



Policing and polluting: The role of practices in contemporary urban environmental pollution governance



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ABSTRACT

Over the past 30 years, urban environmental pollution governance has been increasingly influenced by ideas of New Public Management. However, there is increasing evidence that it is failing in its promise to deliver efficient and effective regulation. The critiques are mounting of risk-based approaches, where regulators are increasingly accountable for the costs (and benefits) of their interventions upon firms.

There is a particular lack of research on the role of conduct and practices involved on the ‘front line’ of regulation. This constrains our ability to understand how more efficient effective urban environmental pollution control might develop. This paper focuses on the regulator field officers and business duty holders of environmental compliance, who have direct contact in the processes and administration of regulation. Applying theories of social practice to environmental regulation, the paper provides new insights into compliance and enforcement practices, as these workers seek to prevent pollution, remediate sites and manage waste. The analysis reveals disconnects between expectations of enforcing and managing compliance; and between practices of policing and polluting.

Using an ethnographic-informed approach to understand the social practices of regulation has not been attempted in this way before. It reveals new insights into limitations of current approaches to regulation, and indicates interventions that could lead to improved compliance outcomes in a post-New Public Management era in urban pollution governance.

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1. Introduction

Risk-based regulation has become increasingly popular since the 1990s in countries including the UK, US and Australia (Gouldson et al., 2009). The approach has arisen from a broader ‘modernisation’ and ‘deregulation’ process termed ‘New Public Management’ (NPM), at the heart of which lies an expectation that regulators should be accountable, transparent and efficient (Hutter, 2005). In simple terms, regulators are under pressure to be “targeted, proportionate, consistent, transparent and accountable” (Gouldson et al., 2009: 5283).

There are two major principles of NPM: (Gouldson et al., 2009) it is market-based; (Hutter, 2005) it aims to move away from bureaucracy as an organising principle (Hughes, 2012). Together these amount to an acceptance of market-economic theories of public choice, principal-agent, and private management. There is

an assumption that individuals are rational and always seek the biggest possible benefits and the least costs in their decisions.

Under NPM, regulators must demonstrate that their operations are efficient and effective, by accounting for any costs the regulatory regime imposes on businesses. They preside over a risk-based regime where businesses manage their pollution liabilities as any other corporate liabilities. Upon inception, these risk-based approaches were considered by some to be appealing as they promised objectivity, cost-effectiveness and transparency “with the added bonus of coming from the business sector” (Hutter, 2005: 2). However, increasingly, they have drawn criticism for insufficient attention to the political nature of decisions about what is an acceptable level of risk (i.e. whose definitions of cost, benefit and risk prevail?), and their tendency to oversimplify complex problems of costs and benefits that tend to work in businesses’ favour. Moreover: “While NPM has its virtues when goals are clear and undisputed, it has apparent drawbacks as soon as the criteria of quality or success are less evident” (Sorlin, 2013: 21). There have also been renewed calls for more evidence-based policy making to underpin environmental policy effectiveness (Holmes and Clark, 2008). The literature points towards a clear

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failure in delivering efficient and effective regulation through NPM:

Governments and foundations, seeking to emulate what they believe are effective business practices, increasingly insist on evidence standards that are often inconsistent with needs of public and nonprofit agencies . . . At a certain level, these practices make eminent sense. At another, they seem intent on creating an evaluation environment that will markedly limit reasoning about public policy (Lipsky, 2010: 220).

The element of discretion is an intrinsic and underestimated part of regulatory enforcement (Fineman, 1998; Hupe and Hill, 2007; Lipsky, 1980). In this vein, Lipsky's concept of 'street level bureaucracy' describes the significant autonomy of workers who implement public policy and who, through "the decisions [they make], the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out" (Lipsky, 1980: xii), original emphasis.

While environmental policy is understandably focussed on the question of *where* resources should be allocated to achieve the greatest 'bang for buck', insufficient attention is placed on *how* this should be achieved. The risk management approach is largely silent on both field officers' work, and that of the equivalent workers in firms who are expected to comply. With clear, business-oriented guidance on risk assessment and principles of cost-effective risk management, there is an implicit assumption that firms *can* comply, and that firms will act in a particular rational way, responding to information and behaviour change campaigns, and training opportunities to managing their risks.

