LIMITS TO REFORM

LIMITS TO REFORM:

OCCUPATIONAL HEALTH AND SAFETY IN ONTARIO

1880 - 1984

By

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ABSTRACT

Much contemporary literature argues that the need for profit in capitalist market economies places limits upon the socio-economic development of society. This thesis will seek to explore the limitations the need for profit places upon the activites within the production process. This will be carried out through an examination of the occupational health and safety issue. Through this examination it is argued that the need for profit severely limits the extent to which capital and labour can comprehensively address the increasing incidence of hazards in the workplace. In fact, it will be argued that the need for profit not only constrains the resolution of occupational health and safety hazards, but it is also implicated in the inadvertant introduction of these hazards.

In addressing this question the thesis first examines the way in which the need for profit restructures the labour process and leads to the inadvertant introduction of hazards into the workplace. Having examined this it is argued that because of the nature of the capitalist market economy, both capitalists and labour are constrained in the action they can take to overcome the presence of hazards in the workplace. Further it is suggest that the state may be best equipped to fulfill this role.

The thesis then provides an analysis of the way in which the Government of Ontario has historically addressed the occupational health and safety issue. This thesis examines the Ontario Factory Acts, the Workers' Compensation Act and the governments most recent attempt of eradicating workplace hazards - the Occupational Health and Safety Act.

It is argued that the Occupational Health and Safety Act is a partial response to the government's previous failure to reduce hazardous work conditions. Finally, it is argued that the state is in fact limited and constrained by the very same factor capital and labour are affected by, namely the need for the constant expansion of profit.

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PREFACE

Every socio-economic system contains within it the seeds of its development and demise. In other words, any given system contains mechanisms that both facilitate its development and set limits to the extent of that development. Historically, the extraction of profit has been the driving force of the capitalist market economy. However, the need for profit has also created limits to this development. This has affected society in that it has erected constraints that affect capitalists, labour and the state by altering the production process and the relations of production. Thus, students of politics, particularly those concerned with state action, must acknowledge and address these limits. More specifically, the constraints the profit motive places on a capitalist market society must be discerned if a coherent and comprehensive analysis of state action is to emerge.

This thesis centres around the limits the capitalist market economy places on state action in the realm of social policy. By addressing these limits the actions of the state are no longer divorced from the larger context - the socio-economic system. This type of analysis also provides a point of reference in which the rationale of state action can be understood within a seemingly chaotic process. However, these limits, and the way in which they affect society only emerge when you test the parameters of the socio-economic system. Thus, the parameters of the capitalist market will be probed by using the Occupational Health and Saftey [OHS]

issue as a case in point.

The OHS issue was choosen as a tool of analysis because of the profound way in which the need for profit constrains its resolution. This thesis is not unique in that it examines the OHS issue in light of the limits the profit motive places on OHS reform, for much of the material in this area does address these limits. For example, Bruce Doern, Garth McNaughton and Michael Prince in their report for the Royal Commission on Asbestos in Ontario, characterize the implementation of the Ontario Health and Safety Act as contradictory. They give this emphasis in the title of their report: Living with Contradictions. They maintain that in the area of OHS there exist "conflicting values, principles and processes at stake, and...that many of the contradictions cannot be resolved in any final sense but can only be balanced or managed within certain limits."[1] They draw out this analysis through an investigation of the standard setting process, implementation and enforcement of the Occupational Health and Safety Act.

Lesley Doyal in her book, The Political Economy of Health, also addresses the OHS issue in light of the limits of the profit motive, but she approaches it in a different way. Doyal investigates the social production of illness and the subsequent constraints the socio-economic system places on its eradication. This emphasis on the limits of capitalism becomes evident when she argues, "[i]ndustrial Health strategies have been developed within the limits set by a capitalist economy..."[2]

Charles Reasons, Lois Ross and Craig Patterson in their book, Assault of the Worker, discuss the OHS issue in relation to the capitalist market system that requires that profits be paramount. Their study

concentrates on the effects this has on the worker's health. Robert Sass best summarizes the fundamental arguments contained in this book:

> ... those who have shaped the field of occupational health and safety in Canada have failed to take adequate care in minimizing the unacceptable levels of human suffering and dying in industry. They accuse industry, government, and company physicians of criminal negligence, since much industrial disease and injury is preventable. At the same time...insufficient attention is paid to looking after those damaged "in the course of employment."[3]

Thus, it is evident that much of the literature on OHS has addressed the constraints the profit motive has placed upon OHS reform. However, the way in which this question will be addressed in this thesis does diverge from the existing literature. The purpose of this thesis, although specifically addressing the OHS issue, is to examine the parameters of state action in a capitalist market economy.

This investigation will be undertaken on two levels. First it will introduce the existing material on the limits to OHS reform. Secondly, a framework in which to examine state action with regard to social policy will be presented. The purpose of this twofold analysis is to draw out the implications of state action from the OHS issue. In so doing the connections between the state and the socio-economic system become clear.

Chapter one will deal with the roles of labour and capital. In this chapter an outline and analysis of the role of capitalists and labour in shaping and developing the capitalist labour process will be undertaken. This will set the stage for the basic concern of this chapter: the profound implications the differing interests of capital and labour - particularly as they revolve around the process of capital

accumulation - have for OHS. These implications will be enumerated. Finally, the role of the state in capitalist market economies will be presented for it will be suggested that the conflicting interests of capital and labour may only be adequately addressed through the state.

Chapter two will provide a historical analysis of the Ontario Factory Acts and the Workers' Compensation Act. Given that these Acts were the state's first systematic attempts at addressing the increasing incidence of accidents and disease in the workplace, this analysis will serve to place into context the state's historical role with regard to OHS.

Chapter three will first examine the effectiveness of the Workers' Compensation Act seventy years after its institution. It will be suggested that the Ontario Occupational Health and Safety Act was in part, a response to the failure of the Workers' Compensation Act. Following this will be an analysis of the ability of the new OHS legislation to fill the void left by previous legislation. The last section of this chapter will deal with the limits the state faces with regard to the regulation and resolution of OHS hazards in a capitalist market economy.

The conclusion will discuss how the existant socio-economic structure affects capital, labour and the state, with specific reference to the OHS issue. It will be argued that there are parallels between the situation the worker's faced in the early twentieth century with regard to OHS hazards, and the situation the workers confront today. Finally, a discussion of the constraints places upon society by the need for profit will be presented.

ENDNOTES PREFACE

[1]G. Bruce Doern, Michael Prince and Garth McNaughton, Living with Contradictions: Health and Safety Regulations and Implementation in Ontario, (Toronto: Ontario Royal Commission on Matters of Health and Safety Arising from the use of Asbestos in Ontario, 1982, Study No. 5), p.0.1.

[2]Lesley Doyal, The Political Economy of Health , (London: Pluto Press, 1981), p. 72.

[3]Charles E. Reasons, Lois L. Ross and Craig Patterson, Assault on the Worker, (Toronto: Butterworths, 1981), p.XIII.

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CHAPTER ONE: INTRODUCTION

The presence of hazards in the process of work is not a problem peculiar to capitalist market economies. In fact, the incidence of occupational injury and disease can be traced back to the period before the birth of Christ. However, the way in which the Occupational Health and Safety [OHS] issue is addressed in capitalist market economies is problematic and thus warrants careful examination. This chapter will therefore examine the constraints imposed on both capitalists and labour by the capitalist mode of production in their attempts to address the OHS issue.

In a capitalist market economy capitalists must continue to extract a net amount of value. The constant reorganization of the labour process facilitates this. However, as a result of the constant revolutionization of the production process, capitalists in part, destroy the material prerequisites of production - depletion of natural resources, destruction of the environment and the debilitation of the labour force. Thus, in an effort to expand surplus value, the capitalists destroy the very source of that value. The inadvertant production of hazards through innovation is thus a concrete expression of the contradictions found in the capitalist mode of production.

The chapter will proceed as follows. The first section will deal with the accumulation process in the capitalist mode of production. Included in this section will be an analysis of the development of the labour process. The second section will then examine the short and long

term interest of both capital and labour and how these interests affect the resolution of the OHS problem. The third and final section will deal with an analysis of the role of the state, for it will be suggested that the state may be best equipped to deal with the OHS issue.

I

In his discussion of the Factory Acts of 1864, Marx addressed the fundamental concern of this chapter: how the differing interests of capitalists and labour - particularly as they revolve around the process of capital accumulation - have profound implications for the eradication of hazards in the workplace. Given the conditions prevalent in factories, at the time, it is not surprising that most of Marx's anaylsis centered around the unsanitary conditions. However, in light of improved sanitation, the current focus on OHS has shifted away from those issues raised by Marx. Research is now directed towards the proliferation of industrial illness that appears to be attributable to the increase in technology and the development of complex production processes. Nonetheless, there is not as striking a divergence between what Marx perceived to be at the root of the problem and how some contemporary analysts view the situation today. It is still often claimed that the OHS problem is, as Marx understood, an outgrowth of the capitalist mode of production.

To illustrate this point, one only has to refer to Marx's discussion of the Factory Acts in Capital, Volume I. Marx quotes a factory inspector's reaction to the improved ventilation legislated by these Acts. The inspector claimed that the Act,

> ...has improved the ventilation very much. At the same time, the portion of the Act strikingly shows that the capitalist mode of production, owing to its very nature, excluded all rational improvement beyond a certain point.[1]

Thus, even 120 years ago, Marx located the issue of OHS within the dynamics of the system itself. Lesley Doyal concurs with his view. She argues that,

> ...it is an inherent feature of the capitalist mode of production that the imperatives of capital accumulation ultimately determine social and economic priorities. Consequently health itself has come to be defined in terms of the needs of accumulation... health objectives will not be pursued if they conflict with profit - as ultimately they must.[2]

Nicholas Ashford, Wallace Clement, Vincente Navarro, Robert Sass and countless others have argued in the same manner.[3] Given the consistency of these views it is necessary to examine the capitalist mode of production.

According to Marx, and a great number of contemporary writers, capital must expand and reproduce itself. This complex process lies at the centre of the capitalist mode of production. For Marx, the fundamental concern of capitalists is increasing profit. He argues:

> [o]ur friend, Moneybags, who as yet is only an embryo capitalist, must buy his commodities at their value, and sell them at their value, and yet at the end of the process must withdraw more value from circulation than he threw into it at starting. His development into a full-grown capitalist must take place, both within the sphere of circulation and without it.[4]

In other words, if the capitalist is to move beyond the "embryonic" stage, the extraction of surplus value from the production process is necessary. However, within the sphere of circulation the capitalist must adhere to the law of value, the fundamental premise being that commodities exchange

at their value. This being the case, the capitalist must find a commodity that not only adds value, but creates it. The extraction of surplus value from the production process can only take place with the discovery of such a commodity. Labour fulfills this requirement.

In a capitalist market economy, those who do not own the means of production must sell their labour power in order to secure a living. They do not sell their labour power per se, but rather they sell their capacity to work. In this sense, labour power becomes a commodity to be sold - at value - on the market in exchange for a wage. The value of labour power is determined socially. It is "...the value of the means of subsistence necessary for the maintenance of the labourer."[5] Incorporated in the value of labour power is the amount necessary to reproduce/replenish the labour force. In short, the value labour power reflects the aggregate value of commodities essential for the preservation of the labourer and correspondingly, his family. This necessarily entails the preservation of the labourer's existing capacities.

In light of this, the value of labour power - in that it reflects the changing needs of capitalism - is dynamic. For example, the labour force that is now basically required is better educated in terms of skills and techniques, and thus the total value of commodities - and hence the value of labour power - has to reflect this.

Nevertheless, given any moment in capitalism, the wages exchanged by the capitalist in return for the promise of work are determined by the value of labour power. Thus, one prerequisite of the law of value-equal exchange - is satisfied. This transaction supplies the managers of capital with the means to expand their capital, and the labourer with

the means to subsistence.

Once the workers sell their labour power they also relinquish some control over the workprocess. As a result, the owners of the means of production not only gain the legal rights to labour power, they also procure control over the workprocess which entails control over the hours, pace and conditions of work. However, contrary to the popular notion that claims the wholesale loss of power by the workers - that in part can traced back to Braverman's analysis of the workprocess - these relations of production do not render the workers impotent. In fact, the workers have at their disposal strategies that can be utilized to limit the extent to which the capitalists can direct their work activity. In effect, these patterns of resistance allow the labourers to retain at least a partial command over their work. Thus, the capitalist in reality only attains a "net command" over the process of work. The discussion concerning the degree of control the labourers can achieve over the workprocess will be elaborated upon following the explication of the capital accumulation process.

The working day can be divided into two parts. The portion of the working day in which labour produces value equal to the value of his labour power is termed necessary labour time: necessary as it is during this period that the worker creates sufficient value to reproduce himself and his family. Conversely, the second part of the working day is dedicated to the production of surplus labour, or labour that is performed beyond socially necessary labour time.[7] In other words, it is labour that is in excess of what is required by the labourer to subsist upon. It is the net control of the workprocess by the capitalist which

allows for the intensification of labour (absolutely via the length of the working day, or relatively via the introduction of machinery) and thus, the extraction of surplus value. Owing to the fact that the capitalist owns the means of production and has the power to set the hours of work - thus extending them beyond necessary labour time - the capitalist extracts more value from the process of production than he originally invested. Hence it is the ability to extract surplus value from the worker that makes it an essential commodity for the capitalist. In other words,

> ...the value of labour-power, and the value which that labour-power creates in the labour process, are two entirely different magnitudes, and this difference of the two values was what the capitalist had in view when he was purchasing the labour-power. The useful qualities that labour power possessess... were to him nothing more than a condition sine qua non...what really influenced him was the specific use-value which this commodity possesses of being a source not only of value, but of more value than it has itself.[8]

Labour is the fundamental prerequisite for capital accumulation since it is the only source of surplus value.

The capital accumulation process is one of extended reproduction. This movement of extended reproduction produces conditions which make it necessary for the capitalist to continually expand value. For as Marx argues:

> ...the development of capitalist production makes it constantly necessary to keep increasing the amount of capital laid out in a given industrial undertaking, and competition makes the immanent laws capitalist production to be felt by each individual capitalist, as external coercive laws. It compels him to keep constantly extending his capital, in order to preserve it, but extend it he cannot, except by means of progressive accumulation.[9]

The capitalist is therefore bound to continually expand and reproduce capital.

There are three methods through which the managers of capital can increase the rate at which surplus value is extracted. The first and most obvious is extending the working day. By lengthening the working day, surplus labour (and hence surplus value) increases correspondingly, as long as the value of labour power remains the same. There are however limits to this method. The first is the 24 hour day; the second, the physical limits of the labourer; and thirdly, the degree of labour resistance. Given these limits, the owners of capital must find an alternative method by which to increase the rate of surplus value. The intensification of the workprocess fulfills this role.

By intensifying work, the worker produces more value than he previously did in the same amount of time. However, there are also limits to this method, namely the existing degree of mechanization. The third method is innovation of the means of production. Surplus value is augmented when the socially necessary labour time required to produce direct/indirect subsistance commodities is reduced. Basically the only way to achieve the reduction of socially necessary labour time - and correspondingly the value of labour power - is through the revolutionization of the production process which in turn serves to increase the productivity of labour. However, given that capitalists produce exchange values, the question that remains is why would capitalists voluntarily reduce the value of commodities.

The exchange value of a commodity is not determined by the value of an individual commodity. But rather, it is determined by the average

socially necessary labour time of the industry as a whole. A large increase in surplus value can be realized if a labour saving device is discovered. If a capitalist can reduce the time necessary for the production of his commodity, his costs will be lowered. The capitalist however is still able to sell his commodity at the market price. Thus, the market price realizes, for the innovative producer, a higher surplus value than average. However, once the industry as a whole develops labour saving devices in response, the extra-ordinary profits enjoyed by the initial innovator are diminished. The result of this industry-wide innovation is the reduction of socially necessary labour time and correspondingly, the exchange value of the commodity. This reduction in the value of labour power results in an increases rate of surplus value. It is thus the realization of extra-ordinary profits in a competitive market that provides the impetus for innovation in capitalist market economies. The attendant reduction of the exchanges value of direct/in-direct subsistence commodities is only an unintended consequence of innovation, and not the motivating factor.

It is therefore the ability of capitalists to exert a directing influence over the activities of others - in the production process - that allows the capitalist to increase surplus value through the three methods described. Or rather, it is the "drive for 'profitability' [that] dictates the actions of capitalists in their attempts to control labour and increase its output wherever it is profitable."[10]

However as Clement's analysis recognizes, it is important to realize that labour can resist management control. Individually workers can counter managements control of the workprocess through quote restrictions, absenteeism and sabotage. Quota restrictions entail a

a decision to limit "...production to a norm established by management but below what could easily be produced."[11] Another form of quota restrictions is termed 'goldbricking'. In this case the labourer produces at a level below what is expected of management. An alternative method workers have recourse to, in the struggle for control is sabotage. With sabotage, the labourer attempts to disrupt the production process through the mutilation of machinery.[12] However, resistance to managements imperatives tends to be more effective when workers combine and form trade unions. For in addition to benefits of an increased rate of success, worker combinations also augment the methods available to the employee to resist control, with tactics such as collective bargaining and strikes. Thus, with all of these strategies at their disposal, the labourers are a vigorous force in the continual restructuring of the control and form of the production process. However, capital/labour relations entail more than the struggle for control and must therefore be explored further.

The relationship between the managers of capital and the wage earners is symbiotic. It is characterized by patterns of dependency. The capitalists need labour power in order to realize surplus value, and the labourers need a wage in order to survive. Thus, both are dependant on one another. Interdependency however, does not imply equal degrees of need, and does not ensure equal power relations. Within the capitalist/labour relationship one party, the owner has an advantage, namely the ownership of the means of production. According to Adam Smith:

> [i]s not...difficult to forsee which of the two parties must, upon all ordinary occasions, have the advantage in...[a]dispute, and force the other into compliance with their terms. The

> masters, being few in numbers, can combine much more easily; and the law, besides, authorizes, or at least does not prohibit their combinations, while it prohibits those of workmen...[Further, a] landlord, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week...In the long run the workman may be as necessary to his master as his master is to him, but the necessity is not so immediate.[13]

Adam Smith thus identified the unequal power relations that existed in the cpaitalist market economy of his day. The owners of the means of production derived their power from their ability to combine and stock pile their goods. Their power was also enhanced by their accessability to those who enact and enforce laws. Smith found that the "masters... never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combinations of servants, labourers and joureymen."[14] With the exception of the removal of the prohibition of labour unions, it could be argued that in contemporary society the advantages held by the owners of the means of production in the capital/labour relationship are still those that were observed by Smith.

However, the complexity of the social relations of production can not be reduced to a single factor such as unequal power relations. This relationship becomes complicated by the existence of interests held by both capitalists and labour that are in some cases complementary, but for the most part incompatible. It is these interests combined with the unequal power structure that ultimately shapes the production process and the attendant social relations of production in a capitalist market economy. Thus it can be suggested that,

> ...there is a dual nature to the relationship of capital and labour. Capitalists are faced with the problem of continually transforming the forces of production. This, in turn, entails stimulating motivation and harnessing labour's creative and productive powers. Thus capitalists must to some degree seek a cooperative relationship with labour. It cannot just exploit those capacities that can be brought into play be bribery and coercion. Similarly, side-by-side with labour's resistance to subordination lies the fact that workers have an interest in the maintenance of the capital/labour relation and the viability of the units of capital which employ them.[15]

This must be examined more closely.

It has been established that the managers of capital - in order to realize profit - must have some degree of control over the process of production. Nonetheless, they must also ensure that the labour force is productive and cooperative. As a result, in order to foster cooperation, the owners of the means of production must to some extent attempt to persuade the employees that their interests are compatible with the interests of the firm. Thus, managers of capital must perform dual tasks: the increase of surplus value through control while maintaining the cooperation of the workforce.

