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WORKING FOR THE 'FREE' MARKET: STATE COMPLICITY IN ROUTINE CORPORATE HARM IN THE UNITED KINGDOM

TRABAJANDO PARA EL MERCADO "LIBRE": COMPLICIDAD ESTATAL EN LA RUTINA DEL DAÑO CORPORATIVO EN EL REINO UNIDO

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ABSTRACT

This paper documents two forms of harms which are not 'dramatic', in fact, each is very low level, and each represents an instance of routine, normalized forms of harm which emanate from the business sector, and in the production of which the state is complicit. The focus specifically here is, in the first substantial section of the paper, on the economic harms produced by the retail sector of the UK financial services industry and, in the second, on the level and scale of airborne pollution in the UK from a range of business sources. While they are very different, they in fact have a lot in common, and tell us a lot about business and state practices. The remainder of the paper considers these state practices at length: despite misunderstandings and claims that governments are withdrawing from free markets, what one finds is a torrent of state intervention designed to create conditions of non-interventionism. It is no mere bystander to these harms, but intimately complicit in them through, variously, deregulation, reregulation and non-enforcement of law... Such state practices are documented in the third part of the paper, which focuses on what is termed regulatory re-shaping by central Governments in the UK since 1997. The results of such state activity may render such harms more likely, even more normalized. In conclusion, the paper considers briefly the relationship between rendering such harms visible and effective resistance to them.

Key words: Corporate harm, regulation, the state, complicity, pollution, 'mis-selling'.

RESUMEN

Este trabajo documenta dos formas de daño que, sin tener efectos dramáticos -de hecho, ambos comportan en sí mismos un bajo nivel de afectación directa - representan un *ejemplos de las rutinas dañosas normalizadas que emanan del sector de los negocios, en la producción de las cuales el estado es cómplice. En la primera parte del artículo, el foco específico lo ponemos en los daños económicos producidos por la industria financiera minorista del Reino Unido y en la segunda, sobre el nivel y la escala de contaminación aérea producida por un amplio rango de negocios. Aun cuando ambos son muy diferentes, tienen verdaderamente muchas cosas en común, y son suficientemente demostrativos de cómo son esas prácticas del sector comercial y del estado. El conjunto de este trabajo considera las prácticas estatales en toda su amplitud: más allá de los malos entendidos y los reclamos que sostienen que los gobiernos se están retirando de los mercados libres, lo que encontramos es un torrente de intervenciones estatales dirigidas a crear condiciones de no-intervención. No se trata sólo de que el estado sea un mero espectador frente a esos daños, sino de la complicidad íntima en ellos, mediante desregulaciones, nuevas regulaciones y falta de herramientas efectivas de aplicación de la ley. Las prácticas estatales están descritas en la tercera parte de este trabajo, que se focaliza en el llamado re-diseño regulatorio que los gobiernos centrales en el Reino Unido llevaron adelante desde 1997. Como resultante de esta actividad estatal es que esos daños sociales se hacen posibles, e incluso se los normalizan. En conclusión, este artículo aclara resumidamente las relaciones entre la visibilización de estos daños y la efectiva resistencia contra ellos.*

Palabras clave*:* Daño corporativo, regulación, Estado, complicidad, contaminación, ventas fraudulentas.

While post-2007 events have seen intermittent, headline-grabbing exposes of corporate crime and harm, routine, systematic, ongoing corporate harm generally continues to proceed, below the surface, relatively unchallenged. Moreover, as this paper shall argue, this harm is supported by states, made possible, even normalised by them, to the extent that we must view states as complicit in their production and their violent effects.

It is relatively straightforward – and necessary, in my view – to understand much of what is being imposed in the name of international economic recovery in terms of state atrocities and, following Galtung, Salmi and others, as mass violence. The harms which this paper documents are much less dramatic, much more low level; they represent routine, normalised forms of violence which emanate from the corporate sector and in which the state is complicit. The next two sections of the paper present data relating to two very different kinds of corporate[1] harms. One emanates from the retail sector of the UK financial services industry; the other concerns airborne pollution from a range of business sources. Yet, while they are very different, they in fact have a lot in common, and tell us a lot, I think, about corporate and state practices. In a third, substantial, section, the paper goes on to put these harms in a wider, dynamic context: despite misunderstandings and claims that governments are withdrawing from free markets, what one finds is a torrent of state intervention designed

[1] The term 'corporate' is used in a way which is consistent with much of the literature on corporate crime and harm – that is, not in a technical sense, to refer strictly only to corporate entities, but in its broadest sense, encompassing all types of for-profit business organisations, including of course small and medium sized enterprises which, at least in volume, constitute the most significant part of most nations' business population.

to create conditions of non-interventionism. As we shall demonstrate with a focus on the UK, since 1997, the state is no mere bystander to these harms.

The specific focus here on post-1997 re-regulation – this latter term encompassing deregulation, new forms of regulation, and ever decreasing levels of enforcement – is not to imply that these developments are unique to this period, for this is clearly not the case. Rather it is to emphasize that these processes of re-regulation not only continued but indeed accelerated under post-1997 *Labour* ('social democratic') administrations (up to 2010), not least through the period of the financial crisis at the end of the 2000s and then beyond. This is significant, since it undermines the belief that the processes revealed in this paper are likely to be curtailed through the formal political process, where in fact they have widespread, consensual support.

Corporate Theft and Fraud: 'mis-selling' in the UK.

Since 2007, there has been much critical popular and indeed political discourse regarding 'the banks' – albeit that, while they have generally, since, restored profitability, what has been most striking has been nation-state failures to examine let alone act upon their harmful and criminal risk-taking, opting rather to socialize their private debts. But while this stunning achievement requires academic analysis and a coherent political response, routine, retail banking has continued, at least in the UK, to steal and defraud on a massive scale with relative impunity.

