

— EIGHT —

CONCLUSION

The purpose of this book was to examine how Canadian governments prevent and compensate workplace injury, who benefits from this approach, and how they benefit. The first four chapters suggest that governments do a poor job of preventing injury. The use of ineffective regulation appears to represent intentionally prioritizing profitability over safety. And the state has contained the ability of workers to resist this agenda by shaping the discourse around injury and the operation of these systems. Examining injury compensation reveals how seemingly neutral aspects of claims adjudication and management financially advantage employers and limit the ability of workers to resist unsafe work.

Together, this analysis suggests that the prevention and compensation of workplace injuries are not solely technical or legal undertakings, but intensely political ones that entail serious consequences — most often for workers. This conclusion is quite upsetting. But the facts are difficult to dispute. Whatever the drawbacks of Canadian injury statistics, they demonstrate that hundreds of thousands of workers are injured each year on the job. This raises two fundamental questions. First, why are so many seriously injured every year? And, second, why don't governments do something about it?

WHY ARE WORKERS INJURED ON THE JOB?

In Chapter 3, I suggested that our perspective on risk — whether economic or political — determines how we explain why workers are injured. Employers often discuss the risk of injury as minimal, unavoidable, and acceptable. That is to say, injury is just a normal part of work. Not everyone agrees with this explanation, in part because the evidence simply does not support this view.

For example, is the risk of injury minimal? Six hundred thousand serious injuries a year suggest not. In fact, the risk of workplace injury is significant — at least to workers. Is the risk of injury unavoidable? Again, no. Employer decisions about the what, when, where, and how of production determines who is exposed to what risks. Avoiding injuries just costs more. And employers understandably are affected by concerns about profitability, more so than safety. Is the level of risk in the workplace acceptable? That depends on who you are. Of course, risk is acceptable for employers. They aren't injured and they reap most of the benefits from unsafe (but profitable) business decisions. Workers — who are routinely maimed and killed — often disagree.

One consequence of believing workplace injury is normal is that injury prevention is really only warranted if the economic benefits exceed the cost. This prescription reflects the fact that the employers are rewarded for maximizing profitability. If employers can externalize the cost of unsafe work practices to workers (via injury) while retaining the financial benefits (such as greater profitability stemming from cheaper inputs or faster production), then the benefits of injury prevention will never outweigh the associated costs.

It may seem unkind or unfair to blame employers for worker injuries. There are certainly other factors at play. For example, workers may make mistakes. They may even act recklessly. But these causes make a relatively small contribution to overall injury rates. Further, they are secondary causes: workers are

only in a position to be injured by their error or stupidity because the employer has structured work to create this opportunity. This is, in fact, implicitly recognized in law. Employers are granted vast power over the workplace and workers and thus have a corresponding duty to ensure the workplace is safe — a duty that reflects their power to make workplaces unsafe.

WHY DON'T GOVERNMENT INJURY-PREVENTION EFFORTS WORK?

The economic perspective on risk may also help explain why governments use demonstrably ineffective injury-prevention strategies. Government injury-prevention activity must result in benefits that outweigh the costs — both for the state and for the employers that the state is regulating. The key cost of workplace injury to the state is the threat injury poses to social reproduction. When someone is injured on the job — especially if the injury is horrific or the victim's life is dramatically altered — it raises questions about why the injury happened and who was responsible.

This questioning can cause workers to wonder whether the existing social formation — whereby employers organize work in ways that injure workers — is legitimate. This line of inquiry is exceptionally threatening to the government of the day, which is complicit in maintaining this relationship and thus can face electoral consequences. It also threatens the production process itself. What if workers started acting directly in the workplace to protect themselves and demand safety improvements?

One way to maintain social stability is to prevent workplace injury. To get employers to alter how they organize work requires the state to cause (or threaten to cause) additional costs to employers. This has, however, consequences for the state. Employers have historically resisted state regulatory efforts because it adds cost and reduces profitability. Alternately, governments can protect the production and social reproduction

processes by managing the perceptions of workers about workplace injuries.

Perception management occurs in several ways. The worst financial effects of workplace injury are (partly) mitigated by the availability of workers' compensation. Governments give workers (weak) health and safety rights that create the appearance that workers can protect themselves. Governments (sometimes) fine and prosecute employers when there is a serious injury or fatality, thereby obscuring the lack of effective prevention strategies. And governments and employers cooperate in partnerships, which create the impression (but not the fact) of decreasing risk of workplace injury.

