Workers' Health, Safety, and Compensation in Historical and Cross-National Perspective

An Overview

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This paper suggests a framework of struggle for improvement of workers' health and safety (WHS) and workers' compensation (WC) and briefly surveys the historical experiences of several countries in order to provide a basis for suggested changes in the United States in the 1990s and beyond.

A FRAMEWORK FOR WORKERS' HEALTH AND SAFETY

As late as 1972 the International Labour Organization's (ILO) *Encyclopedia of Occupational Health and Safety* titled its article on the subject of this paper, "Workmen's Compensation."[1] Only at the close of the 1970s did the Connecticut State Legislature amend "the Workmen's Compensation Act" to "Worker's Compensation Act" effective October 1, 1979.[2] The women's movement and the increasing participation of women in paid labor outside the home had finally forced the change. This recent development reflects, as does the whole history of WHS and WC, its growth and change through struggle. The struggles of gender have been joined with those of class in this recent development. Perhaps class struggles have been primary in the development of WC:

> Underlying the political process involved in the passage of compensation laws was a fundamental clash of interest between employers and workers. Workers wanted to use the financial club of compensation benefits to both succor the injured and to maximize the financial incentive employers had to act to *prevent* accidents. Employers were not opposed to accident prevention or the relief of the injured as abstract or moral propositions; but business owners and managers were guided by a second set of considerations—their desire to maximize revenues (subject, of course, to some constraints) to both increase their own gain and to avoid giving competitors an edge that might eventually endanger the very survival of the enterprise itself. The basic contradiction between the imperatives of business-owners and the objectives of the employed created an antagonism that existed long before compensation laws were first considered by legislatures. Indeed, the extent and bitterness of the class conflict engendered by contention between labor and capital over unsafe working conditions and by the legal and direct personal clashes between injured workers and employers over the level of financial relief to be given to accident victims was an important consideration to many employers, who were willing to accept a small increase in the cost of doing business if this friction could be mitigated.[3]

Although this is not the forum in which to develop sociologic frameworks, it should be noted that others may disagree with class and gender struggle as an explanatory framework for WC and other social welfare measures. Orloff and Skocpol[4] survey and dismiss several explanations in a very scholarly contribution: (1) the logic of industrial development which requires social insurance at a certain point; (2) the relative greater strength of liberalism and laissez-faire ideology in the United States, prohibiting WC from developing as soon and as completely as in Europe, particularly Britain; and (3) comparative working class strength and strength of the labor union movement in particular. They offer the idea of a relatively autonomous state bureaucracy (such as the British civil service), doing technocratic things on its own to better the lot of working people. Although there is much to be learned from their work, including their tracing of U.S. WC and other social legislation to the Civil War veterans' benefits, I find the struggle model more convincing. Certainly Asher[3] and others[5] find the class struggle model most clarifying. Indeed, my own historical and current comparison of general provisions for workers' health and safety leads me in this direction, for I found more adequate protection in Sweden, Finland, and the German Democratic Republic, where workers' movements are comparatively strong, than in the Federal Republic of Germany and the United Kingdom where workers' movements are not as strong. The United States offers the least adequate WHS system and has the weakest workers' movement among those of the six study countries.[6]

Before going into WC, I will briefly describe a few of the most striking provisions for WHS in Sweden, East Germany (GDR), and Finland and contrast these with those same aspects in the United States to suggest what remarkable achievements can flow out of comparatively strong workers' movements. A workers' movement is stronger when it:

- has followed with deliberation and pride a class-based strategy of struggle in clear recognition of the labor theory of value;
- has oriented itself with a broad philosophy of social well-being, including socioeconomic justice, education, health, housing, self-realization, and human dignity for all—not just wages and hours and conditions of work (such breadth makes coalition building more feasible);
- works through, supports, and is supported by a credible labor party;
- through the labor party has held and currently holds state power;
- continues to organize on the basis of laws favorable to labor unions (closed shops, sympathy strikes permitted, etc.);
- has pursued gender and ethnic solidarity and avoided splinterism;
- has a high percentage of the paid workforce organized (perhaps better than 85% of Swedish workers are union members, including high proportions of clerical, technical, professional, and scientific workers, whereas today in the United States it is falling toward 15%); and
- enjoys high employment and low exposure to loss of jobs to other countries in the capitalist political-economic world-system.

Although all these elements have not been perfectly realized in any of the six countries I studied, perhaps Sweden offers the best example of a strong workers' movement, the GDR (though of a different form) is about on a par with Sweden, and Finland follows closely.[7]

Some selected examples of WHS achievements from these countries with comparatively strong workers' movements follow:

Sweden: Sweden can be characterized as having a worker-based system in which more than 110,000 union health and safety representatives have been

trained in WHS for 40 hours or more; these "reps" have a majority on joint union-management health and safety committees which have the power to hire and fire WHS personnel (thus the mistrust of "company quacks," so prevalent in the United States, is disappearing); these reps also have the power to stop the production process when they perceive a hazard, even a long-acting hazard; and all workers have the right to refuse hazardous work without fear of retribution; finally, there generally is no problem with the right to know as the Law of Co-determination brings union and management together to plan all aspects of production, including the chemicals and other materials to be used. In the United States workers are still struggling for the right to know and have not yet seriously raised the right to refuse or the right to stop hazardous production.

German Democratic Republic: The GDR in 1981 began vigorously implementing a law requiring a complete hazard survey for every workplace in the country, with continuous follow-up health exams for workers exposed and a time-ordered plan for removal or control of hazards according to priority based on severity of risk. Today in the United States OSHA has been so weakened that it cannot inspect more than 2% of workplaces each year, and neither NIOSH nor OSHA or any other agency has a working program of hazard surveillance for the workplaces of this country.

