

THE ORIGINS OF WORKMEN'S COMPENSATION IN
BRITISH COLUMBIA: STATE THEORY AND LAW

by

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B.A., Simon Fraser University, 1986

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the School

of

Criminology

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SIMON FRASER UNIVERSITY

September 1990

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The Origins of Workmen's Compensation in British Columbia:

State Theory and Law

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ABSTRACT

This thesis examines the origins of a specific aspect of the welfare State: the implementation of workmen's compensation in the province of British Columbia during the period 1891 - 1916. The thesis examines the social, political, economic and ideological antecedents to the *Pineo Select Committee* (1915), struck to investigate compensation schemes in nine jurisdictions, and to make recommendations for a British Columbia scheme. The work of the Committee was reflected in the *Workmen's Compensation Act* (1916). Central to an understanding of the passage of this legislation are the reasons for, and nature of, State intervention into an economy that, prior to the 1890's, was essentially laissez-faire.

Primary and secondary data sources are utilized to facilitate the research. Emphasis is placed upon an examination of archival sources, such as the *Journals of the British Columbia Legislative Assembly* and relevant *Sessional Papers of the British Columbia Legislature*.

The findings of the thesis cast doubt upon popular explanations of the rise of workmen's compensation. Transitional political, economic, and social conditions created new forms of human dependency that were not addressed by the existing social network. Royal Commissions and Select Committees were established to investigate and defuse crises and, in the Gramscian sense, to manufacture consent. The *Pineo Committee* addressed burgeoning crises of order-maintenance and legitimation that threatened the continued production and reproduction of capital. The eventual solution, as in many other jurisdictions, incorporated the requirements of a capitalist economy within a framework that recognized the political and industrial struggles of an organized working class. The Committee operated at 'arms-length' from the State, and was generally seen as legitimate, authoritative and independent by the various interest groups.

Workmen's compensation can be viewed as an instance of intervention by a relatively autonomous State into the labour reproduction process. Workmen's compensation aided order-maintenance, legitimation and reproduction of the capitalist system of social relations,

with little real cost to capital. Moreover, the institution of workmen's compensation was successful in shifting investigations of injury and death in the workplace from a legal forum to a welfare State mechanism-the administrative tribunal-that dealt with the crisis through a system of State regulation and mediation.

One retired Crowsnest miner recalls that when there was an accident in the mines the management first asked about the horses. "They never asked how the goddamn men was. It took time to train a horse. You could replace a man anytime them days" (Reasons, et al, 1981: 18).

It is true that labour produces for the rich wonderful things - but for the worker, it produces privation. It produces palaces - but for the worker, hovels. It produces beauty - but for the worker deformity...(Marx, K. [1964: pgs. 109-10] *The Economic and Philosophic Manuscripts of 1844*).

Workers build automobiles and ride in streetcars. They build mansions in Shaughnessy Heights and live in shacks in the outskirts. They want to know if this is right (F.W. Welsh, Secretary of the Metal Trades Council; *Victoria Daily Colonist*, May 2, 1919: 2).

ACKNOWLEDGEMENTS

I am indebted to many individuals and organizations, whom I would like to thank. First, to my senior supervisor, Dr. Brian Burtch, who recognized my flagging interest in traditional street crime at the undergraduate level, and introduced me to critical criminology, and the sociology of law. Second, to Dr. Rob Gordon, who instructed me on the application of various theoretical trajectories to Corporate Crime generally, and violence in the workplace specifically. Third, to Dr. Charles Singer, for the support and assistance he provided. I would like to thank Colin Campbell, for his encouragement and scholarly guidance over the past four years.

Invaluable assistance was also rendered by individuals at various institutions and agencies. I am indebted to: Dr. Andrew Yarmie, Cariboo College, Kamloops; Brian Phillips and Emily Sheldon, Simon Fraser University (SFU) Library (reference division); Mary Luebbe at the University of British Columbia (UBC) library (government documents); Barbara Nield (head librarian) and Ramona Wolfe (claims adjudication) at the Workers' Compensation Board, Richmond, B.C. In Victoria, the following people greatly aided my research: Gordon Yusko (special projects) and Judy Bennett (government documents) at the Legislative Library, Victoria, B.C.; John Bovey (provincial archivist), Brian Young (supervisor of reference services), and Allan Specht (sound and moving images) at the Provincial Archives, Victoria, B.C.

Finally, I dedicate this research to the memory of British Columbia workers, whose collective struggle and personal sacrifice for a safe workplace inspired me to tell their story.

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CHAPTER ONE

INTRODUCTION: CAPITAL, STATE, AND SOCIAL WELFARE

The emergence of the B.C. working class and the development of industrial capitalism have been the subjects of extensive and repeated study. Until the publication of *Assault On The Worker*¹ in 1981, however, the nature of compensation for work-related injuries, and the very limited use of the criminal sanction in response to such injuries, was given only narrow consideration by Canadian scholars. In terms of Canadian labour history, workers' compensation is a relatively recent phenomenon. Little attention has been paid to the way in which workers dealt with the problem of work-related injury, diseases and death - a phenomenon Prouty has termed "historical amnesia."² The sparse literature that does exist in this area suggests that workers' compensation was a 'balance of interests' between capital and labor, the logical outcome of negotiations between two equitable interest groups, or a clear victory for workers.³ The present work argues that compensation legislation suggests more than the manifestation of a benevolent, caring State or equivalent power relations among interest groups. Compensation was clearly more than a strategy to defuse working class radicalism (Doyal and Pennell, 1981: 161). The notion that workers' compensation legislation was a qualified victory for capital over working people has only recently begun to be seriously entertained.⁴ Compensation arguably provided a more sure and expedient system of

1 Reasons, et al., (1981: 160-61). Until 1979, there were no studies of the origins of workmen's compensation in Canada (Finkel, 1979: 82). Geddes' (1986) thesis briefly examines the origins of compensation in British Columbia, but neglects the crucial discourse of the *Pineco Committee* hearings in 1915.

2 Prouty (1985: xvii). Prouty directs his criticism at the forest industry for on-going efforts to downplay or ignore the human price of the fibre extraction process.

3 See, for example, Friedman and Ladinsky (1967); Wesser (1971). See also, an address by Canadian Manufacturers Association president J.L. Thibault ('*Workers' Compensation: Facing New Realities*') to the Sixth Annual Corpus Workers' Compensation Conference at Toronto, Ontario, Oct. 10-11, 1989.

processing claims for the majority of workers. At the same time, costs to employers were reduced and made more predictable. The implementation of profitable workplace reform (Piva, 1979: 108) occurred in conjunction with the ideology of a 'commonality of interests'. This ideology coincided with the rise of the social welfare State, at a time of a burgeoning capitalist economic crisis, widespread labour unrest, and failing State legitimacy.

The object of this thesis is approached via two themes. First, an examination of the political, economic and social events that influenced the implementation of workmen's compensation in British Columbia. Second, the application of a conjunctural theoretical trajectory to this historical 'puzzle', reflecting contemporary efforts in State theorizing in the area of social welfare generally, and health in specific.

This thesis addresses rationalizations for the rise of social welfare legislation generally, and workmen's compensation specifically. The role and function of the Pineo Select Committee (1915) appointed by the Conservative government of British Columbia will be examined, and an identification made of the various structural influences that were ongoing both prior to, and concurrent with, the work of the Committee. These 'influences' consist of political, ideological and social factors that operate in concert with the imperatives of a capitalist economy. The degree to which the Committee was successful in defining the parameters of the debate, while limiting discourse and options for alternatives to the proposed compensation scheme, suggests a reformist function analogous to that of "smoother-outers, adjusters...not revolutionaries" (Hastings and Saunders, 1987: 146). This thesis is 'historical' in focus, and seeks to establish a link with criminological theory in general and the relevant State control literature; especially that of a *modified*-structuralist position. The need for historical appreciation in criminology is central to theorizing about the State and the ambit of criminal law. As C. Wright Mills (1959: 143) has noted, "history is the shank of

4 Schmidt, 1980: 52. See also, Carson, W.G. (1982); Clement (1981); Reasons, et al, (1981); Doran (1986).

social study.” An appreciation of the development of economic and social institutions is crucial, for “historical change is change of social structures” (Mills, 1959: 150).

This thesis also addresses an apparent inability of conventional, ahistorical sociology to locate a topic of investigation within a larger range of events. Paying attention to “the facts” without an empirical, theoretical grounding is unhelpful:

If we want to understand the dynamic changes in a contemporary social structure, we must try to discern its longer-run developments, and in terms of them ask: What are the mechanics by which these trends have occurred, by which the structure of society is changing? It is in questions such as these that our concern with trends comes to a climax. *That climax has to do with the historical transition from one epoch to another and with what we may call the structure of an epoch* (Mills, 1959: 152) (emphasis added).

Conventional avenues of investigation will be replaced by a neo-Marxist research perspective. This investigative template - a conjunctural analysis - isolates political, economic, ideological and social events at one historical moment. It is firmly rooted within the tenets of political economy. As Clement (1977: 7) suggests, political economy reflects “the connection between a country’s economy and social relations viewed with a historical perspective.” This investigative technique is ideally suited for an exercise that seeks to determine interactions between State and economy, in a specific time and place. Gordon (1988: 561) supports the utility of an historical, macro-sociological approach, since this ensures:

a full understanding of the changes which have occurred. An untangling of the complex, dialectical interplay between the State, social control strategies, law, structural conditions, and human agency can only be accomplished through a retrospective analysis since the nature and significance of events are usually best understood some time after they have occurred.

Terminology: Capitalism, State and Workmen’s Compensation

In engaging a topic that addresses the embedding of social welfare legislation in a capitalist society, it is necessary to define three terms that are central to the discussion.

Capitalism is a form of economic activity that entails the private ownership of capital by the capitalist class, while excluding the greater majority of the population.⁵ In part because the capitalist class derives its power from ownership and control over the means of production, capitalism is a “structurally contradictory form of society, the reproduction of which sets up tensions and pressures” (Giddens, 1981: 234). The contradictory and conflict-wrought mode of production is the central cause of division between the classes of capital and labour (Cuneo, 1978: 285; Giddens, 1981: 109). The capitalist class attempts to manipulate the cyclical nature of capitalism in hopes of perpetuating the accumulation process. Common strategies include reducing production costs while bolstering production, and creating dissension among fractions of the working class, including the reserve army of labour, in order to facilitate profit-making. For example, during the late nineteenth and early twentieth centuries, the working class were expected to adjust to changes in economic patterns, though their incomes were restrained from “rising relative to the profit accumulated by capital” (Giddens, 1981: 234). Moreover, in a capitalist workplace, the worker was subject to direct managerial surveillance. Control was exacted by regulating wages and imposing workplace discipline. These two spheres of control, both within the labour process, constitute the locus of on-going class struggle in capitalist economies (Giddens, 1981: 222-23). This is not suggest that capitalism is a completely negative form of organizing productive and social relations. Hart (1982: 441) argues that capitalist societies have made genuine progress in the area of health, and other spheres of existence. Doyal and Pennell (1981) argue that health policies are contradictory, and the threats to human health are diverse and complex. While this may be the case, a full examination of contemporary issues in health was beyond the scope of this research. Nonetheless, the historical evidence indicates a good deal

⁵ Bottomore, 1983: 64. This includes private ownership of the means whereby commodities are produced for sale by consumers, rather than for immediate consumption by the producers.

of congruency with much of the critical contemporary literature upon which this thesis is based.

Second, it is the capitalist State that is responsible for ensuring the perpetuation of conditions conducive to the existence of capitalism. The State includes the legal apparatus, which has sole authority to exercise 'legitimate' force. Arising at a specific level of industrialization and division of labour (Vincent, 1987: 221), the State:

regulates business and commerce, intervenes in the labour market and industrial relations, conducts relations with other States, provides infrastructure services such as transport and communications, (and) directly produces goods and services for sale (Gough, 1979: 49).

The terminology used to describe the State is frequently generalised and abstract (Vincent, 1987: 219). This confusion is a product of a process that attempts to clarify linkages in

a system of relations, structures, institutions and forces which, in industrialised society, are vast, complex, differentiated, and as an inevitable result, contradictory at times as well.⁶

The 'State' will be defined as an aggregate combination of "branches, apparatuses and agencies co-existing in a complex web of inter-relationships" (Colwill, 1987: 281). In Canada, this includes the federal House of Commons and provincial legislatures, the respective executives, the Civil Service, the judiciary, the military, and the various levels of regional and local government (Gough, 1979: 63). The State facilitates the overall defense and support of a capitalist economy by encouraging, among other things, the creation and protection of private property rights intrinsic to capitalism (Clement, 1977; Navarro, 1976). It also maintains an infrastructure conducive to the requirements of capitalism. This includes the creation and perpetuation of institutions and relations that service productive and reproductive requirements of the population, such as health needs (Doyal and Pennell, 1981). The primary focus of an analysis with Poulantzian roots is on the function of the capitalist State, not its

⁶ Smith, 1985: 46. The contradictory nature of the State is illustrated by Giddens (1981: 106). He notes that while the State has its origins in the defence of private property, it has also served to inhibit the formation of private property.

composition. The State is more than a “specific network of institutions;” rather, it is a “functional inter-relationship” (Ratner, et al, 1987: 93). Moreover, the State is able to act “in a positive fashion, creating, transforming and making reality” (Poulantzas, 1980: 30). The neo-Marxist literature upon which this thesis is based suggests the State exhibits a ‘relative autonomy’ - that is, acting on behalf of, rather than at the behest of, capital interests (Ratner, et al, 1987). Consequently, the State may over-ride the interests of specific capitalist factions, in order to serve the interests of the capitalist class as a whole (Gough, 1979). Consequently, the “capitalist class frequently mistrusts the State.” As Giddens (1981: 219) argues, capitalist apprehension coincides positively with

the power that the organised working class, in situations of industrial bargaining, in the formation of labour or socialist parties, is able to mobilise vis-à-vis the State.

It is the exercise of ‘human agency’ under repressive conditions - the realization that “human beings fight back”⁷ - that presented the most pressing problem to the State in a province where the legitimation function was failing badly.

Workmen’s Compensation⁸ describes the widespread legislative, social welfare intervention that took place during the late 19th and early 20th centuries. According to Flett (1913: 5), compensation legislation is based upon the police power of the State and “the broad general principle that the welfare of the State depends upon the welfare of the worker.” Workmen’s compensation provided a percentage of lost wages by eligible workers who were injured or killed in the course of employment. Compensation for ‘pain and suffering’ (or non-economic loss), for which awards had been made by the courts, was eliminated by compensation boards. In British Columbia, the Board carries out five major functions: claims

7 According to Giddens (1981: 171), human beings are knowledgeable agents, though they act within historically specific grounds of “unacknowledged conditions and unintended consequences of their acts.” Moreover, the “dialectic of control operates in all circumstances where human individuals, however oppressed they might be, remain agents” (Giddens, 1981: 224).

8 While women were included under the B.C. *Workmen’s Compensation Act* (1916), the legislation was entitled “workmen’s compensation.” As Ison (1989) notes, “workmen’s compensation” was not renamed “workers’ compensation” in B.C. until 1974.

administration and adjudication; registration, calculation and assessment of employer levies; the prevention of injuries and industrial diseases; rehabilitation of injured workers; and, criminal injury compensation. As the first Annual Report of the Workmen's Compensation Board (1917: p. K9) states, the Board exists to ensure that those entitled to compensation "receive(d) exactly the amount due them under the provisions of the law." Contemporary compensation Acts are rooted in two principles: first, collective liability on the part of employers; and second, a State-administered system of compulsory insurance. Both the Parliament of Canada and the provincial legislatures have the power to enact labour legislation, but the judiciary has interpreted sections 91 and 92 of the *British North America Act* in a manner which gives the provinces the bulk of jurisdiction and the right to enter into contracts. As labour laws regulate contracts between employer and employed, they become *intra vires* the provincial legislatures (The Canadian Encyclopedic Digest, 1986). In common law jurisdictions, England was relied upon for legal precedent and statute law. Many English statutes governing the regulation of industry, and compensation for injuries suffered as a result of participation in industrial activities, were 'borrowed' and adapted by Canadian provinces (Ruegg, 1910: Introduction to the Canadian notes). In the Territories, Workers' Compensation Ordinances were enacted with provisions similar to those of the provinces.

Overview of Chapters

The central question posed by this thesis can be summated as follows: What were the social, political, economic and ideological factors influencing the introduction of workmen's compensation in British Columbia, and what role did the State play in facilitating this transformation? The transcripts of the Pineo Select Committee (1915) are of crucial importance in understanding why the B.C. State would intervene into the provincial economy. The Committee was engaged at a time when the economy was beginning to make a transition from a regional, competitive base to a monopoly mode more characteristic of continental

trading blocs. The degree to which the discourse and recommendations of the Committee reflected structural imperatives of a capitalist economy constitutes the second integral part of this puzzle.

Primary and secondary sources of documentary evidence were reviewed. These included the statutes of British Columbia, the *Journals of the Legislative Assembly*, records from various provincial and federal Royal Commissions and Select Committees, *Sessional Papers*, period newspapers, oral histories, journal selections and textbooks. Documentary analysis was the only viable method of securing a wide variety of information, as individuals familiar with events germane to this research are deceased.

The theoretical orientation arises from a conjunctural analysis, and reflects recent attempts to understand the conduct of the State in the context of the imperatives of a capitalist economy. This chapter includes a brief review of the key theories and their proponents. An analysis of strengths and weaknesses of the dominant perspectives is presented, followed by a discussion outlining the primary tenets of the chosen theoretical trajectory. An overview of the relevant literature in the area of social welfare and social control illustrates specific concepts, and provides a theoretical underpinning for the thesis.

Chapter Two presents a methodology that complements the macro-sociological theoretical orientation outlined in this chapter. Sources of information are identified, and the limitations of documentary analysis are discussed.

The focus of Chapter Three is on relevant political, economic, legal and social developments in British Columbia, especially activities of coal and hard-rock miners.⁹ More than any other industry, working conditions in the mines provoked wide-scale unrest, and stimulated radical political mobilization. Larger industries, such as forestry and railroad

⁹ Palmer (1983: 155) argues that railroad workers and coal-miners comprised the “dominant force” of western class struggle. Both McCormack (1985a: 124) and Bercuson (1981: 453-u4) single out the miners as the revolutionary vanguard in British Columbia. Similarly, Seager (1985: 35) argues, “Socialists did not define labour’s political agenda in turn-of-the-century British Columbia. The miners did.”

construction, are reviewed. A series of impasses, especially in the collieries, is analyzed from the 'relative autonomy' perspective in order to understand a State response that varied from military repression to Royal Commissions.¹⁰

In Chapter Four, discussion turns to the proceedings of the 1915 (*Pineo*) *Committee of Investigation on Workmen's Compensation Laws*. Witness testimony, and the reaction of the Committee members to their enquiries on topics such as medical aid, individual liability, and waiting periods, is presented. The positions of labour and capital with respect to the compensation bill, tabled earlier by the government, are discussed. As the transcripts clearly indicate, the views expressed by organized labour and capital serve as an index of class conflict.¹¹ This chapter also addresses the response of the Committee to such issues as the mechanics of installing compensation legislation, the rationale for change, and identification of the quarter from which proposals for change emanated. Evidence of external pressure being brought to bear upon the provincial economy, a consequence of the imperatives of a greater, impending economic system - global monopoly capitalism - will be clarified. The manner in which the Committee focused upon the elimination of 'economic waste', protecting long-term capital interests as a whole, while seeking to improve capital-labour relations through the creation of a 'commonality of interests' (Gough, 1979) is, arguably, a necessary pre-cursor to the advent of monopoly capitalism. The accrual of numerous benefits for the State in utilizing the forum of a Select Committee to "advise, consent and warn" (Maxwell, 1969: 16) is analyzed, and used to suggest the view that class struggle is shaped by the State.¹²

10 During the latter years of the 19th century, the State appeared more willing to utilize the militia in suppressing labour unrest. Royal Commissions were the rule, rather than the exception, during the pre-compensation years of the early 20th century. Nonetheless, the State invoked the full use of the military and the criminal justice system to crush a 1914 strike by Vancouver Island coal miners. The uprising was sparked by a demand for safer working conditions and union recognition (see, Ratner and McMullan, 1989; McMullan and Ratner, 1983).

11 As Walters (1983) argues, any indication of labour-capitalist conflict drawn from recorded transcripts should be analyzed in light of widespread and systemic global political and social unrest.

Chapter Five utilizes recent neo-Marxist research to extend this analysis of health legislation in the capitalist economy of British Columbia. In view of the historical evidence, it is apparent that for a capitalist system of social relations to continue, constant attention must be given to facilitating the production and reproduction of the labour force. The provision of compensation addresses specific needs, yet maintains the relations of production, and leaves intact the greater structural imperatives. Accordingly, workers are prevented from escaping the relations of wage, property and hierarchial authority. The nature of State intervention disguises the direct link between the process of commodity production and the destruction of health. Though working people demanded "immunity, not indemnity",¹³ the State largely succeeded in denying injured workers equality before the law through abrogation of workers' common law rights in favour of an administrative tribunal that avoided reference to criminal behaviour.

This thesis follows a perspective that arises from disenchantment with liberal-pluralist theories of State, on the one hand, and those of determinist, critical theories, such as economism, on the other. The manner in which the State achieved a compensation coup, with strong support from both capital and labour, becomes clearer during an application of a *modified-structuralist* account of the capitalist State. The historical process in British Columbia

12 Stevenson, 1983: 95; see also, Strinati, 1979.

13 Lewis, 1909: 65. The English Trades Union Congress made clear to a Select Committee investigating compensation in the 1880's that

The workmen never cared for compensation itself; it might have been a necessity for their social circumstances, but no idea of compensation ever urged them forward to agitate for the obtaining of this Act; it was primarily, I may say absolutely, with the desire to protect their lives and limbs so far as human precautions could so (Bartrip and Burman, 1983: 164).

Similarly, a worker told the Pineo Committee:

...we don't want the accident, but when we get hurt, we want the compensation, but we don't want to get hurt (v. 4: 106).

has clear relevance to other critical work on the political economy of health care, especially workers' compensation, in Canada and other nations.

Review of Relevant Theory and Research

The links between the rise of workmen's compensation and criminological issues lie within the realm of State theory and its relationship to various specific historical events. These events include: labour-socialist industrial and political action, the responses of Royal Commissions and Select Committees, State repression and State control. The manner and degree to which corporate interests have succeeded in attributing workplace violence to employee negligence or 'accident' comprises another important avenue of investigation. An understanding of the attending economic system known as 'capitalism' is facilitated by the application of State theory. State theory is helpful in revealing the rationale for the removal of workplace assaults from the criminal or civil courts, substituting in their place a welfare State apparatus.

Melossi (1979) postulates that the authority to regulate the workplace (specifically, the factory) is of utmost importance in ensuring the survival of the capitalist mode of production. The manner in which the State has enacted a non-criminal, regulatory system that relies on voluntary compliance and mediation to resolve cases lends itself to an analysis considering the requirements of capital accumulation and legitimation. A preliminary theoretical investigation further reveals three explanations of workplace assault - individual, organizational, and structural - that are not altogether mutually exclusive (Gordon and Coneybeer, forthcoming; Snider, 1988).

The individual level 'explains' workplace injury and death as a consequence of managers and supervisors learning and rationalizing, through a process of differential association (Sutherland, 1949), techniques of engaging in activity harmful to employee health and safety. Such activity may not necessarily violate formal law, but it does infringe upon a set

of ethical principles (Block, 1983). As Snider (1988) argues, the internalization of rationalizations necessary to overcome a value system does not assure that harmful behaviour will ensue. Those with the power to enforce regulations, or overlook infractions, are clearly more vulnerable to bribes or production pressure than are those in less influential positions.

The second perspective, organizational imperatives, considers material and psychological rewards for individuals who allow themselves to be manipulated in order that an organization may achieve a desired goal (Goff and Reasons, 1986; Tataryn, 1979). For example, a calculation of workplace performance is often plotted by analyzing production levels. The more labour is able to produce, the greater the expected levels of profit. In what Carson (1982) calls "the political economy of speed", British oil and drilling companies have been allowed to continue unsafe labour practices offshore that would not have been permitted onshore. The findings of a Royal Commission¹⁴ set up to investigate the *Ocean Ranger* disaster off the coast of Newfoundland in 1982 confirm neglect for the safety of the entire crew - 84 men - who died. An additional 165 lives were lost in 1988 when a North Sea rig - *Piper Alpha* - exploded and caught fire, the result of inadequate maintenance. The *Ocean Ranger* (House, 1986) and *Piper Alpha* disasters illustrate the effect of individuals succumbing to production (and therefore profit) objectives. Safety concerns are relegated to a secondary or tertiary status.

Both individual and organizational levels of explanation are pre-occupied with individualist methodology, which Gough (1978: 34) has characterized as "profoundly unsociological." Class interests are overlooked, conflict and coercion are discounted, and the existence and influence of ideology and hegemony¹⁵ are simply ignored. Mills (1959: 153)

14 *Royal Commission on the Ocean Ranger Marine Disaster, Report One: The Loss of the Semisubmersible Drill Rig Ocean Ranger and its Crew.* Ottawa: Supply and Services Canada, 1984.

15 According to Kaye (1984: 197), hegemony refers to an *order of struggle*, a locus of constant dispute and negotiation. This struggle does not entail revolutionary struggle, nor the use of continuous State coercion to maintain social order.

argues that it is “intellectually easier (and politically more advisable) to acknowledge one trend at a time...than to make the effort to see them all together.” Pierce (1990) maintains that the notion of ‘corporate crime’, in particular, is “poorly described or understood if we stay within a conceptual framework restricted to interpersonal relations between subjects.”

Pluralist levels of analysis characteristically rely upon the actions of individuals, so that social life is viewed in terms of group response to a changing social environment (Gough, 1979: 9). Pluralists suggest that (political) power and influence is impartially distributed, and equally accessible, to a myriad of competing interest groups who freely choose to assemble among themselves, and affiliate with, or oppose other groups (Vincent, 1987: 186). Because the State is held to be absolutely impartial and above any inter-group conflict, pluralism holds that it is desirable to negotiate differences within the confines of the State, according to mutually agreed upon ‘rules’, to reach a consensus (Ratner and McMullan, 1987). Unlike consensus theory,¹⁶ however, which ties law to the codification of widely accepted belief systems, pluralists recognize discrepancies in the interpretation of legal rules. However, the focus is upon “skirmishes between pressure groups, rather than battles between social classes” (Gough, 1978: 37). Pluralism also assumes a consensus regarding the “creation, implementation and enforcement” of these same rules, toward securing a more efficient and egalitarian society (Caputo, et al, 1989). Inexplicably, no attention is given the generation of opinions and values that influence, and in turn are influenced by, rule-making (Gough, 1978: 37). Critics have argued that pluralism has served as “a mystifying apologia for the

16 Consensus theorists view the emergence of social policy as “the result of ‘rational’ solutions to certain pre-existing social problems.” C. Wright Mills (1959: 27) summarizes the position thus:

People often share standards and expect one another to stick to them. In so far as they do, their society may be orderly.

The State response to “the misery and degradation of life wrought by the industrial revolution” is conditioned by a need to be “morally correct”, in terms of a Christian belief system (Gough, 1978: 30). In British Columbia, the Church insisted that industry be “humanized, Christianized”; *Victoria Daily Colonist*, July 30, 1919: 9.

concentration of massive political power in the capitalist class" (Ratner and McMullan, 1987: 9).

Pluralism suggests adherence to "the natural lines of authority in the social order."¹⁷ Pluralism suffers further from imprecision in its usage of descriptive terminology insofar as the State is concerned (Vincent, 1987: 211). On the whole, the school fails to address the contradictory nature of its claims - that the State serves to "superintend and adjust the relations between groups and individuals" (Vincent, 1987: 215) in order to "protect, or promote peace, security and justice" (Weiss, 1986: 199) - when the groups that comprise the pluralist State are capable of resorting to repressive and authoritarian measures.¹⁸

Functionalism constitutes one attempt to understand social process. Essentially, functionalists view social policy as a response to non-social forces. Despite history being seen as 'process' and 'progress', functionalists ignore a history of transitory modes of production, and thus ignore the impact of "classes, class conflict and revolutionary rupture in human history" (Giddens, 1981: 223). While functionalism recognizes the need to produce a specific type of individual, it fails to make the connection between this specific type, and the need for social control vis-à-vis the welfare State (Gough, 1979: 81; 1978: 37). For Giddens (1981: 215), functionalism is fatally flawed, because the core of the perspective suggests that:

those processes or events...necessary for the reproduction of a social system explains why they occur.

Similarly, functionalists disregard the importance of a dialectic - structure and agency - or, what Giddens (1979) calls, the 'duality of structure.' Giddens suggests that structures are reproduced by active human subjects. Moreover, as Conley (1988) argues, functional

17 Vincent (1987: 183). This position is undoubtedly one reason why pluralist theory has been accused of distorting *class* analysis (Ratner and McMullan, 1987: 90).

18 Vincent, 1987. Functionalist theorizing recognizes the utility of a welfare State to facilitate the production and reproduction of the population for the benefit of "modern industrial society"; but it is unable to view this development as specific to capitalist society (Gough, 1978: 38).

explanations are utterly ahistorical, insofar as they “submerge class and other conflicts beneath their outcomes”:

it is not the task of the social theorist to seek to discover whether social change is caused by the thoughts men hold, the tools they employ, or the way they order their economic lives...it is not what causes what, but what is related to what that is the concern of the social scientist (Clark, 1968: 281-82).

A third dimension, and the focal point of this thesis, isolates the structural imperatives of a capitalist economy. These characteristics manifest themselves in a distinct, holistic fashion:

above all, the social scientist is trying to see the several major trends together - structurally, rather than as happenings in a scatter of milieux, adding up to nothing new, in fact not adding up at all (Mills, 1959: 154).

A capitalist economy requires an *appropriation of surplus value* (or profits), created by *wage labour*, to those who own the means of producing commodities. Profits can be utilized for the accumulation of private wealth, re-investment in the workplace (such as new technology), or expended on luxuries. The relation between wage labour and capitalist is necessarily exploitative, a consequence of combining labour and raw materials to increase value. Consequently, the cost of purchasing the commodity by the consumer is greater than the cost of the production process to the capitalist. *Profit maximization* becomes the main motivator of commodity production. *Flexibility and durability* are further characteristics of capitalism. Capitalism has survived innumerable global crises, and emerged relatively unscathed. At present, the evidence suggests that the foundation for a new epoch - that of global monopoly capitalism - is well under way. Theoretically, there is competition between capitalist factions. However, two forces of production - profit maximization and capital accumulation - are best accommodated by controlling or eliminating competition. The result is a strain toward *consolidation, amalgamation and monopolization*, of which present-day ‘take-overs’ and mergers, on an unprecedented scale, are clear indicators. As the crisis of a falling rate of profit associated with latent capitalism becomes more acute, the need to ensure *perpetual growth and expansion* becomes more pressing. The search for cheaper raw

materials and new markets is broadened and accelerated, and methods of reducing costs, including those of labour, are formulated. As a system of productive and social relations, capitalism continues to outlast ongoing crises that are themselves precipitated by the mode of production. Arguably, the social unrest resulting from agitation for compensation for industrial injuries during the late 19th and early 20th centuries is but one example of a crisis that capitalism has managed to not only survive, but to prosper from in the long term.¹⁹ Finally, the *legitimation* function involves, in part, a perpetuation of the virtues of competition and free enterprise, and ‘freedom of choice’. The State has at its disposal numerous strategies to limit the scope of critical discourse, at the same time that potential crises are being defused. If preliminary control mechanisms do not succeed, the State may implement ‘solutions’ that appear to address the source of concern. State intervention is limited to activities which produce and reproduce the political, economic, social and ideological conditions necessary for capitalism to continue (Bottomore, 1983; Gordon and Coneybeer, forthcoming).

Clearly, the imperatives of capital accumulation and profit maximization will conflict with the responsibility of the employer to ensure that the interests of employees at the workplace are fully considered. As Barnett (1981) and Henry (1986) argue, the costs of engaging in behaviour destructive of the labour force may be outweighed by the economic benefits. Consequently, the State is constrained to intervene, act as a mediator in any conflict and, through the provision of a regulatory framework, expedite and ensure the “right” of capital to achieve its two primary objectives of capital accumulation and profit maximization (Clement, 1977).

In terms of explanatory utility regarding corporate wrongdoing and, more significantly, the advent of workmen’s compensation, the individual and organizational perspectives are

19 See, Deville and Burns (1976-77: 5-46) for a more detailed account of how capitalism has survived an on-going series of economic, political and social crises.

limited by their near exclusive focus upon human agency. They also disregard the broader economic, ideological and political components associated with legislative initiatives introduced by the State to create or ameliorate a set of conditions. While it would be inaccurate to suggest that individuals and organizations have little or no impact upon a course of action pursued by the State, it is suggested a survey of structural conditions in countries manifesting similar State activity will prove enlightening in terms of explanatory potential. As Gordon (1988: 193-94) argues,

Short of assuming that some magical and as yet undiscovered process of legislative osmosis is occurring, the explanation must lie with a set of factors that are common to these governments...this issue is addressed in part by those who focus upon the structural conditions affecting reform and the nature and role of the modern, capitalist State.

Conventional sociology characterizes agents as "the hapless playthings of social forces which they neither control nor understand" (Giddens, 1987: 204). However, neo-Marxists claim the existence of a consistent pattern of evolution controlling the human condition (Collins, 1982: 2; Navarro, 1986a). As McNall (1978) illustrates, the critical sociological enterprise has been at work re-assessing its theoretical position, even as the hegemony of its liberal counterpart continues its downward spiral. Though the relative poverty of individual-centered (Thompson, E.P., 1978), liberal (Campbell, 1987) and economic State theory has been acknowledged by concerned social scientists (Vincent, 1987; Ratner and McMullan, 1987; Block, 1987; Carnoy, 1984; Panitch, 1977), the course of action has not always been clearly demarcated. As Ratner, McMullan and Burtch (1987: 85) argue, recent theoretical work viewed the State in terms of either "an instrumentalist reading of Marx's own undeveloped analysis of the State"; or, a pluralist conception of State institutions as "negotiative and disinterested." The current neo-Marxist enterprise has, within the past century, aimed at producing increasingly sophisticated theoretical works (Cuneo, 1978: 289). Recent neo-Marxist theorizing has sought to critically understand the complex relationships between

knowledge and social structure, between institutional life and political economy as a whole (Ratner and McMullan, 1987). For Marx,

the source of social change lay in the material circumstances in which men found themselves and how they responded to their environment (Collins, 1982: 4).

The individual, viewed in the context of his or her interaction with their social environment, is the key factor in understanding history and society. When isolated 'instances' are viewed in terms of the big picture, a knowledge based upon a "conceptual reproduction of social reality" is created (Watson, 1982: 62). In the Hegelian tradition, truth is defined as the whole (Navarro, 1986b: 107). A critical, theoretically-informed sociology can become the basis for a challenge of Western economic and political systems. Plainly, the 'revolutionary outlook' associated with critical theorizing poses a threat to State and capital (Gough, 1979). Vincent notes (1987: 224) that:

...to innovate in State theory is potentially to change the character of our social existence. Theoretical change can alter our practice. To theorize about the State is to think about and potentially change the ends of social existence.

A burgeoning body of knowledge, espousing a particular brand of political economy (that of historical materialism; Gough, 1979: 6) has recently received a considerable amount of scholarly attention.²⁰ The work of Ratner and McMullan (1987) is a stellar example of the push to further broaden and strengthen the theoretical base of the Canadian critical sociological enterprise, in the area of State and social control.

The State: Alternative Theoretical Formulations

Four main neo-Marxist theoretical derivatives predominate in the area of State theory (Ratner and McMullan, 1987): the instrumentalist position (Miliband, 1969, 1970); structuralism, of which Nicos Poulantzas (1969, 1978) was a leading proponent; the class-

²⁰ This work includes: Clement (1975, 1977, 1981); Doyal and Pennell (1981); Forcese (1975); Fine, et al, (1979); Gough (1979); Holloway and Picciotto (1978); Marchak (1981); Miliband (1979); Navarro (1986); Poulantzas (1968, 1979); Ratner and McMullan (eds) (1987); E.P. Thompson (1963).

conflict or Gramscian orientation (1971); and finally, capital-logic (Holloway and Picciotto, 1978). Contained within each of these theoretical derivatives, to a greater or lesser degree, is an examination of the concepts of accumulation, legitimation and coercion, which provides a longitudinal review of developments within liberal, liberal-democratic and exceptional States.

Ralph Miliband's *State and Capitalist Society* (1969) argued that the pluralist view of the State was "in all essentials wrong" (Knuttlia, 1987: 107). His evidence indicated that the State was essentially an extension of the capitalist class. The State was conceptualized as a powerful entity that interacted with capital in a symbiotic relationship, linked by class position, hence, common educational, personal, working and ideological backgrounds (Quinney, 1974; Ratner and McMullan, 1989, 1987). Miliband argued that the State and capital were indistinguishable. The State was a tool of capital, in order to further capitalist objectives. The State was seen as having no autonomy - an 'instrument' of capital²¹ - hence, the term 'instrumentalist' was coined.

Despite instrumental studies of judicial office generating data in support of the position (see, Ratner and McMullan, 1987: 91), critics argue instrumentalism is still vulnerable to simple empirical refutation (Bierne, 1979). Perhaps one major reason this state of affairs exists, is a consequence of instrumentalists continuing to view the capitalist class as devoid of internal dissent and conflict; in effect, capital is viewed as a monolithic and united opposition, impervious to fractionalizing. While instrumentalism lends itself well to specific temporal and geographic junctures (such as instances in late nineteenth and early twentieth century British Columbia, where the militia were utilized to crush strikes), there are many instances of State action that cannot easily be linked to capitalist agency. Instead, the State is one locus of class conflict (Ratner and McMullan, 1987).

21 This proposition seems to directly contradict Marx's observations (admittedly, in a micro context) concerning the English Factory Inspectorate in *Capital*. Indeed, Marx referred to one inspector as having rendered "undying service to the English working class. He carried on a life-long contest, not only with the embittered manufacturers, but also with Cabinet" (Marx, 1978: 216, footnote #1).

One facet of Miliband's thesis was that social reforms, implemented by the State, ensured that potentially troublesome social problems, - "social dynamite"²²- could be safely defused and co-opted, and rendered harmless as "social junk."²³ In the absence of a consistent and unrelenting working class pressure to maintain the implemented reforms, it was inevitable that these 'victories' would atrophy over time.²⁴

Two main problems with instrumentalism have been isolated by critics such as Block (1987: 53). First, the "critical role" of maintaining the legitimacy of the existent social order is ignored. Second, an orthodox stance disallows even minimal autonomy that would facilitate acting against the interests of specific capitalists, in order to serve the long-term interests of capitalism as a whole. The notion of a class-conscious ruling class - one that is cognizant of the necessity to reproduce the capitalist economy, and germane to the instrumentalist perspective - must necessarily limit State autonomy.

Addressing the criticisms of Nicos Poulantzas,²⁵ Miliband later modified his position. While re-affirming the class nature of the State, he also argued a relative autonomy from control by dominant capital factions (see, Knuttila, 1987: 118). Miliband maintained that liberal-pluralist views were flawed. Miliband's most recent stance, like that of Clement (1973), allows for a limited State autonomy for legitimation purposes. This autonomy, however, is not

22 Spitzer (1975: 642). In the context of this thesis, 'social dynamite' refers to a radical working-class militancy that ensued as a result of unsafe working conditions.

23 *Ibid.* This term does not imply that injured workers are worthless. Rather, the term is a measure of the level of threat injured workers (and other dispossessed groups) presented to established institutions subsequent to State intervention.

24 Stevenson, 1983. As Collins (1982: 47) notes, subordinate classes can achieve "real gains by securing beneficial legislation." While some critical theorists choose to view these gains in the sense that they detract only marginally from State control, Stevenson (1983) argues that such victories are worth a struggle to preserve.

25 According to Holloway and Picciotto (1978: 5), Poulantzas was justified in criticizing Miliband for his neglect of the connection between the bourgeoisie and the State: "What makes the State in capitalist society a capitalist State is not the class composition of the personnel of the State apparatus but the position occupied by the State in the capitalist mode of production."

seen as sufficient to overcome the bias of the State toward serving the interests of capital as a whole (Ratner, McMullan and Burtch, 1987). Consequently, the usefulness of the instrumentalist approach will not, in all likelihood, be as adaptable as a structural approach, such as that proposed by Poulantzas (Campbell, 1987: 167).

Poulantzas' review of Miliband's formation employed, in the alternate, a theoretical derivative of Althusseur's structuralism. Arguing a relative autonomy thesis, Poulantzas criticized Miliband for his failure to comprehend "social classes and the State as objective structures" (Poulantzas, 1979: 242; Vincent, 1987: 174). He instead proposed a separation between capital factions and State institutions; the State, he argued, served to organize capitalists, while simultaneously disorganizing the working class.²⁶ As Block (1987: 7) notes, Poulantzas modified an earlier functionalist analysis that viewed humans as "mere bearers of structures", engaged in reproducing structural relations between classes, to one that emphasized a process of continual class struggle within the various apparatus' of the State.²⁷ Vincent (1987: 171) characterizes the earlier Poulantzian formulation of 'structuralism' as:

a mode of explanation which rather than focusing on human subjects, relies instead for explanation on deep-rooted underlying structures.

Block (1987: 58) argues that a structuralist theory must accomplish two related objectives. First, it must demonstrate the constraints the State faces when acting against the interests of individual capitalists. Second, it must possess a utility that assists in explaining the manner through which the State secures the long-term interests of capitalism.

As recent empirical work seems to suggest,²⁸ the State exercises a limited or 'relative' autonomy in its interaction with the capitalist class. This class appears unable to manipulate

²⁶ Block, 1987: 6. Miliband was equally critical of the Poulantzian formulation of 'objective structures' and 'objective relations'. Miliband suggested their utility was probably limited to little more than an alternate formulation of 'ruling classes' (Miliband, 1979: 259).

²⁷ See also, Carnoy, 1984: 98, 106; Ratner, McMullan and Burtch, 1987: 85-125; Vincent, 1987: 173.

²⁸ See, for example, Crouch, 1979: 25-26; Vincent, 1987: 151; Carnoy, 1984: 250.

the State at will, with the result that the State frequently chooses a course of action that contradicts the interests of select capital fractions. The welfare State, and workers' compensation schemes in particular, illustrate this partial usurping of capital interests. O'Connor argues that this type of State intervention has two immediate implications for the capitalist class. First, these expenditures attempt to "reproduce the economic mode of production and stimulate the rate of profit"; second, these "costs legitimate the sanctity and harmony of the social order" (Biernie, 1979: 379). In other words, while capital 'loses' in the short term, the long term effect is to secure and legitimate the hegemonic interests of capitalism in the 'public interest'.

Although Poulantzas has been criticized for neglecting the transformative potential of human agency (by suggesting, in part, that social classes are structurally determined, and existing independently of a class view of themselves)²⁹, the Poulantzas - Miliband debate over the 'relative autonomy' issue initiated a new era of critical investigation of the State, and exposed reigning pluralist 'theories' as empirically unfounded and theoretically uninformed.³⁰

The Gramscian school is an attempt to develop a theory that integrates State and society, and involves a dialectical reformulation of the concept of law (Schmidt, 1981). Rather than an exclusive focus upon the determinants of the base-superstructure distinction which is at the centre of an economic analysis, Gramsci adapted historical materialism to incorporate autonomous ideas and political activity, in order to explain the development of consciousness. As one group exercises "decisive power", the values of that group are internalized by

29 According to Appelbaum (1979: 28), one of the strongest criticisms of structuralism is "its anti-humanist denial of praxis and history."

30 Knuttila, 1987; Skotes, 1979. Other sources have characterized the Poulantzas-Miliband debate as a "remarkably leaden interchange" (Giddens, 1981: 209), and a "rather infertile rut" that "has given rise to an illusory polarity between the approaches of these two authors...a false polarity which has done much to delimit and impoverish discussion" (Holloway and Picciotto, 1978: 3). Similarly, Knuttila (1987: 119) believes an 'illusory polarity' has been fabricated by observers of the Miliband-Poulantzas debate. There was actually a considerable level of congruence in their respective positions.

subordinate members of that society (Gough, 1978: 37). In the event that “spontaneous consent” from the “great masses” was not forthcoming, State coercive power can be invoked to “legally” enforce discipline upon the dissidents (Gramsci, 1971: 12). Significantly, Gramsci’s development of the concept of hegemony was accomplished without sacrificing the core assumptions of Marxism (Vincent, 1987: 167). For Gramsci, ‘struggle’ is central to the winning of a consent necessary to peacefully operate a civil society (Ratner and McMullan, 1987). Unlike an instrumentalist view, the State is not seen simply as an organ for the domination of select classes over all others. Rather, it is the State itself that becomes a battleground for competing ideas and explanations among various factions. As Vincent (1987: 168) notes, “the war of ideas is as significant as any class conflict in the factory.”

The implications of a model that works not only ‘top-down’, but also ‘bottom-up’, has tremendous repercussions for capitalist fractions as a whole. To the extent that the State is a crucial arena of struggle, it maintains a relative autonomy from the economic base (Vincent, 1987: 169). As powerful and as influential as the dominant hegemonic institutions are, bourgeois ideology is not always passively accepted. The existence of organized, counter-hegemonic forces engaged in penetrating the hegemonic veil of the dominant classes was acknowledged by Gramsci.³¹ The goal, of course, is to neutralize or win the allegiance of individuals and groups within the various unsympathetic factions and, in doing so, weaken capital in what is admittedly a lop-sided power struggle for control of the State (Ratner and McMullan, 1987).

Other works incorporating the concept of human agency and consciousness intrinsic to class struggle include the Warwick School, the two most noted contributors being E.P.

31 As Vincent (1987) argues, Gramsci recognized the pivotal role of an intelligentsia sympathetic to the proletarian cause in combatting bourgeois hegemony. For example, Marchak has provided empirical support - a ‘staples theory’ - that dismantles liberal assumptions of equal opportunity and freemarket. By examining data on income, private ownership, and laissez-faire ‘regulation’, the inferences we are led to make are shown to be invalid and/or contradictory. In sum, dominant explanations are dehistoricized, partial and even naive while brushing aside poverty, inequality and regional disparity (Watson, 1982: 205).

Thompson (1975, 1963) and Douglas Hay (1975). Their similar works examine the life of eighteenth century England in an effort to illustrate that Georgian society was split along class lines into the aristocracy, mercantile bourgeoisie, and working class. Law as a hegemonic institution during this historical period is perhaps the main thrust of the work. Of the issue of hegemony, Thompson implies that it is illustrative of class struggle (a consequence of agency). The dominant ideology is continually being challenged.

It is noteworthy, however, that some theorists view Gramsci's concept of history 'from below' as the greatest strength of his formulation. Others argue that it accords too little emphasis on the logic of an autonomous, self-regulating system of capital accumulation, with an attendant neglect of the dialectic between capital, State and labour (Ratner and McMullan, 1989).

The final theoretical derivative, capital-logic,³² attempts integration of the three aforementioned perspectives. The capital-logic perspective proposes politics, ideology and culture must be seen in terms of a stronger connection to the accumulation of capital in an advanced capitalist economy. Specifically, it is the falling rate of profit and intensified efforts of capital to extract surplus value that has an impact upon the nature of the State. The State assumes a central role in production and accumulation processes. Because the State must mirror the characteristics (including the contradictions) of the economic system it facilitates, declining profit levels and renewed attempts to extract increased surplus value result in class struggle (Vincent, 1987: 176). As Ratner and McMullan (1989: 244) note, capital-logic examines the nature, functions, and forms of the capitalist State in relation to the autonomous dynamic of capital.

³² An initial version of capital-logic concentrated almost exclusively upon both fiscal and legal factors central to the production and exchange of commodities. A more recent formulation places greater emphasis upon exploitation and the role of class struggle in the routine operation of the capitalist system of social and economic relations (Ratner, McMullan and Burtch, 1987: 96).

Critical of instrumentalist, structuralist and Gramscian theoretical derivatives, as a consequence of their near-exclusive 'class-theoretical' conception of the State, Holloway and Picciotto (1978) argue that the three alternate theoretical trajectories are

unable to analyze the development of political forms; secondly they are unable to analyze systematically the limitations imposed on State by the relation of the State to the process of capital accumulation (Holloway and Picciotto, 1978: 10).

According to a capital-logic perspective, there should be something more than an attempt to show empirically how the State acts in the interests of capital. Rather, the reasons for, and the manner in which the State takes a particular course of action (without simply attributing the outcome to 'class struggle') should be subjects of analysis, in light of a recurring series of fiscal crises of State (Holloway and Picciotto, 1978).

Starting with the dominant mode of production, while remaining cognizant of the role of the State in the "crisis-ridden development of capital" (Gough, 1979: 156), the capital-logic trajectory 'periodizes' the development of the capitalist State into three exclusive 'moments': first, the phase of primitive accumulation of capital, characterized by a State that may behave in an instrumental manner. State intervention occurs to prevent competing capital interests from destroying each other, while simultaneously facilitating conditions conducive to maximal extraction of surplus and concomitant profitability. Second, the 'liberal' moment, characterized by a marked increase in the frequency and extent of State intervention with a view toward the long term interests of the capitalist class. Here, the State expands the infrastructure required to service a burgeoning capitalist economy. The State also facilitates the creation and installation of statute law that ostensibly separates political and economic power, codifying exploitation and employing subterfuge through the introduction of terms such as 'fairness' and 'equality', in order to camouflage unequal socio-economic relations. Finally, the 'contemporary' moment, that of monopoly capitalism, characterized by a falling profit rate as a consequence of increased costs of production. In order to counter profit declines, the emphasis moves from a tradition of 'rule of law' and its concomitant locus of

power in 'democratically' elected institutions (such as the federal House of Commons and provincial Legislative Assemblies) to a centralization of power in the executive. The State is required to compromise the separation of economic and political powers. A monopolistic, multi or trans-national capitalist economy requiring large infusions of capital investment at any one locale, demands a State with the power to intervene in a coercive manner. In this way, capital anticipates that it can survive an escalating series of crises associated with a capitalist economy (Ratner and McMullan, 1989, 1987; Gough, 1979).

Capital-logic is clearly not a theoretical panacea, however. As Ratner and McMullan (1989, 1987) and Giddens (1981: 215) observe, a functionalist 'needs of capital' account is the only explanation offered for State intervention into the economy. Gough (1979: 157) argues that working-class agency is significant when exercised within a bourgeois framework. Moreover, Gough opposes the suggestion that the State is never autonomous enough to represent the long term interests of capital.

Law and Legal Ideology

Since any discussion concerning the implementation of a State compensation scheme is necessarily a discussion of law, it is helpful to address the relation of law and legal ideology to the formation of social relations. Shaw (1979: 34-5), argues that ideologies are "world-views which, despite their partial and possibly critical insights, prevent us from understanding the society in which we live and the possibility of changing it." Bourgeois ideology is a deformation of reality (Abercrombie, 1980). Nevertheless, according to Collins (1982: 40), Marxists are not necessarily devoted to the position that all ideologies are false.

Marx, and later, Mannheim addressed the ideology inherent in social and political thought. Marx, in particular, closely examined inter-locking economic, political, and ideological factors in order to better understand the collective consciousness of society dominated by liberal world-views. He also utilized the construct of 'false consciousness:' to

describe the extent to which real-world experiences failed to correlate with dominant ideologies. Liberal world-views are indeed remarkable, because they never appear as ideology, but rather, as 'public knowledge'.³³

Gordon (1988: 215) posits that the nature and role of the capitalist State are modified according to the temporal juncture under consideration, the geographic region and type of State, and the constitution of the obstacle confronting it. Acknowledging the inherent tension in law that symbolizes both force and consent is one matter: understanding it is another. A conjunctural analysis allows the incorporation of a dialectical method to understand the relation of ideological conditions to agency at a specific time and place (Caputo, et al, 1989). Dialectical analysis aids in understanding the manner in which the State 'creates' law in order to resolve the various problems. Specifically, the struggle for workmen's compensation serves as a prime example of a socio-legal problem that did not readily complement contemporary legal norms of the period.

For instrumentalists, the focus is upon the coercive nature of capitalist law. The existing legal order is seen as a facade to facilitate social structuring for the benefit of capitalist productive relations (Collins, 1982: 29). A disproportionate amount of effort is devoted by the State to the creation of a climate favourable to business, to the detriment of any accompanying attempt to legitimate the legal system. As the State enjoys no autonomy from the requirement of facilitating measures for the productive process and associated social relations, instrumentalists question whether true reform is possible (Quinney, 1974; Beirne and Quinney, 1982; Caputo, et al, 1989).

For structuralists, a relatively-autonomous State facilitates an ideal locale within which to fabricate a 'consensual structure'. The State achieves this relative autonomy by assuming responsibility for surveillance activities, which enhances the ability to implement social control

³³ For a more extensive review of the pervasiveness and 'power' of the tenets of liberal ideology, see Mannheim, 1936: 125; 255-266; Walzer, 1983.

measures (Giddens, 1981: 169, 218). Second, the State may be said to have a relative autonomy insofar as it possesses the exclusive prerogative to exercise violence. Third, the State represents a forum where fringe groups may secure inroads against the wishes of the ruling class (Ratner, et al, 1987: 100). As Vincent (1987: 179) reveals, the State evolved as a response to disorder, serving as a mechanism for the resolution of conflict.³⁴ This role suggests a milieu, where, as Ratner and McMullan (1979) propose, legitimacy for specific State policy may be fashioned. The law becomes not the imposition of the norms and values of a dominant minority, but rather, a systematic (and systemic) construct which almost invariably succeeds in usurping collective rights in favour of individual ones. Significantly, the State is able to introduce periodic and timely 'reforms' that often succeed in reproducing the dominant system of capitalist productive and social relations. For structuralists, the law serves as a compromise solution to the problem of class struggle, transformed into political conflict within the confines the State. Though the degree to which the dominant classes are able to conduct their respective affairs may be somewhat compromised as a consequence of legal constructs such as the 'rule of law', 'due process' and provisions for 'equality', this seeming infringement of their legal rights is necessary to defuse unrest and legitimate the State (Ratner and McMullan, 1987). As Caputo, et al (1989: 57) note, the theoretical utility of some structuralist explanations of law and State is lessened by too acute an emphasis upon the dichotomy of accumulation-legitimation, to the detriment of exploring State coercion.

In contrast to other neo-Marxist positions which examine the ideological functions of law itself, Gramscian theorizing attempts to isolate the manner in which legal rules and doctrine appear able to re-formulate in a dynamic process, so that they are in approximate alignment with dominant ideologies (Collins, 1982: 50). As political struggles are ultimately struggles over ideas (Block, 1987: 18), a neo-Gramscian investigation emphasizes the

³⁴ However, Vincent (1987: 222) also proffers that the State does not necessarily always serve as a territory for dispute resolution. On the contrary, the State is entirely capable of creating conflict.

formulation of counter-ideologies (such as those propogated by syndicalist labour unions; Collins, 1982: 39) and mobilization of dominant institutions of hegemony (such as the Church, press and educational systems) to counter-act the threat. Marx argued that the conditions of social existence determined collective consciousness (Collins, 1982: 37). As Gordon (1988: 217) argues, the Gramscian perspective views reform as a desirable objective, with the condition that it be undertaken by 'organic intellectuals' - those both sympathetic to the cause of the working class, and more likely to re-establish a working-class consciousness.

For capital-logic, the economic relations of capitalism (as articulated by Marx in *Capital*) becomes the basis for the ideological character of law, with the State deriving its 'logic' of operation from social relations. By disguising in juridical form the class antagonism that arises from the drive to extract increased surplus value, capital-logic views legal ideology as the direct product of class struggle. Instead of a focus upon an artificial separation of politics and law from the economy, derivationist theory attempts to isolate dominant legal ideologies in conjunction with the identification of the form (or phase) of the appropriation of surplus value (Ratner and McMullan, 1989).

Social Welfare and the State: Recent developments

Workmen's compensation is a relevant example of State intervention into the labour reproduction process and, as social welfare policy analysis, must begin with an examination of the relationship between the State and the dominant social interests. At issue is whether the State simply reflects the interests of dominant interests in society, or whether interests of the various dominant factions and the dominated classes are alternately considered (Carnoy, 1984; Vincent, 1987).

Workmen's compensation served to humanize the workplace to some degree, and to provide benefits to injured and disabled workers. Nevertheless, the question is whether these reforms are a product of State activity that serves the interests of capital (in particular, the

accumulation process) with only indirect benefits to labour, or whether workmen's compensation is enacted by the State in the face of opposition from capital (Doyal and Pennell, 1981; Schmidt, 1980). The manner in which any reforms are implemented are, in part, a consequence of the accumulation/legitimation paradox of capitalism. In effect, the State must serve the accumulation function, while obscuring links with capital interests (Clement, 1977; O'Conner, 1973).

According to Gough (1979; 1978: 27), the term 'welfare State' is of comparatively recent origin. It refers to the period immediately following the Second World War. The depression of the 1930's exacted a severe toll on the Canadian economy and the western working class (Melynk, 1989; Griffin, 1985; White, 1983). This state of affairs resulted in near unprecedented social and political instability (Wolfe, 1984). This lengthy crisis was not solely responsible for the rise and implementation of social welfare legislation, nor was it the result of class conflict alone. Rather, the dominant mode of production (that of industrial capitalism) creates needs that must be addressed, or risk compromising the integrity of the entire economic system as a consequence.

Gough's (1979) analysis of the origins and structure of the welfare State in a capitalist economy neatly encapsulates many of the issues relevant to a discussion of workers compensation. Gough (1979: 3) identifies the welfare State as a "constituent feature of modern capitalist societies." While popularly presumed to have as its *raison d'être* nothing less than an improvement of the living standards of the population (as a consequence of the benevolent action of State and capital), a modified-structuralist perspective draws an entirely different picture. Legislative reforms may create, or improve upon, social welfare provisions. Nevertheless, there is a social control component (Gough, 1979: 3). The economy is not adapted to the needs of the people; rather, the labour force is adapted to the requirements of a capitalist economy.

In order for the exploitation of labour to occur, two conditions must be met. First, labour productivity must exceed a subsistence level, necessary to allow for the production and reproduction of the population and, consequently, the labour force. Second, the owners of the means of production must be in a position to expropriate any surplus value produced during the operation of the productive process (Gough, 1979: 18). Because the mode of production has a substantial impact upon the social structure, any measures that enhance the viability of capital further entrenches the powerlessness and alienation of labour in real terms. Benefits may, however, also accrue to the working class, thus legitimating the existing system of social and productive relations.

Gough provides an example of the English *10 Hours Act* to illustrate the manner in which a struggle for a shorter work day, waged by labour against the interests of specific capital factions, was won. Though the legislation was premised upon a 'harmony of interests' (Gough, 1979: 66), the 'victory' clearly aided the longitudinal imperative of capital accumulation by protecting the labour supply for all capitalists (Gough, 1979: 55). The juncture at which the State implemented compensation to offset 'industrial progress' and relentless capitalist development (Gough, 1979: 91) constitutes the focal point of this thesis.

Kolko (1963) and Block (1977) approached social reform as intrinsically tied to a blurred distinction between State regulation of business and State regulation for State business. Block (1977) argued that large corporations supported social welfare reforms during the early twentieth century due to a desire to stabilize economic conditions, while at the same time allowing for predictable capital accumulation. Kolko (1963) argued that only reforms which ultimately met the requirements of capital would ever be instituted by the State. Despite the smaller, less powerful capital factions voicing their concerns about the concept of compensation, the corporate and financial elite consistently supported minimal reform, while rejecting anything more (Bliss, 1974). Block (1987: 46) later re-formulated his position of

'corporate liberalism', choosing to describe State activity in terms of reform pressure "from below."

Finkel (1977) suggests the implementation of social welfare legislation indicates that elite power can be reduced, and capitalism controlled, without compromising the structure of a capitalist economy. The implementation of industrial safety and health legislation (predominantly in factories and mines), a minimum wage, and industrial conciliation-arbitration measures all suggest an "umpire" or "guardian" role for the State (1977: 344). Bliss (1974) notes that while the Canadian Manufacturers Association and its provincial affiliates may have been opposed to specific provisions of social welfare proposals, as the capital accumulation crisis worsened, support for the general principle behind such legislation increased.³⁵ Finkel (1979: 83) analyzed a series of Canadian social welfare reforms during the 1930's. He concluded that business initiated, and supported, reforms which addressed the immediate concerns of the working class. More importantly, these initiatives recognized a pressing need to "stabilize a destabilized economy." While social inequities appeared to be addressed, in fact, only a minimal redistribution of income and power was realized.

O'Connor (1973) postulates that the State derives a relative autonomy from business interests as a result of its accumulation and legitimation functions. As Vincent (1987: 177) observes, the State must intervene into the economy in order to retain legitimacy. Yet, State intervention must not threaten long-term accumulation. Otherwise, the ability of the market system to function might be compromised.³⁶ As O'Connor (1973) has argued, the

35 Finkel, 1977. Nonetheless, as Collins (1982: 52) proposes, considerable intra-class conflict occurs within the "legislative melee." Capital interests were not represented as a monolithic bloc. Rather, State intervention served to consolidate disparate positions.

36 For Deville and Burns (1977-78: 8), an economic system dominated by the imperatives of capital accumulation and profit maximization requires that efforts be made to address contradictions without jeopardizing either the accumulation imperative or the associated power structure. Hirsch (1978: 75) posits the existence of a link between the historical process of capitalist society and the development of the productive forces furthered by the accumulation of capital: a development which "continually comes into conflict with the narrow basis of capitalist relations of production." While

socialization of capital expenditures necessary to maintain production levels, and the private appropriation of surplus creates a fiscal crisis in which State expenditures increase at a pace greater than the means of financing them.

Mahon (1977: 165-66) suggests a relative autonomy of the State is necessary if it is to function as an "organizer of hegemony." Moreover, an analysis incorporating an historical approach allows class struggle to be seen as dynamic, and influenced by the degree of representation achieved within the various appendages of the State. Citing a differential level of power among the various classes as a basis for the relative autonomy of the State, Mahon reveals an administrative apparatus that is able to "depoliticize" and "render more efficient" the design and implementation of social welfare policy. Maintaining the facade of a 'common interest' and a 'neutral State', the State facilitates participation of marginal groups in any negotiation that appears to aim at achieving a 'compromise'. As Mahon (1977: 172) notes, rhetoric involving 'a more efficient economy' and a 'commonality of interests' is part of the idiom of capitalist ideology, for in the final analysis, it is the large corporations who wield the most influence in the operation of a capitalist economy. Regardless of the effect the implementation of such reform may have in terms of 'winners' or 'losers', it is a capitalist economy that is strengthened. Consequently, capitalist interests are least likely to lose.

Doyal and Pennell (1981) attempt to dissect and analyze the links between science as agency, and the processes utilized for caring for the sick. They suggest that there is an intrinsic connection between the manner in which a society is structured from a social, economic and political standpoint, and the type of medical care that is produced. In particular, they address the nature of capitalism, and the acceptance by many of the population that disease and death is a regrettable, but necessary, price to pay for the benefits of economic growth.³⁷ However,

the appearance of conflict is disguised, the contradictions persist and, as Finkel (1977: 1979) asserts, the extent of genuine and lasting change is limited.

ill health cannot...be attributed simply to capitalism in any crude sense. On the other hand, we cannot make sense of patterns of health and illness outside the context of the mode of production in which they occur (1981: 27).

Through an investigation of the effects of working conditions on health, and the form and content of capitalist industrial health strategies, Doyal and Pennell reveal that the imperatives of a capitalist economy sets clear limits on what is, and is not, an acceptable form of State intervention. Productivity and profitability, and not a benevolent concern for improvement of living standards, are the key determinants to State intervention in industrial health (Doyal and Pennell, 1981). Production imperatives demand precedence in any discussion of the production and reproduction of the population, including health concerns. The State is led by a progression of events to counter on-going threats to the dominant economic system,³⁸ and respond with the implementation of various health strategies.

Similarly, Walters (1983) traced the legislative process for an Ontario bill (Bill 70) in the 1970's. She found that State intervention into the workplace promoted capital accumulation, modified the reproduction of labour power, and encouraged a belief in the legitimacy of the system. By reducing health hazards in the workplace, the State sought to lessen the drain on surplus value caused by ill-health. It is, therefore, notable that victims of industrial 'accidents' were the first in almost every country to receive social security benefits (Gough, 1979).

Navarro (1976) points out that the welfare State has not lessened the class stratification of capitalist society. He notes the existence of class-based discrepancies in the

³⁷ Nonetheless, as Doyal and Pennell (1981: 24) note, left wing rhetoric that attributes all disease to capitalism has very little theoretical or political content.

³⁸ Swartz (1977: 318) cites two historically significant figures to buttress his claim. Kaiser Wilhelm I proclaimed that the "cure of social ills" was to be found in the "positive advancement of the welfare of the working classes" (1977: 315).

In 1918, Mackenzie King wrote

Social insurance, which in reality is health insurance in one form or another, is a means employed in most industrial countries to bring about a wider measure of social justice, without, on the one hand, disturbing the institution of private property and its advantages to the Community, or, on the other, imperiling the thrift and industry of individuals.

provision of health services. Moreover, as Renaud (1975) found earlier, Navarro confirms that a class structure, premised upon the dominant mode of production, limits the nature of State intervention into health care. Capitalist industrial growth that produces health needs that are 'treatable' by medicine are compatible with a capitalist organization of the economy. This is because capitalist medicine has a strong emphasis upon a power differential that locates its origins in class, gender and ethnicity. It creates and reinforces an unequal relationship between patients and doctors, and the imposition of a health care system that buttresses a recipient's lack of autonomy and power, means that medical care provides an ideal medium for socialization and social control (Doyal and Pennell, 1981). State intervention, in the form of bourgeois medicine, complements capitalist ideology, and allows an emphasis upon the individual in determining the cause of, and apportioning blame for, disease. Political and economic explanations to positions of insignificance, to the detriment of the workforce. To do otherwise would risk defining occupational health issues in a manner that would demand a collective solution.³⁹

Schatzkin (1978) focuses upon the factors that determine the level of health care. He suggests that human agency (especially class struggle)⁴⁰ has a marked impact upon the provision of services.⁴¹ It is argued that health is seen as little more than another commodity variable, albeit one upon which the capitalist imperatives of capital accumulation and profit maximization are integrally linked. Schatzkin proposes the provision of 'excess' health services beyond that required to secure production and reproduction of the labour force is considered

39 Navarro (1976: 449) notes that the exclusion of alternate ideologies is perhaps the most prevalent form of State intervention. The destruction of health is an issue of crucial political importance, and an ideological effort to make health an individual issue, rather than a collective one, assists the State in maintaining legitimacy over the long run (Doyal and Pennell, 1981: 35).

40 For Schatzkin (1978: 214), class struggle is, in a Gramscian sense, the same as that identified by Navarro (1986a: 149) - a dynamic process, where the working class is able to impact upon the "boundaries, means and instruments of dominance."

41 Without working-class agency, capital investment in medical care would occur for no other reason than a desire for an increased rate of wage-labour exploitation (Schatzkin, 1978).

a 'loss' to capital. This argument helps explain why some social programs may have a beneficial effect (however minimal) on mortality rates (a 'health' indicator), while these same programs have a very significant impact upon 'health' measures that reflect the capacity to work.

Accordingly, a preliminary investigation of the conditions leading to the implementation of workmen's compensation suggests specific strategies. The interlocking requirements of legitimation, order-maintenance, and the production and reproduction of labour and a system of social and economic relations - buttressed by the presumed impartiality of an administrative board - appears to be central to explaining the origins of workmen's compensation. With an emphasis upon human agency and class struggle,⁴² and an allowance for the infusion of an instrumental analysis at relevant junctures or 'periods' in capitalist development, a *modified*-structuralist theoretical trajectory offers the greatest promise for inquiry in this area.

⁴² Again, Althusseurian structuralism will not easily accommodate contradiction, change or class struggle, hence the utilization of the Poulantzian variant (E.P. Thompson, 1978: 197).

CHAPTER TWO

RESEARCH METHODS

This thesis is a macro-sociological investigation of the rise of workmen's compensation in British Columbia, set within the frame-work of the sociology of law. It is a 'conjunctural' analysis: that is, an examination characterized by temporal (and, in this case, geographic) specificity, focussing upon political, economic and social variables at a pre-determined historical juncture (Gordon, 1988).

The inspiration to engage in work on the topic of workers' compensation derives from a number of sources. First, a long-standing interest by the author in working people, especially in light of the renewed attacks by the 'New Right' (see, Ratner and McMullan, 1985) to dismantle protective rights that took many years for the working class to achieve. As Kumar (1990: 206) argues, the present state of labour-oriented academic research is empirically and theoretically deficient:

There appears to be little understanding of the profound changes in the economy, society, demography, labour markets, technology, and in political ideologies - their nature, form, dimension, and the implications for workers and their organizations. Nor has there been much research on how workers and unions in other countries have coped with economic change, and what kind of lessons can be derived from this experience.

Personal experiences, in particular those occurring within the British Columbia forest industry, served to highlight the contradictory nature of occupational health and safety regulation in an economy dependent upon ever-increasing levels of production in order to secure growth. For example, on one job-site where the author was employed, there was an implicit understanding among fellow employees that 'safety first' was an on-again, off-again maxim to be followed *only as long as production quotas were met*.¹ In the event of

¹ The practices of some unscrupulous employers have resulted in some employees interpreting the 'safety first' maxim to mean 'safety first: the *first to go*.' Interview with Mr. W.C. Denault, Director, B.C. Construction Health and Safety Council, Burnaby, B.C., April 26th, 1988.

mechanical failures or other unforeseen circumstances, workers were expected to make-up the short-fall in the most expedient manner possible - including, if necessary, calculated risk-taking. Though this type of behaviour was officially prohibited by Workers' Compensation Board regulations and company policy, it was nonetheless expected and condoned by supervisors, who made themselves conspicuous by their absence on the shop floor the moment production resumed. Ironically, if an unwary employee were 'caught' violating safety rules, verbal or written reprimands, and even short suspensions resulted. To refuse to engage in unsafe behaviour greatly increased the likelihood of the imposition of a penalty in the form of a posting to a less desirable, and potentially even more dangerous job. Though management would never admit to engaging in such tacit practices, several incidents had occurred so that employees were not only clearly aware of the response expected from them, but also the sanctions for refusing to conform.² Third, work undertaken on 'corporate crime' during my first year of graduate studies raised a question: why are victims of workplace assault dealt with by the Workers' Compensation Board, while victims of criminal (non-work place) injury and assault have retained the right to seek redress through tort action and the criminal law?

Seminal research has been conducted dealing specifically with the antecedents of workmen's compensation.³ This area is due for a more detailed investigation of its origins. Historically informed 'instance' studies⁴ have been undertaken in various locales. In England, Colwill (1987) investigated the reform of workers' compensation, in the context of the Beveridge Commission in the closing years of the Second World War. In Canada, Tucker

2 *Infra*, pgs. 203-05, for an historical illustration of the 'speed-up' phenomenon in the workplace.

3 See, Campbell (1980); Doran (1986); Flett (1913); Geddes (1986); Guest (1985); Pope (1966); Tucker (1984); Reasons, et al (1981).

4 The term 'instance study' indicates the application of a conjunctural analysis, consisting of the political, economic and ideological, to a specific historical event, or related series of events at a particular moment in history.

(1990, 1984) has examined employers' liability law in late nineteenth century Ontario, while Risk (1983) reviewed the historical antecedents of workers' compensation in the same province. Walters (1983) reviewed an instance of a 1977 Ontario bill dealing with the right to refuse unsafe work, and regulation of toxic substances, among other items. McMullan and Ratner (1983) reviewed two instances of labour unrest, of which one instance - that of the 1912-14 coal-miners strike on Vancouver Island - could be directly attributed to a refusal by miners to labour under unsafe working conditions (see also, Ratner and McMullan, 1989).

As Hirst (1985: 69) argues, historical research is a process of 'finding out', a measuring of a research question against the available evidence. A neo-Marxist orientation clearly reflects a continuing refinement of the symbiotic relationship between history and theory. It is the methodology that bridges epistemological assumptions and the concrete research project. The value of research and the answers provided by data analysis varies according to not only the person(s) conducting the experiment, but the methodology employed; for, as Mills (1959: 57) argues, "Methodology...seems to determine the problems." Moreover, as Gordon (1988: 566) notes,

'Facts' can be 'interrogated' but both the extraction of meaning and its fusion with the meanings derived from other 'interrogations' are inevitably influenced by theoretical and ideological biases. These influences shape the final product and a reader must, at the outset, be aware of the colour of the interpretative lens employed by an analyst.

Due to its historical nature, this thesis relies almost exclusively upon documentary sources, of which most are necessarily retrospective. These sources include the press, reported cases, jurisprudence, and archival materials such as submissions and proceedings before Royal Commissions (Thompson, P., 1978: 100). Many sources, especially Royal Commissions, are treated by researchers as sources of 'objective knowledge', even though they reflect little more than superficial appearance.⁵ As Paul Thompson (1978: 100) notes,

⁵ Marx, in particular, remained cognizant of the danger of epiphenomena, and sought to derive the actual content of phenomena (Vaillancourt, 1986: 61).