Responding to these critiques and oversights, this paper presents a novel way of seeing environmental policy in action. It addresses the gap in knowledge about *how* the practices of policing and polluting are enacted on a day-to-day basis, and the extent to which these practices transform the intent of regulation into practice, or not. This question requires deep scrutiny; only by shadowing operatives and tuning in to their daily work can we understand the implications of assumptions embedded in risk-based regulation. While there is a small and valuable literature on the role of inspectors in environmental regulation (e.g. 10) literature, and deep ethnographic work has been undertaken in sectors as diverse as health, education, social services, and international development (Griffith and Smith, 2014), there is a lack of such studies being reported in environmental pollution control and linked to practices. For present purposes, 'pollution' means discharges of wastes and materials that are regulated due to their risk to the environment.

The aim of the paper is to shed new light on the *practice* of regulating urban point source pollution through analysing the practices that field officers and duty holders call upon in their daily work. This is especially important in NPM systems, since much is left to negotiation, creating a messy, complicated and inherently unstable environmental compliance regime in a constantly changing and complex business environment (Leach et al., 2010). Although the empirical study reported here was undertaken in one country (Australia) the implications are global in significance, providing new insights for policy makers, regulators and private sector managers, as well as both social scientists and environmental scientists with interests in policy effectiveness and implementation.

It is especially timely to consider this under-researched element of environmental policy enactment, given the scrutiny of NPM in the countries where it has been taken up, and the continued uptake in countries where urban pollution regulation is in earlier stages of development. Moreover, NPM is up for debate: there is some evidence (Ferlie and Steane, 2002) of post-NPM

democratisation in some jurisdictions (Denmark, Netherlands) and entrenchment in others (UK); this research contributes to the debate on post-NPM possibilities.

2. Approach and method

Detailed 'on the job' observations of field officers are analysed as social practices i.e. activities people undertake as a matter of routine. The 'social' dimension refers to the ways in which individual action is structured within social systems, and in turn reproduces the social structures of which it is a part. As Giddens, (1984) observed, the agency of individuals is imbricated with social structures. Following the 'practice turn' (Schatzki et al., 2001), the conceptualisation of a practice is comprised of three 'elements':

- meanings or socially shared understandings about how a practice should be performed, such as what is right, proper or socially acceptable to do;
- competences, knowledge or skills about how to practically undertake and perform a practice; and
- materials, such as objects, infrastructures, and technologies that are necessary to perform the practice (Shove et al., 2012).

In taking a practice approach, we intentionally seek to decentre the role of the individuals in regulation, and to 'focus in' on regulation activities at the site where pollution and its control and management occurs—at firms' sites of production. The performance of any practice happens when people bring the aforementioned elements together (Shove et al., 2012). A waste management practice brings together meanings about what is appropriate, normal and necessary to do; competences about how to handle and manage wastes; and materials such as measuring and monitoring equipment, containers, tanks, the materiality of the site where waste is produced and managed, and the waste itself. In this way we can conceptualise regulation as a 'moment' in practice, rather than as a series of individual cognitive choices about how to regulate or be regulated.

A practice can be modified through performance, as the 'carriers' or 'performers' of the practice integrate new elements or reject old ones. Social practice theory is increasingly being applied to investigate and address a range of environmental and policy problems, such as energy demand (Strengers, 2013), water consumption (Browne et al., 2013), eating and food provisioning (Evans et al., 2012), cycling and driving (Chappells and Shove, 2005), and household consumption (Watson, 2012). However, most studies have focused on 'everyday' practices performed by householders rather than institutional or governance problem areas such as environmental compliance. As such, there is a lack of literature that investigates and analyses environmental compliance issues through a social practice lens.

Using this theoretical approach, we address the question: What practices do field officers and relevant firm employees engage in as they regulate and comply with regulation, and how could practices change, in ways that increase compliance?

Such an approach is not intended to survey or sample a representative range of field officers. As such, the study is not designed to provide a statistically proven industry-wide analysis. Instead, it requires a case study context within which a small number of experienced operatives in a range of circumstances are selected as participants, in order to identify daily contradictions and challenges in their practices that could not be observed through surveys or questionnaires. On the regulator side, inevitable discretion is involved in interpreting and enforcing regulation. For business duty holders, we expect significant differences between larger entities with in-house environmental management teams or retained consultant specialist, and smaller enterprises

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