Il/legitimate risks? Occupational health and safety and the public in Britain, c. 1960-2015

Il/legitimate risks? Occupational health and safety and the public in Britain, *c.* 1960–2015

The last 20 years have seen the emergence of a popular climate of antipathy towards occupational health and safety regulation in the UK, particularly within the mainstream British media.[1] The emergence of a narrative of 'health and safety gone mad' has been mirrored by a hardening of government policy around risk regulation, including a reduction of resources, a rolling back of the legislative framework, and the adoption of a policy-making rhetoric of 'red tape' and 'sensible risk regulation'.[2] The governance of health and safety has thus in recent years become an increasingly visible and contested public and political issue.

The extent of this contestation and its impact on health and safety in the workplace and beyond requires explanation and historicization. Why, in recent years, has public rhetoric about health and safety become so important in framing the ways in which the State might legitimately act? Where does public opinion fit into the longer history of preventing deaths and injuries in modern Britain? In a volume interested in pluralizing notions of how risk has been governed and by whom, it may seem counter-intuitive to focus on the State, an institution thoroughly explored by an earlier generation of historians, as the introduction to this volume has noted. Yet, we can affirm the agency of the State whilst also attending, as this chapter does, to the shifting place and input of the public; and more especially to how public opinion came to exercise a key role in the formation and legitimacy of health and safety regulation, which is largely a product of recent decades.

This development forms part of a broader history of governance in which the State has taken account of constituencies much beyond the realms of formal regulatory processes. Indeed, the State was never a monolithic or domineering agent, even during the heyday of the so-called 'classic' post-war Welfare State. Actions were always negotiated with multiple interested parties, collectively forming what Christopher Sellers and Joseph Melling have recently called the 'industrial hazard regime'.[3] As we shall see, there were peaks and troughs in the extent to which the many actors involved were able to influence the State's approaches to health and safety. Trade unionism was particularly significant up to the 1970s; whereas employers became increasingly influential in the 1980s. Meanwhile, safety organizations (such as the Royal Society for the Prevention of Accidents) and pressure groups (such as the Society for the Prevention of Asbestos and Industrial Diseases) struggled to gain long-lasting purchase throughout, commanding attention only at particular moments. But what is most striking is that from the 1980s one set of actors assumed an increasingly important and influential role, both as an actor and as a point of reference: 'the public'.

To be sure, the public was never a uniform entity, something recognized at the time. As Bill Simpson, Chair of the Health and Safety Commission (HSC) – the management board overseeing the post-1974 regulatory system – observed in 1982: 'I even find it difficult to grasp sometimes what "public concern" actually means, or what "the wider public" means.'[4] Temporary coalitions of opinions emerged at particular points and the public always expressed a multiplicity of views. Nonetheless, the public gradually assumed a central place in debates about the legitimacy of health and safety. This was not, however, simply a product of growing governmental accountability per se. Rather, it reflected a new *kind* of accountability that emerged in the wake of a gradual dissolution of more tripartite forms of governance. It also reflected the advent of

a new political and administrative culture that was pro-business, sceptical of 'red tape' and keen to embrace more efficient styles of public management. As we shall see, the key change was from a relatively long-standing and limited conception of the governance focused around industrial stakeholders – employers, workers and regulators especially – to one rooted in a much more diffuse coalition of interested parties, including the public. This began, we suggest, in the mid-1980s, followed by a period of consolidation in the years after 2000.

A culture of tripartism: 1960–85

The modern regulatory system governing occupational health and safety (OHS) reaches back into the early nineteenth century. It began with the creation of an official Factory Inspectorate in 1833, which remained the lynchpin of the system beyond the Second World War. The creation and longevity of this body might be seen in terms of a sustained climate of progressive opinion, a view famously put forward by the jurist A.V. Dicey in the early twentieth century.[5] It is certainly true that factory inspection was gradually better resourced and that inspectors were slowly equipped with greater powers of enforcement. Regulations became more exacting, especially in relation to working conditions: the Factories Act of 1937, for instance, was a mammoth piece of legislation, specifying sanitary conditions, the safeguarding of machinery, the provision of fire exits and procedures for notifying accidents, among much else.

In fact, as historians have shown, these achievements were only secured through intensely complex processes of negotiation and compromise, and there was little, if any, direct engagement with public opinion more broadly.[6] Instead, the public dimension, such as it was, was restricted to employers, employees and trade unions. As early as the mid-Victorian period, inspectors were urged to practice diplomacy when advising or admonishing employers. It was axiomatic that persuasion was more reliable – and cheaper – than legal action: a sentiment that was just as pronounced in the inter-war period. Similarly, tactics of education and consultation were judged critical throughout, and by the 1930s, as Helen Jones has described, a loosely tripartite culture of governance had arisen in which inspectors regularly liaised with manufacturers' associations and trades unions.[7] Firms, for instance, voluntarily introduced safety committees that featured representatives of labour and management. Although none of this necessarily made for consensus, direct dialogue and tripartite consultation between the State, employers and employees was a part of both the formulation and implementation of health and safety measures.