Royal Commissions are founded nearly exclusively upon an interview format, a method he describes as

particularly intimidating...in which the lone informant was confronted by the whole committee - just like a widow seeking out-relief who faced the Board of Guardians.

E.P. Thompson (1978: 221) has constructed an investigative template that provides concrete guidance to the socio-historical researcher in pursuit of "discrete facts":

(a) "historical facts" must be scrutinized to determine how, and for what reason, the information was recorded.

(b) analyze the information at the "level of their own appearance" or "apparent self-disclosure", while remaining sensitive to the presence of attitudes or ideologies.

(c) analyze "value-free evidences" presented, for example, in the form of statistical procedures, for evidence of intruding ideological precepts.

(d) analyze history in a linear fashion (history as it "actually happened", but "as it can never be fully known") in order to construct a narrative account.

(e) examine the lateral linkage of "social/ideological/economic/political relations" in order to determine the nature of a "section" of society in the past, including, for example, market relations, power and domination.

(f) analyze the facts for "structure-bearing evidence"; that is, seeking evidence which indicates a dialectical relation between human agency, and the at some times constraining, and others enabling, nature of the social structure created by humans.

Clearly, a central problematic for any researcher is the process of arriving at a determination as to 'why' the document came into being in the first place. This aspect of the research comprises the "bread and butter of the trade" (E.P. Thompson, 1978: 221). For the most part, documents are not created by accident; nearly all data have a purpose behind their creation and preservation. Accrued knowledge may limit alternate ideologies or explanations that critique structural contradictions and inconsistencies. Documents, therefore, may be the object of wilful manipulation by their creator(s) in order to convey a misleading impression, one that may range from "minor fudging to towering lies" (Schafer, 1975: 74). Of all documents, perhaps government documents warrant a critical reading in that they "can, and often do, contain distortion and error...due to bias."⁶ A useful example of this phenomenon

is provided by Paul Thompson (1978: 97), who analyzed the records of an English Committee of Inquiry (1830):

The official reports of the Poor Law Commissioners on the Labour Migration Scheme of the 1830's can...be shown, through alternative sources, to have grossly exaggerated the figures for the numbers of paupers removed, and to have quite falsely claimed that all of those removed had found work, in order to suggest that the scheme was succeeding.

Consequently, archival data must be handled with the utmost care by a researcher, as it may represent naught but a 'social perception of facts', subject to various contextual pressures. If a distorted observation is treated as 'fact', the object of contributing to a theoretically informed, historical knowledge base will be impossible to achieve.

Primary and Secondary Sources: The Specific Methodology

Primary Sources

Information on workmen's compensation can be secured through a number of sources.⁷ Both primary and secondary sources of information were incorporated within the thesis framework. A review of social science abstracts proved unfruitful. A computer search was not undertaken, on the advice of Simon Fraser University library staff, due to the recency of the databases, and the obscure and historical nature of the thesis topic. Thus, the chosen methodology was the only available option open. Emphasis was placed upon primary documents, such as: *Journals of the British Columbia Legislative Assembly*; *Sessional Papers of the British Columbia Legislature*; *Statutes of British Columbia*; Dominion and provincial Royal Commissions; the *Canada Labour Gazette*; and *British Columbia Gazette*. In addition, a number of oral histories were incorporated into the research (see below).

6 Schafer (1974: 75). In terms of bias, Paul Thompson (1978: 92) notes that "authors of documents, like historians, are assumed to be male." According to Rosenthal (1979: 36), an early failure to record women's labour history "probably stemmed from a belief that women's struggles were unimportant or insignificant in a historical context."

7 Bibliographic references consulted dealt with, among other things, the literature on the welfare State and working class agency. See, bibliography.

Journals of the British Columbia Legislative Assembly

Forty-five consecutive volumes of the *Journals*⁸ were reviewed, beginning at 1875 (v. 4) and ending at 1920 (v. 49). They were read with the object of sorting and classifying political events, including economic or social pressures emanating outside British Columbia or Canada, and government rhetoric. Government activity was monitored through throne speeches, legislative activity and voting records. The *Journals* comprise a complete record of every bill introduced in the House, and their eventual disposition. This record also proved to be an invaluable source for petitions submitted by employers and workers, and was a useful index for various ministerial reports published in the sessional papers. The work of relevant Select Committee investigations were, on occasion, reproduced in their entirety in the *Journal* appendices.

Sessional Papers of the British Columbia Legislature

Information published in sessional papers was most effective when utilized in conjunction with the *Journals of the Legislative Assembly*. The sessional papers provided a record of all reports presented to the Legislature and ordered to be printed, including all of the final reports of the Royal Commissions surveyed for this thesis. The sessional papers contained all annual reports of various government departments, including the inspectorates. The sessional papers were a fruitful source of related quantitative information, including graphs, diagrams and photographs. The latter were particularly useful, especially when reviewing a report on a catastrophic event, such as a mine disaster.

⁸ The British Columbia *Journals of the Legislative Assembly* are hereinafter cited as *JLA*.

Provincial and Dominion Royal Commissions

Various provincial Royal Commissions were examined.⁹ Many of the investigations appeared to have been sparked by public outcry or working-class unrest. The proceedings of two inquiries that addressed the hostile relations between capital, labour and a population of lumpenproletariat¹⁰ are contained within the *Report of the Select Committee on the Wellington Strike (1891)* and *Report of the Select Committee Against the Attack of the Funeral Procession of Ellis Roberts (1891)*. The *Report of the explosion at a Crow's Nest coal mine (1902)*, a *Special Commission to inquire into the Causes of Explosions in Coal Mines (1903)*, a *Commission On The Conduct of Archibald Dick as Inspector of Mines (1904)*, and an *Investigation of an accident occurring at the South Wellington coal mines (1916)* all manifest the presence of a burgeoning "legitimation crisis" for the State.¹¹ A *Royal Commission on Labour (1914)* and a *Report of the Select Committee appointed to investigate workmen's compensation laws (1915)* are two examples of a State increasingly willing to assume an interventionist role in economic matters. The *Labour Commission (1914)* served to confirm a

9 See, Holmes, M.C. (1945) *Royal Commissions and Commissions of Inquiry under the 'Public Inquiries Act' in British Columbia, 1872-1942: a checklist*. Victoria: C.F. Banfield; National Library of Canada (1986) *Provincial Royal Commissions and Commissions of Inquiry, 1867-1982: A Selective Bibliography*. Ottawa.

10 Bottomore (1983: 292) employs Marx's definition of 'lumpenproletariat' as "the refuse of all classes." In British Columbia, between 1890-1916, workers were subject to recurring economic crises and social disintegration. Individuals became separated from their class interests, and were therefore vulnerable to "reactionary ideologies and movements." In British Columbia, lumpenproletariat were repeatedly utilized by capitalists for strike-breaking purposes.

11 On-going correspondence between front-line government employees, senior bureaucrats, and cabinet ministers confirmed the existence of crises on a variety of fronts. For example, a letter dated March 21st, 1902 at Victoria, British Columbia, from provincial mineralogist William F. Robertson to provincial mine inspector Archibald Dick, disclosed concern about a news item drawn from the *Winnipeg Telegram*. The gist of the *Telegram* article was that the coal mines at Michel (in the vicinity of the Crow's Nest Pass) were unsafe: "Will you be good enough, therefore, to carefully examine into the condition of the mines of the Crows Nest Pass Coal Company and report at the earliest possible moment. It is necessary that such a report, if unfounded, should be denied as promptly as possible"; 'Return of all reports on the Coal Mines of the Crows Nest Coal Company made by Mr. McGregor, Mine Inspector, and Mr. Dick, Mine Inspector, since the 9th day of Nov. 1898, and the correspondence appertaining thereto.' *Sessional Papers (1902)* 2 Ed. 7 at p. 1360.

State compensation scheme as a valid and non-threatening solution to a variety of problems facing the State and capital, such as the need to protect an increasingly expensive, skilled labour force, and social unrest. The *Pineo Committee* (1915) was a clear re-affirmation of what had become, in the interim, an urgent need for *direct* State intervention. Though the findings of the *Labour Commission* were shelved by the Conservative government of Sir Richard McBride, many of its conclusions were expanded upon and refined by the later *Pineo Committee*.

Federal Royal Commissions relevant to the workplace in general, and compensation issues in particular,¹² were examined. They included a *Commission to investigate the relations of labour and capital in Canada* (1889); and two Commissions, investigating working conditions (1898) and related deaths of navvies (or railway laborers; 1899), as a consequence of horrific abuse of workers during construction of the Crow's Nest Pass railway.

British Columbia Statutes

Thirty-two British Columbia statutes were reviewed. Three general sub-headings were constructed in order to more easily allow statute classification, of which not all can be considered mutually exclusive. For example, many of the provisions of the *Coal Mines Regulation Act* dealt with the eradication of the Chinese from under-ground work, ostensibly due to the hazard their employment represented to white labour. The first category deals almost exclusively with legislation addressing safety concerns while at work (such as provision for State inspection of work-sites), including redress mechanisms. Also included are laws designed to ameliorate uncomfortable or unhealthy working conditions (see Appendix A). The second class includes legislative measures manifesting an increasing amount of State regulation of the relationship between employer and employed, that previously had been left

¹² See, Henderson, G.F. (1967) *Federal Royal Commissions In Canada, 1867-1966: a checklist*. Toronto.

to the discretion of employers (see Appendix B). Finally, measures introduced that are complementary to legislative intervention in the work place, are contained in the fourth category. These State initiatives created conditions conducive to the maintenance and reproduction of the labour force (see Appendix C).

Canada Labour Gazette

Funded and published by the federal government, the *Labour Gazette* was examined from its inception in 1900, to 1917. Its contents were surveyed, from quantitative information on industrial accidents, labour legislation (including employers' liability and workmen's compensation), and legal decisions. Overall, the *Labour Gazette* proved a useful compendium of economic and legal information.

British Columbia Gazette

Entitled the *Government Gazette* until Confederation in 1871, the Gazette contains the complete texts of orders-in-council, and the rules and regulations formulated under various statutes. Only years with hard copy available at S.F.U. were surveyed. The *Gazette* proved to be unwieldy due to the small size of character type, and the fragile nature of the volumes. Much of the information was more easily obtained elsewhere, such as period newspapers. Announcements of Royal Commissions, for example, were reported in most every paper. In such cases, the *Gazette* was utilized to serve a corroborative function. Consequently, material from the *Gazette* was incorporated into the thesis sparingly.

Oral Histories

Oral histories are the actual words and voices of those who lived and witnessed history in the making.¹³ Characteristically, they document people and subjects previously absent from the historical record, creating source material where none existed before. Oral histories are more than the recounting of history: they are history in the making. Though there is no sure method to ensure the reliability of oral evidence, this caveat applies to all historical sources. As with any information, the source must be checked against alternate sources (Thompson, P., 1978). Nonetheless, oral histories are an effective way to survey working class history because the majority of workers were unable or unwilling to record their memoirs, opinions and interpretations of their everyday existence. The result is that a large part of the 'official' British Columbia historical record, has been written by individuals such as F.W. Howay, historian and Chief Justice of the Supreme Court of British Columbia. Interestingly, Howay also tried and imprisoned a large number of Vancouver Island miners for their participation in the Great Strike of 1912-14.

A variety of material was incorporated into the thesis. Some audiocassettes dealt directly with the Vancouver Island coal-miners strike. Others dealt with the experiences of mining doctors, loggers, and railroad workers. While all interviews provided some anecdotal information, much more is provided in terms of political activity, and social and economic information. Quite simply, this living history reflects a dramatic struggle to survive in a very hostile world. It is a tremendously emotional and inspiring experience to listen to these people. One learns of the perpetual struggle for better working conditions. Gatling guns may have caused the flames of working-class resistance to flicker, but they have never gone out. As Vancouver Island Strike survivor Ellen Greenwell recounted:

¹³ See, Reimer, D. (ed.) (1984) *Voices: A Guide to Oral History*. Victoria: Ministry of Provincial Secretary and Government Services, Provincial Archives.

Oh, God, we used to be fighters. That 1912 strike is a great lesson to me. If I would have knew then what I know now, boy I sure would have been up on the road, a fighting devil for labour! (Ellen Greenwell, *Howie Smith Collection*).

Secondary Sources

Secondary sources of reference included textbooks,¹⁴ journal articles¹⁵ and period newspapers.¹⁶ These sources were read with the object of discerning political, economic and ideological shifts in the discourse surrounding industrial injury and death, especially that evidence which indicated a receptiveness to the tenets of what is presently known as the 'welfare State'. While most secondary sources did not address developments in British Columbia, the information gleaned was useful in terms of facilitating a process of comparing and contrasting the information extracted with that of primary sources focussing on B.C. data.

The Investigative Framework

This thesis is under-pinned by neo-Marxist research. It is this body of knowledge that is the key, or core element, to the 'puzzle' of the origins of workmen's compensation - a key that, Ratner remarks, is "the only perspective that gets to the guts of the problem" (Campbell, 1987: 161).

As much of the material reviewed for research purposes was archival in nature, documentary analysis was undertaken as the *primary investigative method*. With the exception of information secured from oral histories, this technique was preferred, since

14 See, for example, Bartrip, B. and S. Burman (1983); Carnoy (1984); Doyal, L. and I. Pennell (1979); Giddens (1985; 1981) Gough (1979); Navarro (1986; 1976); Panitch (1977); Poulantzas (1980); Ratner, McMullan and Burtch, (1987); Reasons, Ross and Paterson (1981).

15 See, for example, Colwell (1987); Forsey (1947); Gough (1978); Navarro (1976); Renaud (1975); Schatzkin (1978); Schmidt (1980).

16 The B.C. Legislative Library card index provided a good starting point for a newspaper review. However, then, as today, newspapers published more than one edition daily, which complicated the search. Interestingly, key labour-socialist publications were omitted from the index.

people who would have been able to impart observations are now long since deceased. By examining primary and secondary documents relating to capital, State and labour between 1890 - 1916, access is permitted to an otherwise inaccessible topic. Legislative debate, proceedings from Select Committees - especially the *Pineo Committee* (1915) - statutes, and a review of various newspapers of the period complemented the chosen epistemology.

Archival sources were located by conventional manual means. The focal point of the research effort was British Columbia workplace injury legislation - in specific, employers' liability and workmen's compensation Acts. Relevant statutes were identified by reference to the index contained within the *British Columbia Journals of the Legislative Assembly*. Statutes were read with the object of determining their influence in view of the objective stated within the preamble, or from some other source. Newspapers provided a valuable aid to determining the object and effect of various legislative initiatives, including those (frequently introduced by socialist-labour members) which did not receive royal assent. Some workplace legislation examined manifested a shift in ideological orientation. Others disclosed the clear influence of economic imperatives, characteristic of a shift from regional or national competitive capitalism, to that of a global economy.

The judicial interpretation of key statutes presented a further research problem. The *Canadian Encyclopedic Digest* (v. 2) contained considerable contemporary information, but little was relevant to the present thesis research. A review of the *Digest of British Columbia Case Law* (vols. 1-34) provided a wealth of background on key British Columbia legal cases. A volume by volume manual search of the *British Columbia Law Reports* was also undertaken, to extract uncited cases relevant to the research. Case law was read with the object of providing a rough gauge of the frequency of success of worker lawsuits against employers,¹⁷ and the *ratio decendi* (reason of decision). The content of judge's comments and reported

¹⁷ In view of the large number of unreported cases, it is felt that counting cases may not provide a representative number from which to work and draw conclusions.

decisions was reviewed to identify shifts in ideological under-pinnings, including recommendations for social change by pursuing political (legislative) solutions.

In addition to developments associated directly with workplace legislation, a wide variety of other, related variables were examined. Because the research method employed sought not to define 'inter-relationships', but rather, to utilize a 'conjunctural analysis' - that is, one that remained acutely aware of the dialectic between human agency and social structure - the object was to relate social control techniques, among other things, back to social climates that were produced by specific historical events. Larger questions such as: the stated reasons for pursuing reform; the impact of the structural imperatives of a capitalist economy; the role of individual groups seeking to advance their own interests; the role of particular leaders; the exercise of human agency and its eventual impact upon the implementation of social control mechanisms - can then be explained. Crucial linkages between State and social control are accordingly clarified (Campbell, 1987: 164; Gordon, 1988: 572). Limited material dealing with modern, corporate criminality, especially that addressing workplace injury and death, was incorporated into select areas of the thesis.

Benefits of document analysis

Benefits of document analysis include diminished reactivity (Bailey, 1982: 303) and longitudinal capability (Gordon, 1988: 567). Reactivity has also been called 'observer interference'. A concern about 'reactivity' occurs when a researcher believes that the behaviour of a subject or subjects will be affected by the knowledge that they are being observed, or that their behaviour is being recorded. The method of data collection germane to historical research does not affect the data collected, because it is primarily utilized long after the participants in the behavior have passed away (Kidder, 1981: 279). The longitudinal capability of historical research is critically important because it allows the researcher the luxury of 'hindsight' to address the macro implications of the instance study. The ability to

have at one's disposal the larger picture, in conjunction with the relevant theory for infusion at relevant junctures, can be considered the a major strength of an historically informed sociology of law (Bailey, 1982: 303).

Data gathering problems

Difficulties with document analysis include varying degrees of physical preservation; a lack of availability; incompleteness; and possible document bias. Some difficulty was experienced with the quality of microfilm newspaper collections at SFU, UBC, and the provincial archives. Some issues of micro-filmed newspaper publications, such as the socialist *Western Clarion*, and labour-socialist *B.C. Federationist*, have been used so extensively by library and archive patrons that they are illegible in the microfilm reader. This difficulty proved extremely frustrating on a number of occasions, especially when there was reason to believe that the obliterated article or item was of significance to the research. In terms of primary documents, unless the item was produced by a writer of note, it is possible that its preservation may not have been deemed worthwhile. As Giddens (1987: 204) recounts, E.P. Thompson was engaged in

writing history from the 'bottom up'...to rescue the vast anonymous mass of the common people from the condescension of the historian who would see them only as inert and reactive.

For instance, a journal maintained by a railway laborer or a coal miner may have been considered less valuable than documents produced by a Royal Commission investigating working conditions at the same coal mine or railway construction site.¹⁸ This situation may have been exacerbated if the diary or journal in question was written by a worker who was associated with 'militant' labour organizations, in a language other than English,¹⁹ or by a

18 As Reasons, et al (1981: 161) point out, most public government documents are not written from the perspective of the working class.

19 McCormack (1985b: 104) cites the memoirs of a missionary who commented upon the ethnic heterogeneity of the work crews at the Grand Trunk Pacific Railway camps in British Columbia.

female.²⁰ As the historical record makes quite clear, capital was not kindly disposed toward working class involvement in union activity. The difficult lives and transient nature of many of these workers could not possibly have made it any easier for them to record their observations in any consistent manner.

A related problem, availability, presented difficulty in situations where potentially useful information was never recorded, subsequently destroyed, or had restrictive conditions placed upon access. A thorough search of provincial archives holdings indicates that much of the relevant material from the pre-compensation era was held by the Attorney-General. A fire on June 10, 1939, burned almost all of the department's letter-books for the years 1872-1917.²¹ Important material from the Factory Inspectorate, and Coroner's reports, was destroyed. Fortunately, some material relevant to workmen's compensation was saved, and has been incorporated in this thesis. Minutes of the British Columbia Manufacturers Association could not be located.²²

He recorded that 80% of his congregation were "foreigners." As McCormack reveals, they included Russians, Swedes, Ukrainians, Bohemians, Poles, Finns, Norwegians, Italians, and Turks. By 1911, 9 out of 10 miners in Alberta coalfields were immigrants, and the number of different nationalities employed numbered between 15 to 20 at any one time (Palmer, 1983: 143).

20 As Rosenthal (1979: 36) notes, the organizing drives for unionization spear-headed by women are recorded in labour newspapers, but the records are fragmented and ambiguous. Because it is rare to find primary documents authored by women, their motivations for becoming involved in the labour movement constitute little more than conjecture. Moreover, a failure to record and preserve information generated by women involved in union activity is clearly related to the patriarchal belief that women's struggles were unimportant or insignificant in the context of men's struggles. Patai's (1984) work is a feminist critique of George Orwell's disparaging portrayal of the supposedly marginal, non-involved and interfering nature of women in the history of British labour struggles. See also, *British Columbia Federationist*, 'Laundry Workers International Union', March 27, 1914: 1.

21 See, Provincial Archives of British Columbia (hereinafter referred to as PABC), Attorney-General correspondence index (v. 7); microfilm B398, Attorney-General indexes and guides.

22 A variety of sources were investigated, including the Provincial Archives; the Vancouver and Victoria City Archives; the Victoria and Vancouver Boards of Trade (the former no longer in existence); the Canadian Manufacturers Association in Vancouver (British Columbia division) and Toronto; Dr. Bob MacDonald, UBC Faculty of History; and Dr. Andrew Yarmie, Cariboo College, Kamloops. Dr. Yarmie is presently engaged in research on B.C. business elites. He found that the C.M.A. was active in B.C. during the early 20th century, but B.C. manufacturers broke away in 1913, apparently because their concerns were not being addressed by the eastern-based

It is also possible, given the contentious nature of compensation issues, that a subsequent research effort may encounter restrictive conditions. A more in-depth research effort examining the relationship between labour unrest and the State will invariably encounter, for example, police reports that are access-restricted.

Similarly, incompleteness created difficulties (see, Bailey, 1982: 305). If a researcher's knowledge in an area was limited, if a crucial piece of information missing, he or she may be unable to grasp the significance of some information, in the absence of related information. Admittedly, this thesis must be viewed in terms of preliminary research, and it is entirely possible that the conclusions drawn may be modified with the addition of unseen evidence.

There were two other disconcerting hurdles while gathering data. While the Legislative Library holds the entire four volumes of the *Pineo Select Committee*, it is difficult to believe that there is not, or was not, additional information related to the Committee's activities. A search conducted in concert with the reference specialist at the provincial archives did not throw further light on the matter. It is likely that some relevant information was destroyed in the fire of 1939. Subsequent research should examine all correspondence that passed through the office of the Premier, and papers from various clerks offices at the legislature. Moreover, the original, undated letter²³ of protest to the Pineo Committee over the medical aid agreement can be found taped inside the back cover of volume four of the minutes of evidence, which invariably leads one to wonder if other material was not placed there at one time, only to disappear.

Unlike modern *Hansard*, which reports a verbatim account of the various debates conducted within the provincial Parliament, the *Journals of the British Columbia Legislative*

membership. The B.C.M.A. began publication of their own journal, *Industrial Progress and Commercial Record* in June, 1913. While an original discovery of the post-1916 minutes of the Canadian Manufacturers Association at Vancouver was made while conducting the thesis research, the minutes from 1913-1916 could not be located.

23 The letter was penned with a signature that appears to read "Drs. Rose Martin" (?), but the absence of any typed text in the closing, and no related subject heading in the legislative library or Provincial Archives card indexes, leaves the identity of this individual in question.

Assembly offer an incomplete record. Historians are left to interpret from the abbreviated answers submitted during question period. Other sources, such as newspapers, must be used to verify and expand upon the information within the *Journals*. Although some M.P.'s protested the format as 'undemocratic' during the period examined by this thesis, the *Journals* continued to be the only record of House debate until the modern form of *Hansard* was published in 1971.

Despite these shortcomings, an examination of the relevant documents and literature allows the formulation of an explanation for the rise of compensation that can be empirically substantiated. An analysis of the political, economic and social context of the compensation era is possible, in order to understand why the State reacted in a manner that is now part of the historical record. Labour actions, capital strikes, the political environment, and capital-State response to the increasing class polarization (and concomitant threat to the production and reproduction of labour) are examples of the types of evidence that are readily extracted through critical documentary analysis. Through examination of specific past events, in conjunction with the employment of a critical theoretical trajectory, a considerably different picture emerges than would have been the case with conventional avenues of investigation.

CHAPTER THREE

THE ANTECEDENTS OF WORKMEN'S COMPENSATION IN BRITISH COLUMBIA

Introduction

The literature detailing the rise of workmen's compensation in B.C. is sparse. There are accounts of industrial disasters, such as the Vancouver Island mine explosions and fires of the 1870's (Pethick, 1978; Scott, 1974), but the relationship of these tragedies to the later formulation of regulatory and social welfare legislation is never clearly articulated. As Mouat (1988) notes, the 'radical tradition' has received adequate attention,¹ but the record of working class struggle against injury-related injustice and inequities in the workplace, is scant. This omission is significant, when one considers the polarized class relations characteristic of British Columbia during the late 19th, and early 20th centuries.²

At this time in British Columbia, social conditions closely emulated economic conditions, ranging from (infrequent) labour peace to (more frequent) 'class war'. The implications of workers demanding the power to define work place issues in terms of class were indeed profound. Bitter conflicts occurred in mining regions between workers, and capitalists with close ties to political power. Indeed, in many cases, State and capital were symbiotic, as in the case of the Dunsmuir coal empire. As Ormsby (1971: 307) notes, every prominent business person was well known to legislators. It was difficult for a premier with extensive investments to refuse requests made by friends and associates. Moreover, working

1 The radical labour-socialist movement in Western Canada is well-documented. According to Morton (1984: 93), pre-World War One labour history was "a period of excitement and ferment, of charm and frustration...perhaps that is why it has attracted...such a wealth of attention from Canadian labour historians."

2 Roy, 1972-73: 3; Irving, 1987: 155-56. At a hearing of the 1903 (federal) *Hunter Royal Commission*, a Cumberland miner foresaw the destiny of socialism as:

...the emancipation of the working class...the working class will control the machinery of wealth and production...by capturing the reins of government. It means that the people will be the government, and all natural resources will be controlled by the people...if you want to obtain the scientific analysis of the situation, you could procure a copy of Karl Marx's *Capital* (Palmer, 1983: 163).

conditions were unspeakable, industrial injuries and deaths were frequent, and the ensuing social unrest was crushed by the State militia. With the advent of a labour political presence, pressure for social reform was carried onto the House floor.

The *Employers' Liability Act* (1891) was the first B.C. legislation to deal exclusively with work place death and injury. Ostensibly drafted to ameliorate the effect of the common law upon labour, its effect was mitigated by the judiciary who, on occasion, disallowed compensation awarded by jurors.

By the end of the 19th century, revolution, not reform, was part of the working-class agenda (Palmer, 1983: 164). The election of Socialist politicians to the legislature resulted in the passage of a wide variety of social-welfare compromises, including the 1902 *Workmen's Compensation Act*. This legislation soon proved unsatisfactory, as it encouraged insurance companies and lawyers to litigate, rather than settle compensation claims in a just and expedient manner. Between 1902 and 1914, labour-socialist politicians made on-going efforts to amend the 1902 Act, but were defeated by a Conservative majority. Bills passed by the government, such as the 1908 *Factories Act*, were for the most part ineffective, providing little in the way of genuine protection for workers.

By 1908, employers had good reason to be concerned about the increasingly unpredictable prospect of challenging every compensation claim in court. The risk of court-imposed insolvency over a compensation claim was a continual threat. As the danger of large settlements increased, insurance companies and employers resorted to dishonest and manipulative tactics in order to circumvent their legal and moral obligations. Radical labour, buoyed by a burgeoning organizational network, re-doubled its efforts at the work-site and in the legislature.

A wide-scale and violent Vancouver Island miner's strike occurred in 1912, after disciplinary action was taken against workers who reported gas in a mine, a practice allowed by the *Coal Mines Regulation Act*. The violent unrest associated with the strike coincided

with the *Royal Commission On Labour* which proposed the immediate implementation of a compulsory State workmen's insurance scheme. By March of 1915, the government introduced a compensation bill with the stipulation that there be a one year delay to facilitate interest group input. In September of 1915, the *Pineo Committee* picked up where the *Royal Commission on Labour* had left off, embarking upon an extensive investigation of compensation legislation in eastern Canada and the United States (see, Chapter Four). The evidence is not at all clear that the government intended there should be a Select Committee dealing with the compensation issue. Though favourably received by labour, the *Pineo Committee* ultimately confirmed the validity of a statement made by Theodore Roosevelt: that "social reform (is) truly conservative" (Weinstein, 1967: 174).

Prelude to a Crisis: Industrial Death and Class Conflict in B.C.

The earliest workers' strikes occurred in 1849-50 at Fort Rupert, and 1855 at Nanaimo (Warburton and Coburn, 1988: 269-70; Phillips, 1988: 42). Immigrant English and Scottish miners were accustomed to considerably safer and more comfortable working conditions. The scarcity of labour may have compelled higher wages,³ but capitalists would not tolerate an incursion into 'management prerogatives', including working conditions (Morton, 1984: 52). Workers protested by striking, weakening the economic base of the fledgling colony (Scott, 1974). At Fort Rupert, the Hudson Bay Company fort commander responded quickly, and placed the miners in irons.⁴ This early labour strife was less a consequence of recalcitrant labour, and more an early manifestation of an ominous, statist shift in class relations (Palmer,

³ See, Belshaw, 1989-90, for a discussion of the standard of living of British coal miners on Vancouver Island.

⁴ Robert Dunsmuir was a Fort Rupert miner who refused to strike. His loyalty to the company resulted in the gift of a considerable package of coal-bearing land near Nanaimo (Phillips, 1967: 3). Soon after, Hudson's Bay Company sailors mutinied against working conditions. The miners struck in sympathy, and the company responded with 'dead or alive' warrants for the wayward sailors (Scott, 1974; Belshaw, 1989-90: 37).

1983: 68). The employment of repressive tactics to facilitate attainment of production objectives did indeed prove effective, at least over the short term. This practice was one that was to repeat itself frequently in British Columbia some fifty years later.⁵

Because British Columbia's economy was resource-based and profit-oriented, key industries, such as forestry and mining, took an exorbitant price upon the health and safety of the labour force.⁶ The incidence of injury and death was so high that capital was periodically confronted with labour shortages.⁷ In concert with these inherently dangerous industries came the added hazard of mechanization (Prouty, 1985: 87-137). Improved technology and an emphasis upon 'speed-up'⁸ allowed business to amass extraordinary levels of profits,⁹ while the victims of 'industrial progress' suffered physical injuries and profound financial hardship. Denied justice in the courts, workers turned to industrial action and political

5 See, for example: *Report of the Select Committee On the Wellington Strike*, 20 JLA 1891: ccxli (appendices); *Report of the Select Committee re: Calling Out Militia at Steveston*, 31 JLA 1902: cxli (appendices). In correspondence dated July 11, 1900, the provincial chief constable at New Westminster suggested to the deputy Attorney-General, "I think that an immediate exhibition of authority will have the effect of preventing any serious lawlessness..." (PABC, GR 429, Box 6, File 5, 220/01). The deployment of militia at the Steveston fisherman's strike followed a request by three justices of the peace, one of whom was a canner, the other a prominent merchant (29 JLA 1900: 113). Another canner was the Minister of Finance (Phillips, 1967: 35). See also, 29 JLA 1900: 103; 29 JLA 1900: 179.

6 The extent and severity of injuries in early and contemporary logging operations in B.C. is chronicled by Prouty (1985), Taylor (1975) and Belgren (1966). For an overview of the debilitating effect of mining upon B.C. workers, see Phillips (1967), Scott (1974), Johnstone (1980), and the *Howie Smith Collection* (1976).

7 Palmer, 1983: 146. The human carnage precipitated by mining, railroad construction and logging was offset over the short term by immigration policies that invited careless and destructive treatment of the labour force. During war-time, mine explosions and the conscription of labour severely compromised the productive capability of the south-eastern metal mining region. By 1916, the federal and provincial governments considered exempting miners from conscription (*Colonist*, Nov. 18, 1916: 7).

8 The Western Federation of Miners (industrial union) condemned piece-work because it resulted in increased injuries, reduced wages, and heightened unemployment (*Victoria Daily Times*, Jan. 22, 1914: 1).

9 Though provincial mines inspector Archibald Dick was "not in a position to know if the mine owners were making profits", he was aware that the value of the large collieries on Vancouver Island "would go up in the millions of dollars" (PABC, GR 429, Box 2, File 5, 1359/92).

mobilization to address their concerns. The ensuing labour-socialist activity required employers to re-direct capital that might have otherwise been re-invested or spent, to counter a burgeoning working-class agency.¹⁰

The later development of social welfare schemes in general, and the B.C. *Workmen's Compensation Act* specifically, may be viewed as a rational response to a resource-based capitalist economy. Immigrant workers were a "source of super-profits (for monopoly capitalism) developing in Canada" (Lipton, 1978: 125). Many of these workers also brought with them the "experience of the fight." As Weinstein (1967: 156) reveals, these workers provided the primary impetus for social change. However, any reforms extracted from the State and capital frequently emulated a program or philosophy adopted by the corporate elite in response to the initial unrest. State regulation clearly reflected the need for protection of private property and the encouragement of investment on the part of foreign, and to a lesser extent, indigenous capital (Irving, 1987: 155).

Arduous Lives: The Miners Respond

By 1858, saw mills were established, as Cariboo gold miners demanded timber suitable for bracing mine shafts (Taylor, 1982). The vast mineral and coal deposits presented an opportunity for early provincial administrations to generate large amounts of capital over short periods of time. Measures were taken to encourage the influx of foreign capital in order to exploit these mineral resources.¹¹ Expansive immigration schemes were implemented to

¹⁰ Working class agency in British Columbia was described as "the most militant and politically conscious in the country" (Irving, 1987: 156). Capital was repeatedly forced to organize opposition to labour-socialist legislative initiatives. One attempt by James H. Hawthornthwaite (Soc. - Nanaimo City) and Parker Williams (Soc. - Newcastle) to pass amendments to the *Master and Servants Act* (bill 29), and *Shops Regulation Act* (bill 20) precipitated an employer deputation, headed by the Victoria Board of Trade, to the McBride Conservative cabinet. The premier stated that Hawthornthwaite's amendments would be introduced in Committee "to eliminate any bad effects", especially those "prejudicial to the public interest." McBride assuaged employer apprehension by promising "even if the bill (reaches) the Committee stage, it (will) not emerge without drastic alteration" (*Colonist*, Mar. 3, 1906: 1); see also, 35 *JLA* 1906.

facilitate resource extraction. By 1875, there were nearly 3000 miners in British Columbia, including 620 Chinese.¹²

A series of global economic setbacks, beginning in 1873, intensified the daily struggle of the British Columbia working class to survive. Early miners, in particular, led difficult lives. Arduous living and working conditions eventually led to the formation of labour unions that fueled working class solidarity. Attempts at political action were also entertained. In particular, mine deaths¹³ galvanized labour into demanding safer working conditions. Serious unrest in the coal industry precipitated a strike at Robert Dunsmuir's Wellington mines (near Nanaimo) in 1877. The strike was eventually broken when a Royal Navy gunboat was dispatched to the scene.¹⁴

11 The Lieutenant-Governor stated at the 1876 session:

...the value of our coal deposits cannot be over-rated; they already give remunerative employment to a large number of our people, and new mines are being opened with every prospect of being extensively and profitably worked; 5 *JLA* Jan. 10, 1876: 2.

12 4 *JLA*, Mar 1, 1875: 2. The construction of the C.P.R. through the Fraser Canyon required an expendable supply of cheap labour. Approximately 15,000 Chinese were imported into a province with a white population of only 35,000. The Chinese were transported by steamer to Yale, where they were given a cup of rice and instructed to make their way to the camps 50 miles distant. Already in poor health, many fell sick and died along the road (Taylor, 1982: 37).

13 Subsequent explosions occurred in 1879, 1881, 1884, 1887, 1888, 1901-03, 1904, 1909, 1912, 1915 (x 2), 1916, and 1917. In 1922-23, five years after the passage of the 1916 Workmen's Compensation Act, 51 Cumberland coal miners were killed in two separate explosions. Seager (1985: 25) notes that 862 B.C. and Alberta miners died in explosions between 1879 and 1917.

14 Phillips, 1967; Pethick, 1978. 6 *JLA* 1877 Mar. 15: 24, reveals "the government considered prudent to send the *H.M.S. Rocket* to Nanaimo at the request, and on the representation of Messrs. Dunsmuir and Diggle, who apprehended a breach of the peace by the miners on strike." Taxpayers paid for the coal to fire the ship's boilers. Robert Dunsmuir informed the Attorney-General that "we have all a hard battle to fight": State action was required to avert "blood-shed." Dunsmuir also suggested the Attorney-General have the Opposition request a government inquiry to delay the strike, and "take the matter off your hands" (PABC, GR 429, Box 1, File 6, 200/77). By April 20th, Dunsmuir threatened to close his mine for 12 months. "...if the law cannot be carried out...I have been put to much expense for the want of proper force" (PABC, GR 429, Box 1, File 6, 207/77). Eventually, the H.M.S. Grappler and a crew of militia evicted the miners and their families from Dunsmuir's company houses. This junket cost the public \$18,000.00; Phillips, 1967: 7; Morton, 1984: 52. See also, PABC GR 429, Box 1, File 6, 51/77, 206/77; GR 429, Box 1, File 11, 20/82.

A mine explosion on May 3, 1887 at the Vancouver Coal company operation at Nanaimo killed 148 miners, widowing 50 women and their families. A coroner's inquest laid the blame on the workers, citing a poorly placed or mis-fired shot as the cause of the deaths. The jury acknowledged the dusty and gaseous nature of the mine, but the investigation made no mention of the company allowing production to continue when such dangerous conditions existed. A good part of the workings of the Vancouver Coal company were submarine, which greatly increased the risk (*Daily Colonist*, June 26, 1887: 1). Approximately eight months later, a second explosion at Dunsmuir's Wellington colliery killed 77 miners. One year after the first explosion, the government appointed a Select Committee (17 *JLA* Feb. 14, 1888: 19). The government spoke in terms of patriotic rhetoric, intimating that "legislative safeguards" could be thrown around "our hardy and industrious coal-miners" (17 *JLA* Jan 27, 1888: 1) In the interim, the dependents of the victims were reduced to relying upon the charity of Nanaimo residents to survive.¹⁵

The 1887 and 1888 explosions led to the formation of miner-operated gas inspection committees, and the Nanaimo Miners and Mine Labourers Protective Association (Phillips, 1988: 43, 1967; Ormsby, 1971: 306; Schwantes, 1979: 72-3). The explosions killed 225 miners, which constituted a significant reduction in the availability of a skilled workforce for the Nanaimo mines. According to Mouat (1988: 11), the report from the Minister of Mines showing a 15% reduction in the workforce is probably too low, as above-ground workers

15 17 *JLA* Jan 27, 1888: 1; Pethick, 1978. Despite government assurances that aid was imminent, the evidence is unclear whether a proposed "contribution" from "the public treasury" ever received the blessing of the House.

were included in the tally.¹⁶ The remaining miners refused to work until their grievances were recognized.

One of the key issues for early labour organizations was the underground employment of Chinese workers. A Select Committee later confirmed the claims of white miners that to employ in mines persons unable to speak or understand English was dangerous (see, 17 *JLA* 1888 Feb. 14: 19; 17 *JLA* 1888 Apr. 5: 74). Sensitive to widespread anti-Chinese sentiment, the Wellington and Vancouver Coal Companies promised to respect a 'gentlemen's agreement' and the provisions of Bill 35 of the *Coal Mines Regulation Act*, both hurriedly drafted by the legislature (see, 17 *JLA* 1888). The government had adamantly refused to sanction a motion that would have amended the Act to make the employment of Chinese underground a violation of the law (17 *JLA* 1888 Apr. 5: 74). The mining companies promised to prohibit the employment of Chinese miners underground. Though the exercise succeeded in adding some minor safety amendments to the Act, the coal companies at Nanaimo (Vancouver and Wellington collieries) soon reneged, while the principle of this 'agreement' was ignored entirely at Dunsmuir's Cumberland mine.¹⁷

For employers such as Dunsmuir, hiring Chinese labour was a solution to the (comparatively) high wages (Belshaw, 1989-90: 64), a scarcity of labour, and unionization. Unlike whites, the Chinese could be threatened with deportation for striking. White miners despised the Chinese for their strike-breaking, and for the additional risk they presented to all

16 17 *JLA* 1888: cvi, reveals that efforts were being made to secure the services of a "first-class mining engineer", with the added stipulation that the engineer have the "confidence of mining capitalists in Great Britain." Arguably, this step was necessary to demonstrate to potential English investors that production (and hence, profitability) would not be compromised by any further mine explosions, nor would labour shortages or disruptions occur that might have the same effect. Similarly, after an explosion at #2 Extension mine (near Nanaimo) on Oct. 5, 1909, killing 32 miners, a "distinguished English mining engineer" was appointed by the provincial government to investigate the matter (*Labour Gazette*, Nov. 1909: 600). In this disaster, as in so many others, the company was exonerated (PABC, GR 429, Box 17, File 2, 4758/09).

17 Almost half the labour force were Chinese at Cumberland (Mouat, 1988: 13). By 1890, white miners from Nanaimo, Wellington and Comox again petitioned the legislature to remove the Chinese from working under ground; 19 *JLA* 1890: 68; see also, 21 *JLA* 1892: 18, 24.

underground workers due to their inability to understand complicated instructions involving, among other things, the use of explosives (Morton, 1984: 54).

By 1879, the Victoria Workingmen's Association had taken up the anti-Chinese cause, submitting petitions to the legislature demanding an end to Chinese immigration and employment (see, for example, 8 *JIA*, Mar. 14, 1879: 34). Interestingly, in the same year, the legislature presented a report of a Select Committee to investigate the 'Chinese Question' (8 *JIA* April 22, 1879: 60). Clearly, the State could not ignore the strictures of a resource-based economy and grant white labour a monopoly. The Chinese continued to be a cheap source of expendable labour which allowed capitalists to maximize profits.¹⁸ Moreover, the Chinese willingly performed unpleasant jobs that whites found undesirable. The outcry against the Chinese coincided with their encroachment into positions traditionally held by whites. The State responded to the nuisance of anti-Chinese agitation by attempting to defuse the situation with official condemnation of the Chinese, manifested in the form of periodic investigations and the imposition of head taxes. At the same time, a blind eye toward violations of anti-Chinese statutes was maintained. The government regularly assisted capitalists who wished to import labour for works projects. The result was that capital utilized fractions of labour to divide and rule. Had white labour made an effort to organize the under-classes, British Columbia labour history would have been very different. As it stood, State and capital extracted maximum advantage from the hostilities. Not until the Steveston fishermen's strike at the turn of the 19th century did Asians, indigenous people and whites organize together.

As Lipton (1978: 97) notes, Canadian labour was still in its infancy. Nonetheless, an undeniable pattern of radical working class organization and resistance was beginning to manifest itself in British Columbia. Contemporary ideology stressed the 'natural' aspects of an

¹⁸ Warburton and Coburn, 1988: 278-79. The Chinese were also more docile. McCormack (1985b: 102) reveals that the "vociferous and violent" reaction of Welsh workers imported for railway construction greatly alarmed railway executives and contractors.

individual-centered, 'free-market' economy. The development of labour collectives in response to debilitating treatment at the hands of employers was immediately perceived by capital and State as a threat to the ideal of 'free' individuals 'bargaining' with each other in the market place. This ideology was later betrayed by employers who offered workers ultimatums bolstered by police and military force.

Though Asiatic exclusion from B.C. was a factor in labour planks, there was a growing focus on class disparity. The 1886 platform of both the Nanaimo and Victoria Workingmen's parties declared the existence of "a basic divergence of interest between the 'toiling masses' and the 'wealthier part of the community'" (Phillips, 1967: 15; Loosmore, 1954: 32). Even though the strike constituted an integral part of social relations in early British Columbia, labour increasingly viewed political mobilization as a way to augment industrial action. In this fashion, immediate safety concerns could be addressed, while providing a vehicle to fashion a new social system. Local fragmented organizations failed repeatedly to achieve tangible legislative reform. Petitions had only a limited effect in a House dominated by a hostile government.¹⁹ The unpalatable prospect of leaving the issue of legislative reform to a State that had repeatedly aligned itself with economic endeavors over the interests of those who created wealth,²⁰ only served to reinforce the seeds of radical labourism that had been sown earlier.

19 Miners utilized legislative petitions to press their demands, but to little effect; see, for example, 17 *JLA* 1888: 46, 52, 58. Another attempt by 125 Victoria carpenters, backed by the Knights of Labour, to secure a 9 hour day succeeded. Nevertheless, without the collective ability to maintain the victory, the employers soon eroded the agreement and the union collapsed (Phillips, 1967: 17).

20 Robert Dunsmuir was elected M.L.A for Nanaimo in 1882. Interestingly, the federal government was petitioned shortly thereafter by the provincial legislature to retain 3 naval gunboats in B.C. (12 *JLA* Jan 25, 1883: 3). The provincial militia was strengthened with the addition of new artillery, ammunition storage areas, and drill sheds, including one in Vancouver (PABC, GR 429, Box 4, File 4, 1577/99). New regiments were established at Nanaimo, Yale and Kootenay districts (16 *JLA* 21 Feb. 1887: 22). These three districts were populated largely with coal and metal miners. The government ostensibly justified the expenditure on the pretext that England would soon be at war. However, a more likely explanation were bothersome native rebellions (13 *JLA* Dec. 3, 1883: 2; 18 *JLA* Jan. 31, 1889: 1), and the proximity of large numbers of miners and itinerant labourers in these districts of key economic significance.

In contrast to the trades-oriented Vancouver unions, the Miners and Mine Labourers Protective Association was an industrial union, and organized quickly for the 1890 election, in order to press for the statutory exclusion of the Chinese from underground work in the mines (Mouat 1988: 13). The tactics of employers, such as the Dunsmuir family,²¹ alienated capital from labour (Ormsby, 1971: 306). Repeated efforts were made by the work force to persuade the legislature of the unnecessary risks a single-minded focus upon profit-making was having upon employees. James Dunsmuir had insisted, for example, that the incoming shift were to be at work at the coal face before the out-going shift were allowed to enter the lift for the ride to the surface. In the event of an explosion, the workers awaiting the lift were unnecessarily placed at risk.²²

The 1891 Employers Liability Act

A welcome economic up-turn in coal markets in 1892²³ required larger work-forces. Due to a burgeoning anti-Oriental sentiment, white peasant labour was imported from northern and central Europe, and assumed the subordinate status of the Chinese labour they replaced (Taylor, 1982: 37). English and American miners also arrived in B.C. Unlike eastern Europeans or Asians, these workers were accustomed to 'democratic' franchise, trade unions, and political action. They offered a radical response to hardships and inequities (Mouat, 1988: 11; Bercuson, 1981: 461). On the Island, their response culminated in the nomination of

21 With the death of Robert Dunsmuir in 1889 (PABC, GR 429, Box 2, File 2, 271/89), James Dunsmuir inherited the family coal empire. *The Labour Gazette* (Dec. 1901: 344-45) illustrates an enduring problem of autocratic behaviour of the part of capital in a review of a conciliation process at Alexandria Mines at South Wellington. Prior to a strike vote being taken, the manager of the mine had refused to entertain a miners' deputation seeking to resolve the dispute.

22 Loosmore, 1954. Miners believed that an 8 Hour Law would protect them from such production-related practices. The appeal of the 8 hour resolution (and those of Chinese exclusion, weekly payment of wages and employers liability) were re-affirmed as early as 1880, during an attempt to organize a provincial federation of labour (Phillips, 1967: 21).

23 Opening address of the Lieutenant-Governor; 21 *JLA* 1892 Jan. 28: 1.

Thomas Keith²⁴ and Thomas Forster.²⁵ Shortly thereafter, both were elected to the legislative assembly (Phillips, 1967). Unfortunately, Keith and Forster were not always united in their opposition in the House.²⁶ On more than one occasion, Keith and Forster cancelled each other's vote in the legislature (Loosmore, 1954: 59). Nonetheless, Forster did serve as an advocate for the urban working class. His inquiries in the House revealed that repeated variances (permits) were being obtained by the Union Colliery company. These variances permitted employment of more workers within the mine during exploratory work than were allowed under section 28 of the *Coal Mines Regulation Act*. The Minister of Mines later acknowledged that compliance with safety regulations would occur only when it became economically feasible to do so. Until then, variances from the regulations would be granted as a matter of routine (see, for example, 26 *JLA* Apr. 9, 1897: 110. See also, Appendix D). Nevertheless, by 1891, a burgeoning labour political presence, bolstered by the election of 'labour' representatives, was instrumental in prodding the Liberal administration of John Robson into passing the first significant piece of legislation specifically directed at industrial injuries.²⁷

24 Keith was originally from Belfast, and had mined in Ireland (Loosmore, 1954: 50). Acutely aware of the class struggle, Keith warned workers during the 1890 election: "Do not believe the capitalist will advance your interests and wants. The only man who will do this is the working man..." (Mouat, 1988: 28).

25 Forster hailed from Northumbria, working in the Nanaimo pits prior to becoming a farmer in the New Westminster area (Loosmore, 1954: 50).

26 Panitch (1977: 20) notes that farmers were frequently self-contained and self-supporting despite the vagaries of a capitalist economy. Consequently, farmers were insulated from the harsher realities confronting the urban, industrial worker.

27 At the opening of the 1890 session, the Lieutenant-Governor indicated the government intended to present legislation to the House, Bill 3 (*An Act to Secure Compensation For Personal Injuries suffered by Workmen in Certain Cases*). However, it was not introduced until Jan. 20, 1891, by Theodore Davie. Little information regarding Bill 3 was provided by the Lieutenant-Governor ("Legislation will be submitted to you defining the law, regulating the liability of employers for personal injuries to workmen...") before he launched into an optimistic diatribe concerning coal prospecting. The bill negotiated three readings with a minimum of difficulty (it passed third reading on Jan. 27th, only seven days after its introduction; 20 *JLA* 1891: 13), and was given royal assent (20 *JLA* 1891). According to Ruegg (1910: 43-44), English employers had viewed employers'

Workers in British Columbia had great difficulty in obtaining recompense for their injuries and lost income. The only avenue of redress amounted to tort action through the common law, with the burden of proof upon the plaintiff to substantiate a claim of employer negligence. English legal precedents were based upon pre-industrial cases, which entailed personal employer supervision on a small scale (Weinstein, 1967: 157; *Industrial Progress and Commercial Record*, April 1915: 264). The English initially utilized informal systems of compensating victims of pre-industrial incidents, whereupon the dependents of the deceased were compensated according to the value of the object that had wrought the damage upon an individual. These *deodands*, paid to dependents upon the death of a labourer, were not difficult to secure when the item in question was a wooden cask, worth perhaps 10 pounds sterling. However, as industrial technology became more predominant, cases of individuals being killed by a steam locomotive worth 2000 pounds sterling presented considerable problems for capital, who clearly could not endure such losses. In a very short period of time, capitalists lobbied the government to change the law, demanding the substitution of a statutory mechanism for the deodand.

The courts provided the solution. The common law began to manifest an orientation toward 'negligence', and an apportioning of blame for work place injury or death (Doran, 1986). Prior to the 1837 precedent of Priestly v. Fowler,²⁸ the English common law provided a master was responsible for the acts of his servants. With Priestly, the English courts created the 'fellow servant rule', effectively installing the first of three employer legal 'defences'. According to Ruegg (1910: 15), the fellow servant rule is expressed as follows:

liability legislation with "something like terror", fearing a "revolutionary tendency as likely to seriously disturb the trade of the country." Significantly, these fears "were always groundless, and (were) never realised."

28 3 M. & W. 1; M. & H. 305; 7 L.J. Ex. 42; 1 Jur. 987. Decided by the English Exchequer Court, the Priestly precedent was not recognized by the House of Lords until 1858, during an appeal from the Scottish courts; Bartonshill Coal v. Reid 3 Macq. H.L. Cas. 266; (*B.C. Federationist* July 31, 1914: 1; Tucker, 1984: 217).

If the person occasioning and the person suffering injury are fellow workmen engaged in a common employment and having a common master, such master is not responsible for the consequences of the injury.

Also called 'common employment', the fellow servant rule was the most serious impediment to recovery by an injured worker. The courts adhered to an individualist philosophy, so that by assuming employment, the worker voluntarily contracted to assume any risks, and could therefore guard himself against the negligence of a fellow servant just as adequately as could the employer. In particular, this defence assumed notoriety because of the double standard it represented. As Ruegg (1910: 16-7) argues, if the principle of *respondeat superior* (let the master answer) was to be excluded from a contract that assumes a knowledge of risk, then logically, passengers upon railways and public transport should also have been excluded, as they 'voluntarily' subjected themselves to the ordinary dangers of street traffic. However, this was not the case. Injured workers were treated differently by the courts, compared to other, non-industrial petitioners (Arab, 1938: 29).

The second employer defence, assumption of risk (*volenti non fit injuria*), was equally offensive. This notion of implied consent was based upon the liberal tenets of 'freedom of contract' (Doran, 1986: 637), and assumed that a worker undertaking to perform a task possessed both knowledge of, and consent toward, exposure to a specific task hazard. This meant that if a machine was not guarded or in a state of disrepair, and an employee worked at that machine without complaint and was later injured, the court would hold that the worker had voluntarily assumed the risk of being injured, and thus must personally bear any loss. In the event employer negligence was undeniable, the third defence of contributory negligence provided that any additional negligence of an employee, no matter how trifling the action, would serve to free the employer from legal liability (Arab, 1938: 29). Clearly, any measure of legal probability was situated squarely in the favour of employers (Tucker, 1984: 217-19), and ignored the vulnerable status of wage-dependent workers.

Arguably, the judiciary was cognizant of the need for a market-economy, premised upon commodity production, to operate with minimal outside interference. To hold capital liable for workplace injury or death was clearly unwise in economic terms. Moreover, it was unnecessary, especially when an abundant supply of labour was available. Until their erosion by subsequent legislative and judicial action, all three employer defences remained major obstacles to recovery of damages by workers (Tucker, 1984: 217; Risk, 1983: 419-23).

For many occupations, especially those where witnesses to the injury were few, meeting legal requirements and contending with the adversarial nature of common-law actions proved to be a protracted and arduous process.²⁹ Though court awards could be large, for workers to succeed, employers had to breach a statutory duty, or actual personal employer negligence had to be proved. With mechanization and increased production came the need to delegate authority. In 1869, English decisions reflected this requirement, so that even in cases where a worker was entrusted with so much authority that he or she could be fairly termed a 'vice-master', the principle of common employment still protected the master (*Industrial Progress and Commercial Record*, Dec. 1915: 132-33).

For the western Canadian worker, the reality of the work environment was altogether different. The hazardous nature of resource extraction in British Columbia's staple industries, often conducted in areas remote from medical care, produced shocking injuries (Somers, 1954). Similar to earlier scenes recorded by Engels (1969: 192) in Manchester, England, maimed and disabled workers were highly visible, arousing much sympathy from the labouring and reform-oriented quarters of a class-stratified society. Employees were subject to a period

²⁹ Injuries on the railroads were often severe in nature. For example, one plaintiff lost one leg above the knee, the other below the knee, and three fingers of one hand. The negligence of a fellow servant (common employment) precluded recovery; Hall v. Canadian Pacific Railway Company (1914) 20 B.C.R. 293; *Labour Gazette*, April 1915: 1239.

In Wood v. Canadian Pacific Railway Company (1899) 6 B.C.R. 561; 30 S.C.R. 110, the plaintiff failed at both trial and appellate levels. The court held that "The workman on his part takes the risk of his employment and is remunerated accordingly" (Ruegg, 1910: 52). Though court decisions were often less than favourable, without strong labour unions, workers could never have contested liability (Phillips, 1967; Schmidt, 1980).

of ruthless competitiveness that proved more destructive of labour than at any preceding period of history (Somers, 1954). Workers were also confronted with an unresponsive and inflexible legal doctrine and judiciary that, on average, denied recovery in 70% to 80% of cases (Lewis, 1909; Meredith, 1912).

The 1891 *Employers' Liability Act* sought to provide compensation for personal injuries suffered by workmen in certain cases by reducing specific effects of the "unholy Trinity" (Doran, 1986: 623; Weinstein, 1967: 157-58), or three common law defences.³⁰ The Act was ostensibly the statutory manifestation of a moral obligation on the part of employers to compensate for workplace injuries (*Industrial Progress and Commercial Record*, Sept. 1913: 17). However, the Act was not a 'compensation' measure in the proper sense of the word. Rather, it modified the common law, limiting the scope of the fellow servant rule. The Act disallowed employer defences based upon defective works or equipment, the negligence of a worker acting in the capacity of supervisor, and the negligence of a fellow-servant, or injury resulting from the response of a fellow-servant to a direct order of a supervisor.³¹ Compensation was limited, to three years wages or a sum not to exceed \$2,000.00.³²

³⁰ When the common law defences were finally eliminated with the passage of the 1916 Workmen's Compensation Act, the government argued that "...taking away employer defences may appear unjust, but (it is) based upon the principle of doing good for the many..." (*Colonist*, Apr. 27, 1916: 1) Schmidt (1980: 52) argues that to discuss a progressive weakening of the common law in terms of 'surrendering' employer legal rights is incorrect. Rather, it is better described as "giving up what one was not entitled to in the first place."

³¹ S. 3(1-4), *Employers Liability Act* (1891) c. 10. In a direct reference to Chinese workers, many of whom served as domestic and farm labour, the Act strengthened and extended a pattern of racial discrimination to legislation dealing with workplace injury and death. The 1891 Act stipulated in s. 2(3) that "The expression 'workman', does not include a domestic or menial servant..." Caucasians performing "menial or domestic" duties were also excluded from recovery; *In Re Lewis and Grand Trunk Railway Company* 18 B.C.R. 329; *Daily Province*, Mar. 4, 1913: 23. This provision is entirely consistent with the opening address of the Lieutenant-Governor in January of 1879: "Although your legislation on the Chinese question has been considered unconstitutional, this circumstance should not deter you from adopting every legitimate means of attainment of the end your late statute had in view"; 8 *JLA* Jan. 29, 1879: 2. Essentially the same developments occurred in New South Wales legislation (Cass, 1983: 32).

³² Section 8, *Employers Liability Act*. Contracting out of the 1891 Act was also not entirely prohibited. It provided that no agreement entered into by the workman would be considered a bar

Unfortunately, little information is available concerning the forces behind the 1891 Act. The legislation strictly limited employer liability by requiring direct employer negligence. The courts were given wide interpretive powers, and defined employers' negligence concisely and narrowly. As Piva (1975) argues, 'justice' under employers liability legislation was intermittent and unreliable. It was difficult and expensive for an employee to prove such negligence,³³ and employers often appealed unfavourable decisions. The reported cases indicate a considerable number of workers either lost in court, or had judgements in their favour reduced or eliminated. As one employer remarked, "Happily, our judges, as a rule, take an unbiased view of questions of this kind, and justice is done (for) both parties concerned" (*Province*, May 8, 1902: 2).

At least initially, the courts were, on the whole, unsympathetic to the plight of the injured worker. The courts required only that employers engage in "reasonable" safety practices.³⁴ However, 'reasonable' terms of employment were affected by reigning business ideologies, especially the need to minimize any interference with the accumulation process. In Davies v. Le Roi Mining and Smelting Company (1899) 7 B.C.R. 6, a smelter blacksmith injured in a fall was successful in securing a \$300.00 award from a jury. The employer appealed and won. The court later refused to hear a further appeal by the plaintiff, on the grounds that

to recovery, unless by entering into the agreement, the employee was given some consideration other than that of being given employment; and in the opinion of the court, such consideration was adequate and the agreement was just and reasonable. 'Contracting out' became a volatile issue in railroad construction. 'Station-men' (hired by sub-contractors to occupy a 100 foot place or 'station' on the road) were denied compensation under both employer's liability and compensation Acts; see, for example, *Daily Province*, Dec. 18, 1912: 21.

³³ See, for example, Kingswell v. Crow's Nest Pass Coal Company (1903) 9 B.C.R. 518; Nightingale v. Union Colliery Co. (1900) 8 B.C.R. 134; Nightingale v. Union Colliery Co. (1903) 9 B.C.R. 453, 35 S.C.R. 65, PABC, GR 429, Box 4, File 2, 1672/98, 1782/98; Varesick and Another v. The British Columbia Copper Company, Limited (1906) 12 B.C.R. 286; Velasky v. Western Canada Power Company (1913) 18 B.C.R. 407; Bool v. Ladysmith Lumber Co. (not reported; *Victoria Daily Times*, June 18, 1914: 5); Beck v. Guthrie (not reported; *Vancouver Sun*, Nov. 5, 1913: 5); Hvynczak v. British Columbia Electric Railway, Limited (1914) 20 B.C.R. 31.

³⁴ McDonald v. Canadian Pacific Explorations Co., Ltd. 7 B.C.R. 39. Later on, State compensation boards were expected to assist in the development of "reasonable" safety standards; *Daily Times*, Jan. 2, 1917: 11.

the plaintiff could not support his allegations of claim. The arguments of the defendant relied heavily upon the lower court ruling of Scott v. B.C. Milling Co. (1894) 3 B.C.R. 221, before Justice Drake:

If every workman was entitled to recover damages for injuries sustained in doing work which he knew was risky, a large number of mills would have to close. No man is compelled to work at a dangerous task...

Scott relied upon Sexton v. Hawkesworth 26 L.T. 851:

If a servant enters into employment, knowing that there is danger, and is satisfied to take the risk, it becomes part of the contract between him and his employer that the servant shall expose himself to such risks as he knows are consistent with the employment.³⁵

In Hastings v. Le Roi, No. 2, Ltd., 10 B.C.R. 9; 34 S.C.R. 177, the high court rejected assumption of risk, but accepted the fellow-servant defence. The defendant was acquitted. In Harrigan v. Granby Consolidated Mining, Smelting and Power Company, Ltd. 14 B.C.R. 89, the plaintiff was refused damages arising from an incident where a misunderstanding on the part of the worker had occurred. In some cases, the courts found that an injury was attributable solely to the "serious and wilful misconduct or serious neglect" of a worker.³⁶

Despite economic exigencies, existing legislation underwent amendment in order to accommodate plaintiffs who would otherwise have been excluded. Under the *Employers' Liability Act of 1891*, where the plaintiff died as a consequence of injury, legal recourse was terminated. Multiple fatalities meant worker-witnesses who might have aided the recovery process were themselves often killed, thus depriving their dependents of a redress mechanism (*B.C. Federationist*, July 31, 1914: 1).

35 Ruegg, 1910: 226-27. See also, Regina v. Union Colliery Company (1900) 8 B.C.R. 247; Hosking v. Le Roi No. 2, Limited (1903) 9 B.C.R. 551.

36 Socialist J.H. McVety appeared before the 1912-14 *Royal Commission On Labour*, charging the provision with being offensive and an affront to all workers (PABC, GR 684, Box 2. Vol. 3, File 1, pg. 349). See, Hill and another v. Granby Consolidated Mines 12 B.C.R. 118; 1 Butt. W.C.C. 436; Granick v. B.C. Sugar Refinery Co. 14 B.C.R. 251; 15 B.C.R. 198; 2 Butt. W.C.C. 511; Jamieson v. Adams River Lumber Co. (not reported; *Labour Gazette*, Mar., 1913: 1029). See also, *Labour Gazette*, April, 1911: 1173; *B.C. Federationist*, Mar. 19, 1915: 1..

In Canadian Pacific Railway v. Bryce 13 B.C.R. 446, the plaintiff died after an action had been commenced, but before a judgement could be rendered. Under common law, the death of the plaintiff terminated any legal action. Ironically, employers escaped the same restriction. Section 2 of the *Employers' Liability Act* defined representatives of a deceased employer as an employer. The problem of excluding those left without subsistence subsequent to a worker's death was resolved with the introduction of a statute - attached to the *Employers' Liability Act* - that facilitated the continuation of a lawsuit.³⁷ *Lord Campbell's Act*, as it was known in England, entailed the following:

...given the wrongful act in respect of which the deceased, had he lived, would have had a right of action, the statute intends, in the case of death, to make the wrongdoer liable to damages to those who, irrespective of race or residence, stood to the deceased in any of the relationships mentioned in the (1902 Workmen's Compensation) Act.³⁸

While employers may have had the initial upper hand, many trials were held before juries. Juries may have heeded a burgeoning anti-business sentiment within the working-class and a reformist fraction of the middle-class. While the common law sanctioned the right of employers to have workers labour in unsafe conditions, employer common-law defences failed to persuade many jurors of their legitimacy (Tucker, 1984: 276). Jurors were not insulated from feelings of animosity toward business intent upon accumulation of vast wealth, no matter the human costs. In order for the judiciary to succeed in limiting employer liability, common law doctrines were utilized to make a low standard of care and a high burden of proof the yardstick by which volatile cases were prevented from reaching a jury (Tucker, 1984: 223). Risk (1983) found that Ontario juries frequently found for the plaintiff. This trend appeared even in cases where negligence or liability on the part of the defendant was

³⁷ *An Act for Compensating the Families of Persons killed by Accidents (Families Compensation Act)* R.S.B.C. 1897, C. 58; *Colonist*, June 8, 1898: 8.

³⁸ Varesick v. British Columbia Copper Co., 12 B.C.R. 286. In Green v. The British Columbia Electric Railway, and Edward Cook, 12 B.C.R. 199, the court disregarded a statute limitations in a private Act that had been draughted expressly for the purpose of evading liability. *Lord Campbell's Act* was held to create a "special cause of action."

unproven, especially in cases involving large corporations.³⁹ In Scott v. The Fernie Lumber Company, Limited (1904) 11 B.C.R. 91, the jury awarded a workman \$1440.00 damages and costs, even though the court held that “the findings read alone did not establish any legal liability on the part of the defendants...” That employers were all too aware of a developing trend of jury sympathy toward plaintiffs is clear:

Now, anyone who watches closely the action of juries, when asked to decide questions of this nature between a company and an individual knows...their decisions often run along the line of: ‘Mulch the company; they are better able to stand it than the individual...’ (*Province*, May 8 1902: 2).

Unfortunately for injured workers, some trial judges were openly instrumental in fashioning the law to fit their laissez-faire convictions (Tucker, 1984: 275). It was not uncommon for judges to allow juries to make a finding, then dismiss the case should a decision be returned in favour of the plaintiff.⁴⁰ According to Ruegg (1910: 203), the extent to which damages were awarded was essentially a question for the jury:

39 Tucker, 1984: 223. In Shearer v. Canadian Collieries (Dunsmuir) Limited (1914) 19 B.C.R. 281; *Labour Gazette*, May 1914: 1361-62, the jury took the prerogative of exercising what it interpreted to be an invitation from the court to disregard the questions put to them for deliberation. They found damages in favour of the plaintiff for \$7,500.00. When the bench inquired about the questions they were to consider, the foreman replied “We did not bring them in, we tore them up.” In Stamer v. Hall Mines (1899) 6 B.C.R. 579, the jury was willing to find negligence on the part of the employer (a finding overturned by the trial judge), notwithstanding that it was only able to conjecture how the injury occurred. In Latham v. Heaps Timber Company (1912) 17 B.C.R. 211, the jury awarded the plaintiff \$3,000.00. Upon appeal, the court over-turned the decision by finding contributory negligence, and chastised the jury for being unable to do likewise.

40 Piva (1975: 43). Though Piva’s argument focuses upon events in Ontario, similar cases occurred in B.C. In Clark v. Canadian Pacific Railway (1911) 17 B.C.R. 314; *Labour Gazette*, June 1912: 1206, the jury awarded the plaintiff \$3000.00, but the trial judge set aside the verdict. The action of the trial judge was upheld upon appeal by the plaintiff. The *Labour Gazette* (Sept. 1900: 38-39) reported another case heard under the *Employers Liability Act*. A miner suffering a serious and permanent head injury had 3 trials. The jury awarded \$3000.00 during the third trial. Nevertheless, the trial judge disagreed with the jury, and dismissed the action: “I am unable to agree with the verdict of the jury, which I think was influenced by sympathy for the unfortunate man who was injured.” A fourth and final action, initiated by the miner, resulted in securing an award of only \$500; Pender v. War Eagle Consolidated Mining and Development Co., Limited (1899) 7 B.C.R. 162.

The mere fact that the judge who tried the case with a jury would have decided the other way is no sufficient reason for granting a new trial. If there is a question of fact left to the jury, and they have reasonably answered it, their verdict cannot be disturbed.

English precedent dictated the ambiguous test of the 'reasonable man' be used to determine whether or not damages were 'too large'. In Praed v. Graham 24 Q.B.D. 53, Lord Esher argued:

if damages are so large that no reasonable man ought to have given them as damages, the court ought to interfere.⁴¹

The *Employers Liability Act* provided only a temporary reprieve for Robson's government from pressure outside of the House. A burgeoning crisis of legitimacy began to manifest itself in direct opposition to the State that installed employers liability legislation, and the judiciary that enforced it (Reasons et al, 1981). Because workers managed to win so few cases in court, there was an obvious contradiction between the rights of a "stranger and a workman" (Doran, 1986: 626). The working class began to exhibit hostile tendencies toward a social system that profited from their labours, while refusing to make labouring safer and reneging on the promise of compensation when injury did occur.⁴² The failure of an 1891 miners' strike at Wellington, followed shortly thereafter by yet another economic depression, dramatized the demarcation of class lines.⁴³

41 Ruegg, 1910: 204. In Farmer v. The British Columbia Electric Railway Company, Limited (1910) 16 B.C.R. 423, the jury awarded \$9000.00 to the plaintiff. The employer appealed. The court found the initial award not only ignored the "weight of the evidence, the plaintiff had also failed to prove negligence on the part of the defendant." See also, *Labour Gazette*, Aug. 1910: 275; Farquharson v. British Columbia Electric Railway, Co. 14 Western L.R. 91. A jury award of \$11,500.00 was overturned by the Supreme Court; *Labour Gazette*, Sept. 1910: 367.

42 As Doran (1986: 625) observes, the English legislation of 1880, upon which the B.C. Act of 1891 was based, did not abandon the common law. Rather, it only served to further clarify "exactly who was to constitute a master."

43 Phillips, 1967. An event indicative of the ever-widening rift between capital, labour, and strike-breakers employed by coal-mining capital occurred in 1891. As a consequence of deflation, capital had begun to employ the wage-cut in order to heighten the expropriation of surplus value (Palmer, 1983: 98). This measure, in concert with hazardous working conditions, provoked strikes. Labour M.L.A. Keith had called for a Select Committee to investigate the cause and circumstances surrounding the Wellington strike, including the reading of the *Riot Act* to a peaceable assembly of

Although Phillips (1967) suggests that Keith met with limited success in the legislature,⁴⁴ he succeeded in making labour's voice heard in a public forum,⁴⁵ and provided

miners (PABC, GR 429, Box 2, File 4, 383/91), and use of the militia (20 *JLA* 1891: 9). The government placed a higher priority on an investigation of an attack against a funeral procession of a strike-breaker killed in a gas explosion at the Wellington colliery (see 19 *JLA* 1891 [appendices] for a transcript of the testimony of the Committee). James Dunsmuir's brother-in-law, Henry Croft, was appointed chairman by the government. Not one striking coal-miner, nor their wives or children, were called as witnesses. The Committee appeared to be engaged in little more than a "search (for a) grievance for their political masters" (*Daily Times*, Mar. 19, 1891: 4). The 726 questions asked at the inquiry seemed to be an attempt to discredit the Wellington strikers, and the union movement in general. In that the 'attack' consisted of snowball throwing at the funeral party as it returned to town from the cemetery, the Opposition leader remarked "It is most humiliating...that this legislature should descend so low as to trouble itself about such a matter..." (*Daily Times*, Mar. 19, 1891: 3). When Keith's report was finally presented (20 *JLA* 1891: 124), the trouble was isolated at James Dunsmuir's refusal to recognize the miners' union and a mine safety Committee (see, 20 *JLA* Jan. 26, 1891: lxx *Report of the Select Committee on the Wellington Strike*, April 11, 1891). Indeed, a miner had argued that union activity at Wellington would have been impossible, "if (the miners) had been treated properly..." (Mouat, 1988: 24). Capital-labour relations further deteriorated with the revelation that State militia were to continue to be available for private contract services to strike-bound capitalists (20 *JLA* 1891: 42; 20 *JLA* 1891: 15).

44 In the aftermath of the Island mine explosions, the State had responded with the creation of the *Coal Mines Regulation Act* (B.C. copied the English legislation, but removed substantial sections that might have compromised production; see, 5 *JLA* 1876; 6 *JLA* 1877: 2; 7 *JLA* 1878; 12 *JLA* 1883. Keith failed to amend the Act on four different occasions: Bill 67 (1891); Bill 10 (1892); Bill 22 (1893); Bill 18, 23 *JLA* 29 Jan. 1894: 15. For a review of the scope and provisions of the 1897 *Coal Mines Regulation Act*, see the *Labour Gazette* (Feb. 1901: 297-304).

