

Reviews

Regulating Workplace Safety: Systems and Sanctions

by Neil Gunningham and Richard Johnstone

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Reviewed by David Wenham

The role of legislation and the regulating agencies in reducing the incidence of accidents and ill-health at work is a contentious issue. Whenever there is a major disaster, such as the train crash at Paddington in the UK in 1999, the public demands to know not only why the incident occurred but also how those deemed responsible will be punished.

Gunningham and Johnstone (both from Australia) debate clearly the case for changing the system of regulation and enforcement to make it more effective and efficient in addressing occupational health and safety problems.

The text discusses the existing system in detail, and then recommends how it could evolve to address current failings. Each chapter has an extensive list of notes and references, which alone makes the book a very valuable resource for policymakers and researchers. The authors' recommendations are based on evidence not only from the UK jurisdiction but also from the USA, Sweden, Denmark and Australia. An excellent appendix reviews the legal, institutional and industrial-relations environment in each of these countries.

The authors first support the shift of legislation from specification standards (prescriptive) to performance standards (goal-setting), recognizing, not least, that the former do not encourage the duty holder to do more than the very minimum. They then discuss the role of safety management systems based on self-regulation, and argue that such systems are only effective in large, invariably well-managed organizations. Accordingly, they suggest there should be a two-track system, with one track for those enterprises which have been shown to be capable of adopting a systems-based approach, and the second for those which have not. The former would consist of the enforcement agency adopting the role of accrediting the system and undertaking periodic audits, whereas the latter would consist of an escalating enforcement response, ranging from warnings to prosecution and other punitive action. The latter system would presumably apply to the majority of small and medium-sized enterprises, in which most accidents and ill-health arise. The UK enforcing agencies may well argue that they already match their enforcement strategy to the nature and existing management of the enterprise. However, what is lacking, as the authors recognize, is that the enforcement strategy is neither transparent nor consistently applied.

A substantial part of the text is devoted to reviewing the use of criminal sanctions to regulate workplace safety. The authors recognize that such sanctions have barely developed since the early nineteenth century, and are no more successful at preventing accidents and illness than they were then. They argue that there should be more prosecutions for failing to address 'pure hazards',

where there is no accident or ill-health, and also for organizational failures and psycho-social hazards. It is undoubtedly easier to prosecute an employer for an accident caused by failing to control a physical hazard than for an organizational failure, not least because of the tangible nature of such hazards and the subsequent ease of collecting evidence.

They also argue that there should be more prosecutions of individual duty holders (such as senior managers) rather than the corporate body, and leading to a much greater range of sanctions than the customary fine. These include adverse publicity orders ('naming and shaming'), corporate probation, and community service orders.

In summary, Gunningham and Johnstone present substantive evidence on the failings of the current system in encouraging and enforcing acceptable workplace health and safety standards, and make useful recommendations as to how these failings may be addressed. The book makes a valuable contribution to the ongoing debate, and will be an invaluable resource for students, academics and policymakers.

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