This culture of broadly consensual, tripartite governance persisted into the post-war period, when further legislation was passed, including the Factories Act of 1961. Inspectors, for instance, continued to insist on the limits of legislation and the need to educate (rather than coerce) workers and employers. As the Chief Inspector of Factories noted in his 1963 report: 'both employers and workers are morally bound to accept responsibilities that are wider than those imposed by law ... Legislation cannot be a complete guide to what should be done.'[8] Likewise, if moving in the other direction, trade unions and local authorities continued to lobby for greater State involvement. To give but one example, in the early 1970s the Dock and Harbour Authorities' Association requested better and more extensive inspection, complaining of 'a

considerable shortage of trained personnel in the Factory Inspectorate, particularly those familiar with dock operations and ports generally.'[9]

At the same time, debate remained largely confined to those groups with a direct and vested interest in OHS. Matters of workplace safety and health were not afforded great public importance.[10] In 1972, the TUC General Secretary could note that '[m]ore people are interested in the antics of a certain lady and her butler or the Provost of Portsmouth Cathedral than in safety in industry.'[11] Officials within the Factory Inspectorate seem to have held only a limited conception of public opinion, which was constructed largely in terms of knowledge about the workplace. In 1972, the Chief Inspector of Factories recorded that 'it is part of the job of the Inspectorate to develop an informed public and to harness the force of its informed opinion to the improvement of industrial conditions.'[12] Although the same report noted that 'we are considering a much more active approach to the development of public opinion', this was conceived in terms of informing the public about the work of the Inspectorate.[13] On rare occasions, perhaps, significant disasters sparked considerable public interest and intense debate in the press regarding questions of industrial safety. This was true of the disaster at Aberfan, South Wales, in October 1966, when a primary school and much of the village were engulfed by a collapsed colliery spoil heap, resulting in the death of 144 people, the majority of whom were children. Yet media coverage was invariably short-lived and it was not necessarily related to the precise question of OHS.[14] As Rex Symons, a former member of the HSC, has recently observed: 'Aberfan didn't strike one as being a health and safety issue, it struck you as being a public safety issue'.[15]

The approach taken by the Robens Committee and the subsequent Health and Safety at Work Act 1974 (HSWA) at once built on and formalized the existing culture of corporatist, tripartite governance. As Chris Sirrs' chapter in this volume shows, the approach taken by Robens was driven by an ethos of 'industrial self-regulation' and a perceived 'identity of interests' between workers and employers. Underlying the Robens philosophy was a particular vision of risk governance that sought to co-opt the self-regulating capacities of workers and employers alike whilst limiting the role of the State and the use of formal, prescriptive methods, such as legally enforcing the precise specifications of factories acts. The result was the creation of the Health and Safety Executive (HSE), charged with implementing the HSWA and developing more formal and permanent consultative mechanisms.[16] Crucial here was the HSE's management board, the HSC, which was essentially tripartite, comprising representatives from industry, trade unions and local government, as well as safety experts and policymakers – all those actors that were understood as having a direct interest in OHS. In this way, by incorporating the input of a range of stakeholders, Robens sought to ensure that the new system of risk management was viewed as publicly acceptable, even if public opinions were not formally solicited within the tripartite structure.

Until the end of the 1970s, the governance of OHS was was thus characterized by a general lack of direct engagement with public opinion. It was not necessarily that members of the general public had no opinions on the issue of workplace safety and the risks that they faced; more that there was no means of expressing these opinions formally. As the Chair of the HSC observed in 1982 before a parliamentary select committee inquiring into the work of the HSE: 'We are structured the way we are because of the Act of Parliament [the HSWA] which laid down in broad terms the sort of representative groups that would be appointed there'. The public was not one of them, although he went on: 'I am not saying there that we do not take a note of public

concern, of course we do'.[17] It seems the general understanding was that the public would be represented via the existing groups sitting on the HSC. As the General Secretary of the Associated Society of Locomotive Enginemen and Firemen informed the same committee: 'The public interest is still well safeguarded by the local authority representatives on the Commission, especially the general public interest.'[18]

There are two key reasons for the lack of attention paid to general public opinion at this time. One is that health and safety was seen as a matter that only really concerned the workplace. As an article in the *Times* summed up in 1971, 'Industrial safety is a dry subject which arouses the passions of a limited number of people directly concerned with preventing accidents at work.'[19] Although Section 3 of the HSWA extended the responsibilities of employers to 'persons not in his employment who may be affected' by business activities, the full implications of this had not yet been developed or realized: at this point, the attention of employers, unions and regulators remained very much focused on workers. For the most part, regulators and policymakers remained wedded to viewing the relevant constituencies in narrow, tripartite terms, as indeed reflected in the very structure of the HSC.[20] The assumption was that 'the public' was not really separable from 'the working population' and that the interests of this group were represented by trade unions. As the Chair of the HSC noted in 1982, 'I often quarrel with the idea that, because a person contributes to a trade union, he automatically disqualifies himself from being a member of the public.'[21]

The second reason was that the policymaking process was principally concerned with a small and immediate range of issues relating to the day-to-day operation of OHS, rather than bigger issues which might make health and safety more politically contentious.[22] In part this reflected longstanding aspirations to impartiality and attempts to depoliticize health and safety by removing it, as far as possible, from the wider (and often fraught) industrial relations context of the time. In 1972 the Chief Inspector of Factories stated that 'impartial we must be, for no side – employer or workforce – has a monopoly of rectitude in safety and health at work. We must also exercise a strict impartiality if we are to hold – and deserve to hold – the trust of managers and workers'.[23] In the absence of any institutional reason to look at public opinions, health and safety therefore retained a relatively narrow focus on issues which could be addressed via the existing approaches of the regulator. It even reflected what might be called the technocratic nature of the regulator at this time and its status as a body that was constituted to deal with a particular range of considerations in an avowedly scientific, apolitical way. It is telling that the prevailing culture of regulation was sometimes criticized on these grounds: in the early 1980s, the Labour MP John Golding questioned whether the HSC was not in fact a 'conspiracy of science between workers and employers'.[24]

