The Capture, Release and Recapture of Occupational Health and Safety

PhD

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I, Ryan Arthur, confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged

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Abstract

This study will observe the British state's capture, release and recapture of occupational health and safety (OHS). The state incrementally 'captured' OHS via the passing of the nineteenth-century *factories acts*. The state developed new forms of intervention that grew in scope and ambition. However, such growth was problematic; the state gradually became overloaded by the accumulation of *factories acts*. Correspondingly, the state observed a surge of voluntary initiatives to prevent workplace accidents. Motivated by these developments, the state 'released' some of its responsibilities to non-departmental public bodies and non-state actors through the enactment of the *Health and Safety at Work Act 1974*. The 'release' facilitated a network of non-departmental public bodies and non-state actors to expand and develop into a formidable OHS network. However, within just a few years of its existence, the OHS network was confronted by successive governments that sought to limit its autonomy and 'recapture' OHS.

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Chapter One: Introduction

1.0 General introduction

Occupational health and safety (OHS) developed in tandem with the development of state intervention. It is problematic to explain the development of state intervention without reference to OHS. In this vein, Peter Bartrip believed that his examination of government intervention could not afford to overlook the regulation of factories 'for this exerted a powerful demonstration effect when other possibilities of regulation arose'.[1] Debates around the regulation of the workplace were attached to the definition of government; it was the 'most controversial state interventionist issue in early Victorian Britain'.[2]

Crucial to understanding government is to understand the state's capacity to capture, release and recapture core functions. This study will observe the state's capture, release and recapture of OHS. Never has the state captured, released or recaptured OHS in its *totality*. The notions of capture, release and recapture are not complete dichotomies. Instead, we should view them on a spectrum. The state incrementally 'captured' OHS via the passing of the nineteenth-century *factories acts*. The state gradually regulated aspects of working conditions for the textile, bleaching and dyeing, lace work, percussion cap-making, cartridge-making, paper staining, fustian cutting, earthenware manufacture and lucifer match-making industries. The state had legitimated 'new forms of intervention', which grew in scope as the century progressed.[3] However, manufacturing interests maintained some degree of influence over the state.[4] Correspondingly, the state 'released' OHS through its establishment of the Health and Safety Commission and the Health and Safety Executive (HSC/E) in the 1970s.[5] However, these bodies

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[1] P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605, p611
[2] W.C. Lubenow, *The Politics of Government Growth, Early Victorian Attitudes towards State Intervention 1833 - 48* (Newton Abbot 1971) p137
[3] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Ac, 1802' in Norman Landau (ed), *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002) p255
[4] P.W.J. Bartrip and P.T Fenn, 'The Evolution of Regulatory Style in the Nineteenth Century British Factory Inspectorate' (1983) 10 JLS 2 p201
[5] Keith Hawkins, *Law as Last Resort Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press 2003) p148

operated under the 'shadow of hierarchy'.[6] As R.A.W. Rhodes states, 'They are dependent on central agencies for legal authority and financial resources'.[7] The period of 'release' was short-lived; the state gradually began to 'recapture' OHS through the erosion of the independence of its non – departmental public bodies. This spectrum of capture, release and recapture has shaped the history of OHS.

1.1 Overview of the thesis

In the late eighteenth century, a collective of non-state actors employed practical methods to protect communities from the harms of the work environment.[8] One group, in particular, has received significant attention; the collective of Manchester physicians.[9] Led by Dr Thomas Percival, this collective employed a number of practical methods to ameliorate outbreaks of putrid fevers in the Lancashire area.   The content of which was incorporated into the *Health and Morals of Apprentices Act, 1802*. It from this point that the state gradually 'captured' OHS through assuming primary responsibility for protecting some of its citizens from the harms of the work environment.[10] The *1802 Act* ushered in the first era of factory legislation. Acts followed it in 1819 and 1825 that exhibited a similar sentiment. This was profoundly significant; by

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[6] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

[7] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017) p75

[8] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001) James A. Swaney and Martin A. Evers, 'The Social Cost Concepts of K. William Kapp and Karl Polanyi' (1989) 23 JEI p7

[9] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); James Smiley, 'Some Aspects of the Early Evolution of the Appointed Factory Doctor Service' (1971) 28 BJIM 4 p315; W.G. Carson, 'The Conventionalization of Early Factory Crime' (1979) 7 IJSL p38; Alexander Meiklejohn, 'Industrial Health: Meeting the Challenge' (1959) 16 BJIM 1 p1; Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Ac, 1802' in Norman Landau (ed), *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002); Edward Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community* (Manchester University Press 1998) p11; Robert B. Williams, *Accounting for Steam and Cotton: Two Eighteenth Century Case Studies* (Garland Publishing 1997) p72; Pamela Horn, *Children's Work and Welfare 1780-1890* (Cambridge University Press) p23; C. Wilkinson, *Fundamentals of Health at Work: The Social Dimensions* (Taylor & Francis 2001) p27; W.R. Lee, 'Emergence of Occupational Medicine in Victorian Times' (1973) 30 BJIM 2 p119, p118; Kevin White, 'Introduction' in Kevin White (ed), *The Early Sociology of Health and Illness, Volume 1* (Routledge 2001) pxx

[10] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Ac, 1802' in Norman Landau (ed), *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002)

passing these acts, the fundamental principle of state interference with free labour was cemented.[11] It is mistaken to view the regulation of workplaces as merely an adjunct function taken on by the state; instead, the decision to regulate the workplace was how it *became* a state; an 'active force, doing or choosing not to do particular things'.[12]

Bound by precedent, the state was expected to be an 'active force' to intervene when 'evils' were uncovered.[13] Beginning with the regulation of the textile industry, it then turned its attention to bleaching and dyeing, lace work, percussion cap-making, cartridge-making, paper staining, fustian cutting, earthenware manufacture and lucifer match-making. To accommodate these growing responsibilities, there was an incremental increase in personnel and budget, albeit not at the rate that was fitting for such a broad remit, but enough to demonstrate that the state was capturing OHS. In the late nineteenth century, the state's accumulation of factory legislation was moderated with a concern to regulate the workplace more effectively.[14] Regarding this development, Oliver Macdonagh stated:

> They began to undertake more systematic and truly statistical and experimental investigations. They strove to get and to keep in touch with the inventions, new techniques and foreign practices relevant to their field. They even called directly upon medicine and engineering, and the infant professions of research chemistry and biology, to find answers to intractable difficulties.[15]

From the late nineteenth century, several initiatives were undertaken to review, improve and consolidate factory regulation. These initiatives were critical for the maturation of factory regulation; acceptance that non – state actors could play a larger role and the acknowledgement

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[11] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p26; Hylton Dale, 'Child Labor under Capitalism' in Sally Alexander, *Women's Fabian Tracts Volume VII* (Routledge 1988) p56; B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966)
[12] Joanna Innes, 'Forms of 'government growth', 1780–1830' in David Feldman and Jon Lawrence (eds) *Structures and Transformations in Modern British History* (Cambridge University Press 2011) p79
[13] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[14] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
P.W.J Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605
[15] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p60 - 61

that state-centric legislation had its limits.[16] However, these considerations would remain in the background until the Factory Department's transfer to the Ministry of Labour and National Service in 1940. Though advances had been made in the early twentieth century, they were amplified when the Factory Department relocated to the Ministry. The Ministry was a relatively young department unfettered by precedent and tradition like the Great Offices of State.[17] It was accustomed to adopting new roles and responsibilities placed on it by other departments.[18] Moreover, when Ernest Bevin accepted the ministerial post in Winston Churchill's Coalition government, he did so on the condition that he be allowed to take measures to improve the conditions of workers.[19] On his first day, Bevin filled up four sheets of paper with a programme of action that 'transformed the attitude and the role of the Ministry of Labour'.[20] Prime among his programme of action was to give OHS a new footing.[21]

This new footing gave OHS corporatist backing and led to a surge in government action to improve the working conditions of the British public.[22] These currents of the post-war period contributed to two critical developments. First, the atmosphere of collaboration and input prompted significant non-state interest and activity in the arena of OHS.[23] Non – state actors working for the betterment of working conditions *independently* demonstrated to the Ministry that industry had the potential to mobilise and address the rising accident rates. Second, it

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[16] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937); T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924); George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914)

[17] Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 – 82; Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[18] Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 – 82; Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[19] Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 - 206

[20] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p12

[21] Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991) p253 - 254

[22] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[23] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

helped create a sense of inconsequential reform.[24] The surge of the Ministry of Labour's

corporatist, welfarist and legislative activity in the post-war period did not have a discernible

impact on working conditions. The rigidity of government had been stretched by the Ministry of

Labour's programme of action with no discernable benefit. Both of these developments were

critical to the appointment of the Robens committee.[25] The Robens committee was significant

because it pointed the way towards the 'release' of certain responsibilities to individuals and

groups outside of central government.[26] The proposals of the committee made its way through

the Houses with the passing of the *Health and Safety at Work Act* (HASAWA) in 1974. The

HASAWA was a bold and emancipating act.[27] The Health and Safety Commission and the

Health and Safety Executive (HSC/E) were established with the enactment of HASAWA.[28] The

initial nurturing of these bodies created a quasi-autonomous, well – rounded and formidable

governance network. However, the network was not given the opportunity to fully develop.

From the winter of 1979, successive governments eroded and restricted its regulatory mandate,

autonomy and effectiveness,[29] in doing so, the government began to recapture OHS.

1.2 The significance of the thesis

The significance of this study lies in four matters. First, a period in the history of OHS has been

left under-researched and under-theorised. There are a number of foundational and influential

texts that help us understand two important periods of OHS. The period of the nineteenth

century[30] and the latter part of the twentieth century.[31] However, the decades in-between these

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[24] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[25] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[26] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)

[27] R.C. Browne, 'Safety and Health at Work: The Robens Report' (1973) 30 BJIM 1 p87

[28] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997); R.A.W Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

[29] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997); Steve Tombs and David Whyte, 'Deadly Consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46, p48 – 50; Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); Paul Almond, 'Revolution Blues: 'The Reconstruction of Health and Safety Law as 'Common-sense' Regulation' (2015) 42 JLS 2 p202

[30] For example, M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966); John Fielden, *The Curse of the Factory System* (Frank

periods, there is not much literature. The few studies focusing on this period were written *in* that period.[32] Therefore, we do not benefit from the long view. To address such issues, this study offers two chapters that cover this period. Second, the vast majority of studies are fixated on the government, HSE, HSC and the Inspectorates. Few studies look at non-governmental activity. It is imperative that we go beyond our state-centric fixation and include the efforts of the countless men and women that also contributed to OHS policy and practice. As Hugh Heclo, one of the first scholars to document the activities of 'issue networks', explained, 'Looking for the few who are powerful, we tend to overlook the many whose webs of influence provoke and guide the exercise of power'.[33] It is problematic to discuss capture, release and recapture without reference to critical developments amongst non – state actors. Third, to shed light on either unexplored areas or to bring fresh perspectives, this study utilises unpublished interviews with prominent figures in OHS and archival materials from the National Archives, the TUC Library and the Modern Records Centre. Fourth, there is also significant engagement with theory to frame and explain key occurrences in OHS history. To make the best use of the sources above, this study has drawn from the theoretical work around networks and the hollowing out of the state. Descriptive accounts dominate the landscape of OHS, there are very

Cass & Co 1969); P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605; Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Ac, 1802' in Norman Landau (ed), *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002) p230; Peter Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of the British Asbestos Industry 1890s-1970* (Bloomsbury 2001); Peter Bartrip, 'Success or Failure? The Prosecution of the Early Factory Acts' (1985) 38 EHR 3 p423; Robert Gray, *The Factory Question and Industrial England,* 1830-1860 (Cambridge University Press 1996); Robert Gray, 'Medical Men, Industrial Labour and the State in Britain' (1991) 16 SH 1 p19; Peter Kirby, *Child Workers and Industrial Health in Britain, 1780-1850* (Boydell & Brewer 2013); B.L. Hutchinson and A. Harrison*, A History of Factory Legislation* (2nd edn, P.S King 1911)

[31] For example, Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997); Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); Bridget M. Hutter, *Regulation and Risk: Occupational Health and Safety on the Railways* (Oxford University Press 2001); Keith Hawkins, *Law as Last Resort: Prosecution Decision-making in a Regulatory Agency* (Oxford University Press 2002); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

[32] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924); George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914)

[33] Hugh Heclo 'Issue networks and the Executive Establishment' in Anthony King (ed), *The New American Political System* (American Enterprise Institute 1978) p102

few accounts that generate their own theory or benefit from decades of theoretical work that *broadly* correlates with the development of OHS.

1.3 The scope of the thesis

The scope of this study is from the *Health and Morals of Apprentices Act 1802* until the demise of the Coalition government in 2015. In order to observe incremental change, it is vital to observe such a vast period. Faced with this task, this study will focus on elements related to capture, release and recapture. This provides the study with a basic framework to include or omit events. For instance, this study did not spend much time highlighting the closure of the HSC. By the time it was abolished, it was not able to insulate the HSE from the recapture of government.[34] This study is neither a history of OHS legislation nor an administrative history of regulatory agencies. Instead, it is conceptually anchored towards the notions of capture, release and recapture. Another consideration regarding the large period of investigation is that it shares some connection with existing literature. It is difficult to find a study in this field that does not begin with the nineteenth-century *factories acts* or at the very least refers to past occurrences. This is because of the incremental nature of OHS that does not permit researchers to begin their study at any arbitrary period without referencing the past. It is inconceivable to discuss the *Löfstedt Review* without discussing the *Robens Report* or to discuss the *Health and Safety at Work Act 1974* without discussing the previous *factories acts*.

1.4 The capture, release and recapture of OHS

There is not one particular theory that explains the capture, release and recapture of OHS. The developments within OHS were far too varied to accommodate any overarching theory. As famed commentator Sidney Webb stated, reformers were not guided by any 'abstract theory… but instead responded pragmatically to particular problems as they emerged. We seem always to

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[34] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998); Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

have been inescapable of taking a general view of the subject we were legislating upon'.[35]

However, there were crucial themes that informed particular periods of OHS which this study

has drawn from. What follows is an overview of what informed the notions of capture, release

and recapture.

1.4.1 Capture

Capture involves the state assuming prime responsibility for the policy and practice of OHS,

exerting a significant influence over the administration of factory regulation, influence over the

day-to-day decision–making processes and restrictive roles for non-state actors. The mood for

the government's capture of OHS was prompted by the detrimental consequences of the

productive process, depicted by Karl Polanyi's *Great Transformation*. Polanyi's work enhances

this thesis through the provision of a broad framework for the identification and understanding of

the adverse consequences of industrialisation in the late eighteenth century.[36] Moreover,

Transformation's distinctive merit is theorising the reaction to the consequences of

industrialisation. It helps to frame the spontaneous reactions or *countermovements*.[37] Merits

aside, there are a number of issues with Polanyi's thesis; generalities, contradictions and

interpretation of events are problematic.[38] However, his broad ideas are of interest.[39] The early

history of OHS draws many parallels with these ideas.[40] Also, there is a sufficient body of work

on the factory question that permits us to leave his more problematic assertions to one side.

Polanyi's concept of the *countermovement* is powerful in explaining *change,* but it fails to

explain the *normalisation* of the expansion of factory regulation or the continued capture.

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[35] Cited in Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton University Press 1994) p176 - 177

[36] James A. Swaney and Martin A. Evers, 'The Social Cost Concepts of K. William Kapp and Karl Polanyi' (1989) 23 JEI p7

[37] See for example Anne Mayhew, 'Polanyi's Double Movement and Veblen on the Army of the Commonweal' (1989) 23 JEI 2 p555

[38] Jan Drahokoupil, 'Re-Inventing Karl Polanyi: On the Contradictory Interpretations of Social Protectionism' (2004) 40 CSR p835

[39] Margaret Lewis, 'The Age Demanded: The Rhetoric of Karl Polanyi' (1991) 25 JEI 2 p475

[40] P.W.J. Bartrip and P.T. Fenn, 'The Evolution of Regulatory Style in the Nineteenth Century British Factory Inspectorate' (1983) 10 JLS 2 p201

Despite the reduction of the miseries of industrialisation, government regulation of the workplace continued to grow.

Due to this consideration, we turn to Oliver Macdonagh's model to help shed light on the government's capture of the workplace. Just a decade after Polanyi's *Transformation*, Macdonagh observed the expanding role of government in the first half of the nineteenth century. This observation led him to develop a model of the 'self-generating, administrative momentum' of government. This model provides framing so that 'particular factors can be grouped and the particular developments evaluated'.[41] Macdonagh's observation allows us to see that the *regulation* of the workplace brought more *regulation* of the workplace; assuming responsibilities brought more responsibilities. This in no way disregards external drivers of regulatory growth; all can be accommodated within the model. Thus, Macdonagh's model is among the 'safest' vantage points to observe the government's extension of workplace regulation because it is broad enough to accommodate other considerations, such as humanitarian pursuits, Benthamism, influence of manufacturers or party spirit. On this basis, succeeding writers on nineteenth-century government have not strayed too far from MacDonagh's model.[42] Similarly, Denis Paz noted that 'MacDonagh and the 'pragmatic' school have... the better part of the debate'.[43]

1.4.2 Release

The release of OHS involved the dissemination of certain responsibilities to the HSC/E, the ability of the HSC/E to introduce legislation without scrutiny, autonomy in the day-to-day decision–making processes, the HSC/E's inclusion of non–state actors into the policy-making process and the widening of the HSC/E's regulatory mandate. This notion is informed from two strands of literature. First, the 'hollow state' thesis, which is a metaphor used to describe the

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[41] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p63
[42] Marlene A. Arieno, *Victorian Lunatics: A Social Epidemiology of Mental Illness in Mid Nineteenth Century England* (Susquehanna University Press, 1989) p103; D. Roberts, 'Jeremy Bentham and the Victorian Administrative State' (1959) 2 VS 3 p193 – 210; G. Kitson Clark, *The Making of Victorian England* (Routledge 1962); R. J. Lambert, 'A Victorian National Health Service - State Vaccination, 1855-71' (1962) 5 HJ p1 - I8
[43] Denis G. Paz, *The Politics of Working-class Education in Britain, 1830-50* (Manchester University Press 1980) p8

practice of governments contracting out service provision.[44] In the latter decades of the

twentieth century, the 'hollow state', 'state of agents', the 'substitute state', 'disarticulated state',

'third party state', 'networked state', 'enterprise state' 'neo-managerialist state' and 'marketized

public administration' were all attempts to explain how conventional government had ceded

away some of its core functions.[45] In this light, the enactment of the *Health and Safety at Work*

Act 1974 established the HSC/E to oversee OHS policy and implementation. Through the

creation of these bodies, the core executive conceded its capacity 'outwards', which resulted in

the hollowing out of the state.[46]

The second strand of literature utilises the network thesis. The notion of a 'network' came out of

a range of 'decentred' accounts that sought to document the shift from 'hierarchically organized,

unitary systems of government that govern by means of law, rule and order, to more horizontally

organized and relatively fragmented systems of governance that govern through the regulation of

self-regulating networks'.[47] The network form existed when many 'nodes' (experts,

governmental and non–governmental organisations) are linked to many other 'nodes', which are

all 'tied' together by a common area of interest.[48] Numerous metaphors have been used to

describe this configuration ('lattice', 'web', 'matrix', as well as network'), and all sought to

evoke the logic of decentralised and integrated connectivity which defined the essence of the

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[44] Chris Skelcher, 'Changing Images of the State: Overloaded, Hollowed-Out, Congested' 15 PP 3 p3; Michael Saward, 'In Search of the Hollow Crown' in Patrick Weller, Herman Bakvis and R.A.W. Rhodes (eds), *Countervailing Trends in Core Executives* (Palgrave Macmillan, 1997); R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997) Mark Bevir and R.A.W. Rhodes, *Interpreting British Governance* (Routledge 2003); Mark Bevir and R.A.W Rhodes, 'Public Administration without Foundations: The Case of Britain' (1998) 20 ATP 1 p3
[45] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997)
[46] Mark Bevir and R.A.W. Rhodes, 'Public Administration without Foundations: The Case of Britain' (1998) 20 ATP 1 p3
[47] Eva Sørensen, 'Democratic Theory and Network Governance' (2002) 24 ATP 4 p693; Manuel Castells, *The Rise of the Network Society: The Information Age: Economy Volume 1* (2nd edn, Wiley Blackwell 2011); Jan van Dijk, *The Network Society* (Sage Publications 2012); Jan Kooiman (ed), *Modern Governance: New Government-Society Interactions* (Sage Publications 1993); Walter J M Kickert Erik-Hans Klijn and Joop F.M. Koppenjan (eds), *Managing Complex Networks Strategies for the Public Sector* (Sage 1997); Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197; Eva Sørensen and Jacob Torfing (eds), *Theories of Democratic Network Governance* (Palgrave Macmillan 2007)
[48] Darin Barney, *The Network Society* (Polity Press 2004)

OHS Network.[49] The literature on networks is not without its critics. A standard charge centres

on the metaphorical nature of the network literature.[50] Undoubtedly, the notion of the network is

an ideal type, a streamlined schematic of reality.[51] This is not necessarily a weakness; Patrick

Kenis and Volker Schneider saw that describing the network as a metaphor enables us to capture

the 'architecture of complexity'.[52] As was demonstrated through past attempts, the metaphor of

the network helped us make sense of complex and tumultuous modern realities.[53] Interestingly,

the metaphor of the network was likened to Harry Beck's London Underground map; Beck

designed his circuit diagram with the intent of making complex routes and confusing

interchanges fathomable to the observer.[54] Related to the allegation of metaphor is the notion

that the literature on networks offers little explanatory insights.[55] The literature on networks

inclines towards generality and has had a very irregular record on producing empirical work.[56]

In response to this criticism, this study has confined itself to a particular area in an effort to

garner 'thick description'; no grand theory is proposed, just an illumination of critical events that

took place in one area of government. A network focus is just one aspect of viewing OHS

practice and policy.

1.4.3 Recapture

Recapture involves the loss of the HSE's autonomy and independence, marginalisation,

restriction of regulatory mandate, interference in the decision–making process and alignment

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[49] Darin Barney, *The Network Society* (Polity Press 2004)

[50] Barrie Houlihan, *Sport, Policy and Politics: A Comparative Analysis* (Routledge 1997)

[51] Wayne Parsons, *Public Policy: An Introduction to the Theory and Practice of Policy Analysis* (Edward Elgar Publishing 1995)

[52] Patrick Kenis and Volker Schneider, 'Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox' in Bernd Marin and Renate Mayntz (eds), *Policy Networks. Empirical Evidence and Theoretical Considerations* (Boulder 1992)

[53] Hugh Heclo, 'Issue networks and the executive establishment' in Anthony King (ed), *The New American Political System* (AEI Press 1978); Kenneth Hanf and Fritz W. Scharpf *Interorganizational Policy-Making: Limits to Co-ordination and Central Control* (Sage 1978); Peter J. Katzenstein, *Between Power and Plenty, Foreign Economic Policies of Advanced Industrial States* (University of Wisconsin Press 1978)

[54] Karen Heard - Laureote, 'Transnational Networks: Informal Governance in the European Political Space' in Wolfram Kaiser and Peter Starie (eds), *Transnational European Union: Towards a Common Political Space* (Routledge 2015)

[55] Keith Dowding, 'There Must Be End to Confusion: Policy Networks, Intellectual Fatigue, and the Need for Political Science Methods Courses in British Universities' (2001) 49 PS 1 p89

[56] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford University Press 2017); Barrie Houlihan, *Sport, Policy and Politics: A Comparative Analysis* (Routledge 1997)

with the government. To depict the recapturing of OHS, this study draws from the notion of the 'surround'. The surround was one of the organising principles utilised by Keith Hawkins to direct our attention to the broader context in which regulatory decision–making took place.[57] Hawkins suggests that changes in the surround impact actors 'on the ground' either through central policy shifts or through the modification of their behaviour.[58] Though Hawkins did not point to the origin of this organising principle, it appears that it was extracted from the recurrent themes in his interviews with HSE staff. Also, it bears a similarity to an earlier study conducted by Michael Lipsky[59] which suggested that broad cultural values informed ground-level bureaucratic decision–making.[60]

In addition, the 'steering' literature proves useful in explaining how the HSC/E was 'steered' into moderation and eventual recapture. Within the British context, it was articulated by Andrew Dunsire, and then developed by Rod Rhodes; steering was a 'synonym for a mode of control which involves setting a norm and correcting deviations from it'.[61] Steering describes how governments 'manage' and moderate their sprawling networks of public, private and voluntary actors.

1.5 The layout of the thesis

Chapter Two: The Capture of OHS (1802 – 1870s)

Chapter Two explores how occupational health and safety (OHS) began as a reactionary movement to the adverse consequences of industrialisation of the late eighteenth century. Leading the movement was a collective of Manchester physicians who sought to mitigate the harmful working conditions of the urban poor. Their practical methods were appreciated by

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[57] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p115 - 135
[58] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p115 - 135
[59] Michael Lipsky, *Street-Level Bureaucracy: The Dilemmas of the Individual in Public Service* (Russell Sage Foundation 1980)
[60] Hawkins references Michael Lipsky in *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency*.
[61] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford University Press 2017) p161

local government and prompted the development of the first *factories acts*. In passing these acts, Parliament accepted the principle that the issue of working conditions required its consideration and intervention. This chapter serves to highlight how factory regulation was threaded into the fabric of government.

Chapter Three: The Extension of the Capture of OHS (1870s – 1930s)

This chapter charts the development of OHS from the late nineteenth century in which there was a concerted effort to improve the quality of OHS regulation. Moving from its narrow legislative origins, the government implemented a number of initiatives to broaden OHS regulation. However, the lack of discernible impact pointed to the problematic nature of developing OHS within the confines of Westminster. This chapter seeks to understand the expansion of factory regulation, not merely regarding the proliferation of statute, but also regarding the refinement of processes to bring about greater compliance. In some ways, the process of refining government embedded government further into the factory regulation, but it also prompted government officials to conceive of alternative ways to fill the 'gaps' of factory regulation.

Chapter Four: The Loosening Grip of Government (1930s – 1960s)

Chapter four examines the decades leading up to the appointment of the Robens Committee. These decades were typified by the expansion of corporatist and non - governmental efforts to improve working conditions. Such activity contributed to two significant developments. First, it contributed to a surge in non – governmental efforts to reduce the toll of death and disease *independent* of government. Second, the inability of the government's post-war drive to tackle the accident problem affirmed the notion that its regulation of the workplace had reached its limit. Both developments pushed the government to take OHS in a radically new direction. This chapter explores an under-researched and under-theorised period of OHS to explore plausible reasons that prompted the government's decision to release OHS.

Chapter Five: The Release of OHS (1970 – 1974)

Chapter five provides an overview of the Robens committee which was significant because it pointed the way towards the release of responsibilities to individuals and groups outside of central government. The terms of reference was unprecedented in its scope and it strongly reflected the corporatist sentiment of the period. What came out of this committee was a blueprint to give the prime responsibility of OHS to those who created the risks and those who worked with them. The chapter seeks to uncover the details behind the release of OHS from several government departments.

Chapter Six: The OHS Network (1974 – 1979)

The blueprint produced by the Committee led to the introduction of Health and Safety at Work Act 1974 (HASAWA). There were two significant consequences of the enactment of the HASAWA. The first of which was the 'hollowing out of the state'. The second was that the 'hollowness' of the state was filled by the OHS Network. Individuals and organisations from the public, private and voluntary sectors that worked for the betterment of OHS came together to form the OHS Network. This chapter seeks to conceptualise the release of OHS through the vehicle of the OHS Network. To illustrate the conceptualisation, the OHS Network is observed in isolation of the 'surround'.

Chapter Seven: The Recapture of OHS (1974 – 2010s)

The Labour government's nurturing of the OHS Network created a quasi-autonomous, well – rounded and formidable governance network. Arguably, if it was allowed to continue on the same trajectory established by the 1974 – 1979 Labour government, it had the propensity to govern the workplace more effectively. However, it was not given the opportunity to develop. From the winter of 1979, successive governments eroded and restricted its regulatory mandate. Ultimately, losing much of its autonomy and effectiveness. OHS is in the process of recapture. This chapter seeks to understand how and why this occurred.

Chapter Two: The Capture of OHS (1802 – 1870s)

1.0 Introduction

In the late eighteenth century, occupational health and safety (OHS) developed as a reactionary movement to the adverse consequences of industrialisation. Leading the movement was a collective of Manchester physicians who sought to mitigate the harmful working conditions of the urban poor. Their practical methods were appreciated by the local authorities and prompted the development of the first *factories acts*. In passing these acts, Parliament accepted the principle that the issue of working conditions required its consideration and intervention.

1.1 The layout of the chapter

This chapter will commence with a description of the adverse conditions of industrialisation.[62] Karl Polanyi's *Great Transformation* is utilised to frame these conditions and the reactions to them.[63] Polanyi's work asserts that the miseries caused by industrialisation stemmed from the 'dis-embedding' of economic activity from social and political restraints. This, in turn, spurred a reaction or a *countermovement*, initiated by a collective of Manchester physicians. These physicians conducted studies and employed crude but practical methods to ameliorate the excesses of the factory system. The result of which contributed to the first notions of OHS and led to the passing of the first *factories act*, the *1802 Health and Morals of Apprentices Act*.[64]

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[62] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); Barbara Harrison, *Not Only the Dangerous Trades: Women's Work and Health in Britain 1880-1914* (Taylor & Francis 1996) ;Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001); Joseph Bizup, *Manufacturing Culture: Vindications of Early Victorian Industry* (University of Virginia Press 2003); James Smiley, 'Some Aspects of the Early Evolution of the Appointed Factory Doctor Service' (1971) 28 BJIM 4 p315; W.G. Carson, 'The Conventionalization of Early Factory Crime' (1979) 7 IJSL p38; Alexander Meiklejohn, 'Industrial Health: Meeting the Challenge' (1959) 16 BJIM 1 p1

[63] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001); Gregory Baum, *Karl Polanyi on Ethics and Economics* (McGill-Queen's University Press 1996)

[64] Edward Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community* (Manchester University Press 1998) p11; Robert B. Williams, *Accounting for Steam and Cotton: Two Eighteenth Century Case Studies* (Garland Publishing 1997) p72; Pamela Horn, *Children's Work and Welfare 1780-1890* (Cambridge University Press 1995) p23; C. Wilkinson, *Fundamentals of Health at Work: The Social Dimensions* (Taylor & Francis 2001) p27; Kevin White, 'Introduction' in Kevin White (ed) *The Early Sociology of Health and Illness, Volume 1* (Routledge 2001) pxx; W.R Lee, 'Emergence of Occupational Medicine in Victorian Times' (1973) 30 BJIM 2 p118, p119; B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London

Though the role of the physicians in the formation of OHS was acknowledged in numerous studies, Polanyi's conception of *countermovements* helps contextualise their responses.

The following section explores the significance of the acts that followed. The *1802 Act* prompted the institutionalisation of important precedents and new responsibilities.[65] It was a period in which MPs 'were framing their thoughts in ways that their forefathers would not have done'.[66] To understand the implications and significance of the early factory legislation, this chapter utilises Joanna Innes' work,[67] which elucidates that through the passing of the first *factories acts*, Parliament had conceded the principle that factory conditions required its attention. In effect, the torch of the *countermovement* was passed to the government.[68] This was particularly evident in the 'transition legislation'; a series of acts after 1819 that reflected the government transitioning from being 'escorted' to the statute book by external actors to legislating of its own accord. The government was now fully engaged in *countermoving,* expected to tackle 'new' problems identified, created, or exacerbated by industrialisation.[69]

The third section of this chapter observes the extension of factory regulation. Since the precedents were established with the first *factories acts* 'all that remained to be settled was how far regulation should be extended, and how best to give it effect'.[70] Thus, what follows is an explanation of how factory regulation was extended. Drawing on Oliver Macdonagh's model of regulatory growth, there will be an explanation of the 'self-generating, administrative

1966); *Eddie Crooks, The Factory Inspectors: A Legacy of the Industrial Revolution* (Tempus Publishing 2005); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

[65] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Act, 1802' in Norman Landau (ed) *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002)

[66] Joanna Innes, 'Forms of 'Government Growth', 1780–1830' in David Feldman and Jon Lawrence (eds) *Structures and Transformations in Modern British History* (Cambridge University Press 2011) p79

[67] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Act, 1802' in Norman Landau (ed) *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002); Joanna Innes, 'Forms of 'Government Growth', 1780–1830' in David Feldman and Jon Lawrence (eds) *Structures and Transformations in Modern British History* (Cambridge University Press 2011)

[68] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Act, 1802' in Norman Landau (ed) *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002)

[69] P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605

[70] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Ac, 1802' in Norman Landau (ed) *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002) p230; Oliver Macdonagh, *Early Victorian Government, 1830-1870* (Holmes & Meier Publishers 1977); Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52

momentum' that pushed the government to legislate.[71] It was through this momentum that factory regulation grew in scope.

The last section of the chapter comments on the nature of the growth of factory regulation.[72] The growth of regulation was typified by government intervention. OHS was centrally coordinated; factory regulation was largely the prerogative of state institutions that offered a limited role to non-state actors.[73]

2.0 The miseries of industrialisation

The miseries wrought by industrialisation in the late eighteenth century were typified by human degradation.[74] As W.G. Carson noted, the worst excesses 'had occurred… following the invention of the water – frame, patented in 1769'.[75] Rural communities that migrated to the industrial centres often faced overcrowded and unsanitary workplaces and settlements. Health hazards were provoked by the lack of infrastructure to accommodate such an unprecedented level of migration. The suffering of the newly arrived migrants intensified by way of the rationing of poor quality food, wretched clothing and poor ventilation.[76] Their former rural habits only added to their miseries, 'It was one thing in a semi-rural area to fetch water from the river and to fling refuse to the winds but quite another for dwellers in the congested streets and crowded courts and alleys'.[77] In such conditions, whole families succumbed to death and

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[71] Oliver Macdonagh, *Early Victorian Government, 1830-1870* (Holmes & Meier Publishers 1977); Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52; Richard Brown, *Church and State in Modern Britain 1700-1850* (Routledge 1991);W.H. Greenleaf, *Rise Collectivism* (Routledge 2012)

[72] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007); Jacint Jordana and David Levi-Faur (eds), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age* (Edward Elgar 2004); David Marquand, *The Unprincipled Society: New Demands and Old Politics* (Jonathan Cape 1988) p178

[73] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007)

[74] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001) p41

[75] W.G. Carson, 'The Conventionalization of Early Factory Crime' (1979) 7 IJSL p37, p38

[76] Alexander Meiklejohn, 'Industrial Health: Meeting the Challenge' (1959) 16 BJIM 1 p1

[77] Marjorie Cruickshank, *Children and Industry: Child Health and Welfare in North-west Textile Towns during the Nineteenth Century* (Manchester University Press 1981) p21

disease. Death rates were so high in some of the growing towns and cities that the urban

populations were only able to grow through a net influx of migration from the countryside.[78]

Karl Polanyi's *Great Transformation* provides the framing of the miseries of industrialisation.

More specifically, Polanyi contextualised the miseries by situating them within the notion of

'social costs'.[79] Although Polanyi did not explicitly mention the term 'social cost', his work

pointed to the detrimental 'costs' which communities suffered as a result of the productive

process, and for which factory owners were not automatically held accountable.[80] It proves

difficult to comprehend why the state took on the responsibility to protect its citizens from the

adverse effects of industrialisation *without* referring to the 'social cost' that prompted such

action. Thus, the use of Polanyi's work enhances this chapter through the provision of a broad

framework for the identification and understanding of social costs.[81]

Polanyi explained that society reacted to the adverse conditions brought about by the

establishment of a self - regulating market, which divorced economic activity from social

relations. To this point, James Smiley noted that 'most millowners with a few honourable

exceptions' developed a 'hard and selfish' attitude that exploited workers and rejected any

responsibility for the well-being of their workpeople.[82] Industrialisation or what Polanyi

referred to as 'mechanisation' brought about a radically different work environment that

engendered a revision of the relationship between mill owners and their workforce.[83] Planning

and organising for reliable and large-scale production, coordinating and controlling activities of

larger numbers of people and functions, containing costs and maintaining a trained and

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[78] John Stevenson, 'Social Aspects of the Industrial Revolution' in Patrick O'Brien and Ronald Quinault (eds), *The Industrial Revolution and British Society* (Cambridge University Press 1993)
[79] James A. Swaney and Martin A. Evers, 'The Social Cost Concepts of K. William Kapp and Karl Polanyi' (1989) 23 JEI p7
[80] Gregory Baum, *Karl Polanyi on Ethics and Economics* (McGill-Queen's University Press 1996)
James A. Swaney and Martin A. Evers, 'The Social Cost Concepts of K. William Kapp and Karl Polanyi' (1989) 23 JEI p7
[81] Jan Drahokoupil, 'Re-Inventing Karl Polanyi: On the Contradictory Interpretations of Social Protectionism' (2004) 40 CSR p835
[82] James Smiley, 'Some Aspects of the Early Evolution of the Appointed Factory Doctor Service' (1971) 28 BJIM 4 p315
[83] Alexander Meiklejohn, 'Industrial Health: Meeting the Challenge' (1959) 16 BJIM 1 p1

motivated workforce engendered a homo economicus mindset that rationalised, monetised and mechanised everything in the factory including the workers.[84] Joseph Bizup added that machines and their 'living attendants' were envisioned as mere 'organs' subordinated to the factory's central source of power. Alongside capital and machinery, labour was an asset to be used.[85]

2.1 The reaction to the miseries of industrialisation

The *Great Transformation* is noted for contextualising the social costs of industrialisation. However, it is also crucial in contextualising the *reaction* to the social costs. Drawing from his anthropological research, Polanyi posited that certain members of society mobilised to protect wider society from the social costs of industrialisation; he refers to this mobilisation as a 'countermovement'.[86] Polanyi appealed to what he calls the 'changelessness of man as a social being';[87] throughout known human history, economic activity was embedded in social relations. This contrasted with the self - regulating market advocated by the prevailing *laissez-faire* liberal creed, a unique and unparalleled institution that separated the economy from society and endangered the latter as a result.[88] He notes that historical experience suggests that society would generate a *countermovement* to protect itself against disintegration. However, Polanyi makes it clear that the 'countermovement' of protection was not the result of society acting according to its own inner logic; instead, it was the work of specific groups in society who were concerned about the devastation caused by unfettered production.[89] These groups chose to protect themselves and the society to which they belonged. Their efforts were not necessary, not always successful, not written into the nature of things, but freely chosen and fallible.[90]

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[84] Jay M Shafritz J Steven Ott and Yong Suk Jang, *Classics of Organization Theory* (Cenage 2011) p34
[85] Joseph Bizup, *Manufacturing Culture: Vindications of Early Victorian Industry* (University of Virginia Press 2003) p32
[86] Gregory Baum, *Karl Polanyi on Ethics and Economics* (McGill-Queen's University Press 1996) p3 - 20
[87] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001) p128
[88] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001) p136
[89] Gregory Baum, *Karl Polanyi on Ethics and Economics* (McGill-Queen's University Press 1996) p3 - 20
[90] Gregory Baum, *Karl Polanyi on Ethics and Economics* (McGill-Queen's University Press 1996) p3 - 20

2.2 The countermovements that led to the formation of OHS

Polanyi's thesis provides an appropriate setting to observe the countermovements that formed OHS. It helps to frame their actions as spontaneous *reactions* to the adverse consequences of industrialisation. Such reactions were particularly prevalent among a collective of Manchester physicians. In the closing decades of the eighteenth century, their attempts to counteract the adverse consequences of industrialisation formed the basis of OHS.

Led by Dr Thomas Percival, a collective of Manchester physicians sought to ameliorate outbreaks of putrid fevers in the Lancashire area in the closing decades of the eighteenth century. To this point, Edward Royle noted, 'This *ad hoc* committee was a precursor… of Sir Robert Peel's determination to secure legislation'.[91] The panel of physicians condemned some mills as stuffy, malodorous and filthy.[92] They also criticised the excessively long hours that children were made to work.[93] More importantly, their report on the 'health of Manchester' contained recommendations for remedial action.[94] B.L. Hutchins and A. Harrison commented that, 'The magistrates of the county were so much impressed by the recommendations of the physicians

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[91] Royle was not alone in this regard, Likewise, Robert Williams notes, 'Percival was the main instigator of the move to demand legislative intervention which led to the Health and Morals of Apprentices Act of 1802'. Pamela Horn added '(Sir Robert Peel the Elder) was also influenced by the writings of Dr Thomas Percival and consulted Percival when he was drafting the Bill'. Cf. Wilkinson notes, 'His (Percival) report found favour with Peel. It contributed to the first Factory Bill.' Kevin White states, 'Based on this work (Thomas Percival's 1773 publication Observations on the State of the Population of Manchester), Sir Robert Peel proposed the Health and Morals of Apprentices Act of 1802, the first of the Factory Acts.' White also states that Peel was not only influenced by Percival, but he was also informed by the publications of other physicians that sat on the Manchester Board of Health. W.R. Lee points out that some the Board of Health's recommendations of hygiene control 'continued down through the Factories Acts and still appears in Factories Act 1961'. The most convincing correlation comes from Sir Robert Peel the Elder himself, he noted, 'having the assistance of Dr Percival and other eminent medical gentlemen of Manchester together with some distinguished characters both in and out of Parliament, I brought in the Bill of 1802'.
Edward Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community* (Manchester University Press 1998) p11; Robert B. Williams, *Accounting for Steam and Cotton: Two Eighteenth Century Case Studies* (Garland Publishing 1997) p72; Pamela Horn, *Children's Work and Welfare 1780-1890* (Cambridge University Press 1995) p23; C. Wilkinson, *Fundamentals of Health at Work: The Social Dimensions* (Taylor & Francis 2001) p27; Kevin White, 'Introduction' in Kevin White (ed) *The Early Sociology of Health and Illness, Volume 1* (Routledge 2001) pxx; W.R. Lee, 'Emergence of Occupational Medicine in Victorian Times' (1973) 30 BJIM 2 p118, p119

[92] John Waller, *The Real Oliver Twist: Robert Blincoe: A Life that Illuminates an Age* (Icon Books 2006) p71; Harold Silver, *The Concept of Popular Education* (Routledge 2007); Edward Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community* (Manchester University Press 1998) p11;

[93] John Waller, *The Real Oliver Twist: Robert Blincoe: A Life that Illuminates an Age* (Icon Books 2006) p71 Harold Silver, *The Concept of Popular Education* (Routledge 2007); Edward Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community* (Manchester University Press 1998) p11

[94] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911)

that they directed their clerk to return them public thanks and to have the letter printed and distributed'.[95] Innes observed that 'They printed both report and resolution in the *Manchester Mercury*, and sent copies to the magistrates of seven neighbouring counties. In practice, *they clearly received wider circulation* (emphasis added)'.[96] Such reactions support Polanyi's notion of the *countermovement* 'checking the expansion' of the factory system 'in definite directions'.[97]

2.3 The humanitarianism of the countermovements

The *countermovements* of the Manchester physicians did not only gain the favour of government because of the practical methods employed but also because of its 'concomitant humanitarianism'.[98] For Harold Silver, the Manchester physicians 'were an obvious point at which… humanitarianism became transmuted into social action in Britain'.[99] Percival and his contemporaries espoused a 'brand' of humanitarianism that was particularly appealing to figures in local and central government. Contrary to present-day conceptions of humanitarianism, its earlier manifestations were conservative. For the most part, they did not attempt to identify with the industrial poor or improve social mobility.[100] The economic and social gulf between the poor and the reformers was just too wide.[101] Rather, the brand of humanitarianism that characterised the *countermovements* expressed itself in self-preservation, amelioration and a child-centeredness. The first of which was articulated by one of the leading members of the collective of Manchester physicians, Dr John Ferriar.[102] He explained that the wealthier members of society needed to concern themselves with the plight of the impoverished because their 'own

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[95] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p8 - 9

[96] Joanna Innes, 'Origins of the First Factory Acts; The Health and Morals of Apprentices Act, 1802' in Norman Landau (ed) *Law, Crime and English Society, 1660 - 1830* (Cambridge University Press 2002) p238

[97] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 2001) p136

[98] Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's Body in Early Victorian Fiction' (2000) 28 VLC 2 p313; Harold Silver, *The Concept of Popular Education* (Routledge 2007) p62

[99] Harold Silver, *The Concept of Popular Education* (Routledge 2007) p62

[100] Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's Body in Early Victorian Fiction', (2000) 28 VLC 2 p313; W. R. Lee, 'Robert Baker: The First Doctor in the Factory Department: Part 1. 1803-1858' (1964) 21 BJIM 2 p85

[101] W. R. Lee, 'Robert Baker: The First Doctor in the Factory Department: Part 1. 1803-1858' (1964) 21 BJIM 2 p85; G.H. Boehringer and Michael Tubbs, 'Law's History - A Materialist Perspective' (1979) 3 LSB 7 p30

[102] Michelle Faubert, *Rhyming Reason: The Poetry of Romantic-Era Psychologists* (Routledge 2016) p106

health and safety' depended on it[103]; 'Closer attention to the comfort of the poor, than is *commonly practised*, is a desirable object of attainment: and it may excite the benevolence of some men… that acts of charity will not only serve them in another life, but promise them a longer enjoyment of the present (emphasis added)'.[104]

The second aspect of their humanitarian project was that it represented 'ameliorative action' as opposed to disruptive and radical action.[105] The Manchester physicians were not 'outsiders' that wanted to tear down existing institutions, rather they were representative of these institutions, in the sense that they had a 'high' standing in Lancashire of which they were considered the 'aristocracy of the town'.[106] Percival and his colleagues used conventional practices and means to push through a program of amelioration. Mark Sanders' work on the 'humanitarian narrative' places the *countermovements* within the context of a cluster of ideologies that affirmed the universality of the interests of the various capitalist class factions and that professed that the majority of merchants, manufacturers, and professionals were 'agents of progress', their interests and actions contributed to the greater happiness of all.[107] Thus, the solutions to the problems of the factory system did not venture too far from what was 'practical' and advantageous for all parties concerned.[108]

The third feature of the humanitarian project was that it primarily focused on the child. This can be observed in the physicians' anxieties over the physical well-being of factory children.[109] To this point, S.E. Maltby found significant material from the 1770s that demonstrated a 'long-

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[103] Michelle Faubert, *Rhyming Reason: The Poetry of Romantic-Era Psychologists* (Routledge 2016) p106
[104] Cited in Michelle Faubert, *Rhyming Reason: The Poetry of Romantic-Era Psychologists* (Routledge 2016) p106
[105] Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (The University of California Press 1979)
[106] M.C. Buer, *Health, Wealth and Population in the Early Days of the Industrial Revolution* (Routledge 2006) p122
[107] Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's Body in Early Victorian Fiction' (2000) 28 VLC 2 p313
[108] Accordingly, it was not strange for the Board to put forward the 'business case' to manufacturers, for instance lauding the fact that their methods saved money for Manchester, 'There had been 327 fewer coffins bought for paupers with a saving of £91 during the two years of its existence, and the Board applauded itself in avowing that it 'gave security to the opulent and higher ranks of society besides serving the sick and needy'.
Henry Harris, 'Manchester's Board of Health in 1796' (1938) 28 ISIS 1 p26, p30
[109] Adriana S. Benzaquen, 'The Doctor and the Child' Medical Preservation and Management of Children in the Eighteenth Century' in Anja Müller (ed), *Fashioning Childhood in the Eighteenth Century: Age and Identity* (Routledge 2006)

standing' interest in the welfare of children. Moreover, as their influence grew, 'the cry of the

children' in factories became a centrepiece of the reform movement.[110] Their concern can be set

in the wider context; throughout the eighteenth century, children's bodies were increasingly seen

as crucial to the health of the nation.[111] Thus, the destruction of children was, in fact, the

destruction of society.[112] Emphasising the physical and rational deficiencies of children, this

movement propagated that children were in need of regular intervention, special attention, care

and protection. The child's deficiencies were not despised but cherished as tokens of a more

natural form of existence that adults should protect.[113] It was the mixture of these three aspects

that made the humanitarian demands of the Manchester physicians irresistible. As MacDonagh

noted, 'No wall of either doctrine or interest could permanently withstand that single trumpet

cry'.[114]

2.4 The institutionalisation of the countermovements

After capturing the attention of local government, key figures in central government witnessed

and took note of Percival and his colleague's methods to ameliorate the miseries of the

countermovements.[115] In 1796, Sir Robert Peel the Elder, industrialist and parliamentarian, was

asked to attend the meetings of the newly inaugurated Manchester Board of Health, in which he

and borough reeves, constables, church warders, overseers of the poor, Strangers' Friendly

Society members, magistrates, physicians, surgeons and apothecaries, would hear the problems

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[110] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p18

[111] Joanne Bailey, *Parenting in England 1760-1830: Emotion, Identity, and Generation* (Oxford University Press 2012); Adriana S. Benzaquen, 'The Doctor and the Child' Medical Preservation and Management of Children in the Eighteenth Century in Anja Müller (ed), *Fashioning Childhood in the Eighteenth Century: Age and Identity* (Routledge 2006)

[112] Adriana S. Benzaquen, 'The Doctor and the Child' Medical Preservation and Management of Children in the Eighteenth Century' in Anja Müller (ed), *Fashioning Childhood in the Eighteenth Century: Age and Identity* (Routledge 2006)

[113] Adriana S. Benzaquen, 'The Doctor and the Child' Medical Preservation and Management of Children in the Eighteenth Century' in Anja Müller (ed), *Fashioning Childhood in the Eighteenth Century: Age and Identity* (Routledge 2006); Anja Müller, 'Introduction' in Anja Müller (ed), *Fashioning Childhood in the Eighteenth Century: Age and Identity* (Routledge 2006)

[114] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58

[115] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p23

of an unregulated factory system and more importantly the solutions to these problems.[116] S.E.

Maltby noted that such gatherings were of the 'utmost significance' because they brought

individuals 'into touch with the cruelties so bound up with business'.[117] These gatherings were

also opportunities to promulgate the need for 'parliamentary aid' to 'establish a general system

of laws for the wise, humane and equal government of all such works'.[118] It became clear that

the voluntary advice of non-state actors could only go so far, as 'Nothing less than an Act of

Parliament can put this most essential affair universally upon a proper footing… Unless these

things are attended to, such manufactures will prove the destruction of the people'.[119]

The voices of the 'countermovers' were listened to by Peel and his fellow parliamentarians. The

passing of the *Health and Morals of Apprentices Act* in 1802 is evidence of this. The influence

that Percival and others had on this process was identified by Innes, who observed that 'Though

the idea of seeking legislation seems to have started with Bayley and the doctors, Peel at some

point seized the initiative'.[120] Also, Robert Williams noted that 'Percival was the main instigator

of the move to demand legislative intervention which led to the Health and Morals of

Apprentices Act of 1802'.[121] Pamela Horn found that '(Sir Robert Peel) was also influenced by

the writings of Dr Thomas Percival and consulted Percival when he was drafting the Bill',[122] and

Wilkinson noted that Percival's 'report found favour with Peel. It contributed to the first Factory

Bill'.[123] Kevin White draws the link explicitly: 'Based on this work (Thomas Percival's 1773

publication *Observations on the State of the Population of Manchester*), Sir Robert Peel

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[116] George Rosen, *A History of Public Health* (John Hopkins University Press 2015) p85

[117] Arguably, Peel's interaction with these 'countermovers' appeared to have enlightened his approach to factory management. Given that Peel was the scion of a cotton mill-owning family with a reputation for over-working children and poorly maintained mills, we witnessed some degree of an alignment with the humanitarian projects. S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p17; Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society, 1660–1830* (Cambridge University Press 2001)

[118] E. Hennock, 'Urban Sanitary Reform a Generation before Chadwick?' (1957) 10 EHR 1 p114

[119] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p12

[120] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830*, (Cambridge University Press 2001) p247

[121] Robert B. Williams, *Accounting for Steam and Cotton: Two Eighteenth Century Case Studies* (Garland Publishing 1997) p72

[122] Pamela Horn, *Children's Work and Welfare 1780-1890* (Cambridge University Press 1995) p23

[123] C. Wilkinson, *Fundamentals of Health at Work: The Social Dimensions* (Taylor & Francis 2001) p27

proposed the Health and Morals of Apprentices Act of 1802, the first of the factories acts'.[124]

Peel was not only influenced by Percival but also by the publications of other physicians that sat

on the Manchester Board of Health.[125] W.R. Lee pointed out that some the Board of Health's

recommendations of hygiene control 'continued down through the factories acts and still appears

in *Factories Act 1961*'.[126] The most convincing correlation comes from Peel himself: 'having

the assistance of Dr Percival and other eminent medical gentlemen of Manchester together with

some distinguished characters both in and out of Parliament, I brought in the Bill of 1802'.[127]

We can also postulate that the *countermovement* entered Parliament by means of the institutional

links between local and central government.[128] Primarily in the form of High Court judges who

presided over trials from all over the kingdom and travelled to the provinces for assizes, thus

acquiring opportunities for contact with local magistrates and officials; enabling a cross-

pollination of ideas or what Frédéric Moret referred to as the beginnings of a 'shared political

culture'.[129] At the very least, 'activist magistrates' shared their views with their representative

county members of Parliament.[130] Innes added that:

> Both county magistrates and philanthropists were plugged into wider networks. Parliament, the most
>
> powerful resource available to local activists, was moreover a national body. Concerns brought there were
>
> canvassed before, subject to modification by, and dependent on the support of representatives of all parts of
>
> the nation.[131]

The Manchester physicians had achieved the 'special task of showing the double danger of an

industrialism that incubated-disease and lessened the vitality of future citizens by the inhuman

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[124] Kevin White, 'Introduction' in Kevin White (ed) *The Early Sociology of Health and Illness, Volume 1* (Routledge 2001) pxx

[125] Kevin White, 'Introduction' in Kevin White (ed) *The Early Sociology of Health and Illness, Volume 1* (Routledge 2001) pxx

[126] W.R. Lee, 'Emergence of Occupational Medicine in Victorian Times' (1973) 30 BJIM 2 p118, p119

[127] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p18; G.H. Boehringer and Michael Tubbs, 'Law's History - A Materialist Perspective' (1979) 3 LSB 7 p30

[128] David Eastwood, 'Local Government and Local Society' in H.T. Dickinson (ed), *Companion to Eighteenth-Century Britain* (Blackwell Publishing 2002)

[129] Frédéric Moret, *The End of the Urban Ancient Regime in England* (Cambridge Scholars Publishing 2015) p18

[130] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)

[131] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)

exactions of child labor'.[132] Their efforts resulted in the passing of the *1802 Act*, the first epoch of OHS legislation. [133]

3.0 A new beginning

The *1802 Act* was an indication that the legislature had been caught up in the *countermovement* to protect the urban poor from the excesses of the self – regulating market.[134]   The *1802 Act* ushered in the first era of factory legislation. Acts followed it in 1819 and 1825 which exhibited a similar sentiment. As products of the *countermovements*, their shared ethos was 'emotional, religious, charitable'.[135] The first *factories acts* were practical solutions as much as they were moral instruments. They were representative of the period's 'direct causal link between the moral health of a workman and his physical health'.[136]

3.1 The 1802 Act

The passing of the *1802 Act* was fundamental 'by way of idea… Subsequent attempts to secure factory legislation took it as a starting point'.[137] By passing this Act, Parliament had resigned itself to the principle that factory conditions required its attention.[138] For the first time, the factory was now on the radar of government, with the Act stipulating the establishment of a register of factories, and owners were required to enter particulars in a book kept by the Clerk of Peace.

The *1802 Act* regulated the conditions in textile factories in which three or more apprentices or twenty or more other persons were employed. As its title – 'Health and Morals' – suggests, the

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[132] E. Hennock, 'Urban Sanitary Reform a Generation before Chadwick?' (1957) 10 EHR 1 p114

[133] Ernst Freiherr von Plener, *The English Factory Legislation, from 1802 Till the Present Time* (Chapman and Hall 1873) pviii

[134] Fred Block, 'Social Policy and Accumulation: A Critique of the New Consensus' in Gosta Esping-Andersen, *Stagnation and Renewal in Social Policy: The Rise and Fall of Policy Regimes* (M.E. Sharpe 1987)

[135] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p200

[136] Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's body in Early Victorian Fiction' (2000) 28 VLC 2 p313, p315

[137] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p230

[138] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p230

Act had two concerns. The 'Health' orientated provisions were practical, stipulating that the mills be whitewashed and ventilated. Visitors appointed under the Act were authorised to call in physicians if an infectious disease broke out. Other health-oriented provisions related more to the attire, sleeping arrangements and working hours of apprentices. The 'Moral' related provisions in the Act focused entirely upon apprentices, providing that male and female apprentices be segregated, attend church services and be instructed in reading, writing and arithmetic. The enforcement provisions stipulated that county benches were to appoint at least two visitors, one a justice, the other a clergyman, to oversee conditions in local factories.

3.2 The 1802 Act: A new act?

In some corners, the *1802 Act* was not considered a sign of a new period of factory regulation. This assertion is largely based on Hutchinson and Harrison's *History of Factory Legislation*,[139] where it was argued, 'It was in reality not a Factory Act *properly speaking* but merely an extension Elizabethan Poor Law relating to parish apprentices (emphasis added)'.[140] In agreement with Hutchins and Harrison, the poor laws 'set the scene' for the *1802 Act*, and the abuse of apprentices was not unique to the industrialised urban centres. However, Hutchins and Harrison's study overlooked the progressive elements relating to health, hygiene and education standards that the *1802 Act* sought to establish. Perhaps it was the fact that the Act's focus on apprentices, in the title and much of the provisions, obscured the stipulation of health, hygiene and education standards to *all cotton and woollen factories* in which 'twenty or more persons were employed'. If apprentices were the only targets of the state, as Hutchinson and Harrison imply, perhaps it would have been politically expedient to target the parents of apprentices, as it was supposed that children 'were set to work as soon as they could crawl, and their parents were the hardest of task- masters'.[141] However, the state chose the more difficult task of regulating a

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[139] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911)
[140] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p16
[141] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p11

well-resourced, connected and influential industrial block.[142] From the resolutions of the

Manchester physicians to the statements of Peel, we find a consistent intent to tackle

manufacturing interests.[143]

Also, manufacturers recognised the novelty of the *1802 Act's* to the extent that Peel and his

supporters were compelled to use stealth to get the Act passed.[144] What remains to be

investigated is whether such tactics would have been used if the Bill was *just* an extension of

Elizabethan poor laws. Nonetheless, observing the antagonism of some manufacturers allows us

to appreciate what the *1802 Act* represented; several manufacturers opposed the detail of its

provisions believing it was 'excessively demanding'.[145]   Similarly, it was believed that the Act

instituted regulation in the heart of an industry whose strength had been its freedom: 'creating an

unquestionable power of inspection over and interference with the manufacture of the country

which hitherto has flourished free'.[146]

All the above considerations indicate that the *1802 Act* was a significant development from the

Elizabethan poor laws. The self-preserving, ameliorating and child-centred brand of

humanitarianism espoused by the Manchester physicians had made it onto the statute books.

Though not in the exact form that the more radical voices wanted it, the *Act* was far-reaching

enough to lay down the foundation of a new period of government.[147]

3.3 The 1802 Act: a humanitarian act?

It is challenging to attribute any major contributory factor to the passing of the *1802 Act* outside

of the culmination of the humanitarian *countermovements*. However, it was argued by Peel's

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[142] G.H. Boehringer and Michael Tubbs, 'Law's History - A Materialist Perspective' (1979) 3 LSB 7 p30
[143] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918)
[144] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)
[145] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)
[146] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p45
[147] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed), *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)

contemporaries that the *1802 Act* was passed for more earthly concerns; it was Peel's tool to disadvantage the interests of spinners for the benefit of weavers and help large manufacturers to the disadvantage of smaller manufacturers.[148] Innes dismissed such claims, as 'It seems improbable that Peel, with major interests in both spinning and weaving, was indifferent to the impact of his measures on the industry'.[149] Moreover, Peel's effort to push through the *1802 Act* should be seen in the context of a changing mood. A month before Peel brought the Bill to Parliament, Wilbraham Bootle and Viscount Belgrave, both members of Parliament for the north-west, brought into Parliament a Bill requiring magistrates to keep a register detailing to whom and on what terms parish apprentices were apprenticed.[150] Perhaps the most conclusive indication of the mood of the period was the fact that the Bill passed with 'no difficulty', 'the House being quite convinced of its necessity, and it does not appear the Act was received in at all a controversial spirit'.[151]

Another doubt over the humanitarian ethos of the *1802 Act* stems from the Act's shortcomings.[152] Undoubtedly, the *1802 Act* was ineffective. The declining use of apprentices, the expansion of industry and the increased use of steam power nullified many of its provisions. Such shortcomings were used as a pretext to dismiss the humanitarian ethos of the *Act*; if the *Act* was a culmination of the *countermovements,* it should have been more successful in ameliorating or at the very least minimising the negative aspects of the factory system.[153]

Such an argument ignores two fundamental matters. First, the Act's shortcomings point to its 'emotional, religious, charitable' construction, which naively presupposed the universality of the

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[148] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p248 - 249
[149] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p248 - 249
[150] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p248 - 249
[151] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p16
[152] G.H. Boehringer and Michael Tubbs, 'Law's History - A Materialist Perspective' (1979) 3 LSB 7 p30
[153] G.H. Boehringer and Michael Tubbs, 'Law's History - A Materialist Perspective' (1979) 3 LSB 7 p30

interests of the various capitalist class factions.[154] Second, the legislature possessed limited expertise.[155] To this point, Bartrip and Fenn stated:

> Nevertheless, it is difficult to see what alternative enforcement procedures could have been devised and implemented in 1802. Given prevailing methods of social administration and the absence of precedent for a centralized, paid inspectorate, there was little alternative but to give magistrates a dominant role in the process.[156]

The supporters and drafters of the Bill were on the cusp of the *countermovement*, with no precedent or an actual example of how to ameliorate the miseries caused by the factory system. It is thus unsurprising that the first *factories acts* were ineffective; the practicalities of regulating such unprecedented and rapidly expanding industries were simply beyond the scope of the early nineteenth-century state.[157]

Third, pragmatism also explains the inadequacies of the Act. Peel and his supporters had to draft the Act in a way that would not garner too much opposition and also avoid the pitfalls of venturing into the unknown.[158] It sought to cement existing practices that had emerged from the *countermovements* rather than experiment with untried and impractical restrictions.   To this point, Peel noted, 'If the provisions of the bill were more extended, that would be going forward entirely in the dark'.[159]

4.0 The 1819 Act

There was no coordinated central governmental action following the introduction of the *1802 Act*, even though Peel and his fellow Parliamentarians observed significant developments that

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[154] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p200; Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's body in Early Victorian Fiction', (2000) 28 VLC 2 p313

[155] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p18

[156] P.W.J. Bartrip and P.T. Fenn, 'The Evolution of Regulatory Style in the Nineteenth Century British Factory Inspectorate' (1983) 10 JLS 2 p201, p203

[157] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52

[158] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)

[159] Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001) p251

greatly impeded the effectiveness of the Act.[160] There are two possible reasons for this, the first

of which was a confession made by Peel about the *1819 Act*; he said that he was 'diffident' of

'his abilities to originate legislative measures'.[161] Arguably, if Peel with all of his manufacturing

credentials and experience of bringing through previous legislation made this omission, then

what can be said about the other members of government? Second, perhaps out of naivety,

members of government believed that intervening in the workplace was not something that

required continuous action. This sentiment was expressed throughout the Parliamentary debates

of the *1819 Act.*[162]

4.1 The 1819 Act: Owen's bill

The apathy remained until members of government received 'prodding' from a member of the

Manchester Board of Health, Robert Owen. Owen's protests were crucial to the government's

decision to continue to regulate the workplace, 'Socially and industrially the first two or three

decades of the nineteenth century form a gloomy period... Almost the only episode pleasant to

dwell upon or giving much hope of future progress is the work of Robert Owen'.[163] Similarly,

Thomas noted, 'Robert Owen, the first of the humanitarian philosophers whose untiring zeal

supplied the impetus that was the essential if not sole ingredient of legislative regulation'.[164] In

this regard, 'Robert Owen was the prophet of the new era'.[165] Also, Sally Alexander remarked,

'[T]hrough Robert Owen's influence and ceaseless endeavour, Sir Robert Peel the elder got

passed the Act known as the Cotton Mills Act of 1819'.[166] Turning to the historical accounts,

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[160] What we did see was sporadic and disorganised attempts, all of which were hindered. For example, in 1811, Wilbraham Bootle failed to push further the policy of cutting off manufacturers' access to apprentices, in 1804, William Wilberforce's Bill became embroiled in an overlapping West Country debate and thus failed to materialise. Joanne Innes, 'Origins of the Factory Acts: The Health and Morals of Apprentices Act 1802' in Norma Landau (ed) *Law, Crime and English Society 1660–1830* (Cambridge University Press 2001)
[161] John Fielden, *Curse of the Factory System* (Routledge 1969) p9
[162] Ernst Freiherr von Plener, *The English Factory Legislation, from 1802 Till the Present Time* (Chapman and Hall 1873); P.W.J. Bartrip and P.T. Fenn, 'The Evolution of Regulatory Style in the Nineteenth Century British Factory Inspectorate' (1983) 10 JLS 2 p201
[163] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966) p21
[164] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p18
[165] Judith Blow Williams, 'Review of The Great Transformation' (1945) 5 JEH 1 p124
[166] Hylton Dale, 'Child Labor under Capitalism' in Sally Alexander, *Women's Fabian Tracts Volume VII* (Routledge 1988) p36

Owen recollected that Peel introduced 'the Bill into the House of Commons with all the clauses as *I had prepared them* (emphasis added)'.[167]   Moreover, Peel confirmed that; 'A *worthy man* produced a plan to me, which I am not ashamed to own, and I conceived that the intention of that gentleman was so good, and his wishes so earnest, that I did not lend an unwilling ear to him (emphasis added)'.[168] Needless to say that Robert Owen was the 'worthy man'.[169]

Like Percival, Owen did not begin with a campaign to bring about legislation, rather he sought to create practical solutions to remedy the problems of industrial life. He and his partners purchased the great mill at New Lanark from the enlightened master Robert Dale. He utilised this mill to build upon Dale's progressive experiments in factory management.[170] Owen settled on the policy of only employing children over the age of ten and limiting their working day to twelve hours.[171] He argued that the emulation of such policies would be of incalculable benefit, not only to the young people but to society as a whole.[172] Owen's New Lanark mill was documented not only in the United Kingdom but also on the Continent, and he used this fame to press fellow manufacturers to implement similar visions.[173] However, he did not receive the response he had expected, so he turned his attention to Parliament. In doing so, 'Owen did more than march from meeting to meeting with pictures of his dream world under his arm', rather he undertook a number of actions to bring about government intervention.[174] He advertised and

[167] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p22

[168] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p22

[169] S.E. Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p22

[170] Robert A. Davis and Frank O'Hagan, *Robert Owen* (Bloomsbury 2010); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); Edward Royle, *Robert Owen and the Commencement of the Millennium: A Study of the Harmony Community* (Manchester University Press 1998)

[171] Robert A. Davis and Frank O'Hagan, *Robert Owen* (Bloomsbury 2010); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

[172] Robert A. Davis and Frank O'Hagan, *Robert Owen* (Bloomsbury 2010); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); Edward Royle, *Robert Owen and the Commencement of the Millennium: A Study of the Harmony Community* (Manchester University Press 1998); S.E Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p21

[173] Robert A. Davis and Frank O'Hagan, *Robert Owen* (Bloomsbury 2010); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948); Edward Royle, *Robert Owen and the Commencement of the Millennium: A Study of the Harmony Community* (Manchester University Press 1998); S.E Maltby, *Manchester and the Movement for National Elementary Education 1800 – 1870* (Manchester University Press 1918) p21

[174] Rowland Hill Harvey, *Robert Owen Social Idealist* (University of California Press 1949) p72

drafted *Observations on the Effects of the Manufacturing System*, published it with a dedication to the British legislature and distributed it to MPs.[175] Moreover, he drafted a Bill of reform and held meetings to discuss the contents with both Houses.

The purpose of this Bill was to amend and extend the *1802 Act*, Thomas noted that it 'anticipated the trend of future legislation'.[176] It was to apply to *all* cotton, woollen, flax and other mills employing twenty or more persons under eighteen years of age. No child was to be employed under the age of ten and no persons under eighteen were to work more than ten and a half hours a day. There was to be instruction in reading, writing and arithmetic for factory children during the first four years of their admission. Perhaps the most progressive aspect of the Bill was the appointment of a Clerk of Peace endowed with the same powers and responsibilities as their predecessors under the *1802 Act*.[177] Owen had held on to the concept of a paid and qualified inspectorate propagated by the Manchester Board of Health almost two decades prior.[178] However, Owen faced considerable apathy very early in his legislative campaign.[179] To overcome this, he had little choice but to seek Peel's assistance, given that Peel had passed the only legislation in this area and he was 'one who stood well with the government'.[180] Peel agreed, on the 6th June 1815 he introduced the Bill under the title *A Bill to Amend and Extend an Act made in the forty - second year of his present Majesty (George III.) for the Preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills and Cotton and other Factories*.

4.2 The 1819 Act: a longer journey

Peel's ability to pass Owen's Bill through both Houses was not as smooth as the passage of Percival's Bill. Owen complained that Peel was 'too much under the influence of his brother

[175] Noel Thompson and Chris Williams, *Robert Owen and his Legacy* (University of Wales Press 2011) p131
[176] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p19
[177] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966)
[178] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co 1966)
[179] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p113
[180] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p113

manufacturers, and that to indulge them he allowed unnecessary delays'.[181] However, it was

noted that Owen's perception of the 'unnecessary delays' stemmed from his naivety of the

Parliamentary process rather than Peel's susceptibility to his 'brother manufacturers'.[182] William

Lucas Sargant also added that politicians like Peel did not seek to reduce or to shorten the stages

of legislation 'because they would fear the passing by surprise of many immature measures'.[183]

Another explanation for this delay was that Owen's Bill had entered a different environment;

Harrison and Hutchinson noted that the first factory owners were men of little education, they

were chiefly operatives that had risen – 'narrow-minded'. However, by the time Owen's Bill

had entered the fray, factory owners were better educated, 'if not by schools, at least by wider

life'.[184] They were able to argue their case in a more or less literary form, or at the very least pay

someone else to do it for them.[185]

4.3 The 1819 Act: enlightened government

Due to the more hostile environment, the Bill could not pass through both Houses without

compromise. The 'storm of protest' from manufacturers caused such a commotion that a

Commons and Lord's Committee was announced to consider the question of factory children.[186]

The proceedings of these Committees were important steps to the awakening of the state. The

Commons Committee, under the chairmanship of Peel, sat for two sessions, during which time it

listened to the testimonies of 47 witnesses. Of these, eight were medical men and twenty-nine

were manufacturers. Macdonagh believes that it is difficult not to 'overestimate the importance'

of these Committees:

> Even where (as was commonly the case) the official inquiry was in the hands of unscrupulous partisans, a
>
> sort of informal adversary system usually led to the enlargement of true knowledge in the end. A session
>
> or two late the counter - partisans would secure a counter-exposition of their own. All this enabled the

[181] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p114
[182] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p114
[183] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p114
[184] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p19 - 20
[185] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p19 - 20
[186] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

administration to act with a confidence, a perspective and a breadth of vision which had never hitherto existed... For the exposure of the actual state things in particular fields was in the long run probably the most fruitful source of reform in nineteenth-century England.[187]

The members of government present at these meetings were exposed to testimonies of medical men who unanimously argued that close confinement and long hours led to stunted growth and physical deformity.[188] Moreover, they were exposed to 'heightened' accounts of the suffering of factory children; the evidence for factory regulation was prone to amplification.[189] It is not implausible to assume that some members of the government may not have been aware of the horrors of the factory system; Peel's initial ignorance of the abuses in his own mills bears testimony to this.[190] Also, Jerome Blum mentions that decades later many were still shocked by witness statements. When such statements were reported in the press, they 'made a deep impression upon many of the upper classes who till then had been unaware of the evils of child factory labor'.[191] Economic arguments against factory regulation were broad, dry and lacked the intimacy of the 'heart wrenching' medical accounts of the medical witnesses.[192]

4.4 The 1819 Act: the role of the state

Scholars have tended to concentrate on the dilution of Owen's Bill as it made its way through the Houses, but a more extraordinary occurrence took place as the Bill went through its readings, namely, discussions about the role of the state. A fundamental benefit of Owen's Bill was that it required the government to talk and *listen* to itself about how far it was willing to go to protect the well-being of factory children.[193] Those that opposed the Bill argued that, 'In the law of this country, there was no precedent for such interference. Where was any instance of it to be

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[187] Oliver Macdonagh, *Early Victorian Government, 1830-1870* (Holmes & Meier Publishers 1977) p77
[188] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948))
[189] Peter Kirby, *Child Workers and Industrial Health in Britain, 1780-1850 Peter Kirby, Child Workers and Industrial Health in Britain, 1780-1850* (Boydell Press 2013)
[190] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966)
[191] Jerome Blum, *In the Beginning: The Advent of the Modern Age, Europe in the 1840's* (C. Scribner's Sons, 1994) p48
[192] Mike Sanders, 'Manufacturing Accident: Industrialism and the Worker's body in Early Victorian Fiction' (2000) 28 VLC 2 p313; J.T Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962)
[193] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 346 (27 April 1818)

found?'[194] There was a strong laissez-faire basis for their dissent; Asa Briggs contextualises this recourse to laissez-faire ideologies as concealing an admission that government was ill-equipped to face the problems of modern industry.[195] It was simply beyond statesmen to solve such problems; their involvement could exacerbate the situation or create a whole host of new problems.