On the important (though all too often ignored) matter of adequate links between first-line general health care and WHS, although the United States has many medical schools with hardly any required study of WHS (my own school, the UConn Medical School, is one of those that only offer an elective course)[8]; medical schools in the GDR require 36 hours of WHS.

Finland: Finland has vigorously implemented a law requiring coverage of every workplace in the country with adequate occupational health services. The United States, by contrast, has hundreds of thousands of workplaces with nothing more than first-aid kits and fire extinguishers.

Many more contrasts could be described, but I must move on to the focus of workers' compensation.

WORKERS' COMPENSATION

As early as 1849, in reaction to the widespread but abortive revolutionary attempts in Europe in 1848, Otto von Bismarck, the "Iron Chancellor" of Prussia, said, "The social insecurity of the worker is the real cause of their being a peril to the state."[9] Later it was his anticipatory action in the form of the first national health insurance and first WC adopted in 1883 that helped take the wind out of the sails of the strengthening socialist workers' movement.[10] In Bismarck's words, these acts were passed "to cut the legs off" the socialist workers' movement.[11] At the same time that he was fighting the revolutionary movement with such sophisticated means, members of his own party were calling him, Bismarck of all people, a "socialist," for they saw these beginnings of the welfare state as threatening the then sacred principles of early capitalist development—individualism and laissez-faire. (Today, of course, these words are anachronistic in the age of neoimperialist monopoly capitalism, because the gigantic projects of mammoth transnational corporations, in competition with others, require a partnership with government and its access to capital through taxes and control of competition through legislation and regulation.) Of course, passage of the first WC law did not mean that it offered adequate compensation. In fact, it was quite minimal, and

years of struggle lay ahead before the very interesting system found today in West Germany (FRG) evolved. I will come back to this system.

The earlier phases of capitalist development were very rough indeed on working men, women, and, yes, children.

> Many, many thousands of these little, hopeless creatures were sent down into the north, being from the age of seven to the age of thirteen or fourteen years old—overseers were appointed to see to the works, whose interest it was to work the children to the utmost, because their pay was in proportion to the quantity of work that they could exact . . . cruelties the most heart-rendering [were] practiced upon the unoffending and friendless creatures who were thus consigned to the charge of master manufacturers; they were harassed to the brink of death by excess of labor . . . were flogged, fettered and tortured in the most exquisite refinement of cruelty; . . . they were in many cases starved to the bone while flogged to their work and . . . even in some instances were driven to commit suicide. . . . The profits of manufacturers were enormous; but this only whetted the appetite that it should have satisfied, and therefore the manufacturers had recourse to an expedient that seemed to secure to them those profits without possibility of limit; they began the practice of what is termed "night working," that is, having tired one set of hands, by working throughout the night, the day-set getting into the beds that the night-set had just quitted, and in their turn again, the night-set getting into the beds that the day-set quitted in the morning. It is a common tradition in Lancashire that *the beds never get cold.*[12]

In the United States the struggle for the 10-hour day dated back to at least 1835. Later the struggle for an 8-hour day centered in the national strike of 1886 which ended with the Haymarket Massacre. Both these efforts were tied to the hazards of work.

Accident rates, especially in steel, mining, and railroads, reached astronomic proportions around the turn of the century and afterward. In the single year of 1907, there were 3,242 deaths in the coal mines and 4,534 workers were killed on the railroads.[13] It was said of the brakeman, who had to put his hands between cars to uncouple them, "A brakeman with both hands and all his fingers was either remarkably skilled, incredibly lucky or new on the job."[14]

Workers and their families were at great risk. Their only recourse was to sue their employers. But the employer had several common legal defenses that made success in such suits unlikely. First, the worker had to prove that the employer was at fault in the accident. In addition, employers often used their other defenses with success:

(1) Contributory Negligence. The worker could not recover any damages if the worker had been negligent in *any* degree, regardless of the extent of the employer's negligence.

(2) The Fellow Servant Doctrine. The employee could not recover any damages if it could be shown that the injury had resulted to any degree from the negligence of a fellow worker.

(3) Assumption of Risk. The injured worker could not recover any damages if the injury was due to an inherent hazard of the job of which he had, or should have had, advanced knowledge.

As Downey concluded, "By this concatenation of judge-made doctrines . . . some seven-eighths of all work injuries were left without legal relief."[15] Somers and Somers point out that the use of the fellow-servant doctrine in this way did not follow precedent for in the early part of the nineteenth century it had been clearly established that a master *was* responsible to third parties for injuries inflicted upon them by one of his servants in the course of his or her employment.

They highlight the class bias involved by quoting Dodd's explanation: "the desire of the judges to encourage large industrial undertakings by making the burdens on them as light as possible."[16]

In addition, work-related diseases were almost totally uncompensated at the time for a variety of reasons[17] and still remain highly problematic today even within WC laws. As Barth[18] notes, the German law of 1883 and the Austrian law of 1897 recognized occupational diseases as compensable, but there were many problems in their being identified in an agreed-upon way. (Later presumptive lists were developed as a partial solution.) The British statute of 1897 took no note of work-related disease, but was amended less than a decade later.