Incompatible interests are however not confined to the capitalists. Workers are also confronted with incongruent interests. Whilst the labourers depend upon the status quo - the capital/labour relationship - because it is their only means to subsistence in a capitalist market economy, at the same time they have an interest in resisting capitalist control. In effect, the workers both attempt to ensure the stability of the industry employing them, and also resist the directive influence by the capitalists over the workprocess in order to retain some command over the conditions of their work.

It is this dual nature present in the capital/labour relationship that shapes the way in which the production process is controlled, and ultimately the nature of the capitalist relations of production. A failure to address this dual relationship provides an incomplete characterization of the social relations of production. For it is only with such an analysis that the contradictions inherent in the pattern of control - in a capitalist market economy - becomes clear. This suggests that control "should be seen in relation to conflict and sources of conflict and in relation to the potential terrain of compromise, bargaining and consensus."[16]

To briefly summarize, capital must continue to employ labour and maintain control over the workprocess in order to realize surplus value, while at the same time ensure the cooperation of the workforce. On the other hand, labour has a vested interest in resisting the wholesale control of the workprocess, but it also needs to maintain the capital/labour relationship as a means to subsistence. These differing and contradictory interests have profound implications for the resolution of the OHS issue. However, evidence suggests that the most significant factor in the OHS issue is the capitalists' need for profit.

The capitalist, as mentioned previously has three ways through which surplus value can be expanded: (1) extension of the hours of work; (2) the intensification of work; and (3) the revolutionization of the production process. However, along with the augmentation of surplus value these strategies realize for the capitalist are unintended consequences, namely the introduction of hazardous conditions in the workplace. In order to understand this process it is essential to

examine the way in which these three strategies lead to the introduction of hazardous work.

As its effects are easily discerned, the capitalist's control over the hours of work is the first, and most obvious place to begin. In an effort to extend the amount of surplus labour time the capitalist can extend the hours of work. This produces according to Marx,

> ...not only the deterioration of human labour power by robbing it of its normal, moral and physical conditions of development and function. It produces also the premature exhaustion and death of this labour-power itself. It extends the labourer's time of production during a given period by shortening his actual lifetime.[17]

Marx is correct in his assessment of the effects of drastically extended hours of work.[18] However, labour's resistance (various short hour movements) has played a part in reducing the hours of work and has thus circumvented this difficulty. Consequently, labour's ability to determine to a certain extent the hours of work has reduced the significance of this area in the realm of OHS.

When capitalist can no longer extend the length of the working day, the intensification of the labour process is the second strategy available to increase surplus value. The capitalist can do this in a number of ways. By speeding up the machinery (as in the case of assembly lines) the labourer is forced to increase productivity to the level set by the employer. The second way is to offer incentives to labour so that they will voluntarily intensify the workprocess. This is a good example of how managers attempt to persuade the workers that their interests are compatible with the firm's. However, these incentives can potentially create hazardous work conditions. As Clement argues, the negative effect

spawned by this system is that the,

> ...incentive or bonus system is another area where the company encourages the employee to ignore safety rules in unsafe and unhealthy conditions. This system is designed to give a miner extra money for working at an increased rate.[19]

The intensification of work thus exacerbates the hazards of work, thereby increasing the probability of accidents. Accidents are not the only danger the worker confronts when dealing with the increased pace of work. Numerous studies have been conducted connecting the escalating incidence of stress to the intensification of the workprocess. Stress itself can cause both mental and physical harm to the labourer. However, it must be emphasized that this area of control is also subject to erosion by labour's resistance, for example, quota restrictions and sabotage.

However, there is another area of control that is not so open to resistance, namely, the control of the techniques and means of production. The basis for control over the introduction of technology stems from the capitalist's incentive to innovate.

The capitalist's need to constantly expand and reproduce capital in a competitive market - and the attendant extra-ordinary profits that the increased productivity brings about - provides the incentive for technological innovation. This technological innovation has brought with it a proliferation of complex work processes. It is these new production processes that are the major source of industrial illness. For, "...in seeking to increase capital accumulation, the capitalist class has introduced materials and technologies which have been destructive of the labour power of workers and decreased their productivity."[20]

Consequently, it is the drive for increased profits that necessitates the initiation of new processes of production, the end result being, the inadvertant introduction of occupational health and safety hazards into the workplace.

It would thus be naive to characterize the owners of capital as a cohesive group intent on destroying the workforce through the introduction of hazards into the workplace without any concern over the implications. Rather, individual capitalists are obliged to increase surplus value in order to remain competitive in the market, and thus their activity is directed almost solely to this endeavour. It is thus the nature of the capitalist mode of production and not individual capitalists that create hazardous conditions in the workplace.

II

However, a contradiction arises. In the quest for increased profits the capitalist creates conditions that serve to debilitate the workforce, a workforce that is a source of surplus value. Given this, it will be suggested that the owners of capital do have some interest in reducing workplace hazards in order to increase productivity. This suggestion rests on the fact that,

> the labour of workers creates surplus value and therefore, in order for capital accumulation to occur, labour power has to be renewed or reproduced. The maintenance of the physical health of workers is one aspect of this renewal of labour power. Thus, in addition to relieving personal suffering, improvements in the health of a population also promises to improve the quality and productivity of labour and thereby increase capital accumulation.[21]

In effect, an attempt to realize a higher rate of surplus value through the various methods described also destroys, in part, the source of that

surplus value.

The patterns of capital accumulation are not only the source of workplace hazards, they also impede their eradication. The relationship between capital accumulation - in the short term - and the resolution of OHS hazards is inimical. Since managers of capital are both dependant and limited by the need to realize profit, it is this factor that ultimately shapes the way in which the OHS issue is addressed. In a lengthy but telling quote, Robert Sass characterizes this relationship:

> [i]n general, management faces a contradiction between health and safety concerns and production and profit priorities. These variables are interdependent and inversely related inasmuch as an increase in the level of occupational health and safety often results in a decrease in production and profitability and vice verse... Since the survival of management (or better, managers) is based upon the survival of the enterprise that employs them, and the key to their survival is profitability and production, it is understandable that management, if forced to choose between concerns of production and profit and concerns of occupational health and safety, will often opt for the former. This reflects the contradictory prerequisites for survival found in our political economy rather than the general lack of morality on the part of management.[22]

The dual interests of capitalist are clearly illustrated with the OHS issue. On the one hand, capitalists, in order to survive will choose profit over the elimination of OHS hazards. Yet on the other hand, the presence of OHS hazards reduces productivity through injury or illness. In order to resolve this dilema, the owners of the means of production must in some way balance these two interests.

However, it is clear that the owners of capital can not be grouped into one homogenous class. Each different production process

emanates unique OHS hazards. Thus, the interests of one group of capitalist will not necessarily correspond with another group. Some industries will be plagued with high accident rates, others may be confronted with a significant rise in the incidence of disease, while others may be faced with a combination of both. So, the way in which a capitalist, or group of capitalist characterize the problem and the subsequent resolution may not correspond. To better understand the relationship between the drive for profits and OHS, it is necessary to disect the OHS issue into its component parts.

Accidents tend to affect the production process immediately. If, for example, a mine caves in and thirty labourers are injured or killed, the production process is slowed down or halted. Accidents are immediate, visible and usually can be attributed to a specific cause. Therefore, in their quest for higher productivity employers have a real interest in the reduction/prevention of accidents. However, there are limits to this, for industrial "safety is profitable only when the direct and indirect costs associated with accidents...exceed the cost of eliminating these accidents."[23] So with regard to safety issues, reform in this area is likely to occur if the production process is hindered in such a way that capital's outlay for safety measures is more cost efficient.

The health issue is much more complex. Unlike, accidents, determining the causal relationship between a certain production process and illness is extremely difficult. For example, if a worker looses a finger in a machine the causal relationship is immediately established. However, if a uranium miner contracts lung cancer, numerous factors

come into play. Lung cancer can be caused by workplace hazards such as the radiation emmited from uranium,[24] but it is also said to be attributable to personal habits such as smoking. In this case, the causal relationship between uranium mining and lung cancer is complicated by a second factor, namely smoking. The attempts at determining the causal relationship between illness and work is further clouded by the fact that the majority of illnessess are latent. A period of twenty to thirty years may elapse between initial exposure to the suspect hazard and the identification of illness where as accidents are immediately discernable. The end result is that unlike "...safety hazards, the effects of health hazards may be slow, cummulative, irreversible and complicated by non-occupational factors."[25]

This demarcation of the OHS issue into its component parts - safety and health - provides a clearer understanding of the potential actions different capitalists may take in relation to their production processess and the unique hazards that eminate from them. To further facilitate this analysis two ideal types will be presented: the first an industry that is faced solely with accidents, the second an industry confronted with industrial disease. This will provide a better understanding of the factors that come into play in the resolution of the OHS issue.

When a particular production process is conducive to accidents the employer has two choices. One is to ignore it; however, this may result in lower productivity and high compensation rates. The other choice is to attempt to curtail these accidents through the erection of preventative mechanisms such as guardrails. The effects of this choice will be

immediately discernable: the prospect of higher productivity, a possible decrease in workers' compensation premiums, and more importantly, this action will not seriously affect the competitive position of the firm.

This is not the case for capitalists that are faced with an escalating incidence of industrial illness. It is no longer a question of erecting a guardrail. The preventative measures that are required to rectify the hazardous conditions in the workplace may be much more costly and could conceivebly alter the production process. In other words, it "...is clear that health hazards created by toxic substances greatly increase the stakes. For industry the issue is no longer just fixing a guardrail but rather involves potentially new, often expensive production technologies."[26]

The prevention of occupational health hazards is tied to sunk capital costs. At the onset, a large investment in the occupational health area reduces the incidence of disease. Over time however, capitalists begin to experience diminshing returns. In short, the rate at which occupationally related disease is prevented is not - over time - proportional to the amount of capital that is being invested. The outgrowth of this means that in "...occupational health terms...as in market economies, the margin or incremental value of new additional dollars is important, the private firm has a strong built-in bias to err on the side of less costly changes."[27] Thus, capitalists will opt for protective equipment such as face masks rather than radically alter the production process.

The lack of knowledge regarding OHS hazards also constrains the employer. In many cases - more so in a branch plant economy - the

chemicals being used in the production process are unknown, making it more difficult to establish the causal relationship between the suspect chemical and a certain illness. Therefore, even if the employers are willing to take action, they are impeded by lack of information.[28]

Trade secrets are closely tied to knowledge of the factors of production, in that the composition of chemical processes will not be disclosed in order to retain the competitive edge. In other words, if the capitalist disclosed the "...composition and method of manufacturing new chemical products...enterprises that develop new products may not be able to profit from their efforts."[29] As a result, the incentive for innovation - extra-ordinary profits - would be undercut by the regulation of OHS hazards. This incentive to maintain trade secrets also affects the amount of research undertaken. If the chemicals used are not disclosed they cannot be tested for toxicity, and if they are not tested, the employer has no way to judge whether or not the production process is hazardous.

The particular nature of the workforce is also a salient factor in the degree to which the capitalist will invest in costly preventative measures. In most cases a labourer will be employed by more than one firm in his lifetime. In light of this an employer may be reluctant to channel large amounts of capital for the prevention of disease. This rests on the fact that the expected benefits - higher productivity because of the absence of disease in the labour force - may not necessarily accrue to the capitalist that made the initial investment. In other words, the

> ...impact of health hazards is often deferred for many years, and employers dislike

> 'internalizing' costs whose benefits - the possible absence of disease at some future time when employees may be working elsewhere or retired - do not appear to accrue sufficiently to the employer.[30]

Basically, the employer will be cautious regarding the introduction of radical preventative measures if he perceives that the changes will benefit the competition.

As a result, the owners of capital are limited by the economic conditions in the extent to which they can address occupational health hazards. They are limited by and necessarily concerned with sunk capital costs, trade secrets and the degree of competition. On the other hand, those employers confronted with industrial accidents are not constrained to such an extent. Their investment in preventative measures is less costly, does not alter the production process drastically and immediately increases productivity through the reduction of accidents.

Two extreme cases have been presented to illustrate the diverse constraints employers are confronted with when addressing the OHS issue. In practice however, most industries have a combination of industrial accidents and disease. Consequently, these industries experience most of the aforementioned constraints at one time or another. Although the capitalist mode of production - and indirectly the employers - create these hazards, an examination of those who experience these hazards is now in order.

In his book Hardrock Mining, Wallace Clement argues that safety "...and health are inextricably bound to class interests. They are part of the power to define the workprocess and organization of work. The priorities of managers and workers differ fundamentally; managers do not

put their lives on the line, but...workers do."[31] The priorities of management and workers do differ fundamentally. However the workers have interests which, whilst not necessarily conflicting, are incompatible in the capitalist mode of production. The immediate concern for labour is employment, and it will be suggested that their long term interest is the preservation of health. In a capitalist market economy these interests are incongruent. This has profound implications for the way in which the labour force addresses the OHS issue.

Given the fact that labour is directly affected by hazardous conditions in the workplace, one might assume that the elimination of these hazards would rank high in their lists of priorities. This has not always been the case. According to Ashford, "...the worker could traditionally demand safer working conditions only if he were willing to trade off some benefits of his total package. Partly because job health and safety were difficult to quantify in monetary terms, they received the lowest priority in worker demands."[32] This is not to suggest that unions have ignored the OHS issue. In fact, organized labour has historically been the driving force for OHS reform.[33] What has to be understood, however, is that the immediate interests of workers cannot be underestimated. Job security, decent wages and benefits can be immediately discerned, the expectation of good health in the future cannot. Factors such as the latency period, the economic climate and the fact that workers are denied knowledge of what chemicals are used in the production process all serve to make the OHS issue more obscure for the worker and hence, a lower priority.

The way in which the labour force characterizes the occupational

health problem is significantly affected by that latency period. Given that industrial diseases have latency periods which range from twenty to thirty years, it may be difficult for labour to perceive an immediate threat to their health when the effects of these hazards may not surface for decades. This is complicated further. Most hazards that threaten the health of labour are invisible. Consequently, the occupational health issue becomes a long term priority for labour precisely because the nature of industrial disease necessarily makes it so. In effect, the fact that intangible hazards in the workplace may or may not be destructive of health - in the long term - serves to relegate the occupational health issue to a low priority in the workers schedule of interests. Adequate renumeration, job security and decent benefits - being tangible - will be of more immediate concern.

The state of the economy is also inevitably linked with the position OHS holds in the workers agenda of interests. When an economy is expanding the demand for labour rises and the bargaining position of the workforce is enhanced. Consequently, if the short term interests of labour are met, emphasis can then be placed upon long term concerns. If you examine the history of labour's involvement in the OHS area, this proposition seems to hold.[34] However, much of the pressure that has been placed on management and governments for OHS reform has centered around safety. It will be suggested that the bifurcation of the OHS issue - by labour - was necessary if any progress in this area was to be achieved. In fact, the demarcation of OHS into its component parts allows the immediate interests of both labour and management to be met since they are not completely at odds. This point requires elaboration.

Labour experiences unsafe work conditions directly through personal injury. On the other hand, employers are directly affected by accident through the slow down in production. Consequently, given the fact that the elimination of these hazards - in most cases - will not involve a substantial capital expenditure for management, labour may be more successful in persuading them that the eradication of these hazards will be in the best interests of both parties. As a result, at a minimal cost, the managers can increase productivity while at the same time addressing some of the concerns of labour. Bruce Doern's observations - based on data collected from the Canadian Labour Congress - provides evidence to support this arguement. He found that,

> ...organized labour has historically been the major element in exerting political pressure on federal and provincial systems to adapt stronger legislation and compliance preactises in the field of occupational safety and health, with emphasis on safety. Only in the last few years...has organized labour elevated the question of toxic substances.[35]

Basically, it can be argued that once the safety issue is addressed, the workers can then turn to the prevention of health hazards, a concern that does not correspond to the short term interests of employers as well as the safety issue does. Occupational health reform may entail a prolonged struggle with managment. In effect, much of labour's success in the safety areas can be attributed to the enhanced bargaining power labour holds in an expanding economy. This is not the case in a contracting or stagnant economy.

In a recession ridden economy the bargaining power of labour is undermined. Threatened by layoffs and stagnant or decreasing wages, workers must attempt to retain their hard-won concessions. This places

the OHS issue in a precarious position because the

> ...occupational health issue is emerging as a priority...precisely at the time an even broader concern about the rights of labour...has reached its zenith...In the short run occupational health may simply succumb to an even greater concern for the restoration of traditional free collective bargaining.[36]

Since the demand for labour decreases in a recession, the worker becomes even more dependent on his present employment. This is doubly so in a one-industry town. As a result, there will be more urgency on the part of labour to address their immediate demands as opposed to their long term - and in many cases intangible - concerns. In effect, in a depressed or stagnant economy, the ability of labour to exert pressure on management to eliminate occupational safety hazards is severely reduced, even more so with occupational health. This rests on the fact that eradication of health hazards is inimical to the short term interests of managers, especially in face of the decreased profitability of a firm during a recession. Consequently, labour's ability to successfully address the OHS issue depends upon how well their interests correspond to those of the firm. Their success rate will also depend upon the economic climate pervading at the time of collective bargaining. Nonetheless, labour is limited by other factors, namely, insufficient knowledge of the workprocess.

In most cases, the workers do not possess sufficient knowledge concerning the composition of the production process. Patent rights and licensing arrangements - which are sanctioned by the state - serve to protect trade secrets, while at the same time denying labour information regarding what chemicals they are exposed to. This is not to say that

labour is ignorant of the hazardous conditions they work in. If a worker discovers that his peers are all contracting respiratory illnessess, this predicament may promote an awareness of workplace dangers. However, given the fact that labour is denied valuable information regarding the composition of the production process, they cannot enlist the support of experts to substantiate their preceptions of workplace hazards. This raises a fundamental problem in the identification of hazardous substances. Workplace experience is not perceived as scientific and is thus illegitmate. In effect science,

> ...becomes what scientists - a small group of individuals in society - do. And scientific medicine is what medical scientists and practitioners do. Needless to say, all systematic knowledge which is produced outside those istitutions, and by individuals other than scientists, is not considered science... Thus knowledge is legitimized only and exclusively when it comes from scientists.[37]

Consequently, a suspect chemical is hazardous only if it is deemed so by scientists, the practical experience of the workers do not count. Basically, the workers must not only struggle for the reform of OHS hazards, they must also struggle to persuade the employers that a chemical is hazardous.

Thus, the workers, even in an expanding economy, are confronted and constrained in their efforts to achieve safe workplaces. The peculiar nature of industrial illness, the economic climate and the inaccessability to knowledge regarding the compostion of the production process ultimately shapes the workers characterization of the OHS issue. In effect, the constraints that labour faces are the direct result of, and are exacerbated by the constraints placed upon employers by the capitalist

mode of production.

It has thus been argued that both management and labour have dual and incongruent interests. Managers short term interests lie in the extraction of surplus value, and their long term interests are higher productivity and the reproduction of the labour force. Labour's immediate concerns are employment, adequate wages and decent benefits. Their long term interest lies in the preservation of health. However, the nature of the capitalist mode of production creates conditions that produce limits to labour and managements actions. In other words, the capitalist mode of production necessitates a concern for immediate rather than long term interests. As a result,

> both labour and management have difficulty balancing the concrete immediate costs of health and safety improvements against their often indeterminate long term benefits. Short term and know considerations ususally win out. This often means that actions are taken to limit injuries which are dramatic and whose costs are immediately perceived pain and in workmen's compensation premiums, but that improvements relating to health are limited.[38]

Given the fact that OHS reform is in the long term interests of both parties, yet the capitlist mode of production constrains the resolution of this problem, there must be another actor that must choose between these competing demands if there is to be any solution to OHS problems. It will be suggested that the state may be best equipped to fulfill this role.