From this point of view, the laissez-faire defences were not the result of an optimistic belief in the advancement of society through private enterprise. Rather, it was an acknowledgement that their expertise in the service of society was limited and that in the management of their common affairs, statesmen would not be able to find the elasticity and adaptiveness which individuals showed in devising schemes for their own self-interest.[196] On this basis, we are better placed to appreciate Lord Stanley's warnings over Owen's Bill.[197]

Furthermore, the fierce defence against Owen's Bill spoke to the fear that government would change its nature. The interference that was advocated would bring forth an ill-conceived and foreign notion of government. This fear was particularly emphasised by Lord Lascelles, who believed that once the Bill was passed into law, it will determine future government behaviour, 'Be cautious what you are about, as, if you interfere now in this instance with the regulation of labour, you will find it difficult to find out when to stop'.[198] He also argued that this new definition of government was crafted by external forces. To turn the House against the Bill, he explained that Peel was merely the 'front man', the 'origin of the Bill was from a gentleman (Robert Owen) who had, for the last twelve months, made much noise in the public prints'.[199] This was an attempt to inform the audience that Owen's Bill engendered something *external* to

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[194] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 346 (27 April 1818)

[195] Asa Briggs, *A Social History of England* (Penguin Books 1991)

[196] Asa Briggs, *A Social History of England* (Penguin Books 1991); House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 350 (27 April 1818)

[197] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 350 (27 April 1818)

[198] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 350 (27 April 1818)

[199] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 351 (27 April 1818)

what government has traditionally represented. It was also an attempt to connect the Bill with an individual that been maligned; in some circles, Owen was seen as 'dangerous man, possessed with infidel and revolutionary notions, which his high position as a great manufacturer enabled him to propagate'.[200]

In response, several counterarguments were put forward. First, the precedent had been set with the *1802 Act*. Peel reminded the House of Commons that they had formerly approved of the *1802 Act*.[201] The government had already taken the first step into the unknown, which did not result in any discernible negative consequences. If Parliament moved to protect apprentice children, then it should move to protect factory children who were much more vulnerable than apprentice children, and not entitled to rely on the protection of either employers or their parents.[202] The second counterargument was that the state of affairs was so dire and exceptional that intervention was needed; to buttress this argument, Peel stated that the principle of intervention was constantly acted on in commercial regulations where peculiar exceptions from the general rule of trading practices called for a particular mode of relief.[203] Through such an analogy, he attempted to get the House to see that the plight of factory children was peculiar enough to warrant intervention. The third counterargument centred on the absurdity of considering factory children as free labour.[204] Such an absurdity should allow Owen's Bill to pass undeterred. Kenneth Walker argued that it was difficult to argue that child labour was 'free' or that the regulation of child labour infringed upon the 'freedom of contract'.[205] Moreover, he argued that the propaganda against the regulation of child labour was largely non – existent; the political economist was not greatly interested in the regulation of child labour in England during the first forty years of the nineteenth century. He based this opinion on the lack

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[200] William Lucas Sargant, *Robert Owen: And His Social Philosophy* (Smith, Elder and Co. 1860) p116
[201] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 342 - 344 (27 April 1818)
[202] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 342 - 344 (27 April 1818))
[203] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 353 (27 April 1818)
[204] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 342 - 350 (27 April 1818)
[205] Kenneth O. Walker, 'The Classical Economists and the Factory Acts' (1941) 1 JEH 2 p168

of critical pamphlets or tracts written by leading economists on factory regulation. He believed that the negligible number of tracts and pamphlets holds particular significance given that such materials were usually attached to the hotly debated matters of the day.[206]

In addition to these counterarguments, Peel had the support of the 'respectable classes of society', who demanded that the government do the unprecedented; numerous petitions were presented to Parliament:

> We can refer to petitions presented to Parliament, signed by more than twenty thousand individuals, from various parts of Lancashire, Cheshire, Yorkshire, Derbyshire, and Scotland, attesting the existence of the facts, and the kind and degree of the sufferings resulting from them… All these, in common with the other highly respectable residents, bear testimony to the existence and extent of 'the sufferings which they feelingly deplore.'… such evils cannot be removed without the aid of legislative authority.[207]

Peel also argued that the number of master manufacturers who supported the Bill was greater than those who opposed it, he questioned the House of Commons, 'Would not the House feel it a duty to yield to the pressing remonstrance of the medical, clerical, and all other respectable classes of society, who had no interested object and who had stated the dreadful effects to these little children …?'[208] It was difficult to rebut such a question, with 91 votes to just 26, Owen's Bill was sent to the Lords, where it was confronted by the first Lords' Committee on factory regulation, chaired by Lord Kenyon. However, this Committee accomplished little but to impose a further delay on the Bill. In the summer of 1819, the Bill was finally passed into law.

4.5 The significance of the 1819 Act

The *1819 Act* was no longer Owen's Bill; the multiple readings, committees, debates and private negotiations diluted the provisions.[209] Nonetheless, there was still enough content that 'opened

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[206] Kenneth O. Walker, 'The Classical Economists and the Factory Acts' (1941) 1 JEH 2 p168

[207] *Answers to Certain Objections Made to Sir Robert Peel's Bill for Ameliorating the Condition of Children employed in Cotton Factories* (R. and W. Dean 1819) p14

[208] House of Commons, 'Cotton Factories Bill' in *The Parliamentary Debates from the Year 1803 to the Present Time* Vol. 38 Para 344 (27 April 1818)

[209] Owen's original Bill attempted to prohibit children working under ten. This would have required certification of their age requiring evidence of age from the baptismal register. However, the *1819 Act* merely fixed the age limit at nine years. Also, Owen's Bill sought to limit hours of work for all under eighteen to ten and a half a day, exclusive of meal-times, whereas the *1819 Act* forbade any person under sixteen to be employed more than twelve hours a

the way to further and more far-reaching reforms'.[210] From this point of view, there are three general observations about the *1819 Act's* role in the state's intervention of the workplace. The first of which is that it cemented the 'fundamental principle of state interference with free labour'.[211] Thomas noted, 'It broke barriers. The state had intervened between employer and employed, and on the narrow foundation of this fundamental principle the dreaming of the reformers and innovators was to rear a mighty fabric'.[212] Similarly, Hylton Dale stated, 'The Act of 1819 marks the first and the most important step in the long procession of Factory Acts. Under it, for the first time the State assumed the rights of parent and guardian to the children of the free, and took it upon itself to prescribe the hours of work and general condition of their labor'.[213] Even Harrison and Hutchinson's critical appraisal of the *1819 Act* had to concede, 'This, niggardly as it was, was the affirmation of a principle which was perhaps more needed at that time than any other'.[214]

The second observation was that the *1819 Act* enlarged the state's sphere of influence. This was because there was ten times the number of children affected by this Act than the prior *1802 Act*.[215] Moreover, the *Quarterly Review* argued that covertly the *1819 Act* limited the hours of labour from *all persons* employed in cotton factories, whatever their age may be:

> Every person acquainted with cotton spinning knows, that so soon as the younger persons employed cease working, the more advanced must cease likewise; their labour is so connected, that they must cease or go on together… Thus the bill gains covertly what it does not aim at openly.[216]

day, exclusive of meal-times. Owen's Bill provided for the appointment of paid and qualified inspectors, while the *1819 Act* left the matter in the hands of the justices as it did in the *1802 Act*. The *1819 Act* was restricted to cotton mills, whereas Owen's Bill included all cotton, woollen, flax and other mills. B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966); M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

[210] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p26

[211] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p26

[212] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p26

[213] Hylton Dale, 'Child Labor under Capitalism' in Sally Alexander, *Women's Fabian Tracts Volume VII* (Routledge 1988) p56

[214] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p24

[215] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

[216] *An Inquiry into the Principle and Tendency of the Bill now Pending in Parliament for Imposing Certain Restrictions on Cotton Factories* (Baldwin, Cradock and Joy 1818) p5 – 6; M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)

The third observation has not been widely discussed in the literature; the *1819 Act* established the idea that intervention was an ongoing activity. There is little evidence that this would have come about without the *countermovements*. Despite the ineffectiveness of the *1802 Act* and the arrival of steam power, we saw little government action in this area. Thus, the effect of passing the *1819 Act* was to instil the idea of reactive regulation; when 'evils' were uncovered or finally acknowledged, it was the state's duty to intervene. It would be 'unchristian' to do otherwise. This was best exemplified by the increased speed of passing legislation; within just six months, and following a fire at one of Owen's mills, Peel legislated to amend the *1819 Act* so that operatives who were affected by such unforeseen circumstances could operate night shifts 'till the accident was made good'.[217] This was the first of an extensive line of amendments to *factories acts*; the *1802 Act* had been left in isolation for sixteen years with no amendments.

Arguably, the amendment of the *1819 Act* was a sign that the government was willing to react to changing circumstances. Moreover, the amendment was followed by *factories acts* in shorter periods; for example, the *1825, 1829* and *1831 Acts*. A similar observation was made by Gavin Drewry who saw the increased occurrence of legislation as part of 'a changing view of government and the proper scope of its activities':[218]

> The fact remains... that the main instrument of Victorian social reform was the public general Act of Parliament *and that increasingly such legislation came to be recognised as an essential part of the collectively agreed programmes of government...* The growth of such legislation - measured not just in terms of numbers of Bills and Acts but also by their size, scope and complexity - is an important indicator of the rate at which the responsibilities of government grew during this period (emphasis added).[219]

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[217] Margaret Escott, 'Robert Owen as a British Politician and Parliamentarian' in Noel Thompson and Chris Williams, *Robert Owen and his Legacy* (University of Wales Press 2011) p132
[218] Gavin Drewry, 'Lawyers and Statutory Reform in Victorian Government' in Roy MacLeod (ed), *Government and Expertise: Specialists, Administrators and Professionals Specialists, Administrators and Professionals, 1860 – 1919* (Cambridge University Press 1988) p33
[219] Gavin Drewry, 'Lawyers and Statutory Reform in Victorian Government' in Roy MacLeod (ed), *Government and Expertise: Specialists, Administrators and Professionals Specialists, Administrators and Professionals, 1860 – 1919* (Cambridge University Press 1988) p34

5.0 The transition acts

The *1825, 1829* and *1831 Acts* were important 'transition' Acts. In the sense that they were early attempts to uphold and extend upon the responsibilities of the *1802* and *1819 Acts*, without 'prodding' from external parties.[220] Before the *1825 Act* was passed, the impetus for factory legislation was discernible, almost certainly originating from outside of central government. However, from the *1825 Act*, we are unable to attribute the content of the *1825 Act* to external parties with any degree of certainty. All indicators point to an internal government effort. Whereas, much of the content *1802 Act* can be confidently linked to the *Resolutions* of the Manchester Board of Health and the *1819 Act* and its amendment can be linked to Robert Owen, the *1825 Act* bears no apparent external connection, instead much of its content was associated with Sir John Cam Hobhouse and his Parliamentary allies. Hobhouse was the Whig member for Westminster, who assumed Parliamentary leadership of the Bill. On the 6th May 1825, he moved for leave to introduce a Bill to reduce the working hours of children between nine and sixteen from twelve hours per day to eleven and strengthen enforcement provisions of the *1819 Act*.[221] Appropriating the language of the *countermovement*, Hobhouse appealed to the humanity of Parliament:

> The children in these mills… were now worked twelve hours and a half in the day; and for three or four days in the weeks were not allowed to leave the mills to take their meals, which they were obliged to take off the floor… They scarcely bore any resemblance to their fellow creatures after so long subjected to this torture. Their skins were literally the colour of parchment.[222]

By the 1820s, many members of government were actively involved in discussions of state intervention, of which many were converts to Hobhouse's Bill. Hobhouse's fellow member, Sir Francis Burdett, condemned industrial slavery; 'he knew not a more crying evil, or one that

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[220] Joseph A. Kestner, *Protest and Reform: The British Social Narrative by Women, 1827-1867* (University of Wisconsin Press 1985)

[221] S. Maccoby, *English Radicalism: 1786-1832 From Paine to Corbett* (George Allen & Unwin 1955) p527 – 529; J.T. Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962) p28 - 30

[222] S. Maccoby, *English Radicalism: 1786-1832 From Paine to Corbett* (George Allen & Unwin 1955) p527

called more loudly for the interference of Parliament'.[223] Likewise, Mr W. Smith condemned 'shameless, barefaced and inhuman' evasions of the *1819 Act*, telling the House that negro slaves worked less than Manchester children.[224] Mr J. Smith argued that legislation was 'necessary to prevent malpractices among those who were not restrained by the same feelings of humanity'.[225] Mr Evans observed that 'the bill was loudly called for'.[226] Thus, in June 1825, Hobhouse's Bill passed into law. Hobhouse would go on to spearhead two more Bills that became law in 1829 and 1831. All of which helped to extend the state's jurisdiction over the workplace. However, the support that Hobhouse enjoyed was not enough to protect the legislation from dilution. As with all previous efforts, Hobhouse's legislation was moderated by fierce opposition.[227] Even if Hobhouse and his allies were not faced with such opposition, their efforts were amateurish and unlikely to bring about real change. As Macdonagh noted, these individuals knew little to nothing of the real conditions which they were attempting to regulate and paid little attention to long-term solutions.[228]

6.0 The extension of factory legislation

The significance of the first *factory acts* lies in the precedents they set. Once these precedents were set, the business of extending the coverage of *factories acts* came to be the prerogative of the government. The humanitarian *countermovements* 'injected' the concern of the workplace into the government. This in turn set in motion the 'self-generating, administrative momentum' that extended factory regulation.[229]

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[223] J.T. Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962) p28 - 30
[224] J.T. Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962) p28 - 30
[225] J.T. Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962) p28 - 30
[226] J.T. Ward, *The Factory Movement, 1830-1855* (Palgrave Macmillan 1962) p28 - 30
[227] Despite the chorus of support, Hobhouse's Act was moderated by the manufacturing interests inside Parliament; instead of the eleven - hour day, six days a week, Hobhouse had proposed, he begrudgingly consented to the twelve hour - day for five days and nine - hours on Saturday. However, it was still an advance, particularly in the areas of the verification of age and minimising enforcement bias.
[228] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[229] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58

6.1 From Polanyi to Macdonagh

Polanyi's concept of the *countermovement* is influential in explaining *change,* but it fails to explain the *normalisation* of the expansion of factory regulation. Despite the reduction of the miseries of industrialisation, government regulation of the workplace continued to grow. Due to this consideration, we turn to Macdonagh's model to help shed light on the government's regulation of the workplace. Just a decade after Polanyi's *Transformation*, Macdonagh observed the expanding role of government in the first half of the nineteenth century.[230] This observation led him to develop a model of the 'self-generating, administrative momentum' of government. This model provides framing so that 'particular factors can be grouped and the particular developments evaluated'.[231]

Macdonagh hoped that his 'model' of governmental expansion would point to a 'much wider and more complex group of happenings' than the mere passing of acts. It is among the 'safest' vantage points to observe the government's extension of workplace regulation because it is broad enough to accommodate other considerations, such as humanitarian pursuits, Benthamism and the influence of manufacturers or party spirit. On this basis, succeeding writers on nineteenth-century government have not strayed too far from MacDonagh's model.[232] Similarly, Paz noted that 'MacDonagh and the 'pragmatic' school have... the better part of the debate'.[233] To go any further would be problematic, the propagation of Benthamism[234] and party spirit[235] are cases in point. His model helps us move beyond the limitations of Polanyi's *countermovements* to understand *why* the government extended its regulation of the workplace. His model depicts

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[230] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58
[231] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58, p63
[232] Marlene A. Arieno, *Victorian Lunatics: A Social Epidemiology of Mental Illness in Mid Nineteenth Century England* (Susquehanna University Press 1989) p103; D. Roberts, 'Jeremy Bentham and the Victorian Administrative State' (1959) 2 VS 3 p193; G. Kitson Clark, *The Making of Victorian England* (Routledge 1962); R. J. Lambert, 'A Victorian National Health Service - State Vaccination, 1855-71' (1962) 5 HJ p1
[233] Denis G. Paz, *The Politics of Working-class Education in Britain, 1830-50* (Manchester University Press 1980) p8
[234] Denis G. Paz, *The Politics of Working-class Education in Britain, 1830-50* (Manchester University Press 1980) p9; Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58, p65
[235] Norman Henry Brasher, *Arguments in History: Britain in the Nineteenth Century* (Palgrave Macmillan 1968) p30 - 32

government as the cause for *government*. Though Macdonagh concurs that humanitarianism was a vital precondition for government intervention, he also looks at the consequences of governing to explain growth.

The themes of Macdonagh's model relevant to this study will be highlighted; his generic five-stage model does not *completely* represent the trajectory of workplace regulation. Macdonagh himself was mindful of the limited applicability of his model to real-world situations, 'The development outlined… is but a 'model'… In an exact form, in an unbroken adherence to the pattern, *it was perhaps rarely present*. Nor are the stages into which the process has been divided to be regarded as sacrosanct (emphasis added)'.[236] In light of this, only the relevant themes were discussed.

6.2 The exposure of a social evil

The opening stage of Macdonagh's model depicts that the 'exposure of a social evil' had to be remedied. It was too intolerable for Victorian society to bear even if it brought economic benefit. Throughout this period, 'intolerability' was the 'master card' for mobilisation.[237] In a broad sense, this stage is compatible with Polanyi's social cost of industrialisation spurring the need for *countermovements* or as Macdonagh put it 'an irresistible engine of change in motion'.[238]

6.3 The acknowledgement of the deficiencies of factory regulation

As Macdonagh's model moves on, it departs from Polanyi. It was widely acknowledged by those inside and outside of government that the initial factory legislation 'had left the original evils largely or perhaps even altogether untouched'.[239] This acknowledgement was a significant driver of the government regulation of the workplace. Building on this observation, three

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[236] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58, p61
[237] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58
[238] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58
[239] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p58

notions of acknowledgement significantly extended the government regulation of the workplace;

(1) trial and error (2) redemptive legislation (3) addressing absurdities.

6.3.1 The trial and error process

The process of trial and error was fundamental to the improvement and extension of the *factories acts*; 'one might imagine that Parliament was fully committed to reform from early in the century but had to go through a trial and error process before it finally lit into effective measures'.[240] A pertinent example of this was the trial and error of age restriction. It began idealistically with the *1802 Act's* restrictions to the hours of apprentices.[241] Then the *1819 Act* introduced the first statutory provision for the verification of the age of young workers. Once the precedent of restricting age was achieved, the subsequent Acts sought to improve and extend coverage; the *1825 Act* required the employer to provide a statement that children were over the minimum age. Additionally, the parents of factory children were required to countersign and hence become co-responsible.

However, widespread fraud nullified the Act's intent, thus prompting the passing of the *1831 Act* that placed the parents under even more scrutiny by making them wholly responsible and they were liable for the penalty of £5 if they produced fraudulent certificates. Yet, according to the *Report of the Factory Commission in 1833,* the previous Acts did not go far enough to limit the fraud and overcome inept baptismal registrations.[242] To counteract such problems, a system was devised with the passing of the *1833 Act* in which it was unlawful to employ any child without a certificate from a surgeon who was a resident in the township where the mill or factory was situated. However, within just a few years, it was believed that placing such faith in the medical profession had not produced the expected consequences. Difficulties arose from unqualified

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[240] Susan C. Stokes, *Brokers, Voters, and Clientelism: The Puzzle of Distributive Politics* (Cambridge University Press 2013) p223
[241] Stephen Huzzard, 'The Role of the Certifying Surgeon in the State Regulation of Child Labour and Industrial Health 1833 – 1973' (M.A. thesis, University of Manchester 1975)
[242] Stephen Huzzard, 'The Role of the Certifying Surgeon in the State Regulation of Child Labour and Industrial Health 1833 – 1973' (M.A. thesis, University of Manchester 1975) p12; Peter Kirby, *Child Workers and Industrial Health in Britain, 1780-1850* (Boydell Press 2013)

practice, fraudulent activities and varying levels of medical knowledge.[243]   Correspondingly, the

passing of the *1844 Act* was the first effort to standardise the practices of surgeons by bringing

surgeons under the purview of factory inspectors.

Another cumulative example of trial and error was the move from generalist to specialist

legislation. The dominant mode of factory legislation until the 1880s was a generalist public

health-oriented model emphasising sanitary and environmental aspects of working conditions.[244]

It was simply beyond the Factory Department to specify or even realise that a more specialist

approach was needed due to its scant knowledge of the causes of ill-health or disease.[245]

However, through the cumulative experience of inspectors and medical experts, it became

apparent that specific classes of workers were afflicted with diseases that went beyond the 'usual

and oft-recounted evils attending long hours and bad air'.[246] The *Factory (Extension) Act 1864*

was intended to address much of these peculiar problems that were found outside of the general

ambit of industrial complaints.[247] Barbara Harrison saw the *1864 Act* as a crucial step towards

specialisation; the provisions that came out of the Act were consolidated in the 1870s, leading to

more guidance in the annual reports of the Inspectorate and specific legislation in the decades

that followed.[248]

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[243] Peter Kirby, *Child Workers and Industrial Health in Britain, 1780-1850* (Boydell Press 2013)

[244] Barbara Harrison, *Not Only the Dangerous Trades: Women's Work and Health in Britain 1880-1914* (Taylor & Francis 1996)

[245] Peter Bartrip, 'Expertise and the Dangerous Trades, 1875 - 1900' in Roy MacLeod (ed), *Government and Expertise: Specialists, Administrators and Professionals Specialists, administrators and professionals*, *1860 – 1919* (Cambridge University Press 1988)
P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Brill 2002)

[246] For example, it was observed that workers in lucifer matchmaking workshops were vulnerable to the necrosis of the jawbone, causing great pain, and on occasion causing death or the loss of the jaw.   In percussion - cap and cartridge making establishments, the peculiar element was the danger of explosion. Paper-staining, bleaching and dyeing trades were dependent on the seasons; thus, it was common for employers to demand workers to work excessively long hours at particular times of the year.
B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966) p154

[247] It was of little coincidence that these non – traditional industries selected for regulation had a large proportion of female and child workers; women and children were often the first subjects on the road to reform.

[248] Barbara Harrison, *Not Only the Dangerous Trades: Women's Work and Health in Britain 1880-1914* (Taylor & Francis 1996)

6.3.2 Redemption regulation

The second process of acknowledgement was through 'redemptive' legislation and policies. Such a process differed from trial and error in the sense that the solution was known but did not have enough political support. The contentious nature of factory legislation often meant that Bills could only pass through the Houses in a compromised form. However, the ineffectiveness of such compromises created a cause for 'redemptive' legislation to be put forward.[249] Among the most notable examples of this were the enforcement provisions of the *factories acts*. From the *Resolutions* of the Manchester Board of Health, the proposal of paid government officials enforcing standards was put forward to the government.

Unsurprisingly, it was one of the few *Resolutions* that did not make it to the *1802 Act*. Instead, it was politically expedient to use magistrates to oversee the conditions of local factories.

The proposal for paid officials entered the discussion again in 1815. The continued requests for a new regime show that even at this early date it was recognised that the appointment of unpaid visitors was wholly ineffective.[250] Owen's Bill proposed that the former system should be abandoned and that in the future the magistrates should appoint the Clerk of Peace or his deputy, or other qualified persons as visitors. Moreover, they were to receive 'a full and adequate compensation for their trouble and expenses' from the country rates.[251] Once again, these proposals fell victim to compromise; the government had little appetite to frustrate manufacturing interests, rather through the *1819*, *1825* and *1831 Acts*, it chose to merely 'tweak' the existing system.[252] Three decades of the government submitting to the manufacturing interest had produced ineffective enforcement. Andrew Ure summed up the situation:

> [I]neffectual towards protecting children from being worked over – hours under greedy operatives and
>
> needy parents…. Had the preceding bills been simply inoperative they would have deserved no blame; but

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[249] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)
[250] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948)
[251] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p19
[252] The *1819 Act* merely raised the penalty for each offence to a minimum of £10 and a maximum of £20, the *1825 Act* attempted to eliminate bias by stipulating that justices who were owners of mills, or the fathers or sons of proprietors were prohibited from hearing complaints under the Act and the *1831 Act* empowered that magistrates to inspect Time Books, convict if the machinery was kept in operation at certain times, and fine parents for producing false certificates.

they were instrumental in demoralizing both the parents and the children, by leading the former to commit perjury, and the latter to become habitual liars.[253]

Such failure persuaded members of the government and even some manufacturers that inspection was necessary. With this change of sentiment came the enactment of the *1833 Factory Act*; Section 17 stipulated that 'It shall be lawful for His Majesty by warrant under His Sign Manual to appoint during His Majesty's pleasure four persons to be Inspectors of Factories'. Towards the end of 1833, the first four inspectors were appointed; Leonard Horner, Thomas Jones Howell, Robert Rickards and Robert Jones Saunders. Successive *factories acts* increased their powers, responsibilities and numbers.

6.3.3 Uncovering absurdities

The third process of acknowledgement was to address the absurdities created by a prior *Factory Act*. A prime example of this was the *1867 Factory Act* which extended regulation to workshops. The prior *factories acts* created an arbitrary distinction between factory and workshop based upon the number of workers in the establishment. Additionally, it was observed that if the factories were under legislative control and the workshops remained without supervision, the result would be unfair competition and an inevitable increase of the smaller workshops at the expense of the larger factories. Therefore, in the *1867 Act*, workshops were included in the legislative provisions for control.[254]

6.4 The appointment of executive officers

Crucial to Macdonagh's 'legislative-cum-administrative process' was the appointment of executive officers. Workplace regulation was greatly extended through the appointment of factory inspectors. This was arguably the most significant because it fed into other processes; as MacDonagh noted it was a 'step of immense… consequence' and that it 'brought the process

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[253] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p24

[254] As it was impossible for the small number of inspectors to take care of workshops as well as factories, the enforcement of the Act was given to the local sanitary authorities
George Moses Price, *Administration of Labor Laws and Factory Inspection* (Nabu Press 2011)

into life'.[255] Inspectors 'played a leading role in legislation, including the development of their own powers',[256] and the period was subsequently characterised as 'the age of the inspector'.[257] The fact that there was now a group of individuals, however few, professionally charged with carrying the statute into effect facilitated the improvement and extension of the *factories acts*.[258] Before the appointment of factory inspectors, there was no place for OHS to develop and solidify; it was ill-formed in the hands of politicians, enforcers, humanitarians, magistrates and clergy. However, within the hands of the inspectors, OHS formed into a 'much fuller and more concrete revelation'.[259] Inspectors were envisioned to be travelling stipendiary magistrates, with powers of deciding cases and inflicting fines for breaches of the *factories acts*.[260] Thus, unlike their predecessors, they were able to propose new and more effective legislation through their direct experiences.[261]

Unknowingly, the state had created a reform movement from within its walls; it was the single, consistent lobby for the extension and improvement of the *factories acts*.[262] As a result, there is not a single facet of OHS that does not owe its development to the Factory Inspectorate. Since the Inspectorate was required to report regularly to the Home Secretary and Parliament of its findings, it regularly used this opportunity to push forward their agenda for a wider and more penetrative oversight of Britain's workplaces.[263] Jill Pellew noted that Inspectors 'used every means open to him to press his opinion on the public, on Parliament and in particular on the Home Office that this or that change or extension of the Act was necessary if the law was to be made enforceable'.[264] One of which was the Inspectorate's unparalleled collection of data, a widely cited example of this was the Factory Inspectorate's 1840 report on the condition of

[255] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p59
[256] Henry Parris, 'The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised' (1960) 3 HJ 1 p17, p35
[257] W. L. Burn, *The Age of Equipoise: A Study of the Mid-Victorian Generation* (Norton 1964) p17
[258] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[259] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[260] Norman McCord and Bill Purdue, *British History 1815-1914* (Oxford University Press 2007) p204
[261] Oliver MacDonagh, (1958) 'The Nineteenth-Century Revolution in Government: A Reappraisal' 1 HJ 1 p52
[262] David MacGregor, *Hegel, Marx & the English State* (University of Toronto Press 1996) p204 - 279
[263] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209
[264] Jill Pellew, *The Home Office, 1848-1914, from Clerks to Bureaucrats* (Fairleigh Dickinson University Press 1982) p124

children working in the mines, which led to the total ban of women and children working in the collieries.[265]

A much more substantial example is the move towards the 'safety' of the workplace as opposed to legislation that focused on just health concerns. It was one of the initial signs of a move away from the 'emotional, religious and charitable' basis of the *factories acts* towards its 'quasi-scientific' content.[266] Owing to the influence of the medical practitioners, the *factories acts* had an incessant focus on health, hygiene and sanitation. Additionally, the workplaces that the first *factories acts* encountered were not significantly mechanised; it was the 'day of the low, wooden machines, operated by the hand of the worker'.[267] However, subsequent *factories acts* were increasingly faced with 'giant structures' that 'enabled the machinery to be driven at greater speed, as the thinner driving shafts and smaller drums or pulleys revolved at an ever-increasing rate'.[268] The prevalence of such workplaces created 'a great number of maimed ones… this one has lost an arm or a part of, that one a foot, the third half a leg; it is like living in the midst of an army just returned from a campaign'.[269] Upon its first encounters with the factory system, the newly established Factory Inspectorate witnessed these devastating effects. The Inspectorate's concerns were first raised in the mid-1830s; it drew attention to the consequences of unguarded machinery. More specifically, *Cotterell v. Stocks* tried at the Liverpool summer assizes in 1840 brought the question of factory accidents to the forefront. This case of a seventeen-year-old girl, who had been caught by a revolving shaft and hurled to the ground, attracted considerable sympathy. The momentum of which led to Section 20 of the *1844 Act* that provided that no child or young person was to clean any part of the mill gearing while it was in motion.[270] This was a particularly courageous step by the Inspectorate, given that these 'new machines' were

[265] Stanley J. Ulijaszek Francis E. Johnston and Michael A. Preece, *The Cambridge Encyclopaedia of Human Growth and Development* (Cambridge University Press 1998) p449

[266] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (Frank Cass & Co London 1966)

[267] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p224

[268] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p224

[269] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p225

[270] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p235

viewed with 'superstitious awe and reverence'.[271] Despite the 'mystery' of these innovative

technologies, the Inspectorate progressively instructed how they should be used, who should use

them and at what times they should be used.

7.0 Observing the growth of factory regulation

Several points can be raised about the tremendous growth of factory legislation. The first of

which is that it is important to note that the growth of legislation had no discernible 'plan'.

Though we have 'clothed' the expansion of regulation in Macdonagh's model, this model could

only be constructed *after* the fact. The continued regulation of the workplace was 'largely ad

hoc, practical and unplanned and pragmatic… It was the pressure of the real world'.[272]   Second,

the 'growth of the statute' did not indicate that the state's regulation of the workplace was

effective. As Peter Bartrip noted, 'It is hard to establish a good case for a strong degree of state

control of industry'.[273] The effectiveness of the nineteenth-century factory regulation has been a

source of debate[274], although both sides of the argument rest uneasily on unstable foundations,

there is a strong case to be made that there was a distinction between 'law in books' and 'law in

action'.[275] The former typified the nineteenth century, and the latter came to fruition much later.

Third, factory regulation continued to grow in scope even though the excesses of the factory

system began to subside.[276] This speaks to the overwhelming momentum of the administrative

machine.

Another set of observations can be made about the growth of statute; it was thoroughly

governmental. The state was woven into the fabric of OHS. This was exemplified by three

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[271] Andrew Ure, *The Philosophy of Manufactures: Or, An Exposition of the Scientific, Moral and Commercial Economy of the Factory System of Great Britain* (Charles Knight 1835)
[272] Richard Brown, *Church and State in Modern Britain 1700-1850* (Routledge 1991) p493
[273] P.W.J. Bartrip, 'State Intervention in Mid-Nineteenth Century Britain: Fact or Fiction?' (1983) 23 JBS 1 p63, p83
[274] Peter Bartrip, 'Success or Failure? The Prosecution of the Early Factory Acts' (1985) 38 NS 3 p423; A. E. Peacock, 'Factory Act Prosecutions: A Hidden Consensus?' (1985) 38 NS 3 p431; P.W.J. Bartrip, 'State Intervention in Mid-Nineteenth Century Britain: Fact or Fiction?' (1983) 23 JBS 1 p63, p83
[275] P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605
[276] W.G Carson, 'The Conventionalization of Early Factory Crime' (1979) 7 IJSL p37; W. R. Lee, 'Robert Baker: The First Doctor in the Factory Department: Part 1. 1803-1858' (1964) 21 BJIM 2 p85

matters. First, the Factory Inspectorate was placed in the heart of the regulatory state, the Home Office.[277] We should see its place in the Home Office as part of a 'new trend' of the Home Secretary acquiring diverse responsibilities through acts of Parliament.[278] The Home Office's 'out – department', or within the context of this study, the Factory Department was staffed by a 'new kind of expert official' who worked in the field enforcing regulations and reported back to the Secretary of State on a regular basis.[279] Though they were referred to as 'out – departments', this should not detract from the fact that all significant decisions were taken by the Home Secretary and his advisers, '*these men alone* among department officials worked alongside the secretary of state, going over all incoming correspondence, working alongside the secretary of state, going over all incoming correspondence, working on legislation and advising on policy matters (emphasis added)'.[280]

It was noted that inspectors 'did not interest themselves in certain things simply because they were servants of the State; rather, they were servants of the State because they were interested in those things, because they had formed opinions which an official position allowed them to translate into action'.[281] Inspectors were creatures of the state that could be used for whatever the state wanted. This is best exemplified by the Factory Inspectorate 'deployment' in many areas outside of the scope of OHS. The antecedents of which were highlighted by Thomas' study on the early factory legislation. He noted that the whole conception of inspectorial control was new. There was no corpus of minutes and decisions upon which inspectors could rely. Thus, 'they allowed themselves to be employed in affairs that were clearly outside of the range of duties contemplated by the Act that had called them into being'.[282] Among the most

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[277] Jill Pellew, *The Home Office, 1848-1914, from Clerks to Bureaucrats* (Fairleigh Dickinson University Press 1982)
[278] Jill Pellew, *The Home Office, 1848-1914, from Clerks to Bureaucrats* (Fairleigh Dickinson University Press 1982) p3
[279] Jill Pellew, *The Home Office, 1848-1914, from Clerks to Bureaucrats* (Fairleigh Dickinson University Press 1982) p3 - 4
[280] Jill Pellew, *The Home Office, 1848-1914, from Clerks to Bureaucrats* (Fairleigh Dickinson University Press 1982)
[281] P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p605, p619
[282] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p108 - 109

controversial were espionage activities; the Home Office was concerned about the state of unrest in the 1830s. It had no means of assessing accurately public discontent in the areas that were remote from the metropolis. In such anxious times, the Home Office, whose duty it was to preserve public order, turned to inspectors. The latter's intimate knowledge of the manufacturing districts gave them a unique opportunity to report 'political information' to the government.[283] Sir Robert Peel, the younger, reminded the House that in 'times of great excitement and great distress… it became a matter of expediency that the government should resort to means of obtaining information, without which the public service could not be carried on'.[284]

Moreover, as servants of the state, inspectors were subject to the political direction of the Home Office. For instance, the Inspectorate followed the direction of Sir George Grey who favoured a cautious line, yet they were influenced by Lord Palmerston who pushed for the prosecution of inattentive factory owners and the granting of greater powers of intervention by the Inspectorate. The Home Office's dominance of the Inspectorate was particularly apparent in the moderating of the Inspectorate's wide-ranging powers, in 1850, the central government set out to exercise greater supervision of the Inspectorate's quasi-legislative and quasi-judicial powers and settling of disputes.[285] Consecutive Home Secretaries assumed closer supervision of policy formation and factory regulation. Additionally, the administrative action by the inspectors became subject to scrutiny by government lawyers. The independence of the Factory Inspectorate was significantly curtailed, their discretion shaped by the external controls of legal rules and ministerial discretion.[286] The Inspectorate was wholeheartedly a government institution.[287]

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[283] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p108 - 109
[284] M.W. Thomas, *The Early Factory Legislation* (Thames Bank 1948) p112
[285] Stewart Field, 'Without the Law? Professor Arthurs and the Early Factory Inspectorate' (1990) 17 JLS 4 p44; H.W. Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in 19th Century England* (University of Toronto Press 1985)
[286] Stewart Field, 'Without the Law? Professor Arthurs and the Early Factory Inspectorate' (1990) 17 JLS 4 p445; H.W. Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in 19th Century England* (University of Toronto Press 1985)
[287] Margaret F. Stieg, 'The Nineteenth-Century Information Revolution' (1980) 15 JLT 1 p22

Second, via the *factories act*, non-governmental actors were 'written out of the script'. OHS was legislated out of private hands and placed within the sphere of government. From the very first *factories act*, the state marginalised the role of non-state actors; the *1802 Act* empowered local government to oversee conditions at local factories, ascribing only a peripheral record-keeping role to physicians, in which he had to seek remuneration from the mill owner. Building on this, the state secured its monopoly on OHS by establishing the Factory Inspectorate via the *1833 Factory Act.*

This is not to suggest that there was a conscious effort of ministers to keep the regulation of workplace in government hands, rather it was a pragmatic reality.[288] Any opportunity to promote voluntary action was taken, but when it failed, the state had little option but to intervene.[289] After all, when the first *factories acts* were being passed, the capabilities and resources of non-state actors were severely limited. Employers were not able to talk with one voice. They were not a homogenous block; they were deeply fractured; a national survey in 1851 recorded that 71.5% of employers in England and Wales employed between one and four workers and that 87% of employers engaged fewer than ten workers.[290] Even among larger employers, the history of the National Federation of Associated Employers of Labour clearly demonstrates that unity often succumbed to industrial sectionalism and individualism.[291] Moreover, many employers had no desire to engage in the regulatory process, or were excluded from it due to their size or status, and were in any case unlikely to be prosecuted.

As a whole, non – state actors who were interested in factory conditions were not developed enough to have substantial powers delegated to them.[292] For instance, the medical profession 'was not yet clearly de-limited, and upon the fringes there practised many men whose technical

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[288] Richard Brown, *Church and State in Modern Britain 1700-1850* (Routledge 1991)

[289] Asa Briggs, *A Social History of England* (Penguin Books 1991)

[290] Richard Rodger, 'Mid-Victorian Employers' Attitudes' (1986) 11SH 1 p77

[291] Andrew Yarmie, (1986) 'Employers, Ideology and Social Conflict: A Reply to Richard Rodger' 11 SH 2 p235

[292] Asa Briggs, *A Social History of England* (Penguin Books 1991)

knowledge and skill were of the slenderest'. [293] Throughout the nineteenth century, the Inspectorate expressed its frustration with illicit practices among certifying surgeons.[294] For much of its existence, the Factory Inspectorate maintained its remoteness from professional groups.[295] It rarely deviated from the course that was set by the Home Office. As a creature of government, the Inspectorate was 'ordained' with an exceptionalism to be shared by no other non-state actor; they were the sole authoritative body in OHS. Andrew Hale notes that this was a 'preoccupation' from 1833:

> The reason for setting up an Inspectorate was the feeling that no group in existence would have an interest in casing the laws obeyed because *all* groups were biased… The ideal of a lack of bias, both in the Inspectorate as a whole and in individuals is one which the inspectorate has been pursuing for the whole of its existence.[296]

Third, the closeted nature of the government's capture of OHS was critically connected to the timing of its development. It was created in a world where formal democracy existed only as a frightening spectre.[297] David Marquand noted that 'The atmosphere of the British government was that of a club, whose members trusted each other to observe the spirit of the club rules; the notion that the principles underlying the rules should be clearly defined and publicly proclaimed was profoundly alien'.[298] The 'club like' environment of government was built on discretion, non-transparency, unaccountability and decision - making behind closed doors.[299]

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[293] Cited in W. R. Lee, 'Robert Baker: The First Doctor in the Factory Department: Part 1. 1803-1858' (1964) 21 BJIM 2 p85, p87
[294] W. R. Lee, 'Robert Baker: The First Doctor in the Factory Department: Part 1. 1803-1858' (1964) 21 BJIM 2 p85, p87; Stephen Huzzard, 'The Role of the Certifying Surgeon in the State Regulation of Child Labour and Industrial Health 1833 – 1973' (M.A. thesis University of Manchester 1975)
[295] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)
[296] Andrew Richard Hale, 'The Role of H.M Inspection of Factories with Particular Reference to their Training' (PhD Thesis University of Aston 1978) p218 - 219
[297] Michael Moran, 'Governing Doctors in the British Regulatory State' in Andrew Gray and Stephen Harrison (eds), *Governing Medicine: Theory and Practice: Theory and Practice* (Open University Press 2004) p27 - p37
[298] David Marquand, *The Unprincipled Society: New Demands and Old Politics* (Jonathan Cape 1988) p178
[299] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007)

6.0 Conclusion

Little by Little, and year by year, the fabric of state expenditure and state responsibility is built up like a coral island cell on cell.[300]

The story of OHS begins with the *countermovements* of external actors. These *countermovements* were institutionalised by the state in the form of *factories acts.* This was profoundly significant; through passing these acts, the fundamental principle of state interference with free labour was cemented. The state had intervened between employer and employed. Moreover, it was the first time the State assumed the rights of parent and guardian to the children of the free. Thus, we should not view the regulation of workplaces as merely an adjunct function taken on by the state; rather the decision to regulate the workplace was how it *became* a state; an 'active force, doing or choosing not to do particular things'.[301]

Bound by precedent, the state was expected to be an 'active force' to intervene when 'evils' were uncovered. Beginning with the regulation of the textile industry, it then turned its attention to bleaching and dyeing in 1860, to lace work in 1861 and in 1864 to percussion cap-making, cartridge-making, paper staining and fustian cutting, earthenware manufacture and lucifer match-making. To accommodate these growing responsibilities, there was an incremental increase in personnel and budgets, albeit not at the rate that was fitting for such a broad remit.

Utilising Macdonagh's model, we saw how the state 'grew into its new role' and enveloped the workplace with legislation. Though there is a significant difference between law in statue and law in action, it is a 'reasonable assumption' to make that compliance improved with the growth of the regulation.[302] Macdonagh's observation allows us to see that *regulation* of the workplace brought more *regulation* of the workplace; assuming responsibilities brought more responsibilities. Macdonagh's model does not totally disregard the external drivers of

[300] W.H. Greenleaf, *Rise Collectivism* (Routledge 2012) p32
[301] Joanna Innes, 'Forms of 'government growth', 1780–1830' in David Feldman and Jon Lawrence (eds), *Structures and Transformations in Modern British History* (Cambridge University Press 2011) p79
[302] P.W.J. Bartrip, 'British Government Inspection, 1832 – 1875: Some Observations' (1982) 25 HJ 3 p612

regulatory growth; all can be accommodated within the model. For instance, the legislation that came out of addressing the absurdities of unregulated workshops could point to many drivers. Such a process may have been instigated by larger manufacturers who saw competition from the smaller and unregulated workshops. Equally, the process of addressing absurdities could have been instigated by humanitarian concerns which saw that unregulated workshops as havens of illicit behaviour. What is important is that the *government* stood in the middle of these drivers and addressed the imbalance through acts of Parliament.

Regulatory growth output was significantly state-centric. The Factory Department's physical location in Whitehall reveals much about its place in government. Inspectors were creatures of the state that could be used for whatever the state wanted. Although some degree of discretion came with the Factory Department's growth of expertise, the politically significant issues remained the preserve of the Home Office.

Chapter Three: The Extension of the Capture of OHS (1870s – 1930s)

1.0 Introduction

From the late nineteenth century, there was a concerted effort to improve the quality of OHS regulation. Moving from a narrow legislative focus, the government implemented a number of initiatives to broaden the scope of OHS regulation. However, the lack of discernible impact pointed to the problematic nature of developing OHS within the confines of Westminster.

1.1 The layout of the chapter

This chapter begins with a brief exploration of the latter stages of Macdonagh's model. Macdonagh posits that 'a change of attitude on the part of the administrators' emerged out of experience and experiment. [303] The decades spent regulating the workplace had enlightened the government to the fact that a deluge of legislation was not enough to bring about a satisfactory solution.[304] Macdonagh also observed that experience had shown officials that their concept of regulation was much too narrow. A broader effort was needed to bring about greater compliance. Several studies undertaken in the early twentieth century recognised this transitionary period.[305] To fully appreciate the context of the transition, it is vital that we go beyond Macdonagh's notion of experiment and experience. There were wider and profound developments in the latter part of the nineteenth century that compelled the government to rationalise its output and mature its processes; the increasing accident rate, the consolidation of organised labour, critical changes to the staffing of Home Office and the Factory Department, changing disposition of employers and the influence of international systems of OHS. Such developments helped foster an atmosphere of reform.[306]

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[303] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[304] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[305] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911); H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)
[306] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911); H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)

This atmosphere of reform helped produce a number of initiatives to reduce the toll of workplace death and disease. This section will outline these initiatives that emerged from the late nineteenth century; consolidating legislation, extending departmental committees, promotion of self – inspection, welfare supervision and engagement with non – state actors.

The final section seeks to answer why the above-mentioned initiatives did not fill the 'gaps' in regulation and bring about a reversal of the dire accident rates.[307] The central reason was that the initiatives were placated by the limits of the government. Ironically, the nature of these initiatives demonstrated innovation and maturity, but they also revealed the limits of the state.[308] OHS was 'trapped' in the Westminster model. As a result, several fundamental issues hindered the effectiveness of reform; the sluggishness of government machinery, rigid and circumscribed engagement with non-state actors, inadequate statistical development, undue influence of the Home Office, insufficient staffing and government-centricity. All of which indicated that *government* was the problem with the *government* of the workplace.[309]

2.0 The rationalisation of the regulatory system

The abundance of legislation 'churned out' by the administrative momentum had created a labyrinthine of ill-conceived, complex and overlapping regulations. Moreover, such an abundance of legislation had not necessarily brought the desired results. Thus, from the 1860s, government officials not only assessed all the statutes in front of them but also looked to produce sounder legislation for existing problems. This was a crucial turning point in Macdonagh's model that represented 'a change of attitude on the part of the administrators'.[310] The decades spent regulating the workplace had enlightened the government to the fact that a deluge of

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[307] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960); Theo Nichols, *The Sociology of Industrial Injury* (Mansell Publishing 1997)

[308] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960); John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); Theo Nichols, *The Sociology of Industrial Injury* (Mansell Publishing 1997)

[309] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960); Theo Nichols, *The Sociology of Industrial Injury* (Mansell Publishing 1997)

[310] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52

legislation was not enough to bring about a satisfactory solution.[311]   Macdonagh also observed

that experience had shown officials that their concept of regulation was much too narrow. A

broader and more concerted effort was needed to bring about greater compliance.

Macdonagh's model posits that this 'volte-face' emerged out of experience and experiment.

This is indeed a contributory factor, but there were wider and profound developments in the

latter part of the nineteenth century that compelled the government to rationalise its output and

mature its processes.   First, the yearly increase of accidents, deaths and ill – health exposed the

frailties of the government's regulation of the workplace.[312] Eddie Crooks noted that there were

around 3,000 cotton mills and other factories in the country under government regulation in

1833. However, by 1883, every establishment in which mechanical power, steam, water or gas

was used for manufacturing was deemed to be a factory and places where the preparation of any

article or adaptation for sale was carried out was deemed to be a workshop. This led to

significant increases in the number of accidents reported to the Factory Inspectorate.[313] There

was also a growing perception that the factory legislation was ill-equipped to deal with the

breadth of disease and death in industry.[314]

Second, key changes in personnel 'shook up' up both the Home Office and the Factory

Department.[315] Within the Home Office, new competitive entry arrangements allowed for the

entry of civil servants with 'huge intellectual talents, drive and enthusiasm'.[316] Particularly

significant were Edward Troup, Malcolm Delevigne and the appointment of the dynamic and

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[311] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52
[312] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982)
[313] Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p36 - 56
[314] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p155
[315] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p41
[316] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982)

visionary Herbert Asquith as Home Secretary.[317] All of whom were deeply committed to the

improvement of OHS.[318]   Upon entering the Home Office, Asquith wrote,

> When I assumed office one of the first questions to engage my attention was the organisation of the Factory
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> Department, and from that time to this it has been the subject of my careful and almost continuous
>
> consideration. Mr Herbert Gladstone also has devoted much time and thought to the matter.[319]

Furthermore, these individuals and many others were committed to protecting and *extending*

Home Office responsibilities rather than seeking to 'slough them - off which had been the

attitude of an older generation of officials'.[320]

The Factory Department experienced a similar influx of talent, intelligence, and enthusiasm.[321]

The retirement of Alexander Redgrave in 1891 was important to the ending a period of

conservatism.[322] The aged Redgrave had done little to make the Inspectorate responsive to a

more technical age; the format of annual reports remained unchanged.[323] Information was

presented in impregnable prose and statistical data was unaccommodating.[324] Moreover, the

Redgrave 'model' was not particularly open to women inspectors, specialisation and responding

to the demands of the workforce.[325]   Thus, with the departure of Redgrave, the Factory

Inspectorate was reorganised – 'so much so that it is fair to talk about the start of a new era in the

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[317] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p41

[318] Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton University Press 1994) p20; P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p41

[319] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p155

[320] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p40 - 41

[321] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p40 - 41

[322] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p40 - 41

[323] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books, 1982) p155; P.W.J. Bartrip, 'Expertise and the Dangerous trades, 1875 - 1900' in Roy MacLeod (eds), *Government and Expertise: Specialists, Administrators and Professionals* (Cambridge University Press 1988) p104 - 105

[324] P.W.J. Bartrip, 'Expertise and the Dangerous trades, 1875 - 1900' in Roy MacLeod (eds), *Government and Expertise: Specialists, Administrators and Professionals* (Cambridge University Press 1988) p104 - 105

[325] P.W.J. Bartrip, 'Expertise and the Dangerous trades, 1875 - 1900' in Roy MacLeod (eds), *Government and Expertise: Specialists, Administrators and Professionals* (Cambridge University Press 1988) p104 - 105

1890s'.[326]   Better educated and reform-minded Chief Inspectors took the Factory Inspectorate

into the twentieth century.[327]

Also, Vicky Long observed that the appointment of women inspectors in the 1890s prompted the

Factory Department to turn 'its attention to a wider range of issues'.[328] She notes that women

inspectors turned the Factory Department's attention to the welfare of workers more so than their

male colleagues.[329] They focused their attention on lighting, ventilation, temperature, hygiene

and the provision of cloakrooms.[330]

Third, greater demands were being placed on the Factory Department from employers. As

employers became legally responsible for more activities, they looked to the Inspectorate for

consistent and helpful information.[331] This, in turn, caused inspectors to try to make sense of the

mass of regulation and seek some degree of systematisation and simplification.[332] Sir Gerald

Bellhouse, who joined the inspectorate in the 1890s, recollected that previously inspectors had to

enforce unpopular acts and contend with all kinds of opposition, however, a gradual shift

occurred that required inspectors to spend more of their time advising and consulting

employers.[333] Similarly, Pellew observed that employers made greater demands on the factory

inspector. She presented a case of an inspector that complained that he had spent much of his

[326] P.W.J. Bartrip, 'Regulating Workplace Hazards: The Role of Medical, Scientific and Technical Experts' in Michael Lobban and Julia Moses (eds), *The Impact of Ideas on Legal Development* (Cambridge University Press 2014) p234

[327] P.W.J. Bartrip, 'Regulating Workplace Hazards: The Role of Medical, Scientific and Technical Experts' in Michael Lobban and Julia Moses (eds), *The Impact of Ideas on Legal Development* (Cambridge University Press 2014) p234

[328] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p6 -7; Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p36 – 56; H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) pxii

[329] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p6 – 7; H. Jones, 'Women Health Workers: The Case of the First Women Factory Inspectors in Britain' (1988) 1 SHM p165

[330] H. Martindale, *From One Generation to Another 1839 – 1944: A Book of Memoirs* (G. Allen & Unwin 1944) p143; Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p6 – 7; Helen Jones, 'Women Health Workers: The Case of the First Women Factory Inspectors in Britain' (1988) 1 SHM p165; Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p36 - 56

[331] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982)

[332] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911)

[333] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p13

day as a 'general counsellor' answering queries from appliance makers and occupiers.[334]

Barbara Harrison saw this as a 'new development' that began in the 1880s and 1890s in which the state was called upon to take a more proactive role.[335]   The state's designation of 'dangerous trades' meant that employers needed to keep abreast of the Factory Department's regulations *and* the Orders of the Home Secretary.   The latter aspect was a 'distant regulatory framework' that obligated employers to adhere to standards of cleanliness, ventilation, protective clothing and inspection.[336]   Thus, a higher level of systematisation and standardisation of advice and guidance was demanded from the Government.[337]

Fourth, with the consolidation of organised labour in the late nineteenth century, the government faced stauncher and more vocal critics. [338]   The government was subject to unprecedented scrutiny of its actions inside and outside of Parliament.[339]   For instance, the Trades Union Congress Parliamentary Committee and workers associations would send deputations to question the Home Office about the deficiencies of factory inspection.[340]   Moreover, in the House of Commons, the Home Secretary was 'annually under pressure' during supply debates from MPs sympathetic to labour who pushed for better factory inspection.[341]

Fifth, it was significantly easier to push through legislation.   Thus, much more time was spent improving proposals than combating manufacturing interests.   From the late nineteenth century, employers were far more accustomed to 'interference' and the laissez-faire dogma had softened.[342]   Observing the thirty-year period of 1890 – 1924, H.A. Mess wrote:

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[334] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p161
[335] Barbara Harrison, *Not Only the Dangerous Trades: Women's Work and Health in Britain 1880-1914* (Taylor & Francis 1996)
[336] Barbara Harrison, *Not Only the Dangerous Trades: Women's Work and Health in Britain 1880-1914* (Taylor & Francis 1996)
[337] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p161
[338] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)
[339] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books, 1982)
[340] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p53 – 54; Clive Jenkins and J. E. Mortimer, *British Trade Unions Today* (Pergamon Press 1967) p52
[341] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books, 1982) p161
[342] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p22

> Industrial legislation is therefore 'accepted with less unwillingness than in the past… The theory of non-interference is not held by most people any longer. Where there is objection to some new regulation it is usually on the grounds that this particular change is undesirable, not on the ground of general principle. The modern theory is that the community should insist on minimum standards of conditions for all workers.[343]

Sixth, from the late nineteenth century, the British government was gifted with numerous examples of how to maintain a safe and healthy workplace.[344] The decision to regulate factories set Britain apart from its other fellow nations. Thus, Britain 'walked alone' on unprecedented ground with little to no inspiration from other countries. Rather it was other countries that drew inspiration from Britain's *Factories Acts*.[345] Until the 1870s, the government could boast, 'England is, without doubt, far in advance of every country in this matter, whether we consider the law itself or the strictness of its execution'.[346] However, towards the end of the nineteenth century, various states began to develop very sophisticated OHS systems that not only rivalled Britain's but on occasion surpassed it.[347] To this point, George Moses Price outlines the evolution of European OHS systems, all of which had achieved varying levels of sophistication by the end of the nineteenth century.[348]

With such a variety of evolved OHS systems, the British government no longer held an exceptional place. Campaigners were able to draw on England's 'decline' to prompt reform, the Fabian Society protested, 'England has, on this point, lost her lead in labour legislation. Germany and Hungary absolutely forbid it under twelve; Switzerland forbids it (in factories) under fifteen (Act of 1877), and France under fifteen, unless the child has received sufficient

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[343] H.A Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p213

[344] For example, Germany provided an example for the *1897 Workmen's Compensation Act*. Martin Lengwiler, 'Between War Propaganda and Advertising: The Visual Style of Accident Prevention as a Precursor to Postwar Health Education in Switzerland' in Virginia Berridge and Kelly Loughlin (eds) *Medicine, the Market and the Mass Media: Producing Health in the Twentieth Century* (Routledge 2005) p56

[345] David Walters, *Regulating Workplace Risks: A Comparative Study of Inspection Regimes in Times of Change* (Edward Elgar 2011) p23 – 24; John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937)

[346] Henry Fawcett, *Factory Acts Amendment Bill* (Bristol Selected Pamphlets 1873) p16

[347] British Medical Journal, 'Annual Report of The Chief Inspector of Factories and Workshops for the Year 1897' (1898) 2 BMJ 1967 p726, p727

[348] George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p10

primary education'.[349] In the spring of 1898, Professor T. Oliver, attended the International Congress of Hygiene at Madrid, representing the Home Office in the report of the Congress, he described his visit to the white lead factories of Paris 'in which he found this industry carried on under more salubrious conditions than in our own country'.[350] In 1912, Henry Harris observed that the statistics of the Factory Department's industrial accidents were particularly poor compared to countries like Germany and Austria which had central offices for the collection of data.[351] Thus, from the end of the nineteenth century, the Home Office's departmental committees were able to formulate recommendations drawn from European witnesses.[352] Moreover, the Home Office was able to send its officials across the continent to experience examples of good practice.[353]

Additionally, several International Conferences were held from the late nineteenth century.[354] For the most part, the conferences provided an opportunity for the British government to compare, contrast and exchange ideas with other industrialised nations. B.L. Hutchins and A. Harrison observed that, 'The meeting of experts for the study and comparison of what is being done in different countries is both stimulating and salutary'.[355] Also, Mess observed that international conferences formed the basis of several Acts of Parliament.[356] The first conference of note was held in Berlin in 1890 in which it was recommended that the participating states should make every Sunday a holiday for workers, time off for childbirth and a ban on children under 14 working in the mines.[357]   In 1897, the Home Office also sent representatives to the

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[349] The Fabian Society, *An Eight Hours Bill in the Form of an Amendment of the Factory Acts, with Further Provisions for the Improvement of the Condition of Labour* (LSE Selected Pamphlets 1890) p13

[350] British Medical Journal, 'Annual Report of The Chief Inspector of Factories and Workshops for the Year 1897' (1898) 2 BMJ 1967 p726, p727

[351] Henry J. Harris, 'The Increase in Industrial Accidents' (1912) 13 PASA 97 p1

[352] 'Proposed Prohibition of Lead Paints in Great Britain' (1915) 1 Monthly Review of the U.S. Bureau of Labor Statistics 5 p38

[353] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

[354] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

[355] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p272

[356] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)

[357] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

International Congress on Accidents to Operatives in Brussels.[358] In 1900, the International

Association for Labour Legislation was formed in Paris. It held conferences every two years and

published a monthly bulletin in several European languages.[359] In 1906, the Berne Conference

was set up to reach agreement on the prohibition of night work for women and the use of white

phosphorus.[360] During the Great War, such gatherings ceased. After the War, the forging of

international norms resumed, particularly with the founding of the International Labour Office

(ILO).[361]

The proliferation of such gatherings was also important because it significantly reduced the

'bugbear of foreign competition', therein giving the government less opposition to regulate its

domestic industries.[362] For much of the nineteenth century, there was difficulty introducing

regulations which were beyond the standard of foreign competition.[363] It proved to be a

'hindrance to the statesman, who may find himself confronted with the dilemma, whether to

stand by and see the physique and morale of our workers deteriorated by bad conditions and long

hours, or to run the risk of temporarily raising the cost of production, and so perhaps injuring the

industry and therewith the workers'.[364] Thus, the international agreements reached at these

gatherings and improvement of European OHS systems significantly reduced the opposition of

proposing new regulations.

All these developments encouraged reform. What came out of this process will be discussed

following section.

3.0 Government initiatives to improve the regulation of workplaces

The developments in the late nineteenth stationary culminated with the government undertaking

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[358] British Medical Journal, 'Annual Report of The Chief Inspector of Factories and Workshops for the Year 1897' (1898) 2 BMJ 1967 p726

[359] International Labour Office, *International Labour Standards: A Workers' Education Manual* (International Labour Office 1998) p4

[360] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p72

[361] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p72 - 73

[362] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p269 - 270

[363] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p269 - 270

[364] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p269 - 270

a number of initiatives to improve its regulation of the workplace. To this point, Macdonagh observed:

> They began to undertake more systematic and truly statistical and experimental investigations. They strove to get and to keep in touch with the inventions, new techniques and foreign practices relevant to their field. They even called directly upon medicine and engineering, and the infant professions of research chemistry and biology, to find answers to intractable difficulties.[365]

Several initiatives were undertaken to review, improve and consolidate factory regulation. Moreover, there were also attempts to fill in the gaps left by factory regulation. These initiatives demonstrated the maturation of factory regulation. Not only with regard to the rationalisation of the government's output but also through the acknowledgement that the government could prompt industry to act without the passing of statutes. What follows is an overview of these initiatives.

3.1 Consolidated legislation

Towards the end of the nineteenth century, the government sought to 'tidy up' the ad hoc addition of sundry legal requirements into a consolidated form. Consolidation is defined as 'bringing together different enactments on the same subject matter to form a rational structure and making more intelligible the cumulative effect of different layers of amendments'.[366] The momentum of regulation described in the previous chapter created a labyrinthine of ill-conceived, complex and overlapping regulation.[367] Thus, consolidation signified that the government sought to change direction. This was the essence of all the consolidating acts, especially, the very first consolidated *factories act,* the *1878 Factories Act,* which came out of an appointed commission in 1876 to inquire into the multifaceted system of factory and workshop

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[365] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p60 - 61

[366] Helen Caldwell, 'Can Legislation Rank as Literature?' in Constantin Stefanou and Helen Xanthaki, *Drafting Legislation: A Modern Approach* (Ashgate 2008) p254

[367] The Albany Law Journal 'Consolidation of British Law' (1870) 1 ALJ p365

acts.[368]   As a history of OHS has demonstrated, reviewing past legislation *became* a constant feature of government. The very first consolidation of factory legislation was passed in 1878. Every few decades (1878, 1901, 1937, 1961), factory legislation was reviewed then consolidated into a more manageable form.

In addition to the rationalisation of the law, consolidation held practical implications, it allowed for the simplification of the growing body of OHS law. To this point, commentators noted that in spite of the increase of the Inspectorate's duties, the consolidated acts greatly simplified their work; the detection of evasions was attended with less difficulty than was formerly the case.[369] Also, consolidation was also necessary to extend the state's regulatory powers to new areas.[370] With each consolidating *factories act* came new areas of governance. Thus, there was a need to place the 'new and the old' in one consolidated piece of legislation. For example, the *1901 Factories Act* synergised previous acts and amendments with new areas of governance into one act. Therein, placing an unprecedented five and a half million workers under its protection, this was followed by the *1937 Factories Act* which increased the protections to seven million workers. Subsequently, the *1961 Factories Act* increased cover to around 11 million workers. For the most part, consolidating these acts allowed for the equality of treatment for individuals working in different industries. [371]

Due to these considerations, consolidated *factories acts* were generally the most progressive type of *factories act*. The exercise of consolidating is the 'consequence of reform, or at least change'.[372] Thus, the passing of consolidated *factories acts* was often preceded by many years of campaigning.[373] The consolidated *Factories Act of 1937* is a case in point. It was a result of

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[368] Eric Hopkins, *Industrialisation and Society: A Social History, 1830-1951* (Routledge 2000) p62
[369] B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (P.S King & Son 1911) p248
[370] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)
[371] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p75; Ralph W. King and John Magid, *Industrial Hazard and Safety Handbook* (Butterworth Scientific 1982) p108
[372] Alec Samuels, 'Consolidation: A Plea' (2005) 26 SLR p56
[373] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

15 years of campaigning.[374] Upon its enactment, Duncan Wilson, the then Chief Inspector of Factories described the Act as a 'striking innovation… to raise the general standard of health, safety and welfare to a level higher than may be at present realized'.[375] Also, the Act continued the tradition of the widening of safety measures. The extension of safety measures found their home in the twentieth century's consolidating acts.[376]

3.2 Departmental committees

From the closing years of the nineteenth century, the Home Office set up a variety of committees to address the deficiencies of OHS. The departmental committees were marked by their 'in-house' character, usually headed by the Home Secretary and supported by Factory Department officials.[377] OHS had long been shaped by committees and commissions of various types. However, the Home Office's departmental committees were unique in the sense that they were largely set up to *review* existing legislation and policy. From the late nineteenth century, there was an expansion of specialised departmental committees investigating different aspects of OHS to the extent that OHS issues dominated the subjects reported to Parliament.[378]

These committees set the tone for the twentieth century.[379] Among the most influential was the Home Secretary's[380] departmental committee to consider the question of the increase in reported accidents in 1908.   Over 41 days, the committee took evidence, examined 58 witnesses and visited several factories. The committee produced its report in 1911.[381] The report was

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[374] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p75; Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)
[375] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p75; Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)
[376] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)
[377] If not headed, then appointed by the Home Secretary.
[378] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books, 1982) p158
[379] Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p61
[380] Winston Churchill
[381] Home Office, *Report of the Departmental Committee on Accidents in Places Under the Factory and Workshop Acts* (HMSO 1911)

'instrumental in laying the foundations for a modern Factory Inspectorate'.[382] Another

committee of influence came a few years later; the 1919 Committee of the Re-organisation of

Factory Staff, formed and chaired by Delevinge.[383] The recommendation of this committee

brought about the inclusion of women inspectors into the general body of inspectors, an increase

in the number of divisions and districts of inspections and the strengthening of technical staff.

The recommendations of the committee were acceded to by the Home Office and brought into

action in 1921.[384]

Committees were often the prelude to factory legislation.[385]   For instance, the recommendations

of the Home Secretary Matthew White Ridley's, Cotton Cloth Factories Committee resulted in

the *Cotton Cloth Factories Act 1897*[386]; the recommendations of the Home Secretary Herbert

Gladstone's 1907 Committee resulted in the *1911 Factory and Workshop Act*[387]; the

recommendations of 1918 Committee on Anthrax led to the *Anthrax Prevention Act 1919*[388]; the

recommendations of the Home Secretary Arthur Henderson's Committee on Medical

Examinations of Young Person for Factory Employment made 'their way to the Statute Book'.[389]

3.3 Welfare supervision

From the First World War, the government sought to promote welfare supervision. Although,

the concept of 'welfare' developed in the late nineteenth century, it was actively promoted with

the breakout of war. According to B. Seebohm Rowntree, the Director of the Welfare

Department in the Ministry of Munitions, 'Welfare supervision is simply the creation in a factory

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[382] Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p61; Henry J. Harris, 'The Increase in Industrial Accidents' (1912) 13 PASA 97 p1; Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p60

[383] Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton University Press 1994) p20

[384] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

[385] Roger Shaw (ed), *Safety and Reliability of Software Based Systems: Twelfth Annual CSR Workshop Bruges 12 - 15 September 1995* (Springer 1997) p53

[386] Matthew Ridely, 'The Cotton Cloth Factories Acts, 1889 and 1897' (*The London Gazette*, 10 May 1898) 2897

[387] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

[388] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); Nicholas H. Bergman (ed), *Bacillus anthracis and Anthrax* (Wiley Blackwell 2011)

[389] 'Home Office' HC vol 187 cc331-87 (28 July 1925); T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)

of those conditions which enable each individual worker to be and do his or her best'.[390] More specifically, 'Voluntary efforts on the part of employers to improve, within the existing industrial system, the conditions of employment in their own factories'.[391]

The government was drawn into promoting welfare at work due to the outbreak of war in 1914 when a significant number of women took up employment in industries previously dominated by men.[392] These new workers were compelled to undergo the same 'wearying physical strain' as their male counterparts. Their new work was often marked by 'long hours, improper or inadequate sanitary conditions, and the extreme fatigue produced by industrial processes to which they are wholly unaccustomed to'.[393] It was required of the government to maintain the health of the nation; women could not be worked to the extent that their health, morals and childbearing capacities diminished.[394] Moreover, the War brought issues of productivity to the surface. Through attending to the welfare of workers, greater productivity could be achieved.[395]

Promoting welfare at work was exemplified by the *1916 Police Factories etc. (Miscellaneous Provisions Act*. This Act enabled the Home Office to issue orders for welfare provisions. Such orders included an order requiring drinking water in every factory or workshop employing 25 people or more; an order for the provision of seats for female workers in munitions factories; a first aid and ambulance order which required an ambulance room in factories that employed 500 persons or more.[396] There was also a bottom-up element to promoting welfare at work; the government sought to set up of welfare committees.[397] The business of resolving and analysing

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[390] B. Seebohm Rowntree, 'Value OF Welfare Supervision to the Employer' (1916) 3 Monthly Review of the U.S. Bureau of Labor Statistics 6 p74

[391] Cited in Monthly Review of the U.S. Bureau of Labor Statistics, 'Welfare Work in Great Britain' (1916) 3 Monthly Review of the U.S. Bureau of Labor Statistics 6 p81, p82; Oliver Sheldon, *The Philosophy of Management* (Sir Issac Pitman & Sons 1924) p175

[392] Monthly Review of the U.S. Bureau of Labor Statistics, 'Welfare Work in Great Britain' (1916) 3 Monthly Review of the U.S. Bureau of Labor Statistics 6 p81

[393] Monthly Review of the U.S. Bureau of Labor Statistics, 'Welfare Work in Great Britain' (1916) 3 Monthly Review of the U.S. Bureau of Labor Statistics 6 p81

[394] Gail Braybon, *Women Workers in the First World War* (Croom Helm 1981)

[395] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

[396] *Annual Report of the Chief Inspector of Factories and Workshops for the Year of 1918* (HMSO 1919) p31 - 33

[397] Gail Braybon, *Women Workers in the First World War* (Croom Helm 1981); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

the issues related to the welfare of workers was left in the hands of these committees.[398] The

most prominent being the Health of Munitions Workers′ Committee (HMWC) set up 1915 'to

consider and advise on questions of industrial fatigue, hours of labour, and other matters

affecting the personal health and physical efficiency of workers in munitions factories and

workshops'.[399] In its lifetime, the Committee produced 21 memoranda and two reports of which

over 210,000 were sold and distributed.[400] A Factory Inspector noted that many of the

Committee's publications circulated not just among employers but reached 'a wide, general,

reading and thinking public'.[401] The HMWC was followed by the Home Office and the Board of

Trade's setting up of the Women's Employment Committee to consider issues arising out of the

mass entrance of women to the workplace, such as housing, transit, canteen provision and

recreational arrangements.[402] In addition to such committees, the government also issued a

series of pamphlets offering advice on welfare arrangements for women workers.[403]

The most radical action taken by the government in the realm of welfare was the push for the

appointment of 'welfare supervisors'. B. Seebohn Rowntree, the Director of the Welfare

Department in the Ministry of Munitions, defined the 'welfare supervisor' as a 'human engineer

who goes into the factory to see that all the human machines are working at their highest

potential'.[404] The government hoped that the appointment of supervisors would help promote

the well-being, health and efficiency of the workforce. It was posited that this increase in

[398] Gail Braybon, *Women Workers in the First World War* (Croom Helm 1981); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

[399] Ministry of Munitions, 'Health of Munition Workers Committee Interim Report: Industrial Efficiency and Fatigue' (1917) (Archive no: MUN 5/92/346/14) TNA - Kew Gardens; Monthly Review of the U.S. Bureau of Labor Statistics, 'Industrial Efficiency and Fatigue in British Munition Factories' (1917) 5 Monthly Review of the U.S. Bureau of Labor Statistics 1 p14

[400] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p20; Steven Kreis, 'Early Experiments in British Scientific Management: The Health of Munitions Workers′ Committee, 1915-1920' (1995) 1 JMH 2 p65

[401] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p20

[402] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p20

[402] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p20

[403] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p20

[404] Tony Watson, *The Personnel Managers (Routledge Revivals): A Study in the Sociology of Work and Employment* (Routledge 2011) p42

efficiency was essential to employer and employee because a progressive improvement in wages could only be achieved by the progressive improvement in methods of production.[405] In 1916, the Home Office ordered all munitions factories to appoint a welfare supervisor. Private employers managed to evade the prescription, but there were no such loopholes for the nationalised industries.[406] By the winter of 1917, the Ministry of Munitions had dispatched 28 supervisors to their new posts in national shell and fuse plants across the country.[407] Throughout the war years, the Home Office organised conferences to promote the appointment of welfare supervisors. One of which was a conference in 1917 in which representatives of universities and other educational authorities discussed the criteria for the training and selection of welfare workers.[408] Much of the voluntary welfare – enhancing initiatives became compulsory with the enactment of the *1937 Factories Act*.[409]

3.4 Self – inspection

The twentieth century was the century of 'self – inspection'.   T.K. Djang regarded it as 'a new development in British industry'.[410] Cognisant of their limits, the government directed its attention to inducing employers to provide a measure of daily 'self-inspection' within their own firms.[411] As early as 1911, a departmental committee recommended that there was a need to ensure that those occupying factory premises should be persuaded to take 'constant daily care' to fulfil their legal responsibilities.[412]

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[405] US Department of Labor Bureau of Labor Statistics, *Welfare Work in British Munition Factories: Reprints of the Memoranda of the British Health of Munition Workers Committee* (Washington Government Printing Office 1917)
[406] Laura Lee Downs, *Manufacturing Inequality: Gender Division in the French and British Metalworking Industries, 1914 - 1939* (Cornell University Press 1995) p158
[407] Laura Lee Downs, *Manufacturing Inequality: Gender Division in the French and British Metalworking Industries, 1914 - 1939* (Cornell University Press 1995) p158
[408] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p42
[409] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p67
[410] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p105
[411] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p46
[412] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p211

Self – inspection was brought about through regulation and the stimulation of voluntary provisions. Regarding legal regulations, the extremely hazardous pottery and earthenware industry were selected as a venue for self – inspection. John B. Andrews noted that the *Regulations for the Manufacture and Decoration of Pottery 1913* was an 'unexampled elaboration' of self – inspection.[413] Similarly, Djang noted that the 'far-reaching importance of these regulations is self – evident'.[414] These regulations required that persons fully conversant with the relevant law should be appointed by firms to monitor the observance of OHS and undertake systematic inspection. The appointee was required to keep a record of breaches, apparatus failure and a description of steps taken to remedy defects and prevent accidents.