45 The Opposition continually attempted to secure and co-opt the Labour politicians by introducing bills and resolutions sympathetic to labour. See, for example, 20 *JLA* Jan 23, 1891: 8; 21 *JLA* Feb. 8, 1892: 14. See also, Loosmore (1954: 56-58).

a vehicle for complaints and concerns of workers.⁴⁶ Nonetheless, the sheer size of the government majority made it almost impossible for labour initiatives to become law.⁴⁷

Another major hurdle for labour was the relationship between capital and State at this particular juncture. This relationship could best be described as symbiotic during the latter half of the nineteenth century.⁴⁸ The various costs of pursuing a repressionist policy were beginning to mount, and the government seemed to begin to acknowledge that the pervasive and bitter industrial conflict threatened to erupt in to full-blown socialism (Jamieson, 1962; Palmer, 1983: 164). Consequently, the Liberal administration of Theodore Davie⁴⁹ introduced

46 A labour presence in the House meant that the working class had direct access to the legislature. Keith presented numerous miner's petitions (see, 21 *JLA* Feb 17, 1892: 18), chaired the Select Committee on the Wellington Strike (20 *JLA* 1891: cccxli), and provided a vehicle for miner's concerns over the non-enforcement of the anti-Chinese sections of the *Coal Mines Regulation Act Amendment Act* (1890), numerous provisions of which were ostensibly created to prevent underground employment of Chinese (see, 23 *JLA* Feb. 6, 1894: 26). Responding to Keith's concerns, premier Davie admitted that section 4 of the Act was unenforceable:

The amendment of 1890...aims simply to exclude Chinamen without anything more, irrespective whether they may be a source of danger or not. Whilst it is clearly within the competence of the legislature to exclude dangerous persons generally from the mines, it is entirely a different thing to exclude a man simply because he is a Chinaman. It is the intention of the government to introduce a measure at this session more effectually prohibiting the employment in coal mines of persons who, on account of ignorance and incapacity, would occasion danger.

Ironically, when the government took steps to amend the *Coal Mines Regulation Act* in such a manner on Jan. 21, 1895, 772 miners signed their names to a petition opposing bill 64. Enforcement of bill 64 may have excluded Caucasian miners who did not have a command of written English. Nonetheless, royal assent was secured (see, 24 *JLA* Jan. 21, 1895: 81, and Jan. 31, 1895: 31).

47 Keith was denied a balance of power in the House that Socialists James Hurst Hawthornthwaite, Parker Williams and Ralph Place later exploited to secure labour-sympathetic legislation; see, for example, 20 *JLA* 1891: 143 (Keith lost 15-14 during an attempt to amend the *Coal Mines Regulation Act*).

48 Mouat's (1988: 4) work suggests a high degree of inter-lock between State and capital with his revelation that one cabinet minister was Dunsmuir's lawyer. Another who had previously served in that capacity later became the attorney-general. Other government M.P.'s included Robert Dunsmuir's son-in-law, and the superintendent of the Dunsmuir-owned Esquimalt and Nanaimo railway. Workers were thus confronted with an alliance of employer and State. Industrial disputes became political warfare which both sides interpreted in class terms.

49 Davie had been the attorney-general during the bitter 1890-1891 strike at Wellington.

a measure intended to provide a mechanism for the conciliation and arbitration of industrial disputes.⁵⁰ This legislation proved to be a failure. The conservative press called Labour bureaucracies a “fraud”, as they dealt with “political exigencies” over those of “industrial conditions” (*Colonist*, April 24, 1903: 4). As Atherton (1976-77: 97) notes, employers refused to negotiate the terms and conditions of the workplace contract, because to do so would have strengthened the workers’ position. Not surprisingly, premiers James Dunsmuir and Richard McBride, both of whom had interests in the profitability of the mining sector, defended a refusal to introduce compulsory arbitration of labour disputes (30 *JLA* 1901: 27; 34 *JLA* 1905: 21). Accordingly, any State-orchestrated shift in the relationship between labour and capital can be viewed in the context of production imperatives. The illusory nature of ‘conciliation’ legislation quickly became apparent at the moment the ostensibly ‘mediatory’ function of the State failed to resolve the dispute. At that point, repressive tactics, including the use of militia and the ‘speedy trial’, could be expected.

The refusal of employers to relinquish their ‘right’ to make decisions that not only had a grave impact upon the welfare of their employees, but also of the local economy, was largely responsible for the intervention of a later (1903) dominion Royal Commission to investigate “serious labour unrest.” The *Colonist* believed the “selfish interests” of the miners were responsible for the “numerous business failures” suffered during strikes. Thirty percent of the Wellington payroll supported Victoria merchants. The aggregate loss to trade during labour disputes routinely totalled \$250,000.00 monthly. Dunsmuir did not believe that the possession of immense wealth imposed a measure of accountability upon him. On the contrary, he argued he possessed an “equal, absolute right to administer his property as he pleased.” If so inclined, the mines would remain closed. If the State was concerned about

50 See, 21 *JLA* 1893: 8, *An Act to Provide For the Establishment of a Bureau of Labour Statistics, and also of Councils of Conciliation and Arbitration for the Settlement of Industrial Disputes*. The dominion government drafted a Conciliation Act, which was given royal assent on July 18, 1900; *Labour Gazette* (Sept. 1900: 40). See also, *Labour Gazette* (Dec. 1900: 192-93) for a review of the English statute upon which the Canadian Act was based.

business failures as a consequence of strike activity, Dunsmuir argued "the government could...make him a proposition to sell" (*Colonist*, May 24, 1903: 2. See also, PABC, GR 429, Box 1, File 6, 206/77). Dunsmuir had the audacity to argue that 'his' workers were 'free' under his control. The alternative was 'enslavement' under the control of a union executive. The 1903 *Hunter Commission* dealt with issues that remained unresolved from earlier unrest at Wellington in 1890, especially eight hours labour and the formation of pit safety committees (*Colonist*, May 23, 1903: 9). Powerful aggregations of finance capital, such as the Victoria Board of Trade, solicited assistance from the Canadian Manufacturers Association to combat proposed reforms, such as a dominion eight hour labour law:

...we had better draft a resolution to the effect that in the opinion of the Board, the fixing of the hours of labour is a matter for employers and employees and not for the government to decide (*Colonist*, Mar. 15, 1907: 5).

The miners, for their part, were desirous of some form of State intervention in the form of compulsory arbitration. Repeated strike actions had produced a draining effect upon union ability to represent the interests of its members (Bercuson, 1981: 470). As early as 1900, it was clear new legislation was needed to replace both the original Act and the amendment of 1897. Labourite Ralph Smith called for action to create legislation

to accomplish such purposes as expressed in title, and in consideration of labour disputes occurring repeatedly, which immediately ought to be settled for the public good...this House urges the necessity of such provision...(29 *JLA* 1900 Aug. 3: 115).

Clearly, State strategy suggests there were efforts to instill the image of an impartial arbiter, which might then allow easier dissemination of "value free knowledge."⁵¹ The conciliatory line was pursued in hopes of ameliorating the extensive damage done to the economy by strikes and, equally importantly, buttressing State legitimacy, which was almost non-existent among the working-class.⁵² Testimony delivered by a miner before the 1903

51 Doran (1986: 648). The press aided in this task. Employer-controlled newspapers, such as the *Rossland Evening World*, propagated the ideology of 'commonality of interests' (*Colonist*, May 13, 1903: 3). In the United States, the employer-controlled Steel Trust purchased every newspaper read by steel workers (*Colonist*, May 2, 1902: 8).

Hunter Royal Commission indicated an acute working-class suspicion of the judiciary. One worker demanded they be barred from any tribunal, as “their upbringing” and “education” would “create sympathy for the capitalist classes”, while “their social environment would alienate the judiciary from the working class”, and make them “amenable to bribes.” Because the judiciary were “nearly all the sons of rich men”, workers could not trust them to “act fairly toward the working classes” (*Vancouver Province*, June 12, 1903: 5).

State efforts directed toward countering a burgeoning working-class consciousness must have been seriously compromised by revelations in the legislature that certain regulatory statutes, such as the *Coal Mines Regulation Act*, (1890) were unenforceable (23 *JLA* 1894: 26). In 1890, the B.C. courts held that section 4 of the *Coal Mines Regulation Act* prohibiting employment of Chinese below ground was

within the constitutional power of the legislature as being a regulation of coal mines, and is not *ultra vires* as in interference with the subject of aliens (*In Re The Coal Mines Regulation Amendment Act* (1890) 5 B.C.R. 306).

Court decisions were anything but consistent. Mining companies ignored the law, and continued to employ the Chinese. In 1897, successful prosecutions were launched against two collieries (PABC, GR 429, Box 4, File 2, 1050/98, 1242/98). Mines inspector John Bryden⁵³ launched an unsuccessful prosecution against Dunsmuir’s Union Colliery in 1899 for employing Chinese underground.⁵⁴ Though the courts had affirmed the right of the Provincial

52 See, the address of the Lieutenant-Governor at the opening of the 1893 session. The government hoped to end conflict between capital and labour “by disseminating a knowledge of their mutual needs”; 21 *JLA* Jan. 26: 2 and Apr. 12: 132, 1893.

53 Inspector Bryden had been manager of Dunsmuir’s Wellington mine at the time of the 1887 mine explosion (Pethick, 1978: 86), was married to one of Robert Dunsmuir’s daughters, and was a partner in the Union Colliery at Cumberland (Mouat, 1988: 27).

54 *Bryden v. Union Colliery Co.* (1899) A.C. 580; 1 M.M.C. 337; PABC, GR 429, Box 4, File 4, 1703/99. In this decision, the court reversed its 1890 ruling, determining that section 4 of the *Coal Mines Regulation Act* was not *intra vires* the Provincial legislature by virtue of section 92 of the *B.N.A. Act*. Rather, section 4 was a simply a measure to exclude aliens or naturalized subjects from underground employment. Ironically, attempts by mine inspectors to prosecute employers aided a hegemony of neutrality that, in England, was pivotal in creating an emphasis upon compensation for injuries, instead of abolition of injuries (Doran, 1986: 571).

Legislature to draft and enact "internal police regulations" addressing danger or risk to the public, the work-site was excluded from securing legal protection. Soon after the 1890 decision, premier John Robson realized a policy of Asiatic exclusion would only strengthen the economic position of white miners, and encourage strikes (*Victoria Daily Times*, April 15, 1891: no page). In Attorney-General v. Wellington Colliery Co. (1903) 10 B.C.R. 397, the court re-affirmed that unsafe working conditions were a "matter...not...affecting the public or likely to affect the public..." The Attorney-General argued he sought an injunction to prohibit the employment of Chinese below ground, "Because of the non-respect and non-observance of this defendant Company of the law of the land." On September 16, 1903, Mr. Justice Irving re-affirmed a court decision declining to enforce the *Coal Mines Regulation Act*:

That is not a protection to the public; it is designed for the prevention of accident and the protection of those persons who go down to work there...I do not think any Court in the world would listen to an employee of a company asking for an injunction to restrain the Company from working their coal with Chinamen...*The answer to (the coal miners) would be, if you do not like to incur the risk, you need not go there; you have got no right nor are you compelled to go there* (p. 401) (emphasis added).

The decision was of even more significance because of the emphasis it placed upon State non-interference in private profit-making activities:

In granting injunctions, especially where there is a going concern, such as a colliery, the Court has to proceed carefully. It is a very serious matter to interfere with any person's business...*This Court does not grant an injunction for the purpose of enforcing moral obligations, nor for keeping people without the range of the criminal law. There usually must be some right - a right of property, or some right at any rate - infringed or likely to be infringed. The miner who is employed in that mine has no right to come here and ask for an injunction, because he has no right of property...*⁵⁵

According to Morton (1984: 13), economic power was usually sufficient to secure short-term capitalist objectives. As the press and reported cases make clear, in the event vast wealth was insufficient to win the day, the courts proved to be dependable business allies, by facilitating a shift of entrepreneurial risk away from employers and onto the work force. As

⁵⁵ (pgs. 403-04; emphasis added). Acquittals and the quashing of colliery convictions followed this decision (PABC, GR 429, Box 10, File 3, 2456/03; Box 10, File 4, 3229/03; Box 11, File 1, 911/04). See also, 33 *JLA* 1903: 9, *Labour Gazette*, Nov. 1903: 483.

Doran (1986: 457) articulates, the judiciary viewed working people as the property of capitalists. Consequently, the State paid little or no attention to workers' concerns. Despite Keith's setback at amending the *Coal Mines Regulation Act*, the miners were optimistic that Conciliation-Arbitration legislation would secure for their cause what industrial militance had failed to do: fulfill the third demand of the 1890 Workingmen's platform by protecting the health and safety of workers in industry (Loosmore, 1954: 71).

British Columbia's economy sagged during the worldwide economic depression of the mid-1890's (24 *JLA* 1895:2; 25 *JLA* 1896: 1; Palmer, 1983: 136). Labour continued to agitate for legislative reform. A *Master and Servant Act* was introduced and passed by the government in 1897⁵⁶, as was a bill to secure an inspector for the numerous metalliferous mines in the province.⁵⁷ The latter was won through the efforts of socialist-based unions such as the Western Federation of Miners. Militant frontier unionism found fertile ground in the Kootenays, as the working class were subjected to unpleasant and hazardous living and working conditions.⁵⁸ Like coal-mining, injuries occurring in British Columbia's metal mines were frequent and debilitating (PABC, GR 429, Box 8, File 4, 1084/02; Box 14, File 1, 450/07). The courts frequently exonerated the mining companies, instead blaming injuries and deaths upon "careless" or "unauthorized" employee behaviour. An alternate explanation was the 'unavoidable accident':

56 Received royal assent May 8th, 1897. *Master and Servant Act*, R.S.(1897), C. 131. The Act empowered a Justice of the Peace to command a master to appear and answer a complaint of a worker, and to order restitution to the worker not exceeding \$50.00. Significantly, the Justice could also facilitate the implementation of a 'profit-sharing' plan designed to establish "common grounds of interest between these classes in regard to actual interest, welfare and success." There was two stated objectives: labour peace, and "an increased (level of) industrial and commercial development (in) the province" (*Colonist*, June 8th, 1898: 8).

57 *An Act for the Securing the Safety and Good Health of Workmen engaged In or about the Metalliferous Mines in the Province of British Columbia, by the appointment of an inspector of Metalliferous Mines* (26 *JLA* Apr. 21, 1897: 121). See also, *Labour Gazette* (Feb. 1901: 297-304) for a review of scope, prohibitions, restrictions and payment of wages under the Act.

58 Phillips, 1976. See also, a resolution of June 10, 1899, by the Silverton Miners Union, manifesting a militant class consciousness; PABC, GR 429, Box 5, File 1, 3243/99.

If (the incident resulting in injury) was not (caused by employee negligence), then it was one of those accidents which happen despite all reasonable care and foresight.⁵⁹

By 1895, the Western Federation of Miners had established a foothold at Rossland (Morton, 1984: 56). More than any other reason, the rapid growth of the union in the metal mining regions was fueled by dissatisfaction with unconscionable working conditions, and a refusal of employers to observe the provisions of legislation providing for an eight hour day (Atherton, 1976-77: 101). Here, as elsewhere in British Columbia, labour unrest was beginning to assume an ominous pattern.

Curiously, a provision of the 1891 *Employers Liability Act* (s. 6) limiting the employer defense of assumption of risk was not utilized by the courts until 1894. In Scott v. B.C. Milling Co. (1894) 3 B.C.R. 221; 24 S.C.R. 702, the plaintiff appealed an unfavourable lower court decision. The high court overturned the trial court, stipulating a need for a "direct and positive finding that the plaintiff voluntarily incurred the risk...there was no such finding." The defence of assumption of risk does not seem to have been used successfully subsequent to this decision.

Two years later, in McMillan v. Western Dredging Co. (1896) 4 B.C.R. 132, the defence of contributory negligence was curtailed by the court:

To support the defence of contributory negligence, it is necessary that there should be a direct and positive finding of the facts necessary to constitute it.

The reduction in the scope and effect of employer defences would have negative implications for employers as labour unrest continued, and British Columbia entered the twentieth century.

⁵⁹ *Labour Gazette*, Oct. 1900: 83-4. See also, *Labour Gazette*, June 1912: 1206. As Doran (1986: 570) argues, the 'unavoidable accident' aided making a compensation scheme appear as the only natural solution to the issue of workplace health and safety. See also, the Massachusetts case of Farwell (Lewis, 1909: 57).

The 1902 Workmen's Compensation Act

While the labour political situation had been comparatively quiet for the greatest portion of the 1890's, the 1898 provincial election returned only 17 Conservative members while the Opposition factions swept a total of 19 seats. Conservative C.A. Semlin formed a cabinet that incorporated former Oppositionists. In order to maintain power, there was a need to placate 3 labour-sympathetic members.⁶⁰ Labour legislation was extracted in exchange for support on other issues.⁶¹ Ralph Smith exploited the precarious balance in the legislature to secure a Select Committee to investigate the grievances of female workers at the Victoria and Esquimalt telephone company.⁶² The 1898 election also precipitated strife in the interior, as mine operators sought to overturn the 8 hour law by forming combinations to restrict production, reduce wages and close mines in an attempt to break the miners

60 Ralph Smith (Nanaimo), R.E. McKechnie, and R. Macpherson (Vancouver).

61 Macpherson, McKechnie and Carter-Cotton secured a wide variety of amendments to labour legislation. Most importantly, the labour presence in the legislature proved to be the catalyst for a House vote that resulted in an eight hour law in the metal mines. The mining companies refused to obey the statute, and organized to resist it (see, 28 *JLA* 1899).

62 28 *JLA* 22 Feb. 1899. Smith found that the dispute over hours and wages could have been avoided had the management discussed with employees their wish for a split shift prior to its implementation; see also, 28 *JLA* 1899: 16.

resolve.⁶³ Capitalists were clearly worried that workers refused to discard the idea of an eight hour day:

The working hours are as short as possible in which an average miner can make a decent wage at present rates. If the earning power of the miner is reduced...then the demand for an increased scale of pay would be a natural result (PABC, GR 429, Box 12, File 1, 824/05).

Despite the best efforts of mine owners, the law remained intact (29 *JLA* Aug. 30, 1900: 192).

Events at the legislature between 1898 to 1902 mirrored the growing discord on the industrial front.⁶⁴ Orthodox trades union movements had been engaging in industrial activity that was intended to improve immediate concerns such as wages and working conditions. Industrial action was able to extract only limited concessions and reforms to improve the lot of employees. A provincial constable at the mining town of Phoenix advised the Attorney-General of "the condition (that injured men) find themselves in":

63 *Colonist*, May 23, 1900: 4; 29 *JLA* 17 Jan 1900: 13. The mine owners proclaimed ignorance of the miners desire that their hours of labour be regulated. Capital believed there had been "reason to congratulate themselves upon the pleasant and profitable" work environment. Moreover, they desired that "nothing should occur to disturb the harmony and peace existing" in the relationship. Any State attempt to do so would constitute infringement upon freedom of contract (29 *JLA* 1900: li). The Kaslo Board of Trade supported the mine owners, attacking the Western Federation of Miners and the "*dictatorship of the Unions*" (emphasis added). However, even the Board admitted that "8 hours is entirely *too long* for men to remain in the workings where the air is foul." Instead, they called for increased inspection and enforcement of the existing laws (pp. liii - lvi). Many Kootenay merchants (p. xxxi), residents of Greenwood (p. lvii) and organized labour supported the law. The Vancouver Trades and Labour Council argued that the dispute was "fomented by men who have no regard for humanity, and whose only object is to amass a fortune at the expense of the workingmen" (p. lxvii). The miners defended themselves with correspondence to Premier Joseph Martin (PABC, GR 429, Box 5, File 4, 918/00) and petitions to the legislature condemning employer-generated mis-truths as:

...unjust...unfair...malicious and mis-leading falsehoods, and a slur and slander on the intelligence of Canadian labour and not calculated in any sense to assist the Government. Such statements are used and put forth with the ulterior motive of prejudicing the public mind against organized labour (29 *JLA* 1900: xlvi).

64 Three different political administrations enjoyed fleeting power during this period. Charles Augustus Semlin (Conservative; 1898-1900) maintained power until a split in a coalition government occasioned the Speaker of the House to ask Liberal Joseph Martin (1900) to form the government. Martin failed at his task, and James Dunsmuir (Conservative; 1900-1902) succeeded him.

They are not able to make a living for themselves, and if not taken care of in some way, will be a charge on the public. It will naturally fall to the part of the government to take care of them (PABC, GR 429, Box 8, File 4, 1084/02).

Constable Donnaugh suggested a tax upon workers and employers to care for disabled employees.

Workers, however, had different ideas. A Socialist movement had now emerged that saw the salvation of the working class not in reform, but rather, in the installation of an alternative economic system.⁶⁵ As Grantham (1942: 15) notes, the return of "determined" socialists from Nanaimo area ridings to the provincial legislature was pivotal in the formation of the British Columbia Socialist Party in 1902, followed by the Revolutionary Socialist Party of Canada in 1904. These developments confirmed that labour unrest was not going to disappear.⁶⁶ Soon after, the federal government began monthly publication of the *Canada Labour Gazette*. This journal was a brilliant conciliatory measure introduced by William Lyon Mackenzie King. Clearly, the *Gazette's* message to workers was reinforcement of the State as an impartial, benevolent arbiter.⁶⁷

65 Bennett, 1937. The conservative press had been decidedly hostile to the labour movement. Nevertheless, the sudden threat of socialism led one editor to recant his previous stand, and argue that labour candidates were acceptable only "as long as he is not a Socialist seeking to overturn existing institutions and try experiments in legislation." The existence of a 'commonality of interests' was utilized to support the claim that "nothing...can be enacted in statute that will make the working men any better off than they are now"; *Colonist*, June 13, 1900: 4. See also, Lipton (1967: 87-97) for parallels in the development of conservative eastern Canadian socialism.

66 The Kootenay metal miners were especially militant at this time. Their attempts to unionize (PABC, GR 429, Box 5, File 2, 5432/99) occasioned capitalist demands for "protection" (GR 429, Box 5, File 3, 237/00), resulting in the arrival of police and Pinkerton investigators (GR 429, Box 5, File 2, 5481/99; Box 5, File 3, 453/00; Box 5, File 4, 843/00; Box 5, File 5, 2144/00). See also, 'The Coming Struggle', *Colonist*, May 24, 1899: 4; 'Anarchy in Slocan', *Colonist*, Nov. 4, 1899: 7. Repeated military intervention into labour disputes (29 *JLA* Aug. 2, 1900: 113) angered the socialist press in British Columbia. The editor of the *Lardeau Eagle* confidently predicted that in Canada, "British Columbia will be the first to feel the chaos" (McCormack, 1974: 12). See also, *Colonist*, April 24, 1903: 4 (industrial unrest epidemic in North America); *Colonist*, Oct. 27, 1901: 9 (strikers in France threatened by state with death penalty); *Colonist*, April 6, 1902: 10 (company police threaten union organizers with death in Colorado); 40 *JLA* 1911: 27 (the Japanese government executes socialists); *B.C. Federationist*, Feb. 27, 1914: 3 (Australian socialist orators are assaulted and locked to street lamp-posts).

At the same time, important legislative concessions were being won by working class politicians.⁶⁸ The worst fears of the conservative element within British Columbia were realized with the election (by acclamation) of radical labourite James Hurst Hawthornthwaite.⁶⁹ The 1901 and 1902 sessions saw a dramatic increase in legislative activity as labour and socialist M.L.A.'s repeatedly exploited a precarious balance of power within the legislature. Perhaps heartened by the prospect that the working class might at last be approaching a position of influence within the legislature, Hawthornthwaite observed, "We are out for class legislation, and we are not going to be quiet until we get it."⁷⁰

67 Craven, 1980. In a letter of August 17th, 1900, to the Attorney-General, Mackenzie King requested "reports or publications, containing facts, figures, or other information on subjects of interest to workmen, or the industrial classes generally" (PABC, GR 429, Box 6, File 1, 2916/00). The Canadian Manufacturer's Association protested the publication of the *Labour Gazette*, fearing it would become "a vehicle for labour propaganda." As Piva (1979: 100) reveals, these fears proved groundless.

68 The summer session of the House (1900) produced Bill 53, *An Act Respecting the Closing of Shops and the Employment of Children and Young Persons Therein*, in addition to amendments to the *Master and Servant Act* (1899) and the *Inspection of Metalliferous Mines Act* (1899). However, similar, more comprehensive legislation proposed by labour advocates was defeated; for example: Bill 9, *An Act Relating to Labour* (a more substantial version of McPhillips Bill 53) and *An Act Respecting Deception in Procuring Workmen and Employees* (Bill 40) 29 *JLA* 1900; see also, *Vancouver Province*, July 27th, 1900: 2; August 8th, 1900: 3.

69 See, 30 *JLA* Feb. 21st, 1901: 3. Chosen by acclamation to represent the Nanaimo City riding (1901-1911, 1918-1920), Hawthornthwaite's background was unique. Familiar with the Island political situation as a consequence of aiding former labour M.L.A. Ralph Smith, Hawthornthwaite had been employed at the United States consulate in Victoria, and served as a consular agent at Nanaimo. After stints in real estate and a mining machinery venture in San Francisco, Hawthornthwaite returned to Nanaimo, where he was a night watchman at the New Vancouver Coal Company. He later became a clerk in the company's land department (Loosmore, 1954: 149). As Ralph Smith moved from labour to liberal-labour, becoming ever more intimate with capital (the superintendent of the New Vancouver Coal Company had said "I am proud the New Vancouver Coal Company...produced such a man...Mr. Dunsmuir is also on record as having perfect confidence in him"; *Nanaimo Free Press*, Oct. 25th, 1900: 2) the rift between he and Hawthornthwaite widened, until the latter's political activities culminated in his firing from the colliery. Citing a lack of autonomy for labour candidates from the Liberal machine, Hawthornthwaite evolved toward the left, and in January of 1902, joined the Revolutionary Socialist Party (*Nanaimo Herald*, Jan 21, 1902: 1).

70 *Independent*. Sept. 26, 1903: 1. See especially, 'Class War In Local House', *Western Clarion*, Jan. 12, 1907: 1,4.

The highlight of the 1902 session was the introduction of Bill 31,⁷¹ which was later described by the government as having been “framed with the idea of providing a cheap method of securing compensation.”⁷² Upon receiving assent, the 1902 Act became the first of its kind in Canada. Nonetheless, the bill did not progress without heated debate, nor did the Prior or McBride administrations later implement the legislation without a good deal of procrastination, despite widespread support from labour (*Daily Colonist*, May 2, 1902: 4; *Daily Province*, April 16, 1902: 1). The Act was not fully implemented until February 16, 1904.⁷³

The 1902 *Workmen’s Compensation Act* was created around the skeletal framework of the English Act of 1897,⁷⁴ and included the identical amounts of compensation payable to an

71 *An Act Respecting Compensation To Workmen For Accidental Injuries Suffered In the Course of Their Employment* C. 74 (31 *JLA* Mar. 25th, 1902: 41). Alberta followed in 1908; Manitoba, Quebec and Nova Scotia in 1910; and Saskatchewan in 1911. The Alberta Act incorporated some provisions of the English Act of 1906 (State compensation), while the Quebec legislation was set out in the Civil Code, imposing greater liability upon employers than English legislation (Arab, 1938: 30).

72 *Colonist*, April 27 1916: 1. The Crows Nest Pass Coal company, for example, believed that immigrant labour (comprising 90% of the workforce at coal and metalliferous mines) were more amenable to risk-taking than ‘Canadians’. Moreover, the company believed organized labour would be unwilling and unable to overcome national prejudices and differences to organize. Legal counsel for the company had resisted every legislative initiative to improve the working conditions of the miners, including the 1902 compensation Act. After deliberations with Premier McBride, it was considered a politic move to pass the compensation legislation, “relying upon the courts to set it aside...So far, the coal company has lost” (*Daily World*, Dec. 17, 1910: 4; see also, *Province*, May 8, 1902: 2).

73 33 *JLA* 1904: 61; *Labour Gazette*, Mar. 1904: 907. In 1902, Hawthornthwaite was anxious about the possibility of the bill reaching even third reading, especially in view of press reports stating “it is pretty well understood that (the bill) will not be put through this year.” Premier McBride had told a labour deputation only the day before that “such a measure would be a dangerous step at the present time.” Cabinet ministers and some Opposition members believed the passage of the bill was “hardly desirable”; *Province*, May 9, 1902: 3. See also, *B.C. Federationist*, Aug. 7, 1914: 1.

74 Socialist J.H. McVety acknowledged that while the British Columbia legislation was patterned after the English Act, “many of the better points were omitted” by the McBride Conservative majority. Nonetheless, McVety wrote, “Credit is due to James Hawthornthwaite for securing its passage, unsatisfactory as its provisions were to him” (*B.C. Federationist*, Aug. 7, 1914: 1). Longing for the ‘final rupture’, socialists believed it to be “only a matter of time when it (the bill) or a more radical measure, will become law, if not by this government, then by some other...” (*Daily Province*, May 8, 1902: 2).

English worker.⁷⁵ The principle of the Act differed from employers' liability legislation by introducing the concept of no-fault insurance, albeit on a limited scale. Clearly, the unexpected developments in the evolution of the common law demanded innovative thinking on the part of State and capital.

Nonetheless, to suggest that any concessions granted in the 1902 Act were purely benevolent ignores the social, political and economic realities of the period.⁷⁶ The State struggled to reconcile the human costs of production with the pressing need to address the demands of a resource-based capitalist economy. The inconvenience and suffering associated with workplace injuries was seen as a 'necessary', albeit unfortunate, cost of production. Industrial injury was beginning to be viewed in terms of 'accidents', rather than negligence. In theory, industry was to bear the immediate costs, which could be passed along to the consumer at the first available opportunity, by adding to the price of the commodity.

Clearly, the intent of the 1902 Compensation Act was to improve upon a process of regularizing the costs of injury and death begun earlier under Employers' Liability legislation. At least initially, common law decisions allowed an element of predictability to be injected into business decision-making. Few workers were able to withstand the financial burden of repeated appeals, with the result that these legal rules were able to protect crucial business interests in almost every conceivable circumstance. The judiciary were not insulated from the

⁷⁵ Because the purchasing power of the English currency was three times as great as that of its Canadian counterpart, compensation recipients rarely found their award to be enough to survive upon (*B.C. Federationist*, Feb. 11, 1916: 3).

⁷⁶ The secretary of the B.C. Lumber and Shingle Manufacturers Association voiced his opposition in a letter of April 25, 1902, to the Attorney-General, demanding a reconsideration of the 1902 Act:

(It is) very prejudicial to the business interests of the country, and is not calculated to benefit those in whose interests it is proposed...(it will) materially reduce the employment of labour...retard the investment of capital, and hinder the establishment of new industries, such as the pulp mills... (PABC, GR 429, Box 8, File 5, 1084/02).

growing labour and social unrest. Awards under common law became increasingly substantial.⁷⁷

Though compensation laws remained little more than "a lottery", where, too often, "the deserving (were) defeated in the Courts on technicalities" (*Industrial Progress and Commercial Record*, Jan. 1915: 193), the 1902 Act was instrumental in initiating a process of discouraging workers from pursuing potentially more remunerative statutes. However appealing the larger awards of the common law and employers liability statute were for workers, the spectre of the two employer defences, though clearly weakened, still remained. Actions that could not withstand the rigors of being tested against the common law or employers liability legislation were seen in terms of an "accident"; that is, the employer could not be held accountable according to the legal tests then in vogue (*Industrial Progress and Commercial Record*, Sept. 1913: 17). In Follis v. Schaaque Machine Works (1908) 13 B.C.R. 471, the plaintiff initiated actions at common law and employer's liability legislation. When the plaintiff realized these actions were not likely to succeed, the court was requested to consider a claim under section 4 of the 1902 *Workmen's Compensation Act*. The "defendant Company...admitted liability under the Workmen's Compensation Act...", and the court awarded a stipend, less costs for the unsuccessful actions. In Roylance v. Canadian Pacific Railway Company (1908) 14 B.C.R. 20, the Chief Justice commented, "It just occurs to me that I would not give more than \$1,500.00 under the common law, and I would give that amount under the Workman's Compensation Act. In view of that is it worth while to go on?"⁷⁸

77 This development did not escape the notice of the *Industrial Progress and Commercial Record*. The journal reported successful worker actions that secured \$9000.00 (April, 1914: 16) and \$5000.00 (May, 1914: 16), respectively. In Hichin v. B.C. Sugar Refinery, Co., 18 B.C.R. 397, the plaintiff was awarded \$12,000.00.

78 In the first case heard under the 1902 *Workmen's Compensation Act*, the dependents of a deceased worker failed to secure damages under common law because there was no fault found either with the car, equipment or company. The court also determined that the victim had been neither negligent nor engaged in wilful misconduct. The plaintiffs were awarded \$20.00 a month for the three year period provided for by the Act; Ekins v. British Columbia Electric Railway Company (not reported; *Colonist*, Dec. 12, 1902: 2).

Though coverage was extended to the majority of work injuries, the Act limited compensation, dependent upon the nature and severity of an injury, to a specified schedule of payment detailed within the legislation itself. It also allowed companies to contract out of the Act with an alternate "scheme of compensation, benefit, or insurance for the workman." At Nanaimo, the Western Fuel Company required the approximately 1500 miners to each donate \$1.00 on the occasion of a death, the sum of which was to be matched by the company (*Industrial Progress and Commercial Record*, Apr. 1914: 8; PABC, GR 684, Box 1, Vol. 2, File 1, p. 7).

In the event of total disability, 50% of the wages that had been earned for the previous six months were to be paid over a three year period, not to exceed \$10.00 weekly. The maximum stipend of \$1500.00 was \$500.00 less than that allowed under the 1891 *Employers Liability Act*.⁷⁹ In both cases, there was a two week waiting period before any compensation would be paid (*Vancouver Province*, Dec. 19, 1914: 19). Only 25% of employers insured against further action under both the common law and employers' liability (*B.C. Federationist*, June 25, 1915: 2).

The proclamation of the 1902 *Workmen's Compensation Act* resulted in most employers insuring against their liability through private casualty companies.⁸⁰ The method

⁷⁹ *Colonist*, Dec. 12, 1903: 2. A lumber worker raised the ire of defense counsel for proceeding by way of the potentially more remunerative *Employers Liability Act*, instead of the 1902 *Workmen's Compensation Act*. The defense described the plaintiff and his witnesses in a most disparaging manner, describing their evidence as "perjured" (*Billings v. Gribble and Skeene Lumber Company*; not reported); *Colonist*, Jan. 19, 1908: 7; *Daily Times*, Jan. 17, 1908: 2 and Jan. 18, 1908: 2. The 1902 Act did not preclude the injured worker from proceeding under the common law or employers' liability legislation if the worker or his or her counsel felt the chances of recovery to be good. Because the recompense allowed under the 1902 Act was actually less than that of the 1891 Act, there may have been a tendency for employees to try to proceed under the common law or employers liability legislation where possible, in the hopes of securing a larger settlement than otherwise would have been realistic. Indeed, some labour opposition developed to the concept of a compensation Act, because it was believed that a further weakening of employer defences would produce even more court victories and higher awards than a compensation scheme could provide (Weinstein, 1967: 159).

⁸⁰ See, *Vancouver Province* April 28, 1902: 1-2. A deputation of manufacturers from Vancouver and various points on the Island visited the legislature in order to 'interview' cabinet concerning

associated with obtaining compensation, that of dealing with the courts and insurance companies, became a serious problem almost immediately. As one worker told the 1912-14 Labour Commissioners, insurance companies and employers would "tell the man they would rather treat them individually than with the union. They get (the worker alone), and they (haggle) him down all they can" (PABC, GR 684, Box 2, Vol. 5, File 3, p. 321). If a worker and the employer or insurance company, were unable to come to mutually satisfactory terms, a process of arbitration was initiated. Arbitrators could be mutually agreed upon by a committee of employers and workers, or the courts could be requested to appoint a judge to arbitrate. Unsuccessful arbitrations were taken to provincial court for a final decision. The procedure was time-consuming, expensive and adversarial.⁸¹

One case presents an especial example of the difficulties families endured attempting to obtain compensation. In Plecas v. Stewart (1914; not reported), two immigrant railroad labourers were killed on Sunday, January 21, 1913, at Abbotsford from an explosion during construction work. During the initial arbitration, judge Grant ruled that the labourers had "no business to be working on a Sunday" and that contracts entered into on a Sunday, in contravention of the *Lords Day Act*, were illegal. Upon appeal by the Austrian consulate, the decision was overturned by Justice Gregory of the Supreme Court.⁸² Referred back to the

Hawthornthwaite's compensation bill. The deputation objected to "being put under the possibility of being continually in litigation with employees who may happen to be injured." (p.1) The secretary-treasurer of the Canadian Pacific Lumber Company argued that "No more dangerous legislation could be placed on the statutes of this province." In a clear reference to the growing tide of socialism, he suggested the working class should "denounce the band of political agitators who, to further their own ends...are trying to create discord between labor and capital...the man who creates the feeling...that British Columbia is a good place in which not to invest money, is an arch-enemy to his province." The editor of the labour-sympathetic *Independent* adopted a prescient position, stating simply "Life is more valuable than the almighty dollar." Nonetheless, even he expressed doubt that Hawthornthwaite would get his bill through the House "without it being so mutilated that it will not be recognizable" (p.2).

81 In Lee v. The Crow's Nest Pass Coal Company, Limited (1905) 11 B.C.R. 323, the company attempted to appeal the selection of an arbitrator by a Supreme Court judge, subsequent to the arbitrator awarding a \$1,500.00 settlement in favour of the applicant (*Daily Province*, Apr. 5, 1905: 4). See also, Basanta v. Canadian Pacific Railway (1910) 16 B.C.R. 304; *Daily Province*, Nov. 5, 1910: no page; Dec. 1, 1910: 8.

arbitrator for a new decision without regard to the *Lords Day Act*, Grant again refused to consider the facts because he believed Sunday labour was clearly *ultra vires* the provincial judiciary and legislature (*Industrial Progress and Commercial Record*, May 1914: 16). In the wake of the growing controversy, the government ratified an amendment to the 1902 Act to allow Sunday labour.⁸³ Grant's second decision provoked a further appeal by the worker's dependents. On this occasion, the financial support of organized labour was required in order to pursue the case.⁸⁴ Arbitration frequently created more headaches than solutions for workers; the Sunday labour issue is a graphic example of the predicament workers found themselves in. The *Royal Commission On Labour* found:

Where an employer requests a workman to pursue his ordinary labour on (Sunday), it does not appear to us to equitable or just that he should be exempt from liability...employers, especially those engaged in railway construction work, (are) anxious to push their work to completion.⁸⁵

A failure of the legislation to define legal terms, such as 'dependent', resulted in years of bitter litigation. In Kruz v. Crow's Nest Pass Coal Company, Limited,⁸⁶ the plaintiff was killed by a rock fall while employed at the Michel mine of the Crow's Nest Pass Coal company. Kruz took three years to resolve, punctuated by numerous appeals and a conviction for theft of an administrator appointed to administer the estate of the deceased

⁸² *Daily Province*, Feb. 18, 1914: 1; *Industrial Progress and Commercial Record*, Mar. 1914: 17. Gregory held that nothing in the 1902 Act deprived a worker of compensation, even if the injury did occur on a Sunday.

⁸³ See, for example, 43 *JLA* 1914: 54; *Daily Province*, April 6, 1914: no page; PABC, GR 429, Box 11, File 3, 2120/04.

⁸⁴ *Daily Province*, May 23, 1914: 2. Other workers experienced difficulty, in arbitration and the courts: McKelvey v. Le Roi Mining Company, Limited (1901) 8 B.C.R. 268; Armstrong v. St. Eugene Mining Company (1908) 13 B.C.R. 385; Scalzo v. Columbia Macaroni Factory (1912) 17 B.C.R. 201; Everett v. Schaaque Machine Works, Limited (1912) 17 B.C.R. 271, *Labour Gazette*, Aug. 1912: 201.

⁸⁵ *Sessional Papers*, 1914 at M15. Miners faced exactly the same hypocrisy. The death of a miner working on a Sunday, and the subsequent refusal of compensation to his dependents, resulted in immediate political mobilization; *Victoria Daily Times*, Jan. 22, 1914: 1.

⁸⁶ (14 B.C.R. 385; 16 B.C.R. 120; 1912, A.C. 590). There was some confusion over the spelling of the plaintiff's surname. In law reports and newspapers, it varied from Kraus, Kruz, Krusz, to Kruze.

miner. The key issue was whether non-resident alien dependents (the deceased's mother in Austria) were entitled to apply for benefits under the 1902 Compensation Act. This difficult question had initially been passed off by a Nelson arbitrator (Judge Wilson) to a justice of the Supreme Court (Mr. Justice Clement), who promptly decided in 1910 that foreign dependents of workers killed in B.C. were entitled to compensation benefits (*Vancouver Province*, Nov. 23, 1910: 1, Nov. 24, 1910: 8; *Labour Gazette*, Feb. 1911: 907-08). It was company counsel (Hon. W.M. Ross, Minister of Lands) who first raised the eligibility question before Judge Wilson, much to the dissatisfaction of the Western Federation of Miners. The union argued that numerous awards had been made in the past to non-resident dependents without resort to the courts (*Colonist*, Nov. 27, 1910: 20; *Labour Gazette*, Dec. 1912: 600). The *Vancouver World* (Dec. 17, 1910: 4) berated the mining company for speculating that a predominantly immigrant workforce would be more amenable to risk-taking, and more difficult to unionize. Ross, in particular, was singled out for criticism, ridiculed as 'Ballot Box Billy' and a 'company henchman' for his efforts in the legislature to thwart "every measure introduced in the legislature for the improvement of the condition of miners..." A decision by the court of appeal resulted in a victory for Ross and the company,⁸⁷ adversely affecting the outcome labour desired for 12 back-logged cases. Buoyed by the financial support of organized labour, the plaintiffs in Kruz were granted leave to appeal the 1911 decision to the Privy Council in London, England (*Vancouver Province*, May 17, 1911: 8). This final decision affirmed the right of foreign dependents to apply for compensation under the 1902 Act in the reasonable expectation of receiving it (*Vancouver Province*, May 18, 1912: 1; *Labour Gazette*, June 1912: 1207). The willingness of capital to contest issues that previously had not resulted in any

⁸⁷ Kruz v. Crows Nest Pass Coal Company, Limited (1911) 16 B.C.R. 120; *Vancouver World*, May 1, 1911: 8. In Brown v. British Columbia Electric Railway (1910) 13 B.C.R. 350, the B.C.E.R. acknowledged liability under the 1902 compensation Act, but similar to Kruz, disputed the right of the deceased worker's parents to sue or expect any indemnity.

resistance prompted the Trades and Labour Congress of Canada to seek a ten cent donation from every member in order to fight future actions.⁸⁸

Recourse to the appellate courts proved advantageous for larger employers, as they were more able to bear the associated legal expenses than were injured workers. Workers were characteristically confronted with a total loss of wages, mounting legal and medical bills, and a limited potential for meeting these expenditures. The insurance companies found that the worker could often be forced to accept a low compromise settlement rather than go through an expensive, and uncertain litigation.

There were also excessive ancillary expenses associated with the private casualty insurance system which encouraged legal battles. Exorbitant costs in the form of agents fees, administration, and profits for shareholders assumed priority over the needs of the injured worker. These overhead commitments could only be achieved by extracting the lowest possible settlement from claimants.⁸⁹ Consequently, insurance companies and, to a lesser extent employers, found it within their interest to contest claims. Injured workers were confronted with other difficulties, as well. Plaintiffs were denied redress by the courts and insurance companies when employers became insolvent.⁹⁰ On occasion, dependents were

88 "Take this up At Once. As It May Be Your Turn Next - An Injury to One is a Concern to All"; *Vancouver World*, Feb. 3, 1912: 4. See also, *Vancouver World*, 18 May 1911 at 17; *B.C. Federationist*, Feb. 20, 1912: 1; *Vancouver Sun*, Mar. 9, 1912: 6; *Victoria Daily Times*, May 18, 1912: 1.

89 Drawing an analogy to gaming, the *B.C. Federationist* noted that when employers paid their premiums to their liability company, their responsibility to their employees ceased. In effect, the insurance companies made

a bet with the employer that they will be able to settle all claims during the year for less than the amount of the premium, otherwise there cannot be a dividend declared for the shareholders...the less they pay, the higher the dividend (*B.C. Federationist*, June 25, 1915: 4).

90 Disourdi v. Sullivan Group Mining Company And Maryland Casualty Company 14 B.C.R. 241; (*No. 2*) (1909) 14 B.C.R. 256, 2 Butt. W.C.C. 508, 514, *Labour Gazette*, Sept. 1909: 402; (*No. 3*) 14 B.C.R. 273; Disourdi v. Sullivan Group Mining Company and Maryland Casualty Company 15 B.C.R. 305.

forced to contend with fraudulent behaviour by those in positions of trust.⁹¹ This wholly unacceptable result of the 1902 Act, in contrast to its ostensible objective of making industry 'responsible' for workplace injury and death, only heightened workers' sense of injustice.⁹² Organized labour became more vocal and increasingly militant. The labour press became a progressively more important mechanism through which to communicate displeasure of the working-class readership to State and industry.⁹³

The Gathering Storm: Revolution over Reform

In view of the shortcomings of the 1902 Act (or more accurately, because of them) the labour-socialist movement intensified its' struggle for a just and humane compensation scheme. Lured by the promise of a better life, immigrant labour was met instead with dangerous and unrewarding occupations. Ready to work hard and sacrifice, workers were blocked not by personal failures, but by an exploitive system (Bercuson, 1981: 451). Industrial feudalism provided fertile ground for men such as James Hawthornthwaite and Parker Williams.⁹⁴ Their popularity was a manifestation of a burgeoning association between a

91 See, Kruz v. Crows Nest Pass Coal Company, Limited (1909) 14 B.C.R. 385.

92 So acute did the unscrupulous (yet profitable) practice by insurance companies of starving claimants into submission become, that the courts began to quash releases signed by workers under duress. In their place, the judiciary awarded "damages in accordance with the merits (of the case), merely deducting the amount paid for the release by the insurance company" (*B.C. Federationist*, June 25, 1915: 4; June 5, 1914: 1).

93 See, Verzuh (1988). The *B.C. Federationist* slammed the Compensation Act as a "costly farce" and a "stupid, expensive and inefficient" piece of labour legislation (Feb. 19, 1915: 1). Another writer complained that British Columbia's Act was "about as obsolete a measure as there is in force in any of the 42 countries which have already passed legislation based on the same principle" (Aug. 7, 1914: 1). Particularly contentious was the exclusion of loggers, 'station-men', farm and domestic labour. For workers, the Act fell far short of their expectation that industry should bear the cost of maintenance for its maimed, injured and killed (April 17, 1914: 1).

94 A self-taught socialist (later, in 1911, to become a social-democrat and, by 1916 a liberal), Williams was born in Wales in 1873. He worked the Welsh collieries, in addition to those of Alberta and Washington state. Williams also logged in Ontario and British Columbia. Although he did not win a seat until 1903 at Newcastle (near Nanaimo), by 1902, Williams nonetheless

Marxist-socialist⁹⁵ and industrial union movement,⁹⁶ that coincided well with the socialist notion of class political action (*Colonist*, Nov. 3, 1901: 9). Williams articulated his philosophy succinctly in late 1902:

I have but one promise to make...I will grasp every opportunity to promote legislation in the interest of the wage earner, applying to every question the test, 'Will this legislation advance the interests of the worker, and aid him in the class struggle?'⁹⁷

In 1903, working class efforts culminated in the election of Revolutionary Socialist Party candidates at Nanaimo, Slocan and Newcastle. In Vancouver, socialist candidates averaged over 1100 votes apiece (Palmer, 1983: 163).

exerted considerable political influence with the Miners and Mine Labourers Protective Association (Nanaimo) (Phillips, 1967: 38-42; Loosmore, 1954: 180).

⁹⁵ A central figure of the Socialist movement, E.T. Kingsley, lost both legs in an industrial incident. While recuperating, he read Marx intensively. Kingsley had an extensive impact upon the Nanaimo socialist movement, facilitating the development of a philosophy that rejected any reform efforts as counter-revolutionary. By 1903, Kingsley was editor of the *Western Clarion*, a praxis-dedicated newspaper. In concert with men such as Hawthornthwaite, the Vancouver-based dominion executive of the Revolutionary Socialist Party of Canada called for the destruction of capitalism: "The pathway leading to our emancipation from the chains of wage slavery is uncompromising political warfare against the capitalist class, with no quarter and no surrender" (McCormack, 1974: 15-16). By the end of 1918, the federal government had banned the *Western Clarion* (Friesen, 1976: 143).

⁹⁶ McCormack (1985a: 124) argues the miners were the revolutionary vanguard in British Columbia. Similarly, Seager (1985: 35) notes "Socialists did not define labour's political agenda in turn-of-the-century B.C. The miners did." Revolutionary sentiment manifested itself in an industrial union movement that sought to achieve economic and political change through incorporation of the general strike. In Canada, between 1891-1920, there were 3408 strikes, involving 829,000 workers (Cruikshank and Kealey, 1987: 86). In British Columbia, between 1901-1917, there were 327 strikes, idling 94,140 workers, for a combined total of 3,283,000 lost person-days (Cruikshank and Kealey, 1987: 138). A lengthy general strike of Crows Nest Pass coal miners and construction workers in 1911 lasted 8 months and involved 7000 workers. This strike, like most others fought in the province, was fought over union recognition, working conditions, and wages. Comack (1985) notes that of 14 major strike actions in Canada between 1901 and 1913, six occurred in British Columbia, prompting Ralph Smith, Mackenzie King's labour advisor, to describe the Pacific coast as being divided into two armed camps (Levant, 1977). Smith's statement was perhaps an unwitting confirmation of the looming 'social war' prophesied by Marx; a result of a burgeoning working class political consciousness. Endemic unrest was instrumental in the appointment of the Hunter federal Royal Commission (1903), without consultation with, or the approval of, the British Columbia government. See also, *B.C. Federationist*, May 8, 1914: 6.

⁹⁷ *Nanaimo Herald*, Dec. 6 1902: 2. Unfortunately, the SPC did not fully capitalize upon increasing labour militancy, by shifting the emphasis from Party to labour unions, until 1918 (Friesen, 1976: 143).

Working conditions in British Columbia industry accentuated class demarcations and expanded working-class cohesiveness.⁹⁸ The often violent nature of the work experience, in conjunction with pervasive repression on the part of State and capital, made it impossible for workers to any longer ignore the “inherently antagonistic” nature of capital and labour.⁹⁹ Social-Democrat John Thomas Place demanded expanded coverage of occupational diseases, arguing it was “well known that some industries had the effect of inducing a certain class of disease, and the men exposed to such conditions should have some protection” (*Daily World*, Feb. 27, 1914: 1; 43 *JLA* 1914: 131). Workers demanded they be compensated for the numerous cases of lead poisoning at smelters, mines and mills. ‘Miners’ paralysis’ was also becoming a social issue (*Victoria Daily Times*, Jan. 22, 1914: 1; see also, April 13, 1916: 7). In an attempt to amend the 1902 Act, Hawthornthwaite cited the consumption deaths of 200 workers per year. This debilitating illness was contracted in B.C. factories and workshops (*Colonist*, Mar. 15, 1907: 11). Catastrophic mine explosions continued to occur amid damning revelations of State and corporate negligence, incompetence and corruption.¹⁰⁰

98 Seeking to directly counter the ruling class hegemony of ‘divide and rule’, one member of the Industrial Workers of the World proclaimed

when the factory whistle blows it does not call us to work as Irishmen, Germans, Americans, Russians, Greeks, Poles, Negroes, or Mexicans. It calls us to work as wage-workers, regardless of the country in which we were born or the colour of our skins. Why not get together, then...as wage-workers, just as we are compelled to do in the shop (McCormack, 1985a: 111).

As Morton (1984: 96) argues, the I.W.W. was the first organization to openly welcome Oriental members. The union clearly “defended men’s dignities more adequately than the rival hostels of the Salvation Army.”

99 Bercuson, 1981: 453; *Vancouver Province*, June 10, 1903: 1. The *Western Clarion* argued that capitalist law was the expression of “probably the meanest class in history.” Capital began to resort to law to prevent labour from striking their industries, and to secure recompense for pecuniary losses as a result of a strike. It was a strategy with which capital initially succeeded; see, for example, Le Roi Mining Company, Limited v. Rossland Miners Union, No. 38, Western Federation of Miners, et al. (1901) 8 B.C.R. 370; PABC GR 429, Box 7, File 1, 1722/01; Box 7, File 5, 3338/01.

100 The *Labour Gazette* called the May 22, 1902 explosion at the Crows Nest Pass Coal Company mine at Coal Creek “one of the most disastrous accidents in the history of coal mining in Canada.” Of 150 miners on shift at the time of the explosion, 125 were killed; *Sessional Papers*, 1903: H273.

Returns for correspondence between the Minister of Mines and two mine inspectors were requested and presented,¹⁰¹ and a Commission struck to investigate the matter,¹⁰² with the first sitting at Fernie on September 8th, 1902. Hawthornthwaite called for a return of the results (32 *JLA* 1903 April 17: 26; 33 *JLA* 1904 Feb. 8: 101), and maintained continuous pressure upon the government by refusing to let the matter die on the floor of the House.¹⁰³

The findings of the Commission confirmed that ventilation,¹⁰⁴ use of explosives,¹⁰⁵ shift scheduling,¹⁰⁶ and safety lamps¹⁰⁷ all contributed to the explosion. While

(see, PABC, GR 429, Box 9, File 1, 2189/02 for the findings of the coroners jury). The *Gazette* (June, 1902: 750-52) recorded widespread public sympathy, but noted “the effect of the explosion will not long delay the re-commencement of operations...The local prices of coal will not be affected...” A conciliatory message was communicated by the House on May 26, 1902 (31 *JLA*: 126). When the legislative session was prorogued on the 23rd of June, the Lieutenant-Governor expressed remorse at the “lamentable accident”, and requested the House direct its “earnest attention to the best means of preventing the recurrence of similar calamities” (p. 213).

101 31 *JLA* 1902: 149, 152. ‘Return of all reports on the Coal Mines of the Crows Nest Coal Company made by Mr. McGregor, Mine Inspector, and Mr. Dick, Mine Inspector, since the 9th day of November 1898, and the correspondence appertaining thereto.’ *Sessional Papers* (1902) 2 Ed. 7 at 1329. See also, Appendix D.

102 See, *British Columbia Gazette*, Vol. 42, #35: 1391. See also, *Sessional Papers* (1903) 3 Ed. 7 at H286, *Special Commission appointed to inquire into the Causes of Explosions in coal mines*. In a radical departure from previous Royal Commissions, the number of miners who testified outnumbered company mine officials.

103 31 *JLA* 1902 June 19: 187. Citing the dangerous nature of conventional explosives in dusty and gaseous British Columbia mines, Hawthornthwaite demanded legislation be drafted to enforce the use of flameless explosives, locking safety lamps and safe tamping materials. Hawthornthwaite’s demands were later replicated by the 1902 Royal Commission on coal mines explosions.

104 Adequate ventilation was essential to exhaust explosive gas released when the coal was disturbed (p. H287).

105 Testimony revealed that explosives with fluctuating quality and potency were routinely sold to miners by the company. Miners were forced to handle explosives in the mines that had been exposed to wide fluctuation in temperature and humidity, making the explosives extremely unstable. Explosions at mines near Lillooet and Port Alberni were both attributed to unstable dynamite; PABC, GR 429, Box 6, File 5, 220/01; Box 7, File 1, 1668/01. See also, Lilja v. The Granby Consolidated Mining, Smelting and Power Company, Ltd. (1915) 21 B.C.R. 384.

106 The Commission acknowledged that production was the over-riding concern. Nonetheless, it recommended a routine production lapse between shifts in order to clear the mine of gas accumulated through disturbing the coal deposits from the previous shift (H292). This

acknowledging the horrific death rate in B.C. mines largely as a consequence of the profit-oriented production process,¹⁰⁸ the Commission nonetheless chose to tie a key recommendation to the exclusion of “workmen who cannot intelligently understand orders and instructions given in the English language.”¹⁰⁹

recommendation was buttressed by a report prepared subsequent to a 1900 inspection of the Crows Nest Collieries. The inspector wrote:

I may mention that, after the mine has been stopped for only one day, they cannot find any gas; but when it is at work the gas is liberated so that the atmosphere of the mine becomes heavily charged with it... *Sessional Papers* (1901) 1 Ed. 7 at p. 950.

107 The Commission believed miners would question being prosecuted for being caught with smoking paraphernalia, or opening their lamps underground, while mine officials were permitted to open their safety lamps to light shot fuses (H290). In a letter dated Mar. 26 1902, from inspector Archibald Dick to E.G. Prior, Minister of Mines, Dick requested that carrying tobacco and matches into a mine be made an offence:

The officials of (the Crows Nest Pass Coal Company) think, and I am of the same opinion myself, that this is a very serious matter to them, as all the mines here, with one exception, give off much gas...; *Sessional Papers* (1902) 2 Ed. 7 at 1360.

108 Data from British Columbia, Britain and Pennsylvania showed that for every million tons of coal produced, miner deaths by explosion equalled 6.61, .624 and .415, respectively. For coal mining deaths from other causes, the figures were 10.66, 3.32 and 4.63. The Commission clearly believed that industrial death was unfortunate, but necessary. Even though aggregate deaths for all three jurisdictions for three proximate 10 year periods totalled 15,000, the Commission opined that “even were all precautions are taken it is doubtful if we can ever become entirely free from explosions...” The symptoms of industrial activity were addressed with the recommendation that mine rescue equipment be acquired, but any discussion of an economic system that relegated human life secondary to production was ignored; *Sessional Papers* (1903) 3 Ed. 7 at H294. As McCormack (1985a: 120) argues, “Death literally became part of life in coal towns.”

109 In a clear reference to the Chinese, the Commission opined that “an intelligent class of labour is in every way preferable...” It recommended a 1901 amendment to the *Coal Mines Regulation Act* be further amended to require that miners be able to understand English (p. H293) (see also, 30 *JLA* 1901). Hawthornthwaite had introduced a stringent bill (#20) in 1901 in this regard, but withdrew it when McBride assured he intended to pass similar legislation. During the 1900 session (29 *JLA* 1900: 45), one government member questioned the utility of continuing to bar persons unable to read English from the mines, suggesting that such legislation would “not be of any beneficial effect in inhibiting the employment of Oriental labour.” On the contrary, it was feared such legislation “would result in the dismissal of, and the loss of employment to hundreds of miners in this province, thoroughly capable as miners, but who are not able to read English.” The miners were apprehensive of any attempt to bar persons unable to read mine rules posted in English. A petition was quickly circulated and signed by 406 miners at Wellington opposing the amendment, and sent to Victoria (1900 *JLA*: lxix).

Once again, Chinese workers became a scapegoat for the excesses of mining capitalists. Plainly, Chinese, Japanese and East Indian labour was exploited in the work place.¹¹⁰ As passages recorded within the *Journals of the Legislative Assembly* demonstrate, capital interests relied upon a ready and expendable supply of immigrant labour, not only to discipline the regular labour force, but also to allow a greater expropriation of surplus value.¹¹¹ A move by the Conservative government of Richard McBride in 1908 to restrict immigration of "undesirable persons"¹¹² precipitated a scandal and crisis of legitimation for the State when coal magnate and Lieutenant-Governor James Dunsmuir refused to grant royal assent to the bill. Hawthornthwaite presented a motion revealing that

...James Dunsmuir, in his private capacity as an operator of coal mines in the Province, had, on or about the time of passage of said Bill, entered into a contract with the Canadian Nippon Company of Vancouver, to procure five hundred Japanese coolies for exploitation in his coal mines...(37 *JLA* 1908 Jan 21: 7-8).

Hawthornthwaite argued Dunsmuir's actions would precipitate a crisis of confidence for the government, and demanded the Lieutenant-Governor's resignation.¹¹³ House speaker Eberts

110 The Grand Trunk railroad planned to import 50,000 Japanese to build the road, and then, once completed, settle these workers along the line to "do the rough operating work of the system" (*Vancouver Province*, Feb. 1, 1907: 1).

111 The C.P.R. imported 6000 Chinese for railway construction in the 1870's because of their propensity for accepting conditions other workers refused (Howay, 1928: 262). Similarly, capital witnesses at a Victoria Board of Trade Inquiry struck to investigate a labour shortage within B.C. were unequivocal in their belief that "white labourers (were) too independent to be useful":

Let's get more men into the country, then those who are here won't be so independent...I've always found that whenever there is a shortage of labour, the workmen will manage to get up to trouble of some sort... (*Colonist*, April 17, 1907: 9).

Clearly, labour shortages allowed workers to demand increased wages and improved conditions. The only practical solution for capital was to secure increased immigration. Chinese domestic workers exploited labour shortages; *Vancouver Sun*, May 18, 1917: 12; *Colonist*, Feb. 21, 1907: 1. See also, PABC, GR 429, Box 7, File 4, 2863/01; *Colonist*, Aug. 27, 1907: 5.

112 (37 *JLA* 1908 Jan 16: 1). *An Act to Regulate Immigration into British Columbia*. The Grand Trunk railroad was "hostile" to the McBrides government for continuing to implement what it viewed as unnecessarily vexatious legislation, in the form of anti-Oriental measures (*Vancouver Province*, Feb. 1, 1907: 1).

determined that Hawthornthwaite's motion was one that spoke disrespectfully of the Crown. Moreover, Dunsmuir had not withheld consent, but rather, had only "reserved it for the Kings pleasure." Therefore, the Lieutenant-Governor had acted in the public, not private interest, "and it would therefore be highly improper to impute motives" (37 *JLA* 1908 Jan. 29: 21). The ensuing scandal forced McBride to publicly disclaim cabinet responsibility for the behaviour of the Lieutenant-Governor (37 *JLA* 1908 Jan. 29: 20), leaving little option but to call a Royal Commission to investigate the charges.¹¹⁴

A good portion of the 1902 Commission's work focused upon the Chinese.¹¹⁵ Revelations in the House that the Chinese were being employed underground¹¹⁶ in violation

113 (37 *JLA* 1908 Jan 21: 7-8). Hawthornthwaite found Dunsmuir's Cumberland operation employed "281 Chinese, 22 Hindus, and 73 Japanese" in violation of *Coal Mines Regulation Act*. Three other major mining operations in the province employed no Asian or Indian minorities (37 *JLA* 1908 Jan 21: 6).

114 37 *JLA* 1908 Feb. 21: 63. Additional Opposition demands were registered to investigate price-fixing and a disregard for safety regulations in the coal industry. Clearly, the Dunsmuir crises left the government in a conciliatory position. Government support for safety concerns, however fleeting, suddenly began to materialize (37 *JLA* 1908: Feb. 10: 41-42).

115 An 1899 petition from 1421 miners demanded "stringent legislative enactment" to prevent risk to life. Miners believed a reduction in the number of injuries and deaths recorded could be "attributed to the fact that no Chinese have been employed in the Nanaimo and Wellington Collieries during that period"; *Sessional Papers* (1900) 53 Vict. at 393. By 1901, the situation had deteriorated. The *Labour Gazette* (Mar. 1901: 342) reported "The accidents at Extension (mine) have been so numerous of late...that the miners employed there are circulating a petition to the Provincial Legislature praying the government to prohibit the employment underground of any one who cannot read and understand the Mining Regulations in English or French." The extent to which the legislature was prepared to support such extreme (and arguably, unfounded) demands is perhaps best illustrated with bill 39 (29 *JLA* 1900: 48), *An Act to Regulate the Length of Hair that may be worn by Employees in Metalliferous and other mines*. Miners also professed concern that their wages and working conditions were bound to regress to an inferior level due to Oriental labour: "... (Orientals) are not employed because they are Orientals, but because they are cheap" (B.C. Federationist, July 13, 1912: 1).

116 Forster was assured by the government (27 *JLA* 1898: 104) that the inspector of mines had been instructed "to see that the regulations for the Coal Mines Regulation Act prohibiting the employment of Chinamen in the mines" were to be enforced. In a later session (32 *JLA* 1903 Dec. 2: 9), the government again insisted the law was being enforced at Cumberland. 142 counts of violating the *Coal Mines Regulation Act* were laid against three mine managers, and convictions secured, resulting in a fine of \$25.00 and \$2.50 costs in each case (PABC, GR 429, Box 10, File 3, 2456/03; 33 *JLA* 1904 Jan 12: 39). The legislation was later ruled unconstitutional by the Supreme Court, and over-turned the convictions. While mining companies were relatively immune from penal sanction, the miners were not. Mine inspectors believed imprisonment had a "salutary effect"

of the *Coal Mines Regulation Act*, in conjunction with safety regulations in metal mines being openly flaunted,¹¹⁷ served to strengthen the resolve of unions in the metal mining regions (see, for example, 27 *JLA* 1898: 32) and at Vancouver Island. The deteriorating situation in the coal mines¹¹⁸ and metal mines¹¹⁹ continued to demand much attention in the House over the next decade, as miners frequently resorted to industrial action to protest the intractable position of employers in dealing with issues such as mine safety, union recognition and wages. The extent to which working conditions at the Crows Nest Pass coal company mines were a serious concern to the miners is clear, given the appointment of a 1904 Royal Commission into the conduct of mine inspector Archibald Dick. The miners accused Dick of receiving cash bribes from the company. The single commissioner exonerated Dick in a single page report.¹²⁰

on miners, but no such sentiment was recorded concerning equivalent treatment for mining capitalists; see, *Sessional Papers* (1902) 1 Ed. 7 at p. 1200; (1903) 3 Ed. 7 at H278; *Labour Gazette*, Dec. 1905: 693.

117 Voluntary compliance by capitalist regarding mine regulations appeared to be the norm in the metal mines of British Columbia. Excerpts of numerous reports written by inspectors Macdonald and McGregor illustrate the extent to which this philosophy was implemented; see, 1899 *Sessional Papers*, pgs. 1154, 1155, 1157, 1158, 1161. The infractions included storing blasting powder in a mine (see also, *B.C. Federationist*, Aug. 21: 1912: 1); substandard timbering; unsafe ladder-ways and shafts; and failure to report mining deaths. As late as 1901, mines inspector Archibald Dick reported "...I visited the scene of many of the accidents reported and inquired into their occurrence, but in no instance did it appear that any blame (could be) attached to the mining companies..." *Sessional Papers* (1902) 1 Ed. 7 at 1188. See also, *Labour Gazette*, Dec. 1909: 632.

118 For example, 34 *JLA* 1905 Feb. 13: 9 (Hawthornthwaite demands a reorganization of the inspection system in the face of "the appalling percentage of accidents"; 34 *JLA* 1905 Feb. 14: 14 (Williams enquires as to "Mongolians" holding miners certificates); 34 *JLA* Feb. 21: 26 and Feb. 22: 30 (demand that McBride enforce the provisions of the *Coal Mines Regulation Act* at the Crowsnest Pass).

119 See, for example, 36 *JLA* 1907 Mar. 13: 10 (number and description of injuries in metalliferous mines for 1906).

120 *In the Matter of the "Public Inquiries Act" and in the matter of the conduct of Archibald Dick as Inspector of Mines* (1904). Appointed October 24, 1904, Commissioner W.W. Spinks (County court judge, Yale assize) exonerated Dick of suspicion of receiving bribes, either directly or indirectly, from the Crows Nest Pass Coal Company. The one page finding was delivered on December 31, 1904.

At Victoria, Hawthornthwaite continued to press for enforcement of a 1903-04 amendment to the *Coal Mines Regulation Act*.¹²¹ Continuous efforts were made, as late as 1914, to amend the 1902 *Workmen's Compensation Act* to benefit labour, but to no avail.¹²² The *Vancouver Sun* (Oct. 27, 1915: 4; see also, *Colonist*, Mar. 15, 1907: 11) reported the House voting record subsequent to the 1907 debates of Hawthornthwaite's proposed amendment. The proposal was defeated at second reading 21-16. Liberal J.A. Macdonald introduced a similar bill (37 *JLA* 1907 Apr. 18: 97) later in the session, in hopes it might be "more acceptable" to the House. This initiative was also defeated at second reading, by a 20-13 margin.

During the 1910 and 1911 sessions, Hawthornthwaite undertook to amend the 1902 *Workmen's Compensation Act*. Both attempts were defeated.¹²³ Speaker Eberts ruled that the proposed 1910 amendment (Bill 35) was a "charge against revenue, and therefore...only properly introduced by the incumbent government." A similar ruling was issued by the Speaker on Bill 2 submitted by Hawthornthwaite during the 1911 session. During this latter attempt, Premier McBride called for a "drastic departure" from the House Rules of Order, as "(the compensation issue) would have to come up sometime." Hawthornthwaite was allowed the floor. He argued passionately for a State insurance scheme, that would guarantee a form of limited liability while restricting the award to "reasonable amounts of compensation." McBride promised that "improvements...reasonable for all parties concerned" would be

121 37 *JLA* 1908 Feb. 10:41. Hawthornthwaite singled out the Union Colliery as the worst violator of the *Coal Mines Regulation Act*.

122 See, for example, 36 *JLA* 1907 Mar. 21: 29. By 1908, Hawthornthwaite characterized the 1902 *Workmen's Compensation Act* as a "dead letter" in the coal mines, "since any man claiming its benefits was certain that he would soon be out of employment should he recover" (*Daily Province*, Feb. 3, 1908: 1). At the later *Royal Commission On Labour*, workers voiced their fear of company intimidation, 'black-balling', and unemployment as a consequence of demanding fair and equitable compensation settlements (PABC, GR 684, Box 2, Vol. 5, File 3, pg. 319; see also, Boxes 1-4).

123 These initiatives were 1) ruled out of order (39 *JLA* 1910) and 2) withdrawn (40 *JLA* 1911), respectively.

implemented. Due to the public nature of McBride's commitment, Hawthornthwaite withdrew his bill (*Victoria Daily Times*, Jan. 27, 1911: 12; *Vancouver Province*, Jan. 27, 1911: 22).

Hawthornthwaite did not contest his seat at Nanaimo City during the 1911 provincial election. The seat was assumed by Social-Democrat John Thomas Place. Parker Williams (Newcastle) had also been elected under the Social-Democratic ticket. The Conservative landslide completely eliminated the Liberals from the House. Williams and Place became the only effective Opposition. Hopelessly out-numbered, Williams and Place nonetheless continued to press for changes to the 1902 *Workmen's Compensation Act* (42 *JLA* 1913 Jan. 16: 5; see also, 43 *JLA* 1914 Mar. 4: 131). Arguing that the 1902 Act "was not up to present day requirements, whatever it might have been when first enacted", Place isolated casual labour, all rail-road workers (especially those in construction excluded because of their 'station-man' status), logging operations, occupational disease, the inclusion of 'necessary' labour (that performed on Sundays) that otherwise would conflict with the *Lords Day Act*, and appealed for a higher rate of compensation, to replace one that was "inadequate in many ways." Place had attempted the introduction of a similar measure in 1913, but the government was not prepared to cooperate, and instead promised to re-draft the 1902 Act between the 1913 and 1914 sessions. The pledge was ignored. Place took the opportunity to demand that something be done while the government contemplated the findings of the *Royal Commission On Labour* (PABC, GR 684; *Sessional Papers* (1914) at M1). McBride was unreceptive to the requests, and motioned the debate be closed (*Vancouver World*, Feb. 27, 1914: 1). Once again, Place and Williams were overwhelmed upon division after the second reading, and their motion defeated 23-2 (43 *JLA* 1914 Mar. 4: 131). Ironically, at the proroguing of the 1914 session, the Lieutenant-Governor intimated the government was sympathetic to labour issues:

...the conclusions arrived at after careful investigation of the Royal Commission on...Labour will no doubt greatly assist the legislature in its consideration in the near future of these all-important interests (43 *JLA* 1914 Mar. 4: 138).

A government member introduced a *Factories Act*,¹²⁴ which was ironically amended so as to limit the power of the inspectorate (37 *JLA* 1908 Mar. 6: 120-21). McPhillips secured a new section (s. 61) that read:

In any case where the inspector may instruct an employer to make alterations or additions conforming with any section of this Act, the said employer has reason to believe that such changes or additions are needless and not necessary within the spirit of this Act, he, the employer, may appeal from the decision of the inspector to the Lieutenant-Governor in Council, who shall judge whether such alterations or additions are necessary (37 *JLA* 1908 Feb. 18: 56-7).

Despite labour-socialist amendments and bills relating to the protection of the workforce consistently being excluded in the past by the Speaker because they ostensibly “related to trade”, Speaker Eberts held that the Conservative *Factories Act* was similar to English legislation regulating the employment of children in factories and “designed simply to protect the life and limb of a person employed in any of the factories...and may fairly be termed a police regulation” (37 *JLA* 1908 Feb. 18: 56-7). At the same time, Socialist Parker Williams was defeated 26-12 in an attempt to amend the Act with a provision that would make it an offence for an inspector to divulge the name of any worker who complained of an unsafe workplace (37 *JLA* 1908 Mar. 6: 121). Inquiries made in the House as to the effect of the *Factories Act* facilitating the inspection of “smelters and ore reduction works” culminated in an admission by premier McBride that no inspections of these work-sites had been conducted in the previous year.¹²⁵ As Atherton (1976-77) notes, factory legislation leaned more toward

124 36 *JLA* 1907 *An Act For Protection of Persons Employed In Factories*.

