehow both natural but also unnatural – it was a force of nature but also something that could not have been expected nor prevented, and somehow aberrant in the normal workings of the world of finance. Third, it is plausible since it is entirely consistent with the ways in which markets, market forces, economic outcomes and so on are and have long been represented, as if natural, literally a product of nature, which of course at the same time "severs the economy from political life" (Pludwin, 2011: 467) and thus any form of human agency – representations which dominant forms of academic economics have been crucial to upholding. (Jackson, 2013) Fourth, the analogy with the tsunami also provides the basis for a 'state of exception' since, as is the case following any natural or other, specific 'disasters' (such as 9/11), these justify, in fact necessitate, states instituting emergency measures – albeit ones for which we would all have to pay, both now and in the future, in exchange for some future state-promised if not state-delivered protection (see Broome et al, 2012, Brassett and Vaughan Williams, 2012). Thus, the financial tsunami allows

> the government to justify incredibly large interventions to recapitalise the banks on behalf of such anxious citizens; the trick of course being that it was actually the citizens who were to subsidise the protection of the very banks that created the excessive lending in the first place (Brassett and Vaughan Williams, 2012: 27).

In general, across nation-states, bailouts, bail-ins, emergency budgets, state nationalisation of banks, have all taken place as executive acts - which in effect have liquidated democracy and exist in a space beyond the rule of law (Agamben, 2005).

The Emergence of a Political Consensus

> Everywhere the crisis of the private financial system has been transformed into a tale of slovenly and overweening government that perpetuates and is perpetuated by a dependent and demanding population. This is an amazing transformation of the terms in which our circumstance is to be understood. For about 10 days the crisis was interpreted as a consequence of the ineptitude of the highly paid, and then it transmogrified into a grudge against the populace at large, whose lassitude was bearing the society down to ruin. (Robinson, 2012)

In 2008, even as the Government was in the midst of bailing out the financial services sector, Prime Minister Gordon Brown was keen to adopt the tone not of regulation nor criminalisation, but of moral re-energisation. In doing so, he was able, crucially, to draw upon the moral capital of private capital which had been developed and strengthened over the previous decades. This latter "common sense" – and all that it implied for the gamut of potentially available regulatory strategies - was remarkably un-dented by the financial collapse and international recession (Crouch, 2011). Thus, despite having overseen an unprecedented bailout of the banking system – a massive state subsidy funded by the taxpayer that effectively socialized the consequences of long-term, systematic private greed and possible (albeit never to be uncovered) illegality – the UK's Labour government *underscored* their commitment to the 'free-market system' and 'light-touch regulation', while again declaring their continued faith in business morality and corporate social responsibility:

> Our government is pro-business; I believe in markets [and] entrepreneurship, and there are many areas of the economy that need the spur of more competition. But the

> events of the past months bear witness, more than anything in my lifetime, to one simple truth: markets need morals (Brown 2008).

On one level the claim that 'the markets' – a purely reified, fictitious entity – need morals (not, note, regulation) is just *non*-sense; on the other hand, the fact that such a statement can be made attests to the power of the hitherto constructed *common*-sense. This formal political response was soon to form the basis of a consensus,[3] one accepted by all major political parties in the UK as they 'fought' the General Election of 2010 (and, indeed, one common to most Governments across the capitalist world).[4] Specifically, senior political figures frequently espoused the need for improved regulation' of the financial services sector – albeit what this meant was never (and never-to-be) specified. In fact, the "main parties competed only to represent themselves as the most competent to foster the health of the city". (Froud et al., 2012: 53)

More generally, by this time, the financial crisis had been transformed into a national debt crisis – the logical response thereby being to reduce public expenditure significantly whilst re-creating the conditions in which private capital could flourish. Thus, in the UK,

> Rather than regard finance as broken, the politicians have chosen to regard government as broken. New Labour set out a blueprint for an assault on the state; the Coalition has merely intensified this assault. The financial sector demanded a fiscal consolidation, and the Government has pledged itself to deliver. The ease with which our politicians have attacked civil servants and the social benefits that have been the birthright of UK citizens since the Second World War contrasts markedly with an almost non-existent approach (so far) to financial sector reform (Simms and Greenham 2010, 53).

It was a fiscal crisis from which *only* private business could 'rescue' us, the conclusion generated by the combination of the key elements of the political consensus that emerged: Government needed to reduce expenditures; Government and the public sector had in any case proven themselves inefficient as compared to the private sector; thus private capital was the only route of out recession. This in turn fuelled an ironic end-point – that regulation had to be minimised in order to allow private capital to perform its rescue act for all our sakes. Better regulation had to get better.