Additionally, a special section was drafted into Section 28 (3) of the *Workmen's Compensation Act 1923* which empowered the Secretary of State to give special orders to compel employers in hazardous industries to make 'arrangements for special supervision in regard to safety, investigation of the circumstances and causes of accidents'. Andrews notes that this section was expressly enacted by Parliament for the purpose of 'promoting the establishment of special safety organisations in factories'.[415] Utilising this provision, a draft order was put forward in 1927 by the Home Office providing for the establishment of a safety organisation at each works in the iron and steel industries, heavy engineering and shipbuilding industries, in which more than fifty persons were employed.[416] Though this draft order was not mandatory, it was not abrogated, it 'held like the sword of Damocles' over industry inducing employers to institute their own regimes of self – inspection.[417]

The stimulation of voluntary self – inspection was also a cause for the establishment of the Home Office's Industrial Museum. In 1925, the government established an Industrial Museum

[413] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p46

[414] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p106

[415] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p46

[416] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p110

[417] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p9; John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p46; T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p110

in which up-to-date methods, arrangements, and equipment for promoting OHS were exhibited to the public. Located on Horseferry Road in Westminster, this was among the first significant signs of a transition. Realising the limited nature of factory legislation, the Factory Department saw the museum as a means to address some of the regulatory gaps.[418] Inspectors described how employers arrived with contravention notices to find out how they could best comply with the instructions and whole firms utilised the museum to improve safety systems.[419] Long stated that the museum was a move away from the narrow 'government heavy' punitive approach towards a 'government - lite' encouragement of industry to improve its own standards.[420] Similarly, a Factory Department internal report in 1920 stated that 'what may be called the police duties of the inspectors are becoming less and less important'.[421] Furthermore, the government sent representatives to Europe to study their safety museums, yet another indicator that the government was seeking a new way to regulate industry.[422]

The provision of information was also crucial to stimulate self – inspection. From the opening decades of the twentieth century, there were several noteworthy safety publications that dealt with accident prevention.[423] Of particular importance were pamphlets related to transmission machinery, hoists, cotton spinning and weaving machinery, abrasive wheels, and fire protection in factories.[424] The Home Office endeavoured to provide employers with the latest information on special hazards and best practice. Booklets were also printed to warn employees of special risks arising in their work. [425]

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[418] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p64 - 65
[419] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p64 - 65
[420] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p64 - 65
[421] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p209
[422] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p99
[423] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937)
[424] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937)
[425] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937)

In tandem with the Home Office's efforts, the Factory Department sought to stimulate self – inspection schemes in numerous industries. The Superintending Inspector noted in 1919 that, 'Periodical visits by members of the Factory Department can never have the same effect as the daily and hourly supervision of a works official whose activities are entirely concentrated on the prevention of casualties'.[426] The Inspectorate was influenced by the 'Safety First' movement, which developed as a result of concern for the appalling industrial conditions during the First World War and advocated better management techniques and forms of self – regulation.[427] At the request of the employers, Inspectors attended the meetings of voluntary safety organisations[428] to give them additional advice and assistance.[429] On occasion, companies which did not have such organisations often established them because of the encouragement and assistance of the Factory Inspectorate.[430]

3.5 Engagement with non – state actors

From the early twentieth century, there was a move to engage with non-governmental organisations.[431] There were three aspects to this engagement. First, the government had ad hoc arrangements with individuals and groups. Much of these arrangements took the form of funding an area of study. For instance, in 1910, J.M. Beattie of Sheffield University conducted experiments on animals for the Factory Department to assess whether the inhalation of asbestos dust will cause a mild degree of fibrosis.[432] In 1913, the Home Office funded Dr A.F. Stanley

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[426] H.M. Factory Inspectorate, *Annual Report of the Chief Inspector of Factories and Workshops for the Year 1919* (HMSO 1920) p17

[427] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p211

[428] A safety organisation was set up in a workplace by the employer, with the co – operation of the workforce, for the purpose of introducing, maintaining, and propagating safety methods and provisions. It often took the form of a committee.

[429] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p113

[430] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p113

[431] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p120

[432] Richard A. Lemen, 'Epidemiology of Asbestos - Related Diseases and the Knowledge that led to what is Known Today' in Ronald F. Dodson and Samuel P. Hammar (eds), *Asbestos: Risk Assessment, Epidemiology, and Health Effects* (CRC Press 2012) p137

Kent's Professor of Physiology at Bristol University, studies on industrial fatigue.[433]   There was also funding available through the setting up of the Health of Munitions Workers Committee in 1915.[434]   Funding from the government supported field investigations into working conditions, hours of work, fatigue, ventilation, lighting and labour turnover.[435]   In addition to these studies, the expertise of individuals and groups also played a role in the formulation of legislation; departmental committees welcomed persons known to have special knowledge of the subjects, not only to collect information but also to suggest regulations.[436]   Second, the government set up formal gatherings with non – governmental organisations. Such gatherings were inaugurated in 1927 with the Home Office's joint conference with the National Safety First Association. This was the first British 'Safety Congress'.[437]   Regarding the union, the *Annual Report of the Chief Inspector of Factories* stated that:

> *A few years ago a conference of this kind would hardly have been possible* but this conference was attended by some 450 delegates, sent by firms and associations from all parts of the country and from the remarks that were made afterwards it was quite evident that the discussion had served to bring home what is not yet realized by industry as a whole, how much can be accomplished by organised safety work (emphasis added).[438]

Third, the government played a central role in setting up organisations.   After the Great War, the government encouraged the creation of three new organisations: the Industrial Welfare Society (1919) subsequently the Industrial Society and the Work Foundation, the National Institute of Industrial Psychology (1921) and the Industrial Fatigue Research Board (1918) renamed the

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[433] Medical Research Council, *First Annual report of the Industrial Fatigue Research Board 31st March 1920* (HMSO 1920) p5

[434] US Department of Labor Bureau of Labor Statistics, *Welfare Work in British Munition Factories: Reprints of the Memoranda of the British Health of Munition Workers Committee* (Washington Government Printing Office 1917)

[435] Peter Warr, 'Some Historical Developments in I - O Psychology Outside the United States' in Laura L. Koppes (ed), *Historical Perspectives in Industrial and Organizational Psychology* (Psychology Press 2007)

[436] Thomas Oliver, 'Dangerous Trades and Legislation' (1905) 6 JSCL 1 p157

[437] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p49 - 50

[438] Cited in John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p49 - 50

Industrial Health research board.[439] Psychologists, doctors and physiologists formed the bulk of these organisations. Under the direction of the government, these organisations developed new procedures and vocational guidance for a whole range of working practices.[440]

3.6 Important steps

The initiatives were indicative of a developing regulatory regime. Particularly the initiatives that sought to instigate activity amongst non – state actors. This was a novel approach and a tacit acknowledgement that the passing of *factories acts,* devoid of a deeper inquiry, could only go so far. What was needed was a holistic approach to OHS, the nineteenth-century concept of the field of regulation was much too narrow.[441] These were important steps to the government's appointment of the Robens Committee.

4.0 The unsatisfactory impact of the government's initiatives

Though the government's initiatives were important symbolically, their material benefit is more difficult to ascertain.[442]   There appears to be little thought into the establishment of procedures to measure their effectiveness to the extent that it is difficult to determine what improvements to the safety and health of workers 'was due to legislation and what was due to the spread of enlightenment and to scientific progress'.[443] It appears that the government's initiatives in the twentieth century were unable to adequately address the accident problem and the gaps in the regulatory system. The *Manchester Guardian* stated in the 1930s:

> Every Home Secretary professes his burning enthusiasm to reduce them to order, to cure anomalies, and to bring the regulations abreast of modern standards and ideas. One Government after another makes pledges

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[439] Peter Warr, 'Some Historical Developments in I - O Psychology Outside the United States' in Laura L. Koppes (ed), *Historical Perspectives in Industrial and Organizational Psychology* (Psychology Press 2007)
Medical Research Council*, First Annual report of the Industrial Fatigue Research Board 31st March 1920* (HMSO 1920)
[440] Peter Warr, 'Some Historical Developments in I - O Psychology Outside the United States' in Laura L. Koppes (ed), *Historical Perspectives in Industrial and Organizational Psychology* (Psychology Press 2007)
[441] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52, p60
[442] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[443] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)

and forgets them... society demands increasingly high standards of vigilance, and this branch of State service can never rest.[444]

Mess concluded his treatise in the late 1920s, 'Industry is probably almost as dangerous today as it was in 1907… It was distinctly more dangerous in 1907 than it had been in 1891. The reduction in the number of accidents is a task needing the most serious attention'.[445] He said elsewhere that, 'The increase in the number of accidents, both fatal and non-fatal, is greater than can be accounted for plausibly either by the expansion of industry or by better reporting'.[446] Observing the trends of the twentieth century, John Williams looked at the 'size of the problem' that the government's twentieth-century initiatives were unable to subdue.[447] He lamented the erratic and 'appalling' accident rate.[448] The accident rate rose, fell and stalled seemingly indifferent to the government's initiatives.[449] Moreover, the government was aware that its figures did not capture the full toll of death and incapacitation.[450] The system of monitoring the accident rate was dependent on whether the injured workman filed a claim, or the employer went through the correct process.[451] Equally, statistics were even more sparse for workers whose ill - health was caused or aggravated by their working conditions. Williams notes that 'there were no statistics for them'.[452] According to some experts, such cases may have outnumbered accident cases.[453] Beyond the figures, recorded and unrecorded, was the real suffering and loss caused by workplace accidents.[454]

In addition to the accident problem was the 'gaps' in the regulatory system. Regardless of the initiatives employed by the governments, gaps in regulatory oversight continued to be an issue.

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[444] Manchester Guardian, 'A Hundred Years of the Factory Acts' (*Manchester Guardian*, July 1932) cited in David Eves, 'Two steps forward, one step back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018

[445] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p215

[446] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)

[447] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[448] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p3 - 11

[449] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p11 – p42

[450] Theo Nichols, *The Sociology of Industrial Injury* (Mansell Publishing 1997)

[451] H.J. Harris, 'The Increase in Industrial Accidents' (1912) 13 PASA 97 p1

[452] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p9

[453] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p390

[454] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p6

The term 'gaps' is derived from an article written by Hutchins in 1908, in which she derided the government for its lack of protections for *all* workers.[455] Many workers fell through the cracks of the regulatory system, left to toil in unregulated industries and susceptible to loopholes in regulated industries.[456] Being on the front line, the Factory Inspectorate often felt the brunt of criticism from workers who were confounded that they did not receive the same protections as other workers.[457]

In the 1920s, Mess listed the gaps that needed rectification, it ran into several pages.[458] He implored the government to conduct a survey of 'industrial labour in order to see what protection it needs'.[459] Similarly, an American scholar in the 1930s was astonished at the gaps in legislation, he wrote:

> There is no authority over building construction where mechanical power is not used… There is no authority whatever over the demolition of buildings… At the beginning of 1936 there was no legal regulation whatever of the working hours of men, except in a single process in the potteries, and in coal mining, which does not come under the factory acts… There is no regulation for work under compressed air… There is no official inspection whatever of elevators or lifts in England, except those in factories which come under the jurisdiction of the factory inspector.[460]

4.1 Trapped in the Westminster Model

A crucial question to ask is why didn't the government's innovative initiatives bring about a discernable impact on the accident rates and fill in the regulatory gaps? This study posits that significant change did not come about because OHS was 'trapped in Westminster'. The Factory Department was a 'possession' of the Home Office, which it guarded jealously, as was exemplified by Delevingne's proclamation 'to die on the steps of the Home Office rather than

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[455] B. L. Hutchins, 'Gaps in Our Factory Legislation' (1908) 18 EJ 70 p221
[456] B. L. Hutchins, 'Gaps in Our Factory Legislation' (1908) 18 EJ 70 p221
[457] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p33
[458] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p209 - 212
[459] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p216
[460] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p8 - 10

yield one iota of its prerogatives to any upstart department'.[461] Briefly, in the previous chapter, we discussed that OHS regulation was typified by state capture. Matters were conceived of and drafted in-house *then* disseminated out to industry. Regulating the workplace in such a manner can be broadly described as the Westminster model. We use this term with caution; it came under significant criticism due to the way it was presented as an accurate depiction, dichotomy and an ideal. Thus, we use this model in the context of a 'top-down, hierarchical approach' to OHS regulation where much of the significant decisions were made in Westminster.[462] In *principle*, the Westminster model ensured that decisions made at the centre of government were delivered 'on the ground' through the process of subordination and hierarchal control.[463] Within this model, Factory Department staff were 'knights', public servants enabling their superiors to accomplish their goals.[464] The state played an omnipresent role, 'The structure and personnel of the state exert their own independent influence on this process'.[465]

Regulating OHS from behind the Westminster walls was largely facilitated by the apathetic public. As Michael Moran noted, such closeted government could not have 'originated, or survived, without the support of a wider culture of deference'.[466] Though Moran conceded that deciphering patterns of behaviour from the past is 'a notoriously tricky business' he pointed to significant evidence for the 'widespread existence of popular deference to hierarchies' of the government.[467] To this point, Williams recognised that it was difficult to provoke public opinion over workplace accidents because there was a feeling that such accidents were primarily a matter between the employers and employees; also if further action was needed, then the 'expert

[461] W. H. Greenleaf, *The British Political Tradition Volume III Part I A Much Governed Nation, Part 1* (Routledge 2003) p180

[462] Xiongwei Song, *Implementing Sure Start Policy: Context, Networks and Discretion* (Springer, 2018) Matthew Flinders, *The Politics of Accountability in the Modern State* (Ashgate, 2001)

[463] Xiongwei Song, *Implementing Sure Start Policy: Context, Networks and Discretion* (Springer 2018) Max Weber, *Max Weber, From Max Weber, Essays in Sociology* (Routledge 2009)

[464] Xiongwei Song, *Implementing Sure Start Policy: Context, Networks and Discretion* (Springer 2018)

[465] Xiongwei Song, *Implementing Sure Start Policy: Context, Networks and Discretion* (Springer 2018) p26

[466] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007) p34

[467] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007) p34

government departments' were dealing with it.[468] Thus, the more 'mundane' aspects of OHS, which affected the majority of workers, were left to the prerogatives of government officials. OHS would only receive attention at 'irregular intervals'[469]; an ILO report commented:

> It is only great disasters such as factory conflagrations and mines explosions that are brought to public notice by press and radio. Such disasters only account for a fraction of the industrial accident total, and the everyday accidents which account for the overwhelming majority of the victims are not the stuff for the headlines.[470]

Unless it was a major disaster, it was difficult to get a reaction; Hutchins noted that when she discussed the daily desperate situation of some workers, she was 'met with an incredulous look, and the objection, I thought the Factory Act had altered all that'.[471]

Mess saw that fervent public opinion was crucial to bring about effective enforcement and much more would be done about the high accident rate if the public did not see it as 'a matter of course'.[472] Since such opinion was not regularly forthcoming, lacklustre government thrived. For instance, the government had been aware of the dangers of lucifer-match making since the 1840s. However, 'nothing was done', until the enactment of the *1891 Factories Act* when lucifer-match making was certified as a dangerous trade to which special rules were drawn up. Even at this point, Mess lamented that the 'absence of any strong public opinion they could not be of great stringency'. Similarly, another example of lacklustre government due to public inattention was the low compliance rate to the *1901 Act's* requirement that 'every room in any factory or workshop' should provide 'sufficient means of ventilation'.[473] He regarded the non – compliance was a reflection of the public's ignorance about the 'value of fresh air'.[474] The

[468] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p5
[469] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[470] International labour Organisation, *Safety in Factories* (ILO 1949) p1 – 2
[471] B. L. Hutchins, 'Gaps in Our Factory Legislation' (1908) 18 EJ 70 p221, p222 - 223
[472] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p27,205,206, 215
[473] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p101
[474] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p101

requirement of ventilation could only achieve extensive compliance once it received the public's 'steady pressure over a number of years'.[475]

Arguably, the Westminster model of OHS regulation hindered the potential of the initiatives to significantly decrease the toll of death and disease. More specifically, there were five crucial interrelated issues of the government of the workplace that either protracted gains or failed to bring about desired outcomes; the sluggishness of the machinery of government; the government's inadequate data collection; the Factory Department's low staffing levels, Home Office's undue influence and government – centricity. These hindrances were intrinsic to OHS and remained with OHS until the very last *factories act.*

4.1.1 The sluggishness of the government's reforms

A significant hindrance to the effectiveness of the government's initiatives was the time it took the government to push through reforms.[476] Arguably, reforms would have been more impactful if they were implemented in a timelier fashion.[477] This was because the progressive nature of some reforms was often eroded with the passage of time. Such delay was the consequence of developing OHS in the confines of Whitehall. Particularly, the Home Office, which was a 'highly conservative' department of government.[478] The type of progressive innovation that was required proved problematic in a department created to *maintain* the King's Peace. Pellew observed that Home Office officials were typified by their observance to precedent and tradition.[479] David Dixon added, '[U]nusually centralized, precedent-bound, hierarchical,

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[475] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p101

[476] Manchester Guardian, 'A Hundred Years of the Factory Acts' (*Manchester Guardian*, July 1932) cited in David Eves, 'Two steps forward, one step back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018

[477] Manchester Guardian, 'A Hundred Years of the Factory Acts' (*Manchester Guardian*, July 1932) cited in David Eves, 'Two steps forward, one step back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018

[478] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p5; David Dixon, 'Review of Home Office 1782-1982; The Home Office: Perspectives on Policy and Administration; The Home Office 1848-1914: From Clerks to Bureaucrats' (1984) 11 JLS 1 p127

[479] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p5

isolated from the rest of Whitehall, notoriously slow in dealing with individual cases and proposals for reform, and jealous of its wide discretionary powers'.[480] Also, Hugo Young saw that the Home Office's procrastination stemmed from two issues. First, it was a product of liberal officials carrying out illiberal functions.[481] Second, there was also a constant fear of a crisis that could erupt due to a decision that was made, given the controversial nature of the Home Office's role.[482]

Looking at the wider perspective, government departments were met with a list of concerns that went beyond workplace safety. Maintaining Britain's international competitiveness, national efficiency and the country's 'racial health' often trumped OHS reform.[483] Morris Greenberg observed that 'Even modest demands in the field of occupational health could be interpreted as a threat to employment and the economy, and further demonised as part of an international programme orchestrated to destabilize society and usher in a secular apocalypse'.[484] Moreover, the reaction to OHS was compounded by the fact that the government was a major employer. As a result, government departments were often faced with significant conflicts of interest.[485]

The sluggishness of government machinery was unable to keep pace with technological advances of industry.[486] Reviewing OHS arrangements in the twentieth century, the *Robens Report* commented, 'In an age of rapid change in industrial structures and technologies... this

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[480] David Dixon, 'Review of Home Office 1782-1982; The Home Office: Perspectives on Policy and Administration; The Home Office 1848-1914: From Clerks to Bureaucrats' (1984) 11 JLS 1 p127, p129

[481] H. Young, 'The Department of Civil Liberties' in the *Home Office on Policy and Administration Bicentury Lectures* (RIPA 1982); H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p23 - 24

[482] H. Young, 'The Department of Civil Liberties' in the *Home Office on Policy and Administration Bicentury Lectures* (RIPA 1982)

[483] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002); P.W.J. Bartrip, 'Regulating Workplace Hazards: The Role of Medical, Scientific and Technical Experts' in Michael Lobban and Julia Moses (eds), *The Impact of Ideas on Legal Development* (Cambridge University Press 2014)

[484] Morris Greenberg, 'Knowledge of the Health Hazard of Asbestos Prior to the Merewether and Price Report of 1930' (1994) 7 SHM 3 p493

[485] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011); Ian Maclean and Martin Johnes, *Aberfan: Government and Disasters* (Welsh Academic Press 2000)

[486] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)

traditional empirical approach cannot keep pace'.[487] Similarly, Andrews' study of the period states, 'The growing complexity of modern industrial processes, especially with the introduction of new chemicals and a rapid increase in electric power, has enormously increased the problems of health and safety'.[488] Losing pace with industry is fathomable considering the limits of government, but what was blameworthy was the delay in reforms for processes that were *known* to be harmful.   In this regard, the delay that has received considerable attention is the regulation of the use of asbestos. N.J. Wikeley commented,

> It cannot be considered a convincing explanation of why, with the primitive conditions that prevailed and had been described in the Chief Inspector of Factories' reports, and with the anecdotal accounts by his staff of the health hazard of working with asbestos, and the persuasive supporting evidence of excessive disease and deaths from France, America and the UK it took some 60 years from the start up of the industry before the department acted.[489]

He maintains that the failure to act faster meant that 'the history has been one of a long series of lost opportunities for earlier recognition, effective intervention and the prevention of avoidable disease'.[490] The history of OHS is plagued with examples of such delays; among them is the example of industrial lighting. In 1909, the dangers of poor lighting were known to the Factory Department.[491] A special report was authored in 1911, which in turn led to the appointment of a departmental committee two years later.[492] The committee issued three reports in 1915, 1921, and 1922.[493] Though the reports 'stimulated public interest', there was no legal compulsion for decades.[494] To this point, an inspector lamented, that the regulation 'has not kept up with

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[487] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p182

[488] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p10

[489] N.J. Wikeley, 'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449; Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365

[490] N.J. Wikeley, 'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449; Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365

[491] HM Factory Inspectorate, *Annual Report of the Chief Inspector of Factories and Workshops for the Year 1934* (HMSO Cmd 4931 1935) p23 – 24

[492] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p184 - 185

[493] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p184 - 185

[494] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p184 - 185

progress with factory conditions'.[495] It was not until the passing of the *1937 Factories Act* that every factory was required to provide sufficient and suitable lighting for the first time in in the history of British factory legislation.[496]

Another well-cited example of the delay was the recommendation of a departmental committee in 1920 that called for a significant increase of factory inspectors. However, this recommendation was not carried out, the number of factory inspectors was left to decline.[497] Three years of inaction caused much disquiet; it was argued that the rising trend in factory accidents was attributable to the insufficient number of inspectors. The Home Secretary 'bought time' by insisting that legislation was being worked on.[498] It would take a decade after the committee was set up to recruit more factory inspectors, however, by this time more staff was needed to cover the Inspectorates' increased responsibilities.[499] The culture of delay had a corrosive effect. A former miner turned politician spoke to this, 'This long delay must, as it has done, always leave with the workmen the idea that Parliamentary methods are slow and cumbersome, and that they have to resort to other methods which are not either in the interests of the employer, the workmen, or the country generally'.[500]

4.1.2 The government's inadequate data collection

In order for the government's initiatives to impact industry, it required a thorough knowledge of what was happening in British factories. However, the collection of government statistics on ill – health and accidents in the workplace had long been inadequate.[501] Remarkably, until 1949, there were no official figures available for the accidents and disease sustained each year by the working population.[502] It was essential for the organs of the modern state to have at its disposal

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[495] HM Factory Inspectorate, *Annual Report of the Chief Inspector of Factories and Workshops for the Year 1934 (HMSO Cmd 4931 1935)* p23 – 24
[496] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p184 - 185
[497] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p70 - 71
[498] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p70 - 71
[499] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p70 - 71
[500] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p34
[501] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[502] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p11

sound data.   For the government to comprehend and promote the best interests of its constituents, identify areas of concern, monitor areas of progress and regress, allocate and withhold resources, a sound information base was essential.

The government was not solely to blame, fraudulent and apathetic employers and noncompliant workers who failed to report accidents and ill – health contributed to a patchy and incoherent statistical base.   The strides towards more efficient and productive use of statistics seemed to have plateaued in the last quarter of the nineteenth century.   Home Office officials, in official and unofficial discussions, appeared to be unconcerned about such things.[503]   Only through public criticism, argues Pellew, came a recognition of the weaknesses of the collection and use of factory statistics.[504]   As a result of this criticism, there was an attempt to improve the poor state of factory statistics.[505]   However, for several reasons, such efforts did not result in vast improvements.   First, consistent low staffing levels weakened the information gathering capacity of the Factory Department.   The Department's wide remit and limited resources meant that the Inspectorate had insufficient time to develop, maintain and utilise a sound statistical base, 'This was the province of the inspector - a man who was, typically, overworked'.[506]   Second, the status of the Factory Department and all the work associated with was diminished as a result of the prominence of the criminal justice.[507]   By the 1880s, the Criminal Department was the superior department, as a Home Office clerk explained, 'All of the interesting work having been gradually gathered in the Criminal Department'.[508]   Thus, the more able men and resources were redirected to the Criminal Department.[509]   Third, there was a general undervaluing of statistics in the Home Office.   Unlike officials at the Board of Trade where valuable statistics were being collected, analysed and applied, Home Officials were remarkably vague and apathetic about their data gathering activities.   This is evidenced by the low status of the Statistical Branch when

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[503] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p56 - 57
[504] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p56 - 57
[505] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p105
[506] P.W.J. Bartrip, 'British Government Inspection, 1832-1875: Some Observations' (1982) 25 HJ 3 p605, p626
[507] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982
[508] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p57
[509] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p57

compared to the Registry and Accounts branches.[510] The Statistical Branch was side-lined as it was shuffled around from the General Department to the Criminal Department to the Industrial Department and Parliamentary Department.[511]

Since the Factory Department was housed and developed under the auspices of the Home Office, it may have been influenced by the same apathetic approach to data gathering.[512] Whatever the influence, it is clear that many factory inspectors believed that 'preparing statistics for official purposes and parliamentary returns, seriously interfere with their duties'.[513] While housed in the Home Office, the Factory Inspectorate's lack of information about workplaces and factory accidents were evidence of apathetic attitudes. Moreover, unlike other government departments, there was no central branch of the Factory Department which specifically handled statistical information. Thus, Pellew noted, 'Information collected by the inspectorate… took little account of statistical developments'.[514]

Another issue with the information gathering capacity of the Factory Department was that it was hampered by the way in which OHS had developed.   A mixture of piecemeal improvements and extensions of factory legislation and overlaps with other government departments made it difficult for the Factory Department to identify trends or even gain an accurate picture of the modern workplace. The Home Office was aware of this and did try to find a more innovative way of recording accidents through examining returns from insurance companies in respect of workmens compensation claims. However, Williams noted 'this was a haphazard and incomplete arrangement'.[515] Even at the Factory Department's most developed state in the 1950s, it was sombre about the accuracy of its estimates.[516] Williams did a masterful job of picking through the Factory Department's annual reports of the 1950s to reveal the

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[510] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p108
[511] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p108
[512] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982
[513] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p108
[514] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p108
[515] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p11
[516] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p11 - 29

inconsistencies, deflections and inadequacies of the information provided.[517] Moreover, Williams noted that there was no explanation given for the elaborate estimates of the Factory Department. References to its 'undisclosed ratio' which were 'obtained some time ago' were simply too vague.[518] Its calculation of accidents was largely an internal matter, none outside of the Factory Department could understand the basis of their calculations.[519]

4.1.3 The government's inadequate staffing of the Factory Department

Adequate staffing was essential for the government's initiatives to be effective. However, the Government's staffing levels of the Factory Department were incredibly low. This was instituted from the first *Factory Act*, giving rise to the famous quote from Karl Marx, 'Parliament passed 5 labour laws between 1802 and 1833, but was shrewd enough not to vote a penny for the requisite officials etc'.[520] The antecedents of such low staffing levels were found during this period.[521] Peter Bartrip noted that the 'desire for economy was a pervasive and stifling influence'.[522] This not only protracted the expansion of the Factory Department, but it also provoked disputes over inspectors' salaries, expenses, and even over trivial matters such as whether the Home Office should pay for geological maps and protective clothing.[523] Thus, when the first four inspectors took up their duties in 1833 there were around 3,000 textile mills in their charge, some 90 years later their responsibility had grown to 280,000 workplaces and the number of inspectors had increased to only 205.[524]

The accumulated responsibilities of the Factory Department did not correspond with the recruitment of new staff. This observation became particularly clear with the passing of the *1871 Factory and Workshop Act* that added more than 90,000 workshops to the Inspectors'

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[517] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p11 - 29
[518] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p29
[519] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p11 - 29
[520] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998) p54
[521] P.W.J. Bartrip, British Government Inspection, 1832-1875: Some Observations (1982) 25 HJ 3 p605
[522] P.W.J. Bartrip, British Government Inspection, 1832-1875: Some Observations (1982) 25 HJ 3 p605, p626
[523] P.W.J. Bartrip, 'British Government Inspection, 1832-1875: Some Observations' (1982) 25 HJ 3 p605, p624
[524] Eddie Crooks, *The Factory Inspector: A Legacy of the Industrial Revolution* (The History Press 2005) p35 - 36

estimated 30,000 factories.[525] With over 120,000 establishments apportioned, each inspector would have had 2,000 premises to inspect.[526] There was no significant increase in staff to correspond with their remit.   On the contrary, Djang observed that recruitment sometimes stalled, for instance, from 1878 to 1891; the size of the Inspectorate remained stationary.[527]

Such low staffing numbers was a source of continuous strain for the Factory Department.[528] The Inspectorate continuously experienced organisational problems arising from its meagre numbers, its 'thin' dispersal across the country and growth of paperwork.[529]   Pellew outlines the dilemma:

> (The growth of paperwork) was causing the serious problems for the staff at headquarters which was clearly in arrears. In the field the district inspectors were also finding paperwork a problem and there was a serious danger of their losing sight of important communications from London because of the mass of information they received. Moreover, the inspectorial districts were large and unwieldy.

Consequently, rumblings of criticism emerged from the 1880s; A.J. Mundela, President of the Board of Trade, protested to the Prime Minister about lacklustre inspection of factories, mines and workshops.[530]   By the early twentieth century, there were consistent demands for an increase in the number of inspectors.[531]   This is best exemplified by a parliamentary session in the summer of 1923 in which Mr Arthur Greenwood informed the House of Commons to the fact that:

> During the last few years the administrative burden upon the factory inspectors of this country has been steadily increasing, but there has not been a commensurate increase in the staff to cope with the work. On the contrary, since 1914… there has been an actual decrease in the number of factory inspectors.'[532]

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[525] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p126
[526] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p126
[527] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p53
[528] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[529] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[530] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p155
[531] The demands were levied at the Home Office and Treasury since it was the Home Secretary with the approval of the Treasury that decided the numbers of inspectors and their salaries.
T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p70
[532] 'Home Office' HC vol 166 cc1629-91 (12 July 1923)

Correspondingly, Lord H. Cavendish – Bentinck referred to the low staffing levels of the Factory Department as a 'deplorably penny-wise, pound-foolish policy'.[533] Crucial to these protests was the notion that increases in factory accidents were 'attributable to the insufficiency of inspectors'.[534]

4.1.4 The Home Office's undue influence on the Factory Department

Although the Factory Department was an important influence on legislative developments, its influence should not be overstated, the ecosystem in which the Factory Department inhabited meant that it had 'limited power in the big issues'.[535]   Pellew's study of the early twentieth century arrangements revealed that the Home Office exercised considerable control over the Factory Department. Pellew notes that the question of the 'desirable level' of factory inspection was left to be decided by the Secretary of State and the Treasury.   Observing the formulation of factory and workshop bills, she found the Home Office discussed proposals with the Inspectorate, usually the Chief Inspector. However, the central government had the 'final word'.[536]

Surveying the history of the Factory Department, Djang observed that the Factory Department's powers were curtailed by the Home Office. The initiatives of the government would have been more impactful if the 'wide experience' of the Inspectorate was better utilised.[537]   Thus, he argued that the powers of the Chief Inspector of Factories should be 'considerably increased'.[538] In particular, much of the powers that lay in the hands of the Home Secretary should be transferred to the Chief Inspector of Factories. He saw that this would improve OHS regulation because he was more conversant with the industrial problems of the nation, the conditions of

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[533] 'Home Office' HC vol 166 cc1629-91 (12 July 1923)
[534] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p71
[535] P.W.J. Bartrip, 'British Government Inspection, 1832-1875: Some Observations' (1982) 25 HJ 3 p604, 623
[536] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p161
[537] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p224
[538] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p224

employment, the risks of occupational accidents and diseases and the ways and means they could be prevented.[539]

Djang's recommendations subtlety reveals the subordination of the Factory Department by an Office of the State that was not at all conversant with the industrial conditions of the day. The Factory Department was subject to a rigid hierarchy. Deference to layers of authority typified the existence of the Factory Department. The Factory Department was at the bottom of the 'totem pole'. At the head was the Secretary of State for Home Affairs who had a plethora of responsibilities, such as the prison system, police administration, local, civil and criminal courts.[540] Underneath him was an Under – Secretary of State for Home Affairs, who often delegated this power to an Assistant Under – Secretary of State.[541] This latter official was the head of the Industrial Division of which the Factory Department was situated. The Head of the Factory Department was the Chief Inspector of Factories who was handpicked by the Home Secretary. The Home Office was responsible for the recruitment of the personnel of the Factory Department. Applications were scrutinised by the Home Office, with the assistance of the Civil Service Commissioners and potential recruits were interviewed by a selection board of individuals nominated by the Home Office and the Commissioners.[542] The absence of the Factory Department in such processes was particularly striking.

The Treasury also exerted significant control over the staffing of the Factory Department. The Home Office needed the approval of Treasury to set numbers and salaries of factory inspectors. From the creation of the Inspectorate, the Treasury had scrutinised its expenditure.[543] However, from the 1870s, the processes were more formalised, government departments were placed under extraordinary pressure to keep their expenditure 'acceptable'.[544] The level of 'acceptability' was never laid down by statute it was left to the negotiations of the Secretary of State and the

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[539] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p224
[540] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p76
[541] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p76
[542] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942 p78 - 79
[543] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982)
[544] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p4

Treasury.[545] It is telling that Factory Department officials were excluded from such negotiations.

Even Home Office officials believed that the Treasury looked at the needs of the Factory

Department in isolation without considering the excessive statutory demands being made on the

Department or the increasing 'social importance' attached to factory inspections.[546]

The government's wider political concerns often constrained the development of OHS.

Bartrip's commentary on the regulation of white lead is a case in point.[547] In 1904, the Swiss

government issued invitations to the governments of Western and Central Europe to send

representatives to an International Conference on Labour regulation to be held the following

year.[548] The conference sought to bring about international harmonisation on the limiting of

hours of women night workers and the use of white phosphorus in the manufacture of

matches.[549] The British government sent Home Office officials Henry Cunynghame and

Delevinge. However, both officials were not authorised to sign any agreements, no matter what

their terms, the position of the superiors was that no ban on white phosphorus would be

accepted.[550]   Despite the mounting evidence provided by the Inspectorate, the British

government took a very 'political' view on this subject. The government stipulated that if

Britain had signed the Convention, it would have destroyed a part of British industry and given

the competitive edge to other countries.[551]   Even though Britain was not alone in 'sabotaging' the

conference, the government attitude attracted criticism in Parliament. The Earl of Lytton

suggested that, 'If this country is to take part in these Conferences at all it would surely be better

for the Government to send its representatives to them in rather a different spirit from that which

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[545] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p161
[546] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p164
[547] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213
[548] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213
[549] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213
[550] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213
[551] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213

has animated them in the past'.[552] Mess brought a similar example of delegates that attended the

Berlin Conference. Most of the delegates, including the British attendees, had recommended the

raising of the age of employment to 12 years. However, the British Government dissented and

proposed leaving the age at ten years as before. The Home Secretary contended that children

working half-time were at least as healthy and as intelligent as those attending school full

time.[553]

4.1.5 Government – centricity

Government – centeredness was a significant barrier to reform. Though engagement with non –

state actors increased significantly in the twentieth century, the engagement was rigid and

circumscribed. The various professions working in industry protested about their lack of access

to policy formulation. Although the determination of what constituted a safe working

environment *should* be a medical or technical matter, it was also a matter of political, legal and

economic constraints of which the government was best suited to decide.[554] Thus, it was not

uncommon for the government to dismiss the concerns of experts and professionals if it decided

upon a particular action.

A significant indicator of government centricity is the factory legislation produced in that period.

Observing this extension of government power, Price believed that they were 'new tendencies

not fully embraced in former legislation';[555] All the government's initiative to encourage

voluntary action on the factory floor was offset by its 'top-down' legislation. Even the

progressive consolidating acts of the twentieth century imbued the government to exercise

significant powers over industry.   Government responsibility continued to grow with each

factories act. The British Association for Labour Legislation noted, 'The Home Secretary for

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[552] P.W.J. Bartrip, *The Home Office and the Dangerous Trades: Regulating Occupational Disease in Victorian and Edwardian Britain* (Rodopi 2002) p212 - 213
[553] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p24
[554] P.W.J. Bartrip, 'Expertise and the Dangerous trades, 1875 – 1900' in Roy MacLeod (eds), *Government and Expertise: Specialists, Administrators and Professionals* (Cambridge University Press 1988)
[555] George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p32

the Home Department has very wide powers under the factory and workshop acts, and these powers are freely used in certain cases'.[556]   Paul Almond looks at this growth from the late nineteenth century in which a 'raft of legislation' authorised the Home Secretary powers to certify industries as 'dangerous trades', apply special rules to them and impose prohibitions on the employment of any class of people.[557]

The first consolidating act of the century, the *1901 Act*, was 'notable' because of its 'centralising administrative content'[558]; the *1901 Act* provided the Secretary of State with the power to make special regulations for OHS in respect of factories, workshops, building operations, operations at docks, quays and warehouses.[559]   Moreover, the Act entailed requirements of notification and reporting which placed a greater onus upon the regulated to exhibit prescribed behaviour laid down by the state.[560]   The *1901 Act* was followed by the *Police, Factories, etc. (Miscellaneous Provisions) Act 1916*. This was the Home Office's sole legislative contribution to OHS during the War. The *1916 Act's* main provisions gave the Home Secretary the power to require proper arrangements for washing facilities, serving meals, supply of drinking water, protective clothing, first - aid facilities, seating, cloakrooms and the supervision of workers.[561]   It was within the period of this Act that it was believed that government extended 'a hitherto undreamt-of degree of control over the private industrial production, the employment of workers and civilian life'.[562] Similarly, Charles Baker wrote in the period of the Great War, 'Government operation and control of industry in the past four years has not merely driven the last nail into the coffin containing the defunct laissez-faire theory of government; it has dumped that coffin without the

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[556] British Association for Labour Legislation, *Report on the Administration of the Labor Laws in United Kingdom* (British Association for Labour Legislation 1908) p20

[557] Paul Almond, *Corporate Manslaughter and Regulatory Reform* (Palgrave Macmillan 2013) p104

[558] Paul Almond, *Corporate Manslaughter and Regulatory Reform* (Palgrave Macmillan 2013) p104

[559] Jane Moffatt, *Employment Law* (Oxford University Press 2011) p216

[560] Paul Almond, *Corporate Manslaughter and Regulatory Reform* (Palgrave Macmillan 2013) p104

[561] Helen Jones, *Health and Society in Twentieth Century Britain* (Routledge 1997) p47

[562] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

benefit of clergy into the grave… and has heaped high the earth over it'.[563]   The *1937 Factories Act* did not break the pattern of overt government control, rather Long contends that it placed even more responsibility in the hands of the Secretary of the State and his advisers.[564] John Bridge, the then Chief Medical Inspector of Factories also stated that the Act bestowed powers on the Secretary of State to make arrangements for medical supervision where he had reason to believe that cases of illness were caused by a particular type of work.[565]

The government's initiatives of the twentieth century could only go so far without the inclusion of non-governmental organisations. The government could have benefited from the expertise and experiences of the thousands of individuals that worked in industry. These men and women were acquainted with the work of factories, processes of manufacture, the conditions of labour that were injurious to the health and lives of the workpeople.[566]   More specifically, initiatives like self – inspection and welfare promotion required 'boots on the ground'. However, the barrier erected by the government was the cause of 'incredibly slow' progress in these areas.[567] Dixon describes the closeted nature of the Home Office, 'There is - or was - a lack of open discussion within the Department and a reluctance to consult external advice and expertise'.[568] The government's insistence to maintain a central role hindered any real contribution from those that worked with the risks.

Groups such as the certifying surgeons likened such rigidity to a 'straitjacket'.[569] Stephen Huzzard argues that the subsidiary role ascribed to surgeons and similar entities stunted efforts to

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[563] A McIvor, *A History of Work in Britain, 1880 – 1950* (Macmillan Education 2001) p151 – 170; C.W. Baker, *Government Control and Operation of Industry in Great Britain and the United States during the World War* (Oxford University Press 1921) p5
[564] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p63
[565] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p63
[566] British Medical Journal, 'Certifying Factory Surgeons' (1876) 2 BMJ 834 p836
[567] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937)
[568] David Dixon, 'Review of Home Office 1782-1982; The Home Office: Perspectives on Policy and Administration; The Home Office 1848-1914: From Clerks to Bureaucrats' (1984) 11 JLS 1 p127, p129
[569] Edward Aveling and Eleanor Aveling, *The Factory Hell* (LSE Selected Pamphlets 1885) p52; A. Campbell, 'The Granting of Certificates of Fitness To Children And Young Persons For Employment In Factories And Workshops, With Special Reference To The System Of Half-Time Employment' (1902) 2 BMJ 2176 p756

advance sanitary science and protracted remedies to occupational diseases.[570] Similarly, John

Rimington noted that, 'Almost nothing had been done to harness the nation's science base to the

emerging problems. Such professional and scientific effort took place in the corners of

inspectorates'.[571] Ultimately it led to the government 'legislating in the dark... much of it was

found to have been ill contrived and some positively so bad that it obstructed, and to a great

extent prevented, the attainment of the object'.[572]

Arguably, the state's reluctance to work closer with industrial groups created an atmosphere of

misunderstanding; since these groups did not play a significant role in the development of the

government's initiatives, such initiatives may have been prone to misinterpretation by these

groups. They may have misinterpreted the government's initiatives to be detrimental or

inconsequential to their operations. Thus, their much-needed assistance was not forthcoming to

the government's initiatives. Such a scenario could explain organised labour's reluctance to aid

some of the government's initiatives. Initially, unions were antagonistic towards the

government's promotion of welfare provisions because they believed that they were aimed not

so much at improving conditions for workers but at undercutting the influence of trade unions

and pacifying worker unrest.[573] Such negativity often spilt onto the factory floor; employers

realised fairly quickly that their appointment of welfare supervisors had 'ruffled many feathers'

of those that resented their 'intrusive presence'.[574] If the government's project of welfare

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[570] Stephen Huzzard, 'The Role of the Certifying Surgeon in the State Regulation of Child Labour and Industrial Health 1833 – 1973' (M.A. thesis, University of Manchester 1975); W.R. Lee, 'Emergence of Occupational Medicine in Victorian Times' (1973) 30 BJIM 2 p118

[571] John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed; on 25/10/2016

[572] David MacGregor, *Hegel, Marx & the English State* (University of Toronto Press 1996) p204 - 279

[573] Vicky Long, 'Health in the Workplace from the Factory Acts to the Second World War' (*People's History Museum / Centre for the History of Medicine*) < https://www.jiscmail.ac.uk/cgi-bin/webadmin?A3=ind1107&L=OCC-HEALTH&E=base64&P=339845&B=------%3D_NextPart_000_004A_01CC37EE.5ECE3C20&T=application%2Fpdf;%20name=%22history%20of%20workplace%20health.pdf%22&N=history%20of%20workplace%20health.pdf&attachment=q&XSS=3 > accessed 25 June 2018

[574] Laura Lee Downs, *Manufacturing Inequality: Gender Division in the French and British Metalworking Industries, 1914 - 1939* (Cornell University Press 1995) p164

promotion was developed with close cooperation with the unions, much of their fears and resentment could have been addressed through the negotiation process.

Additionally, union help was not forthcoming with the promotion of the Home Office's Industrial Museum. The Museum was not as successful as the Home Office had hoped. To no avail, the Factory Department wrote a series of letters to the TUC seeking its assistance in promoting the Museum to its members.[575] It would seem that unions saw little benefit in helping the government promote the Museum. Again, if the unions were invited to help with the founding of the Museum, perhaps we would have seen a greater concern for the project.

The need to establish a closer working relationship with non – governmental organisations was not an idea reached retrospectively, from the late nineteenth century, such demands were made. The English manufacturer A.J. Mundella believed that as long as the powers remained solely in the hands of the Inspectorate, 'it will never be done by them in a thorough manner'.[576] However, if such powers were dispersed among the regime, it would 'strengthen the hands of the inspectors' and the action of the inspectors would give 'weight and authority' to the regime, and the two would thus 'work together for the public interest'.[577] Similarly, the TUC sent several deputations to the government in the late nineteenth century pleading for representation in the inspectorates.[578] It was argued that the slender inspection force could be bolstered through the appointment of experienced workpeople.[579] However, the Factory Department rebuffed their demands, the reason for the rebuff reveals the disposition of government officials. The reason given by officials was essentially the preservation of the 'purity' of government; unlike the government, workpeople and manufacturers were not independent of men and masters.

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[575] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p65
[576] British Medical Journal, 'Certifying Factory Surgeons' (1876) 2 BMJ 826 p566
[577] British Medical Journal, 'Certifying Factory Surgeons' (1876) 2 BMJ 826 p566
[578] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p54 – 55; George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p49 - 51
[579] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p54 – 55; George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p49 - 51

Moreover, if either side of industry were given such representation in the Factory Department, both sides would question the partiality of the Department.[580] However, the zeitgeist of reform in the 1890s and the excessive workload compelled the government to soften its stance. A 'lower class of officials' was appointed by the Home Office in 1893 from the working classes, *but* their size was negligible, they had an inferior status, no meaningful influence on policy and legislation, disproportionately supervised and unions were not given representation.[581]

Consigning non – state actors to the fringes was not particular to the nineteenth century, the practice continued in the twentieth-century. There were a handful of studies on British factory inspection, conducted in the pre – Robens era that spoke indirectly of the government – centred approach to OHS.[582] One of which was Djang's *Factory Inspection in Great Britain* that pointed out that governmental regulations alone, without the co-operative effort of industry, resulted in 'apathy, procrastination, or possible inactivity'.[583] Elsewhere he noted that:

> It is upon the *full development* of such voluntary associations as works committees, safety committees, welfare departments, National Safety-First Association, the Industrial Welfare Society, and so on that the future success of factory inspection in Great Britain mainly depends. Without such voluntary effort on the part of industry, governmental inspection has little hope of achieving complete success (emphasis added).[584]

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[580] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p54 – 55
George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p49 - 51
[581] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p54 – 55
George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p49 - 51
[582] Most of these studies were conducted by non – British scholars. It was noted in 1942, No British author has devoted even this limited attention to the subject. One of the non – British scholars noted that it was because of their foreign experiences that they could identify the 'anomalies' of the British system. However, because these foreign nationals had been granted unprecedented access to the Factory Department, there may have been a tendency in their studies to be 'diplomatic' with their criticism. Thus, it seems that they used their recommendations as means to point out the deficiencies of the British OHS system
R.R.H, 'Factory Inspection in Great Britain by T.K. Djang' (1942) 90 JRSA 4625 p750; John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937 p54
[583] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p116
[584] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p120

He saw that the Factory Department should do more to recruit experts outside of its doors.[585] Djang also advocated that research on factory health and welfare should be entrusted to the Industrial Health Research Board.[586] Mess' *Factory Legislation* made recommendations along similar lines.[587] Andrew's *British Factory Inspection* saw the Factory Inspectorate as overdeveloped, highly trained and well paid, more so than any other country *but* the peripheral aspects were underdeveloped. Everything outside of the Factory Department was in a poor state; he noted that the *factories acts* were 'out of date', Britain's 'supplemental administrative codes are in some fields either lacking or suspended in the form of the gentlemen's agreements', the accident compensation system was ineffectual and that there was not much in the way of innovation.[588] Also, Andrews' section on the government's cooperation with other entities was unable to bring many examples and the examples that he did bring were atypical.[589] The last study was George Moses Price's *Administration of Labor Laws and Factory Inspection*. Although Price noted that inspectors had arranged occasional conferences and had good relations with employers, he saw that the Inspectorate's relations with employees did not 'seem to so close or genial' and that there were no official relations between the factory department and labour organisations.[590]

Further evidence of the limited role of non – state actors is best exemplified by two representative examples. The first of which was the transfer or 'capture' of the accident reporting role from certifying surgeons. The most prominent profession in OHS was the medical profession. Consequently, the *British Medical Journal* was a popular venue to express the dissatisfaction with the government's lack of consultation.[591] In 1911, a government departmental committee concluded that the surgeons' reports were superfluous because the

[585] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p225
[586] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p225
[587] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924)
[588] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p54 - 55
[589] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p47 - 50
[590] George Moses Price, *Administration of Labor Laws and Factory Inspection in Certain European Countries* (Washington Government Printing Office 1914) p102
[591] The British Medical Journal, 'The Association of Certifying Factory Surgeons' (1920) 1 BMJ 3088 p335

Inspectorate was now so closely in touch with factories that an inspector could judge from the occupier's report whether their personal investigation was required. It was also concluded that the certifying surgeon's report seldom added anything of value; the certifying surgeon was not an expert in accident risks, so his report did not eliminate that need for an inspector to visit if an investigation was required. Moreover, the sum paid to surgeons could be better spent on more effective accident prevention strategies.[592] As a result of these observations, the government opted to abolish the accident reporting role of the surgeons, except in special cases where a special inquiry was thought to be necessary.[593]

It was protested that the government's decision to transfer the reporting role of certifying surgeons to the Inspectorate was taken with very little input from the surgeons, the *Journal* criticised that such a decision occurred without their involvement. [594] The Certifying Factory Surgeons' Association alongside the British Medical Association (BMA) sent several deputations to the Home Office pleading their case. They put forward strong arguments for the continuance of their duties. They argued that the government would be unable to deal with the increased workload and thus struggle to fulfil its responsibility to see that workpeople were properly protected against accidents.[595] They also argued that without their reports the government would have to rely upon the employers for an account of the nature and causation of an accident.[596] By denying access to surgeons, the government denied itself access to professional opinion which was not subject to the same biases of unions and employers.[597] None of these arguments changed the government's course.

Second, it was not just the professions that were subject to such experiences, organised labour and capital had to work within a rigid structure, their muted role in establishing an acceptable

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[592] The British Medical Journal, 'The Accident Committee's Report and Certifying Surgeons' (1911) 1 BMJ 2623 p828
[593] The British Medical Journal, 'Proposed Abolition Of Reports Of Factory Surgeons' (1916) 1 BMJ 2889 p110
[594] The British Medical Journal, 'The Accident Committee's Report and Certifying Surgeons' (1911) 1 BMJ 2623 p828; H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p32
[595] The British Medical Journal, 'Association of Certifying Factory Surgeons' (1911) 2 BMJ 2659 p1603
[596] The British Medical Journal, 'Association of Certifying Factory Surgeons' (1911) 2 BMJ 2659 p1603
[597] The British Medical Journal, 'The Accident Committee's Report and Certifying Surgeons' (1911) 1 BMJ 2623 p828

standard for asbestos exposure is evidence of this.[598] Assessing the influence of both sides of

industry becomes apparent when looking at the development of asbestos standards. The use of

asbestos, regarded as the 'grand-daddy of all occupational killers', illuminates the government –

centred approach to OHS.[599] Moreover, it illuminates the deficiencies of both sides of industry

that necessitated the government to take ownership of OHS.[600] From the outset, it was clear

who played the central role; the Home Office opened the proceedings to consider asbestos

hazards in 1931.[601] The influence of employers has always suffered from exaggeration.

Undoubtedly, Home Office officials leaned towards the concerns of employers. However, it was

the former that decided whether to take on their views. Moreover, it was the former that decided

which employers to correspond with and who to invite for further negotiations.[602] In an informal

conference chaired by the Deputy Chief Inspector of Factories and Workshops, arrangements

were put forward to draft regulations, the manufacturers present 'took the view – rightly… that

their interests would be better protected *if they co-operated with the department*'(emphasis

added).[603] The draft regulations of these arrangements compromised of 25 agreements for

improving conditions in asbestos factories, the bulk of which were drawn from an earlier

government report.[604] Wikeley pointed out that relatively 'few concessions were made to meet

the employers' concerns'.[605]

The unions fared much worse. Although Wikeley acknowledged that Home Office officials

made a 'genuine attempt' to canvas union views, the TUC was only able to make improvements

at the margins, rather than fundamental issues; the TUC was effectively presented with a fait

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[598] N.J. Wikeley, 'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449; Nick
Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365
P.W.J. Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of Occupational Health in the
British Asbestos Industry 1890s - 1970* (The Athlone Press 2001) p21 - 27
[599] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365; Morris Greenberg,
'The British Approach to Asbestos Standard Setting: 1898 – 2000' (2004) 46 AJIM p534
[600] Morris Greenberg, 'Knowledge of the Health Hazard of Asbestos Prior to the Merewether and Price Report of
1930' (1994) 7 SHM 3 p493
[601] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365; N.J. Wikeley,
'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449
[602] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p367
[603] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p367
[604] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p369
[605] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p369

accompli.[606]   Correspondingly, Bartrip's *Dusty Death* utilised Wikeley's sources, though his

conclusion was more muted than Wikeley, he concurred that the union influence was marginal,

and they were aware of the limits of their influence.[607]

The development of the asbestos regulations also illuminates *why* the government maintained a

central role in OHS standard setting. If not the government, then who? It was extremely

unlikely that employers would push for regulation in previously unregulated industries.   Long's

study of twentieth-century occupational health could not identify an 'active interest' amongst

employers' associations in such matters. [608]   Rather their involvement was largely defensive,

either seeking minimum standards or exemptions.[609] Equally, it was not beyond an employer to

'turn the tables' and claim that the factory environment improved the health of their employees

who irresponsibly jeopardised their health and consequently in their own time and own homes.[610]

The TUC's demand for such regulations was also non – existent.   This was due to a number of

reasons. First, the unions had no authoritative medical evidence to counteract the arguments of

the Home Office.[611] In contrast to the unions, the government had conducted and funded studies

in this subject area since the turn of the twentieth century.[612]   The second reason for the failure

to demand regulation was that unions were faced with a series of more pressing concerns. In

particular, the Great Depression had a devastating impact on the Lancashire cotton trade.[613]

Third, the Government's decision in 1931 to cut unemployment insurance and introduce the

[606] N.J. Wikeley, 'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449

[607] P.W.J. Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of Occupational Health in the British Asbestos Industry 1890s - 1970* (The Athlone Press 2001) p21 - 27

[608] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health 1914 – 1960* (Palgrave Macmillan 2011) p212

[609] Mark Bufton and Joseph Melling, ''A Mere Matter of Rock': Organized Labour, Scientific Evidence and British Government Schemes for Compensation of Silicosis and Pneumoconiosis among Coalminers, 1926–1940' (2005) 49 MH p155, p156 - 157

[610] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health 1914 – 1960* (Palgrave Macmillan 2011) p212; Mark Bufton and Joseph Melling, ''A Mere Matter of Rock': Organized Labour, Scientific Evidence and British Government Schemes for Compensation of Silicosis and Pneumoconiosis among Coalminers, 1926–1940' (2005) 49 MH p155, p156 - 157

[611] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365

[612] Morris Greenberg, 'Knowledge of the Health Hazard of Asbestos Prior to the Merewether and Price Report of 1930' (1994) 7 SHM 3 p493

[613] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p371 - 372

household means test inevitably consumed the time and resources of the unions.[614] All of which prompted the government to take a lead role in the regulation of asbestos.

4.2 The limit of government

All the issues discussed in this section hindered the full development of the OHS system. Despite the government's willingness to address the inadequacies of OHS, these hurdles hindered any fundamental change. In a sense, the development of OHS had reached its ceiling; it required a significant impetus to move beyond its mediocrity.

5.0 Conclusion

There is little doubt that the extremities of the nineteenth century were greatly reduced or entirely eradicated in the twentieth century. However, fundamental problems remained. To emphasise this dichotomy, Mess asks us to imagine an observer who spent a considerable amount of time visiting factories and workshops in the late nineteenth century.[615] Then after three or four decades of absence, he revisits those same workplaces. To his delight, he would not find a single child working in these locations and he would notice that working hours were greatly reduced. He would see better ventilation, higher levels of hygiene and an array of protective clothing. He would also see the reduction of the most common occupational ailments of the nineteenth century; phossy jaw and lead poisoning.   He may come across a safety pamphlet and during the war periods he would also have seen a welfare supervisor.

However, if the same individual would scratch beneath the surface, he would find much to alarm him.   As Mess notes, 'He would probably get the impression… that risks had been much reduced.   However, if he looked into the statistics of accidents, he might well feel doubtful whether that was indeed the case'.[616] The veneer of the improved factory conditions would be welcomed, but the reality of the challenges for continued improvement would be disconcerting.

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[614] Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365, p371 - 372
[615] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p207 - 209
[616] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p209

He would not know whether the improvements 'was due to legislation and what was due to the spread of enlightenment and to scientific progress'.[617] In the realm of occupational health, he would be concerned that the government was being outpaced by the technological developments of industry. Regarding accident prevention, he would be aggrieved about the lack of significant improvements in safety, despite the wider use of machinery. He could attribute the limited impact of government action in the nineteenth century to the lack of precedent, ignorance and the fortification of industrial opposition. However, by the twentieth-century, these hindrances were greatly reduced, yet progression remained protracted.

All these observations would cause him to ponder whether the efforts of the government to bring about a safe and healthy workplace had plateaued. OHS had been 'incubated' Westminster, but the time was approaching for its departure. The government's initiatives that centred on causing industry to act on its own accord, such as welfare supervision, self – inspection and engagement with non – state actors were a tacit acknowledgement that a state-centric approach to OHS was limited. Therein, clearing the stage for greater industry involvement in the development of OHS policy and practice.

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[617] H.A. Mess, *Factory Legislation and its Administration 1891 – 1924* (P.S King 1924) p208

Chapter Four: The Loosening Grip of Government (1930s – 1960s)

1.0 Introduction

The decades leading up to the appointment of the Robens Committee were typified by the expansion of corporatist and non - governmental efforts to improve working conditions. This expansion coincided with the growing realisation that the Westminster model of OHS regulation was ill-suited to tackle the accident problem. Both developments pushed the government to appoint the Robens Committee, which would take OHS in a radically new direction.

1.2 The Layout of the Chapter

The chapter commences with a discussion on the initial interaction between the government and non - state – state actors, which was augmented with Ernest Bevin's appointment to the newly established Ministry of Labour and National Service in 1940.[618] He and his officials undertook significant initiatives to encourage non – state actors to contribute to the betterment of OHS.[619] Even after his departure in 1945, he left a legacy of corporatist machinery and a reactive legislature. In maintaining Bevin's momentum, the Ministry of Labour had stretched the boundaries of the conventional approach to OHS.[620]

The following section documents two developments that came out of the Ministry of Labour's stretching of the boundaries. First, it contributed to a period of intense non – governmental activity in the arena of OHS. What was remarkable about this activity was that it was not state-led or legislation - inspired, instead it was non – state actors taking it upon themselves to

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[618] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011

[619] Peter Weiler, *Ernest Bevin* (Routledge 2016); Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967); Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007); Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991)

[620] Peter Weiler, *Ernest Bevin* (Routledge 2016) ; Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967); Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007)
Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991)

improve working conditions. From the post-war period, we saw increased investment in the employment of personnel, propaganda, safety training, welfare provision and knowledge transfer.[621] Though these steps did not significantly reduce the toll of death and disease, they were essential steps to cement the notion that industry could undertake measures to prevent accidents and incidences of ill – health.   Rather than accept that 'accidents happen' or the occurrences of ill – health, one could take undertake efforts to ameliorate the situation without recourse to the government.[622] Therein, first articulating key precepts of the Robens philosophy.[623] Additionally, these steps allowed for the intake of experiences and maturation of processes.

The second development of the Ministry of Labour's stretching of the boundaries was that it enlarged expectations of what the state could achieve.   However, these interventions failed to impact the accident problem, in fact, matters deteriorated. This led to the perception of government overload, for officials, the 'business of government' became too difficult.[624] Solving the accident problem was beyond the Westminster model.[625] Correspondingly, for the public, a seemingly endless series of tragedies challenged the notion that they were protected effectively.[626] In light of these developments, Barbara Castle, the then Secretary of State for Employment and Productivity[627] sought to 'get away from the conventional approach'.[628]

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[621] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740 ; John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[622] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740; P.B. Beaumont, 'An Analysis of the Problem of Industrial Accidents in Britain' (1980) 1 IJM 1 p28

[623] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)

[624] Richard Rose, 'Overloaded Governments: The Problem Outlined' (1975) 5 ESN 3 p13; Samuel Brittan, 'The Economic Contradictions of Democracy' (1975) 5 BJPS 2 p129; James Douglas, 'The Overloaded Crown' (1976) 6 BJPS 4 p483; Michael Crozier, *The Crisis of Democracy* (New York University Press 1975); Anthony King, 'Overload: Problems of Governing in the 1970s' (1975) 23 PS p162; David Richards, 'A Crisis of Expectation' in David Richards Martin Smith and Colin Hay (eds), *Institutional Crisis in 21st Britain* (Palgrave Macmillan 2014)

[625] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972); John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960); P.B. Beaumont, *Safety at Work and the Unions* (Croom Helm 1982); P.B. Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979)

[626] Ian Maclean and Martin Johnes, *Aberfan: Government and Disasters* (Welsh Academic Press 2000)

[627] Previously the Ministry of Labour

2.0 The government and non – governmental organisations

The dissemination of responsibilities to non – state actors was a slow and congested process. However, there were landmarks along the way. Our earlier discussion about the government's engagement with non – governmental organisations is an appropriate place to begin.[629] The government's initiatives that centred on activating industry to act on its own accord, through welfare supervision, self – inspection and engagement with non – state actors, allowed for the input of non-state actors. Although rigid and circumscribed, it opened the door for organised capital and labour. It became evident from the 1930s that organised labour and organised capital were the prime recipients of the government's outreach.[630]

The relationship progressed to the extent that the Factory Inspectorate stated in the 1930s, 'At no time in the history of factory legislation have the relations between the Inspectorate and the two chief partners in industrial progress - employers and workers - been closer or more friendly and with the spirit of reasonableness on all sides'.[631] In the same period, John Forbes Watson, Director of the British Employers' Confederation (BEC) made an 'open confession' that when he first came in touch with the Factory Inspectorate, an impression still lingered here and there that the factory inspector was more of an inquisitor than a friend'.[632] However, he noted '*that spirit had changed*, and the change was largely due to the fact that… the Factory Department had been so ready to consult the employers and the workers in drawing up their regulations (emphasis added)'.[633]

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[628] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[629] See previous chapter

[630] N.J. Wikeley, 'Asbestos and Cancer: An Early Warning to the British TUC' (1992) 22 AJIM p449; Nick Wikeley, 'The Asbestos Regulations 1931: A Licence to Kill?' (1992) 19 JLS 3 p365; Peter Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of Occupational Health in the British Asbestos Industry 1890s - 1970* (The Athlone Press 2001) p21 – 27; Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209

[631] HM Factory Inspectorate, *Annual Report of the Chief Inspector of Factories and Workshops for the Year of 1937* (HMSO Cmd 5802 1938) p11

[632] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209, p227

[633] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209, p227

As Watson noted above, the government welcomed organised labour and organised capital to work on regulations.[634]   Among the well – documented examples of this engagement were the Factory Department officials meeting with asbestos company representatives to formulate the *1931 Asbestos Regulations*.[635]   Also, the BEC and TUC discussed every clause and aspect of the *1937 Factory Bill* with Factory Department officials 'with the result that when the Bill came before Parliament it was more or less an agreed measure'.[636]   It was believed that a 'piece of legislation drawn up in that way was much more likely to achieve its results than one which was thrust upon the parties without practical consideration of circumstances'.[637]

Also, a number of corporatist projects began to develop. In 1934, the Home Secretary cooperated with the National Confederation of Employers' Organisations (NCEO) to work out a 'satisfactory solution' to the excess of accidents among young persons.   Two years later, a printed memorandum was circulated among employers' organisation, embodying the various suggested safety measures for juvenile agreed between the Home Office and the NCEO.[638]   Unions and employers associations took part in the Conferences of the International Labour Office at Geneva.[639]   Additionally, unions and employers associations were called upon by the government to disseminate information to their members.[640]   The novelty of such events caused the Chief Inspector to state that, 'This movement must certainly be regarded as one of the most interesting developments in industry'.[641]

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[634] Refer to Morris Greenberg, 'The British Approach to Asbestos Standard Setting: 1898 – 2000' (2004) 46 AJIM p534; P.W.J. Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of Occupational Health in the British Asbestos Industry 1890s - 1970* (The Athlone Press 2001); Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)
[635] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209
[636] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209
[637] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209
[638] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p50
[639] Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209
[640] P.W.J. Bartrip, *The Way from Dusty Death: Turner and Newall and the Regulation of Occupational Health in the British Asbestos Industry 1890s - 1970* (The Athlone Press 2001)
[641] T.K Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942) p111

2.1 The transfer of the Factory Department to the Ministry of National Labour and National Service

Though advances had been made in the 1930s, they were amplified when the Factory Department relocated to the newly established Ministry of Labour and National Service in 1940. From this point, we see a momentum towards corporatist projects in the field of OHS.