III

The task now at hand is the presentation of the role of the state in capitalist market economies. However the question of the state has been of long interest to the students of political economy and has resulted

in a proliferation of theories of the state. Of all the theories developed so far the one that seems satisfactory and the one best for the purposes of this thesis is Joachim Hirsch's theory. The purpose of this thesis is not to prove any particular theory of the state, but to find one that can help comprehend the actual process by which regulation of OHS has developed over the past century. Hirsch's theory - which is part of the state derivationist school - best fulfills this task.

According to Hirsch, the state is a historically specific form of domination that has its foundations in the existing social relations of production and reproduction. In contrast to feudal relations of dependence and direct force, the need for social relations to be formally free in capitalist market economies requires that: "...the direct producers be deprived of control over the physical means of force and that the latter be localized in a social instance raised above the economic reproduction process..."[39] Given that the coercive function of the state is abstracted from the process of production it necessarily leads to the separation of the economic and poitical shperes in a capitalist market economy. This in turn structures the activities of the state.

Since the foundations of the state lie in the social relations of production, the primary function of the state then becomes the maintenance of these relations. For as Hirsch argues,

> ...the bourgeois state as an instance raised above the direct production process can only maintain its form if the capital reproduction process is guaranteed and its own material basis thus secured. This will necessarily manifest itself as the specifically political and bureaucratic interest of the direct holders of state power and their agents in the safeguarding of the capital reproduction and capital relations.

> This is why the bourgeois state must function as a class state even when the ruling class or section of it does not exert influence over it.[40]

This is not to say that the state is an instrument of the ruling class, but rather, the state is bound to the capitalist relations of production and reproduction that gives rise to its form.

However, since the state is a political apparatus separated from the economic sphere of production, the state in an attempt to maintain the existing social relations of production and reproduction can only react to the developments of the accumulation process. Thus the state is limited in that it must promote the accumulation process while remaining external to it. In effect then, in order to secure the existing social relations of production and reproduction the state must guarantee the "general and external conditions of accumulation" which are not or cannot be secured by individual capitals. Thus, the "...general necessity of state intervention results from the fact that the capitalist process of reproduction structurally presupposes social functions which cannot be fulfilled by individual capitals."[41]

However, the actual infrastructural services provided by the state, in light of capitals limited profit motive, changes over time in response to historical conditions. The state's functions thus developed in response to the development of the accumulation process.

The accumulation process however, - which is driven and shaped by class antagonisms - is ridden with contradicitons that give rise to barriers to accumulation. The expression of these contradictions are economic crises. Thus, given that the state's functions develop in response to the accumulation process, the state by its very nature

becomes a crises manager. These economic crises however give rise to political crises which are the concrete expressions of class struggles. In crises ridden periods these antagonisms - which are latent during periods of progressive accumulation - find their expression at the level of the state. Thus, in order to secure the existing social relations in capitalist societies the state must also ensure existing class relations. In effect then, the pacification of the working class becomes a function of the state.

In light of the political pressure exerted by the working class the state must in some instances intervene against capitalist in favour of labour. However, in so doing the state is not performing a legitimation function - in the sense James O'Connor speaks of -[42] for this analysis fails to take into account the presence of working class struggles. Rather, the state in effect attempts to alleviate political crises by addressing the demands of labour. Basically,

> ...the gradual and partial success of the working class in safeguarding and improving their conditions of labour and reproduction with the help of the state apparatus and within the framework of bourgeois society have shown themselves to be at the same time an essential moment in social pacification and in keeping the class struggle latent. However, the possiblity of safeguarding the political domination of the bourgeoise by means of "welfare-state" concessions to the working class depends on the undisturbed progress of accumulation.[43]

Therefore, in an effort to maintain progressive accumulation - which also serves to keep the class struggle latent - the state must increasingly pursue policies of "economic growth".

However, even with the intervention of the state, these crises can only be temporarily alleviated, for these crises are an historical

expression of the contradictions inherent in capitalist market economies. Historical in that the way in which the state reacts to these crises - inflation and unemployment that continue to resurface - and the attendant historical conditions - for example, levels of technology, degree of monopolization, size of markets, degree of international competition, know supply of natural resources, the nature of the class struggle and the form of previous crises - ultimately shape the nature of crises at a given moment in capitlist development. Thus, the state can only attempt to alleviate these crises temporarily, it cannot eliminate them.

This leads us to an even more fundamental limit to state action. Given that the state's foundations lie in the existing social relations of production and reproduction, the contradictions in these relations are reflected and reproduced at the level of the state. These contradictions are becoming increasingly apparent as capitalism and the attendant crises - inflation, high unemployment, conservative reactions - develop. In other words,

> ...the mechanism of state interventionist regulation of the reproduction of capital...proves to be thouroughly contradictory: not because state structural policy and 'global management' do not do away with the laws of capitalist reproduction processess and therefore cannot attain their ends fully, but also because they bear in themselves the moment of intensification of social conflicts.[44]

Basically, during an economic crisis individual capitals need the state to inervene to equalize profits for capital - for example, subsidies, technological knowledge - while at the same time the need to address labour's demands becomes more urgent. Thus, the state must channel resources to capital development rather than to welfare-state policies to

address labour's demands. Ultimately, "[t]his is the context in which the 'consequences' of economic growth - decay of cities, collapse of the ecological equilibrium, etc. - become politically explosive..."[45] The state must then intervene to compensate for the negative effects of economic growth at a time it is least equipped to. Therefore the contradictions in the relations of production become apparent at the level of the state in times of crises.

Given that the state must react to both demands from competing capitalists and labour, the state can not be in the functional sense, a closed apparatus. Rather, the state is,

> ...a heterogenous conglomerate of only loosely linked part-apparatuses...the heterogenous and increasingly chaotic structure of the bourgeois state apparatus is a precondition for its being able to maintain complex relations to the various classes and class fractions, relations which are the conditions of its ability to function as a guarantor of the domination of the bourgeoise. It must be open to divergent interests and influence of individual capital's and groups of capitals, which always secure the political domination of the bourgeoise and keep class conflict latent, it must maintain links with both the proletariat and with other classes and strata not to be counted as part of the bourgeoise.[46]

It is only when crises arise that the plural nature of the state becomes "closed" in order to secure the existing bourgeois relations. An example of this is state instituted wage controls which effectively suspend collective bargaining during economic recessions. However, when dealing with regulation and subsidization, the state acquires a plural nature in order to address the competing demands of different classes and interests.

Basically, the state is thus a crises manager that acts in order to ensure the existing social relations of production and reproduction

from which its form arose. In this way the state must act againgst both capital and labour - depending on the nature of the crises. This means that the state:

> ...does not originate historically as a result of the conscious activity of a society or class in pursuit of its 'general will' but rather as the result of often contradictory and short-sighted class struggles and conflicts - its specific functional mechanisms also evolve in the context of conflicting interests and social conflicts. That is: the concrete activities and measures of the state come into being not as the result of an objectively given social structure or of an objectively given historical process of development but only under the pressure of social and political movements and interests which, acting on this basis, actually succeed in pressing home their demands. The state's particularization has continually to re-establish itself afresh and maintain itself in this process of conflict and collision of interests. Not least of the consequences of this is the imperfection, incompleteness and inconsistency of state activity.[47]

The state can thus never manage capitalism, it can only react to its developments - determined by class struggle and historical peculiarities. This means that the state, given that it does not have extra-ordinary knowledge will address the movement of capitalism through trial and error according to the existing political forces at the time.

Thus, in using this theory of the state, one must analyze state action through an historical analysis. This necessarily means an examination of state action and the institution's themselves in their concrete form. It is only through this type of analysis that the apparent chaotic nature of state action can be understood. In light of this, the next chapter will provide an historical analysis of state action in the area of OHS. The Ontario Factory Acts and Workers' Compensation Act will be used as cases in point. This will serve to place into context the contemporary role of the state with regard to social policy and the way

in which it has historically addressed the competing demands of both capitalists and labour, particualarly in the area of OHS.

ENDNOTES CHAPTER ONE

[1]Karl Marx, Capital: A Critique of Political Economy Vol.I, (Moscow: Progress Publishers, 1977), p.580.

[2]Lesley Doyal, op.cit., p.297.

[3]For a full explication of the OHS issue in capitalist market economies see: Nicholas Ashford, Crises in the Workplace: Occupational Disease and Injury, (Cambridge, Mass: MIT Press, 1976); Wallace Clement, Hardrock Mining: Industrial Relations and Technological Changes at Inco, (Toronto: McClelland and Stewart, 1981) ; Vincente Navarro, "Work Ideology and Science: The case of Medicine", International Journal of Health Services. Vol. 10, No.4, 1980. ; and Robert Sass, "The Underdevelopment of Occupational Health and Safety". in William Leis ed. Ecology versus Politics in Canada. (Toronto: U of T Press, 1979).

[4]Marx, op.cit., p.163.

[5]Ibid., p. 167

[6]Harry Braverman, Labour and Monopoly Capital: The Degredation of Work in the Twentieth Century, (New York: Monthly Review Press, 1974). Braverman's analysis fails to recognize the importance of worker resistance to management imperatives. This failure to address this issue is demonstrated in the following chapters: "Scientific Management", pp.85-123; "The Effects of Scientific Management", pp. 124-138; and "Machinery", pp.184-233.

[7]Marx, op.cit., pp.208-209.

[8]Ibid., p.188

[9]Ibid., p.555

[10]Clement, op.cit., p.252.

[11]James W. Rinehart, The Tyranny of Work, (Don Mills: Academic Press Canada, 1975), p.74.

[12] Ibid, pp. 74-78.

[13] Adam Smith, The Wealth of Nations, (New York: The Modern Library, 1965), p.66.

[14] Ibid.,p.67.

[15] Craig Littler, The Development of the Labour Process in Capitalistic Societies, (London: Heneian Educational Books, 1982), p.32.

[16] Ibid, p.35.

[17] Marx, op.cit.,p.253

[18] The documented evidence suggest that long hours of work - which were predominant in the late nineteenth and early twentieth century - combined with low wages and poor diet contributed to the debilitation of the workforce. For a good study on this matter see: Frederick Engels The Condition of the Working Class in England, (Great Britain: Granada Publishing Ltd., 1981).

[19] Clement, op.cit., p.239.

[20] Vivienne Walters, "Occupational Health and Safety Legislation in Ontario: An Analysis of its Origins and Content". Canadian Review of Sociology and Anthropology.
For further discussion on the proliferation of technology and complex work processes and the attendant debiltation of the workforce see:
Nicholas Ashford, op.cit., especially pp.18, 85-96, and 127.;
Science Council of Canada, Policies and Poisions: The Containment of Long-term Hazards to Human Health in the Environment and the Workplace. (Ottawa: Report 28, October 1977);
Daniel M. Berman, Death on the Job, (New York: Monthly Review Press, 1978), pp.40-48.; and Lesley Doyal, op.cit., p.25.

[21] Ibid., pp. 10-11.

[22] Robert Sass, op.cit., p.74. For further information regarding industry's trade off of OHS reform as against profits see:
Richard Peto, "Distorting the Epidemeology of Cancer: The Need for a More Balanced Overview" Nature, Vol.284, March 27,1980, p.1.; Nicholas Ashford, op.cit., pp.130-131.; Samuel Epstein M.D., The Politics of Cancer, (Sierra Club Books: San Fransisco, 1978), p.35.; Bruce Doern and Richard Phidd, Canadian Public Policy: Ideas, Structure, Process, (Toronto: Methuen, 1983).

p.309. ; Science Council of Canada, Regulatory Processes and Jurisdictional Issues in the Regulation of Hazardous Products in Canada, (Ottawa: Background Study No. 41, October 1977), by Bruce Doern, pp. 57-58.

[23]Ibid., p.73.

[24]The scientific evidence linking uranium mining and cancer can be found in: Casarett and Doull, Toxicology: The Basic Science of Poisons Second Edition, (New York: MacMillian Publishing Co. Inc., 1980), pp. 107, 123. ; Jeanne Stellman and Susan Daum, Work is Dangerous to your Health, (New York: Vintage Books, 1973), pp.148-150.; and James Ham, Report of the Royal Commission on the Health and Safety of Workers in Mines, (Toronto: Government of Ontario, 1976), pp. 66-110.

[25]Ashford, op.cit.,p.9.

[26]Bruce Doern, "The Political Economy of Regulating Occupational Health: The Ham and Beudry Reports." Canadian Public Adminstration, Vol.20, p.27.

[27]Ibid.,p.18.

[28]Terrence B. Ison, The Dimensions of Industrial Disease, (Kingston: Industrial Relations Centre, Queens University, 1978),p.3.

[29]Science Council of Canada, Canadian Law and the Control of Exposure to Hazards, (Ottawa: Background Study No. 39, October 1977), By Robert Franson, Alastair Lucus, Lorne Giroux and Patrick Kennif, p. 70.

[30]Ashford, op.cit., p.5

[31]Clement, op.cit., p.250.

[32]Ashford, op.cit., p.40.

[33]For a good history on union involvement in OHS see: United Steelworkers of America, A History of Steelworkers' Action for Occupational Health in Ontario Mining: A brief submitted to the Royal Commission on Health and Safety of Workers in mines in Ontario. (January, 1976).

[34]If you examine the Canadian Labour Congresses and Ontario Federation of Labour's Legislative Proposals, Policies and Reports of Proceedings of various conventions you will find a marked increase in interest regarding occupational disease, esecially since 1975. For example during the 17th Annual Convention of the Ontario Federation of Labour (C.L.C.), (Toronto: November 12-14, 1973), p.71., there is

barely a mention of disease (except from the grass roots) while most of the stress was placed on safety. In fact, the demands made by the union with regard to reforming the Workers' Compensation Act placed occupational disease as the lowest priority. In 1974, at the Ontario Federation of Labour's Convention, industrial disease became a number one priority. See: Ontario Federation of Labour, Resolutions for the Eighteenth Convention, (Niagara Falls: October 28-30, 1974), p.57. However, for the most part, the union concerned itself primarily with safety up until 1974 . For further evidence of this trend see: Ontario Federation of Labour (CLC), Report of Proceedings: 17th Annual Convention, (Toronto: November 12-14, 1973) pp. 65-68 and p.71. ; Ontario Federation of Labour (CLC), Officers' Report: 18th Annual Convention, (Niagara Falls: October 28-30, 1974), pp.25-26.; Ontario Federation of Labour (CLC), Resolutions for the 18th Annual Convention, (Niagara Falls: October 28-30, 1974), p57.; Ontario Federation of Labour (CLC), To the Government of Ontario: Legislative Proposals, (1974), pp. 17-18.; Ontario Federation of Labour (CLC), Report of Proceedings: 19th Annual Convention, (Kitchenrer, Ontario: November 3-5, 1975), pp. 52-53.; Ontario Federation of Labour (CLC), Summary of Policies, (1975), pp.53-56.; Ontario Federation of Labour (CLC) To the Government of Ontario: Legislative Proposals, (1976), pp. 16-18.; Ontario Federation of Labour, (CLC), Report of Proceedings: 21st Annual Convention, (Toronto: November 27-30, 1977), p.68.; Canadian Labour Congress, 12th Constitutional Convention, (Quebec: April 3-7, 1978), pp.155-166.; Ontario Federation of Labour (CLC), Proceedins of 23rd Annual Convention, (Toronto: November, 1979), pp.70,85.; Canadian Labour Congress, 13th Constitutional Convention, (Winnipeg: May 5-9, 1980), pp. 68-74.; Ontario Federation of Labour (CLC), Policies (Toronto: Shepphard and Sears Ltd., 1982), pp. 49-53.

[35]Doern, op.cit.,p.20.

[36]Science Council of Canada, Regulatory Processess and Jurisdictional Issues. p.60.

[37]Vincente Navarro, op.cit., p.542.

[38]Ashford, op.cit.,p.5

[39]Joachim Hirsch, "The State Apparatus and Social Reproduction: Elements of a theory of Bourgeois State" in Holloway and Picciotto eds., State and Capital: A Marxist Debate, (London: Edward Arnold, 1978), p.61.

[40]Ibid., p.66.

[41]Ibid., p, 66

[42]James O'Connor, The Fiscal Crises of the State, (New York: St. Martins Press, 1972),

[43]Hirsch, op.cit., p. 84.

[44]Ibid., p.89.

[45]Ibid., p.105.

[46]Ibid., p.100.

[47]Ibid., pp.65-66.

CHAPTER TWO: WORKER'S COMPENSATION

HIstorically, industrialization and automation in the workplace have produced an increased incidence of hazard to the worker. Traditionally, with this development there has been an associated increase in governmental concern which has developed in response to the inability of management and labour to fully address the issue. An understanding of the historical nature of government involvement in this area helps delineate a framework for an adequate analysis. In this light, it is essential to comprehend the manner in which governments have been motivated to enter the realm of occupational health and safety. For it is only in this way that contemporary state action in this field can be adequately addressed.

The Ontario Factory Acts and the Workers' Compensation Act will be used as cases in point. Attention will be directed at this legislation because it was the government's first attempts at systematically addressing the social costs of industrialization, namely OHS. This chapter will initially examine the industrialization of Canada and the associated costs of this industrialization. Included in this section will be an examination of the Royal Commission on the Relations of Capital and Labour, for the evidence presented during the hearings is invaluable. Not only does it highlight the conditions of work in that period, but it also examines the degree of success the Ontario Factory Acts enjoyed. The second section will provide an analysis of the socio-economic conditions prevailing prior to the Workers' Compensation Act. Special attention will be placed upon the rights of labour and management in the areas of compensation and

liability. The third section will centre on the factors that affected the passage of the Workers' Compensation Act.

The analysis presented in this chapter will serve to place into context the state's historical role in the area of OHS. The conclusions reached will give rise to the predominant theme of the following chapter which will concentrate on the limits to state action in this area.

I

At the onset of the nineteenth century, Canada's economy was based solely upon agriculture and staple exports. By 1840 however, the nature of the economy was beginning to change. The emerging infrastructure[1] provided evidence of this transformation for it laid the foundations for the rapid industrial expansion Canada was to experience in the following decades.

A rapid increase in large scale industrial manufacturing occurred between 1870 - 1910. Much of this dramatic expansion can be attributed to the protective tariffs that were imposed by the National Policy of 1879. The extent to which Canada's economy became industrialized in this period can be discerned through an examination of the indicators of industrial growth: percentage of national income derived from the secondary sector[2], percentage of capital invested, the number of firms involved in manufacturing, percentage of the population living in urban centres and the percentage of the workforce engaged in industrial activities.

In 1870, 44.9 percent of national income was derived from the primary sector, while only 22.0 percent originated from the secondary sector. By 1910, the primary sector only contributed 30.2 percent of the national income (a drop of 14.7 percent), while the secondary sector

added 27.8 percent of the value (an increase of 5.8 percent).[3] Between the periods of 1881 and 1891 the amount of capital being invested in Toronto increased about 265 percent.[4] Also, during the same period, the number of manufacturing units in Canada increased by 74 percent, from 38,000 to 70,000.[5] The percentage of the Canadian population living in urban centres illustrates this trend towards industrialization. From 1870-1900 the percentage of the population that shifted to urban centres increased by 17 percent. By 1900, 35 percent of the Canadian population was urbanized. These patterns of industrialization were especially apparent in Ontario. A good indication of this phenomena was the number of labourers who were engaged in idustrial activity. Between 1871 and 1891 the number of employees in the industrial sector rose from 87,000 to 166,000, an increase of 75 percent.[6] Given these indicators, it can be argued that Canada's industrialization was intense, in that much of the changes that occurred transpired over a short period of time - three decades.

Consequently, similar to most dramatic changes that affect the socio-economic structures in society, Canada's rapid industrialization created social upheaval. In other words, co-existing with the emerging prosperity created by industrial growth were attendant social costs. These costs were borne primarily by the labour force. No where was the more apparent than in the conditions of work.