Better Regulation, 2003/04 – 2014/15: some quantitative and qualitative indicators

I now shift registers to focus on trends in regulatory enforcement in three key areas of social protection – environmental protection, food safety and worker health and safety – in

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[3] Just as there had been an all-party consensus on the virtues of 'light touch regulation" in the years prior to the crisis (Straw, 2011), albeit that this was of course denied and caused fleeting embarrassment for many senior political figures in the later years of the decade.

[4] This is not to make any claim about contexts beyond the UK; see White, 2013.

the period 2003/4-2014/15. The beginning of this period is marked by the roll out of Better Regulation, and it is also marked by the 2007 crisis, fallout and political imposition of austerity through central Government from 2010 onwards.

Regulation in these areas here is something of a patchwork of national and local responsibilities, albeit most businesses across these areas are regulated at the Local Authority level. Food Safety enforcement in the UK operates almost entirely at the local level, overseen by the national body, The Food Standards Agency (FSA). Local functions are divided between Environmental Health Officers (EHOs) and Trading Standards Officers. Food EHOs oversee food safety and food hygiene, enforcing law across all forms of retail food business organisations (restaurant, shops, and so on), as well as food processing and food manufacturing outlets. Occupational health and safety regulation is divided between a national regulator, the Health and Safety Executive (HSE), and Health and Safety EHOs at a local level; the division is based on the main activity of any premises. Pollution Control is also divided between a national regulator, the Environment Agency, while at local level, pollution control EHOs enforce regulation of businesses operating 'Part B' premises, as well as significant areas of non-business activity such as littering and fly-tipping.

Food safety and food hygiene regulation and enforcement is undertaken by Local Environmental Health Officers (Food). Between 2003/4-2014/15:

- food hygiene inspections fell by 15%
- food standards inspections fell by 35%
- food prosecutions fell by 35%

Occupational health and safety regulation and enforcement is divided between a national regulator – the Health and Safety Executive (HSE) – and local regulators, Environmental Health Officers (Health and Safety)

Between 2003/4-2014/15, on the part of the national Health and Safety regulator:

- inspections fell by 60% (to 2013/14)
- prosecutions fell by 35%

Between 2003/4-2014/15, on the part of Local Environmental Health Officers enforcing health and safety law, there were:

- total inspections fell by 69%
- preventative inspections fell by 96%
- prosecutions fell by 60%

On the part of the Environment Agency officers engaged in national pollution control, between 2003/4-2014/15 there were:

- inspections fell by 52%
- prosecutions fell by 54%

On the part of Local Environmental Health Officers enforcing local pollution control law, between 2003/4-2013/14[5] there were:

- inspections fell by 55%
- notices fell by 30%

Now, taken in isolation, perhaps no one individual data set on any specific of enforcement activity data relating to any one regulator over a ten year period is particularly surprising. What *is* remarkable, certainly for a set of social scientific data, is that *each set of data reveals precisely the same trend*: that is, notwithstanding variations across regulators, the form of law being enforced, and indeed within regulators and specific forms of enforcement activity by year, *each set of data unequivocally indicates a long term downwards trend in every form of enforcement activity*.

Of course, this ten year period is also marked by the 2007 financial crisis which was used, by the Coalition Government from 2010 onwards, to justify austerity – so it is likely that within this data there is evidence of both politics and economics at play. And, indeed, 'austerity effects' are confirmed if we drill down to local authority level. Thus a case study of five local authorities' regulatory efforts in these three areas of social protection reveals:

- Considerable reductions in staffing in these regulatory functions
- Declining enforcement activity
- An increasing reluctance to prosecute
- A widespread perception that enforcement capacity has been dangerously undermined.

(Tombs, 2016b)

On the issue of resources, the following quotations, drawn from interviews with local enforcement officers, were typical:

> "at present, we can't meet our statutory duties"
> "to be honest we're now doing statutory stuff only"

[5] The most recent data available.

> "there's nothing left to cut now"
> "there is no padding left, we're below the statutory minimum … there are no areas of discretion left"
> "there's nothing else to be cut"
> "Where we are now, we're at the point where worker safety is being jeopardized"
> "It's going to come to the point where it going to affect the residents, the local population, in many ways we are at that point now, public health and protection is being eroded"
> "We're at the point where there is no flesh left, this is starting to get dangerous, a danger to public health" (ibid.)

A further, worrying finding from the qualitative research reveals significant push factors towards contracting out or even wholesale privatisation of regulatory services – something which a handful of Local Authorities have now embraced. Taken together, these changes may mark the beginning of the end of the state's commitment to, and ability to deliver, social protection.