The transfer of the Factory Department to the Ministry of Labour and National Service[642] in 1940 was debated for many decades. In 1894, Sidney Webb proposed to the Royal Commission on Labour that a new department of labour should be formed by amalgamating the labour statistics branch of the Board of Trade and the Factory and Mines Department of the Home Office.[643] Tom Keenoy argues that, despite the differences in terminology, the Webbs' collectivist proposals concerning industrial relations were more than prescient of what commentators have termed 'corporatist'.[644] The proposal for a Ministry of Labour was again proposed in 1909 in the Minority Report of the Poor Law Commission.[645] This was followed by a succession of bills proposing to deal with the setting up of a Ministry of Labour.[646] In 1915, the TUC carried a unanimous resolution which stated, 'This Congress calls upon the Government to appoint a Minister of Labour with full Cabinet rank… Factory Acts, mines, docks, railway regulations, provisions for 'dangerous', 'unhealthy' occupations to be supervised by the Minister, together with a staff of inspectors'.[647] A year later, the Ministry of Labour was established as a concession to the Labour Party.[648]

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[642] From henceforth referred to as the Ministry of Labour

[643] Jill Pellew, *The Home Office: 1848 – 1914* (Heinemann Educational Books 1982) p155; Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[644] Tom Keenoy 'Industrial Relations and the Law: From the Webbs to Corporatism' in Z. Bankowski & Geoff. Mungham (eds), *Essays in Law and Society* (Routledge 1980)

[645] Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[646] Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[647] Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99, p100

[648] The Labour Party traditionally gave more value to the Ministry of Labour than their Conservative counterparts. Roger Murphy, *Challenges from Within* (Routledge 2018) p111; Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 - 82;

2.2 The arrival of Ernest Bevin

Before Ernest Bevin was appointed the Minister of Labour, it was a 'second class department' to the extent that Norman Price notes that it was unable to absorb the Factory Department even though it should logically have been part of the Ministry of Labour, more so than the Home Office. [649] However, the Home Office's territorialism prevented any transfer of responsibilities.[650] Such obstinacy would melt away with the outbreak of War.[651] S.E. Finer noted that, 'It took the dominant personality of Mr Bevin, the demands of the Second World War, and a row in the cabinet to wrench the function from the place where history has deposited it'.[652] Ernest Bevin's 'dominant personality' was the crucial factor; wars and cabinet rows had occurred, yet the Factory Department sat comfortably in the Home Office.[653] It was the arrival of Bevin at the Ministry of Labour that 'turned the tide'.[654] It is telling that it required a 'non – governmental figure' like Bevin to extend the corporatist machinery of the Ministry; Bevin had no experience of government, he had never sat in Parliament and he was ignorant of 'process'.[655] He did not see himself as *just* a Labour politician, rather he saw himself as a representative of the trade union movement and the wider working class.[656]

Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[649] Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991); Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p12

[650] Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991) p212 - 213

[651] W.H. Greenleaf, *The British Political Tradition Volume III Part I A Much Governed Nation, Part 1* (Routledge 2003) p180

[652] S.E. Finer, 'Central Government Organisation' (1957) 5 PS 3 p309, p311

[653] Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 – 206; Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991); W. H. Greenleaf, *The British Political Tradition Volume III Part I A Much Governed Nation, Part 1* (Routledge 2003)

[654] Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 - 206

[655] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p4

[656] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p5

Correspondingly, the Ministry of Labour was fertile ground for his ideas. Arguably, of all the ministries, his innovative proposals could only have flourished in the Ministry of Labour.[657] The Ministry of Labour was a young department unfettered by precedent and tradition like the Great Offices of State.[658] It was accustomed to adopting new roles and responsibilities placed on it by other departments.[659] Moreover, when Bevin accepted the ministerial post in Winston Churchill's coalition government, he did so on the condition that he be allowed to take measures to improve the conditions of workers.[660] On his very first day, Bevin filled up four sheets of paper with a programme of action that 'transformed the attitude and the role of the Ministry of Labour'.[661] Prime among his programme of action was the transfer of the Factory Department. Price's unique study of the relationship between the Ministry of Labour and the Home Office did not regard this transfer as insignificant; it served to give OHS a new footing.[662]

Bevin saw that this transfer was crucial to 'raise of the profile of industrial welfare'.[663] Additionally, Bevin felt that the Factory Department housed in the Home Office had taken on an inappropriate association with police, prisons and the control of vice.[664] He saw that the development of safe and healthy work practices could not be brought about by state-centric policing only through the installation of a comprehensive welfare service.[665] Moreover, his

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[657] Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99; Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 - 82

[658] Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 - 82 ; Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[659] Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p75 - 82 ; Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99

[660] Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 - 206

[661] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p12

[662] Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991) p253 - 254

[663] Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 - 206

[664] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Vol. 2 Heinemann 1967) p78

[665] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Vol. 2 Heinemann 1967) p78

years as a trade union leader had convinced him that 'brandishing compulsory powers' was not

an effective means to bring about compliance.[666]

The effect of transferring the Factory Department to the Ministry of Labour was

'considerable'.[667] A few months before the transfer of responsibility, the staff of the Factory

Department totalled 208. This must have been a daunting prospect for a relatively young

Ministry.[668] Nonetheless, Bevin's Ministry engaged fully with the accident problem. This was

due to an interest in accident prevention, occupational health and the large numbers of

inexperienced workers entering factories.[669] He told an audience of unions, employers and state

officials, 'Attention to the human problems of employment in industry had lagged behind

attention to production problems but should be ahead of it'.[670] Within just a few months in

office, he issued orders that empowered factory inspectors to compel large businesses to appoint

welfare officers and doctors and also the provision of canteens.[671] A year later, the Ministry

instructed employers to match the increase in the proportion of women workers by appointing

more women welfare and personnel officers.[672] His efforts of promoting industrial health had

yielded some results. By the end of 1944, the number of full-time appointments for doctors rose

from 30 to 181 and of part-time from 50 to 890, the number of nurses had risen from 1,500 to

7,800.[673] Additionally, the number of work canteens rose from 200 to over 5,000.[674]

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[666] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Vol. 2 Heinemann 1967) p18
[667] Norman George Price, 'The Relationship of the Home Office and the Ministry of Labour with the Treasury Establishment Division 1919 – 1946: An Evaluation of Contrasting Needs' (PhD Thesis, London School of Economics 1991)
[668] The Ministry of Labour was formed in December 1916
Refer to Journal of Comparative Legislation and International Law, 'The Ministry of Labour of Great Britain' (1923) 5 JCLIL 1 p99
[669] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p78 - 79
[670] Peter Weiler, *Ernest Bevin* (Routledge 2016) p129
[671] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p23; Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002)
[672] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p23; Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002) p205 - 206
[673] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p79
[674] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p80

2.3 Sowing the seeds

Though the above advances were admirable, Bevin's impact should be measured by its long-term effects. His time in the Ministry was crucial for several reasons. First, activities that he introduced and oversaw normalised the engagement with non – state actors. Although there was some machinery to engage with non – state actors before the Bevin arrived, little use was made of it.[675] Meetings with both sides of industry were often ad hoc, isolated and *after* regulations had already been drawn up. He signalled his seriousness about making better use of the corporatist machinery by bringing together industrialists and trade unions and announcing his plans of a greater union between unions, employers and government.[676]

He saw that his powers as Minister of Labour were not used to replicate the previous ministers or dictate to industry, 'but to bring both sides together – always on equal terms – face them with what was required and get them to work out an agreed solution which he could put into force in statutory orders and regulations where necessary'.[677] The practical aspect of this philosophy came in the form of the Factory and Welfare Board, composed of representatives from trade unions, employers, voluntary organisations and Ministry officials.[678] The Board was set up to 'advise him on welfare questions and to assist him in developing and stimulating health, safety and welfare arrangements inside the factory and lodging, feeding and welfare arrangements outside the factory'.[679] The Board was designed to be a permanent fixture of decision – making that met monthly.[680] Bevin told the House that, 'We tried to the best of our ability to bring into association representatives of the employers and the trade unions together with people of experience'.[681] The Board allowed both sides of industry to sit in the same room to discuss the

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[675] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p21
[676] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p21
[677] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p21
[678] Onlooker. 'Industrial Welfare in War – time' (1942) 2 SW 3 p123
[679] Peter Weiler, *Ernest Bevin* (Routledge 2016) p129; Onlooker. 'Industrial Welfare in War – time' (1942) 2 SW 3 p123
[680] Onlooker. 'Industrial Welfare in War – time' (1942) 2 SW 3 p123
[681] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)

issues of the day *before* any regulations had been proposed. Bevin spoke of the importance of such gatherings,

> While it is true that it is called an advisory body, it has been a good deal more than that. It receives regular reports covering the whole field and acts as a focal point in the development of policy. I do not remember having had to reject a single recommendation which has been made.[682]

It is important to point out that this Board was seen as an *alternative* to the conventions of the period. In fact, Bevin saw it as a 'safeguard against the rigid bureaucratic methods'.[683] He saw such a system as vital because it gave:

> [I]ndustry and public service a proper place in this branch of administration, and I hope that a board of this character will remain a permanent feature to enable us to get over the changes and difficulties which will arise in our industrial system in the vexed and difficult times which lie ahead.[684]

The necessities of the War gave Bevin space to expand the tripartite decision – making machinery; he utilised this space to infuse the Ministry of Labour with a host of tripartite boards.[685] Alongside the Board sat the Central Consultative Council which was created to utilise the experiences and services of voluntary organisations interested in questions of welfare[686]; the Catering Wages Board composed of representatives of the state, industry and labour, and was empowered to set minimum wages in trades without organised representation and more radically, to enforce agreed-upon standards[687]; the Seamen's Welfare Board was chaired by Bevin and supported by a range organisations to provide welfare facilities for merchant seamen.[688] Beyond employers and unions, Bevin also reached out to a whole host of non – state actors. The Ministry initiated a 'consistent and persistent campaign' of 'safety first propaganda

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[682] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)
[683] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)
[684] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)
[685] Peter Weiler, *Ernest Bevin* (Routledge 2016)
[686] Peter Weiler, *Ernest Bevin* (Routledge 2016); Robert Mackay, *Half the Battle: Civilian Morale in Britain During the Second World War* (Manchester University Press 2002)
[687] Peter Weiler, *Ernest Bevin* (Routledge 2016) p134
[688] Tim Carter, *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain* (Boydell Press 2014) p148

with the Royal Society for the Prevention of Accidents (RoSPA).[689] To increase the amount of medical personnel in factories, the Ministry instructed the BMA (British Medical Association) to set up the Committee on Industrial Health in Factories.[690] All of these initiatives were considered 'wise policy' because it enabled Bevin to 'draw on a fund of energy and local initiative *which no government department could have supplied* (emphasis added)'.[691]

Once established, this method of decision - making took root in the Ministry, distinguishing the Ministry from its counterparts.[692] Allan Bullock wrote:

> What is interesting in this development is that Bevin as Minister of Labour not only established for the first time the regular practice of the Government calling in the trade unions for consultation, but began to introduce a tripartite pattern of consultation and co-operation between Government, employers and unions as a way of dealing with industrial and economic problems.[693]

Bevin had wedged the door open for unions and employers to enter Whitehall. The Ministry of Labour was regarded as a significant conduit for organised interests.[694] This remained long after Bevin left the Ministry.[695] David McCrone, Brian Elliott and Frank Bechhofer provided a chronology of corporatist endeavours starting from Bevin that lasted decades.[696]

Second, Bevin was a visionary; he saw a future industrial order in which workers would be treated fairly under a system of rational direction and co-operation, thus lessening the need for recourse to class conflict.[697] He envisioned a world in which fully unionised workers

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[689] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)
[690] Allan Bullock, *The Life and Times of Ernest Bevin: Minister of Labour, 1940-1945* (Heinemann 1967) p97
[691] Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967) p82
[692] Chris Williams, 'Britain in Historical Perspective: From War Concertation to the Destruction of the Social Contract' in Stefan Berger and Hugh Compston, *Policy Concertation and Social Partnership in Western Europe: Lessons for the 21st Century* (Berghahn Books 2002) p55; Jim Phillips, *The Great Alliance: Economic Recovery and the Problems of Power, 1945-1951* (Pluto Press 1996)
[693] Allan Bullock, *The Life and Times of Ernest Bevin: Minister of Labour, 1940-1945* (Heinemann 1967) p97
[694] Roger Murphy, *Challenges from Within* (Routledge 2018) p111; Andrew Taylor, 'Industrial Relations' in Kevin Hickson and Ben Williams, *John Major: An Unsuccessful Prime Minister? Reappraising John Major* (Biteback Publishing 2017)
[695] Douglas Brodie, *A History of British Labour Law: 1867-1945* (Hart Publishing 2003) p237
[696] David McCrone Brian Elliott and Frank Bechhofer, 'Corporatism and the New Right' in Richard Scase (ed), *Industrial Societies: Crisis and Division in Western Capitalism and State Socialism* (Routledge 2015) p63
[697] Peter Weiler, *Ernest Bevin* (Routledge 2016) p130

cooperated with enlightened owners to manage the economy rationally.[698]   This unity of interests was remarkably similar to the philosophy of Bevin's successor in the Ministry of Labour, Alfred Robens.[699]   Bevin had shown consistency in his attempts to establish such 'joined up' thinking.   Five years before his appointment to the Ministry of Labour, Bevin had pressed trade unions to think outside of the box and avoid relying on the state's measures.   Walter Citrine, General Secretary of the TUC, recalled a meeting in which Bevin was unimpressed with the lack of progress in the implementation of occupational health education, he urged the TUC to broaden their approach and not rely on the state's mechanisms.   Instead, they should establish an advisory committee to enhance themselves with information regarding accident prevention, social insurance and occupational health.[700]

2.4 The surge

Before Ernest Bevin departed from the Ministry of Labour and National Service in 1945, he stipulated that the Ministry's corporatist arrangements and the pursuit of better working conditions should not cease with the cessation of the War.[701]   It would appear that his advice was upheld; the initiatives to improve working conditions following the War were very impressive. The legislative output dwarfed earlier periods.   In 1946, special rules were made for patent fuel manufacture and magnesium grinding.   In the same year, the Gowers Committee was appointed by the government to consider the extension of statutory standards to workplaces not already subject to legislation.   In 1947, controls were enhanced over health hazards in the pottery industry.   The *1937 Factories Act* was amended by the *Factories Act of 1948*, which extended the age limits for the medical examination of young persons entering factory employment, widened welfare benefits to include male workers and extended building regulations.   The

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[698] Peter Weiler, *Ernest Bevin* (Routledge 2016) p136
[699] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume* 1 (HMSO Cmd 5034 1972)
[700] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p119
[701] Peter Weiler, *Ernest Bevin* (Routledge 2016) p136; Alan Bullock, *The Life & Times of Ernest Bevin - Minister of Labour 1940 – 1945* (Heinemann 1967)

National Insurance (Industrial Injuries) Act 1946 came into force in 1948, providing the government with better statistical information about industrial accidents and disease.[702] 1948 also saw new regulations for clay works and jute manufacture. Dry cleaning and blasting of castings processes were covered in 1949. In the same year, the UK helped develop and ratify the International Labour Organisation's *Convention concerning Labour Inspection in Industry and Commerce 1947* came into effect in 1950 and laid down principles for inspection of conditions at work.[703] In 1950, a Working Party was set up to look at Precautionary measures against toxic chemicals used in agriculture. In 1952, *the Agriculture (Poisonous Substances) Act* was passed to protect workers using specific toxic chemicals. In 1954, the Minister of Labour presented to the House a White Paper on the staffing and organisation of the Inspectorate, following an examination carried out by the Ministry, the Government decided to significantly increase the staffing numbers of the Inspectorate.[704] Additionally, Williams observed that during this period, OHS was the subject of numerous private members bills and parliamentary debates, motions and questions.[705]

When the Conservative Party won the 1951 general election, there were no significant signs of departing from Bevin's legacy. Carrying on with Bevin's legacy, the Ministry of Labour was committed to working 'in co-operation with those concerned in industry and to help them in studying these problems… Much of this kind of work has been done in the Ministry *and I have tried to intensify it a good deal in the last few years* (emphasis added)'.[706] Evidence of which was the establishment of a succession of joint consultation committees from 1954; the Industrial Safety Sub – Committee of the National Joint Advisory Council of the Ministry of Labour, the Industrial Health Advisory Committee, the Advisory Committee on Safety and Health in the Building and Civil Engineering Industries and Interdepartmental Committee on Industrial Safety

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[702] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p11
[703] David Eves, 'Two steps forward, one step back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018
[704] 'Factories Bill' HC vol 595 cc853-956 (17 November 1958)
[705] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p458
[706] 'Factories Bill' HC vol 595 cc853-956 (17 November 1958)

Research. There were also three influential reports published in the late 1950s; the Industrial Safety Sub – Committee's *Industrial Accident Prevention* (1957), the Industrial Health Advisory's Committee's *Halifax Industrial Health Survey* (1958) and the Factory Inspectorate's *Industrial Health Survey of the Pottery Industry* (1959).

3.0 The developments following the government's surge

The range and intensity of government's surge detailed above contributed to two developments. First, the government's opportunities for collaboration and input contributed to the significant non-state interest and activity in the arena of OHS. Second, it helped create a sense of 'government overload'. The surge of activity detailed above did not have a discernible impact on OHS, therein reinforcing the perception of 'government overload', it was simply beyond the Westminster model to effectively the accident problem, the load was too much bear. Each of these developments will be discussed below.

3.1 The activation of industry

The government's surge was not only within the legislative realm, but it also sought to activate industry through voluntary measures. For example, the Factory Department worked with the Royal Society for the Prevention of Accidents (RoSPA) to educate and influence management and workers alike. [707]   The managerial staff received a monthly bulletin, and the workers, weekly posters, 'both drawing attention to specific hazards and aiming to cultivate the sense of personal alertness and responsibility'.[708] The Government also produced several safety films

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[707] 'Factories Acts (Administration)' HC vol 382 cc50-126 (22 July 1942)
H.M. Vernon, 'Prevention of Accidents' (1945) 2 BJIM 1 p8
Ministry of Labour and National Service, *Industrial Accident Prevention A Report of the Industrial Safety Sub - Committee of the National Joint Advisory Council* (HMSO 1956) p7
[708] H.M. Vernon, 'Prevention of Accidents' (1945) 2 BJIM 1 p8

with private firms.[709] Also, safety courses were held in conjunction with universities and factories across the country.[710]

Proactive and collaborative government was not just at the organisational level, the Ministry of Labour wanted to see better government of the workplace on the shop floor level through encouraging joint consultation in the private sector and nationalised industries.[711] Joint consultation was envisioned to be a regular and organised discussion between employers and employees. It was regarded as an essential device for the creation and maintenance of harmonious industrial relations.[712] The Ministry of Labour held conferences across the country to discuss and promote schemes of joint consultation, and the Ministry also worked with other government departments concerned with industry to promote the adoption of consultative machinery.[713]   Additionally, the National Joint Advisory Council (NJAC), representing the Ministry and both sides of industry, recommended to employers and unions the establishment of joint consultation arrangements.[714] By late 1948, a census taken by the Ministry showed that of 54 industries, 38 operated some type of formal joint consultation.[715] The efforts to establish joint consultation were the Ministry's attempt to implement a 'reasonable' interpretation of Bevin's industrial utopia in which both sides of industry settled disputes and solved problems without resorting to conflict.[716]

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[709] H.M. Vernon, 'Prevention of Accidents' (1945) 2 BJIM 1 p8

[710] British Journal of Industrial Medicine, 'Education in Industrial Health: Report of the Education Committee of the Association of Industrial Medical Officers' (1945) 2 BJIM 3 p158
 H.M. Vernon, 'Prevention of Accidents' (1945) 2 BJIM 1 p8

[711] R.D.V. Roberts & H. Sallis, 'Labor-Management Cooperative Committees in Britain's Electricity Supply Industry' (1958) 12 ILRR 1 p86

[712] Arnold A. Rogow, 'Labor Relations under the British Labor Government' (1955) 14 AJES 4 p357, p366

[713] Arnold A. Rogow, 'Labor Relations under the British Labor Government' (1955) 14 AJES 4 p357, p370;
R.D.V. Roberts and H. Sallis, 'Labor-Management Cooperative Committees in Britain's Electricity Supply Industry' (1958) 12 ILRR 1 p86

[714] Ministry of Labour and National Service, 'Joint Consultation in Industry' (1949) 3 Industrial Relations Handbook p4; Arnold A. Rogow, 'Labor Relations under the British Labor Government' (1955) 14 AJES 4 p357, p370

[715] Arnold A. Rogow, 'Labor Relations under the British Labor Government' (1955) 14 AJES 4 p357, p370

[716] Ministry of Labour and National Service, *Industrial Accident Prevention A Report of the Industrial Safety Sub - Committee of the National Joint Advisory Council* (HMSO 1956) p8
Also refer to R.S.F. Schilling, 'Developments in Occupational Health During the Last Thirty Years' (1963) 111 JRSA 5088 p933; H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740, p752

Arguably, we can posit that the government's project to activate industry had a residual effect. Accident rates had long been troubling, the Factory Department had long been stretched and the *factories acts* had long been problematic, yet we did not see significant activity from non – state actors *until* the Ministry of Labour was charged with the regulation of OHS.

Equally, there was a range of post-war developments that could have also stimulated non-state activity. The first set of developments stem from the war itself; the need to protect a skilled and trained workforce became even more necessary given the labour shortages during and after the War.[717] Commentators have also attributed the surge of activity to the overflow of research into the 'human factor' of production that was generated by the government's war industries and fighting services.[718] The second set of developments that stimulated activity centre on the government's post-war capital development programmes of large-scale industries producing coal, steel, chemicals and other primary products; the new knowledge acquired informed the more established industries.[719] The third set of developments related to the legal developments, H.R. Payne, the Chairman of the Industrial Safety Committee of the Royal Society for the Prevention of Accidents (RoSPA), noted that changes in the law that industry was compelled to become more proactive as a result of a growing number of claims for damages on the grounds of negligence. Judging by the period of the article, Payne may have been referring to the *Law Reform (Contributory Negligence) Act 1945* which made it possible for judges to make awards of damages to plaintiffs who were in part responsible for their injury, because of their own negligence. Before this Act, if the plaintiff were at all negligent, no damages could be awarded. Additionally, The *Legal Aid and Advice Act 1949* made it possible to access free legal help for

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717 H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740; R.S.F. Schilling, 'Developments in Occupational Health During the Last Thirty Years' (1963) 111 JRSA 5088 p933

718 Thomas Bedford and others, 'First Conference of the British Occupational Hygiene Society' (1954) 11 BMJ 1 p49

719 T.U. Matthew, 'The Significance of Information in Present - Day Industrial Society' (1952) 4 AP 4 p195

those that were unable to pay for a solicitor.[720] The consequences of these acts, according to Payne, stimulated employers to act.

As a result of such post-war developments, industry had to go beyond traditional practices, if not, the continuance of their operations was threatened with the 'dislocations of production, damage to the plant, the injury to morale in the works, the diversion and cost of medical services'.[721] OHS could not be considered apart from the balance sheet; workplace conditions materially affected the 'economy of an organisation'.[722]

This consideration found expression in larger organisations significantly investing in propaganda, welfare provision, joint consultation, orientation and safety training.[723] The most significant of these developments was the employment numbers of personnel following the War.[724] The employment of medical and safety staff was a means to improve occupational and health safety. This was often well beyond what factory legislation stipulated. Regarding the employment of medical personnel, Schilling observed in the 1960s, 'During the last twenty years there has been a rapid growth of medical services in Great Britain, first in industry and later in other workplaces such as shops, offices and universities'.[725] There were 400 full-time doctors and over 3,000 part-time doctors employed within factories by 1957. This was a doubling of full – time personnel and a fourfold increase in the number of part-time doctors since 1948.[726] By the 1960s, the *British Medical Journal* observed that in the vast majority factories employed full-time industrial medical officers; doctors were often observers on the safety committee or

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[720] Brenda Barrett and Richard Howells, *Occupational Health & Safety Law* (3rd edn, Longman 1999)
[721] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740, p745; John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p48
[722] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p48
[723] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960); L.F. Neal and Andrew Robertson, 'False Remedies in Labour Relations' (1968) 2 MD 2 p90
[724] P.C.G. Isaac, 'Protective Clothing and Devices by N. T. Freeman' (1963) 20 BJIM 1 p70; L.G. Norman, 'Advancing Frontiers in Industrial Health' (1963) 20 BJIM 2 p73
[725] R.S.F. Schilling, Developments in Occupational Health During the Last Thirty Years' (1963) 111 JRSA 5088 p933, p938
[726] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p176

reviewed the minutes and on some occasions, they acted as chairmen.[727]   The Ministry of Labour conducted a study entitled *Health at Work* that shed light on this influx of medical personnel. Even though its sample base consisted of just fourteen British factories, it exhibited a range of services offered by medical professionals; medical examination, first aid provision, monitoring of the work environment, physiotherapy services, accident prevention, dentistry and chiropody.[728]

In addition to medical men, the employment of safety professionals intensified in the post-war period.[729] Contrary to their medical colleagues, safety officers were employed in the field of accident prevention. For the most part, the link between the medical profession and accident prevention had been severed with the introduction of the *Police, Factories, & c. (Miscellaneous Provisions) Act 1916*.[730] The initial impact of safety professionals was felt first in the collieries.[731] However, they soon spread to other industries where their role expanded; as a result of the lack of statutory instruments for accident prevention, firms relied upon voluntary arrangements to protect the workforce from the accidents.[732]   In such a volatile environment, the services of safety officers were needed to not only educate and influence the workforce but also to review, modify, and formulate measures to improve safety.[733]

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[727] British Medical Journal, 'Industry and Health' (1964) 2 BMJ 5423 p1479

[728] Ministry of Labour, 'Health at Work: A Description of Medical Services in Fourteen British Factories' 1961 (Archive No: HD 7272) TUCLC - London Metropolitan University; Milton I. Roemer, 'From Factory Inspection to Adult Health Service: A Review of Governmental Administration of Occupational Health' (1953) 10 BJIM 3 p179

[729] Sandra Dawson Philip Poynter and David Stevens, 'Safety Specialists in Industry: Roles, Constraints and Opportunities' (1984) 5 JOB 4 p253

[730] L. Teleky, 'Place of the Doctor in Factory Inspection' (1935) 31 ILR 1 p28

[731]   There is little coincidence that safety officers were first prominent in this sector. The coal sector was uniquely organised. In comparison to the factories and workshops regime, it was very decentralised; disseminating considerable responsibility to non – state actors. From as early as the 1872, the *Coal Mines Regulation Act* established the right to appoint representative-inspectors from amongst the workmen. These representatives monitored safety, inspected the mines on a regular basis, investigated accidents and reported their findings. Further legislation, *Coal Mines Act 1911* and *Mines and Quarries Act 1956,* strengthened the position of these workmen inspectors.

[732] John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p43; Duncan Wilson, 'Factory Inspection: A Thirty-Five Years Retrospect' (1941) 104 JRSS 3 p209, p222

[733] Institution of Industrial Safety Officers, *The Training of Safety Officers* (IISO 1969)

In light of the above developments, the notion that industry could undertake measures to prevent accidents and incidences of ill – health was not uncommon in the post-war period.[734] Rather than accept that 'accidents happen' or the occurrences of ill – health, one could take undertake efforts to ameliorate the situation.[735] Within this context, nearly two decades before the Robens Committee was appointed, the core of the Robens philosophy was pronounced at a gathering of industry leaders and members of government, 'There is no escaping the conclusion, reached after some years of experience, that the main burden of responsibility for reducing industrial accidents lies in the places of work where the accidents occur'.[736]

Reviewing the safety literature of the period, P.C.G. Isaac remarked, 'At the present time employer and employed are showing increasing concern for the safety of the worker'.[737] This transition was also witnessed by Professor T.U. Matthew who spent the War period as a government technical adviser visiting factories across the country. The initiatives that he saw were of such a novelty that he believed it was the coming of 'industrial democracy' enabled through the machinery of joint consultation between employers and employees on all matters affecting production.[738] This coming together represented 'an extension of means of personal contact between management and workers. It is also an additional informal means for transmitting ideas and information rapidly and effectively between different levels in the organization'.[739]

Whether an 'industrial democracy' in the field of OHS had occurred in the post-war period is questionable, but something was happening in-between the gaps of factory legislation.[740] There was a search for solutions outside of the *factories acts*.[741] Correspondingly, Professor Schilling

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[734] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740
[735] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740
[736] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740, p741
[737] P.C.G. Isaac, 'Protective Clothing and Devices by N. T. Freeman' (1963) 20 BJIM 1 p70
[738] T.U. Matthew, 'The Significance of Information in Present - Day Industrial Society (1952) 4 AP 4 p195, p197
[739] T.U. Matthew, 'The Significance of Information in Present - Day Industrial Society (1952) 4 AP 4 p195, p197
[740] Chris Howell, *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain 1890 - 2000* (Princeton University Press 2007) p11 – 14; T.U. Matthew, 'The Significance of Information in Present - Day Industrial Society (1952) 4 AP 4 p195
[741] L.F. Neal & Andrew Robertson, 'False Remedies in Labour Relations' (1968) 2 MD 2 p90

saw 'a relative decline in the importance of statutory legislation'.[742] He believed that the decline

was due to the predominance of voluntary effort coupled with the recognition of the inadequacy

of factory legislation.[743] Similarly, the National Joint Advisory Council (NJAC) report observed

that:

> *In more recent years*, over and above efforts to ensure full compliance with the law, much has been done in
>
> industry on a voluntary basis to achieve higher standards of safer safe environment and of safe behaviour in
>
> matters note regulated by law. *There has been a growing recognition* that many common causes of
>
> accidents cannot be removed by legislation, its enforcement and its observance. The increasing attention
>
> given to improving standards of industrial management, human relations in industry and industrial
>
> efficiency generally has been reflected in greater attention being paid by both employers and workers and
>
> by their organisations to the problems of reducing industrial accidents (emphasis added).[744]

The parallels between this statement and the later *Robens Report* are striking. Though this report

was published several years before the *Robens Report*, it illuminates non – governmental efforts

to tackle the accident problem.   Such approaches were exemplified by the semblance of OHS

regime that began to form in the 1950s. Employer associations, trade unions and the new safety

organisations started to fill in the gaps left by factory legislation.

3.1.1 Employers associations

From the late 1950s, employers associations undertook significant activity in the field of OHS.

Concurring with Long's observation, the archives reveal very little positive action in the arena of

OHS before this period.[745] However, from the late 1950s, we start to see some documentation

about the activities of employers associations. Arguably, their 'awakening' in the arena of OHS

was part of the broader 'Brighton Revolution' in 1960. The 'Revolution' developed from a

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[742] R.S.F. Schilling, 'Developments in Occupational Health During the Last Thirty Years' (1963) 111 JRSA 5088 p933, p935
[743] R.S.F. Schilling, 'Developments in Occupational Health During the Last Thirty Years' (1963) 111 JRSA 5088 p933, p935
[744] Ministry of Labour and National Service, *Industrial Accident Prevention: A Report of the Industrial Safety Sub - Committee of the National Joint Advisory Council* (HMSO 1956) p7
[745] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p198

conference organised by the Federation of British Industries (FBI) at Brighton in 1960 which brought together leading industrialists to discuss the problems facing the British economy.[746] The significance of this gathering is that it represented a willingness to work towards a tripartite management of the economy by government, business and unions; to unify their efforts to facilitate 'a more effective dialogue with government', to step out of the shadows and *publicly* 'project industry as a dynamic entity'; to work within government to reform its 'machinery'.[747] Similarly, Wilks saw that a 'revisionist faction' among industrial leaders came out of this period who argued for a statesman-like balancing of national interests on the part of the business. They came to dominate both the FBI and the CBI created in 1965.[748]

The foundations of the accident prevention projects of employers associations were detailed at a well-attended conference held in Eastbourne in 1957.[749] Employers organisations organised the Eastbourne conference to develop and review several safety initiatives, independent of government assistance.[750] Far from being a glossy booklet on the aims of employer organisations, what we find is an honest document of employers' organisations aware that a much more proactive project was needed.

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[746] Stephen Wilks, *In the Public Interest: Competition Policy and the Monopolies and Mergers* (Manchester University Press 1999); Geoffrey Jones and M.W. Kirby (eds), *Competitiveness and the State: Government and Business in Twentieth-century* (Manchester University Press 1991) p110; Alan Budd, *The Politics of Economic Planning* (Manchester University Press 1978) p94 – 95; Wyn Grant, 'Pressure Groups' in Jonathan Hollowell, *Britain Since 1945* (Blackwell Publishers 2003) p188 – 189 / p370 – 371; Wyn Grant, 'Government and Manufacturing Industry since 1900' in Geoffrey Jones and M.W. Kirby (eds), *Competitiveness and the State: Government and Business in Twentieth-century* (Manchester University Press 1991) p110
[747] The British Employers' Confederation (BEC), the Federation of British Industries (FBI), the National Association of British Manufacturers (NABM) and the Industrial Association of Wales (IAW) merged into the Confederation of Business Industry (CBI) shortly afterwards
Stephen Wilks, *In the Public Interest: Competition Policy and the Monopolies and Mergers* (Manchester University Press 1999)
Geoffrey Jones and M.W. Kirby (eds), *Competitiveness and the State: Government and Business in Twentieth-century* (Manchester University Press 1991) p110; Alan Budd, *The Politics of Economic Planning* (Manchester University Press 1978) p94 – 95; Wyn Grant, 'Pressure Groups' in Jonathan Hollowell, *Britain Since 1945* (Blackwell Publishers 2003) p370 - 371
[748] Stephen Wilks, *In the Public Interest: Competition Policy and the Monopolies and Mergers* (Manchester University Press 1999) p170 - 171
[749] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick
[750] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p2

From the conference papers, we can identify four initiatives pursued by employers' organisations to reduce workplace injuries and deaths. Many were existing practices that employers associations wanted to see implemented across all industries.[751] First, the use of accident statistics, employers associations insisted that firms sent them a copy of the forms used to notify accidents to the Ministry of Labour, in order to 'compare progress which they themselves had made from one period to another, but also enabled them to compare their position with those of other firms in the industry concerned'.[752] This initiative was not restricted to the domestic market, the extractive and chemical industries were encouraged to supply statistics of accidents based on the international frequency rate.[753] The BEC hoped that this scheme would encourage firms to strive to improve their own position and were at the same time given the motivation that they were not acting in isolation but were taking part in an industry-wide effort.[754]

Second, employers' organisations had also undertaken a number of detailed investigations of risks associated with machinery. The Rubber Manufacturers Employers Association, for example, had found a solution to the problem of the safe working of two roll mills, which had been in operation in the industry for 100 years and had given rise many serious accidents. Similarly, the British Iron and Steel Federation had investigated the causes of accidents with certain types of machinery and equipment and had made recommendations as to their design. In the Cotton Spinning and Weaving Industries, the Employers organisations gave detailed advice on the guarding of machinery.[755]

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[751] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick

[752] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p3

[753] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p3

[754] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p3

[755] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p3

Third, training was deemed to be very important to employers' organisations.[756] Employers organisations played a significant role in the formulation of schemes of apprentice training, the running of courses for foremen and supervisors and the production of safety training films.[757]

Fourth, the promotion of safety committees to its members. Employers associations stressed the importance of safety committees at industry level and also smaller subcommittees to cover specific technical issues.[758] The Eastbourne Conference left an impressionable mark on the business community; it was the hope that such gatherings would take them forward;[759] R.W. Lunn of the Leyland and Birmingham Rubber Company wrote a letter to the BEC in which he proclaimed, 'I think you should be congratulated on the whole affair… I wonder what comes next! Some kind of organisation will have to be built up'.[760]

Employers associations also exhibited a discernible interest in occupational health in the 1960s; the reluctance to positively engage with occupational health and the wider medical profession significantly reduced.[761] This new direction was reflected in the BEC's increased enthusiasm to actively participate in joint conferences with the BMA to sketch out a plan for an occupational health service and the distribution of BMA's publications on occupational health amongst its membership.[762] The BMA witnessed this transformation by the Confederation and saw it as an 'important first step… to encourage firms to set up an occupational health service'.[763] This first step would be the first of many coaxed by a new cooperative spirit, the TUC and the BMA made appeals to the BEC to commit even more resources.[764] The latter seemingly responded in their

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[756] Robert Carr, 'Apprenticeship: A Conference' (1958) 106 JRSA 5027 p813
[757] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p6
[758] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick
[759] BEC, 'Correspondence from R.W. Lunn and the Leyland and Birmingham Rubber Company in Safety Conference at Eastbourne' 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p5
[760] BEC, 'Correspondence from R.W. Lunn and the Leyland and Birmingham Rubber Company in Safety Conference at Eastbourne' 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick
[761] British Medical Journal, 'Occupational Health Committee' (1960) 1 BMJ 5167 p18,19
[762] British Medical Journal 'Conference on Occupational Health' (1962) 1 BMJ 5292 p262; British Medical Journal, 'Occupational Health Committee' (1960) 1 BMJ 5167 p18,19; British Medical Journal, 'Occupational Health Committee' (1961) 1 BMJ 5266 p242
[763] British Medical Journal, 'Occupational Health Committee' (1964) 2 BMJ 5414 p152
[764] British Medical Journal, 'Occupational Health Committee' (1964) 1 BMJ 5397 p234-235

dissemination of a booklet entitled *The Advantages of a Company Health Service*.[765] Through

such means, the BEC instructed more than 22,000 to consider the advantages of industrial health

services, on either a company or a group basis.[766]

3.1.2 Trade unions

Though patchy and inconsistent, trade unions held a far better track record in OHS than

employers associations.[767] They had been involved in the movement behind *Workmens*

Compensation Acts, the *National Insurance (Industrial Injuries) Act 1946* and the giving of

evidence for statutory safety provisions.[768] However, their involvement in OHS was weakened

by their fixation on seeking compensation and 'danger money'. The majority of trade unions

focused their safety policies on securing compensation cases rather than securing accident

prevention measures.[769] The assumption was that tort liability encouraged firms to adopt

effective safety practices, if firms refused to adopt such practices, they would be penalised by

higher insurance premiums and harsher compensation payments.[770] However, this assumption

was flawed, Roy Lewis and Geoff Latta remarked that in some cases it might have been

advantageous to endure a higher accident cost due to the increased profits derived from

hazardous method of production.[771] Also, the *Robens Report* found limited evidence 'to indicate

that liability insurance premiums paid by individual employers – as distinct from the general

level of such premiums - are adjusted to any very significant extent in the light of claims

experience'.[772] Simply put, spreading the risk left negligent employers not much financially

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[765] British Medical Journal, 'Occupational Health Committee' (1961) 1 BMJ 5266 p242; British Medical Journal, 'Medical News' 2 BMJ 5413 p887
[766] British Medical Journal, 'Medical News' *2* BMJ 5413 p887
[767] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)
[768] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960)
[769] P.B. Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979); David Lewis, 'An Industrial Relations Approach' (1974) 3 ILJ 1 p96, p103
Roy Lewis and Geoff Latta, 'Compensation for Industrial Injury and Disease' (1975) 4 JSP 1 p25
[770] Roy Lewis and Geoff Latta, 'Compensation for Industrial Injury and Disease' (1975) 4 JSP 1 p25
[771] Roy Lewis and Geoff Latta, 'Compensation for Industrial Injury and Disease' (1975) 4 JSP 1 p25
[772] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p146; Roy Lewis and Geoff Latta, 'Compensation for Industrial Injury and Disease' (1975) 4 JSP 1 p25

worse off than businesses that implemented more stringent safety measures.[773] Even more controversial than seeking damages was the union acceptance of 'danger money', that is the negotiation of special wage premiums to compensate workers for working in riskier situations. Lewis remarked about the how it side-lined trade union safety efforts because it condoned the acceptance of unsafe working conditions.[774]

However, from the post-war period, doubts were raised about the fixation on securing compensation and danger money,[775] Coinciding with these moments of clarity came the early formulation of an accident prevention policy. Williams observed among unions that, '*For the first time the principle* of a comprehensive accident prevention organisation involving the workers and for all employment was recognised (emphasis added)'.[776] The centrepiece of their prevention policy was the safety committee.[777] The safety committee was envisioned to be a committee set up within a workplace, consisting of members from management, the workforce and other concerned personnel. Located at the 'epicentre' of hazards, safety committees would draw upon practical knowledge and experience of the workers that worked closely with the hazards. [778] The safety committee was hoped to inculcate safety consciousness, analyse accident experience and develop policy. Also, their existence would assist and reinforce the work of the Inspectorate. From the late 1950s. trade unions worked in unison to establish such committees in workplaces across the country.[779] This is not to say that unions did not continue to secure financial settlements for their members, but from the late 1950s, it was accompanied with preventative measures.

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[773] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p146; Roy Lewis and Geoff Latta, 'Compensation for Industrial Injury and Disease' (1975) 4 JSP 1 p25
[774] David Lewis, 'An Industrial Relations Approach' (1974) 3 ILJ 1 p96, p103
[775] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960); P.B. Beaumont, *Safety at Work and the Unions* (Croom Helm 1982); P.B. Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979); *Report of the Proceedings at the 88th Annual Trade Union Congress Held at the Dome, Brighton September 3rd to 7th 1956* (Co - operative Printing Society Limited 1956) p469; John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p53
[776] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p337
[777] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p337
[778] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p183
[779] P.B. Beaumont, P *Safety at Work and the Unions* (Croom Helm 1982); P.B. Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979)

3.1.3 Safety organisations

The recruitment surge of safety men provided the impetus for organisation. Before the 1950s, the majority of safety men that entered industry worked separately with little to no interaction with their counterparts in other firms. Also, the safety men entered industry were largely novices that employed rudimentary means to prevent accidents.[780] However, years spent striving to prevent accidents led to greater organisation and sophistication of techniques. This evolution was exemplified by the formation of the Institution of Industrial Safety Officers, the forerunner to the Institution of Occupational Safety and Health (IOSH), the founding of the British Safety Council (BSC) and the increased attention paid to workplace accident prevention by RoSPA. The 'Big Three' provided a foundation for the raising standards of professional competence amongst its members, exchange of information and development of accident prevention techniques.[781]

The 'housing' provided by the Big Three allowed for the development of accident prevention techniques. Within these units, approaches to accident prevention were refined, explored and rolled – out across the country. From the late 1950s, we can point to two broad approaches to accident prevention; motivational and technical. The motivational aspect of accident prevention was a maturation of existing practices that had typified the safety officer since his initial entry into industry. Motivational approaches were designed to engender and maintain a positive and compliant attitude towards technical controls of hazards. They sought to develop a 'safety culture' among the workforce founded on notions of responsibilisation and accountability.[782] The second area was technical controls that were a means to arm the safety officer with a scientific arsenal. A fitting way to explain this area of accident prevention is to conceptualise as

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[780] E. King, 'Book Review of The Training of Safety Officers' (1969) 26 BJIM 3 p248
[781] E. King, 'Book Review of The Training of Safety Officers' (1969) 26 BJIM 3 p248
[782] Sandra Dawson, Philip Poynter & David Stevens, 'Safety Specialists in Industry: Roles, Constraints and Opportunities' (1984) 5 JOB 4 p253; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens; Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; James Tye, Management Introduction to Total Loss Control (British Safety Council 1970)

a cycle. This involved, 'The assessment and evaluations of the risk; development of controls and standards to eliminate or contain the risk or to mitigate the consequences should the hazards be realised; implementation of controls and standards; longer-term monitoring and adaptation of risk and standards'.[783]

3.1.4 A semblance of an OHS Network

Out of the pursuit to improve working conditions came a closer between unions and employers from the post-war period. This was not only caused by their working relationship in the government's corporatist fora but also due to the practicalities of the day. For unions, they saw the employers as a critical component in the development of the safety committee; it was hoped that a closer union would result in employers associations putting more pressure on their membership to establish more safety committees and also the promotion of best practice.[784] For employers, despite their reservations about trade unions' pursuit of danger money and compensation, employers indicated that, 'No safety policy in the works could be fully cooperative and effective unless it received the full support of the workpeople concerned... trade unions assist... in creating create the right atmosphere'.[785] Throughout the 1960s, the union between organised labour and capital grew stronger with each joint conference. Relative to other disputes between unions and employers, their joint conferences revealed a congenial and complementary approach to accident prevention.[786]

Additionally, unions and employers welcomed safety officers as a crucial ally of accident prevention, particularly in the operation of safety committees. The presence of the safety officer

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[783] Sandra Dawson, Philip Poynter & David Stevens, 'Safety Specialists in Industry: Roles, Constraints and Opportunities' (1984) 5 JOB 4 p253, p257; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens; Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; James Tye, *Management Introduction to Total Loss Control* (British Safety Council 1970)
[784] 'Note of Proceedings at an Informal Meeting between the Representatives of the TUC and the BEC held at 36 Smith Square SW1' 11 August 1964 (Archive no: MSS.292B/146.19/2) MRC - University of Warwick p1 - 2
[785] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick p6
[786] BEC, 'British Employers' Confederation Report on the Industrial Safety Committee at Eastbourne' May 1957 (Archive no. MSS.13//3/2/C 1220) MRC - University of Warwick

on such committees was projected to reduce the accident rate and ease the pressure that the Ministry of Labour was placing on unions and employers.[787] Both groups depicted an officer that would 'not be distracted by other duties and could stimulate positive accident prevention by safety inspection, followed by action and advice to the works engineer or production manager… even with the best of legislation… a safety officer was an essential service to industry'.[788]

There may have been another reason for the enthusiastic acceptance of the safety officers, the safety officer was seen as a malleable component of accident prevention.[789] The safety officer was not seen as a threat to the dominance of organised labour and capital, even the formation of safety associations was just seen as a means to facilitate 'national – cooperation amongst themselves'.[790] For trade unions, the safety officer was a tool that could aid the safety work of trade union representatives.[791] There is little evidence of conflicting interests during this period because the safety officer's primary focus was safety; even though he looked after the interests of the employers, he looked after the *safety* interests of the employer, not the financial, safety was his only focus. In fact, his remuneration was reliant on keeping accidents rates low and his membership to safety associations reinforced professional standards. Thus, there was limited evidence of union distrust, like that which existed with the medical profession.[792] Employers

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[787] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick

[788] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick; E. King, 'Book Review of The Training of Safety Officers' (1969) 26 BJIM 3 p248

[789] Gordon Atherley, 'Strategies in Health and Safety at Work' (1975) 54 PE 1 p52

[790] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick

[791] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick

[792] British Medical Journal, 'Industry and Health' (1964) 2 BMJ 5423 p1479; Andrew Meiklejohn, 'Sixty Years of Industrial Medicine in Great Britain' (1956) 13 BJIM 3 p157

organisations expressed similar sentiments of congeniality and even set up working parties to examine the best possible way that safety professionals could serve employers.[793]

Though there was not any central 'housing' for non – governmental organisations to come together, regular conferences and meetings between industrial groups provided 'temporary lodging' for discussions to take place. Such gatherings offered industry groups interested in accident prevention an opportunity to formulate a coherent and cooperative vision of accident prevention. By the mid-1950s, there were at least 60 industries covered by agreements which allowed for some considerations of the safety, health and welfare of employees.[794] This was fertile ground to codify and develop practices and create a more cohesive, concentrated and collaborative project. Just as state practice attuned itself to the problems of accidents and ill – health through experience, so did its non - governmental counterparts. The industrial space filled with new organisations eager to build on the gains made and rectify previous mistakes.[795] Moreover, a succession of governments 'intensified the pressure' on industry to 'develop better safety organisation and practice'.[796]

Though non – governmental efforts were dynamic and ground-breaking, even the 'greatest optimist' was forced to admit that there was significant variance over what to do and how to do it.[797] However, there was just enough accord to bring about the spread of safety committees in the 1960s. The safety committee was a symbolic and genuine representation of various groups working in unison to prevent accidents *independent of government*.[798] They were set up,

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[793] BEC, 'British Employers Confederation Annual Report 1963' 1963 (Archive no: HD6663) TUCLC - London Metropolitan University p9

[794] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[795] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens

[796] 'Industry (Prevention of Accidents)' HC vol 707 cc775-84 (25 February 1965)
CBI and TUC, 'Report of Joint TUC/BEC Conference on the Prevention of Industrial Accidents 1962 held at Congress House Great Russell Street London WC1 1962' (Archive No: HD 7273) TUCLC - London Metropolitan University p7

[797] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p205

[798] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick

maintained on an individual, regional, national basis without government support. Safety committees were a testament of what industry could do if left to its own devices. Without the aid of factory regulation, safety committees spread across various industries; by the early 1960s, the Cement Makers Federation reported that numerous committees were put into operation.[799] Electric Cable Makers Federation noted that every large company in their sector had either safety committees or discussion panels.[800] The Glass Manufacturers' Federation relayed that matters relating to safety are considered by the National Joint Council for the Glass Container Industry and that most works have joint safety committees.[801] In the years leading up to the appointment of the Robens Committee, the safety committee became standard industry practice.[802]

The spread of safety committees gave credence to the belief that factory regulation was not the only impetus for industry to address the accident problem. Moreover, once cooperation was established, accidents would decrease because it was assumed that most safety endeavours failed through weaknesses in communications and the lack of individuals taking responsibility.[803] The acknowledgement of which was reflected in the Chief Inspector's *Annual Reports* and the last *factories acts*; *Factories Act 1959, Factories Act of 1961* and the *Offices, Shops and Railway Premises Act 1963*. These acts represented the 'old world' of government prescription meeting the 'new world' of non – state activity. In a sense, these *factories acts* were paradoxes; they were the last attempts of government seeking to govern the workplace, at the same time offering non – state actors significant roles in accident prevention. Arguably, the latter aspect spoke to the volume and ordinariness of non – state accident prevention activity.

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[799] TUC, 'Accident Prevention Information Received from the British Employers' Confederation on Joint Safety Activity of its Member Organisations in Certain Industries' 1963 (Archive no: MSS.292B146.19/2) MRC - University of Warwick p1

[800] TUC, 'Accident Prevention Information Received from the British Employers' Confederation on Joint Safety Activity of its Member Organisations in Certain Industries' 1963 (Archive no: MSS.292B146.19/2) MRC - University of Warwick p1 - 2

[801] TUC, 'Accident Prevention Information Received from the British Employers' Confederation on Joint Safety Activity of its Member Organisations in Certain Industries' 1963 (Archive no: MSS.292B146.19/2) MRC - University of Warwick p3

[802] J.W. Leopold and P.B. Beaumont, 'Joint Health and Safety Committees in the United Kingdom: Participation and Effectiveness - A Conflict?' (1982) 3 EID p266. 267

[803] BEC, 'The North East Council for Industry Safety in Collaboration with the British Employers' Confederation, The Trade Union Congress and H.M. Factory Inspectorate of the Ministry of Labour / Conference Report / Seaburn Hall Sunderland' 28 April 1965 (Archive No: MSS.292C/145.8/2) MRC - University of Warwick

3.2 Government overload

Successive governments innovated, reformed, consolidated and collaborated, yet there was no discernible impact on OHS. Moreover, the accumulation of factory legislation 'overloaded' government with a diverse set of responsibilities. This created a feeling of government overload, that is, the 'business of government' became too difficult. Solving the accident problem was beyond the Westminster model. Though modified, this notion is derived from studies that came out of the crisis – striven 1970s.[804] A number of explanations were offered to explain the crises of the period; among the most prominent was the 'overloaded government' thesis or the 'ungovernable' thesis. Primarily emanating from two articles addressing changes on both sides of the Atlantic, Michael Crozier's analysis of the United States[805] and Anthony King's account of the UK[806], both scholars questioned why it was harder to govern in the post-war period.[807] The resounding answer was that governments became overloaded when expectations were more than what government institutions could achieve. There were two aspects to the overload thesis, one of which was politicians asked more of government than it could provide. The second aspect was that the positive perceptions of citizens were challenged by a series of government fiascos.[808] What follows is an exploration of both aspects of overload.

3.2.1 Internal perception of government overload

The overload thesis speaks to the expectations of government officials who administered factory regulation but saw little gain from their efforts. Governments had implemented a number of initiatives without correlation to any significant success. This was even more apparent in the post-war period in which the expansion of welfarist and corporatist policies enlarged

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[804] Richard Rose, 'Overloaded Governments: The Problem Outlined' (1975) 5 ESN 3 p13; Samuel Brittan, 'The Economic Contradictions of Democracy' (1975) 5 BJPS 2 p129; James Douglas, 'The Overloaded Crown' (1976) 6 BJPS 4 p483; Michael Crozier, *The Crisis of Democracy* (New York University Press 1975); Anthony King, 'Overload: Problems of Governing in the 1970s' (1975) 23 PS p162; David Richards, 'A Crisis of Expectation' in David Richards Martin Smith and Colin Hay (eds), *Institutional Crisis in 21st Britain* (Palgrave Macmillan 2014)
[805] Michael Crozier, *The Crisis of Democracy* (New York University Press 1975)
[806] Anthony King, 'Overload: Problems of Governing in the 1970s' (1975) 23 PS p162
[807] Anthony King, 'Overload: Problems of Governing in the 1970s' (1975) 23 PS p162
[808] Richard Rose, 'Overloaded Governments: The Problem Outlined' (1975) 5 ESN 3 p13, p14

expectations of what the state could achieve. However, the post-war government's intense and innovative initiatives to reduce the toll of death and disease did not have a significant impact on accident figures, in fact, Bevin's time in the Ministry of Labour saw matters deteriorate, as they often did in times of war. Workplace accidents and deaths peaked in the 1940s.[809]

Several scholars have looked at the data of the post-war period to reveal appalling rates of ill – health and accidents.[810] Denis Gregory's chapter on the link between the NHS and OHS argued that the belief that industry had become safer in the post-war period is 'one of our more misguided examples of conventional wisdom'.[811] Considering the activity, Gregory said that activities of the period *should* have made industry safer but accidents in industry did not significantly decline. He used 'restricted data' from the Factory Inspectorate[812] to show that there had been a sharp rise from 193,059 in 1950 to a peak of 322,390 in 1969.[813] Likewise, the two most prolific scholars of the period, John Williams and P.B. Beaumont, saw the accident rate as a source of concern. Williams saw that the postwar surge of activity had brought mixed results. He made use of the improved dataset brought about by the enactment of the *National Insurance (Industrial Injuries) Act* 1946. Williams observed that throughout the 1950s, accidents that caused at least three days of incapacity in all forms of employment remained at approximately the same level. Fatal and serious accidents in employment covered by statutory standards tended to reduce, accidents that caused at least three days of incapacity in mines tended to increase; accidents that caused at least three days of incapacity in factories showed fluctuation with a tendency to decrease. Unfortunately, industrial disease showed no signs of decreasing.[814] Rereading the available data, Beaumont argued that it was not until 1970 that we

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[809] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p15
[810] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960)
[811] Denis Gregory, 'The National Health Service and its Relevance to Industrial Health and Safety' in Paul Atkinson Robert Dingwall and Anne Murcott (eds), *Prospects for the National Health* (Routledge 2017) p118
[812] Statistics relating to fatalities and reportable accidents causing at least three days absence from work and including fatalities.
[813] Denis Gregory, 'The National Health Service and its Relevance to Industrial Health and Safety' in Paul Atkinson Robert Dingwall and Anne Murcott (eds), *Prospects for the National Health* (Routledge 2017) p118
[814] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p11 - 42

saw 'a period of relatively stable accident rates in Britain', whereas throughout most of the previous decades the number of industrial accidents and rate of ill – health rose each year.[815]

Moreover, while Britain stagnated, many industrialised nations experienced significant gains. Parliament was informed of the fact that in 1957, there were four-and-a-half times more accidents in the British iron and steel industry than there was in America.[816] They were also informed that the British Productivity Team visited America and saw that, 'The United States companies have established a good record. Their lost time accident frequency rate per million man hours worked for the year 1949 is reported as 7.2, while the British frequency rate is 32.6'.[817] Moreover, the USA saw continued progress, from 1948 a substantial and continual reduction occurred to the extent that by 1955 there was a 47% reduction in the rate of accidents.[818]

Britain was also outpaced in its corporatist efforts to reduce the toll of death and disease, Sweden's *Workers Protection Act 1949* provided for workers' safety delegates to be elected by workers in every workplace employing more than five persons.[819] These delegates had the statutory powers of inspection of the workplace, and if an employer failed to take the appropriate action in relation to hazards identified by the delegates, then they were empowered to call in the government inspectorate.[820] The effect was immediate, a continual reduction rate was observed from 1950 onwards.[821]

Also, a 1958 report presented by Dr H. Stephany, Ministerial Director of the Ministry of Labour of the Federal Republic of Germany, at the Second World Congress on the Prevention on Occupational Accidents further denigrated British performance compared to other industrialised

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[815] P.B. Beaumont, 'An Analysis of the Problem of Industrial Accidents in Britain' (1980) 1 IJM 1 p28
[816] 'Industrial Accidents' HC vol 571 cc1625-37 (7 June 1957)
[817] 'Industrial Accidents' HC Deb 07 June 1957 vol 571 cc1625-37
[818] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p452
[819] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p429 - 432 P.B Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979) p11 - 12
[820] P.B. Beaumont, *Safety Legislation: The Trade Union Response* (The University of Leeds, the University of Nottingham and the Institute of Personnel Management 1979) p11 - 12
[821] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960) p452

countries.[822] Following an analysis of 30 national systems, he postulated 16 measures for an effective prevention system. Of Stephany's 16 measures, Britain had one which was wholly effective, twelve were partly effective and three were not effective.[823] Williams believed that the rating would have been much worse if the British government had submitted accurate information.[824]

The fundamental problems remained; the *Robens Report* observed that the legislation that came out between the 1940s and 1970s 'added new provisions *but no fundamental changes in the scope and pattern of the legislation* (emphasis added)'.[825] Reforming OHS within the context of the Westminster model was the only option for government officials, but this was strewn with problems, for one, OHS was compartmentalised into numerous departments and ministries.[826] Though the Ministry of Labour oversaw the majority of OHS regulation, the supervision for OHS was also 'shared' across multiple government departments.[827] Long attributed the multiplicity of departments and overlapping interests to the failure of government action.[828]

Thus, despite the determination of the Ministry of Labour, it did not have full responsibility to carry out a 'full makeover' of OHS. OHS was too fractured to undergo any real reform. For any reforms to take place, it would require an agreement between multiple government departments.[829] This was a feat that proved difficult even with the simplest of matters. For example, the Ministry of Health wanted oversight of industrial medical services. The Ministry saw that such services should be incorporated within the NHS. However, the Ministry of Labour

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[822] World Congress on the Prevention of Occupational Accidents, *Proceedings of the World Congress on the Prevention of Occupational Accidents* (World Congress on the Prevention of Occupational Accidents 1958) cited in John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[823] World Congress on the Prevention of Occupational Accidents, *Proceedings of the World Congress on the Prevention of Occupational Accidents* (World Congress on the Prevention of Occupational Accidents 1958) cited in John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[824] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p447

[825] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO, 1972) p182

[826] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p418

[827] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p16; John B. Andrews, *British Factory Inspection; A Century of Progress No. 11* (United States Department of Labor 1937) p8 - 10

[828] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p23

[829] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p416 - 17

contended that these medical services should be within their purview, given the industrial nature of many of the health problems arising at work. They also disagreed with the philosophy of placing these services in the parameters of health; rather industrial health problems were best alleviated through the intervention of experts in an industrial setting.[830] Williams brought another example of the divergence that existed between government departments. In 1959, the Occupational Health Unit at the Central Middlesex Hospital was threatened with closure following some confusion between the Ministry of Health and Ministry of Labour's statutory obligation to fund research at the Health Unit.[831] Out of the 24 weaknesses of the post-war OHS system identified by Williams, more than half could be attributed to fragmented government control.[832]

It was hoped that the relocation of the Factory Department to the Ministry of Labour would bring about more significant change. However, many of the issues of the Home Office's administration of OHS remained with the Ministry of Labour's administration. Though the latter significantly opened the door wider for non – governmental organisations, OHS was still very much a government-run enterprise. For the most part, it was business as usual; delayed reforms, inadequate data gathering, chronic understaffing and government centricity continued in the Ministry. The government of the workplace had seemingly reached its limit.

3.2.2 External perception of government overload

The range of matters for which the public held governments responsible for had increased in the post-war period.[833] Many issues that affected the public were housed in a department of government. Thus, when a tragedy occurred, the fingerprints of government were not far away.[834] This was particularly apparent with 'workplace' accidents that 'spilt outside' of the

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[830] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011) p198
[831] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p416 - 17
[832] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p454 - 457
[833] Anthony King, 'Overload: Problems of Governing in the 1970s' (1975) 23 PS p162
[834] Ian Maclean and Martin Johnes, *Aberfan: Government and Disasters* (Welsh Academic Press 2000)

workplace and killed and injured members of the public.[835] A series of accidents occurred from

the late 1950s that exposed the frailties of the OHS system and thus, provoked immense criticism

of the government.[836] David Vogel noted that there was a uniqueness about tragedies of this

period that reverberated beyond the site of the calamity.[837]   Surveying the impact of the tragic

events, David Eves noted,

> It was becoming increasingly obvious that the narrow, prescriptive approach of Factory Law and the
>
> limited powers of Factory Inspectors were no longer sufficient for the effective regulation of modern
>
> industry…   Political support slowly grew for stemming the tide by another revision of Factory Law.[838]

A seemingly endless series of tragedies challenged perceptions about the capacity of the

government to protect the public.[839] Its notional definition of a factory was outdated; the

workplace had broadened since the nineteenth century to include such varied premises in which

the public could be adversely affected by work practices.[840]   Moreover, the tragedies occurred in

an era of television news; disturbing scenes of disasters and relief operations was relayed to the

British public in their homes.[841]   The transmission of unpraiseworthy acts of government has

always been a visible part of the cultural milieu. What was new, however, was the way in which

the details of these tragedies were amplified by the electronic media.[842]

3.3 The last straw

The result of the overload pressures led the government to attempt its most radical *factories act*.

R.C. Simpson observed that the government was convinced that reform was a 'matter of

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[835] International Labour Office, *Safety in Factories* (ILO 1949) p1 – 2
[836] Ian Maclean and Martin Johnes *Aberfan: Government and Disasters* (Welsh Academic Press 2000)
[837] David Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (Cornell University Press 1986)
[838] David Eves, 'Two Steps Forward, One Step Back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018
[839] Ian Maclean and Martin Johnes *Aberfan: Government and Disasters* (Welsh Academic Press 2000)
[840] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p116 - 117
[841] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016) p116 - 117
[842] John B. Thompson, *Political Scandal: Power and Visibility in the Media Age* (Polity Press 2000)

considerable urgency'.[843] Thus, the Minister of Labour announced on 30th June 1967 that

preparatory work had begun on a comprehensive revision of the *Factories Act 1961* and the

Offices Shops and Railway Premises Act 1963. Later that year, under the auspices of the CBI

and the TUC, the Ministry published for comment and discussion the *First Consultative

Document* containing proposals for a comprehensive revision and amalgamation of these two

Acts. 700 organisations were invited to comment.[844] This unprecedented number of

organisations invited to comment not only speaks to the amount of non – state activity but also to

the government's desire to reach out to every corner of industry. Seldom proposed *factories act*

have received such attention.

Consideration of these comments continued throughout 1968 and 1969, however, the proposals

that came out of these considerations failed to make the statute book. Even though the

Government had invited comment from hundreds of organisations, it was just a 'comment'. In

every practical sense, it was *still* a government project. Thus, the Ministry of Labour noted 'that

the result would be fundamentally the same kind of legislation as already existed'.[845]   Similarly,

Sirrs argued that the proposals 'remained trapped within the established logic of the Factories

Act model of regulation'.[846] The 1967 proposals were the final straw; it fully convinced the

Department of Employment and Productivity (DEP)[847] that they needed to 'get away from the

conventional approach… mere consolidation and revision of existing legislation are not

enough'.[848] From this juncture, the DEP made preliminary plans to appoint a committee that

would redefine OHS regulation.

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[843] R.C. Simpson, 'Safety and Health at Work: Report of the Robens Committee 1970-72' (1973) 36 MLR 2 p192
[844] Ministry of Labour, 'Proposals for New Legislation on Safety and Health at Work (The First Consultative Document)' 1967 (Archive no: LAB 96/527) TNA – Kew Gardens
[845] Ministry of Labour, 'Proposals for New Legislation on Safety and Health at Work (The First Consultative Document)' 1967 (Archive no: LAB 96/527) TNA – Kew Gardens
[846] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p120 - 121
[847] Previously the Ministry of Labour
[848] John C. Chicken, *Hazard Control Policy in Britain* (Pergamon Press) p47; Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

4.0 Conclusion

Regulating the workplace from Westminster had reached its limits. As Eves put it, 'the movement that had so successfully built on past achievements had now run out of steam'.[849] The government was unable to significantly impact the accident problem. The government had exhausted its arsenal; it had set up corporatist machinery, incorporated non – state activity into its legislation, increased its legislative output and consulted with hundreds of non – governmental organisations. Yet, these actions did not translate into any real progress.

Moreover. OHS regulation was also not able to guarantee the protection of the public. The twentieth-century peril of the mass disaster was disconcerting. The authorities were ill-equipped to protect the public from the consequences of rapid technological advances, greater economies of scale and the clustering together of communities.[850] The 'disaster' loomed large and frightening in the public mind.[851] The twentieth century made it abundantly clear that accidents could drift from industry to wreak havoc on an unsuspecting public. Once the smoke cleared, the public would ask the usual questions; who had foreknowledge? Who was aware of potential danger? What was the contingency plan for the occurrence of such a disaster?[852] The public was consistently disappointed with the answers they received from those that had authority over them.[853]

While acknowledging such limitations, the state witnessed the advent of non – state actors, engaged in and committed to improving working conditions. The activities that would inspire the *Robens Report* were happening across industry. Years in the 'field' significantly matured their approaches. Individual experiences were shared with one's counterparts through organisational linkages allowing for a repository of knowledge to build up. Moreover, their

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[849] David Eves, 'Two Steps Forward, One Step Back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 24 June 2018

[850] James Tye, A Safer World *The Times* (London 14 May 1976)

[851] W.G. Carson, 'The Conventionalization of Early Factory Crime' (1979) 7 IJSL p37

[852] Celia Wells Dereck Morgan and Oliver Quick, 'Disasters: A Challenge for the Law' (2000) 39 WLJ 3 P496

[853] Ian Maclean and Martin Johnes, *Aberfan: Government and Disasters* (Welsh Academic Press 2000)

organisations filtered dissension and encouraged alignment with other organisations allowing for some degree of cohesion to the extent that we start to see a semblance of an OHS regime in the 1960s. The government was confronted by this OHS regime, unified in their disapproval of the *factories act* model of OHS regulation. The government was encouraged to listen to their concerns because of their shared experiences; hundreds of individuals and organisations were *now* able to talk about OHS with some authority. The fluctuating accident rates and tragedies that plagued the 1960s gave credence to their criticisms about *factories acts*. In the last remaining months of Wilson's government, a consensus was reached; the *factories act* model had reached its limit, a new approach was needed, preferably one that came outside of the walls of government.

Chapter Five: The Release of OHS (1970 – 1974)

1.0 Introduction

The Department of Employment (DE)[854] had exhausted a plethora of initiatives to address the accident problem. It found itself governing matters with no demonstrable effect on outcomes. Instead of setting up another *government* committee to produce conventional solutions to the accident problem, the DE opted to set up a *non–governmental committee* to do what government could not; disseminate responsibility. The terms of reference formulated for this non–governmental committee was unprecedented in their scope and strongly reflected the corporatist mood of the period. What came out of this committee was a blueprint to give prime responsibility to those who create the risks and those who work with them.

1.1 The layout of the chapter

This chapter commences with a brief discussion on the significance of the Robens Committee.[855] It was a forthright attempt to reform the state-centric OHS system. This intent colour the remainder of this chapter. The following section looks at main aspects (terms of reference, appointment of committee members and engagement with industry) of the Committee's work.[856] This was highlighted to demonstrate that the government wanted to go beyond the conventional approach. Also, this section highlights the shifting scales of power. The TUC, CBI and the government worked together on the terms of reference *until* the arrival of the Heath government in 1970. The Heath government's objective of a less burdensome and 'hived off' OHS system aligned much more with organised capital than their labour counterparts.[857] As a result, TUC's influence was muted. This led to a much more non–governmental and self-regulatory vision

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[854] No longer the Department of Employment and Productivity (DEP), it became the Department of Employment (DE) in 1970

[855] R.C. Browne 'Safety and Health at Work: The Robens Report' (1973) 30 BJIM 1 p87; Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[856] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997); R.C Browne 'Safety and Health at Work: The Robens Report' (1973) 30 BJIM 1 p87

[857] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)

coming to the fore.[858] The appointment of the committee members represented the prevalence of this self-regulatory agenda. Each committee member was selected through a well-documented process. The government needed committee members who would not oppose the establishment of a self–regulatory system.

Central to this system was the proposal of a National Authority for the Safety and Health at Work.[859] Thus, this latter part of the chapter observes how the CBI and the TUC worked to influence the independent character of this Authority. Their efforts were rewarded with the enactment of HASAWA that placed the Authority at the heart of the new OHS regulatory system.