> That the British quickly amended their law of 1897 to cover occupational disease might suggest that the American states, many of which shortly thereafter passed their own compensation laws, would specifically incorporate provisions for diseases. The states, however, excluded any mention of diseases in their earliest statutes; but there is evidence that the issue was not simply overlooked in their haste to pass these first laws. The Wainright Commission, which resulted from pressures to pass a workers' compensation statute in New York, reported that occupational disease probably fell outside its purview and that it would report later on the subject. However, later reports made no mention of the issue.[18]

Going back to the period in the United States just before WC laws began to be adopted by the individual states, several sources note that although employers were able to avail themselves of the common law defenses against tort liability suits by workers, several factors led to increasing success and larger awards in such suits.

First, the workers' movement was growing in strength and becoming more militant. For example, the "one big union," the Industrial Workers of the World (IWW or "Wobblies"), won the important "bread and roses" strike at the Lawrence textile mills in 1912. Solidarity had been achieved across gender and ethnic lines against vicious repressive measures of the bosses and police. As Big Bill Haywood put it in his speech celebrating the victory, "The women won the strike."[19]

Second, public outrage over working conditions also played a role. In the Bread and Roses Strike, the case of Camella Teoli made national headlines and caught the attention of President Taft's wife. "Two weeks after she'd started work [at age thirteen] at the Washington Mills, Camella Teoli was scalped: her hair got caught in a machine for twisting cotton. She was hospitalized for the next seven months. The company paid her doctors' bills, but not her lost wages."[20]

Third, the ground for this public outrage had been prepared in part by the Muckrakers—Upton Sinclair (*The Jungle*, 1906, on work in the meatpacking industry) and Crystal Eastman (*Work Accidents and the Law*, 1910). These and other works "were effective in arousing public awareness of horrible working conditions of the times, with temperatures freezing in the winter and boiling in summer, child labor common (as young as five years old), long hours, and no ventilation."[21]

These several sources of pressure brought about the passage of more protective employer liability laws, first for railroad workers. These were extended to miners and industrial workers in only a few jurisdictions before 1910.

> But in the first decade of the twentieth century, as labor union membership increased, as labor became better organized for legislative lobbying and as the Socialist Party of America increased its representation in legislatures, several states—most notably Oregon, Ohio and Colorado—began to remove the common law defenses that had

protected negligent employers against successful tort suits by injured workers. Concurrently, state judges, especially in Minnesota and Wisconsin, began to alter their interpretation of the common law of industrial torts in a manner that allowed injured workers higher rates of recovery of damages. Immediately, employers felt the financial pressure of these developments, as liability insurance companies, in the insurance business to make a profit, quickly raised their premiums for accident insurance. By 1909, when several states established investigative commissions to draft workmen's compensation laws, very drastic employers' liability bills were pending in the legislatures of most industrial states. Pressure for the enactment of these laws was mounting; in Ohio labor broke through with the 1910 Norris law, which left negligent employers virtually defenseless against tort litigation. In Oregon, the legislature passed an equally drastic liability statute. Everywhere business spokesmen, representing large and small establishments, sounded the alarm: additional "radical" liability legislation had to be blocked.[22]

Thus, in the face of increasing numbers and size of injury awards, disturbing to capitalists not only for their effect on profits, but also for their unpredictability and consequent inability to properly plan for the cost of doing business, the owners began to accept, even push for, the passage of WC laws. Asher assesses this development this way:

But business spokesmen drove a hard bargain: they insisted that a definite limit be placed on the increased outlays for injured workers and strove to attain a level of predictability of costs for accident compensation which could be achieved only by making injured workers sacrifice almost completely their right to sue negligent employers, a right that workers regarded as essential to making employers obey safety legislation and avoid gross negligence. The political weakness of both organized and unorganized labor during the years of the enactment of pioneering compensation legislation, and—I would add—in the years that followed, led lawmakers to accede to most of the terms requested by business spokesmen who wanted to be assured that state-mandated welfare capitalism would substantially reduce class conflict but would not substantially reduce profits.[23]

For a time the U.S. systems (enacted by the states; no federal legislation was passed) reflected a mix of so-called voluntary and compulsory approaches. This had been an issue with all social insurance—health, unemployment, disability, WC, and the like—in Europe as well, employers generally favoring a voluntary approach. Much of this debate occurred in the meetings of the International Congress of Insurance against Industrial Accidents (later the Congress of Social Insurance). This association

which was organized in Paris in connection with the World Exposition in 1889 and which met at frequent intervals until the eve of the World War, witnessed a recurrent battle between the adherents of the principle of compulsion and those who advocated subsidized voluntary insurance. At its session of 1908, however, the victory of the former at least in theory was virtually conceded.[24]

In the United States this struggle went on until 1917.

There was at first considerable doubt on constitutional grounds that the European type of compulsory law would be permissible in the United States. As a result the "elective" compensation law was devised. This gave both the worker and his employer the right to choose between the newly created compensation system and the old damage suit arrangement. Pressure was exerted, however, to prevent rejection of compensation by the employer by providing that such a choice would deprive him of his three defense doctrines of assumption of risk, fellow servant and contributory negligence. Conversely, the worker who chose to adhere to his damage suit rights was handicapped by restoration of the defenses to his employer. As the Supreme

> Court of the United States upheld the legal propriety of the compulsory type of compensation law in 1917 (*N.Y. Central Ry. Co.* v. *White,* 243 U.S. 188), there was no longer any reason for the elective type of measure.[25]

There were many more problematic aspects to WC laws. In 1934, Armstrong summarized the U.S. situation this way:

> Most of the American acts started with an undue number of the worst features of the various continental laws . . . [and] the great majority of American laws still contain a marked number of clauses which make them far less satisfactory compensation measures than the current laws of the important foreign industrial countries.[26]

The death benefits for surviving family members were not adequate and only in the case of six states—Arizona, Nevada, Oregon, New York, Washington, and West Virginia—and the Federal Employees Compensation Act did these benefits carry through the period of family dependency. Another problem, taken over from the British system, was that workers were usually left to their own devices to avail themselves of the law, there being no administrative or assistance machinery to facilitate the worker's filing and pursuit of his or her case. This lack of support for workers to pursue their cases coupled with another major failing of these laws—that workers might be charged with total or partial responsibility for their accident (something Berman develops in detail, as "blaming the victim," even in the educational approaches to WHS in which "the careless worker" was invented)[27]—meant all too low a rate of success in deserving cases. Also, insurance companies that entered this field for profit were likely to deny and fight all claims.