In the past thirty years, consumers of financial services firms have been victims of three recent waves of offences in the UK, involving many of the same (well-known) financial services companies, since the deregulation of the sector marked, notably, by the particularly with the Financial Services Act, 1986. By the end of the 1980s, personal pensions frauds emerged, in which as many as 2.4 million victims lost their pensions after replacing their occupational schemes with high-risk private schemes (Slapper and Tombs, 1999); the endowment mortgage frauds of the 1990s - mis-selling a particularly risky mortgage product to high-risk customers - created as many as 5 million victims (Fooks, 2003); latterly, the 'mis-selling' of payment protection insurance has been estimated as affecting almost 5 million people (Pollock, 2012), with the volume of claims still increasing in 2013 (Bachelor, 2013).

We shall explore the first of these, "pensions mis-selling", in a little more detail, since in its origins, in the way in which it unfolded over years from initial exposure, in the scale of harm in terms of victims and financial amounts, and in the identity of the key actors involved, it sets what was to become a pattern across the three waves of crime and harm produced through the sector: Government policy creates the opportunity structure for crime and harm; products are then sold in a deregulated market to boost profits, despite the products being unsuitable for those customers to whom they were sold, resulting in widespread financial hardship, mass complaints, regulatory actions against the companies involved, and long term dissembling on the part of companies in terms of reaching settlements with victims. In all cases, the products continued to be sold long after widespread concerns had been established with them. Each involved all of the main actors in their respective markets, and indeed many of the same companies were involved across all three waves of scandal. In all three forms of mis-selling, the key combination of formal deregulation, and subsequent inability or unwillingness of Governments to enforce compliance with regulation, combined to implicate the state in the harms produced.

Clarke (1996) has documented how the gradual withdrawal of the Conservative Government from pension provision, coupled with deregulation of the retail financial services sector in the UK in the latter half of the 1980s, contributed to the "biggest scandal of them all" in the sector. Pensions providers launched into a hard sell, targeting many public sector workers in well-developed pensions programmes, wrongly advising many to cash in their contributions and transfer them to a new, private scheme about which they provided false and misleading information. Black refers to a survey conducted by the Securities and Investments Board which found that only 9% of pensions companies had complied with legal requirements when originally advising on these pensions' transfers (Black, 1997, p. 178). Moreover, once the mis-selling was exposed,

> "the industry proved extremely reluctant to admit wrong doing, even by way of over-selling, still less mis-selling. Enquiries by the supervisory regulator, the Securities and Investments Board in the early 1980s, eventually produced an estimate that 1.4 million people may have been mis-sold personal pensions and had a right to have their cases reviewed and awarded compensation as appropriate; the costs of this were estimated at between £2 and £4 billion" (Clarke, 1996, p. 14).

Indeed, despite the establishment of a timetable for reviewing and if necessary compensating for cases, the pension's providers consistently missed deadlines, ignored cajoling, and proved relatively resistant to government threats. While breaches had been first uncovered in 1990 (The Guardian, 9 October, 1997), many of the offending companies had resolved less than 10% of the cases under their respective review by 1997 (The Guardian, 10 July, 1997). In that month, Treasury Economic Secretary Liddell began resorting to consistent but apparently fruitless efforts to "name and shame" the most recalcitrant offenders, with the first such list of 24 companies including Allied Dunbar, Abbey Life, Sedgwick, the French insurer GAN, Colonial and Hogg Robinson, Barclays Life, Pearl, Prudential, Royal London, Legal & General, Norwich Union and Lloyds/TSB Group (Cicutti, 1997). Incredibly, a survey by KPMG Peat Marwick of pensions advice given during 1991-1993, a period after the mis-selling had been first exposed, revealed that in "four out of five cases" pensions companies were still giving advice which fell short of the legally required minima (cited in Black, 1997, p. 178, and footnote 143).

By the end of 1997, the sum involved in this series of offences was consistently being referred to as £4billion (Financial Times, 19 September, 1997) and involving two million or more victims (The Times, 20 September, 1997). Early in 1998, the new Regulatory Body, the Financial Services Authority, cited new research which estimated the final costs as "up to £11billion, almost three times the original estimate. The number of victims could be as high as 2.4 million" (The Guardian, 13 March, 1998). As the cost of one particular series of crimes, this figure of £11 billion - even if ultimately an over-estimate, even though not an annual but a "once-and-for-all" cost - dwarfs the costs of almost all estimates of all forms of 'street' crimes put together.

Then, by the end of the 1990s, widespread mis-selling of endowment mortgages had also begun to emerge – following the end of state housing building and Government encouragement to buy their homes, millions of such policies had been sold through the 1980s and 1990s based on the claim that on maturity of the endowment policy, the sum returned to an investor would pay off the costs of their homes, a claim which often proved to be false (BBC News Online, 1999). The saga is uncannily similar to that of pensions mis-selling.

First, the list of companies involved in each is very similar. Amongst the companies known to be mired in the endowment mortgages episode are virtually all of the main high street providers of financial services. These include: Prudential (BBC News Online, 2005a), Norwich Union and Legal & General (BBC News Online, 2005b), Bradford & Bingley (Kollewe, 2007), Lloyds TSB (which at the time included Cheltenham & Gloucester) and HBOS (Treanor, 2005), CGU (formed by a merger of the Commercial Union plc and General Accident plc, Collinson, 2000), Nationwide and HSBC (Jones, 2004b), Royal & Sun Alliance, Standard Life and Scottish Widows (Jones, 2004a), Allied Dunbar (Scott, 2000), Scottish Amicable (The Guardian, 6 March 2003), Abbey Life (Financial Services Authority, 2002) and Friends Provident (Financial Services Authority, 2003).

Second, the endowment mortgage scandal was characterised by long term obduracy on the part of companies in the sector either, initially, to admit any wrongdoing and then to compensate victims. Even in 2006, for example, the Financial Services Authority was still responding to reports from the Financial Ombudsman to complaints that cases for compensation had been rejected by mortgage providers (BBC News Online, 2006). Six years after the scandal was first uncovered (BBC News Online 1999), the FSA begun, in July 2005, to investigate further "the procedures of 52 firms which accounted for 90% of all the endowments mortgages that have been sold". It claimed that this led to 75% of rejected claims being re-adjudicated in favour of the customer (BBC News Online, 2006).

