LABOR STATISTICS and CLASS STRUGGLE

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Preface

1. KENNETH DAVIS, ADMINISTRATIVE LAW TEXT 4 (3d ed. 1972 [1951]).
3. OSKAR MORGENSTERN, ON THE ACCURACY OF ECONOMIC OBSERVATIONS 10 (2d ed. 1965 [1950]).

I. From Surplus Value to Unit Labor Costs

1. Pronounced as in the German, Ullk ("practical joke").
2. An unusual and oblique acknowledgment of such struggles can be found in advertisements by states and nations of the multiples that their workers “give back . . . in value added for every dollar they’re paid” (Business Week 1974; Malabre 1976).
3. For a detailed discussion of the statistical-conceptual problems of gathering the underlying data, see Shelton & Chandler (1963a); Mark (1968).
4. There are also instances of secular declines in ULC such as that during the last quarter of the nineteenth century in Britain (Phelps Brown 1968, 126–29).
5. For an analysis of this scenario in terms of ULC, see Schultze (1959, 22).
6. Although the General Council wanted to print the debate between Marx and Weston, Marx never published it. On the one hand, he thought publication would be useful because some Council members had connections with John Stuart Mill; on the other hand, to have “‘Mr. Weston’ as opponent [is] not exactly very flattering” (Marx 1965, 125). Citizen Weston, in turn, did not feel that Marx had refuted any of his principles (Institute of Marxism-Leninism [1964], 109–12).
7. It is therefore a half-truth to adduce the AFL’s adoption of the policy of tying wages to productivity as an example of conservatism (O’Connor 1986, 45).
8. Even the published text of Green’s Declaration bears traces of its Germanic authorship. Thus, for example, the lack of the indefinite article in the phrase “higher productivity without corresponding increase of real wages” (Green 1927a, 919) makes the sentence ungrammatical English; its literal German counterpart, however, would be a component of a well-formed sentence (“höhere Produktivität ohne entsprechende Reallohnverhöhung”).
9. When, four years later, Douglas did expressly discuss the relationship between increases in real wages and productivity, he used the Green-Kuczynski formulation of the issue as his point of departure (Douglas 1930, 504).
10. Kuczynski states that “it is well-known that after a single mention Marx had never again returned to the idea of relative wages” (Kuczynski 1973, 124). In fact, however, sixteen years after raising the issue, Marx did return to it in his talk to the General Council of the First International (Marx 1849, 413; Marx 1992, 178).
11. Contrary to Kuczynski’s reconstruction forty-five years later, just a year earlier Kuczy-
ski himself had appeared to doubt the reality of absolute immiseration while stressing the prevalence of the relative variant (Kuczynski 1926d, 127–28).

12. It is unclear why Kuczynski used the term “social wage,” which in Europe had been applied to wages as supplemented by family allowances (Waggaman 1923; Waggaman 1924; Tarnow 1927).

13. When this book, which Kuczynski had written with his wife, was being translated into Russian, the galley proofs happened to be seen by Stalin, who, disturbed by the large number of errors, told old Bolshevik Karl Radek to write a foreword pointing them out. Having heard the story, the next time he was in Moscow Kuczynski rushed to Radek for the details. Before answering, however, Radek wanted to know which part Kuczynski had written and which his wife. Being a “gentleman,” Kuczynski answered that of course she had written the good parts and he the bad. To which Radek replied: “Aha, Comrade Kuczynski, then that means that you wrote the book all by yourself!” (Kuczynski 1973, 176). Ironically the Kuczynskis also expressed their gratitude in this book to Thorne and Scattergood for “crucial instruction” (Kuczynski & Kuczynski 1930, iii).


15. Labor's share in production for individual industries appears to be simply wages divided by value added. For industry as a whole, for which Kuczynski provided only index numbers, he used this formula: payroll/employment/(physical volume of production x wholesale prices of non-agricultural commodities)/population. To arrive at labor's share in consumption, Kuczynski substituted in the numerator of the denominator: (physical volume of production of food and textiles x retail prices of food and clothing) (Kuczynski 1928a, 327; Kuczynski & Steinfeld 1928, 830 n.1).