A change of focus: 1985–2000

During the 1980s fractures began appear in the relative consensus surrounding health and safety that had emerged in the preceding decades. The underlying principles of tripartite management and mediated public consultation were compromised as 'health and safety' became a more contested and politicized arena of State regulation. It became more and more difficult to conceive of health and safety as a narrow area of concern, fit only for the attention of employers, employees and unions. Accordingly, State agencies

such as the HSC had to pay attention to a much wider cross-section of opinion, including that of the public. In short, the governance of health and safety broadened and intensified and this impacted on the ways in which the State governed risks.

How might this be explained? Underlying the shift were significant social and economic changes. Most notably, traditional heavy industries such as mining and shipbuilding declined, whilst service and office-based work increased in scale. Employment in mining and quarrying, for example, fell from over 527,000 in 1961 to around 164,000 in 1981, whereas jobs in administration and management rose from 643,000 in 1961 to over 1,342,000 in 1981.[25] These trends continued in the 1980s, dramatically reshaping the economic landscape in which risks were produced and governed. At the same time, the obligations and powers set out in Section 3 of the HSWA, which imposed a duty on employers and the HSE to consider the impact of occupational activities on people beyond the workplace, were increasingly developed and realized. One instance is gas safety in the home. In January 1985, an explosion at the Newnham House flats in Putney, London, killed eight people, which was thought to have been caused by the faulty installation of gas appliances by engineers. The HSE was called in to investigate, marking the first time the body had dealt with the problem of domestic gas safety.[26] As David Eves, then Chief Inspector of Factories, later recalled:

> [t]hat accident was significant because it really elevated gas safety as an issue ... then everybody became aware that about 30 people a year were being gassed in their homes ... so we became involved with domestic gas issues. Now I think I'm right in saying this was the first time ... that we had powers, or even the willingness to enter domestic premises.[27]

In short, health and safety reached broader and more varied constituencies than it had previously: it was no longer synonymous with 'industrial safety'.

Yet changes in the social and economic context and the nature of health and safety regulation do not by themselves explain the increased prominence of the public. In fact, we should acknowledge at least three other factors, in what was also a contested and contingent period of transition in the culture of regulation: a politicization of regulation under the Conservative governments of Margaret Thatcher and John Major; a run of large-scale disasters that prompted concerns about public safety; and the development of new ideas about assessing risks and measuring levels of public tolerability. In terms of the first factor, the neo-liberalism espoused by the Conservative governments of the 1980s and 1990s made for a hostile ministerial and administrative environment. Many accounts of HSE policy and practice during this period have highlighted the impact of a more avowedly anti-regulatory political climate on the way that health and safety was directed. This included, for instance, the imposition of cost-benefit-oriented decision-making processes around regulations; scepticism about the value of personnel invested in inspection and enforcement; and greater pressure for political and legal accountability around decision-making.[28]

The presumption, certainly, was that regulation constituted a negative, burdensome intervention; but this was also – and increasingly – subject to explicit articulation. According to a 1986 Government White Paper *Building Businesses ... Not Barriers*, health and safety regulations amounted to a form of 'red tape' that 'forces people running businesses to follow a particular pattern or administrative process which

is not related to that business'.[29] Together with other White Papers such as *Lifting the Burden* (1985), *Building Businesses* recommended that 'along with a concerted effort to reduce the volume and burden of existing regulations, new arrangements should be established to ensure that the business dimension is properly taken into account in the framing of new regulations *where these remain necessary*'.[30] Such sentiments were widespread: in 1988, the *Guardian* quoted a 'senior government official', who asserted that a 'culture which is about enterprise, competition and profitability doesn't want to concern itself too closely with issues of health and safety.'[31] Health and safety was thus targeted for substantive reductions in the number of regulations, and there was a shift towards increased self-regulation and freedom from inspection.

The elevation of health and safety into an object of party-political antipathy also broke with the more consensual and consultative culture of the 1960s and 1970s. Business interests were seen as both dominant and more legitimate compared to the interests of organized labour.[32] The crude equation was of health and safety with trade union influence, declining traditional industries, unaccountable public bureaucracy, and 'outdated' welfare politics.[33] Yet, besides pronounced Tory antipathy towards the labour movement, the movement itself was suffering from falling membership, declining from a peak in union membership of 13,212,000 workers in 1979 to 7,898,000 in 2000.[34] As a result it became increasingly difficult for the various State agencies to overlook public opinion or, just as crucially, to assume that it was captured via the existing tripartite structure. In this context, reference to a wider public became unavoidable, whether one was for and against greater regulation.