2.0 The cliff's edge

The Department of Employment had 'run out of steam'.[860] The DE had exhausted a plethora of initiatives to address the accident problem. Officials were devoid of answers. The sense of bewilderment was present in Barbara Castle's, First Secretary of State for Employment and Productivity, address to Parliament. MPs were eager to hear specific details about a proposed Bill, but instead, they were met with more questions:

> [We] ought to be asking some far-reaching questions about our safety legislation. Are we, for example, putting enough emphasis on voluntary action and self-help by employers and unions? Do we need joint safety machinery, regionally and nationally, run by industry itself—as the T.U.C. has been suggesting? Industry changes very quickly and the law is apt to lag behind the changes. Is the present machinery adequate to cope with major new hazards which are emerging from new technology coupled with the increasing scale of industrial operations? Again, are we doing enough to protect the public from the risks

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[858] Harold Walker, 'Is Robens Strong Enough?' (1973) 10 JLP 1 p7; Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)

[859] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972); John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[860] David Eves, 'Two Steps Forward, One Step Back: A Brief History of the Origins, Development and Implementation of Health and Safety Law in the United Kingdom, 1802–2014' (*History of Occupational Safety and Health*, 2014) <http://www.historyofosh.org.uk/brief/#chapter08> accessed 18 August 2018

to them of industrial processes—whether large-scale risks through the blowing up of an industrial plant or small-scale but still important risks such as those which may arise in a launderette?[861]

Barbara Castle's address and her Department's correspondence was typified by a lack of clarity on the way forward.[862] Thus, an announcement was made on 2 March 1970 about setting up 'a small, high-powered body to conduct a general inquiry across the whole field… It would examine how we can best extend protection over the whole field of employment.'[863]

It was intended that this committee would do three things. First, the committee would chart a new course. It would not repeat what had been done previously, as Castle stated, 'We need to get away from the conventional approach… the mere consolidation and revision of existing legislation are not enough'.[864] The DE wanted the committee to produce; 'The abolition of the present statutory regulation – making procedure… this is highly desirable'.[865] Just a few years prior, the DE had misspent a significant amount of time gathering the comments of hundreds of non–governmental organisations, only to have these comments 'sucked' into the government machinery, 'disinfected' of any originality, and 'emitted' out as unremarkable and conventional proposals.[866] Second, the committee's recommendations would echo what was already being said in industry, that is, responsibility should be disseminated to those that worked directly with the risks.[867] Third, the committee would provide a blueprint of how to achieve this. Past experiences have shown that government had trouble 'letting go'. Attempts to disseminate greater responsibilities to non – state actors had failed. Thus, this committee was to be filled with 'independent' members who could show the government how this could be done, as was reiterated in the House of Lords, 'We are hoping to learn a great deal from this Committee of

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[861] 'Employed Persons (Health and Safety Bill)' HC vol 797 cc44-166 (2 March 1970)
[862] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[863] 'Employed Persons (Health and Safety Bill)' HC vol 797 cc44-166 (2 March 1970)
[864] 'Employed Persons (Health and Safety Bill)' HC vol 797 cc44-166 (2 March 1970)
[865] Ministry of Labour, 'DEP Evidence' 1967 - 1971 (Archive no: Lab 96/366) TNA – Kew Gardens
[866] Ministry of Labour, 'Proposals for New Legislation on Safety and Health at Work (The First Consultative Document)' 1967 (Archive no: LAB 96/527) TNA – Kew Gardens
[867] H.R. Payne, 'Industrial Accidents' (1952) 100 JRSA 4882 p740; Ministry of Labour and National Service, *Industrial Accident Prevention: A Report of the Industrial Safety Sub - Committee of the National Joint Advisory Council* (HMSO 1956)

Inquiry… The Committee's report should provide us with a firm basis for the activities in this field for many years ahead'.[868]

It could be argued that the committee was not appointed for such lofty goals. Instead, it was just a ploy or a means to bide time. As Lord Wright alleged, 'Committees of inquiry are well-known devices used by Governments to dodge an issue'.[869] This argument is without merit. From their investigations of committees of inquiry, Mike Rowe and Laura McAllister found that, 'More generally, commissions convey a genuine spirit of inquiry… The spirit of genuine inquiry was clearest where commissions were formed by non-governmental bodies'.[870] Correspondingly, the DE's correspondence and public addresses do not indicate anything other than a 'genuine spirit of inquiry'. Moreover, if it was a ploy, then to whom? If it was a ploy to the Houses, it was not well – thought out because there was no appetite for the setting up of a committee.[871] If the ploy were intended for a public audience, then Alfred Robens would not have been selected to head the committee.[872] Professor McLean described Robens appointment as 'beyond satire'.[873] Robens did not have the confidence of the public to lead a committee on workplace safety and health. Alfred Robens was the Chairman of the National Coal Board (NCB) at the time of the Aberfan disaster in 1966. He received considerable criticism for his evasive actions and apathetic attitude after the Aberfan disaster.[874]

3.0 The terms of reference

The first matter to be considered by the government was the formulation of the terms of reference. Just a few days after Barbara Castle announced the committee, work on the terms of

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[868] 'Industrial Disease and Accidents' HL vol 312 cc126-86 (28 October 1970)
[869] 'Industrial Disease and Accidents' HL vol 312 cc126-86 (28 October 1970)
[870] Mike Rowe and Laura McAllister, 'The Roles of Commissions of Inquiry in the Policy Process' (2006) 21 PPA 4 p99, p105
[871] 'Industrial Disease and Accidents' HL vol 312 cc126-86 (28 October 1970)
[872] A.J.P. Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998) p42
[873] Becky Allen, 'Aberfan: Decent Men, Led Astray' (*Health and Safety at Work*, 1 April 2011) < https://www.healthandsafetyatwork.com/aberfan > accessed 18 July 2018
[874] Ian Maclean and Martin Johnes, *Aberfan: Government and Disasters* (Welsh Academic Press 2000); Ministry of Labour, 'Memorandum to P.H Edwards / Safety and Health Inquiry Memo to C.H. Sisson' 27 February 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

reference began. The services of the TUC and the CBI were called upon to discuss what 'the scope of the new inquiry should be'.[875] There were 'preliminary informal meetings' with both sides of industry to formulate the terms of reference;[876] the DEP was adamant that it would consult the TUC and CBI at every turn.[877] After numerous drafts, the terms of reference were agreed upon by the DE, TUC and CBI. C.H. Sisson, a renowned poet, novelist and essayist who briefly worked in the DE, observed that Richard Dale, head of the TUC Social Insurance Committee, 'left the discussion in a mood to recommend his Committee to give the Inquiry a welcome'.[878] He also stated that, 'It is fairly clear that the Inquiry is welcome to the CBI and that the sort of terms of reference we have in mind are broadly acceptable to them'.[879] The CBI and the TUC's role in the terms of reference reflected the healthiness of the corporatist project.[880]

The corporatist effort produced a unique terms of reference. [881] No committee or commission considering OHS had such a vast remit. To grasp the breadth of the terms, it is essential to quote the full text:

> To review the provision made for the safety and health of persons in their course of employment (other than transport workers while directly engaged on transport operations and who are covered by other provisions) and to consider whether any changes are needed in: (1) the scope or nature of the major relevant enactments, or (2) the nature and extent of voluntary action concerned with these matters, and to consider whether any further steps are required to safeguard members of the public from hazards, other

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[875] 'Employed Persons (Health and Safety Bill)' HC vol 797 cc44-166 (2 March 1970); John C. Chicken, *Hazard Control Policy in Britain* (Pergamon Press)

[876] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 3 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[877] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 5 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[878] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 11 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[879] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 11 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[880] R.C. Browne, 'Safety and Health at Work: The Robens Report' (1973) 30 BJIM 1 p87

[881] Ministry of Labour, 'Terms of Reference and Scope of Inquiry' 1970 -1971 (Archive no: LAB 96/200) TNA – Kew Gardens; Ministry of Labour, 'Terms of Reference and Scope of Inquiry' 1972 (Archive no: LAB 96/365) TNA - Kew Gardens

than general environmental pollution, arising in connection with activities in industrial and commercial premises and construction sites, and to make recommendations.[882]

Reading such a vast remit, one observer noted, 'Many committees are quite purposely kept to the straight and narrow… Not, however, in this case… Although there have been a number of committees which have studied segments of the subject, there has never, until Robens, been a comprehensive review by a single body'.[883] Its broad remit was constructed to give the committee members 'maximum depth of focus' and analyse the 'root' and 'branch' of OHS.[884] While the committee was skilfully shielded from contested areas and matters that were already being considered, it was given a wider remit than its predecessors to do what had not been done before; the dissemination of responsibility to industry. [885]

3.1 Change of government during the setting up of the Robens Committee

Ted Heath's Conservative government came to power in the summer of 1970. From this point, the corporatist project became 'lopsided', leaning disproportionately towards employers organisations. The Heath government and the Wilson government were equally committed to reforming OHS, but the former opted to let business interests take the lead in the matter, as the business case was much more fixated on the dissemination of responsibility to those that worked directly with the risks.[886] A CBI briefing document stipulated, 'What is wanted is not just new legislation but a completely new approach and method of presentation centred upon the predominance of the basic common law principle which places responsibility on every individual for reasonable conduct in his relationship with others'.[887]

[882] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) pv

[883] R.C. Browne, 'Safety and Health at Work: The Robens Report' (1973) 30 BJIM 1 p87

[884] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[885] Ministry of Labour, 'Terms of Reference and Scope of Inquiry' 1970 -1971 (Archive no: LAB 96/200) TNA – Kew Gardens; Ministry of Labour, 'Terms of Reference and Scope of Inquiry' 1972 (Archive no: LAB 96/365) TNA - Kew Gardens

[886] L. Kenton 'Slackness in the Safety Net' (1973) 73 IM 4 p24, p26

[887] CBI, 'Working Party on Evidence to Robens Committee' 30 September 1970 (Archive no: MSS.200/C/3/EMP/4/168) MRC - University of Warwick

With a choice between organised labour and capital, the Government opted for the latter since it was committed to 'hiving off' health and safety, which it favoured over the former's inclination for increased legislation that would place more statuary obligations on employers.[888] Though both the CBI and TUC had reached an agreement on OHS practices, the CBI's vision of a reduced statutory basis for the OHS system aligned much more with that of the Heath government.[889] Before the Committee had even convened, the government wanted the Robens Committee to plot the course away from 'the present statutory regulation–making procedure'.[890] Moreover, the DE sought counsel from the leading OHS academic, John Williams, in the preliminary stages of the setting up the committee. He advised that a committee should consider promoting voluntary cooperation between the parties concerned, in line with a school of thought which argued that there was already too much statutory regulation of safety standards.[891]

We cannot discount the influence of the Heath government's broader neoliberal agenda on its desire to support the CBI's 'minimal state' vision of OHS.[892] The neoliberal inclinations of the Heath government were comparable to that of the Thatcher government.[893] The Heath government saw the CBI and employers as their best possible 'partner' to liberalise the state from its paternal obligations.[894] However, the viewpoint of the organised labour could not be completely dispensed with. The views of the TUC on OHS still held considerable weight. To maintain a delicate balance, the government had to give at least the appearance that the views of organised labour and other industrial groups mattered. Correspondingly, the DE could not

[888] Ministry of Labour, 'Letter from C.H. Sisson to K Barnes' 10 July 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[889] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[890] Ministry of Labour, 'DEP Evidence' 1967 - 1971 (Archive no: Lab 96/366) TNA – Kew Gardens

[891] His magnum opus *Accident and Ill Health at Work* was given to each committee member as required reading. Ministry of Labour, 'Memorandum to P.H Edwards / Safety and Health Inquiry Memo to C.H. Sisson' 27 February 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens; Ministry of Labour, 'J.L. Williams' n.d. (Archive no: Lab 96/365) TNA – Kew Gardens

[892] Monica Prasad, *The Politics of Free Markets: The Rise of Neoliberal Economic Policies in Britain, France, Germany & the United States* (University of Chicago Press 2006) p152

[893] The *Economist* juxtaposed the Thatcherite programme with Heath's two-year programme to emphasise their striking similarities; Monica Prasad, *The Politics of Free Markets: The Rise of Neoliberal Economic Policies in Britain, France, Germany & the United States* (University of Chicago Press 2006) p152

[894] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997) p37

acquiesce to all the demands of employers, considering the bright spotlight placed on the appointment process. A large number of organisations watched attentively as the DE appointed the committee and formulated the terms of reference.[895] Additionally, on balance, the government was aware that the TUC had far more substance in their contributions to policy than their counterparts; employer's organisations had spent much of the twentieth century in a defensive posture, seemingly disinterested or unable to make any positive contributions to OHS.[896]

3.2 The appointment of the Robens committee

The terms of reference had already been established by the Labour government, so the incoming Heath government did not alter them, but the appointment process was still ongoing when the Conservatives entered government. Thus, this was the point that the influence of business interests began to overshadow that of organised labour. In the spring of 1970, the new government set about appointing a committee.[897] In line with John Chicken, surveying the appointment of the committee allows us to observe the measures taken by the government to avoid the conventional approach.[898]

The government expended significant resources to keep the committee independent or 'non–governmental'. This was because the appointment of an independent committee was a means to produce 'radical solutions'.[899] Essentially, the appointment of independents was 'a device to break through the political impasse that inhibited earlier reform efforts'.[900] The DE's correspondence on the establishment of the Robens Committee revealed that it was a well-

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[895] Alison Broadhurst, 'Robens: A Missed Opportunity' (1972) 4 ICT 12 p595

[896] Vicky Long, *The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain 1914 - 60* (Palgrave Macmillan 2011)

[897] Alfred Robens, Safety and Health at Work: Report of the Committee, 1970-72, Volume 1 (HMSO Cmd 5034 1972) p182

[897] John Williams, *Accidents and Ill – Health at Work* (Staples Press, 1960)

[898] John C. Chicken, *Hazard Control Policy in Britain* (Pergamon Press)

[899] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[900] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p73

documented and well-thought-out selection process, with officials demonstrating a desire to avoid any repetition of past efforts. It is safe to say that all the committee members were 'safe bets'.[901] The DE was fully aware that the proposals of the committee needed the consent of other government departments and it ultimately had to pass through both Houses. Thus, even though the DE stated that the 'final choice could not prudently be made until the TUC/CBI have had its way', their choice was restricted to individuals that the DE had 'cleared'.[902]

The Government, TUC and CBI settled on six members; Alfred Robens, Sydney Robinson, Anne Shaw, George Beeby, John Wood and Brian Windeyer.[903] Lord Alfred Robens was appointed to chair the committee. The fact that the DE officials put forward Robens to chair the committee indicates three matters. First their intent to put forward proposals that would please both Labour and Conservative MPs. Even though Robens was a Labour MP, he was appointed to head the NCB by the Harold Macmillan government.[904] Robens depicted himself as a practical man that had a 'sensible business approach to politics'.[905] Moreover, Robens' 'NCB1'-registered Daimler, private plane, and exclusive apartment in Eaton Square may have eased concerns about his socialist origins.[906]

Second, the DE appreciated the radical nature of their mission; there seems to have been foresight that it would cause departmental friction. Thus, they needed a seasoned and strong individual to break the political impasse; Robens, or the 'New King Coal', was that individual. Derek Ezra, Robens' NCB successor, spoke of his predecessor as an individual that was able to

[901] Ministry of Labour, 'DEP Evidence' 1967 - 1971 (Archive no: Lab 96/366) TNA – Kew Gardens
[902] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 5 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens; W. Dibelius, *England* (Jonathan Cape 1930) p254; Sidney Webb and Beatrice Webb, *Methods of Social Study* (Longmans 1932) p45
[903] The DEP did not want a large committee, so the initial number considered was just 3 or 4, but through negotiations with the CBI and TUC, it was extended to 6
Ministry of Labour, 'Memorandum to P.H Edwards / Safety and Health Inquiry Memo to C.H. Sisson' 27 February 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens
[904] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[905] Education + Training, 'Interview' (1972) 14 ET 5 p154, p155; Ministry of Labour, 'Mr Feather, Meeting on 20 April' 1970 (Archive No: LAB 96/447) TNA – Kew Gardens
[906] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

forge a new path, 'He is a very dominant, vigorous and human personality, and he definitely left his imprint on the coal industry in a way no one else will. The coal industry could be considerably different today if he had not been skilfully selected by Macmillan to take the job on'.[907]

Third, it represented the desire to see voluntarism come to the fore. Robens was well – versed in the voluntary approaches to tackle workplace accidents. Christopher Sirrs notes:

> As NCB chair, Robens became closely acquainted with health and safety in a major hazardous industry… As a nationalised industry able to draw upon public funds, the NCB developed a more comprehensive approach to health and safety compared to other industries. In response to the high accident rate among miners, Robens raised the status of professional safety staff, and pioneered a variety of methods to disseminate the safety message: publications, posters, league tables, as well as shock films, 'more horrific than any Hammer Films production'.[908]

Robens' experience was derived from the collieries, an extremely hazardous industry distinguished by its dissemination of responsibility to non–state actors. What is clear from Robens was his desire to 'decentralise'. In an interview shortly after the cessation of the committee, Robens stated, 'In every large industry it is a mistake to centralize… You should devolve as much as possible the day-to-day operations in management down to the operating units. Right down to the foremen on the workshop floor'.[909] Robens' idea expressed itself in the milder form of 'self – inspection'. However, in contemporary times, it is referred to as 'responsibilisation'; through internal responsibility frameworks, the workforce is strongly encouraged to take personal responsibility for their own safety while they are at work.[910] We would see varying forms of Robens idea with the passing of key legislation in the late 1970s.

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[907] Industrial Management 'New King Coal' (1972) 72 IM 1 p46, p46 - 7
[908] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p146
[909] Education + Training, 'Interview' (1972) 14 ET 5 p154, p155
[910] Garry Gray, 'The Responsibilization Strategy of Health and Safety' (2009) 49 BJC 5 p326

Also, the collieries were distinguished by cooperation between workers and management.[911]

Robens carried these ideas with him into his deliberations on the Committee.[912]

The union element of the committee was dwarfed by business interests and 'two independents'. Anne Shaw was a management consultant, George Beeby was the Chairman of the British Titan Products Co and the Director of Cape Universal Building Products and Tory MP for Melton, Mervyn Pike was the Director of Watts, Blake, Bearne & Co. The two independents, Sir Brian Wellingham Windeyer and Professor John C. Wood, were selected due to their non – partisan background.[913] This left one trade unionist, Sydney Robinson, by himself. On paper, he seemed the perfect 'union' candidate. However, there seems to have been some friction between Mr Robinson and the TUC leadership. These feelings were manifested with Robinson's earlier appointment to the Monopolies and Mergers Commission in the late 1960s. The Minister of Labour, Ray Gunter, wanted Mr Robinson on the Committee to the dissatisfaction of The TUC General Secretary, George Woodcock, who refused to endorse Mr Robinson and proffered his own shortlist.

The rank and file of the labour movement also expressed dissatisfaction of Mr Robinson's appointment to the Robens Committee:

> So there we have it; for all the talent in the trade union movement and for all the long service by many
>
> people such as Dr Murray, Chief Medical Adviser to the TUC, none of them was on the Committee. The
>
> sole representative of the trade union the labour movement was Mr Sydney A. Robinson; no room for the
>
> National Union of Mineworkers, Amalgamated Union of Engineering Workers or the Transport and
>
> General Workers' Union and many others. A foretaste of things to come in the Report (emphasis added).[914]

Thus, instead of Robinson, the TUC wished to put forward 'a short list for the trade union member' to sit on the Robens Committee, the DE did not afford the TUC this privilege; instead,

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[911] Education + Training, 'Interview' (1972) 14 ET 5 p154, p155

[912] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p148

[913] Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 5 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[914] George Montgomery, 'The Robens Report: A Step Backwards' (1973) 55 LM p123, 124

the DE's deliberation process made sure that 'right' unionist sat on the committee seat, to the extent that no other candidate was so heavily scrutinised.[915]

3.3 The Robens committee's interaction with industry

Once appointed, the DE sought to expose the Committee to the voice of industry. It did this through the process of meetings. In these meetings, the Committee was exposed to influential governmental and non – governmental actors. From the Committee's appointment in May 1970 to its dissolution in March 1972, there were a total of 47 meetings. These meetings were not conducted in a room in a government corridor. Instead, they were held in Robens' NCB office which opened its doors to employers' organisations, trade unions, professional and industrial organisations. The meetings with the safety organisations were particularly engaging. Though the ethos of the committee's report reflected the influence of the CBI and DE, much of the technical substance came from safety organisations.[916] By the time that the safety bodies met the committee, their respective memberships had grown massively. The British Safety Council had 16,000 subscribers, an 'increase of about 18.6 or 18.7 per cent on a weekly basis'. RoSPA had 5,000 members and 3,200 subscribers to its Industrial Safety Service.[917] Subscription materials were sent to 6,500 works throughout the country and abroad. The number of subscribers has

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[915] Ministry of Labour, 'Letter from Mr D.B. Smith to K. Barnes' 6 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens; Ministry of Labour, 'Letter from C.H. Sisson to K. Barnes' 5 March 1970 (Archive no: Lab 14/2475) TNA – Kew Gardens

[916] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens; Ministry of Labour, 'RoSPA / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 14 June 1971 (Archive no: LAB 104/57) TNA – Kew Gardens

[917] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens; Ministry of Labour, 'RoSPA / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 14 June 1971 (Archive no: LAB 104/57) TNA – Kew Gardens

increased by an average of 5% per annum during the last three years.[918] The Institution of

Industrial Safety Officers had also grown exponentially to number around 2,000 members.[919]

The committee held extended meetings with these safety organisations in which the latter was

requested to showcase their approaches to accident prevention.[920]   They stressed to the

committee that their techniques would raise safety consciousness, which would help companies

avoid liability claims and lost production time.[921] Their sessions were 'idea-intensive'[922], for

instance, the BSC intrigued the Committee with their Safety Pyramid, a memo recounts:

> Most of the large firms are very good at self – regulation, but towards the bottom of the pyramid are many
>
> firms who will not act responsibly unless by the law… The corollary of his (James Tye) thinking is that
>
> Inspectorates should concentrate much more on the smaller firms and on the smaller firms and on those
>
> with bad records, and should spend less time at very large sophisticated plants.[923]

Some years after their meeting, Robens noted about their encounter,

> When my colleagues and I were producing the Robens Report - which led to the present legislation on
>
> health and safety at work – we leaned very heavily on the advice that was freely available from James Tye
>
> and I want to reiterate my fulsome appreciation for the help he gave… it was largely due to the efforts of
>
> people like him that the legislation was being looked at all.[924]

Similarly, the IISO met the committee and impressed upon them a number of ideas that were

incorporated into the final report, Labour MP Harold Walker noted:

> It must give the Institution of Industrial Safety Officers much satisfaction to see so many of their sensible
>
> recommendations embodied in the Robens Proposals. For example, the proposal that plant machines and

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[918] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p603

[919] Maurice Bryant, 'A Safety Officer's View of the Future' (1975) 18 AOH 4 p350; Sandra Dawson, Philip Poynter and David Stevens, 'Safety Specialists in Industry: Roles, Constraints and Opportunities' (1984) 5 JOB 4 p253

[920] Ministry of Labour, 'Govt. Committee meets BSC; Robens hears TLC talk' June 1971 (Archive no: Lab 104/57) TNA – Kew Gardens

[921] Ministry of Labour, 'Govt. Committee meets BSC; Robens hears TLC talk' June 1971 (Archive no: Lab 104/57) TNA – Kew Gardens

[922] Ministry of Labour, 'M. Wake's Memorandum on the British Safety Council to Mr Neale' 22 October 1970 (Archive no: LAB 104/57) TNA – Kew Gardens

[923] Ministry of Labour, 'M. Wake's Memorandum on the British Safety Council to Mr Neale' 22 October 1970 (Archive no: LAB 104/57) TNA – Kew Gardens

[924] British Safety Council, 'How James Tye Helped Create HSWA, 17 July 1995' (*British Safety Council Digital Archive*, 17 July 1995) <https://legacy.britsafe.org/the-archive/archive/ > accessed: 24 June 2018

equipment should be required by statute to be designed and constructed to comply with safety needs will be widely welcomed, as will the recommendations on noise control.[925]

The IISO proudly proclaimed to its members:

> Members will naturally be concerned as to how the Institution's evidence was received, an indication is that it was selected for inclusion in the printed Report… Our recommendation that there should be a unification of Inspectorates to avoid duplication of functions was also reflected in the Report's advice that an Authority for Safety and Health at Work should take the place of the existing seven separate Inspectorates. There are other matters on which the Committee's findings are in close parallel with the IISO ideas, so it can fairly be claimed that we came out of the exercise pretty well.[926]

Arguably, we can posit that the 'how to' portion of the Committee's findings came from safety organisations. They were best placed to speak about such approaches more than any other sets of actors. Since the 1950s, the 'housing' provided by the Big Three safety organisations allowed for the development of accident prevention techniques. Within these residences, approaches to accident prevention were refined, explored and implemented across the country.

Exposure to industry also came through the request of information from every corner of industry.[927] Correspondingly, an unprecedented number of organisations wanted to contribute to the committee. [928] Professor Andrew Hale observed that the submission of evidence to the committee was devoid of any restriction and explicit agenda.[929] He also noted that submissions were made with seemingly very little contact between parties.[930] Most of the evidence submitted was published as a second volume to accompany the final report. It amounted to 718 pages.

Also, the committee's exposure to the industrial practices came through travelling to various worksites all over the UK and even meeting with Government officials from Europe and North

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[925] Harold Walker, 'Is Robens Strong Enough?' (1973) 10 JLP 1 p7
[926] N. Freeman J. Gardner J and H. Payne, 'Robens Received' (1972) 8 PR p2
[927] Alison Broadhurst, 'Robens: A Missed Opportunity' (1972) 4 ICT 12 p595
[928] Alison Broadhurst, 'Robens: A Missed Opportunity' (1972) 4 ICT 12 p595
[929] Andrew Hale, 'Accident Research for the Robens Committees by Professor Andrew Hale' (*Hastam*, 2017) <https://www.hastam.co.uk/accident-research-robens-committees-professor-andrew-hale/> accessed 24 June 2018
[930] Andrew Hale, 'Accident Research for the Robens Committees by Professor Andrew Hale' (*Hastam*, 2017) <https://www.hastam.co.uk/accident-research-robens-committees-professor-andrew-hale/> accessed 24 June 2018

America to see how occupational health and safety policy operated further afield.[931] R.L. Howells observed that the committee was particularly influenced by Canada's Labour (Safety) Code 1966 and the United States' Occupational Health and Safety Act 1970.[932] These legal systems emphasised the use of administrative orders, or cease and desist orders and the encouragement of employers and employees to work together to 'institute new and to perfect existing programmes'.[933]

3.4 The invisible hand

Throughout the Committee's activities, Theo Nichols' observed that they were 'quietly and gently guided by the hand by the civil servants … they were, oh so gently, led up the garden'.[934] Building on these observations, Sirrs offers the more descriptive account; 'Officials gently prodded the CSHW (Robens' committee) towards reforms under the DE's sphere of influence'.[935] He pulled out from the archives the DE's early review of evidence, just six months into the committee's proceedings it stated 'the existence of a mass of detailed restrictive legislation may inhibit the natural development of self-help and continuous self-regulation by industry itself'.[936] He believed that much of this document was similar to the committee's eventual conclusion.[937] However, the allegation of manipulation is too simplistic. The undue influence could have been an issue of logistics; the DE's role in the establishment and allocating

[931] Ministry of Labour, 'Visits of the Robens Committee' 1970 -1972 (Archive No: Lab 96/523) TNA – Kew Gardens
[932] R.W.L. Howells, 'The Robens Report' (1972) 1 ILJ 1 p185
[933] R.W.L. Howells, 'The Robens Report' (1972) 1 ILJ 1 p185
[934] Theo Nichols, *The Sociology of Industrial Injury. Employment and Work Relations in Context* (Mansell 1997) p37
[935] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p154
[936] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p154
[937] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p153 - 154

resources to the committee meant that the committee was more exposed to the DE's viewpoint than any other government department or organisation.[938]

Moreover, there was little need to manipulate the committee, considering the 'business makeup' of the committee which was predisposed to notions of minimal government intervention. Evidence of this was reflected in their orientation towards the CBI as opposed to the TUC.[939] The committee members outright rejected many of the TUC's suggestions of statutory interventions, in favour of the CBI's argument of general duties.[940] The CBI's annual reports leading up to the appointment of the committee propagated the idea of voluntary effort on the part of management, opposing all forms of statutory compulsion.[941] The committee even sought significant logistical support from the CBI. This arrangement was not something initiated by the CBI, and the number of requests for help from the committee was such that there is a sense that CBI became overwhelmed.[942] The committee sought consultation on appropriate work sites to visit, content of questionnaire drafts and individuals to interview; the CBI acted as a conduit for companies, which desired to give evidence to the Robens Committee; it even requested the CBI to find a researcher that would aid their adjacent advisory committee.[943]

Flicking through the volume of evidence that accompanied the Robens Report, it is plain to see that the CBI's evidence dwarfed all other parties, except the DE.[944] Nichols also observed that the CBI expected the results of the Robens enquiry, to the extent that the CBI did not even bother to put out a written comment because, as an official explained:

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[938] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p153

[939] CBI, 'Working Party on Evidence to Robens Committee' 30 September 1970 (Archive no: MSS.200/C/3/EMP/4/168) MRC - University of Warwick

[940] Cited in Christopher Sirrs, 'Accidents and Apathy: The Construction of the 'Robens Philosophy' of Occupational Safety and Health Regulation in Britain, 1961-1974' (2016) 29 SHM 1 p66

[941] L. Kenton 'Slackness in the Safety Net' (1973) 73 IM 4 p24

[942] CBI, 'Memorandum from Mr M.Y. Cobb to Mr Hitchcock' 27 August 1970 (Archive no: MSS 200/C/3/EMP/4/168) MRC - University of Warwick

[943] CBI, 'Memorandum from Mr M.Y. Cobb to Mr Hitchcock' 27 August 1970 (Archive no: MSS 200/C/3/EMP/4/168) MRC - University of Warwick; CBI, 'New Inquiry on Health and Safety' 26 August 1970 (Archive no: MSS 200/C/3/EMP/4/168) MRC - University of Warwick; CBI, 'Memorandum' 26 August 1970 (Archive no: MSS 200/C/3/EMP/4/168) MRC - University of Warwick CBI, 'Memorandum' 5 August 1970 (Archive no: MSS 200/C/3/EMP/4/168) MRC - University of Warwick

[944] Alfred Robens, *Committee on Safety & Health at Work 1970 – 1972 Vol.2 Selected Written Evidence* (HMSO 1972)

> The Report has come down so remarkably close to the line we suggested that it was felt that 'comment' could wait until the Government came up with firm recommendations for legislation – (for) if the Report was accepted any comment would be a duplication of our evidence.[945]

Furthermore, the committee's slant towards the CBI may have also been caused by the anti-union rhetoric they heard from many of the organisations interviewed.[946] There was surprisingly little critique about employers organisations contained in the exchanges between industry groups and the committee. Instead, much of the derision was aimed at unions and the under-performing and overstretched Inspectorates.[947]

4.0 The road to the Health and Safety at Work Act 1974

The report of the committee was published in 1972 with an accompanying volume of selected written evidence.[948] The central ethos of the report was that the primary responsibility for addressing the poor levels of occupational accidents and diseases lies with those who create the risks and those who work with them, 'Our present system encourages too much reliance on state regulation, and rather too little on personal responsibility and voluntary, self-generating effort'.[949] The *Work Study Journal* observed that these recommendations were designed to create 'a more self-regulating system for securing safety and health at work'.[950] Graham Moffat, also observed the emancipatory nature of the report, noting that although a critical role remained for State regulation albeit in an 'amended form', the report recommended 'a clear need

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[945] Theo Nichols, *The Sociology of Industrial Injury. Employment and Work Relations in Context* (Mansell 1997) p38

[946] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens

[947] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens; Ministry of Labour, 'RoSPA / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 14 June 1971 (Archive no: LAB 104/57) TNA – Kew Gardens

[948] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)

[949] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p7

[950] Work Study, 'General Review' (1972) 21 WS 10 p3, p11

for a more effective self-regulating system of control'.[951] Harold Walker, who had played a key role in crafting the terms of reference before his government lost power in 1970, saw that the final report espoused, 'The philosophy of voluntarism – of self-regulation and self–inspection – the retreat from the law – the idea that these matters are best left to industry'.[952]

Perhaps the most significant evidence of the self – regulatory spirit of the committee's recommendations was the TUC's reaction. The TUC was extremely critical of the *report*. A TUC working paper revealed the discontent:

> The Robens Report… (was) criticised by the trade union movement and others on various counts. The main criticisms have been that the Report advocates that the State's role should be to promote a policy co – operation and advice, rather than stronger enforcement of the statutes on safety and health. In fact, Robens describes legislation as one of the causes of apathy and tends to discredit the role of law as a means of improving standards.[953]

To quell the discontent of the unions, the then Secretary of State for Employment Maurice Macmillan addressed trade unions at the Conference on the Report of the Robens committee.[954] He reiterated throughout his brief speech that the committee's recommendation had met the approval of Sydney Robinson, the unionist on the committee and more importantly he tried to quell concerns about the nature of self – regulation:

> Now I know that the TUC is worried in particular about the Report's emphasis on the greater use of voluntary codes and standards, but I think that part of trouble here is simply a matter of words. The Report uses the word 'voluntary' to contrast with the word 'statutory'. But as I see it and understand it and as I understand the Report, an approved voluntary code would not be something to be observed or not,

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[951] Graham Moffat, 'The U.K Health and Safety at Work Act - A Reaction to Apathy' (1979) 3 LSB p27
[952] Harold Walker, 'Is Robens Strong Enough?' (1973) 10 JLP 1 p7
[953] J. McCarty, 'Health and Safety at Work Legislation: A Critical Study / Industrial Studies No.5 / Trade Unit Research Unit Ruskin College Oxford' 1974 (Archive no: HD 7272) TUCLC - London Metropolitan University
[954] TUC, 'Trade Union Congress Report of Proceedings at the Conference of the Report of the Robens Committee of Safety Health at Work' 12 October 1972 (Archive no: HD 7272) TUCLC - London Metropolitan University

something to choice. There would be a statutory obligation, but the precise means of implementing that obligation could be a voluntary code."[955]

Perhaps sensing that his explanation of the Robens Report was not believed by the disgruntled crowd, he left the conference abruptly without answering any questions from the floor.[956]

The emancipatory nature of the recommendations is best understood by looking at them on three levels; the workplace, non – governmental organisations and the British State.[957] Regarding the workplace, the committee reasoned that the most effective way to improve working conditions was by 'creating the conditions for more effective self-regulation by employers and workpeople jointly', using tools such as safety committees, education, advice, and voluntary standards to raise the standing of OHS in the workplace.[958] On the second level, the committee acknowledged the valuable work of industrial organisations and associations in formulating and coordinating accident prevention efforts, establishing joint standing committees and the growing spirit of cooperation. The committee believed that these arrangements should be allowed to grow 'without being unnecessarily hindered by legislation or the state'.[959] The third and the most fundament level concerned the state. There was a need to scale back the state's reactive legislative impulse that had produced nine main groups of Acts and 500 regulations, all of which could be simplified and reorganised under a single enabling Act. Such an act would be bolstered by voluntary standards and codes of practice instead of state-centric prescription. Through the use of voluntary standards and codes of practice, industry would be given greater responsibility for OHS regulation. For this new framework to work, a quasi-independent single authority to supervise and enforce OHS regulation was proposed. Referred to as the 'National Authority for

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[955] TUC, 'Trade Union Congress Report of Proceedings at the Conference of the Report of the Robens Committee of Safety Health at Work' 12 October 1972 (Archive no: HD 7272) TUCLC - London Metropolitan University
[956] TUC, 'Trade Union Congress Report of Proceedings at the Conference of the Report of the Robens Committee of Safety Health at Work' 12 October 1972 (Archive no: HD 7272) TUCLC - London Metropolitan University
[957] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016); Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)
[958] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)
[959] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)

Safety and Health at Work', it would be released from the day-to-day control of the central government, possessing its own director, staff and budget.[960]

The recommendations of the committee garnered significant acclaim from across the political spectrum. However, the *Robens Report* was just a document with no intrinsic power to bind Government to carry out its recommendations, and while state officials may have expressed support for the Report, implementation of the Report was another matter entirely. The real test came with transporting the Report's proposals into corresponding legislation.

4.1 The National Authority for Safety and Health at Work

Despite the lack of movement from the government, non–governmental organisations continued to work to fulfil Robens' vision. The proposal that received the most attention from non–governmental organisations was the autonomous 'National Authority for Safety and Health at Work'. The Authority imagined by the Robens Report was:

> A separate and self - contained organisation, clearly recognisable as the authoritative body responsible for safety and health at work former idea… it should have autonomy in day – to – day operations. Much of its work will be executive and technical in character, and it should be allowed to do it without unnecessary interference.[961]

The idea for such an Authority did not originate from *Robens Report*. The notion was conceived in the 1940s. It began with the idea of greater centralisation. In 1942, Djang wrote about the need to centralise and unify efforts.[962] In 1949, the TUC argued that the Factory Department should expand to become the 'Department of Health and Safety', a hub for all things OHS.[963] In 1956, an NJAC report noted that, rather than periodical and separated activities, 'there must be vigorous, more extensive, more sustained, better organised, and better informed voluntary action

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[960] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p38 - 39
[961] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972) p35 - 36
[962] T.K. Djang, *Factory Inspection in Great Britain* (George Allen & Unwin 1942)
[963] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p412, p481

by everyone in industry; planners, designers, managers, technicians, research workers, supervisors and workers all have an important contribution to make'.[964] In 1957, there was a much more precise vision of central housing, the Labour MP W.R. Rees–Davies argued for:

> A close cooperation, in particular, between the government, the safety organisation, the insurance companies, the employers, and through them the workers and the trade union movement… It is time to form a national organization, a safety council, for the purpose of achieving these objectives, with specialists chosen in these various fields to achieve them.[965]

Rees – Davies based his idea of a 'national organisation' on the National Safety Council;[966] he viewed it as 'a focal point of an accident prevention movement covering industry, transport, agriculture, home and factory accidents. Its function is the publication of all types of documents, posters, films, broadcasting, consultation and lectures'.[967] Similarly, in 1960, Williams suggested a 'Ministry of Health and Safety to direct and coordinate official machinery in connection with all activities relating to the health and safety of the community… no opportunity for teamwork would be denied. In fact, the opportunity would arise for closer cooperation and for more uniformity in practice'.[968] Thus, the idea was already in the ether, the committee's engagement with industry, government and academics exposed it to the idea of a National Authority.

4.2 Lobbying the government for the establishment of the National Authority for Safety and Health at Work

The TUC and CBI used their privileged access to campaign for the establishment of an autonomous Authority. Initially, the CBI outright rejected the need for an autonomous National

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[964] Ministry of Labour and National Service, *Industrial Accident Prevention A Report of the Industrial Safety Sub - Committee of the National Joint Advisory Council* (HMSO 1956) p8
[965] 'Industrial Accidents' HC vol 571 cc1625-37 (7 June 1957)
[966] The National Safety Council (NSC) was an American, non-profit and non- governmental public service organisation that promoted health and safety.
[967] 'Industrial Accidents' HC vol 571 cc1625-37 (7 June 1957)
[968] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960) p479 - 486

Authority,[969] a policy position they maintained from the 1960s until their submission of evidence to Robens Committee.[970] Even when the CBI came around to the idea, they remained cautious about an unrestrained National Authority. The organisation they envisaged was firmly planted within the Whitehall system, it was an organisation with an active Ministerial head who would be solely responsible for the safety and health of employed persons, and the Minister would be put in charge of the body by 'personally' chairing the body. The Minister would 'personally' appoint the Chairman, Executive Directors and members of the Managing Board and in consultation with the Treasury would determine the body's annual budgetary provision. This body was to function under the policy directives of a departmental minister.[971]

However, several circumstances gravitated both sides of industry towards establishing an autonomous National Authority. First, the popularity of the idea spread through Whitehall and eventually made its way into the *Robens Report*, the TUC and CBI had little choice but to concede to its inevitability. Second, the Authority was the last resort; it was hoped that such an Authority would reform the poor state of OHS. It became increasingly clear to both sides of industry that the Authority had the propensity to reverse the trend of rising accident rates and remedy the incomprehensible legislation.[972] Particularly for the CBI, which began to see that such an Authority would protect industry from not only 'politics' but also from ministerial interruptions and excessive government bureaucracy.[973] Third, both organisations needed regular 'victories' to appease their membership, controlling such a vital institution would be a significant triumph. The TUC began to see little value in solely relying upon the Labour Party to

[969] 'Proposed National Industrial Safety Organisation Paper L. 113, 66' 2 June 1966 (Archive No: MSS.200/C/3/EMP/4/54) MRC - University of Warwick
[970] 'Proposed National Industrial Safety Organisation Paper L. 113, 66' 2 June 1966 (Archive No: MSS.200/C/3/EMP/4/54) MRC - University of Warwick
[971] Safety, Health and Welfare Committee, 'Robens Committee Report Central Authority' 11 September 1972 (Archive no: MSS.200/C/3/EMP/4/4) MRC - University of Warwick
[972] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens; CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick
[973] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens; CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

promote their aims; rather they sought other ways to influence outcomes.[974] Mick Marchington

believed that this new focus led the TUC to push for positions of influence on national

authorities designed to devise and execute policy such as the Advisory Conciliation and

Arbitration Service, the Equal Opportunities Commission, Manpower Services Commission and

the Commission for Racial Equality.[975] For the CBI, failure to 'escort' the *Robens Report* to the

statute books was not an option.[976] The CBI believed that as long as the *Robens Report* was not

secured by legislation, it was in danger of being altered. The DE observed the tremendous

amount of pressure being placed on the CBI, 'It seems to be that their members are expecting

them to take some overt steps about Robens and they are tired of having nothing to report. No

doubt CBI members are hardly very restive'.[977] This should be seen in the context of their

significant membership decline in the 1970s.[978] David Marsh noted that companies of various

sizes were deeply unhappy with the CBI's performance and its ability to influence government.

The unrest resulted in the decline of their membership.[979] In the face of diminishing and falling

subscriptions, the CBI set their officials to work on an Authority that would showcase their

capability.

The success of the TUC and the CBI's project to establish an autonomous Authority was best

reflected in three crucial negotiations. Before the discussion of these negotiations, it is worth

noting that there was a marked difference between the CBI's eagerness for an autonomous

Authority and the TUC's tacit assistance. The vast majority of negotiations on the establishment

of the Authority were between the CBI and the DE. This can be explained by their close

relationship and also by the fact that the *Robens Report* was more the CBI's 'project' then it was

the TUC's. The CBI put so much energy into crafting the Authority to the extent that a DE

internal memorandum stated, 'The CBI want frankly to come as near as they can to employers

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[974] Mick Marchington, 'The Issue of Union Power' (1979) 1 ER 4 p3

[975] Mick Marchington, 'The Issue of Union Power' (1979) 1 ER 4 p3

[976] David Marsh, 'More on Joining Interest Groups' (1978) 8 BJPS 3 p380

[977] Ministry of Labour, 'Letter from Mr. Locke to Mr. Howells, Mr Harvey and Mr Wake' 4 January 1973 (Archive no: LAB 104/29) TNA – Kew Gardens

[978] David Marsh, 'More on Joining Interest Groups' (1978) 8 BJPS 3 p380

[979] David Marsh, 'More on Joining Interest Groups' (1978) 8 BJPS 3 p384

running the whole show themselves'.[980] However, the Department bluntly told the CBI that this was 'politically untenable'.[981] Thus, the CBI had to enlist the support of the TUC, and it became clear to the CBI officials that a core group of the DE's civil servants placed a disproportionate amount of 'political significance' on the demands of the TUC.[982] A joint project was crucial to the establishment of a National Authority, this seems to have been picked upon by the Department's officials, who noticed that the CBI 'appear happy to go along with the TUC' on certain issues 'in the hope of getting TUC support for the CBI line on other matters'.[983] The bargain struck appears to have been that if the TUC backed the CBI's campaign for an autonomous Authority, it would give the TUC support for statutory requirements for safety representatives and safety committees.[984]

The CBI and the TUC made numerous joint deputations to the DE, cementing their union by scrutinising every aspect of the Authority and ensuring that they were creating an autonomous body that would provide them both with maximum influence.[985] First, there were intense negotiations regarding the need for the *Health and Safety at Work Act* to be an 'enabling act'.[986] An enabling act was essential for the Authority to draft regulations as and when they became necessary without having to rely on the full parliamentary process.[987] Such a privilege was arguably essential for an administrative authority of this sort:

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[980] Ministry of Labour, 'Letter from Mr. Locke to Mr. Howells, Mr Harvey and Mr Wake' 4 January 1973 (Archive no: LAB 104/29) TNA – Kew Gardens
[981] Ministry of Labour, 'Letter from Mr. Locke to Mr. Howells, Mr Harvey and Mr Wake' 4 January 1973 (Archive no: LAB 104/29) TNA – Kew Gardens
Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens
Ewan Mitchell, 'Management Fear over New Safety Law', 74 IM 9 p34, p35
[982] Ministry of Labour, 'CBI/TUC Deputation to Discuss Robens Brief for Parliamentary Secretary' 12 February 1972 (Archive no: LAB 104/29) TNA – Kew Gardens
[983] Ministry of Labour, 'CBI/TUC Deputation to Discuss Robens Brief for Parliamentary Secretary' 12 February 1972 (Archive no: LAB 104/29) TNA – Kew Gardens
[984] Ministry of Labour, 'CBI/TUC Deputation to Discuss Robens Brief for Parliamentary Secretary' 12 February 1972 (Archive no: LAB 104/29) TNA – Kew Gardens
[985] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens
[986] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick
[987] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

> The authority of administrative agencies to make rules and regulations having statutory effect is a power of enormous consequences. In its effect upon the community, its exercise is of scarcely less importance than the actions of the Legislature itself. Rules and regulations, no less than statutes, lay down patterns of conduct to which those affected must conform.[988]

The second aspect of the negotiations was concerned with the character of the Authority. The TUC and the CBI were adamant that they should dominate the 'commission' of the Authority so that they could exercise control over the subordinate 'executive' of the Authority.[989] The CBI believed that the commission was the key to restraining the executive's enforcement operations. The DE emphasised that the CBI were anxious that the powers of the executive were not 'uncontrolled' and that the commission was able to set a limit on their use.[990] The DE appeased the CBI in this regard, but the CBI was still disappointed that Section 11 of the Health and Safety at Work Bill prevented the commission from 'giving to the executive any directions as to the enforcement of any of the relevant statutory provisions in a particular case'.[991] However, the DE explained that this was not a derogation from the 'control function' of the commission, but rather a means for the commission to avoid becoming subject to external pressure in any particular case. Thus, this provision did not interfere with the commission's power to direct the executive's overall enforcement policy.[992]

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[988] Bernard Schwartz, 'Delegated Legislation in America: Procedure and Safeguards' (2011) 11 MLR 4 p449
[989] Sirrs explains that DE officials decided to separate the Authority proposed by the committee into two separate, but closely linked statutory bodies: a 'Commission' and a 'Executive'. A two-tier structure had various advantages; it mirrored the approach to other employment services such as rehabilitation and training. Additionally, it eased inspectors' concern that they were subject to the control of trade unions and employers' associations.
Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p178 - 179
[990] Ministry of Labour, 'Note of a Meeting at CBI HQ to Discuss Further DE's Consultative Proposals on Health and Safety Legislation' 17 October 1973 (Archive no: Lab 104/20) TNA – Kew Gardens
[991] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick
[992] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

Moreover, the TUC and the CBI were equally adamant that professionals and experts should be excluded from the membership of the Commission so that the governing of OHS should be carried out by employers' associations and trade unions.[993] As the TUC stated:

> Experts, doctors, lawyers and industrial hygienists will all have a valuable role to play in finding out and conveying information about risks, hazards and precautions, but the final decisions themselves have to be taken by trade unions and employers."[994] The only pathway open to OHS organisations would be a peripheral role, they could not be allowed to bypass the Commission in order to raise a matter at ministerial level.[995]

Third, the negotiations surrounding the independence of the Authority were bitterly fought over; even seemingly unobtrusive clauses were scrutinised by their CBI and TUC officials in order to protect the organisation from even the remotest threat. For instance, a sub-clause of Section 10 of the *Health and Safety at Work Bill* revealed that the functions of the Authority were to be performed on behalf of the Crown. The CBI demanded its removal, complaining that such 'statute might adversely affect the independence of the commission'.[996] However, the DE officials alleviated their fears by ensuring them that the regulatory and enforcement responsibilities of the commission and the executive were of a kind which made Crown status necessary, having no real bearing on the Authority's independence.[997] Another example was Section 11 of the Bill, which placed a duty on the Authority to provide information to ministers. The CBI argued that such a request had the potential to provide ministers with unwarranted access leading to 'unnecessary intrusions on the independence of the commission.'[998] The DE quieted such claims and assured both sides of industry that such a clause was necessary to ensure

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[993] CBI, 'Minutes of a Safety, Health and Welfare Committee' 18 June 1974 (Archive no: MSS.200/C/3/EMP/4/6) MRC - University of Warwick; CBI, 'Confidential Minutes of the Safety Health and Welfare Committee' 11 September 1972 (Archive no: MSS.200/C/3/EMP/4/4) MRC - University of Warwick

[994] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p674

[995] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens

[996] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

[997] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

[998] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick

that government departments could be adequately informed where an overlap of interest occurs.[999]

Negotiations that centred on the consent of the Secretary of State for Employment consumed the most amount of energy. This was because this section went to the very core of the Authority's independence. The chief concern of the TUC and CBI was whether all the Authority's issued regulations and codes of practices were subject to the phrase 'the consent of the Secretary of State', without which the Commission would be unable to issue regulations. From the outset, the CBI had sought to eliminate the word 'consent' because it was felt that this would be 'damaging to its independence and contrary to the spirit of the Robens Report'.[1000] This was a rare occasion in which the Department did not falter. It could not afford to acquiesce to the demands of the TUC and CBI because Parliament would not allow any regulatory agency with such powers to be outside the ambit of a Ministry.[1001]

In hindsight, we can observe a tacit compromise; the formality of seeking the consent of the Secretary of State would remain, but in practice, the regulations could be submitted without fear of opposition from the Secretary of State.[1002] Graham Wilson observed that the Secretary of State never exercised his legal right to reject a regulation, and it has not been seriously challenged – let alone rejected – by Parliament.[1003] Even in the face of opposition from the IMF and the Conservatives, controversial regulations were still passed by the Secretary of State.[1004] Moreover, during the negotiations, the DE would have considered that it was too difficult to

[999] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick
[1000] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick; CBI, 'Minutes of a Safety, Health and Welfare Committee' 18 June 1974 (Archive no: MSS.200/C/3/EMP/4/6) MRC - University of Warwick
[1001] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick; CBI, 'Minutes of a Safety, Health and Welfare Committee' 18 June 1974 (Archive no: MSS.200/C/3/EMP/4/6) MRC - University of Warwick
[1002] CBI, 'Health and Safety at Work Act 1974 CBI Involvement and Outstanding Issues in Preparing the Legislation' 16 September 1974 (Archive no: MSS. 200/C/3/EMP/4/6) MRC - University of Warwick; CBI, 'Minutes of a Safety, Health and Welfare Committee' 18 June 1974 (Archive no: MSS.200/C/3/EMP/4/6) MRC - University of Warwick
[1003] Graham K. Wilson, *The Politics of Health and Safety* (Oxford University Press 1985)
[1004] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998)

exercise ministerial oversight once the Authority was established; Michael Asimow explained that the sheer breadth and depth of regulations produced by regulatory bodies could not be overseen by even the most accomplished government department. In a sense, the Secretary of State for Employment was merely the 'figurehead' of OHS.[1005] Furthermore, an Authority had the ability to bypass the Secretary of State by issuing 'informal regulations',[1006] thus allowing the Authority to make broad policy decisions through guidance memoranda, informal rules, and other policy devices.[1007]

The negotiations between the DE and the TUC and CBI culminated in a well–rounded blueprint of an autonomous Authority with wide-ranging powers. The only hurdle left was to get the blueprint through Parliament intact.

5.0 The Whitehall war

> The Regulatory Agency Model did not spring from premeditated efforts to improve regulatory governance, but rather is the outcome of political or bureaucratic conflict.[1008]

Upon the completion of the blueprint for a National Authority for Health and Safety, a 'Whitehall War' erupted.[1009] The paternal vestiges of the state were appalled that DE had agreed to establish such an autonomous authority. Michael Foot, the Secretary of State for Employment, commented:

> There occurred what was described in one of the papers presented to me as a prolonged and intensive period of interdepartmental consultation. What that means is that there was a first-class Whitehall row… I was informed that there had been a war which… was a classic in Whitehall history[1010]

[1005] Michael Asimow, 'Delegated Legislation: United States and United Kingdom' (1983) 3 OLJS 2 p253, p274
[1006] Robert Baldwin, 'Regulatory Legitimacy in the European Context: the British Health and Safety Executive' in Giandomenico Majone (ed), *Regulating Europe* (Routledge 1996)
[1007] James Hamilton and Christopher Schroeder, 'Strategic Regulators and the Choice of Rulemaking Procedures: The Selection of Formal vs. Informal Rules in Regulating Hazardous Waste' (1994) 57 LCP 2 p111
[1008] Jacint Jordana and David Levi-Faur, *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (Edward Elgar 2004) p308
[1009] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens
[1010] 'The Health and Safety at Work etc, Bill 1974' HC vol. 871 cols 286-394 (3 April 1974)

The regulation of OHS went to the very heart of what defined Government.[1011]   It was no longer just a cosy set of negotiations between the Department of Employment, trade unions, and employers' associations. The issue concerned several Government departments,[1012] including the Civil Service Department, Home Office, Lord Chancellor's Office, Treasury, Customs & Excise, Welsh Office, the Ministries of Defence, and Agriculture, Fisheries and Food, and the Departments of Energy, Trade and Industry, Health and Social Security and Education and Science.[1013] As Sirrs commented:

> Whitehall departmentalism constituted a significant practical and conceptual barrier to the more all-embracing vision of health and safety demanded by the Robens Report. It threatened to confine health and safety regulation within the work gates and propagate a fractured and disjointed system.

The conflict arose for a number of reasons. First, some departments feared that they would lose manpower and resources, and hence prestige, to an external, non – departmental body. Recollecting on the conflict, John Rimington, a former Director-General of the HSE, stated that, 'Many of those departments, at least seven, would lose segments of the department which they greatly valued'.[1014] This was substantiated by another former Director- General, 'It was a Whitehall battlefield, because essentially what we were doing was trying to get departments to give up their responsibilities, which they always hate doing, and push those into another body'.[1015]   The second reason was issues of overlap between departments and the proposed National Authority.[1016] The third reason revealed itself through the archives some officials

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[1011] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens

[1012] Ministry of Labour, 'Legislation to Implement Robens' 21 May 1973 (Archive no: Lab 104/52) TNA – Kew Gardens

[1013] Ministry of Labour, 'Health and Safety Bill – Working Group' 23 August 1973 (Archive no: LAB 104/220) TNA – Kew Gardens

[1014] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1015] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1016] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

viewed that the Authority was a threat to Parliamentary control.[1017] The most substantial

skirmish was between the Lord Chancellor's Office and the DE, both departments were locked

into a series of intense discussions, the Lord Chancellor's Office insisted that every code

generated by the Authority should be subject to Parliamentary approval. However, the

Department of Employment stood their ground and maintained that there would be no such

approval system for the enactment of regulations.[1018] With the help of the Civil Service

Department (CSD), the DE's blueprint of the National Authority survived the 'Whitehall War'.

Within just a month of the minority Labour government coming to power, Michael Foot

announced victoriously, 'We are glad that that Whitehall war has led to triumph all round. We

are prepared for the laurels to be shared by every Department in Whitehall so long as *we in the*

Department of Employment retain the sword, as we do. We believe, therefore, that a perfectly

proper arrangement has been reached (emphasis added)'.[1019]

6.0 The Flixborough tragedy

The ferocity of the explosion at the Nypro factory in Flixborough prevented any reneging on the

concessions given to the DE.[1020] The Flixborough Works of Nypro (UK) Ltd was virtually

demolished by a massive explosion which killed 28 people, outside of the works, many more

were injured and property damage extended over an area that included 1,821 houses and 167

shops and factories.[1021] Flixborough was unlike anything that had happened before. The public

did not believe that such devastation could be unleashed by a factory; aeroplanes, trains, road

transport and ships had been instrumental in causing a considerable loss of life and serious

injury, but such terrible things had never before happened in a factory. [1022] 'Now', as one

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[1017] Ministry of Labour, 'Legislation to Implement Robens' 21 May 1973 (Archive no: Lab 104/52) TNA – Kew Gardens
[1018] Ministry of Labour, 'Note of a Meeting to discuss the Health and Safety at Work etc. Bill L. 484 74' 28 March 1974 (Archive no: LAB 104/29) TNA – Kew Gardens
[1019] 'The Health and Safety at Work etc, Bill 1974' HC vol. 871 cols 286-394 (3 April 1974)
[1020] James Tye, 'A Safer World' *The Times* (London, 14 May 1976)
[1021] Boston Globe, 'British Hunt Victims of Plant Explosion' (Boston, 3 June 1974) 1
[1022] The Times, 'New Rules after Needed after Flixborough' (London, 2 October 1974)

observer witnessed, 'everything was changed.'[1023] The images of the devastated area displayed to millions of Britons played a vital role in this 'change'.[1024] Flixborough removed any inclination to further delay the passage of the Health and Safety at Work Bill and, a few weeks after the tragedy, the *Health and Safety at Work Act 1974* was passed.

7.0 The Health and Safety at Work Act 1974

The 'blueprint' had made its way through the Houses with the passing of the Health and Safety at Work Act (HASAWA) in July 1974. Seldom observer disagreed that HASAWA was a bold and emancipating piece of legislation. It marked a significant departure from the *factories acts*. First, it reversed the exclusionary approach to the involvement of non–governmental organisations. The CBI and TUC's endeavours were rewarded with a porous and non–governmental-friendly National Health and Safety Authority, re-titled the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE). Second, HASAWA offered a new framework based on less prescriptive and more goal-based regulations, supported by guidance and codes of practice. Third, HASWA was an enabling Act which acted as an umbrella so that secondary legislation or regulations can be made 'under it'.[1025] Fourth, HASAWA extended protection well beyond the traditional industrial sphere to reach another 8 million people working in local government, healthcare, education and a host of other services. Fifth, HASAWA imposed general duties to preserve the health and safety of members of the public who may be affected by work activities.

The HSE's first Director-General described HASAWA as 'a bold and far-reaching piece of legislation'.[1026] The enactment of HASAWA was a watershed moment, enabling a

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[1023] D. Offord, 'Can HSE Prevent another Flixborough?' in HSE, *Her Majesty's Inspectors of Factories, 1833-1983: Essays to Commemorate 150 Years of Health and Safety Inspection* (HMSO 1983) p57 - 60
[1024] Industrial Management, 'Gone to Blazes' (1977) 77 IM 1 p23
[1025] Helen Lingard and Stephen M. Rowlinson, *Occupational Health and Safety in Construction Project Management* (Spon Press 2005)
[1026] Hugh Robertson, 'The Health and Safety at Work Act turned 40' (2015) 65 OM 3 p176

fundamentally different regulatory system to emerge. Moreover, it was a recognition that the existing system was ill-suited to keep pace with industrial and technological developments.

8.0 Conclusion

The enactment of HASAWA was the culmination of a long process of reform. It saw ideas that had been discussed for many decades finally being enacted into law. However, this was also a process that caused considerable conflict within and around government. The notion that OHS would be governed and policed by a quasi-autonomous authority concerned many government officials, as OHS had been a core area of government for nearly two centuries. Upon viewing the proposals for what would become the *Health and Safety at Work Act 1974*, a commentator recalled,

> I confess that when I first learned of the proposals in the then draft Health and Safety Bill, I thought that they could never be made to work. Would ministers really stand aside and pay large sums of public money to semi-independent organisations which they could not control, from which they could get no kudos, and whose activities were difficult to understand and value?[1027]

In spite of the potential conflict, the DE embraced the notion of an autonomous Authority. This appears to be due to two reasons. First, as opposed to other government departments, the DE had decades of experience with corporatism. Disseminating so much responsibility to the CBI and the TUC was not as radical as it seemed to other departments. The DE was confident that a tripartite structure would have a positive effect on the regulation of OHS.[1028] Second, the DE may have been more receptive for a solution than other departments because it felt the brunt of most of the problems associated with OHS. Since it had the most extensive responsibilities of OHS, the spotlight regularly fell on the DE when matters went awry. OHS was the 'hot potato' of the day which other departments could 'toss around' when it became too hot. However the

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[1027] John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed; on 25 October 2016
[1028] Robert Baldwin, 'Regulatory Legitimacy in the European Context: the British Health and Safety Executive' in Giandomenico Majone (ed), *Regulating Europe* (Routledge 1996) p89

DE's wide responsibilities did not allow this, so it had its 'hands burnt' regularly. [1029] Aside from the DE's institutional responsibilities to OHS, the public connected the DE to the entire spectrum of OHS because OHS was erroneously seen as an issue just within factories. Thus, other departments that oversaw non–factory elements of OHS were not held as responsible.[1030]

The uneasy predicament of the DE prompted opposing government departments to let the DE 'retain the sword'. Such sentimentality and tradition had to give way to the realities of the day. There was an increasing sense of ungovernability; the DE was overloaded with matters that were beyond its capability. Thus, the enactment of HASAWA was a means for the government to 'pass the baton'. A Report published just a few years after the enactment of HASAWA spoke to this motivation, 'Because the work is more effectively carried out by a single purpose organisation rather than by a government department with a wide range of functions; in order to involve people from outside of government in the direction of the organisation'.[1031] Through the enactment of HASAWA, the government took a step back from the delivery of services.

[1029] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO 1972)
[1030] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)
[1031] Leo Pliatzky, *Report on Non-Departmental Public Bodies* (HMSO 1980)

Chapter Six: The OHS Network (1974 – 1979)

1.0 Introduction

The introduction of HASAWA was not the end of the story. Far from it, it was the beginning of a new era in OHS. There were two major consequences of the enactment of the HASAWA. The first of which was the 'hollowing out of the state'. The second consequence of the HASAWA was that the 'hollowness' of the state was 'filled' by the OHS Network.

1.1 The layout of the chapter

This chapter commences with a discussion of the hollowing out of the state that followed the enactment of the *Health and Safety at Work Act 1974* (HASAWA). The 'hollow state' is a metaphor used to describe the practice of governments contracting out service provision to third parties.[1032] In the latter decades of the twentieth century, the 'hollow state', 'state of agents', the 'substitute state', 'disarticulated state', 'third party state', 'networked state', 'enterprise state' 'neo-managerialist state' and 'marketized public administration' were all attempts to explain how conventional 'government' had ceded some of its core functions.[1033] In this light, HASAWA established the Health and Safety Commission and the Health and Safety Executive (HSC/E) to oversee OHS policy and implementation. Through the creation of these bodies, the core executive conceded its capacity 'outwards', which resulted in the hollowing out of the state.[1034] There was now a greater degree of distance between the government and the services that it funded.

[1032] Chris Skelcher, 'Changing Images of the State: Overloaded, Hollowed-Out, Congested' (2000) 15 PP 3 p3; Michael Saward, 'In Search of the Hollow Crown' in Patrick Weller Herman Bakvis and R.A.W. Rhodes (eds), *Countervailing Trends in Core Executives* (Palgrave Macmillan 1997); R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997); Mark Bevir and R.A.W Rhodes, *Interpreting British Governance* (Routledge 2003); Mark Bevir and R.A.W Rhodes, 'Public Administration without Foundations: The Case of Britain' (1998) 20 ATP 1 p3

[1033] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997)

[1034] Mark Bevir and R.A.W Rhodes, 'Public Administration without Foundations: The Case of Britain' (1998) 20 ATP 1 p3

The following section looks at the OHS Network that filled the hollow state. Individuals and organisations from the public, private and voluntary sectors working for the betterment of OHS came together to form the OHS Network. The formation of the OHS Network was among the earliest signals that the hollowed state was disintegrating into self–organising inter-organisational networks.[1035] The notion of a 'network' came out of a range of 'decentred' accounts that sought to document the shift from 'hierarchically organized, unitary systems of government that govern by means of law, rule and order, to more horizontally organized and relatively fragmented systems of governance that govern through the regulation of self-regulating networks'.[1036] The network form exists when many 'nodes' (experts, governmental and non–governmental organisations) are linked to many other 'nodes', which are all 'tied' together by a common area of interest.[1037] Numerous metaphors have been used to describe this configuration, 'lattice', 'web' and 'matrix', network' was but one of these. All of which sought to evoke the logic of decentralised and integrated connectivity which defined the essence of the OHS Network.[1038]

The last section of the chapter seeks to frame the activities of the OHS Network to show its dynamism and uniqueness. Eva Sørensen and Jacob Torfing's typology of a governance network will be utilised for this task. Their typology outlined five crucial features; '(1) a relatively stable horizontal assemblage of interdependent, but operationally autonomous actors (2) who interact through negotiations (3) which take place within a regulative, normative and

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[1035] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997)

[1036] Eva Sørensen, 'Democratic Theory and Network Governance' (2002) 24 ATP 4 p693; Manuel Castells, *The Rise of the Network Society: The Information Age: Economy Volume 1* (2nd edn, Wiley Blackwell 2011); Jan van Dijk, *The Network Society* (Sage Publications 2012); Jan Kooiman (ed), *Modern Governance: New Government-Society Interactions* (Sage Publications 1993); Walter J.M. Kickert Erik-Hans Klijn and Joop F M Koppenjan (eds), *Managing Complex Networks Strategies for the Public Sector* (Sage 1997); Jan van Dijk, *The Network Society* (Sage Publications 2012); Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197; Eva Sørensen and Jacob Torfing (eds), *Theories of Democratic Network Governance* (Palgrave Macmillan 2007)

[1037] Darin Barney, *The Network Society* (Polity Press 2004)

[1038] Darin Barney, *The Network Society* (Polity Press 2004)

cognitive framework (4) that to a certain extent is self-regulating; and (5) which contributes to the production of 'public purpose'.[1039]

2.0 The hollowing of the state

The enactment of HASAWA 'hollowed out the state'.[1040] Through this Act, power and responsibilities shifted from the central government to non–departmental public bodies and non–state actors. Before its enactment, government departments played a much larger role in service delivery and policy making. However, after HASAWA was introduced, government departments devolved responsibilities to non–departmental public bodies and non–state actors to carry out service delivery and policy making. This is best exemplified in an exchange between Harold Walker, Parliamentary Under-Secretary of State of the Department of Employment, and Bob Cryer, a Labour backbencher, in which the latter attempted to introduce a bill to limit the maximum weight a worker can lift but was promptly stopped by Walker and told that the Government now regarded amendments to the law as the *prerogative* of the HSC.[1041] This exchange is particularly pertinent considering that Walker was one of the architects of the Robens Committee and HASAWA, thus, re-emphasising that delegation was in line with the original intentions of OHS reform. Correspondingly, we find that the HSC/E presented itself to the public as 'independent of government'.[1042]

With the passing of HASAWA in 1974, the Health and Safety Commission (HSC) was established and its operational arm the Health and Safety Executive (HSE) was created the following year. Referred collectively as the HSC/E. Former HSC Chair Bill Callaghan noted that the 'HSC/E model' was wholly unique within Whitehall; it combined two separate and distinct bodies which performed their functions on behalf of the Crown, each with a separate

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[1039] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197; Eva Sørensen and Jacob Torfing (eds), *Theories of Democratic Network Governance* (Palgrave Macmillan 2007); Eva Sørensen, 'Democratic Theory and Network Governance' (2002) 24 ATP 4 p693

[1040] Chris Skelcher, 'Changing Images of the State: Overloaded, Hollowed-Out, Congested' (2000) 15 PP 3 p3

[1041] A. Wilson, 'Danger Men at Work' *The Guardian* (London, 28 May 1976)

[1042] The Times, 'Health and Safety Commission' *The Times* (London, 18 March 1975)

legal personality yet gradually intertwined both by legislation and a series of administrative developments.[1043] Regarding the HSC, sections 1, 10 and 11 of the HASAWA endowed it with a mandate to take the appropriate steps to secure the health, safety and welfare of people at work and the public generally against risks arising out of a work situation. The HSC was central to reforming the existing system of regulations, proposing new regulations and codes of practice, providing information and advice and conducting research. The HSC was a tripartite institution. Three members of the HSC were nominated by the CBI, three were nominated by the TUC, and two were nominated by local authorities. Robert Baldwin noted that the local authorities were involved to represent the general interest of society.[1044] However, in practice, the power levers of HSC policymaking remained firmly in the TUC and CBI.[1045] The first Chair of the HSC was William (Bill) Simpson a former General Secretary of the Foundry section of the Amalgamated Union of Engineering Workers (AUEW) and occasional chairman of the Labour Party.

Legally, the HSE was subordinate to the HSC; its remit was to follow the directives of the HSC. Also, under section 18 of the HASAWA, the HSE was charged with making 'adequate arrangements for the enforcement' of OHS legislation. The HSE brought together nearly 3,000 members of staff from nine separate government departments and inspectorates to be headed by a 'three-person statutory body' consisting of a Director General, a Deputy Director General and another senior official.

The establishment of the HSC/E significantly hollowed out the state. Specifically, the loss of capacity of the core executive to alternative delivery systems.[1046] Linking the hollowing out of the state to the creation of autonomous agencies, David Vogel commented, 'By turning over the task of establishing standards to the representatives of the interest groups directly affected by

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[1043] Bill Callaghan, 'The Health and Safety Commission and Executive' in Linda Dickens and Alan C. Neal (eds), *The Changing Institutional Face of British Employment Relations* (Kluwer Law 2006) p38
[1044] Robert Baldwin, 'Regulatory Legitimacy in the European Context: the British Health and Safety Executive' in Giandomenico Majone (ed), *Regulating Europe* (Routledge 1996)
[1045] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[1046] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 2003)

them, the British system reduced the direct role of government in the regulatory process'.[1047]

Although there was a reduction in the direct role of government, it is important to stress that the HSC/E carried out their activities under the 'shadow of hierarchy', Rhodes explained,

> Many networks work in the shadow of hierarchy; that is, they are dependent on central agencies for legal authority and financial resources but are at arm's length for implementation. In turn, because they include the private and voluntary sectors, the networks provide more resources for central agencies.[1048]

The 'shadow of hierarchy' can be explained by observing the 'negotiated independence' of the HSC/E. The DE's had three broad areas of restrictions in which the HSC/E had to negotiate its independence. These restrictions were not entirely rigid and would 'give way' and loosen from time to time. This 'negotiated' independence could be observed in three matters. First, the main restriction was the HSC/E's specified mandate. On occasion, when the HSC/E's activities or even its proposals went beyond its mandate, the DE would deter such incursions. An example was the refusal to allow the HSC/E to inspect, investigate and prosecute crown bodies.[1049] At the time of the HSC/E's establishment, crown authorities such as government departments were not subject to the same sort of legal sanctions as any other employer.[1050] However, such restrictions were not completely rigid. They could be disregarded if the case was well-argued or deemed necessary, as in the case of the government's eventual agreement to allow the HSC/E to pursue certain crown authorities.

Second, the DE held on to the 'purse strings', under the watchful of the Treasury, the DE oversaw the budget of the HSC/E.[1051] Plausibly, the DE could use the HSC/E's annual budget as a means to alter the behaviour or restrict the reach of the HSC/E. Cutting the budget of the HSC/E was politically tenable given the fact that OHS was much lower down on the list of other

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[1047] David Vogel, *National Styles of Business Regulation: A Case Study of Environmental Protection* (Beard Books 2003) p200

[1048] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017) p75

[1049] In Brief, 'Crown not Above the Law says Safety Chief' (1977) 77 IM 10 p5

[1050] In Brief, 'Crown not Above the Law says Safety Chief' (1977) 77 IM 10 p5

[1051] Robert Baldwin, 'Regulatory Legitimacy in the European Context: the British Health and Safety Executive' in Giandomenico Majone (ed), *Regulating Europe* (Routledge 1996)

'politically sensitive' areas under the purview of the DE.[1052] Nonetheless, such actions were not present in the first six years of the HSC/E's operations. In fact, the OHS budget increased.[1053]

Third, HASAWA imbued the Secretary of State with powers to modify and reject regulations. However, *in practice*, the government exercised minimal oversight over the HSC/E's activities. The HSC/E regulations went unchallenged in Parliament and the courts.[1054] Writing in the mid-1980s, Graham Wilson added that, 'The Secretary of State for Employment has not so far exercised his legal right to reject a regulation passed by the HSC, and no regulation has been seriously challenged — let alone rejected — by Parliament'.[1055]

2.1 The reaction to the hollowing of the state

The powers granted to the HSC/E did not go unnoticed, Jon Tinker noted in 1976 in the *New Scientist* that the HSC/E were endowed with 'broad powers… the degree of political control of the HSE is considerably less than that over other Whitehall agencies… in practice… it will be responsible to no-one, neither department nor minister. This seems somewhat undemocratic'.[1056] Correspondingly, an article in the *Observer* shared a similar sentiment. It centred on the fact that the HSC/E and other agencies operated behind a curtain. The hiring and firing of individuals along with their activities were shielded from public view.[1057]

Furthermore, several articles in the *Times* spoke to this new independence.[1058] At the end of 1975, a poignant article was written by Eric Wigham.[1059] Fundamentally, he saw that the DE had undertaken an 'important experiment'. He raised many points about the consequences of 'hiving off' powers to autonomous agencies. He noted that the release of responsibilities left the

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[1052] L. Kenton, 'Slackness in the Safety Net' (1973) 73 IM 4 p24
[1053] L. Kenton, 'Slackness in the Safety Net' (1973) 73 IM 4 p24; Phillip Holland, *The Governance of Quangos* (Adam Smith Institute 1981)
[1054] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p203
[1055] Graham Wilson, *The Politics of Safety and Health: Occupational Safety and Health in the US and the UK* (Clarendon Press 1985) p28
[1056] Jon Tinker, 'HMPI and Integrated Pollution Control' (1976) 69 NS 984 p794
[1057] Robert Taylor, 'Perks for the Brothers' *The Observer* (London, 4 September 1977) 7
[1058] The Times, 'Powerful Influence Behind Scenes' *The Times* (London, 6 November 1978) 25
[1059] Eric Wigham, 'How Much Authority for the Manpower Services?' *The Times* (London, 2 December 1975) 17

'those at St James Square' more time to sit back and strategise. Coordination was difficult and time-consuming when it was 'under a single control', however, with the creation of autonomous agencies, adequate attention could be given to a single task. He also pointed out the release of responsibilities was reflected in staffing levels. In 1974, the staff of the DE decreased, while the staff of their regulatory agencies increased. The DE employed 23,141 in 1975 compared to 35,263 just a year before. Also, there were only three Deputy Secretaries employed instead of four. While the DE's autonomous agencies surpassed this number, employing around 25,047 members of staff.[1060] Another article in 1977 questioned whether the DE should not be disbanded since it was merely a 'shell'.[1061] It was argued that the DE had spent the 1970s 'hiving off' its responsibilities to interest groups, which had led to the DE becoming a 'rump, merely monitoring the activities of these agencies'.[1062] Given the radical nature of the HSC/E's newfound autonomy, there should have been more press coverage, but the lack of coverage may have been because OHS had never been not particularly newsworthy.[1063]

Behind the walls of government, there was still some apprehension around what functions would be submitted to the HSC/E.[1064] However, the most vocal reaction was expressed by the Conservative backbencher Philip Holland. The self – proclaimed 'quango hunter' viewed autonomous agencies like the HSC/E with great suspicion, as they were beyond the reach of Parliament, but able to issue 'commands, instructions and advice that must be obeyed' without any debates in Parliament, much less the approval of Parliament.[1065] They were not subject to public scrutiny, yet they had a role in the processes of government and were funded by the

[1060] Eric Wigham, 'How Much Authority for the Manpower Services?' *The Times* (London, 2 December 1975) 17
[1061] Rodney Lowe, 'After Sixty Years of Ups and Downs, is a Labour Ministry Really Necessary?' The Times (London, 10 January 1977) 12
[1062] Rodney Lowe, 'After Sixty Years of Ups and Downs, is a Labour Ministry Really Necessary?' *The Times* (London, 10 January 1977) 12
[1063] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[1064] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture, October 9, 2008' (*RoSPA*, 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016
[1065] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)

government. He saw himself as a warner of things to come; Parliament had failed to understand the implications of the establishment of the HSC/E, 'power was passing into the hands of unelected, unrepresentative executive nominees'.[1066] Holland was supported by Madsen Pirie, the founder and President of the Adam Smith Institute. From the late 1970s, they launched 'punchy and dramatic' awareness campaigns, one of which included a photo of Howard holding up a long page of 'quango' names to signify the government's delegation to agencies like the HSC/E.[1067] Though their exaggerated apocalyptic warnings were not shared by most parliamentarians, the quasi-autonomous non-governmental organisations 'quangos' became a source of debate from the late 1970s.