16. It also mistakenly referred to the author as “Jürgen Viczynski” (“Labor’s Share in Production” 1927).


18. The Labor Research Association characterized the rate of surplus value and the worker’s relative position as two different ways of analyzing labor’s share of national product, but used different sources for the two calculations and failed to note that their quantitative movements were not mirror images of each other (Labor Research Association 1948, 47–55, 78–84, 97–99). Leading members of the CPUSA founded this organization in 1927 (Biographical Dictionary of the American Left 1986, 388; Encyclopedia of the American Left 1990, 347).

19. In a speech to the U.S. Senate on June 14, 1951, Joseph McCarthy said that it would be impossible to answer “the question of why we fell from our position as the most powerful Nation on earth at the end of World War II to a position of declared weakness by our leadership . . . without uncovering a conspiracy so immense and an infamy so black as to dwarf any previous such venture in the history of man” (U.S. Congress 1951, 6556).

20. Weintraub divided an index of factory payrolls by an index of physical volume of production; the result as multiplied by 100 produced an index of labor cost per unit of output. He then divided an index of hourly earnings by this index of labor cost to generate the output per man-hour index that he required to analyze unemployment.

21. Even a staunch opponent of the Fifth Amendment concedes that its invocation against “governmental snooping and oppression concerning political . . . beliefs . . . is the privilege we love” (Friendly 1968, 696).

22. The crisis of the mid-1970s, which afforded Marxist economists “a measure of attention . . . when many mainstream economists appear[ed] caught in an interpretive whirlpool,” provided an ironic opportunity for Magdoff’s re-emergence as an economic consultant. After appearing at a panel discussion with a corporation president, “Mr. Magdoff says, the businessman approached him and suggested the two get together privately to talk about the economy” (Newman 1975).

23. Several months before Perlo’s article appeared, an anonymous article in the Monthly Labor Review summarizing Magdoff’s study added less than two pages on ULC. It noted
that the strong drop in the 1920s had not been accompanied by a comparable increase in wages or lower prices ("Employment and Production" 1939, 1403–1404).

24. This approach is also rooted in the transformation of the value components of the commodity into autonomous sources of revenue. The empirical observation that a general increase in wages produces a decline in the rate of profit and changes production prices in accordance with the organic composition of capital in various industries induces the belief that prices rise because wages rise and conceals the "regulation of these changes by the value of commodities, which is independent of wages" (Marx 1964, 875).

25. Comparisons of AULC and unit nonlabor costs can also cast light on labor-capital income shifts (Herman & Fulco 1969, 13–14).

26. To the extent that the price deflators for manufacturing output diverge from those used for deflating compensation—that is to say, to the extent that the commodities entering into the consumption of the recipients of labor income are produced in other sectors—it is more appropriate to cast the underlying output and compensation data in current dollars. "Moreover, an individual producer is not interested in the smallest degree in the level of real wages. He does not, in his business capacity, even enquire what it is" (Keynes 1979, 98).

27. For skepticism as to whether ULC analysis can provide evidence of causality from wages to prices, see White (1988).

28. For an analysis of income distribution using real wages as the point of comparison, see Bergmann, Jacobi, & Müller (1975, 107–15, 355).

29. For an example of a journalistic account that expressly refers to "nominal unit labor costs" and even emphasizes that "in real terms, employers now spend 3.8% less for pay . . . per unit of output, see Bernstein (1993, 120).

30. Whereas Raskin described the development of productivity in a purely objective fashion—"Output per man hour, the standard measure of productivity"—he stated that "union leaders . . . insist that their members have been badly short-changed as a result of the runaway climb of living costs in the last three years" (Raskin 1976).

31. For an example of Party-Marxist use of RULC, see Hemberger et al. (1968, 626).

32. As two of the prewar period's leading labor economists articulated the program: "Any generalized statement of the forces determining distribution in . . . capitalism should be based upon a knowledge not only of the trend of labor's real remuneration but also of whether there has been a gain or loss in comparison with the returns . . . to property and enterprise" (Millis & Montgomery 1938, 135).