The second development was the sudden and dramatic visibility of health and safety issues in the mid- to late 1980s. Over four years a spate of high-profile industrial, organizational and public disasters involved significant loss of life and subsequent public concern. The King's Cross London Underground fire in 1987 (31 fatalities), the *Herald of Free Enterprise* sinking in 1987 (189), the Piper Alpha oil rig fire in 1988 (167), the Clapham Junction rail crash in 1988 (35), and the Hillsborough football stadium disaster in 1989 (96), among others, created a particular moment of public safety crisis. This was exacerbated by a backdrop of terrorism (IRA, ongoing; Lockerbie, 1988) and nuclear meltdown (Chernobyl, 1986), and had a significant effect on both the public and government. As the *Guardian* noted in 1988, additional responsibilities demanded by the government and EEC regulations, 'combined with a series of disasters ... has put worker and public safety high on the agenda and the role of the HSE is being closely examined.'[35]

This increased scrutiny led to major changes in the systems of regulation in particular industries and in the approaches and methods that were used.[36] The offshore and rail industries, for instance, were now brought within the HSE directly (previously these pockets of safety work had been retained by the Government Departments responsible for running the industries), and the 'safety case' regime was more widely applied, whereby operators were granted licenses to practice on the basis of documentation submitted in advance to show that effective risk management procedures were in place. This was a much more anticipatory regime, with organizations taking responsibility for governing potential risks, rather than reacting to specific incidents and interventions as and when they happened.

Crucially, public scrutiny also served as a bulwark against the deregulatory instincts of the governments of the day, providing a protective shield to regulators. As one Labour MP later recalled, 'for virtually all of Margaret Thatcher's government, I

think that they probably would have liked to have done things with the Health and Safety at Work Act but there were so many disasters, it was very difficult.'[37] Following some of the large-scale disasters, a number of actors – including the public, the TUC and the Labour Party – put pressure on the Government about the reduced resources for the HSE. In response, the Director-General of the HSE was reported in the press as 'smiling discretely and welcom[ing] the political weight they are able to put behind his requests for more money and resources.'[38]

It thus became very difficult for even a deregulatory government to take action that might be construed as exposing the general populace to risk, and post-disaster reforms tended to strengthen the hand of the regulators rather than weaken them. For example, at select committee hearings in 1988, the HSE was able to make a play for greater responsibility in the areas of offshore (following Piper Alpha), underground (following King's Cross), and ferry (following the *Herald*) safety.[39] By 1992, the same committee welcomed the HSE's management 'back here with responsibilities which we thought you should have back under your belt'.[40] Starting in this period, government and regulators took a much greater interest in public attitudes to health and safety risks. Roger Bibbings, at that point Health and Safety Advisor at the TUC, recalled a meeting in the late 1980s:

> He [Director-General of the HSE] invited me to come and present from a TUC perspective to get the discussion going amongst his senior colleagues. So I said, "oh you need to look again at worker safety, and need to have a bigger view of worker safety"… not very long into this, he put his hand up and said, "no, no, no, stop my boy, stop … that's worker safety. That's a dead volcano," he said. "The live volcano is public safety. That is what's going to energise everyone."[41]

Not only, then, was the public becoming more prominent in directing political attention; it was increasingly noted by the regulators.

The third development was more technical: the idea of the 'tolerability of risk'. This continued a long-established trend for new technologies to become sites around which debates about safety and risk crystallized, for instance factories in the early Victorian period, the railways and the mines in the late nineteenth and early twentieth centuries, and, by the 1980s, the nuclear industry. The Sizewell B nuclear power station planning inquiry of 1982-7 in particular raised questions about how the safety calculations around nuclear sites should be made. It was proposed during the inquiry that HSE should explicitly assess 'tolerable levels of individual and societal risk to workers and the public' in relation to nuclear power.[42]

This led to the publication in 1988 of a new framework for calculating the 'tolerability of risk' in which health and safety regulators would seek to weigh probabilistic assessments of risk and the costs of prevention alongside a more informed sense of what was deemed appropriate by the public.[43] This model embodied a new approach to governing risk. In particular, it allowed regulators like the HSE to frame calculations of what level of risk exists (how serious, how likely) and what is possible in terms of risk control (feasibility, costs and benefits) against the backdrop of judgements about the social acceptability of those risks (from 'broadly acceptable', through 'tolerable' to 'unacceptable').[44] This then allowed for a more principled assessment of risk control to take place in high-hazard areas like nuclear power, where

the potential risks (and public attitudes towards them, especially after Chernobyl) might be extreme. As the then Chair of the HSC observed during select committee hearings in 1988: 'technological change is now probably swifter … the public has become increasingly conscious of and knowledgeable about its implications. The reassurance provided by a fully effective and respected state regulatory body is more and more important'.[45]

The tolerability of risk framework became a highly influential document and was revised in 1992 and 2001 to make it applicable to a broader range of industries and sectors.[46] It became widely admired for its efforts to put the balancing of public concerns and expert-led risk assessment on a systematic footing. At the same time, the HSE began to commission research into public opinion by organizations such as MORI. Many of these studies took the form of investigations into public attitudes towards and tolerance of high-risk industries, particularly among the specific populations who coexisted and interacted with them. All of these studies identified a public desire for regulation in these areas of risk and technological change.[47] Indeed, risk-creating industries were not necessarily trusted and this created an opportunity for an agency like the HSE to stake a claim as a trusted agency that acted to advance the 'public interest', as opposed to the interests of profit-hungry businesses.[48] The claim that regulation could and did counter incipient risk insecurity was thus reinforced by evidence that positioned health and safety as a matter of 'externalities', or costs accruing to parties not directly involved in the employment exchange.[49] This served to rebut the characterization of regulation as a burden imposed illegitimately from outside upon autonomous organizations. If risk was not internal to businesses in the complex, interconnected modern world, then risk regulation from outside was implicitly legitimated.

