

Sidney Shapiro and Randy S. Rabinowitz

*Punishment Versus Cooperation in Regulatory Enforcement: A Case Study of OSHA*

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Abstract by Alex M. Johnson

This article considers the effectiveness of both cooperation and punishment in the wake of a growing concern regarding the proper enforcement mechanisms for health and safety regulations within the statutory framework of the Occupational Safety and Health Act (Act). Authors Shapiro and Rabinowitz provide an analytical assessment of the various enforcement methods utilized by agencies, federal approaches to regulatory compliance, and a case study that examines the policies and methods implemented by the Occupational Safety and Health Administration (OSHA). After reviewing the impact of cooperation on short and long-term incentives for agencies to comply with regulatory norms, relying on both domestic and international procedures, the authors suggest that a mixture of cooperation and punishment is necessary. The authors note, however, that an overabundance of cooperation will lead to less compliance of regulatory standards and discretion should be delegated to inspectors to prevent excessive cooperation. Additionally, the authors suggest that a “tit for tat” (TFT) strategy should be imposed which would impose cooperation standards on regulated entities and avoid punishment methods until there is non-compliance.

This article concludes by addressing the legal discretion, particularly the discretionary authority pertaining to “first-instance citations” that allows OSHA to implement a variance of cooperation and punishment methods. The author’s emphasize that as part of OSHA’s efforts to induce compliance they have reformatted the inspection process as well as structured a sliding scale for monetary penalties when violations occur. Finally, Shapiro and Rabinowitz suggest a number of less punitive methods, including legislative proposals that OSHA can adopt in promulgating enforcement standards, some of which entail increased communication and the reclassification of sanctions.