33. Constant capital coefficients in connection with constant factor shares and rate of profit presuppose that capital intensity and "labor productivity" grow at the same rate.

34. The German counterpart to the Council of Economic Advisers, very attentive to the effect of the proletarianization of the self-employed on the distribution of income, regularly published adjusted figures for labor's share to take this shift into account (Sachverständigenrat 1972, 146–47).

35. For a similar Marxist critique, see Mandel (1971, 28–39).

36. For evidence that in lieu of an incomes policy, the Swedish labor unions' solidaristic wage policy fulfilled the same function, see Dencik (1974).

37. On Solow's awareness of the existence of a considerably wider range of shifts in "distributive shares," see Solow (1960, 95–103).

38. Although Menshikov's book was translated from the Russian, the publisher believes that it was probably never published in that language.

39. Menshikov separately proposed an incomes policy that would have prohibited firms from raising prices by the amount of the increase in their ULC (Menshikov 1975b).

40. In other words, the simplifying assumption that the general price index and the consumer price index coincide is unrealistic.
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41. The issue of compensation of owners and their families can be eliminated by focusing on "the corporate sector where there is a definite distinction between labor and nonlabor payments" (Herman & Fulco 1969, 14).

42. In 1962 Perlo published a technical critique of one of the components of ULC—the index of industrial production (Perlo 1962).

43. For similar calculations (presumably done by Perlo) for an industry, see Communist Party (1970, 18–22).

44. Perlo later adopted a more nuanced view (Perlo 1988, 27–30).

45. Although some conceptual flaws marred the real spendable average weekly earnings series, its critics seemed chiefly irritated by the fact that the average had been lowered since the 1960s by the enormous influx of low-paid women and teenagers (Perry 1972; National Commission on Employment and Unemployment Statistics 1979, 206–208; Moore 1980, 182–91; Flaim 1982; U.S. BLS 1983, 204–206).

46. Historical amnesia had apparently so enveloped the subject that the editors of World Marxist Review found it necessary to append a footnote to Perlo's article speculating that by "relative wages" he "probably means the share sof wages in the national income" (Perlo 1990a, 83 n.4).

47. President Carter's Council of Economic Advisers, the chairman of which was Charles Schultze, did discuss the shares of corporate profits and employee compensation in its Annual Report (U.S. Council 1979, 26–27; U.S. Council 1980, 40–41; U.S. Council 1981, 155).

II. Fatal Subtraction


4. § 24(a), 84 Stat. at 1614 (codified at 29 U.S.C. § 673(a)).


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15. For an example of an author so intent on conceptualizing accident in terms of the “contract-form of employment” that he loses sight of its rootedness in a profit-driven economy, see Karl Figlio, What Is an Accident?, in The Social History of Occupational Health at 180.

16. One such question, for example, is whether deaths occurring during travel to and from work should be included. In West Germany, for example, accidents on the way to and from work are compensable but are tabulated separately; in recent years, they have accounted for about one-third of industrial fatalities. Bericht der Bundesregierung über den Stand der Unfallverhütung und das Unfallgeschehen in der Bundesrepublik Deutschland: Unfallverhütungsbericht 1991, tab. 1 at 54, tab. 3 at 56 (Bundestag Doc. 12/3988, 1992). Under the “Going and Coming Rule,” absent special circumstances such as employer-provided transportation, injuries sustained while traveling to and from work are not compensable under state workers’ compensation statutes in the United States. 1 Arthur Larson, The Law of Workmen’s Compensation, § 15.11 at 4–3 (1992). The claim that many state workers’ compensation boards count commuting deaths as job-related is, without qualification, incorrect. See J. Leigh, Estimates of the Probability of Job-Related Death in 347 Occupations, 29 J. Occupational Med. 510 (1987). See also NIOSH, Fatal Injuries to Workers in the United States, 1980–1989: A Decade of Surveillance: National Profile, App. I (1993) (excluding such deaths); 1 Int’l Lab. Office, Encyclopaedia of Occupational Health and Safety 12–13 (1972); OECD Employment Outlook, July 1989, at 136 (varying practices in European countries).