> Other major shortcomings of many American compensation measures are the following. First, certain codes contain penalty clauses which exclude from benefits or reduce benefits in situations where a variety of types of misconduct or "gross negligence" contributes to the injury. These clauses are to be criticized in that they lead to litigation and also because they shut out from compensation benefits thousands of workers who are injured at their work. Second, in order that the cost of compensation may be kept down, total compensation for all types of injury is limited to an arbitrary sum, regardless of the particular requirements of individual cases. Moreover specific permanent injuries are scheduled with corresponding compensation amounts, which are not adjusted with reference to the age and occupation of the worker. Third, weekly benefits, although usually stated as a percentage of the wage earned, are scaled down, by the inclusion of a low maximum benefit figure, to an amount inadequate to maintain the workers' family even at the lowest current standard of living. Fourth, occupational disease is not compensated as an industrial injury; even in the minority of states which do make provision, compensation only for listed diseases is allowed. Fifth, no provision for a state insurance carrier is made in thirty-one of the acts, so that the "poor risk" employer, whose business is rejected by the commercial companies, is left without any practicable opportunity to protect his workers.[28]

Whatever the failings of WC laws and their surrounding systems (for the United States Berman[29] terms it the "compensation-safety apparatus") and the failings are many, though faults vary greatly across nations, by 1932 Armstrong[30] found in her comprehensive survey of social insurance (WC, health, old age, disability, and unemployment) that WC was the most ubiquitous, with 119 systems in 62 countries. It was "well nigh universal."

Because Britain's law loaned many of its features to so many others, in large part because the United Kingdom was then the dominant center of the core capitalist nations in the political-economic world-system, and the cultural hegemony emanating from this center influenced colonies, former colonies, and

others,[31] it is worth noting that its cumbersomeness and many unsatisfactory aspects eventually led, under a strong Labour government just post WWII, to its replacement with the Industrial Injuries Act of 1946. In addition to all the aforementioned problems, the British system, contrary to many initial expectations and predictions, was incredibly litigenous. In being restricted initially to "the dangerous trades," disputes developed as to which jobs in what industries were included. With its definition as a factory-related act, disputes of an amazingly complex variety developed. As one observer put it, "Although we know generally what a 'factory' is I defy the Factory Inspectors themselves to say, what may or may not be a factory for the purposes of the Workmen's Compensation Act."[32] The exquisite character of the many disputes is suggested by the following:

> Many legal cases were generated by the wording of section 7(1) which applied the Act to "any building which exceeds thirty feet in height, and is either being constructed or repaired by means of scaffolding." Did scaffolding include a board resting on chairs, or the chair itself? Could the branch of a tree constitute scaffolding in particular circumstances? In *Veasey* v. *Chattle* (1902) the Court of Appeal held that a crawling board resting on a roof was scaffolding. Did the thirty feet rule include buildings which had been or would be over the height limit? This question was not settled until 1899 when the Court of Appeal ruled against such an interpretation. But there remained the difficult question of how a building was to be measured—should footings and chimneys be included, how should buildings on sloping ground be treated, what was the position when underground constructions, such as wells or subterranean railways were involved?[33]

By contrast, the German law had many advantages over the British law:

> Although there were some basic similarities (e.g., no-fault, finance provided wholly by employers—though in Germany this was so only after thirteen weeks—and earnings-related benefits), the German system of work accident insurance was very different, both in its principles and its administration, from that of Britain. Unlike the British scheme it was closely linked to the rest of the social insurance system; it provided for accident prevention, medical treatment and rehabilitation, whereas the British scheme did none of these things; in Germany insurance was compulsory and private companies played no role, whereas in Britain insurance was voluntary with proprietory companies possessing an important share of the market. A full list of contrasts would be extensive. Much closer to the German system were, *inter alia*, those of Austria (1887), Norway (1894), Greece (1901), Russia (1903), Switzerland (1906) and Hungary (1907). No official examination of continental experience preceded the British Act of 1897. According to Wilson and Levy, Britain lagged behind most other countries in terms of the level of cash benefits, provisions of medical expenses, surgical appliances and rehabilitation.[34]

In his brief overview of foreign experience for protection of WHS, including brief attention to WC, Ashford[35] surveyed eight European countries. Although it is unsure whether the United States does any better or worse in job safety and its compensation because "all statistics on occupational injury and disease represent gross underreporting [and thus] statistical comparisons between countries are not very revealing," it seems certain that most European systems do a better job of recognizing and compensating occupational disease.

> The programs for reporting, controlling, and compensating occupational disease are all far superior to those of the United States. In Sweden, occupational illness has been compensable for twenty years, and a steadily increasing number of diseases has been reportable and compensable since 1939, with an updated list provided in 1967. Under the German BGS insurance scheme, 47 occupational diseases are compensable. In France, there are 48 compensable occupational diseases, and if a disease is not

included as compensable, an employee can sue at common law. In France and Britain, a physician is required by law to report and diagnose properly all cases of occupational disease. In Britain, disease caused by twenty chemical substances or their derivatives as well as pneumoconiosis and byssinosis must be reported to the Factory Inspectorate. In Italy, control of 47 hazardous substances has been required by law since 1952 (amended 1967). In many cases, an illness may be classified as occupational if a hazardous substance which can cause a variety of illnesses is found in the work environment, even if no direct connection is known.