DO GOVERNMENTS ACTUALLY PRIORITIZE PROFIT OVER SAFETY?

Suggesting governments choose ineffective injury-prevention strategies because, at a high level, they prioritize profit over safety is a bold statement. There is, however, plenty of evidence of this when you start to look for it. Let's start with enforcement. As we saw in Chapter 3, occupational health and safety (OHS) violations attract legal sanction only when a worker has been injured or killed. Otherwise, employers who operate an unsafe workplace normally receive only a verbal or written warning. What message does this send? Perhaps this says unsafe workplaces are unacceptable. But I think the actual message is more nuanced: unsafe workplaces are unacceptable only if they result in an injury or death that threatens social stability.

Why is that placing workers at risk of injury is not a big deal? The first reason is that risk (and its mitigation) is often difficult to see — until someone is maimed or killed. Consequently, risk of injury does not have the same political verve as actual injury or death. In these ways, risk of injury poses less threat to the social formation than does the occurrence of injury. Consequently, the government benefits little from preventing

injuries by reducing risk. Conversely, the government benefits greatly from condemning injuries (via pronouncements, fines, and prosecutions) when they occur. This condemnation creates the appearance that the state disapproves of workplace injury when, in fact, its day-to-day injury-prevention activities (e.g., inspections, fines) do little to reduce the risk of injury to workers.

The second reason is the pervasive view that employers are engaged in socially productive activities and are able to act responsibly. Within this perspective, education, persuasion, and the occasional prosecution appear to be effective strategies to remedy non-compliance. This view ignores the incentives employers have to externalize production costs by placing workers at risk of injury. This approach also entails relatively little monetary cost to the state or employers and can thus be justified on a cost-benefit basis. Finally, this approach entails little political cost because — despite evidence that education and persuasion are ineffective — it is difficult for workers to argue that the state ought not to educate and persuade employers.

WHY DON'T WORKERS CALL "HOOEY" ON THIS APPROACH?

Workers have difficulty arguing against education and persuasion for two reasons. First, these activities have “motherhood” qualities about them. What reasonable person is opposed to education? Or asking someone nicely to stop doing something? Second, explaining why education and persuasion don't work requires workers to accept (and convince others) of some awkward truths about employment. Specifically, that employment is a relationship of power, wherein power is asymmetrically distributed and is used by employers in ways that frequently disadvantage and endanger workers.

Revealing the true political economy of employment — the ways in which capital has advanced its economic goals by

shaping the political and legal landscape — is generally unwelcome. Such discussion highlights that we are dependent upon and subservient to our employers. And that our employers are rewarded when they exploit us to their own ends. Further, it suggests employers have co-opted the political and legal systems to support them in doing so. No one really wants to hear this. Consequently, it is difficult for workers to oppose the compliance orientation of government.

CAN WORKERS PROTECT THEMSELVES?

The state has granted workers three rights — to know, to participate, and to refuse. In theory, workers can protect themselves by knowing about hazards, working with the employer to remedy them and — ultimately — to refuse unsafe work. But theory and practice diverge. As we saw in Chapter 3, these weak rights are more about creating the appearance of protection than actually empowering or protecting workers.

Information about hazards is often unavailable, incorrect or simply withheld by the employer. The ability of workers to pressure employers to remedy health and safety hazards — even where there is a joint health and safety committee (JHSC) — is constrained by the limited enforcement efforts of governments in the absence of an injury or death. And the right to refuse is tempered by the potential for workers to be disciplined, penalized, and terminated for doing so.

What this system does very well is channel worker concern and energy into a process that employers control. Discussing safety on the shop floor or in the union hall appears illegitimate because there is a “proper” place to discuss it. And personal knowledge and experience is similarly delegitimized: the employer pays experts to ensure the workplace is safe. Overall, the internal responsibility system (IRS) creates the impression that workers are not as vulnerable as they really are to the health consequences of decisions made by an employer.

DO SAFETY INCENTIVES REDUCE INJURIES?

Governments and workers' compensation boards (WCBs) have created incentive schemes, whereby employers with good accident records receive a rebate on their workers' compensation premiums. These incentive schemes are designed to encourage employers to reduce the number and severity of worker injuries. These systems, however, are subject to gaming by employers, who can (and do) substitute aggressive case management in place of reducing the number and severity of workplace injuries.