18. Early on researchers recognized that construction workers were also subject to severe occupational illness and disease risks; lead poisoning, for example, was a leading cause of death among painters. U.S. BLS, Bulletin 207: Causes of Death by Occupation: Occupational Mortality Experience of the Metropolitan Life Insurance Co. Industrial Department, 1911–1913, at 50–52 (1917); U.S. Division of Labor Standards, Bulletin No. 7: Recent Changes in the Painters’ Trade (1936) (by Alice Hamilton). On such typical bricklayers’ health problems as back injuries, see Studenterfronten ved Aarhus Universitet, Mürerrapporten 58–69 (n.d. [ca. 1972]).
22. C.H. Mark, Our Murderous Industrialism, 12 World To-Day 97 (1907).


31. Arthur Reeves, Our Industrial Juggernaut, 16 Everybody’s Mag. 147, 148 (1907).


41. Frederick Klein, Ironworker Tom West Wrestles Steel Beams High Above the Ground, Wall St. J., Mar. 4, 1971, at 1, col. 1. The membership’s annual fatality rate was still close to one per cent. For additional corroboration, see Injury Rates in Construction Occupations, 1948, 70 Monthly Lab. Rev. 387, 388 (1950).

42. Reducing Casualties in Construction Work, 72 Engineering News 145 (1914).


44. The British factory acts as early as 1844 required employers to equip machines with guards. An Act to amend the Laws relating to Labour in Factories, 7 & 8 Vict., c. 15, §§ 21, 59 (1844); An Act to consolidate and amend the Law relating to Factories and Workshops, 41 & 42 Vict., c. 16, § 5 (1878); An Act to consolidate with Amendment the Factories and Workshop Acts, 1 Edw. 7, c. 22, § 10 (1901). See generally, P. Bartrip & S. Burman, The Wounded Soldiers of Industry: Industrial Compensation Policy 1833–1897, at 54–96 (1983). The Industrial Code for the North German Confederation of 1869 obligated covered employers to provide and maintain all facilities necessary to protect their workers against dangers to life and health. Gewerbeordnung für den Norddeutschen Bund, 21 June 1869, BGBl des Norddeutschen Bundes, § 107 at 270. Despite the expansive scope of this provision, the state failed to enforce it vigorously. Lothar Machtan, Workers’ Insurance Versus Protection of the Workers: State Social Policy in Imperial Germany, in The Social History of Occupational Health at 209. The 1891 amendments to the Industrial Code added the...
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weasel words, "as the nature of the operation permits." Gesetz, betreffend Abänderung der Gewerbeordnung, 1 June 1891, RGBl, § 120a at 5.

45. C. Legien, Aus Amerikas Arbeiterbewegung 51, 52, 54 (1914). See also Martin Wagner, Amerikanische Bauwirtschaft 27, 43 (1925).

46. 26 Statistisches Jahrbuch für das Deutsche Reich 1905, at 268 (1905) (with data for 1886 to 1903). This was the last year in which the Imperial Statistical Office printed the total of all fatalities since the inception of the Accident Prevention Law. For an analysis showing that the German law placed the state's imprimatur on the principle that industrial work entailed an unavoidable risk for workers and transformed the principle of prevention-oriented liability into a purely (and non-fully) compensatory compulsory insurance scheme, see Lothar Machtan, Risikoversicherung statt Gesundheitsschutz für Arbeiter: Zur Entstehung der Unfallversicherungsgesetzgebung im Bismarck-Reich, 13 Leviathan 420 (1985).

47. 1 Karl Marx, Das Kapital: Kritik der politischen Ökonomie 253 (1867 & photo reprint 1959).