The pattern was repeated in the Personal Payment Protection Insurance (PPPI) policies which began to be widely marketed and sold at the start of this century, at the height of the credit boom. Financial services firms were selling to customers with debts such as mortgages, credit cards or loans insurance against an inability to pay the debt – again, these were often sold when they were unnecessary, or without customers' knowledge, or indeed were to prove invalid in the event of customers claiming against them. (Pollock, 2012). In 2005, the Citizens Advice Bureau filed a "super-complaint" to the Office of Fair Trading in 2005 and the Financial Services Authority "having already fined several smaller firms for mis-selling" (Neville, 2012).

About 16 million PPPI policies have been sold since 2005 (Pollock, 2012). Indeed, in 2007, two years after this complaint was filed, "The reliance on PPPI insurance sales was at its highest", and analysts have "estimated 14% of Lloyds' [Banking Group] group profits were generated from the product" (Neville, 2012), as was the case for most High Street banks (Pollock, 2012). Only in 2011 did the British Bankers Association abandon a legal challenge to an FSA ruling on compensating victims (Hickman, 2011). Moreover, the companies embroiled in the mis-selling of Payment Protection Insurance included many of the, by now, 'usual suspects', including: the Royal Bank of Scotland, Barclays, HSBC, Santander, MBNA, NRAM (Northern Rock and Bradford & Bingley, Yorkshire and Clydesdale banks, the Co-op bank, Nationwide, Capital One, Welcome Financial, Principality Building Society - and Tesco (Pollock, 2012).

Again the Financial Ombudsman Service has dealt with hundreds of thousands of complaints from consumers whose claims for compensation have been turned down by companies -

about 70% of its rulings have been in favour of the customer (Pollock, 2012). In the first six months of 2012, the Ombudsman upheld the following percentages of complaints against individual firms: Lloyds TSB (98% of complaints upheld), MBNA (97%), Barclays (93%), CitiFinancial (93%), Welcome Financial (92%), Bank of Scotland (90%), HFC (part of HSBC, 90%) and NatWest (89%) (Pollock, 2012). By the end of 2012, £12.96bn had been set aside by companies to deal with compensation claims, with an estimate of 4 to 4.75 million people having been, or due to be, compensated. (Pollock, 2012). Yet even in January 2013, the Financial Ombudsman expected an annual tripling of complaints to be dealt with as companies, in the words of the deputy Ombudsman, "continue to frustrate their customers with delays and inconvenience" (Bachelor, 2013).

These will not be the last 'scandals' associated with the retail financial services sector and its direct targeting of consumers (Osborne, 2012) – none of which, of course, is even to mention the wider allegations of crime and risk-taking associated with the bailouts from 2008 onwards, LIBOR, sanctions-busting, money laundering, cartelization, and insider trading. Indeed, it may be the greater media and popular, if not political nor regulatory, scrutiny of this sector in the wake of the 2008 crash will bring to light further categories of mis-selling which will only serve to underscore the fact of long-term, systematic, widespread, routine fraud on the part of the industry. Amongst the contemporary candidates for the next major mis-selling scandal are those which bear a remarkable similarity to the waves of mis-selling reviewed above – for they include further pensions (Simon, 2012, BBC News Online, 2012), mortgage (Bachelor, 2012, The Observer, 28 October 2012) and credit card identity-theft protection (Bachelor and Treanor, 2012, Financial Services Authority, 2012) mis-selling.

It is worth emphasizing that these three waves of mis-selling occurred in the retail arms of financial services companies – which, in political and popular rhetoric, has, since the events of 2008, been generally represented as the 'clean' or 'safe' ('good') side of banking when contrasted with the 'bad' risk-hungry, profit-maximizing investment banking arms. This distinction has been so thoroughly accepted that the key legislative response to the banking crisis in the UK is Vickers' proposal to erect an admittedly rather thin fence between these two forms of banking in the UK. State and governmental myopia to retail financial services harms – and thus a reluctance to regulate or enforce effectively - appears to be entrenched.

Corporate Violence: Air Pollution

Air, land and water pollutants are a further key cause of death and disease; the focus here is on exposure to airborne pollutants. In global terms, a recent estimate of the scale of death and disease as a result of outdoor air pollution concluded that ambient air pollution causes about 800,000 (1.2 per cent of the total) premature deaths (Cohen et al., 2005), a figure supported by the World Bank (Vidal, 2005) and the World Health Organization (Global Atmospheric Pollution Forum, undated). Moreover, the effects of air pollution too are predominantly located in those states that are the least able in terms of resources either to prevent or respond to such harms – namely, the developing world. An estimated 65 per cent of deaths from air pollution are in Asia (Cohen et al., 2005).

It is extremely difficult to be precise either about the level of death and illness caused by air pollution, or about the sources of that pollution and, specifically in the context of this paper, what proportion of air pollution is caused by corporate activity – nor, indeed, can we know how much is caused illegally. On this latter point, two observations need to be emphasized in the context of this paper.

First, identifying **illegal** pollution is difficult not least because – within prescribed limits - emissions of virtually all substances are legal. This 'consent' to pollute itself generally operates upon companies' own inventories of their rather than any ongoing regulatory oversight of levels of airborne pollutants. In other words, what tends to be regulated are companies' records of pollutants *not* the levels of pollutants *per se.*

The second observation to be made in this context is that, *contra* the cases of mis-selling documented in the previous section, state complicity in these corporate harms is not a product of deregulation *per se*, but of non-enforcement of existing law – much of which, in fact, emanates from the European Union so that the degree of state autonomy for formal deregulation is far more restricted.
These points being made, we have enough official indications to begin to approximate the scale of this type of harm.