These systems typically operate on the basis of numeric injury indicators, such as claim costs, lost-time claims, or claim duration. As noted in Chapter 3, this sort of injury data is misleading because it does not document the number of injuries. Rather, it documents injuries reported to and accepted by WCBs. The result is an underestimation of injury rates. Employer gaming further skews these numbers downward, increasing the degree of underestimation over time. This makes it appear that workplaces are safer than they are.

BUT HOW DOES GOVERNMENT LEGITIMIZE PRIORITIZING PROFIT OVER SAFETY?

First, governments don't describe workplace injury in accurate terms. They use terms such as *accident*, *tragedy*, and *unforeseen event* or *freak event*. These characterizations avoid placing blame on anyone. Further, injuries and fatalities are often not seen at all. Their geographic and temporal distribution is wide and they are often not reported. The government gets some help in this department from the media.

When a fatality is reported (because injuries almost never are), the report is usually limited to "A worker was killed 15 kilometres south of town today. Occupational health and safety is investigating." It is rarely possible to draw a conclusion about causation or responsibility at this point. And when such information is available, interest in the event has passed. In

this way, reporting portrays injuries as normal (albeit regrettable) events, a tendency that contributes to the general apathy about them.

This, however, is not the full explanation. Governments have adopted three main strategies to legitimize inaction. The most obvious one is blaming workers for their injuries. This approach has a long pedigree, harkening back to the careless worker myth of the nineteenth century. It is simply updated with a more modern look. Alberta's "stupid" and "bloody lucky" campaigns focus on worker behaviour as the root cause of injury. They ignore the much more significant contribution employers make to injury rates when they decide to organize work unsafely.

Governments also make cost-benefit arguments about enforcement. It is true that inspectors cannot be everywhere all the time. But they could be more places and act more assertively to address the impressive body count that employers rack up every year. That they do not do this reflects a (quiet) political decision regarding the degree of money the government wants to spend on protecting workers and the degree of inconvenience and cost the government wants to cause employers. The seemingly neutral criterion of cost-benefit is, in reality, an effort to legitimize the particular level of worker injury and death the government is prepared to put up with.

As noted above, government and government agencies create data that says workplaces are safer than they are and are growing safer. That this data reflects WCB claims (rather than true injury rates) is ignored. As is the fact that this data is not only susceptible to employer gaming, but that governments and WCBs give employers incentives to game it — thereby making it less accurate over time. Finally, governments have developed injury compensation schemes that undermine the political will and power of workers to address workplace injury.

WHO BENEFITS FROM INJURY COMPENSATION? AND HOW?

Workers' compensation provides most workers with predictable, stable, and immediate compensation. In these ways, workers' compensation is unquestionably a significant improvement for workers. Yet workers' compensation also benefits governments and employers. And it entails some difficult-to-see costs for workers. Examining these suggests that, rather than supplementing or reinforcing injury prevention efforts, workers' compensation acts as a substitute for injury prevention.

For governments, employer-funded compensation reduces the threat that the financial and social consequences of workplace injuries historically posed to the legitimacy of a capitalist social formation. Workers (mostly) no longer face (total) financial ruin when they are injured at work. Further, having something to lose makes the working class less likely to challenge the existing system. And governments are able to deflect worker demands to WCBs and their appeal mechanisms.

Employers receive three main benefits. First, employer liability for injuries is limited to wage-loss replacement, medical aid, and rehabilitation costs. And this cost is spread across an industry or rate group. In this way, the cost of injuries is limited and made more predictable than it is under tort. This mitigates a significant risk for employers. What cost is directly borne by an employer via experience rating does not appear to be significant enough to alter employer behaviour.

Second, workers' compensation operates to reduce the cost of injuries to employers in a couple of ways. Injuries that emerge over or after a long period of time, do not demonstrate a clear pathology, tap into an established social prejudice, and/or entail a significant economic cost are often found non-compensable. More commonly, workers are targeted for early return-to-work (ERTW) programs under threat of having their wage-loss compensation terminated, despite limited evidence that ERTW is advisable or effective.