The first parliamentary debates on this issue revealed much about the initial concerns of creating autonomous agencies to carry out what was formerly 'government work'.[1068] First, what exactly was being created? There was much debate about their definition. The inability to define bodies like the HSC/E spoke to their newness. There was also significant debate about the norms of utilising such bodies. It was argued that creating quasi-autonomous agencies should be restricted to exceptional circumstances.[1069]

Parliamentary concern was accompanied by a growing body of literature on governance in the 1970s.[1070] Dissatisfied with the scholarship of the period, scholars began to look at patterned interactions between public and private actors in the British political system.[1071] Something was happening in – between the 'spaces' of government.[1072] Rhodes recollected the awareness of a

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[1066] Phillip Holland, *The Governance of Quangos* (Adam Smith Institute 1981) p20 - 21
[1067] Madsen Pirie*, Think Tank*: *The Story of the Adam Smith Institute* (Biteback Publishing, 2012)
[1068] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)
[1069] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)
[1070] Louis Meuleman, *Management and the Metagovernance of Hierarchies, Networks and Markets: The Feasibility of Designing and Managing Governance Style Combinations* (Physica - Verlag 2008)
[1071] Tanja A. Borzel, 'Networks: Refied Metaphor or Governance Pancea' (2011) 89 PA 1 p49
[1072] Tanja A. Borzel, 'Networks: Refied Metaphor or Governance Pancea' (2011) 89 PA 1 p49; R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

change in the 1970s that was 'shaking off the old order'[1073]; the crumbling of the 'Westminster model.'[1074] As a young researcher, Rhodes recalls stumbling upon this new direction of scholarship when he attended his first conference in the early 1970s.[1075] He witnessed the utilisation of organisational, public management and public policy making theories to explain the transition from top-down hierarchal government towards a more horizontal mode of governance.[1076] Decades later, Michael Marinetto corroborated Rhodes' observation of the 'new wave of theoretical currents on the state' that emerged from the 1970s onwards.[1077] Correspondingly, Stephen P. Osborne remarked that a hundred years of studying the traditional public administration ended in the late 1970s, it was brushed aside in the pursuit of studying new forms of government as if it 'counted for nothing in this momentous shift'.[1078]

New insights targeted the Westminster model as a venue of criticism and scepticism; another model was needed to explain the change. Having no precedent in the British literature to explain this occurrence, the new wave of scholarship was compelled to draw from the American literature.[1079] These studies allowed British scholars to intellectually 'challenge' the traditional and dominant Westminster model,[1080] and construct the first major criticisms of hierarchal conceptions of politics. British scholars utilised A.F. Bentley and David Truman's works which placed great emphasis on the 'fluid perspective' of the political process.[1081] These works pointed

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[1073] Mark Bevir, *Public Governance* (SAGE Publications 2007); R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford University Press 2017)

[1074] Mark Garnett and Philip Lynch, *Exploring British Politics* (Routledge 2016); Mark Bevir, *Public Governance* (SAGE Publications 2007); R.A.W. Rhodes, Network Governance and the Differentiated Polity: Selected Essays, Volume 1 (Oxford University Press, (2017)

[1075] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

[1076] R.A.W Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

[1077] Michael Marinetto, *Social Theory, the State and Modern Society; The State in Contemporary Social Thought* (Open University Press 2007)

[1078] Stephen P. Osborne, 'The New Public Governance' (2006) PMR 8 3 p377

[1079] Mark Bevir and R.A.W. Rhodes, Interpreting British Governance (Routledge 2003); R.A.W Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017); Peter John, *Public Policy* (Routledge 2012)

[1080] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)

[1081] A.F. Bentley, *The Process of Government* (University of Chicago Press 1967); David Truman, *The Governmental Process: Political Interests and Public Opinion* (Greenwood Press 1981)

to the presence of horizontal relations between government, administration and organised interests.[1082]

2.2 The hollowing of the state?

It is important to highlight that the creation of quasi-autonomous agencies like the HSC/E was not seen by all observers as a hollowing of the state. Rather, some factions argued that the power of the executive had increased.[1083] It was argued that the creation of HSC/E expanded the corporate state and it empowered government departments at the expense of Parliament.[1084] Much of this critique came from the Conservative backbenches. However, it was seemingly more to do with party politics than any robust and disinterested analysis. The Labour government was charged with cronyism and helping out their 'friends' with public appointments. Labour ministers often replied to this charge that Conservatives were guilty of similar actions during their time in government.[1085]

Nonetheless, there were much more scholarly arguments, which provided the early theorists with an opportunity to refine and contextualise their ideas about the hollow state. One opportunity came very early via the work of Michael Saward, who asserted that there were no significant signs of hollowing out, even when it was shown that ministers relinquished their day—to—day control to autonomous agencies.[1086] Rather, the state was redefined and reshaped, not hollowed out. He based his assertion on two factors. The first was one of intention; the executive *wanted* to get rid of some functions, and as a result, there is no loss. The second was that the creation of an agency separated politics and administration, which meant the executive could exercise more

[1082] A.F. Bentley, *The Process of Government* (University of Chicago Press, 1967); David Truman, *The Governmental Process: Political Interests and Public Opinion* (Greenwood Press 1981); Patrick Kenis and Volker Schneider, 'Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox' in Bernd Marin and Renate Mayntz (eds), *Policy Networks. Empirical Evidence and Theoretical Considerations* (Boulder 1992)
[1083] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)
[1084] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)
[1085] 'Quasi – Autonomous Non – Governmental Organisations' HL vol 396 cc716-36 (15 November 1978); 'Crown Agents' HC vol 957 cc1351-5 (10 November 1978); 'New Clause No. 1' HC vol 959 cc1439-98 (6 December 1978)
[1086] Michael Saward, 'In Search of the Hollow Crown' in Patrick Weller Herman Bakvis and R.A.W. Rhodes (eds), *Countervailing Trends in Core Executives* (Palgrave Macmillan 1997)

control without bureaucratic distractions. Ministers gain a new flexibility to manoeuvre and a capacity to focus their efforts on selected issues.[1087]

Though there is much validity in both of these points, for two crucial reasons, they are not enough to dislodge the hollowing out of the state thesis. Rhodes argues convincingly that the executive's motive for contracting out its functions is irrelevant; 'a function willingly lost is still a function lost'.[1088] The executive could no longer carry out a function that it used to carry out. Second, the ability of the executive to concentrate on core issues was offset by the fact that the executive had less personnel and expertise than it had before the creation of autonomous agencies. The creation of agencies such as the HSC/E often resulted in a mass exodus of personnel from government offices to the newly formed regulatory agencies.[1089] Moreover, Rhodes observes that evidence of increased focus has not been produced.[1090]

Though Saward's *explicit* arguments were rebutted by Rhodes, Saward's *implicit* stance was not so easily dismissed, that is, the rejection of the arbitrary distinctions between the Westminster model and the hollow state which Rhodes was guilty of exaggerating, although in recent years he moderated his arguments.[1091] Saward asked the questions that would ultimately lead to the later generations of governance theorists rightfully questioning the veracity of such sharp distinctions.[1092]

The rush to make such sharp distinctions may have been a reaction to the momentous shifts which were not fully understood.[1093] Also, an overzealousness to 'finish off' the lingering

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[1087] Michael Saward, 'In Search of the Hollow Crown' in Patrick Weller Herman Bakvis and R.A.W. Rhodes (eds), Countervailing Trends in Core Executives (Palgrave Macmillan 1997)
[1088] R.A.W Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 2003) p17
[1089] Eric Wigham, 'How Much Authority for the Manpower Services?' *The Times* (London, 2 December 1975) 17; Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014)
[1090] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 2003)
[1091] R.A.W Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017)
[1092] Felicity Matthews, 'Governance and State Capacity' in David Levi-Faur, *The Oxford Handbook of Governance* (Oxford University Press 2012)
[1093] Mark Bevir, *Democratic Governance* (Princeton University Press 2010) p30

Westminster model may have compelled scholars to uncritically utilise the work of neoliberals.[1094] Sharp distinctions came out of the neoliberal discourse which disparaged traditional government and looked for a contrasting term to overemphasise the beloved 'hollow state activity' they witnessed. The notion of 'governance' offered them such a concept. It enabled them to distinguish between big government (rowing) and appropriate governance (steering).[1095] Though notions of rowing and steering help explain much of the arrangements in OHS, it was not as dogmatic or static as the initial studies suggested.[1096] Instead of a complete hollowing of the state, after 1974, this area saw a shift of decision–making so that policy was formulated and implemented across a plethora of *governmental* and non - *governmental* institutions, mechanisms and processes ordinarily referred to as 'governance'. Very few places offer a better example of this shift than the OHS Network.

3.0 The OHS Network

The hollowing of the state enabled a more cohesive and extensive network to develop, namely, the OHS Network. Networks are central to understanding the hollowing of the state.[1097] Individuals and groups from the public, private and voluntary sectors that worked for the betterment of OHS came together to form the OHS Network. 'Membership' to the OHS Network was based on contribution to the policy and practice of OHS. In line with Rhodes, as long as a party 'has an interest in a policy sector, the resources to affect outcomes, and a need for other resources (which it does not possess) to pursue its policy objectives', it occupies a place within the OHS network.[1098] Though a rudimentary and less cohesive regime existed before 1974, it did not reach its potential; the disparate, poorly resourced, and government-controlled

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[1094] Perri 6, 'Governance: If Governance is Everything, Maybe it's Nothing' in Andrew Massey and Karen Johnston (eds), *The International Handbook of Public Administration and Governance* (Edward Elgar 2015)

[1095] Mark Bevir, *Democratic Governance* (Princeton University Press 2010) p30

[1096] David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (Prentice Hall 2000); Emanuel Savas, *Privatization: The Key to Better Government* (Chatham House 1987)

[1097] R.A.W. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 2003) p19

[1098] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays* (Oxford University Press 2017) p65

Inspectorates that preceded the HSC/E were not sufficient 'nuclei' for organisations to gather around.[1099] Organisations saw little authority and attraction to the Inspectorates because of the latter's subordination to Government departments and the ability to legislate was placed firmly in the hands of the Ministries.[1100] Much of this changed with the establishment of the HSC/E.[1101] A network is a collective of mutually dependent actors, which cluster around a problem area.[1102] This concept had its beginnings in network theory, which sought to explain how communities emerge from patterns of relationship among individuals in different settings.[1103] In the 1960s, the conversation moved from individuals towards organisations. It was part of the growing realisation that organisations are not isolated entities but part of a larger environmental system.[1104] Now with the focus on organisations, there was a move to understand their content; what service did they deliver? What issues did they pursue?[1105] In the latter decades of the twentieth century, such questions were asked within the field of governance.[1106] Networks became a focal point to understand a new form of governance that arose in situations typified by high levels of interdependence between organisations 'where hierarchical forms of command

[1099] Seb Schmoller and John Grayson, 'Studies for Trade Unionists: Safety Representatives and the Factory Inspectorate' (1980) 6 WEA 24 p1; Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens

[1100] John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[1101] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture, October 9, 2008' (*RoSPA*, 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1102] Erik Hans Klijn and Joop Koppenjan, *Governance Networks in the Public Sector* (Routledge 2016)

[1103] Jacob Levy Moreno, *Who Shall Survive?: Foundations of Sociometry, Group Psychotherapy, and Sociodrama* (Beacon House 1934); Zachary P. Neal, *The Connected City: How Networks are Shaping the Modern Metropolis* (Routledge 2013) p14; Robyn Keast, 'Network Theory Tracks and Trajectories: Where from, Where to?' in Robyn Keast Myrna Mandell and Robert Agranoff (eds), *Network Theory in the Public Sector Building New Theoretical Frameworks* (Routledge 2014)

[1104] Robyn Keast, 'Network Theory Tracks and Trajectories: Where from, Where to?' in Robyn Keast Myrna Mandell and Robert Agranoff (eds), *Network Theory in the Public Sector Building New Theoretical Frameworks* (Routledge 2014)

[1105] Robyn Keast, 'Network Theory Tracks and Trajectories: Where from, Where to?' in Robyn Keast Myrna Mandell and Robert Agranoff (eds), *Network Theory in the Public Sector Building New Theoretical Frameworks* (Routledge 2014)

[1106] Hugh Heclo, 'Issue networks and the Executive Establishment' in Anthony King (ed), *The New American Political System* (American Enterprise Institute 1978) p102; J.K. Friend J.M. Power and C.J.L. Yewlett, *Public Planning: The Intercorporate Dimension* (Tavistock 1974); Hugh Heclo and Aaron Wildavsky, *The Private Government of Public Money: Community and Policy Inside* British Politics (University of California Press 1974); R.A.W. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 2001)

and control are no longer the most effective methods for policy development or implementation'.[1107]

The literature on networks is not without its critics. A common charge centres on the metaphorical nature of the network literature.[1108] Undoubtedly, the notion of the network is an ideal type, a streamlined schematic of reality.[1109] This is not necessarily a weakness; Patrick Kenis and Volker Schneider saw that describing the network as a metaphor enables us to capture the 'architecture of complexity'.[1110] As was demonstrated through past attempts, the metaphor of the network helped us make sense of complex and tumultuous modern realities.[1111] Interestingly, the metaphor of the network was likened to Harry Beck's London Underground map; Beck designed his circuit diagram with the intent of making complex routes and confusing interchanges fathomable to the observer.[1112] Even Dowding, a critic of Rhodes' approach to network analysis states, 'Show me an explanation that is not reductionist.'[1113] Thus, to critique the use of networks as a metaphoric exercise is a reasonable but not a substantial weakness.

Related to the allegation of metaphor is the notion that the studies on networks offer little explanatory insights.[1114] The literature on networks inclines towards generality and has had a very irregular record on producing empirical work.[1115] Moreover, the network discourse has

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[1107] Robyn Keast, 'Network Theory Tracks and Trajectories: Where from, Where to?' in Robyn Keast, Myrna Mandell and Robert Agranoff (eds), *Network Theory in the Public Sector Building New Theoretical Frameworks* (Routledge 2014) p22

[1108] Barrie Houlihan, *Sport, Policy and Politics: A Comparative Analysis* (Routledge 1997)

[1109] Wayne Parsons, *Public Policy: An Introduction to the Theory and Practice of Policy Analysis* (Edward Elgar Publishing 1995)

[1110] Patrick Kenis and Volker Schneider, 'Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox' in Bernd Marin and Renate Mayntz, (eds), *Policy Networks. Empirical Evidence and Theoretical Considerations* (Boulder 1992)

[1111] Hugh Heclo, 'Issue networks and the Executive Establishment' in Anthony King (ed), *The New American Political System* (American Enterprise Institute 1978); Kenneth Hanf and Fritz W. Scharpf, *Interorganizational Policy-Making: Limits to Co-ordination and Central Control* (Sage 1978); Peter J. Katzenstein, *Between Power and Plenty, Foreign Economic Policies of Advanced Industrial States* (University of Wisconsin Press 1978)

[1112] Karen Heard - Laureote, 'Transnational Networks: Informal Governance in the European Political Space' in Wolfram Kaiser Wolfram Kaiser and Peter Starie (eds), *Transnational European Union: Towards a Common Political Space* (Routledge 2015)

[1113] Keith Dowding, 'There Must Be End to Confusion: Policy Networks, Intellectual Fatigue, and the Need for Political Science Methods Courses in British Universities' (2001) 49 PS 1 p89, p103

[1114] Keith Dowding, 'There Must Be End to Confusion: Policy Networks, Intellectual Fatigue, and the Need for Political Science Methods Courses in British Universities' (2001) 49 PS 1 p89

[1115] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford university Press 2017); Barrie Houlihan, *Sport, Policy and Politics: A Comparative Analysis* (Routledge 1997)

become 'incestuous'; 'a small group of partisans… arguing over definitions and typologies'.[1116] In response to this criticism, this study has confined itself to a particular area in the hope to garner 'thick description'; no grand theory is proposed, just an illumination of key events that took place in one area of government. A network focus is but one 'angle' of viewing the development of OHS practice and policy.

3.1 The Centre and the Periphery

Not all networks are the same. Dowding notes that 'The different types of networks that exist have certain properties – which may be modelled in terms of agent characteristics and structural characteristics to produce descriptive and causal inferences'.[1117] Thus, he stipulated that any engaging study of networks needed to point out such nuances. In line with this recommendation, it is vital to highlight a distinctive and fundamental characteristic of the OHS Network, that is, it comprised a 'Centre' and a 'Periphery'. The Health and Safety Commission/Executive (HSC/E) provided the 'Centre' to the OHS Network; the 'Periphery' was made up of non – governmental professional, occupational and trade groups and individuals working for the betterment of OHS. Once the Centre was established by HASAWA, the Periphery 'huddled around' it, fortifying the OHS Network. It is vital to observe the Network through the signifiers of Periphery and Centre; the literature has paid limited attention to the former. So, it is imperative that we go beyond our state-centric fixation with the Centre and include the efforts of the countless men and women that made up the Periphery. As Hugh Heclo explained, 'Looking for the few who are powerful, we tend to overlook the many whose webs of influence provoke and guide the exercise of power'.[1118] Moreover, to avoid conflation of activities, some level of distinction is warranted. However, such a distinction is not intended to be too rigid. Rather, the distinction does not go

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[1116] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford University Press 2017) p35

[1117] Keith Dowding, 'There Must Be End to Confusion: Policy Networks, Intellectual Fatigue, and the Need for Political Science Methods Courses in British Universities' (2001) 49 PS 1 p89, p102

[1118] Hugh Heclo, 'Issue networks and the Executive Establishment'. in Anthony King, (ed.) *The New American Political System* (American Enterprise Institute 1978) p102

beyond a broad categorisation; the porousness of the Centre and the notion of the 'revolving door' prevent rigid demarcation.[1119]

3.1.1 The Centre

The Centre became a thriving sector. Upon the passing of HASAWA, a number of regulatory and scientific organisations were transferred to the HSE; the Factory Inspectorate, Explosives Inspectorate, Employment Medical Advisory Service, Nuclear Installations Inspectorate, Safety and Health Division from the Department of Energy, the Mines Inspectorate, the Safety in Mines Research Establishment, the British Approvals Service for Electrical Equipment in Flammable Atmospheres and the Alkali and Clean Air Inspectorate.[1120] Though the Centre was strengthened by the entrance of these entities, it was also willing to engage with Peripheral individuals and organisations with no government connection or statutory basis. This was a real opportunity for the Periphery to affect how OHS was formulated and implemented. Their ideas of a safer and more productive workplace could now flourish on the national stage. Correspondingly, the Centre's invitation to the Periphery came out of an acknowledgement that more 'boots on the ground' were needed.[1121] The HSC/E realised that forging a bond with the Periphery was a means to stretch much wider than the regulatory framework.[1122] The HSC/E was aware that its limited resources would not allow it to permeate workplace practices. Thus, it believed that a move from the policemen on the beat to a neighbourhood watch scheme was necessary. The first Chair of the HSC/E explained that, 'Inspectors, however inspired and dedicated, are never going to be so numerous as to be in every workplace every day — *but this new army of men and women are placed right in the front line of occupational safety* (emphasis added).'[1123]

[1119] Toni Makkai and John Braithwaite, 'In and Out of the Revolving Door: Making Sense of Regulatory Capture' (1992) 12 JPP 1 p61

[1120] Bridget M. Hutter, *Compliance: Regulation and Environment* (Clarendon Press 1997)

[1121] W. Walsh, 'Legislating for Safety' (1974) 16 *ET* 11 p276

[1122] Editorial, 'Blueprint for Safe Future' (1977) 26 WS 11 p40; Work Study, 'Safety Regulations New Legal Requirements' (1977) 26 WS 5 p3

[1123] Work Study, 'Safety Regulations New Legal Requirements' (1977) 26 WS 5 p3, p35; Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books 2015) p132 - 133

In addition to aiding the Centre's external reach, the Periphery also strengthened its internal

mechanisms. The Centre learnt the lessons of their predecessors; as workplaces advanced, it was

beyond the capacity of one institution to develop an effective knowledge base by itself.[1124]

Thus, the Centre needed the Periphery to use their 'local knowledge to address local

problems'.[1125] Sandra Dawson regarded this as the heart of the *Robens Report* that birthed the

HSC/E.[1126] The earliest manifestation of this logic was the encouragement of non –

governmental actors to populate the HSC/E's newly formed advisory committees; these

committees were technically knowledgeable bodies set up to resolve disputes, propose

recommendations, and investigate queries.[1127] Sirrs observes that:

> Advisory committees typically included academics, industrialists, safety officers, physicians and other
>
> professionals… Additional members were co-opted to serve on subcommittees and working groups. The
>
> absence of a particular organisation did not mean they were excluded from consultation altogether: these
>
> organisations were invited to respond to consultations directly, or had the opportunity to respond to
>
> proposals once they were published. Hence, the HSC/E attempted to foster the total involvement of British
>
> industry, commerce and workpeople in policymaking.[1128]

Breaking with the past, the HSC/E attached 'great importance' in developing this 'network of

advisory committees'[1129], covering all the major industries; iron and steel, general engineering,

foundries, chemicals, coal mining, construction, quarries, electricity, railways, docks, cotton and

wool, potteries, papermaking, agriculture, hospitals, shipbuilding and repairing, food

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[1124] Csaba Győry , 'Restorative Justice, Responsive Regulation and the Governance of Crime' (2008) 49 Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica p397; Friedrich Hayek, *Individualisation and Economic Order* (Routledge and Kegan 1949) p77

[1125] Csaba Győry , 'Restorative Justice, Responsive Regulation and the Governance of Crime' (2008) 49 Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica p397; Friedrich Hayek, *Individualisation and Economic Order* (Routledge and Kegan 1949) p83

[1126] Sandra Dawson, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p10; Alfred Robens, *Report of the Committee on Safety and Health at Work 1970 – 1971* Cmnd 5034 (The Stationery Office 1972)

[1127] D.A. Everest, *The Provision of Expert Advice to Government on Environmental Matters: The Role of Advisory Committees Research Report 6* (University of East Anglia 1989)

[1128] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016) p216 -217

[1129] Editorial, 'Blueprint for Safe Future' (1977) 26 WS 11 p40

manufacture and printing.[1130] The Periphery's inclusion into the decision – making process

empowered HSC/E; the former gave the latter an informational advantage.[1131] The ability of the

Centre's advisory committees to carry out studies, cross-pollinate findings with other bodies, and

build consensus with various interest groups gave the Centre 'institutional muscle'.[1132]

Watching this activity from afar, the self – proclaimed 'Quango Hunter', Conservative MP

Philip Holland was troubled by the influence of the unelected outsiders that sat on the HSC/E's

advisory committees.[1133] His fears, though exaggerated, drew broad historical correlations with

advisory committees utilised by Government departments, which developed into 'mini'

departments.[1134] Likewise, Holland saw the growth of advisory committees as the penultimate

challenge to Parliamentary supremacy. In a series of publications, he argued that the advisory

committee was the main pillar of Quango strength and that they were Quangos within their own

right.[1135] Holland's views aside, it was normal practice for governing institutions to create

advisory committees.[1136]

3.1.2 The Periphery

The Periphery also derived benefit from engaging with the Centre. Undoubtedly, being able to

participate in the policy-making process was extremely beneficial for the Periphery, but it also

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[1130] Prominent examples of such committees were the Toxic Substances Advisory Committee which examined the hazards and precautions for man-made mineral fibres, carcinogens and means of vetting the introduction of new chemicals at work, the Advisory Committee on Dangerous Substances examined proposals for future legislation on flammable liquids and gases, the Advisory Committee on Genetic Modification advised the HSC/E on the acceptability of proposals for genetic manipulation research and following the Flixborough tragedy, Advisory Committee on Major Hazards was set up to look at similar installations.
William Simpson, 'Health and Safety - An Appraisal by W. Simpson - Chairman, Health and Safety Commission' (1975) 18 ML 1 p334
[1131] Steven J. Balla and John R. Wright, 'Interest Groups, Advisory Committees, and Congressional Control of Bureaucracy' (2001) 45 JPS 4 p799
[1132] John Rimington, 'Health and Safety - Past, Present and Future: The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016
[1133] Philip Holland and Michael Fallon, *The Quango Explosion: Public Bodies and Ministerial Patronage* (Conservative Political Centre 1978)
[1134] J. Perkins, 'Permanent Advisory Committee to the British Government Department' (1940) 34 APSR 1 p85
[1135] Philip Holland and Michael Fallon, *The Quango Explosion: Public Bodies and Ministerial Patronage* (Conservative Political Centre 1978); Philip Holland, *Quango, Quango, Quango: The Full Dossier on Patronage in Britain* (Adam Smith Institute 1979); Philip Holland, *Quango Death List* (Adam Smith Institute 1980); Philip Holland, *The Governance of Quangos* (Adam Smith Institute 1981); Philip Holland, *The Hunting of the Quango* (Adam Smith institute 1994)
[1136] Editorial, 'Blueprint for Safe Future' (1977) 26 WS 11 p40

derived benefit from the legitimation that came from being associated with the quasi-governmental character of the HSC/E. The deep integration of the Periphery allowed the quasi-government appearance of the Centre to 'spill over' into the Periphery.[1137] This was most present when the Periphery advertised its products and services to employers. For example, Nafloc advertised to employers that their Corrosion Meter RB Mark II would aid a safe environment since it was accredited by the HSE. The British Safety Council advertised their risk management courses under the pretext that it was in line with HSE enforcement policy. Rotheroe and Mitchell Air Samplers would protect their employers from silicosis and asbestosis since it was the same product issued to the HSE. An HSE discussion document was used to coax employers that they needed to purchase Peters AP25 Industrial Automatic Audiometer to protect the hearing of their employees.[1138]

The Periphery's regulatory association with the Centre also had a formal legal component. For example, if the employer refused to recognise a legitimate safety representative, an Inspector could consider an action under Section 2 of the HASWA; if the employer refused to set up a safety committee, an Inspector could issue an Enforcement Notice; and if the advice of a safety officer was not acted upon, this could draw unwanted attention from the Inspectorate.[1139] No longer seen as the solitary safety officer or the lone noise specialist, he or she was now part of a wider 'sanctioned' Network.

3.2 The typology of the OHS Network

To help us understand the nature of the OHS Network, we turn to Eva Sørensen and Jacob Torfing's typology of a network. As a result of what Rhodes called 'incestuous scholarship', the

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[1137] M. Molinuevo and S. Sáez, *Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services* (The World Bank 2014)
[1138] Work Study 'Colour for Safety' (1982) 32 WS 10 p26; Products and services, 'Automatic Audiometer for Industry' (1980) 80 IM 5 p6; James Tye, 'Risk Management' (1980) 12 ICT 3 p95; The Times, 'Advertisements' *The Times* (London, 4 April 1975) 15
[1139] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998)

network literature was adept at putting forth typologies.[1140] Thus, there were a plethora of

typologies to correlate with the findings of the study. Among the closest was the five-pronged

typology put forward by Sørensen and Torfing. Their typology of a typical network helps frame

the vast range of activities and manifestations of the OHS Network. They outlined five crucial

features; '(1) a relatively stable horizontal assemblage of interdependent, but operationally

autonomous actors (2) who interact through negotiations (3) which take place within a

regulative, normative and cognitive framework (4) that to a certain extent is self-regulating; and

(5) which contributes to the production of 'public purpose'.[1141]

3.2.1 A relatively stable horizontal assemblage of interdependent, but operationally autonomous actors

A core feature of networks is that they are an assemblage of voluntary, private and public

organisations who are interdependent. Each group operates autonomously, in the sense that they

act independently, 'although with an eye to the expectations of the other actors'.[1142] This feature

was prevalent in the OHS Network.[1143] Schemes like WorkSAFE, demonstrated the Network's

ability to work autonomously under a collective umbrella that brought a general benefit to the

Network as a whole. WorkSAFE was inaugurated in 1977 by Bill Simpson, Chairman of the

HSC. OHS groups joined HSC/E officials on an annual national exhibition train tour promoting

OHS to the industrial centres of England, Scotland and Wales. Each group would take it upon

itself to meet and demonstrate their equipment and services to industrial management in the

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[1140] R.A.W. Rhodes, *Network Governance and the Differentiated Polity: Selected Essays, Volume 1* (Oxford University Press 2017) p35

[1141] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197

[1142] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197

[1143] Editorial, 'Danger! Men at Work' (1975) 75 IM 11 p20; Industrial and Commercial Training, 'New Equipment' (1973) 5 ICT 6 p298; Industrial Management and Data Systems, 'Colour has a Crucial Role to Play in the Field of Industrial Safety' (1980) 80 IMDS 10 p10

latter's own locality.[1144] It proved to be very successful; by the end of the 1970s, it attracted more than 12,000 people from British industry.[1145]

Another example of this synergy was found in the *Safety Representatives and Safety Committee Regulations 1977* (SRSC Regulations).[1146] The *SRSC Regulations* enabled a recognised trade union to appoint safety representatives from among the workforce. Once appointed, safety representatives performed a wide range of investigative and proactive safety duties.[1147] Though these regulations were pushed for and largely aided trade unions, they also benefitted the entire Network.[1148] First, they increased the 'footprint' of the Centre; the Chairman of the HSC spoke of the wider benefit of union-appointed safety representatives:

> For over a century a handful of inspectors have fought an uphill battle to improve the safety of people at work, and today the first step has been taken for them to be joined by tens of thousands of union-appointed safety representatives whose daily work will involve them in a commitment to make the workplace safe and healthy for all who work there.[1149]

[1144] Industrial Management, 'At Your Service' (1978) 78 IM 3 p8

[1145] The Plant Engineer, 'The Way to Mecca' (1980) PE 24 p38

[1146] D. Lydon, 'Health and Safety' (*Union History,* 2012) <http://www.unionhistory.info/britainatwork/narrativedisplay.php?type=healthandsafety>) accessed 24 February 2015
J. McCarty, 'Health and Safety at Work Legislation: A Critical Study / Industrial Studies No.5 / Trade Unit Research Unit Ruskin College Oxford' 1974 (Archive no: HD 7272) TUCLC - London Metropolitan University

[1147] Brenda Barrett, 'Safety Representatives, Industrial Relations and Hard Times' (1977) 6 ILJ 3 p165

[1148] Upon their enactment, the HSC proudly proclaimed, 'Today is a milestone for the safety and health for everyone at work in Britain and the placing on the statute book of these regulations is *easily the most important event in occupational safety* since the passing of the *Health and Safety at Work Act* (emphasis added)'. The HSC's exuberant statement was echoed by numerous studies of that period. Barrett believed that the *SRSC Regulations* was part of a 'new era in industrial relations.' Similarly, Glendon and Booth observed, 'The creation of the safety representative role… was an innovative measure for all sectors of industry… The SRSC Regulations were radical'. By the same token, Stuttard noted that the *Regulations* spearheaded the new health and safety legislation and were an important extension of industrial democracy
Brenda Barrett, 'Safety Representatives, Industrial Relations and Hard Times' (1977) 6 ILJ 3 p165
Work Study, 'Safety Regulation: New Legal Requirements' (1977) 26 WS 5 p35; Ian Glendon and Richard Booth 'Worker Participation in Occupational Health and Safety in Britain' (1982) 121 ILR 4 p401; G. Stuttard, 'Health, Safety and Industrial Democracy' (1979) 1 ER 33 p23; P. Moody, 'Toxic Substances in the Workplace - the Role of the HSE' (1980) 32 AP 5 p220; Brenda Barrett, 'Safety Representatives, Industrial Relations and Hard Times' (1977) 6 ILJ 3 p165

[1148] Brenda Barrett, 'Safety Representatives, Industrial Relations and Hard Times' (1977) 6 ILJ 3 p165

[1149] Work Study, 'Safety Regulation: New Legal Requirements' (1977) 26 WS 5 p35

His hopes were not unfounded[1150]; P. Moody observed that when the regulations came into force in 1978, there was 130,000 union - appointed safety representatives ready to take up their posts.[1151] Though there were some initial teething problems, an HSE survey found in the first year that workplaces with safety representatives accounted for 79% of all employees.[1152] Delighted at the success of union representatives, Jim Hammer, the then Chief Inspector of Factories, stated in 1978, 'Trade union safety representatives are becoming so well trained that they will know more about shop-floor health and safety than some of their own managers'.[1153]

Second, Schmoller and Grayson observed that the SRSC regulatory framework compelled factory inspectors to work closely with the union–appointed representatives.[1154] The torrid relationship between unions and inspectors was laid bare during the aftermath of the Flixborough tragedy; the Inspectorate refused to liaise with, or recognise, shop stewards at the plant, issuing their own preliminary report with no contact with the unions at any level.[1155] The post–Flixborough environment demanded that both parties come together, the SRSC regulations were borne out of this new resolution.[1156]

Third, dispatching safety representatives *purposefully* opened the door for other actors to enter industry. One HSC Commissioner explained that, 'This system of safety representatives is *deliberately designed to merge* with and to work within existing systems of industrial relations in the United Kingdom, and, therefore, a necessary amount of flexibility has been incorporated into the Regulations (emphasis added)'.[1157] The 'existing systems' being safety committees; the *SRSC Regulations* stipulated that when two or more safety representatives request a health and

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[1150] Ian Glendon and Richard Booth 'Worker Participation in Occupational Health and Safety in Britain' (1982) 121 ILR 4 p401

[1151] P. Moody, 'Toxic Substances in the Workplace - the Role of the HSE' (1980) 32 AP 5 p220

[1152] Health and Safety Executive, *Health and Safety: Manufacturing and Service Industries 1977* (HMSO 1978)

[1153] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998) p27

[1154] Seb Schmoller and John Grayson, 'Studies for Trade Unionists: Safety Representatives and the Factory Inspectorate' (1980) 6 WEA 24 p1

[1155] Seb Schmoller and John Grayson, 'Studies for Trade Unionists: Safety Representatives and the Factory Inspectorate' (1980) 6 WEA 24 p1

[1156] Seb Schmoller and John Grayson, 'Studies for Trade Unionists: Safety Representatives and the Factory Inspectorate' (1980) 6 WEA 24 p1

[1157] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p674

safety committee, the employer must comply within three months of the request. While such committees have existed for some years, P.B. Beaumont's study observed that the *SRSC Regulations* resulted in a major increase in the number of committees, particularly among small firms and those in the traditionally low accident rate industries.[1158] This created vacancies for the safety profession; by the early 1980s, the IISO estimated that approximately 10,000 people had the word 'safety' in their job title.[1159] This consequence was not entirely unforeseen; the *SRSC Guidance Notes* stipulated that the safety professional should occupy an *ex officio* position on the safety committee.[1160] Even before the publication of the *Guidance Notes*, the HSE had contemplated a much larger role for safety professionals via their vital work on safety committees.[1161] They were expected to play a major role in determining the success of the safety committee through their technical and personal skill set.[1162]

Both examples point to the interdependence of the post-1974 Network. The above–mentioned joint projects laid the foundations for a deeply integrated Network. However, it must be noted that interdependence was a process, it did not happen automatically. Ironically, there was far less contention between the Centre and the Periphery, rather most of the contention existed within the Centre. Sirrs noted that the HSE's constituent institutions experienced continued friction years after HASAWA was enacted, as they were authorities in their own right and accustomed to working independently. The HSE worked consistently as the 'negotiating body'

[1158] P.B. Beaumont J.W. Leopold and J.R. Coyle, 'The Determinants of Effective Health and Safety Committees' (1982) 5 MRN 1 p1

[1159] P.B. Beaumont J.W. Leopold and J.R. Coyle, 'The Determinants of Effective Health and Safety Committees' (1982) 5 MRN 1 p1; P.B. Beaumont, J.W. Leopold & J.R. Coyle, 'The Safety Officer: An Emerging Management Role?' (1982) 11 PR 2 p35

[1160] Anita Levinson, 'Self - regulation of Health and Safety in a Local Authority with Particular reference to Safety Representatives, Supervisors and Safety Committees' (PhD Thesis submitted in partial fulfilment of the requirement for the degree of Doctor of Philosophy, University of Birmingham Aston and Napier College of Commerce & Technology 1984)

[1161] Health and Safety Executive, *Safety Officers: Sample Survey of Role and Functions: Discussion Document* (HMSO 1975)

[1162] P.B. Beaumont J.W. Leopold and J.R. Coyle, 'The Determinants of Effective Health and Safety Committees' (1982) 5 MRN 1 p1

to eventually create a single corporate entity.[1163] No entity had engaged so vigorously in unifying the Centre before 1974.

3.2.2 Interaction through negotiations

Sørensen and Torfing observed that network actors interact through negotiations that bring together elements of bargaining and deliberation.[1164] This trait found its expression in the OHS Network's consensus building activities. More specifically, the *initial* efforts to build consensus fell disproportionately on the shoulders of the HSC. The HSC was pivotal in assuring that the relevant interests have been heard, no interested party had been denied access and that all arguments have been put in such a way that they were understood and respected.[1165] Such an emphasis can be construed as the 'construction of consensus' in which the Centre set the boundaries and 'constructed' the rules of engagement among the participants. To manage the vastness of the interactions, it was vital for the Centre to 'host' negotiations, set the procedural rules and the mode of management.[1166] The Centre did not have the option of coercion and the Periphery's protest could stifle negotiations. Thus, it attached considerable importance in constructing consensus with each engagement.[1167] Everything from the operation of meetings, passing motions, turn–taking, the amount of time one could speak, establishing a point, choosing a mediator was constructed to bring about consensus.[1168] The HSC sought to actualise the Robens philosophy of consensus, that is, 'a mutually beneficial co-incidence of interests amongst apparently antagonistic parties can be reached via relatively little or no state intervention'.[1169] The decision by HSC's first chair to make decisions by consensus was crucial. It meant that

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[1163] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p202 - 210
[1164] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197; Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p203
[1165] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p674
[1166] Beatrice Hibou, *The Bureaucratization of the World in the Neoliberal Era: An International and Comparative Perspective* (Palgrave Macmillan 2015)
[1167] Bill Simpson, 'Cutting the Industrial Death Toll' (1977) 26 WS 4 p46
[1168] Beatrice Hibou, *The Bureaucratization of the World in the Neoliberal Era: An International and Comparative Perspective* (Palgrave Macmillan 2015)
[1169] Steve Tombs and David Whyte, 'Deadly consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46, p48 - 50

OHS policymaking was typified by persuasion and compromise.[1170] Building consensus went to the very heart of the HSC's activities; Dawson observed that the HSC's collection and dissemination of information and formulating policy, regulations and guidance were 'all interlinked and imbued with the spirit of consultation and the hope of consensus'.[1171]

Consensus was vital to the burgeoning Network.[1172] It was not just the history of dissension that spurred the HSC to seek consensus, but there was a belief that consensus was a logical outcome if industry regulated itself. Looking through the HSC's first decade of documents, Dawson notes that there was a curious absence of any fundamental objections for lack of agreement on safety policy and practice between interested parties.[1173] Arguably, this 'natural' consensus outlook can be traced back to the Robens Report which theorised that there was a far greater 'identity of interests' in industry than other aspects of workplace relations.[1174]

Reaching consensus was a means to insulate the Network from opposition. Dawson makes the convincing argument that regulations were never challenged by Parliament or the courts because of the HSC/E's rigorous consensus building activities.[1175] Thus, we saw a number of controversial proposals spearheaded by the HSC that were protected by consensus. The most controversial example of the period was the HSC's proposals for appointing trade unions as safety representatives; the 'rough consensus' reached compelled the Secretary of State for Employment to approve of the HSC's proposals despite the enormous costs involved, parliamentary opposition and an IMF warning.[1176]

[1170] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p200
[1171] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p205
[1172] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)
[1173] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p205
[1174] Steve Tombs and David Whyte, 'Deadly consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46, p47
[1175] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)
[1176] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998)

Through constructing consensus, the HSC sought to influence 'patterns of behaviour' between and within interested parties.[1177] This is what Faranak Miraftab referred to as 'a structure of inclusive governance' that is crucial to secure compliance.[1178] Unable to rely on the weight of hierarchal authority, the Centre utilised consent and perception of inclusion to ensure compliance and deter dissent. It was hoped that individuals and organisations that participated in the formulation of regulations were more likely to comply and even promote the regulations because they had a 'stake' in the process. Of course, compliance was desired from employers that took part in these fora, but it was also desired from those lower down the ladder; the various safety professions needed to be on board to aid their employers to meet new standards:

> Entrepreneurialising responsible units and individuals, through devolving authority, decision making, and the implementation of policies and norms of conduct. These are the processes that make individuals and other small units in workplaces responsible for themselves while binding them to the powers and project of the whole.'[1179]

The level of emphasis that the HSC/E placed on consensus building was at such an extent that it brought criticism, largely relating to the length of time it took to reach consensus.[1180] For instance, the *Work Study Journal* complained that it took 'almost two years' for the HSE to draw up a certificate which specifies that eye protectors must be soundly constructed.[1181] It was stated that the 'writing and rewriting and getting second and third opinions' weighed more on the minds of agency staff than 'prompt action', such was the need to strengthen organisational links.[1182]

Though the search for consensus may have brought about a more cohesive Network, there is sufficient scope to argue that it created 'regulatory degradation'; vagueness and sluggishness

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[1177] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p206

[1178] Faranak Miraftab, 'Insurgent planning: Situating Radical planning in the Global South' in Susan S. Fainstein and James DeFilippis (eds), *Readings in Planning Theory* (Wiley Blackwell 2016)

[1179] Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books 2015) p129 - 130

[1180] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[1181] Editorial, 'A Few Minutes Caught by the Stopwatch' (1977) 26 WS 4 p6

[1182] Editorial, 'A Few Minutes Caught by the Stopwatch' (1977) 26 WS 4 p6

were often outcomes of the consensus process.[1183] It also eroded the 'ambition that can accompany policymaking when unconstrained by compromise'.[1184] However, consensus building was a necessary evil for a burgeoning Network, 'Consensus allowed the regulatory system to weather the political storm'.[1185] Dawson contrasted the consensual approach with the adversarial approach of the Occupational Safety and Health Administration (OHSA) in the USA. They argued that the adversarial approach tends to be less effective regarding influencing behaviour, except where the prevailing political climate is strongly in favour of regulation. However, where the opposite exists:

> There is very little chance that an adversarial approach at the national level can achieve more than a consensual approach. On the contrary, it seems that in terms of actually influencing behaviour so as to reduce accidents and improve standards overall the consensual approach is likely to be more successful.[1186]

3.2.3 Institutionalised framework

Consensus building does not occur in a vacuum; instead, they proceed within a relatively 'institutionalized framework, which is more than the sum of its part'.[1187] Through this institutionalised framework, norms, values and standards are developed. This was experienced in the OHS Network as a consequence of its consensus-building projects. Such projects provided the Network with regular opportunities to engage, exchange ideas, discuss best practice and keep abreast of the latest developments. Before the enactment of HASWA, inspectors, researchers, experts and professional, occupational and trade groups did not have a shared 'venue' to meet on a regular basis. The two volumes of the *Robens Report* detail the differences between approaches to OHS. However, the establishment of the HSC/E provided the wider

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[1183] Steve Tombs and David Whyte, 'Deadly Consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46; Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35

[1184] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p201

[1185] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p201

[1186] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press, 1988) p205 - 206

[1187] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197, p204

Network with central venues to develop a shared vision of OHS. The Centre laid the foundations of a shared vision by bringing the Network together to 'sit down together and work out how to deal with them (risks)'.[1188]

The institutional framework of engagement expanded throughout the 1970s. For instance, the Fire Liaison Panel Network was in set up in the aftermath of Flixborough by the British Insurance Association (BIA), TUC, CBI, officials of the HSE, safety organisations and local authorities. The representatives of these groups met regularly as a planning body with the main objective of getting senior, middle and line management to understand about fire safety and their responsibilities to the workforce under the law. Similarly, in an attempt to increase professionalism, the Managerial Professional and Staff Liaison Group (MP&SLP) was set up by non–TUC affiliated unions, safety organisations and the medical profession.[1189] The VDU Eye Test Advisory Group, consisting of trade unions, academics and civic groups, would publish regular discussion documents on the safety of VDU use.[1190] The result of the expanding framework encouraged the cohesion of OHS policy and practice. Such forums compelled the participants to forge common goals and tighter bonds.[1191] An insider observed, 'We talk to each other in a permanent forum… on a regular basis about an issue *which we wouldn't discuss with each other a few years back…* This is a forum which is grossly underestimated (emphasis added)'.[1192]

This move towards a shared outlook is best exemplified by the relationship between the CBI and the TUC.[1193] Wilson's comparative study of OHS systems observed that the relations between the TUC and the CBI were particularly close, with officials of the CBI and TUC referring to

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[1188] Bill Simpson, 'Cutting the Industrial Death Toll' (1977) 26 WS 4 p46
[1189] Industrial Management, 'Can you Afford to take the Risk?' (1980) 80 IM 2 p15
[1190] Vine, 'Peripherals' (1979) 9 Vine 2 p65
[1191] Industrial Management, 'Gone to Blazes' (1977) 77 IM 1 p23
[1192] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p683
[1193] R. Amis, 'Safety and Health in The Construction Industry' (1991) 302 BMJ 6767 p54; Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p683

each other as 'our colleagues'.[1194] Dalton added that there were no great public disagreements between the CBI and the TUC on health and safety issues.[1195] What was interesting about the CBI and the TUC's shared consensus was the value that both groups now gave to OHS. This was bound to happen, unions and employers found themselves regularly interacting with the Periphery in the decision–making and implementation process.[1196] From the 1970s, unexpected statements emerged from top CBI officials; in a letter regarding the high accident rates in the construction and civil engineering industries, we see a more safety conscious CBI, they demanded:

> An increase in the number of inspectors that the Health and Safety Executive can deploy in its construction division, and pressure for legislation to increase the upper limit of fines that can be levied on convictions of health and safety offences together with guidelines for judges and magistrates on the appropriate tariff for such offences'.[1197]

The CBI also lambasted these industries for being full of 'unregistered, *unionised*, subcontracted gangs' and called for advisory committees to have more teeth.[1198] Correspondingly, we saw the TUC adopt the CBI's language of the applicability of cost-benefit analysis to aspects of OHS provision.[1199] Sirrs centres on this point in his critique of Tombs and Whyte when he argues that trade unions *also* acquiesced to this 'deadly consensus'.[1200]

Regular dialogue in these frameworks allowed for the nationalisation of approaches to OHS. Two interrelated approaches developed nationally in this fashion; safety consciousness and risk-based approaches to regulating OHS. The newly founded HSC/E was open to the developed, tested and operationalised approaches of the safety profession. There is scope to argue that the HSC/E would have remained a fragmented and hollow set of institutions, if not for the influx of

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[1194] Graham. K Wilson, *The Politics of Health and Safety* (Clarendon Press 1985)
[1195] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998)
[1196] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p683
[1197] R. Amis, 'Safety and Health in The Construction Industry' (1991) 302 BMJ 6767 p54
[1198] R. Amis, 'Safety and Health in The Construction Industry' (1991) 302 BMJ 6767 p54
[1199] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)
[1200] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p201

the innovative safety profession. After all, the Robens philosophy that gave birth to the HSC/E was too speculative and inconsistent to offer a *complete* roadmap for the HSC/E.

Additionally, the HSC/E did not inherit a cohesive approach from the under-performing Inspectorates and their reactionary sponsoring government departments. This susceptibility of the Centre was met by a significant portion of the safety profession who believed it was their duty to stimulate the HSC/E.[1201] Correspondingly, discussions of the Robens Committee revealed that the Inspectorates valued safety bodies, many of whom were former factory inspectors.[1202] This admiration turned to reliance as they populated the HSC/E's advisory committees, consultations, and national projects, providing a direct route for ideas to flow straight into the heart of the HSC/E.[1203] This is not to allege a conspiracy, but rather to suggest that the same 'toolkits' safety men and women used in their day-to-day activities were the same toolkits they brought to Centre; commentators have observed the 'baggage' that external experts carry to such fora.[1204]

As mentioned, via the expanded institutionalised framework, safety consciousness and risk-based approaches to OHS achieved national attention. Both approaches were preventative and were implemented *before* an accident took place as opposed to the retroactive and corrective focus of the former Inspectorates.[1205] Regarding the former approach, the HSC/E's appropriation of risk-based methods shaped its approach to OHS. Risk-based methods could be broadly defined as the identification of risks to health and safety and the assessment of what can

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[1201] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens

[1202] Ministry of Labour, 'British Safety Council / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 6 May 1971 (Archive no: Lab 96/46) TNA – Kew Gardens; Ministry of Labour, 'Institution of Industrial Safety Officers / Witness Examination - Committee on Safety and Health at Work / Minutes of Evidence' 5 July 1971 (Archive no: Lab 104/52) TNA – Kew Gardens

[1203] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p201; Maurice Bryant, 'A Safety Officer's View of the Future' (1975) 18 AOH 4 p350

[1204] Hugh McDowall Clokie and J. Williams Robinson, *Royal Commissions of Inquiry: The Significance of Investigations in British Politics* (Stanford University Press 1937)

[1205] Maurice Bryant, 'A Safety Officer's View of the Future' (1975) 18 AOH 4 p350

be done to minimise risks.[1206] Though it is difficult to imagine the HSC/E without the use of

such methods, in the 1970s, risk management techniques were still in their 'infancy.'[1207] It was

first utilised by the safety professions decades earlier, as James Tye, the Director General of the

British Safety Council (BSC) put it, the safety profession dragged risk-based methods out of the

'insurance quagmire.'[1208] In its original form, it was seen as too 'limited' because it placed too

much emphasis on pure finance.[1209] The safety profession transformed risk by moving it away

from pure finance towards a focus on accident prevention;[1210] Once 'renovated' for accident

prevention, we can postulate that the deep integration of the safety profession put it in the hands

of the HSC/E via their work in advisory committees.[1211]

From 1974, Sirrs identified that the 'most important change' was the movement towards a 'risk-

based' approach.[1212] The identification, measurement, minimisation and information on risks

constituted the core of HSC/E's policy; everything was interpreted in terms of risk, to the extent

that the central tenet of HASWA, to do whatever was 'reasonably practicable', was solely

concerned with compelling employers to 'adopt risk management techniques of assessing

hazards and controlling them'.[1213] As the Director-General of RoSPA put it, the new role that

risk played in the HSE's execution of HASWA 'takes us a long way from the Factories Acts

which said 'Thou shalt not…' to the Health and Safety at Work Act which implies 'You may,

subject to approval… etc. (emphasis added)'.[1214] Similarly, Brian Harvey, the HM Chief

Inspector of Factories reiterated that risk even transformed the HSE mode of inspection,

[1206] It left its narrow technical origins to become a comprehensive policy – based approach to regulation in the 1980s.
Bridget Hutter, 'The Attractions of Risk - Based Regulation: Accounting for the Emergence of Risk Ideas in Regulation' (*LSE*, 2005) <www.lse.ac.uk/accounting/Assets/CARR/documents/D-P/Disspaper33.pdf> accessed 25 June 2018
[1207] James Tye, 'Risk Management' (1980) 12 ICT 3 p95
[1208] James Tye, 'Risks and Insurance Cover — a New Attitude Needed' (1982) 82 IMDS 9/10 p29; James Tye, 'The New Challenge Facing British Industry' (1980) 29 WS 1 p44
[1209] James Tye, 'Risks and Insurance Cover — a New Attitude Needed' (1982) 82 IMDS 9/10 p29
[1210] Industrial Management, 'Can you Afford to take the Risk?' (1980) 80 IM 2 p15
[1211] James Tye, 'Risk Management' (1980) 12 ICT 3 p95
[1212] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p186
[1213] John Locke 'Provision of Information and Advice for the Protection of Health and Safety at Work' (1976) 28 AP 1 p8
[1214] R.M. Warburton, 'The Factory Inspectorate: Its Changing Role' (1980) 2 ER 4 p6

'Cyclical inspection has been modified in favour of a more flexible and selective approach, allowing the Inspectorate to deploy its resources in relation to numbers employed and *the level of risk* (emphasis added)'.[1215] The HSC/E's risk 'net' was cast over the whole of industry, it captured more than employers; manufacturers, installers of equipment and designers had a duty to provide products and services which were safe and without undue risk.[1216]

Risk-based approaches were complemented by the inculcation of safety consciousness, which was the capability of recognising danger, estimating the likelihood of an accident happening, and its extent, and acting accordingly. Initially, the promotion of safety consciousness was largely unique to the safety profession. Without the threat of punishment or much technical skill, this was the only accident prevention tool available to the first safety officers.[1217] However, with time, safety bodies sophisticated their approaches, moving from inculcating safety consciousness using propaganda towards more comprehensive measures such as 'total recall' and 'Aetiology'.[1218] Drawing from the safety profession, the HSC/E launched numerous projects under the banner of safety consciousness, as noted by one of the HSC's earliest policy announcements, 'During the Commission's first 18 months, our objective above all has been to raise the level of safety consciousness at work, on the part of employers and employees alike'.[1219] In all likelihood, without the expanding institutionalised framework these approaches may have never left the confines of the safety professions. Yet within the first years of the HSC/E, we start to see their usage on the national stage.

[1215] Bryan Harvey, 'A Typical Year in the Life of the Factory Inspectorate' (1974)16 ET 11 p271

[1216] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960 - 2015* (IOSH 2016); John Locke 'Provision of Information and Advice for the Protection of Health and Safety at Work' (1976) 28 AP 1 p8

[1217] Maurice Bryant, 'A Safety Officer's View of the Future' (1975) 18 AOH 4 p350

[1218] The earliest methods utilised to raise safety consciousness were the same methods used by the safety profession decades earlier, that is; the use of films, posters, leaflets etc. to connect the workforce with dangers around them. The HSC/E produced and distributed a significant amount of propaganda, from their most notable examples was their 15-minute production, *One Step Away,* aimed at people that worked on high platforms. The film was based on three case histories in which a number of essential safety rules were transmitted to the audience. Another popular release was HSC/E's produced *Health at Work*, which highlighted the surprising nature of health hazards at work James Tye, *Management Introduction to Total Loss Control* (British Safety Council 1970)

[1219] William Simpson, 'Health and Safety - An Appraisal by W. Simpson - Chairman, Health and Safety Commission' (1975) 18 ML 1 p334

3.2.4 Self – regulating

This aspect is the hardest 'box' to place the OHS Network. The Network was not self–regulating in the sense that it was not completely autonomous. It was restricted to a certain area of governance and it operated in the 'shadow of hierarchy'.[1220] However, the authors mention another aspect of self–regulation, which is applicable to the OHS Network, 'It aims at regulating a particular policy field on the basis of its own ideas, resources and capabilities, and it does so within a regulative, normative, cognitive and imaginary framework that is adjusted through negotiations and regular interact'.[1221] Before the enactment of HASAWA, there was minimal collaboration with external parties, regulatory oversight was held tightly by the Inspectorate and their sponsoring government departments.[1222] However, the *Robens Report* sought to reverse this omission by recommending that those who created the risks and those who worked with the risks should have prime responsibility for the betterment of OHS.[1223]

The collaborative efforts of the Centre and the Periphery operationalised Robens' recommendations by forging a coherent system of 'soft law' that fostered the motivation and capacity for individuals to take more responsibility for OHS.[1224] Much of this system was constructed through the HSC/E's regulations, Approved Codes of Practice, recommendations, Guidance Notes and monthly newsletters. The veteran OHS journalist, Bill Walsh, observed how the Periphery was compelled to stay in tune with an 'unending stream of information, exhortation and regulation… just keeping abreast of the volume is no mean task'.[1225] By the end of the 1970s, The HSC/E's first catalogue listed 1,500 publications.[1226] This output

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[1220] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997)

[1221] Eva Sørensen and Jacob Torfing, 'Introduction: Governance Network Research: Towards a Second Generation' in Eva Sørensen and Jacob Torfing (eds), *Theories of Democratic Network Governance* (Palgrave Macmillan 2007) p10

[1222] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); John Williams, *Accidents and Ill – Health at Work* (Staples Press 1960)

[1223] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO Cmd 5034 1972)

[1224] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)

[1225] Bill Walsh, 'Background Information: for Health and Safety' (1982) 31 WS 1 p35

[1226] Products and Services, 'Guide to Workplace Safety' 9 IM 7 p9

reverberated through industry; safety bodies had to incorporate this information into their safety courses and in their information and guidance to their clients.[1227]

Such constant streams of information from the Centre helped the continuity of the self–regulatory system.[1228] The Centre served as the 'glue' of 'regulative, normative, cognitive and imaginary framework'.[1229] This was illustrated in an article in the *Work Study Journal* which documented how British machine makers and retailers took heed of the direction of the Centre. It highlighted the example of equipment which was inconsistent with the noise control guidelines of the HSE; the HSE Director General warned manufacturers and retailers that failure to take noise levels into account in the design of industrial plants would result in lost orders since HSE Inspectors were ordered to give 'increased attention' to equipment that violated guidelines.[1230]

3.2.5 Public purpose

It was observed that networks congregate on a public purpose within a certain area. In fact, the authors stipulate that the networks that do not have a public mission cannot be considered a governance network. In line with the authors' observations, a significant amount of the OHS Network's activities were directed towards the public, therein securing its status as a governance network. This differed dramatically from the era before HASAWA was enacted of which Lord Robens noted, the previous regime held 'a long-established and deep-seated reluctance… to accept any explicit responsibility in relation to the safety of the public. It is as if there was some invisible ring–fence around the occupational safety system with the general public left outside'.[1231] The previous regime was content to remain inside 'club government', its posture was inward–facing, never looking beyond 'club members' for legitimacy and development.[1232] However, the years leading up to HASAWA was typified by a series of disasters that prompted

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[1227] Bill Walsh, 'Background Information: for Health and Safety' (1982) 31 WS 1 p35
[1228] Bill Walsh, 'Planning for Safety' (1974) 16 ET 11 p281
[1229] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197
[1230] Work Study, 'Noise effects on sales' (1985) 34 WS 1 p50
[1231] Alfred Robens, *Safety and Health at Work: Report of the Committee, 1970-72, Volume 1* (HMSO 1972)
[1232] Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2007)

the government and those that worked in OHS to turn their attention to the public. With the passing of the HASAWA, protections extended to the public for the first time. Through such means, the Network was *impregnated* with a mandate to protect the public. Correspondingly, the timing and severity of the Flixborough disaster-induced an exceptionally generous interpretation of HASWA; public safety was placed at the top of the Network's priorities.[1233] Arguably, if Flixborough would have happened *outside* of the Network's formative years, we may not have seen such a public – focused Network.[1234]

Observing the change in direction, a former Superintending Inspector of Factories noted the effect of this provision, 'Our work has been widened beyond that of our traditional clients—industry and the worker—to those who may be affected by work—the public… You cannot reassure the public in any shape or form, if you see yourselves as a closed elitist group'.[1235] Flixborough was the first 'test' of the public–facing Network. Spawned by the fallout of Brent Cross, Aberfan and Flixborough, the embryonic OHS Network was immediately confronted by a more risk-aware society, even circumstances that were considered 'normal', such as living next to a factory which produced hazardous chemicals, or driving alongside vehicles carrying hazardous materials, began to be seen as potential risks to one's safety.[1236] The *Times* reported that the public started to raise many questions about the safety of workplaces, 'How many other factories present a potential threat? Should there be now regulations about industrial sites close to built-up areas?'[1237] Such questions needed to be answered, or there was a severe danger of a 'withdrawal of public confidence from the statutory authorities'.[1238]

[1233] Pigment & Resin Technology, 'The Factory Inspectorate's 150 Years' (1983) 12 PRT 11 p15; W. Walsh, 'The Third Party' (1976) 25 WS 11 p14
[1234] Pigment & Resin Technology, 'The Factory Inspectorate's 150 Years' (1983) 12 PRT 11 p15
[1235] R.M. Warburton, 'The Factory Inspectorate: Its Changing Role' (1980) 2 ER 4 p6
[1236] Letters to the Editor, 'The Catastrophes Industries' *The Times* (London, 14 September 1976)
[1237] The Times, 'Record of Events before the Blast at Flixborough Chemical Plant have been Destroyed' *The Times* (London, 3 June 1974)
[1238] Jon Tinker, 'Britain's environment - Nanny Knows Best' (1972) 53 NS 789 p675

The Network faced multiple protests across the country, demanding an 'unbiased investigation' of plants that handled hazardous materials.[1239] The Network responded to such requests with vigour.[1240] The Centre invested a significant amount of its budget on safeguarding the public by way of ensuring employers met their obligations to public safety, promotional campaigns, conducting risk-based surveys and overseeing planning applications for high–risk plants.[1241] The Centre was not alone in this change of direction, within the Periphery 'Whole new industries mainly in the field of consultancy have grown up around the concept of protecting the public'.[1242] For the main safety bodies, workplace safety was used as a platform to launch a very broad 'safety crusade' that included everything from 'seat-belts in cars, fairground safety, dangerous toys and consumer products, fire safety in hotels and public places'.[1243]

Arguably, the most significant identifier of this change in direction was the provision of information of the surrounding risks. The HSC/E took it upon itself to provide the public with a true depiction of industry. Within its first term, the HSC published the most comprehensive set of statistics ever published on the state of OHS across the country.[1244] Until 1974, a Factory Inspector was not allowed to let employees know, let alone members of the public, about the actual hazards they might have faced at work. Even though an inspector was empowered to monitor a workplace for the presence of toxic chemicals, he was not permitted to relay this information to the employees, their representatives and especially not the general public. As a result, Medawar concluded that many people died and suffered ill health without the knowing the reason why.[1245] However, with the introduction of HASWA, Inspectors could provide employees and the public with sufficient information. Enlightening the public to the surrounding

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[1239] Ministry of Labour, 'Letter from the Cheddar Action Group A Society of Local Residents to the Prime Minister Harold Wilson' 8 July 1974 (Archive No: LAB 104/376) TNA - Kew Gardens
[1240] W. Walsh, 'The Third Party' (1976) 25 WS 11 p14
[1241] D. Offord, 'Can HSE Prevent another Flixborough?' in HSE, *Her Majesty's Inspectors of Factories, 1833-1983: Essays to Commemorate 150 Years of Health and Safety Inspection* (HMSO 1983) p57 - 60
[1242] D. Offord, 'Can HSE Prevent another Flixborough?' in HSE, *Her Majesty's Inspectors of Factories, 1833-1983: Essays to Commemorate 150 Years of Health and Safety Inspection* (HMSO 1983) p58
[1243] B. Crew, 'James Tye On the Safety Crusade' (1977) 83 IMDS 5/6 p2
[1244] Editorial, 'Blueprint for Safe Future' (1977) 26 WS 11 p40; William Simpson, 'Health and Safety - An Appraisal by W. Simpson - Chairman, Health and Safety Commission' (1975) 18 ML 1 p334; Work Study 'Not Figures: People' (1977) 26 WS 11 p6
[1245] C. Medawar, 'A Public Right to Know' (1976) 28 AP 2 p69

risks only increased the public's need for an OHS Network with a comprehensive reach. In essence, the OHS regime removed the blindfold off the public, as the *Times* reported, 'Removing the air of ominous mystery surrounding many chemical plants which makes local residents feel they have stepped into an episode of Dr. Who'.[1246]

3.2.6 OHS governance

It is good to know that factory inspectors, safety officers, scientists, engineers and some medical are all working together to ensure our safety… negotiating about technical issues, investigating, writing reports, presenting evidence, dealing with people at all levels within an organisation – these are all part of their work.[1247]

Sørensen and Torfing's typology of a governance network allowed us to make sense of the activity after 1974. Though there remained some similarities and transitions were not always smooth, the typology of the OHS Network was clearly distinguishable from anything that had come before. With such a change, we expect a change in performance. This change was reflected in its initial successes.[1248] Though it is difficult to correlate the reduction of workplace accidents and the emergence of the Network, Theo Nichols' study demonstrated that there was an improvement after 1974 that needs to be accounted for. Though the disaster at Flixborough contributed to a spike in accidents, industry-by-industry comparison of average fatality rates between 1971 – 1974 and 1975 – 1979 point to a reduction in workplace accidents.[1249] Improvement in the initial years of HASAWA was also observed by other commentators.[1250]

4.0 Conclusion

'If the Act is to work, it will need the men to back it'.[1251]

[1246] The Times, 'Committee to Examine how Best to Protect Workers' *The Times* (London, 4 April 1975)
[1247] The Times, 'Why Safety Always Comes First' *The Times* (London, 13 November 1986)
[1248] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)
[1249] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)
[1250] Graham Wilson, *The Politics of Safety and Health: Occupational Safety and Health in the US and the UK* (Clarendon Press 1985); Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)
[1251] Editorial, 'Danger! Men at Work' (1975) 75 IM 11 p20

Decades of corporatist activity and non – state action came to fruition with the enactment of HASAWA. This represented a shift away from government taking full responsibility for service delivery and traditional spheres of state activity towards provision by networks of non – departmental public bodies and non - governmental actors.   This shift away was not a complete release; the OHS Network worked in the shadow of hierarchy. Networks cannot function independently of hierarchal government.   Even though the day-to-day activities were largely carried out by the OHS Network, the Centre was still answerable to the government; it was required to report its activities and liaise with government departments. Thus, the concept of network governance does not seek to remove past understandings of government, 'but… expand the conceptual horizon to include recent changes, in so far as they have come about'.[1252]

Expanding the 'conceptual horizon' also allows us to see the differences between the OHS Network and the regimes that existed prior. The differences were highlighted by Sørensen and Torfing's typology of an archetypal network. First, the OHS Network's assemblage of interdependent actors reversed a history of unilateral activities. The Centre drew from the expertise and reach of the Periphery to improve working conditions. Correspondingly, the Periphery benefited from the legitimacy and the 'housing' provided by the Centre.

Second, building consensus was integral to the Network's activities. The HSC was pivotal in assuring that no interested party had been denied access.[1253] No entity had engaged so vigorously in unifying the various factions before 1974. The Network that emerged was an actualisation of the Robens philosophy of consensus, that is, 'a mutually beneficial co-incidence of interests amongst apparently antagonistic parties can be reached via relatively *little or no state intervention* (emphasis added)'.[1254]   It was hoped that individuals and organisations that participated in the formulation of regulations were more likely to comply and even promote

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[1252] Peter Bogason and and Mette Zølner, 'What is Network Governance' in Peter Bogason and Mette Zølner (eds), *Methods in Democratic Network Governance* (Palgrave Macmillan 2007) p5
[1253] Peter Jacques, 'The Trade Unions and the Work Environment' (1977) 125 JRSA 5255 p674
[1254] Steve Tombs and David Whyte, 'Deadly consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46, p48 - 50

regulations because they had a 'stake' in the process. Moreover, regulations reached through consensus were extremely difficult for the courts and Parliament to dislodge.

The third aspect of the Network was the establishment of an institutionalised framework in which norms, values and standards were developed. Such settings provided the Network with regular opportunities to engage, exchange ideas, discuss best practice and keep abreast of the latest developments. Before the enactment of HASAWA, inspectors, researchers, experts and professional, occupational and trade groups did not have a shared 'venue' to meet on a regular basis.

The Network was also typified by self – regulation, in the sense that the Network focused on regulating OHS based on its own ideas, resources and capabilities, and it did so within a regulative framework that was adjusted through negotiations and regular interaction. Although the Factory Inspectorate had a strong tradition of exhortation, education and advice in its dealings with employers, it was haphazard and inconsistent. The Network exhibited a much more explicit intention to codify and rationalise how industry could best regulate itself, through this pursuit, policies of responsibilisation and safety consciousness came to the fore. The last aspect was the production of 'public purpose'.[1255] A significant amount of the OHS Network's activities were directed towards the public. Before HASAWA was enacted, the public was largely an afterthought. However, the years leading up to HASAWA were typified by a series of disasters that prompted the government and those that worked in OHS to turn their attention to the public.

The building blocks of the OHS Network were laid down between 1974 – 1979. The OHS Network was given the space and resources to develop into impressive governing institutions.

[1255] Eva Sørensen and Jacob Torfing, 'Network Governance and Post-Liberal Democracy' (2005) 27 ATP 2 p197; Eva Sørensen and Jacob Torfing (eds), *Theories of Democratic Network Governance* (Palgrave Macmillan 2007); Eva Sørensen, 'Democratic Theory and Network Governance' (2002) 24 ATP 4 p693

Chapter Seven: The Recapture of OHS (1974 – 2010s)

1.0 Introduction

The Labour government's nurturing of the OHS Network created a quasi-autonomous, well – rounded and formidable governance network. However, it was not given the opportunity to develop further. From the winter of 1979, successive governments eroded and restricted its regulatory mandate. Ultimately, losing much of its autonomy and effectiveness. Setting the scene for the recapture of OHS.

1.1 Themes

To observe how the OHS Network endured each period of government, this chapter utilised several themes. When confronting such a vast history, it is useful to use a framework to observe critical events. Thus, notions of the 'surround', 'targeting' and 'steering' were used to emphasise key points, understand matters in their correct contexts and signify commonalities and differences.

1.2.1 Surround

The 'environment' that impacted the OHS Network is described as the 'surround'. The surround was one of the organising principles utilised by Keith Hawkins to direct our attention to the broader context in which regulatory decision – making took place.[1256] Hawkins suggests that changes in the surround impact the leadership and actors 'on the ground' either through central policy shifts or the modification of their behaviour.[1257]

[1256] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p115 - 135

[1257] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p115 - 135

1.2.2 Targeting

With the exception of the Labour government, the HSC/E was targeted for 'special attention' by successive governments. Generally, *before* any specific action was directed towards the HSC/E, there were some reasons that motivated the government to focus its attention on the HSC/E.

1.2.3 Steering

After the HSC/E was targeted, it was 'steered' to fulfil the aims of government. Steering describes how governments from the 1970s 'managed' their sprawling networks of public, private and voluntary actors. Much of what was developed was spontaneous and reactive to the pressures of managing networks of quasi-autonomous non – departmental public bodies and their 'helpers'.[1258] Thus, from the Labour government of 1974 – 1979 until the Coalition government, we can broadly observe an evolution of steering tools. Rather than provide a descriptive account of each tool used by these governments, we will focus on the tools that typified the administration.

1.3 The layout of the chapter

The chapter is sectioned into five parts. Each part describes a period of government. The chapter commences with a discussion of the surround of the Labour government 1974 – 1979. The building blocks of the OHS Network were laid down between 1974 – 1979. The OHS Network was given the space and resources to develop into impressive governing institutions, distinct and unique from the Labour government.

The following section looks at the surround of the Thatcher government (1979 – 1990); the 'honeymoon period' was over. The 'anti-public sector - pro-private sector conservatism' of the Thatcher government reshaped the surround of the HSC/E. The social contract was nullified,

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[1258] Andrew Dunsire, *Execution Process: Implementation in a Bureaucracy* (Martin Robertson 1978); Andrew Dunsire, *Control in a Bureaucracy* (St. Martin's Press 1978); Andrew Dunsire, 'Holistic Governance' (1990) 5 PPA 1 p4

budgets were tightened and decision – making processes were 'interrupted'.[1259] The result of which left the Centre weakened.   However, the Periphery was afforded opportunities to fill the vacuum left by the weakened Centre.

This is followed by an exploration of the surround under the Major government (1990 – 1997). The key features of Thatcher's government lingered; managerialism and neoliberalism remained the mood music of the period. Anti-unionism continued to be reflected in the promotion of individual employment relationships at the expense of the collective.[1260] All of which weakened the Centre even more while furthering empowering the Periphery.

The subsequent New Labour government (1997 – 2010) mirrored the surround of the Thatcher and Major governments, albeit with a 'human face'.[1261] When Labour entered government, it inherited a series of practices embedded within the British state.[1262] There was no real effort to reverse these practices. What happened instead was the formalising of existing trends. In the sense that the Centre's decline and the Periphery's ascension were part of explicit policy.

The last section looks at the Coalition government (2010 - 2015), much of the surround remained the same except for a creeping populism.[1263] Following the 'cycle' set by the Blair government, the Conservative leader opened the door *wider* to a rhetorical populism through his appeals to the ordinary man.[1264]   Such populist appeals were a deterring and critical restriction on OHS regulation.[1265] All of which left the Centre moderated and susceptible to government influence.

[1259] Manfred B. Steger and Ravi K. Roy, *Neoliberalism: A Very Short Introduction* (Oxford University Press 2010)
[1260] Susan L. Kang, *Human Rights and Labor Solidarity: Trade Unions in the Global Economy* (University of Pennsylvania Press 2012)
[1261] Stuart Hall, 'New Labour's Double-shuffle' (2005) 27 REPCS 4 p319
[1262] Tony Cutler and Barbara Waine, 'Managerialism Reformed? New Labour and Public Sector Management Social Policy and Administration' (2000) 34 SPA 3 p318
[1263] Michael Higgins, 'Governmentality, populism and empowerment' in Richard Scullion and others (eds), *The Media, Political Participation and Empowerment* (Routledge 2013) p58 - p71; Agnès Alexandre-Collier, 'The Temptation of Populism in David Cameron's Leadership Style' in Agnès Alexandre-Collier and François Vergniolle De Chantal (eds), *Leadership and Uncertainty Management in Politics: Leaders, Followers and Constraints in Western Democracies* (Palgrave Macmillan 2015); Agnès Alexandre-Collier, 'How Populist was David Cameron?' (2016) 23 JUNC 2 p116
[1264] Agnès Alexandre-Collier, 'How Populist was David Cameron?' (2016) 23 JUNC 2 p116
[1265] Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-sense' Regulation' (2015) 42 JLS 2 p202; Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016)

Though the Periphery continued to expand, it suffered from being denigrated and stigmatised by the Coalition government.[1266] As a whole, the period of Coalition government represented the Periphery's first adverse consequence to its expansion.