First, in terms of the scale of harm, there have been a series of UK Government estimates in recent years which indicate that the level of death runs into the tens of thousands. For example, Whyte cites UK government estimates that there are between 12,000 and 24,000 "deaths brought forward"[2] by pollution every year (Whyte, 2004, p. 135). More recently, the all-Party Environmental Audit Committee concluded in 2010 in its report on Air Quality that "Air pollution probably causes more deaths than passive smoking, traffic accidents or obesity, yet it receives very little attention from Government or the media." (Parliamentary News, 2010). It added that evidence indicated that "air pollution could be contributing to as many as 50,000 deaths per year … Averaged across the whole UK population it is estimated that poor air quality is shortening lives by 7-8 months. In pollution hotspots it could be cutting the most vulnerable people's lives short by as much as nine years" (Parliamentary News, 2010). A subsequent, 2011 report by the same committee claimed that "Dangerous levels of particulate matter (PM2.5 or PM10) and chemicals (such as NO2) in the air are contributing to tens of thousands of early deaths every year in UK cities", estimating that "30,000 deaths in the UK were linked to air pollution in 2008 - with 4,000 in London alone" (Parliamentary News, 2011). Finally, in 2010, discussing upper and lower limits on the relationship between air pollution and deaths, as well as the degree of contribution of such pollution to these deaths, the Committee on the Medical Effects of Air Pollutants[3] concludes that,

> "it is more reasonable to consider that air pollution may have made some contribution to the earlier deaths of up to 200,000 people in 2008, with an average loss of life of about two years per death affected, though that actual amount would vary between individuals. However, this assumption remains speculative." (Committee on the Medical Effects of Air Pollutants, 2010, para 21)

2 I am grateful to Paddy Hillyard for bringing this phrase used in government definitions to our attention.

3 COMEAP is "an Advisory Committee of independent experts that provides advice to Government Departments and Agencies on all matters concerning the potential toxicity and effects upon health of air pollutants", http//comeap.org.uk.

The effects of such pollution are not evenly distributed. Research findings have also indicated that by "poor air quality is hitting the poorest hardest" (House of Commons Environmental Audit Committee, 2011, para 10). In general, "elevated levels of pollution are concentrated amongst socially deprived neighbourhoods" (ibid.) Correlations with greater exposure have been found with lower incomes, low employment, low educational attainment, ethnicity, and lower house prices (ibid.).

These levels of pollution of course also carry with them economic costs; the Government's Department of the Environment Food and Rural Affairs has estimated that "the health impact of man-made particulate air pollution experienced in the UK in 2005 cost between £8.5 billion and £20.2 billion a year" (House of Commons Environmental Audit Committee, 2011, para 11). This does not include effects upon the environment.

These points being made, it is virtually impossible to estimate precisely how much pollution is caused by corporate activity, as opposed, notably, to private car or fuel use. The key pollutants at issue here are as follows: Particulate Matter (PM10 and PM2.5), the main source of which in Europe is road traffic emissions, particularly from diesel vehicles. It is also emitted from industrial combustion plants and public power generation, commercial and residential combustion, and some non-combustion processes (e.g. quarrying); Nitrogen Dioxide (NO2), another traffic-related pollutant; Sulphur Dioxide (SO2), produced in fossil fuel combustion (principally by power stations), conversion of wood pulp to paper, manufacture of sulphuric acid, smelting, and waste incineration; Volatile Organic Compounds (VOCs), including Benzene T (main sources being petrol vehicles, which account for about 70% of emissions, and the distillation, refining and evaporation of petrol from vehicles) and 1,3-Butadiene (again, main source is road traffic as well as some industrial processes); Carbon Monoxide (CO), from road vehicles and organic combustion in waste incineration and power station processes; Lead (Pb), still originating from some road traffic and also produced in waste incineration and metal processing and used in some manufacturing; and Toxic Organic Micro-Pollutants (TOMPs) - PAHs (Polycyclic Aromatic Hydrocarbons), PCBs (Polychlorinated Biphenyls), Dioxins, Furans – of which road transport and industrial plant are the largest sources (Environmental Protection UK, nd).

On sources of pollution, the House of Commons Environmental Audit Committee (2010) stated that:

> "Industry and road transport are the main sources of air pollution, though domestic combustion and agriculture are also to blame. Industry is a major source of emissions of NOX (46%) and PM10 (36%). Road transport contributes to significant emissions of NO2 (30%) and PM10 (18%). Emissions and exposure vary greatly depending on location. Although polluting, the majority of large combustion plants are located away from major urban centres. Road transport contributes far more to the public's exposure to pollutants and is responsible for up to 70% of air pollution in urban areas" (House of Commons Environmental Audit Committee, 2010, para 2).

According to government figures, 96% of SO2 is commercially produced (Department of the Environment, Food and Rural Affairs; 2001). Meanwhile, it has been estimated that 72% of PM10 is produced as a result of commercial activity, as are most of the carbon monoxide, ozone, NO2, 1,3 Butadeine and lead pollution (see Whyte, 2004, p. 135). Lorry traffic (House of Commons Environmental Audit Committee, 2011, para 8), buses (ibid, para 16), as well as aircraft engine emissions, airport operations and road transport to and from airports – all commercial or directly linked to commercial activity – are specifically cited as key sources of pollutants by the cross-party Environmental Audit Committee (ibid., paras 8, 16, 22).

On the general (that is, beyond specific pollutants) contribution of commercial vehicles to overall road traffic pollution, we can make some relevant observations from the best available data. Thus, the Department for Transport Statistics calculates road traffic by vehicle miles by vehicle type – the latter being cars and taxis (as one category), motorcycles, buses and coaches, light vans, and goods vehicles. Of these, we cannot know the extent to which ‘cars and taxi’ and motorcycle use is commercial – but we can be certain that some of this is. Nor can we assume that all ‘light van’ use is commercial – but we can assume that most is. The most recent data for 2011 shows that, combined, cars, taxis and motorcycles account for about 243 billion vehicle miles, while buses and coaches, light vans and goods vehicles account for some 69 billion (Department for Transport, 2012). Given the likelihood of larger vehicles to use diesel, to use more fuel and thus to cause greater pollution per mile travelled, and given the fact that ‘cars and taxis’ will incorporate a great deal of commercial driving, it is clear that the contributions of commercial activity to overall levels of air pollution from road traffic is significant.