The labouring classes in the late nineteenth century were increasingly concentrated into factories where hours were long, sanitation inadequate and machinery unprotected. However, these conditions also facilitated the development of organized labour, and hence working class

power. In light of this, conflict between capital and labour began to emerge. "One expression of the rift between labour and capital that emerged in the 1880's was the rising number of strikes. The willingness to resort to the strike pointed to an increase in working-class grievances... indicating that labour was beginning to see alternatives to accomodation."[7] The entrance of organized labour into the political sphere reflected the growing number of alternatives open to the labour force. Labour either supported established political parties that were sympathetic to their cause or nominated candidates of their own. This growing politicization of the working class enhanced labour's ability to influence governmental policy. The Factoy Acts and the numerous Royal Commissions appointed during this era are cases in point.

Provincially the 1881 Factory Acts were passed in Ontario in response to labour's demands.[8] Québec followed suit and instituted similar legislation in 1885. These Acts addressed: child labour, hours of work, sanitary conditions and safety in the workplace. However, this legislation only applied to establishments employing over twenty people.

The federal government of Sir John A. MacDonald was also faced with demands from labour. In 1883 a Factory Act was introduced in the legislature. However, this legislation was not passed. This did little to garner the support of the working class who had traditionally endorsed the Macdonald government. By 1886, support for the Macdonald government was wavering. This was attributable to the growing dissatisfaction with the National Policy and the government's apparent inability to address labour's demands. Macdonald responded to this growing critisism by appointing a Royal Commission to study the Relations of Labour and Capital.

According to its mandate, the Royal Commission was charged with: "enquiring into and reporting upon the subject of labour, its relation to capital, the hours of labour, and the earnings of labouring men and women, and the means of promoting their material, social, intellectual and moral prosperity, and of improving and developing the productive industries of the Dominion..."[9] Labour and employers were to be represented on the Commission.

The most striking evidence presented during the Comission's hearings concerned the number of times employers claimed they did not know of any factory legislation that limited their master-servant relationship. A good example of this situation is found in the questioning of John R. Booth, a lumber manufacturer in Ottawa.

> Q: Are you aware, Mr. Booth, that the Factory Act of Ontario says that boys under a certain age are not to work more than sixty hours a week?
>
> A: No; I cannot say that I do: I never pay any attention to it.
>
> Q: Do you know if the factory inspector has ever inspected your mill?
>
> A: No, not that I am aware of.
>
> Q: He never gave you a copy of the Ontario Inspection Act?
>
> A: No. 10

This was not an isolated incident. The same phenomena was observed throughout Ontario and Quebec,those being the only two provinces where Factory legislation existed.

Further, in the briefs presented at the hearings, factory employees, many of whom wished to remain anonymous for fear of reprisals, described

the conditions in which they laboured:

> Q: I wish to know if the tannery is comfortable to work in, or if it is in a condition such as to injure the health of the workmen?
>
> A: It is more likely to hurt us than to help us recover. There is no stove, only a small stovepipe. When we go in there, it is like an ice house, and when we come out at night it is the same.
>
> Q: Do you know of any tannery where dirt or lack of comfort can really hurt the workman, or the uncleanliness affect the neighbours?
>
> A: I know of shops where they are obliged to air them, because first, when the skins are turned, it is a thing people complain of; the odour is too overpowering. Only those that work there can endure it, and even they are often unable to take their supper, they are too sick...
>
> Q: Do you know of any tannery where there is want of ventilation, and it is not kept clean?
>
> A: Yes, sir. 11

With regard to unsafe work conditions, John Davidson, an agricultural wood worker from London, Ontario described the worker's dilema:

> Q: Are there any boys running machinery in your shop?
>
> A: Yes.
>
> Q: What kind of machinery do they run?
>
> A: They work on the planer, the rip-saw, the cross-cut saw; sand-papering machines and jointers; in fact, there are boys who run almost any machine. Every week or two an accident happens.
>
> Q: The boys get hurt?
>
> A: Yes, their fingers are cut off...
>
> Q: Is the machinery protected - the shafting and belting?

A: No; none of it.

Q: Has the factory inspector visited your establishment?

A: Not that I am aware of.

Q: You think if he did that there was good ground for compliant?

A: Yes; I do. 12

On the whole, employees described work conditions where factories were poorly ventilated, sanitation non-existant and machinery unprotected.

Another significant feature of the Royal Commission was the conflict the emerged amongst its members. Initially Macdonald had appointed eight commissioners who were to represent labour and management. However, these appointments did not appease organized labour. The original appointees were viewed by labour and the press as partisans, the appointments being merely political payoffs. Consequently in 1887, Macdonald appointed eight additional members, four of which were recruited from the ranks of organized labour.

Once the Commission launched its hearings, the members split into two competing factions. One group was labelled the capitalist group, led first by Judge James Armstrong, and after his death, A.T. Freed. The second faction represented labour. This group was led by John Armstrong (no relation to Judge Armstrong). As a result of the fragmentation, the Commission submitted two separate reports: The Freed Report in February 1889, and The Armstrong Report in April 1889. The recommendations presented in these reports differed funadmentally, especially with regard to their assessments of the existing Factory Acts.[13]

The need for federal factory legislation modelled on existing

laws was the major recommendation made in the Freed Report. They suggested that the legislation should be stringent, inspections frequent and that all establishments regardless of size, should be included. These recommendations were perceived as the most equitable solution for all parties concerned.

The Armstrong report differed from the Freed in that it contained both recommendations for reform of the factory acts, and a critisism of the present legislation. It also derided those who ignored the social costs of rapid capital accumulation. It recommended that hours of work should be shortened (especially for women and children), sanitation should be improved, and that protective equipment should be placed on all machinery.[14] However, their greatest concern was directed at the way in which the factory laws were being enforced. They argued that,

> [t]he Ontario Act was passed some two years before the inspectors provided for it were appointed. Nearly another two years have elapsed since the appointment of these officers and during the whole of that time, up to the close of this enquiry, only one case has been brought before the courts. This inactivity cannot be for want of material to work upon...Just as long as there is a manifest reluctance to enforce its provisions by process of law it will remain a delusion and a farce upon legislation. It would be better to discard it altogether than to retain it, and yet make no proper effort towards its enforcement.[15]

Given the differing orientations of both factions, it is not surprising that the Armstrong Report was a more thorough analysis of the relations of capital and labour. The Freed Report was superficial in that it failed to address the problems that limited existing factory legislation, namely the reluctance to enforce them.

In 1894, the Macdonald government finally implemented one of the

recommendations made by the commission - Labour Day became a holiday. In effect, the recommendations presented to the government with regard to the conditions of work were dismissed. Consequently, no improvement was made in this area. In light of this ineffectual legislation, the only recourse remaining to the labouring classes was compensation for the injuries sustained at work.

II

In Ontario, labour's right to compensation was based on common law. With reference to workplace injury the common law states that the "individual is liable for damages for an injury occassioned by his own negligence to the person or property of another."[16] It went on to say: "...a person is held responsible for any damage to another caused by the negligence of his employée or servant, providing that the latter, at the time he committed the fault, was within the general scope of his employment."[17] However, the most damaging doctrine for the worker's right to compensation was an interpretation of the common law, named the Doctrine of Common Employment which stated that: "[a] servant, when he engages to serve a master, undertakes as between himself and his master to run all ordinary risks of service, including the risk of negligence upon the part of a fellow-servant when he is acting in the discharge of his duty as a servant of him who is the common master of both."[18] Therefore, when a worker was injured in the course of his employment he could be compensated if he proved that: (1) that the employer was negligent; (2) that the worker did not contribute, through his own negligence, to the accident in any way; (3) that it was not the result of another worker's negligence; and (4) that it was not an assumed risk. In the face of such obstacles it

proved difficult to demostrate that the worker was entitled to compensation.

In 1886 the Ontario Government attempted to rectify some of these difficulties and passed the "Workman's Compensation for Injuries Act." Modelled on the English Employers Liability Act of 1800, this Act did not do away with Common Law, it simply increased the instances where the employer was liable. According to the Act the worker would be compensated if the accident occurred while in the process of work if:

1. By reason of any defect in the condition or arrangement of the...works, machinery, plant buildings or premises connected with, intended for, or used in the business of the employer;

2. By reason of neglience of any person in the service of the employer who has superintendance entrusted to him whilst in the exercise of such superintendence;

3. By reason of negligence of any person in the service of the employer to whose orders of directions the workman at the time of injury was bound to conform and did conform, where such injury resulted from his having so conformed;

4. By reason of the Act or omission of any person in the service of the employer done or made in obedience to the rules or by laws of the employers, or in obedience to particular instructions given by the employer or by any person delegated with the authority of the employer in that behalf;

5. By reason of the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine, or train upon a railway, tramway or street railway. 19

In contrast to the pure common law defense that the employer traditionally had, the passage of the act increased the liability of the employer. However, included in the Act were a list of provisions where the worker had no right to compensation under law. These were:

1. Unless the defect in machinery, etc., causing the injury was due to the negligence of the employer or some agent responsible for the condition of the machinery of the plant in question;

2. Unless some impropriety or defect in the rules under which the accident occurred exists, except rules that have received the approval of the Lieutenant Governor-in-Council or are in accordance with an act of the legislature or of the Parliament of Canada may not be held improper or defective;

3. When the workman knew of the defect or negligence which caused his injury and failed without reasonable excuse to notify the employer or some person superior to himself in service... 20

Once these provisions were included, notwithstanding the fact that the liability of the employer was increased, the provisions that barred the worker from lawful compensation had not been drastically reduced. The worker still had to prove his injury was not due to his own negligence (for example, not informing the employer or supervisor of dangerous machinery), and he still had no right to compensation if the injury was caused by the negligence of a fellow employee or he was assumed to have accepted the risk when entering into employment. This Act also did not alter the basis of compensation: proof of fault through the judicial process.

By the turn of the twentieth century, there was a renewed interest regarding the efficacy of the existing compensation legislation in Ontario. This was due in part to the 1897 enactment of the English Employer Liability Act which recognized the deficiencies of compensation based upon common law. Basically, the English Act: "[relinquished] ...any attempt to define the degree to which an employer's liability should extend, the new law made him, in nearly all the great industries, individually liable in

all cases where personal injury by accidents, arising out or in the course of employment, was caused to the workman, If personally negligent, he remained liable to the provisions of the common law."[21] Consequently, in light of the new English legislation and the rising incidence of workplace injury in Ontario, Premier Arthur Hardy commissioned a study on the existing compensation legislation. James Mavor - a professor of economics at the University of Toronto - was selected to conduct the report.

Mavor concluded his study of the English system in 1900. Although he did concede that common law, especially the doctrine of common employment impeded the effort of workmen to receive compensation for industrial injury, he argued a cautious approach suggesting a study of the effects of the English legislation would be most beneficial before any substantial changes were made to the existing Ontario legislation. Mavor's basic oppostion to radical legislation was: "[l]egislation which would make small concerns more difficult to conduct or which would wipe them out could scarcely be defended on any ground."[22]

The interest in Mavor's report for small concerns was consistent with the socio-economic climate at the time. This period was characterized by an economic slump and the concentration of capital which served to seriously impair the competitive postion of small manufacturing firms. For example, in 1890 there were 70,000 manufacturing units in Canada and by 1920, only 22,000 remained.[23] This reduction: "indicated more rather than less industrial activity. Through the formation of joint stock companies...mergers...and internal growth, manufacturing industry was becoming more concentrated, centralized and bureaucratized."[24] As a result, Mavor's primary concern was the state of the market system in Ontario.

According to Mavor, legislation extending compensation benefits to workers could seriously harm the economic health of industrial Ontario.

III

Mavor's report did not however mark the conclusion of the compensation debate. On Januray 1910, a delegation of labour representatives approached Premier James Whitney requesting a Royal Commission on Compensation. Six months later, the Royal Commission on the "Laws Relating to the Liability of Employers to Make Compensation to their Empolyees for Injuries Received in the Course of their Employment which are in Force in Other Countries, and as to How Far Such Laws are Found to Work Satisfactorily" was appointed, with Chief Justice William Meredith as its chairman. Sir Meredith was joined by Fred Bancroft, vice-president of the Trades and Labour Congress [TLC] and Mr. F. Wegenast, a solicitor who represented the Canadian Manufacturers Association [CMA]. Representatives of labour and capital showed an active interest in the Commissions hearings.

The CMA for example, presented a brief noted for the specificity of its demands. They enumerated eleven proposals:

> First: For reasons both humanitarian and economic the prevention of accidents should be a prime consideration in any system of workmen's compensation, and no system can be satisfactory which will not tend to produce the maximum of effort and result in conserving the life, health and industrial efficiency of the workman.
>
> Second: Relief should be provided in every case of injury arising out of industrial accidents. Such relief should not be contingent upon proof of fault on the part of the employer, but gross carelessness, drunkenness, or intentional wrong on the part of the workman should be penalized in some way.

Third: The system of relief should be adapted to cover wage workers in every industry or calling involving any occupational risk, and should not be confined to such industries as railroading, manufacturing, building, ect.,

Fourth: The relief should be as far as practicable by way of substitution for the wages of which the injured workman and his dependants are deprived by the injury. It should, as a rule, be periodical and not in a lump sum.

Fifth: The relief should be certain. It should not depend upon the continued solvency of the employer in whose service the injury was sustained.

Sixth: The amount of compensation should be definite and ascertainable both to the workman and the employer. The system should entirely displace the present method of compensation by an action for damages, and the employer should not be subjected to any further liability except in cases of gross carelessness or intentional wrong on the part of the employer.

Seventh: The system of relief should be such as to secure in its administration a maximum efficiency and economy, and as a large portion as possible of the money contributed should be actually paid out in compensation.

Eighth: The procedure for the adjustment of claims should be as far as possible dissociated from the regular courts of law. It should be simple and calculated to involve in its operation a minimum of friction between employer and employee.

Ninth: The system of compensation should be directly associated with a system of inspection with a view to the prevention of accidents and a system of prompt and expert medical attendance to mitigate the effect of the injuries.

Tenth: The system should be such as to secure as liberal a measure of relief as possible without undue strain upon industry.

Eleventh: The system should be such as to afford some promise of premanency. 25

Comparing the CMS's proposals with those of labour it is evident that the initial demands labour made were less specific in nature. On the whole, labour's demands centerd around the adoption of the English model, the only major alteration being a higher scale of compensation. Labour's initial requests were as follows:

> First: All employments, the employees of the Province, Municipality, County, and all other adminstrative bodies in the Province are to be covered the same as employees in industries.
>
> Second: Compensation for all injuries arising out of, and in the course of employment.
>
> Third: Compensation for being disabled, or other injuries arising out, or as the result of specific occupation,the said disablement and injuries being in the nature of occupational diseases.
>
> Fourth: Entire cost of compensation to rest upon employer.
>
> Fifth: In the case of injuries resulting in death, the dependants as outlined in the British Act and State of Washington Act, shall be the beneficiaries, with the expenses of the funeral as outlined so.
>
> Sixth: The doctrine of negligence on the part of employee or employer, fellow-servant or otherwise, shall have no place in the new legislation.
>
> Seventh: State insurance in connection with Compensation Act.
>
> Eighth: The creation of a Provincial Department of Insurance with three Commissioners for the purpose of administration of the Act.
>
> Ninth: Compulsory Insurance of employers, in the State Department by a yearly tax levied upon the industry or occupation, in respect to the risk of the particular industry or occupation.
>
> Tenth: The tax shall be upon the yearly wage-roll.
>
> Eleventh: No employer shall attempt to pay the tax by deduction of wages of employees, by agreement or otherwise, such action to be regarded as a gross

misdemeanour as provided for in the State of Washington legislation.

Twelfth: The schedules of payment under the act, to be based upon the payments under the British Act, with proportional increases due to the difference in wages in Ontario, reflecting the difference in the cost of living.

Thirteenth: The Provincial government shall provide revenue for the creation of the Department of Insurance. [26]

In examining the demands of labour and the CMA there are many points of contention. Although both agreed that the existing method of compensation was unsuitable and unworkable, agreement went no further. The major disagreement centred around the contribution issue. The CMA argued that employees should contribute to the compensation plan, while labour argued that the employer should shoulder the entire cost of the plan. Another argument arose with regard to compensation for occupational disease. Labour maintained that disease should be included in any compensation scheme, while the CMA opposed it on the grounds that employers may be compensating disease that did not arise out of the course of employment. They suggested that ailing workers may receive compensation from the employer even if the disease was not attributable to that particular employer. They dismissed the issue as being to unwiedly.[27]

Predictably, the level of compensation was a hotly contested issue between labour and management. Labour argued that the level of compensation should be higher than that provided in the English Act in consideration of the higher cost of living in Ontario. The CMA maintained that the rate of compensation should be "as liberal a measure of relief as possible"[28] without jeapordizing the competitive position of the industry. Basically, the CMA wanted to pay as little compensation as possible while labour

tried to obtain what it termed a fair level of compensation. These divisions withstanding, the most unpredictable factor in the Commission's hearings was the commissioner himself.

Throught the hearings, relations between Sir William Meredith and Mr. Wegenast were largely antagonistic. This tension arose initially during the first sitting of the commission. Given that about a year passed from the time the commission was first appointed and its first sitting, Meredith was angered at Mr. Wegenast's unpreparedness. From the onset this friction established the pattern of relations between Meredith and Wegenast.[29] Moreover, while Meredith appeared to be sympathetic to labour's case, he took great offence when a socialist argued that there was a "war" between the interests of labour and capital. Throughout the hearings the commissioner alluded to his disillusionment and disappointment with the socialists who characterized relations between employers and employees in such an uncompromising light.[30] However, throughout the commission's hearings, regardless of any personality conflicts, Justice Meredith displayed an interest in all the arguements presented to him. This can be attributed to Meredith's personal belief that the present Workman's Compensation legislation was completely inadequate. In his final report, the Commissioner strove to illustrate that his draft bill was by no means radical. He argued that:

> ...in making these recommendations I am not advancing any novel propostion as shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules that it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as

> now existing, and to the use of complicated machinery and the great dangerous forces of steam and electricity of to-day is the generally accetped view, and was the unanimous opinion of the Employer's Liability and Workmen's Compensation Commission of the United States.[31]

Although Meredith was appointed to conduct a Royal Commission on the matter of compensation and propose suggestions, the commissioner in his Final Report presented a Draft Bill. Controversy during the actual sittings of the commission were at a minimum. All parties involved were hoping for some sort of compromise. This was not the case when the Draft Act was presented. As a consequence, much of the tension that arose around the issue was a direct result of the Draft Proposal. The basic proposal made in the Draft Bill were:

> One: Mutual Insurance administered by the State.
>
> Two: Those employers listed in schedules I and II would be liable under the Act. Those in schedule I would collectively contribute to an accident fund, while those in schedule II would be individually liable.
>
> Three: Contributions would be made by employers with partial State contributions to defray the costs of administering the Act. Employees would make no contributions.
>
> Four: The Act would only apply to those industries who employ three persons or more unless those employers not included under the provisions voluntarily wished to be included.
>
> Five: No appeals could be made by either party to courts of law.
>
> Six: Workers would be compensated for 55 percent of wages during the whole period of disability.
>
> Seven: Industrial diseases enumerated in schedule III would be compensated. Provisions to expand the list of diseases were included.

> Eight: Workmen were expected to bear the loss wages if the disability lasted less than seven days. If the disability was to extend beyond that period, compensation would be paid from the time the accident occurred.
>
> Nine: No lump sums would be awarded.
>
> Ten: No compensation would be payable if the injury was solely attributable to serious wilful misconduct of the workers unless injury resulted in death or disablement. [32]

Labour was very happy with the Draft Bill, although they claimed it did not address all their demands. They argued that the Draft Bill should be paases in its entirety, and in sacrificing some of their demands they illustrated their commitment to compromise. An article in the Industrial Banner, re-asserted this point. The article claimed that:

> [t]he only changes which the labor men desire, are the raising of the scales of compensation, the extension of the scope of the Act and the abolition of a waiting period during which no compensation is to be paid...The workers want the Draft Act passed without any mutilation. The Act is complete as far as the Commissioners thought expedient...Labour asks the Ontario Government to pass the Draft Act with the extensions suggested.[33]

Labour, on the whole was satisfied with the potential form this new legislation would take,and wished it to remain in the form Meredith intended it to. This was not the case with regard to the CMA.