125 (38 *JLA* 1909 Feb. 10: 38). Forsey (1947: 580-83) traced the development of Dominion factory legislation during the 1880’s. He found that manufacturing concerns played a significant role in the drafting and implementation of factory legislation. Revisions clearly in the interests of manufacturers were made to the bill, prompting the Opposition to charge that “the alterations...are not improvements in any shape or way.” Undoubtedly, this is why British Columbia, with strong employer representation at the legislature, failed to proclaim a *Factory Act* until 1908. See also, Cole (1947: 220); *Labour Gazette* (November, 1900: 104-12; July 1902: 33); *B.C. Federationist*, Aug. 21, 1914: 4; Lipton (1978: 74); Morton (1984: 84).

addressing work place matters, such as hours of labour and rest breaks, rather than attacking the root causes of ill health and unrest.

The conservative press ridiculed the efforts of labour-socialist politicians to improve the welfare of working people. The *Colonist* argued that “an undying affection for the workingman” was making a “good cause ridiculous”:

All right-thinking people are desirous of seeing the condition of wage-earners improved. There is many ways this can be done, and is being done all the time...It gives perhaps the best expression to true altruism that is to be found today...The self-styled friends of labour in the House waste a good deal of breath to very little purpose (Feb. 20, 1908: 4).

Nonetheless, during the pivotal years leading up to the Vancouver Island Coal Strike, socialist opposition continued to attempt introduction and amendment of numerous other pieces of labour legislation,¹²⁶ yet rarely won substantial concessions. The increasingly

126 See, for example, 37 *JLA* 1908 Mar. 6: 121. Hawthornthwaite attempted to limit the hours of labour around high-speed, steam powered laundry equipment:

In all cities or rural districts where laundries are established and being operated by steam or other mechanical power, to prohibit the work being carried on in any laundry before the hour of 7 a.m. and after the hour of 5 p.m.

The motion was negatived by the Conservative majority (see, *B.C. Federationist*, Feb. 26, 1915: 1, for a graphic description of the destructive potential of a ‘power laundry’). In addition to the numerous attempts to amend the *Workmen’s Compensation Act* (1902), Hawthornthwaite and Williams demanded eleven amendments to the *Coal Mines Regulation Act*. They included: restrictions on boys under 18 working in areas of the mine where gas had been found within the past 12 months; a posting of inspection notices at conspicuous places within the mines; a daily patrol of the mine by an individual nominated by the miners (as opposed to the monthly inspection allowed under the *Coal Mines Regulation Act*); and other amendments that would have given miners a greater degree of control over their own safety and well being. Only one of the 11 amendments was carried by the majority of the House (40 *JLA* 1911 Feb. 23: 73-75).

Hawthornthwaite also placed 7 bills before the House during the 1910 session, including an attempt to amend the 1902 compensation Act (39 *JLA* 1910). The other six bills were: an initiative to enact a maximum eight hour day, six day week; an amendment of the *Health Act* providing for inspection of all logging, railway, lumber, mining and sawmill camps, especially their water supplies; an amendment to the *Labour Regulation Act* to protect smelter workers from “smoke, fumes, dust or heat arising from the smelting or refining operations” (see also, smelter worker petitions at 35 *JLA* 1906: 45, 47, 56, 61; *Western Clarion*, Nov. 13, 1909: no page); an amendment to the *Metalliferous Mines Inspection Act*; a fifth bill sought numerous amendments to the *Shops Regulation Act*; finally, *An Act to Prevent Discrimination Against Trade Unionists* was intended to make unlawful employers forcing employees into reneging their affiliation with a labour union in order to secure or maintain employment. The bill also sought to prohibit employers seeking to discover whether prospective or current employees were members of, or desired to join, a

polarized class relations succeeded in reinforcing in the minds of working people the seeming futility of trying to achieve change within the confines of the dominant social system, a realization that mirrored the decision of a 1906 Trades and Labour Congress convention to discard traditional labour organizations for that of socialism.¹²⁷ The interminable efforts of capitalists to maximize the expropriation of surplus value by minimizing the costs associated with maintaining and protecting the labour force was clearly a factor in the aggressive growth of militant labour.

Out In the Cold: Railroad Labourers and Loggers

Many industries exacted a severe toll upon the workforce, but few inflicted traumatic injuries to rival those endured by railroad labourers and loggers. Indeed, militant industrial unionism was later to be the *forte* of predominantly immigrant railway construction labourers, a turn of events largely due to unpleasant working conditions.¹²⁸ Known as ‘Wobblies’ (for those associated with the ‘Industrial Workers of the World’) or ‘blanket-stiffs’ (for their habit of trekking from job to job with all their worldly possessions rolled up in a blanket upon their

trade union. All the above initiatives were defeated; see, 39 *JLA* 1910; *Colonist*, Mar. 1, 1910: 2; *Province*, Mar. 2, 1910: 24; *Labour Gazette*, Aug. 1911: 170.

127 Phillips, 1967: 43-4. Cognizant of the abortive 1905 Russian revolution, the *Vancouver World* (Sept. 18, 1906: 1) reported the convention affirmed that “it will be in the best interests of wage workers if they will...sever their connections with all parties not organized in the interests of the proletarian class.”

128 The ill-treatment of railroad construction workers on the C.P.R. line in the Crowsnest region of Alberta and B.C. prompted one business publication to “damn the railroad” for its “grossly brutal and inhuman treatment of the men” (Bliss, 1974: 66). Two Royal Commissions ensued as a consequence. The first investigated complaints from men who had been employed by the contractors: Canada. *To the House of Commons of the Report of the Commissioners Appointed to Inquire into complaints respecting the treatment of labourers on the Crowsnest Pass Railway. Return.* Ottawa: April 30, 1898. 61 *Victoria Sessional Papers* (No. 90A). See also, Atherton, 1977-78: 100. The second Royal Commission was held only two months after the report of the first Commission was received. It investigated the deaths of two workers: Canada. *Report of Mr. R.C. Clute on the Commission to enquire into the death of MacDonald and Fraser on the Crowsnest Pass Railway. Return.* 62 *Victoria Sessional Papers* (No. 70); see also, *Colonist*, June 12, 1898: 2. By 1911, conditions had improved little. Board for “bunkhouse accommodation” consumed nearly 50% of the average labourer’s earnings (41 *JLA* 1912: 9, 22).

back), these labourers endured an ‘accident’ rate characterized as nothing less than “remarkable carnage” while working on the grade, or in the woods.¹²⁹ Numerous factors were responsible for a burgeoning bitterness within the workforce over the high injury and death rate attendant with railroad construction work. Like the coal-mine explosions of the late 19th century, non-labour politicians were willing to draft messages of condolence expressing “deep sorrow” and “heartfelt sympathy” in the aftermath of an industrial disaster.¹³⁰ More substantive forms of assistance, however, were rarely forthcoming.

The courts were consistently punitive in dealing with railroad labourers. The result was often a mechanical interpretation and administration of legal rules, in terms of both legal precedent and statutory provisions. In a 1912 case that hinged upon ‘contracting out’, the courts employed convoluted legal reasoning to reinforce the provision. The incident occurred at a Canadian Northern Pacific Railway camp near Yale. Like the miners, railroad workers were forced to contend with a lack of proper storage facilities for dynamite, which tended to exacerbate its already unstable nature.¹³¹ When frozen or damp, workers had no choice other than to thaw the explosive out as best they could (Taylor, 1982: 38). Two thawed sticks exploded while being transported to a work site adjacent to the railway camp. A blacksmith was killed instantly, and the plaintiff lost his left arm. The contractor argued the plaintiff was precluded from coverage under the 1902 Act as he was in the relation of a sub-contractor.

129 McCormack (1985b: 105). Twenty-two Japanese workers were killed in November of 1909 when their work train plunged off a washed-out bridge in Burnaby (PABC, GR 429, Box 17, File 3, 5483/09). A railroad construction labourers’ “miraculous escape from death” was recorded by the *Victoria Daily Times* (Jan. 13, 1912: 3). The premature explosion of 66 sticks of dynamite at a C.N.R. camp maimed the worker’s hand.

130 See, for example, 39 *JLA* 1910: 91. 64 railroad workers were killed on Mar. 4, 1910 when, while clearing one snow-slide in the Rogers Pass, they were engulfed by another (Orchard, 1969). Rather than secure a measure of justice for the dependents of the victims “killed or injured in the deplorable accident”, the House avoided conflict with railroad capital by engaging in the symbolic gesture of publishing a copy of its resolution in the *Journals*.

131 The Fernie coroner reported the death of a railroad labourer engaged in thawing dynamite over a wood stove, in a rough cabin that already contained a half case of explosive (PABC, GR 429, Box 12, File 2, 1466/05).

and therefore not an employee. The plaintiff countered he was an employee on piece-work. Because the 1902 Act stipulated that “anyone engaged in an employment, under a contract of service, apprenticeship or otherwise” was eligible to claim under the Act, its scope was clearly wide enough to include ‘station-men’, or railroad sub-contractors (*Vancouver Province*, Dec. 18, 1912: 21). Nonetheless, the plaintiff lost. The court decided that by sub-contracting, all ‘station-men’ became contractors themselves, and therefore ceased to be classed as employees as defined by the 1902 *Workmen’s Compensation Act* (*Vancouver Province*, Dec. 20, 1912: 37). The judiciary interpreted the provision in such a way as to ensure the interests of employers were served (*Vancouver Province*, May 8, 1902: 2; *Labour Gazette*, Jan. 1913: 801). Ironically, the sub-contracting provision in the 1902 Act was termed “objectionable” by employers prior to the bill receiving assent. Social-Democrat J.T. Place attempted unsuccessfully to eliminate the ‘sub-contracting’ loophole in 1914 (43 *JLA* 1914: 131; *Vancouver World*, Feb. 27, 1914: 1).

Railroad capital and workers also enforced a rigid stratification of labour. Immigrants with the lowest status performed menial and dangerous jobs, while whites were relatively secure with more prestigious and often less hazardous tasks.¹³² However, once injured, workers were treated in a callous and inhumane manner.¹³³ Social-Democratic opposition

132 McCormack, 1985b. Similar stratification based upon race also existed in the mines (Bercuson, 1981: 460).

133 One railroad worker, injured while loading heavy rock onto a rail car, was released the following day to walk 20 miles along the grade to the hospital. The journey took 12 hours (*Vancouver Province*, June 19, 1914: 19). Another worker, John McRae, complained to the Attorney-General about his treatment at a railroad ‘hospital’ at Creston. Kept in tents, patients had to sleep with their clothes on to keep from freezing, blankets were “never washed”, bed pans were “fermenting under beds”, doctors worked while intoxicated, and injured men were told to “get the hell out (of hospital) and go back to camp” (PABC, GR 429, Box 5, File 1, 3241/99). In 1909, Grand Trunk Pacific crews at Prince Rupert had to contend with a “pretty tough foreman.” With a constant inflow of workers arriving from the south, employers could afford to fire injured workers (*Living Memory In The Skeena No. 5: Prince Rupert*). The sole survivor of the 1910 Rogers Pass snowslide that killed 64 workers was left all night in an unheated, open boxcar while the ‘rescue’ crew cleared the line. Bill LaChance’s leg was broken so badly that when the watchman saw the injury, he vomited (Orchard, 1969).

demanded the government explain why the Canadian Northern railway was permitted to charge 'medical fees' for an inadequate service with untrained personnel. Only eleven "medical practioners" were retained by the company for its extensive operations on Vancouver Island and the mainland. Two of these practioners were not sanctioned by the British Columbia Medical Association.¹³⁴ The death of railway labourer in 1915 at a Canadian Northern project in the Cowichan region of Vancouver Island served to illustrate the quality of 'medical services' the railway insisted it was providing. A serious wound had caused severe hemorrhaging, but there had been no medical appliances at the camp, nor any doctor at the railway 'hospital'. The sole nurse was forced to transport the victim 23 miles by boat on the Cowichan Lake. The worker later died. An investigation revealed that on the 84 miles of railroad in question, there was but one doctor, two small hospitals, and no emergency medical supplies at any of the camps. For the 700 to 800 men in that 84 mile grade who paid their \$1.00 per month for medical services, the company hired a doctor of questionable repute who was paid less than \$100.00 per month. As the *Daily Province* revealed, workers brave enough to query the books of the contractor were immediately fired.¹³⁵

The members of the 1914 *Labour Commission* were forced to acknowledge a positive correlation between the organizing ability of the 'Industrial Workers of the World' and the abusive treatment labour had received at the hands of employers. The commissioners believed that organizations of such "pernicious principles...(could) find few adherents except among immigrants...where the economic conditions are and have been...deplorable" (*Sessional Papers*, 1914: M3). The manner in which employers treated labour made organizing

134 (41 *JLA* 1912: 26). One dollar per month was deducted from each pay packet, regardless of the number of days worked. Clearly, 'first aid' schemes implemented by railway contractors were less a benevolent response to the rigors of railroad construction than they were a strategy to fraudulently recover wages. This unsavory state of affairs led the *Vancouver Sun* to characterize medical aid schemes as "farcical grafts" (Mar. 9, 1912: 6).

135 *Daily Province* Feb. 10, 1915: 2. See also, 44 *JLA* 1915: 17, 31; Wilson v. Mackenzie and Mackenzie (not reported; *Labour Gazette*, Feb. 1915: 1004).

easy. The prospective member needed only swear allegiance to the working class (McCormack, 1985b: 110). The Commission utilized the example of immigrant labour at an isolated Crowsnest railway mining camp (euphemistically known as 'New York') to prove their point (*Sessional Papers*, 1914: M23). Here, hundreds of Russian miners existed in squalor. The railroad refused to consider cleaning privies and collecting garbage more frequently than twice annually. Corporate goals centered around the drive to maximize profitability, resulting in a strong resistance to any State intervention that would have increased costs. Expenses associated with the provision of a sanitary sewer and drinking water system were deemed excessive.¹³⁶ Hawthornthwaite had attempted to amend the *Health Act* to prevent such deplorable conditions, but his initiative was defeated by a straight Conservative majority (40 *JLA* 1911: 73-75). Interestingly, the Minister of Health introduced a bill for the inspection of logging and railroad construction camps subsequent to the defeat of Hawthornthwaite's initiative (40 *JLA* 1911; *Victoria Daily Times*, Jan. 27, 1911: 12).

Clearly, working conditions fueled unrest. Workers resented being treated worse than "swine" (McCormack, 1985b: 113). According to Bercuson (1981: 465), railroad construction labourers "were just above slaves in the general scheme of things", and ill-treatment clearly had undesirable effects. As one itinerant railroad labourer remarked:

...after the experience I have had for the past three weeks (in a Pacific Great Eastern Railroad construction camp), I want to announce myself as a candidate for any wrecking crew that's going. I had heard a good deal of the rough stuff that was pulled off in the railway construction camps of this province, but now I speak from an experience...by the Gods of Labour, I've had more reason to make a man turn anarchist or dynamiter than ever fell to my lot in my life before...¹³⁷

¹³⁶ McCormack, 1985a; 1985b. Similarly, the 1903 *Hunter Royal Commission* 'discovered' the existence of typhoid at James Dunsmuir's Union colliery on Vancouver Island: *Colonist*, May 21, 1903: 6.

¹³⁷ *B.C. Federationist*, August 1, 1913: 1. Bitter resentment of working conditions was expressed in other ways as well. One British Columbia railroad labourer wrote:

The life that God created
Is mangled torn and hurt
By those who in their greed have rated
Humanity to be as cheap as dirt

The Labour Commissioners dismissed the allegation of employers and Attorney-General William Bowser that the I.W.W. was a violent and destructive labor organization (*Vancouver Province*, Mar. 4, 1914: 1).

Worker dissatisfaction with primitive living and working conditions eventually culminated in 7,000 I.W.W. members striking the Canadian National Railway construction camps between Kamloops and Hope in March of 1912. It was the largest Wobbly action ever in Canada. The Conservative government, as it had done so many times before, utilized the State apparatus to assist capital. Provincial 'health inspectors' closed the striker's camps, ostensibly because they were 'unsanitary', while the provincial police arrested the strikers as they peaceably vacated the camps. The government successfully broke the back of the strike.¹³⁸ Ironically, the I.W.W. camps complied more closely with the provisions of the *Health Act* than those of the contractors. Like the mine owners, railroad contractors enjoyed relative immunity from prosecution (McCormack, 1985b).

The I.W.W. was successful in organizing more than just rail workers, however. The "gruesome" number of fatalities in the woods was so excessive that no one company was able to track down the next-of-kin of the young, single men who were dying on their operations. The companies preferred to hire these individuals, as it lessened the possibility that logging victims would leave any dependents behind (Prouty, 1985). Miners at Rossland petitioned the legislature in 1912 to prohibit the offensive practice of companies discriminating against workers with families in order to reduce potential liability. Though loggers were equally affected, only the miners had enough political clout to draft and submit a

And ever the ones who are toiling
Die hard for the ones that rest;
The victims of a hellish spoiling
Of a system that stands accurst.

(McCormack, 1985b: 105).

¹³⁸ As Norris (1980: 68) argues, the strike failed because the rank and file had underestimated the strength of the police.

preamble and resolution to the British Columbia Federation of Labour, the provincial government, and local M.P.P.'s (*Vancouver Sun*, Oct. 23, 1912: 10; *B.C. Federationist*, Oct. 19, 1912: 1).

Unlike the larger mining operations, which were more likely to be located proximate to the seats of economic and political power, loggers, like railway workers, had to fend for themselves. Emergency hospital care was an almost unheard of.¹³⁹ Occasionally, 'favoured individuals' who survived their injuries were given permission to live at the company camp for a short while to recuperate. At some camps, there were "so many young boys on the payroll that it became known as the 'old folk's home and the logger's college...'" (Prouty, 1985: 123). 'Benevolent' employers were the exception rather than the rule.¹⁴⁰ Many injured workers were docked pay for failing to complete a shift. As Lind (1978: 68) observes, injured loggers had to wait until the end of the shift to be returned to camp. Even then, the suffering might not end. One logger recalled the death of his friend:

...we got him to the hospital...and they wouldn't take him...we caught the five o'clock boat to Vancouver, and got in at eight...that night, he's dead...but in the meantime, he kept hollering out, 'hit me with a hammer'...(Joe Muir: *Vancouver Island Logger, 1902-1944*).

Other loggers were more fortunate. Lind (1978: 73) recounts the story of one worker who fell from a logging railroad trestle:

¹³⁹ The *Vancouver Province* (May 19, 1903: 1) related a report of a Japanese logger "crushed between two big logs" at a Howe Sound logging camp. Without medical help, fellow loggers transported him to hospital, braving rough seas at night in a row-boat. They reached Vancouver in the early morning. Well-organized miners owned and financed their own hospitals (see, U.B.C. Special Collections, *Bylaws and Sketch of Sandon Miners' Union Hospital*; Sandon, n.d.). Mines without unions, such as the Britannia mines, were poorly equipped (Macpherson, 1976. *Public Health: Dr. A.M. Menzies*). Loggers were even less fortunate. As Prouty (1985: 88) reveals, an unusual logging fatality was one that occurred after receiving hospital care.

¹⁴⁰ After the death of five workers in one incident, one coast camp was shut down:

...(it wasn't that the boss was soft-hearted)...it was because they were short of men, and the steamer wasn't due with a new crew for ten days...(Orchard, 1958 *Charles O. Marston: Forester In B.C.*).

The falling man disappeared among the tree tops. It was a long way down to the bottom of the canyon. All that could be heard was the breaking of the branches. He was a goner for sure. The crew wasn't allowed to quit work for rescue operations of a dead man. An hour later the man climbed up the side of the canyon and went back to work. The tree branches had broken his fall. Except for a few bruises, he was feeling just fine.

For logging capitalists, the daily parade of injuries and deaths were viewed in terms of a 'routine' non-event, little more than the price to be paid by some unfortunate for "getting out the logs." (Prouty, 1985: 129). To the workers who were paying that price, these deaths were anything but routine.¹⁴¹ Existing legislation was not effective in providing recompense for workers in forestry (particularly logging) operations. The courts interpreted the 1902 compensation Act to exclude the occupation in that it did not constitute a 'factory or an engineering work'.¹⁴² This judicial policy resulted in much hardship and suffering in the years prior to the 1916 Act. Early on, the I.W.W. recognized the potential in the forest industry for militant industrial unionism. Shortly after the wobblies began their organizing drive in 1907, the Vancouver lumber workers local became the largest in Canada (McCormack, 1985b). However, this effort was short-lived. The remote nature of most logging operations, in conjunction with repressive tactics engaged in by State and capital, made organizing difficult at the best of times. Clearly, loggers and other workers engaged clearing land were unable to

141 In Mitchell v. Rat Portage Lumber Company (1911; not reported; see, *Vancouver Province*, Feb. 8, 1911: 8; *Labour Gazette*, Jan. 1912: 710), a suit action for \$15,000.00 for the loss of an arm hinged upon the question of log chutes. Sawn logs hurtled down mountain-sides in water-filled chutes at tremendous velocities into adjacent booming grounds. A survivor of many years labouring around log chutes testified of the "continuous worry" the safe operation of the chute presented for the worker responsible for clearing obstructions. When asked by defense counsel whether the first duty of the man at the foot of the chute was not to keep the passage clear, the logger replied in the negative:

"Then what is it?" asked counsel.
"To take care of himself", replied the witness.

142 See, *Vancouver Province*, Sept. 20, 1911: 9; Weaver v. Barber (1911; not reported; *Labour Gazette*, Nov. 1911: 506).

press their demands in the same forceful way that the miners had been able to.¹⁴³ Social-Democrat Parker Williams was the only politician who had any logging experience, but acknowledged the occupation was more dangerous and physically exhausting than that of coal-mining.¹⁴⁴

A scarcity of reported legal cases involving loggers suggests these workers initially endured the consequences of their calling without resorting to the courts. Nonetheless, logging was an extremely dangerous occupation. Few vocations presented as many opportunities to be killed at work.¹⁴⁵ The advent of mechanization brought innovations such as 'high-lead' and 'sky-line' yarding.¹⁴⁶ Logging quickly became a 'high-ball' affair, and increased injuries resulted in a larger number of loggers proceeding to court (Prouty, 1985). Focusing upon the destructive effect of mechanizing logging operations, Social-Democrat John Thomas Place believed logging "was a dangerous occupation in many ways...Many men have been killed, and many injured annually." Nonetheless, Place failed to secure a desired amendment to the 1902 Compensation Act (*Vancouver World*, Feb. 27, 1914: 1; 43 *JLA* 1914: 131).

143 Oral histories confirm poor living and working conditions. Improvements, such as linen sheets instead of straw beds, did not occur until 1919, when the One Big Union organized northern Vancouver Island (*Thomas Roeser: A logger in Oregon and B.C., 1900-1930*). Bergren (1966: 29) relates that relative to the time period of 1912, many European countries allowed union advocates to talk openly about their convictions. In Canada, however, anybody seeking to organize loggers was "immediately ejected and blacklisted from working in the industry."

144 For the entire text of his speech, see, *B.C. Federationist*, Feb. 25, 1916: 3-4.

145 While the term 'hazardous employment' conjures up images of falling trees, breaking cables and steam donkey explosions (all of which were everyday dangers for a turn-of-the-century logger) there were other, less obvious dangers as well. The *B.C. Federationist* reported the disappearance of one Campbell River logger whose remains were later recovered five miles from where he had last been seen. The logger was a victim of an animal attack, "his bones and clothing strewn around the bush" (Nov. 12, 1915: 1).

146 'High-lead' and 'sky-line' logging systems made skidding logs over the ground obsolete. A combination of spar-trees and steel cable allowed logs to 'fly' through the air at high speed without ever contacting the ground.

Loggers rarely challenged an unfavourable arbitration decision or sued in court. Those that did met with sporadic success.¹⁴⁷ This state of affairs led the editor of the *Vancouver Sun* to question the motives of a government that had

not made the slightest effort to render (the 1902 Act) more efficient, or to remove some of its anomalies or extend its practical benefits.

Indeed, the writer continued,

we cannot conceive of any employment whose hazardous nature more urgently requires protection of the statute than that of a logger (*Vancouver Sun*, Mar. 9, 1912: 6).

The implications of a family unable to secure recompense for a breadwinner were no less devastating for a logger's dependents than they were for other workers. In one case, a logger was killed while 'falling' near Ladysmith. The court action failed.¹⁴⁸ The decision elicited cries of indignation from organized labour, and an analogy to "precisely the same kind of conditions Island miners are organizing to protect against":

Probably one of the strongest arguments confirming the necessity of men engaged in the timber industry organizing themselves into a trade union, is presented this week in a judgement rendered by Judge McInnis.¹⁴⁹

147 See, for example, Latham v. Heaps Timber Company, Limited (1912) 17 B.C.R. 211; McCormick and McCormick v. Kelliher Lumber Company (1912) 17 B.C.R. 422, 18 B.C.R. 57.

148 Hill v. The Victoria Lumber Co. (1913; not reported). The plaintiff attempted a novel argument that logging operations utilizing machinery were engineering operations as defined by the 1902 Compensation Act, and also part of the manufacturing process of converting a resource (timber) to a finished product (lumber). The action failed; see, *Vancouver Province*, Oct. 10, 1913: 14, and Oct. 16, 1913: 22; *Labour Gazette*, Nov. 1913: 638; *Industrial Progress and Commercial Record*, Sept. 1913: 19; Oct. 1913: 23. See also, White v. The Victoria Lumber Co. (1910; not reported; *Labour Gazette*, Jan. 1910: 834).

149 *B.C. Federationist*, Oct. 17, 1913: 1. The International Woodworkers of America (Canada) was not formed until 1937, at which time the membership were immediately confronted with a draining strike at Blubber Bay (see, McMullan and Ratner, 1983). There was no further union expansion until loggers organized on Vancouver Island and the Queen Charlottes between 1940-42 (Lembcke, 1980: 115).

Though there were many ways to die in the bush,¹⁵⁰ steam power, considered “the nuclear power of the industrial revolution”, was clearly responsible, directly or indirectly, for a large proportion of the fatalities. As Prouty (1985) notes, the “acts of God” upon which logger bosses were so fond of blaming ‘accidents’ ended at “just about the moment someone tied down the pop-off valve on the boiler of a steam yarder” (Prouty, 1985: 99). Engineers were often subjected to pressure by co-workers to push a boiler beyond its limits. The crew hoped to achieve production quotas set purposely high by the employer.¹⁵¹ Unfortunately, the consequences were frequently catastrophic. If the cables or cable-splices did not first separate at their weakest points, shattering bones or cutting a worker in two where he stood, the steam donkey invariably exploded. Prouty (1985) recounts one such instance:

...Pieces of the donkey flew in every direction and so did the rivets which sheared off the boiler plate. The engineer was blown a hundred feet into a canyon and the fireman had a hole in his head, from ear to ear, where one of the rivets had gone through.¹⁵²

As Taylor (1975: 107) notes, loggers worked under difficult circumstances. After a particularly bloody fatality, camp talk would invariably focus on the lack of proper facilities to care for injured workers. Workers criticizing unsafe conditions in the woods were fired. Without a union, there was no hope of improving working conditions (Bergren, 1966: 67). This state of

150 For a description of the ‘top 13’ killers, see, Prouty, 1985: 88-130. See also, *Colonist*, June 6, 1903: 2, for an illustration of the high-risk involved in breaking up log-jams on rivers.

151 Lind, 1978: 70. Indeed, the Secretary-Treasurer of the Canadian Pacific Lumber Company at Port Moody registered vehement opposition against the 1902 compensation Act. The company was evidently displeased that the financial benefits of speed-up might be mitigated by a “dangerous section of the bill...(making) the employer responsible for injury to any worker through the negligence of another worker.” The company believed boiler explosions were due, “as is most frequently the case”, to the negligence of the engineer. In the company view, government inspection could serve no useful purpose if employee negligence was automatically transferred to the company; *Vancouver Province*, May 8, 1902: 2. See also, PABC, GR 429, Box 8, File 5, 1374/02.

152 Prouty, 1985: 97. For an additional illustration of the tremendous force associated with an exploding boiler, see; *Colonist*, June 3, 1903: 1.

affairs did not improve until the early 1940's, well after the introduction of the *Workmen's Compensation Act* (1916).

Unpredictable Costs: The Employers Mobilize

Lumber capital appearing before the *Royal Commission On Labour* were clearly concerned about industrial carnage but, like the coal owners, their interest was not born of benevolent concern for the worker. Rather, they advocated any "measures...be taken to improve the compensation law, as much friction had arisen" between employer and employed as a consequence of the operation of the 1902 Act (*Victoria Daily Times*, Oct. 23, 1913: 7). Many of the same concerns were later heard at a Vancouver Board of Trade meeting held in January of 1915 (*Vancouver Province*, Jan. 13, 1915: 2). In 1908, a gathering of the Vancouver Employers Association (a consortium of small to medium-sized employer interests) pondered a question "that (had) for some time given much concern to employers of labour": that of tort liability for worker injuries. Indeed, the common law and its two amending statutes - the *Employers Liability Act* and *Workmen's Compensation Act* - created a good deal of "confusion and uncertainty" for employers (*Industrial Progress and Commercial Record*, Jan. 1915: 192). Moreover, successful actions by employees jeopardized the financial health of business. Employers began to view existing legislation as "a source of peril." Some firms were actually considering "retiring from business in order to avoid possible liability."¹⁵³

Clearly, employers had reason to fear the less predictable nature of the judiciary, and the mounting costs of awards against them.¹⁵⁴ The B.C. *Workmen's Compensation Act*

¹⁵³ *Colonist*, Mar. 22, 1908: 14; see also, *Vancouver Province*, Mar. 20, 1908: 1; *Labour Gazette*, July 1911: 43. At the *Royal Commission on Labour*, New Westminster businessman D. Turnbull argued that employers could be "dragged into a lawsuit and practically ruined" (PABC, GR 684, Box 2, Vol. 3, File 2, pg. 147. See also, Box 3, Vol. 7, File 3, pg. 372).

¹⁵⁴ In *Beamish v. Whitewater Mines, Limited* (1900) 8 B.C.R. 261, the court determined that unlimited damages could be sought by plaintiffs in county court. Employers had reason to fear juries, as well. In *Lilja v. The Granby Consolidated Mining, Smelting and Power Company, Limited* (1915) 21 B.C.R. 384, (1916) 23 B.C.R. 147, the jury found the employer negligent, notwithstanding the juror's inability to identify a defective operating system. In *Aaronson vs. Carlin, Moore and*

(1902) incorporated many of the features of the 1886 Ontario *Workmen's Compensation For Injuries Act*. Though the Ontario legislation was little more than an employer's liability statute that modified the common law, it nonetheless resulted in an increased number of workers winning their court action (Risk, 1983: 429; Tucker, 1984: 252). In British Columbia, the judiciary emulated their Ontario peers, and began to exhibit an intermittent pattern of thinking divorced from the formal rules of common law. The ideological armour that had for so long protected the interests of employers was weakening, a fact of which capital was acutely aware. In Roylance v. Canadian Pacific Railway Company, the judge resisted the suggestion of defense counsel that \$400.00 constituted an "ample" award:

You have a different idea from mine as to the effect of the loss of a thumb upon a man's earning power...Under the Workmen's Compensation Act I think the loss of a...thumb of the right hand of a working man is worth \$1,500.00.¹⁵⁵

Employers responded decisively to such decisions, and began to mobilizing to

lay the matter in some form before the Dominion and Provincial governments and endeavor to have the law so modified that it might be less dangerous to vested interests.¹⁵⁶

Capitalist factions, such as the Builders Exchange, organized independently to "protect each other from the compensation Act" (*Colonist*, Aug. 14, 1907: 7). By December of 1914, the British Columbia Manufacturers Association was receptive to a proposal of compensation as "a desirable thing for (the) province", based upon a concept of a workman waiving his common law damages "for this simpler and more satisfactory settlement...that has proven a financial success where such laws are in effect" (*Vancouver Sun*, Dec. 16, 1914: no page. See also, *Industrial Progress and Commercial Record*, Jan. 1915: 193).

Pethick (not reported; *Victoria Daily Times*, Mar. 19, 1912: 7; Mar. 20, 1912: 14) a victim of a blasting accident was undressed and exhibited to the jury. The plaintiff sought \$25,000.00.

155 (1908) 14 B.C.R. 21. In Fakkemma v. Brooks, Scanlan and O'Brien (1910) 15 B.C.R. 462, the court denied the defendants the defences of fellow-servant and assumption of risk.

156 *Colonist*, Mar. 22, 1908: 14. Employers sent extensive correspondence to the Attorney-General voicing their concerns over the compensation issue; PABC, GR 429, Reel 2111.

Worker Insurrection: Strikes and Explosions

The recommendations of the 1914 Labour Commission concerning a compensation scheme, touted as “a radical departure from the established policy and system” (*Vancouver Province*, Apr. 21, 1913: 11) were still years away, when a catastrophic explosion at Extension (near Nanaimo) on Oct. 5th, 1909 killed 32 men.¹⁵⁷ Despite legislative assurances that working-class interests would soon be reflected in statute,¹⁵⁸ the deaths served to remind miners that employers were willing to sacrifice workers to maximize profitability. The explosion had occurred because the company had insisted upon using open flame head-lamps (as opposed to a more expensive, sealed safety-lamp), despite knowledge of the presence of dangerous concentrations of gas.¹⁵⁹ For workers, the explosion was proof that legal obligations were no more binding on mine owners than previous moral obligations had been (*B.C. Federationist*, June 25, 1915: 1).

In the interim, a new ideology had been gradually emerging, based upon obedience to ‘the laws of science.’ F.W. Taylor’s ‘scientific management’, while addressing production

157 The coroner’s jury absolved the company of criminal negligence; PABC, GR 429, Box 17, File 2, 4758/09.

158 The Lieutenant-Governor called for “the application of every possible safeguard for the miners” during the opening of the 1911 session of the House (40 *JLA* 1911 Jan. 12: 2).

159 As the *B.C. Federationist* (July 13, 1912: 1) notes, these circumstances repeated themselves in 1912, after James Dunsmuir’s mine had passed in ownership to Mackenzie and Mann (owners of the Canadian National Railway). Mines inspector Newton had declared the mine unsafe after detecting gas. The company was ordered to cease using naked lights, and safety lamps were to be made available to workers. The company refused to comply. The *Vancouver World* (Dec. 17, 1910: 4) published a damning indictment of the callous attitude of coal-mining capital. The paper characterized the “massacre of miners” for “corporate profit” as “brutal”:

...lives (are) not lost because of (a) lack of knowledge...an explosion in a mine is not an accident; it is a brutal crime...the fact remains...that the managers and directors of the coal company in question will not be punished for the crime, even though they have dipped their hands in the blood of the coal diggers.

See also, Bercuson (1978: 221), for an account of the Bellevue explosion; *Labour Gazette*, July 1914: 103; *Daily Province*, June 19, 1914: 1; June 20, 1914: 4.

concerns, did nothing to lessen the destructive effects of the process upon the workforce.¹⁶⁰ In British Columbia, 'scientific management' was endorsed as a mechanism to facilitate greater production, encourage harmony between capital and labour, and counter Bolshevik activity (*Colonist*, Dec. 10, 1919: 15). Kealey (1985) notes that the working class resisted production initiatives that ignored dangerous working conditions and the unpleasant consequences of such conditions for workers. In Vancouver, a 'Workmen's Alliance', with an I.W.W. esque platform, was formed with the express purpose of securing a new compensation Act, eight hour legislation, electoral franchise for women, freedom of religion, speech, and political beliefs; and, a union of all working people (*Vancouver Province*, Nov. 16, 1909: 15).

Available evidence suggests that expansive measures were being implemented to discipline what was fast becoming an unmanageable workforce.¹⁶¹ Individuals such as Ginger Goodwin, a socialist and gifted orator, were central to working-class political and industrial mobilization (see, Mayse, 1989). In order to counter the unsettling effect of upstart labour organizers, the State facilitated massive immigration to increase the threat of a reserve labour pool. This tactic was a but a single example of the symbiotic nature of State and capital. Wages were effectively reduced, and labour agitation for legislative reform was quelled, if only temporarily. This labour was effectively utilized to break strikes, and compensate for labour shortages as a consequence of high mortality rates, especially in resource extraction industries

160 Taylor believed workers were not unlike "an intelligent gorilla", "stupid and phlegmatic...(requiring training) by a man more intelligent than himself" (Nightengale, 1982: 41).

161 Encoded telegrams were used by the Attorney-General to relay strike information. The Crows Nest Pass Coal Company refused to open their mines with strike-breakers until the government agreed to provide "genuine mounted police" to effect order (PABC, GR 429, Box 13, File 4, 2752/06). Other mine operators requested similar assistance to crush unrest (PABC, GR 429, Box 14, File 4, 4076/07). At Victoria, J.H. Hawthornthwaite was denied the floor by the Conservative majority. Without the protection of parliamentary immunity, he lashed out at James Dunsmuir, calling him a "brute", "human hyena" and "champion union smasher." Hawthornthwaite also accused Dunsmuir of violating "every labour law in the province" at his mines (*Daily Province*, Feb. 3, 1908: 1; *B.C. Federationist*, July 13, 1912: 1). Hawthornthwaite's statements did not escape the notice of the Vancouver Chief Constable. He enclosed the *Daily Province's* coverage of the speech in correspondence to the Attorney-General, and offered to make "further enquiries in the matter" (PABC, GR 429, Box 15, File 1, 580/08).

and railroad construction. There was also considerable pressure from labour contractors and employer interests to increase the immigration of persons deemed 'desirable' for domestic and farm labour. As early as 1907, Hawthornthwaite and Williams had demanded that immigrants brought to British Columbia by the Salvation Army "by misrepresentation and false statements, and...in a destitute condition" be stopped (36 *JLA* 1907: 100; see also, *B.C. Federationist*, April 3, 1914: 1). Williams discovered provincial agricultural interests had expressed an "urgent" demand for large immigration increases in farm and domestic labour.¹⁶² Victoria 'ladies' supported the farmer's efforts to secure more Chinese. Indeed, the 'ladies' considered Chinese servants "most suitable for farm and domestic purposes." A scarcity of Chinese labor meant that Chinese residents were able to exact a higher price for their services. The 'ladies' were not amused:

...We want servants, and the only way to obtain them...is by allowing Chinese to come into the country in larger numbers than heretofore (*Colonist*, Feb. 22, 1907: 10).

The Salvation Army was also actively involved in immigration schemes. During 1912, plans were made to import 148,000 widows and 200,000 children from Britain. Labour was incensed, characterizing the plan a "barefaced vulgar traffic in human flesh and blood." The *B.C. Federationist* demanded the State cease acting "in the interests of employers looking for cheap women and child labour" (*B.C. Federationist*, Sept. 28, 1912: 1; see also, *Province*, Mar. 12, 1913: 7). The designation of immigrants and women as farm and domestic help is of crucial importance in understanding their later exclusion from compensation coverage under the B.C. Act.

Since 1910, the cost of living had been rising dramatically, with some employers receptive to the notion that "in the long run, a strike would be cheaper than wage

162 (36 *JLA* 1907: 65). A registered demand existed for 1246 farmhands and 1092 domestic servants; 36 *JLA* 1907: 50.

increases.”¹⁶³ Foreign ownership of provincial services such as the British Columbia Electric Railway was severely criticized for the disregard it encouraged of employee safety.¹⁶⁴

Resident directors were guided by non-resident shareholders demanding profits before safety, as “every dollar spent for (safety was a) proportionate reduction in the profits accruing to the non-resident owners.”¹⁶⁵

In the face of oppressive labour policies, coal and metal mining communities also continued to experience compensation and safety-related strife. The management of the Cumberland colliery was notorious for its attempts to cajole dependents and claimants into abrogating their right to claim under the compensation Act, in favour of ‘compensation’ paid by the company (*B.C. Federationist*, July 20, 1912: 1; August 17, 1912: 1). In Moore v. Crow’s Nest Pass Coal Company, Limited (1910), the company paid compensation of \$10.00 per week as ordered by an arbitrator, but later arbitrarily arrested payments at 38 weeks.¹⁶⁶

Another miner recovering from an eye injury was refused compensation by both an arbitrator

163 Similar management philosophies contributed to a record 490,726 person-days lost in 1912 due to strikes. Clearly, strikes were becoming “bigger, more bitter and longer” (Phillips, 1967: 51). Any illusions that workers were not to be taken seriously was shattered with the revelation that Lenin was being published in the *B.C. Federationist* (Roy, 1972-73: 15). Employers were cognizant of the feeling among employees that “a good time is coming for them and that they are going to have much more their own way than in the past” (Roy, 1972-73: 13).

164 One railway electrician received a 30,000 volt shock, permanently relegating him to a wheelchair. The foreman had authorized the work after assuring the worker the power was off. The company contested the compensation claim, arguing the substation equipment was in perfect working order. They alleged the injury was consequence of the victim’s own negligence; *Vancouver Sun*, June 25 1914: 2. See also, Brown v. British Columbia Electric Railway Company, Limited (1910) 15 B.C.R. 350; Carty v. British Columbia Electric Railway Company, Limited (1911) 16 B.C.R. 3; McDonald v. British Columbia Electric Railway Company, Limited (1911) 16 B.C.R. 386.

165 *B.C. Federationist* (Dec. 9, 1911: 1). Organized labour was acutely aware of the regulatory nature of legislation affecting business, and the punitive nature of laws affecting street criminals. Criminals were imprisoned or executed. Corporations were able to “kill passengers and employees and escape with the payment of such nominal damages as the appeal court may decide to be just and proper.” Hawthornthwaite attempted to introduce a bill to protect employees and passengers on tramways, but was defeated by a Conservative majority (35 *JLA* 1906: 128).

166 (15 B.C.R. 391). The miner remained completely incapacitated, and was forced to contest the company action. The Supreme Court ruled in the plaintiff’s favour: an arbitrator appointed by the court had the same powers as a judge in a civil action.

and the appeal court when, due to a misunderstanding between he and his doctor about the treatment schedule, he lost his sight. The court upheld the decision of the arbitrator that the plaintiff lost his eyesight through his own negligence (Powell v. The Crow's Nest Pass Coal Company, Limited (1915) 22 B.C.R. 514; *Vancouver Province*, July 13, 1915: 10).

Such unjust decisions, and the ensuing labour unrest, clearly had some impact on the government decision to appoint a Labour Commission in 1912. In 1894, mine inspector Archibald Dick reported that miners at the Wellington and Union mines did not "take the benefit of the privilege, granted them by the Coal Mines Regulation Act", to inspect the mines once a month.¹⁶⁷ Management clearly intimidated the miners to such a degree that none were willing to forego employment to secure a safe workplace. Working conditions were appalling:

You went into your place with your lamp held half-way between the roof and the floor...If you put the lamp down, it went out in black damp, that's a heavier than air gas. If you put it up, you lit the explosive gas on fire. (My uncle and father) kept after their brother-in-law who was working in Number 6 (shaft at Union Colliery) to quit and get out there. He did and it was about a week after he got out that everybody in the mine was killed.¹⁶⁸

The lack of a union meant no forum existed to air grievances. Mine-owners categorically refused to enter discussions with any union. Management recalcitrance made workers receptive to organization by the United Mine Workers of America. Locals were quickly formed at Cumberland, Nanaimo, Extension and South Wellington. The miners and the

167 *Sessional Papers* (1895: 769). Interestingly, the courts did not support the miner's attempts to protect themselves. A 1903 decision (Leadbeater, et al. v. Crow's Nest Pass Coal Company, Limited, No. 2; 2 M.M.C. 145, 10 B.C.R. 206, 404) held that a gas committee elected at a union meeting were not "persons employed in a mine", even though the court admitted that the majority of miners were union members.

168 Ben Horbry, *Howie Smith Collection*. The *Labour Gazette* (Mar. 1901: 341 - 342) called the explosion "a disastrous one" in which the No. 6 shaft ("known as a very fiery one") at the Union Mine, Cumberland, claimed 65 lives. For a more complete account of the Union mine explosion, see *Labour Gazette* (Mar. 1901: 354-55).

women who supported them (*B.C. Federationist*, July 25, 1913: 1) resented the oppressive company position:

If you had a grievance, you couldn't state your grievance. If the company didn't like it they could tell you to get! So you just scudded along...in them days, the company had the only say. (Jim Galloway, *Howie Smith Collection*).

On June 15th, 1912 at Extension, two miners inadvertently provided the catalyst for one of the most bitter and protracted strikes in British Columbia history.¹⁶⁹ Miners Issac Portrey and Oscar Mottishaw were members of a gas committee that miners cautiously endorsed to make monthly mine inspections.

The companies refused to sanction the gas committees, as this activity interfered with production, and encouraged collective action on the part of the miners. The Department of Mines declined to actively enforce the *Coal Mines Regulation Act* or provide consistent support to the miners in their gas-detection efforts.¹⁷⁰ When Portrey and Mottishaw discovered gas, they filed a report with the Department of Mines, and their finding was confirmed by an inspector. Mottishaw was fired from Extension almost *immediately*. The situation did not sit well with the mining community:

They could tell men to do a thing, like report that gas and the minute they reported it, they were fired! Well, that was enough to show me just then that something was wrong. There must be something wrong when a committee is hired to report something and when they report it, they fire these men. There must be something wrong with the bosses side, mustn't there? (Ellen Greenwell, *Howie Smith Collection*).

Mottishaw departed to seek employment at Canadian Collieries (Dunsmuir) Cumberland mine. When the miner's name was recognized by the mine superintendent, Mottishaw was again fired, then blacklisted from securing employment in any other mine (Phillips, 1967). The Cumberland miners demanded reinstatement of Mottishaw, responding with a one day

169 For a review of the events surrounding the Nanaimo Miners strike of 1914-16, see McMullan and Ratner (1983); Ratner and McMullan (1989); PABC, *Howie Smith Collection*.

170 In a public address, Parker Williams accused the Department of Mines of being more interested in "sell(ing) mines and break(ing) strikes" than "safeguard(ing) the life and limb of the worker" (*B.C. Federationist*, June 25, 1915: 1).

'holiday' on September 16, 1912 in order to discuss mine safety concerns. A miner's deputation was dispatched forthwith to management, but the latter refused to negotiate. Reporting to work the next day, the miners discovered Canadian Collieries had demanded each miner renege their union affiliation, and submit to individual two year contracts that did not address working conditions. Portrey remained employed at the Extension mine until Sept. 18, 1912, when a sympathy strike was called in support of Cumberland mine workers.

The dispute escalated with the introduction of strike-breakers.¹⁷¹ By May 1st 1913, the decision was made by the United Mine Workers executive to call a general strike of all Island mines (*B.C. Federationist* Oct. 5, 1912: 1; Phillips, 1967: 57-58). The miners were all too aware of the horrific effects of a gas explosion in a mine,¹⁷² and stood by their decision to have both miners reinstated, and genuine protection from the State for miners who reported gas to their employers.

As the events in Nanaimo took on an increasingly adversarial nature, so too did the political clamour for an end to the strife become more frequent. The miners received continuous support from Social-Democrats Parker Williams and John Thomas Place.¹⁷³ The two M.P.'s were not only the sole labour representatives; they also remained the only official

171 The strike halted production for a short period. However, Canadian Collieries (Dunsmuir) soon revived production back to two-thirds of normal by importing strikebreakers from England, and utilizing Chinese labour. The mining companies, intent upon exterminating the unions, told a federal government conciliator that "there (was) nothing to arbitrate...(Phillips, 1967: 58. Ironically, Robert Dunsmuir made an identical threat in 1877 (PABC, GR 429, Box 1, File 6, 206/77). The McBride administration was concerned less with the reasons for the lock-out than it was with the fear that production might be interrupted; 43 *JLA* 1914 Jan. 15: 2.

172 In the 28 years prior to the 1912 strike, 373 miners died on Vancouver Island as consequence of gas explosions. (Nanaimo = 180; Wellington = 83; Cumberland = 69; Extension = 50). 1902 proved to be a catastrophic year. 139 deaths occurred at British Columbia mines, in addition to 121 other injuries classified as 'serious'; *Sessional Papers* (1903) 3 Ed. 7 at H279.

173 Williams and John Thomas Place placed several motions before the House demanding the government end the economic damage being done to individual miners at Cumberland and Ladysmith, and the provincial economy as a whole. Moreover, they enjoined McBride to address the unsafe working conditions that were largely responsible for the initial protest and subsequent lockout. See, 42 *JLA* 1913 Jan. 31: 23; Feb. 5: 29 (Williams and Place call for a Select Committee to determine "whether the questions at issue between Canadian Collieries (Dunsmuir) Ltd., are questions as to the safety of the lives of the mine workers"); 43 *JLA* 1913 Feb. 28: 114.

Opposition to the Conservative government.¹⁷⁴ Over the course of the strike, the miners also registered strong support from the pulpit¹⁷⁵ and the public.¹⁷⁶ Despite military intervention on the Island,¹⁷⁷ the Speaker of the House refused to intervene on the grounds that affirming Opposition motions would involve “an expenditure of public moneys by the government” (42 *JLA* 1913 Jan. 21: 23; 43 *JLA* 1915 Feb. 5: 29). McBride personally refused to end the dispute, implying that strikers were seeking to infringe upon ‘management rights’ (Phillips, 1967). Williams and Place responded with a motion of non-confidence (43 *JLA* 1914 Feb. 13: 46), charging McBride with making “a shameless sacrifice of the rights of the miners,

174 Williams and Place were the sole Opposition in the House, and appealed to the government on two different occasions to modify House Rule 110. Rule 110 provided that the results of a House vote were not to be entered upon the Journals of the Legislative Assembly unless demanded by three M.P.P.'s. The overwhelming Conservative majority negated the motion, thus ensuring that their habit of conducting public business in a secretive manner would continue unobstructed. The vote effectively denied the Opposition the ability to secure and record the will of the House, and to communicate voting patterns to the working class. See, 42 *JLA* 1913 Jan. 24: 15; and 43 *JLA* 1914 Jan. 19: 7.

175 One Reverend Dr. Fraser succeeded in filling the pews every Sunday by arguing that the “mine owners ought to be in prison...I have come to the conclusion that the lives of a few miners do not count with the owners when their protection entails the cutting down of dividends” (*B.C. Federationist*, Dec. 13, 1913: 2).

176 A report written by a militia captain sent to crush the strike noted:

The Regiment had a rather mixed reception in marching through the streets (of Vancouver enroute to the docks, and hence, the Island), a good deal of hostility being shown by a section of the crowd... (Roy, 1979: 83).

An eyewitness reported:

The militia was sent from Vancouver and what a time they had in Vancouver! The people was down at the boats calling them everything they could call them...! (Ellen Greenwell, *Howie Smith Collection*).

177 ‘Bowser Declares Martial Law on Vancouver Island: Hundreds of special police rush to aid of coal companies to intimidate strikers into submission’; (*B.C. Federationist* Nov. 22, 1912:1) Norris (1980: 71) argues quite rightly that the assertion by U.M.W.A leader Robert Foster that martial law had effectively been declared “showed remarkable ignorance of local law...” Nonetheless, a review of the strike in an account written by a militia captain (see; Roy, 1979), details “the great morale effect” (p. 84) of the machine gun on the strikers, in addition to other actions such as arrests, searches and disruptions of peaceful union meetings without any ‘legal’ grounds whatsoever. Clearly, civil law and procedure were abrogated in an exceedingly repressive manner.

and the welfare of the public to the exigencies of a group of financial adventurers.” This initiative was crushed by the Conservative majority on February 16th, 1914.

The miners responded to military repression with vociferous resistance. The response of the State to a challenge of the established social order was swift and sure.¹⁷⁸ A total of 256 miners were arrested and held for trial.¹⁷⁹ The debates in the *Journals of the Legislative Assembly* make it clear that the State employed organized thugs (such as Pinkerton ‘detectives’) to spy upon, and instigate worker unrest in order to justify later repressive action.¹⁸⁰ As Phillips (1967) notes, the miners strike of 1912-14 left an indelible mark on the collective consciousness of the affected miners. As Issac Portrey was being released from the New Westminster gaol in Feb. of 1914, he opined that the “treatment of the prisoners would, in the end, make them stronger adherents of their union than anything else could possibly have done.”¹⁸¹

When the strike finally ended,¹⁸² the miners had won the right to belong to the United Mine Workers of America, and the company was bound not to discriminate as a

178 Kellough, et al. (1980: 254-55) argues a positive correlation between the status of legitimacy the State possesses in a society, and the amount of dissent that will accordingly be allowed. When a “political emergency” occurs, such as the Miners Strike of 1914, the ‘criminal’ label is employed to identify “social dissent as crime”, and social activists as “criminals.” Invoking the criminal law in crisis situations serves two functions: crushing social dissent, and discrediting the rebellion, thereby partially or completely defusing the crisis.

179 43 *JLA* 1914 Feb. 10: 34-38. The names and charges against all miners fill over three pages within the *Journals*. Attorney-general Bowser emptied the Nanaimo jails of prostitutes in order to imprison “thugs” (miners); *Vancouver Province*, Feb. 18, 1914: 5.

180 (37 *JLA* 1908: 8; 43 *JLA* 1914: 16, 19, 30; 45 *JLA* 1916: 151). Attorney-General Bowser met personally with one Pinkerton operative on August 20, 1913. He directed the spy to “mingle with the trouble-makers...obtaining all possible advance information regarding impending plans of the strikers” (PABC, GR 429, Box 19, File 1, 7529/16).

181 *B.C. Federationist* Feb. 13, 1914: 1. The last imprisoned coal miner (an organizer of the United Mine Workers of America) was released on Sept. 25, 1914; *B.C. Federationist*, Sept. 25 1914: 1.

182 The two-year strike ended with a vote of 1030 to 363 in favour of the McBride deal that stipulated the companies were to bring in no new miners until all previous employees were taken back to work.

consequence. However, the company did not have to recognize the union (*B.C. Federationist*, Aug. 21, 1914: 1). By November of 1914, the coal companies had broken their promises. German and Austrian workers were retained, and the rest of the workforce was "told to go to War" (*B.C. Federationist*, Nov. 13, 1914: 1). Norris (1980: 71) suggests the strike occurred

...at a time when the climate of opinion in the labouring force was changing quickly from resentful acceptance of the economic helotry in which companies held them to violent rebellion against the companies and the social order they represented...

Clearly, the strike was a harsh defeat for the labour. Yet, as Palmer (1983: 157) argues, it also witnessed moments of working class initiative and solidarity all the more impressive because of the range and diversity of monopoly capital's opposition. Economic change, the transformation of the labour process in specific sectors, the rise of the interventionist State, and the flooding of the labour market with new workers, forced Canadian labour to fight back as never before.

The stage was set for a series of mining disasters that would shatter what little remained of State legitimacy in the eyes of the working-class.

On January 2, 1915, an explosion occurred at the Coal Creek Colliery operated by the Crows Nest Pass Coal Company. When the explosion occurred, no miners were working within the mine.¹⁸³ Nevertheless, a single death occurred as a consequence of the mine manager balking at temporarily sealing the mine entrance to suffocate fires burning within the mine. The manager's resistance to a safe course of action could be attributed to a desire to maintain production.¹⁸⁴

Another incident on Feb. 9, 1915 was more serious. Twenty Vancouver Island miners drowned when the flooded workings of an adjacent mine, abandoned earlier, broke through a

183 Nonetheless, 4 miners gathered at the mine entrance readying themselves for maintenance duties were injured, one severely; see, 2 *Sessional Papers* (1916) 6 Geo. 5 at K323.

184 A party of four descended the mine, including the superintendent, two supervisors (one of which was killed) and a mine inspector. An inquiry was called on Mar. 29, 1915 at Fernie. See, 44 *JLA* 1915 Feb. 15: 21.

coal seam and poured into the active mine.¹⁸⁵ Workers were outraged to discover that the Chief Inspector of Mines knew that mine surveys whose scales did not correspond were routinely used by the coal companies (*B.C. Federationist* May 21 1915: 1). In the last weeks prior to the flooding, water seeping into the active mine was so foul that miners vomited as they worked at their places (*B.C. Federationist* May 28, 1915: 1; *Vancouver Province*, Feb. 10, 1915: 1). Plainly, the fear of losing their job over-rode any concern for personal safety.

Four years earlier, in 1911, Hawthornthwaite and Williams had attempted to amend the *Coal Mines Regulation Act* to allow any person to view the blueprints of abandoned mine workings, but were crushed by the Conservative majority (40 *JLA* 1911 Feb. 23: 74). At the inquest into the deaths, Chief Inspector of Mines Thomas Graham agreed with the principle of the proposal, but recommended restricted access.¹⁸⁶ Moreover, he suggested permission be required from the Chief Inspector and the *Minister of Mines* (2 *Sessional Papers* (1916) 6 *Geo.* 5 at K334). The labour press cried out in frustration:

The miners themselves would have averted this disaster if the government had adopted their suggestion of making it legal for the miners to elect their own inspectors. Instead...Inspector Graham (was appointed)...under the thumb of the government which...was the grovelling slave of the coal-owners...Unless Attorney-General Bowser wants to prove that there is one law for the rich and one for the poor he will at once commence proceedings against the Chief Inspector of Mines (*B.C. Federationist*, May 21, 1915: 1).

The appearance of a circular in Nanaimo, signed by 'N. Wright', soliciting funds for the 'Wellington Relief Committee', served to inflame the situation further. An investigation by the miners union revealed that the money was being collected by select company officials and a handful of anti-union workers. The money was being funnelled into a Wellington Colliery

¹⁸⁵ 2 *Sessional Papers* (1916) 6 *Geo.* 5 at K328; *Labour Gazette*, Mar. 1915: 1018. Retired miners argued that Dunsmuir had closed and flooded the mine more than 20 years earlier because he had deliberately exceeded the bounds of his coal survey. The mine was flooded when it was believed a State investigation into the allegations was imminent; *B.C. Federationist*, Feb. 12: 1915: 1.

¹⁸⁶ Inspector Graham admitted at the inquest that he knew the coroner's jury had been misled with regard to the survey scales of the two mines. Labour agitated for charges of criminal negligence, and the immediate dismissal of Graham, "for the benefit of humanity and the saving of lives of men in the mining industry" (*B.C. Federationist* May 28, 1915: 1).

bank account, in order to relieve the coal company from as much financial obligation as possible (*B.C. Federationist*, Mar. 15, 1915: 1).

Later 'consideration' of the inquiry testimony resulted in charges being laid against Graham and colliery manager J.H. Tonkin.¹⁸⁷

Approximately three months later, on May 27, 1915, the tiny community of Wellington was delivered another blow when 22 miners died in an explosion (See, *B.C. Federationist* May 29, 1915: 1; *Labour Gazette*, June 1915: 1371). The Reserve mine, operated by the Western Fuel Company, had been in production for five months, but had already developed a notorious reputation for gas.¹⁸⁸ A two-day Coroners inquest, begun at Nanaimo on June 16th, revealed that a gas 'outburst' was responsible for the explosion.¹⁸⁹ In a departure from many previous inquests, no blame was attached to the miners for the explosion.¹⁹⁰

187 Mr. Justice Murphy found Graham guilty of omitting to act where action was called for. Tonkin was singled out as the culprit who had authorized the removal of the 100 foot barrier wall separating the flooded and new mine workings, "fully aware ...that error meant death in all human probability to many miners..." (*B.C. Federationist*, Sept. 10, 1915: 1). Even as labour were cautiously optimistic that justice would be served against Tonkin and Graham, an earlier incident involving Tonkin as manager of the Crows Nest Colliery remained unresolved. Warrants for the arrest of Tonkin (a total of five informations) had been issued by the Attorney-General, but they were not executed, and later withdrawn. The Crows Nest Pass Coal Company had advised the Attorney-General that "justice had been done" simply by laying the informations, and requested the warrants, informations and planned proceedings be withdrawn and annulled, a request to which Attorney-General Bowser acceded; see, 39 *JLA* 1910 Feb. 7: 27.

188 Inspector Graham's report on the incident cites several 'outbursts' of gas during the development of the mine:

...the largest of these occurred at the extreme bottom of No. 1 shaft, 1,068 feet in depth...The outburst...occurred without much warning; it displaced from 25 to 30 tons of coal, the workmen narrowly escaping being buried...

Despite the operation of a fan with a capacity of 10000 cubic feet a minute, the mine remained explosive five and a half hours after the initial gas release; see, 2 *Sessional Papers* (1916) at K335.

189 Inspector Graham surmised that the sudden outburst at the face of the mine was enough to trap the first victim, knocking the miner to a half-sitting position and instantly breaking both his ankles. As his 'safety-lamp' broke, the flame ignited the gas, blowing out 231 tons of coal, in turn releasing more methane gas, which mixed with coal dust to create a secondary explosion of tremendous force; 2 *Sessional Papers* (1916) at K343.

190 2 *Sessional Papers* [1916] 6 Geo.5 at K343. Only 15 years earlier, workers were blamed for disasters on a routine basis. See, for example, the comments of Thomas Morgan, inspector of mines

Nonetheless, U.M.W.A. president Robert Foster argued that regulatory statutes were “violated in such a flagrant fashion, that those responsible for it could not possibly plead they did not realize what they were doing.”¹⁹¹

Significantly, the Reserve miners did not have gas inspection committees.¹⁹² In view of the events surrounding the 1912-14 strike, Foster believed “the miners would sooner risk their lives than their jobs.” The *Province* suggested that any miner clearing a mine for production would subject himself to “sneers of a certain section of his fellow workers who believe he is currying favour with the management.” Nonetheless, the *Labour Commission* later recommended miners for the job, because they “understood the conditions, and have a personal interest in clear mines.” The Commission recommended gas committees be elected from mine employees (*Province*, Mar. 4, 1914: 1).

Considerable suspicion existed among miners that the company and inspectorate were in collusion with one another.¹⁹³ The Western Fuel Company circulated a petition that required the miners approve of the performance of government mine inspectors as they carried out their duties at the mine. The validity of the exercise was clearly open to question:

at Vancouver Island (“...in nearly every instance they occurred through want of thought and care on the part of the workman; [having mostly] brought the trouble upon themselves...”); *Sessional Papers* (1901) 1 Ed. 7 at 953; see also, the comments of two separate coroners jury foremen; *Sessional Papers* (1903) 3 Ed. 7 at H268.

191 Brattices were a central feature of any coal mine. They consisted of a temporary fence erected at each place to channel air pumped from the surface directly to the most hazardous area - the face - where gas was most often released as a consequence of disturbing the coal. Foster charged that at Reserve, brattices were as far back as 20 feet from the coal face due to a rapid production pace. Moreover, the miners were forced to consider why the mine was running 3 consecutive 8 hour shifts, a far more dangerous practice than 2 shifts, especially in a mine that was known to release large quantities of gas; *B.C. Federationist* June 25, 1915: 1.

192 *B.C. Federationist*, June 25, 1915: 1. The *Coal Mines Regulation Act* provided that if the miners did not select a gas committee themselves, the inspector was bound to appoint two workers. No such committee existed at Reserve. See also, *Sessional Papers* [1889] 53 Vict. at 301 for a review of miners gas committees and the enabling provisions of the *Coal Mines Regulation Act*.

193 *Province*, Mar. 4, 1914: 1. Counsel for the miners at the inquiry perceived a distinct “impression of sympathetic understanding between management and inspectors.”

The signatures...are easily obtained because they know enough to realize they must expect to be discharged on some excuse or other...it (is) characteristic of the company that, when trouble (comes) along, it should show such a touching desire to consult the men with respect to the mine inspectors...(B.C. *Federationist*, June 25, 1915: 1).

The Report of the Royal Commission On Labour

The *Labour Commission*¹⁹⁴ conducted its investigation at a time when unemployment was rising,¹⁹⁵ and a virtual state "industrial warfare" (B.C. *Federationist*, Feb. 27, 1914: 1) was occurring on Vancouver Island: the 1912-14 strike was at it's height. The report noted that the "working-class" were responding to "industrial conditions" and the "disappearance of all personal relations" with militant collective action, a strategy viewed by workers as "the best means of ameliorating (these) conditions" (p. M2). Delegates attending a July, 1914 B.C. Federation of Labour convention at the Vancouver Labour Temple advocated measures ranging from a general strike, to street rebellion, to "open murder." As the *Victoria Daily Times* noted, delegates remained in favour of organizing for the ballot box, but workers were willing to resort to the bayonet against capital, in the event dominant political institutions continued to fail them:

The question that faced the delegates was not of Vancouver Island or British Columbia, but of international labour against international capital (*Victoria Daily Times*, July 14, 1914: 2).

The six labour Commissioners¹⁹⁶ examined 419 witnesses, and visited a variety of industries, including logging and railway construction camps, and retail shops. The report

194 *Report of the Royal Commission On Labour*, announced on Feb. 27, 1912; appointed Dec. 4th, 1912. See, PABC, GR 684; *Sessional Papers* (1914) at M1; *Labour Gazette*, Mar. 1912: 838.

195 The *B.C. Federationist* (Nov. 13, 1914: 2) noted that a proposal to arm 250 Vancouver police with rifles, ostensibly for the purpose of quelling 'alien' disturbances, did not fool many people - "Thoughtful folk are connecting it with the exceptional number of unemployed workmen who are now in Vancouver..."

196 The past record and political sympathies of each labour commissioner were scrutinized by the *B.C. Federationist* (Dec. 13, 1912: 1). Labour demands to be represented on the Commission were ignored; *B.C. Federationist*, Dec. 6, 1912: 1.

reviewed the health and sanitary provisions of camps and shops, the statutory provisions for "Protection of Life",¹⁹⁷ and compensation for industrial injuries. The Commission also recommended the creation of a worker-administered first-aid scheme to be implemented in remote industrial camps. When tabled, the final report was "noticeable throughout by its sympathetic attitude toward labour" (*Province*, Mar. 4, 1914: 1). In total, 25 unanimous and comparatively progressive recommendations were tabled,¹⁹⁸ including that of a compulsory State compensation scheme to be administered by an administrative board.

In the years since the introduction of the 1902 Act, the attitudes of employers had undergone a marked transformation. According to the *Labour Gazette* (April 1913: 1105), compensation was one issue that elicited unanimity between the representatives of capital and labour at the hearings. Building contractor James Henderson believed no-fault insurance would

...be a splendid idea. I think this employers liability Act is an awful hard thing on a man employing men (PABC, GR 684, Box 2, Vol. 6, File 1, pg. 92).

Other employers operating sawmills favoured eliminating a workers' right to sue for new legislation, under which a worker "should get so much, regardless of fault, and the employer to be free of liability" (PABC, GR 684, Box 3, Vol. 7, File 3, p. 345; Box 1, Vol. 2, File 4, p. 438). Worker advocate J.H. McVety believed:

(an injured worker) should receive compensation no matter what way the injury arises...a sure payment, even if smaller, and without the necessity of proceedings of law on the part of the injured one would be a more satisfactory arrangement than any legislation we have existing now in British Columbia (PABC, GR 684, Box ?, Vol. 3, File 3, pg. 363).

197 *Sessional Papers* (1914: M11-12). The Commission reviewed regulations concerning defective scaffoldings and deaths to electrical workers, and recommended the appointment of additional inspectors.

198 Nonetheless, the Commission also recommended: leaving the issue of an eight hour day to the dominion government; no minimum wage; no change in method of appointing gas committees in mines; a continuation of the Asiatic exclusion policy; assisted immigration to be confined to farm and domestic help only; and white women prohibited from employment by Asiatics (*Province*, Mar. 4, 1914: 1; *Vancouver Sun*, June 25, 1913: 11).

The Commissioners were especially concerned about the friction caused by lengthy litigation and the interference of insurance companies. It was recognized that few workers managed to obtain compensation, yet money was being wasted upon excessive over-head costs, shareholder dividends, and litigation fees.¹⁹⁹

The Commission was critical of common law and the operation of the 1891 *Employers' Liability Act* because of the need to prove employer negligence. Moreover, the narrow scope of the 1902 *Workmen's Compensation Act* restricted the classes of labour able to recover, forcing excluded workers to resort to common law and employers' liability legislation. For those able to proceed under the 1902 Act, the cost of arbitration was often prohibitive.²⁰⁰

The Commission re-affirmed the "basic principle" of the 1902 Act that "industry should bear the burden of accidents as part of the cost of production." The benefits and drawbacks associated with removing a worker's right to sue and employer common law defences were weighed. It was determined that even though "each class surrenders to the State certain rights, it is in the public interest that this should be so":

The employer in submitting to the levy of taxes upon his industry receives the benefit of protection from expensive litigation, the workman in return, through he loses the precarious right to sue in tort for damages, receives in return a stipulated amount based upon his economic position in the community. Both (parties), as well as the State as a whole, benefit from the elimination of the friction and loss which...attends all litigation (*Sessional Papers*, 1914: M13).

To ameliorate the "limitations and injustices" of the 1902 compensation Act, the Commissioners recommended modelling new British Columbia legislation after the

199 Lawyer's fees averaged between \$200.00 to \$500.00 dollars per case, so that one-third to one-half of an award was consumed for the service. If repeated appeals were necessary, the plaintiff lost the action, or the award was less than expected, workers frequently went bankrupt (*Vancouver Province*, Dec. 19, 1914: 19). When companies became insolvent due to court actions, workers or their dependents could be forced to "receive a few articles of wear and household goods from the company store"; *Sessional Papers* (1914) at M13; see also, *B.C. Federationist*, Mar. 26, 1915: 1).

200 The report criticized the "settled practice" of charging workers \$100.00 fees at arbitration hearings: "To an applicant for arbitration, in nearly all cases a poor man, this is a considerable burden"; *Sessional Papers* (1914: M12).

Washington Act of 1911, and the Ontario and Oregon bills then under development (*Sessional Papers*, 1914: M13). For the Labour Commission, there was only one practical option:

...it is unnecessary to make recommendations for the amendment of (the 1902) Act. The proper remedy, in our opinion, should not be in amending existing legislation, but in the introduction of a system of compulsory State insurance.²⁰¹

A prominent member of the insurance business, A.S. Matthew, launched a scathing attack on this key recommendation, characterizing it as “an unwarranted interference with individual liberty.” Matthew believed that compulsory State insurance would be “costly and inefficient, and...injurious to human society” (*Industrial Progress and Commercial Record*, Apr. 1914: 27-28). A letter, penned under the pseudonym of “A Manufacturer”, promptly appeared the next month in the *Industrial Progress and Commercial Record*.²⁰² The anonymous author first conceded that “the Chairman (of the Labour Commission) is a friend of the writer’s.” He then advanced his argument for support of a State scheme:

The employers liability companies doing business in the province are not operating from a philanthropic standpoint; they are in it for what it is worth in dividends and as doubtless 90% of the stock is held outside British Columbia, the money “made in B.C.” to help pay those dividends, goes out of the province and stays out.

The *Report of the Royal Commission On Labour* was presented to the House on Mar. 4, 1914. The government promised the recommendations of the Commission would “no doubt greatly assist the legislature” in dealing with “all-important” labour interests (43 *JLA*: 128, 138). Clearly, the Commission itself was at least equally concerned with the position of capital as it was with labour. Certain measures would be required to placate labour, but other concessions would have to be extracted from workers to ensure the long-term viability of capitalist enterprise.

²⁰¹ *Sessional Papers* (1914: M12). However, the Commissioners only extended compensation to those employed in “dangerous jobs.” Other industries could gain entry only at an employer’s request; *Daily Province*, Mar. 4, 1914: 1.

²⁰² May, 1914: 11, 29. A.S. Matthews responded in a subsequent issue; June, 1914: 10.

Some labour critics argued the *Labour Commission* had been “costly and unnecessary”, and that the work should have been done in the House under “ordinary, routine business.” *Vancouver World*, Aug. 28, 1916: 9.²⁰³ Nonetheless, the Commission reaffirmed the demands organized labour had been attempting to extract from the McBride government since 1912.²⁰⁴

Considering the Options: The State Responds

If there had been any question about the position of the judiciary on the compensation issue prior to 1914, the confusion was eliminated by an address delivered by Chief Justice Hunter during the trial of Ward v. Canadian Pacific Railway Company in May of 1914:

²⁰³ The *Vancouver Sun* (Oct. 27, 1915: 4) presented a scathing review of the “hypocrisy and waste” associated with Royal Commissions “at a time when the average Canadian is squeezing every cent and cutting out the frills to keep down expenses.”

²⁰⁴ Delegates to the 1912 B.C. Federation of Labour convention debated the compensation issue extensively. Seven resolutions were ratified, and later modified. A labour deputation delivered the resolutions to Richard McBride; see, *Colonist*, Jan. 27, 1912: 10; Feb. 14, 1914: 2; *B.C. Federationist*, Feb. 20, 1914: 1.

I think it is a reproach to our jurisprudence that men who are injured in these industrial occupations should be forced to resort to questionable actions against employers...The employer...must protect himself against these lawsuits, which in many cases are questionable, and adding the cost to the prices of his goods, and on the other hand, the unfortunate plaintiff if he does succeed has to cut up a large share of the proceeds with his solicitor...the State should make provision for these industrial accidents, just as it does for the deaf, dumb and blind...in the long run, the cost comes out of the community, and surely it is not beyond our capacity to devise a simple procedure by which these unfortunate men who are injured can get proper indemnity from the State...²⁰⁵

Hunter's sympathies were thus clearly aligned with capital. A mechanism had to be devised to lessen the "questionable actions" capital and the courts were being troubled with. In Ontario, Chief Justice William Meredith was wrestling with the same issue:

(The worker) is the victim of parasites...Lawyers and insurance companies are as inseparable as the Siamese twins and about as useless...Why bother cutting their tails, an inch at a time? Why not start at the head and cut it off at once? (*B.C. Federationist*, June 25 1914: 4).