So while we cannot be certain about the contributions of commercial and domestic settings to the overall burden of pollution, we can at least be clear that corporate contributions to this health, economic and environmental problem are significant. A further uncertainty is introduced if we try to estimate the extent to which any of these corporate harms are in fact also crimes, that is, are illegal – since, as noted above, much pollution is legal, that is, permitted within specific limits or concentrations. In this context, while the EU sets legally binding concentration limit values for arrange of specific air pollutants, it has recently been noted, again by the Commons Environment Committee, that, “The UK was failing to meet EU limits for nitrogen dioxide (NO2) and particulate matter (PM10)” (House of Commons Environmental Audit Committee (2011, para 1), and that “air quality was not seen as a priority across Government, which as a result was failing to meet a range of domestic and European targets” (House of Commons Environmental Audit Committee, 2011, para 2). For example, of the 43 zones into which the UK is divided for air quality monitoring, 40 out of 43 of the zones breached the annual European NO2 safety limit value in 2010; meanwhile, while EU air quality laws allow daily pollution levels of PM10 to exceed legal limits on up to 35 days in any year, in 2011 London exceeded that total by April (Parliamentary News, 2011). In fact, Government response had been to apply to the EC for an extension to compliance deadline for European PM10 targets, and subsequently for NO2 targets (House of Commons Environmental Audit Committee, 2011, para 6). The 2011 report concluded that “The UK is still not meeting EU limit values or UK objectives for PM10 particulate matter and NO2 and is predicted by some to fail to meet targets for fine particulate matter (PM2.5) (House of Commons Environmental Audit Committee, 2011, para 14). In the context of this paper, state and Governmental complicity in these corporate harms, then, is a product of virtually institutionalised non-compliance and lack of enforcement to this.

State Complicity in the Production of Normalised Corporate Harms

Whether or not we can refer to the above as corporate *crimes* is empirically and conceptually difficult to resolve. Without rehearsing old, well-known debates, the majority of corporate harms, even if they are punishable, remain largely unregulated in practice. The term 'regulated' is used to indicate that those crimes are not policed in the usual sense of the word. Corporate crimes are normally dealt with using different types of enforcement authorities ('regulatory agencies') and often with different types of ('administrative' or 'regulatory') law. They typically remain outside the ambit of mainstream criminal legal procedure. If they do become subject to law enforcement, they tend to be separated from the criminal law (and processed using administrative or informal disposals rather than prosecution). Even if they are subject to the formal processes of criminal law, corporate crimes are rarely viewed as equivalent to 'real' crimes.

Certainly in the various forms of mis-selling which we have highlighted above, typically the legal response is to enforce programmes of compensation upon the companies – in other words, there tends to be no formal legal action against the company for the offence(s) itself, even if one is clearly recognised, rather (long-term) efforts to ensure restitution to victims. Again, then, there is no record of crime. And, in the case of environmental pollution-related deaths, for example, it is highly unlikely that any will result in prosecution. This is partly because cases of deaths 'brought forward' (the term used by the Department of Health to describe premature death) by pollution are not generally subjected to any process of investigation, and partly because of the complexities of investigating and prosecuting such cases. Thus, in the seven years between 2000 and 2007, the Environment Agency in the UK prosecuted only ninety-nine industrial pollution offences[4]. Does this mean only ninety-nine crimes were committed during this period?

These points being made, it needs to be emphasised that what appears to be a lack of state intervention is nothing of the sort. This is not to deny the fact that, in the context of regulation and enforcement, corporate activity is always relatively ineffectively regulated (Snider, 1993, pp. 120-124). Yet it is important to consider how the norm of non-enforcement changes over time, not least as a product of the wider balance of politico-economic forces, and indeed is more or less visible. Thus, in the UK, what can clearly be distinguished in the past thirty years is a long term regulatory reshaping towards *less* regulation and/or *less* enforcement, the end point of which *appears* as a non-interventionist state protecting free corporations within a free market. But as we examine the elements of reshaping we find that the free corporation and the free market requites an awful lot of state activity – so that the consequences of this situation in which states appear to be *not* doing things (conditions of omission) are in fact the product of a great deal of work, indeed work which implicates states directly in the *production* of corporate harms (if not crime, since one effect of this work is formally as well as effectively to de-criminalise).

In this section, I review some aspects of such work, albeit briefly. The focus here is on the period since 1997 – the year in which a Labour Government (Labour being, formally, a party of social democracy) was elected with a landslide majority, and went on to win three further

[4] From a personal communication between David Whyte and Environment Agency, 4 April 2008. I am grateful to David Whyte for sharing this with me.

terms of government, being replaced, in 2010, but a coalition Government between the Conservative party (a 'right' party) and (the 'centrist') Liberal Democrats. If, as stated above, re-regulatory practices are not unique to this period and in fact preceded it, post-1997 developments are of particular interest and importance. First, because in the period 1997-2010, a series of 'social democratic' administrations initiated a radical series of re-regulatory initiatives, the net effect of which was to create considerably greater freedom for corporations to produce harm. Then, from 2010, even in the wake of the financial crisis, the first Coalition Government seen in the UK since the second world war has pushed forward these programmes with remarkable vigour. Taking the period as a whole, one finds, in fact, a remarkable consensus across the formal political spectrum – that regulation and enforcement need to be reduced as far as possible, so that there these are always constructed as problematic, *at whatever level they proceed*.

1997-2010: Regulatory Reshaping under New Labour

If we take, first, the period since the election of the first labour Government for almost twenty years, with the New Labour administration of 1997, we find a rash of activity – 'regulation work' – which continued, extended, deepened, and finally entrenched a shift towards a radically reframed regulatory regime, through a combination of legal, administrative, institutional and discursive means.