The CMA waged an attack on the Draft Act on two fronts. First, they tried to criticize the commissioner. This attack was present in many of the articles published by the CMA in the period between the presentation of the Final Report and the actual passage of the Act. In an article that was republished in the Industrial Banner, the representatives of the CMA claimed that:

> [i]t is apparent to all who have studies the question of workmen's compensation that Sir William Meredith, Commissioner of the Ontario Government, has entirely misapprehended the nature of the task which was assigned to him. No greater commission has been entrusted in Canada to one man and it is regretable that Sir William, instead of approaching the problem with experimental prudence has drafted a Bill for the Ontario legislature which is chiefly remarkable for recklessness and inpracticability.[34]

Although these criticisms leveled by the CMA were quite extreme, in later articles they claimed that the commissioner, although with good intentions, took too much upon himself when he proposed a Draft Bill. Meredith, according to the CMA, was a busy man, and the weight of his responsibilities was the major cause for the undesirable form the legislation took.[35]

The CMA's campaign against the proposed Draft Bill was not limited to questioning the integrity of the Commissioner. Much of the CMA's resources were channeled into legal representation, in an attempt to oppose the contentious Act. Manufacturing interests throughout Canada were joining forces to half the implementation of this legislation, for the nature of the federal system in Canada could eventually lead to similar legislation being enacted in the remaining provinces.[36]

Even though the CMA had many objections to all facets of the Act, they were adamant with regard to four. In summary these are: (1) the scale of benefits; (2) payment of compensation in cases where the accident occurred because of the serious or wilful misconduct of the employees or a fellow employee; if the accident was a result of an "Act of God"; and if the injury lasted more than a week, compensation would be paid from the time of the accident; (3) the allowance that provided compensation for parital disability that would span the employee's lifetime, computed to

make up the difference between his present wages and the wages the labourer would have received if the injury had not occurred; and (4) the compensation for industrial disease. According to the CMA, diseases that were included in schedule III of the proposed draft were not applicable to Ontario. They also argued with regard to this issue that since the evidence to prove that the disease was contracted in any given workplace was so complex, it was beyond the capabilities of the board to decide.[37]

During the annual meeting of the CMA in 1914, the membership was informed of the Draft Act and the "obstacles" that their representatives had to face:

> [t]he first great task which your Committee had to undertake consisted in convincing the Government Commissioner of the soundness of the conclusions we had reached. In this task we were met with the frankly expressed skeptisism and even hostility of the Commissioner who, throughout his investigation ...has maintained an attitude towards the Association which we are bound to say was...extremely embarrassing and altogether unwarranted...[38]

The CMA did have some justification for this aforementioned statement. Before the Meredith Draft Bill was formulated the CMA submitted a Draft Bill. Throughout the Final Report Meredith alluded to the CMA proposal in uncomplementary terms. He derided them on issues concerning industrial disease, and levels of compensation. In fact, Meredith was opposed to the major bulk of the CMA proposals.[39]

The Workman's Compensation Bill - which was Meredith's Draft Act with minor alterations - was passed in May of 1914 to come into effect on January 1, 1915. Basically, the Workman's Compensation Act provided compensation, outside of the judicial process, for injuries sustained in the course of employment. This covered all industrial injuries, and to

a lesser extent, industrial disease. However, compensation was not the sole purpose of this legislation. Emphasis of the need for prevention was displayed in the "spirit" of the Act. In other words, the Act was designed so that employer contributions were based on the rate of accidents in the particular industry. Thus, an economic incentive - lower compensation rates - was provided to encourage accident prevention.[40]

The question that must be addressed is: why did the Ontario Government, in the face of strong opposition by the CMA pass the Meredith Act? From the onset, although their reasons differed, there was no objection on the part of any of the representatives (labour and management) to a Workman's Compensation Act that would allow employees to be compensated for injuries occurring in the course of employment. All agreed that the present legislation was inoperable. However, agreement halted at these issues with much of the controversy between labour and management being based on the rate of compensation.

Management agreed with the concept of workman's compensation for a number of diverse reasons. Once reason concerned compensation under common law. Under this system compensation was received only through the process of tort litigation whereby the employer had to supply the funds for the litigation process, and if found liable, also had to provide funds for the award. Although the employer insured his workers, this insurance only protected the employer's liability, and money was rarely received by the worker. It also forced the labourer to go to litigation, for no payment was given by the insurance company if the case was settled out of court. Therefore, a compensation system would allow the employer to regularize his costs and also avoid conflict between the labourer and the

employer. However, not all employers believed that the greatest benefit of compensation was in the regularization of their costs. Mr. Martin, an employer based in London, Ontario, characterized the humanitarian concerns held by some employers. During the commission's hearings in London, Mr. Martin stated the employers position when he claimed:

> [t]he great trouble with the present laws is that while we are paying for protection, and we are entitled to get it, we also want our employees to be protected. That is, that if a man is entitled to anything if he has met with an accident, there is no way for him to get anything unless he sues the company, and...in the case of an accident we must first use first aid and help the man out and to a certain extent that has been construed as an accessory.[41]

Consequently, regardless of the underlying motivations, employers supported in principle a compensation plan that would no longer be based on common law. R.C.B. Risk, in his article on Workman's Compensation in Ontario best summarizes the employers support of compensation. He argues that the

> ...employers did not take the initiative in proposing compensation, but they eventually supported it because it promised to solve the problem of injured workers in an efficient, peaceful, conservative way. They expressed some humanitarian motives, but not often, and did not disguise self-interest...Compensation would increase costs, but not dramatically and probably not as much as some alternatives, especially the common law without the defenses of the fellow servant rule, assumption of risk, and contributory negligence. Compensation did not threaten any major elements of the industrial capitalist system and it diminished the appeal of a more radical solution.[42]

Notwithstanding the support of the CMA in principle for compensation without litigation, the Meredith Act, which was eventually enacted, was opposed. It was opposed on the grounds that it would destroy the small manufacturing

concerns through high rates of compensation that could in some cases span the life of the injured worker.

Labour had other reasons for supporting a new compensation bill. Under the common law, it was almost impossible to receive compensation. However, if the worker did win the court case, the employer usually appealed the decision up to the highest court. Thus, in many cases, even if the plaintiff did win the final appeal, the bulk of his award was devoured by legal costs. Michael Piva also illustrated another obstacle the labourer faced when sueing for compensation: "[u]nder employer's liability law justice was irregular and sporadic. Working-men usually had the advantage of sympathetic juries, but it was not uncommon for trial judges to dismiss actions after juries found in favour of the plaintiffs."[43] It was therefore perceived by the workers to be in their best interests to remove compensation from the realm of litigation. This was the major reason why workers surrendered their right under common law in the Workman's Compensation Act. Consequently, labour supported the legislation because it met most of their demands without undue compromise.

In summary, labour supported the legislation passed by the Ontario Government and the CMA, although sympathetic in principle, rejected the legislation that was ultimately enacted. The question remains: why did the government pass a bill which had labour's support yet was contrary to the demands of the CMA? It will be suggested that the final form the compensation legislation acquired was a product of the socio-economic and political conditions in Ontario at the time.

By 1914, with the failure of the factory acts, labour was becoming increasingly dissillusioned with government's apparent inability/reluctance

to address the needs of labour in industrial Ontario. This dissillusionment serve to unite the working class over the compensation issue. The political and trade union divisions that usually served to fragment labour's power were overstepped. This solidarity was expressed by labour's threats to conduct province-wide strikes if the Meredith legislation was not enacted.[44] Given that 1914 was an election year in Ontario, this threat gained potency. In effect, the workman's compensation issue was the concrete expression of the class tensions existant at the time.

Sir William Meredith - as the representative of the Ontario Government - addressed the presence of this heightened class tension in his Final Report. He argued that:

> [i]n these days of social unrest it is, in my judgement, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgement, to be avoided. That the existing law inflicts injustice on the working man is admitted by all. From that injustice he has long suffered, and it would, in my judgement, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the working man, but of what is the least he can be put off with; or if the Legislature were to be detered from passing a law designed to do full justice owing to the groundless fears that disaster to the industries of the Province would follow from the enactment of it.[45]

Basically, by 1914 the Ontario Government was made aware of the social unrest that would result if the working class was to continue to bear the

brunt of the costs of industrialization.

The third factor that contributed to the form the Workman's Compensation Act acquired was the prevailing economic situation. During the period in which the Commission conducted its hearings, Ontario's economy was prospering. However, along with this prosperity there was an increased incidence of industrial accidents. As Piva notes, a "...close correltaion existed between the rise of accidents during the periods of prosperity and increasing production from 1900 to 1907, 1909 to 1913, and 1916 to 1920".[46] As a result, given the economic situation, the CMA's claims that the enactment of the Meredith Bill would destroy industrial Ontario was perceived as unfounded, especially since the passage of the Act did not radically alter the existing economic system.

In short, the passage of the Workman's Compensation Act was a response by the government to the increasing class tensions existant at the time. Basically, it was an attempt by the government to pacify labour - within the existing economic framework by compensating the 'negative' effects of economic growth - before the social unrest of the working class reached crises proportions. Given that 1914 was an election year, the urgency to pass some form of compensation legislation most likely contributed to the fact that Meredith's Draft Act was basically passed in its entirety.

Further, this was not a mere legitimation tactic on the part of the government, but rather a reaction to the demands of labour. In other words, it would have been highly unlikely that the compensation act would have been passed - especially in the form it acquired - without the concerted struggle of the working class. Another contributing factor was

the fact that the CMA had agreed in principle to a compensation scheme. Thus, since the existing economic structure remained intact, the government's decision to enact the Meredith legislation did not serve to irrevocably alienate the employers from government. In effect, the passage of the Workman's Compensation Act was the result of the existing socio-economic and political conditions the government was confronted with in 1914, namely, the pressure from the working class, and the government's recognition that it was necessary to alay working class discontent.

The Workman's Compensation Act did in fact - at least for a time - pacify labour. In fact, labour claimed this bill was a "victory" for the working class. If one compares the position of the working class before the passage of the Act with their position after the passage of the Act the reasons for labour's euphoria become evident. Before 1914, with industrial accidents on the rise, labour's right to compensation was founded in common law. In most cases it was almost impossible for the worker to reveive compensation for injuries sustained at work. After the passage of the bill - although injuries still occurred - the workforce was guaranteed compensation under the law. Granted those workers in establishments not covered under the Act were no better off, but for the most part, the major industries were included and thus a significant portion of the workforce were entitled to compensation. Also, given that the Act provided an economic incentive to employers to prevent hazardous conditions, both demands of labour - compensation and prevention - were thought to be addressed. Therefore, given this, the working class declared a victory.

However, in contemporary society, labour's position regarding the efficacy of the act has drastically altered. The next chapter will thus

examine the degree of success this Act has enjoyed seventy years after its enactment. It will also examine the government's subsequent response to the OHS issue and analyze the limits to government action in this field.

ENDNOTES CHAPTER TWO

[1]The infrastructure was comprised of railways, canals and roads which served to link together urban centres, and hence future markets.

[2]The secondary sector is composed of construction and manufacturing. The primary sector includes agriculture, fishing and trapping, forestry operations and mining.

[3]Arthur M. Kruger, "The Direction of Unionism in Canada" in Richard Ulrich Miller and Fraser Isbestor eds., Canadian Labour in Transition, (Scarborough: Prentice-Hall of Canada Ltd., 1971), p.86.
The only increase in the primary sector was in the area of mining. An increase of 1.7 percent occurred in the period spanning 1870-1910.

[4]Bryan D. Palmer, Working Class Experience: The Rise and Reconstruction of Canadian Labour 1800-1980, (Don Mills: Longman Canada Litd., 1975), p.31.

[5]Rinehart, op.cit, p.97.

[6]Palmer, op.cit, p.97

[7]Ibid, pp.124-125.

[8]For a brief discussion regarding labour's pressure on the government to adopt factory legislation see: Greg Kealy, Canada Investigates Industrialism, (Toronto: U of T Press, 1975), p.IX; and Charles Lipton, The Trade Union Movement in Canada 1827-1954, (Montreal: Canadian Social Publications Ltd., 1966), p.74.

[9]Kealey, op.cit.,p.3.

[10]Ibid.,p.203.

[11]Ibid., p.277.

[12]Ibid., pp. 129-130.

[13]Ibid., pp.X-XVX.

[14]Ibid., p.44.

[15]Ibid., p.44.

[16]Canada, Labour Gazette, (November 1910), p.547.

[17]Ibid., p.547.

[18]Ibid., p.548.

[19]Ibid., p.553.

[20]Ibid., p.645.

[21]Ibid., p.550

[22]James Mavor, "Report on Workmen's Compensation for Injuries" Ontario Sessional Papers, Part 10, Volume 32, No.40 (1900), p.46.

[23]Rinehart, op.cit., p.39

[24]Ibid., p.39.

[25]Province of Ontario, "Minutes of Evidence Taken Before the Commissioner the Honourable Sir William Ralph Meredith on Workmen's Compensation", Sessional Papers, Part 14, Volume 44, No.65 (1912), p.57.

[26]Ibid., pp.8-9.

[27]Canadian Manufacurers Association, Industrial Canada, Volume XIV, No.7, (February 1914), p.922. and Sir William Ralph Meredith, "Final Report on Laws Relating to the Liability of Employers to Make Compensation to Their Employees for Injuries Received in the Course of Their Employment which are in Force in Other Countries", Ontario Sessional Papers, No.53, (October 31, 1913), p.4.

[28]Ontario, Minutes of Evidence, pp.8-9,57.

[29]Ibid., pp.158-159.

[30]Ibid., pp.178,185,196,268.

[31]Meredith, Final Report, p.4.

[32]Ibid., pp.2-7.

[33]Industrial Banner, March 13, 1914, p.6.

[34]Ibid., December 19, 1913.

[35]Canadian Manufacturers Association, Industrial Canada, Volume XIV, No.9, (April 1914), p.1138.

[36]Industrial Banner, February 13, 1914.

[37]Canadian Manufacturers Association, Industrial Canada, Volume XIV, No.7, (February 1914), pp. 919-922.

[38]Canadian Manufacturers Association, Industrial Canada, Volume XIV, No.13, (July 1914), p.1552.

[39]Meredith, Final Report, pp.11-15.

[40]Ibid., p. 17.

[41]Ontario, Minutes of Evidence, p.263.

[42]R.C.B. Risk, "This Nuisance of Litigation: The Origins of Workers' Compensation in Ontario" in David H. Flaherty ed., Essays in the History of Canadian Law Volume II, (Toronto: U of T Press, 1983), p.462.

[43]Michael J. Piva, "The Workmen's Compensation Movement in Ontario" in Ontario Historical Society p.43.

[44]Industrial Banner, November 12, 1913 to May 1, 1914.

[45]Meredith, Final Report, pp.17-18.

[46]Piva, op.cit., p.41.

CHAPTER THREE: OCCUPATIONAL HEALTH AND SAFETY

The initial euphoria labour experienced after the enactment of the Workman's Compensation Act in 1914 [now renamed Workers' Compensation] turned to dissillusionment by the late seventies. Although the Workers' Compensation Board [WCB] did indeed compensate injuries sustained in the process of work, the Board has been critisized for the way they have computed the degree of disability and hence the size of the award. However, this chapter will address the Board's inability to address industrial disease. The Ontario Government, as a partial response to the failure of the WCB to address industrial illness, passed the Occupational Health and Safety Act (Bill 70).

The first task of this chapter is to examine the failure of the WCB to fulfill its mandate and the subsequent legislation the government passed in the occupational health and safety [OHS] area. However, this chapter will not attempt to explain why certain legislation was passed, for example the OHS Act (Bill 70), for this would entail a much larger and complex study than has been undertaken in this thesis. Rather, it will explicate the way in which the state has dealt with the question of OHS - post Workers' Compensation - and what limits it has encountered in this process.

The presentation of this chapter will progress as follows. Section one will deal with the reasons why the Workers' Compensation Act has failed to meet its mandate. The second section will then provide an analysis of the way in which the government responded to the failure of

the Act. This will include an analysis of the efficacy of the subsequent legilation that was passed. The third section will deal with the priority setting process and instrument choice process in the Canadian state. An examination of public policy processes will provide a good basis for understanding the mechanics of state action in their concrete form. Section four will explore the limits the state is confronted with in connection with the regulation of OHS.

I

Paul Weiler, in his report on Workers' Compensation described some revealing facts regarding compensation for industrial illness. In a lengthy but telling quote Weiler highlights the dilema the WCB faces with regard to workplace related illness. He argues that the

> ...situation is entirely different when the disability stems from disease: particularly the multi-causal, long latency disease epitomized by cancer...it is inherently difficult to tell whether a person's cancer is caused by exposure to a toxic substance at work, or one in the general environment, or due to his own dietary, drinking or smoking habits. For a long time, this did not greatly trouble worker's compensation in Canada because there was little popular realization that the job was much of a factor in such diseases. By the Seventies, this age of innocence was over. The number of such disease claims have risen every year, nowhere more than in Ontario. But they regularly encounter legal and medical hurdles in being fitted with the traditional boundaries of a program for compensating occupational disabilities. The result has been a highly controversial caseload, lengthy delays, extensive appeals, and overall rejection rates of well over 50%: all in all eerily reminiscent of the tort regime for industrial accidents in the early 20th Century.[1]

This statement is not a complete surprise since the bulk of the original legislation centred around industrial accidents. Although six industrial

diseases were included in the Act with a provision that more diseases would be added to the schedule when information proved them to be work related, this process has been piecemeal and slow. This is partly attributable to the nature of industrial illness and the nature of scientific proof.

As illustrated in the first chapter, many industrial diseases entail a latency period. This latency period is complicated by the fact that cancer can be contracted by a variety of substances, this includes substances that are voluntarily introduced into the body, for example, lifestyle. The task of the WCB then becomes not the recognition of disease, but, the identification of the source of that disease. C. Reasons, L. Ross and C. Patterson succinctly state the dilemas facing the WCB:

> ...compensation boards are reluctant to compensate for diseases unless there is absolute proof of causation, otherwise, they tend to assume other causes, such as eating, smoking or "lifestyle" habits...While one's personal habits may contribute to the development of the disease, the workplace itself is an independent producer of cancer.[2]

In effect then,the WCB's policy of attempting to define whether the injury, in this case disease, is attributable to the workplace, transports us back to the situation workers faced in the early twentieth century. With the establishment of the WCB workers no longer had to prove that their injuries were solely attributable to the negligence of the employer. However, seventy years later, workers again have to prove their injury was directly attributable to the negligence of the employer, although in this case it is disease and not accidental injury. This now leads us to the criterion the WCB uses with which to make their decisions.

The WCB makes its decision based on the existing scientific

evidence related to the disease they are examining. This brings into play a host of issues relating to scientific proof.

One problem arises with conflicting evidence. For example, numerous studies have been conducted on the incidence of disease related to the workplace. Estimates have varied as much as 35 percent as to the incidence of workplace attributable disease.[3] Richard Peto has argued that the issue of occupational disease has become politicized in the scientific community. He claims that:

> [t]he vacum of reliable scientific knowledge is such that each side can find scientists who will maintain in courts, in public hearings or in the scientific literature whatever is politically convenient, and it is important to recognize that scientists on both sides of this debate now have a career interest at stake in it.[4]

While the inuendo about character is unnecassary, Peto's argument has validity in that both sides have scientific evidence to prove their arguments. This does not mean that there was any intent on the part of scientists to lie or manipulate their evidence. However, it must be recognized that scientists are not immune to political and value judgements.[5] Once a scientist states a position, it becomes tied to his career through prestige and personal integrity. On the other hand, it provides scientific information that is conflicting and can be used to prove validity of any given argument.

