The Relentless Construction of the Powerless State: ‘social regulation’ in the UK

What is Justice? Re-imagining Penal Policy: the Role of the State

Keble College, Oxford, 2 October 16 May 2013

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(Leverhulme Research Fellowship, RF-2011-173)
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Contexts

- Long term preoccupation with corporate crime and harm
- Focus on state (de/re-)regulation and (non/under) enforcement
- Theoretical (and empirical) recognition that the state and corporation and intimately linked – increasingly so
- Reflections upon post-crisis ‘settlement’
- Current work on LA regulation of business: food safety, health and safety, pollution control
The Myth of the Powerless State

The diminution of state capacity: an idea that has long circulated in much social science – through neo-liberalism, globalisation, the current ‘fiscal crisis’, and most academic work on regulation

Seems borne out by the fact that ‘the State’ is complicit in corporate crime and harm production through a series of ‘failures’:

- to put into place more ‘effective’ legal regimes
- to enforce adequately existing laws
- to respond effectively to violations of such laws
‘Food’ Inspections (EHOs, Local)

[Graph showing the number of food hygiene and food standards inspections from 2003 to 2011/12]

- Food Hygiene inspections total
- Food Standards inspections total
‘Food’ Establishments Prosecuted (EHOs, Local)
H&S Inspections (HSE, National)
OH&S Offences Prosecuted and Convictions Secured (HSE, National)
OH&S Inspections (EHOs, Local)
OH&S Offences Prosecuted and Convictions Secured (EHOs, Local)
Pollution Control Inspections (EA, National)
(from Whyte, 2010)
Pollution Control Inspections, Part B installations (EHOs, local)
In Summary, 2003/04 – 2011/12...

NATIONAL
HSE, H&S
- FoD Inspections declined by 53%
- Offences Prosecute: declined by 40%, Convictions (Offences): declined by 37%

Environment Agency, Pollution Control
- Inspections declined by 60% (1997/98-2008/09)

LOCAL
EHOs, Food
- Food Hygiene inspections declined by 10%, Food Standards inspections declined by 19%
- FSA prosecutions declined by 25%

EHOs, H&S
- H&S Preventative Inspections declined by 89%, H&S Total Inspections declined by 73% (to 12/13)
- Informations Laid declined by 52%, Successful Convictions by 47% (to 12/13)

EHOs, Pollution Control
- Part B Inspection Visits declined by 38%
- Part B Notices (other than variations) declined by 22%
The State’s Relentless *Construction* of the Powerless State

Note that above data / trends are not indices of *mere omission*….

- Better Regulation Unit, BRE, BRTF, Reducing Regulation Committee
- Hampton, Rogers, Young Review, Lofstetdt
- Legislative & Regulatory Reform Act (RIAs), Regulators Compliance Code(s)
- Hampton Compliance and Triennial Reviews
- LBRO, BRDO
- The ‘Growth Duty’

- Red tape, burdens on business, entrepreneurship and ‘freedom’ for business to do business

… Long-term material and ideological work
In Conclusion: the ‘Powerless’ State at Work

‘The state’ refashioning itself as joint partner, out-sourcer, contractor, ‘co’- and ‘meta’-regulator – albeit in different ways in different contexts - but in any case though intense, ongoing activity …

… while it constantly creates, recreates and maintains new markets for private capital; and these diminished roles for ‘the state’ are the product of a great deal of work by ‘the state’

An increasingly complex set of inter-dependences between apparently separate sets of entities - the corporation as both ‘inside’ and ‘outside’ of the state

Social regulation-as-law-enforcement has been undermined through ideological, political and economic means - and the principal actor has been the state