An early indication of New Labour's enthusiasm for market-based regulation came in its first year of office, in 1997, when the position of the Conservative's flagship *De*regulation Unit was consolidated under a new name, the '*Better* Regulation Unit', with the Better Regulation Task Force established in the Cabinet Office. Government also formally launched its Better Regulation agenda in this year, aiming to "minimize the burden of regulation". Better regulation entailed three elements: "simplifying regulation by designing new regulations better and simplifying or removing old ones"; reducing "the administrative burden on business of regulation, that is, administrative activities businesses would not undertake in the absence of regulation"; and reducing "the burden on business of inspection and enforcement activity" (National Audit Office, 2008e, p. 6).

Then, Regulatory Impact Assessments (RIAs) were introduced the following year. In 1999: 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" (Better Regulation Executive, 2008). In other words, they are mechanisms that are based upon reducing regulation. Second, their economic form is likely to produce a financial argument for less rather than more controls on business activity 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). In other words, they cement a pro-business, anti-regulation logic at the heart of government. By 1999, the Better Regulation Unit was replaced by the Regulatory Impact Unit (RIU). The latter – later superseded by the Regulatory Policy Committee 2009 – sought to ensure that proposals for regulation are "supported by a sound and robust evidence base" in the form of Regulatory Impact Assessments (Regulatory Policy Committee, 2011, p. 8).

In policy terms, in the run up to winning its second term, Blair launched New Labour's manifesto for business, committing Labour to developing a "deeper and intensified relationship" with business (Blair, cited in Osler, 2002, p. 212); commenting upon Blair's pledges, Osler notes that, "Policies on offer that day included deregulation…" (Osler, 2002, p. 212) Indeed, one of the last acts of that first term of office had been the passage into law, in April 2001, of the Regulatory Reform Act, 2001 Act. Crucially, this provided for regulatory reform orders (RROs), which enabled a Minister to remove any regulation if it represented a burden (defined tortuously by the Act; see Regulatory Reform Act, 2001, section 1), a move that had been "warmly welcomed by business organizations" (Lea, 2006). However, the crucial watershed for contemporary forms of regulation was to come in 2004 (Dodds, 2006).

In 2004, a key review of regulation was launched. The Hampton Review, established by the then Chancellor of the Exchequer[5] Gordon Brown, had the potential to be catastrophic in terms of the state's ability to regulate corporate criminality, as the review's remit encompassed 63 major regulatory bodies – all of the major national regulators, including the Environment Agency and the Financial Services Authority (Hampton 2005, p. 13) – as well as 468 local authorities (Hampton, 2005, p. 3). The subsequent Hampton Report, published in 2005, was a watershed in regulation across many sectors of the UK economy.

The Hampton Report (Hampton, 2005), 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 laid upon pseudo-scientific, risk-based claims (below) to withdraw regulatory scrutiny from those that businesses which had, in the terms used in the Hampton report, 'earned' their 'autonomy'.

Such claims rest upon a series of assumptions: that most businesses are law-abiding; that they are likely to comply with law when faced with a combination of persuasion and market incentives; and, therefore, that only the minority of recalcitrant businesses need to be monitored via inspection regimes. Moreover, this risk-based model assumes above all, that businesses are capable of, and given the correct information and advice, are likely to, comply with the law. In much of his critique of existing regulators and their practices, Hampton focused on the Financial Services Authority as "a model regulator, consolidating functions and using thoroughgoing risk profiling/assessment" (Hampton, 2005, p. 62).

On unveiling the Hampton Report, Gordon Brown made clear the Government's policy trajectory in a speech heralded 'a new, risk-based approach to regulation to break down barriers holding enterprise back'; the 'new' model will entail 'no unjustifiable inspection, form-filling or requirement for information. Not just a light but a limited touch. Instead of routine regulation trying to cover all, the risk based approach targets the necessary few'. This

[5] Effectively, the Finance Minister.

new approach will 'help move us a million miles away from the old belief that business, unregulated, will invariably act irresponsibly' (Brown, 2005).

What followed the Hampton Report was a torrent of oversight activity. A series of 'Hampton Implementation Review Reports' were conducted on the work of 36 national regulators. Reports will be published here as the reviews are complete. Phase 1, completed by the National Audit Office by December 2007, covered the five "most significant in this country. The Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and Office of Fair Trading [which] regulate millions of businesses, covering some key areas of economic activity, whilst protecting the interests of us all" (National Audit Office, 2008a, Foreword; see also National Audit Office, 2008b,c,d,e). Phase 2, up to December 2009, assessed the Hampton-compliance of 31 further regulators, while the aim was to begin a round of second reviews of the first five (Phase 1) regulators, albeit only one was completed prior to the General Election of 2010 (Department for Business Innovation and Skills/Better Regulation Executive, 2010).

Also in the same month as the Hampton Report was published, the Cabinet Office's Better Regulation Task Force published its own review of regulation, 'Less is More: Reducing Burdens, Improving Outcomes' (Better Regulation Task Force, 2005). This 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 (ibid., pp. 32-44) which would further "(d)eregulation - removing regulations from the statute book, leading to greater liberalization of previously regulated regimes" (ibid., p. 7).

Recommendations from these two reports then informed the Legislative and Regulatory Reform Act, which passed into law in November 2006. This Act further facilitated removing or reducing burdens resulting from legislation, with a clearer definition of burden than the 2001 Act, namely: "a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability, or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity" (Legislative and Regulatory Reform Act 2006, S1(3)(a)-(d)). It was also to prove the basis for the new Regulators Compliance Code. This new code, published in December 2007 (Department for Business, Enterprise and Regulatory Reform, 2007), provided a new, explicit frame for the work of regulators: '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); and, most significantly, '[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 marginalising the enforcement role expected of regulators and giving renewed momentum to New Labour's pro-business trajectory.

A further, direct product of the Hampton report was the Macrory Report (Macrory, 2006) on the system of regulatory sanctions to ensure that these were consistent Hampton (Macrory, 2006b, p. 4). While accepting the need for criminal sanctions in some cases, Macrory concluded that "there is heavy reliance on criminal sanctions as a formal response to regulatory non-compliance." (ibid., p. 15) and that regulators should have at their disposal a much broader toolkit of sanctions, many of which would be more appropriate where "there has been no intent or willfulness relating to regulatory noncompliance" (ibid., p. 16). Many of his recommendations were formalized in the subsequent The Regulatory Enforcement & Sanctions Act (RESA) 2008.