Third, the provision of compensation diffuses worker pressure for safer workplaces. Compensation reduces an important source of dissatisfaction for injured workers and leverage for their advocates. And the operation of workers' compensation serves to channel worker energy into a system that focuses attention on remediating individual injuries and away from identifying patterns of injury and preventing them. This protects the ability of employers to organize work in the most profitable manner. In this way, compensation acts as a substitute for prevention.

HOW DOES COMPENSATION LEGITIMIZE LIMITING EMPLOYER LIABILITY?

Limiting employer liability by constraining the types of injuries accepted is justified by relying upon the biomedical conception of injury. That is to say, it is expected that the mechanism of injury will be discernable, the injury will manifest itself at the time of or reasonably soon after the injury occurs, and the course and treatment of the injury will be broadly similar from one person to the next. Where these assumptions are not met, additional scrutiny and barriers occur.

This scrutiny is justified by reference to the potential for moral hazard — that workers might be cheating the system. That employers, health-care providers, insurers, and WCB employees also have the opportunity to defraud the system is largely ignored. Limiting employer liability via ERTW programs is legitimized by suggesting workers will malingering, work is rehabilitative, and (bizarrely) being absent from work due to injury is unhealthy. The fundamental questions about the effectiveness of ERTW programs and the moral hazard they create for employers are largely ignored.

OCCUPATIONAL DISEASE AS A MICROCOSM

The political nature of injury recognition — in both prevention and compensation — is an important source of legitimation.

Consider occupational diseases. The effect of exposing workers to hazardous chemical or biological agents is normally slow to appear. And the relationship is often hard to see. These characteristics make it very hard for workers to know they are being put at risk and act to protect themselves. These same characteristics allow employers to pass costs to workers — by using hazardous substances and/or unsafe production techniques — in the form of disease and death.

It can be difficult to accept that employers can be so cold blooded. There is, however, ample evidence of just such behaviour with regards to asbestos, fluorspar, and uranium mining. But, as we saw in the case of young women painting radium on watches, such behaviour is not limited to any one sector. And this behaviour is widespread enough that a pattern is evident. It usually goes something like this:

1. Workers raise concerns regarding the health effects of an industrial process.
2. Employers dismiss worker claims that anything is wrong. This continues as long as possible.
3. Employers commission research into the problem. Employers may try to influence, misrepresent, minimize, undermine, or suppress unfavourable findings.
4. Employers eventually accept a substance is hazardous, focusing on controlling risk and compensating injury, rather than eliminating the hazard.

Among the strategies used by governments and employers are exposure limits. As we noted in Chapter 3, such exposure limits are typically based on inadequate evidence at levels that industry is already operating at. Further, these exposure limits are based on preventing the worst consequences of the exposure. There is little attention to difficult to substantiate concerns,

the effects of long-term, low-level exposure, or the synergistic effects of multi chemical exposures.

The effect of relying on faulty exposure limits is to create the impression that work is safe, when it is not. When such limits are codified in occupational health and safety laws and regulations, these limits — which are consistently found to be too high — become essentially unassailable. They provide political and legal cover for the government and employers while continuing to expose workers to hazardous substances.

SO WHAT?

These conclusions can appear rather disheartening. Is every worker victory — gaining injury compensation, safety rights, WCB appeal processes — just a further defeat? Clearly not. Pressure brought by workers to prevent and compensate injury over the past 100 years has generated tangible improvements. The point of this analysis is that the effectiveness of these changes has been limited in ways that mean workplace injury remains commonplace and injury compensation is partial.

These limitations — and the political reasons behind them — are often absent from discussions of injury prevention and compensation. It is impolite to point out that government injury prevention efforts still allow hundreds of thousands of workers to be injured each year. And suggesting that employers cause injuries by the job design decisions they make — decisions made in the pursuit of profit — is often a conversation ender.

Yet it is precisely this sort of conversation that is necessary to increase the degree to which workers can effectively utilize their existing rights and demand increased rights. For example, while the rights to know, participate, and refuse have limitations, the strength of these rights appears to turn on how they are used by workers. Workers who adopt an overtly political approach can significantly increase their ability to gain health and safety improvements.

Educating workers is a common exhortation in the trade union movement. The degree to which such efforts result in tangible changes in the perspective of workers and willingness to mobilize is unclear. This may be affected by the approach taken to the topic: a more technical approach to labour relations issues may result in less behavioural change than a more political approach. Education regarding workplace safety seems more likely to produce results because of the significant and immediate consequences that workplace injury has for workers and their families.