A second problem deals with the nature of proof. Scientists tend to be very cautious with regard to absolute certainty. According to Bruce Doern:

> Scientists...are naturally and necessarily careful about the statements they make about causal knowledge. They have a more cautious sense of 'evidence' about

> standards of exposure limits for example. They are likely to advocate therefore, that the standards be viewed as guidelines and that more research needs to be done.[6]

The legal burden of proof is less stringent. If evidence displays a reasonable amount of proof, it is accepted.

> The standard of proof required for acceptance of a scientific thesis is much higher than that required by the law...The law attempts to make the best decisions on the information that exists. Absolute certainty or even consensus in not always required. What is required is an opportunity for all evidence to come in and for all parties to be heard.[7]

However, the role of the WCB is to protect the workers right to to compensation for injuries arising out of the workplace. Their role then must include the protection of workers rights regarding industrial disease. In a case of discrepency the benefit of the doubt would ideally be given to the worker. This has not been the case. Weiler argues that:

> ...the Ontario worker who believes he is suffering from an occupational disease does not face the bleak prospect of litigation...as does his counterpart south of the boarder. But the meager chance of ultimate success has had much the same depressing effect of the possibility the someone will actually make the claim. The total number of cancer claims made to the Ontario Board has never ammounted to more than 100 in one year: less than one seventh of what Doll and Peto conservatively predict to be the annual total of occupational cancer deaths in the province.[8]

Doll and Peto, two British epidemelogoists, undertook a study that concluded only two to three percent of cancer was occupationally related. This was termed a 'conservative' prediction because other studies have claimed that up to forty percent of cancer was occupationally related. This then leads us to the conclusion that even in conservative terms the

amount of occupationally related diseases that are actually claimed do not illustrate the actual scope of the problem. Consequently, the WCB has been partially successful in the area of industrial accidents, but the nature of the system has disuaded workers from claiming compensation for industrial diseases.[9] The question now to be investigated is how successful has the Workman's Compensation Act been in regards to preventative measures.

Employers contribute to the workers' compensation scheme according to their industrial rating. What this means is that each individual interest is grouped into one industrial rating according to criterion set by the Board. The individual employer then pays a compensation rate identical to those in the same industrial grouping. This has seriously affected any type of prevention policies.

Originally, the goal prevention was to be met by employers internalizing the costs of accidents and disease. This was based on the theory that an employer would direct a certain amount of capital towards safety measures. This in turn would lower the rate of accidents and eventually lower the rate of compensation contributions made. This theory was ideal as it worked on the supposition that employers would create a safe and healthy work environment without the need for government regulation. For the most part, this did not take place.

Since each employer was grouped together according to their industrial classification, they all paid the same fee. This removed all economic inventive to install safety mechanisms. For if one or more industries were unwilling to introduce safety mechanisms, even if the others have, the industrial rating of the industry group was not reduced.

Weiler puts it more succinctly when he argues:

> As economic analysis demonstrates, the presence of 'free riders' in such a market means that private action (which here must mean employer action) will generate nowhere near the degree of safety investment which would be optimal from a social point of view.[10]

Thus, due to the nature of the fee schedule, the Act did not provide sufficient incentive to invest in preventative mechanisms.

It has thus been illustrated that sevety years after the Workers' Compensation Act has been introduced, the Board has met its task with regard to industrial accidents, but due to the nature of the legislation, they have failed by impeding a free market solution in the area of prevention, although it is questionable whether a free market would rectify the situation. In additon, the nature of industrial disease, complicated by multi-causal factors, has contributed to the dismal record the WCB holds in the area of workplace related disease. Gus Frobel's case epitomizes the failure of the Workers' Compensation Act.

In 1968 Gus Frobel was told he had cancer. Convinced that this cancer was a direct result of him employment in the uranium mines, he set out to prove this. In 1968 his first claim for compensation was rejected. Six months later Frobel filed an appeal which was also rejected. As a result, Frobel had compiled enough evidence to convince the WCB that his cancer was indeed a direct result of his employment in urnaium mines. Gus Frobel was the first man to convince the WCB that his cancer was job related.[11] Gus Frobel's case was not atypical.

Labour in Ontario had adamantly been lobbying for OHS reform since

the mid-sixties. Much of this effort was concentrated in Elliot Lake. Elliot Lake is a single industry town in Northern Ontario. The major industry in Elliot Lake is uranium mining. The mines are owned by two companies, Dension Mines and Rio Algom. The concern for OHS reform is attributable to the nature of uranium mining. Not only are the uranium miners exposed to hazard such as noise, dust, fumes, rock cave ins and mud slides, all of which are common to hard rock mines, they are also exposed to the much deadlier and unseen risks of silica dust, and gamma rays.[12]

The uranium miners in Elliot Lake, spurred by the increasing incidence of disease amongst their fellow workers, Gus Frobel's victory and frustrated by their inability to push the Ontario Government into action, turned to the provincial leader of the NDP, Stephen Lewis. In 1974, the NDP sent a task force to Elliot Lake to study the safety of the uranium mines.

The task force discovered an increasing number of miners contracting silicosis and cancer as a direct result of their employment in the mines.[13] Lewis was outraged. In the legislature Lewis attacked the government, accusing it of what he argued was criminal negligence. As a result of Lewis's campaign and Gus Frobel's plight, the media was beginning to direct its attention to OHS hazards.

Elliot Lake thus became the focus of media attention and the provincial government was put into a situation where it had to act. The Ham Commission was appointed in 1974 to offset unwanted publicity. The mandate the Ham Commission was to inquire into and report upon was the health and safety of mine workers in Ontario.

In its report to the provincial government the Ham Commisssion stated that the most significant obstacle to OHS reform was a blurred responsibility system. Much of this blurred responsibility was attributable to the state's historical faith in the market paradigm - let the market provide incentives for OHS reform. In his report Ham argued, indeed "...at times it has not been clear whether initiative was considered to rest with industry or the responsible ministry."[14] Blurred responsibility not only occurred between the state and the private sector but it was also predominant within the ministries themselves. Ham also urged that any comprehensive attempt to promote the health safety of workers in any industry must include the participation of the worker.[15]

In response to the recommendations of the Ham Commission the Ontario Government enacted Bill C-139. Bill 139 "...was acknowledged to be interim legislation to be replaced in the near future by a more extensive omnibus bill which would draw together all existing health and safety legislation."[16] In 1978 this "omnibus" legislation was enacted - Bill 70. It is evident by the composition of the Act that some of Ham's recommendations were incorporated, especially with regard to worker participation. Basically the Occuptaional Health and Safety Act is based on the principle that:

> ...hazards can be best dealt within the workplace itself through communication and co-operation between employers and workers...Fundamental to the Act is the concept that employers and workers must share the responsibility for occupational health and that both must actively seek to identify hazards and develop responses to protect the workers.[17]

Examining the principle on which the Act is based, it becomes evident that the state has not completely lost its faith in the ability of industry to self-regulate. Despite the failure of the Workers' Compensation Act to

effectively spur employers to prevent OHS hazards, much of the onus for occuptaional health and safety was placed on employers and employees. The state, although authorized to enforce the provisions of the Act, played a small role in the actual mechanics of prevention.

In effect, although the failure of the Workers' Compensation Act was part of a larger movement for OHS reform in Ontario which had its various stages in the Ham Commission, Bill C-139 and Bill C-70, the government still relied heavily on the self-regulation of industry, a concept that seems to have failed in the Workers' Compensation Act. Thus, given the fact that the OHS Act was partially a response to the impotence of the Workers' Compensation Act in addressing the prevention of hazards, an assessment of the success the OHS Act has enjoyed is now in order.

II

One of the problems with the Act first has to do with the principle of internal responsibility, which was clearly the government's response to Professor Ham's recommendations. The principle upon which it is based stems from the philosophy that workers and management could better identify occupational hazards because they were directly involved in the production process. A recent NDP task force instituted to study the effectiveness of the Occupational Health and Safety Act found that the internal responsibility system, although theoretically sound, was not working. The task force report maintained that the first flaw with this type of responsibility system was the imbalance of power. As a result,

> [w]orkers in every city gave detailed accounts of difficulties they face in making the Internal Responsibility system work as a mean of resolving health and safety problems between management and workers. Ultimately workers have to depend

> on the willingness of management to institute suggested reforms. There was widespread reluctance on the part of management to accept the intention of the Act to protect workers. When faced with uncooperative management, workers had far too little power to make their workplaces safe.[18]

The failure of the Act to specifically lay out administrative procedures compounded the imbalance of power between labour and management. Since there were no specific provisions that placed the adminsitrative responsibilities on any party, management took over this role. They increased their power by controlling the setting of meetings, setting the agenda and providing minutes of the meetings.[19] The Act also failed to set a time limit for the period that could elapse between the identification of a potential hazard, and the consequent investigation.[20] Also, the Department of Labour does not involve itself in the workings of the OHS committees unless there is a stalemate. In this sense their role is limited to arbitration. These factors led the task force to conclude that the intended role of the Internal Responsibility system had not been fulfilled.[21]

The second point of contention lay in the area of enforcement of the Act. According to Department of Labour records, in one year 71,000 orders were processed for infractions of the Occupational Health and Safety Act. Of those 71,000 orders, 8,500 had to be repeated, and of those 8,500 repeat orders there were only 82 prosecutions. In light of this information, the NDP task force concluded that the Act was being feebily enforced.[22] Much of this was attributable to the suspect practices of the inspectors. According to the evidence presented at the task force hearings, there were repeated claims that inspectors were overlooking

hazards.[23] Labour members of the OHS committees also claimed that in many cases when they brought hazards to the attention of the inspectors, the inspectors placed the responsibility for the hazard's containment on the unions ability to get management to comply.[24] A third grievance workers had with the inspectors was with regard to the many cases where the inspectors issued orders but did not ensure that these orders were fulfilled.[25] Basically, the task force found that:

> Even when the Act or regulations clearly required management to undertake certain responsibilities, the Ministry of Labour would not use its legal clout to force the company's compliance. Clear violations of the Act went unheeded by the Ministry, often without so much as a slap on the wrist of a company.[26]

The third area of compliant with regard to the effectiveness of the OHS Act was the right to refuse dangerous work. Ideally, the Act was designed to grant the worker the right to refuse any work that was dangerous without the fear of reprisals from his/her employer.[27] When a worker felt that the work he was supposed to do was dangerous, he was to tell management. Management would then study the area and decide on whether or not the workers complaint was justified. If no agreement was reached the Ministry of Labour then inspected the proposed worksite and made a decision. However, the task force found that in many instances the workers claimed that they were better off working in a dangerous situation than refusing, for the Act did not adequately protect the worker against reprisals.

Fourth, the worker's right to information seems not have been substancially imporved with the passage of the Bill. This is another area of the Act that was modelled on recommendations from the Ham

Commission. Although there is a provision for access of information, the onus of collecting information in practice has been placed on the workers. The act specifically dealt with the access of information in making the provision that:

> ...employers are obliged to provide information to assist in recognizing hazardous conditons... these sections have done little to ease the difficulties in obtaining information on hazardous substances...The law does not require companies to have safety data sheets; nor does the law require the manufacturer to supply them. Where health and safety committee members or representatives tried to take advantage of their rights to information under the Act, they found the companies either did not have the information, refused to release it or did not offer the information to their committees.[28]

The fifth area of controversy surrounds the effectivenss of Occupational Health and Safety Act in the regulation of toxic substances and workplace hazards. In this regard it is charged that the Ministry of Labour has been slow in designating substances for regulation. For the most part approximately 25,000 substances are known to be used in various production processes, but they are largely unregulated. Some of these substances will be subject to guidelines, however these are not legally enforceable. Very few are subject to regulated standards.[29]

On the whole then, the OHS Act in Ontario has not been effective. The failure of the Act can be attributed to, first, the lack of specific wording in the Act; and, second, the reluctance of the Ontario Government to stringently enforce the Act. However, the significance of these factors lies in the fact that the problematic areas of the Act are precisely those that management was opposed to before the passage of this legislation. This needs further scrutiny.

Similar to the Workers; Compensation Act, employers were not opposed to safe and healthy workplaces in principle. However, in their briefs to the Ham Commission they argued that it "...was the moral, legal and financial responsibility of management to formulate health and safety policy. Legislation was considered to be inappropriate and unnecessary in combating the health hazards faced by miners."[30] Basically management made four suggestions regarding the form the OHS Act should take (1) A flexible approach should be adopted by the Ministry of Labour so that only those industries with poor OHS records should require health and safety committees, the rest of industry could voluntarily establish these committees; (2) Management argued that guidelines rather than standards be instituted for the regulation of toxic substances so as not to unduly constrain the power of management to control the pace and conditions of work; (3) They lobbied for a stringent definition of what constituted "unsafe work" so workers could not "abuse" the right to refuse work; and (4) Maintained that the costs of preventative mechanisms should be taken into account so that there would be no threat to profits.[31] All in all, while "...almost all the briefs started with statements affirming the importance of protecting the health and safety of workers, none favoured comprehensive legislation to achieve this goal."[32]

It can thus be argued that the state has been limited in its ability to carry out the objective goals of the OHS Act. The task now at hand is to determine whether or not the governments inactivity is a direct result of management opposition or whether the government is limited by other factors. The remainder of this chapter will thus revolve around the limits to state action. However, the first task at hand is an

examination of the mechanics of the public policy process, for a clearer understanding of the state action can be discerned if an analysis of the priority setting and governing instrument choice process is undertaken. This will prove useful, for an examination of this type will assist in illuminating the way in which the state deals with societal pressure and change. An investigation of the priority setting process is now in order.

III

At best, the state's priority setting process can be described as mildly chaotic. According to Bruce Doern and Richard Phidd, since "...governments must both lead society and be responsive to at least some of the democratic demands placed upon the, it should not be surprising that priority setting is at best an eposodic affair."[33] Consequently, it is this contradiction between leading society and being responsive to societal pressures that characterizes the nature of the priority setting by the state.

When the state sets its priorites it is fundamentally concerned with the prevalent social, economic and political climate. It is these factors that ultimately prevail in the priority choice process. However, another factor, often overlooked, is the role of the bureaucracy in this process. The bureaucracy is ranked hierarchically[34] according to how closely their mandate corresponds to the maintenance of the socio-economic system. For example, the Department of Finance has more political clout than the Department of Health. This is important in the priority setting process in two ways. Firstly, since society has become so technologically advanced, the bureaucracy, as a source of expertise, has gained prominence.

Interest groups and lobbyists no longer approach their members of parliament, but try to influence the minister responsible through the bureaucracy.[35] Hence the bureaucracy is now playing a larger role in the policy making area. Consequently, it will have more input and decision making power over the types of priorities developed.

Secondly, each department has its own list of priorities, some of which will be translated onto the governments priority list. The chances of an issue reaching the central list increases with the degree of authority the department with which the issue is related to has. A good example of this is the OHS issue. Even if the OHS issue was a high priority for the Department of National Health and Welfare, the degree of clout this department has, as opposed to that of the Department of Finance, is considerably smaller. Thus policy concerning the economy, regardless of the fact that these issues may be lower priorities in their departments, have a better chance of becoming governmental priorities. In effect, those who seek to place the OHS issue on government priority list must in

> ...addition to making it onto the general political agenda, persons concerned or harmed by, particular hazards have to muscle their way onto a second agenda... their are numerous departments whose mandates totally or partially embrace health and safety concerns. Each of these departments has a minature agenda of its own dictated by the broader political environment as by the pressures, self-interest and concern of its own particular clinetele.[36]

Priority lists are not only designed in light of the power of the bureaucracy - the prevailing social, economic and political climate is also significant. Consequently, the economic climate may constrain the type of policies that will be addressed. Concurrently, the state must also act in light of the social and political situation existant at the

time. For example, even though the state might not act upon an issue due to economic constraints, political pressure can alter this. However, once an issue becomes a government priority, the next task the government is faced with is the choice of policy instruments.

Once a policy or issue has become a priority, there are various choices the government has to make with regard to how to address these issues. The three competing instruments that the government must choose from are: exhortation, spending and regulation. With exhortation, the government tries to convince people to do something they might not do of their own accord. For example, the government may try to persuade management to install safety equipment. Management would, however, realize that undertaking this course of action would cut into the profits and productivity, and thus regard this course of action an opposed to their own interests. Thus, in the absence of any compensation for the loss suffered, they may regard the introduction of such measures as incongruent with their interests, and hence not comply.

The second governing instrument is spending. For example, if the government if unable to convince management to install safety equipment, it can provide a program whereby it will pay a percentage of the cost of installing safety equipment, thereby compensating the loss suffered by management. This is more effective than exhortation. However, this type of instrument choice involves the re-allocation of governmental resources from one policy area to another.

The third method used the state is regulation. Regulation, as Doern and Phidd characterize it, is an attractive tool because although regulation will result "...in the allocation of resources...these are in

the main, private resources, not governmental."[37] Thus, regulation is an attractive choice because it does not drain the state's resources and it also provides a legal method by which to back up "norms of conduct" that exhortation or spending cannot fulfill effectively. Regulation also has other appealing features that the other two methods lack. Rianne Mahon in her article on regulatory agencies provides an insightful characterization. She argues that:

> ...a regulatory agency is created to provide a framework for facilitating an 'exceptional' compromise in the face of political challenge that can only be met by altering the juridicial rights of capital...It may even involve a limitation on the corporate power or a challenge issued by subordinate forces or it may involve a conflict among different fractions of capital.[38]

Politically, regulation ideally suits the needs of the state. This is because regulatory agencies are seen, to a great extent, as politically neutral. As a result, when pressure is placed on the state that could, if not addressed, be politically damaging, the regulatory route is seen as the best choice. For as Mahon states:

> ...regulatory agencies...constitute a special case - they are 'independent' of the regular departmental and political apparatuses; they are 'open' to competing private inputs (adversary hearings); and their authority is specifically linked to their capacity to make 'politically neutral' judgements.[39]

Regulatory agencies then are perceived to be neutral, even though this may not be the case. The fact that regulatory agencies are not completely neutral can be illustrated by the degree of regulation that occurs and how it is enforced. For example, the degree of commitment by the state to a particular policy can be seen by its choice of either standards or guidelines. Guidelines are not legally enforceable, standards

are. However, no matter how stringent a standard may be, the way in which it is enforced is the real yardstick for measuring the degree of commitment by the government. Doern and Phidd best characterize the highly political atmosphere in which regulation occurs. They argue that:

> [s]ymbolic actions may also be needed to assauge and placate those with concerns that, for a number of valid or invalid reasons, are simply ranked at the lower end of the government priority list. Is in this sense that action which we might otherwise wish to classify under one of the other instrument lists may at times be perceived by the interest concerned to be an insufficient response or an act designed to buy more time. Thus groups that wanted action may get a Royal Commission instead. Or, alternatively, those that said "there ought to be a law" get their regulation passed, but it is only then feebly enforced.[40]

Given the aforementioned, it can be argued that the government, when faced with a politically charged atmosphere, will choose regulation as the means by which to diffuse conflict. An examination of the reasons why the Ontario government choose to use regulation to tackle the OHS issue, and the limits this choice presented will now be instructive.