In short, a new set of regulatory practices and ideas - from which it became increasingly difficult to dissent, had been established both through institutional design, regulatory review and legal reform – all supported by a constant stream of anti-regulation rhetoric at all levels of Government up to and concluding the Prime Minister. Indeed, so well cemented was this new common-sense regarding the 'limits' to be set upon regulation in a neo-liberal world that it was not even to be undone by the events that were to unfold at the end of the decade. The period in which financial services sectors across the globe reached a point of near collapse as a 'credit crisis' unfolded towards the end of 2007 followed what had been at best a sustained period of the most irresponsible forms of risk-taking, sanctioned by Governments, including that of the UK.

Moreover, such had been the energy directed at re-regulation by the Labour Governments that the last OECD report on Regulatory Management Systems[6] (OECD Regulatory Policy Committee, 2009), as well as those on the regulatory policies and systems of OECD member countries undertaken on 1998 and 2005 indicators (Jacobzone et al., 2007), indicate both that the UK is a leader in terms of 'regulatory management' and that it was an early if not the earliest starter on almost every indicator of such (see also OECD, 2010).

Post-2010: Regulatory Reshaping under the Coalition Government

Since 2010, legal reform, review, institutional re-design and anti-regulation rhetoric have accelerated. Rhetorically, within weeks of the Coalition being formed, the new Business Secretary signalled "radical steps … against red tape" (Horton, 2010). The key strategic document for new coalition 'Government was its December 2010 Reducing Regulation Made Simple. 'Less regulation, better regulation and regulation as a last resort' (HM Government, 2010). This set out a series of proposals, including detailed guidance on how 'Better Regulation' would be rolled out through Government at all levels (ibid.), notably through the work of the Reducing Regulation Committee, the Better Regulation Executive, the Better Regulation Strategy group, Better Regulation Ministers, Departmental Board Level Champions and Better Regulation Units within Ministries as well as the Reducing Regulation Committee!

In September 2010, following Labour Government proposals some years earlier (above), a 'One-In, One-Out' rule had been introduced to minimize regulation: any government department introducing new regulation that will impose a direct net cost on business will have to remove or modify another regulation at equivalent cost (Department for Business, Innovation & Skills, 2010). This itself was superseded by 'One in, Two Out': from January 2013, every new regulation that imposes a new financial burden on firms must be offset by

6 And, at the time of writing, still the most recent.

reductions in red tape that will save double those costs (Department for Business, Innovation and Skills, 2012).

Still early in its term of office, the Government also set out the need for "streamlining" systems of enforcement (HM Government, 2010, para section 3.4), since "More needs to be done to ensure that, where businesses have a good track record of compliance, this is taken into account by regulators, who will then reduce the inspection burden for them" (ibid., para 64). This includes, wherever possible, "Developing Co-regulatory Approaches", that is, giving "appropriate recognition to a businesses' own efforts to comply with regulation (ibid., p. 63).

This document not only trailed some of the substance but also set the tone for much of what was to follow. In June 2011, the 'Red Tape Challenge'[7] was launched – a website inviting comment as to which regulations should be repealed. At its launch, Grayling noted, "This is an opportunity that every beleaguered business leader, incredulous community group or outraged newspaper reader has been waiting for" (Health and Safety Executive, 2011). While it is tempting to trivialize this as little more than a stunt, recommendations made to the website have proven to be a key source of regulatory reform.

At the end of 2011, in December, a major document, Transforming Regulatory Enforcement, was published. While the opening page of the document itself noted the range of work initiated on "reducing the burden of regulation" (Department for Business, Innovation and Skills, 2011, p. 5), it noted that

> "... none of this is enough without addressing the most pressing concern for millions of businesses: the day to day experience of regulatory enforcement at the front line. For that reason we consulted over the summer, so that we could hear, first-hand from businesses, views on where reform of enforcement was needed and where the state's methods of enforcing regulation could be lightened or made to work in more constructive ways with business." (Ibid.)

A month later, the 'Independent Regulatory Challenge Panel'[8] was launched. This was a forum for complaints regarding compliance advice given by various regulators which the regulated considered to be incorrect or going beyond what was required to control risk (note – not 'comply with law'!) adequately. Later the same year, the 'Your Freedom' website was launched, another forum inviting suggestions to identify regulation that should be removed or changed. At its launch, Deputy Prime Minister Clegg claimed, "For too long new laws have taken away your freedom, interfered in everyday life and made it difficult for businesses to get on" (Prime Minister's Office, 2012)[9]. Then, a month later, a Focus on Enforcement Review was opened, where businesses were to be consulted as to how enforcement can be improved, reduced or done differently. It aims to encourage inspectors to "have regard for growth"[10].

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[7] Red Tape Challenge at http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/.

[8] Independent Regulatory Challenge Panel is at http://www.hse.gov.uk/contact/challenge-panel.htm.

[9] Your Freedom website at http://webarchive.nationalarchives.gov.uk/20100824180635/http://yourfreedom.hmg.gov.uk/

[10] Focus on Enforcement at http://discuss.bis.gov.uk/focusonenforcement/.

In March 2013, it was announced that the Regulators Compliance Code, already rewritten under Labour to consider economic progress (above), was to be amended to incorporate a “'growth duty' for regulators – requiring regulators to take into account the impact of their activities on the economic prospects of firms they regulate” (Department for Business, Innovation and Skills, 2013a).
Perhaps with the greatest hyperbole of all, 5th April 2013, was dubbed ‘Freedom Day’ for Business by the Government, as a package of deregulatory reforms were introduced; Business Minister Michael Fallon stated that “Setting business free from the restrictions that hold back enterprise is a compulsory step on the road to growth. We’ve listened to firms and taken prompt action where regulation presents barriers - but there is a huge amount still to do.” (Department for Business, Innovation and Skills, 2013b). Later that month, a major Deregulation Bill passed into law as the Enterprise and Regulatory Reform Act, over-turning a range of protections, in some cases over a century old (Field, 2013). In May 2013, when the Queen performed her ceremonial role of announcing the year’s Parliament business on behalf of the Government, she referred to a new, and yet another, Deregulation Bill.