This is not to say that discussion alone will bring change. The state faces powerful inducements to maintain both production and social reproduction. The current approach to injury prevention and compensation reflects a political calculation regarding the costs and benefits of workplace injury. Creating a heightened awareness of the prevalence of workplace injury and the ineffectiveness of current approaches can change the calculation. Two employer narratives are particularly vulnerable to cooptation: (1) workers are our most valuable resource, and (2) there are no accidents.

ARE WORKERS OUR MOST VALUABLE RESOURCE?

Human resource managers and corporate leaders are fond of saying “workers are our most valuable resource.” Everyone wants to believe this is true. Saying it provides employers with moral authority — by implication, they must be looking out for workers’ best interests. This only makes sense if workers are truly an employer’s most valuable resource. Yet the spilled blood of more than a half million workers each year suggests this sloganeering is largely spin, designed to increase the productivity that can be extracted from workers and stop them from considering the difficult question of why employers can expose them to hazards in the pursuit of profit.

Workers are employers’ most valuable resource only in an

instrumental and ironic sense: they are treated just like any other production input and are expendable if the return is high enough. The implicit moral commitment to worker welfare is clearly absent. The narrative is highly vulnerable to being unmasked: if workers are so valuable, why is work organized in ways that resulted in widespread injury? This line of questioning naturally leads to examining the root causes of worker injury and what workers can do to reduce them.

IS THERE REALLY NO SUCH THING AS AN ACCIDENT?

Politicians and safety gurus often say there are no such things as accidents. This is indeed true. When workers are injured, for example, as a result of being exposed to chemical substances where there has been no testing of their toxicity, this is not an accident. It is a reasonably predictable outcome of employer decisions about the organization of work and state decisions about regulation. This holds true for most workplace injuries—their timing may be tricky to predict but rarely are the causes a surprise.

Again, this narrative can be used to ask hard questions of employers and the state. If there truly are no accidents, why do we continue to see so many injuries? The reason employers organize work unsafely is because they can externalize much of the cost of any resulting injuries. This process is facilitated by ineffective regulation. This line of discussion leads immediately to questioning how employers can be motivated to organize work more safely. Increasing the cost of injuries borne by employers by increasing the cost of ineffective regulation to the state is one obvious solution. It also leads to questions about why the state does not do this.

THE POLITICAL ECONOMY OF WORKPLACE INJURY

Despite the emancipatory potential of examining workplace injuries through the lens of political economy (or perhaps because

of this), injury prevention and compensation are usually discussed in technical terms. The analysis presented in this book suggests that such technical discussion directs our attention away from the political nature of injury prevention and compensation — a process that distributes the costs and benefits of workplace injuries between workers and employers. Revealing the political economy of workplace injury allows us to better understand the full implications of prevention and compensation systems.

Neither the state nor employers come off looking particularly good in this analysis. It is important to keep in mind that governments are not necessarily conspiring with employers to imperil workers' health and safety. Rather, the existing system is one solution to conflicts over the prevention and compensation workplace injury that threaten production and social reproduction. Historical contingencies have influenced the options available to governments as they try to maintain both production and social reproduction.

The political economy of injury prevention and compensation appears to be broadly similar to that which is evident in the broader industrial relations system. It represents a temporary accommodation of the interests of some (predominantly white, male) workers and provides these workers with tangible benefits. At the same time, it does little to impede employers' ability to organize and direct work in a manner that is profitable, albeit unsafe. In addition to mitigating the more egregious effects of unsafe work (thereby undermining resistance), this system channels conflict and worker resources into a highly legalistic process that retards worker resistance. Further, the system is operated in a way that extends employer liability coverage as broadly as possible by limiting who is covered, what injuries are accepted, and the duration for which they are compensated.

In this way, occupational health and safety and workers' compensation are paradoxical. On the one hand, they create a

higher level of protection and compensation than workers have ever had in the past. These successes obscure, however, that workers continue to be injured and killed in vast numbers. This level of injury and death reflects the limited reach of occupational health and safety. It also reflects that workers' compensation continues to be a substitute for injury prevention and a way to manage worker resistance. This is clearly an immoral and unacceptable arrangement.