The point about linkages between WC and prevention deserves special emphasis. Initially, labor leaders had looked to employ liability acts and later WC not only as a way of relieving some of the misery workers and their families suffered because of the slaughter and maiming going on through work; they had hoped that if the employers had to pay, they would clean up their acts. As Harry D. Thomas, secretary of the Ohio State Federation of Labor, put it in 1910:

> . . . our object has been at all times not to get compensation or collect damages, but . . . to prevent accidents; and when safety laws have been made and deliberately violated and accidents continue to occur with as much frequency as before, we have come to the conclusion that the only way in which the employer will eliminate accidents in his plant as far as possible is to make him liable for all that occurs; and then he will find it cheaper to buy safety devices than to pay damages.[36]

But it hasn't worked out this way for many reasons. The levels of compensation—sometimes only 50% of wages in some U.S. states (whereas several European countries provide 100%)—and the ease of avoiding any payment through contesting cases are among the many reasons. Probably the most important factor is the comparative overall weakness of the workers' movement in the United States. But just with regard to the way premiums are collected without motivating either employers or insurers to clean up, Ashford observes:

> Workmen's compensation insurance, while mandatory in many of the countries studied, varies in the form it takes and the extent to which it affects accident and illness prevention. In France, Finland, and Germany, premiums (which are paid by the employers) are based on a percentage of the total wage bill, risk level, and firm performance record. In France, the threat of rate increases serves as an important economic lever in controlling accident and illness, particularly since the Regional Caisses have an inspection role. The British system utilizes a flat-rate premium and offsets the lack of individual firm incentive (caused by spreading the risk) by enabling employees to sue their employers for negligence to cover any damages not paid for by workmen's compensation insurance.[37]

My own comparison of provisions for WHS in six industrial countries does not highlight the overall strength of the West German system, but for the concerns of this paper, this oldest WC system in the world has evolved into one of the greatest interest.[38] Whereas in the United States it is hard to discern any important impact of the insurance industry and WC laws on prevention in the overall WHS system, in West Germany the WC system has evolved to become the very center of the system for protecting workers. Legal mandates come from two sources: the laws or ordinances of the national state and regulations issued by the three types of Mutual Accident Insurance Associations (the *Berufsgenossenschaften*). The latter began as self-help insurance-advisory agencies of the employers. Today these organizations are legally mandated public nonprofit corporations to cover work accidents and sickness in industry groupings—steel, shipbuilding, mining, and the like. They are grouped under three categories: industry (36), agriculture (19), and a number for public service. There is a 50–50 representation of employers and

unions on the controlling boards of the *Berufsgenossenschaften*.[39] Thus, they are a major channel through which the workers' movement can have an influence on WHS. Generally, these laws, regulations, and the like from these different sources are said to be nonoverlapping. They proceed from more general to more specific measures as shown in TABLE 1.

Thus, the insurers are involved in every aspect of WHS in West Germany—setting of standards and regulations; inspection; training of WHS personnel and of employers and workers; and reimbursement for medical and rehabilitation expenses as well as compensation. Possibly the key characteristic of the system is its functioning more or less like a set of state-regulated public utilities with equal representation in the control structures of the potential or actual adversaries—organized labor and management.

TABLE 1. Parallel Structure for WHS Laws and Regulations in FGR

From the State	From the Insurers
Laws	Reich's insurance codes
Ordinances	Accident prevention regulations
General implementing ordinances	Rules for application of the accident prevention regulation
Generally acknowledged safety engineering and occupational health rules	Generally acknowledged safety engineering and occupational health rules
DIN[a] standards	DIN standards
VDE[b] regulations	VDE regulations
Directives, etc.	Directives, etc.

[a] DIN = German Industrial Standard.
[b] VDE = Association of German Electrotechnicians.

NEW DIRECTIONS

What lessons can we suggest from this all too cursory historical and cross-national overview of WHS and WC? One certainly is that considerably more in-depth work of this sort should be supported. It is high time for an update of the kind of cross-national survey Armstrong[30] did back in the 1930s. Such work, it is hoped, would not simply assemble a catalogue of provisions in different systems, but would also look into the dynamics of class and gender struggles and other political-economic contextual forces shaping systems in particular ways.

Two rather different strategies of reform can be envisioned. The first, tied more directly to the WC system, is piecemeal in approach. The second envisions more encompassing changes in the health system. I will not prejudge here the political-economic chances of either approach, although I personally favor the more encompassing strategy.

With respect to the WC system, it is a bit presumptuous of me to make suggestions from this brief overview. I am not as expert on the subject as are others who have given much more attention to the matter. A recent set of conference papers is of some help in this regard.[40] A good start would be made in improving the U.S. system if the ILO model was followed.[41] Although I am hesitant in making them, a distillation of my recommendations follows:

- It is high time for a national law to be adopted that would smooth out some of the hodge-podge variations of multiple state laws and assure minimal standards.
- Such a law should establish WC as a public nonprofit utility with equal representation of organized labor and management.
- Such a law should inject strong motivational forces into the WC system so as to bring about real preventive efforts.
- In this connection, no-fault compensation, which provides 100% of lost wages or income and benefits, should be provided.
- Work-related compensable diseases should be included on a presumptive list (I believe the Federal Republic of Germany uses a list of 55), and additions should be made as epidemiologic and other research establishes reasonable grounds for supposing a work connection.
- Tort liability of employers should be reestablished in cases of employer negligence or violation of strengthened OSHA standards and regulations to guard a punitive element in the system so as to cut down on company concealment, dishonesty, and wrongdoing and generally to enhance the preventive aspect of the system.
- An independent WHS service should be set up through a network of independent state-supervised clinics to cover all workplaces (as is required in Finland) so as to bring work-related disease fully into the picture and properly compensate injured workers as well as lead to prevention of such illness.[42]
- First-line general health care providers should be trained in WHS and linked into a clinic network as just suggested for continuing education.[43]

Alternatively, a more comprehensive approach would establish a fully regionalized national health service,[44] one that would explicitly take WHS adequately into account, especially as regards necessary links between first-line general health care and WHS. The Dellums Bill offered each year in Congress for more than a decade would go a long way toward meeting what is intended here. Compensation adequate for the maintenance of a decent life-style should be given to every citizen with a disability regardless of source (work-related or not). Such a social security disability system would simply remove the strife and confusion from the worker compensation system. Countries like Sweden today provide 90% of usual income during sickness and shift to such a system as I intend here when disability is permanent, either partial or total. Whether compensation should be related to earning power above an adequate floor is one of those points on which I feel others are more expert and able to advise.

Finally, for reasons indicated herein, this more encompassing approach should still provide for tort liability when damage from work has occurred because of employer negligence or wrongdoing.

Of course, in line with the framework suggested at the outset of this paper, I am not optimistic that any of this will happen in the United States in the near future. The struggle for workers' health and safety is long and hard because its improvement lies at the heart of the production process, and there is nothing more jealously guarded by the capitalist than control over the means and processes of production and there is nothing more important to the class-conscious worker than to claim her or his full due from a process organized to expropriate the surplus value produced by the workers' labor. The primary need is for the workers' movement to rejuvenate and spread, keeping such goals in mind as have been suggested in this specific sphere of concern, as it gathers strength for a much needed transformation of our society in a more humane direction.

NOTES AND REFERENCES

1. QUINN, A. E., 1972. Workmen's Compensation. Encyclopedia of Occupational Health and Safety. Vol. **L-Z:** 1515–1518. International Labor Organization. Geneva, Switzerland.
2. Bulletin No. 34 "Workers' Compensation," The Workers' Compensation Act as amended in 1979. Issued by The Board of Commissioners. October 1, 1979, Hamden, CT. Quote from p. 4. Note that the quote gives a singular possessive, "worker's," whereas the bulletin's title and text otherwise uses the collective "workers'," the practice I follow in this paper.
3. ASHER, R. A. 1986. A Flawed Precedent: The Legacy of the Original Workmen's Compensation Laws. Paper prepared for the annual meeting of the Organization of American Historians, April 12. I owe a special debt to Robert Asher, Professor of History at the University of Connecticut, Storrs, for this paper and some of his other works, notably: 1969. Business and Workers' Welfare in the Progressive Era: Workmen's Compensation Reform in Massachusetts, 1880–1911. Business History Rev. **43:** 452–475. Workmen's Compensation in the United States, 1880–1935. Unpublished Ph.D. dissertation, University of Minnesota. 1973. Radicalism and Reform: Workmen's Compensation in Minnesota 1910–1933. Labor History **14**(Winter): 19–23. I also benefitted from Robert Asher's reading and critique of an early draft of this paper.
4. ORLOFF, A. S. & T. SKOCPOL. 1984. Explaining the politics of public social spending. Am. Soc. Rev. **49**(December): 726–750.
5. QUADAGNO, J. S. 1984. Welfare Capitalism and the Social Security Act of 1935. Am. Soc. Rev. **49**(October): 632–647. Social welfare legislation in general in U.S.A. is seen as waxing and waning in relation to the ferment or heat in the system. *See* Regulating the Poor. 1971. F. F. Piven & R. A. Cloward, Eds. Pantheon. New York; see also Morse.
6. ELLING, R. H. 1986. The Struggle for Workers' Health. Baywood. Amityville, NY.
7. More discussion of these criteria or elements of a strong workers' movement is offered in my book (ref. 6). The comparatively weak situation for the United States is highlighted *in* Working Class Modernization and American Exceptionalism. Economic and Industrial Democracy Series, 1980. Shalev, M. & W. Korpi, Eds. Vol. **1:** 31–61. Sage. Beverly Hills, CA. The capitalist world-system is examined in the works of Wallerstein and many others. See, for example, Goldfrank, W. L. 1979. The World-System of Capitalism: Past and Present. Vol. 2 of Political Economy of the World-System Annuals. Sage. Beverly Hills, CA.
8. About half of U.S. medical schools require some WHS; the average is 4 hours. The others offer only elective work or have nothing. Levy, B. S. 1980. The Teaching of Occupational Health in American Medical Schools. J. Med. Ed. **55**: 18–22.
9. As quoted by Sigerist, H. E. 1943. From Bismarck to Beveridge: Developments and trends in social security legislation. Bull. Hist. Med. **13**: 365–388; quote and source p. 376.
10. All observers I consulted begin the story of WC with the German law of 1884: Quinn, *op. cit.*[1]; Asher, *op. cit.*[3]; Sigerist, *op. cit.*[9]; Orloff and Skocpol, *op. cit.*[4]; also the important cross-national comparative article by Armstrong, B.N. 1934. Workmen's Compensation. Encyclopedia of the Social Sciences. E. R. A. Seligman, Ed. Vol. **XV:** 488–492. Macmillan. New York; and Barth[18] whose work is cited below. However, Rubinow, I. M. 1934. Social Insurance. Encyclopedia of the Social Sciences. E. R. A. Seligman, Ed. Vol. **XIV:** 134–138. Macmillan. New York, says: "Although it is usual to ascribe the beginnings of the movement to the first compulsory accident insurance act of 1883 in Germany, which was rapidly followed by others covering sickness and old age, its sources derive from earlier periods. . . . A step toward the development of state insurance along somewhat different lines was made by France in 1850 and Italy in 1883 in their establishment of state insurance funds in which participation was voluntary and individual but which offered to the workman assurance of security on a non-profit basis, the state at times even contributing to the insured workman's premium." (pp. 134–135).