52. For a sustained argument that class struggle took the form of individual litigation, see Anthony Bale, Compensation Crisis: The Value and Meaning of Work-Related Injuries and Illnesses in the United States, 1842-1932 (Ph.D. diss., Brandeis University 1986).

53. Marx, Zur Kritik der Politischen Ökonomie (Manuskript 1861-1863) at 162


57. Legislative Hearings on H.R. 1063, the Construction Safety, Health, and Education Improvement Act of 1991: Hearings Before the Subcomm. on Health and Safety of the House Comm. on Education and Labor, 102d Cong., 1st Sess. 257 (Serial No. 102-15, 1991) (testimony of Dr. Knut Ringen); Thomas McGarity & Sidney Shapiro, Workers at Risk: The Failed Promise of the Occupational Safety and Health Administration 4-5 (1993). Since the ILO data on fatality rates that Ringen used are based on at four different national bases (per man-hours, man-years, workers exposed to risk, and persons employed), it is unclear how Ringen reduced them all to a per 1,000 workers common basis. See ILO, Year Book of Labour Statistics 1992 at 1042; International Labour Office, Current International Recommendations on Labour Statistics 1988 Edition 101-104 (1988).

58. Reeve, Our Industrial Juggernaut at 147.

60. Hoffman, Industrial Accidents at 421. See generally, [NEW YORK STATE COMMISSION ON EMPLOYERS LIABILITY], REPORT TO THE STATE OF NEW YORK: FIRST REPORT 191-93, 197 (1910); I. Rubinow, Social Insurance: With Special Reference to American Conditions 49-85 (1913).


63. Reeve, Our Industrial Juggernaut at 156.

64. Hoffman, Industrial Accidents at 417-18.


70. Unfallversicherungsgesetz, July 6, 1884, RGBI 69. Coverage was broad, and employers were required to report deaths to the police; id. §§ 1, 51-52 at 69, 91. On the origins of social insurance as an attempt to control the working class, see Gaston Rimlinger, Welfare Policy and Industrialization in Europe, America, and Russia 112-22 (1971); Hans-Ulrich Wehler, Bismarck und der Imperialismus 459-64 (1976 [1969]); Machtan, Workers’ Insurance.

71. See 7 HANDWÖRTERBUCH DER STAATSWISSENSCHAFTEN 260, 285 (J. Conrad et al. 2d ed. 1901) (s.v. “Unfallstatistik” and “Unfallversicherung”). Even the German system was not universal. See 26 STATISTISCHES JAHRBUCH FÜR DAS DEUTSCHE REICH 1905, at 268 n.1 (1905); Müller, A Patient in Need of Care.


73. 31 ENGINEERING NEWS-RECORD 298 (1918).

74. W. Starrett, Skyscrapers and the Men Who Build Them 301 (1928).

75. Carl Hookstadt, Estimated Annual Number and Cost of Industrial Accidents in the United States, 17 MONTHLY LAB. REV. 991, tab. 4 at 996 (1923). These figures included all gainfully employed persons; among employees, fatalities totaled 21,232.


80. Id. at 3 (Rep. Rathbone).

81. To Create a Division of Safety in the Department of Labor: Hearing Before the Senate Committee on Education and Labor, 69th Cong., 1st Sess. 39 (1926).
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82. Id. at 39, 45.
84. 68 Cong. Rec. 5030 (1927); see also id. at 1015–18; S. Rep. No. 1288, 69th Cong., 2d Sess. (1927).
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102. NSC, “Documentation” at 8, Appendix 8.


104. NSC, Accident Facts 1993 Edition at 112–13; [Stephanie Brand & Alan Hoskin], “Allocation Factor Investigation” (n.d. [1993]). See also U.S. Occupational Safety & Health Admin., Analysis of Construction Fatalities—The OSHA Data Base 1985–1989, at 75 (1990) (“Although the same equations are still used, the original data giving the rationale is no longer available”).