Regulating in public: 2000 onwards

The period after approximately 2000 witnessed a consolidation and intensification of the trends that emerged from the mid-1980s. Two aspects might be highlighted: first, the systematic targeting of regulation, itself a product of increasing political sensitivity to perceptions of public opinion; and secondly, an increase in public scrutiny and demands for accountability. In terms of the former, the 'better regulation' agenda pursued by the New Labour governments of the late 1990s and early 2000s was significant. Established in 1997, the Better Regulation Task Force reflected values that were articulated during the previous Conservative governments. These were seen in the Force's five guiding principles, which included a commitment to cost-benefit analyses, an ability to justify decisions publicly, and ideas about assessing the impact of regulations on business efficiency. The intention was to ensure that policy and practice meshed with the wider ideological and economic goals. Likewise, risk management continued to be devolved to a range of partner institutions, which in the case of health and safety included businesses. As regulations were increasingly questioned from within government and as further actors were brought into play, the governance of OHS broadened still further.[50]

One important step was the Revitalizing Health and Safety strategy of 1999, which was designed to reposition health and safety 25 years after the HSWA. It restated a need to focus on high-frequency risks and for the first time set targets for improvements in safety performance, reflecting pressures for increased public

accountability. At the same time, central government's capacity to exert direct control over regulatory outcomes was weakened. This was a result of both the continuation of the self-regulatory agenda, which moved responsibility for risk management outside the State, and the associated government desire to step away from direct control of day-to-day delivery.[51] According to Bill Callaghan, formerly of the TUC and Chair of the HSC during the years 1999 to 2007:

> I do recall a conference ... Brown and Blair were there ... the finger was being pointed at a number of regulators. Not HSE, I think, directly ... [but] there was a very strong view in New Labour that there was too much regulation ... in the City and in the retailing sector there were a lot of complaints to the political powers that be about what they saw as excessive regulation ... It then led to [the] Hampton and Macrory [reviews] and so on.[52]

The 2005 Hampton Review, entitled *Reducing Administrative Burdens*, recommended an easing of some regulations and the creation of a business-led body at the heart of government.[53] The Macrory Review of Regulatory Penalties, which reported in 2006, also embraced notions of proportionality and accountability.[54]

New Labour thus continued in the direction of travel started under previous administrations. Indeed, the climate of anti-regulatory sentiment that developed from the mid-1980s only hardened, making for an ongoing cycle of public review and reflection about the purpose and legitimacy of health and safety regulation. This was partly prompted by a highly politicized media narrative of 'health and safety gone mad' and the now regular provision of stories of regulatory excess, which was especially pronounced in the tabloid press.[55] Equally, attacks on the idea of regulation emerged with increasing ferocity from the business lobby and the Tory party, which sought to create a public perception that it was a matter of 'petty or restrictive' rules.[56] In 2008, the then leader of the Conservative opposition, David Cameron, argued that 'this whole health and safety, human rights act culture, has infected every part of our life … it's not a bigger state we need: it's better, more efficient government'. In 2012 and now in office, he stated that his Government's 'New Year's resolution' was 'to kill off the health and safety culture for good. I want 2012 to [be] the year we get a lot of this pointless time-wasting out of the British economy and British life once and for all'.[57]

The desire to reshape the regulatory system in order to respond to 'public opinion' led to the Young (2010) and Löfstedt (2011) reviews, which both paid attention to the problem of public standing, recognizing its potential to impact adversely upon the ability of regulators to fulfil their mandates. The report of the Löfstedt review was, significantly, titled *Reclaiming Health and Safety for All*, explicitly putting the public at the heart of debate.[58] Although Löfstedt determined that the existing regulatory system was broadly fit for purpose, Conservative Minister for Employment Chris Grayling claimed that '[b]y accepting the recommendations of Professor Löfstedt we are putting common sense back at the heart of health and safety', suggesting that regulation had run out of control and away from public opinion.[59] The promise of these reviews tended to reflect the deregulatory desires of the incumbent government, something noted in the *Guardian* following the announcement of the Young Review into the operation of health and safety law: 'The review will delight the Tory leader's spurned right wing, with the issue of over-restrictive rules filling many MPs'

postbags.'[60] The tendency for reforms to go beyond the conclusions of the reviews, however, suggests that those conclusions were not always to the liking of the commissioning politicians. Although Löfstedt recommended 35 per cent of health and safety regulations might be cut, the Government announced that over three years it expected to cut up to 50 per cent of regulations.[61]

The second theme evident in relation to regulation in general, and health and safety regulation in particular, was the persistence of public scrutiny and a desire for public accountability. This found expression in attempts to use corporate manslaughter rules to find senior management figures criminally culpable for deaths. Attempts to reform corporate manslaughter laws had been tied to public opinion since the mid-1980s, following the failures of prosecutions arising out of the *Herald of Free Enterprise* disaster of 1987 and the Southall rail crash of 1997, both of which were linked to a lack of high-level managerial accountability. This particular facet was thus not entirely new, but it gathered momentum after 2000. Commentators and government continued to cite public concern as a central reason for introducing revisions of corporate homicide liability law, and significant reform was eventually secured in 2006.[62]