11. "um die Beine abzuschneiden," Sigerist, *op. cit.*[9]; p. 380.
12. Marx's quote from Fielden in Vol. I of *Capital* first published in 1867 as cited in Edwards, R. C. *et al.* Eds. 1972. The Capitalist System, Prentice-Hall. Englewood Cliffs, NJ, quote from p. 66, some deletions (. . .) added.
13. PAGE, J. A. & M. W. O'BRIEN. 1973. Bitter Wages. :47. Grossman. New York.
14. Bruce, as cited in MORSE, T. 1987. Dying to Know: The Workers' Struggle for the Right to Know. Unpublished Ph.D. dissertation, Ph.D. Program in Social Science and Health Care, University of Connecticut :15. I would like to acknowledge Tim Morse's special contribution to this paper. His suggestion of sources and critique of an early draft were most helpful.
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17. MORSE, op. cit.,[14] makes the important point that workers' knowing the hazards could turn against them if employers used the "assumption of risk" defense. Thus, there were few motivating supports for the right to know in this early period.
18. BARTH, P. S. with H. A. Hunt. 1980. Workers' Compensation and Work-Related Illnesses and Diseases. MIT. Cambridge. MA; quote from p. 2. Also Fuchs, S. 1972. Compensation of Occupational Diseases. Encyclopedia of Occupational Health and Safety. Vol. **L-Z:** 1518–1521. ILO. Geneva.
19. CAHN. W. 1980. Lawrence 1912, The Bread and Roses Strike. Pilgrim. New York.
20. COWAN, PAUL. Introduction to Cahn, *op. cit.*[9]
21. MORSE, p. 18.
22. ASHER, *op. cit.*,[3] pp. 4–5.
23. *Ibid.*, pp. 2–3.
24. RUBINOW, *op. cit.*,[10] p. 135.
25. ARMSTRONG, *op. cit.*,[10] p. 490.
26. *Ibid.*, p. 490.
27. BERMAN, D. M. 1978. Death on the Job. Monthly Review Press, New York.
28. *Ibid.*, pp. 490–491.
29. BERMAN, *op. cit.*[27] Part of the extent of business domination of this apparatus in the United States is given by the following quote (pp. 74–75). "A half-dozen organizations have for decades had an important role in defining the business response to the problems created by dangerous working conditions, but a description of the activities and financing of such groups is hardly adequate to characterize the scope of the business role in occupational safety and health. In fact, every insurance claims representative, every corporate industrial hygienist, safety engineer, and medical director functions as part of the compensation-safety apparatus. In order to understand the workings of this system it is necessary to look at a number of topics: the ideas which guide management safety practice; the activities of the National Council on Compensation Insurance in setting insurance rates; the changes in the business role as standards-setting moves from private to public arenas and from an emphasis on safety to an emphasis on health; and the training, attitudes, and practices in the principal occupational health specialties. . . ."
30. ARMSTRONG, B. N. 1932. Insuring the Essentials. Macmillan. New York.
31. For a consideration of world-systems theory (work by Immanuel Wallerstein, Andre Gunder Frank, and others) in relation to workers' health and safety see Elling, *op. cit.*,[6] especially chapter 5, "Framework."
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33. BARTRIP, *op. cit.*,[32] pp. 25–26.
34. *Ibid.*, pp. 148–149.
35. ASHFORD, N. A. 1976. Crisis in the Workplace, Occupational Disease and Injury, A Report to the Ford Foundation. :506. MIT. Cambridge, MA.
36. As quoted in Asher, *op. cit.*,[3] p. 3.

37. ASHFORD, *op. cit.*,[35] p. 507.
38. For more detail, see Elling, *op. cit.*[6]
39. "Berufsgenossenschaften," pp. 165–167, in Woerterbuch zur Humanisierung der Arbeit. Bundesanstalt fuer Arbeitsschutz. Bremerhaven, 1983.
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41. For detailed references and a summary of ILO recommendations see Quinn, *op. cit.*[1]
42. LANDRIGAN, P. J. & S. B. MARKOWITZ. 1987. Occupational Disease in New York State. Proposal for a Statewide Network of Occupational Disease Diagnosis and Prevention Centers. Report to the New York State Legislature, February 1987. Environmental and Occupational Medicine, Department of Community Medicine, Mount Sinai School of Medicine of the City University of New York. A very significant report which details the need for and recommendations concerning such a network of WHS clinics in New York State.
43. ELLING, R. H. & K. GREENLUND. 1988. First-line General Health Care Providers and Environmental and Workers' Health. A report based on an exploratory research. Department of Community Medicine, University of Connecticut (reproduced).
44. The concept of regionalization as used here includes such elements as involvement of citizens at all levels of the health service in determining its priorities and assessing its achievements, closed-ended financing, etc. A schema of 10 interwoven elements of regionalization is developed in Elling, R. H. 1980. The Cross National Study of Health Systems, Political Economies and Health. Transaction Books. New Brunswick, NJ, esp. pp. 100–101.