106. The NSC submitted a written supplement to its testimony to the committee, which merely stated that whereas the NSC “precisely tabulated” motor-vehicle deaths, it did not do so with regard to work, home, or public fatalities; it failed to explain its method for “estimating what the counts should be.” Occupational Safety and Health Act Review, 1974 at 909, 910.

107. NSC, “Documentation” at 8

108. Telephone interview with Alan Hoskin, NSC, Itasca, IL (Feb. 11, 1994, 11:00 a.m.). Berman, Death on the Job at 39, inverts the absurdity of the procedure by charging that the absolute figures “were given a spurious appearance of accuracy by the inclusion of annual percentage changes.”


110. Untitled and undated information sheet distributed by the NSC.


figures were not enumerations at all but merely derived from some observed patterns of
tactical tab. G-2 at 164 (1948); NSC, Accident Facts 1973 Edition at 29; supra tab. 1. Neither
the BLS nor NSC explained why their fatality figures diverged for several years.
1 n.3 (1951).
128. Id. at 205, 206. From several statements it is possible to surmise that the fatality
figures were not enumerations at all but merely derived from some observed patterns of
deaths as a share of all injuries. Thus the BLS spoke in several places of the data as “the
percent of disabling injuries resulting in death, permanent impairment, and temporary-total
disability.” Id. at 197; see also id. at 198, 204.
129. United States of America Standards Institute, USA Standard Method of Recor-
dding and Measuring Work Injury Experience 8 (1967), reprinted in Occupational Safety
and Health Act, 1970: Hearings Before the Subcomm. on Labor of the Senate Comm. on Labor
and Public Welfare, pt. 2 at 1181; COUNTING INJURIES AND ILLNESSES IN THE WORKPLACE
at 12–13; Lyle Schauer & Thomas Ryder, New Approach to Occupational Safety and Health
130. Occupational Health and Safety Act, 1970: Hearings Before the Subcomm. on Labor of
the Senate Comm. on Labor and Public Welfare, pt. 1 at 628.
131. U.S. BLS, Bull. 1798: OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY: JULY 1-
132. Construction Safety, Health and Education Improvement Act of 1989: Hearing Before the
Senate Comm. on Labor and Human Resources, 101st Cong., 1st Sess. 106 (1989) (testimony
of Barry Cole, manager, construction safety consulting firm). This ignorance did not prevent
Senator Dodd from calculating at the same hearing that “every 2 hours, three construction
workers” are killed. Id. at 2.
133. 3 Karl Marx, Das Kapital: Kritik der politischen Ökonomie, in 25 Karl Marx [a]
Friedrich Engels, Werke 99 (1964 [1894]) (describing British factory inspectors’ reports).
134. See, e.g., THE PRESIDENT’S REPORT ON OCCUPATIONAL SAFETY AND HEALTH 1975, tab.
135. 29 C.F.R. § 1904.12(c) (1993).
136. 29 C.F.R. § 1904.2(a) (1993); Paul Seligman et al., Compliance with OSHA Record-
keeping Requirements, 78 AM. J. PUB. HEALTH 1218 (1988); U.S. GAO, OCCUPATIONAL
SAFETY & HEALTH: ASSURING ACCURACY IN EMPLOYER INJURY AND ILLNESS RECORDS 3
(1988).
137. U.S. BLS, Bull. 2399: OCCUPATIONAL INJURIES AND ILLNESSES IN THE UNITED STATES
138. Eileen McNeely, WHO’S COUNTING ANYWAY? THE PROBLEM WITH OCCUPATIONAL SAFETY AND
139. Anthony Suruda & Edward Emmett, COUNTING RECOGNIZED OCCUPATIONAL DEATHS IN THE
UNITED STATES, 30 J. OCCUPATIONAL MED. 868 (1988).
140. See 2 Wolfgang Daubler, Das Arbeitsrecht: Ein Leitfaden für Arbeitnehmer
127 (1979). Even in proposing release of firm-level data to the public, the U.S. Department
of Labor worried that groups might “harass” individual employers.” DAILY LAB. REP.,
May 11, 1994 (Lexis).
141. While continuing to acknowledge BLS’s need for confidentiality, the OSHAadm has
proposed moving in the direction of requiring larger employers to submit the logs to the
OSHAadm. U.S. GAO, OCCUPATIONAL SAFETY AND HEALTH: CHANGES NEEDED IN THE COM-
BINED FEDERAL-STATE APPROACH 36, 69 (1994); DAILY LAB. REP., Mar. 23, 1994; id., May
2, 1994 (Lexis).
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144. See, e.g., Dole v. Trinity Industries, 904 F.2d 867 (3d Cir. 1990).