Discussion: How much 'Better' can Better Regulation Get?

Once regulation is successfully cast as a problem, to be reduced, a drain on state resources, private entrepreneurship and economic growth, and once that view is furthered through regulatory, legal and institutional reform, then the momentum against regulation becomes virtually unstoppable – if less state regulation and enforcement is always to be preferred, then how little is little enough?

This issue emerged in interviews with two staff at the Better Regulation Delivery Office, the Government body responsible for overseeing the implementation of Better Regulation at local Government level. For each of these, they were clear that Better Regulation was established to "restore trust" on the part of business with regulators, a relationship which one described as having been "broken". Of interest was the view, even after over a decade of Better Regulation initiatives, that regulators failed to understand that "regulation and economic development and prosperity go hand in hand", rather viewing the former "as a matter of enforcement" – and claiming that this was especially problematic at the level of local regulation. Thus, for each, the Better Regulation message had not been effectively received at local level: "Most [EHOs] didn't know and many still won't where their local Economic Development programme sits within the authority". Thus the task was still to get regulators "to see themselves in a different light in relation to business, to reposition themselves in terms of businesses". This "requires a commercial mindedness that most local authority regulators simply do not have" – albeit there was optimism that newer recruits were more likely to be imbued with this attitude, and thus to embrace Better Regulation. Such view found echoes amongst some of my interviewees.

"We need to be more business friendly and get our customer focus right"

"I am in the business of collaborative regulation … there must be growth, and that is the context in which we must support business to comply with the law."

"Increasingly we're told that our main job is to facilitate business, industry and so on"

The 'search' for Better Regulation has continued, and will continue. It is a long-term political initiative, effectively designed to break the link between regulation on the one hand and inspection or external oversight on the other. To paraphrase Fooks's prescient analysis of financial regulation of the City of London in the 1990s (Fooks, 1999), what we are witnessing is a shift from the regulation *of* business to regulation *for* business. As one analysis of the effects of spending cuts on Local Authorities has concluded, these will lead to a "re-positioning" of authorities in relation to "individual well-being and quality of life as well as economic leadership", (Hastings et al., 2013: 3) with

> A renewed emphasis on developing and managing economic growth as a means both to generate income and to develop the economic competitiveness of the local authority and its region in the longer term. (ibid.: 4)

There is good reason to suggest that regulatory functions will likely be increasingly re-cast as part of *growth* initiatives – that is, as part of permissive and facilitative regulatory regime (Bernat and Whyte, 2014).

In 2007, the *Regulators' Compliance Code* –which governs the work of regulators both nationally and locally – had already been amended under the Labour Government in a way that made clear the new realities of Better Regulation as they were then unfolding, so 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"' (Department for Business, Enterprise and Regulatory Reform, 2007, para 3). A new, 2014 version made the so-called growth duty its first principle: that is, '*Point 1*' of the new Code emphasised that, "Regulators should carry out their activities in a way that supports those they regulate to comply and grow." (Better Regulation Delivery Office, 2014, 3)

What we are witnessing is the transformation of a system of social protection which, for all of its limitations, has existed in the UK since the 1830s. Under conditions of advanced neoliberalism, recent UK Governments of all political stripes have sought to roll out a politics of Better Regulation – via ceaseless initiatives on a range of mutually reinforcing political, institutional, legal, and discursive fronts – which effectively entails creating regulatory regimes from which enforcement is increasingly absent. Moreover, at national level, all major regulators face a statutory review every three years of their existence and mandate, and all are likely to face further reductions in Government funding. This may be hands-off government as far as business goes, but it's hardly hands-off as far as regulatory agencies are concerned. They are under constant, critical scrutiny.

Indeed, according to the political logic of Better Regulation, perhaps no better captured by its 'less is more' leitmotif, *there is no logical end point* to this drive towards regulation without enforcement. Once regulation and enforcement are defined as 'too much', and once the argument that regulation can proceed without enforcement is won, it is impossible to perceive when there will be 'little enough' of either or both.

The process of Better Regulation continues apace. Far from being halted by the financial crisis, responses to that crisis have fuelled the Better Regulation agenda. Private business is now less subject to regulation than pre-2007; the UK is witnessing a dismantling of The 'Social Protection' State. This is not a story about rules, regulations, red tape. It is a story about social harm and social inequality - lives lost and shortened, the health of communities, workers, consumers made poorer. And, quite remarkably, it proceeds, daily – met only by academic, political and popular silence.

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