Workers were less victims of parasitical lawyers and insurance companies, than they were victims of a mode of production. Meredith was clearly unable (and unwilling) to radically alter the structure of capitalism, but he was able to offset some of the debilitating aspects by re-arranging legal and financial relationships within that structure. The Canadian Manufacturers Association was able to support Meredith's solution for this reason. Despite initial "fumbling in the dark" for a policy, the powerful financial aggregation of the C.M.A. eventually concluded that "compensation could work to the benefit of business" (Piva, 1975: 45; *Labour Gazette*, Feb. 1912: 779).

As Weinstein (1967: 170) relates, the judiciary comprised the rearguard of the corporate and political elite who were being pressed into developing a progressive welfare State ideology. Court decisions unfavourable to labour barred "the path of social reform" and thus strengthened the Socialist movement. As in other global jurisdictions, the British Columbia courts did eventually respond to external pressure. In B.C., Chief Justice Hunter

²⁰⁵ *Ward v. Canadian Pacific Railway Company* (not reported); *Vancouver Sun*, May 26, 1914: 11; *B.C. Federationist*, May 29, 1914: 1.

recognized that workers were winning more frequently at arbitration, trial and appellate levels - a conviction that is substantiated through a review of the reported cases.²⁰⁶

After years of complacency on the compensation issue, the B.C. government began to stir. Six months after Chief Justice Hunter's lecture in Ward, W.J. Bowser attended the labour strong-hold of Fernie. He delivered a speech attacking the insurance companies for producing injured claimants who were "depressed and discouraged", and intimated the government was prepared to draft a compensation bill to ameliorate the condition.²⁰⁷ A one

206 Reported cases indicative of a greater willingness on the part of the judiciary to decide in favour of the plaintiff include: McKelvey v. Le Roi Mining Co., Ltd. (1901) 9 B.C.R. 62; Gunn v. Le Roi Mining Co., Ltd. (1903) 10 B.C.R. 59 (duty of superintendent to give warnings and instructions); Love v. New Fairview Corporation (1904) 10 B.C.R. 330 (even if a statute imposes a penalty upon the employer for a breach of statute [i.e., the *Factories Act*], should the worker suffer as a consequence of the breach, the worker may initiate an action at either the common law or at employers' liability. Love was based upon a 1898 English case; Ruegg, 1910: 42); Booker v. Wellington Colliery Company, Limited (1902) 9 B.C.R. 265; McGregor v. The Canadian Consolidated Mines, Limited (1906) 12 B.C.R. 116, 373; Green et al v. The British Columbia Electric Railway Company, Limited and Edward Cook (1906) 12 B.C.R. 199; Snow v. Crows Nest Pass Coal Company, Limited (1907) 13 B.C.R. 145 (see also, *Labour Gazette*, Mar. 1907: 1031); Darnley v. C.P.R. (1908) 14 B.C.R. 15, 2 Butt. W.C.C. 505 (minor misrepresenting age does not preclude from eligibility for recovery; *Colonist*, Sept. 26, 1908: 7); Barnes v. British Columbia Copper Company, Limited (1909) 14 B.C.R. 397 (an employer who conducts operations with a negligent or defective system is liable to workmen for injury thus occasioned; *Labour Gazette*, Jan. 1910: 834); Carrigan v. The Granby Consolidated Mining, Smelting And Power Company, Limited (1909) 16 B.C.R. 157, *Labour Gazette*, Oct. 1911: 390; Cervio v. Granby Consolidated Mining, Smelting and Power Company (1910) 15 B.C.R. 192; Granick v. British Columbia Sugar Refinery Company (1910) 15 B.C.R. 198; Collins v. Britannia Mining and Smelting Co. (not reported; *Labour Gazette*, Nov. 1911: 506); Hodgson v. Westholme Lumber (not reported; *Colonist*, Nov. 24 1911: 10, *Labour Gazette*, Jan. 1912: 710; Bosomworth v. Star Laundry, Co. (not reported; *Daily Province*, Sept. 30, 1910: 8); Cook v. Newport Timber Company (1913) 18 B.C.R. 624; Hichen v. B.C. Sugar Refinery, Co. 18 B.C.R. 397, *Labour Gazette*, May 1913: 1325; In Re Moffatt and The Crow's Nest Pass Coal Company (1913) 18 B.C.R. 303; Hatch v. Powell River Paper Company, Limited (1913) 18 B.C.R. 1; Culshaw v. Crow's Nest Pass Coal Company (1913) 19 B.C.R. 13; Maftichuk v. Crows Nest Pass Coal Co. (not reported; *Vancouver Sun*, June 21, 1913: 1 *Labour Gazette*, Aug. 1913: 218-20; *Daily Province*, 20 June, 1913: 1); Ellis v. British Columbia Electric Railway Company, Limited (1914) 20 B.C.R. 43; Topay v. Crow's Nest Pass Coal Co. (1914) 20 B.C.R. 235, *Labour Gazette*, Jan. 1915: 823); Cook v. Canadian Collieries (Dunsmuir), Limited (1914) 21 B.C.R. 64; Pomeroy v. Canadian Bridge Co. (not reported; *Vancouver Sun*, Apr. 18, 1914: 10); McPhee v. The Esquimalt and Nanaimo Railway Company (1915) 18 B.C.R. 450, 49 S.C.R. 43; Lyons v. The Nicola Valley Pine Lumber Company (1916) 23 B.C.R. 141; Moncreiff v. Barnett McQueen Co., Ltd. 24 B.C.R. 185.

207 Bowser was adamant that a solution be found that was "fair to all sides and all classes." Nonetheless, he feared "extreme union men throughout British Columbia would declare that the government had not gone far enough, while...investors and employers would cry out that it would hinder industry" (*Province*, Dec. 15, 1914: 3).

year period of consideration was included in order to solicit input on the bill from interested parties. In this way, Bowser believed the "Act, as finally passed, would be as nearly perfect as possible" (*Daily Province*, Dec. 15, 1914: 3).

However, Bowser qualified his announcement by suggesting a world financial crisis had created an "inopportune time to burden employers with workmans' compensation." He believed Opposition attempts to introduce compensation bills had "entirely overlooked the interests of the employer":

(there are) two sides to every question...it is the employer that has to pay the bill...and he must be used in such a way that he does not think this bill will be prohibitive, and that he will have to close down his works, for if the works close down there will not be any employment for the workman, and we want to be fair (B.C. Federationist, June 4, 1915: 1).

For Bowser, workmen's compensation was clearly an "economic problem" (*Victoria Daily Times*, Apr. 13, 1915: 7; *Colonist*, April 13, 1915: 3). Workmen's compensation had the been the focus of a tremendous amount of legislative activity in other jurisdictions, particularly the United States, in an attempt to address working class concerns and facilitate predictable compensation costs. Between 1911 and 1914, 23 states passed compensation Acts (*B.C. Federationist*, Feb. 26, 1914: 5). The press responded to Bowser's plan by accusing the government of delaying tactics until the flagging fortunes of the Conservative government could be propped up in time for an anticipated election.²⁰⁸

On March 6th, 1915, the Lieutenant-Governor introduced a compensation bill (Bill 46),²⁰⁹ at which time it received first reading. The timing of the introduction at the conclusion of the legislative session is strategically significant, as it precluded any opportunity

²⁰⁸ *Victoria Daily Times*, Jan. 18, 1915: 4. McBride tentatively set an election for April 10, 1915 to bolster party unity subsequent to a railway financing scandal. Party insiders forced him to delay. In the meantime, the government introduced a wide variety of legislative reform to prop up its ailing support; see, 44 *JLA* 1915; 45 *JLA* 1916.

²⁰⁹ *An Act to Provide Compensation To Workmen For Injuries Sustained and Industrial Diseases Contracted in the Course of their Employment*. 44 *JLA* 1915: 86; *Colonist*, Mar. 7, 1915: 5; *Labour Gazette*, May 1915: 1239; *Industrial Progress and Commercial Record*, Oct. 1915: 80.

for examination within the legislature. When an anticipated spring election was not held after the dissolution of the legislature on March 8th, 1915 (*Colonist*, Mar. 7, 1915: 1), the attorney-general embarked upon a program of speeches to labour audiences in an attempt to garner support.²¹⁰ 'Public meetings' were held under the auspices of the Trades and Labour Congresses in Vancouver and Victoria. According to the *Victoria Daily Times* (Oct. 27, 1915: 4), the meetings afforded Bowser little more than "a grand opportunity for posing as the friend of labour."

Bowser's bill was severely criticized by Hawthornthwaite. He was concerned that no protest had been registered by the B.C. Manufacturer's Association, which confirmed his suspicion that the bill had been engineered to lighten the burden of the employer.²¹¹ Hawthornthwaite also characterized as "vicious" the neglect of farm labourers, domestic servants, the creation of conditions which would encourage sweated industries,²¹² and the provision for a single commissioner drawn from the ranks of management (*Daily Times*, Apr. 13, 1915: 7; *Industrial Progress and Commercial Record*, May, 1915: 286). Labour advocates organized province-wide meetings to study Bowser's legislation, and re-assured workers that immunity from injury would take priority over securing compensation (*Colonist*, Mar. 7, 1915: 1).

210 *Victoria Daily Times* Oct. 27, 1915: 4. Bowser clearly had a monumental task to accomplish. A Provincial Election Manifesto adopted by the Vancouver Trades and Labour Council made the passage of a favourable compensation Act a first priority. The Conservative bill was dismissed as a scheme to "secure the working class vote"; *B.C. Federationist*, May 28, 1915: 4.

211 A *B.C. Federationist* editorial (Aug 21, 1914: 4) warned workers that the Canadian Manufacturers Association was a "powerful aggregation of Canadian finance capital" that would resist the implementation of any compensation scheme favourable to labour interests over those of capital. Indeed, the C.M.A. had made a number of representations to boards of trade and labour organizations, seeking to win favour for the less comprehensive Ontario Act (*Labour Gazette*, July 1915: 91).

212 *Victoria Daily Times* Apr. 13, 1915: 7; *B.C. Federationist*, Apr. 16, 1915: 1. The *B.C. Federationist* (July 24, 1914: 1) undertook to describe what must have been one of Vancouver's more notorious sweat-shops.

In the meantime, organized labour had not been resting on its oars. On July 14th, 1914 a "Special Committee" was appointed by labour to "carry on agitation and (an) educational campaign for a better Compensation Act."²¹³ Within a month, labour organizer and compensation expert Fred Bancroft arrived in British Columbia, "fresh from the successful fight" in Ontario.²¹⁴ In June of 1915, the 'Workers Compensation Committee' presented it's critique of the draft Act. The verdict was unequivocal:

...the Act is so limited in its scope, that it is to all intents and purposes useless, and seems to be rather an Act to define who shall not be paid compensation, than one to provide for the payment of it.²¹⁵

The concerns of the Compensation Committee were echoed by J. Harrington, the Vancouver member for the Socialist Party of Canada, during a public debate with Bowser. Harrington congratulated Bowser for not professing to draft the compensation bill "out of love for the working class":

213 The Committee consisted of James McVety and A.S. Wells of Vancouver, and William Yates of New Westminster; *B.C. Federationist*, June 4, 1915: 1. The formation of the committee was reported in the July 31, 1914: 1 issue of the *B.C. Federationist*. The information campaign was undertaken to educate workers and "the public" (Jan. 29, 1915: 2) about the proposed legislation. Various installments comparing compensation legislation in other jurisdictions were published to facilitate an informed choice; *B.C. Federationist*, Dec. 26, 1913: 3; April 24, 1914: 3; Aug. 7, 1914: 1; Aug. 14, 1914: 1; Aug. 21, 1914: 1; Dec. 25, 1914: 4; Jan. 1, 1915: 1; Jan 8, 1915: 1; Jan. 15, 1915: 1; Jan. 22, 1915: 1; Feb. 5, 1915: 1; Feb. 26, 1915: 5. In addition, the *B.C. Federationist* undertook to publish the entire B.C. draft Act; see, Mar. 19, 1915: 3, 4; Mar. 26, 1915: 3, 4; April 2, 1915: 3, 4. Finally, James McVety critiqued the bill in a half-page article; *B.C. Federationist*, April 30, 1915: 1. See also, *Daily Colonist*, April 18, 1916: 6.

214 Bancroft was clearly oriented to ameliorating workers' immediate concerns, and advised them to discard the revolutionary notion of "some future betterment of things"; *Daily Province*, July 4, 1914: 27; *Daily Times*, July 20, 1914: 13; July 21, 1914: 16.

215 *B.C. Federationist*, June 4, 1915: 1. Bowser's inclusion of contributory negligence in the draft Act riled labour. Wells argued

Any one...at all conversant with contributory negligence will...know how this works. It is an easy matter for the employer to find some hook to hang the fault upon, and in this case it would be the injured, as it would be cheaper for the employer... (*B.C. Federationist* June 4, 1915: 1).

...This measure, like others of its kind, (is) merely (a) response to a desire of the executive of the employing class to lessen the burden of the employers by giving them a cheaper form of protection than could be obtained from private insurance companies...²¹⁶

Bowser was eventually forced to honour his promise that all classes be given an opportunity to suggest amendments to the compensation bill (*Labour Gazette*, Oct. 1915: 367). It is unclear whether the attorney-general had a Select Committee in mind when he introduced Bill 46 in March of 1915. Nonetheless, the shaky popularity of the Conservative government with voters, many of whom were workers,²¹⁷ required meeting the working-class electorate 'half-way' on the matter. Delay was clearly advantageous to individuals such as cabinet member Price Ellison, who had interests in the insurance business.²¹⁸ Liberal critic John Oliver argued,

What kind of an insurance (compensation) bill (will) be possible, when a minister (is) connected with an insurance concern? The passage of a stringent bill (will mean) robbing the pockets of the minister (*Vancouver World*, Dec. 1, 1914: 15).

Shortly thereafter, Avar B. Pineo, British Columbia's deputy attorney-general, was chosen by Bowser to chair a Select Committee.²¹⁹ A Vancouver timberman and lawyer,

216 *B.C. Federationist*, June 4, 1915: 1. That 1600 people attended the meeting, with hundreds more turned away for lack of room, attests to the importance of the compensation issue to Vancouver workers. See also, *Daily Colonist*, Apr. 11, 1915: 1; *Daily Province*, June 4, 1915: 1.

217 A special convention of the B.C. Federation of Labour called to discuss the Island miners strike and related social concerns pledged to do "all in its power to defeat the McBride-Bowser administration at the next provincial election." An intense "educational" campaign was drafted to "strike an effective blow at those who have proved themselves to be the enemies of organized labour" (*B.C. Federationist*, July 16, 1914: 4).

218 The first Report of the Superintendent of Insurance (*Sessional Papers* [1914] 4 Geo. 5 at T7) followed the proclamation of the *Insurance Act* on Oct. 1, 1913. The report reveals that 30 companies operated in life insurance, 26 in accident insurance, and 26 in sickness insurance. A report filed by the British Columbia Accident and Employers Liability Insurance Co., Ltd. (p. T68) identifies the Hon. Price Ellison as president and director. Ellison was a cabinet minister (Finance and Agriculture) in the Conservative government, and was the minister to whom the Superintendent of Insurance reported; see also, *Industrial Progress and Commercial Record*, Nov. 1914: 138.

219 Bowser was inundated with correspondence from employers requesting Pineo be chosen as the State representative on the Committee (PABC, GR 429, Reel 2111, File 4988).

David Robertson, was selected by provincial employers to represent their interests. James H. McVety, president of the British Columbia Federation of Labour, was elected by the Vancouver convention of the Trades and Labour Congress of Canada, to represent labour interests.²²⁰

The committee was officially appointed on Sept. 27, 1915, and visited seven American states and three provinces, including British Columbia. Altogether, the Committee was received at 14 cities, examined 72 witnesses, and amassed 1658 typewritten pages of testimony.²²¹

Returning to B.C. approximately three months later, the Committee held hearings in Vancouver with labour groups and representatives of industry, the medical profession and insurance companies (*B.C. Federationist*, Dec. 3, 1915: 1).

Summary

In Canada, developments arising as a consequence of industrial capitalism replicated the pattern of the English experience. Working was often unpleasant and unsafe. The character of the working class was conditioned by both the dominant mode of production, and the response, if any, of the State to their daily struggles. McCormack (1985a: 116; 1977) posits the experience of the western Canadian working class, in particular those of British Columbia workers, was singularly unique. The compressed time frame and acceleration of development (in comparison to European or even eastern Canadian jurisdictions) greatly aided the formation of a working-class consciousness.²²² Workplace realities served to traumatize,

220 *B.C. Federationist*, Feb. 11, 1916: 1-4; *Labour Gazette*, Nov. 1915: 532. The attorney-general received correspondence requesting McVety be appointed to the Committee; PABC, GR 429, Reel 2111, document 4962.

221 *Sessional Papers* (1916) 6 Geo. 5 at 5. The work of the Committee was bound into four volumes. *Vol. 1*: California, New York, Massachusetts, and Wisconsin. *Vol. 2*: Ontario and Nova Scotia. *Vol. 3*: Washington. *Vol. 4*: Oregon, the Vancouver hearings, and appendices.

222 A businessman arriving in Phoenix, B.C. lamented, "the Mayor, members of the City Council, City constable and all the business men of the place belong to the Union and are in entire sympathy with the movement" (PABC, GR 429, Box 6, File 5, 220/01). Strikebreakers and non-union workers at the mining town of Sandon, a miners' union stronghold, were routinely refused service at hotels, bars, restaurants and stores (GR 429, Box 7, File 1, 1710/01). Irate employers characterized such class solidarity in terms of "union espionage and terrorism" (29 *JLA* 1900: li).

and at the same time, mobilize working class resistance to the imposition of hardships. The contradictions arising from the debilitating nature of a resource-based production process, and the unrestrained destructiveness of corporate capitalism (Pentland, 1979: 60), effectively ensured that one end product of capitalist production - that of burgeoning labour insubordination and unrest - would eventually manifest itself in British Columbia.²²³

Workmen's compensation served a number of functions, not the least of which was the positive view of capitalist productive and social relations it encouraged on the part of the workforce. The *Pineo Report* attempted to facilitate an air of legitimacy over the various aspects of implementing a State insurance scheme. The manner in which the Committee proceeded with this task is addressed in the ensuing chapter.

223 In addition to 'conventional' job action, miners reciprocated violence to their employers with protest at least equal to that of a mine explosion. Bullets were fired into the home of the mine superintendent at South Wellington (GR 429, Box 8, File 3, 95/02), and a bomb was detonated on the porch of the assistant manager at Wellington prior to the 1894 election; *Nanaimo Free Press*, Mar. 13, 1894; no page. Talk among Belgian and Finnish miners at Extension was that "(Lieutenant-Governor James) Dunsmuir is likely to have a hole through his body." Dunsmuir took the threat seriously enough to request J.S. Hussey, superintendent of Provincial Police, to investigate the matter "at once" (PABC, GR 429, Box 8, File 5, 1797 02).

CHAPTER FOUR

THE PINEO SELECT COMMITTEE

Introduction

The 1915 *Pineo Committee* was ostensibly struck in order to allow 'interest groups' to deliberate upon the merits of Bill 46 introduced earlier by W.J. Bowser. The Committee was determined that, whatever the outcome of the hearings, it "be based upon the principle of social justice." In simple terms, the objective was to

eliminate so far as possible the economic waste attendant on the present system in force in the Province...protecting the employer against personal-injury claims and ensuring the employee an enlarged and better measure of compensation.¹

The evidence gathered over the course of the investigation was comprised of eleven inter-locking categories.² The Commissioners noted that "certain matters of special importance in connection with the proposed legislation" warranted a more in-depth review. These matters included medical-aid, waiting periods, safety and accident prevention, individual liability, and the central issue of a State insurance plan versus the existing system of private sector casualty insurance (*Sessional Papers* (1916: 6)).

The public hearings of the *Pineo Select Committee*, held in eastern Canada and the United States, culminated in a series of four meetings convened at the Vancouver Courthouse December 16th through the 18th, and the 23rd, 1915. Twenty-seven men and one woman presented their briefs and proposals to the Committee, presenting the views of labour, capital, and medical institutions on the subject of compensation reform. When the report was submitted to the government on March 1, 1916 (45 *JIA* 1916: 2), it recommended a State

¹ *Sessional Papers* (1916), 6 Geo. 5 at p. 5. The proposed State scheme was calculated to ensure employers would save "immense amounts of money"; *Daily Colonist*, Apr. 13, 1916: 1.4.

² Recommendations were categorized as follows: Schedule 2 of Bill (Individual Liability); Medical and Waiting Period; Safety and Accident Prevention; State-Administered Insurance versus Casualty Companies; Scale of Compensation; Notice and Proof of Accidents; Assignment or Attachment of Compensation; Extra-Territorial Jurisdiction; Industrial Diseases; Administrative Board; Right of Appeal to the Courts; Cost of Administration; Miscellaneous.

scheme similar to that operating in other jurisdictions, most notably Ontario. According to Avard Pineo, the purpose of the Vancouver meetings was to

bring the different (provincial) interests together...so each may hear the arguments of the other interests, and contribute (their) opinions on different things.³

The time frame and discussion parameters of the Committee were clearly limited, reflecting labour shortages brought about with the onset of war, and general social unrest.⁴ A “general theory” of compensation,⁵ similar to that adopted by Ontario and United States jurisdictions with State insurance, provided a central point of reference for the participants at all locales visited by the Committee. Pineo had stated “We are going to take control of the compensation fund, and administer (it) through the State” (v. 1: 20). The Committee believed State compensation legislation would establish a “common interest” between “employers and their employees”, and facilitate a “constant and direct force” in the work place that would improve “personal relations”, create “better working conditions” and reduce “opportunities for accident.”

3 (v. 4: 305). See also, *Victoria Daily Times*, Dec. 8, 1915: 7; *Colonist*, Dec. 8, 1915: 7; *B.C. Federationist*, Oct. 1, 1915: 1.

4 The B.C. Manufacturers Association were caught off-guard by the “earlier appointment of the Commission than was looked for.” The Association was confused by the “lack of information as to the Commission’s function and scope.” They also believed the time frame of six weeks to compile evidence was “too short to do justice to a subject of this magnitude” (*Industrial Progress and Commercial Record*, Oct. 1915: 80).

5 During the introduction of the compensation bill in the House, the government proposed “each and every industry must bear its just share of the cost of providing full protection to the laboring classes.” The duty of the government was seen in terms of creating legislation that would recognize “common interests” and address “the moral, physical and industrial welfare of the people.” “Common justice” to employer and employed was of key importance (*Colonist*, April 27, 1915: 1). See also, *Sessional Papers* (1918) at K9 for a detailed explanation of the “general theory” behind a compensation Act.

The Committee rejected alternatives to State insurance.⁶ With the sole exception of the lawyer representing both Canadian Collieries (Dunsmuir) and Yarrows, Ltd., the principle of a State scheme was accepted. Committee members exploited the status of their State appointments, in order to reassure participants that the position of each party was consistent with progressive schemes in other jurisdictions. For the most part, the discussion was restrained to debating specific details and concerns associated with the implementation of the *Workmen's Compensation Act*.

State-Administered Insurance Versus Casualty Companies

Despite an attempt to assuage the concerns of capital in general, and insurance capital in particular that no "representations" outside of the Committee were being made to the government, it is clear that the Committee favoured State insurance over private-sector casualty insurance. The *Report* (1916: 12) utilized the collective experiences of Washington, Ohio, Oregon, California, Wisconsin, New York State, and Massachusetts to justify an unanimous recommendation: "the complete exclusion of casualty insurance companies is by far the best adapted to meet the requirements in this province."

Many witnesses in other jurisdictions had previously arrived at the same conclusion. California employers believed an exclusive State scheme was "best for the public"⁷ due, for the most part, to the ease with which the costs of production could be forecast (v. 1: 116). Employers initially embraced premium rate-cutting, but the wildly fluctuating costs that ensued were soon characterized by employers in terms of an "injustice to the public" (v. 1: 44). The

6 One Wisconsin manufacturer noted that if not for constitutional difficulties associated with mandatory compensation, the law would have been made compulsory. Pineo responded "Well, that helps to strengthen our case" (v. 1: 555). Similarly, in Oregon, Pineo had remarked, "That feature (the constitutionality issue) does not bother us; we can make it compulsory" (v. 4: 287).

7 (v. 1: 70). Labour had arrived at essentially the same conclusion, calling it "the ideal system" (v. 1: 171).

unstable rate also threatened the ability of the insurers to remain solvent.⁸ Moreover, employer concern about insurance companies “largely...interested in the stock...rather than underwriting policies” (v. 1: 44) led to demands for legislation to regulate insurance capital by requiring them to respect their obligations to policy holders and claimants. Not surprisingly, insurance interests disagreed:

If you put any institution in a position where they have no competition, it promptly becomes a case of them becoming arrogant, losing initiative and of their dropping back below normal.⁹

Employers realized that a ‘competitive’ system “necessarily...saddles a great amount of expense on the business and...the employer” (v. 1: 44). Employers cited benevolent concern for the workforce as a major reason for preferring a State scheme (see, v. 1: 73, 77, 109). Financial benefits were, however, a key factor in determining their preference. The *Report* notes the State fund had held expenses to 11.45% of earned premiums and returned a dividend to employers of 15%, while casualty company expenses consumed 40% of earned premiums.¹⁰

According to F.W. Weganast,¹¹ the implementation of a ‘competitive’ scheme in New York was an object lesson. The private scheme had cost employers “about eight million dollars” during the first year of the statute’s operation. Weganast placed the blame squarely upon politicians:

8 During the New York hearings, Pineo related some 30 British casualty companies had become insolvent in England since 1897 (v. 1: 313).

9 v. 1: 190. California insurance capital exploited their position by “securing the cream of the business” and leaving the “worst risks”, including dynamite factories, to the State fund; v. 1: 57.

10 A similar effect was noted in Wisconsin. Early on, the greed of insurance companies forced employers to organize themselves into mutual companies, which resulted in a 100% savings.

11 v. 1: 278. F.W. Weganast had represented the Canadian Manufacturers Association before the Meredith Royal Commission in Ontario.

...it is in my opinion nothing short of a calamity that the legislators of New York state hadn't the backbone to exclude the companies; perhaps they didn't know anything about the subject; they should have put the liability companies down and out...(v. 2: 293).

Weganast uncovered considerable political pressure upon individuals involved in the administration of the New York Act to support the scheme, despite any personal misgivings they may have had over the inclusion of casualty companies:

...do not take the (New York) board's word (at face value). Mr. Miles Dawson had a good deal to do with the New York Act, and was very much disappointed that the liability companies were not put out of business. But he was afterward obliged to come around behind the Act, and support it to such an extent, that he was fairly enthusiastic in his account of the working of the Act (v. 2: 293).

The manager of the New York State fund believed a State monopoly would eliminate the "great economic waste" that resulted from "private enterprise." It would also fulfill the "moral obligation" to meet financial encumbrances to workers and employers (v. 1: 242). Indeed, State fund policy-holders saved \$250,000.00 over a six month period, despite the competition from stock insurance companies (*Report*, 1916: 11). Advocates of the State fund disseminated an ideology of

...the State (as) a third and disinterested party...(and)...more acceptable to the workman and the employer than any other organization which might involve a prejudiced view of the thing...The State must, of course, be the deciding factor...(v. 1: 312).

Insurance companies operating in New York mobilized their lobbyists to counter the threat, but the manager of the State fund stood firm:

I deny the insurance companies the right to do this (new) form of business; and the fact that they have been writing liability insurance does not give them a patent right to include compensation business...The sole question is, how can this compensation insurance be provided at the lowest possible cost, in the interests of employers and employees...the State fund is not interfering with the companies and taking away their business; rather, the companies are being let in to interfere with the State fund (v. 1: 242; see also, *Report*, 1916: 13).

In Massachusetts, as in New York, insurance capital influenced politicians with highly paid lobbyists (v. 1: 401), and secured inclusion of private insurance in the Act (*Report*, 1916: 11). Nevertheless, labour advocacy resulted in the removal of all three employer defences in

the event the employer chose to 'elect' private liability coverage over that of State-sanctioned compensation coverage (v. 1: 349). For the General Electric Company, court procedures had always been "exceedingly slow", and "the cost of litigation excessive." The passage of a compensation Act had changed all this:

Before the Massachusetts' workmen's compensation law was enacted, we operated under the employers' liability law, which gave occasion for many disputes...in fact, there were more injured employees who got compensation before the workmen's compensation Act than do now...the amount of compensation for major injuries is far less now than it was then...now, of course, we live strictly up to the law.¹²

In Wisconsin, manufacturers soon appreciated the benefits of the scheme.¹³ The secretary of the Wisconsin Merchants and Manufacturers Association aided the *Pineo Committee* in its "propaganda" by proposing a method to frame an "acceptable law" (v. 1: 551). For Wisconsin employers, the compensation law was "right", "humane" and "correct", and there was considerable utility in the belief that the cost should be passed on to society:

The consumer is the last man, and he must pay for it...it must necessarily work out that way...the man who invests his capital in an industrial enterprise, must have a reasonable return for his capital, or he will invest it in another direction...on the other hand, the workman must get a reasonable compensation for his services, and the workman should not be asked to accept the loss of life or limb, or to bear that cost of the product...it should be met by the consumer (v. 1: 579).

Like Massachusetts, Wisconsin legislators evaded the constitutional issue by affirmative election. Employers who chose to disregard the 'suggestion' of the Wisconsin legislature that they voluntarily elect State compensation over that of private insurance, had their common-law defences removed by the legislature (v. 1: 480).

12 v. 1: 371. General Electric executive W.M. Alexander was one of the few employers ignorant of the principle of a compensation Act. He believed capital shouldered the entire burden of compensation. There was no transfer of costs to the consumer, nor, in his opinion, did the State share any cost. Rather, he surmised that the entire burden was extracted from business profits (v. 1: 384).

13 The secretary of the Merchants and Manufacturers Association suggested

I doubt the employers would go back to the old system; in many instances they have found that it costs less money...less friction, and less litigation, and the tendency is towards a better feeling between the employers and the men (v. 1: 588; see also v. 1: 463).

Wisconsin insurance concerns believed that liability insurance would remain profitable in spite of compensation legislation. They attempted to defeat the law by providing compensation coverage at rates more than double the cost of liability insurance,¹⁴ “a height which they believed would be prohibitive” (v. 1: 486). However, the courts proved unsympathetic to the scheme:

...the employer who did not take advantage (of the compensation Act) did not receive much sympathy in the courts, so that the cost of liability mounted very rapidly, and the companies found that they were losing money (v. 1: 486).

In 1911, Washington state ratified legislation making the State responsible for the collection and disbursement of compensation, eliminating casualty insurance in the process. In the first four years, the average operating cost of the State scheme amounted to 7.8% of premiums paid (*Report*, 1916: 9), while only 20% to 30% of casualty insurance premiums had ever reached injured workers.¹⁵ Manufacturers saved \$600,000.00 in premiums the first year. Understandably, insurance concerns and lawyers with personal liability practices combined to resist the implementation of similar legislation in neighboring industrial states (*Report*, 1916: 10; v. 3: 35).

Despite the immediate financial benefits, capital was divided over the notion of a State scheme. One lumber representative noted the compensation Act provided a “feeling of security” unsurpassed in the 25 year history of the company (v. 3: 167). Other lumber magnates questioned both the necessity¹⁶ and the principle of the Act. An animated

14 The opposition of the casualty companies to compensation was the result of a business decision that saw the law conflicting with their financial interests (v. 1: 488).

15 v. 3: 25. Similarly, in Oregon, substantial savings were recorded, especially in comparison to states such as Wisconsin, where free-market conditions reigned. In 1914, the State fund operated at a seven to eight percent overhead, while private sector sales commissions alone consumed 25% of premiums (v. 4: 193). Competition between insurance companies had damaging ramifications for workers. In Washington state, the International Union of Timber Workers argued that the of \$800,000.00 paid by employers in 1910 for casualty coverage, “only about one hundred thousand dollars of that actually reached the employees” (v. 3: 234).

16 A representative of the Wheeler Osgoode Lumber Company argued

exchange between Pineo and W.B. Nettleton (of Schwager and Nettleton Lumber Manufacturers) illustrates the degree and level of disorganization and misinformation surrounding the compensation issue within the manufacturing quarter. Pineo invited Nettleton to justify his belief that private insurance "could be gotten cheaper" than State insurance. Nettleton replied:

Well, for the simple reason that everybody knows, State and public things are always more expensively operated than private companies (v. 3: 196).

Despite repeated probing by Pineo, Nettleton was unable to substantiate his "general opinion" on the matter. Nettleton refused to alter his position even when confronted with an impressive array of contradictory evidence. After an extensive discussion, Nettleton finally conceded he was

willing to pay the extra cost (of State insurance), because we do not have any fear of a large judgement against us, and it is more satisfaction to us under the present system (v. 3: 202).

After an experience with casualty companies that proved to be "far from satisfactory" (*Report*, 1916: 10), Ohio followed Washington with a compulsory State insurance scheme in 1913. While the Ohio Manufacturers Association was uncomfortable about a State monopoly, it supported the abolition of the common law because it would serve to "stabiliz(e) conditions" and eliminate "an undefined liability" (v. 4: 75). The O.M.A. cited three advantages to the State fund: first, workers received an award identical to other workers similarly injured; second, a State-orchestrated settlement removed "any idea from the mind of the workman that anything exists between the employer and himself as to the settlement not being all that he wanted"; third, labour relations were improved because "the old sour feeling...(workers)...used to have" was lessened (v. 4: 85). Labour supported a State scheme, and was clearly hostile toward the "old ideologies" (v. 4: 93):

...in cases where a man was willing to take a reasonable sum, to cover his doctors bills and loss of time, there never has been any difficulty with the casualty companies and they have always been willing to settle...(v. 3: 138).

...as a result of letting the employer come in under the old idea of his 'freedom to act' and the 'right to contract' and all that sort of junk that has been handed down to us for centuries...lawyers and other people will stand up and talk for hours about it, but in the end...it injures the workman, and makes the workman's compensation a burden (v. 4: 98).

Labour retained the right to sue in cases where the employer had engaged in a wilful act, or violated safety regulations. The worker, however, forfeited any claim under the compensation law, while the employer retained all three common law defences. An attempt by insurance capital to usurp the 1913 Act was met with unanimous opposition from both labour and productive capital (v. 4: 131). Insurance capital was charged with being "responsible for a good deal of the bad faith" that existed between employers and workers.

In Oregon, the casualty companies recognized that the variable rates of private insurance threatened the ability of productive capital to operate competitively. Lumbermen argued "getting out a thousand feet of fir lumber should be the same cost in (Oregon, Washington, and British Columbia)" (v. 4: 228). The low uniform cost of State insurance made it attractive to employers (v. 4: 209). Unable to resolve the contradiction between insurance profits and the need of productive capital for reduced costs and increased efficiency, insurance companies resorted to disinformation campaigns "in order to arouse prejudice on the part of employers and workmen for the purpose of destroying the law" (*Report*, 1916: 10).

Labour agency had been a key factor in the shift of employer strategy in Oregon. Activism had secured a "very stringent" employers liability Act. According to the Portland Labour Council secretary,

...from that point (the employer) began to see the light, and we got compensation...the employer didn't want to guess what he had to pay; he wanted a compensation Act (v. 4: 290).

For employers, the introduction of a compensation Act resulted in assessments so low that it was "cheaper than insurance" (v. 4: 259). At the same time, the Act encouraged employers to

assist their injured employees,¹⁷ because there was no longer any need to fear such action would be construed as an admission of fault (v. 4: 243).

Like United States employers, Ontario manufacturing capital was receptive to “exclusive State insurance” (v. 2: 19). The Commissioners appointed to administer the Ontario legislation were unanimous that capital would benefit from a State scheme (v. 2: 26). The Commissioner responsible for making recommendations for the Ontario compensation Act, Sir William R. Meredith, was completely opposed to the inclusion of casualty insurance companies. He believed insurance companies “did all they could to relieve themselves of the obligation to pay” (v. 2: 167). Meredith was equally forthright in his assessment of the British Columbia situation:

the whole secret of your success (will be) to have every person in it; it puts you all on the same basis (v. 2: 257).

As C.M.A. counsel during the Meredith Royal Commission, F.W. Weganast told the Pineo Committee, he was determined to eliminate

...expenses incidental (to the provision of compensation), the parasitical insurance companies, and agents...acting for the employers...I was trying to save as much of it as I could for them; I was cutting out the lawyers...(v. 2: 310).

Weganast believed a uniform State system would ensure that “the system started off right.”

Employers would enjoy an immediate saving on assessments and, in addition, receive an annual rebate. Weganast convinced manufacturers of the superiority of a cash refund over a reduction in rates, because employers could better utilize the capital themselves for re-investment purposes (v. 2: 303-04).

17 Labour was adamant that compulsory State insurance (v. 3: 245) would ameliorate the employer self-interest so common with private insurance:

...in one particular case that I know of, where there was an employee badly hurt, he went and asked the employer if he could help him out, that he was in a pretty bad situation; the employer said ‘I would like to do it, but I simply cannot do it without cancelling my insurance policy with the company’...in that case, he had to turn the whole business over to the (casualty insurance) company (v. 3: 234).

Armed with little more than a textbook to counter the legal fire-power of the C.M.A. (v. 2: 404), Fred Bancroft, the ex-vice-president of the Canadian Trades and Labour Congress, was a formidable reminder of labour interests during the Meredith Royal Commission. Arguing State compensation schemes constituted “a break in what is termed social legislation”, Bancroft told the Pineo Committee that workers viewed compensation as a “question of the obligation of the State to care for those who are unable to care for themselves...” (v. 2: 389). State intervention was not viewed as charity:

...it is an obligation of the State...which compels the employers...so that widows and children may receive the benefit...that is not charity (v. 2: 389).

In Nova Scotia, capital interests presented themselves as an anomaly by mounting vehement opposition to the principle of compensation. Despite the best efforts of Canadian Manufacturers Association representatives to explain to their Maritime peers that a State compensation plan was “cheaper”, and the most expedient method of meeting the ‘common interest’, Nova Scotia capitalists only grudgingly considered compensation in terms other than “diabolic”:

...I don't believe in taking care of the workman until you have got to do it, but if you have to do it, you have to do it (v. 2: 476).

At Vancouver, the discourse was somewhat more conciliatory. With the lone exception of Canadian Collieries, labour and capital agreed upon the principle of a State insurance scheme. A.S. Wells of the British Columbia Federation of Labour cited an on-going correspondence with a New York trade union official revealing a heightened level of conflict between employers and labour due to casualty insurance interference. Wells demanded the exclusion of the insurance companies in British Columbia:

We are opposed to any other method of compensation than that for the State fund; we are not prepared to accept any casualty companies in this proposition at all; all the evidence we can find would lead us to believe it is not in the interests of the working man, and not in the interests of the employer financially; I am of the opinion that a State board without any desire for profits...(is) bound to work it cheaper...wherever insurance companies are allowed to operate, the rate has been higher than where they have not (v. 4: 519).

The Canadian Pacific Railway was acutely aware of the truth of Well's position. Their own calculations proved that Bill 46 would result in a significant cost-saving for the corporation (v. 4: 320). Other capital interests were less well informed. Counsel for Canadian Collieries (Dunsmuir) Ltd. demanded insurance capital be given the opportunity to 'compete' against a State fund. McVety commented on the ignorance demonstrated by H.B. Robertson and E.M. Yarwood¹⁸ on the issue of 'competition':

You are representing a number of very large employers, and you should have the advantage of a great deal of information that we have gathered on the subject that has not been hinted at here (v. 4: 444).

Robertson conceded that he had "no data at all" to support his position (v. 4: 444). Despite earlier agreement with McVety that employers bore the load of compensation costs for a short period, only to pass them on to consumers (v. 4: 426), Robertson later controverted his position (v. 4: 442), arguing that employers had a right to choose the cheapest scheme, even if private interests had to offer coverage at a loss:

...the insurance companies tell us they can satisfy you under this Act, and give us a cheaper rate of insurance than you can...if they can give it to us cheaper, even if it is at a loss to them, give them a chance...We want to get the cheapest form of insurance...(v. 4: 442-43).

That the insurance industry was willing to accommodate this demand of productive capital seems likely, given the substance of an exchange between Pineo and insurance counsel D.A. McDonald.¹⁹ McDonald quickly realized that insurance companies could not

expect to get any sympathy unless they (could) show to the employees and employers that they (would) get some benefit from the continuation of the casualty people in the field (v. 4: 337).

¹⁸ Robertson represented Canadian Collieries (Dunsmuir) and Yarrows, Ltd. Yarwood appeared as counsel for the Western Fuel Company, an American-owned coal mining concern operating at Nanaimo.

¹⁹ The interests of insurance capital operating in B.C. were represented at Vancouver by D.A. McDonald and H.F. Roden. McDonald appeared as counsel for a Committee of casualty insurance companies, while Roden served as the Committee secretary. An appendix to the Pineo transcripts, containing memoranda of recommendations from interests represented at the Vancouver meeting, lists 17 insurance companies represented upon a single committee. Significantly, no companies indigenous to British Columbia were represented before the Committee.

McDonald implied that because his clients had “a bigger field to draw from”, they would be able to “carry the business at a cheaper rate” than could the State. Pineo was unswayed by the argument, noting that insurance companies could lower rates for B.C. employers only if rates in other jurisdictions increased dramatically (v. 4: 347).

Pineo was careful not to hold out promise of favour in considering the arguments of the insurance companies, and reinforced the position that the Committee as one of considering “a large number of facts and a large number of representations”:

I may state these facts and present to you certain arguments not for the purpose of arguing with you or opposing your views, but to bring out your views more fully, so that we may have a full discussion of the matter at hand (v. 4: 337).

Essentially, the position of the insurance companies centered around two options: first, that the State refrain from entering “the insurance business”; and second, that insurance capital be allowed to compete with the State fund (v. 4: 339). Insurance capital was skeptical that a State scheme was workable:

the history of government organizations have shown that they are not the most cheaply carried on; the tendency is, even in the best board that could be chosen, they are all human, and they do not look at the government money as they do their own (v. 4: 349).

McDonald proposed a hybrid arrangement that would have a compensation board approving of various companies under a ‘licensing’ mechanism.²⁰ Firms would deposit a capital reserve with the board, allow the board to administer capital, make payments,²¹ and set assessment rates. Pineo, was unimpressed:

If you were going to put on the board the work of investigating accident hazards in all the industries, and fixing all the proper rates in all the industries, might you not as well have a State fund if they rate the industries and do the work you suggest? The other work is very little (v. 4: 342).

²⁰ Insurance interests suggested a regulatory role for the State. If a company refused to pay an amount of compensation dictated by the board, then its business license could be revoked (v. 4: 351).

²¹ McDonald did not attempt to conceal the sorry record of insurance companies. He intimated that board supervision for payment of compensation benefits would be necessary in order to be certain that the disbursement was conducted properly (v. 4: 339).

McVety was more direct:

That is, you would allow the board to do the work, and you would take the profit? (v. 4: 351).

McDonald would not admit that this was the case (v. 4: 351). Nonetheless, his proposal simply replicated an administrative infrastructure, increasing costs without increasing efficiency. This fact was not lost upon the Pineo Committee (v. 4: 343). Pineo regretted that McDonald had "not had the opportunity" of researching the relative strengths and weaknesses of State, as opposed to private, insurance schemes (v. 4: 351). Referring generally to the record of casualty companies in America, Pineo utilized the examples of Wisconsin and California to illustrate that

the casualty companies, when they found they had a clear field, shoved up the (employers') rates for compensation from 100 to 200 percent (v. 4: 361).

When McDonald was able to do little more than feign ignorance concerning the meaning of the phrase 'clear field', Pineo continued:

A field left entirely to the casualty companies; they shoved up their rates to the extreme limit so that the employers were not able to get insurance less; and those rates were not lowered until the employers organized a mutual company; the rates there today are less than half what they were 4 years ago...(v. 4: 362).

Pineo insisted that the retention of private casualty insurance in competition with a State scheme would dramatically increase the cost of a compensation scheme (v. 4: 363-64). McDonald retaliated with a vague argument that manufacturers would benefit from being able to 'choose' their insurer; however, the form in which this 'benefit' would accrue was not articulated (v. 4: 364). Representatives of insurance companies before the Committee were reduced to grasping at straws in a desperate bid to preserve their financial interests. McDonald could only prophesy as to the consequences of implementing a 'competitive' scheme (v. 4: 362). He conceded that insurance companies had committed "certain sins in the past", but was unable to offer little more than conjecture that questionable corporate practices would cease in future (v. 4: 364).

Pineo acknowledged the distress their proposed exclusion presented to the insurance companies, and promised to "take into consideration" the submissions of MacDonald. However, Pineo noted that cost was the "most vital part of the whole question." The interests of insurance companies would be weighed against the evidence, most of it damaging, that had been obtained in other jurisdictions (v. 4: 364).

There was one final aspect of a State scheme that made it preferable to private insurance. Costs that could not be passed on to the consumer, such as administration expenditures, could easily be assumed by the State. The majority of witnesses before the Pineo Committee were aware of the significant cost saving possible with a carefully implemented State scheme. The B.C. Manufacturers Association supported a State scheme with the proviso that all administrative expenses were to be borne by the State.²² Ohio manufacturers demanded immunity from taxation for administrative expenditures by drawing comparisons to the economic infrastructure maintained for education and agriculture. If State coffers were available for "schools and museums and libraries...(and) agricultural trade shows", capital believed the State should "promote the welfare of industry." Clearly, in capital's view, a nominal State contribution to compensation, in the form of administration costs, was not unreasonable (v. 4: 77).

A similar argument was advanced in Oregon. Attorney J.B. Kerr proposed that as a consequence of workmen's compensation, the State achieved a considerable reduction in expenditures associated with "...penitentiaries, poorhouses, asylums, and the care of wayward girls" (v. 4: 226).

In Washington, the entire cost of administration for the compensation Act was borne by the State. There, compensation legislation had resulted in a significant cost saving to "the public" through a reduction in "court costs, liability litigation, and professional costs" (v. 3:

²² *Industrial Progress and Commercial Record*, Feb. 1916: 186-87; Jan. 1915: 192-193. In British Columbia, sections 25, 26 and 28 of the draft Act provided the administrative costs of compensation to be paid out of the consolidated revenue of the province.

27). This finding was supported by the experience of Oregon where, prior to the enactment of a compensation Act, 66% of circuit court time allotments were consumed by personal injury cases (v. 4: 226). Ontario Chief Justice William Meredith noted a similar trend in Ontario:

(There is) a very large lessening of the cost of the administration of justice in this province on account of this (workmen's compensation) Act.²³

Finally, J.B. Kerr proffered an argument he characterized as "an indirect one, but a financial one." While Oregon provided for the cost of administration to be paid by the State, Kerr suggested what he believed to be a compelling reason for the State to contribute to the indemnity fund as well:

...before the enactment of this legislation, a vast sum of money which was paid for casualty insurance, went out of the state, and none of it was kept here for investment; and you will see now in this last report that the money under the Act has been invested in bonds of the state and bonds of local municipalities (v. 4: 227).

In this way, all assessments paid by State businesses remained at home, "rather than some foreign State" and, in effect, served as an early form of regional economic development.²⁴

Individual Liability

The issues of individual liability²⁵ and self-insurance²⁶ presented considerable difficulty for the Pineo Committee. On the one hand, there were large capital concerns, who

23 (v. 2: 170). Ontario capitalists wanted the State to transfer the savings realized through a reduction in justice costs to the administration of the compensation Act.

24 (v. 4: 227). As Gough (1979: 53) notes, the pensions of English workers became an important source of finance for regional and national industries.

25 Individual liability allowed the larger employers (usually of crucial significance to the development of the province) to be included within the compensation Act. However, rather than being grouped with other similar industries, an employer granted this advantage is placed within a class of their own. In British Columbia, the Canadian Pacific Railway was granted individual liability.

26 Self-insurance refers to employers excluded from a compensation Act due to sufficient assets to cover all foreseeable liability.

desired minimal State interference in their business affairs. On the other, labour was determined to secure a just and equitable scheme for as many employees as possible. Significantly, capitalists demanding preferential treatment, such as the railways, employed some of the strongest, most well-organized and militant unions of the period.²⁷

Commissioner McVety noted that the railways were strongly opposed to being included with other classes of industry:

The objection of the railway in that case...would be that they would have to put up large sums of money which would be withdrawn from their own use in their industry, and invested by the Board to cover the losses from the accidents arising on their line, when...if it were left to individual liability, they would pay out from day to day such amounts as were actually necessary to meet present requirements.²⁸

Three avenues were open to the Committee. First, a single large employer could be included in a class with other, related industries within a compensation Act. Second, the Committee could implement a scheme of individual liability, whereupon large employers could be placed in a class of their own. Finally, as had happened in some American jurisdictions where corporations commanded considerable power, large employers were exempted from the provisions of the compensation Act, ostensibly due to possession of assets sufficient to allow survival even in the event of a catastrophe. This third option of 'self-insurance' provoked the most resistance from labour.

In Ontario, capitalists were divided over the criteria to determine which industry would receive the economic (and thus, competitive) advantage of individual liability being given to one capital interest over another. Moreover, large industry sought to operate under a

27 F.W. Weganast feared any compromise of the key principle of compensation - that of a no-fault stipend to be paid in an expedient manner - would further strain capital-labour relations. The "great advantage" of a compensation scheme - that of avoiding "getting the two parties into a contest" - would be obviated by the inclusion of a self-insure or individual liability clause (v. 2: 287).

28 (v. 2: 415). One worker recognized the reason why railroads were continually 15 days in arrears on their compensation assessments:

...they preferred to use the money that much longer; they did not come right out and say that, but there is no question that that is what they meant (v. 2: 415).

'current-cost' plan,²⁹ while smaller business was faced with a less advantageous 'capitalized' plan.³⁰ Understandably, smaller employers were concerned that larger concerns might be allowed such competitive advantages by the State (v. 2: 274).

New York Fund manager F.S. Baldwin voiced three related concerns on the contentious subject of individual liability.³¹ Arguing "self-insurance is no insurance", Baldwin voiced a fear of "abuses" he felt might result from excluding corporations from a compensation Act. He believed their immunity from State scrutiny would "(open) the way to dictation and coercion in the matter of the settlement of claims." Employees dependent upon the benevolence of an employer for their livelihood could not insist upon full and proper compensation for fear of jeopardizing their job. Exempting corporations from State inspection would, in all likelihood, result in injured employees being culled by a "very rigorous system of medical examination" (v. 1: 262-63).

In Massachusetts, employers had been unsuccessful in establishing a scheme of self-insurance. Labour had succeeded in securing a redress mechanism for injustices occasioned by the individual liability clause, but was limited in that it required a complaint from the worker to initiate a possible action. Nevertheless, the Massachusetts Industrial Accidents Board was confident abuses could be prevented:

...if an employer attempts to make it disagreeable for the employee, or attempts to prevent him from getting his compensation, we hear about it, we know about it, and the case is likely to go to the Industrial Accidents Board...the Board seeks to find out what the story is (v. 1: 349).

29 The current cost plan, strongly advocated by the Canadian Manufacturers Association, required that premiums sufficient only to pay for the claims of the current year (based upon the frequency and severity of injurious incidents recorded during that year) be charged to employers.

30 The capitalized plan required that enough premiums be collected to cover all foreseeable claims in the following year, thus depriving employers of additional capital for re-investment while isolated in a contingency reserve.

31 In New York, companies benefitting from 'self-insurance' included the American Manufacturing Company, the International Paper Company, and the Standard Oil Company (v. 1: 236).

For the Boston Elevated Railroad, the decided advantage of their own class (individual liability) gave the railroad the benefit of a "great relief" in having "their men handled" by a State adjuster (v. 1: 361). The General Electric Corporation contradicted the presentations many employers offered concerning State regulation of the workplace relationship between capital and labour. The corporation carried its own insurance which, it argued, was not only "more economical", but also made relations with their employees

most pleasant...there is no third party to come in between us...the employees are better off without the interference of any third party (v. 1: 370).

In Wisconsin, the board had found it necessary to supervise direct settlements made between employers and injured workmen. Employers were curtailing disability periods on workers with legitimate claims, or providing indemnity at a rate far less than stipulated by statute (v. 1: 3, 10). Insurance companies utilized industry journals to flagrantly counsel employers to engage in questionable conduct of exactly that type (v. 1: 441).

In Ontario, an alliance was formed between railway and insurance capital. The railways hoped the alliance would secure them preferential legislative treatment. Insurance capital, on the other hand, anticipated that if enough employers could be convinced to organize and defeat the compensation Act, insurance capital interests would be protected and most probably strengthened. However, the sectional interests of capitalists quickly overcame class cohesion. One agreement, formulated within an eastern-based railroad combine and the Canadian Manufacturers Association, disintegrated when one C.P.R. representative, described as a "very strong anti-socialist", broke ranks with the combine:

...the upshot of it was...the railway companies secretly filed a brief of which I had no word for months; the brief, I believe, was published, but that was against the wishes of the railway company, and their objection really arose out of the mind of this representative...and is not based...on any logical reasons (v. 2: 281).

Ontario labour also had problems with the concept of individual liability, for the manner in which it encouraged the firing of injured workers (v. 2: 349), and the imposition of

compensation settlements that were below the scale set by the Act.³² The railroads had also secured a 'discount' of 25%, to be deducted from a compensation award in cases where a railroad worker or his benefactors required, or requested, a lump sum payment. Though workers seemed mystified by this provision (v. 2: 421), F.W. Weganast attributed its inclusion to manufacturing interests (v. 2: 292).

In the United States, individual states encountered constitutional difficulties imposing a mandatory workmen's compensation scheme. Corporations operating in Washington, such as Dupont, resented being "interfered with", claiming they were doing more for the workmen than the State was (v. 3: 76). Dupont refused to contribute to the State fund. The ensuing fiscal crisis necessitated the issuing of warrants to injured workers, to be honoured later by the State. For the Pineo Committee, the recalcitrant attitude of corporations and the inability of the State to manage the crisis provided "a most excellent example of the wisdom of taking the workman's compensation cases out of the courts" (v. 3: 77). For Ohio capital, as in other jurisdictions, self-insurance was extremely attractive because of the reduced costs involved. The secretary of the Ohio Manufacturers Association laid claim to a spirit of benevolent paternalism:

(employers) like to be in touch with their men themselves, and to have their relationships all the way down the line (v. 4: 82).

A Youngstown lawyer described self-insurance as "a joke" (v. 4: 147). Labour strongly resented being intimidated by employers. In one case, a baker was injured at work. His self-insured employer "gave him...10 or 12 dollars compensation, and they deducted that amount from his wages afterwards" (v. 4: 147). While employers resisted the initial, voluntary Act, the passage of a later compulsory Act, which "(employers) were more opposed to than ever",

32 (v. 2: 408). See also, v. 2: 41. Nonetheless, labour witnesses were reluctant to deny the advantage to all employers:

...I was against the employer paying compensation to the injured employee direct...I know that all employers are not the same; there are those who would not stoop to these things (imposing unlawful settlements), and others who will, and have done so...(v. 2: 410).

provoked open revolt (v. 4: 95). Self-insured employers challenged the statute, by securing counsel and “fighting (workers) just as they were doing under the old law.” Labour realized that a State scheme was a more expedient alternative,³³ and mobilized to counter employers in the court and legislature (v. 4: 126-28).

Self-insured employers engaged in other uncooperative tactics. The Ohio Federation of Labour confirmed that employers regularly denied compensation to a worker they alleged had disregarded their orders (v. 4: 142). They also were at the fore of a movement advocating physical examinations of workers, “for the purpose of excluding any defective employees” (v. 4: 45). In one instance, women workers in Ohio were performing a task and, on the basis of medical exams, were removed and replaced by men. In this way, job hazards were ostensibly reduced for co-workers performing the same function (v. 4: 98). Under the Washington Act, workers were required to submit themselves for examination by board doctors at the pleasure of the board (v. 3: 101). The Ohio Federation of Labour did not disagree with examinations that were carried out to a “reasonable extent”, but rather objected to the humiliation attendant with the “wholesale system and custom of examining men and women” in order that self-insured businesses could reduce their costs and increase profits:

...(employers) told us all those beautiful things that it does; how they are so much concerned for their workman, and that they examined them so that they can give them easier work...the reason that the examinations were taking place is that (the employers) want to get down from under the compensation law because they admit it themselves...the plants that are not carrying their own compensation...are not so deeply interested in the physical exam as those that are (v. 4: 99).

Despite the passage of compensation “for the benefit of the worker”, employees injured in self-insured industries were terminated from their jobs subsequent to receiving compensation. The effect was to become a charge upon the State and surrounding

³³ A Mineworkers representative argued that, in comparison to casualty insurance, the union membership had not experienced a single delay of all the compensation claims that had been processed (v. 4: 128).

community (v. 4: 103). The Ohio rubber industry had gone so far as to organize an information exchange drawn from the medical files of workers:

...(every factory) make a complete record which is written down; I could not begin to tell you all the things they examine for...and if you are rejected at one place, you cannot get work at any other place; if you are not good enough for one, you are not good enough for another (v. 4: 104).

As in Ontario (v. 2: 349), recuperated employees were fired upon their return to work.

The ruse was conducted in the following manner:

...(after recovery), the man who is injured comes back to work for a week or two, and then he is told, 'well, we will have to let you go'; he is put to work long enough to make sure that he is recovered from his injury, and that there will be no further claim for compensation; that employer won't employ him again (v. 4: 96).

The result, the Pineo Committee was assured, was going to be

...thousands of men and women thrown out of the trades in the state, unable to secure employment...(v. 4: 97).

A member of the Ohio Industrial Commission remarked that the exclusion of workers deemed 'unfit' due to a financial incentive was a "serious matter", making "labouring people very suspicious" by allowing them to "naturally connect" the difficulties they experienced with self-insured business (v. 4: 45). Ontarian F.W. Weganast harboured similar worries about the effect of individual liability in Canada:

...the labour men here know what the C.P.R. was able to do by way of preventing railways coming under the insurance scheme; it is not a very far step from that to think that when a claim comes before the board on any principle, the railway company could find some way of being heard.³⁴

34 (v. 2: 287). Weganast believed that the "interests of the workman" dictated that special consideration for corporations should not be considered:

I would bring them (all capital) all under schedule one, under the same kind of Act, without the slightest hesitation; in the interests of the workman, I would certainly do that (v. 2: 290).

A graphic testament to the effect of State incentives to corporations to cooperate in implementing State insurance the Nova Scotia Steel and Coal Company and the Dominion Steel Corporation offered "no organized opposition" to the dismantling of their own schemes, and their subsequent inclusion in a collective system of compensation insurance (v. 2: 450).

Not surprisingly, the Pineo Committee cited events in Ontario, where the retention of an individual liability option "was already leading to dissatisfaction on the part of some of the workmen covered by it." The evidence gathered substantiated the position of the Pineo Committee that any provision for individual liability would "sooner or later" produce "unsatisfactory results" (*Report*, 1916: 6).

British Columbia capital must have thought otherwise, because at the Vancouver meetings, they articulated a desire to retain both individual liability and self-insurance (see, v. 4: 330, 352, 386, 409, 479). Pineo remained unconvinced, referring to the American experience where self-insured companies with assets of millions of dollars had become insolvent. The Committee made it clear to the railways (who were the strongest proponents of self-insurance) that the onus rested upon them to justify any preferential treatment (v. 4: 313). Pineo, however, was in favour of railways considered good financial risks to be placed in a class of their own under schedule one:

The C.P.R. would be under the Act...with this exception; the C.P.R. would not be in a group with other railways or other employers; that is, the C.P.R. is considered large enough for the purposes of this discussion to form an insurance group of its own. It then pays...for its own losses; the rate is not influenced by the losses which occur on improperly constructed railways, or logging railways...this railway then comes under the Act, and pays its own premiums or assessments...estimated to cover its prospective liabilities into the board (v. 4: 315).

The economic advantage to the railway was clear. Pineo noted,

it is their money, they would absolutely get all benefit of the interest, and any surplus would be for the benefit of the railways.³⁵

Judging by the transcript of the hearings, C.P.R. counsel was clearly taken aback by this sudden turn of events. F.W. Peters seemed scarcely able to contain his delight at Pineo's proposal:

35 (v. 4: 316). In a 12 class rating scale, railroads occupied classes 10, 11 and 12 and, consequently, were assessed the smallest premiums of all classes. This state of affairs implies much about the important position of the railroads in B.C.'s resource-based economy, especially when one considers the frequency and severity of railroad injuries, which were comparable to the extractive industries.

Your suggestion would seem to me in the case of a railway that made every effort to improve its service and operations so as to minimize the risk of danger, it would benefit by its efforts, keep down expenses, and encourage "safety first"; and instead of being grouped with more careless roads, it would seem to me to be absolutely fair (v. 4: 317).

The offer of privilege for the C.P.R. provoked applications for equal benefit from other railways, including the Canadian Northern Pacific and Grand Trunk Pacific (v. 4: 318-19). In both cases, Pineo granted approval in principle.³⁶

Initially, labour did not support the railways striking out on their own. British Columbia trainmen believed their employers were in a much stronger position than either contractors or manufacturers, and could well afford to provide adequate compensation.³⁷ Without an "independent board" to supervise claims adjudication, W.J. Baird³⁸ believed "(capital-labour) relations might suffer":

trainmen feel so strongly on this point, they would prefer to retain the old compensation Act rather than see this new Act go into force with this provision in it (v. 4: 452-53).

A representative of the Brotherhood of Locomotive Engineers added

...we are not asking for anything unjust, but something that would be conducive to removing any chance of friction or irritation (v. 4: 454).

Pineo was acutely aware of the cumulative effect of fraudulent settlements and repeated intimidation of the workforce. He recognized that labour misgivings could be reduced "with the modern systems of compensation that (were) in force" (v. 4: 311-14). There was a need to balance the economic interests of railroad capital and labour. Clearly, in the face of larger

³⁶ McVety later contradicted Pineo by arguing the C.N.P.R. could not expect to be "placed in exactly the same position", as the C.P.R., because the newer road could not be operated "as efficiently and safely as an older constructed road" (v. 4: 386). V. Laursen, a British Columbia Electric Railway lawyer, believed his client qualified for the consideration offered to the C.P.R. McVety again disagreed, arguing that unlike the C.P.R., the existence of several types of employment at various hazard levels necessarily excluded the former from consideration (v. 4: 354).

³⁷ The secretary of the Vancouver lodge of the Brotherhood of Railway Trainmen was "emphatically against individual liability of employers" (PABC, GR 429, Reel 2111, doc. 2347). See also, PABC, GR 684, Box 1, Vol. 3, File 2, pg. 158.

³⁸ Baird was counsel and representative for the Committee of Railway Brotherhoods.

and more frequent court awards, smaller businesses would not survive any retention of the common law or employers' liability.

Individual liability was a solution which appeared to address the concerns of each respective class. The British Columbia Federation of Labour provided support for capital's position that larger factions be allowed to operate with less State interference and a larger degree of economic freedom. At the same time, the individual liability compromise met the requirements of labour by allowing the retention of "an independent (State) board" to supervise the administration of a compensation Act (v. 4: 515).

Medical Aid

The relation of social class, political power, and the State to the delivery of medical services has been extensively reviewed by Navarro (1986a, 1986b, 1976). The Pineo Committee was cognizant of the "very great value" of immediate medical attention to injured workers:

...medical aid not only results in preventing and alleviating human suffering, and in saving to employers large sums of money otherwise payable in compensation, but also results in preserving and returning to industry the individual efficiency of many of its most competent workmen.³⁹

Though most witnesses agreed first aid should be provided for workers, there the agreement ended (see, v. 2: 454; v. 3: 176-77). The majority of employers questioned believed injured workers should be required to either fund outright, or provide substantial contributions to, the operation of any medical aid program.⁴⁰ California employers believed

³⁹ *Report*, 1916: 7. 'The secretary of the Massachusetts Industrial Board explained to the Committee why they created a special 'out-patient' treatment centre, fully staffed by doctors and nurses:

It gets the employee back to work much sooner, it is better for the employer because it increases the efficiency of his employees, and it is better for us, because it gives us a definite report on the condition of the employee, and I think it is probably much cheaper...(v. 1: 353).

employee contributions would create the impression that workers "(were) contributing towards (their) own relief."⁴¹ A lumber baron employing 4500 workers argued injured workers should be penalized, foregoing any wage compensation in lieu of first aid attention because, as workers, they constituted "an interested party." He argued:

A man is not hurt very badly if he can go back to work within two weeks, and if he is taken care of in the meantime, it should be sufficient (v. 1: 117).

The California Federation of Labour vehemently opposed such reactionary positions:

The worker has had to pay an equivalent in suffering, hasn't he? The employers are not paying for the suffering. That is something that is not suggested by the law...I am compensated by law for loss of wages, but you do not take into consideration at all the suffering of the workmen under the compensation law (v. 1: 138).

Ontarian F.W. Weganast argued a State-run first-aid scheme would "double the cost" to employers (v. 2: 322). He advocated a "distinct education" for workers on the subject of first aid:

...we should have a...system...that would be an incentive to the workman...after all, the workman gets his wages, and you might just as well say that the industry should provide his underclothes; but he gets them through his wages...why not give the workman ten cents a day more, and let him provide his own insurance? The answer is that the workman would not do it...don't protect him against himself - just give him a taste of the same principle in the compensation Act (v. 2: 316-18).

Labour believed that "strong (economic) interests" (v. 2: 371) demanding a worker contribution were interested only in "inserting the thin edge of a wedge" (v. 2: 435). Fred Bancroft stated the workers' position bluntly:

...(employers have) absolutely no right to touch the individual workman...if the workman contributes 45 percent, plus the suffering, and the employer merely pays an indirect tax, what a shameful suggestion it is to start at the other end with the employee...for a proportion of medical expenses; there is no argument for it if you analyze the question clearly.⁴²

40 No doubt employers wished to further programs workers had established for themselves. Like B.C., Washington mineworkers had provided their "own hospitals and doctors" and controlled their own medical affairs (v. 3: 262). Ontario employers also desired that workers contribute to any medical aid; see v. 2: 132, 137.

41 v. 1: 98-99. California employers also argued that a worker contribution was necessary because, "in most instances, the fault (for injury) lies with the workman."

42 (v. 2: 371-72). A Washington witness argued

During the Ontario Meredith Royal Commission hearings between 1910 and 1913, Meredith decided against first aid, and was instead in favour of paying compensation from the day of disability. The idea had been to enable a worker to bear the associated medical expenses. In its first year of operation, the board had discovered that their "experience (had) not satisfied (them) that (the) assumption (was) a correct one" (v. 2: 9). Indeed, some Ontario capitalists demanded first aid for their employees in order to eliminate a "good deal of pauperism", and the image of the "crippled beggar...going door to door." First aid was viewed as a mechanism to prevent injured workers from becoming "general charges on the community and the State."⁴³ During his appearance before the Pineo Committee, Meredith revised his position, arguing first aid was central to "preventing accidents developing into serious consequences."⁴⁴

In Ontario, as elsewhere, employer support for a medical aid provision appeared to be based primarily upon cost-saving considerations and the need to conserve the labour force. Many Oregon employers had objected to employee contributions to first aid for fear "that the board might be too liberal."⁴⁵ Nonetheless, Commissioner McVety discovered a "trifling" cent

...for over a hundred years in our present industrial system...90% of the risk of life and limb is borne by the workman, to say *nothing of the suffering and the pain* which is also borne by him; if he was not careful before in those circumstances, if that didn't prevent the accident, why should a few cents deducted weekly have any great effect...it is a money-saving argument, and made just to meet a situation on the part of the employers; at this date, the workmen are paying the whole of it...(v. 3: 119).

43 (v. 2: 193). During Washington testimony, McVety established that medical fees often exceeded the amount of compensation allowed by the legislation, creating a problem of mutilated, street-bound debtors (v. 3: 118). A Washington miner acknowledged the predicament of loggers in that state, who he described as

hit hardest for lack of first aid...it is not compensation at all when the amount of compensation just meets the doctors bill; it is sometimes a loss to the workman; he has really not received any compensation for his injuries (v. 3: 262).

44 (v. 2: 161). Concern was expressed over minor injuries (such as blood poisoning) that developed into fatalities if the victim returned to work too quickly. Immediate medical attention was favoured for minor wounds that had not received attention (v. 1: 433).

per day levied against each worker paid all first aid costs in Oregon (v. 4: 171). A Portland lawyer who assisted in drafting the Oregon act suggested the “moral effect” of the one cent contribution was “splendid”:

...the fact that the workman contributed under this law made him feel that they were then in line with the commission; that it was a law as much for the employee as the employers.⁴⁶

There was also a motive in dissuading appeals and ‘malingering’, by effecting a measure of self-policing among the work-force:

...the law excluded the ambulance-chasing lawyer...(who) tried to make (the worker) appeal from the decision of the commission...if the workman contributed, there was the feeling that it inclined him to give (the lawyers) the cold shoulder...it discourages malingering a good deal, too...*the intervention of workingmen who have read the riot act to an injured man who might pretend to be injured worse than he was has had a good effect...*...if it was a fund to which (the worker) did not contribute, they might feel inclined to say that whatever their association could get out of it, was so much more their gain (emphasis added) (v. 4: 233-34)

Another witness argued that in situations where an “operation (was) the only means of saving the fund from some expense”, the procedure should be authorized, “rather than continu(ing) to pay the disability on account of the (injury)” (v. 2: 100).

Control over the selection of physicians was an immediate and controversial issue.

Cost efficiency and value for the dollar were the prime motivators in medical services.⁴⁷ A

45 (v. 2: 255). The Oregon position was not unanimous, however. Some employers believed an employee contribution would allow provision “for larger and more liberal benefits...” (v. 4: 171), and serve as an incentive toward accident prevention. Members of the Oregon Compensation Commission believed an employee contribution to a first aid fund would make workers more careful, but were unable to substantiate their position (v. 4: 171).

46 (v. 4: 232). The secretary of the Central Labour Council of Portland concurred in the assertion that the cent per day contribution was there

merely to make the workman a part of this Act; when he contributes, he is a party to a contract, and he has got to abide by the provisions of the Act (v. 4: 296).

47 Wisconsin physicians were given the authority to determine whether or not an injury was serious enough to require compensation. The Act required that workers succumb to this authority, and be bound to the resulting decision (v. 1: 433). Compensation schemes encouraged speedy processing of claims. New York routinely handled as many as 52 wage-loss claims in one day. Most claims were characterized by a lack of argument, and an “unanimous decision in each case” (v. 1: 317). Similarly, Oregon physicians risked being discredited if they performed their task in an “inefficient” manner (v. 4: 169).

Washington physician recommended the Ohio scheme because the employer had exclusive control of all medical treatment. Moreover, the board could refuse any "(in)efficient treatment" (v. 3: 95). Physicians were described by Wisconsin attorney C.H. Crownhart as "just as bad as lawyers; worse...",⁴⁸ adding that workers were "not competent generally to select their own physicians." Russians, Slavs and Italians were singled out as most likely to seek the advice of a "country doctor", with "very bad results." The Ohio commissioner cited evidence to suggest that where workers were allowed to select their own doctors, infection rates ran as high as 12 percent, while equivalent rates for company doctors were considerably less (v. 4: 26). Strict State supervision over medical billing (v. 1: 471) and the medical prognosis of an injured worker (v. 4: 175) were suggested in order to reduce costs.

With regard to medical aid, the *Minutes of Evidence* indicate the Pineo Committee was most concerned with the problem of whether the State or employers, under the auspices of insurance companies, would provide the necessary services (v. 1: 20). The question of cost efficiency and legitimacy was crucial for employers and insurance companies desiring to select physicians. Significantly, in situations where a compensation board or commission delegated medical services, the immediate concern in most jurisdictions was that the reputation of the doctor be high enough to satisfy the requirements of employers or insurance companies. Ironically, no input was solicited from the work-force (v. 1: 358).

California had experienced some difficulty with the calibre of doctors hired by insurance companies to perform services under contract (v. 1: 17). California labour had sought to secure the right of each worker to choose their own physician, but were

⁴⁸ Crownhart's view of physicians was jaundiced by the few who "grown up with the settled idea" that they would profit from legislative reform (v. 1: 438). Indeed, expenses incurred for medical, hospital, and surgeon's fees amounted to one half of the total amount paid for compensation in Wisconsin (v. 2: 10). Moreover, with the abolition of profitable common law actions, lawyers attempted to recoup their income losses by increasing the frequency of malpractice suits against physicians. In Washington, the Pineo Committee heard allegations of physicians unnecessarily resorting to amputation of limbs, in order to eliminate any "evidence" of unsound medical treatment on their part (v. 3: 192).

unsuccessful (v. 1: 96). The Commission screened legislative reform initiatives so closely, that any attempt to secure reform not approved by the Industrial Accidents Commission Committee, amounted to a "hopeless case from the beginning."⁴⁹

Employers attempted to justify their recalcitrant attitude on the same ground that they resisted a reduction in waiting periods. Despite Commissioner McVety establishing employer self-interest as the impetus behind their demand to control physician selection,⁵⁰ the California Employers Federation nonetheless maintained that "an unscrupulous practitioner" and injured workers would conspire to lengthen the term of incapacity. Employers wanted workers to hire a physician at their own expense in the event the board or employers disagreed with the prognosis of a worker's first physician (v. 1: 96).