Equally, public attitudes remained hugely complex, characterized by either ambivalence about or unconcern with health and safety issues. Research published by Gary Slapper in 1999 argued that there was a broader public view that health and safety was, in Kit Carson's term, 'conventionalized'. Offences, for instance, were not viewed as 'proper' crimes.[63] Although people might be aware of health and safety as an issue, it was perceived as a minor irritant rather than something more serious. This was certainly the view of Lawrence Waterman, a leading corporate health and safety consultant and formerly Head of Health and Safety at the Olympic Delivery Authority, who identified a 'public perception of health and safety being a bit trivial, a bit interfering, getting in the way of the lives that we want to lead … Although there's a degree of political maliciousness about it ... it does definitely weaken the opportunity we have for achieving what we want.'[64]

Nonetheless, it is clear that in 2015 health and safety and risk governance remain contested issues, and most of in the media and for politicians.[65] The focus groups conducted as part of the wider research project which underpins this chapter found evidence of an interplay between, on the one hand, an instinctive cynicism and rejection of 'health and safety' as boring and restrictive, and on the other, more considered and positive evaluations.[66] It was thus perfectly possible for participants to regard the diffuse mechanisms currently in place to manage health and safety as interfering, overly risk-averse and contrary to 'common sense', *and* as something that empowered workers and had brought major improvements in working conditions. And while negative media perceptions and public opinions were shared, they were also understood as representing a particular agenda. Perhaps surprisingly, despite holding these negative opinions on some level, the idea of health and safety as morally a 'correct' thing was still almost universally endorsed as a vital part of modern society:

> As a citizen you feel, when people have got their act together as far as health and safety's concerned, confident, that you're being looked after, and that's what you want … over the years we've got more confident about asking for these things, so there's a sense of safety, people have got their act together[67]

> [interviewer] Do you think it's important to have health and safety laws in place? … [participants all together] YES![68]

Conclusion

In 2015, the health and safety system might be characterized as being subject to 'critical trust' by the public at large.[69] It is accepted at the level of general principle, but subject to heavy criticism at the level of implementation and experience. While the abstract principle of State intervention to ensure health and safety has remained robust, the pursuit of this has become increasingly politicized and fragmented in recent years. The regulatory system has increasingly bifurcated so as to split efforts by central government to change the political character of health and safety away from the implementation and delivery of day-to-day outcomes by non-State actors such as safety professionals.[70] On both fronts, there is evidence of a disjunction between the ways health and safety is talked about and what it means in practice.

As we have argued, the present situation is a product of a complex set of developments which relate to changes both in the nature of regulation and in the broader social and political context. Since the 1960s the place of the public in the governance of health and safety has been of increasing importance. Conceptions of key stakeholders in health and safety altered slowly, if radically, moving from the long-standing 'industrial' interests of capital and labour to a more nuanced and diffuse group, including as a key player the public. Perhaps more significantly, since the mid-1980s, the place of public *opinion* in the State's governance of health and safety risks has assumed a greater prominence. This grew out of the changing political and economic structure of the UK at this time, not least the gradual decline of trade unions and tripartite models of governing, coupled with the rise of a neo-liberal agenda: all developments that made health and safety and State intervention matters of significant political dispute. These developments also meant that the State – which had long paid heed to public opinion, if in relatively informal or intangible ways – took increasing steps to respond to public attitudes about health and safety at work and beyond. Crucially, this recognition of the role of the public further complicated the diffuse nature of risk governance. State action had always been but one mode of governing risks in modern Britain, but towards the end of the twentieth century public opinion added a further and significant layer of complexity.

From a long-term perspective, it might be pointed out that there have long been points of conflict about what health and safety means and how far the State ought to intervene in the activities of businesses and the lives of individuals. What is noticeable, however, is the degree to which efforts to systematize public attitudes as a factor within bureaucratic decision-making have coexisted with a recasting of these attitudes within broader political and social debates. On the one hand, these trends are connected, in that formal regulatory accountability to public scrutiny is a major element of the neo-liberal, managerial State.[71] On the other hand, however, it seems that the emergence of a public anti-health and safety narrative has relatively little to do with formal issues of accountability, and more to do with the re-emergence of longstanding tensions around the role that State regulation should play in the settlement of competing interests around the everyday realities of work and public lives. If anything, these tensions are now less

deep-seated than in the past, but their expression is more prominent than it has been for some time.

---

[1] P. Almond, 'The Dangers of Hanging Baskets: Regulatory Myths' and Media Representations of Health and Safety Regulation', *Journal of Law and Society*, 36/3 (2009), pp. 352-75; D. Ball and L. Ball-King, 'Safety Management and Public Spaces: Restoring Balance', *Risk Analysis*, 33/5 (2013), pp. 763-71; S. Lloyd-Bostock, 'Public Perceptions of Risk and "Compensation Culture" in the UK', in B. Hutter (ed.) *Anticipating Risks and Organising Risk Regulation* (Cambridge, 2013), pp. 90-113.

[2] S. Tombs and D. Whyte, 'A Deadly Consensus: Worker Safety and Regulatory Degradation under New Labour', *British Journal of Criminology*, 50/1 (2010), pp. 46-65; P. Hampton, *Reducing Administrative Burdens: Effective Inspection and Enforcement* [Hampton Review] (London, 2005); R. Löfstedt, *Reclaiming Health and Safety for All: An Independent Review of Health and Safety Legislation* [Löfstedt Review] (London, 2011); R. Macrory, *Regulatory Justice: Sanctioning in a Post-Hampton World* [Macrory Review] (London, 2006); Lord Young, *Common Sense, Common Safety* [Young Review] (London, 2010).