Over these five periods of government, there has been a gradual erosion of the autonomy, dynamism and regulatory mandate of the OHS Network.

2.0 The surround of the Labour governments (1974 – 1979)

The building blocks of the OHS Network were laid down between 1974 – 1979. The OHS Network was given the space and resources to develop into effective governing institutions, distinct and unique from the Labour government. Despite the controversies of the period, a nurturing Labour government facilitated the growth and expansion of the OHS Network. The documentary evidence exudes complete confidence in its regulatory activities. Such low levels of scrutiny were particularly important because it meant that the Centre's ambitions were not tempered by having to justify its operations through rigid and external categories.[1267]

If the DE was unwilling to scrutinise the activities of the HSC/E, it still had the opportunity to 'hand the HSC/E over' to Parliamentary scrutiny.[1268] However, the Conservative 'quango hunter' Holland believed that the DE actively sought to screen the HSC/E from the scrutiny of Parliament.[1269] His growing concern over the unaccountability of the HSC/E was met by a wall of silence erected by the DE. He complained that, 'Power has been bestowed on executive agencies of government about which the only permitted parliamentary questions are "Who are the appointed at what rate of pay?" and "What reports have been submitted to the minister, if

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[1266] Paul Almond, 'The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulation' (2009) 36 JLS 3 p352
[1267] Barry Boyer, 'The Federal Trade Commission and Consumer Protection Policy: A Post-Mortem Examination' in Keith Hawkins and John N. Thomas (eds), *Making Regulatory Policy* (University of Pittsburgh Press 1989)
[1268] Phillip Holland, *The Governance of Quangos* (Adam Smith Institute 1981) p21 - 22
[1269] Phillip Holland, *The Governance of Quangos* (Adam Smith Institute 1981) p21 - 22

any?"' He demanded that the DE 'open up the activities' of the HSC 'to the possibility of challenge at Question time in the House of Commons'.[1270]

The DE resisted such calls by offering vague reassurances. Also, scrutiny could have come about through the regulatory process; the statutory instruments produced by the HSC were subject to the approval of the Secretary of State for Employment. However, the Secretary of State for Employment did not exercise his legal right to reject a regulation passed by the HSC, and no regulation was seriously challenged by Parliament.[1271] In fact, the Secretary of State for Employment signed off the HSC/E's comprehensive five-year plan, which consisted of seven separate programmes that went beyond the factory walls; as far ranging as regulating hazards on the roads, ports, harbours, railways, air pollution, offshore installations and even diving regulations.[1272] Such expansionism could have prompted an overt Government reaction, yet there was a high level of tolerance for this ambitious project not shown in later periods.

The Wilson and the Callaghan administrations had ample opportunity to halt the expansion of the Network, particularly in the period of the Wilson administration in which the DE was a full – time 'shadow executive' of the HSC/E. Before the 'keys' of the HSC/E were handed over to the Chairpersons, the Department of Employment was in direct control of the HSC/E; since the Department was the 'sponsor' of the Act, it was charged with administering a wide-ranging programme of work aimed at ensuring that the basic provisions of HASWA would operate correctly.[1273] This privileged position of absolute authority presented a window of opportunity for the DE to roll back the independence allotted to the HSC/E, which in turn would have severely impaired the wider Network. However, after the transition work was complete, the handover to the Chairpersons went as planned. The only precaution taken by the Department

[1270] Phillip Holland, *The Governance of Quangos* (Adam Smith Institute 1981) p21 - 22
[1271] Graham K. Wilson, *The Politics of Health and Safety* (Clarendon Press 1985)
[1272] Work Study, 'Blueprint for Safe Future' (1977) 26 WS 11 p40
[1273] CBI, 'L 483 74 Health and Safety at Work Act Department of Employment Timetable for Implementing the Act' 1974 (Archive no: MSS 200/C/3/EMP/4/6) MRC - University of Warwick

was to leave behind a timetable of statutory instruments and administrative arrangements for the HSC/E.[1274]

In addition to the lack of impairments, the 'surround' of the Labour government provided the OHS Network with two material benefits. First, the DE increased the budget.[1275] Moreover, the government allowed regulations to pass in the full knowledge that huge costs would be incurred by third parties. For instance, the government did not block the *SRSC Regulations* even though costs were estimated to be £80m per year and employers, mainly from the public sector, had to provide safety representatives with paid time off both for training and for the performance of their functions.[1276] It should be noted that the government did not have to increase the HSC/E's funding; underfunding the HSC/E was politically tenable, considering the turbulence of the period and the fact that OHS was much lower down on the list of 'politically sensitive' areas under the purview of the DE.[1277] Yet, despite this, the government did not reduce the HSC/E's funding.

Under the Labour Government, the Network, *as a whole*, grew exponentially. At the end of the 1970s, the Core reached its peak, staffed by 4,700 employees. Correspondingly, the Periphery had also grown, the IISO estimated that over 10,000 people had the word 'safety' in their job title.[1278] This figure excludes thousands more that worked under different job titles or employees that incorporated safety within their core responsibilities.

Second, the Labour government's support of trade unionism strengthened the voluntarist framework which underpinned the OHS Network.[1279] Nichols implores us to see that the

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[1274] CBI, 'L 483 74 Health and Safety at Work Act Department of Employment Timetable for Implementing the Act' 1974 (Archive no: MSS 200/C/3/EMP/4/6) MRC - University of Warwick; Philip Holland, *The Governance of Quangos* (Adam Smith Institute 1981)

[1275] L. Kenton, 'Slackness in the Safety Net' (1973) 73 IM 4 p24; Philip Holland, *The Governance of Quangos* (Adam Smith Institute 1981); A. Wilson, 'Danger Men at Work' *The Guardian* (London, 28 May 1976)

[1276] Brenda Barrett, 'Safety Representatives, Industrial Relations and Hard Times' (1977) 6 ILJ 3 p165

[1277] L. Kenton, 'Slackness in the Safety Net' (1973) 73 IM 4 p24

[1278] P.B. Beaumont J.W. Leopold and J.R. Coyle, 'The Determinants of Effective Health and Safety Committees' (1982) 5 MRN 1 p1; P.B. Beaumont J.W. Leopold and J.R. Coyle, 'The Safety Officer: An Emerging Management Role?' (1982) 11 PR 2 p35

[1279] Peter Fairbrother, 'Organize and Survive: Unions and Health and Safety - A Case Study of an Engineering Unionized Workforce' (1996) 18 ER 2 p5

success of HASAWA in the 1970s has to be understood in the context of the strength of trade unionism, while the deterioration of OHS in the first half of the 1980s should be viewed in the context of the new industrial relations climate that saw trade union membership decline.[1280]   The government 's support of trade unionism stemmed from the 'social contract'. Discussion on the 'social contract' is often restricted to an agreement between Labour and the unions; the former agreeing to a raft of political concessions and the latter agreeing to persuade its members to cooperate in a programme of wage restraint. However, the social contract meant much more to Michael Foot, the then Secretary of State for Employment, and his sympathetic ministerial team.[1281]   Since Foot was the 'most important link' in the government's social contract with unions, it is worth noting how he envisioned the contract, the Secretary of State stated in 1974, 'The Social Contract is no mere paper agreement approved by politicians and trade unions. It is not concerned solely or even primarily with wages. *It covers the whole range of national policies* (emphasis added)'.[1282] Foot's mission was to facilitate the way for unions to look beyond their membership base, they had a duty to 'members of other unions, to pensioners, to the lower - paid, to invalids, to the community as a whole'.[1283] We should see the unyielding support of the HSC/E through this lens, 'The HSWA and HSC, therefore, were fundamentally linked with this movement to extend workers' rights, and the prevailing belief in corporatism as a means of reaching a political settlement'.[1284] The union element in the OHS Network played a significant role in the founding years of the HSC/E.[1285] Materially represented in the government's consent of the *SRSC Regulations 1977*.[1286]

[1280] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)
[1281] Andrew Scott Crines, *Michael Foot and the Labour Leadership* (Cambridge Scholars Publishing 2011)
[1282] Andrew Scott Crines, *Michael Foot and the Labour Leadership* (Cambridge Scholars Publishing 2011) p71
[1283] Andrew Scott Crines, *Michael Foot and the Labour Leadership* (Cambridge Scholars Publishing 2011) p71
[1284] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p199
[1285] Theo Nichols, *The Sociology of Industrial Injury* (Mansell 1997)
[1286] Cited in Ian Glendon and Richard Booth 'Worker Participation in Occupational Health and Safety in Britain' (1982) 121 ILR 4 p399

2.1 Steering the HSC/E

The Labour government sought to *moderately* 'steer' the HSC/E rather than 'row'. The government stepped back and discouraged ministers from exercising overt control of OHS policy and practice.[1287] Instead, the government opted to steer the HSC/E. The Labour government's mode of steering was best described as 'boundary steering'; the government steered the HSC/E to investigate a particular area, prevented the HSC/E from entering into a certain area and instructed the HSC/E to document their activities. By specifying the boundaries of the HSC/E, the state established norms of what could and could not be regulated.[1288] A former Director General of the HSE felt the constant pressure to stay within the 'long borderlines and overlaps with areas which were largely excluded from the scope of the new arrangements, notably environmental concerns, fire safety, food safety, transport safety and the health service itself'.[1289] Border monitoring meant that the state had to continuously prod the HSC/E to stay within their mandated borders.[1290]

In comparison to subsequent governments, the Labour government's steering of the HSC/E was minimal. Archival materials and interviews of HSC/E officials conducted by Hawkins, Almond and Sirrs, are devoid of any examples of excessive control until the 1980s. We can speculate on several reasons for the government's minimal steering. First, aversion to overt steering can be connected to the theme of 'government by consent' that was present in the first years of Labour's tenure in the DE. Foot and his ministerial team desired a move away from the authoritarian and bureaucratic government of industrial matters towards a *status quo ante*.[1291] For Foot, 'government by consent' was 'the most sacred cause of all'.[1292] As a young man, Ray Collins, a

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[1287] A. Wilson, 'Danger Men at Work' *The Guardian* (London, 28 May 1976)

[1288] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002)

[1289] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future: The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1290] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002)

[1291] Andrew Scott Crines, *Michael Foot and the Labour Leadership* (Cambridge Scholars Publishing 2011) p71

[1292] Andrew Sparrow, 'Michael Foot: Tributes and Reaction' *The Guardian* (London, 3 March 2010)

former trade unionist and General Secretary of the Labour Party, witnessed Foot implement HASAWA with this idea in mind.[1293]

Second, the lack of steering may have been connected to the newness of the OHS framework. The DE officials were bereft of any experience of steering institutions like the HSC/E. How do you regulate regulators? Moreover, it was still fresh in their minds of the pitfalls of rowing; the DE had expended significant resources distancing themselves from rowing. Such concerns may have brought about a reluctance to exercise too much control over the HSC/E.

2.2 Learning to walk

The OHS Network was given a crucial 'head - start' by being established under the surround of a supportive Labour government which was willing to develop governing institutions. This placed the Centre in a unique position; the Centre was given a relatively large budget to fulfil its mandate, with little to no interference. To be an effective force, the Centre needed the 'training wheels' given to it by the Labour government. Arguably, if the Centre was established under a less tolerant Thatcher government, this scenario would have been debilitating for the burgeoning Network. Budget cuts, increased scrutiny and no real support to regulate are not conducive for growth and development.

3.0 The surround of the Thatcher governments (1979 – 1990)

In 1979, Margaret Thatcher entered 10 Downing Street, commencing 18 years of continuous Conservative rule. The 'honeymoon period' was over. The 'anti-public sector - pro-private sector conservatism' of the Thatcher government reshaped the surround of the HSC/E. The social contract was nullified, budgets were tightened and decision – making processes were 'interrupted'.[1294] Therein creating a surround that put the HSC/E in the crosshairs of the central government. The surround of the Thatcher government incorporated three broad themes;

[1293] Andrew Sparrow, 'Michael Foot: Tributes and Reaction' *The Guardian* (London, 3 March 2010)
[1294] Manfred B. Steger and Ravi K. Roy, *Neoliberalism: A Very Short Introduction* (Oxford University Press 2010)

neoliberalism, anti-union sentiment and New Public Management. First, under the influence of

Keith Joseph, an active and committed publicist and polemicist with connections to the

neoliberal Institute of Economic Affairs (IEA), Margaret Thatcher accepted that the post-war

consensus had to be abandoned. Although the Heath government had implemented a neoliberal

programme in the first two years of government, and the Labour government used monetarism as

a crisis management technique, it was the Thatcher government that attempted to give

neoliberalism a fuller expression.[1295] David Harvey commented that Thatcher 'plucked from the

shadows of relative obscurity a particular doctrine that went under the name of 'neoliberalism'

and transformed it into the central guiding principle of economic thought and management'.[1296]

The Prime Minister staffed her cabinet with loyal secretaries and advisers who shared her point

of view and applied considerable pressure to officials who did not.[1297]

The impact of which expressed itself in the shrinkage of the HSC/E's budget. As part of wider

cuts to the public sector, the government set out to reduce the HSC/E's staff-related budget by

6% in 1979. [1298] Just two years later, there was another demand for an 8% cut.[1299] Depicting the

regular reduction of the HSC/E's staff levels and expenditure in graphs, Sirrs concluded that,

'The HSC/E's income effectively flat-lined.   Adjusting for inflation, the effect of financial cuts

is clearly discernible. Between 1980 and 1985, the number of HSE inspectors fell by over 12 per

cent'.[1300] An IOSH report also observed that between 1975 to 1990 the proportion of HSE

[1295] Daniel Steadman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton University Press 2012); Kean Birch and Vlad Mykhnenko, (eds) *The Rise and Fall of Neo – liberalism: The Collapse of an Economic Order* (Zed Books 2010); Keith Tribe, 'Liberalism and Neoliberalism in Britain, 1930 – 1980' in Philip Mirowski and Dieter Piehwe (eds), *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective* (Harvard University Press 2009)
[1296] David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2007) p2
[1297] Manfred B. Steger and Ravi K. Roy, *Neoliberalism: A Very Short Introduction* (Oxford University Press 2010)
[1298] The Employment Committee, *The Employment Committee. The Working of the Health and Safety Commission and Executive: Achievements since the Robens Report. Minutes of Evidence* cited in Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[1299] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)
[1300] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p240

expenditure which came directly from the government fell from 98% to 76%.[1301] John

Rimington who became the Director-General of the HSE in the early 1980s recalled the arbitrary

nature of the cuts:

> [T]he way it was done was nonsense, really, as it always is when you get these peremptory orders…. What happened was that HSE had to lose 25 per cent of its staff, whether it needed them or not… All inspectors' recruitment had to be immediately suspended, and remain suspended for five years. What that does to an organisation is nobody's business What do you do? You've got no choice.[1302]

It is important to note that Thatcher governments reduced the budget covertly. OHS had too

much support from the public and industry to launch a direct attack on OHS.[1303] Thus, the

Thatcher government used 'backdoor' methods to steer the HSC/E.[1304] The reduction of the

HSC/E's budget was often covered up. During the HSC/E's first cuts, the Secretary of State

stated that the opposite was happening '*more* resources are available, and *more* visits are being

made'.[1305] Furthermore, the government maintained that,

> In real terms, at 1987–88 prices the last Labour Government spent £98.5 million on the Health and Safety Executive. This year, the amount has been increased to £102 million in real terms. Next year, it is to go up to £104.5 million in real terms. Therefore, how does he justify his claim that we have cut provision?[1306]

Also, it was stated to the House, 'There has been a great deal of talk in the debate that the

Government have been responsible for financial cuts... Let us get it on the record once and for

all that there have been no cuts whatever of that nature'.[1307] The government failed to mention

that the HSC/E's remit had been extended significantly since the 1970s, thus, even though there

was an equivalence in real term spending, the resources had to be stretched significantly further.

Moreover, there was a belief amongst ministers that despite the cuts, the HSC/E 'got off easy'

[1301] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)
[1302] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p240
[1303] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)
[1304] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35
[1305] 'Health and Safety' HC vol 123 cc996-1038 (2 December 1987)
[1306] 'Health and Safety' HC vol 123 cc996-1038 (2 December 1987)
[1307] 'Health and Safety' HC vol 123 cc996-1038 (2 December 1987)

compared to other bodies. The 'mercy' shown to the HSC/E should be lauded rather than scrutinised.[1308]

Second, the Thatcher government was regarded as the 'most determinedly anti-union since the Second World War'.[1309] The anti-unionism of the Thatcher government stemmed from its commitment to creating a functioning and unhindered economy.[1310] Consequently, the government undertook an incremental legislative programme that sought to constrain the influence of trade unions on the functioning of the free market.[1311] Such a programme shattered the post-war consensus and established a new agenda which supported the rights of the individual over the interests of the collective.[1312]

The anti-union surround impacted OHS. Within the first year of government, the *Safety Representative and Safety Committees Regulations 1977* was undermined when it was most needed.[1313] The Thatcher government annulled the entitlement to appoint safety representatives by redefining 'a recognised trade union' in the *Employment Act 1980*.[1314] Thus, safety representatives could only exist where the employer chose to recognise a trade union. Moreover, the wider effect of the government's hostility played a significant role in constraining trade union influence, thereby tilting the tripartite structure towards the CBI.[1315]

[1308] 'Health and Safety' HC vol 123 cc996-1038 (2 December 1987)

[1309] Martin Holmes, *The First Thatcher Government, 1979-1983: Contemporary Conservatism and Economic Change* (Westview Press, 1985) p149

[1310] Andrew S. Crines Timothy Heppell and Peter Dorey, *The Political Rhetoric and Oratory of Margaret Thatcher* (Palgrave Macmillan 2016) p34

[1311] Andrew S. Crines Timothy Heppell and Peter Dorey, *The Political Rhetoric and Oratory of Margaret Thatcher* (Palgrave Macmillan 2016) p34

[1312] Kenneth Miller and Mairi Steele, 'Employment legislation: Thatcher and After' (1993) 24 IRJ 3 p224

[1313] Christopher Gifford, 'Deregulation and BSE' in Eve Coles Denis Smith and Steve Tombs (eds), *Risk Management and Society* (Kluwer Academic Publishers 2000) p216

[1314] Christopher Gifford, 'Deregulation and BSE' in Eve Coles Denis Smith and Steve Tombs (eds), *Risk Management and Society* (Kluwer Academic Publishers 2000) p216

[1315] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)
Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016)

Third, the Thatcher government is often regarded as the driving force behind New Public Management (NPM).[1316] NPM was as a reaction to the perceived inadequacies and failings of the 'bloated' public services.[1317] Appropriated from the private sector, NPM was the key organising principle for government to employ private sector models of financial control, performance monitoring and fiscal discipline.[1318] Though there was some engagement with management techniques in the 1960s and 1970s, it did not go beyond the conduct of personnel and matters of pay.[1319] A 'full-blown form' came under the Thatcher government to the extent that it became the dominant ideology of governing public services in the UK. Its impact on OHS was experienced through the central question posed by government officials, how we can 'manage' the HSC/E to make workplaces safer in the least costly manner?[1320] The way in which the HSC/E was targeted and steered by the Thatcher government was largely informed by this surround.

3.1 Targeting the HSC/E

The targeting of the HSC/E was not an automatic process; rather it took some months for the government to acknowledge that the HSC/E were institutions of interest. This spoke to the newness of the HSC/E; such institutions were incomparable to anything that had come before. From decades of observation and study, it is relatively simple to define the HSC/E. However, for incoming Conservative ministers that encountered Labour's projects, there was a need to categorise and catalogue such novelties. Hence, the commissioning of the *Pliatzky Review*.[1321]

[1316] Bernard Burnes, 'Organizational Change in the Public Sector; The Case for Planned Change' in Rune Todnem and Calum Macleod (eds), *Managing Organizational Change in Public Services: International Issues* (Routledge 2009) p113

[1317] Bernard Burnes, 'Organizational Change in the Public Sector; The Case for Planned Change' in Rune Todnem and Calum Macleod (eds), *Managing Organizational Change in Public Services: International Issues* (Routledge 2009) p113

[1318] Christopher Hood, 'Encyclopaedia Entry on New Public Management' in *The Encyclopaedia of the Social and Behavioural Sciences* (Elsevier 2002) p12553

[1319] Christopher Hood and Ruth Dixon, *A Government that Worked Better and Cost Less?: Evaluating Three Decades of Reform and Change in UK Central Government* (Oxford University Press 2015)

[1320] Edoardo Ongaro and Sandra Van Thiel, *The Palgrave Handbook of Public Administration and Management in Europe* (Palgrave Macmillan 2018) p974

[1321] Leo Pliatzky, *Report on Non-Departmental Public Bodies (HMSO Cmnd 7797 1980)*

The Prime Minister enlisted the help of Sir Leo Plitazky to look at the whole range of non -

Departmental bodies to eliminate any which had outlived their usefulness or which could not be

justified in the context of the Government's objectives of reducing public expenditure and the

size of the public sector.[1322]   Pliatzky's role was not to secure reductions in Government

expenditure but to gain a picture of the quango landscape.[1323] The Department of Employment

had to 'hand over' a list of bodies, which it was responsible for. The HSC/E's large budget

made it a viable target. What they found, alarmed them. They encountered vast institutions,

which exerted considerable influence on several departments and noted that it was a beneficiary

of a large annual budget that grew exponentially every year. Moreover, it was believed that the

HSC/E had resulted in 'considerable extra costs for industry'.[1324]

There was another matter that Pliatzky's investigation brought to the fore; what was the nature of

the HSC/E? When the Government scrutinised its quangos, a variety of terms were used. Bruce

Fraser unpublished government report of 1945 used the term 'non-departmental

organisations'[1325]. The Treasury used 'non-departmental organisation' in 1968 in its *Guide to

Setting up Public Bodies[1326],* in a survey of such institutions undertaken in 1975 for the Civil

Service Department, Gordon Bowen used the term 'fringe bodies.'[1327] In the late 1970s, Holland

popularised the term 'quangos'.[1328] Very early, Pliatzky encountered definitional problems, he

dismissed Holland's term 'quango' on the basis that the connectedness of the HSC/E rendered it

non – departmental and not *non - governmental*, he saw HSC/E's expansion as the 'concealed

[1322] Leo Pliatzky, *Report on Non-Departmental Public Bodies (HMSO Cmnd 7797 1980)*

[1323] Margaret Thatcher Foundation, 'Government machinery: Pliatzky minute to No.10 ("Non-departmental public bodies") [progress report on review]' (*Margaret Thatcher Foundation*, 12 October 1979) < www.margaretthatcher.org/document/142112 > accessed 4 October 2015

[1324] Margaret Thatcher Foundation, 'Pliatzky minute to MT ("Health and Safety Commission and Health and Safety Executive") [review of non-departmental public bodies]' (*Margaret Thatcher Foundation*, 19 November 1979) <https://www.margaretthatcher.org/document/142108> accessed 26 June 2018

[1325] W. H. Greenleaf, *The British Political Tradition Volume III Part I A Much Governed Nation, Part 1* (Routledge 2003) p453

[1326] W. H. Greenleaf, *The British Political Tradition Volume III Part I A Much Governed Nation, Part 1* (Routledge 2003) p474

[1327] Gordon Bowen, *Survey of Fringe Bodies* (Civil Service Department 1978)

[1328] Philip Holland and Michael Fallon, *The Quango Explosion: Public Bodies and Ministerial Patronage* (Conservative Political Centre 1978); Philip Holland, *Quango, Quango, Quango: The Full Dossier on Patronage in Britain* (Adam Smith Institute 1979); Philip Holland, *Quango Death List* (Adam Smith Institute 1980; Philip Holland, *The Governance of Quangos* (Adam Smith Institute 1981); Philip Holland, *The Hunting of the Quango* (Adam Smith institute 1994)

growth of Government', which occurred outside of the DE.[1329] Therefore, Pliatzky referred to

the HSC/E as a Non – Departmental Public Body (NDPB); 'A body which has a role in the

processes of national government, but is not a government department, or part of one, and which

accordingly operates to a greater or lesser extent at arm's length from Ministers'.[1330] Once the

HSC/E was defined, Pliatzky, the Prime Minister, Sir Ian Bancroft, Sir Derek Rayner, David

Wolfson and Mike Pattison all agreed that the HSC/E was one of the NDPBs, which 'needed

attention'.[1331]

Related to the problem of definition was also the government's lack of knowledge of the

HSC/E's operations. Central Government knew very little about the HSC/E's activities. Such

unfamiliarity served as a protective layer for the HSC/E. Pliatzky was given just three weeks to

investigate dozens of NDBPs; this was not a sufficient period to investigate the HSC/E.[1332]

Also, it took weeks of probing and complaints from the Public Records Committee (PRC) to

survey the records of activities kept by the HSC/E; the PRC was continuously met with

frustration, to the extent that the PRC only managed to come away with a generic survey.[1333]

Likewise, Pliatzky had little recourse to use the HSC/E's annual reports, which were generic and

presented the latter in the way it wanted to be presented.   To this, a Permanent Secretary

remarked, 'Sir Leo's conclusions in the case of the HSE were not as clear-cut as the advice which

you received about the MSC'.[1334] Unlike the MSC and other NDPBs, the HSC/E's budget was

spent solely on their operating costs. Whereas other NDPBs funnelled their budget to other

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[1329] Leo Pliatzky, *Report on Non-Departmental Public Bodies* (HMSO Cmnd 7797 1980) p4
[1330] Justin Fisher D. T. Denver and John Benyon, *Central Debates in British Politics* (Routledge 2003) p373
[1331] Margaret Thatcher Foundation, 'Record of a meeting at 10 Downing Street at 1500 hours on Tuesday 28 August 1979' (*Margaret Thatcher Foundation*, 28 August 1979) <86e87754c1530cd7c4a7-873dc3788ab15d5cbb1e3fe45dbec9b4.r88.cf1.rackcdn.com/790828%20no.10%20cnv%20PREM19-0245%20f217.pdf> accessed 26 June 2018
[1332] Margaret Thatcher Foundation, 'Sir Leo Pliatzky memorandum to Mike Pattison - Health and Safety Commission and Executive' (*Margaret Thatcher Foundation*, 19 November 1979) <86e87754c1530cd7c4a7-873dc3788ab15d5cbb1e3fe45dbec9b4.r88.cf1.rackcdn.com/791119%20pliatzky%20min%20PREM19-2045%20f135.pdf> accessed 26 June 2018
[1333] Lord Chancellor Office, 'Department of Employment and Health and Safety Executive' April 1979 – August 1980 (Archive no: LCO 27/97) TNA - Kew Gardens
[1334] Margaret Thatcher Foundation, 'Sir Leo Pliatzky memorandum to Mike Pattison - Health and Safety Commission and Executive' (*Margaret Thatcher Foundation*, 19 November 1979) <86e87754c1530cd7c4a7-873dc3788ab15d5cbb1e3fe45dbec9b4.r88.cf1.rackcdn.com/791119%20pliatzky%20min%20PREM19-2045%20f135.pdf> accessed 26 June 2018

organisations, creating a more distinct paper trail, which made it easier for external parties to investigate. The HSC/E's self – contained expenditure was far opaquer and difficult to scrutinise.[1335]

Though Pliatzky was not able to get a full picture of the HSC/E's activities, it was enough of a picture to alert officials that there was a problem. A problem so significant that Pliatzky sent a confidential memo direct to the Prime Minister. The memo stressed that the HSC/E was continuously growing; evidence of staff increases, bureaucratic excesses and burdens on businesses were underlined throughout his memo.[1336] Disturbed by his memo, the Prime Minister demanded action on the HSC/E.[1337] Action would come in the form of seeking to change the decision – making processes of the HSC/E.

3.2 Steering the HSC/E

Once targeted, the HSC/E was subject to steering that it had not experienced previously.[1338] Steering the HSC/E considerably evolved under the Thatcher government. Perhaps being able to observe the development of sprawling networks on the opposition benches and the adoption of an administrative philosophy, NPM, the Thatcher government's approach to steering was much more intensive than their predecessors. [1339] Steering significantly went beyond the minimal steering of the Labour government.[1340] An example of this was that steering through setting

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[1335] Leo Pliatzky, *Report on Non-Departmental Public Bodies* (HMSO Cmnd 7797 1980)

[1336] Margaret Thatcher Foundation, 'Sir Leo Pliatzky memorandum to Mike Pattison - Health and Safety Commission and Executive' (*Margaret Thatcher Foundation*, 19 November 1979) <86e87754c1530cd7c4a7-873dc3788ab15d5cbb1e3fe45dbec9b4.r88.cf1.rackcdn.com/791119%20pliatzky%20min%20PREM19-2045%20f135.pdf> accessed 26 June 2018; Margaret Thatcher Foundation, 'Confidential Memo from Leo Pliatzky to Mike Pattison - Non - Departmental Public Bodies - The Manpower Services Commission (MSC)' (*Margaret Thatcher Foundation*, 1 November 1979) <fc95d419f4478b3b6e5f-3f71d0fe2b653c4f00f32175760e96e7.r87.cf1.rackcdn.com/D9358B7350394AA485ECE5C1C3D6453D.pdf> accessed 4 October 2015

[1337] Margaret Thatcher Foundation, 'Government machinery: Pliatzky minute to No.10' (*Margaret Thatcher Foundation*, 12 October 1979) < www.margaretthatcher.org/document/142112 > accessed 4 September 2015

[1338] Keith Hawkins, *Law as Last Resort Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press 2003)

[1339] R.A.W. Rhodes, 'Waves of Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) p33 - 49

[1340] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016); Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46

boundaries was intensified by the Thatcher government. The minimalist steering of the Labour government did not go beyond setting the boundaries of operation. The Thatcher government's approach was much more intimate. Hawkins' interviews of HSC/E staff revealed that extent that the Thatcher government heavily scrutinised the HSE's plan of work:

> All of the policies and enforcement, the whole panoply of things which we do, looks at those periodically, and decides whether or not the balance is right… whether there are particular omissions that they would like to see filled, or whether there are particular things which they think are being overdone... I think the government does have rather rough and ready priorities.[1341]

Specifically, the HSC sent a draft plan of their operations to concerned government departments. The department would return the plan with attached comments.[1342]

3.2.1 The evolution of steering the HSC/E

The Thatcher government's steering of the HSC/E was typified by cost-benefit analysis (CBA). The first application of formal CBA in the UK was in the evaluation of road and transport projects in the UK in the 1950s.[1343] It was largely used in an experimental sense. Had the CBA shown excessive costs, the projects would still have proceeded. However, under the Thatcher government, cost-benefit calculations took on a much more expanded and deterministic role in formal policymaking.[1344] This meant that the Centre was obligated to weigh the potential

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[1341] Keith Hawkins, *Law as Last Resort: Prosecution Decision-making in a Regulatory Agency* (Oxford University Press 2002) p159

[1342] Keith Hawkins, *Law as Last Resort: Prosecution Decision-making in a Regulatory Agency* (Oxford University Press 2002) p159

[1343] Stuart Cole, *Applied Transport Economics: Policy, Management & Decision Making* (Kogan 2005)

[1344] The imposition of the CBA placed the HSC/E in a precarious position, it is difficult for a regulatory agency to justify much of its operations. As the Chairman of the HSC stated in 1980, 'The balance sheet of health and safety cannot easily be quantified'. Also, several authors have discovered, it is extremely difficult to correlate the impact of regulation on rates of occupational disease and accidents due to the entanglement with confounding factors such as the changing nature of employment, technological developments and levels of reporting
P.B. Beaumont, 'An Analysis of the Problem of Industrial Accidents in Britain' (1980) 1 IJM 1 p28; Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p233

regulatory costs with potential benefits for all proposed regulations.[1345] A series of interviews conducted by Keith Hawkins in the 1980s reveal the imposition of this requirement:

> *The thing that causes attention now, which did not cause attention... perhaps when we started... is the fact that on the whole occupational health and safety legislation does have a cost*, that its benefits are actually difficult to demonstrate, particularly if they are... prevention of ill - health in the long and distant future (emphasis added). [1346]

To unpack what lay behind this tool, we turn to Andrew Dunsire's memorial address. The teacher of esteemed scholar Christopher Hood and Principal in the Department of Transport was very interested in control; his most original work sought to understand how bureaucracies were kept under control.[1347] After a decade of Thatcherism, he was very impressed with the manner that the Thatcher government exercised control over its many parts.[1348] With the assistance of Rhodes and Hood, his address was centred on the 'homeostasis' approach of the Thatcher government.[1349] The Thatcher government was intent on instilling homeostasis into the entities it had authority over. Homeostasis, in its original biological context, denoted the maintenance or regulation of a stable condition. In relation to the control of regulatory agencies, the government attempted to instil norms into the HSC/E to produce predictable and 'stable' outcomes.[1350] Any excessive burdens on business or increase in spending would bring about instability. Also, the instilling was designed to be covert; Dunsire brought the example of 'speed bumps' on roads that produce speed restriction more cheaply, and perhaps more reliably, than the imposition of 'speed cops'.[1351] In this sense, the Thatcher government sought to embed 'speed bumps' into the daily operations of the HSC/E.

[1345] Diana Fuguitt and Shanton J. Wilcox, *Cost-benefit Analysis for Public Sector Decision Makers* (Quorum Books 1999)

[1346] Keith Hawkins, *Law as Last Resort Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press 2003) p158

[1347] Andrew Dunsire, *Execution Process: Implementation in a Bureaucracy* (Martin Robertson 1978)
Andrew Dunsire, *Control in a Bureaucracy* (St. Martin's Press 1978)

[1348] Andrew Dunsire, 'Holistic Governance' (1990) 5 PPA 1 p4

[1349] Andrew Dunsire, 'Holistic Governance' (1990) 5 PPA 1 p4

[1350] Andrew Dunsire, 'Modes of Governance' in Jan Kooiman (eds), *Modern Governance: New Government-Society Interactions* (Sage 1994) p24

[1351] Andrew Dunsire, 'Holistic Governance' (1990) 5 PPA 1 p4

Similarly, Dunsire's colleague, Rhodes wrote about 'storytelling'.[1352] The narrative was imposed upon regulatory agencies like the HSC/E that they should be mindful of their regulatory burden, their 'role' in industry should be 'red tape reduction' and not one that places 'burdens on business'.[1353] Kenneth Dyson explained that narratives compel regulators to stick to the script, scaring straight regulators that would otherwise produce excessive regulations. Regulators that went against the narrative risked producing a fraught situation in which businesses would fold, markets or locations will collapse, and banks would slow down lending.[1354] Also, another stream of narratives that came out of the Thatcher government revolved around the notion that the worst problems of industrial safety had been mitigated, thus, 'further improvements needed to be justified in terms of a quantification of their costs and benefits'.[1355] Such narratives remained consistent throughout the 1980s. Dawson highlights that they were enshrined in two White Papers *Lifting the Burden* and *Building Businesses...Not Barriers*.[1356]

3.3 The impact of the Thatcher Governments on the OHS Network

By the end of the decade, the Thatcher government had fundamentally impacted the OHS Network. The impact was reflected in a weakened Centre and a strengthened Periphery.

3.3.1 The weakened Centre

As governing institutions, the Centre of the OHS Network was weakened under the Thatcher government. The surround of the Thatcher government had taken its toll on the Centre, its

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[1352] R.A.W. Rhodes, 'Theory and Practice of Governance; The Next Steps' (*Raw-Rhodes*, October 2016) <www.raw-rhodes.co.uk/wp-content/uploads/2017/07/TheoryPractice-Governancedocx.pdf> accessed 12 May 2018; R.A.W. Rhodes and Anne Tiernan, 'Executive Governance and its Puzzles' in Andrew Massey and Karen Johnston (eds) *The International Handbook of Public Administration and Governance* (Edward Elger 2015) p91
[1353] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988); R.A.W. Rhodes, 'Theory and Practice of Governance; The Next Steps' (*Raw-Rhodes*, October 2016) <www.raw-rhodes.co.uk/wp-content/uploads/2017/07/TheoryPractice-Governancedocx.pdf> accessed 12 May 2018; R.A.W. Rhodes and Anne Tiernan, 'Executive Governance and its Puzzles' in Andrew Massey and Karen Johnston (eds) *The International Handbook of Public Administration and Governance* (Edward Elger 2015)
[1354] Kenneth Dyson, *States, Debt, and Power: 'Saints' and 'Sinners' in European History and Integration* (Oxford University Press 2014) p327
[1355] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p203
[1356] Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988) p22 - 23

resources, ambition and reach had been curtailed. The budget cuts curtailed the *physical* presence (inspection and advisory services) of the Centre.[1357] In reaction to the cuts, the HSC warned the government that cuts would result in the reduction in their inspections and programmes and also lead to redundancies.[1358] Such warnings were not always heeded.[1359] Accompanying the retraction of the physical presence of the HSE was the ambition that had been so crucial to the expansion of the Centre in the 1970s. The surround had changed, affecting the confidence of HSC/E officials. Hawkins wrote specifically about the HSE's vulnerability to the political climate that 'became real in the early 1980s'[1360]. His collection of interviews revealed a 'change in stance' caused by the 'deregulation movement'.[1361] Although this was not something officially articulated in writing, it was something to which the HSC/E were sensitive to; 'The government of the day provides a feel as to what is appropriate... *and this I'm sure, will filter down* (emphasis added).[1362]

The governing ambition of the Centre was moderated by the reality of reduced resources, accounting for the economic impact of its activities and the steering of its new masters. This last point was particularly incapacitating. No longer operating under the *shadow* of hierarchy, it operated under the *shadows* of hierarchy. The Thatcher government exposed the HSC/E to the scrutiny of several influential central departments with little knowledge of what the HSC/E did; the National Audit Office (NAO) reviewed the HSC/E's operation and administration, the Public Accounts Committee's (PAC) questioned their financial management and the Employment

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[1357] Theo Nichols, *The Sociology of Industrial Injury* (Mansell Publishing 1997); Sandra Dawson and others, *Safety at Work: The Limits of Self-Regulation* (Cambridge University Press 1988)

[1358] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)

[1359] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p118

[1360] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p118

[1361] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p118

[1362] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p118

Committee enquired into their workings.[1363]   Moreover, the former Director- General of the HSE recollected that in the 1980s, seven Select Committees of Parliament were interested in the activities of the HSC/E:

> Now I was liable to be dragged before any of seven committees of Parliament, at a moment's notice to explain anything they wanted to ask me, and I was, you know. So your answerability becomes overwhelming, really overwhelming, that's one of my principal recollections, the amount of answerability. I mean one would sit, each, well at least once a month, until about ten at night, with a pile of questions, parliamentary questions in front of one.[1364]

Furthermore, at the beginning of its existence, the HSC/E barely received 30 Parliamentary questions annually, however, by the late 1980s, there were nearly 800 per year.[1365]   We can posit that being answerable to so many factions affected the HSC/E's autonomy and ambitiousness. Both of which were further complicated by the fact that the Centre could not always argue its case with interested parties, it had to rely on the sponsoring department to defend its interests. This posed several problems if the sponsoring department gave OHS a low financial priority.[1366]

3.3.2 The strengthened Periphery

The Periphery was not subject to such pressures. On the contrary, the Thatcher Government's cuts to the Centre strengthened the Periphery. The Periphery were inundated with opportunities to fill the vacuum left by the Centre.   Budget cuts meant that the Centre had to curtail its advisory role, training courses and charge for some of its services it previously carried out free

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[1363] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[1364] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014)
[1365] British Safety Council, 'Too Many PQs' (1990) 6 SM 122 p22
[1366] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016; Richard Smith, 'Alcohol and Work: A Promising Approach' (1981) 283 BMJ 6299 p1108

of charge.[1367] Even the Centre's advisory literature grew costly to many employers.[1368] This allowed significant room for the Periphery to capitalise from the gap in the market.

Also, the Centre's regulatory output provided opportunities for the Periphery; the Notification of Installations Handling Hazardous Substances (NIHHS), Control of Industrial Major Accident Hazards (CIMAH), the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), the *Electricity at Work Regulations* and the *Noise at Work Regulations* were major pieces of regulation that required the expertise of the Periphery.[1369]

More importantly, the strength of the Periphery was fuelled by the HSE staff joining the ranks of the Periphery.[1370] The Periphery benefitted greatly from the expertise of former inspectors. In fact, they actively targeted former inspectors for recruitment.[1371] There is even some evidence that the government was aware of the Periphery filling the vacuum of the retreating Centre, and in a limited capacity, encouraged such activity.[1372]

While the Centre's staffing levels peaked at the end of the 1970s and fell each year after that, the 1980s were years of tremendous growth for the Periphery.[1373] The 'boom' period of the Periphery was also reflected in a series of mergers in the 1980s. The most significant merger was between the IISO and the Institute of Municipal Safety Officers (IMSO) to form the Institute of Occupational Safety and Health (IOSH); IOSH became the largest and most prestigious safety organisation in the country, with national and international membership.

[1367] John Lansman and Alan Meale, *Beyond Thatcher: The Real Alternative* (Junction Books 1983) p86
[1368] A. Ward Gardener and D. Bell, 'Book Reviews' (1982) 32 OM 1 p97
[1369] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future: The Alan St John Holt Memorial Lecture' (*RoSPA* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed; on 25 October 2016; Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014)
[1370] Paul Almond, Interview with Stan Barnes, Former President of the IOSH, University of Reading (Reading, 10/9/2014)
[1371] British Safety Council, 'BSC And HSE Inc. On Inspectors' (*British Safety Council Digital Archive*, 1980 - 1990) <https://services.storetec.net/showfile.php?id=9178206> accessed 25 June 2018
[1372] British Safety Council, 'BSC And HSE Inc. On Inspectors' (*British Safety Council Digital Archive*, 1980 - 1990) <https://services.storetec.net/showfile.php?id=9178206> accessed 25 June 2018
[1373] Work Study, 'A Few Minutes… Caught by the Stopwatch' (1983) 32 WS 4 p9

The Periphery had shown significant ambition to play a greater role in OHS. They saw themselves as the 'young Turks of industrial safety, *pioneering a new aggressive approach to a whole spectrum of industrial hazards*, ranging from fire and flood, sabotage and theft to shop floor and office safety, product liability and industrial relations (emphasis added)'.[1374] The IISO proclaimed decades earlier:

> The safety officer will be wanted more than ever, and his functions will be to supply specialised advice and knowledge… The works manager will want advice, so also the mechanical engineer, the electrical engineer, the production engineer, the power engineer, the foundry manager, the foreman of each of the gangs, and so on.[1375]

The publication of *The Training of Safety officers* and *Management Introduction to Total Loss Control* were among the first authoritative statements on the new direction of the safety profession.[1376] Through the publication of these materials, safety bodies had in mind the production of the type of safety officer only too infrequently encountered in industry – 'the fully competent, authoritative man'.[1377] Safety bodies employed significant resources to bring about uniformity of practice and raise standards of professionalism.

We cannot discount the fact that the private sector dominated the Periphery.[1378] Unrestrained by a public mandate, the Periphery had the freedom to go as 'close to the wire' as was viable.[1379] The Former Director – General of the HSE also acknowledged that, 'Large numbers of advisers and consultants… were, uncomfortably often, *adept at maximising their financial advantage by exaggerating requirements*. It was the small industry sector that bore the brunt of this, and COSHH and the Electricity Regulations were the main cases in point (emphasis added)'.[1380]

[1374] B. Crew, 'James Tye On the Safety Crusade' (1977) 83 IMDS 5/6 p2; B. Crew 'Risk Manager — the New Professional' (1982) 82 IMDS 11/12 p3

[1375] A. Palmer, 'Opening Address: The 1957 Conference' 5 JIISO 1 p22, p25 - 26

[1376] Institute of Cast Metals Engineers, 'The Training of Safety Officers' (1969) 126 FTJ p168

[1377] IISO, *The Training of Safety Officers* (Institution of Industrial Safety Officers 1969)

[1378] R.C. Dutt, *State Enterprises in a Developing Country: The Indian Experience, 1950-90* (Abhinav Publications 1990)

[1379] Bill Walsh, 'Cures that can Kill' (1983) 32 WS 12 p22

[1380] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014)

Through such means, the Periphery pushed for OHS to cover more aspects of work, often with blurred results.[1381]

3.4 The problematic nature of steering the OHS Network

The Thatcher government expended a significant amount of time and resources steering the HSC/E. However, it appears that it had exhausted itself in doing so. By the mid-1980s, there were no more grand deregulatory projects, the HSC/E's budget had relatively stabilised, the OHS Network continued to expand and even the anti-unionism of the Thatcher government seemed to dim.[1382] In this respect, David Gee noted, 'If Mrs Thatcher's government is so keen on deregulation, how come we have had so many new and proposed health and safety laws since 1980, for example, on lead, chemical control, testing and labelling, major hazards, asbestos and noise?'[1383] Moreover, the HSC/E's remit continued to expand and impose new responsibilities on businesses, supposedly burdening even more businesses. Graham Wilson, author of one of the premier texts of politics in OHS in the 1980s, argued that Thatcher started as an 'executive' prime minister.[1384] However, she soon departed from this approach. She lacked the patience to follow through in an enduring manner. She stepped away from routine cabinet decision-making and engaging with the permanent bureaucracy.[1385] This exhaustion was not restricted to the Prime Minister; for many government departments, managing sprawling networks of public, private and voluntary actors was a demanding exercise that was difficult to sustain.[1386] Besides, the core executive's staffing numbers were far too low to control the activities of the HSC/E, by

John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014)

[1381] Bill Walsh, 'Cures that can Kill' (1983) 32 WS 12 p22

[1382] Stavroula Leka and others, *The changing landscape of OSH regulation in the UK* IOSH 2016

[1383] D. Gee 'How 1992 Could Bring Better Health and Safety' (1992) AEU February Edition p19

[1384] Colin Campbell and Graham Wilson, *The End of Whitehall: Death of a Paradigm* (John Wiley & Sons 1995) p101

[1385] Colin Campbell and Graham Wilson, *The End of Whitehall: Death of a Paradigm* (John Wiley & Sons 1995) p101

[1386] Colin Campbell and Graham Wilson, *The End of Whitehall: Death of a Paradigm* (John Wiley & Sons 1995)

the end of Thatcher government, HSC/E were among the 5521 special purpose bodies, accounting for £37 – 46 billion of public spending.[1387] There was simply too much traffic for the government to monitor, let alone control.

The Thatcher government was the first to learn that steering agencies towards homeostasis was a frustrating and challenging affair. This matter was crucial to Rhodes' refutation of Saward's *Hollow Crown*. The former author noted that the core executive's attempt to exercise control did not always produce the expected outcomes.[1388] The erosion of the governing capacity of the OHS Network was a long and protracted affair. The Centre had five layers of protection that enabled it to maintain some degree of autonomy for many years. The paternal supervision of the sponsoring department, tripartite structure, business support, threats to public safety and specialised knowledge enabled the Network to remain quasi-autonomous for decades to come.[1389]

An example of these protective layers in action was the Thatcher government's arbitrary and controversial decision to move some operations of the HSC/E from London to Bootle. In response to this decision, the protective layers of the HSC/E mobilised its resources. What was intended to be a simple and swift transfer ended up as lengthy negotiations. This speaks to the connectedness of OHS, each *layer* of opposition combined to compel the Thatcher Government to seek compromises. The first layer was the Department of Employment, the first Secretary of State for Employment under the Thatcher Government was Jim Prior. He saw no benefit in the mass dispersal of the HSE to Bootle and vehemently opposed the numbers proposed. He sought to dilute the strength of the proposals by combating each of the proposals with detailed criticisms and more drastically, he continuously leaked the dispersal project to the media.[1390] Prior was not

[1387] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997) p18
[1388] R.A.W. Rhodes, *Understanding Governance Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997) p18
[1389] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)
[1390] J. Aitken, *Margaret Thatcher: Power and Personality* (Bloomsbury Publishing 2013)

exceptional in this regard, Jenny Bacon, Former Director- General of the HSE, noted that until the DE was abolished in 1995, it expressed a 'kind of paternity' for the HSC/E.[1391]

The second layer was the activism of organised labour and capital. The HSC was aggrieved to see its younger sibling shipped off to Bootle. Thus, it made a series of deputations to dissuade the government.[1392] The CBI and the TUC managed to soften the Government's proposals by arguing that they bore responsibility for the HSE and that they were intimately involved in the day-to-day work of the HSE and would find it difficult to keep this body – 'a powerful quango' - under control if it moved to Bootle. Note that the term 'powerful quango' was underlined in the memorandum, stressing that the TUC and the CBI were the only organisations that could tame the beast.

Additionally, the TUC and the CBI pre-empted the planned dispersal by commissioning a study on the dispersal project. This study was designed to see how much staff could be dispersed without it having a detrimental effect on OHS. Thus, if the Government contradicted the numbers that the study produced, without showing any care for its arguments 'this will give the TUC an opportunity to make loud noises about irresponsible and inefficient Government decision making'.[1393] Additionally, the Government feared that if they went ahead with a more radical proposal, it would bind the TUC and the CBI into the 'same camp'. Upsetting the TUC *and* CBI was genuinely 'feared', the Government was not interested in starting a 'major row'.[1394]

[1391] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1392] Margaret Thatcher Foundation, 'Confidential Memorandum to the Prime Minister Ref: A0499 - Dispersal of the Health and Safety Executive' (*Margaret Thatcher Foundation*, 25 October 1979) <c1a4d4a4a40988b14f1b-c7a3803ab0f7212d059698df03ade453.r91.cf1.rackcdn.com/791025%20Hunt%20to%20MT%20(671-229).pdf> accessed 26 June 2018

[1393] Margaret Thatcher Foundation, 'Confidential Memorandum to the Prime Minister Ref: A0499 - Dispersal of the Health and Safety Executive' (*Margaret Thatcher Foundation*, 19 October 1979) Confidential Memorandum to the Prime Minister 25 October 1979 Accessed:c1a4d4a4a40988b14f1b-c7a3803ab0f7212d059698df03ade453.r91.cf1.rackcdn.com/791025%20Pattison%20to%20MT%20(671-227).pdf accessed 26 June 2018

[1394] Margaret Thatcher Foundation, 'Confidential Memorandum to the Prime Minister - Dispersal of the Health and Safety Executive' (*Margaret Thatcher Foundation*, 19 October 1979) <c1a4d4a4a40988b14f1b-c7a3803ab0f7212d059698df03ade453.r91.cf1.rackcdn.com/791019%20Soames%20to%20MT%20(671-241).pdf> accessed 26 June 2018

The third layer was the concerns of public safety. These concerns were triggered by the negative impact on the staffing levels of the Nuclear Installations Inspectorate (NII), an arm of the HSE, that the transfer to Bottle would create.   A reduced inspectorate was fraught with dangers for public health and safety. The tragedies of Flixborough, Seveso and Bhopal, cast their shadows over the Thatcher premiership.   To this point, Roger Bibbings, RoSPA's Senior Safety Adviser and Fellow of IOSH, stated:

> There had been gas explosions and nuclear accidents and all this sort of thing. And so he (John Rimington) came and sort of dangled this under Margaret Thatcher's nose, saying we don't want any of these things happening, therefore you need a strong body which has got all the hazard knowledge, which is the Health and Safety Executive, here to deal with these big hazard issues.[1395]

The fourth layer was the support of business. The government was mindful that the HSC/E enjoyed considerable support from business.[1396]   The dispersal of significant numbers of staff would not be acceptable to the supposed chief beneficiaries of deregulation.[1397] Arguably, industry supported the Centre and its core regulations because of its onus on consensus and that it created a level playing field for competitors.[1398]

The fifth layer was the expertise of the HSC/E. As a former Director – General of the HSC/E explained, 'Departmental officials could not deceive themselves that they knew how to handle these arcane affairs; and provided that HSE's chiefs and policy divisions were able to roar in approved English, it was clear that the beast had better be left alone'.[1399] Thus, any plans to dramatically alter the HSC/E relied on the HSC/E's assessment. Through this medium, the

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[1395] Paul Almond, Interview with Roger Bibbings, RoSPA's occupational safety adviser, University of Reading (Reading, 6/11/2014)

[1396] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)

[1397] Stavroula Leka and others, *The changing landscape of OSH regulation in the UK* (IOSH 2016

[1398] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35

[1399] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

HSC/E could moderate the government's proposals.[1400]   As a result of these protective layers,

the weakened Centre was able to remain functional, while being supported by a growing

Periphery.

4.0 The surround of the Major governments

In November 1990, the country awoke to a new and very different Prime Minister, John Major.

However, there was nothing particularly new or different about the Major Government's steering

of the HSC/E. The surround of Thatcher's government lingered; neoliberalism and

managerialism remained the mood music of the period. Anti-unionism continued to be reflected

in the promotion of individual employment relationships at the expense of the collective.[1401]

Also, the Major government had much less to worry about than its predecessor; the trade union

membership continued to fall to a level roughly equivalent to that of the 1950s.[1402]

4.1 Targeting the HSC/E

There was a quiet before the 'political firestorms', the disinterest of the final Thatcher

government seemed to extend into the Major government. There was little indication that the

government would target the HSC/E.[1403] On the contrary, the decline in resource allocation

reversed in 1990, leading to a new peak of 4,545 staff in 1994.[1404] Moreover, the HSC/E duties

continued to expand.[1405] Perhaps we can attribute this 'armistice' with the government being

busied with the tragedies that shadowed the period, preoccupation with dealing with rebel MPs,

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[1400] Aaron B. Wildavsky, *Budgeting: A Comparative Theory of the Budgeting Process* (Transaction Publishers 2002)
[1401] Susan L. Kang, *Human Rights and Labor Solidarity: Trade Unions in the Global Economy* (University of Pennsylvania Press 2012)
[1402] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35
[1403] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: The HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016)
[1404] Steve Tombs and David Whyte, *Safety Crimes* (Willan Publishing 2007) p148
[1405] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016)

rectification of the Conservatives toxic image or simply the government 'finding its feet'. For whatever reason, the HSC/E was in relative safety until the second Major government.

From the winter period of 1992, the HSC/E was on the radar of the government. This appears to be due to the HSC/E closer links with Europe.[1406] Europe was among the most divisive issues of the Major government.[1407] It was a significant contributing factor to the downfall of Mrs Thatcher, enabling the contest of which Major was victorious; he was perceived as being the most euro-sceptic candidate.[1408] At the time, the Director-General of the HSE witnessed that members of the Conservative Party who were 'instinctively anti-European and minimalist' steadily became more influential until 'they seized the reins of power… under John Major'.[1409] He noted elsewhere, 'The right wing of the Conservative party, which assumed increasing importance around 1990, was, to say the least, not in favour of European regulation, and that feeling came on top of an instinctive dislike of regulations of any kind'.[1410] Thus, the perception that HSE was 'in bed with Europe' prompted the beginning of government probes. To this point, Bacon viewed that this perception 'politicised health and safety and antagonism to HSE' because HSE was the vehicle for taking forward the Directives, 'which Conservative ministers regarded as an absolute anathema'.[1411]

Although the HSC/E had built up a relationship with the EU many years before the Major government, it was not met with a government 'crackdown' *until* the second Major government.

[1406] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1407] Philip Cowley, 'Chaos or Cohesion? Major and the Conservative Parliamentry Party' in Peter Dorey (ed), *The Major Premiership: Politics and Policies under John Major, 1990–97* (Macmillan, 1999) p4

[1408] Philip Cowley, 'Chaos or Cohesion? Major and the Conservative Parliamentry Party' in Peter Dorey (ed), *The Major Premiership: Politics and Policies under John Major, 1990–97* (Macmillan, 1999) p4

[1409] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1410] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1411] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

This was because the relationship between Europe and Britain on the issue of health and safety was a 'micro consideration' in the formative years.[1412] Until the late 1980s, the introduction of EU OHS regulations into the UK was drawn-out and fragmented.[1413] Also, the UK was seemingly at the helm of negotiations, the HSC/E exercised considerable influence on the EU to the extent that 'several European directives during HSC/E's inaugural period were closely based on established British legislation'.[1414] A former Director-General added, 'Now at the beginning, HSE ran the European show. No doubt about that'.[1415] However, this gradually changed with developments in the European Commission's (EC) voting system which 'side-lined British interests', the passing of the *Single European Act* and a move towards Directives which stipulated general duties and minimum standards to harmonise OHS regulation across EU member states.[1416]

All these developments culminated with the introduction of the 'six-pack' in 1992. The Six-Pack regulations were issued in response to a series of EU directives that covered a wide range of issues about the regulation of OHS. Unfortunately for the HSE, the six-pack indelibly linked the HSC/E with the EU. Rimington recollected the change of atmosphere when government officials became aware that the HSC/E issued the Six-Pack regulations:

[1412] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014)

[1413] Alan Dalton, *Safety, Health and Environmental Hazards at the Workplace* (Cassell 1998)

[1414] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016) p229; Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1415] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016) p229

[1416] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016); Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (Unpublished PhD thesis, London School of Hygiene & Tropical Medicine 2016) p229

When this glittering six-pack tumbled on to my desk, I knew the game was up; and it was not long before I
was up before the Prime Minister, personally accused…. of "throwing" negotiations in Europe in order to
smuggle in impossibly high standards of health and safety.[1417]

The fact that the HSE's six-pack guidance was printed on a blue booklet emblazoned with the
EU constellation did not help matters.[1418] OHS now fell into the matrix of the Conservative
Party's dislike of 'European' interference in 'British law', the idea of the 'nanny state', the
traditional Tory dislike of 'burdens on business' and susceptibility to the views of small
companies.[1419] The HSC/E were now marked institutions.

4.2 Steering the HSC/E

The steering of the Major government was typified by 'political firestorms'. 'Political
firestorms' were continuous government probes of the HSC/E's activities that were supposedly
placing burdens on businesses and the government's purse. These 'firestorms' were far more
explicit and confrontational than the Thatcher government's backdoor steering. The emphasis of
the Major government's steering campaign was 'search and destroy'.[1420] It was envisioned that
there would be a 40% reduction in 'outmoded' OHS regulation.[1421] A Former Director- General
of the HSE, remarked, 'It was a rather different world from the one that I was dealing with in the
1970s and a lot of it was about, how do we persuade ministers not to throw out the baby with the
bathwater'.[1422]

The firestorms were critical attempts to curtail the HSC/E's autonomy, 'cut out the fat' and
inculcate good practice. The specificity of the probes went further than the Thatcher's

[1417] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading
(Reading, 6/11/2014)
[1418] John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture'
(*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-
rimington.pdf> accessed 25 October 2016
[1419] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading
(Reading, 6/11/2014)
[1420] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and
Britain' (2003) 28 IRJ 3 p176
[1421] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to
New Labour' (2003) 31 IRJ 1 p35
[1422] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading
(Reading, 6/11/2014)

government generalist deregulatory programme. Under the premiership of John Major, the HSC/E went through seven unremitting reviews which could have 'wiped it, or part of it at least, off the map'.[1423] The Fundamental Expenditure Reviews (FERs) also formally known as the Fundamental Reviews of Running Costs were introduced by the Treasury in 1993 to continue previous attempts to grapple with underlying drivers of public spending and to identify upward pressures on departmental running costs.[1424] More specifically, these reviews were a means for the HSC/E and its sponsoring department to reconsider their resource allocations. The model for the review was the scrutiny model developed by Margaret Thatcher's Efficiency Unit under Derek Rayner.[1425]

Interestingly, the appointment of the individuals charged with the FERs signalled a move away from the appointment of what N. Deakin and R. Parry refer to as 'Treasury toffs' towards individuals with 'real world' expertise and 'modern personalities'.[1426] For the 'toffs' that remained, they were subject to attempts to change their institutionalised behaviour through the encouragement to gain two years private-business experience and to engage with consultants on 'change management' and senior management structure.[1427] Also, the new appointees 'reinforced the pattern' that knowledge of public spending was not necessary.[1428] With this context in mind, it was not surprising to see that three of the seven FERs included in their terms of reference questioned the continued existence of the HSC/E.[1429] Rimington reflects on the outlandish demands of the FER:

[1423] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1424] Richard Parry Christopher Hood and Oliver James, 'Reinventing the Treasury: Economic Rationalism or an Econocrat's Fallacy of Control?' (1997) 75 PA 3 p395

[1425] N. Deakin and R. Parry, *The Treasury and Social Policy: The Contest for Control of Welfare Strategy* (Macmillan Press 2000) p70

[1426] N. Deakin and R. Parry, *The Treasury and Social Policy: The Contest for Control of Welfare Strategy* (Macmillan Press 2000))

[1427] Richard Parry, Christopher Hood and Oliver James, 'Reinventing the Treasury: Economic Rationalism or an Econocrat's Fallacy of Control?' (1997) 75 PA 3 p395

[1428] N. Deakin and R. Parry, *The Treasury and Social Policy: The Contest for Control of Welfare Strategy* (Macmillan Press 2000)

[1429] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt

The FER addressed only fundamental questions, the most fundamental being, 'Why can't the market do your job?' For example, could the insurance market replace HSE? Other questions were 'Does HSE give value for money?', 'How are HSE's expenditures calibrated to risks?', 'If you were forced to downsize HSE by 50%, how would you do it?'[1430]

Moreover, seven HSC Sectoral Tasks Groups (STGs) had to be appointed. Though the STGs reported to recognisable faces on the HSC Steering Group, every STG was chaired by a 'business person with broad management experience' and a representative from a small firm.[1431] Moreover, the HSC Steering Group had to keep in regular contact with the Department of Trade and Industry's (DTI) Deregulation Task Forces.[1432] This was not a picture of autonomy that the HSC/E wanted to show the world. Such a public display of subordination brought very vocal condemnation.[1433] Though the government did not achieve its target, it 'received the comforting sound of more deregulatory proposals landing on ministerial desks'.[1434]

This was a new experience for the HSC/E; it was caught in what Peter Bain called the 'twin tracks' of deregulation. The first of which was a specific focus on the activities of the HSC/E; the FERs focused on HSC/E's output. Information gathering brought the government closer to the HSC/E, the like of which Pliatzky was not able to achieve. The other 'track' was of the generic programme of deregulatory reform that impacted the HSC/E. Regarding this variety, the Major government was unrelenting. It sought to weave into the fabric of institutions that non-regulation is the norm, as Major himself articulated, 'There should always be a presumption

Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016
[1430] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016
[1431] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176, p179
[1432] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176 1997
[1433] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176, p179
[1434] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176, p179

against regulation unless it is strictly necessary'.[1435] To achieve this, the Deregulation Unit of

the DTI was repositioned to the 'strategic centrality' of the Cabinet Office and the *Deregulation*

*and Contracting Out Ac*t 1994 set out extensive delegated powers for ministerial repeal of

regulations. Such repeals required minimal parliamentary scrutiny.[1436] The effect on the HSC/E

was that they were subjected to the continuation of rigid and arbitrary CBA practices, erection of

procedural barriers to regulatory activities, delays in the passing of regulations, prescribed

periods of non-enforcement and the hiring of third parties to scrutinise its regulations.[1437]

Never had a government penetrated so deep into the HSC/E's legitimacy. It was the 'hottest'

period ever experienced; there were 'bonfires of regulations' all around them.[1438]   No longer

confined to discreet probes, these were open 'fire pits' for all to see.

4.3 The ever – decreasing Centre

Despite the firestorms, the Centre survived. Albeit, in a considerably weakened form. Its

protective layers were not as strong as they were under the Thatcher government. Thus,

allowing the Major government to penetrate the Centre and further weaken it. The tripartite

activism did not amount to much of a defence, Almond and Mike Esbester noted that, 'The

benefits of tripartism became less relevant as the industrial relations context changed'.[1439]

Similarly, 'A senior source at the HSC noted that Trades Unions' participation in government

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[1435] Anthony I Ogus, *Regulation: Legal Form and Economic Theory* (Bloosmbury 2004) p338 - 339
[1436] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35; Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176
[1437] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35; Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016); Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176
[1438] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016
[1439] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p87

had been fashionable in 1972, but no longer was in 1992'.[1440]   Organised labour had lost much

of its influence; the pendulum had swung in favour of business interests. The research of Alan

Dalton, a lifelong OHS campaigner and a TUC-nominated member of the HSC's Advisory

Committee on Dangerous Substances (ACDS) provides valuable information about the

weakening of the tripartite structure.[1441]   Dalton was the first researcher to request information

under the HSE's freedom of information policy: he surveyed the composition, agendas and

minutes of the HSC and its 21 advisory committees to shed light on the reality of tripartism.

First, he concluded that the influence of the CBI far outweighed their labour counterparts. He

found that on issues as far ranging as stress, asthma, asbestos, homecare workers, rail safety, fire

and working time, employers and CBI were able to move the conversation towards voluntarist

solutions.[1442]   Dalton recollected, 'I found the meetings very employer-dominated, supported by

the HSE'.[1443]   Correspondingly, Dave Mathews of the National Health and Safety Officer for the

Fire Brigades Union and a member of ACDS, stated, 'The HSC/HSE officials lean towards the

CBI'.[1444]   Despite Dalton's expertise on dangerous substance, he could not penetrate the

influence of employers and their organisations. Second, trade unions often capitulated to the

demands of employers and the government. More worryingly, the labour representatives' low

attendance in HSC's meetings signified a lack of interest.[1445]

Correspondingly, the fear of negatively affecting HSC/E's protection of the public appeared to

be less of a factor with the Major government than it was with the Thatcher government.

[1440] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p86 - 87

[1441] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

[1442] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

[1443] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

[1444] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

[1445] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016

Despite the shadow of tragedy, the Major government sought to annul much of the HSC/E's operations; a senior source at the HSC observed that the various rail crashes 'was the great disaster of HSE that was the point at which ministers lost confidence in HSC'.[1446] Due to the Centre being 'progressively eroded', it lacked the capacity 'to study and control' major hazards. Significantly diminishing the Centre's legitimacy as a protector of the public.[1447]

Despite the loss of the above two protective layers, three remained. The relationship formed from the paternal protection of the sponsoring department was enough to protect the HSE from the FERs.[1448] In spite of the rhetoric, every so often, a minister 'patted the health and safety dragon occasionally and recognised that it did do some good'.[1449] However, it was to be the DE's final deed, as a consequence of the firestorms, it was abolished in 1995, stripping the HSC/E of an ally that could have protected it from future governments.[1450] The second layer of widespread support from industry protected the HSC/E. The former HSE Director - General, believed that this was 'a decisive factor in the siege years between 1992 and 1995'.[1451] Bacon confirmed the sentiment, she saw that 'all those big industry bodies stood up for HSE… and say, look actually, this has made a change, and it's been a change for the good and you still ought to regard it as a plus point, and there still is a need to protect people at work'.[1452] The third

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[1446] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p69; Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46

[1447] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p69; Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46

[1448] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1449] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1450] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1451] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA*, 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1452] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

'priceless major asset which no-one else could match or replace' was the Centre's technical capability, and its well organised and consensual understanding of industrial hazards.[1453] Rimington observed that government officials could not deceive themselves that they knew how to handle these 'arcane affairs... it was clear that the beast had better be left alone'.[1454]

These protective layers allowed the Centre to *survive* but not *thrive*, Rimington joined the ranks of former Director-Generals that feared for the future of the HSC/E upon their departure. Leaving his post in the mid-1990s, he acknowledged, 'The political position of HSE is weak... The way Whitehall operates that could point to increased marginalisation and a slow death'.[1455] Similarly, Peter Bain paints a pyrrhic victory for the HSC/E:

> The job of chairing the HSC was made part-time by the government. The agency's 4,545- strong staff was reduced by 203 (102 inspectors) in 1994–95 and budget cuts of 2.6% were imposed that year, with a further 5% reduction in 1995–96; by the year 2000, staff numbers would be at least 20% down on the 1993 figure. By March 1995, 85 of the most senior inspectors and advisers had left and the HSE, it was argued, faced 'the worst cash and morale crisis in its 20-year history". The agency struggled to train new staff meet inspection targets and to undertake necessary new work.[1456]

4.4 The ever – growing Periphery

Mirroring the Thatcher government, the Major government paid scant attention to the expanding Periphery. Most of the energies were spent restraining the Centre. This allowed the Periphery to continue to grow unimpeded, filling the vacuum left by the restrained Centre. Although the politicisation of OHS was growing, it was confined to the Centre.

[1453] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1454] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1455] John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1456] Peter Bain, 'Human Resource Malpractice: The Deregulation of Health and Safety at Work in the USA and Britain' (2003) 28 IRJ 3 p176, p183; Carol Boyd, *Human Resource Management and Occupational Health and Safety* (Routledge 2003) p17

The stream of experienced individuals leaving the Centre continued to reinforce the Periphery. Also, new entrants interested in working in OHS tended to fill the ranks of the Periphery, to many it seemed like a better option, Bacon explains why, 'We couldn't spend the money because we couldn't get people with the right expertise because we couldn't pay the salaries to match what was being paid in the industry, because overall pay was still controlled from the Treasury'.[1457]

The six-pack regulations were a source of growth for the Periphery. While the Centre was targeted by government for their involvement with the six pack, the Periphery revelled in the opportunities it brought.[1458] The six-pack represented a 'sea-change' in the approach to the management of OHS in the UK.[1459] This change 'amplified' the need for employers to adopt a more proactive approach to managing safety based on the principles of risk assessment.[1460] As a direct consequence of this, Richard Jones, the Head of Policy and Public Affairs at IOSH stated, 'In the 90s when the '6-pack' came in, demand for IOSH membership increased significantly (numbers increased almost fivefold)'.[1461] Anxious employers need not turn to the under-resourced Centre. Instead they turned to the Periphery, particularly regarding the legal requirement to conduct written safety assessments.[1462] A former HSE Director-General observed that:

> So suddenly the number of members of IOSH burgeoned. There were 4,000 in 1983 and there are now
>
> 30,000 and what do they do, *how do they get their money?* They get their money by writing written safety

[1457] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1458] Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014)

[1459] Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014)

[1460] Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014); Caroline Woollatt, 'Managing Safely' (1996) 96 IMDS 6 p20; Industrial and Commercial Training, 'New Health and Safety Training for Managers and Employees' (1999) 31 ICT 3

[1461] Paul Almond, Interview with Richard Jones, Head of Policy and Public Affairs of IOSH, University of Reading (Reading, 10/9/2014)

[1462] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

assessments.   The idea of an assessment was that the chap who created the risks should walk around and assess his risks, not employ someone else to provide him with a report which he just signs (emphasis added).[1463]

Opportunities also expanded health and safety training to educate non-safety professionals to a basic level of understanding in OHS.[1464] There were courses designed for every level of business and ironically also for NDPBs.[1465] From 1993, IOSH alone, trained more than 60,000 personnel every year.[1466] The Periphery went from strength to strength while its central counterpart grew more constrained.

4.5 A step further

Though the cuts, procedural barriers and the surround of enmity were particularly debilitating, they were expected features of Conservative governments. However, it was the brazenness of the firestorms that had the most significant impact. What came out of the interaction with the Major government was that OHS was not sacred and untouchable, rather it was vulnerable to be 'caught up in the deregulation red tape stuff'.[1467] The Major government asked questions which were hitherto never vocalised in such a brazen manner. Questions around the existence of the HSC/E and whether all 'parts' were necessary. This allowed later politicians to question what if?