It is questionable how many injured workers were solvent enough to hire a second medical opinion in order to counter that held by either the board or employer. Workers, however, were all too familiar with the consequences of company physicians who functioned solely to reduce compensation costs to employers:

...there is a system of surgery whereby a person can be apparently fixed up sufficiently to have the commission determine the amount of compensation to which he is entitled, and thereafter the surgical wound will have to be reopened, and other operations performed, which are necessarily injurious to the patient (v. 1: 130).

By subjecting workers to temporary surgical solutions, company physicians facilitated a reduction of compensation costs to the employer (v. 1: 130). Similar events were occurring in Ohio. In one instance, a miner injured a foot, was apparently healed, and returned to work. When the limb later required amputation, the Industrial Commission physician characterized the worker as a "malingeringer." In the meantime, as the employee had earlier been pronounced fit, the board refused to consider any further compensation. Consequently, the union had

49 (v. 1: 161). Interestingly, the Commission's rationale for not acceding to worker requests for personal physician selection was the belief that workers "had gone about far enough" in the legislative reform process (v. 1: 161).

50 (v. 1: 595). A Washington employer personally felt it to be the case that workers were "too liberally dealt with" by many physicians (v. 3: 202).

been forced to take up the case (v. 4: 128-29; see also, *Vancouver Sun*, May 18, 1917: 12). Some physicians also compromised their professional integrity by intimate association with insurance companies. E.W. Weganast implied that liability companies "needed the goodwill of the doctor when it came to an action." Commissioner McVety chose to describe this state of affairs in a somewhat more unsympathetic light:

(The insurance companies) paid (the physicians) large fees for the purpose of securing favourable evidence in case the workman brought suit? (v. 2: 322).

Ontario authorities blamed their fear of "unconscionable" physicians bills (v. 2: 10) for the State refusal to provide medical aid to workers:

...some physicians might be tempted to call upon a man half a dozen times when once or twice would be enough, feeling that the more frequently they call, the larger their bill...the passing of a first aid bill providing for the payment of bills in full opens a situation, where a great many frauds may be perpetrated (v. 2: 128).

Perhaps the lower medical fee scales implemented by many boards had untoward effect in this area. Ohio physicians "complained very bitterly" that fees allowed by the commission were not realistic (v. 4: 111). The Oregon commission acknowledged an inferior pay scale, but justified the reduction with the finding that physicians recovered their expenses only 35 to 60 percent of the time when dealing with industrial injuries. As the commission guaranteed payment in all cases, "it was felt that the schedule should be somewhat less than the usual charges" (v. 4: 168).

Exorbitant profits, siphoned by employers from first aid schemes, were another problem. Most employers denied making a profit out of first aid fees (v. 3: 203), but many witnesses reported instances of unethical conduct and windfall profits made by employers operating such schemes. A member of the Seattle Ports Commission conceded that while "it may be that these cases are rather exceptional", he nonetheless argued

they are not so exceptional as you may think; the total amount taken from the men's wages was a good deal more than the payments made for treatment (v. 3: 120)

McVety revealed that some B.C. employers, notably the railroad contractors, deducted as much as two dollars per month for "medical services" that included neither sick nor death

benefits.⁵¹ The first aid ruse was so badly abused in B.C. that it was “necessary to pass an act to regulate it.”⁵² In Ohio, employee contributions supported 10% of the insurance fund, but employers found that the “proportion was too small to bother with”; some expressed the opinion that the cost in clerical labour to make the deduction exceeded any cost saving. Employers denied that a fear of antagonizing the workforce entered into the decision, because none of “(the employers) went far enough into the matter to determine whether there was any antagonism on the part of the men” (v. 4: 49).

Unlike other jurisdictions, comparatively little debate was recorded at the Vancouver, B.C., meeting over the specifics of providing medical assistance to employees. The only participant at the Vancouver meetings who openly supported medical aid was W.F. Gurd of the Joint Committee of Employers.⁵³ A method of reporting and treatment could limit later claims as a consequence of inattention to an injury (v. 4: 392). Such inattention invited costly “trouble” for employers (v. 3: 48). The Pineo Committee acknowledged the B.C. government

51 This revelation evoked responses from capital witnesses such as “It is outrageous...The employer who is deducting one dollar a month needs investigation”; from another, “It is an enormous amount” (v. 2: 207). The Consolidated Smelter Company at Trail, B.C., levied a monthly first-aid fee of \$1.00 (*Colonist*, Apr. 18, 1916: 6) which, according to one witness, meant the company was reaping “a big profit” (v. 2: 243). The secretary of the Washington State Employers Association acknowledged that profiteering from first aid schemes “used to be a common practice”, but the countervailing power of labour resulted in the practice being terminated “for very sound business reasons” (v. 3: 321; see also, v. 4: 277, 294).

52 (v. 2: 208; see also, v. 2: 312). An amendment to the *Master and Servant Act* was introduced by the government on Feb. 15, 1915, requiring employers to maintain separate accounts for all medical deductions, the amount of expenditure, their eventual disposition, and the filing of a bi-annual statutory declaration. Workers were also empowered to appoint a committee from their ranks at any time to inspect and audit record books (44 *JLA* 1915, Bill 22; *Industrial Progress and Commercial Record*, Mar. 1915: 240).

53 *Industrial Progress and Commercial Record*, Oct. 1915: 80. The Joint Committee was initially struck in order to back the selection of Avard Pineo for the chair of the Select Committee investigating compensation laws (PABC, GR 429, Reel 2111, doc. 4963). Gurd served as counsel for the Joint Committee, while E.C. Knight held the chair. The organization represented the following: The B.C. Lumber and Shingle Manufacturers’ Association; the B.C. Loggers’ Association; the Manufacturers’ Association of British Columbia; the Fraser River Cannery Association; Vancouver Chamber of Mines; and, the Granby Consolidated Mining and Smelting Company (*Report*, 1916: 19).

had made no provision for first aid within the draft bill. Pineo suggested that there was a fear that labour would achieve an

(un)reasonable system; having in view of the fact that our province is in its infancy in industrial pursuits, and the fact that we do not want to introduce a system that would be burdensome to the employers.⁵⁴

Much of the discussion concerning first aid focused upon the construction of a *cost sharing arrangement* between capital and labour, or solutions to address the concerns of hospitals and medical personnel who were absorbing the expense of unpaid medical bills. The evidence indicates there was relatively little concern for the injured worker. Rather, efforts were focussed upon ameliorating the financial risk that institutions attending to industrial injuries found themselves under.

Medical institutions, in particular, suffered large capital losses due to defaulting on patient accounts.⁵⁵ A.L. Russell of the Vancouver General Hospital Board noted that insurance companies had actually negotiated bedside settlements with industrial injury victims “for fifty or one hundred dollars”, from which the hospital was often unable to recover (v. 4: 309). Hospitals also received gravely injured workers, only to later find that the employers’ insurance company refused to reimburse for costs, ostensibly because the injury-causing incident was not written into the policy (v. 4: 308).

Vancouver physicians were critical of a system that encouraged both ‘contract medicine’,⁵⁶ and an ongoing abrogation of responsibility on the part of insurance companies

54 (v. 3: 94). Despite the attempts of Washington employers to resist labour efforts to make first aid a political issue (v. 3: 104), unrelenting pressure by a coalition of labour organizations eventually secured legislation placing the entire cost of a first aid scheme upon employers (v. 3: 227-30).

55 *Vancouver Sun*, Mar. 9, 1912: 6; Nov. 19, 1915: 8. Logging and sawmill injuries were the most frequent in the Fraser Valley. As the *Vancouver Daily World* (Aug. 4, 1915: 7) argued, if developing municipalities withheld payment for ‘hospital fees’, the Royal Columbian Hospital in New Westminster would be forced to close.

56 Dr. J.H. MacDermott characterized the contract system of medical attendance as an “evil” (v. 4: 377). While some physicians became inordinately wealthy as a consequence of contracting their services, others objected to the practice because it encouraged doctors to do as little as possible in

and employers to ensure that medical bills were paid. Fee losses for the profession consistently ranged from anywhere between 50% to 90%.⁵⁷ Nonetheless, physicians did not alter their fee structure simply because a patient could not afford payment. Instead, they were “forced” to accept decreased remuneration for services rendered, or risk receiving nothing at all. Consequently, the medical profession petitioned the Pineo Committee to draft a “workable” provision for the direct payment of fees incurred for medical aid.⁵⁸

Capital adopted a characteristically self-serving stance on the medical aid issue. Both F.W. Peters and C.H. Nicholson⁵⁹ suggested that hospitals be authorized to extract a portion of any settlement equal to the amount of medical expenses incurred by the worker, without the permission of the victim. McVety immediately attacked this suggestion, arguing that governments and hospitals were already maintained largely through taxation of the workforce. To implement the suggestion would “rob (the worker’s) family of their sustenance in order to provide for the hospital bill.”⁶⁰

order to collect the contract fee. Workers, on the other hand, were forced to fight to extract the maximum value for their dollar (v. 4: 379). Utilized predominantly in logging and mining camps, medical contracts were also tendered by the C.P.R. (v. 4: 378). Ironically, F.W. Peters, a C.P.R. General Superintendent, boasted that the Canadian Pacific Employees Medical Association gave “greater benefits than under any other insurance company in the way of medical aid...” (v. 4: 324).

57 (v. 4: 377). When Dr. MacDermott suggested that a determination of whether or not a physician would be paid was dependent upon “the honesty of the workman”, he was quickly corrected by Pineo, who interjected, “It depends upon the inability to pay” (v. 4: 377-378).

58 (v. 4: 384). Some B.C. physicians refused to attend to injured workers if they believed they would not be paid for their service (*Vancouver World*, Nov. 16, 1914: 6). In 1914, Liberal compensation expert John Oliver proposed heavy penalties for physicians who refused to attend an injured worker (*Daily Province*, July 18, 1914: 6). The eventual solution agreed upon by the medical delegation and the Pineo Committee was the implementation of a reduced fee scale, albeit with a certainty of payment (v. 4: 380).

59 (v. 4: 326). Nicholson was a manager for the Grand Trunk Pacific Steamship Company.

60 (v. 4: 325). McVety seemed annoyed with Peter’s suggestion that an injured worker’s family “should not live in luxury” as a result of an injury:

You would not suggest a man’s family would be living in luxury if you were getting 55¢ of three dollars a day (v. 4: 325).

The Joint Committee of Employers demanded the province assume the cost of administering the Act, and labour support the first aid fund. Not surprisingly, employers offered to fulfil their end of the 'bargain' through premium assessment contributions to the State fund.⁶¹ Whatever internal cohesiveness the broad-based employer coalition of the Joint Committee enjoyed at its formulation, the accord began to deteriorate during the submission of its first brief to the Pineo Committee. The Joint Committee determined that employees should contribute one cent per day for first aid, yet were unable to establish first, the level of medical care to be provided for workers, and second, which segments of the labour force would be required to contribute (v. 4: 372). McVety chastised the Joint Committee position:

Don't you see, sir, that the workmen, in asking them to contribute their judgment on the question of contribution, will be guided by what they are going to get, and if they are simply going to get a ride to the hospital and a little first medical assistance, they will object to paying the one cent a day.⁶²

The circumstances surrounding the construction of a medical aid agreement serves as a graphic example of the level of disunity between the various capital fractions involved in the process, which was finalized on December 22nd, 1915.⁶³ Two "informal meetings" were held at the Hotel Vancouver, attended by the Joint Committee of Employers, the British Columbia Federation of Labour, and the Railway Brotherhoods, resulting in an agreement on the medical

61 (v. 4: 365). The shrewd bargaining position of the Joint Committee of Employers ensured that every aspect of 'real cost' attached to a compensation scheme was assumed by either State or labour. The employer 'contribution' to a compensation scheme was temporary, as capital outlay was quickly recovered from the consumer (the workforce) with the consumption of goods and services.

62 (v. 4: 373). The Commission noted that first aid amounted to little more than transportation to a hospital and immediate medical attention, while medical aid provided full medical attention for the duration of a convalescence. Pineo added that if employers intended to support a first aid scheme, as opposed to that of medical aid, even a nominal contribution of one cent a day would result in a large profit for the fund (v. 4: 374). The 1916 Compensation Act eventually required B.C. employers to deduct one cent a day from their employees (*Labour Gazette*, June, 1916: 1262).

63 See, Memorandum of Suggested Medical-Aid Provision For Workmen's Compensation Act, British Columbia (*Report*, 1916: 19); *Industrial Progress and Commercial Record*, Feb. 1916: 186-87.

aid issue. Pineo noted that the Washington, Ontario and Nova Scotia Acts lacked medical aid provisions,⁶⁴ but that

workmen and employers in (B.C.) (were) to be congratulated in having men representing (them) who not only appreciated the importance of (medical aid), but were prepared to cooperate with each other so that (they would) have this provision from the inception (v. 4: 461).

The agreement vanquished the concerns of the medical establishment, who would now have their accounts paid for by the State. Injured workers also benefitted, as they were provided with complete medical treatment until fully recovered (v. 4: 492). Protests were registered almost immediately. A representative of the Kettle Valley Railway wrote

I repeat, I want to treat the employees fairly, but there is a limit and a last straw, and the medical aid provisions are the last straw (PABC, GR 429, Reel 2111, doc. 2346).

Shortly thereafter, an undated letter appeared before the Committee. Characterizing the medical aid memorandum signed by the Joint Committee of Employers as "disastrous", the disgruntled author wrote:

The members of the Committee of employers who signed this were apparently totally ignorant of the conditions affecting the Interior and some Coast points, otherwise they would not have consented to such an arrangement as applicable to the Province generally (v. 4: 564).

The writer argued for the retention of existing (employee-sponsored and contract) systems of medical aid due to their "great popularity with the men." Moreover, separate surgical arrangements for workers and their families would prove "cumbersome and vexatious", resulting in both "inefficiency and increased expense." Finally, a worker contribution of one cent a day was held to be "quite insufficient" (v. 4: 564). Significantly, no reference to this letter, or the opposition contained within it, is mentioned in the final report of the Committee. The Committee was not prepared to compromise a medical aid agreement, the

⁶⁴ Pineo attributed this legislative deficiency in other provinces to an inability of employers and employees to come to an agreement. Significantly, he discounted any "oversight on the part of the draftsman" (v. 4: 461).

⁶⁵ The original dissenting letter remains taped inside the back cover of volume 4 of the *Minutes of Evidence*, held at the Legislative Library, Victoria.

principle of which had proven to be a monumental stumbling block in other jurisdictions, in order to entertain a minority of smaller coastal and interior employers.

Waiting Periods

As defined by Reasons, et al (1981: 180), a 'waiting period' is "an initial injury period during which no compensation is paid." In British Columbia, a "political and economic compromise" mediated by, and supported with the unanimous approval of the Pineo Committee, resulted in the establishment of a three day waiting period.⁶⁶ The waiting period in British Columbia was considerably less than many other jurisdictions, but a significant proportion of injured workers were excluded from receiving compensation. Like all other facets of the final compensation package, the struggle over waiting periods reflected a business strategy to minimize the human cost of production. The waiting period constituted a further 'contribution' on the part of workers in order to reduce the tax burden upon industry.

In California, some employers believed that a waiting period was a "contribution of workmen to the total cost" (v. 1: 117-22). Labour had attempted to reduce the length of the waiting period from two weeks to one week, but the labour representative on the Industrial Accidents Commission was over-ruled by the two remaining commissioners.⁶⁷ Employers attempted to justify the two week waiting period by suggesting that it minimized malingering and allowed a more liberal compensation for serious injuries (v. 1: 100), while balancing off the cost of injuries they attributed to carelessness, drunkenness, and "many other causes that are out of the control of employers."

⁶⁶ *Report*, 1916: 7. The Compensation Act was amended in 1967 to reflect the recommendation of the Tysoe Royal Commission (1965). The legislature did not promulgate the legislation until March 30, 1972 (Reasons, et al, 1981: 180), an action suggestive of delay on the part of the State in order to satisfy business interests.

⁶⁷ One of whom was appointed by the governor; the other, an appointee of capital interests (v. 1: 102).

In New York state, the chairman of the Industrial Insurance Commission suggested a two week waiting period was the "right thing to do" so that a worker, while receiving immediate medical aid, would be less likely to receive any compensation (v. 1: 208). Labour had initially secured a one week waiting period, but were later forced to concede another week to achieve increased benefit levels (v. 1: 290).

While in New York, McVety repeatedly attacked the business ideology that workers would mangle without a waiting period (v. 1: 291). F.C. Schwedtman, an employer appointee on a Special Committee, was unable to substantiate any figures on the number of workers engaged in 'soldiering' or 'malingering'. Nonetheless, he acknowledged the control feature a waiting period provided:

I would not be willing to give that proportion in definite figures...I find...that it is a very large element in the total number of workmen...my opposition (to a lack of a waiting period) is on account of the general attitude, the general frame of mind that it causes to the workmen...it prevents cooperation in the prevention of accidents (v. 1: 318).

In Massachusetts, the identical notion of a waiting period being useful as a means of disciplining the labour force was reiterated by W.M. Alexander, a member of the executive staff of the General Electric Corporation. Alexander destroyed his own credibility through a series of contradictions he offered in later testimony, facilitated for the most part by a previous statement that a "humanitarian" stance had been the "moving spirit" of the Corporation for many years (v. 1: 374). Alexander believed that:

The most important factor in the prevention of accidents is personal caution. There is nothing more effective in that direction than to train men in personal caution. How can you train them? I think a waiting period is one of those things you can give a man in the line of education towards personal caution...it may be that in time, people may become entirely cautious, then we can remove various elements, like a waiting period, which I think is one of the most effective ways of teaching people their personal responsibility...⁶⁸

68 (v. 1: 386) Ontario capitalists concurred with this position. It was believed that the issue was not so much a matter of penalizing workers (indeed, business representatives were hesitant to characterize waiting periods as a 'penalty'; v. 2: 195), as it was a "matter of having them think...so they will not allow the chap next to them to get away with a week when he is not hurt" (v. 2: 187).

McVety immediately attacked, arguing that in Oregon, "a large number" of employers not only refused to accept the existence of "faking or malingering", they were also "emphatically opposed to a waiting period" (v. 1: 386). Ontario businessmen found this information particularly difficult to digest. One individual argued:

They claim that there is no malingering? Then the people of Oregon are different to Ontario because we have malingering here...(Ontario has) developed professional malingerers (v. 2: 197-99).

Similarly, a California employer asked to reconcile the difference in waiting periods between California and Oregon could not, except to suggest that Oregon workers had to be "a whole lot better than the workmen we have here" (v. 1: 122). McVety provided an illustration of an Oregon steel and iron works that had voluntarily paid workers their compensation to cover the waiting period, because workers earning \$3.00 or less per day "could not possibly afford to lose that time" (v. 1: 389-90). Alexander replied:

One is somewhat suspicious of an employer who develops all of a sudden such humanitarianism.

To this, McVety retorted:

Well, I am contrasting it with the humanitarian spirit you referred to in connection with the General Electric company (v. 1: 390).

Alexander unwittingly laid bare the business rationale for a waiting period. Even though he incorporated the existence of compensation "fakes" to justify a two week waiting period, Alexander acknowledged that 80% of injured workers in Massachusetts would be eliminated from receiving any benefits (v. 1: 380). Like so many other business people of the same opinion, Alexander was unable to cite a "percentage of workmen (who were) fakers."

He stated:

I do not know, and I do not care how many there are, but as long as there any such, I think we need a check against it (v. 1: 382).

Others resorted to even less precise arguments:

If there were any malingerers who were good malingerers, there would be no way of getting the statistics (v. 2: 184).

The ideology of the ‘malingerer’ was also internalized by organized labour in Massachusetts. The American Federation of Labour reviewed the ‘experience’ of the casualty insurance companies before adopting the principle of a waiting period:

No, we took this thing up with the Industrial Accidents Board, and found that the cases...laid up from three to ten days would take up most of the time, and we figured to keep out the faker entirely...You will find that when you start on this that there are a number of fakers, who simply won’t get to work...that is the experience of the insurance company...(v. 1: 398).

Industrial Commission of Wisconsin statistician E.H. Downey argued that the ‘malingerer’ had no actuarial basis. Rather, it was little more than an opinion:

...I have no confidence in any statistics whatsoever that involve an opinion...In the estimation of the insurance company, every man who presents a claim is trying to beat the company...we are of the opinion that most of the cases are what may be called neurasthenic, or are due to the treatment the workman has received from the insurance company or employer...most of these cases are due to improper treatment, and could be avoided...by treating the workman well...⁶⁹

For capital, the prime motive in nurturing the notion of ‘malingering’ was to justify a waiting period (v. 1: 435; v. 3: 304; v. 1: 122). By constantly striving to lower the scale, a reduced cost for compensation could be achieved, thus freeing the monetary resources of capital interests for other, profitable activities.⁷⁰ A variety of arguments were employed to justify this position.⁷¹ Some believed that loss of wages for less than a week was “not an

69 (v. 1: 519). During Ontario testimony, F.W. Hinsdale, ex-chief auditor of the Washington Industrial Commission, and the individual later to over-see the installation of British Columbia’s Act, doubted the existence of “any dependable statistics” that would validate the concept of malingering (v. 2: 137; see also, v. 4: 79). McVety was also quick to remind Ontario employers appearing before the Committee that “in the absence of proof”, the validity of ‘malingering’ could only be regarded as a “general theory on the part of employers” (v. 2: 184). Indeed, employers relied extensively upon intuition, not empirical evidence, to substantiate their belief in the existence of malingering (v. 2: 250).

70 (v. 1: 519-22; Reasons et al, 1981: 181). Wisconsin capital had initially attempted to impose a 29 day waiting period in order to exclude nearly all claimants (v. 1: 589).

71 See, for example, v. 3: 217. In Ontario, Commissioner Meredith expressed the opinion that a failure to include a waiting period would “enormously increase the labour and expenses” associated with the administration of a compensation Act (v. 2: 161). W.M. Alexander of General Electric was more blunt:

excessive inconvenience to (the worker)" (v. 2: 132), or that injuries should be "of a sufficient severity to incapacitate a man for at least a day and a half...to entitle him to an award."⁷² Others endorsed a waiting period ostensibly because workers would intentionally injure themselves in order to enjoy a "holiday."⁷³ A member of the Ontario board disagreed that waiting periods excluded thousands of claimants (v. 2: 12). One witness supported the English and German experiences, rooted in business ideology, that it would "take a week to develop the character of an injury" (v. 1: 562). The Washington Chief Medical Officer acknowledged that injuries sustained in British Columbia and Washington resource extraction operations would outlast a two week waiting period (v. 3: 101). In Washington, it would appear that the State was willing to accommodate militant labour employed in resource extraction, at the expense of labour (perhaps not so militant) that might suffer an injury of only one week's duration. At this point in the hearings, Pineo began to refer to some injuries in the context of being "trivial" (v. 3: 251).

Business representatives in most jurisdictions believed that workers would stop at nothing to exploit a compensation scheme for even minor injuries. A California lumber magnate offered the following proof in the form of an anecdote about loggers:

...if the other 80% are entitled to compensation, see the enormous administrative machinery that you would have to get, and the expenses that you would have...all these accidents would have to be investigated, the man has to be questioned, reports have to be made...just see the enormous expense that would immediately arise (v. 1: 384).

72 (v. 2: 135). Labour advocates echoed a similar sentiment. The secretary-treasurer of the Ohio State Federation of Labour believed there was

no reason why a workman should be given compensation for a little slight injury that does not really incapacitate him to any great extent...if he only has a little mashed finger...which lays him off a day or two, I cannot see any reason why he should burden the State or the employer (v. 4: 112).

73 See, for example, v. 2: 195, 432; v. 3: 161. At the final Vancouver meetings, Western Fuel Company counsel E.M. Yarwood received a stern rebuke from Pineo for suggesting workers would risk injury in order to "get a holiday" (v. 4: 484-85). Ontario labour advocate Fred Bancroft presented evidence which indicated only small number of workers would ever consider self-mutilation in order to collect compensation (v. 2: 364).

...the moment anything occurred to them, they laid off...but when they discovered they could not collect for two weeks, they went right back to work.⁷⁴

However, the Committee established that many workers did not claim for an injury, even though entitled by law to do so (v. 3: 162). As Pineo noted:

The point of our observation, is that these men who are actually injured, and injured sufficiently to require medical attention, made no claim, even though the law gave them a claim for any loss of time.⁷⁵

Without a compensation Act, workers could not afford the luxury of laying off work to recuperate from their injuries (v. 4: 141-44). An Oregon business agent argued:

...when a man gets a thumb smashed up, he gets compensation for it under the compensation law; under the other law (employers' liability), he wrapped a rag around his thumb and forgot it; he knew that he could not get anything for it...(v. 4: 279).

Invariably, economic necessity demanded working people had no alternative but to continue laboring, despite their injuries.

During the Oregon hearing, Pineo again referred to the "trifling injury" in a statement that appeared to favour a waiting period (withholding compensation) while ensuring all medical bills were paid. In this way, workers who were able to resume production, even if only in a limited fashion, did so. Providing medical aid ensured recovery and a speedy return to full productive capability.⁷⁶ The Oregon commissioners, however, were unimpressed by the suggestion. Justifying the absence of waiting period in their state, they argued:

74 (v. 1: 122). In British Columbia, the myth of the 'compensation cheater' was inaugurated with a note in the *Victoria Daily Times* (Oct. 4, 1917: 11), relating a "humourous story" of a "Hindu" who tried to "slip one over" compensation board chairman E.S.H. Winn.

75 (v. 1: 291). In Washington state, one employer disagreed that fake claims would be problematic:

I have 400 men working for me, and I have had repeatedly to find fault with them for not reporting trivial accidents...I have even had to threaten to discharge men for not making reports (v. 3: 242).

76 (v. 4: 183-184). Pineo argued:

...is (the injured worker) not better able to stand a trifling injury which is only a matter of a few days disability when he is able to go on and earn wages, providing he has medical attendance provided to him free during that time...?

...when a man is thrown on his own resources...and he loses that (working) time...it is just...when he is most in need of assistance, when he is hard up and injured; it is true that you pay the doctors bills, but his grocery bill goes on just the same.⁷⁷

Labour advocates were in full agreement:

...you take a week's pay off him, and he does not get any compensation for a week...it takes a long time to get it (one's bank account) up again; his grocery and butcher bills keep on going on (v. 4: 282).

Pineo queried whether the "average man" could afford to lose "even two or three days."

One witness responded, "How can he, if his wages won't keep him while he (is) at work?"⁷⁸

Although a British Columbia labour deputation, appearing before the McBride cabinet in September of 1915, proposed a reduction of the waiting period to six days from the 14 days stipulated in the draft Act, labourite W.J. Baird seized the forum of the Pineo Committee to propose a complete elimination of the waiting period. M.F. Crawford argued workers had become more fully informed of legislative developments in other jurisdictions. Moreover, Baird contended there was no valid reason for a waiting period, when many workers provided their own first aid (v. 4: 448-49).

By the time of the December 23rd meeting, an informal arrangement between "certain employers and trusts and representatives of organized labour" (v. 4: 482, 496) was reached that set the waiting period at three days duration. Held *in camera*, counsel for the Western

77 (v. 4: 183). It seems plausible the Oregon commission believed a waiting period would only encourage injured workers, in "99 cases out of 100", to "lay over" this time in order to collect compensation for the period of disability. Data from other jurisdictions indicated the majority of workers stood to be eliminated from compensation by a waiting period. In Oregon, waiting periods were counter-productive. Oregon's economy depended heavily upon resource extraction, which exacted a heavy toll on the workforce. High turn-overs were the norm. Abolishing waiting periods, therefore, may have been an attempt to inject some stability into the labour force. As the Oregon Commission argued,

an employer said to us that he would not stand for any waiting period, and he said he would pay the men himself rather (v. 4: 187).

78 (v. 4: 299). An employer testifying before the 1912 *Royal Commission On Labour* recommended a two week wait for B.C. workers. He believed the English labourer was often too close to starvation to afford time to "lie off" (*Daily Times*, Oct. 23, 1913: 7). This statement contradicted the position of the secretary of the Victoria Metal Trades Council, who argued that the average B.C. worker struggled to stay "two days ahead of want..." (*Daily Colonist*, April 30, 1919: 11).

Fuel Company later disputed the authority of the Committee to present the agreement to the government as representative of the specific interests of the company.

McVety challenged Western Fuel Company counsel E.M. Yarwood on the reasons his client had for insisting upon a lengthier waiting period. Their exchange illustrates the autocratic attitudes coal mining capital harboured against mining labour. Yarwood acknowledged that mine accidents often resulted in a miner being "hurt pretty badly", and incapacitated for up to a month. Yarwood was unable to reconcile this with his belief that miners would "hurry back to work" if a two week waiting period was imposed upon them (v. 4: 482-83). Yarwood viewed short waiting periods as encouraging workers to return to work. McVety countered with evidence from California and Washington, and eventually had Yarwood agree to a seven day waiting period (v. 4: 483).

Safety and Accident Prevention

The Committee was acutely aware of the need for, and advantages of, a coordinated program of "essential element(s)" in a compensation Act. Unlike many other jurisdictions, the Committee viewed accident prevention as an integral component of a compensation Act:

Laws which provide for the taxing of industry to furnish compensation for the victims of industrial accidents irrespective of fault are commendable and desirable, but laws which will prevent the happening of such accidents are of more vital importance.⁷⁹

Pineo refused to consider one provision of the draft bill, on inspectorates employed by industries to police their operations. As the *Report* noted:

While this system may work to good advantage...we think in this Province...that some other method of dealing with accident-prevention may be found better adapted to our conditions.⁸⁰

⁷⁹ *Report*, 1916: 8-9. As one witness argued, "compensation and safety are so closely related...they should be controlled in one department" (v. 1: 36).

⁸⁰ *Report*, 1916: 8. Employers were convinced of the need for self-policing:

If the employers themselves don't take hold of it and make the inspections with the object of accident prevention, the Commission will do it (for us)...we would much prefer to have the

The Committee clearly favoured rule-making premised upon “advisory committees” assisting a State-appointed board. The benefits included:

the favourable attitude with which rules framed in this way are received by the general body of employers and workmen. Such rules are looked at not as being imposed on the industry by some body on the outside...but as having been framed in a measure by the employers and workmen themselves in their own interests...⁸¹

The California Commission supported bi-partite (management and employee) formulation of accident prevention rules. According to one commissioner, the “beauty of the plan” was that the method avoided the possibility of objections being raised to the rules when they were raised for discussion at later public hearings.⁸²

Once Wisconsin employers realized a State compensation scheme was inevitable in their state, the ‘safety’ movement secured a “tremendous impetus all around.” Employers mobilized to secure “competent men” for the board, and were rewarded with the State

selection of our man and have the control of him, and look after the inspection ourselves, rather than have the Commission or anyone appointed by the government to report (v. 2: 172).

Many employers favoured self-policing schemes because, for them, it was “a case of getting results: the idea (was) to cut down the cost” (v. 2: 336). This philosophy was grounded upon the notion that working people were the property of capital; that is, that the responsibility for the protection of the former was best entrusted to the latter, which argued the “right to look after their own workmen.” Capitalists espoused benevolent motives, but the real reasons were clearly production oriented (v. 2: 174).

81 (*Report*, 1916: 8). Wisconsin authorities aided the formulation of “reasonable regulations” by facilitating regular State-mediated (tripartite) safety committee meetings:

...when these rules are published in bulletin form, (employers and workers) recognize right off that it is something the employers themselves believe in, that the leading employers and workmen have agreed, and that they must be reasonable regulations, and they are accepted in a reasonable spirit (v. 1: 454).

Pineo recognized the value of ‘negotiated’ rules and regulations vis-à-vis a tripartite committee as superior to that of employer dominated ‘safety associations’. On at least two different occasions, witnesses confirmed the beneficial nature of these committees (v. 2: 233, 379).

82 (v. 1: 34); see also, v. 2: 178. Similarly, the C.P.R. was reported to be “most anxious” to expand a company “safety first” program that emphasized union assistance and monthly management-worker safety committee meetings; *Vancouver Sun*, June 25, 1913: 11.

appointment of the vice-president of the national manufacturers association.⁸³ This latter individual excluded labour from the formulation of safety orders and rules:

...the safety committee is made up entirely of master mechanics, superintendents, foremen, and special employees...the splendid policy of the Industrial Commission...(saw invitations to) the manufacturers and heads of departments to cooperate on them (v. 1: 559)

Labour, on the other hand, was allowed only limited participation in the general education movement by simply “disseminating information” (v. 1: 562).

In most jurisdictions, the centralization of authority inherent in a board, and a balance of power in the hands of State and capital appointees, had serious implications for labour. Democratic considerations were set aside, as was the need to wait “years” for the legislature to respond to work place demands (v. 1: 36). B.C. Federation of Labour witness A.S. Wells, like most of his American contemporaries, was resigned to the ‘inevitable’ nature of industrial injury and death.⁸⁴ Citing the failure of the *Factories Act* to police unsafe work sites, Wells viewed a consolidation of authority in compensation boards as the only viable method of eliminating industrial “deathtrap(s)” (v. 4: 517):

while the compensation Act was formed for the purpose of compensating our men, the main objective is to prevent accidents...(the board) would be the most competent to carry out this work (v. 4: 516).

The relatively autonomous, centralized nature of a compensation board encouraged flexible enforcement activities. The restrictive character of undeveloped resource-based economies forced the State to focus accident prevention programs not upon structural factors, but rather those of the individual:

83 (v. 1: 559). Ontario workers were denied representation on a compensation board by Commissioner Meredith. They were incensed to later discover that “one of the new commissioners was a mouthpiece for the Canadian Manufacturers Association”; Morton, 1984: 86.

84 The vice-chairman of the New York Industrial Insurance Commission believed it was easier to compensate individuals who were injured, than it was to prevent them from being injured (v. 1: 198). Conversely, under the terms of many compensation statutes, it was easier to benefit from the legislation by suffering a serious, as opposed to a minor, injury (*Daily Times*, Apr. 13, 1915: 7).

...the unsafe man is the worst kind of hazard that you can have, and the safe man is the best safeguard that can be adopted in any industry (v. 1: 59).

Innovative techniques of surveillance were utilized so that workers policed themselves. If necessary, violations resulted in workers being fired. The scheme offered “splendid results” because the responsibility for maintaining a safe workplace was shifted from those who controlled the workplace (employers), to employees.⁸⁵

The Pineo Committee was “most favorably impressed” with Wisconsin’s method of accident-prevention. The *Report* (1916: 9) indicated that “adequate” regulatory activity could be enhanced by “bulletins, safety exhibits, short talks, and evening lecture-entertainments”, such as “lantern-slides and moving pictures.”⁸⁶ When workers balked at participating in one program, the Commission enlisted the support of employers to compel employee attendance at safety-exhibits:

...(employers) would take so many (admission) tickets (for a movie show on safety); if they had 100 men, they would take 100 tickets; we would write the name or the number of the man that they gave the ticket to on one side, and when the next day came, the man would be told if the employer didn’t get that ticket back, he would want to know the reason why, so it practically forced them to come...⁸⁷

Employers expected indemnity for their efforts, in the form of premium refunds (v. 2: 300).

Witnesses in Washington state were less definite about responsibility for accident prevention. One witness suggested one solution encompassed the “question of... human attitude in...management.”⁸⁸ Some witnesses suggested affecting employers in the pocket-

85 (v. 1: 124). Massachusetts policy-makers geared their efforts to the “rising generation” of workers. Interestingly, there was little concern for the “old type of workman” (v. 1: 391).

86 For workers, the message was they were responsible for their own safety (v. 1: 454). Ohio received the assistance of a ‘safety expert’ and the Chamber of Commerce to organize factory safety meetings in order to reach “(the (desired) class of people” (workers) (v. 4: 34-7). Washington created worker shop safety committees, whose task it was to ‘recommend’ mechanical safeguards and related training (v. 3: 224-27).

87 (v. 1: 417). Interestingly, employers commended “the action of the commission and their work toward safety.” No mention is made of a favourable labour response (v. 1: 421).

book would ensure the safety of workers (v. 3: 107). Ontarian Fred Bancroft agreed that making industrial injuries costly for capital was the only way to prevent their occurrence (see also, v. 1: 458), but noted

it is not, in my opinion, the fact that workmen won compensation - they don't want to be injured...the only way that (labour) can see to prevent accidents is to make it too costly for those who are responsible and in authority in industries to allow them to have accidents (v. 2: 361).

Oregon labour feared a compensation Act would increase the frequency of injuries, as employers would be tempted to "take a chance on...accidents" rather than operate under a costly employers liability law (v. 3: 291). In fact, just the opposite occurred. Employers wanted their workmen restored to health as quickly as possible to avoid a "drain on the (insurance) fund."⁸⁹ Significant organizational pressure was exerted upon managers to reduce premium expenditures. Following a satisfactory safety performance, a Portland Meat Company received both a premium reduction and waiver in a two year period. The news elicited a letter from the company president:

(he) wrote...to our superintendent congratulating him on the fine and successful experience that he had had in the prevention of accidents in the past year...complimenting him on the showing, and hoping that similar results would be shown in the future...the superintendent notified the foreman just what was done in order to endeavour to get a better record during this year than he had made during the previous year; if there is anything that is going to save us money, it is cutting down all these needless accidents (v. 4: 269).

Ironically, the very individual responsible for production - the foreman - was made responsible for safety on the shop floor. One witness argued that the two roles were impossible to reconcile:

The same man, or foreman, will never deal efficiently with production and protection...production always gives bad protection, because the interest of production is not concerned at all with the protection of the workman, and the same cannot do both sides of the question...(v. 4: 377).

88 (v. 3: 108). Others disagreed with this view. For T.J. Duffy of the Ohio Industrial Insurance Board, the "human element" in industrial injuries was clearly one which for which workers bore the full responsibility (v. 3: 70).

89 (v. 4: 244). By expediting the recovery process, Oregon employers reduced compensation expenditures, making them eligible to receive premium reductions the following year.

For General Electric executive W.M. Alexander, the solution to safety concerns was simple. Safety was to be a 'top-down' process orchestrated by those who held a "business outlook...(and) knew what it meant to manage a factory" (v. 1: 377). Workers were prohibited from participation on safety committees. Instead, they were "constantly (tapped)...for information" by foremen, who determined whether management decrees met with the approval of workers (v. 1: 379).

A similar 'consultative' process was implemented in Washington, where employees were encouraged to recommend safety devices to the management of a Tacoma lumber company. F.P. Griggs suggested the owners of the mill were "very careful" to solicit the opinion of the lumber workers (v. 3: 180).

Inspectors, Prosecutions and Penalties

The factory inspectorate was one obvious manifestation of the contradictory social relations of a capitalist economic system. For the most part, workers had very little faith in the ability of the inspectorate to protect the labour force (Piva, 1979: 100). During the 1830's, British inspectors operated as spies, infiltrating working-class organizations and reporting political activity (Doran, 1986: 568). In the British Columbia mining industry, the inspectorate engaged in activity more becoming of production concerns than those of the workforce (*B.C. Federationist*, June 25, 1915: 1). Violations of safety regulations by workers were severely dealt with, while serious employer violations received minimal attention (*B.C. Federationist*, June 4, 1915: 1). With the advent of compensation legislation, a pattern of individualizing industrial injury and death, initiated with common law, became more entrenched. Inspectorate practice was integral to this process.

In the United States, employers complained about enforcement practices. Wisconsin employers characterized inspectors as "czars" (v. 1: 422) and the enforcement scheme as a "big club." Punitive State action "created a great deal of hard feeling" between the Labour

department and employers (v. 1: 422). Employers resented laws that hindered them unnecessarily (v. 1: 450). According to capital, inspectors, as “officer(s) of the State”, had erred from the correct path of “a servant of the people” (v. 1: 422). High-ranking bureaucrats determined that inspectors were “attacking the problem at the wrong end”; the focus was shifted from enforcement against employers to ‘education’ of employees. A compensation board replaced the existing inspectorate, and assumed responsibility for ensuring that its orders were complied with:

...we felt that if we could not work out something that would be helpful (toward solving the problem of increasing accidents)...we would not work out anything, and in order to overcome the trouble that had been caused by the prosecutions on the part of our inspectors against the employers, we took authority away from them for any prosecutions...the only authority to prosecute lies in the commission now...(v. 1: 406).

In Ontario, the Canadian Manufacturers Association wanted employers to emulate the inspection systems of Germany and England. In Germany, inspections were conducted with the “advice and cooperation” of employees, while in England, the Factory department received comparable assistance from employers. Rules formulated by employer “associations” (v. 2: 28) and enforced by a board meant employers would not

be interferred with by the class of inspector expert that we have sometimes in the service of the government; *employers will select their own experts*, and the work will be done in a smooth and economical manner, in such a way as to get the results (emphasis added).⁹⁰

Labour, however, did not believe “the power to formulate accident prevention rules could safely be left to a committee of employers.” C.R. Case argued:

employers are prone to neglect those things that cost them money for necessary changes, even to bring about relief from accidents (v. 3: 240).

The Ontario board also possessed the power to “get rid of (a board) employee” in the “interests of harmony in the staff.” The British Columbia bill did not grant the power to discharge its employees, instead leaving it to the Lieutenant-Governor and the political arena

90 (v. 2: 336). Similarly, Ohio abolished existing State inspectorates, bringing them under the jurisdiction of the State Industrial Insurance Commission (v. 4: 3).

(v. 1: 36). Because political recourse encouraged potentially embarrassing "investigation and argument", (v. 2: 33) it was suggested the board be administered in the manner of private enterprise (v. 2: 146). Board employees threatening production with overly enthusiastic enforcement practices could be fired.

Nonetheless, Washington authorities recognized the utility the threat of a penalty had upon employers and, to a lesser extent, employees. Enforcement powers were characterized as a "club", a "good thing to have...there, even if you don't enforce it" (v. 3: 56). McVety believed a failure to enforce regulations would result in workers characterizing legislation as "a joke." A Washington state official disagreed, suggesting a lack of enforcement was more indicative of "employers carrying out the safety first rules to the best of their ability" (v. 3: 56), than it was abrogation of duty.

British Columbia employers were no less concerned about enforcement practices. Pineo attempted to assuage these concerns, suggesting "the administration of this Act might work out much better than you fear at present" (v. 4: 499). Labourite A.S. Wells proposed a 'merit system' rather than punitive action against employers because, in the view of the former,

the main idea of the act is to prevent accidents, and that is what we desire more than anything else...perhaps the better way out of it would be the merit system, which is a little milder, but means the same (v. 4: 518).

The Joint Committee, however, were more concerned with a proposal to limit the extent of employee penalties (v. 4: 399). Employers demanded a right to appeal penalties in the event the levy of a sanction was the result of "an annoyance or something like that" on the part of the board. The Court of Appeal, it was suggested, "might take a calmer view of it" (v. 4: 400). McVety disagreed with this position, especially considering the

high (status) of men (the Joint Committee proposed) putting on the board...discipline would necessarily be very lax if every occasion is subject to review by the court of appeal (v. 4: 400-01).

The Joint Committee also demanded input into the process whereby penalties were determined. H.B. Robertson wanted employers to fix their own penalties, while W.F. Gurd requested limiting maximum penalties. McVety opposed both suggestions:

I think criminals under this section should be given the same rights as criminals under the Criminal Code (v. 4: 419).

Board Composition

The composition of the proposed B.C. Board elicited a wide-ranging set of opinions from all parties represented. Though the British Columbia bill stipulated a lone commissioner to be appointed by the Lieutenant-Governor in Council (ostensibly on the basis of economic restraint), employers were not unaware of a shift in 'public opinion' against a political reality that, until that time, had allowed them clear and untrammelled access to the provincial executive. More often than not, capital concerns had been assuaged by sympathetic administrations receptive to corporate agendas. American employers realized that rather than lend support to the "dangerous" venture that the appointment of a single commissioner presented to their interests, a more logical course of action would be to support each other with the twin concepts of an "independent...unbiased" (v. 1: 466) and "cooperative" (v. 1: 327) administrative body premised upon "safety in numbers."⁹¹ Wisconsin attorney C.H.

91 (v. 2: 209, 255; v. 1: 473). Other employers feared the corruptive influence (v. 3: 144) of a single political appointee whose judgements were subject to being "influenced by their situation" (v. 1: 391-93; v. 1: 25). A minority of witnesses were not entirely sure that a tripartite scheme would be beneficial. F.W. Hinsdale argued that

it would be a very improper and unfortunate method to appoint men to the board who were the advocates...of any interest. There are surely many men of unbiased and wise judgement who can be found who will administer the Act in the interests of all parties affected by it...(v. 2: 143).

A Tacoma lumber man was more forthright:

...we get just about what our people go after...one advantage to the Act (is that) the appointment of the commissioner is subject to the governor; you expect the governor to give you results, and the responsibility is on his shoulders, where it ought to be (v. 3: 174).

Crownhart noted that in order for board decisions to be seen as legitimate, they had to appear to be made in a atmosphere of *neutrality*:

I think three members will lend more dignity to your commission...and your awards and judgements would be better accepted...(the commission) is passing on a question of human affairs, and when you say whether or not a man shall have compensation, you may be passing on his whole life.⁹²

Most employers supported the idea of a tripartite board. W.W. Downard of the Oregon-based Union Meat Company noted that, first, the additional expense of a third commissioner was "entirely too small to take into consideration." Second, he argued that "you will find that it will pay for itself in the long run" (v. 4: 267). One Ohio labour witness believed that employees owed their employers representation on a compensation commission:

...the employers were paying the money, and they ought to be represented; the employees were making the claims against the board, and they ought to have a representative on the commission...(v. 4: 115-16).

The support capital displayed for a tripartite board (see also, v. 3: 24; v. 4: 4, 191, 235) also extended to the appointment of Royal Commissions. Commissioner McVety suggested to an Ontario capitalist that British Columbia would benefit from the appointment of a tripartite Select Committee, and furthermore, that the Meredith Commission could have "secured better results" had the Commissioner received the benefit of "colleagues from both sides" (v. 2: 255). The witness agreed (v. 2: 255).

Labour proponents, including McVety, supported the concept of "an absolutely impartial (tripartite) board."⁹³ Labour endorsed this mechanism because workers believed in

Miners in the Crows Nest Valley were apprehensive. The *B.C. Federationist* (May 7, 1915: 4) noted "the vesting of plenary powers in one individual has a tendency to autocracy rather than democracy." Business was favorably disposed to a single commissioner with business sympathies, but was less receptive to labour advocates (v. 3: 319). See also, v. 3: 125, 155.

92 Eastern capitalists were adamant that workers should receive the least possible recompense for their injuries, at the same time they recommended commissioners appointed to oversee business (compensation) interests should receive between \$6000.00 and \$10000.00 annually. In comparison, well remunerated Western workers received wages averaging \$624.00 annually (v. 2: 463).

93 (v. 4: 399). McVety relied upon aggregate American testimony relating the 'beneficial' nature of capital and labour members on a board, with a third member excluded from affiliation with either group (v. 4: 397). F.W. Peters of the C.P.R. (v. 4: 330), H.B. Robertson of Canadian Collieries (v. 4:

the effectiveness and impartiality of a quasi-judicial, administrative panel to facilitate “equal representation” (v. 4: 282) of capital and labour. Differences could be negotiated in an amicable manner by a chairperson who was “supposed to be impartial” (v. 3: 169).

Nonetheless, labour was well aware of the need for a labour-sympathetic commissioner:

it is a mistake at any time...not to place on the board a commissioner who by his whole life, by his connection with the workers in every respect...understands their positions, their troubles and their desires clearly, and who has special knowledge to look after their interests; and to consider the question from their standpoint on that board (v. 2: 386).

The witness continued:

...if you want an expert to take care of the workers interests, the best thing would be to go to the workers themselves, who would best be able to appoint a man (who) can take care of their interests (v. 2: 387).

In order that a balance of class interests could be secured on the compensation board, the Joint Committee of Employers suggested it be staffed by “a casualty insurance man of high standing or an actuarial expert or a mechanical engineer” (v. 4: 396). Manufacturing capital in B.C. had become accustomed to a relatively unfettered access to the provincial executive. As Bill 46 had been drafted by a Conservative government, capitalists seemed willing to assume a calculated risk that their privileged position would continue subsequent to the implementation of the Act. Rather than make obvious efforts to secure capital-sympathetic commissioners, the manufacturing lobby chose the strategy of a ‘classless’ board. To do otherwise would require allowing labour an equivalent right, a state of affairs capital undoubtedly wished to avoid at all costs. The ramifications of capital’s position were not lost upon McVety:

You do not want capital or labour represented, but you choose an actuarial expert, a mechanical engineer, and a lawyer - what better representation of capital could you wish? (v. 4: 398).

331), E.M. Yarwood of the Western Fuel Company (v. 4: 489), W.J. Baird of the Committee of Railway Brotherhoods (v. 4: 459) and A.S. Wells of the B.C. Federation of Labour (v. 4: 515) all supported a tripartite administrative tribunal.

Gurd, however, differed on the definition of 'capital'. He opined that the label applied only to manufacturers. "Casualty men", he argued, "are not in the employer class, and do not represent any employers of labour..." McVety disagreed:

They urged this morning what large employers they were...they represent the employers class (v. 4: 398).

Capital did not present its interests in a unified bloc. In spite of a consensus on items such as the professional affiliation of any future chairman, factions were evident.⁹⁴ H.B.

Robertson made it clear that Canadian Collieries opposed specific aspects of the Joint Committee position:

...we think there should not be officials on the board because the result would be they would fix the rate; the actuarial expert would fix the rate and then could sit on the board and help pass it; and the same with the mechanical engineer; and we want a *thoroughly impartial board* in each case... (emphasis added) (v. 4: 402).

H.B. Robertson opposed representation of class interests on the board, reaffirming that the board had to remain "impartial" (v. 4: 331). He conceded it would be a

distinct advantage to appoint a man who would know all about labour conditions, because he would be able to inform the board from the workman's point of view; we are willing to have men of that class...(v. 4: 440).

In contrast to Robertson, I.W. Peterson feared a single commissioner would become autocratic. Peterson was, however, essentially unopposed to the appointment of a labour sympathizer to the board.⁹⁵

In view of capital apprehension over a labour appointee to the board, workers did surprisingly little to provoke such fear. Worker W.J. Baird assumed an almost apologetic stance on the matter:

94 Capital preferred a lawyer to assume the chair. Due to unpleasant recollections of lawyers and the dominant legal system, organized labour was unsupportive of any lawyers on the board (v. 4: 393; *B.C. Federationist*, Feb. 26, 1914: 5).

95 Peterson's sole qualification was that whomever labour chose, that he be "a good man" (v. 4: 330).

We are not asking or suggesting that the man who shall represent labour shall be there as a special representative of the labouring interests; but one who is familiar with the labouring conditions, and will know their needs, and be impartial in his decisions (v. 4: 459).

Only A.S. Wells stipulated that one member of the board should have ties with organized labour. Labourite Fred Bancroft made some rather blunt comments concerning Cabinet appointments to State tribunals. Although Bancroft revealed that he had “a great deal of respect” for many lawyers and university professors, he argued that higher education and better living conditions distanced them from the working class:

...they have not come in as close a touch to the worker, nor do they understand the desires of the working class, as well as a man who has risen from their own ranks; they possibly do not understand him at all: they are in another class entirely (v. 2: 387).

The later choice of the Harlan Carey Brewster administration, elected in 1916 after a B.C. Liberal landslide, was Parker Williams. Arguably, Williams was an ideal compromise. In order to secure working-class legislative reforms, the one-time leader of the Revolutionary Socialist Party, had been co-opted by the Liberal Opposition during his tenure in the House. More than political patronage, William’s appointment was strategically brilliant, as it appeased labour agitation for labour representation, while at the same time, presented a comparatively non-threatening image to long-term capital prerogatives. Williams’ appointment further served an immediate legitimation function, while ‘leaving the door open’ for a future commissioner who, perhaps, would be considerably more sympathetic to immediate capital concerns.

Speed-up

According to William Meredith, accelerating production in order to maximize the expropriation of surplus value was simply an “evil” that only “education (could) put right.”⁹⁶ Although Meredith acknowledged the inherent danger of speeding up, he did not address the

96 (v. 2: 163). Significantly, Meredith saw the reformulation of power in compensation boards to create safety legislation as central to the ‘education’ (of workers) issue. Granting the commission this “final power” was done “in order to enable (employers) to minimize the number of accidents, and to lessen the burden upon them...” (v. 2: 163).

reasons why workers refused to use safety appliances, such as guards and shields. For Fred Bancroft, guard removal was not so mysterious:

the employee is compelled or at least he is urged to do a certain amount of work in a certain time, and the quicker he does it, the better it is for his job; there is more or less a competition in the shops between men as to who will get through the work quicker...I think it can be generally shown, that if a man removes a guard which has been placed upon a machine even at the instance or pressure of a factory inspector, that in the great majority of cases in removing that guard, it was done for the purposes of getting through the work so much quicker; and as long as the present system continues, you cannot put down to the fault of the workman things that he does in his anxiety to make good, and in order to keep his job, and to make his record look good in the business where he is in a working capacity (v. 2: 365).

Many boards made a practice of prosecuting workers for these infractions. A member of the Wisconsin Industrial Commission disagreed with this enforcement philosophy:

All that you want to do is to prevent accidents, and if you put that penalty upon a workman, taking away his compensation in case he uses a guard, I doubt whether that would be very good; but the employee in this state is sometimes forced to put aside a guard, and the thing that causes him to is his piece-work pay (v. 1: 426).

Commissioner Robertson enquired why workers expected indemnity when foremen repeatedly gave "strict notice" to maintain a guard.⁹⁷ Fred Bancroft responded:

I have worked along with foremen for 16 years, and I think I am well aware of the whole business of foremen's instructions; a foreman has to say these things, but if a man is directed not to remove a guard, the foreman would not say anything or object to the removal, if it was a matter of the work being got through (v. 2: 367).

The secretary of the Washington Industrial Insurance Commission agreed that workers did not remove safeguards except to speed-up. In response to a suggestion by McVety that foremen might "guy" a worker for using a safeguard - embarrassing or belittling the employee for an "inability to handle the work without the safeguard" - Gilbert remarked that the problem had never been brought to the attention of the commission. However, he allowed that it "might exist" at some shops (v. 3: 58).

At the Vancouver hearings, capital was relatively mute on this issue. Labour, however, demanded the elimination of section 3(1)(b) of the draft Act, which would disallow

⁹⁷ (v. 2: 367). Commissioner Robertson raised the identical issue with the secretary of the Washington Industrial Insurance Commission (v. 3: 58).

compensation in instances of 'serious and wilful misconduct' on the part of workers. W.J.

Baird feared the board would give a "wide interpretation" to the phrase:

...the employers laid down a certain set of rules;...they do not necessarily expect the employees to follow those rules, and if the employee follows them strictly, he is not covering the same amount of work, and this results in a premium being put on breaking the rules; if an employee is injured through a breach in the rules, the employer says he has broken instructions, and that way he is kept out of compensation he would otherwise be entitled to (v. 4: 450).

Similar sentiments were echoed by other labour representatives, including I.J. Coughlin of the Brotherhood of Railway Trainmen, M.F. Crawford of the Brotherhood of Locomotive Engineers, and A.S. Wells of the B.C. Federation of Labour. Like Baird, Wells believed that employers would resist compensation for workers injured while engaged in a speed-up program:

...frequently it is necessary for the men to disregard these notices altogether in order to get a big job out of them, out on time...in other words, it is a question of speeding up, and it is impossible to carry out the instructions to turn the work out, and if (the worker) disregarded the notices and an accident happened, it might be brought up against him, and he would not be able to receive compensation (v. 4: 496).

Most labour witnesses who toiled under such 'incentive' programs were well aware of the tenuous nature of their employment if they failed to demonstrate a satisfactory level of production. For M.F. Crawford, the situation clearly limited the utility of a liberal, free-market conception of 'freedom of choice':

You could hardly call that wilful disobedience, where if he were compelled to follow the rule, someone else would get his work (v. 4: 500).

Pineo evidently accepted that 'serious and wilful misconduct' would apply to cases of self-mutilation (v. 4: 450, 498). He believed that s. 3(1)(a) of the draft Act was an "advantage" to labour, in that the ambiguous phrasing could allow compensation in situations where a labourer had been injured or killed, "and it was decided he should have (the compensation), notwithstanding his own wilful misconduct" (v. 4: 449). However 'benevolent' this provision may have appeared at first, labour unease could not have been lessened with Pineo's

admission that the effect of 'serious and wilful misconduct' would depend upon "the construction and meaning" of the phrase (v. 4: 500).

Improved Capital-Labour Relations

Almost without exception, witnesses testified to the effect that compensation legislation had greatly improved previously strained relations between the diametrically opposed interests of capital and labour. The accolade of one Oregon commissioner is indicative of the sentiment expressed by compensation proponents:

The employers stand behind the commission; never before in Oregon have the employers and workmen appeared before a committee advocating the same thing as they did in this instance; it was stated on the floor of the Senate that compensation has done more to bring capital and labour together than any other thing they have ever done before; capital and labour stood shoulder to shoulder in favour of the law.⁹⁸

California workers believed it "impossible" to secure justice as long as the three employer defences remained. A legal entitlement to set compensation eliminated bitterness (v. 1: 148). Having paid a premium and been relieved of all responsibility, employers assisted employees to procure the "right" amount of compensation from the insurance company (v. 1: 32).

The State-mediated compensation deal meant a marked decrease in frequency and intensity of complaints from workers. The Ontario board noted that the labour force had failed to present any "trouble...at all." The Act had been implemented without "a single utterance from any of the labour organizations in criticism either of the law or its administration" (v. 2: 26). Portland, Oregon workers approved of the fact that they would now "get a doctor instead of a lawyer" when they needed one (v. 4: 289).

⁹⁸ (v. 4: 188). See also the comments of G.N. Cornwall, publisher of the *Timberman*, a forest industry trade journal (v. 4: 242).

Some witnesses were critical of the role the insurance companies⁹⁹ and courts (v. 3: 137; *B.C. Federationist*, Feb. 26, 1914: 5) played in exacerbating tension between capital and labour. With the advent of compensation, some manufacturers exhibited a greater interest in industrial relations (v. 1: 350).

Other witnesses were unsure whether any real change had been effected by compensation legislation. Fred Bancroft suggested that in Ontario, at least, there had been minimal tendency for antagonism to lessen (v. 2: 348). A similar opinion was rendered by a Washington lumber manufacturer (v. 3: 196) and president of a Washington Timber Union (v. 3: 224). Both viewpoints related a lessening of tension arising from litigation associated with industrial injuries, but disagreed with the opinions of most other witnesses that compensation presented a panacea for labour unrest (v. 3: 46, 105).

The secretary of the California State Federation of Labour offered a major reason why labour complaints about a compensation Act had been minimal:

The compensation system is such a vast improvement over our old method of securing redress, that I think it is not at all surprising that there have been no complaints, because the man receives something now...whereas formerly they would have had to fight in the courts before they had a possibility of getting anything...(which is) precisely the reason why there is such satisfaction (v. 1: 171).

As noted previously, the Vancouver Island coal mines were the scenes of protracted and often violent labour unrest. Canadian Collieries counsel H.B. Robertson was unabashed in presenting his motive for supporting an industrial insurance scheme:

...I might say our view is this; if any scheme of insurance can be brought forward which will not be prohibitive or too expensive, which will make the relationship between the employers and employees friendly, we would be strongly in favour of it.¹⁰⁰

⁹⁹ (v. 1: 278; v. 3: 34). A Washington commissioner with extensive experience in a private insurance company argued their emphasis upon profit-making created conflict at all stages of the claims process.

¹⁰⁰ (v. 4: 425). The B.C. Manufacturers Association believed that a State compensation scheme would facilitate a "greater degree of loyalty...friendly cooperation and sympathy" among workers toward their employers (*Industrial Progress and Commercial Record*, Jan. 1915: 192-93).

Right of Appeal

The Committee noted that a general consensus among United States representatives of State, capital and labour existed in favour of a right to appeal a ruling from a compensation board decision. In B.C., the draft Act proposed to remove all right of appeal. While the Committee was aware of the "confidence" that an appeal would give those "immediately affected by the Act", they also realized that the procedure involved a "considerable expense."¹⁰¹ B.C. labour was unequivocally opposed to any appeal from a decision of the Board, while capital favoured a limited appeal (*Report*, 1916: 17).

The California Industrial Accident Commission recognized that while appeal prohibition would be fiscally advantageous, it might also serve as a catalyst around which workers could rally against unpopular Commission decisions (v. 1: 29). An Oregon worker believed few decisions would be appealed by labour. But, its symbolic value would serve as a safeguard, minimizing "grumbling and kicking" within the rank and file (v. 4: 283). Washington state tightened appeal criteria for labour, so that only "proper" appeals had court costs paid for by the State (v. 3: 91, 236; see also, v. 4: 7).

California capital was critical of any right of appeal, especially while they believed that the incumbent commissioners were "reasonable...well-balanced...and fair minded men" (v. 1: 114; see also, v. 1: 74). Sir William Meredith echoed this sentiment in Ontario:

I think that if you have a board, it will make mistakes, but it is nothing when laid in the balance against the injustice of allowing appeals and adding up costs...(v. 2: 164).

The president of the Ontario Association of Builders Exchanges was clearly uneasy about the prospect of workers retaining an appeal:

¹⁰¹ *Report*, 1916: 17; v. 4: 199. Legal fees were a large component of appeal expenses. In some jurisdictions, lawyers acting as advocates in compensation cases operated under restricted fee schedules, which resulted in a reduction in the number of lawyers willing to appeal (v. 1: 136).

That puts us back to the position that we are always trying to get away from...we felt that we would be in just as bad a position as ever...if the workingmen agree with this (an Act with no appeal) and the employers are satisfied with the law, I do not see where the idea of allowing an appeal comes in, because it would be going back to the old situation.¹⁰²

In Washington, the judiciary reaffirmed their support for the authority of the Industrial Accident Commission by refusing to over-turn any decision made by the Commission (v. 3: 29). Nonetheless, some capitalists believed that without an appeal, the courts would assume a role subordinate to that of businessmen (commissioners) "telling (the courts) how to read the law" (v. 3: 146). Disagreeing that appeal rights should be maintained for the purpose of "preserving the dignity of the (judiciary)", lumberman R.H. Clarke argued:

...the board might be prejudiced, it is human, and the court is not; the court does not make any mistakes (v. 3: 146).

As Pineo noted, with a markedly different principle buttressing their national constitution, American labour was strongly of the opinion that there was to be no "taking away the right of every man to have his day in court" (v. 4: 520). For British Columbia workers living in a common-law jurisdiction, the experience of their day in court was such that, as A.S. Wells remarked, "we would rather leave it to a commission...I would sooner trust the mistakes of the commission, than the mistakes from other sources" (v. 4: 520).

Other labour interests had not given full consideration to the matter of an appeal for fear that, if secured for labour, "the other side would have it to...we would not be in any better position than before (v. 4: 459). I.J. Coughlin wondered aloud if labour would be entitled to have "the same common law appeals as before." Pineo responded:

I do not think so; I think you will find in other places that courts considering the compensation Act as being under a new theory, and you will find that they are considering appeals on rather a new basis (v. 4: 499).

102 (v. 2: 263). Portland attorney J.B. Kerr characterized appeals as "destructive", and certain to arrest the "quick, safe and sure remedy" that the compensation Act had been designed to achieve (v. 4: 236). Though the Canadian Manufacturers Association supported appeals during the Meredith Royal Commission (v. 3: 146), by the time of the Pineo Committee, the C.M.A. supported making appeals, and appeal procedure, "as difficult as you can" (v. 2: 334).

While there was agreement on the principle of a 'limited' appeal, there was evidence that capital differed on the specifics of the process. For example, the C.P.R. believed that it would be advantageous for both employer and employee to be able to resort to counsel during an appeal hearing, if so desired. J.I. McMullin also believed that section 56 of the draft Act was wide enough in its scope to allow awarding of legal costs (v. 4: 329). H.B. Robertson, of the Canadian Collieries also desired a "short appeal" (v. 4: 332), but proposed to "cut any questions of costs":

as long as you have any questions of costs, you will have the question of litigation on account of costs; but if there are no costs, if an appeal (is held) for the purpose of establishing some principle, it will be appealed from that point of view, and not for the costs (v. 4: 440).

Worker Resistance to the Abrogation of Common Law Rights

For the most part, labour renitence to the imposition of an 'historical compromise' - that of a guaranteed, no-fault stipend to be paid in the event of injury or death - was sporadic and unorganized, but pockets of resistance did exist. At the introduction of the draft Act (Bill 46) in British Columbia on March 6, 1915, M.P.P. Parker Williams disputed section 10, which denied workers the right to sue their employer (*Colonist*, July 25, 1916: 2).

Organized labour in California had rallied around the cause of eliminating the employer common law defences. They characterized the new compensation Act as a "vast improvement" over previous employer liability legislation, as nearly all injured employees were now able to receive compensation without the necessity of going to court.¹⁰³ However, workers lost both the right to sue for incapacity and damage, and any right to recover for "suffering in misery" as a by-product of incapacity (v. 1: 138). California commissioners hoped

103 See also, (v. 1: 171; v. 3: 17). Commissioner McVety reaffirmed the fortunate position of labour for one worker witness:

The policy of the act has given the workman new rights which did not exist before, and it has given him as a whole better service and more compensation than was ever obtained before, and it has taken away the old common law defences (v. 2: 439)

workers realized that others who received large court awards were still relatively few in number. More importantly,

it (was) better to have each man properly cared for than to make trouble in the whole plant (v. 1: 23).

The intense resistance of Oregon labour to the abrogation of their common law rights won them a limited compromise, despite initial setbacks. Early attempts to bypass the compensation Act by workers filing suits directly against their employers were routinely dismissed by the courts (v. 4: 158). Continued labour pressure forced the issue. Workers retained the right to sue in cases where employers failed to install safety devices.

Unfortunately, the attendant administrative and legal processes to exercise this right presented an opportunity for casualty insurance companies to undermine the principle of the Act in the view of employers. The effect of labour attempting to exercise hard-won legal rights worked to the advantage of interests determined to defeat the State scheme (v. 4: 151).

Oregon labour also strongly objected to workers being included or excluded from compensation coverage according to the dictates of an employer. When Pineo mistook their concern as a one of a question of constitutionality, McVety was quick to clarify the matter:

The point (the labour witness) is making is that the workman has no right of election; he is either in or out according to the whim of the employer...the (witness) considers that it is an unfair right of election on the part of the employer, and no right of election on the part of the employee.¹⁰⁴

Though the California rank and file appeared content with the compensation law, labour advocates were infuriated by the "atrocious and unjust" extent to which corporations had influenced the final legislation. Business domination within the legislature had resulted in

104 (v. 4: 289). E.J. Stack of the Portland Central Labour Council provided an illustration:

...to show you the difference between the option of the employer and the employee...one employer forgot - you see, the employer who does not serve notice of election of his intention not to take the Act, he comes under the act...one employer forgot - the time had passed for him to reject the Act - he was under it (the Act), and he decided to go through the plant, and he had some nicely written notices of the rejection of the Act...all nicely made out, little square pieces of typewriting, and he had them signed by the employees; he simply forced his employees to reject the Act, because he didn't want it (v. 4: 303).

a transferral of statutory liability from those corporate officers who had been appointed to those who were elected. As a matter of routine, corporations delegated management responsibility to appointed officers. Corporations were consequently able to evade legal liability, even in cases of gross, wilful and deliberate neglect (v. 1: 140).

In Ontario, Meredith was cognizant of the familiarity which society had developed with the common law, and realized that it would be necessary to convince individuals and organizations that they were not being subjected to an injustice by its removal. Consequently, Meredith proposed that in order for the compensation Act (which Meredith termed "entirely experimental legislation") to receive a "fair trial" period, it would be necessary to make it the exclusive remedy (v. 2: 439).

Non-resident Alien Dependents

Almost universally, capital sought to deny compensation to foreign dependents. Foreign dependents were often more difficult to locate than the dependents of resident workers. Due to the difficulty of determining the validity of non-resident dependent claims, employers imported foreign labour in hopes of minimizing, or evading completely, the payment of compensation benefits. Compensation paid in North American currencies to foreign dependents was invariably worth more, due to exchange rates and lower costs of living. Immigrant labour was most frequently employed in the dangerous extractive industries and railroad construction. Employers could afford to be less careful with these employees, safe in the knowledge that they would not be held fiscally accountable for death or injury, and that the State was busy facilitating programs of massive immigration to fill the void. A member of the Industrial Insurance Commission of New York State summed up the situation succinctly:

(Compensation legislation) is designed to prevent (employee) families becoming a charge on public charity. Of course, if they are not residents, that reason does not exist. They will not become a public charge here. Then, we find that monies in the old country is worth very much more than it is here...they can live there practically on half of what they can here (v. 1: 221; see also, v. 1: 544; v. 2: 97; v. 3: 24).

Labour had initially desired the exclusion of foreign dependents in order to lessen job competition in North America. British Columbia labour was familiar with policies of massive immigration pursued by the Dominion government, and the depressing effect on wages and working conditions in the labour market. They sought to prevent discrimination that they believed would occur as some capital interests (notably, the resource extraction industries) utilized immigrant labour extensively in order to lessen the likelihood of paying benefits to dependents. In Wisconsin, labour mobilized and defeated an initiative by capital to reduce compensation payments to foreign dependents by 50% to 65%, thus eliminating any economic advantage to employers in hiring foreign labour (v. 1: 545).

The Vancouver debate over the inclusion of non-resident foreign dependents was essentially a repeat of the central issues heard six years earlier in Kruz v. Crow's Nest Pass Coal Company, Limited. The company had appealed the decision of an arbitrator awarding compensation to dependents of a deceased workman who resided in Austria. With the introduction of the compensation bill, capital interests which had previously been strongly in favour of unrestricted immigration, especially from China, now appeared to advocate taking steps to make British Columbia "less attractive to that class of people" (v. 4: 466). Labour, on the other hand, defended the provision that tentatively included non-resident foreign dependents, in order that employers could not continue to discriminate against the hiring of 'B.C.' labourers (v. 4: 463-64, 468).

For capital, the issue was clearly one of minimizing costs, in addition to avoiding any obstruction to inexpensive, available, and readily exploitable pools of labour. Fueled by disinformation campaigns, such as that perpetrated by the Canadian Manufacturers

Association,¹⁰⁵ capital unease with the concept of compensation for foreign dependents manifested itself in various forms. W.D. Burdis of the British Columbia Salmon Cannery Association was firmly of the conviction that there needed to be restrictions limiting the number of eligible dependents, "especially in the case of Asiatics" (v. 4: 467). Their combined attack centered on three main points: first, that a difference in "the mode and cost of living" in foreign countries justified a marked reduction in benefits payable to dependents (v. 4: 414, 467, 469, 507); second, that compensation be denied to dependents in countries allowing the practice of polygamy (v. 4: 461-62, 465, 507); third, that monies paid for compensation remain in British Columbia to aid the provincial economy (v. 4: 461-62, 467). As H.B. Robertson noted:

if they were residing in this country, the province would get the benefit of the money paid to the dependents; but if they reside in a foreign country, are we not supporting the people that foreign country should support?¹⁰⁶

The 'general theory' of compensation that all workers (except domestic and farm labour) were to be compensated for any loss of wages led capital to view the compensation bill not as an attempt to provide redress for injured workers, but rather one "to try and make the employers not employ Oriental labour" (v. 4: 467). No longer would it be as economically advantageous to employ 'foreigners' (v. 4: 465). W.L. Gurd was particularly concerned about the competitive advantage United States lumbermen had with a large number of Swedish and Norwegian workers. The Joint Committee of Employers demanded assurances of State intervention to ensure cheap Chinese and Japanese labour would be replaced by another source:

105 McVety noted that the C.M.A. had published a circular to the effect that the state of New York had to make advances of \$500,000.00 to the insurance fund in order to meet payments for non-resident aliens. Not surprisingly, the figures were "not substantiated" (v. 4: 415).

106 (v. 4: 413). Robertson was concerned that without restrictions imposed upon non-resident dependents, the maximum benefit of \$1500.00 in the 1902 Act could increase to \$5000.00 and possibly as high as \$15,000.00 under the proposed bill (v. 4: 412).

The trouble is, the manufacturers have not been able to get these men in years gone by, and now we will have to be shown that we can get the white men (v. 4: 468).