[3] C. Sellers and J. Melling (eds.), *Dangerous Trade: Histories of Industrial Hazard Across a Globalizing World* (Philadelphia, 2011).

[4] *The Working of the HSC and E: Achievements since the Robens Report* (1981/82 HC-400ii), minutes of evidence 23 June 1982, p. 15.

[5] A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London, 1905).

[6] On diplomacy and negotiation see D. Roberts, Victorian Origins of the British Welfare State (New Haven, CT, 1960), pp. 287–93 and P.W.J. Bartrip, 'State Intervention in Mid-Nineteenth Century Britain: Fact or Fiction?' Journal of British Studies 23 (1983), pp. 63–83.

[7] Helen Jones, 'An Inspector Calls: Health and Safety at Work in Inter-War Britain', in P. Weindling (ed.), *The Social History of Occupational Health* (London, 1985), pp. 223–39.

[8] *Annual Report of H.M. Chief Inspector of Factories, 1963* (Cmnd. 2450; London, 1964), p.47.

[9] Written evidence of Dock and Harbour Authorities' Association to the Robens Committee (c.1972), p.3. The National Archives of the UK, London, LAB 96/57.

[10] J.L. Williams, *Accidents and Ill-Health at Work* (London, 1961).

[11] *Daily Telegraph*, 9 August 1972.

[12] *Annual Report of H.M. Chief Inspector of Factories, 1972* (Cmnd. 5398; London, 1972), p. vi.

[13] *Annual Report of H.M. Chief Inspector of Factories, 1972*, p. xv.

[14] I. McLean and M. Johnes, *Aberfan: Government and Disasters* (Cardiff, 2000); M.K. Pantti and K. Wahl-Jorgensen, '"Not an act of God": Anger and Citizenship in Press Coverage of British man-made Disasters', *Media, Culture & Society*, 33/1 (2011), pp. 105-122.

[15] R. Symons interview, para.10.

[16] Lord Robens, *Safety and Health at Work: Report of the Committee 1970-72* (Cmnd. 5034, London, 1972), p. 21.

[17] *The Working of the HSC and E* (1981/82 HC-400iii), minutes of evidence 23 June 1982, pp. 15-16.

[18] *The Working of the HSC and E* (1981/82 HC-400ii), minutes of evidence 16 June 1982, p. 25.

[19] *Times*, 5 May 1971, p. 23.

[20] S. Dawson, P. Willman, A. Clinton, and M. Bamford, *Safety at Work: The Limits of Self-Regulation* (Cambridge, 1988); B. Hutter, *Compliance: Regulation and Environment* (Oxford, 1997).

[21] *The Working of the HSC and E* (1981/82 HC-400iii), minutes of evidence 23 June 1982, p. 25.

[22] M. Moran, *The British Regulatory State: High Modernism and Hyper Innovation* (Oxford: 2003), p. 138.

[23] *Annual Report of H.M. Chief Inspector of Factories, 1972*, p. xiii.

[24] A.R. Hale and J. Hovden, 'Management and Culture: The Third Age of Safety. A Review of Approaches to Organizational Aspects of Safety, Health and Environment', in A. Feyer and A. Williamson (eds.) *Occupational injury: Risk, prevention and intervention* (London: 1998), pp. 129-65. *The Working of the HSC and E* (1981/82 HC-400ii), minutes of evidence 16 June 1982, p. 26.

[25] B.R. Mitchell, *British Historical Statistics* (Cambridge, 1988), p. 107.

[26] *Guardian*, 11 January 1985, p. 1; *Times*, 11 January 1985, p. 2.

[27] D. Eves interview, para.57.

[28] HSE, *The Scrutiny Programme: Problems of Assessing the Costs and Benefits of Health and Safety Requirements and the Techniques Available* (London, 1985), pp.1, 16-17; R. Baldwin, 'Health and Safety at Work: Consensus and Self-Regulation', in R.

Baldwin and C. McCrudden (eds.) *Regulation and Public Law* (London: 1987), pp. 132-58; Dawson *et al*., *Safety at Work*, pp.251-265; K. Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford, 2002); B. Hutter and P. Manning, 'The Contexts of Regulation: The Impacts Upon Health and Safety Inspectorates in Britain', *Law and Policy*, 12/2 (1990), pp. 103-136.

[29] *Building Businesses … Not Barriers* (Cmnd. 9794, London 1986), p. 2.

[30] *Building Businesses … Not Barriers*, p. 10 [emphasis added].

[31] *Guardian*, 9 March 1988, p. 23.

[32] A. Gamble, *The Free Economy and the Strong State: The Politics of Thatcherism* (2nd ed.) (London, 1994); D. Harvey, *A Brief History of Neoliberalism* (Oxford, 2005).

[33] Hutter and Manning, 'Contexts of Regulation', pp. 107-110.

[34] 'Trade Union Membership 2013. Statistical Bulletin', Dept for Business, Innovation & Skills (London, 2014), p. 21.

[35] *Guardian*, 16 November 1988, p. 1.

[36] C. Wells, *Corporations and Criminal Responsibility*, 2nd Ed. (Oxford, 2001).