5.0 The surround of the New Labour governments

In May 1997, the country awoke to a landslide victory; New Labour captured 44% of the vote. Depicted as the third great progressive electoral landslide of the twentieth century, much was

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[1463] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, 'Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1464] Caroline Woollatt, 'Managing Safely' (1996) 96 IMDS 6 p20; Industrial and Commercial Training, 'New Health and Safety Training for Managers and Employees' (1999) 31 ICT 3

[1465] Caroline Woollatt, 'Managing Safely' (1996) 96 IMDS 6 p20; Industrial and Commercial Training, 'New Health and Safety Training for Managers and Employees' (1999) 31 ICT 3

[1466] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1467] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

expected of the new government.[1468] There was cause for hope.[1469] The HSC observed 'a change in the political climate since the general election of 1997' in which it experienced a significant encouragement to exercise more of a presence in industry.[1470] Tombs and Whyte observed an initial rise in prosecutions in the period after the election.[1471] Moreover, the government provided an extra £4.5 million for the financial year 1998/1999.[1472] Also, the government suspended Section 5 and Schedule 1 of the *Deregulation and Contracting Out 1994* which required inspectors to write to companies two weeks in advance, before invoking improvement notices.[1473] For a short time, it was believed that the attitude towards deregulation had changed and that the political environment was more favourable for OHS regulation.[1474]

However, such notions would fade within a year; it appeared that it was 'business as usual', Stuart Hall contended that:

> Eighteen years of Thatcherite rule had radically altered the social, economic, and political terrain in British society… Thatcherism had evolved, not just an effective occupancy of power, but a broad hegemonic basis for its authority. This 'revolution' had deep philosophical foundations as well as an effective popular strategy. It was grounded in a radical remodelling of state and economy and the 'colonizing' of civil society by a new neo-liberal common sense. Its effects were 'epochal… This was not likely to be reversed by a mere rotation of the electoral wheel of fortune.[1475]

The arrival of New Labour 'is perhaps the key period in which the Thatcherite claim to there being 'no alternative'… was consolidated'.[1476] New Labour mirrored the surround of the

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[1468] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002)
[1469] Stuart Hall, 'New Labour's Double-Shuffle' (2005) 27 REPCS p319
[1470] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p119
[1471] Steve Tombs and David Whyte, Deadly consensus Worker Safety and Regulatory Degradation under New Labour (2010) 50 BJC 1 p46
[1472] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35, p46
[1473] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35, p46
[1474] Keith Hawkins, *Law as Last Resort Prosecution Decision – Making in a Regulatory Agency* (Oxford University Press 2002) p119
[1475] Stuart Hall, 'New Labour's Double-Shuffle' (2005) 27 REPCS p319
[1476] Steve Tombs and David Whyte, Deadly consensus Worker Safety and Regulatory Degradation under New Labour (2010) 50 BJC 1 p46, p46 - 47

Thatcher and Major governments, albeit with a 'human face'.[1477] When Labour entered office, it inherited a series of practices embedded within the British state.[1478]

Apart from the initial enthusiasm documented in Hawkins' interviews, the HSC/E staff did not express any discernible concern or apprehension about the Blair government's deregulatory programme. This may have been because eighteen years of Conservative government had pushed senior and more experienced staff to retire or migrate to the Periphery, thus, leaving a younger less experienced Centre.[1479] The heyday of the 1970s was not experienced by the vast majority of staff.   Budget cuts, redundancies, recruitment freezes and doing more with less had long been the norm at these institutions.   Low morale in certain sectors was the result.[1480] Moreover, Almond's interviews of HSC/E staff revealed that a good deal felt that there was little difference between the Labour and Conservative governments, in fact, some preferred the latter.

5.1 Targeting the HSC/E

The Labour government did not express any significant interest in OHS before 2000.[1481]   Within the first two years of the Blair government, the HSC/E was affected by the *generic* deregulatory programme.[1482] Though not specific, the HSC/E was an obvious target; it was the second largest of the 63 national regulators, which made a significant amount 'regulatory contacts' per year.[1483] Moreover, its relatively large budget and connection to the EU predetermined it to face some pressure from the government's *general* deregulatory agenda. However, from 2000, we start to see more specific and a significant amount of deregulatory pressure being placed on the HSC/E. Upon hearing that the government had focused its sights on the HSC/E, Bacon noted that 'some

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[1477] Stuart Hall, 'New Labour's Double-Shuffle' (2005) 27 REPCS p319
[1478] Tony Cutler and Barbara Waine, 'Managerialism Reformed? New Labour and Public Sector Management Social Policy and Administration' (2000) 34 SPA 3 p318
[1479] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35
[1480] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35
[1481] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p374
[1482] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35
[1483] Hazards Magazine, 'Protection racket' (*Hazards Magazine*, August 2005) <www.hazards.org/commissionimpossible/protectionracket.htm> 26 June 2018

of us just sort of went down on the table'.[1484]   From the early 2000s, the HSE experienced a decrease in its resources and front line numbers that corresponded with a downturn in inspection and some regulatory activity.[1485] An internal 2004 HSC paper, *Becoming a Modern Regulator*, speaks to the deregulatory pressure, 'There has been deregulatory pressure from within government to reduce burdens on business, be clearer about the benefits of regulation, and more sympathetic to business needs'.[1486]

Aside from the fact that the HSC/E 'stood out' as a resource heavy and burdensome institution, there are four salient reasons why the government felt obliged to target the HSC/E. First, targeting the HSC/E was following in the tradition of previous governments, it was simply what the government did after a period of 'settling in'. Bacon observed during her time in government that there was a feeling amongst ministers that expressed itself as, 'We didn't manage to shoot it last time, let's go out and hunt it again, where is this quango?'[1487] Moreover, the weaker the HSC/E became, the easier it was to 'hunt it'. Second, the escalating numbers of workplace deaths became apparent. What was once offset by unemployment, redundancies, under-reporting, de-industrialisation could not be explained away.   Third, a significant amount of Labour MPs wanted to reverse such poor statistics, one of which was John Prescott, Kevin Myers recollected:

> Well, the Health and Safety at Work Act was very dear to the heart of John Prescott. He was a young MP when it went through Parliament and he, I think he's said he thinks that the Welfare State, The National Health Service and the Health and Safety at Work Act are three of the biggest legacies of the Labour Party, in terms of our society. So that's how he viewed it. So when in 1997 they came into government having been out of power for 18 years, , he thought, well let's actually review the situation 25 years on from the

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[1484] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1485] Steve Tombs and David Whyte, 'Deadly consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46

[1486] Hazards Magazine, 'Protection racket' (*Hazards Magazine*, August 2005) <www.hazards.org/commissionimpossible/protectionracket.htm> 26 June 2018

[1487] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

Health and Safety at Work Act to see what we need, if there's anything that we need to do to revitalise it, it's a bit of a cliché, but that was the point of it.[1488]

John Prescott's interest in OH triggered something that the HSE had not experienced in many decades:

> The Deputy Prime Minister (John Prescott)… wanted a far stricter regime and he wanted more ministerial involvement, he didn't want the commission doing things, he wanted to be in charge of everything outright'. So that was a different kind of challenge, it wasn't one that said, let's cut the resources, let's undermine the regulation, it was the opposite. But in many ways it was just as dangerous and it was politicising and it was saying, we want ministers in charge, whereas the whole point about setting up the Health and Safety Commission and Executive was actually to get health and safety out from under politics and not get it politicised. But under Labour I think it got more politicised but it had already happened.

Though Prescott did not get 'a far stricter regime', his influence on the cabinet directed attention to the ineffectiveness of the HSC/E and more so 'revitalised' the discussion on how the government could reboot the OHS system and make it fit for the twenty-first century.[1489]

Fourth, the legitimacy of OHS was beginning to be questioned in the public space. Therein, catching the attention of government officials.[1490] The understated and unassuming nature of OHS regulation was gradually substituted by a rabid politicisation of the activities of the OHS Network.[1491] From the late 1990s, 'regulatory myths' about OHS flourished. Disseminated by the leading tabloids, these myths were based on 'tales of heavy-handed and disproportionate enforcement, the petty implementation of regulations, and the adoption of unnecessarily

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[1488] Paul Almond, Interview with Kevin Myers, Former Deputy Chief Executive of the HSE, University of Reading (Reading, 6/11/2014)

[1489] Paul Almond, Interview with Frank Davies, Former Chair of the HSC, University of Reading (Reading, 5/5/2015)

[1490] BERR, *Improving Outcomes from Health and Safety* (BERR 2008)

[1491] Annette Morris, 'Spiralling or Stabilising? The Compensation Culture and Our Propensity to Claim Damages for Personal Injury' (2007) 70 MLR 3 p349

bureaucratic approaches to issues of health and safety'.[1492] Thus, by the time New Labour

entered office, it faced significant 'media hullabaloo' that threatened the legitimacy of OHS.[1493]

These four factors resulted in the Deputy Prime Minister's launch of the *Revitalisation of Health*

and Safety, which firmly placed the HSC/E within the crosshairs of government.

5.2 The steering of the Labour government

The steering of the HSC/E under the Labour government was typified by the imposition of

targets. Steering public actors through setting targets was an attempt to instil norms, improve

efficacy and produce more successful outcomes. [1494]   Rather than just operating, public services

would be required to deliver 'public value' and value could be ascertained by whether targets

were achieved.[1495] In 1999, the HSC/E and the government launched the *Revitalising Health*

and Safety strategy.[1496]   It contained the first ever explicit target approach for the OHS.[1497]

Experiencing target – based steering, Myers of the HSE explains, 'At the time the Blair

government was keen on more explicit outcome focused approaches and we were then all driven

to develop targets'.[1498] Targets were adopted to reduce the number of working days lost to

work-related injuries and ill-health, incidence rates of fatal and major injury accidents and

incidence rates of cases of work-related ill-health. All of which had to be achieved by 2010. A

year later, the government also initiated a decade-long occupational health strategy to reduce

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[1492] Paul Almond, The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulation (2009) 36 JLS 3 p352, p353

[1493] John Walls and others 'Critical Trust: Understanding Lay Perceptions of Health and Safety Risk Regulation' (2004) 6 HRS 2 p133; Paul Almond, 'The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulation' (2009) 36 JLS 3 p352, p353

[1494] Paul Almond, Interview with Jim Hammer, Former HM Chief Inspector of Factories, University of Reading (Reading, 5/12/2014)

[1495] Sandra Groeneveld and Steven Van de Walle, 'Introduction' in Sandra Groeneveld and Steven Van de Walle (eds), *New Steering Concepts in Public Management* (Emerald 2011)

[1496] HSE, *Revitalising Health and Safety* (HSE 2000)

[1497] Stavroula Leka and others, *The Changing Landscape of OSH Regulation in the UK* (IOSH 2016)

[1498] Paul Almond, Interview with Kevin Myers, Former Deputy Chief Executive of the HSE, University of Reading (Reading, 6/11/2014)

occupational ill health and related absence.[1499]   The HSC/E was obliged to report on their

progress each autumn, comparing the latest data with the base year (1999/2000).[1500]

Patrick Diamond's article on the delivery agenda in public services sheds light on the centralising

nature of steering through target setting.[1501]   First, he wrote that agencies that missed targets or

that were charged with being unduly sluggish would result in intervention by the government at

different levels of intensity, such as experienced by Myers, 'The problem is if you don't get the

targets right you get strange behaviours'.[1502]   Second, target-based steering laid bare the paradox

or 'double talk' of New Labour, responsibility for delivery was *apparently* devolved to the

HSC/E to achieve the targets, but it sought 'external validation' from the executive, therein

strengthening the grip of the core executive.[1503]   Third, setting targets also distanced the

executive from failure.   Since the onus of performance was laid firmly on the shoulders of the

HSC/E. Despite budget cuts and expanded responsibilities, the HSC/E had to achieve its targets

or suffer the negative consequences from public scrutiny. Fourth, targets were an attempt to set

the HSC/E as 'industry leaders'. The targets set by the HSC/E were an attempt to lead by

example. It was hoped that industry would follow suit and set targets for itself.[1504]

5.3 The 'official' retraction of the Centre

From the Thatcher government until New Labour, the Centre had experienced retraction due to

the constant cuts in resources, recruitment freezes and the antagonistic surround.   However, we

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[1499] HSC, *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond* (HSE 2004); HSE, *Revitalising Health and Safety* (HSE 2000)

[1500] HSC, *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond* (HSE 2004)HSE, *Revitalising Health and Safety* (HSE 2000)

[1501] Patrick Diamond, 'New Labour, Politicisation and Depoliticisation: The Delivery Agenda in Public Services 1997 – 2007' (2015) 10 BP 4 p429

[1502] Paul Almond, Interview with Kevin Myers, Former Deputy Chief Executive of the HSE, University of Reading (Reading, 6/11/2014)

[1503] Patrick Diamond, 'New Labour, Politicisation and Depoliticisation: The Delivery Agenda in Public Services 1997 – 2007' (2015) 10 BP 4 p429

[1504] Patrick Diamond, 'New Labour, Politicisation and Depoliticisation: The Delivery Agenda in Public Services 1997 – 2007' (2015) 10 BP 4 p429

start to see a marked change in the character of the retraction.[1505] The HSC/E under the Labour government *actively* sought to retreat from the workplace; it formulated ways to retract from front line services. This is in line with the *Hazard Magazine's* reporting that the HSC/E 'dropped off dramatically' from the early 2000s.[1506] Indeed, in a decade of New Labour government, 1999/2000 – 2008/2009, HSE inspections fell by two – thirds. There was a 69% decline in the numbers of inspections made by HSE's Field Operations Directorate (FOD); a 63% decline in investigations of safety incidents at work; a 29% decrease in all types of enforcement notices issued: a fall in HSE prosecutions of 48%; by the end of the decade, a mere 8% of major reported injuries were investigated.[1507]

Such levels of retreat from the workplace were significant; *Hazard's* *Retreating from Front* section reported the intention of the HSC/E to 'retreat' from the workplace, it argued that the HSC/E 'stole a lead on other regulators by being the poster boy' for the government's new approach.[1508] The retreat stemmed from the fact that the HSC/E could not continue the pretence that they were able to function with such obstacles. The Centre believed that its efforts to improve working conditions in certain areas plateaued in the 1990s.[1509] Industry had moved on from the *Robens Report*: deindustrialisation, growth of the service industry, industry fragmentation and contracting challenged the HSC/E's regulatory functions.[1510] Also, their resources, expertise, influence and legitimacy had been so eroded that a new direction was needed. Thus, from the 2000s, the HSC/E reviewed its inspection and enforcement strategy with

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[1505] Hazards Magazine, 'Sure, We'll be Safe' (*Hazards Magazine*, April/June 2006) <www.hazards.org/commissionimpossible/hse.htm> accessed 25 June 2018
[1506] Hazards Magazine, 'Protection racket' (*Hazards Magazine*, August 2005) <www.hazards.org/commissionimpossible/protectionracket.htm> accessed 26 June 2018; HSC, *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond* (HSE 2004)
[1507] Phil James Steve Tombs and David Whyte, *The Löfstedt Review of Health and Safety Regulation: A Critical Evaluation* (IER 2012)
[1508] Hazards Magazine, 'Protection racket' (*Hazards Magazine*, August 2005) <www.hazards.org/commissionimpossible/protectionracket.htm> 26 June 2018; HSC, *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond* (HSE 2004)
[1509] House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p12
[1510] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016); House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p12

the aim to concentrate more resources on advice, 'providing effective support free from the fear of enforcement'.[1511]   This was akin to what Gordon Brown, the then Chancellor of the Exchequer, referred to as the 'new model of regulation' where the formulation of regulation or maintaining a well-staffed front line service should no longer be seen as the norm or a goal to work towards.   Instead, such things should only be actioned after education and encouragement have failed, 'No inspection without justification, no form filling without justification, and no information requirements without justification.   Not just a light touch but a limited touch.   The *new model of regulation* can be applied to… health and safety (emphasis added)'.[1512]

Observing the HSC/E move in this direction, it becomes clear what the 'revitalisation' of OHS entailed.   Carol Boyd observed that *Revitalising* set the course to intervene as little as possible; the 'revitalising exercise' was based on tactics of 'persuasion, cajoling and buck-passing'.[1513]   In this vein, the HSC/E's retraction was reliant upon the 'self – interest model'; it was intended that businesses would be able to identify the 'business case' and make the necessary improvements to their workplaces and that insurance companies would exert pressure on 'poor performers'.[1514] This would allow the HSC/E to reduce its footprint and essentially become 'risk managers'; moving from removing the risks from hazards to one of managing the risks.[1515]

It would appear that the HSC/E's retraction was to such an extent that it did not want to release too much information.   The information of the decrease of 'regulatory contacts'[1516] was kept out of the public domain, so the *Hazards Magazine* spent months pursuing the HSE for its figures on

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[1511] HSE, *HSE Statement on Providing Accessible Advice and Support* (HSE 2004); Hazards Magazine, 'Protection racket' (*Hazards Magazine*, August 2005) <www.hazards.org/commissionimpossible/protectionracket.htm> 26 June 2018
[1512] Gordon Brown, 'Full Text of Speech by the Chancellor, Gordon Brown, Given to the CBI Annual Conference' *The Guardian* (London, 28 November 2005) <www.theguardian.com/business/2005/nov/28/economicpolicy.budget2006> accessed 26 June 2018
[1513] Carol Boyd, *Human Resource Management and Occupational Health and Safety* (Routledge 2003)
[1514] Carol Boyd, *Human Resource Management and Occupational Health and Safety* (Routledge 2003) p17
[1515] To this, Hugh Robertson, TUC's Head of Safety argued that this represented a 'major sea change, managing risk is a concept totally alien to the H&SW Act. The role of the HSE must be about removing hazards' TSSA, 'Health and Safety News TSSA Rep's Bulletin Ref: H&S/054/NOV2004' (*TSSA*, 2004) < https://www.tssa.org.uk/download.cfm?docid=39CF31E2-CDB2-4CA1-858CD44103AC57E5> accessed 21 August 2018
[1516] Regulatory Contact refers to inspections, investigations, enforcement action, seminars, workshops and advisory activities

the decrease of 'regulatory contacts'; the figures revealed a dramatic fall in official safety inspections, '[R]evealing how far HSE has moved from its role as the UK's official health and safety enforcer. Firms are now less likely to be inspected, less likely to be prosecuted, less likely to be convicted and less likely to receive an HSE notice requiring safety improvements'.[1517] It should also be noted that the policy of retreat was not restricted to the reduction of 'regulatory contact', it also extended to the formulation of regulations. The HSC's strategy involved a 'downplaying of further regulatory solutions'.[1518] As far as the HSC/E was concerned 'existing health and safety legislation offers adequate legal protection for all workers, regardless of employment status'[1519], the 'best route' was through clear advice.[1520] The 'storytelling' of the Thatcher government had finally found its place in the HSC/E.[1521]

In order for the HSC/E to retract from the workplace, the HSC/E wanted to develop closer partnerships with employers by providing support and education with 'the principle of proactive management' of OHS.[1522] To this point, Whyte and Tombs observed that the HSC/E exerted its energies developing partnerships with employers rather than focusing on enforcement.[1523] The government and HSC/E began to use the term 'partnership' much more frequently following the 1997 general election.[1524] Although 'partnership' was said to have its roots in the *Robens Report*'s notion that special interests needed to be accommodated into the policymaking process, the 'language of partnership further relegated the role of the state. Under the partnership

[1517] Hazards Magazine, 'Sure, We'll be Safe' (*Hazards Magazine*, April/June 2006) <www.hazards.org/commissionimpossible/hse.htm> accessed 25 June 2018

[1518] House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p22

[1519] House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p22

[1520] House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p31

[1521] House of Commons Work and Pensions Committee, *The Work of the Health and Safety Commission and Executive Fourth Report of Session 2003–04 Volume 1* (TSO 2008) p22

[1522] HSE, *HSE Statement on Providing Accessible Advice and Support* (HSE 2004)
TSSA, 'Health and Safety News: TSSA Rep's Bulletin Ref: H&S/054/NOV2004' (*TSSA*, 2004) < https://www.tssa.org.uk/download.cfm?docid=39CF31E2-CDB2-4CA1-858CD44103AC57E5> accessed 21 August 2018

[1523] Steve Tombs and David Whyte, 'Deadly Consensus Worker Safety and Regulatory Degradation under New Labour' (2010) 50 BJC 1 p46

[1524] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p327

mentality, statutory intervention was thought to be ineffective without the wider support of partner organisations'.[1525]

The close bond between the HSC/E and employers that had gained momentum since Thatcher's attack on unions was formalised and made explicit with the notion of partnership.[1526] Instead of addressing the imbalance of the tripartite framework, Beck and Woolfson note that the government sought to intensify the existing business-government dialogue on regulation.[1527] This development coupled with the retraction from the workplace was leading to what the former Director-General referred to as the 'slow death' of HSE.[1528]

5.4 The 'official' growth of the Periphery

The Periphery continued to grow unabated. It grew in the traditional trajectory of filling the vacuum of the Centre, but it also experienced significant growth in the contracts it received from the HSE. Coming out of the matrix between the HSE's partnership with the private sector and the former's retraction from the workplace was the aggressive contracting out of formerly HSE functions. The *Hazard Magazine* made several FOI requests to the HSE for information on the extent of its contracting out (see *Fig 1*). What they found was that the HSE had 'massively' increased its 'external spend'.[1529] HSE's expenditure on external OHS services increased significantly from £19.9m in 2000/01 to £26.2m in 2004/05, totalling 9.6 percent of its total budget in 2004/05.[1530]

[1525] Christopher Sirrs, 'Health and Safety in the British Regulatory State, 1961-2001: the HSC, HSE and the Management of Occupational Risk' (PhD thesis, London School of Hygiene & Tropical Medicine 2016) p76
[1526] Alan Dalton, 'Consensus Kills Health and Safety Tripartism: A Hazard to Workers' Health?' (*The Carbon Monoxide Gas Safety Society,* n.d.) < http://www.co-gassafety.co.uk/consensus-kills-by-alan-dalton/ > accessed 30 October 2016
[1527] Matthias Beck and Charles Woolfson, 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour' (2003) 31 IRJ 1 p35, p47
[1528] John Rimington, 'Health and Safety - Past, Present and Future' The Alan St John Holt Memorial Lecture, (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed; on 25 October 2016
[1529] Hazards Magazine, 'Total Suck Up' (*Hazards Magazine*, 14 February 2006) <hazards.org/totalsuckup/index.htm> accessed 26 June 2018
[1530] Hazards Magazine, 'Total Suck Up' (*Hazards Magazine*, 14 February 2006) <hazards.org/totalsuckup/index.htm> accessed 26 June 2018

Fig 1. The Contracting out of the HSE[1531]

Hazards question "What are the expenditures (broken down by recipient) of major out-sourced or part-outsourced HSE projects related to health and safety (value in excess of £10,000)?"

HSE answer

Supplier	Start	Finish	Contract(s) Value (indicative spend)
McKann Erikson	02/07/2001	02/07/2004	£3.77m
Scout Enterprises Western (SCOUT) Ltd	01/09/1999	03/09/2006	£56.9k
Cable & Wireless	01/04/2001	31/03/2006	£6m
Promotional Logistics	02/01/2002	31/12/2008	£12.5m
Beambrook Ltd	19/07/2004	31/03/2005	£34k
Experian Ltd	01/02/2005	31/01/2006	£24.6k
International Stress Management Association	01/09/2004	31/12/2005	£121.8k
MBTB Ltd	31/08/2004	31/03/2005	£12.6k
Spearhead	07/06/2004	29/10/2004	£15k
IPEX Consulting Ltd	18/10/2004	28/11/2004	£38k
Kirklees Metropolitan Council	19/11/2004	25/02/2005	£44.2k
IMS Interim Management	29/03/2005	31/03/2006	£200k
Computer People	06/06/2005	31/03/2006	£32.9k
Octagon Sponsorship Consulting Ltd	2001/02	30/12/2005	£1.187m
Gardiner Graphics Group	15/08/2005	11/08/2006	£94.5k
Badenoch & Clark	08/08/2005	28/10/2005	£35k
Reed Technology	08/08/2005	31/03/2006	£30k

However, from the 2000s, some actors of the Periphery had been caught in the snares of regulatory myths. Therein, prompting the government to view the OHS consultants as a cause for concern. The Brown government was the first government to focus on the Periphery. The previous governments did not censure the Periphery. Perhaps this was because the Periphery was seen as the epitome of a market – based solution to the betterment of working conditions. Employers *opted* to use the services of consultants; no regulation stipulated their appointment. Moreover, there was also a significant amount of naivety of the 'burdens on business' narrative. It did not account for the 'hangers on', instead it was postulated that once the regulator was restrained, then the burdens would miraculously dissipate.

[1531] Hazards Magazine, 'Total Suck Up' (*Hazards Magazine*, 14 February 2006) <hazards.org/totalsuckup/index.htm> accessed 26 June 2018

From the mid-2000s, government officials began to focus their energies on 'overzealous health and safety consultants' which emerged during discussions about the merger of the HSC and HSE, 'Employers can be over-cautious in their interpretation of its provisions, increasing the compliance burden on themselves. Over-zealous health and safety "consultants" contribute to this problem and we call for a system of accreditation of consultants and advisers'.[1532] The main issues centred on the 'abuse' of written risk assessments that occurred with the introduction of the Six-Pack. The HSE's former Director-General recalled that some consultants made a 'bureaucracy of what was originally intended to be a flexible and discretionary system, and *I think that's done HSE a lot of harm* (emphasis added)'.[1533] Though no major action was taken to address the 'abuses' of the Periphery, OHS consultants now had the attention of government.

6.0 The surround of the Coalition government

On May 2010, the Labour government had clearly lost the election, but the Conservative opposition had failed to win. Thus, David Cameron's Conservative Party agreed to a power-sharing coalition government with Nick Clegg's Liberal Democrats. Under the Coalition government, much of the surround remained the same except for a creeping populism.[1534] Following the 'cycle' set by the Blair government, the Conservative leader opened the door *wider* to a rhetorical populism through his appeals to the ordinary man.[1535]

The populist rhetoric of the Conservative Party affected the surround of OHS in two ways. First, the denigration of OHS was no longer confined to the tabloids; concerns were legitimated by No. 10. No previous government openly disparaged OHS regulation. Lord McKenzie, New

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[1532] House of Commons Work and Pensions Committee, *The Role of the Health and Safety Commission and the Health and Safety Executive in Regulating Workplace Health and Safety Third Report of Session 2007–08 Volume 1* (TSO 2008)

[1533] Paul Almond, Interview with John Rimington, Former Director- General of the HSE, University of Reading (Reading, 10/9/2014); John Rimington, Health and Safety - Past, Present and Future The Alan St John Holt Memorial Lecture' (*RoSPA,* 9 October 2008) <http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf> accessed 25 October 2016

[1534] Agnès Alexandre-Collier, 'The Temptation of Populism in David Cameron's Leadership Style' in Agnès Alexandre-Collier and François Vergniolle De Chantal (eds), *Leadership and Uncertainty Management in Politics: Leaders, Followers and Constraints in Western Democracies* (Palgrave Macmillan 2015)

[1535] Agnès Alexandre-Collier, 'How populist was David Cameron?' (2016) 23 JUNC 2 p116

Labour's shadow Health and Safety Minister, protested: 'The rhetoric of this government has shown an antipathy to health and safety; *the rhetoric at the highest levels. I'm sure the previous government would never have done that, simply it is not in their DNA to do it* (emphasis added).'[1536] Though antipathy towards OHS was not new, never had it been expressed in such a visceral and populist way, the Prime Minister pronounced openly that the government was 'waging war against the excessive health and safety culture that has become an albatross around the neck of British businesses… This coalition has a clear new year's resolution: to kill off the health and safety culture for good'.[1537] Arguably, such pronouncements added additional gravitas to the media's proliferation of regulatory myths.[1538]

Second, the populist rhetoric revolved around the notion of 'common sense'. Almond notes that common sense was 'central to the Coalition Government's thinking on health and safety regulation'.[1539] If Big Society was the conversation between the government and the people, then common sense was the language in which they spoke to each other. There was no place for translators or interpreters in this conversation. Almond goes on to argue that the Coalition government explicitly used the notion of common sense as a deterring and critical restriction on OHS regulation; the government actively engaged with popular representations of the ordinary man's common sense, and 'the interaction stages of the meaning-generation process to form and consolidate one particular world-view'.[1540]

Both of which contributed to an increasingly 'thick' surround for those working within OHS. The Deputy Chief of the HSE spoke of this surround:

[1536] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH, 2016) p181; Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46

[1537] Andrew Woodcock Dan Bentley and Ben Glaze, 'David Cameron: I will kill off safety culture' (*The Independent*, 5 January 2012) <https://www.independent.co.uk/news/uk/politics/david-cameron-i-will-kill-off-safety-culture-6285238.html> accessed 26/06/2018

[1538] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016); Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46

[1539] Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-sense' Regulation' (2015) 42 JLS 2 p202, p212

[1540] Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-sense' Regulation' (2015) 42 JLS 2 p202, p212

> I said I've worked in HSE for many years and when you meet people in the pub or dinner party and you talk about what you do for a living and I said most of my career when people find out what they do they say, gosh, that's a really interesting and important job and there's not enough of you… but in the last couple of years the experience has been, oh you're one of them are you?... that is a real problem.[1541]

Those that worked within OHS were constantly 'sniped at by ministers, the press'.[1542] A BERR report in the late 2000s noted that negative and erroneous statements around health and safety frustrated those that worked within OHS, their frustration was the backdrop in their responses in the call for evidence.[1543] Similarly, the British Chamber of Commerce (BCC) believed that the media coverage 'has helped to fuel negative perceptions and cynicism about health and safety and its value or lack of it.'[1544] Throughout the 2000s, approximately 48,000 written articles were referring to health and safety published in the UK each year.[1545] The bulk of which placed OHS in a negative light. What made the surround worse for the HSE was the lack of an effective media centre. The HSE was in no position to defend itself, Frank Davies, former Chair of the HSC noted that:

> The HSE used to have a huge media department – and a campaigns department. It used to run national newspaper campaigns and used to engage', and then the government 'put a complete block on that… if you compare that with, you know, even ten, fifteen years ago, their press releases were about working to raise awareness of asbestos and lead and the agricultural industry and so on. *So the flow of awareness-raising activity in HSE has been deliberately suppressed, yes?* (emphasis added).[1546]

6.1 Targeting the HSE

The targeting of the HSE was unique. Prior governments did not immediately target the HSE, it usually took some time in office, an investigation or an exogenous reason for the government to

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[1541] Paul Almond, Interview with Kevin Myers, Former Deputy Chief Executive of the HSE, University of Reading (Reading, 6/11/2014)

[1542] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1543] BERR, *Improving Outcomes from Health and Safety* (BERR 2008)

[1544] BERR, *Improving Outcomes from Health and Safety* (BERR 2008) p50

[1545] BERR, *Improving Outcomes from Health and Safety* (BERR 2008) p47

[1546] Paul Almond, Interview with Frank Davies, Former Chair of the HSC, University of Reading (Reading, 5/5/2015)

target the HSE. Yet, the Conservative government needed no provocation to target the HSE. In fact, even before the Conservative Party came to power, it had expressed its disdain for the health and safety culture. Two years before the Conservative came to power, Cameron stated that, 'This whole health and safety, human rights act culture, has infected every part of our life'.[1547] Arguably, the early targeting of the HSE was due to its weakness. After three decades of government probes, the HSE was a much hollower institution. The protective layers of the HSE/E had all but withered away. We can also infer that the Cameron and his ministers drew their critique from the media's regulatory myths. Crucial to the acceptance of these myths was the fact that OHS regulations began to 'invade' areas that it had not traditionally occupied. Cameron's target voter base was the 'new entrants' that were subject to OHS requirements. Similarly, Almond and Esbester suggest that the extension of regulatory activity to office work brought increased numbers of people in contact with the HSE 'and contributed to later concerns about the legitimacy of health and safety'.[1548] This became more profound with the growth of retail and service sectors.[1549] Also, Davies of the HSC remarked:

> It was about the workplace, it was all to do with work. *It was not to do with outside. Which is the problem we face now, it's all outside.* We're in the factories and controlling health and safety and in *those days it was only in the factories.* Nobody talked about health and safety outside of the factories and almost like getting dirty. It was something you expect in a factory (emphasis added).[1550]

Within the just a few weeks in government, the HSE was targeted with a review and a substantial budget cut.

[1547] David Cameron, 'Speech to Conservative Party Conference' *The Guardian* (London, 1 October 2008) <http://www.guardian.co.uk/politics/2008/oct/01/davidcameron.toryconference1> accessed 26 June 2018
[1548] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH, 2016) p114; Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46
[1549] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p114; Mike Esbester and Paul Almond, 'Regulatory Inspection and the Changing Legitimacy of Health and Safety' (2017) 12 RG 1 p46
[1550] Paul Almond, Interview with Frank Davies, Former Chair of the HSC, University of Reading (Reading, 5/5/2015)

6.2 Steering the HSE

The Coalition government utilised the steering tools of its predecessors except for one interesting development; the 'public' OHS review. The 'public' OHS review sought to instil critical restrictions to OHS regulation and enforcement activity through appealing to the common sense of the 'ordinary man'.[1551] Arguably, contrary to previous government hostility towards OHS regulation, these reviews contributed to the creation of a 'new orthodoxy' of regulation 'which sets firm parameters around what impossible and permissible in terms of future policy, and which excludes alternatives that do not conform to this model'.[1552] These public reviews 'undertook interaction with a wider public constituency via two mechanisms: a consultation process which gathered responses from stakeholders, and an engagement with mediated popular opinion via the regulatory myths that were cited'.[1553] In this vein, two OHS public reviews were distinguished; Lord Young's *Common Sense, Common Safety* and Ragnar Löfstedt's *Reclaiming Health and Safety*.

6.2.1 Common sense, common safety

Lord David Young of Graffham, a Conservative peer, noted for overseeing two deregulatory White Papers in the mid-1980s, *Lifting the Burden* and *Building Business Not Barriers*, was asked by the new Prime Minister David Cameron to investigate 'the rise of the compensation culture over the last decade coupled with the current low standing that health and safety legislation now enjoys'.[1554] Sources indicate that Lord Young's appointment was an effort to 'please the Thatcherite wing of the Conservative Party and elements of the tabloid press'.[1555]

[1551] Paul Almond, 'The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulation' (2009) 36 JLS 3 p352; Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-Sense' Regulation' (2015) 42 JLS 2 p202

[1552] Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-Sense' Regulation' (2015) 42 JLS 2 p202, p203

[1553] Paul Almond, 'Revolution Blues: The Reconstruction of Health and Safety Law as 'Common-Sense' Regulation' (2015) 42 JLS 2 p202, p218; Paul Almond, Interview with Roger Bibbings, RoSPA's Occupational Safety Adviser, University of Reading (Reading, 6/11/2014)

[1554] David Young, *Common Sense, Common Safety* (Cabinet Office 2010)

[1555] Andrew Grice, 'George Osborne and Vince Cable at War Over Bank Reform' *Independent* (London, 31 August 2011) <www.independent.co.uk/news/uk/politics/george-osborne-and-vince-cable-at-war-over-bank-reform-2346591.html> accessed 26 June 2018; The Times, 'Lord Young of Graffham to Review Effects of Health and

The findings of his report were fairly predictable, thus before the publication, many from the OHS community tried to deter him from perpetuating regulatory myths.[1556] Roger Bibbings, who had made his career in both the Centre and Periphery, met Lord Young on several occasions to dissuade him, he also met Alison Scott from the DWP, 'the civil servant who wrote it'… to get her to say something a bit more reasonable'.[1557] All such warnings were ignored, the Young report centred on freeing businesses from unnecessary bureaucratic burdens; regulatory agencies should consolidate and simplify regulations and that measures should be put in place in ensuring that the EU does not over-regulate.[1558] Lord Young's noted that he had received 'a remarkable postbag' in which 'every single letter is in favour of the review'[1559] and David Cameron welcomed the report 'in full' and vowed to retain Lord Young as an adviser to help implement the report across Whitehall.[1560]

Though *Common Sense, Common Safety* did little to bring about direct and tangible change to OHS, it helped propagate the absurdity of OHS to white – collared new entrants. The report represented the collectivisation of negative opinions about regulatory networks. Almond referred to this as the 'interaction stage' in which the 'objectification' of subjective meanings were given concrete and external significance. Lord Young's report sparked nationwide discussion, debate, and agreement that aggregated individual subjective perceptions into a shared reality. Accordingly, Lord Young knew that his task was 'unusual'[1561] and that health and safety

Safety Culture' *The Times* (London, 14 June 2010) <www.thetimes.co.uk/tto/news/politics/article2553720.ece> accessed 26 June 2018

[1556] Paul Almond, Interview with Roger Bibbings, RoSPA's Occupational Safety Adviser, University of Reading (Reading, 6/11/2014)

[1557] Paul Almond, Interview with Roger Bibbings, RoSPA's Occupational Safety Adviser, University of Reading (Reading, 6/11/2014)

[1558] David Young, *Common Sense, Common Safety* (Cabinet Office 2010)

[1559] David Young, 'Health and Safety Law has Noble Origins – So What Went Wrong?' *The Telegraph* (London, 22 June 2010) <www.telegraph.co.uk/news/politics/7847393/Health-and-safety-law-has-noble-origins-so-what-went-wrong.html> accessed 26 June 2018

[1560] The Times, 'Cameron vows Health and Safety Common Sense' *The Times* (London, 15 October 2010) <www.thetimes.co.uk/tto/news/politics/article2768930.ece> accessed 26 June 2018

[1561] David Young, *Common Sense, Common Safety* (Cabinet Office 2010)

was a 'mystique' that he was consciously 'stripping away'.[1562]   It was the first time that such scorn was placed between the covers of a TSO publication. The ridicule of OHS was given 'official backing' through his report, baseless and exaggerated stories could be legitimised just through association.

In this vein, Lord Young's report created an agenda for reform. It helped cement the idea that the social regulation had a noble past but was corrupted by network actors seeking financial gain, the long arm of the EU and the presence of 'busybodies and killjoys.' The glorious past was one where 'legislation… was directed at protecting those seen as most vulnerable, and which helped introduce safe practices for all workers' tragically transformed into an 'all-encompassing regime that stops people who change clocks from climbing ladders, requires Christmas trees to be kept behind barriers and prevents pantomime performers from throwing sweets to children in the audience'.[1563]   Similarly, the Prime Minister helped disseminate the 'fall from Eden' thesis:

> I think we'd all concede that something has gone seriously wrong with the spirit of health and safety in the past decade… It is clear that what began as a noble intention to protect people from harm has mutated into a stultifying blanket of bureaucracy, suspicion and fear that has saturated our country, covering the actions of millions of individuals as they go about their daily lives.[1564]

Paul Taggart saw this idealisation of the past as one of the general features of populist discourse; it refers to a world built by people of common sense for principled and rational reasons.[1565] Thus, the underlying message was that it was not always like this, therein encouraging conversations about reform.[1566]

[1562] Safety & Health Practitioner, 'Young Report Aims to Banish Health and Safety Mystique' (*Safety & Health Practitioner*, 26 October 2010) < https://www.shponline.co.uk/i-want-to-strip-away-mystique-around-health-and-safety-says-lord-young/> accessed 26 June 2018

[1563] Philip Johnston, 'Danger! Daft health and safety laws under inspection' *The Telegraph* (London, 15 June 2010) <https://www.telegraph.co.uk/news/uknews/law-and-order/7828902/Danger-Daft-health-and-safety-laws-under-inspection.html> accessed 26 June 2018

[1564] BBC, 'Cameron says Health and Safety Rules 'Over the Top'' <news.bbc.co.uk/1/hi/uk_politics/8388025.stm> (*BBC*, 1 December 2009) accessed 26 June 2018

[1565] Paul Taggart, *Populism* (Open University Press 2000) p13

[1566] Hank Johnston and Bert Klandermans (eds), *Social Movements and Culture* (Routledge 1995) p77

6.2.2 The Löfstedt Review

The year after *Common Sense, Common Safety* was published, Chris Grayling, the Department

for Work and Pensions' (DWP) Minister for Employment, commissioned a review of health and

safety legislation to be undertaken by Professor Ragnar Löfstedt, Director of the King's Centre

for Risk Management at King's College. It was noteworthy that when Grayling commissioned

Reclaiming, he reportedly 'wanted to absorb HSE into the Department of Work and Pensions as

a prelude to axing it', a DWP insider informed *Hazards* on condition of anonymity, 'When he

didn't achieve that, he saw HSE was on the receiving end of a crippling funding cut'.[1567] The

commissioning of the Löfstedt Review was extraordinary; it was the widest-ranging review since

the Robens Report. The full title of the Löfstedt Review is *Reclaiming Health and Safety for All*.

The notion of 'reclaiming' or 'taking back' has its roots in populist discourse.[1568] It was the

sense that something had been stolen from the people by the elite, in this case, bureaucrats and

experts hijacked OHS. Thus the *Löfstedt Review* was the means for the government to transfer

non – technical aspects of OHS *back* to the people.

Phil James, Steve Tombs and David Whyte questioned the independence of the *Löfstedt*

Review.[1569] Their questioning has some grounding; before Professor Löfstedt had even

completed his *Review*, the Employment Minister Chris Grayling stated, 'We need common sense

at the heart of the system, and these measures will help root out the needless burden of

bureaucracy'.[1570] He also stated elsewhere, 'Professor Löfstedt's review will play a vital part in

putting common sense back at the heart of Britain's health and safety system'.[1571] Furthermore,

when the *Review* was published Professor Löfstedt himself expressed concern about the extent to

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[1567] Hazards Magazine, 'Get Shirty' (*Hazards Magazine*, October/December 2010)
<www.hazards.org/votetodie/getshirty.htm> accessed 28 June 2018
[1568] Margaret Canovan, *The People* (Polity 2005) p81
[1569] Phil James Steve Tombs and David Whyte, 'An Independent Review of British Health and Safety Regulation?
From Common Sense to Nonsense' (2013) 34 PS 1 p36
[1570] Eve Reed, 'Government Announces New Review of all Health and Safety law' (*Health and Safety at Work*, 21
March 2011) <www.healthandsafetyatwork.com/new-safety-review> accessed 26 June 2018
[1571] Phil James, Steve Tombs and David Whyte, *The Löfstedt Review of Health and Safety Regulation: A Critical
Evaluation* (IER 2012) p2

which his report was being misused for political purposes.[1572] However, the most telling

evidence came from James, Tombs and Whyte's analysis of Löfstedt's references, they

concluded that, 'The inquiry drew on evidence from government sources more than other

sources… Much of this evidence is in the form of reports and reviews from government and

parliament itself'.[1573] The weight of evidence wanted to simplify the layman's task of achieving

a safe workplace without the need of experts.   Thus, *Löfstedt Review* was essentially a publicity

document for simplification and consolidation of regulations, personalisation of risk assessment

and limitation of external enforcement.

Taken as a whole, *Löfstedt*, *Common Sense* and the Department of Work and Pension's *Good

Health and Safety, Good for Everyone* were intended to make the OHS Network more placid.

To this point, Michael Higgins observed that as a result of 'popular enablement', the

Conservative government sought to alter national regulatory frameworks.   Throughout these

reviews, the 'rhetoric of empowerment' for the ordinary man was utilised to 'disguise the

destruction of state support'.[1574]   Also, Higgins noted that the carrot of empowerment dangled in

front of the ordinary man did not extend to the corporate sector 'where government policy

remains committed to eroding workplace rights'.[1575] Thus, we should view the claims of

empowerment along very narrow individualist economic lines rather than through the lens of

social principles, 'After all, removal of government everyday activities takes away from those

financial, organisational and legal safeguards guaranteed by regulatory frameworks'.[1576] The

tangibility of this was reflected in the discarding and nullifying of regulations through the

introduction of the *Health & Safety (Miscellaneous Revocations) Regulations 2012* and the

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[1572] Phil James Steve Tombs and David Whyte, *The Löfstedt Review of Health and Safety Regulation: A Critical Evaluation* (IER 2012) p2
[1573] Phil James Steve Tombs and David Whyte, 'An Independent Review of British Health and Safety Regulation? From Common Sense to Nonsense' (2013) 34 PS 1 p36, p43
[1574] Michael Higgins, 'Governmentality, Populism and Empowerment' in Richard Scullion and others (eds), *The Media, Political Participation and Empowerment* p60 58 - p71 (Routlledge 2013) p68
[1575] Michael Higgins, 'Governmentality, Populism and Empowerment' in Richard Scullion and others (eds), *The Media, Political Participation and Empowerment* p60 58 - p71 (Routlledge 2013) p68
[1576] Michael Higgins, 'Governmentality, Populism and Empowerment' in Richard Scullion and others (eds), *The Media, Political Participation and Empowerment* p60 58 - p71 (Routlledge 2013) p68

Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013.
There has also been a significant slowing down of new regulation; there are currently 79 health and safety regulations on the statute book, compared to 90 in 2014–15 and 201 at the baseline year of 2011–12.[1577] Additionally, there was also 'breathing space' allocated to businesses, for example, the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995* (RIDDOR) extended the three day injury reporting requirement to over seven days and the number of reportable incidents, injuries and illnesses were reduced and the requirement for self-employed people to report injuries or illnesses was abandoned.

6.3 The Centre – A willing victim?

Though the weakening of the HSE had followed a consistent trajectory from the Thatcher period, it was clear under the Coalition government that its independence was significantly eroded.[1578] For the leadership in the HSE, it was a matter of 'keeping your head down and getting on with the job'.[1579] There was more to it than just victimisation. It would appear that HSE shared an affinity with the government, often to the dismay of the Periphery. No matter how ill – thought out or ideologically driven, the HSE would follow the direction of government and internalise the 'burdens on business' narrative.[1580]   Significant evidence that contradicted the government's plans for OHS was collected by the HSE and select committees since the 2000s, yet much of this evidence was cast aside to pursue the direction of government.

It is against this background that, Rory O'Neill l saw that 'the cull of inspections' was rationalised as a risk-based approach, but the HSE could not provide evidence, 'It is simply a case of the HSE tamely following orders, in this case a stop-enforcing directive in the

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[1577] Elaine Knutt, 'HSE Annual Report Search for New Income Sources as FFI Costs Rise' (*Health and Safety at Work*, 18 July 2016) <www.healthandsafetyatwork.com/hse/annual-report-new-income-sources-ffi> accessed 24 June 2018

[1578] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 20 October 2016

[1579] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

[1580] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 20 October 2016

government's 2011 Good Health and Safety… The HSE tried to retrofit the evidence to the imposed policy'.[1581] To this point, the *Hazard* stated, 'Government instruction has percolated down into HSE's… documents… Cable and Fallon needn't have worried about HSE. It has already gone way beyond the requirements of the incoming code'.[1582] Moreover, the *Magazine* examined internal policy statements and 20 FOI requests to reveal that the HSE's senior management was 'tripping over itself to accommodate a deregulatory push from government and the employer lobby'.[1583] Through the FOI requests, the HSE was forced to concede that they had agreed with the government to reduce proactive inspections.[1584]

The HSE became a conduit for the Coalition government to spread its deregulatory agenda. Local Authority inspectors were instructed by the HSE to follow their *National Local Authority Enforcement Code*, which limited their occupational health and safety interventions to low-risk businesses.[1585] Within the first two years of the *Code*, that local authorities reduced their unannounced proactive inspections to 16,400. This was a drop of 86% since the baseline year of 2009/10.[1586] Similarly, the HSE was utilised by the government to 'hold the line' against proposals for European legislation. The HSE used its 'positive and influencing role' on behalf of the UK government to frustrate the offshore and Seveso Directives (concerned with the prevention of major accidents).[1587] Regarding the latter proposal, there were proposed changes in 2013 to the Seveso Directive which aimed at aligning the existing Directive with a new

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[1581] Rory O'Neill, 'Campaigner and Wannabe HSE Chief Executive, Talks to HSB's editor, Howard Fidderman Biting the Hand that Starves it: Citizen Sane and the HSE' (*Health and Safety at Work*, 22 July 2013) www.healthandsafetyatwork.com/hsb/citizen-sane-and-hse accessed 29 October 2016

[1582] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 20 October 2016

[1583] Hazards Magazine, 'Total Suck Up' (*Hazards Magazine*, 14 February 2006) <hazards.org/totalsuckup/index.htm> accessed 26 June 2018

[1584] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 20 October 2016

[1585] DWP, *A Final Progress Report on Implementation of Health and Safety Reforms* (DWP 2015) accessed:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415692/final-progress-report-h-and-s-reform.pdf March 2015 on 29/10/16

[1586] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 20 October 2016

[1587] Martin Temple, *Triennial Review Report: Health and Safety Executive An Independent Review of the Function, Form and Governance of the Health and Safety Executive* (DWP 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf> accessed 26 June 2018

classification of chemicals scheme.[1588] The new scheme included a broader scope and some prescriptive requirements for inspections of hazardous sites. However, the HSE campaigned against this, in doing so, preventing around £40 million of 'unnecessary costs to British business and the regulators'. [1589] Similarly, the HSE achieved the withdrawal of planned EU Commission Directives on hairdressing and musculoskeletal disorders.[1590]

From the late 2000s, the HSE was 'pushed towards' an increasingly commercialised position. A senior HSC source noted that, 'The commercialisation agenda of HSE… has been forced on them by Ministers'.[1591] The 'commercialisation agenda' thrust upon the HSE required elements of its operations were to be monetised or reorganised along commercial lines.[1592] Although a 'payment for approval' relationship has been a longstanding regulatory feature of the nuclear and offshore industries, the government sought to widen the HSE's commercial operations.[1593] There were five aspects to the coerced commercial project of the HSE, first, the opening of the Health and Safety Laboratory (HSL), the HSE's research and testing facilities, to the private sector. The second angle was essentially products; specialist training courses and software. Third, offering support, advice and guidance to companies outside of the UK. Fourth, auditing organisations with mature health and safety systems.[1594] The fifth aspect and mostly contested

[1588] Martin Temple, *Triennial Review Report: Health and Safety Executive An Independent Review of the Function, Form and Governance of the Health and Safety Executive* (DWP 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf> accessed 26 June 2018

[1589] Martin Temple, *Triennial Review Report: Health and Safety Executive An Independent Review of the Function, Form and Governance of the Health and Safety Executive* (DWP 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf> accessed 26 June 2018

[1590] Martin Temple, *Triennial Review Report: Health and Safety Executive An Independent Review of the Function, Form and Governance of the Health and Safety Executive* (DWP 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf> accessed 26 June 2018

[1591] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p175

[1592] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016); Louis Wustemann, 'Interview: Richard Judge, HSE Chief Executive' (*Health and Safety at Work*, 4 March 2015) <https://www.healthandsafetyatwork.com/interview/richard-judge> accessed 16 June 2018

[1593] Louis Wustemann, 'Interview: Richard Judge, HSE Chief Executive' (*Health and Safety at Work*, 4 March 2015) <https://www.healthandsafetyatwork.com/interview/richard-judge> accessed 16 June 2018

[1594] Louis Wustemann, 'Interview: Richard Judge, HSE Chief Executive' (*Health and Safety at Work*, 4 March 2015) <https://www.healthandsafetyatwork.com/interview/richard-judge> accessed 16 June 2018

was the 'newly marketized regulatory strategy' of Fee for Intervention (FFI), whereby HSE charged firms when it intervened in response to breaches of the law.

Despite industry's overwhelming protest and the recommendation of *Triennial Review* that HSE's public body status is the appropriate delivery model, the government still pushed ahead with the commercialisation of the HSE.[1595]   The rationale behind this was that it wanted the HSE to become more self-financing and to recover a larger proportion of its operating costs from its activities. In doing so, extending the rationality of 'commercialised service provision' through passing the costs of regulating from the public to the private sector.[1596]

6.4 The maligned Periphery

The private sector of the Periphery continued to usurp functions of the HSE. However, it continued to face the backlash of regulatory myths.   Beginning in the latter years of the Labour Government, the disparagement of the Periphery heightened under the Coalition government. The disparagement has since become the enduring 'white noise' in the OHS debate. This was principally a unique feature of the post - *Löfstedt* period, the Periphery was ignored throughout the Thatcher, Major and much of New Labour governments, reform was squarely aimed at the Centre. The Periphery were free to expand unabated and fill the vacuum left by the cuts to the Centre. However, their unquestioned expansion would come to an abrupt end in the late 2000s.

In the late 2000s, a poignant narrative began to develop in which networks of professionals and consultants had abused the power that was devolved to them; they had 'rode the coattails' of government institutions, to enrich themselves or to cover up their incompetence. Whether there was evidence of such activity was inconsequential, it was advantageous for the government to capitalise on the media sensation around the 'elf and safety jobsworths'.

[1595] Martin Temple, *Triennial Review Report: Health and Safety Executive An Independent Review of the Function, Form and Governance of the Health and Safety Executive* (DWP 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf> accessed 26 June 2018
[1596] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960–2015* (IOSH 2016) p172

This provided enough momentum to launch two initiatives that sought to censure whole areas of the Periphery. First, the Myth Busters Challenge Panel gave the public the opportunity to challenge the Periphery's advice. The Panel, headed by Chair of the HSE, considered cases where inaccurate or disproportionate advice was given by members of the Periphery. The Panel would deliberate on whether the advice was correct and proportionate regarding the interpretation of the requirements of OHS legislation. Once the Panel reached its verdict, the public was then 'encouraged to return to the *offending* organisation and ask it to come clean on the real reason for its decision (emphasis added).'[1597] What the Challenge Panel represented was troubling to some of the Periphery, it tainted the whole Periphery with the actions of a few individuals. If a 'guilty' verdict was reached, it did not only cast aspersions on the 'culprit' but also the organisation that he or she was a member of. Furthermore, the mere fact that the Challenge Panel had to be established validated that regulatory myths were not myths after all. The Panel perturbed organisations in the Periphery, which alleged that erroneous actions in the name of OHS were not necessarily traceable to the advice of OHS consultants, it could have equally had stemmed from how employers implemented their advice.[1598] Also, the Challenge Panel empowered the public to question expert knowledge based on common sense. All that was needed was a doubt; the public was not requested to bring counter-evidence to the Panel, therein creating a culture of doubt and scepticism that not only delegitimises the professionalism of consultants, but it also encourages managers to disregard or reinterpret the advice of consultants.

The second initiative was recommended by *Common Sense* and *Good Health and Safety*. It was the setting up of a register of all OHS consultants who offered their services to the public and

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[1597] SHP, 'Top Ten Daft Decisions Revealed by Safety Regulator's Challenge Panel' (*SHP*, 3 January 2013) <www.shponline.co.uk/top-ten-daft-decisions-revealed-by-safety-regulator-s-challenge-panel/?cid=searchresult> accessed 30 October 2016

[1598] SHP, 'Practitioners not Wild about OSHCR' (*SHP*, 31 January 2011) <http://www.shponline.co.uk/practitioners-not-wild-about-oshcr/?cid=searchresult> accessed 30 October 2016; SHP, 'Changing Perceptions Begins at Home, IOSH 2012 Delegates Told' (*SHP*, 6 March 2012) <www.shponline.co.uk/changing-perceptions-begins-at-home-iosh-2012-delegates-told/?cid=searchresult > accessed 30 October 2016

private sector.[1599] The Occupational Safety and Health Consultants (OSHCR) was purported to make it easier for the businesses to access reliable and reputable advice. Businesses were afforded the opportunity to search a database for 'accredited' consultants, free of charge. Consultants in the OSHCR who failed to maintain standards would be subject to disciplinary procedures, and if a decision to withdraw their membership status were made, the consultants would no longer be eligible to appear on the OSHCR. The OSHCR was by no means a neutral pursuit, it stemmed from a particular perception of the Periphery, the government and the HSE freely admitted that the OSHCR was a means 'to clamp down on the rogue health and safety advisers who cost industry so much money by giving them advice which bears little relation to the actual requirements of legislation'.[1600] Thus, many consultants were perturbed by the stigma of setting up such a scheme.[1601] Moreover, using the services of a consultant was pitched as a last resort, the HSE's advice read: 'Before you approach a consultant, *have you considered managing your own health and safety?* You probably manage many areas of your own business... HSE provides tools to help you manage health and safety (emphasis added)'.[1602]

Though the above initiatives have yet to impact the Periphery in any meaningful way, they indicate a developing fractious relationship between the Centre and some elements of the Periphery.

7.0 Conclusion

The OHS Network had the potential to develop into a well - rounded governance network,

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[1599] David Young, *Common Sense, Common Safety* (Cabinet Office 2010) accessed:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60905/402906_CommonSense_acc.pdf on 29 October 2018
[1600] DWP, *Good Health and Safety, Good for Everyone* (DWP 2011) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66745/good-health-and-safety.pdf> accessed 27 June 2018
[1601] SHP, 'Practitioners not Wild about OSHCR' (*SHP*, January 31 2011) <accessed:www.shponline.co.uk/practitioners-not-wild-about-oshcr/?cid=searchresult> accessed 27 June 2018; Mark Burton, 'I'm Working as a Consultant. Is there any Career Benefit to getting on to OSHCR?' (*Health and Safety at Work,* 8 August 2011) <www.healthandsafetyatwork.com/recruitment-expert-oshcr> accessed 27 June 2018
[1602] HSE, 'The Occupational Safety and Health Consultants Register (OSHCR)' (*HSE*, n.d.) <www.hse.gov.uk/oshcr/> accessed 30 October 2016

largely independent from government. The HSC/E were created to do the work that the government proved incapable of doing. Under the Labour government (1974 – 1979), the HSC/E realised much of their potential because they were nurtured and given the space to fulfil their regulatory mandate. However, successive government significantly curtailed the autonomy of the HSC/E. From the Thatcher government, there was a continuous momentum to steer the HSC/E towards moderation. The continuity of government was particularly remarkable; each government built on the interventions of the previous government to gradually erode the governance capacity of the HSC/E. Through such means, steering evolved and became more intrusive with each government.

We should envision the evolution of steering as a funnel; starting very broad and generic then becoming narrower and more specific. Starting with the Labour government's mode of steering which was generic, subtle and unassuming. The Thatcher government evolved steering considerably; it began the process of instilling norms into the HSC/E, in order to create much more moderated and less invasive institutions. This, in turn, was significantly matured and intensified through the Major governments' political firestorms, which were *specific* reviews that attempted to further moderate the HSC/E. The specificity and intensity of the Major government's review went to the heart of the legitimacy of OHS, no longer sacred and untouchable, it was *openly* 'caught up in the deregulation red tape stuff'.[1603] Probing questions, which were hitherto never vocalised, considered the continued existence of the HSC/E and whether all 'parts' were necessary. Such questions were answered by the Labour government, which abolished the HSC and formalised the contraction of the HSE. Moreover, the Labour governments advanced the steering of the HSE through setting targets, focusing on performance management. By the time the Coalition government entered office; the job was done, the HSE was a hollowed-out institution,

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[1603] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

The HSE is suffering an identity crisis.   It is a regulator averse to regulating… when it comes to workplace health problems…   no capacity to assess, let alone remedy, them…   The HSE – both its leadership and its board – needs to assert its independence from government. At the moment its policy and practice is conflated uncritically with pronouncements from a government openly hostile to the HSE and to its regulatory function.[1604]

The fate of the HSE was a culmination of events that began when Leo Pliatzky handed his report to the Prime Minister in the winter of 1979.

[1604] Health and Safety at Work, 'Rory O'Neill 'Campaigner and Wannabe HSE Chief Executive, Talks to HSB's editor, Howard Fidderman Biting the Hand that Starves it: Citizen Sane and the HSE' (*Health and Safety at Work*, 22 July 2013) <www.healthandsafetyatwork.com/hsb/citizen-sane-and-hse> accessed 29 October 2016

Chapter Eight – Conclusion

1.0 The capture and release of OHS

The capture and release of OHS produced a remarkable history. Moreover, at each of these turns, it has told us much about government. The capture of OHS informs us about an emerging state that sought to 'minimize the social costs of industrialization by protecting the workforce from the undesirable side-effects of manufacturing production'.[1605] The continued capture tells us about a state caught up in a 'self-generating, administrative momentum'.[1606] Correspondingly, the release of OHS informs us about a state that reached its limit. Overloaded by its capture of the workplace and motivated by the activities of non – state actors, it sought to 'release' some of its responsibilities to non-departmental public bodies and non-state actors.

2.0 The recapture

The recapture of OHS corresponded with the surround of the Thatcher government. It continued with the Coalition government, showing no signs of weariness. The aggressive recapture of the HSE stems from the government's 'desire for control and wish to shape the HSC/E's work in a direct way'.[1607] Every government since the Thatcher government has sought to scrutinise and interfere in the decision – making processes of the HSC/E. The notion that the OHS Network was out of control prompted the government to target and steer them. Autonomy could prove too costly for the government if the HSC/E were left to expand. Agencies like the HSE had the propensity to consume significant resources that could be used for more politically expedient causes. Also, the notion of a quasi-autonomous lawmaking body staffed with non-departmental personnel, employers, trade unionists and professionals regulating a segment of the UK's

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[1605] P.W.J. Bartrip and P.T. Fenn, 'The Evolution of Regulatory Style in the Nineteenth Century British Factory Inspectorate' (1983) 10 JLS 2 p201

[1606] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 HJ 1 p52

[1607] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960 - 2015* (IOSH 2016) p92

economy was a daunting prospect for the government. It would appear that the settlement reached at the 'Whitehall War' was a temporary measure.

2.1 The consequences of recapture

The ongoing recapture of the OHS is reflected in three significant outcomes. First, the unravelling of the HSE's protective layers exposed it to the designs of government. Formerly, its well-integrated protective layers allowed the HSC/E to resist government probes and preserve their autonomy. However, these layers were gradually worn away, leaving behind much hollower institutions to the degree that the ending of the HSC occurred with little to no protest. The protective layer of both sides of industry did not amount to much of a defence, the benefits of tripartism became less pertinent as the context of industrial relations changed.[1608] Also, the peril of possible disasters was enough to deter the Thatcher government from further probes, but from the 1990s, this lost significance as the HSE's capacity to study and control accidents was progressively eroded. The protection of the sponsoring department was lost with the loss of the DE; the DWP did not offer the 'paternal protection' the HSE received with the DE, according to Bacon,

> We lost our parent department, the Department of Employment disappeared, and so we had to form a whole lot of new relationships. And it took ages and was very resource intensive to build up a relationship with the Department of the Environment, which was itself of course then later subject to the machinery of government changes and became DEFRA and then became whatever it is now. So all of that is quite upsetting to any kind of trying to build relationships and understandings and so on. But when we first joined the Department of the Environment, nobody but nobody really knew what the Health and Safety Executive and Commission were and did, nor had much interest in it.[1609]

The protection of expertise that the state could not surmount was reduced with the HSE's haemorrhaging of expertise and research capabilities. More poignantly, the populist appeals to

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[1608] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960 - 2015* (IOSH 2016) p87

[1609] Paul Almond, Interview with Jenny Bacon, Former Director- General of the HSE, University of Reading (Reading, 6/11/2014)

common sense have the propensity to challenge the remaining areas of expertise. Lastly, the one

remaining protection was the support of business. To this point, an HSE source revealed, 'The

reason why HSE is still there today is purely because… ministers have never managed to get

British industry to say they don't want it... *If they did, HSE would be dead in the water*

(emphasis added)'.[1610] However, even this thin membrane of protection has been stretched with

the business community's displeasure with the FFI.[1611]

Second, because of the eroded protective layers, the HSE has been defenceless to the downward

pressure from the government. The government could essentially mould the HSE into whatever

it desired.   The ability to do this had significantly diminished the HSE's regulatory mandate.

Decreasing budgets have been accompanied by lowering staff levels, decreased regulatory

contact and the allocation of core services to the private sector.[1612] FFI was touted as a means

for the HSE to recover the costs from the Coalition government's 35% cut in its budget.

However, it appears that the FFI scheme is loss-making.[1613] The retraction of the 'physical'

presence of the HSE has also been accompanied by an 'intellectual deficit'.[1614] Whyte and

Tombs found that the minimal level of preventative inspections and relaxed rules of reporting

has led to inadequate 'levels of intelligence'.[1615] Also, the HSE's reliance on business being

responsible fails to consider that businesses do not always register their existence with the HSE,

leaving the HSE with an unrealistic picture of the problems it faces and the burden of expending

resources to identify premises before their risk can be assessed.[1616] In the face of such an

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[1610] Paul Almond and Mike Esbester, *The Changing Legitimacy of Health and Safety at Work, 1960 - 2015* (IOSH 2016) p197

[1611] IOSH, 'Exit interview: Dame Judith Hackitt' (*IOSH*, 27 April 2016) https://www.ioshmagazine.com/article/exit-interview-dame-judith-hackitt accessed 28 June 2018

[1612] Steve Tombs and David Whyte, *Triennial Review of the Health and Safety Executive. Submission to the Department for Work and Pensions* (Institute of Employment Rights 2013)

[1613] Yoosof Farah, 'HSE 'Lost £6m' on Safety Fines Scheme Last Year' (*Building*, 18 January 2017) <https://www.building.co.uk/news/hse-lost-6m-on-safety-fines-scheme-last-year/5085793.article> accessed 3 October 2018

[1614] Steve Tombs and David Whyte, *Triennial Review of the Health and Safety Executive. Submission to the Department for Work and Pensions* (Institute of Employment Rights 2013)

[1615] Steve Tombs and David Whyte, *Triennial Review of the Health and Safety Executive. Submission to the Department for Work and Pensions* (Institute of Employment Rights 2013) p5

[1616] Steve Tombs and David Whyte, *Triennial Review of the Health and Safety Executive. Submission to the Department for Work and Pensions* (Institute of Employment Rights 2013)

intelligence deficit, 'it is difficult to see how a risk-based model or any coherent programme of targeted inspections/interventions could be sustained'.[1617]   Though difficult to confidently correlate, there is every indication that the government's reshaping of the HSE has had a negative impact on work-related accidents.[1618] In the first year of the Coalition government, the number of people killed at work in Britain last year rose by 16 percent, and the rate of fatal injury per 100,000 workers also increased – from 0.5 to 0.6.[1619] Similarly, Hugh Robertson, TUC Head of Safety, postulates that the historic downward trend in work-related fatalities and ill-health has stagnated and, in some instances, reversed.[1620]

Third, the State's recapture of OHS prompted a fractious relationship between the Centre and the Periphery. The quality of OHS policy, practice and research requires the delicate balance of both sides of the OHS Network.   Each shift in the Centre's behaviour caused by government pressure created significant friction with the Periphery. The weakened and commercialised Centre has transformed significantly from its Robens beginnings. The HSE's alignment with government engendered the former to speak in tandem with the latter to the extent that nothing came from the HSE that contradicted the official government line. Even if this alignment meant disparaging the Periphery, reiterating regulatory myths and echoing reasons for governments cuts.[1621] All of which were carried out with no substantial evidence. Thus, the *Hazards Magazine* believed that the HSE was stuck in an 'abusive relationship', 'It is time the HSE stopped playing the Whitehall game and saying 'thank you' to ministers after each successive

[1617] Steve Tombs and David Whyte, *Triennial Review of the Health and Safety Executive. Submission to the Department for Work and Pensions* (Institute of Employment Rights 2013) p7
[1618] SHP, 'Workplace Deaths Increase in Coalition Government's First Year' (*SHP*, 29 June 2011) <https://www.shponline.co.uk/workplace-deaths-increase-in-coalition-government-s-first-year/> accessed 3 October 2018
[1619] SHP, 'Workplace Deaths Increase in Coalition Government's First Year' (*SHP*, 29 June 2011) <https://www.shponline.co.uk/workplace-deaths-increase-in-coalition-government-s-first-year/> accessed 3 October 2018
[1620] Hazards Magazine, 'Buy Me: HSE Pimps Out its Services as Regulating takes a Back Seat' (*Hazards Magazine*, June 2016) <www.hazards.org/safetypimp/buyme.htm> accessed 3 October 2018
[1621] Hazards Magazine, 'Low Life: How the Government has put a Low Price on your Life' (*Hazards Magazine*, January 2013) <www.hazards.org/votetodie/lowlife.htm> accessed 29 October 2016

insult and cut. It is time for the watchdog to bite the hand that starves it'.[1622] This is unlikely to happen. Since Leo Pliatzky identified the HSE, there has been a general trend towards 'taming' the HSE. Building on the legacy of previous governments, the Coalition government has arrived at a place where it can exert considerable influence on the HSE. The TUC's Head of Safety observed that government ministers decide who sits on the HSE board; the bulk of joint committees have been moderated and there is considerably less consultation with the HSE.[1623]

Attempting to appeal to the Periphery, the HSE reiterated that it had to make a series of unpopular choices, but its survival was the most important factor.[1624] It was a strategic necessity to align itself with the government. A former HSE Chief noted that 'siding' with the government, even if it disadvantaged the Periphery, was more necessary than ever before. The need to safeguard the relationship between the two 'central pillars' of OHS, the HSE and the Government, trumped all other concerns. If this was not secured:

> [T]he professional efforts of the rest of our national provision for industrial health and safety would gradually run down, as would our precious ability… to get to the bottom of new developments, provide information and stimulus to national and international efforts influence international standards.'[1625]

Decades of discord, the loss of the HSC, crippling budget cuts, negative press and the populist backlash left a shell of a Centre that was willing do anything to remain operational.

It appears that the bulk of the friction will stem from the commercialisation of the HSE. The HSE accelerated its commercialisation operations; it laid out plans to expand its audit and consultancy services nationally and internationally, primarily in areas that were traditionally associated with the Periphery. In reaction, disgruntled members of the Periphery declared at the

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[1622] Health and Safety at Work, 'Rory O'Neill: Campaigner and Wannabe HSE Chief Executive, Talks to HSB's editor, Howard Fidderman Biting the Hand that Starves it: Citizen Sane and the HSE' (*Health and Safety at Work,* 22 July 2013) <www.healthandsafetyatwork.com/hsb/citizen-sane-and-hse> accessed 29 October 2016

[1623] Hazards Magazine, 'Buy Me: HSE Pimps Out its Services as Regulating takes a Back Seat' (*Hazards Magazine*, June 2016) <www.hazards.org/safetypimp/buyme.htm> accessed 3 October 2018

[1624] SHP, 'IOSH 2014 Big Debate' (*SHP*, 19 June 2014) <www.shponline.co.uk/iosh-2014-big-debate-you-are-a-regulator-stick-to-regulating/?cid=searchresult> accessed 30 October 2016

[1625] John Rimington, 'Health and Safety - Past, Present and Future: (The Alan St John Holt Memorial Lecture, October 9th 2008) accessed; http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/john-rimington.pdf on 25/10/2016

Big Debate, 'You are a regulator. Stick to regulating. End of story'.[1626] Such matters caused significant intrigue, prompting questions of neutrality and conflict of interests, Neal Stone of the BSC was perplexed:

> What you are seeing now is different. How powerful is the commercial imperative? Is HSE really going to be competing in the market to provide audit or consultancy? Should it be doing that or should it be concentrating on the statutory priorities that were set 40 years ago, enforcement, science and technology and policy?[1627]

The disparagement of the Periphery is unlikely to lead to a complete fracture in the Network; the Centre and the Periphery are too dependent on each other's services. However, we are likely to see a less connected Network as the Centre continues to align with the government and expand its commercial operations.

3.0 History repeats itself

The government's recapturing of OHS has resulted in an almost unrecognisable OHS Network from its HASAWA origins. The recapture process has eroded much of the gains made under the 1974 - 1979 Labour government. It was as if the period of the 1970s was a hiatus from the status quo.   The traits of the pre – Robens era are reappearing; the distancing between the Centre and the Periphery, increasing government involvement in the HSE's decision – making processes, a growing intellectual deficit and limited autonomy. As a result, much of the same issues that prompted reform are likely to intensify. The crucial question is, how many lives must be negatively impacted by the workplace before the government considers a 're-release'?

[1626] SHP, 'IOSH 2014 Big Debate' (*SHP*, 19 June 2014) <www.shponline.co.uk/iosh-2014-big-debate-you-are-a-regulator-stick-to-regulating/?cid=searchresult> accessed 30 October 2016
[1627] Louis Wustemann, 'Interview: Neal Stone, Policy and Communications Director, British Safety Council' (*Health and Safety at Work*, 2 October 2014) <www.healthandsafetyatwork.com/interview/neal-stone> accessed on 30 October 2016

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