The strife predicated over the Kruz case left no doubt in the minds of labour representatives what would ensue if capital secured lower, preferential benefit rates for foreign labourers. The position of the "British race" would be threatened in British Columbia (v. 4: 505). Capital interests reminded Pineo that if their economic interests were not addressed, they would refuse to hire married men, and instead hire single men to minimize the potential costs associated with payment of benefits to dependent families.¹⁰⁷

As a consequence of Kruz, organized labour in B.C. realized that in order to further their own interests, it would again be necessary to defend the inclusion of all foreign dependents, especially that of the Chinese. As A.S. Wells argued, lower expectations concerning wages, living and working conditions gave the Chinese a competitive edge:

...(their) standard of living enables the Asiatic to come here owing to his ability to accept a lower salary than the white man; and if the compensation were lowered, there would be another incentive to employing them, instead of the white labour (v. 4: 506).

This topic consumed much of the interest of commissioner McVety, who addressed the hypocrisy of an effort to reduce or eliminate compensation benefits for the Chinese, while the head tax to prevent worker's dependents immigrating to British Columbia remained in place:

...it seems to me we will have to divorce the humanitarian suggestion from the (compensation) Act, if we prevent their dependents coming into the country (as a result of the head tax) and then refuse to pay (foreign dependents) because they are not residents here.¹⁰⁸

107 (v. 4: 462). McVety countered capital demands for concessions in the area of foreign dependents by arguing that section 33(a) of the draft bill, which limited the amount of 'compensation' paid to single men killed at work to burial expenses, more than "equalized) the matter" (v. 4: 415).

108 (v. 4: 464). McVety later reiterated his point, arguing that he was unable to see

any reason for inviting both the European and the Asiatics to come here, and charging a head tax, and paying bonuses to the immigration departments if, on the other hand, we are discriminating against them in the matter of dependents (v. 4: 468).

With the “reasonable consensus” throughout the hearings that foreign dependents “should not be cut off”, (v. 4: 410), McVety was confident that monies “contributed by the industries of the province may reasonably be expected to be spent in the province” (v. 4: 468). However, he also believed that only employers could solve the problem, by hiring ‘indigenous’ B.C. labour (v. 4: 415).

Excluded Labour Classes

The issue of occupations to be excluded from compensation consumed much of the Committees’ working time. However, the subject is not addressed in the final report. Excluding select classes of labour - most notably farm and domestic labour, or other occupations comprising a large percentage of either female and/or immigrant labour - extended a pattern of discrimination in British Columbia that began with the first *Employers’ Liability Act* in 1891. The problem of farm and domestic labour exposed the rhetoric of a comprehensive scheme for coverage of injuries. Many compensation Acts, such as New York’s, divided hazardous labour into as many as 42 classes, yet excluded farm and domestic labour.¹⁰⁹

The taxing nature of developing a resource-based economy made it imperative that the labour force employed in mining, forestry, railroad construction, and related activities, be adequately maintained on the domestic front. The higher-paid occupations were dominated by caucasian males, and a considerable army of labour was required to maintain this workforce. Compensation was clearly aimed to address this need. Females unwilling or unable to labour domestically found employment in agriculture and service industries. Female immigrant labour was utilized to fulfil the requirements of domestic food production and

109 (v. 1: 200). See also, v. 2: 356; v. 3: 1, 11; v. 4: 73). In Oregon, farm and domestic workers could acquire compensation coverage by applying to the board (v. 3: 155). Washington allowed ‘elective adoption’ for office employees (v. 3: 78). Given the vulnerability of immigrant and female labour to employer intimidation, it is unlikely that many workers availed themselves of compensation coverage.

household labour. Denying compensation to women in clerical, service and agricultural industries helped ensure that only those who had no choice but to secure non-traditional employment outside of the home, would be willing to risk a non-compensable injury. In concert with a string of related exclusions and legislative initiatives, workmen's compensation aided in channelling women into the home. Compensation also served to effectively facilitate the utilization of marginal labour groups, thus enhancing productive and reproductive functions required to maintain the workforce (v. 4: 209).

Farm and domestic labour was categorically excluded in most every jurisdiction visited by the Pineo Committee, despite testimony confirming the hazardous nature of such employment.¹¹⁰ Farm and domestic work faced long hours, poor pay, and arduous working conditions that resulted in a considerable deterioration of health. Significantly, "dangerous occupations" with well-organized (male) labour activity, such as logging or coal mining, were not excluded in any jurisdiction. Industries employing women and minorities, on the other hand, were not uniformly characterized by organized agitation for improved conditions of labour. The textile industry exposed female workers to a high risk of contracting 'brown lung'.¹¹¹ Similarly, labour advocates were concerned about the proposed definitions of 'workman' and 'out-worker'. Though Pineo assured labour delegates that women were covered by the definition of 'workman' (v. 4: 495), 'out-workers' were specifically excluded from the definition of 'workman' and hence, eligibility for compensation benefits (v. 4: 445).

110 A California witness noted that farm operations were responsible for "an immense amount of accidents" (v. 1: 146). A member of the Ontario Compensation Board admitted that "farming itself is a hazardous occupation" (v. 2: 9). F.W. Hinsdale, the ex-chief auditor of the Washington Industrial Commission, admitted that "agriculture is one of the most dangerous of occupations" (v. 2: 73).

111 Byssinosis (or 'brown lung') is a form of pneumoconiosis caused by the inhalation of cotton dust. Many textile workers laboured at home. The debate centered about whether employees were responsible for their own health if they accepted 'out-work' contracts to perform labour at a location other than that of a factory or shop (see, for example, v. 3: 1-2). Ontario labour advocate Fred Bancroft argued that employers preferred out-workers, rather than make provision for a factory, because of the economic advantage it afforded them (v. 2: 354).

'Out-workers' were predominantly female, often from ethnic minorities, employed primarily in the wholesale clothing trade where they laboured under the piece-work system in their own homes.

For employers, out-work was advantageous because they could dictate the structure of the production process without being held accountable for the deleterious effects (v. 4: 495). Labour objected to the legal definitions of 'workman' and 'out-worker' because they would encourage domestic piece-work. For workers, out-work meant home labour, for low pay, under "unhealthy" and "unsanitary" working conditions (v. 4: 494).

In addition to being categorized as non-hazardous, the exclusion of farm and domestic labour was justified on a number of alternate grounds as well. The seasonal nature of some occupations, particularly farming (v. 2: 64), administrative convenience,¹¹² cost of medical attention (v. 1: 140), and farmer opposition¹¹³ were four of the ancillary justifications mentioned during testimony. Large manufacturers (v. 2: 350), retail merchants associations (v. 2: 165; v. 4: 15), and employers of out-workers were also outspoken in their demands for specific exclusions. The commissioners of the Ontario board alluded to an unspecified set of "purposes served by those exclusions", but did not elaborate as to the meaning of their statement (v. 2: 1).

Institutionalized racism was also a factor in the relegation of minorities to jobs of relatively low prestige and hard labour. The Ontario Board argued that migratory farm threshing operations constituted an insurmountable administrative obstacle. When McVety inquired as to how it was the Ontario board could justify the exclusion of Chinese power

112 (v. 2: 1, 64). F.W. Hinsdale argued against inclusion of farmwork on a number of grounds, such as difficulty auditing payrolls, and extended hours of labour. Factory operations were more conducive to audits, because they were accessible to board personnel and workers, hours of labour and wage rates were clearly defined, and little difficulty existed in collecting the appropriate amount of payroll assessment (v. 2: 73).

113 California farmers argued the unpredictable nature of produce markets made it impossible for them to add the cost for compensation onto their products. While the California Industrial Accident Commission was of the opinion that all employers should be required to secure compensation, they were over-ruled by the legislature (v. 1: 1).

laundries, the board was forced to admit the nature of the "Chinese question" had affected the board's decision.

Another witness suggested occupations such as power laundries, mining, threshing work and street-cleaning were minor hazards. McVety challenged these exclusions (v. 2: 69). Not uncoincidentally, these occupations were characterized by a significant component of Chinese labour. Hinsdale cited the question of power laundries to illustrate his argument:

Any laundry...that has...a considerable number of employees, is certainly a form of operation that should be under the Act; but there are a great many of them which are very small laundries...and a great many of them are Chinese laundries...it was felt necessary, certainly in the case of Chinese laundries, to exclude them...(v. 2: 69).

The court-enforced exclusion of station-men¹¹⁴ from the common law, the 1891 *Employers' Liability Act* and the 1902 *Workmen's Compensation Act* had fostered working class hostility in British Columbia. McVety was convinced that to exclude by statute classes of labour in a "new province", such as British Columbia, would lead to an increase in the amount of work done under such conditions, as employers sought to evade liability in the event of injury (v. 1: 527; v. 3: 3). McVety believed Washington state had the solution to the problem:

...we make the primary employer responsible for the contribution to the compensation fund; if a man...sublets (a) contract, or any part of it, we hold that man responsible under the Act; we do our business with the contractor, and endeavour to collect from (him); but if he doesn't, we make the owner responsible (v. 3: 6-7).

By the time of the Pineo Select Committee, the willingness of the courts to consider the position of contract labour reinforced for employers the need to protect their financial interests by advocating a compensation Act. Station-work was not discussed during the Vancouver meetings, probably because provision was made for its inclusion in the draft Act.

The work of the Pineo Committee culminated with extensive revisions being made to Bill 46, introduced to the legislature on March 6th, 1915. The new bill (#30) was given third reading and passed by the House on May 23, 1916.¹¹⁵ The manner in which the first bill was

114 'Sub-contracting' entailed railway contractors sub-contracting to lesser operators, who in turn sub-let their contract to 15 or 20 workers on individual stations or places.

introduced, its modification as a consequence of the Pineo Committee recommendations, and the re-introduction of the revised bill, suggests that a compensation Act had developed some priority with the government over a rather brief period of time. Barely fourteen months had elapsed for the entire process to come to fruition. Despite the speed of these events, labour was not unhappy with the outcome. On the contrary, there was ample reason to celebrate.

The *B.C. Federationist* proclaimed,

After an examination of the terms of the Act...the press of the province has almost unanimously stated, both editorially and through news articles, that the terms were such as guaranteed to the workmen of British Columbia the best system of State insurance in the world (April 14, 1916: 1; see also, *Victoria Daily Times*, April 13, 1916: 7).

Within months, the appointments of three commissioners to the board were made.¹¹⁶

Summary

As one witness in New York noted,

We are now paying, as you are in British Columbia, for the accidents that have occurred within the last 35 to 40 years, in one way or another...(v. 1: 286).

The compensation debate reflected a good deal more than simply a functional State response to ensure the long-term interests of capitalism. A modified-structuralist analysis recognizes the integral role of class struggle in the origins of social-welfare policy. The Pineo Committee was an overt attempt to mediate and diffuse class conflict, legitimate 'solutions', and promote social harmony. The evidence indicates that "social and industrial schemes" in other jurisdictions were instrumental in defusing unrest. The victims of industrial injury were "least noticeable" in countries implementing compensation legislation (v. 1: 286).

115-45 *JLA* 1916: 151; *B.C. Federationist*, May 26, 1916: 1. See also, *Labour Gazette*, May 1916: 1163-64; *Victoria Daily Times*, May 4, 1916: 14 (compensation bill given second reading); *Daily Times*, May 9, 1916: 7 (compensation bill presented to House Committee).

116 *Daily Times*, Jan. 2, 1917: 11; *Daily Colonist*, Jan. 2, 1917: 7; *Labour Gazette*, Jan. 1917: 2. Rossland barrister E.H. Winn, a staunch Liberal, was appointed chairman for a ten year term. Mechanical engineer H.B. Gilmour, manager of the Waterous Engine Works company of Vancouver, and past Liberal M.P.P., was appointed for eight years. Parker Williams was appointed for a nine year term.

This is not to suggest that capitalists have always opposed occupational health and safety reform. As Walters (1983) argues, at the very least, the drain on surplus value caused by on-going industrial carnage inevitably resulted in efforts to reduce the associated productive costs. Nonetheless, a recurring theme throughout the testimony is that capitalists emphasized the individual worker over the greater structural imperatives of capitalist social and productive relations. ‘Radical strategies’ which would significantly reduce surplus value were resisted or rejected outright by business. Solutions thus emphasized adapting workers to the work environment, and the enforcement of safety regulations directed at workers, as a responsibility of the State (Walters, 1983). As the Pineo deliberations and recommendations indicate, the strength of organized labour, both in B.C. and in other jurisdictions, won limited concessions. Miliband (1969) argues, however, that ‘concessions’ do not transform class relations. Indeed, as Mahon (1977) notes, whatever effect the implementation of social-welfare reform may have in terms of ‘winners’ or ‘losers’, the capitalist economy is improved.

The final report of the Pineo Committee discounted the need to state the reasons for its recommendations. The extent and gravity of wide-scale social unrest (in part, a consequence of the continual high price of ‘industrial progress’ being paid by the working class) made any overt connection between social unrest and compensation not only undesirable, but unwise. As Brandes (1976) notes, big business believed the war in Europe made it unlikely that a transition to a peacetime economy could be made without a replication of social unrest elsewhere in the world. One reform advocate wrote, “With labour crying for democracy, capital must go part way or face revolution” (1976: 27). The validity of the positions suggesting workmen’s compensation represented either a genuine concession on the part of State and capital, or the manifestation of equivalent power relations between interest groups, is the subject of the ensuing discussion.

CHAPTER FIVE

WORKMEN'S COMPENSATION: THEORETICAL IMPLICATIONS

As Reisman (1977: 9) notes, social policy "cannot be discussed or even conceptualized in a social vacuum." Definite links can be drawn between "values, ideologies and images" and solutions proposed by the State to social problems at specific historical junctures. Moreover, as Gough (1978: 32) suggests, the 'values' of a society influence the number of available 'solutions':

When it is said by historians that a particular social problem "had to be dealt with" or that a particular piece of legislation was "imperative" or "inevitable", what, apparently, is meant is that the alternative to action of the kind taken was such as to be clearly incompatible with the ends of those, at least, who were in a position to make the effective decision.

Reisman (1977: 9-10) posits that social welfare legislation is necessarily "concerned with those needs which must be satisfied if the existing social matrix is to continue in existence." Gough (1979: 32) offers an alternative formulation that emphasizes a structuralist-oriented political economy:

The autonomous dynamic of capitalism provides the starting point for a materialist analysis of the welfare State. The course of capital accumulation continually generates new 'needs' or 'requirements' in the arena of social policy. Of course, when using the term 'needs' here we are not referring to human needs, but to the requirements of the capitalist mode of production at a particular stage of development.

Gough (1979: 44) proposes that acknowledging a structural relationship cannot possibly explain, in its entirety, the origin and evolution of a particular social policy. Nonetheless, any analysis of the manner in which a State intervention later manifests itself as social policy must maintain a separation between the manner in which it functions, and the manner in which it originated. As Gough (1979: 53) reveals:

Analysing the former can, strictly speaking, tell us nothing about why a particular policy was enacted, how it was administered, and so on.

Conversely, even though various formulations have been offered to explain the rise of workplace social-welfare legislation,¹ it is too complicated to be seen as “merely the struggle of capital against labour.”² To suggest that all events that occur at the workplace can be explained by class conflict, is misleading:

Class conflict alone...will not suffice to explain the origins and development of the welfare State - if this were all we would be back with a Marxist variant of pluralist theories...For there are imperatives created by the capitalist industrialisation process, and there are functions to be performed which cannot be carried out by individual business firms...(Gough, 1979: 62).

Economic activity and the State response to a perpetual flux of economic conditions and working-class agency comprise key aspects of a solution to the compensation puzzle:

The deeply embedded and camouflaged logic of the capitalist social order in health predicts that partial successes can be obtained only at the price of considerable struggle. The conditions of success are embedded in the historically and nationally specific evolution of class relationships and they largely can only be understood in relation to specific political and economic conjunctures (Renaud, 1975: 569).

Gough (1979: 39) notes “this process...needs to be situated within the confines of the capitalist State structure.” A modified-structuralist trajectory facilitates a greater understanding of why a capitalist State would act against the interests of capitalist factions, over-riding their short-term interests to accommodate the long term interests of capitalism. The task is to understand “the mechanism by which these...interests are mediated and articulated by the State” (Gough, 1979: 62).

¹ See, for example, Finkel (1977: 346). According to Gough (1979: 14, 56, 65), some writers have focussed upon the welfare State as functional to the needs of capital, while others view it as the fruit of working-class struggle. Irving (1987) utilizes Gough’s (1979: 14) *Political Economy of the Welfare State*, which tempers a recognition of ‘needs of capital’ with the realization that class struggle plays a significant role:

Working class struggles which potentially threaten the political domination of capital or the execution of State functions critical to the accumulation of capital necessitates ruling class restructuring of the State to preserve capitalist political domination and to insulate critical functions from working class influence (Gough, 1979: 65).

² Schmidt, 1980: 51. Schmidt (1980: 46) argues that in the United States, compensation reform was advocated by labour, middle-class reformers and the intelligentsia, but implementation of compensation occurred only with assent of large corporate interests.

Deville and Burns (1976-77: 8) state that an understanding of capitalism requires acknowledgement of an inherent contradiction, the manifestation of which occurs in two closely-related forms: first, a contradictory relation between capitalists and workers. Second, a contradictory tension between social regulation of production, and the preservation of private control and utilization of finite resources through private property rights. The contradiction between the forces of production and relations of production is one that the capitalist State must identify, mediate and defuse. The “unplanned relentless drive” associated with capitalist development has a human cost, in the form creating a state of *diswelfare* among the victims of ‘economic progress’ (Gough, 1979: 92). The nexus upon which all capitalist contradiction can be isolated stems from a working class “whose interests are fundamentally opposed to those of capital.”³ Because of the difficulty of altering capitalism, the symptoms of a contradictory mode of production can be ameliorated by drafting social welfare legislation. For the victims of “industrial progress”, the welfare State facilitates crucial ‘compensation’ (Gough, 1979: 92). The welfare State disguises discrepancies, and utilizes “State power to modify the reproduction of labour power” and “maintain the non-working population in capitalist societies” (Gough, 1979: 44-5).

Not only does the workplace serve as a primary organizer of social life, it is an expression of social contradictions inherent in capitalism (Navarro, 1986b: 107). The State must reconcile an exploitive mode of production with a humanistic agenda within the welfare State. Gough (1979: 12) argues that a capitalist mode of production “differs utterly from an economic system which serves to meet human needs.” While it is too simplistic to argue that “capitalism causes disease” (Doyal and Pennell, 1981), as Renaud (1975: 56-4) observes,

...since socialism, in theory if not in practice in existing socialist societies, gives precedence to human needs rather than to capital accumulation, it is also likely that these diseases will be less prevalent with socialism.

³ Gough, 1979: 59. Gough (: 60) defines the ‘core’ of the working class as those who have “no control over labour power, means of production, or investment and resources.”

According to Doyal and Pennell (1981: 66)

The most direct relationship between the process of commodity production and the destruction of health is obviously to be found in industrial accidents and diseases. In these cases, ill health, disability or death are directly produced through the victim being at work.

If a commodity has market potential, the effect of the production process upon the worker is not likely to be a serious concern to the capitalist or the State, especially where other factors, such as an expendable labour supply, or a refusal to recognize a union health and safety committee, is facilitated or protected by the State. Commodity production will continue in many hazardous work environments because it is profitable (Doyal and Pennell, 1981: 25; see Appendix D). To understand the structural relationship between capitalism and workmen's compensation, therefore, requires an understanding of the dynamic between the forces and relations of production and health (Navarro, 1986b: 108). Clearly, capital required workmen's compensation to address three key concerns. First, it allayed a burgeoning capital accumulation crisis. Second, the scheme would preserve and renew the labour force. Third, compensation would facilitate the reproduction of ruling class hegemony, and aid in legitimating capitalist social and productive relations (Swartz, 1980; Doyal and Pennell, 1981).

From the inception of the Industrial Revolution, capitalism has experienced a series of economic and political crises. Capitalism nevertheless demonstrates a remarkable ability to implement regulatory policies to resolve these crises, while preserving the dominance of this economic system (Deville and Burns, 1976-77: 6). The international movement toward compensation legislation represents a "unique configuration of circumstances", one to which only a comparative historical analysis will do justice (Gough, 1979: 57). Nevertheless, similarities in the developing pattern of social-welfare legislation between British Columbia and other jurisdictions are evident. Factors such as geographical isolation, labour militance, a staples economy, and the manifestation of an intermittent, yet undeniable, symbiotic relationship between State and capital, combine to make British Columbia's experience with the compensation issue a particularly vivid and unique historical instance. As in all

jurisdictions, the resolution of this issue had an impact upon the wider field of corporate activity. The eventual solution to the problem of business behaviour causing material loss and physical injury or death to employees was best dealt with outside of the conventional justice system. It is the manner in which this 'compromise' was arrived at in British Columbia which assumes greater significance.

One answer to the workmen's compensation puzzle can be found in the relationship between the State, the imperatives of the capitalist economic system, working class political struggle, and business interests dependent upon State intervention and regulation to facilitate long-term capital accumulation and profitability. Though theoretically neutral, State-mediated conflict between the economic imperatives and human need will frequently result in priority being given by the State to economic needs (Navarro, 1976: 443). Similarly, social welfare interventions are routinely driven by economic concerns, more so than a benevolent desire of the State to raise living standards.⁴ This imperative is certainly reflected in patterns of injury and illness that manifest themselves in the workplace. Conversely, health policies are not the product of an all-seeing State that emphasizes social control (Doyal and Pennell, 1981: 23, 45). In short, the relationship between the predominant organization of the economy, and the political and social institutions and processes in society (Gough, 1979: 10) are key variables in a theoretical application to the instance of workmen's compensation.

In British Columbia during the late 19th century, the economy was one of resource-based dependence. Working-class life was difficult and, as Tipton (1978: 81) argues, hunger and State coercion presented a formidable combination. The need to legitimate the existing system of social relations presented less of a concern than did the requirement to facilitate

⁴ Profit was not the sole motivator of social reform. Finkel (1979: 1-4) argues big business realized that in the absence of structural reforms that lent themselves to periodic adjustments dictated by the economy, profits would decline and the working class would continue to "respond by sliding toward radicalism." The social unrest caused in part by unchecked inflation, profit-mongering, and corruption associated with the onset of World War I, is a relevant example of the 'social dynamite' the State was attempting to defuse.

the production process (Ratner and McMullan, 1987: 11), especially in the face of an economy struggling to recover from a series of downturns (Lipton, 1978: 79). A pressing need for large-scale production diminished the opportunity for genuine petty commodity production. Indeed, it is arguable whether British Columbia ever experienced a significant level of such economic activity, characterized by the worker owning the object and means of work, and controlling the process of production. 'Land-jobbing', and the large scale industrial monopolies that followed, established capitalist control of both the means of production and the labour process. Mechanization and the employment of women, children, and other unskilled labour resulted in heightened levels of exploitation and surplus value extraction. In addition, urban migration, immigration policies, and the tenuous 'boom-bust' nature of British Columbia's staples economy resulted in high levels of unemployment that also effectively served to discipline the labour force. Undeniably, the changes in the labour process had grave implications for the working class (Navarro, 1986b: 117-19).

Irving (1987: 155) argues that the manner and frequency of State intervention in British Columbia underwent considerable flux in the early years of the twentieth century, largely as a consequence of the demands placed upon an, as then undeveloped, social-welfare net by a burgeoning resource-based capitalist economy. In formulating a model to explain the origins of British Columbia social-welfare legislation, Irving relies exclusively upon Gough (1979). The latter views the emergence of the social-welfare State first, as a functional response to a capitalist economy, and second, the result of political class struggle on the part of an organized working class. Avenues of State intervention were shaped by these developments, and reflected a commitment to individualism.

Intervention was also characterized by a free market, 'laissez-faire' economic philosophy that hinged upon a relentless drive to expand production and profitability (Doyal and Pennell, 1981: 142). Legitimation functions in the form of more concrete action, as opposed to political rhetoric, were piece-meal and intermittent. The eventual evolution of

capitalism to a monopoly economy required an attendant growth of the State infrastructure (Block, 1987: 62). The State continued to survive and flourish during the 19th century because of the numerous advantages its continuation offered business (Clement, 1977: 227).

A State commitment to capital as the “motor force of society” meant that a staples economy dominated, for the most part, by strong foreign capital interests, was best served in the short-term by minimal intervention. The State existed to protect private property, and to provide a stable investment environment (Irving, 1987: 155). The high costs borne by venture capital were ‘insured’ by a close alliance between government and capital. The “vested interests” of capital were promoted and protected, the weight and authority of the law was conferred upon the private decisions of businessmen, and essential services were funded by public taxation (Panitch, 1977: 16-17). The reliance upon military intervention by early capitalists in order to crush working class militancy, is one clear example of this alliance. In this way, the short-term accumulation process was safeguarded (Finkel, 1977: 345). Increased levels of State expenditure served to enhance the expropriation of surplus value, and maintain the accumulation and reproduction of capital.

Demands by labour advocates for State intervention into a ‘self-regulating’ market economy that did not assist in capitalist expansion and profitability garnered little support from either the State or business.⁵ In the interim, a pattern emerged where few social welfare reforms were realized solely on account of their popularity with labour. Yet, as Gough argues, limited social-welfare concessions could be wrung from the State by working class unrest. A

⁵ Finkel, 1979: 2. The State rarely constrained capitalist enterprise with regulatory legislation that did not assist the accumulation process. For example, the B.C. *Steam Boilers Inspection Act* was ostensibly drafted in order that the State might be responsible for routine inspection, and the examination and licensing of engineers. According to labour critics, the Act did little more than provide “first class and cheap technical advice to the owners of steam boilers and engines.” The Act was “not intended to be of any benefit to workers”, as ‘inspectors’ did little more than ensure steam boiler “owners (were) not exposed to any dangers of having to pay damages through boiler explosions” (*B.C. Federationist*, Nov. 19, 1912: 6). On the whole, State intervention tended to assist the accumulation process, not hinder it.

correlation existed between the nature and growth of the State, and heightened social needs of capital and social demands of labour (Navarro, 1976: 452).

Providing an adequate labour supply for business was one State responsibility. Structural aspects of the labour process, notably lengthy working hours in conjunction with hazardous working environments, took a severe toll on the workforce (Doyal and Pennell, 1981: 113). In occupations such as mining, railroad construction and logging, high labour turnovers were relied upon to reduce the effects of illness and injury upon productivity. A system premised upon a 'peasant economy' allowed employers to draw healthy members of the community into the work force, only to later thrust back upon the community those rendered sick and disabled by the production process. The existence of a structurally impermanent labour force made such employer behaviour economically viable (Doyal and Pennell, 1981: 113). With the evolution of the economy from one of laissez-faire industrial capitalism to the initial stages of monopoly capitalism (Doyal and Pennell, 1981; Strinati, 1979), there was a shift away from the need for a huge, unskilled labour force toward one that was more stable and qualitatively superior. When labour shortages did occur, it allowed workers, including ghettoized workers, to extract greater concessions from State and capital. Increasing immigration was one method of combatting labour potency. State intervention thus served to support and regulate production (Stevenson, 1983) by, for example, consolidating and stabilizing labour markets.⁶

Capital utilized other 'support services' as well, including health legislation. The growth of health-related services occurred as a consequence of increased social needs, which were themselves determined by the process of capital accumulation. Moreover, British

6 Whitaker, 1977. During a robust economy, employers were pressed to maintain work force numbers. After a legislative amendment increased the B.C. head tax to \$500.00, Chinese workers exploited the resulting downturn in Chinese immigration, and "doubled their wages." Farmers then fired their Chinese labour, but were unable to recruit white workers, most of whom were employed at higher paid jobs. The agricultural lobby demanded a reduction in the head tax and increased immigration to resolve the issue (*Daily Times*, April 16, 1907: 2; *Colonist*, Sept. 19, 1907: 6).

Columbia was not insulated from pandemic disease. The outbreaks of small-pox and cholera in the mid-1890's prompted demands for a *Health Act*.⁷ Though enabling legislation for a Board of Health was created in 1893, it wasn't constituted until 1896, more than likely due to mounting evidence that large reductions in deaths, and measurable cost savings, could be "attribut(ed) to improved sanitary conditions."⁸ With the advent of mechanization and the onset of heightened labour unrest, there was the implicit realization of an intrinsic link between improved health, a heightened extraction of surplus value and increased profits (Navarro, 1976: 450). Accelerated involvement of the State in providing an increased level of health and social services must be viewed in light of the object of such intervention - to conserve capital while maximizing the potential productivity of the labour force. Clearly, the quality of human labour had become a key factor in capitalist development, and State interventions were closely tied to the requirements of British Columbia's burgeoning resource-based economy (Doyal and Pennell, 1981: 56, 141-44). By the time of the *Royal Commission On Labour* (1914), capitalists realized the labour force would require an 'investment' the same as any other facet of production (Doyal and Pennell, 1981: 163). The challenge was to gear health needs created by the production process in such a manner so that the solution to these needs was compatible with a capitalist organization of the economy.⁹

7 PABC, GR 429, Box 3, File 1, 318-93; 26 *JLA* 1897: 1; see also, 25 *JLA* 1896: 1. Smallpox was recorded at Yale as early as 1881 (PABC, GR 429, Box 1, File 10, 1632-81), and cholera followed in 1890 at Nanaimo (GR 429, Box 2, File 3, 331-90). Ensuing smallpox outbreaks resulted in desperate quarantine measures (GR 429, Box 2, File 5, 623A-92, 684-92; Box 3, File 1, 287-93). For additional comments of the Lieutenant-Governor, see 21 *JLA* 1893 Apr. 12: 132.

8 PABC, GR 429, Box 4, File 2, 1186-98. The Victoria smallpox epidemic of 1892 cost the municipality \$59,102.00 to treat 112 cases (GR 429, Box 8, File 3, 643-02). Curiously, an 1897 opposition attempt to call for a Select Committee into "the state of the public health" failed by a 15-8 margin (21 *JLA* 1897 Feb. 22: 29). In the calendar year of 1901, a warrant for an additional \$10,000.00 was required by the Board of Health to counter disease (GR 429, Box 8, File 3, 643-02). Though early health legislation ostensibly addressed problems such as poor housing, crowding, and malnutrition, in actual fact, little decline in actual mortality rates was realized (Renaud, 1975: 560).

9 Renaud, 1975: 559. As early as 1917, a plan for the implementing of State health insurance was discussed in Ottawa (*Labour Gazette*, Oct. 1917: 768). A provincial *Royal Commission On Health*

If British Columbia was initially a capitalist paradise, it was also characterized by an increasingly articulate, organized and militant labour force that focussed effort toward securing democracy both inside and outside the workplace. According to Navarro (1986a: 147), democracy is the "capacity of individuals to control their own lives", a control which is relinquished upon crossing the workplace threshold. In British Columbia, the bourgeoisie consistently resisted any expansion of democratic rights, especially those that impinged upon productive relations (such as labour unions). The provincial economy manifested signs of strong market liberalism, anti-democratic conservatism, and a belief in the virtues of individualism. Liberal ideology was presented as a panacea for a legitimation problem centering upon political and economic freedom, even though the political reality was strong executive authority and a marked hostility to popular representation.¹⁰ Though largely pre-occupied with the development of British Columbia's then-extensive resource wealth, labour and socialist activism forced government and business to at least appear to address the concerns of a working class that was not receiving sufficient remuneration for the physical, emotional and financial deprivation they endured as a consequence of the production process; this, in spite of the considerable wealth the working class were responsible for generating (Irving, 1987).

was appointed on Nov. 19, 1919, and reported on Mar. 22, 1920; *Sessional Papers* (1920: F1-F13). The Commission was chaired by Compensation Board chairman E.S.H. Winn. As the transcript of the Commission makes clear, it was believed a scheme of State health insurance would do much to minimize social unrest. Similarly, overt references were made to the operation of the compensation Act, with the result that the requirements of industrial capitalism were not overlooked, either:

...the physical condition of the people is now more than ever before, a matter for serious consideration by the Government, and on the completeness with which the Government solves the problem of a steady man power depends much on the future prosperity of this country (Matters, 1974: 30).

10 Gough, 1978: 33. As Whittaker (1977: 45) reveals, the conventional wisdom of the dominant political elites had earlier been succinctly propounded by John A. Macdonald when he stated, "The rights of the minority ought to be protected, and the rich are always fewer in number than the poor."

Nonetheless, there were few concessions in any quarter without a protracted struggle (Navarro, 1986a: 159). The 'democracy' most preferred by the ruling class was that of a passive and apathetic electorate (Navarro, 1976: 446), but the British Columbia labour-socialist movement was neither of these. The agitation of human agents and tentative State reforms facilitated an explosion of socialist, social democratic and labour parties throughout the world. In British Columbia, the locale for conflict centered around the workplace and social wage issues, which only served to heighten the crisis (Navarro, 1986a: 147). When political avenues of redress failed to bring about the desired reforms quickly enough, violent confrontations resulted which not only taxed the resources of the State, but also jeopardized the ability of the State to legitimate itself. As the unrest associated with the period between 1912 and 1914 illustrates, it was clear that the repressive apparatus would be less and less able to maintain the control necessary for economic stability (Linkel, 1977: 345). Clearly, in British Columbia, it was increasingly difficult to ignore the social and economic costs of industrial activity. Despite the economic instability that occurred as a consequence, a properly formulated and well-executed regulatory intervention - workmen's compensation - was nonetheless able to succeed in securing a resumption of economic activity under normal or even improved conditions (Deville and Burns, 1976-77: 10).

With the implementation of regulatory mechanisms, the State attempted to maintain the smooth operation of an economy dependent upon capital accumulation by first, addressing the need for a higher quality of workforce, and second, assuaging threats to the prevailing socio-economic order (Doyal and Pennell, 1981: 145). Herein lies the relevance of a relative autonomy thesis to this argument. It complements a modified-structuralist investigation, insofar as it

directs us to understand the State (and its repressive component in particular) as pragmatically tied to the agenda of the class in control of the dominant mode of production but not able to take initiatives for interests which may diverge from those of the dominant class (Ratner, McMullan and Burch, 1987: 113).

In other words, the relative autonomy thesis recognizes the needs of capital, while holding that the "State is not a uniform expression of 'capital'" (McMullan, 1987: 248). As Giddens (1981: 211) states, "The ruling class does not rule." Rather than relying wholly upon 'structure', relative autonomy allows for the unpredictable nature of human agency to be considered when analyzing the response of the State apparatus to constant political, economic and social flux.

The transformation of a capitalist economy from one of entrepreneurial to that of a monopoly phase¹¹ demanded that an 'outside' entity - one for which the State was ideally suited - be responsible for the consolidation and stabilization of the labour market (Whittaker, 1977: 54). The primary role of the State is to "defend, support, and encourage the capitalist economy", not in the interests of specific capitalists, but in the interests of capitalism as a whole.¹² *The mode of production determines the nature of the entire social structure, and defines the nature and extent of intervention available to the State.* The imperative of capital accumulation affects the nature of the workplace. The State depends upon an unobstructed and smooth process of accumulation in order to finance its expansion, so that services to the economy may be maintained and improved. The invasion of corporate capital into all facets of economic and social life in the quest for profits demanded State intervention to facilitate such a concentration, while disguising or relieving the more deleterious aspects associated with such behavior (Navarro, 1976: 452).

11 In 1919, Vancouver wholesale grocer W.H. Malkin mused, "We may be going through a transitory stage, and may be approaching the end of the competitive period in industry." Malkin favoured social reforms to ameliorate the hardships and unrest that he felt sure would follow (*Colonist*, May 2, 1919: 2).

12 (Navarro, 1976: 443). According to Navarro (1976: 442), a clear distinction can also be made between "on behalf of" and "at the behest of." The degree of autonomy that the State exhibits is clearly tied to the "level and form" of class struggle, including the existence of a political party buttressed by working class support. In British Columbia, labour political action commenced in Nanaimo in 1877 with the establishment of a Workingmen's Association. By 1890, labour had secured representation in the provincial legislature, and the support base later broadened further to include a revolutionary socialist movement.

The accumulation imperative is not the sole determinant of social policy decisions (Navarro, 1976: 444). The State must exercise a degree of autonomy from a single-minded pressure to service the accumulation process, in order to be able to serve the long-term interests of the capitalist class (Gough, 1979: 41). As Block (1987: 54) argues,

Those who accumulate capital are conscious of their interests as capitalists, but, in general, they are not conscious of what is necessary to reproduce the social order in changing circumstances. Those who manage the State apparatus...are forced to concern themselves...with the reproduction of the social order because their continued power rests on the maintenance of political and economic order.

Other factors, such as the political and ideological, must be considered as well:

...social policies have been introduced by the State, in the interests of preserving capitalist relations...against the interests of the working class...(P)olicies, originally the result of class struggle, are adapted to serve the needs of capital. There are numerous examples where forward-looking members of the capitalist class perceive the need for the State to step in and perform 'reproductive' functions... (Gough, 1979: 62).

The State does establish and maintain the conditions necessary for a capitalist economy to operate. As Gough (1979: 51) notes, it does this by assuming responsibility for specific expenditures, the nature of which have been presented in O'Connor's (1973) accumulation-legitimation thesis. According to O'Connor, 'social investment' are projects and services that increase labour productivity. The task of lowering costs associated with the reproduction of labour are assumed by 'social consumption' projects. 'Social expenses' encapsulates all projects and services that are required to maintain social harmony, and thus, the legitimacy of the State. Significantly,

Social expenses...are not even indirectly productive for capital. They are a necessary but unproductive expense (Gough, 1979: 51).

A relative autonomy thesis allows a closer examination of the State apparatus, and the manner in which it reconciles three interlocking, potentially contradictory functions germane to a capitalist economy: legitimation; order maintenance; and, producing and reproducing the conditions necessary for continued capital accumulation (Ratner et al. 1987).

Legitimation

The State has the onerous task of maintaining social harmony and cohesion among classes in society that, without intervention, might otherwise threaten a system of social and productive relations most beneficial to capitalism. The State must address the contradictions created by, more generally, those affected by business activity; more specifically, it must assuage workplace conflict arising as a consequence of the capitalist mode of production. A failure to address workplace death and injury caused by business in the pursuit of profit maximization and capital accumulation risks an increase in the level of working class mobilization to counter the offending condition.

For example, disquietude among workers engaged in railway tunnel construction, near Field, B.C., necessitated the dispatch of a provincial constable to investigate reports of high frequencies of injury and death (PABC, GR 429, Box 15, File 5, 3578-08). At Coal Creek, a coroner's refusal to appoint a jury to investigate the death of a miner sparked a protest by the Italian consulate:

The Chief Provincial Constable has afterwards said...that he was at a loss to understand why, in a case pre-eminently one for an inquest, none was held.

The lawyer retained by the family was more blunt:

The accident was of such a nature that a Coroner's inquest should have been held and it is shocking that one was not (PABC, GR 429, Box 12, File 4, 3150-05).

In another incident at Grand Forks, a worker had his leg amputated. The callous manner in which he was treated by his employer eventually led to a threatening letter being delivered to the mine office. The anonymous authors demanded an immediate payment of \$3000.00:

Send the man that got his leg cut off \$2000.00, and we will keep \$1000.00 for our trouble.¹³

In the Kootenays, a prosecution of the editor of the *Sandon Paystreak* for contempt of court resulted in a petition from workers at the Slocan Star mine:

¹³ PABC, GR 429, Box 18, File 1, 1993-10. Cervio v. Granby Consolidated Mining, Smelting and Power Company, Limited (1910) 15 B.C.R. 192.

We believe that there are members of the Supreme Bench who, by the habits of their life, and by their actions, have violated the confidence of the people who have placed them in positions of trust (PABC, GR 429, Box 9, File 1, 2379-02).

Similarly, the *B.C. Federationist* editorialized against the behaviour of Judge Howay sentencing miners during the 1912-1914 strike:

His 'Honour'...deals with effects and has not the moral courage to investigate the deep lying causes which brought into being the present crisis...It is a crime for labour to organize, a crime for workers to fight for better conditions. Any condition which tends to lessen the profit of the masters of (premier) McBride and (attorney-general) Bowser is lawless...(B.C. *Federationist*, Nov. 7, 1913: 2).

In a calculated act of defiance, the miners broke into the *Marseillaise* as they were marched off to prison. State legitimacy was clearly compromised when a vocal labour elite charged that "dividends (were being) given precedence over the lives of workers", or that enforcement of existing mining laws would reduce profits by 50% (B.C. *Federationist*, June 4, 1915: 1).

A revelation in the legislature that Crown lawyers were required to secure ministerial permission before prosecuting Rogers Sugar Refinery (46 *HA* 1917, Aug. 17: 211) only served to confirm earlier labour verdicts:

B.C. Sugar Refinery Kills, Maims, and works employees to death: Pus overflow of industrial hell-hole breaks out, but is soon hushed. One slave killed, and another will die. Such is the record of the B.C. Sugar refinery works last week (B.C. *Federationist*, Oct. 19, 1912: 1).

Health care in the form of a compensation Act was an effective mechanism to abey social unrest (Lewis, 1909: 63):

...it is precisely because health, and therefore medical care, are so vital to every individual that the provision of medical care often comes to represent the benevolent face of an otherwise unequal and divided society. People who are sick are extremely vulnerable, and the ultimate demonstration of concern on the part of the State is to care for its citizens when they are ill, or even to save them from death (Doyal and Pennell, 1981: 43).

Historically, it is at the very time that the State needs to initiate or increase social expenses, perhaps as a consequence of sickness and injuries associated with an accelerated commodity production effort, that it can least afford to apportion funds to social expenditures. In B.C., the economic reality of an immature, resource-based economy made it imperative that

business be allowed relatively free rein in order to maximize the expropriation of surplus value and profitability of their operations. Early provincial administrations exhibited close ties with the capitalist class, and the evidence presented suggests a marked level of symbiotic decision-making activity favourable to attracting investment and encouraging development of provincial resources.¹⁴ The implications of this relationship could not help but affect the ability of the State to seek legitimation. Navarro (1976: 444) observes:

Thus the predicament is that when, for purposes of legitimation, the State needs to appear most classless is the very time when its class nature appears most clearly.

Social reforms directed toward ameliorating working-class discontent have historically been implemented during periods of labour unrest, and the compensation phenomenon constitutes but one example of the State attempting to abey social unrest with a demonstration of benevolence (Lewis, 1909: 63). According to Navarro (1976: 452), the need to amass ever-more capital conflicts with the efforts of the working class to extract concessions from State and capital, over and above that which is considered sufficient for the needs of capital accumulation. Capital conceded that compensation was a "tremendous step in advance", but resisted further State intrusion into 'private' relationships:

...compensation for injuries is fair and feasible; there is natural justice there; then you go a step further, and provide the workman with old age insurance, or medical aid; but at some point or another you will cross the line of expediency; my point is that line...should be stopped outside of workmen's compensation...why not rest on that position for a few years, until you get your bearings?¹⁵

Medical aid was one aspect of compensation that parties in the B.C. debate agreed was worth including. During the *Pineo* hearings, McVety made it clear that a scheme that

14 Nonetheless, in terms of fore-casting economic decisions, Gough (1979: 42) argues that various external influences exerted upon the State, or the class backgrounds of State personnel, clearly pale in comparative importance to that of the capitalist mode of production. Accordingly, the form of any social-welfare intervention will reflect structural constraints and requirements (Gough, 1979: 19).

15 *Committee of Investigation On Workmen's Compensation Laws* (1915). Minutes of Evidence, v. 2: 327. For labour, 'social legislation' and compensation were "more or less connected", and included "sick benefits, invalid benefits, (and) old age pensions..." (v. 2: 400).

required monies paid for 'compensation' be exhausted by injured workers to provide for immediate expenses, was unacceptable to organized labour. The provision of medical aid would also eliminate the disturbing and provoking sight of mutilated, street-bound debtors (v. 3: 118). At the time of the Pineo Committee, the Canadian Manufacturers Association remained opposed to employer funding of medical aid. The B.C. Manufacturers Association were more flexible in this regard. They believed medical aid to be an "important feature." Their concern was less a case of benevolent concern for the employee, than it was the realization of the formidable costs associated with providing such a service in their member's industries (*Industrial Progress and Commercial Record*, Oct. 1915: 80). By July of 1917, Ontario manufacturers had come to the same conclusion. Ontario labour had agitated for medical aid from the beginning of the Meredith Commission. Nevertheless, the Ontario amendment provided medical aid for a period of only one month from the date of injury (*Labour Gazette*, July 1917: 507), while B.C. workers secured medical aid until fully recuperated.

The rise of compensation legislation occurred in 'waves', adhering to a distinct pattern of working-class political action that presented itself as a threat to the privileged classes. The size of the resulting social wage, such as medical aid, was tied not only to the special production requirements that B.C. industries required, but also to the level of militancy associated with labour political action.¹⁶ Unlike a genuine shift in the ownership of the means of production to those who actually produce commodities, health care legislation is one area in which concessions to the principles of justice and equality are more easily made (Doyal and Pennell: 1981: 279). In British Columbia, social legislation was not implemented

16 Navarro, 1976: 452; Doyal and Pennell, 1981. B.C. was characterized by a high level of class polarization, and the compensation issue only exacerbated this situation. Miner Isaac Portrey told the Labour Commissioners that

If we want compensation, we have to fight for it. (In) every compensation case tried...the poor man has to fight for (fair compensation) (PABC, GR 684, Box 1, Vol. 2, File 2, p. 267).

by Socialists, but by those whose interests were diametrically opposed to working people. As Navarro relates,

social legislation is not merely to be distinguished from Socialist legislation, but it is its most direct opposite and its most effective antidote.¹⁷

According to Doyal and Pennell (1981: 42: 170), capitalism requires a perpetuation of labour capacity and skills, not only that they might be more rationally exploited, but also so that they might assume a role in the social division of labour. This suggests a legitimization of the dominant mode of social and economic organisation, especially that of the State role in facilitating attitudes and beliefs conducive to capitalism. The dominant hegemonic institutions responsible for reinforcing a "natural, universal or common-sensical" world-view demonstrated remarkable flexibility in dealing with a comparatively sudden shift from individual-oriented, liberal ideology to the 'sanitized socialism' that accompanied a State intervention into the workplace. Profitable enterprises were still to be left to the private sector, but State intervention was justified in instances where the cost, risk, or imminent failure of private sector schemes made State intervention not only desirable, but necessary (Navarro, 1976: 443). A State insurance scheme socialized the costs of production. Workmen's compensation, therefore, ensured the State would assume responsibility for the cost of private profit-making. For Gough, it is

the threat of a powerful working class movement which galvanises the ruling class to think more cohesively and strategically, and to restructure the State apparatus to this end. Those countries which have experienced strong, centralised challenges to the power of the capitalist class are those which have developed a unified State apparatus to counter those challenges (Gough, 1979: 65).

The benefits of such an intervention include a buttressing of political hegemony, and a detusing of an immediate workplace health and safety crisis (Schatzkin, 1978: 216).

17 Navarro, 1976: 443. Indeed, Bliss (1974: 90) argues that early efforts directed toward 'welfare work' in Canadian factories were seen by capital "as the surest safeguard against the more aggressive and most objectionable demands of socialists and labor agitators."

Select Committees and Royal Commissions, in particular, were effective in reconstituting the requirements of capitalism as the 'common interest', thus fortifying capitalist hegemony. Maxwell (1969: 18) suggests that some Royal Commissions were more effective than others at facilitating change, and argues that a generalized characterization of ineffectiveness is not valid. Many Royal Commissions were clearly more than a delaying tactic to shelve criticism and construct recommendations that had no possibility of implementation. In particular, the presence of elites on a Commission appear to have some bearing on the degree of success achieved by the Commission, measured by the number of implemented recommendations. A 1907 Victoria Board of Trade enquiry into a provincial labour shortage clearly illustrates the advantage provided by a Royal Commission. As the chairman of the enquiry had to finally admit,

The status of...this Board of Trade is hardly authoritative enough to get information from all over the province...Personally, I should like to see the investigation taken over by a Royal Commission. Such a commission would have a greater power and authority than any that could be appointed by this board (*Colonist*, Mar. 15, 1907: 5; April 16, 1907: 10).

Workers believed the enquiry was anything but impartial. One report observed:

(its) members (are) either employers or representatives of monetary interests, presided over by a chairman whose employees have been on strike for the last four months...the most conspicuous witnesses...(are) employers with unsettled strikes...(and) employers who...mainly (employ) cheap Asiatic labour...gentleman farmers...and persons animated by a desire to charge their lack of success to their employees (*Colonist*, May 2, 1907: 7).

The *Pineo Committee* was a different animal altogether. James McVety was a member of the revolutionary vanguard in British Columbia. He was in continual demand to negotiate contracts and represent worker interests in labour matters.¹⁸ The appointment of McVety is of crucial importance, because the Pineo Committee was directed at securing the consent and

18 A machinist by trade, McVety was president of the B.C. Federation of Labour from 1912-1916. He became active in the Vancouver Trades and Labour Council between 1912-13, and served as president between 1914-16. McVety also represented a wide variety of labour organizations before the *Royal Commission On Labour* in 1913. See, for example, PABC, GR 429, Box 17, File 2, 5202.09.

support of labour, not capital. It was no coincidence that McVety was so actively involved in the work of the Committee, while Commissioner Robertson was only rarely heard from. Robertson remained low-key as an observer, and only infrequently entered into discussion. Pineo acted as mediator and, as the preceding chapter illustrates, the focus of debate was often as much between Pineo and McVety, as it was between any Commissioner and a witness.

The creation of a Workmen's Compensation Board represented a visible manifestation of a shift from competitive capitalism to that of a monopoly mode. This shift has been accompanied by a less visible deviation in power from the legislative branch to that of the executive and State apparatus. This tendency to centralization and accelerated bureaucratization was clearly an attempt to reinforce the appearance of a State separate from society: to ensure that sections of the State apparatus required to implement policy are detached from others who formulate and disseminate these same policies.¹⁹ In order to fulfill a legitimization function, State bodies needed to present themselves as balanced, absent of "ideologues", and class interest. Nonetheless, as Navarro argues, it is

utterly inconceivable...that a person either rejecting or resisting the existing social order and its norms of thought and action could reach the top of the State apparatus (1976: 445).

According to Mills, human agents are subject to the "force of rational consistencies", which themselves can be "conditioned by formal discipline." Unless individuals "accept institutional demands for discipline, they may have no chance to earn a living" (Mills, 1959: 39). Viewed in this light, the contents of a speech made by Social-democrat M.L.A. Parker Williams to the Vancouver Labor Temple on February 23, 1916, are not altogether mystifying. In it, Williams justified the announcement of his resignation from the Social Democratic Party in order to join

¹⁹ Navarro, 1976: 445. The manager of one insurance company told a labour audience that "this question of State insurance is purely a business question apart altogether from politics" (*B.C. Federationist*, May 14, 1915: 1. According to Giddens (1981: 128), the notion of the economic being separate from the political is closely linked to the form of a capitalist labour contract.

forces with the Liberal party. Williams believed that a continued subscription to a "non-compromising" stance of the revolutionary Socialists would forever deny them the political power they required to effect legislative change. In the throes of another recession, with "swarms of hungry men" unemployed, Williams adopted a decidedly reformist stance (*B.C. Federationist*, Feb. 25, 1916: 3-4). At the introduction of the compensation Act, Williams "paid tribute to the government" (*Colonist*, May 2, 1916: 1; *B.C. Federationist*, May 5, 1916: 1), an event noteworthy enough for the Conservatives to feature it in their pre-election propaganda (*Daily World*, Aug. 21, 1916: 8). Williams was later chosen by Liberal premier-elect Harlan Carey Brewster, over Socialist and Pineo Committee member J.H. McVety, to represent labour interests as a Commissioner of the Board.

McVety clearly questioned the tenets of the existing social order, sharing few of the dominator's values or concern for the legitimacy of the existing social order.²⁰ He was, in fact, an intelligent, articulate and able advocate of working-class interests. Because McVety was so influential in labour matters, the *Vancouver World* (Dec. 2, 1916: 1) believed that had the Conservative government not been defeated, McVety would have received a Board appointment.²¹ Mills (1959: 39) illustrates part of the dilemma the appointment of a person of McVety's persuasion would have presented to the State:

A skilled compositor employed by a reactionary newspaper...may for the sake of making a living and holding his job conform to the demands of employer discipline. In his heart, and outside of the shop, he may be a radical agitator...(his) subjective values...those of revolutionary Marxism.

²⁰ During the Ontario hearings, F.W. Weganast argued that capital had always borne its share of the social cost of production. To this, McVety shot back,

The employer does not pay anything - all the employer secures is what he takes out - shall I say, of the hides of the worker himself? (v. 2: 325).

²¹ The Western Federation of Miners at Trail endorsed McVety for labour commissioner, and petitioned premier Bowser to that effect; *B.C. Federationist*, Mar. 17, 1916: 1; *Colonist*, Dec. 8, 1916: 7.

During the Pineo Committee hearings, American employers supported the appointment of compensation board commissioners premised upon the notion of ‘safety in numbers.’ B.C. labour was equally apprehensive of individual appointments (*B.C. Federationist*, May 7, 1915: 4), but supported a tripartite board that they believed could provide impartial, equal representation of both capital and labour. Labour further believed that the appointment of a sympathetic individual to represent their interests would ensure that the workers’ position would at least be considered. However, State agencies, of which the compensation board was arguably one, were constrained by the over-reaching imperatives of a capitalist economy. It would have been difficult or impossible to institute reforms that clashed with the imperative of capital accumulation, though it is probable that McVety would have pressured for continual improvements that minimized the convenience and cost-effectiveness of a compensation scheme for capital. Most importantly, spirited enforcement of regulations designed to police business activities would also result in a reduction in what Block (1987: 62) has termed “business confidence”, thus precipitating an economic and political crisis for an incumbent executive. In the midst of global conflict, the advantages of selecting an individual such as Parker Williams ensured that trades support could be maintained for the war effort, while allaying labour unrest (Gough, 1979: 70). In British Columbia, a failure of the State to address the contradictions of a system of economic privilege, in conjunction with a burgeoning working-class agency, resulted in a legitimation crisis for the existent system of productive and social relations.

Order-maintenance

Capitalism requires symbolic political equality and freedom in order for exploitation to occur. Capitalist ideology continually reproduces itself in one form with the notion of ‘free’ wage-labour as the fulcrum of the labour process (Giddens, 1981: 135). Workers are not “forcibly incarcerated in the factory”, but rather, enter into a renewable contract as ‘free’ wage

labour (Giddens, 1981: 172). At the turn of the century, workers in British Columbia were not forced to labour in a hazardous or deleterious work environment as slaves were. Yet, few had the luxury of exercising choice in the matter of employment. Most were compelled by economic necessity to sell their labour power, regardless of the risks associated with the employment. The practice of 'speed-up' was uncovered during the Pineo Committee hearings. Employers did not deny that workers might be embarrassed or belittled into risk-taking in order to increase production. B.C. workers appearing before the Committee were compelled to violate safety rules to secure production quotas, or risk losing their jobs. As Gough (1979: 23) argues, for English workers, the only real alternative was to seek alternate employment, in what was often an equally hazardous occupation, or face starvation.

Clearly, a need existed for the State to employ various components, such as legal, justice and welfare systems, in order to secure peace and harmony in the province. Social stability is important for a smooth operation of the economy and, therefore, to fulfilling the accumulation imperative. One of the objects of a compensation Act was to expedite "justice." According to Ontario Chief Justice William Meredith,

even if injustice is done in a few cases, it is better to have it done and have swift justice meted out to the great body of men.²²

Capitalism stratifies classes, and class rule is ultimately premised upon coercion (Gough, 1979: 41; Giddens, 1981: 112, 212). As Mills (1959: 77) argues:

...moral problems become problems of power...in the last resort, if the last resort is reached, the final form of power is coercion.

Pashukanis views the State as an organizer of class domination, one form which manifests itself as the 'dependence' of workers upon their employers. During the 'critical phase' of political class struggle, the State becomes the sole authority for the infliction of organized violence by one class over another (Beirne and Shartlet, 1982: 312-13). However, in order for

²² *Interim 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.* (Toronto, 1912: 512).

the State to orchestrate capitalist productive and social relations, without the need to continually exercise physical force, it must be perceived by the majority of the population as a neutral arbiter, and above partisan class sympathies. Most importantly, the State must reflect a 'commonality of interests' (Gough, 1979).

A system premised upon exploitation and an unequal power relationship could not survive indefinitely if unsympathetic challenges (e.g., working class mobilization or opposition) were allowed to propagate unchecked. Indeed, the exclusion of ideologies which question or menace the core tenets of capitalism is the most prevalent State interventive strategy (Quinney, 1974: 140; Navarro, 1976: 449; Gough, 1979: 65). While the use of direct force is not discounted,²³ the State can employ fiscal (program cutting) and legislative techniques to neutralize burgeoning counter-ideologies. For example, the predominance of law-making dealing with private property relations over that of workplace legislation is clearly linked to the position that health related reforms can only occur within the economically determined class relations germane to capitalist societies. Consequently, statutory enactments become a central component to the order-maintenance function. They reflect acceptable ideologies, or solutions to social problems, and may also facilitate changes in social and productive relations. Law, therefore, can be an effective social control mechanism, and has utility in not only regulating the relationship between both capital and labour, but between capitalist factions, as well.

Law As Social Control

Recognizing concepts such as wage-contract were important in an economic system that demanded the freedom to sell labour as a commodity. The courts engaged in a program

²³ The B.C. Manufacturers Association viewed returning soldiers as a "serious problem" (*Industrial Progress and Commercial Record*, Nov. 1915: 98). The Returned Soldiers Organization supported union action (*Colonist*, April 25, 1919: 1), and called for veterans to "create a force which would wipe out the existing governments and inaugurate a real democracy" (*Colonist*, Dec. 28, 1919: 7). Not surprisingly, mounted police contingents were bolstered (*Daily Times*, Apr. 29, 1919: 14).

of ideological hegemony emphasizing wage contract and labour discipline, and the propagation of cultural values focussing on State authority, patriotism and nationalism (Ratner, McMullan and Burch, 1987: 107). Capitalist legal systems demand attention because of their impact in determining social formations favourable to a specific type of economic activity (Collins, 1982: 9). For Marxists, the task becomes one of attempting to identify specific components of a complex web of legal ideologies: to demarcate the boundaries of what Collins (1982: 10-11) has termed 'legal fetishism'. Essentially, the central thesis of this claim is that legal order is necessary for social order. Pashukanis (1978: 81) noted the requirement of an additional criterion for legal regulation:

Human conduct can be regulated by the most complex regulations, but the juridical factor in this regulation arises at the point when differentiation and opposition of interests begin.

Hence, the conflict of private interests for economic reasons constitutes the second reason for law. While capital may possess considerable power as a consequence of its economic position, the authority to engage in coercive behaviour, vis-à-vis the military, police, judicial and corrections systems, remains the exclusive prerogative of a liberal-democratic State. As Caputo, et al (1989) inquire, if coercion is sufficient to maintain immediate control, why bother with regulatory mechanisms such as the rule of law? Dietze (1973: 10) notes this doctrine has come to possess many meanings, due, for the most part, to the general ambiguity of the phrase:

...it may mean a rule of the best law which stands above the rule and is respected by him, as well as the rule of the worst law which is arbitrarily made and executed by a tyrant. It depends upon how 'rule' and 'law' are understood and what is emphasized.

Clearly, the dilemma attached to the question of whether or not to utilize force to quell an uprising has frequently presented itself as a problematic for the State and capital. Because of the importance of perpetuating rhetorical facades of 'equality', 'mercy' and 'justice', punishment was necessarily waived or minimized in order to conform to the

ideologically implanted notion of 'popular justice'. Collins (1982: 13-4) argues that the rule of law serves an invaluable function in inhibiting the arbitrary exercise of power:

...even if their control is precarious, law can contribute an important dimension to political philosophies seeking to explain or justify the existing structures of political domination on the ground that the powerful are constrained by the demands of due process of law.

Thompson (1982: 134) proposes that "the rhetoric and rules of society are something a great deal more than sham." The rule of law may veil the sometimes harsh realities of capitalist productive and social relations in the guise of fairness and equality, yet it can also limit power and curb excesses. Worker victories in appeal courts over issues such as injuries incurred while labouring on Sunday, or that of non-resident alien dependents, are a clear indication of the manner in which capitalist legal institutions could be manipulated to benefit the disadvantaged. As Hay (1982: 121-22) suggests, one result of legal concessions won by marginal groups is that it discourages the incentive to subject law and authority to ridicule or close scrutiny. Ruling-class power is consolidated, State legitimacy is enhanced, and revolutionary movements may be weakened (Thompson, 1982: 134).

Marx realized that the right to exercise power, backed by State authority (meaning the ability to dictate the 'rules of the game'), legal ideologies are both themselves a manifestation of social struggle (Figar, 1977: 323), and the adaptation and attachment of political authority and laws to the relations of production. Law is determined by the form and content of these relations, also called 'material base' (Collins, 1982: 19). It is, therefore, not surprising, that alternatives to dominant legal ideologies are consistently discouraged by the State and capital (Quinney, 1974: 140), unless the proposed alternatives correspond with State strategy. Moreover, legal rights are actually conditional rights. Formal protections are parceled out to citizens at the discretion of the authority they are dissenting from, attempting to extract a measure of justice from, or alter or dismantle. Parties in a dispute are directed by the State to submit to legal decorum, in order that a determination may be made regarding their case (Figar, 1977: 283-86). These rules and laws remain accessible only so long as the parties

'behave themselves' by adhering to the dominant legal ideologies. With the passage of time, there is an increasing likelihood that the number of contradictions between the rhetorical nature of the capitalist system of social relations and the formal legal rules that purport to regulate it will increase. Tigar (1977) argues that insurgent groups are often able to 'feel out' the dominant legal ideology, and are occasionally rewarded by "partial and temporary" legal victories as a consequence (Tigar, 1977: 286-88). In order to resist insurgent counter-ideology, the dominant ideology must constantly reinforce a position of legal rules designed to preserve a "natural socio-economic order, one that does not seek to oppress but rather, maintain social order" (Collins, 1982: 43).

For coal miners at Nanaimo, British Columbia, who fought (and lost) a protracted (1912-1914) and violent strike over mine safety and union recognition, political tolerance and the right of dissent ceased to exist at the point at which protest and dissent became effective. Similarly, the Silvertown Miners Union were "antagonized" to such a degree that president John Roberts was arrested in January of 1905 for the attempted murder of mine operator M.S. Davys (PABC, GR 429, Box 12, File 3, 198/05). The police action clearly had an effect upon the Union. By February 16th, the miners had rescinded their revolutionary platform of July, 1899 (PABC, GR 429, Box 12, File 2, 1650/05). As Balbus (1973: 12) asserts,

Repression by formal rationality...serves to depoliticize...and delegitimize collective violence, militating against the growth of the consciousness and solidarity of the participants...affixing the label of "crime" upon the participants is likely to help convince them that their violent acts represents nothing more than outbreaks of "common criminality"...

The instances at Nanaimo and Silvertown arguably provide empirical support for a major precept of historical materialism; legal forms and relations are essentially super-structural, dependent upon the economic base for their form and content (Collins, 1982: 22; Tucker, 1984). The task facing critical theorists is therefore clear. As Tigar (1977: 369) records,

Revealing the social function performed by institutions of private law is a valuable task; exposing the reality of coercion behind the legal facade of free choice and fairness is an indispensable part of what we call the jurisprudence of insurgency.

Tigar (1977: 369) also notes that the bourgeoisie have increasingly relied upon public-law institutions to protect their interests and facilitate increased levels of capital accumulation. As E.P. Thompson (1982) notes, a central facet of public law - the rule of law - is a concession, albeit one that affords the hegemony of the capitalist class the rhetoric of legitimacy (Caputo, et al, 1989). Though individual capitalists would no doubt be tempted to pursue, unimpeded by the State, the various benefits of their short range substantive objectives, to do so would destroy the confidence trick of guarantees to formal justice and its concomitant positive effect toward reaffirming the system of capitalist social relations (Balbus, 1977). One business response to an injury case illustrates the myopic stance of some employers:

Many people are of the opinion that saws of any kind should not be guarded on the ground that a guard prevents the operator from seeing what he is doing as well as he would be able to do without a guard and that consequently the existence of guards is more conducive to accidents than the absence of them...²⁴

As Tucker (1984: 272) argues,

Rules that exhibit a high degree of logically formal rationality allow for a high level of predictability which facilitates rational, profit maximizing behaviour.

Unquestionably, the work of the Pineo Committee was directed toward a rationalisation of existing legal precedent that would make the State more responsible for supervision of workplace activities than it had been previously. Yet, the nature of intervention had to leave untouched, and even strengthen

the basic tenets of bourgeois individualism, the ethical construct of capitalism where one has to be free to do whatever one wants, free to buy and sell, to accumulate wealth or to live in poverty, to work or not, to be healthy or to be sick...it (must leave) the economic and political structures of our society unchanged (Doyal and Pennell, 1981: 36).

²⁴ *Colonist*, Nov. 25, 1910: 3; *Hodgson v. Westholme Lumber Company* (not reported); see also, *Victoria Daily Times*, Nov. 23, 1911: 20; Nov. 24, 1911: 2; *Labour Gazette*, Jan. 1912: 710.

Furthermore, as Renaud (1975: 567) argues,

In its intervention, the State in capitalist societies... cannot question the basic factor that makes work unhealthy: the fact that workers largely are only commodities utilized for maximum output, efficiency, and profit. (The State) can only act on very limited, discrete, and easily identifiable working conditions.

Thus, the avenues of State intervention in the interests of order-maintenance are indeed limited, for to genuinely address the contradictory nature of capitalism would most certainly create crises of legitimation, or threaten the accumulation imperative. Most importantly, some available solutions - including the installation of alternative economic systems - may not always maintain a congruity with the imperative of capital accumulation.

Consequently, two possible avenues existed for the State. The easiest and least disruptive 'solution' was to blame the victims of industrial progress for their own misfortune, and to make safety solely a matter of personal responsibility. The second, and more complex option, required direct State intervention into the routine operation of the economy.

The perpetuation of victim-blame was clearly the easier of the two strategies to implement. Arguably, employer common law defences existed to minimize the liability of capital in order that industrialization could occur. The ideology of workers 'voluntarily' assuming risk of injury is clearly linked to the fact that capitalists possessed the power to compel workers to labour in unsafe conditions, or face starvation. The courts cemented this economic prerogative to an illusory legal 'right'. The judiciary accepted and condoned the "unsafe acts" theory of accident causation: one that held "it would be unfair to hold the employer liable for the carelessness of the injured plaintiff" (Lucker, 1984: 247), by relying exclusively upon worker incompetence, while ignoring unsafe working conditions or workplace production pressures. In California, for example, where a large component of the economy was resource-based, accident prevention programs were premised upon the following foundation:

...the unsafe man is the worst kind of hazard that you can have, and the safe man is the best safeguard that can be adopted in any industry (v. 1: 59).

Workers certainly received State attention, but their contribution was to be in the form of a continual indoctrination on the benefits of their practicing preventative safety.²⁵ However, allowing workers too great a measure of control over working conditions was viewed as detrimental to industry prerogatives. In B.C., the Pineo Committee was in favour of a safety and accident prevention scheme modeled after the example of Wisconsin, which favoured a consultative process. Labour was to be distanced from actual regulatory activity, and instead was to busy the membership with activities targeted upon individual worker behaviour.

Victim-blame was also more amenable to a "bourgeois liberal vision of society according to which well-being derives from individual achievement, poverty from individual failure" (Renaud, 1975: 568). As one Nova Scotia capitalist argued:

All the accidents that I have had in 40 years are due to the workmans' own fault...why should I have to pay for the men's own carelessness? (v. 2: 475).

The imposition of waiting periods mirrored business ideology. From an examination of the minutes of the Pineo Committee, it is clear that no logical or valid rationale was offered for the creation and perpetuation of waiting periods. Business justified waiting periods as an effective method of social control, to instill in workers a sense of personal caution and responsibility. Workers, on the other hand, viewed business support for waiting periods as little more than a cost-saving measure, designed to shift the financial burden from corporate coffers, to those of individual workers. Compensation legislation clearly entrenched paternalism in the workplace by suggesting that workers required protection from their carelessness or negligence.

The second avenue of State intervention required a rearrangement of business and social relationships, without compromising the integrity of capitalism. This direct form of State intervention and regulation could occur in an otherwise profitable sector of the economy: in

25 Though it is comparatively easy to focus upon turn of the century judicial and corporate ideologies as solely responsible for perpetuating the 'dumb worker', this approach to workplace health and safety is still flourishing (Tucker, 1984: 248; Reasons, et al, 1981).

British Columbia, private-sector insurance companies were prevented from offering casualty insurance to employers for workplace injury and death. Such interventions are often unable to transpire without “considerable input from working-class movements”, and for this reason, are more prone to require a considerable expenditure of State resources to effect the required change in social and productive relations (Renaud, 1975: 568). The debate over the definition of what was to constitute an ‘accident’ is one example of the social and ideological adjustment that had to occur. Remaining cognizant of the need for the State to legitimate capitalism, the State was nonetheless compelled to address the threat and irritation posed to business by legal actions launched by workers. This potentially thorny issue was resolved by removing workplace injury and death from the courts, and de-criminalizing it vis-a-vis a welfare State apparatus. Plainly, this solution prevented industrial injury and death from being viewed in terms of class (Doyal and Pennell, 1981: 71).

Despite McVety’s earlier characterization of workplace violence as “criminal”, the ‘common interests’ position of the Pineo Committee appeared to constrain any further critical discussion of the matter. As McCormack (1985b: 107) reveals, the isolation associated with vocations such as railroad construction allowed foremen to routinely employ physical coercion and corporal punishment in order to extract increased production from workers. Nonetheless, Ontario labour advocate Fred Bancroft opined that workplace ‘assaults’ were “on a different basis” than non-occupational injuries (v. 2: 401). Canadian Collieries counsel H.B. Robertson agreed:

That (foreman) is committing a breach of the criminal law; you might say if he took a knife to him, or shot him, it is not an accident; *I do not think the intention is to force us to pay where crime is committed; we are willing to pay for anything under the term accident* (emphasis added) (v. 4: 425).

Despite the opportunity to address in greater depth the reasons why ‘workplace assault’ should be treated differentially from ‘criminal assault’, the Committee failed to pursue the issue. McVety seemed content to limit the discussion to violent supervisors (v. 4: 38, 422).

425), while Pineo simply further obfuscated an already sanitized discussion of workplace violence:

Isn't (the threat of workplace assault) a penalty for living in a community where the population resorts to crime? (v. 4: 422).

Capitalism over Capitalists: Implementing State Insurance

As noted, the second option, that of direct intervention into the routine operation of the economy, can present a number of difficulties. As a matter of definition, order-maintenance includes State regulation of business in instances where the economic interests of a minority disrupt the ability of other industrial pursuits or markets to engage in economic activities beneficial to capitalism as a whole. The ideal of the self-regulating market was in some jeopardy by the late nineteenth century. Market forces coerced even enlightened capitalists to engage in business practices counter-productive to their long-term interests. The alternatives were reduced competitiveness, or insolvency. Factory legislation is one clear example of binding State regulations being imposed on all capitalists to prevent a 'self-regulating' economy from self-destructing (Gough, 1979; Block, 1987).

In B.C., the tactics of private-sector insurance companies in dealing with labour and productive capital had become of great concern, escalating premium costs to employers, exacerbating friction between capital and labour, and taxing the State judicial apparatus with lengthy and expensive back-logs. A brief presented by B.C. insurance companies represented at the Vancouver meeting forcefully argued that the government did not have the right to remove a profitable activity from the private sector, which they "believe(d) rightly belong(ed) to them." One casualty insurance advocate argued that

history shows that private concerns paying out of their own money do make a greater effort to minimize their losses and save expenses than do Government organizations (v. 4: 528).

However lucrative the maintenance of the status quo would have been for insurance capital, this profitable enterprise was being realized at the expense of productive capital, and it caused

many B.C. employers to consider whether engaging in business was worth the risk and the cost. In the United States, productive capital had been forced to form mutual insurance schemes to defeat the exorbitant costs associated with private casualty insurance (*Report*, 1916: 11). Pineo himself noted that cost was the "most vital part of the whole question" (v. 4: 364). Indeed, "the element of private profit" was viewed as that of "an economic evil." Eight casualty companies requesting permission to operate in the province under the proposed legislation recorded operating expenses in American states averaging in excess of 39 percent. The multi-national nature of insurance companies operating in B.C. was, in addition, a source of concern as their policies were necessarily "determined by the men in charge at their head offices", and insulated from "the local situation which might develop in this single province" (*Report*, 1916: 11):

a careful consideration of (the) evidence (illustrates) that the casualty insurance companies...have utterly failed to show as good results...as the State-administered funds...The economic waste of allowing casualty insurance companies to carry on this class of insurance unquestionably amounts to many millions of dollars each year...this money is either secured by increased premiums from employers or retained from moneys which otherwise might be paid to injured workmen and their dependents (*Report*, 1916 :12).