Conclusion

This paper has presented the juxtaposition of two processes.

First, it has detailed, in two quite different contexts, the routine, systematic, corporate production of harms, some more likely to be crimes than others, though we can rarely know this. These harms affect millions of people in ways that are diffuse – and somewhat different across the two contexts.

Airborne pollution affects us all – albeit not equally, contra Beck (Tombs and Whyte, 2006) and other advocates of the ‘risk society’ thesis. Moreover, these effects for the most part are ones that we are unlikely to recognize or ever to be able really to know, certainly not in any direct causal way in terms of a health condition and its relationship to a specific corporate polluter. Nor, in a collective sense, can we know the scale nor longevity of these effects, nor the extent to which they are, or rather the proportion of these which are in fact, the consequences of corporate activity, let alone corporate illegality. It should also be emphasized that these harms do not simply affect the health and morbidity of individuals and communities, but they have unknown effects on the natural environment, as well as social costs in the sense of healthcare, inability to work, the costs of various forms of social support, as well as the costs of regulation – even if the latter is ineffective, from the point of view of ‘prevention’. Such forms of pollution represent, quite literally, mass and enduring harms, albeit relatively silent, relatively invisible. If they are difficult to recognize, they are also difficult to resist.

But visibility – if a *necessary* pre-condition for resistance - is not in itself *sufficient* for resistance. Thus, victimization to mis-selling is somewhat different to chronic exposure to pollution for in the former there have been concerted efforts to identify – indeed, ‘prove’ – victimization, in order to pursue claims of compensation. Indeed, in that respect, one might say that, if compensated, these victims were not victims at all. But this would be to obscure the layers of victimization and social costs that these three waves of mis-selling have engendered. First, these products and their markets were regulated – albeit not adequately, of course, and as we have documented were subjected to forms of deregulation – but state expenditures were consumed in the various stages of this process: that is, expenditures met through general taxation. Then, while millions of individuals did receive compensation, this cannot take account of any emotional or psychological costs that they or their families may have incurred in this process, not least where claims for compensation across each form of mis-selling were, *routinely and falsely*, initially denied. But further than that, a new market opportunity for business emerged around these waves of mis-selling, a market defined by the proliferation of 'claims management' firms, private sector companies which pursue claims on behalf of individuals – on the basis of a percentage of the claim either from the offending company or the compensated individual. Therefore, private profits were created and individuals were not fully recompensed. Third, the costs incurred by financial services companies in meeting the claims for compensation were likely to have been offset elsewhere, through charges for other banking services. Moreover, fourth, the costs of compensating these claims has latterly been cited on numerous occasions as a reason why banks are not responding to cash injections from central Government designed to restore post-2008 lending to individuals and businesses in order to generate economic growth – indeed, often cash stimuli from Government to banks has been followed by decreasing lending, as banks hoard cash at the expense of the wider economy. Finally, then, these processes underscore a dysfunctional sector – certainly when set alongside the 'larger' harms of the banking industry – further undermining social trust in what is a basic and at present necessary social function.

The second set of processes to which the paper has pointed are the ways in which, rather than states being implicated in these harms through long term *failures* of enforcement/ regulation, which is in any case a criminological given, states have in fact engaged in a great deal of work to construct state 'interference' as less legitimate and less likely. This is not a case of states *withdrawing* from markets to allow corporate freedoms, but of states continually constructing and reconstructing – through forms of regulation and enforcement – the markets within which corporations can act, and indeed produce harms, 'freely'. To be clear, then, the evidence presented in this paper documents forms of collusion between the state and corporations to produce widespread social harm. On the part of states this appears to be largely passive in the sense that this collusion takes the form of deregulation, or non-enforcement of existing law, or both. But in other ways, as the paper has sought to show, this collusion is much more active, as the state, through Government and the practices of regulators, has feverishly reconstructed markets and their oversight, providing a mass of ideological supports for these initiatives, albeit in ways likely to exacerbate or at least leave unhindered various forms of corporate harm.

Taking these two sets of processes together, I would argue, finally, that a combined effect of them may be to generate popular anger, anxiety, or apathy. Each effect – and they are not mutually exclusive – appears to be a logical or at least a comprehensible response to evidence of ongoing harms produced by the corporate sector where the state either colludes or, from some perspectives, and at best, 'fails to act'. The routine and seemingly endless production of harms may inure people to their perniciousness, as the population becomes anaesthetized to such harm, seeing but not seeing, which is the most pernicious effect of all. What is there to be surprised about any more about the corporate world? About the state? And - in the absence of alternatives to either, nor mechanisms for achieving these in any case, certainly not in the formal political sphere - is not a reasonable response simply to slide into apathy, alienation and atomization? In this context, the methodological problems of *knowing* about the extent and nature of such harms, raised in the earlier sections of this paper, have political effects – in a sense, these harms are both inadequately known but also *all too well-known* by the population, albeit in different ways. Whilst the scale and extent of environmental harms may not be widely recognized, there would, one imagines, be little surprise at 'discovery' of the extent and effects of such routine harm – although the nature and scale of the problem may in itself be enough to generate helplessness. At the same time, the waves of mis-selling to which this paper has pointed may now, in the current conjuncture, simply be consigned with a sigh to the generalized problem of 'the banks', again, seemingly, an inherent fixture of contemporary capitalism. The problem here, then, is not necessarily the invisibility of the structural violence routinely inflicted – it is in some ways its very visibility through its "ceaseless repetition" (Ditts, 2012, p. 192; Winter, 2012). It is this ceaseless repetition which represents an academic and, most of all, a pressing political challenge for those who would resist state-corporate harms.

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