DISCUSSION OF THE PAPER

MITCHELL ZAVON: I learned some years ago, on a visit to Switzerland after a visit to Spain, that things were not always what they seemed to be. I had been told by a French physician in Madrid, as he looked down his nose at me because we did not have a physician for every plant, that in France they had a physician for every plant.

When I was visiting in Switzerland, we looked at some plants of the Geigy Corporation. They pointed to a plant in Germany, one in France, and one in Switzerland and described how the physicians in the Swiss and the German plants interchanged when they had to cover for each other. I asked about the physician in the French plant? They looked at me and said: "Oh yes, but he is in 300 other plants as well." The question is: How does it really work in Sweden and in the other countries you have cited?

ELLING: You are right to ask about variation and how fully coverage is being implemented. Although the question was directed toward Switzerland, the country that is actually attempting to cover all workplaces is Finland. An amazing effort is being made to bring in physicians for short-term courses and to certify them. Companies have to sign up either with a local municipal service or with a private polyclinic, like an HMO, to make arrangements for workers' health.

I was at a conference in October in Finland to learn more about this system. The evidence presented seemed quite convincing that the Finnish had in fact moved a long way toward implementing this law. This is not to say that the private clinics are going to function in just the same way as the public ones; there are variations still within the country.

ERIC JANNERFELDT, (*Swedish Embassy, Washington, D.C.*): After hearing Ray Elling, I should say that I am proud to be Swedish. As with so many other

things, however, it is important to remember that things may look better in the laws and on the books than they are in reality and that also applies to Sweden. We have come further than you have in the United States, but the background is a bit different. Sweden has a long history of political stability and excellent industrial growth. We survived two world wars and did not have to enter them.

These issues are important to remember when it comes to realizing why we are where we are. It is not a simple situation in which the United States and Sweden started at equal points with equal resources and equal commitment to safety. I should mention that the Swedes have an almost excessive interest in safety, perhaps due to the proximity of our powerful neighbor, the Russians. But whatever the cause, that sense of the importance of safety has carried over also into the workplace.

Of course, all of this has been done at a cost. We have the highest taxes in the world. We have a very large and, in a sense, an unproductive governmental sector, and we have been criticized for going too far in our regulatory efforts. I think that even in Sweden, we are seeing the limits of what can be done with regulation, and right now we are in the midst of trying different approaches.

When it comes to learning from Sweden, you have to realize the difference, but there are some lessons too. There has been a lot of talk about regulation; yet there are limits to what it can achieve.

If the regulation is to be effective, there has to be effective enforcement. We do not have that in Sweden. There also must be an acceptance of regulation, and I do not mean acceptance only in the political sense. I mean an overall broad acceptance in society that the regulation is something that has merit, that is good, and that really justifies the increased costs and complications. It is not enough to write something into law; there also must be consensus and acceptance.

If there is one major lesson to be learned from the Swedish occupational health and safety system, it is to characterize it as a worker-based system. The action is in the plant, in the health and safety committees, and in the wide net of well-informed people, including local study circles.

I do not mean to pretend that everybody is always enthusiastic and actively involved in reading the latest pamphlets from the Work Environment Fund. However, the structure at the local level and the degree of involvement are amazingly high and admirable. It strikes me that the control really rests there, and that the awareness of the hazards and doing something about them indeed rests much more with the workers than it does in any other system.

TEE L. GUIDOTTI (*University of Alberta*): I share the common view that Europe is an exceedingly valuable source of new concepts and innovative ideas in occupational health. The Swedish, Finnish, and German systems are very useful in introducing new ideas. Whether these ideas will actually work on a demonstration basis in the more pluralistic and expansive societies of North America is an open question. Dr. Jannerfeldt from Sweden pointed this out very nicely.

What is needed is a laboratory to demonstrate whether or not these ideas work. There are 10 such laboratories in the provinces of Canada in which various models are being applied. Among the most interesting is in the Province of Québec where there exists not only a provincial equivalent to NIOSH, which is doing very good research in safety-related behavior, but also a very innovative system of community occupational health clinics, similar to what is being proposed for New York State. This is a network that is now relatively well implemented, and data exist to permit its evaluation.

The point I am making is that a great deal is going on north of this border, ranging from a highly sophisticated infrastructure along the lines of those of

Québec and Alberta, to a less sophisticated structure on both coasts. Careful evaluation of that experience can teach us as much in the United States as the study of the National Health Insurance schemes in Britain and Canada taught us about health care financing.

DOROTHY WIGMORE: Another important lesson to be learned from Québec, and perhaps from Manitoba, is the involvement of the workers. You speak about the need to have workers trust their doctors. In Québec, the joint worker-management safety committee has the right to hire and fire the doctors. They also have the right to decide on the nature of the training programs and to choose protective equipment.

There are many problems with the workers' compensation systems in the various provinces, but in some places where more worker-oriented political parties have been in power, attempts have been made to improve that situation. Improvement certainly is taking place in Manitoba at the moment. We are looking at developing an occupational health service that would function along the lines of the WHO definition of the occupational health services, and that uses the Québec model to a certain extent. We also looked at countries such as Sweden for help and guidance.

The other place that people ought to be aware of is New Zealand, which has a very interesting workers' compensation system that is linked to their health care system. Because they have universal health coverage, that connection makes life a little simpler when it comes to dealing with some of the workers' compensation issues with which everyone here is familiar.

ELLING: I agree that it is very important to look at other experiences, because it is high time that we were more systematic, not just in a cross-sectional way, but in a dynamic historical way. I certainly support the recommendations to look further at other experiences.