148. But see 1 Int'l Lab. Office, Encyclopaedia of Occupational Health and Safety at 14 (discussing such a requirement).

149. 29 C.F.R. § 1904.8 (1993).


152. This figure includes illness fatalities for which the BLS published separate totals for the years 1971 to 1973.


155. The rates were 1.97 and 0.004 per 1,000 workers respectively. Barbara Marsh, Chances of Getting Hurt Is Generally Far Higher at Smaller Companies, WALL ST. J., Feb. 3, 1994, A1, col. 1. According to OSHA data, 45 percent of all construction fatalities occur in workplaces with 25 or fewer employees. S. REP. NO. 558: CONSTRUCTION SAFETY, HEALTH, AND EDUCATION IMPROVEMENT ACT, 101st Cong., 2d Sess. 6 (1990).

156. An intermediate figure comes from a labor group estimation that three to four construction workers are killed daily. WALL ST. J., Feb. 22, 1994, A1, at 5.


161. U.S. OSHA, ANALYSIS OF CONSTRUCTION FATALITIES at 3. The BLS data reported by OSHA are for some years identical with but for other years differ from those furnished by BLS itself. Id. at 53, 56.

162. Id. at 51–55.


176. A half-century ago Congress considered a comprehensive "Workers' Social Insurance Act," which would not only have included self-employed, but even conferred guaranteed annual incomes on them. Social Insurance: Hearings Before the Senate Committee on Education and Labor, 74th Cong., 2d Sess. 1-12 (1936). For an excellent overview of arguments in favor of equalization of treatment of self-employed and employees in social insurance programs based on the former's equally insecure position as sellers of their labor power, see Olaf Sund, Die Sozialpolitik für Selbständige, in SOZIALPOLITIK UND SOZIALREFORM: EIN EINFÜHRENDES LEHR-UND HANDBUCH DER SOZIALPOLITIK 167 (Erik Boettcher ed. 1957).

177. Legislative Hearings on the Construction Safety, Health, and Education Improvement Act of 1990 at 35 (testimony of Robert Georgine, president, Building & Construction Trades Dept., AFL-CIO). See also SAFETY AND HEALTH AT WORK: REPORT OF THE COMMITTEE 1970-72, at 55 ("There may . . . be situations where groups of self-employed persons may be to all intents and purposes in the same position as employees as regards their methods and conditions of work, that is to say their methods of work and working environment may not be within their direct control").


186. Dawn Castillo & E. Jenkins, Industries and Occupations at High Risk for Work-Related Homicide, 36 J. OCCUPATIONAL MED. 125 (1994); Windau & Toscano, Workplace Homicides in 1992, tab. 8 at 8. Some workplace homicides, especially those by subordinates against supervisors, may be (dangerous) employment-related. Thus a workers’ compensation referee ruled that a black automobile worker’s preexisting but nondisabling tendency toward paranoia had been “aggravated by his being unfairly assigned undesirable work in front of a hot oven, cheated out of advancement opportunities, addressed by a foreman as ‘nigger’ and ‘boy,’ denied medical benefits, . . . and, finally, fired after refusing to do a job he considered dangerous.” Michigan Rules Chrysler Must Pay Benefits to Man Who Killed 3, WALL ST. J., Mar. 7, 1973, at 22, col. 3.


188. Harry Philo, Revoke the Legal License to Kill Construction Workers, 19 DE PAUL L. REV. 1 (1969); To Promote Health and Safety at 38–76 (testimony of Harry Philo).