In the case of OHS, the Ontario government choose the regulatory route. The reasons for this choice are numerous. Firstly, it is suggested that since OHS regulation could conceivably interfere with the rights of capital to control the workprocess, the most expedient choice - in light of Mahon's analysis - would be regulation - expedient as regulatory agencies appear to be removed from the political process. Secondly, the prevailing ideology with regards to OHS - in all likelyhood - also contributed to Ontario's choice to regulate. In other words, since the the government believed that the market could to a large degree regulate

itself, regulation with partial reliance on the ability of industry to be self-regulating when in cooperation with labour, was choosen. Thus, much of the onus for OHS reform was placed on the private sector thereby freeing the state,as much as practicably possible, from interfering in the production process. Regulations would exist, but the degree of commitment could be manipulated by the way in which these regulations were enforced. Thirdly, by choosing regulation, a minimum of resources had to be allocated by the state. What occurred in fact, was a re-allocation of private sector resources for protective equipment - since there was no government assistance or compensation. Fourthly, it was an attempt by the government to address labours demands. However, no matter how appealing this tool of governing appeared to be with regard to OHS, it also constrained the degree of government action. These limits must now be examined.

III

The introduction of new technology can increase social wealth through the attendant increase in labour productivity. However, along with this increase in social wealth there are attendant costs, environmental and physical. Or in other words, 'negative external' effects of accumulation. Doern characterizes the regulation of OHS as: "...the soft underbelly of economic regulation, precisely because it deals ultimately with who will bear the hidden costs of new products and production processes. To allocate costs more accurately, and to improve health and safety ultimately involves more intervention in production and private sector decision making."[41] Thus, the first of these limitations involves the degree to which the state can effectively regulate in the area of OHS without creating conflict by

erroding some control over the production process from the private sector.

To begin, conflict could be generated by intervention in research and development. In Canada however, this form of intervention is futile as only a small percentage of research and development is actually done in Canada. Thus, although it seems that the most rational approach in the identification of a hazard is to identify it as early in the production process as possible, this is not the case in Canada because of the branch plant nature of the economy.

Secondly, the intervention at the mineral exploration stage and milling stage is also difficult in Canada where historically there has been a concerted effort by both levels of government to create a favourable climate of investment for the mining and petroleum industries. This can be attributable to the fact that these industries were considered high risk ventures and governments endeavoured through various policies to get companies to actively enter these fields. Thus, any stringent regulation of OHS could divert investment elsewhere.

The difficulty of interveining at the manufacturing level is a third source of constraint to government action. The effects of this intervention - for industry - at this point is costly and brings the possibiiity of disclosing trade secrets. Thus again government is constrained. On the whole, the state could intervene in many of these areas, but the political considerations - namely the free market ideology prevalent in Western Liberal Democratic societies - are a severe constraint on the extent to which the state can act.[42]

Another level of obstacles confronting state regulation of OHS concerns the scarcity of resources. In the mid-sixties, social regulation

was looked upon favourably - examples of this can be seen in the proliferation of social welfare measures in Canada in the sixties - however, in the inflation ridden seventies this trend has changed. For the most part, governments in the Western world have been pressured to cut down or limit their spending in area such as health, education and welfare spending. Thus in the area of social regulation, the state has had to make do with existing resources because of political constraints. The scarcity of resources is a predominant constraint. Regardless of how effective the regulation may be in principle, the lack of resources to implement it hampers the effectivenees of the Act.

In sum, the first form of constraint on state policy making arises out of the choice of governing instruments. The next restraining factor on state action in Canada is divided jurisdictions of the federal system. With regard to OHS, these divisions have become increasingly blurred both intergovernmentally and interdepartmentally. These blurred jurisdictions have created obstacles to coherent OHS regulation in Canada.

At the federal level three departments have major and differng responsibilities in the area of OHS: Labour Canada, the Department of National Health and Welfare, and the Atomic Energy Control Board [AECB]. Based upon the Canada Labour Code, Labour Canada's responsibilities lie in the six major areas of sanitation, electrical safety, building safety, fire safety, coal mine safety and noise control. The OHS area is administered enforced by the Occupation Health and Safety Branch and Regional Operations. Regional Operations deals with occupational medicine, laboratory support, industrial hygiene, program/policy development, and safety engineering.[43] However, the focus of this latter branch has centred

around industrial accidents as opposed to disease.

The department of National Health and Welfare's role focuses on monitoring and researching health hazards. Traditionally the department's role centred around enforcement of the Food and Drug Act. Only recently has the department begun to focus on OHS, but their resources have not kept pace with their expanding role. The Department of National Health and Welfare is also the major source of expertise for other departments.[44]

By means of its regulatory authority over urnaium mines the AECB also plays a role in OHS issues. Constitutionally, the provinces have ownership over their natural resurces, but the case of urnaium is atypical. The federal government was granted jurisdiction over uranium mines for reasons dealing with national security. The AECB, which was created in 1946, regulates all aspects of the uranium industry. However, in most cases this usually entails compliance with the provincial mine acts. The AECB also provides a research role.

Consumer and Corporate Affairs also plays a small role in the regulation of hazardous substances in the workplace. Through the Product Safety Branch, with authority given by the Hazardous Product Act, the Department of Consumer and Corporate Affairs concerns itself with the use of products "...without deference to end use which are poisonous, toxic, flammable, explosive or corrosive and thus can be applied to broader end use or even workplace situations."[45] On the whole, the federal government's role in the area of the OHS is centred around research and monitoring as opposed to regulation. Provincially, the division of OHS areas has been the Departments of Mining, Labour, Health and Workers'

Compensation Boards. In Ontario, since the passage of the Occupational Health and Safety Act, there has been a consolidation of the OHS role. Prior to the passage of Bill 70, several pieces of legislation encompassed all the areas of Occupational Health and Safety.[46]

This overlapping responsibility of governments and departments gives rise to a number of implications with regard to OHS policy. The first implication that arises out of the division of powers is the failure of governments on both levels to act. For when a highly politicized issue arises, one level of government might fail to take action, claiming the other level of government is responsible for this area.[47] This blurred responsibility does not have to limit government action. The Science Council of Canada's report on Canadian Law and the Control of Exposure to Hazards maintains that:

> [C]onstitutional limitations should not seriously impair the ability of either the senior levels of government to deal with environmental contaminants. Parliament and the provinces can co-opearte by enacting complementary legislation. Moreover, both levels of government have ample powers to deal effectively with the subject without relying on the other for assistance.[48]

The lack of constitutional barriers, notwithstanding, what has occurred with blurred responibilities is that governments, when faced with politically explosive issues, can put off making decisions. In effect, what occurs is "passing the buck". Thus, although constitutional factors ideally should not limit OHS reform, politically it may be used as a tool to do just that. Thus, only when federalism is married with a highly political issue can it be limiting. These political conflicts are also evident in the bureaucracy.

The hierarchical ranking of bureaucratic departments lends itself to political power struggles. These political struggles result in an aura

of mistrust between departments. This had important implications for OHS reform, primarily, duplication of information. What occurs is that departments may simultaneously research the same issues, for example, hazard identification, but not share the information. This also occurs intergovernmentally.[49] The end result of these power struggles being, many resources are wasted on duplicated research rather than being used for new research.

The divided jurisdictions between departments gives rise to another complicating factor. That is,

> ...within any government, for every department or part of a deparment or regulatory agency whose task is to regulate safety and risk, there is another department or another part of the same department whose task is to promote or help develop a given industry or activity.[50]

Therefore, the Department of Trade and Commerce may have priorities that are in opposition to those of the Department of National Health and Welfare or Labour Canada. Also, given that the position in the hierarchy of departments determines the amount of political clout, those departments lower down in the hierarchy are politically disadvantaged. However, the major complicating factor that federalism creates is the ability of certain interests to lobby two levels of government. As Doern states,

> [t]he division of political authority enables both corporations and unions to lobby on a multi-lateral basis...Differences in standards, in policies, and in compliance strategies and practises are partly explained by the political opportunities which federalism encourages. Federalism also requires the striking of bargains between regulation and compliance. Because many areas of jurisdiction are blurred, or are though to be blurred, the political trade-offs between levels of government are frequently made, not just in the area of

> regulations themselves, but rather in the enforcement of regulations, with one level leaving or contracting enforcemnt to another level.[51]

Hence, federalism allows issues to become politicized both intergovernmentally and interprovincially. The different levels of government can put of actions claiming the responsibility lies at another level,departments and governments will duplicate research, and both levels of government can be subject to environmental blackmail, the latter meaning that industries which might be opposed to certain types of legislation in one province, might threaten to move their industries to another province where the regulation may not exist or may be less stringent. Thus, although one might assume that divided jurisdictions might lead to comprehensive legislation, in most cases it hinders it.

Another constraint - not related to federalism - involves the high degree of foreign investment in Canada. The first concern lies in the nature of Canadian exports. Canada's mining industry, which has a high proportion of OHS hazards, exports the majority of its resources to the United States to be processed. Bruce Doern succinctly highlights the problems with this for Canada. He argues that, "...in some industries, particularly mining, Canada may absorb the occupational and environmental health costs and export the benefits of the resources to other countries, particularly the United States."[52]

Secondly, as mentioned previously, the state is unable to intervene at the research and development stage in the identification of hazards since most of the research is done at the parent branch in the U.S. Thus, high foreign investment does complicate the regulation process. It must also be noted that the state is also open to environmental blackmail

by foreign companies also.

OHS reform is also constrained by the legal system in Canada. this rests on the fact that first, courts can only rule with regard to the division of powers, and secondly, the onus is placed on individuals to prove that a certain production process is hazardous.

The Canadian courts have historically, for the most part, only legislated with regard to procedural issues or jurisdictional issues. With regard to jurisdictional issues the court was empowered to make decisions on whether the action of one level of government was ultra vires or intra vires. In other words, the courts decide whether the legislation or actions of either level of government were in the sphere of their powers as layed out in Sections 91 or 92 of the constitution. Procedural issues are supposed to be ruled upon the basis of whether a given agency or board has acted in accordance to the procedures layed out in their mandate. This constrains the role that the courts can have with regard to regulation.[53] In the Science Council of Canada report on Canadian Law and the Control of Exposure to Hazards it was found that there

> is practically no tradition of judicial enforcement of regulatory requirements. The role of the courts is limited essentially to procedural and jurisdictional issues...The result is that court intervention and enforcement or standard setting decisions or agencies concerned with hazardous substances is extremely limited. To set a decision aside it is necessary to establish that the agency acted completley without evidence on a material issue, or that it based its decision on irrelevant matters or failed to take relevant matters into consideration. It is virtually necessary to prove that the agency acted arbitrarily or capiriciously.[54]

Thus, using the example of OHS, even if labour is dissatisfied with the

degree of enforcement of the Occupational Health and Safety Act in Ontario, it is extremely unlikely the courts could be of assistance to them.

The legal system also limits the identification of hazards in a more profound way. The nature of production is instrumental in this limiting factor. Governments have imposed secrecy on information concerning production processes. This is based on the fact if this information was disclosed, trade secrets would also be exposed. Thus, the government protects industry through secrecy. The Science Council of Canada further states that:

> ...the existing legal framework for regulation is seriously biased in favour of contaminant production. Our legal system emphasizes secrecy at the expense of disclosure...Government agencies withhold studies that indicate the extent of contamination and the harms that result from it. They refuse to release information concerning potential violations of the law because the information may be libellous or might destroy the working rapport between the inspector and those under his authority.[55]

However, this secrecy does not affect those that produce the hazard. Government files and documents are freely given to industry.

This secrecy affects the hazard identification process in another way. The legal system of Canada places the burden of proof on individuals. What this means is that if an individual or group wants to stop production of a suspiciously hazardous material, they have to prove that the process is in fact hazardous. The product or process is safe until proven hazardous. However, this rarely halts contaminant production due to the nature of scientific evidence as opposed to legal proof.[56] Thus, the Canadian legal system makes it difficult for private individuals to stop

the production of hazards. Similar to the WCB, the government is also limited by the nature of scientific proof.

The first obstacle that confronts both the state and the scientific community is the sheer number of new chemicals and new technological processes that enter into the market yearly. Ashford, in his book Crisis in the Workplace, illustrates how this limits OHS prevention in three major ways. First, there are about 12,000 chemicals that are known to be toxic. Thus, sheer numbers limit the amount of research that can be undertaken each year. Secondly, many of the labourers are exposed to different combinations of chemicals. There are therefore, millions of these pairs that have to be investigated. Thirdly, the latency period of occupational disease limits research as any study must span decades in order to determine the extend of hazards with regard to any product or production process. Clearly science - although also implicated in the very production of these toxic substances - is limited by the number of hazards that enter the marketplace every year.[57]

The difference between the nature of scientific proof and legal proof also affects the way in which the state deals with the prevention of occupational health and safety standards.[58] Legal criterion of proof is much less stringent than scientific proof. This fundamentally alters how the state reacts to OHS issues. In the study of the Regulatory Process and Jurisdictional Issues in the Regulation of Hazardous Products in Canada, the Science Council of Canada found that in

> ...many of the areas of the regulation of hazardous products and substances, lack of research is not the main problem. A very normal conflict emerges in this regard. Scientists, for example, are naturally and necessarily cautious about the statements they make

> about causal knowledge. They have a more cautious sense of evidence about standards ...they are more likely to advocate therefore, that the standards be viewed as guidelines and that more research needs to be done. Economic interests will exploit this argument and use it to justify looser standards or postpone action until more conclusive cause-and-effect evidence is produced. Unions and others who must seek more precise administrative and legal criteria of evidence will opt for precise legislated standards.[59]

Scientists are thus more cautious about causal evidence than the legal profession - a situation from which problems can arise. The caution of the scientists can be misinterpreted by interests that oppose stringent regulation. They will interpret the science community's caution as a lack of scientific proof because it is in their interest to disregard the legal criterion of proof.[60] The most important implication arising from this is that when one speaks of regulation, once necessarily speaks of legal criterion, thereby severely limiting the regulation of hazardous substances. The state can also be open to this type of misinterpretation which in some cases can be used to their political advantage.

Scientific evidence can also create problems with regard to value judgements. The fact that evidence is scientifc does not preclude the presence of value judgements - either implicit or explicit. In his book, The Politics of Cancer Samuel Epstein illuminates this issue when he maintains:

> [i]t is vital that the public learn where the science of cancer ends and social policy considerations begin. Further, it is important to realize that the basis of many so-called 'scientific' decisions are in fact economic considerations, and not science. When regulatory judgements are made and laws are passed (or not passed) which touch on our lives and welfare, we must understand the real basis of the decision making process.[61]

The fact that scientists do not always agree on whether something is hazardous or not also contrains the state. When two studies have completely divergent results with regard to the same hazard the danger that both studies will be used by different groups to promote their interests will become increasingly prevalent. For example, the industries will present studies that show a particular chemical or production process is safe while labour will come armed with evidence that proves the contrary. In public inquiries that usually have limited space of time in which to make recommendations to the government, this only serves to confuse the issue at hand. This issues is whether the costs outweigh the acceptable risks.

Thus, the nature of scientific knowledge with regards to OHS hazards can limit the state's ability to act. However, as with the other constraints under discussion, the state can also use them to put off the need for immediate action when faced with a politically explosive situation.

A digest of the constraints placed upon the state action in the area of OHS had been presented. These limits were: (1) The degree to which the government could intervene in the production process without creating conflict erroding capital's right to control the workprocess; (2) The scarcity of resources; (3) Blurred jurisdictions both intergovernmentally and interprovincially; (4) The legal system; and (5) The limits of scientific knowledge. However, it was also shown that these constraints could be overcome and that the government in most cases may use these limits to delay the need for immediate action. Thus, these factors are only constraining in that the government may seek tc use them as a means to avoid action. In effect the, the real limits to OHS reform is the

government's reluctance to take action in this field. Therefore, if one is to discern the "real" limits to government action, one must attempt to decipher these reasons, for these aforementioned factors are only the concrete expressions of the fundamental limits of the state. Thus, an examination of the government's rationale for erecting these "so-called" limits will prove enlightening. However, before this task is undertaken a brief summary of the role of the state is in order.

Since the state's foundations lie in the social relations of production and reproduction in a cpaitalist market economy, the state's primary role becomes the maintenance of these relations in order to preserve its own form. This means that the state must guarantee the conditions - or prerequisites - of capital accumulation, and it must also ensure the stability of the existing class relations. Since the class struggle is latent during periods of progressive accumulation, the state must increasingly adopt policies of economic growth. Thus, it is the state's need to ensure economic growth that becomes the primary rationale for state action. This rationale must be examined further in its concrete form which is the "so-called" limits to state action.

The first concrete expression of the state's limits is the degree to which the government can intervene in the production process without creating conflict by eroding capital's right to control the workprocess. Given that it is the capitalist's control of the workprocess that allows for the expansion of surplus value, any erosion of this control may result in a decrease in productivity. This is evident in the OHS case. If the government was to pursue a policy whereby all industries had to install ventilation equipment - that could conceivably entail an alteration of the

means of production - the managers of capital could no longer have complete control of the degree to which new technology could be introduced, and consequently the degree of surplus value to be extracted. Thus, if the state needs to continually pursue a policy of economic growth, it must only intervene in the production process to attain this end.

The state's function as provider of the "general conditions of capital accumulation" is a significant factor in the amount of resources it can channel to "social regulation". For example, in an economic recession the state may claim that it cannot get involved in areas of social policy because of the scarcity of governmental resources - for example the recent Ontario cut backs in education. However at the same time the government is channeling large portions of it's resources to subsidize industry - a recent Canadian example being the loan guarantee to the Chrysler Corporation. In effect, there is not a scarcity of resources, but rather, during profitability crises, the government must attempt to ensure the continue accumulation of capital. Thus, the state is limited in that it must - in economic crises - attempt to maintain the relations of production and reproduction.

The so-called limits to state action created by blurred jurisdictions and the legal system are closely related. The state must function as a hetergeneous formation of loosely linked apparatuses so that it can address the conflicting and competing demands of individual capitals and the working class. Thus, the separation of the government - division of powers - into federal and provincial governments, the multitude of bureaucracies and the judicial system addresses this necessity. The only time the state apparatus becomes closed is when the economic or social or

class structure in the society is threatened - for example, income policies, the War Measures Act. Only then does the real interest of the state apparatus become clear - it must ensure the existing capitalist relations of production and reproduction. For example, it was noted that the Canadian legal system was biased towards hazard production which entailed secrecy of the composition of the production process. The system is not biased towards hazard production per se, but rather towards the continued expansion of capital that arises out of the revolutionization of the production process. Further, the apparent inability of those concerned with OHS to "muscle" their way onto governmental priority lists is also fundamentally linked to the specific interests of the holders of state power and their agents. The overriding interest being the continued expansion of capital accumulation, or in other words economic growth.

Also, the limits of scientific knowledge also finds its basis in the need for economic growth. Scientific knowledge is not only important in the identification of hazards, it is also implicated in the production of these hazards. This must be explored further.

As the capital accumulation process develops, there is an attendant proliferation of complex production processes. These production processes are developed for the most part by scientists and those with advanced technical knowledge. Further, as capitalism develops individual capital can no longer provide this knowledge and must then turn to the state for assistance. The state as provider of the "general external conditions of capital accumulation", takes over this role. In effect then, the state also becomes implicated in the production of hazards in order to ensure progressive accumulation. Thus, any actions that may impede the

expansion of capital must be avoided.

As a result, all of these so-called limits to state action in the area of OHS have their foundations in the real limits to state action: the form and functions of the state which reflect the contradictions in a capitalist market economy. These contradictions become apparent during economic and political crises. The OHS case is a concrete expression of these contradictions.

The struggle for OHS reform - especially in the area of health - by labour was intensifying at the very time Ontario was experiencing a prolonged recession. Given the existance of this recession, the government was increasingly committed to guaranteeing the prerequisites for continued accumulation. Thus the state had to fulfill its two primary functions - ensuring continued accumulation and addressing labour's demands - at a time it was least equipped to. The end result was OHS legislation that was sound in theory, but reluctantly enforced. Given that the degree of enforcement exhibits the real commitment of the state apparatus to any given policy, it becomes questionable whether the state can act in the long term interests of any party, since OHS reform is in the long term interests of both capitalists and labour. Ultimately, the contradictions and constraints that both capitalists and labour are confronted with are transformed and reflected in the state. Thus, the government's reluctance to enforce the OHS Act was not the result of pressure from management - in the sense of the state being an instrument of the ruling class - but rather it was response and outgrowth of its very nature. Namely, it is suggested that even without pressure from management, it would have been unlikely that the OHS legislation would have been radically different. This is not to

say that management's pressure on the Ontario government was not a significant factor in the form the OHS Act ultimately acquired, but rather, it is an illustration of the way the state is limited in a capitalist market economy. In effect, similar to both capitalists and labour, the state is fundamentally constrained by the capitalist mode of production.