At the Pineo Committee hearings, only the Canadian Collieries insisted upon the retention of private casualty insurance.²⁶ The Committee, however, rejected this position, citing the "highly unjust" nature of enacting a requirement for compulsory insurance, while leaving the employer "at the mercy of the private insurance companies" (*Report*, 1916: 13). The joint objectives of "protection to the workman" and "insurance...at actual cost" were deemed inconsistent with

²⁶ (v. 4: 442-44); *Report*, 1916: 12; *Daily Times*, April 11, 1916: 7. H.B. Robertson indicated his contempt for the position of miners in other ways, as well: "A man in a mill has about as much chance of being hurt in an accident as I have in the office" (v. 4: 428). Some months after the conclusion of the Pineo Committee, the canneries registered a formal protest against the compensation Act (*Daily Times*, May 4, 1917: 8; *Colonist*, May 4, 1917: 6). Less than a month before the Act was to become law, a consortium of insurance and productive capital interests, headed by Sir Charles Hibbert Tupper, met with the Brewster cabinet (*Colonist*, Dec. 8, 1916: 7; Dec. 9, 1916: 14).

leaving the matter in the hands of those whose only interest in the business is in making a personal profit for themselves and a dividend for the company which they represent (*Report*, 1916: 13).

Consequently, the Committee unanimously decided that the complete exclusion of private insurance was "best adapted to meet the requirements in this Province", as it would

contribute greatly to the success of the Act as a whole by eliminating many undesirable features usually attendant on a competitive company system.²⁷

Insurance capital refused to accept defeat, and organized a lobby to protect its financial interests. The manager of one American company argued,

If carried to its logical conclusion this invasion of private rights on the part of the government would ultimately undermine, if not destroy altogether, not only the insurance business but private enterprise of all kinds...State insurance would be a very hazardous experiment.²⁸

On at least two occasions subsequent to the recommendations of the Pineo Committee being tabled in the legislature, casualty insurance interests secured private meetings with cabinet, but these efforts failed to influence the form of the legislation.²⁹

The concerns of insurance companies aside, a State scheme promised numerous advantages. The State implementation and supervision of a regulatory framework ensured that no one capitalist or industry would receive an unfair competitive advantage. Consequently, State intervention succeeded in preserving the accumulation process for the great majority of employers over the long-term. To the extent that even social relationships between individual capitalists endure the scrutiny of the State, it can be said that

27 *Report*, 1916: 12. Though some employers were suspicious of the compensation Act, State advocates anticipated that because "its operation will be cheap or cheaper than the old system of liability, (employer sentiment) will be unanimous" (*Colonist*, Aug. 4, 1916: 14; April 13, 1916: 1, 4).

28 *Daily Times*, April 11, 1916: 7; *Daily World*, Apr. 10, 1916: 10; *Vancouver Sun*, April 6, 1916: 5. Insurance companies were rarely progressive in their outlooks. The Prudential company motto was borrowed from the Greeks, meaning 'Make Haste Slowly.' Only later was it changed to 'Solid as Gibraltar'. See also, *Vancouver Sun*, Nov. 27, 1916: 4.

29 *Daily Colonist*, Mar. 29, 1916: 7; *Vancouver Sun*, Mar. 31, 1916: 8; *Daily World*, Nov. 11, 1916: 20; *Daily Times*, Dec. 8, 1916: 13.

capitalist development has as its corollary, the development of extensive control mechanisms in every sphere of social life (Deville and Burns, 1976-77: 9).

A State insurance principle, in conjunction with a tacit, if not always completely open, belief in individual responsibility for industrial injury (despite the existence of an attendant principle within compensation legislation that industry should be responsible for all injuries), conformed closely with a secondary strategy later embraced by the Pineo Committee: that of an enforcement mechanism incorporating a socialized cost, directed at manufacturers, and premised not upon genuine punitive measures but rather incentives (i.e., assessment refunds) to secure voluntary compliance with regulatory measures. This variety of intervention entails considerably more risk than does person blame because there is an increased possibility of presenting a threat to capital accumulation in what would otherwise might be an even more profitable activity. Indeed, Ontarian F.W. Weganast was straightforward concerning the refund employers expected to receive as a reward for resources expended upon accident prevention. When Ontario employers realized the promised refund of their capital was to be delayed, employer enthusiasm for the State scheme dwindled:

...they know that any efforts that they make in the direction (are) not going to bring their rates down, and so they lose their interest in it (v. 2: 300).

The potential detrimental effects for capital as a consequence of a regulatory State intervention into British Columbia's economy clearly unnerved capital. The threat presented by a working class that, in the interim, had become increasingly militant and vocal, presented an even more ominous risk to an economic system rife with privilege for the few. A capitalist mode of production could adapt to limited structural reform: the same could not be said about the vision for British Columbia that had been proposed by more radical members of working class political organizations. An awareness on the part of all parties represented at the Pineo Committee of the possibility of a transformation to a socialist State was readily apparent. However, discussion of this alternative was neither encouraged nor facilitated by the Committee. In medical terms, such a development would have led to:

the elimination of the monopoly...over the definition and cure of illnesses...and a reversal in the actual trends in the allocation of resources toward therapy and prevention, so that human beings (would be able to) self-produce care of their bodies and minds, individually and socially (Renaud, 1975: 569).

The formulation and implementation of strategies sympathetic to a capitalist mode of production consequently required input from all parties concerned (Renaud, 1975: 568). Thus, the creation of the Pineo Committee assisted not only formulating ideas, but disseminating them to the various interests. In this regard, labour had the most to lose, therefore it was most important that their concerns be given a sympathetic ear, which the Select Committee succeeded in doing.

Clearly, the State is unable to eliminate factors causing differential mortality and morbidity among social classes, nor can it outlaw industries that exact a continuous and high toll of workplace injury and death. On the contrary, the State is only able to force workers to be more careful, or provide incentives for better protective devices or improved technology, such as guards or new machinery. The capitalist State is completely restricted by the structure of a capitalist economy so that it cannot offer solutions to problems associated with economic growth. Rather, it can only offer compensation, and attempt to ameliorate the effects by engineering an ideological smoke-screen (Renaud, 1975: 567).

It is the unequal power relationship between capitalists and workers that allows capital accumulation to occur. Consequently, social regulation of production is necessary to control this basic worker-capitalist incongruity. In the event the State is unable to manufacture the appearance of security, harmony and peace in society - when the "systematic denial of its nature as a capitalist State" is exposed as a falsehood - then the ability of the existing social order to legitimate itself collapses. The State must invoke the repressive apparatus in order to protect and preserve the accumulation process (Navarro, 1976: 443).

Reproducing Capitalism: The Labour Force

The State must balance a need to maintain order and preserve legitimacy with the requirement that conditions necessary for the survival of capitalism be produced and reproduced in perpetuity. According to Gough (1979: 48), the welfare State is comprised of two activities which are themselves basic to all societies: the reproduction of labour; and the maintenance of the non-working population. A significant expenditure of State funds is associated with maintaining non-working labour; State resources are re-directed away from those healthy enough to labour, to those who cannot (Gough, 1979: 120). Facilitating the production and reproduction of the labour force centers around two crucial areas. First, the provision of material necessities which allow people to function in a productive capacity - the "social costs of maintaining social relations or social harmony", such as food, clothing, shelter and health care (Gough, 1979: 122) - must remain accessible. These goods and services are essential to secure the general conditions for reproduction (Gough, 1979: 160). Second, the preceding conditions, necessary for reproduction of the population, must be maintained in perpetuity so that a potential source of future labour-power can be realized (Burstyn, 1985: 53; Gough, 1979: 121). The implications of these requirements in facilitating the necessary conditions for production and reproduction to occur are considerable.

Under capitalism, 'health' is a measure of an individual's capability to engage in labour which will result in the production of commodities, whether they be goods or services (Schatzkin, 1978: 215). A class-based mode of production demands that two conditions be met in order that commodities can be produced. First, labour productivity must exceed a level that is beyond mere subsistence; otherwise, an exploitive relationship cannot occur. Moreover, the value of the labour power must not only maintain the workforce, but also allow for a reproduction of a future generation of workers. Second, one class must be in a position to claim that portion of commodity production that comprises surplus labour (Gough, 1979: 18). Realistically, business is concerned with individual health only insofar as a level sufficient

to maintain a maximum level of productivity is secured, for the least possible capital outlay. The inability of business to recognize its own long-term interests in this regard precipitates State intervention. The implementation of factory legislation over the objections of productive capital factions had less to do with a benevolent concern for the workforce than it did the realization that unscrupulous capitalists were driving the workforce to the point of exhaustion (Doyal and Pennell, 1982: 146; Gough, 1979: 55; Schatzkin, 1978: 218). Lewis (1909: 65) argues that a simple economic analysis of the compensation debate dictated that a nation which wished to market a competitive, profitable product could not afford any "unnecessary waste of life and limb." To the extent that it cost \$1,500.00 to rear a boy to a working age, labour became "too costly a piece of mechanism to be exposed to needless hazards or to wasteful methods in industry" (Lewis, 1909: 65). Though necessary to maximize the extraction of surplus value, the health costs that made raising children expensive are themselves a surplus-value drain on productive capital interests. Plainly, it is the exploitation attendant with the capitalist mode of production that has such profound implications on the terrain demarcating the class struggle. Schatzkin (1978: 217) reveals, workplace health issues directly affect the class struggle:

The capitalist wants to maximize productive capacity at a particular time, even if it means, from the workers point of view, diminished physical and mental health. The worker, on the other hand, wants to increase his physical and mental health, even if it means diminishing the surplus-value accumulated by his employer.³⁰

³⁰ The struggle over the inclusion of occupational disease is a prime example of an on-going dialectic between structure and agency; see, v. 1: 174; v. 2: 14, 226, 354. The *Pinco Committee* found harm caused by industrial disease had "very serious results", and created a right to compensation (*Report*, 1916: 16). However, the Committee failed to follow through with effective preventative measures. The economic implications of 'opening the economic floodgates' of occupational disease meant State intervention was deferred until the damage was done. Indeed, the British Columbia Manufacturers Association was clearly relieved over the schedule of industrial diseases adopted by the Committee:

It will be recognized that this portion of the Act will impose little, if any burden on the employer, but is merely an act of elemental legislative justice which can in any event do harm to no one (*Industrial Progress and Commercial Record*, August, 1915: 41).

Consequently, for capital, any health-related expenditure in excess of that necessary to secure a maximal rate of exploitation represents an unnecessary initial cost. State attempts to maintain levels of health care at a 'reasonable' level may run counter to the ultimatum of unenlightened capitalists to reduce State expenditures, regardless of the social (and, arguably, productive) costs. According to Renaud (1975: 567), it is at this point that

the structural constraints imposed by the economically determined equation between health needs and the commodity form of their satisfaction are more felt.

Moreover, a corporate insistence on capping health expenditures at a level sufficient to sustain production will inexorably clash with the objective of the working class to view 'health' as a means of elevating the quality of life (Schatzkin, 1978: 215). Clearly, the State is caught in a hopeless structural bind. Compensation legislation partially minimized one aspect of the health quandary by drafting a formal set of 'rules' - the schedules within the Act - which plainly outlines those injuries and diseases considered compensable. Nonetheless, the process is not static. Labour continually struggles to expand the scope of compensable claims, while capital and State may attempt to limit any further reform.³¹

Consequently, the drive to reduce workplace health care costs can be viewed in terms of a concerted effort to define health 'negatively', and it is this philosophy which characterizes compensation struggles. Corporate ideology propagates the belief that work environments do not threaten worker health, unless there is clear evidence to the contrary (Doyal and Pennell, 1981: 69):

Anyone not showing signs of (incapacitating and externally verifiable pathology) is assumed to be healthy. The defining of health and illness in a functional way is an important example of how a capitalist system defines people primarily as producers - as forces of production. It is concerned with their 'fitness' in an instrumental sense, rather than with their own hopes, fears, anxieties, pain or suffering. In defining health and illness in this way, the medical model limits people's own expectations of what it is to be healthy and is thus significant in keeping sickness (and also the demand for medical care) under control (Doyal and Pennell, 1981: 34-5).

³¹ Schatzkin, 1978: 214. The growth of the State itself, in the form of regulatory processes and creation of welfare schemes, can also result in a restriction of the accumulation process (Gough, 1979: 105).

Of paramount importance is the tendency to deny or obscure the causal relationship between ill health and the production process. The utility of utilizing capitalist medicine to effect individual cures was certainly effective in discounting explanations linking corporate activity to ill health (Navarro, 1976: 451).

Though the later introduction of compensation benefits clearly served to legitimate the existent system of productive relations, compensation policies were limited. In order to be considered for benefits, members had to keep employment to remain eligible (Doyal and Pennell, 1981: 166). The disbursement of State supervised medical care succeeded in duplicating a liberal world-view that complemented capitalist ideology. The focus was individualism and self-help. Most significantly, as Navarro (1976: 447) argues,

The ideology of medicine (is) the individualization of a collective causality that by its very nature would (require) a collective answer.

Capitalist Medicine in the Workplace

Workplace injury and disease are largely the result of a labour process over which working people have no control. Profit, and not human health safety, is the prime motivator (Walters, 1982: 8). As Navarro (1986a) proposes, medicine has an undeniable social utility in legitimating capitalist social relations, as long as the State is able to convince a majority of workers that unhealthy (albeit profitable) working conditions can be ameliorated or minimized through medical intervention.³² Medicine is also instrumental in maintaining levels of health adequate to engage in production activity.

As the Pinceo Committee makes clear, the proclamations of physicians assumed crucial importance in defining and justifying acceptable levels of health and as such, their activity

32 In response to a Nanaimo worker who requested the addition of nystagmus and sulphur poisoning to the disease schedule, board chairman E.S.H. Winn stated he would do so "if (the application were) approved by the Board's Chief Medical Officer" (*Colonist*, June 13, 1917: 16). Nonetheless, as Walters (1982: 9) argues, the ideology of scientific medicine as a panacea for workplace hazards was advocated by the State and capital long before medicine could be shown to be effective.

clearly had potential for a control mechanism. Medical science became a useful tool to justify the “existing social and sexual division of labour” by, for example, utilizing physical examinations to re-classifying women to ‘more suitable’ jobs, or focussing entirely upon their unsuitability for the workplace. A frequent justification for medical exams was that it allowed workers deemed unfit for one task to be transferred to another for which they were better “physically suited.”

Any attempt by Pineo to impart upon British Columbia labour representatives present at the Vancouver meetings that their trepidation over the issue of medical examination was unfounded (v. 4: 517), was clearly compromised by the reactionary position of Canadian Collieries. Company counsel H.B. Robertson articulated a comparatively inflexible position on the matter, proposing the imposition of punitive sanctions for workers who balked at the prospect:

If upon the request of the board, he refused to be examined, (compensation) ought to stop automatically; there should not be any time given to the workman (v. 4: 435).

As Doyal and Pennell (1981: 148) argue, social control is necessary for any society to survive. However,

The question is: control for what? What is the impact and ideological content of a given system of social control?

The concentration of legal and medical knowledge in the hands of ‘experts’ who, more often than not, were attached to either State or industry, meant that workers had to depend upon their own assessment of job hazards (Doyal and Pennell, 1981: 69). Historically, people have extended, to select persons, the authority to make pronouncements on the definition of health and illness, apart from any effectiveness in curing disease.³³ To the extent that working people either willingly or unconsciously abrogated control of their health and their bodies as a consequence of receiving medical care from experts, two things occurred. First, individuals

³³ Renaud, 1975: 563. According to Walters (1982: 6), unions are not part of the medical decision-making process, but are used to reinforce the authority of the physician.

became isolated and objectified in a treatment oriented environment which resulted in a bonding between workers and physicians (Renaud, 1975: 564). Clearly, in a dependent relationship, medical treatment was able to more easily serve as a powerful legitimator of the capitalist system and the capitalist class. Second, the solution to the unequitable delivery of medical services to working people was not seen in terms of eliminating the need for such service, but rather, a need for increased expertise. Railroad workers, for example, were consistently subjected to less satisfactory health care because the physicians they could afford collectively were the less affluent and prestigious members of the profession. Employer administered first aid schemes frequently employed personnel who were not certified to practice medicine (41 *JIA* 1912: 26). Well-organized workers, such as coal-miners, were frequently able to finance their own medical facilities, but the reception of medical care was dependent upon whether or not the recipient had been regularly employed up to the time of disability. Other, less well-organized and financed working class organizations had little choice but to take care of themselves which, uncoincidentally, was closely aligned with the liberal work ethic and capitalist spirit of competitive individualism.

The introduction of a compensation Act eliminated the question of providing medical aid, but created a host of related problems. A Vancouver Island physician at Sooke complained bitterly of the “callous disregard of rights” of injured workers by the board. W.D. Calvert argued that board policy ignored the common law right of privileged communication between physician and client. Calvert was especially outraged that physicians were required to disclose “moral character traits” which might “retard...recovery”:

the (work)man is treated as if he were a convict or a German conscript...the injured man can do nothing to prevent the physician reporting his moral infirmities. Moreover, if the physician fails to report, the man forfeits compensation (*Victoria Daily Times*, Sept. 1, 1917: 7).

When the board refused Calvert permission to publish their reply to his complaints, he protested their recalcitrance by withdrawing medical services in an area notorious for logging injuries.

Physicians cannot solve structural problems with individual solutions, because capitalist medicine fails to address the collective phenomenon of workplace injury and illness. The material factor of the failure of medicine to eradicate injury and disease from the workplace is conveniently mitigated by resorting to blaming the individual worker for their suffering. Just as the abhorrent conditions facing the English working class in the 19th century were blamed upon their "poor moral fibre", so too were workplace issues reduced to the level of individual abstraction: essentially one of low working-class concern for personal health and safety.³⁴ The compensation solution commodified health needs, transforming a potentially explosive social problem into a commodity that could easily be assimilated by a capitalist economy, the same as any other commodity (Renaud, 1975: 564). Health strategies, therefore, assumed the form of "individual prevention and individual therapy", and conformed closely with the parameters set by a capitalist economy. 'Education' directed at the individual worker was the logical outcome of an effort to adjust the labour force to the conditions of a capitalist mode of production, and the only possible solution the State could offer that would not conflict with capitalist social and productive relations.³⁵

A Note on the Excluded Classes: Domestic and Farm Labour

Domestic Labour

The domestic environment, and the respective roles of men and women also assumes considerable significance, especially in view of the impact welfare institutions had during the 19th and 20th centuries on facilitating and perpetuating sex-role stereotypes (Doyal and Pennell, 1981: 218). In particular, the ideology of the "weak and passive woman", requiring

³⁴ Doyal and Pennell, 1981: 150. For example, English colliery owners resisted installing pit-head baths, believing miners to be so slovenly that they would refuse to utilize them (Orwell, 1958).

³⁵ Navarro, 1976: 447. In B.C., metal miners routinely employed a rock-drill they called a "widow-maker." The rock dust produced by its operation was implicated in chronic respiratory diseases, such as miners phthisis. Drill operators wore respirators: clearly, a 'solution' that adapted workers to the exigencies of production: 46 *JLA* 1917: 205.

the support of a husband and family, was adopted by working-class political organisations (Smith, 1985: 36). Capitalist social relations created an artificial division between “breadwinner and the housewife: between production and reproduction” (Gough, 1979: 48). An artificial split was created between commodity production and labour performed within the home. Prior to the Industrial Revolution, women were involved in remunerative activities within the context of the family (Doyal and Pennell, 1981: 150), and those women who could not assist with producing income or sustenance were viewed as undesirable by males (Smith, 1985: 28). The insatiable demand of capitalism for a “competitive, available, and cheap” labour force resulted in the employment of women and children (Marchak, 1987: 204). While fertility rates of wealthier social classes receded, those of skilled workers increased. For unskilled workers, the increases were even more pronounced. As Palmer (1983: 83) argues,

This cresting fertility was thus one expression of class need: those social classes most constrained by economic necessity responded positively to the opportunities of an expanding teenage labour market, which could be exploited to help provide sustenance for the family.

Public sentiment, in conjunction with the advent of factory legislation in 1908, had made it less desirable to employ children, which meant more mouths to feed with less possibility that the children or woman could secure outside employment (Smith, 1985: 28). Additional pressure was directed by men toward women, making them responsible for any untoward effects visited upon their children or husband as a consequence of working outside the home (Doyal and Pennell, 1981: 278). When the stresses of male wage labour became more intense as a consequence of workplace technological refinements in conjunction with a drive to create greater wealth, domestic services became increasingly important as a form of compensation for the unpleasant and tiring aspect of working. Men were to be the primary wage-earners, while women were to remain in the home to procreate and maintain the family members. Indeed, socialist and labour appointee to the Pineo Committee, J.H. McVety, described the need for a pension to be attached to a compensation Act in the following terms:

The basis of legislation of this kind, gentlemen, is that a woman's place is with her children, and it is not her position to make a living, and this pension is given to her in order for her to live (emphasis added) (v. 2: 468).

Similarly, 'workmen's' compensation belies much more than simply a patriarchal system of social relations. According to Smith (1985: 31), social welfare legislation, and the statutory protection of the nuclear family, represents a "cross-class masculine coalition orchestrated by the State." There was a tacit recognition of the need to enforce by law the constitution of the nuclear family. Compensation initiatives were a significant part of a greater plan to implement a series of social control mechanisms that reflected the needs of a capitalist mode of production and, at the same time, the needs of individual families (Gough, 1978: 31; Stevenson, 1983).

As well, there was an increasing awareness on the part of the State that "ill health affects productivity" (Doyal and Pennell, 1981: 165). In order to allow a maximal expropriation of surplus value, the male workforce had to be maintained by another, equally important labour force - women - who served to organise commodity consumption and maintain standards of cleanliness and fitness for work.³⁶ A state of affairs developed that viewed the woman's place as being in the home, even though working-class women continued to involve themselves in outside labour in their 'spare time'. Consequently, women were unable to enter the workplace on equal terms with men, and were relegated to a reserve labour pool.³⁷

The existence of a reserve labour pool was undeniably an integral component of the British Columbia economy. Workplace realities then for many women were long hours, for low pay, in jobs with real occupational hazards (Marchak, 1987; Burstyn, 1985; Smith, 1985).

³⁶ Doyal and Pennell, 1981: 217; Smith, 1985: 33. See also, Porter (1985).

³⁷ Doyal and Pennell, 1981: 150. In contrast to early developments to relegate women to the home in British Columbia, later capitalism forced women back into the labour force. Characteristically, their contribution in domestic labour power was no longer able to balance off inflation and increasing levels of unemployment. Moreover, women fit the demand for low paid clerical, sales and service workers (Smith, 1985: 39).

Like Asian labour, women presented competition for available jobs, (Marchak, 1987: 204-05) and served to lower the wage rate men could demand from an employer (Smith, 1985: 29). Consequently, male-dominated labour unions were not entirely supportive of female waged labour, being content to unionise women as a strategy to define parameters and effect control over female workplace activity.³⁸ Indeed,

the Canadian Labour Congress in the early twentieth century had as an avowed goal that of eliminating women, particularly married women, from the labour force (Smith, 1985: 30).

However, the introduction of a single-wage family system was more than a “clever economic-class manoeuvre to maximise worker productivity” (Burstyn, 1985: 60). Smith (1985: 15, 37) argues that limiting female occupations and income potential subsequent to marriage effectively ghettoised women to occupations which would preclude self maintenance, the added cost of children aside, without the additional income of a husband.³⁹ The streaming of women into occupations that did not present competition to male jobs, such as clerical and service industries, aided in creating a division of labour by gender (Marchak, 1987: 211). The draft bill, for example, restricted women from the right to receive compensation benefits in certain instances, while males employed in the same occupation remained eligible (v. 4: 523). Women laboured at low-status and dangerous jobs, such as fish canneries (v. 4: 523), which were notorious for severe cuts and lead poisoning contracted during the tinning process.⁴⁰ In Washington state, eight young girls were killed in a dynamite

38 Smith, 1985: 29. According to the *B.C. Federationist* (August 6, 1915: 1), women were engaged in over 300 occupations, including “heavier manufacturing and mechanical pursuits.” Because male trade unionists regarded unorganized women in the workplace as “a menace to the improved conditions which appear to them to have been secured for men by organization, some impetus (was) given the movement to organize the women wage-earners.” This change of heart manifested itself with ‘a plea for the organization of women workers’ being issued by J.H. McVety and Helena Gutteridge, both members of the B.C. Federation of Labour (*Colonist*, April 27, 1916: 8).

39 A labour shortage during World War One precipitated a crisis for British Columbia farmers and fruit-growers. “Arrangements” were made with the Y.W.C.A. to “register and distribute female help with fruit packing...many applications (were) received and orders filled through these sources”; 47 *JLA* 1918 April 8: 130.

factory explosion in 1911. Two of the victims were under 16 years of age (*Industrial Progress and Commercial Record*, Nov. 1915: 104). One factory fire, at the Triangle Shirtwaist factory in New York, killed 150 girls when fire escape doors were bolted shut (*B.C. Federationist*, Dec. 23, 1911: 3). Unconscionable working conditions convinced many women to sell their bodies, as well as their labour (Doyal and Pennell, 1981: 158). Compared to long hours and minimal wages working in conventional employment, prostitution was an attractive alternative (*B.C. Federationist*, June 22, 1912: 1).

Economic threats, including income interruption, were frequently a root cause of working-class unrest (Palmer, 1983: 81). Industrial injuries to the male head of a family resulted in a reduction of income. Next-of-kin living under already austere conditions were forced to endure a further reduction in living standard. Without an effective compensation scheme, families temporarily or permanently bereft of an income were faced with the prospect of the remaining parent having to either secure employment, or assume additional employment in order to secure sustenance for the family:

The loss of a mother...even though it may not have meant the loss of a wage, shook the family to its very foundations...Widows who lost husbands faced even more pronounced material anguish, for they were often without a source of income or the skill to provide cash in sufficient quantity to continue child rearing (Palmer, 1983: 84).

This state of affairs was in nobody's best interests: not the children or remaining parent, nor the injured worker. If a worker had been injured, recuperation time was bound to lengthen without palliative care. If the breadwinner had been killed, the possibility of the children assuming their respective places in a new generation of workers (males) and support services (females) would surely be compromised. Moreover, as capital increasingly required a skilled labour force, it did not make economic sense to have their investment languishing around at home, without care, when the only alternative was to invest still more capital in the securing

40 Ralston, Keith. Public lecture entitled 'White Labour in a Multicultural Society' (Burnaby Village Museum, Nov. 28, 1989). Girls as young as 12 years were employed in conditions best described as "very unhealthful" (*Vancouver Sun*, Oct. 26, 1917: 2). Howay (1914: 585) commented upon the cooking process: "The room in which the cooking was performed was, in temperature, like a Turkish bath room; no windows or doors were allowed to be opened..."

and training of a replacement worker. Ontario employers testifying before the *Meredith Royal Commission* realized the necessity of preserving the workforce:

It is a small matter to scrap machinery, but it is a very expensive matter to scrap your employees. There is a very large investment in employees by every factory and by every manufacturer in the world, and that must be preserved.⁴¹

It is debatable whether male working-class organizations viewed the problem in such a light. It is apparent, however, that working people were well aware of the tenuous nature of their existence, and life insurance concerns exploited this reality.⁴² Clearly, concerned members of the male workforce had a vested interest in a preservation of the family unit, and they must have realized that they would not succeed in reconstituting the family in order to secure dependency upon a single male-produced income without the assistance of the State. The State enacted various laws applicable to women that regulated hours of labour, night work, and level of physical exertion, in order to ‘liberate’ women for work in the home (Smith, 1985: 31). Like Asiatics, women were legislatively excluded from trades and professions, and relegated into workplace ghettos. Women were also given every inducement to marry (Burstyn, 1985: 61; Smith, 1985: 24). Attempts to secure the right of franchise for women (see, for example, 43 *J/A* 1914, Feb. 26, 1914: 83), and a measure of protection for domestic employees were also stymied (see, for example, 43 *J/A* 1914, Feb. 28, 1914: 112). Clearly, the State achieved a strategic coup, acquiescing to the patriarchal demands of male workers, while increasing the potential to produce a new generation of workers. In the event a male breadwinner was injured or killed, the State became the guarantor of sufficient income to support the family in the absence of income derived from work.

41 Sir William Ralph Meredith, C.J. Ont., Minutes of Evidence: Final Report, at p. 10.

42 In an address to the Vancouver Trades and Labour Council, A.S. Mathews, manager of the Guardian Casualty and Guaranty Company argued “why should the State have the right to say arbitrarily to the skilled artisan what his fingers are worth?” Rather than “simply accept(ing) \$200.00 under the (compensation) Act and be(ing) thankful”, workers were encouraged to seek \$20,000.00 by tort; *B.C. Federationist*, May 14, 1915: 1. Insurance companies also circulated “weird, untruthful statements about the effects of State insurance”; *B.C. Federationist*, March 24, 1916: 1.

At the same time, legislation was passed that made men responsible for supporting their wives and offspring, whether the nuclear family was united or not. Plainly, the objective was to 'free' the woman to tend to her domestic and child-rearing duties, but the system offered no guarantees for the reliability of the male bread-earner's wage:

...the 'support' the husband gives his wife must come out of production, and the owners of the means of production are not unaware of her existence...while (capitalists) also know that children must be raised if the supply of labour and soldiers is to remain adequate to their needs...the working man who is the support of his family (remains insecure) in this amount (Smith, 1985: 32).

Capitalism reinforced the essential nature of female domesticity by enlisting the aid of capitalist medicine, male trade unions and politicians. It also delegated responsibility for procreative duties (Smith, 1985: 28). Interestingly, procreative obligations for working class women who did not have the luxury of regular medical care was said to be four times as dangerous as coal-mining, then considered the most debilitating male occupation (Doyal and Pennell, 1981: 174).

Farmworkers

The exclusion of farmworkers also demands a brief comment. As Linda Forsyth (no year: 1) relates,

there has yet to be written a complete history of farm work in British Columbia. Information is difficult to find - most of it is buried in archives and government documents. The research has only begun.⁴³

This exclusion was no accident, but rather, the manifestation of racism in social policy. As the British Columbia Manufacturers Association commented,

This diversion seems to be quite intentional because the group is specifically excluded from the Act, but (we) cannot see any logical ground for not including them...(*Industrial Progress and Commercial Record*, Sept. 1915: 62).

According to Sandborn (no year: 3), British Columbia farmers were desirous of replicating the treatment the Chinese received at the hands of California farmers:

⁴³ Limited work addressing other jurisdictions does exist. See, for example, Parr (1985).

Once farm employers saw that they could not import slaves, Chinese labour seemed the logical alternative. Indeed, one of their spokesmen insisted in 1854 that logic as well as an inexorable destiny directed that *Chinese farmworkers should be to California what the African has been to the South* (emphasis added).

With the advent of legislation restricting the participation of white women and children in industry, the Chinese became a substitute for cheap labour that was no longer available (*Victoria Daily Times*, Oct. 23 1913: 7). In 1863, there were 2500 Chinese in B.C. (Howay, 1914: 568). A massive influx of Chinese between 1881 and 1884 coincided with the requirement of a cheap, expendable labour force to construct the Canadian Pacific Railroad; 15,701 Chinese entered the province during this period (Howay, 1914: 571). Howay (1914: 576) argued the Chinese were not the only threat to white dominance:

The people of British Columbia (are) slow to recognize that the Japanese is a far more dangerous antagonist than the Chinese; that his superior education, his training, and his more plastic nature fit him to compete in a far greater variety of occupations and to mould himself to the conditions of the country, and that *unless restrictions are placed upon his entry every class of the community and every avocation in the province will find this enterprising yellow man slowly, but surely, elbowing his way in and taking possession* (emphasis added).

Agreements between Japan and Canada were entered into in 1907 and 1924 which provided that Japanese could enter Canada only if they became farm workers, domestic servants or contract labourers (Sandborn, no year: 4). White labour had repeatedly sought to protect their own interests by attempting to influence legislation dealing with immigration matters.⁴⁴ Though there were attempts to restrict the underground employment of Chinese in coal mines as early as 1890, the courts consistently declared such legislation unconstitutional (Howay, 1914: 576). Clearly, the requirement of capital for a cheap, expendable labour force was served by these decisions. In 1916, Social-democrat Parker Williams had introduced a bill that would have effectively regulated the labour supply, by limiting the degree to which

44 A resolution adopted at a 1914 B.C. Federation of Labour convention demanded the government re-think its immigration policy, in the face of "untold misery and poverty" among workers due to an over-supply of labour (*Vancouver Province*, July 16, 1914: 4).

immigrant labour could be exploited for profit, but it was ruled out of order by the Speaker.⁴⁵ Whites believed they could not compete with an immigrant population where “their simple needs and low cost of living gave them a great advantage in competition” (Howay, 1914: 571). The resultant white sentiment toward Asians was hostile:

The proportion of Orientals to whites in B.C. is too great, but only in one sense, and that is owing to the fact that they are in business for themselves and are not as they should be, working for white men (Sandborn, no year: 3).

Later, when continual increases in head taxes failed to stem Oriental immigration, efforts were broadened to exclude the Chinese from a wide variety of rights extended to caucasian citizens. They included prohibiting employment of Asians on Crown-granted land; preventing professional accreditation as lawyers and pharmacists; restricting the awarding of operating licenses and permits, such as those for logging, commercial fishing and public houses; and the barring of Asians from running for public office (Sandborn, no year: 3-4). Asians were effectively channelled into farm and domestic labour, which reflects the classification of these occupations in early statutes as ‘casual labour’. As Giddens (1981: 137) notes, English domestic workers also routinely engaged in farm labour. The work was characterized by its poor pay, as well as a sporadic and unreliable nature. Though British Columbia legislation, beginning with the 1891 *Employers’ Liability Act*, effectively excluded ‘domestic or menial servants’, farm work had been recognized as a dangerous occupation by the Germans as early as 1887. In that country, 43% of all workplace injuries and deaths were attributed to the agricultural industry (*B.C. Federationist*, Feb. 11, 1916: 2). The unattractiveness of farming as an occupation, due to its hazardous nature, was later recognized in British Columbia (*Victoria Daily Colonist*, May 2, 1916: 1). One Galiano Island farm-hand was confused by his exclusion from the compensation Act. He had been denied coverage by a private insurance company as a “hazardous risk”, a tactic his employer believed

⁴⁵ *JLA* 1916, May 4: 120. Williams also supported the inclusion of farmworkers in the compensation bill; *B.C. Federationist*, May 5, 1916: 1.

was calculated to secure a "high premium."⁴⁶ In Ontario, labour advocates had demanded the inclusion of farmworkers, but Sir William Meredith had been adamant that he would only support a "measure that (would) pass."⁴⁷ Similarly, in British Columbia, J.H. McVety argued:

if an attempt is made to include farm labourers...then you will never get the workmen's compensation Act through in British Columbia...because the basis of all our legislative representation is rural, and if you do anything...that would...include farm labourers, (it will make the) prospects for those engaged in industrial life that much worse, for the farmers will never consent, until they have undergone a very severe course of education.⁴⁸

Some prominent British Columbians were farmers: cabinet minister Price Ellison farmed 30,000 acres of land on the present day site of Penticton (Forsythe, no year: 3). Farmers benefitted tremendously from the agricultural ghettoisation of minorities:

...the reason for hiring Orientals...are found...in the fact that they only cost money...they are easily provided with lodgings, and they are less dissatisfied with poor, overcrowded living quarters than any other race (Forsyth, no year: 5).

Indeed, one Penticton rancher hired Chinese because he could not "afford to pay the price demanded by white men for clearing land" (PABC, GR 429, Box 13, File 2, 1078-06). As Forsyth (no year: 5) relates,

The root cause of anti-Oriental feeling has always been economic...But through the years this root cause was always skillfully obscured by those who exploited labour. *By diverting economic discontent into racial channels, employers and politicians managed to keep all labour standards down. The workers did not see the real enemy* (emphasis added).⁴⁹

46 *Victoria Daily Times*, Sept. 7, 1917: 7. See also, Minutes of Evidence (Pineo Committee), v. 1: 441; v. 4: 15.

47 Minutes of Evidence (Meredith Royal Commission). Final Report: 274. See also, *Victoria Daily Times*, July 21, 1914: 16.

48 *B.C. Federationist*, Feb. 11, 1916: 4. Twenty-four days after the re-introduction of the modified compensation bill into the legislature, McVety reiterated the necessity of excluding farm labour due to a fear of "legislative tinkering at every session of the House" (*B.C. Federationist*, May 5, 1916: 1). See also, Minutes of Evidence [Pineo Committee], v. 1: 522; v. 4: 587).

49 The success of this diversion manifested itself in terrible ways. In August of 1900, a cabin with 3 sleeping Chinese workers was blown up near Windermere; PABC, GR 429, Box 6, File 1, 2821-00.

Despite legislative road-blocks, Chinese and Japanese continued to emigrate. The ghettoisation of these immigrants allowed a plentiful labour source which did not require the maintenance and up-keep of a white labour force.

Summary

The implementation of workmen's compensation schemes confirms that radical critiques of capitalist organization of labour were marginalized. Instead, 'cooperative' schemes premised upon a 'commonality of interests' were implemented by the State. Despite the sweeping breadth and depth of intervention workmen's compensation represented, the B.C. scheme did not threaten capitalist productive and social relations. On the contrary, workmen's compensation injected a measure of stability into production costs, employer-employee relationships, and concerns over labour force production/re-production issues, including health care.

The exclusion of less organized workers, who nevertheless faced considerable hazards in their work, resulted as a consequence of their relatively powerless political situation. Foundering without the support of organized labour, capitalists found women and immigrant workers (especially the Chinese) to be easily exploited. The codified exclusion of these people from all but the most minimal of State protection, including compensation coverage, confirmed their marginal status as 'cast-away' employees. In essence, State abrogation of concern for domestics and farm-workers guaranteed their employers an inexpensive means of maximizing profitability, with little possibility of repercussions for ill-treatment, or damaging labour practices.

CHAPTER SIX

CONCLUSIONS AND OBSERVATIONS

Introduction

This thesis examines the political, economic, ideological and social factors that influenced the State response to workplace injury and death in British Columbia, between 1890 - 1916.

Previous work that recognizes the economic inequities inherent in a capitalist mode of production forms the foundation for this thesis. Earlier formulations have often viewed social-welfare legislation solely in the context of business requirements to improve labour relations, increase productivity and rationalize costs (Kolko, 1963; Schmidt, 1980; Weinstein, 1967; Finkel, 1979; 1977). As Kaye (1984: 176) notes, much of the work originating with the 'New Left' conceives the working class as "irretrievably co-opted, economically and/or ideologically, by capital."

Nevertheless, as Gough (1979) has argued, social policy under capitalism is also influenced by human agents, including those embroiled in class struggle. E.P. Thompson's (1963) work illustrates that working class history is as much political and cultural, as it is economic. Class struggle results in a restructuring of power relations, social organization and domination. Reasons, et al. (1981) have emphasized the nature of Canadian working-class political and industrial struggles to secure a healthy and safe working environment. Navarro (1986a) examined the transfer of struggle from control over the workplace, to compensation for damage. Doyal and Pennell (1981) investigated the commoditization of workers' health in view of the requirement for the production and reproduction of labour. Walters (1983) argued that the State must grant concessions to the working class, within the milieu of occupational health and safety legislation, in order to retain legitimacy and restore social harmony. State intervention facilitated the imperative of capital accumulation, and modified

the reproduction of labour to accommodate capitalist social and productive relations. Irving (1987) views the emergence of the social-welfare State in British Columbia as a functional response to a capitalist economy, and the result of political class struggle on the part of an organized working class. Tucker (1990, 1984) examined the development of employers' liability in Ontario, and found that the economic base imposed structural limitations on the operation of the legal superstructure. Workplace statutes reflected a high degree of functional compatibility with capitalist social and productive formations (Tucker, 1984: 275).

Unfortunately, the sole work addressing the development of compensation in British Columbia fails to address the imperatives of capitalism, or the nature of the capitalist State. Geddes (1986) acknowledges the actions of the State 'after the fact', but omits any discussion of why the State behaves in the manner it does. Moreover, the radical nature of early 20th century working-class agency in B.C. is marginalized as a factor bringing about social change.¹

Workmen's Compensation: A Reformulation

Labour agitation for favourable legislation over forty years preceding the passage of the *Workmen's Compensation Act* (1916) had been intense. Working and living conditions solidified the demand for a variety of social-welfare measures: compensation, like many other concerns, became a class issue. By the 1890's, a clear change in the form and intensity of working-class struggle was evident. Workers defended themselves against unrestrained corporate capitalism and the deleterious effects of large scale industrialisation with the formation of militant industrial unions. Socialist organizations defined their struggle in terms of class. Though racism was clearly an obstacle for a unified labour front, trade union resistance to the Chinese was arguably less a consequence of a racist reflex, and more a crude

¹ Geddes (1986) argues that the inclusion of medical aid stemmed from strong labour agency. Though it seems clear that labour pressure improved the medical aid provision, in fact, the B.C. Manufacturers Association, through the auspices of the Joint Committee of Employers, listed medical aid as one of their ten initial demands (*Industrial Progress and Commercial Record*, Oct. 1915: 80).

strategy to resist the depressing effect of unskilled labour upon wages and working conditions (Comack, 1985; Craven and Traves, 1979).

The evidence clearly indicates that structural factors related to the development of a fledgling, resource-based economy, and subordinate factors such as the ongoing industrial and political struggles between social classes, were central to the development of compensation. Organized labour believed that legislation compelling employers to compensate workers for industrial injuries was the most effective means to ensure a just measure of compensation, and promote safety. But, as Ison (1967: 84) argues, employers' liability legislation succeeded at little more than encouraging employers to abrogate their responsibility to injured workers by insuring with casualty companies. The adversarial nature of determining liability pressured employers into neglecting remedial action after a worker had been injured or killed, lest any compassionate overtures be construed as an admission of fault (Ison, 1967: 85). The eventual solution was State-mediated, reflecting the need to manufacture a 'common ground' between labour and capital, and reconcile the conflicting interests of insurance and productive capital. Plainly, the State could not represent capital as a monolithic bloc. Casualty insurance companies vociferously resisted attempts to exclude them from a profitable aspect of their business. The interests of manufacturing blocs were diametrically opposed to those of insurance capital. Productive capital (including the railroads) had a higher priority than insurance companies.

At the same time, the interests of the organized working-class had to be accommodated, on issues such as waiting periods and non-resident alien dependents. Compensation legislation had been a working-class demand long before business was receptive to the idea. While confidence in most politicians was plainly not high, workers did have a measure of faith in the 'impartiality' of State bodies, especially Committees and

Commissions that facilitated 'impartial' and 'equal' representation, and a comparatively amicable negotiation of differences.²

Labour-socialist political action and legislative activity, in conjunction with the erosion of the common law defences, made it imperative for employers to modify their individualist, laissez-faire convictions. By 1914, employers who had opposed the no-fault principle in 1902 for fear of inflicting damage to their competitive position in domestic and international markets, now supported it because of the formidable threat presented by social and political developments. The labour-socialist element in B.C. labour seriously threatened the status quo, largely due to the dependence of the provincial economy upon resource extraction, and construction work. While business legal liability had been limited by the common law defences, the view that worker negligence was responsible for most injuries began to be challenged. A transition in the courts that weakened common law employer defences occurred in conjunction with increasing labour militancy, especially in the metal mining regions. The 1902 Act lessened the emphasis upon negligence, and provided a 'no-fault' compensation mechanism in 'accidents' that defied findings of negligence. The erosion of the common law, in conjunction with increasing jury awards and a more liberal interpretation of provisions relating to dependents, made the drive for an alternate form of workplace insurance necessary.

Reform initiatives in the workplace served employer interests in a variety of ways. Workplace injuries affected production by damaging workers, equipment and materials (Ison, 1967: 85). With the onset of World War One, the ensuing labour shortages demanded the remaining labour force be better maintained in order that production objectives could be met.³ Compensation reform, in particular, facilitated a reduction in capital-labour friction, due

² By April of 1919, however, this state of affairs had changed drastically. According to the *Colonist* (April 25, 1919: 1), the Vancouver Trades and Labour Council had declared 'class war', and declined to appear before the Royal Commission On Industrial Relations.

in large part to the elimination of the courts. Employers won predictable and greatly lessened insurance costs for inevitable industrial injuries, a benefit realized through the elimination of private sector insurance capital activity. A uniform scheme of State insurance meant that employers engaged in similar pursuits were being assessed comparable, if not identical premiums. This, in conjunction with a centralized enforcement apparatus, ensured that all employers would be faced with similar costs for compliance. Thus, as Ison (1967: 87) posits, observance of safety legislation represented more than immediate protection for employees. It also provided “an act of good faith” by an employer toward his competitors.

The eventual modification in the substantive aspect of the law saw employers substituting an uncertain liability for damages, plus a certain liability for costs for a liability premium. Workers substituted an uncertainty in award amount and legal litigation for a sure compensation proportionate to loss (*Industrial Progress and Commercial Record*, June 1915: 310). Labour recognized that compensation only covered a percentage of lost wages: “No amount of compensation will pay a worker for the loss of an arm, or a leg, or eye” (PABC, GR 684, Box 2, Vol. 3, File 3, pg. 297). Workmen’s compensation clearly humanized the workplace by expediting the receipt of a nominal stipend for injured workers. With the introduction of the State scheme in B.C., large numbers of claims were processed relatively quickly.⁴

The exclusion of some labour groups from compensation coverage - notably those occupations into which efforts were made to channel the Chinese - reflected a State recognition of the influence of the agricultural lobby and the need for unrestricted

3 Though Chinese labour remained a factor, they were essentially unskilled. Skilled labour in the coal and metal mines, and smelting operations, was at a premium. By 1916, the federal and provincial governments were considering exempting miners from conscription; *Colonist*, Nov. 18, 1916: 7.

4 *Daily Colonist*, Jan. 10, 1917; Feb. 9, 1917: 7; *Daily Times*, April 30, 1917: 7. The B.C. Board was awarded the “coveted laurel for rapidity in claim adjustment” at a Boston, Mass. conference for the newly-formed International Association of Industrial Accident Boards (*Daily Times*, Oct. 4, 1917: 11).

development in this key area of the provincial economy. The exclusion of domestic and farm workers contradicted the official positions of the *Royal Commission On Labour* and the *Pineo Committee*, that workers should be compensated according to the economic value of their labour to the community at large. Clearly, workers engaged in service and agricultural labour performed a valuable productive function for society. Their exclusion can be explained by reference to the protectionist attitude of white male labour, and the racist and sexist sentiments of the time.

Structural neo-Marxism: The Origins of Workmen's Compensation

Gough (1979) argues that a primary function of State intervention is to modify the reproduction of labour power, by counter-acting the deleterious consequences of the capitalist mode of production, and maintain the non-working population. Evidently, workmen's compensation was about much more than recompense for industrial injuries. The evidence is clear that a lack of State regulation in the affairs of productive and insurance capital was resulting in extensive physical and pecuniary damage to the working population; so much so, that, in England, a "growing inability or willingness on the part of working families to shoulder" this burden began to manifest itself (Gough, 1979: 120). Though election anticipation on the part of Conservatives undoubtedly affected the timing for compensation reform, the legislation must be seen as a component of larger structural conditions. Accepting that the State implements social-welfare measures to address the accumulation-legitimation paradox, does not assist in explaining why the State behaves in the manner it does.

Workmen's compensation is one manifestation of a need to contain the contradictions that characteristically arise as a result of the mode of production. In conjunction with other legislation, compensation mitigates the destructive effect of industry upon an increasingly skilled and expensive labour-force by, for example, providing adequate medical aid and

hospital care to protect this investment. The welfare State is used to modify the reproduction of labour power. Workmen's compensation provides a clear example of social policy - through the provision of a 'health' service - which attempted to ameliorate the variety of ways a capitalist mode of production compromised 'adequate' production and reproduction of labour power (Walters, 1983). In the event the sole male bread-winner was injured or killed, it was imperative that sufficient financial resources be available to allow a family unit to function as efficiently, or nearly as efficiently, as it had prior to the traumatic incident. The production of a future generation of workers would thus be compromised as little as possible (see, Marchak, 1987: 204).

At no time, however, did the 'solution' proposed by the State threaten the structure of capitalism itself. Indeed, State intervention into the modification of labour power has, as one object, a lessening of the drain on surplus-value caused by incapacitating injuries, or worse, death (Schatzkin, 1978). The State was constrained to perform a complex, managerial 'balancing act' in regard to its cardinal functions within the structure of capitalism. There were a number of structural constraints which not only limited the sum of State responses, they also demarcated the acceptable limits of a specific intervention. The State was caught in a bind that required a reconciliation between the imperatives of accumulation and profit maximization, and the factors that made work unhealthy. Moreover, the State was constrained to act only upon "very limited, discrete, and easily identifiable working conditions (Renaud, 1975: 559). If a problem or crisis emerged in regard to, for example, legitimation, the State's response was conditioned by the need to ensure that order was maintained and that the general conditions necessary for capitalist economic activity were addressed. It is precisely this balancing act between social welfare and repression, that results in the label 'contradictory' being applied to a social-welfare State (Gough, 1979: 12).

The modern, capitalist State evolved as a consequence of a need for a relatively autonomous body to intervene in the affairs of an individualist, 'free-market' economy, to

ensure the perpetuation of capitalism over the factional interests of capitalists. This autonomy is not absolute (Block, 1987). Rather, it is relative to the common interests and requirements of capitalism as a whole. As Gough (1979: 41) argues, State disassociation from the short-term interests of specific capitalists ensures that the interests of capitalism as a whole will be better served over the long term. Even though a deputation of employers opposed to compulsory State insurance petitioned the Attorney-General in December, 1915 with a substantial number of signatures (PABC, GR 429, Reel 2111, File 4988), a State insurance scheme was still implemented. As one manufacturing ally wrote:

...State insurance is a necessary accompaniment to the new code of rights and liabilities. The fact that there may be some weak points or exceptions to the general rule, which, after all, can affect only a trifling minority, is no reason the general benefits be lost to the greater number (*Industrial Progress and Commercial Record*, July 1915: 13).

The State grows and thrives in scope and powers, so long as structural pressure for expansion of the welfare State remains a factor. Gough (1979: 64) sees two factors as especially important in explaining the growth of the welfare State. First, the degree of class conflict, especially the strength and form of working-class struggle. Second, the ability of the State to devise and implement social policy that addresses the long term requirement to reproduce capitalist social relations. It is arguable that the ideology of a 'harmony of interests' applied as much to relations between capital and labour, as it did between capital factions. Rivalries were to be "subordinate to a unity" (Gough, 1979: 67).

The symbolic nature of the compensation board being divorced from political and, therefore, business influence, was demonstrated shortly after the Conservative election loss. Opposition leader W.J. Bowser attempted to secure information from the Liberal government about the operation of the new Compensation Act, but was rejected by the Speaker:

The Board (is a) body corporate, its members being appointed by the Lieutenant-Governor in Council...(these) matters come within the provision of the Workmen's Compensation Act, and are under the jurisdiction of the Board, and are not matters of the administration for which the Attorney-General's department is responsible; therefore, he is not obliged to answer the questions (46 *JJA* 1917: 100-01; *Daily Times*, April 25, 1917: 7).

This is not to say that the mode of production is the sole determinant of the form of social structure, though it clearly is significant in determining the nature of social structure (Gough, 1979: 19). Though the compensation solution reflects State efforts to assuage capitalist intra-class conflict, working-class agency also plays a significant role in determining the production infrastructure, which in turn determines the structure of society (Gough, 1979). As Giddens (1976) proposes, social structure suggests creation by human agency and, at the same time, an imposition or restraint upon the exercising of human action. Gough (1979; 1975) argues that State intervention is a 'calculated' response to class struggle and "the imperatives of the capital accumulation process" (Gough, 1979: 44). The inability of various capitalist class factions to organize themselves into a monolithic unity is part of the compromise that provides a basis for extracting reform while leaving the power and structure of capitalism unscathed. Consequently, the organized working class, in industrial bargaining, or in socialist or labour parties, was able to mobilize through the State (Giddens, 1981: 219). Workers rebelled against repressive conditions, fighting back (Giddens, 1981: 171, 224), and presented a serious problem to the B.C. State.

Overcoming ongoing crises proved to be a formidable task. State policies and practices placed priority upon aiding the accumulation process. Counter-acting labour-socialist challenges to capitalist hegemony was complicated by State actions, taken in the interests of the accumulation imperative, that precipitated and intensified working-class unrest. Because of the power of human agency, and the unpredictable nature of class struggle, the State is continually forced into seeking to manufacture a consensus by adopting or co-opting this force to the benefit of long term capital interests. The *Pineo Committee* focused upon eliminating economic waste, protecting the economic interests of manufacturers (and the provincial economy) at the expense of insurance firms, improving labour relations, and extending the corporate ideology of a commonality of interests. The de-politicization of industrial injury by perpetuating the facade of a 'common interest' and a 'neutral State', was

accomplished by including labour in a negotiative process aimed at achieving a 'compromise'. The Committee facilitated the implementation of a State scheme that melded a covert ideology of individual responsibility for industrial injury, with the overt principle that industry be held responsible for workplace injuries. Rather than compel the attendance of employers to court to answer increasingly costly charges related to the injuring or killing of workers, a scheme of predictable assessments, levied on a regular basis, was substituted in its place. Punitive measures were discarded, in favour of providing fiscal incentives to secure voluntary compliance with regulatory measures.

Compensation legislation in B.C. reflected social and political developments in other jurisdictions. At a time of widespread unrest and upheaval, it was necessary to bring labour "on-side" to aid the war effort, and help pull B.C. out of a pre-war recession. A review of the *Industrial Progress and Commercial Record*, coinciding with the declaration of the First World War, indicates that a war-time economy presented an opportunity for western Canadian manufacturers to expand rapidly, increase profits, and wrest a greater share of lucrative contracts away from eastern-based manufacturers. Arguably, workmen's compensation aided in achieving these objectives, to the extent which it allayed labour unrest, and addressed the productive and reproductive imperatives of a capitalist economy.

To the extent which the State ceases to be a purely repressive mechanism, it may be exploited in terms of facilitating social reform or revolutionary action. Of course, the latter roles constitute a positive view of the State, but they are compatible with the notion of relative autonomy.⁵ Measures that enhance the viability of capital further entrenches the powerlessness and alienation of labour in real terms. Because industrial capitalism demands a

⁵ Vincent, 1987: 162. Deville and Burns (1977-78: 8) differentiate between *morphostatic* and *morphogenic* processes. The former usually maintain and/or strengthen the structure of the dominant social system. The morphogenic tend toward, but do not always achieve, the goal of social restructuring. As the former has the immediate effect of reinforcing the dominant power structure, the latter is considerably less reliable because of the potential for an 'undesirable' (from the perspective of the dominant classes) outcome.

production and reproduction of the conditions conducive to its continuance. Gough (1979) argues that the State implements social policy that better secures the interests of capital over those of the working class.⁶ Compensation allowed the State to deny injured workers equality before the law, by abrogating common law rights in favour of an administrative tribunal that avoided reference to criminal behaviour. Compensation benefits accruing to the working-class served to reinforce, legitimate and perpetuate the existing system of social relations. Gough (1979: 12) argues such an economic system “differs utterly from (one) which serves to meet human needs”, yet this is precisely the function the State was expected to perform. A modified-structuralist position allows an analysis of social-welfare reform in terms of ‘social expense’ to maintain social harmony, as well as a mechanism with which to modify labour power according to the requirements of monopoly capitalism and the international market for a skilled labour force.

The relative autonomy thesis challenges the position that the State is a “uniform expression of capital” (Ratner and McMullan, 1987: 243). The relationship with the State is especially significant because capitalist interests and requirements are symbiotic with the capitalist mode of production and blind market forces, and thus depend upon the State to defuse crises that result from the mode of production. In British Columbia, however, the historical record provides strong support for the instrumentalist position at certain, specific junctures. Between 1890 and 1916, Liberal and Conservative administrations maintained close ties with the capitalist class. Indeed, in a variety of cases, the two were symbiotic. This state of affairs not only made it exceedingly difficult to achieve meaningful legislative reform; it also resulted in frequent resort to military and police intervention to crush working-class resistance; this, in addition to less obtrusive tactics, such as the infiltration of spies into the workplace.

⁶ Gough (1979: 62) illustrates with the English *School Meals Act* of 1906, which arguably, was more about the need to nurture a healthy working and military force “essential to a growing economic, political and military inter-capitalist rivalry of the period”, than it was borne of benevolence for malnourished school children.

With the notable exception of the conservative press, such as the *Victoria Daily Colonist*, and a limited number of adherents, there was very little support for such heavy-handed intervention. British Columbia developed an unenviable reputation in the rest of the country, if an *Ottawa Evening Citizen* article, reproduced by the *B.C. Federationist* (June 18, 1915: 1), is any indication whatsoever:

From the tragedy of scores of Canadian coal miners being threatened by machine guns and hurled into gaol...has evolved a new farce in which the British Columbia...authorities are still playing the leading part.

The relationship between government and employer suggested nothing less than a plutocracy. Government counted the business community as a close ally in their mutual object of exploiting the resources and labour of the province as profitably as possible.

Working conditions and the not infrequent failure of industrial action weakened the attractiveness of a reformist platform, leading British Columbia's working-class toward a rendezvous with socialism. Radical labour and socialist activity clearly compromised the legitimacy of incumbent administrations. This militancy resulted in the engagement of investigative Commissions and legislation to quiet the dissent. Though the appointment of the *Pineo Committee* suggests that a measure of political influence had been accorded workers, this power was probably more illusory than genuine. For example, the economy had a great impact upon the demands the organized working class could make. The 1913-15 depression resulted in a significant drop in the number of unionized workers between 1913-16 (Phillips, 1967, Appendix A). For the unorganized, the negative effect was accentuated. Consequently, labour had to scale down its demands for an increased level of wage benefits. In 1912, 75% wage compensation was the minimum labour was willing to accept (*B.C. Federationist*, Jan. 24, 1913: 2). By 1915, organized labour's 'Special Committee on Compensation' was relatively receptive to the provision contained within the draft bill of 55%. Nevertheless, the passage of a compensation Act did not prove to be a panacea for working-class militancy in such matters. In July of 1917, the Victoria Trades and Labour Congress

harshly criticized the operation of the compensation Act, accusing the Board of unnecessary delay in the settlement of claims, failure to respond to correspondence from injured workers, and complicity with employers who balked at installing safety devices (*Daily Colonist*, July 5, 1917: 7).

The evidence surrounding the rise of workmen's compensation in British Columbia indicates that political power and influence were not impartially distributed, nor could the *Workmen's Compensation Act* be viewed solely as the product of competing interest groups vying for attention from an impartial State. The reality of social classes with disparate power demanded the State be removed from overt representation of one class over another, to that of a relative autonomy. Legislative intervention in the form of workmen's compensation occurred as the State struggled to reconcile the inevitably contradictory functions of accumulation and legitimation, brought on by domestic political and international economic exigencies, and the agitation of an organized working class (Gough, 1979). By utilizing a structural framework to analyze the historical instance of workmen's compensation in British Columbia, it is apparent that the State was compelled to momentarily cast aside a fixation with accumulation, and respond to a burgeoning productive and legitimation crisis. For the purpose of this instance in British Columbia labour history, it is clear that the State responded to the requirements of both structure and agency. Workmen's compensation was arguably a brilliant coup which assuaged the concerns of order-maintenance, legitimation and reproduction of labour (and a social system) in a manner which did not disrupt the imperatives of production, consumption, or capital accumulation. A temporary reprieve to a pattern of instrumental response to socio-economic and political problems was in evidence with the introduction of workmen's compensation indicating, for the time at least, that the State had considerable, but relative, autonomy.

Workmen's Compensation: Future Directions For Research

The Canadian criminological enterprise has focussed almost exclusively upon activity traditionally defined as 'criminal', while neglecting to investigate other avenues of equally harmful behaviour. The result has been the accumulation of extensive data on, for example, street murders and assaults, while death and injury as a consequence of business activity has been all but ignored. The role of the State in decriminalizing and regulating such behaviour has been similarly ignored, not only by criminologists, but by historians as well. However, a broader understanding of historical and contemporary issues associated with workers' compensation and workplace health and safety is within reach. Ratner (1987: 11) suggests a model incorporating the tradition of an indigeneous political economy, one that reflects the historical record of a "resource-based dependent economy, weak legitimation function, and evident use of coercion."

In Canada, very little work has been done in this area. Because of the limited scope of this socio-historical thesis, it only considers a restricted conjuncture. Consequently, a variety of areas related to the historical origins of workmen's compensation are well-suited to further research. The scope of this thesis could be expanded by undertaking a review of all papers passing through the premier's office, and the correspondence relating to the ministerial clerks employed at the legislative assembly. Research detailing the subsequent evolution of workmen's compensation in British Columbia would undoubtedly be a rewarding undertaking.

Other than Ontario, little or no research has been conducted with regard to other provinces in Canada, save for the occasional passing reference. Research of developments in workplace legislation at the federal level in Canada would also aid in securing a broader understanding of developments at the provincial level. Another fruitful avenue of investigation would be to survey developments in related common-law jurisdictions, such as England and Australia. In contrast to research that has limited the range of explanation to individual or

organizational levels, work that acknowledges structural factors in the investigation of compensation and workplace health and safety issues, will almost certainly facilitate an important and worthwhile contribution to the Canadian criminological enterprise.

APPENDIX A: A CHRONOLOGY OF LEGISLATION RELATED TO THE WORK PLACE, 1878-1919:

Coal Mines Regulation Act (1878) and related amendments (1888, 1890, 1892, 1894, 1895, 1897, 1899 (x2), 1901, 1902 (x2), 1903, 1905 (x2), 1906, 1909 (x2), 1910, 1911, 1918). This legislation replicated the structural framework of the English legislation, and covered a variety of provisions. It set out the conditions of employment of young men and prohibited the employment of women and girls; initiated a certificate of competency for mine managers (penalty applied only after 14 days without a manager); created a mine State inspectorate and a system of annual reporting to the minister; stipulated that mine inspections be undertaken by management every 24 hours; miners were allowed to appoint two of their own to inspect the mine once a month at their own cost; workers given the right to refuse to work in unsafe conditions; required locked safety lamps, proper ventilation, adequate timbering, man-holes; created a system of signalling; and prohibited storing powder in the mine.

An Act Relating to the Law of Coroners (1888). Covers appointments, remuneration, jury selection, medical witnesses, enforcing attendance of jury and witnesses.

Explosives Storage (1888) and amendments (1901, 1909). Any quantity of gunpowder greater than 200 pounds classified as a magazine; prohibited to maintain same within 2 miles of a city (military, coal-mines and railroads exempt).

Employers Liability Act (1891) and subsequent amendments (1892, 1897). Implemented to restrict the employer of common employment (fellow servant rule), leaving employers to rely upon the remaining defences of assumption of risk, and contributory negligence. Significantly, a workers' knowledge of a defect did not constitute a bar to recovery. However, contracting out the Act limited or excluded recovery where, in the opinion of the Court, there were considerations in the contract other than continued employment. Compensation was limited to 3 years wages or \$2000.00.

An Act for compensating the Families of Persons killed by Accidents (Lord Campbell's Act; R.S.B.C., 1897, c. 1). Essentially a duplicate of an English statute. If a workman was killed, this statute entitled the personal legal representatives of the victim to have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. The Act buttressed the concept of the nuclear family by preventing a woman from suing in cases where the husband lived outside the home, or where she had committed adultery (Ruegg, 1910: 181-193). In 1897, Lord Campbell's Act was incorporated into the Employers Liability Act.

Metalliferous Mines Inspection (1897) and subsequent amendments (1899, 1901, 1909, 1918). Outlined the duties, obligations, and manner of enforcement for a newly-created inspectorate: prohibited employment of Japanese, Chinese, women and girls below ground; boys under 16 prohibited from employment for more than 10 hours a day or 54 hours per week; notice to be given of mine injuries and deaths; explosives, ventilation, signal code and fire protection created; provision made for fining management and miners contravening regulations; courts empowered to sentence mine management to 3 months in prison at hard labour if miners endangered.

Inspection of Steam Boilers (1899). Inspectorate appointed to survey and test all boilers at least once a year, with the object of preventing explosions. Issue of annual reports. \$100.00 fine or 14 days in jail for operating a condemned boiler; appeals allowed from inspector assessment.

Shops Regulation Act (1900) and subsequent amendments (1901, 1902, 1905, 1907, 1908, 1911, 1912, 1916). Allowed municipal councils to regulate hours of labour at retail outlets; employment of young persons restricted; provision made for sanitary hygiene; stools provided for female employees.

Inspection of Steam Boilers and Engines, and the Examination and Licensing of Engineers in Charge of Steam Boilers and Engines (1901) and subsequent amendments (1902, 1903-04, 1906, 1910). Little similarity to 1899 Act. Inspectors required to have 5 years experience as a practical machinist; inspectors not permitted to act as sales agents for boiler sales; creation of Board of Steam Boiler Inspectors, comprised of Chief Inspector and 2 inspectors; role and function of State inspectorate explicitly articulated; provision for examination of engineers.

Workmen's Compensation Act (1902) and amendment (1911). Patterned after the English Act of 1897. Codified a two week waiting period and disqualification from recovery in cases where "serious and wilful misconduct" on the workers' part was found by the court. Most importantly, the Act was a tentative attempt to provide an alternative to proceeding by common law. Incentives were provided to workers (see s. 4) to engage in State-mediated arbitration in lieu of tort action.

Deception of Workmen (1902). Made it unlawful to induce, influence or persuade a worker to travel to British Columbia, or move within the province, as a consequence of "false advertising" or "deceptive representations concerning the kind and character of work available."

Labour Regulation (1907) and amendments (1908, 1915). Prevents employment for longer than 8 hours in 24 in smelting operations, including coke ovens and ore concentrators.

Protection of Factory Employees (Factories Act) (1908) and subsequent amendments (1910, 1913, 1915, 1918, 1919). Defines factory, limits employment of women, and prohibits employment of children where permanent injury to health is likely; meals, hours of employ, guarding of machinery, dust control, fire escapes outlined; enabling clause for female inspectorate where and when required.

Inspection of Tramways (1910). Single official appointed to inspect operating tramways, and those in the planning stages or under construction.

Health Regulations for Lumber Camps, etc. (1911). Prevention of disease outbreak and spread; regular inspection of lumber, mining and railway camps; provide medical personnel, and erect temporary and permanent hospitals; erect proper living accommodation for workers; this Act read/enforced in conjunction with the the Health Act.

Protection of Workmen (1915). Mining or construction camps with more than 30 workers at a distance of greater than 6 miles from medical help, to maintain a certified first aid attendant and a proper ambulance. Board of Health to determine the qualifications for the first aider. Employers allowed to operate for 6 days in violation of law before any penalty.

Workmen's Compensation (1916) and subsequent amendments (1918, 1919). Passed on May 23, 1916. Implemented on Jan. 1, 1917. A scheme of compulsory State insurance administered by a tripartite board, the compensation Act became the sole avenue of redress for workers injured after midnight on January 1, 1917. Workers injured before that time could choose to proceed by pre-existing legislation. As passed, the B.C. Act was singularly unique in that it provided medical aid. At three days, it also had the shortest waiting period.

Prevention of Unauthorized Use of Certificates of Competency (Coal Mines Regulation Act) (1916). Creates investigative board of 3 members - Supreme Court judge, a mines ministry appointee, and a miner; any person mis-using a certificate of competency disqualified from employment in any British Columbia colliery.

APPENDIX B: A CHRONOLOGY OF LEGISLATION REGULATING WORK PLACE RELATIONSHIPS, 1888-1911:

Workmen's Wages (1888). Person contracting for supply of timber and logs to be liable for loggers wages if contractee does not demand a payroll of wages due the contractors workers.

Establishment of a Bureau of Labour Statistics, and also of Councils of Conciliation and Arbitration for the Settlement of Industrial Disputes (1893) and amendments (1897, 1909). Appoints and sets out powers of arbitrator: enforces awards; Court may remove arbitrator where he has misconducted himself.

Woodsmens Wages (1895) and amendments (1905, 1910). Provides mechanism for application of lien in instances where wages not paid.

Mechanics Liens (1897) and subsequent amendments (1900, 1907). See Woodsmens Wages Act (1895).

Master and Servant (1897) and amendments (1898, 1899, 1902, 1908, 1915). Creates infrastructure for profit-sharing plan; justice of peace to hear complaint of wage non-payment; 30 day statute of limitation subsequent to the final day of disputed employment; State regulation of employer-operated first aid schemes.

Trade Unions (amendment) (1902). Limits tort liability for unions sued by employers as a result of a strike, lock-out, etc; unions not liable for inducing workers not to renew wage contracts if fair arguments employed; unions not liable for publishing warnings and information to other workers with regard to the circumstances of an impending strike, or strike in progress.

Wages of Deceased Workmen (1905, 1911). 3 months wages protected from creditors; wages protected from administrative charges associated with executing will; widow must prove she is, in fact, spouse of deceased worker.

Liens of Mechanics, Wage-earners and Others (including coal miners) (1910). Provides lien mechanism for wages not paid.

APPENDIX C: RELATED SOCIAL WELFARE LEGISLATION

Health Act (1893) and amendments (1901, 1906, 1911, 1915). Appoints Board of Health; duties to study vital statistics; investigate disease and especially epidemics; suggest prevention and interception of cures; try to limit rise and spread of disease; "shall take cognizance of interests of health and life among the people of the Province"; inspection of public conveyances and places of gathering; sanitary police created; local boards of health created; work place is excluded from mention.

APPENDIX D: Correspondence between Minister of Mines Richard McBride and the coal mine inspectorate, on the subject of the Crow's Nest Pass Coal Company mines (Sessional Papers, 1902, pgs 1329-60).

Select items of correspondence, between coal mine inspectors and Minister of Mines Richard McBride, have been reproduced here for two reasons. First, it is clear the mines of the Crow's Nest Pass Coal Company were in an extremely dangerous condition. Second, the correspondence indicates the extent to which the State was prepared to accommodate production imperatives over any safety concerns. The letters also indicate a disparity in the treatment of those violating the *Coal Mines Regulation Act*. Enforcement against the company assumed the form of gentle persuasion and appeal to reason, while the miners were prosecuted, fined or imprisoned. McBride was clearly not prepared to discourage foreign investment and compromise the fragile provincial economy by saddling the mining industry with new regulations, and adequately enforcing existing legislation. At the same time, on a number of occasions, State officials were unwilling to accept poorly qualified mine managers, or the presence of explosive gas. The letter excerpts follow:

McGregor to McBride. Fernie, 27th July, 1900:

The first mine I inspected was...in a very dangerous condition. In fact...it was in an almost explosive condition. I at once ordered the men out, and had men placed at the entrance to prevent anyone from entering that portion of the mine. I consider it my duty to remain here a few days longer and insist upon the suggestions I made being carried out, in the interest of life and property (emphasis added) (p. 1332).

McGregor to McBride. Rossland 12 Aug. 1900:

(There is)...every evidence of creep (unstable soil and rock in mine shafts) especially in No. 2. In No. 1 it could be detected at night, as that is the time I notice it most, when everything is still. There is no immediate danger...owing to the creep opening up the floor at times large quantities of gas is given off... (p. 1334).

McGregor to McBride: Rossland, Sept. 15, 1900:

...In conclusion, I beg to say, in my opinion, these mines need careful watching (p. 1335).

McGregor to McBride. 27 Sept. 1900 at Rossland:

I will endeavor to be firm, and insist upon my suggestions being carried out, and will report to you on each visit (p. 1336).

William. F. Robertson (prov. mineralogist) to McGregor Victoria: 19 Nov. 1900

...I am glad to see you are able to report a marked improvement in the condition of the mine; even yet (if I can read between the lines in your report) there is much to be desired in the management of this colliery (p. 1337).

McGregor to McBride:

...I can assure you I am more than anxious and nervous of the present conditions and state of affairs, notwithstanding safety lamps are used in all stalls and levels, but the fact still remains that gas can be detected in the safety lamps in the main return air-ways, proving conclusively that an explosion is possible by a heavy charged blown-out shot, which frequently happens, as the mine is naturally dusty (p. 1337).

W.R. Wilson, manager of the Crows Nest Pass Coal Company colliery, to McBride (Dec. 31, 1900):

Your telegram informing us of the failure of all the Fernie candidates in the recent mine managers examination, held in Fernie, is very disappointing.

It is hard to realise how four of the brightest men we have in the whole community here should all fail to give satisfactory evidence of ability, and requisite knowledge of mining.

Mr Pearson (a manager who failed the exam) I knew twenty years ago when he held responsible positions at one of the most dangerous mines in England (emphasis added) (p. 1341).

Archibald Dick to Richard McBride (no date):

I have omitted to tell you that while I was at Fernie and Michel Mines, both collieries were being worked without a Certificate Manager - Mr. Pearson had charge. I could not say anything, as I knew nothing of where he got his authority. I understand that Mr. Pearson failed at the late examination...Please answer as soon as convenient, so that I may know how to act when I again go to Fernie. I do not want to make trouble, neither do I want to get into trouble (emphasis added) (p. 1348).

Note: a qualified certificated mine manager existed (Dick to McBride, 12 Feb. 1901), but the coal company appeared unwilling to appoint him to the position (internal politics over the interests of the miners) (p. 1343)

Richard McBride to Archibald Dick:

I beg to inform you may rely on the full support of the department in seeing that section 33 of the Coal Mines Regulation Act is rigidly enforced as regards the employment of a certificated manager; at the same time, I cannot give my sanction to any person not holding a certificate being employed as manager for a longer period than two months (emphasis added) (p. 1345).

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