[37] F. Doran interview, para.46.

[38] *Guardian*, 16 November 1988, p. 1.

[39] *Health and Safety Matters* (1987/88 HC 704-i), minutes of evidence 8 November 1988, pp. 6-7; Moran, *British Regulatory State*, p.136.

[40] *The Work of the Health and Safety Commission and Executive* (1991/92 HC 263), minutes of evidence 12 February 1992, p. 2.

[41] R. Bibbings interview, para.19.

[42] F. Layfield, *Sizewell B Public Inquiry: Report by Sir Frank Layfield* (London, 1987), Summary of Conclusions and Recommendations.

[43] HSE, *The Tolerability of Risks from Nuclear Power Stations* (London, 1988); J. McQuaid, 'A Historical Perspective on Tolerability of Risk', in F. Bouder, D. Slavin, and R. Löfstedt (eds.) *The Tolerability of Risk: A New Framework for Risk Management* (London, 2007), pp. 87-92.

[44] T. Bandle, 'Tolerability of Risk: The Regulator's Story' in F. Bouder, D. Slavin, and R. Löfstedt (eds.) *The Tolerability of Risk: A New Framework for Risk Management* (London, 2007), pp. 93-103.

[45] *The Work of the Health and Safety Commission and Executive* **(**1987/88 HC 267), minutes of evidence 20 January 1988, p.2; Hawkins, *Law as Last Resort*, appendix 1.

[46] Bandle, 'Tolerability of Risk'.

[47] G. Walker, P. Simmons, A. Irwin, and B. Wynne, *Public Perception of Risks Associated with Major Accident Hazards* (London, 1998); J. Elgood, N. Gilby, and H. Pearson, *Attitudes Towards Health and Safety: A Quantitative Survey of Stakeholder Opinion [MORI Social Research Institute report for the HSE]*, (London, 2004); S. King, M. Dyball, and L. Waller, *Public Protection Consultation Study [Research Report RR541]* (Sudbury, 2005).

[48] N. Pidgeon, J. Walls, A. Weyman, and T. Horlick-Jones (2003) *Perceptions of and Trust in the Health and Safety Executive as a Risk Regulator [Research Report 100]* (Sudbury, 2003), pp. 15-16.

[49] R. Baldwin and M. Cave, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford, 1999), p.11.

[50] R. Baldwin, 'Is Better Regulation Smarter Regulation?', *Public Law*, 3 (2005), pp. 485-511; A. Dodds, 'The Core Executive's Approach to Regulation: From "Better

Regulation" to "Risk-Tolerant Deregulation"', *Social Policy & Administration*, 40/5 (2006), pp. 526-42.

[51] J. Black, 'Tensions in the Regulatory State', *Public Law*, (2007), p. 64.

[52] B. Callaghan interview, para.31-3.

[53] Hampton Review.

[54] Macrory Review.

[55] Almond, 'The Dangers of Hanging Baskets'.

[56] Pidgeon et al, *Perceptions of and Trust in the HSE*, pp. 28-30.

[57] Speech to Conservative Party Conference, reported in *Guardian*, 1 October 2008 (http://www.guardian.co.uk/politics/2008/oct/01/davidcameron.toryconference1); 'Coalition plans to kill off 'health and safety monster' with limits on lawyers' fees', *The Telegraph*, 5 January 2012 (http://www.telegraph.co.uk/news/politics/8995276/Coalition-plans-to-kill-off-health-and-safety-monster-with-limits-on-lawyers-fees.html).

[58] Löfstedt Review.

[59] Department for Work and Pensions press release, 'Report calls for one million self employed to be exempt from health and safety law', 28 November 2011 (https://www.gov.uk/government/news/report-calls-for-one-million-self-employed-to-be-exempt-from-health-and-safety-law).

[60] *The Observer*, 13 June 2010, (http://www.theguardian.com/politics/2010/jun/13/tories-start-health-safety-rules-cuts)

[61] 'Report calls for one million self employed to be exempt from health and safety law'.

[62] Wells, *Corporations and Criminal Responsibility*, p. 122; Home Office, 'Reforming the Law of Involuntary Manslaughter: The Government's Proposals' (London, 2000);

Home Office, 'Corporate Manslaughter: The Government's Draft Bill for Reform' (London, 2005).

[63] G. Slapper, *Blood in the Bank: Legal and Societal Aspects of Workplace Deaths* (London, 1999), p. 155.

[64] L. Waterman interview, para.66.

[65] Slapper, *Blood in the Bank*, p. 157; also Wells, *Corporations and Criminal Responsibility*, p. 12.

[66] P. Almond and M. Esbester, 'The Changing Legitimacy of Health and Safety, 1960-2015', Institution of Occupational Safety & Health (IOSH) Research Report (unpublished, 2015). Eight semi-structured focus groups were conducted, each containing between 7-10 participants (total number, 67).

[67] References are structured by focus group identifier ('A' to 'H'), the participant identifier within that group ('1' to '10'), and the point in time during the recording/transcript where the comment was made.

C4: 1.00.22- 1.00.52.

[68] G1-7: 43.03.

[69] Pidgeon et al, *Perceptions of and Trust in the HSE*.

[70] Black, 'Tensions in the Regulatory State'.

[71] C. Hood, 'A Public Management for All Seasons?', *Public Administration*, 69/1 (1991); Moran, *The British Regulatory State*.