ENDNOTE CHAPTER THREE

[1]Paul Weiler, Protecting the Worker From Disability: Challenges for the Eighties, A Report Submitted to Russel H. Ramsey, Minister of Labour. April, 1983. pp.10-11.

[2]Reasons, Ross and Patterson, op.cit., p.42.
Reasons', Ross and Patterson's use of the term absolute proof is questionable. One can never ascertain absolute proof, even more so with regard to the causal factors of cancer that require lengthy epidemeological studies because of the latency period involved in the disease. To suggest that the WCB should compensate without as much proof as possible is problematic. However, their statement does bring to light a complex and important issue. That is, would a labourer - even if his personal habits have been linked to cancer - have developed cancer if he had been employed elsewhere. The question does not become whether or not the labourer would have developed cancer regardless, but rather did his employment contribute to the disease. If it did, under the Workers' Compensation Act, the worker has indeed sustained injury in the process of work and therefore has a legal right to compensation. Unfortunately, the WCB files are not accessible to all scholars attempting to ascertain how well the Board has met its mandate with regard to compensating industrial illness. However, Paul Weiler's Report on the WCB in Ontario provides evidence to suggest that large numbers of labourers who have developed cancer from work are not compensated. See pp.15-33, especially pp.24-25. Also see: Science Council of Canada, Regulatory Processess and Jurisdictional Issues,pp.44-46.

[3]Weiler, op.cit., pp.20-21., Reasons, Ross and Patterson, op.cit.,p.40 Ashford, op.cit., pp.10-11.

[4]Richard Peto, "Distorting the epidemiology of cancer: the need for a more balanced overview" Nature Vol.284, March 27, 1980.p.1.

[5]The area in science where value judgements have their expression is not in the actual scientific study itself, but rather value judgements or normative judgements intrude in the calculation of safety.i.e. What level of exposure is safe. For a brief but salient discussion on this matter see: Science Council of Canada, Policies and Poisons, pp.26-29.

[6]Doern, et.al., Living with Contradictions, p.3.5.

[7]Ashford, op.cit., pp.42-43.

[8]Weiler, op.cit., pp.30-31.

[9]Previous to the Weiler Report, there have been three Royal Commissions on Workers' Compensation in Ontario. These were: Mr Justice Middleton's Report in 1932; Mr. Justice Roach in 1950; and Mr Justice McGillivray in 1967. All have investigated the recurrent critisisms leveled at the WCB with regard to the size of the awards granted and the need to expand the number of industrial diseases which could be compensated.

[10]Ibid., p.100.

[11]Lloyd Tataryn, Dying for a Living,(Canada: Deneau and Greenburg Publishers Ltd., 1979), pp.73-91. For further available evidence on the difficulties of obtaining compensation for disease see: Reasons, Ross and Patterson, op.cit., pp.47-51.

[12]Silica dust, which is found in high grade ore bodies floats freely in the air and is inhaled by the miner. Over a period of time this dust creates scar tissue on the lungs. Eventually this scar tissue develops into nodules which cause the lung tissue to become inelastic, the end result being, difficult breathing. Unlike silica dust, gamma rays cannot be reduced by ventilation ; in fact, open areas increase the incidence of gamma ray bombardment. Gamma rays have been linked to lukemia and bone cancer. In addition to the health hazards of silica dust and gamma rays, the miners are exposed to decaying uranium which emits carcinogenic gases. The effects of this are invisible and latent.

[13]James Ham in his Report on the Health and Safety of Workers in Mines, also found evidence linking the escalating incidence of silicosis and cancer amongst mine workers in Elliot Lake.

[14]James Ham, Report on the Royal Commission on the Health and Safety of Workers in Mines. (Government of Ontario: June 30, 1976), p.78.

[15]Ibid., p.6.

[16]Walters, op.cit., pp4-5.

[17]Ontario Ministry of Labour, A Guide to the Occupational Health and Safety Act, 1978, p.28.

[18]Elie Martel, Not Yet Healthy Not Yet Safe, (A Speech in the Ontario Legislature by Elie Martel, MPP, Chairman, Ontario New Democratic Party Task Force on Occupational Health and Safety, April 1983), p.1.

[19]Ibid., pp.5-6.

[20]Ibid., p.6.

[21]Ibid., pp.3-9.

[22]Ibid., pp.11-12. With regard to enforcement, one of the major points of contention was with regard to the size of the fine to the employer. Labour argues that the fine should be large enough so as to be a detterant to further infractions of the Act. See the case studies conducted by the task force for further information.pp.10-16. Paul Falkowski from the United Steelworkers of Ontario, at the 13th Annual Convention of the CLC in Winnipeg, May 1980, also derided the Ontario Government for its lack of enforcement. See: Canadian Labour Congress, Proceedings of the Thirteenth Convention, (Winnipeg: May 1980), p.70.

[23]Ibid., p.11.

[24]Ibid., p.11.

[25]Ibid., p.11.

[26]Ibid., p.2.

[27]The Occupational Health and Safety Act, 1978 and Regulations for Mines and Mining Plants, Part V, Section 23, and Part VI, Sections 24, pp.20-25.

[28]Martel, op.cit., p.21.

[29]Ibid., pp.30-32. See also: Science Council of Canada, Canadian Law and the Control of Exposure to Hazards, (Ottawa: Background Study No. 39, October, 1977).

[30]Walters, op.cit., p.26.

[31]Ibid., pp.27-30.

[32]Ibid., p.27.

[33]Bruce G. Doern and Richard W. Phidd, Canadian Public Policy: Ideas, Structure, Process. (Toronto: Methuen, 1983), p.257.

[34]Rianne Mahon, "Canadian Public Policy: the unequal structure of representation" in Leo Panitch, ed., The Canadian State (Toronto: U of T Press, 1972), pp. 170-195.

[35]See: Rianne Mahon article: "Canadian Public Policy..." for a good discussion on the bureaucracy and the public policy process.

[36]Bruce G. Doern. The Politics of Risk: The Identification of Toxic and Other Hazardous Substances in Canada, (Toronto: Ontario Royal Commission on Matters of Health and Safety Arising from the use of Asbestos in Ontario, 1982), Study No. 5, p.1.4.

[37]Doern and Phidd, op.cit., p.257

[38]Rianne Mahon, "Regulatory Agencies: Captive Agents or Hegemonic Apparatusses", in J.P. Grayson, ed., Class, State, Ideology and Change: Marxist Perspectives on Canada, (Canada: Holt, Rinehart and Winston, 1980), p.159.

[39]Ibid., p.159.

[40]Doern and Phidd, op.cit., p.318.

[41]Science Council of Canada, Regulatory Processes and Jurisdictional Issues, p.17.

[42]Ibid., pp.17, 57-58, 156.

[43]Doern, Politics of Risk, p.1.3.

[44]Science Council of Canada, Regulatory Processes and Jurisdictional Issues , p.35.

[45]Ibid., p.35.

[46]Now included in the OHS Act are: The Industrial Safety Act, 1971; The Construction Safety Act, 1973; The Mining Act, Part IX; The Silicosis Act; and The Employee Health and Safety Act, 1976. Doern et.al., Living with Contradictions, p.3.4.

[47]Canadian Labour Congress, Proceedings 13th Convention (Winnipeg: May 1980), pp.70-71. Paul Falkowski gives an example of this "passing the buck".

[48]Science Council of Canada, Canadian Law and the Control of Exposure to Hazards (Ottawa: Background Study No.39, October, 1977), By Robert T. Franson et.al. p.75.

[49]Science Council of Canada, Regulatory Process and Jurisdictional Issues, pp. 40-43.

[50]Doern, The Politics of Risk, p.1.5.

[51]Science Council of Canada, Regulatory Processes and Jurisdictional Issues, p.19.

[52]Ibid., p.19.

[53]Science Council of Canada, Canadian Law, p.64.

[54]Ibid., p.64.

[55]Ibid., pp.75-76.

[56]In Canada there is no tradition of placing the burden of proof on the producer of the suspect hazard. Thus, the individual must prove that the suspect substance has harmed him personally. This becomes complicated by the latency period for there are limitation statutes that specify a certain limited time period that actions must be brought to court after the initial harm. For more information see: Canadian Law, pp.61-64.

[57]Ashford, op.cit,p.15.

[58]The difference between legal proof is comprehensively addressed in Canadian Law, pp.55-56.

[59]Science Council of Canada, Regulatory Processes and Jurisdictional Issues, p.29.

[60]The best example of this is the asbestos case. Lloyd Tataryn, op.cit., p.15.; Reasons, Ross and Patterson, op.cit., p.46.; and Science Council of Canada, Regulatory Processes and Jurisdictional Issues, pp.103-114.

[61]Samuel S. Epstein M.D., The Politics of Cancer, (San Fransisco: Sierra Club Books, 1978), p.7.

CONCLUSION

The object of this thesis has been to show how the need for profit in a capitalist market economy creates limits that affect capitalists, labour and the state. Given that the existing literature on occupational health and safety [OHS] provided a good indication of the way in which the need for expanded value constrains the resolution of hazardous work conditions, the OHS issue was choosen as a case in point to probe the limits of the capitalist market economy. The use of this issue as a tool of analysis exceeded the original task assigned to it. For after conducting a historical analysis of OHS using the political economy approach, the evidence suggested that the limits to OHS reform were more profound than has been suggested by the literature thus far. In fact, the evidence examined led to the conclusion that not only is OHS reform limited by the need for profit, but in reality the OHS issue is a concrete expression of the contradictions contained within the capitalist mode of production.

This conclusion could not have been ascertained without the historical political economic nature of this analysis. For it was this approach that allowed for some revealing and significant trends to be discerned from the actions of capitalists, labour and the state in the area of OHS. The most disturbing trend uncovered was the parallels that could be drawn between the Ontario Factory Acts of 1883 and the OHS Act of 1978. These parallels were also found in the situation the workers faced pre-1914 with regard to compensation for injuries sustained in the workplace, and the dilema they now face in attempting to receive compensation for industrial disease.

As illustrated in chapter two, the failure of the Factory Acts to fulfill its mandate was attributable to the reluctance of the government to enforce the provisions of the Act. These Acts addressed child labour, hours of work, sanitary conditions and safety in the workplace. However, the Armstrong faction of the Royal Commission on the Relations of Capital and Labour revealed the reasons for the Act's shortcomings. They argued:

> [t]he Ontario Act was passed some two years before the inspectors provided for it were appointed. Nearly another two years have elapsed since the appointment of these officers and during the whole of that time...only one case has been brought before the courts. This inactivity cannot be for want of material to work upon...Just as long as there is a manifest reluctance to enforce its provisions by process of law it will remain a delusion and farce upon legislation. It would be better to discard it altogether then to retain it, and yet make no proper effort towards its enforcement.[1]

Almost one hundred years later, the Ontario government again passed legislation in an attempt to eradicate hazardous conditions in the workplace. And again, the apparent failure of this legislation seems to be attributable to the reluctance of the government to enforce this legislation. In telling quote three union members described the situation:

> If the provincial police were to enforce the highway speed limits in the same manner as the Ministry of Labour enforces the Occuaptional Health and Safety Act, then the only thing on the highway doing less than 150 miles per hour would be a jogger.[2]

The next parallel that can be drawn is between the compensation of injuries pre-1914 and the compensation of illness in 1984. Before the passage of the Worker' Compensation Act in 1914 it was almost impossible to receive compensation on the basis of common law. However, after the passage of the Act, compensation for injuries was guaranteed, this did not

however apply to all industrial illness. Initially, only six diseases were to be compensable. Today, as Paul Weiler in his study on Workers' compensation notes, the struggle to get compensation for industrial disease is: "...all in all eerily reminiscent of the tort regime for industrial accidents in the early 20th Century."[3] Thus, although ideally the Workers' Compensation Board's role is the protection of worker's rights to compensation for injuries arising out of the workplace, in the case of disease the Board instead of recognizing the presence of disease attempts to identify the source of disease. The worker then - similar to the situation of the early twentieth century - has to prove the disease was solely workplace related.

Basically then, the hazardous conditions in the workplace that labouring classes face have not fundamentally changed. Granted, the incidence of illness from extended hours of work are no longer present, the workplaces - for the most part - are more sanitary than those of the late nineteenth and early twentieth century, however the incidence of workplace illness is still on the rise.

Throughout, this thesis illustrated how capitalists and labour, because of their short term interests, could not sufficiently address the erradication of hazards in the workplace. It was then suggested that the state may be best equipped to fulfill this role. However, the conclusion reached by the end of the thesis raised the question whether the state could - because of its nature - sufficiently address the OHS issue. It was then that it became apparent that the OHS issue was indeed concrete expression of the contradictions contained within the capitalist mode of production. Let us examine this further.

First, it was argued that in order to constantly expand the extraction of surplus value from the production process the capitalists - through their net control over the process of work - had three ways in which they could increase surplus value. These were: (1) The extension of the workday; (2) The intensification of work; and (3) The revolutionization of the production process. However the first methods limited the amount of surplus value that could be extracted from the production process at any given moment of capital - for example, the physical limits of the labourer, the natural length of the working day, the degree of labour resistance and the productivity of labour. It was argued that the only way the productivity of labour could be drastically increased was through the revolutionization of the production process. However there are attendant costs associated with this method, namely the debilitation of the labour force. Thus in an effort to increase the amount of surplus extracted through any of these three processes, the capitalists serve to destroy the very source of that value.

It was this destruction of the source of value that led to the conclusion that it was in the long term interests of capitalists to address the OHS issue. But, in a competitive market the short term interests win out - the constant extraction of value. It was then argued that since the erradication of disease was inimical to profits - at least in the short term - capitalists would not comprehensively address this issue. On the other hand, since safety - through the reduction of accidents - was not a threat to the competitive position of the firm, and could in the long run decrease compensation premiums, this issue could be addressed by the capitalists themselves.

Labour - being the ones who experience the hazards - also have a real interest in the reduction of workplace hazards. But again, this issue is relegated to a lower priority in their schedule of interests, partially because of the nature of disease - invisible and latent - and primarily because their immediate interests - decent wages and benefits and job security - have to be met first in a capitlist market economy. For workers must secure their living through these wages and also hence have an interest in maintaining the profitability of their employers. This is not to say that labour has ignored the issue completely. Through struggle the workers have fought for health and safety reform, however they have until recently stressed the prevention of accidents rather than disease for two reasons. First, because accidents are immediate, affect the production process immediately and are therefore easier to bargain for because they are not incongruent to the interests of the firm. Secondly, because diseases are latent and invisible and require a prolonged struggle with management because of the inimical relationship between profits and the reduction of workplace related disease. What has occurred in the past ten years has been a concerted effort on the part of unions to push for the eradication of disease. However, this push has come at a time when Ontario has experienced a prolonged recession. The outcome has been ineffectual legislation.

However, if the state is to ideally act in the long term interests of capitalism, and the eradication of work related disease is in the long term interests of both parties, why has the state once again repeated history and passed legislation that is ineffectual because of the reluctance to enforce it. It is here where the real contradictions begin

to surface.

The state as an instance raised above the economic process but which has its foundations in the system, reflects and reproduces the contradictions contained within the system. Thus, the state's primary role of ensuring economic growth becomes inimical - in the short term - to regulating OHS. For is the state wants to ensure the profitability of firms so that the accumulation procress can progress unhindered the stringent regulation of disease will cut down the degree of surplus value that can be extracted - in the short run - and limit the degree to which capitalists can control the way in which they revolutionize the workprocess. Thus the capitalist mode of production not only necessitates a concern for short term as opposed to long term interests for capitalists and labour, the state is also placed in the same position. Overall the, the capitalist mode of production not only leads to the inadvertant introduction of hazards into the workplace, it also constrains the degree to which any party, be it capital, labour or the state, can resolve the issue.

This may leave the reader with a depressing scenario. It can be predicted from this analysis that the future may bring a decrease in the incidence of workplace related accidents but the decrease in industrial disease will not fare as well, namely due to two important factors. First, as has been often repeated, the inimical relationship between the reduction of disease and short term profits, and secondly and much more fundamental, the nature of disease.

Industrial disease is quite complex for numerous reasons. First, the casual relationship between a certain production process and illness is not clear. Other factors such as lifestyle can affect whether or not

a worker may contract an illness. Secondly, industrial disease is latent. Latency periods may span from ten to thirty years on average. Thirdly, many of the toxic and carcinogenic substances are invisible. Combine the indeterminate causality with the latency period and the invisible nature of the hazard it is easy to see why this issue is not immediatley addressed. Capitalists need a healthy workforce, as long as each generation reproduces itself and a healthy workforce is available, there is no incentive to reduce the incidence of disease. Workers, although they may experience the hazard have trouble believing that their work is hazardous or that they will die because of their work, especially if the economy is depressed and they have a family to support. The state's role is to ensure the continuation of the production and reproduction process in the capitalist market economy. If the debilitation of the workforce does not affect the accumulation process or the existing class relations, it too has no incentive to reduce workplace hazards. What it may do, and what is has done historically, is to address working class demands through compensation after the fact, or ineffectual legislation. However there are further contradictions.

If the working class becomes angered at the inability of the existing OHS Act to address their needs, they may need to be pacified by the state to ensure the existing class relations - keep class struggle latent. However, if the economy is still depressed, the state will concentrate its effort on the accumulation process, its resources will be geared in that direction. Thus, at a time when the working class struggle becomes apparent - during economic downturns - the state is least equipped to address the needs of labour, and will act openly against labour. Thus, with such a situation, it is questionable whether there will

be any real reforms in the area of OHS.

It is because of the aforemention that one can see that the OHS issue is indeed a contradiction inherent to the capitalist mode of production. The need for profit has increased the incidence of workplace related illness and severely limited the degree to which it can be eradicated.

At the onset, the OHS area was to be addressed as part of the state's social regulation. By the end of the thesis, it can be argued that there is really no correspondence between social regulation and OHS. OHS is an outgrowth of the system and will remain to be so unless fundamentally addressed - which is highly unlikely in a capitalist market economy. Social regulation on the other hand is in most cases a redistribution of the wage packet by the state - and does not fundamentally alter the system of production. Granted during economic crises, social regulation will be difficult to secure, or even difficult to retain the hard won concessions, but for the most part, once the economy begins expanding, social regulation will no longer be in the precarious position it is now in. OHS due to its very nature will not enjoy the benefits of an expanding economy.

It has not been the purpose of this thesis to examine each constraint faced by each actor in an indepth manner, for each of these are an area in themselves. It has also not been the purpose to weigh the benefits and problems of recent state theories. Rather, this thesis has attempted to show, through a historical political analysis, the way in which the need for profit has fundamentally constrained the actions of society. Further work should address the OHS issue in a comparative manner in order to ascertain whether or not the issues discussed here in

this thesis are peculiar to Ontario or whether they are indeed an outgrowth of Western Liberal Democratic capitalist market economies.

Fruitful research can be done by comparing countries such as Canada and Britain that have industrialized in different periods and in different ways, and more importantly, where the nature of unionism is radically different. Only if we address the degree to which the working class can secure reforms in this area can we hope to be able to truly ascertain whether or not industrial disease can at least be partially eradicated in capitalist market economies.

ENDNOTES CONCLUSION

[1]Kealey, op.cit., p.44.

[2]Martel, op.cit., p.10.

[3]Weiler, op.cit., p.11.

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