191. 29 U.S.C. § 666(e) (imprisonment of a 6 months and 1 year for repeat offenders).


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194. See, e.g., SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, 92D CONG., 1ST SESS., LEGISLATIVE HISTORY OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (S. 2193, P.L. 91-596) iii (Comm. Print 1971) (foreword by Senator Harrison Williams, one of the eponymous sponsors of OSHA). But see NIOSH, FATAL INJURIES TO WORKERS at iii (foreword by J. Donald Millar, director of NIOSH).


197. Legislative Hearings on H.R. 1063 at 243 (testimony of Dr. Knut Ringen on Laborers’ Union membership in Indiana).


201. Nordheimer, Pressure of Costs Drives Some Contractors to Stress Worker Safety (quoting risk management consultant).


204. U.S. BLS, Bull. 2252: INJURIES TO CONSTRUCTION LABORERS 4-5, tab. 11 at 16 (1986).

205. U.S. OCCUPATIONAL SAFETY & HEALTH ADMIN., CONSTRUCTION LOST-TIME INJURIES: THE U.S. ARMY CORPS OF ENGINEERS DATA BASE 1984-1988, at x, xi, 2, 8, 21, 41-42 (1992). The Army Corps of Engineers’ safety program, which is imposed on the private contractors working for it and reportedly results in the lower accident rate, casts doubt on the claim that “no bosses’ government body is going to interfere with the speed with which any boss decides it must make profit.” Capitalism Kills 51 Workers, CHALLENGE, May 10, 1978, at 5.


207. 1 DAUGHERTY, LABOR PROBLEMS IN AMERICAN INDUSTRY at 105.

208. BUNDESMINISTERIUM FÜR INNENDEUTSCHE BEZIEHUNGEN, DEUTSCHLAND 1971, at 169 (n.d. [1971]).

209. John Conti, Coal-Mine Study Shows Record Can Be Improved When Firms Really Try, WALL ST. J., Jan. 18, 1973, at 1, col. 6, at 20, col. 3.


211. U.S. BLS, Bulletin No. 700: INDUSTRIAL-INJURY STATISTICS (1942); MAX KOSSORIS & FRANK MCCRELROY, INDUSTRIAL INJURIES IN THE UNITED STATES DURING WORLD WAR II, 57 MONTHLY LAB. REV. 865 (1943).

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217. See U.S. Dept. of Commerce, Seasonal Operation in the Construction Industries: Summary of Report and Recommendations of a Committee of the President’s Conference on Unemployment VI (1924) (customs fixed in preindustrial period rather than bad weather is the principal cause of seasonality).


230. Berman, Death on the Job at 76.

231. Construction Safety at 44.

that the necessity of working fast caused accidents. Friedrich Engels, Die Lage der arbeitenden Klasse in England, in 2 Karl Marx & Friedrich Engels, Werke 225, 388 (1957 [1844]).


235. Legislative Hearings on H.R. 1063 at 218 (statement of Sigurd Lucassen).


237. Legislative Hearings on H.R. 1063 at 36 (testimony of Ira Norris).

238. Legislative Hearings on the Construction Safety, Health, and Education Improvement Act of 1990 at 62-63 (statement of Neil Norman, president elect, National Society of Professional Engineers). See also id. at 353 (testimony of J. Donald Millar, director, NIOSH); LaBar, Breaking New Ground in Construction Safety at 63.

239. The desolate state of industrial injury statistics in the United States corresponded, at least until the advent of OSHA and NIOSH, to the lack of a national occupational injury and disease prevention policy or an appropriate research program. For examples of the much more advanced European research in construction safety and health, see Jan Wahlberg, Yrkeshusfukomar hos byggnadsarbetare (Byggnadsinstrunders Forskningsrapporter och Uppsatser No. 11; n.d. [1968]); Seved Lindquist, Horselskador hos byggnadsarbetare (Byggnadsinstrunders Forskningsrapporter och Uppsatser No. 15; n.p., n.d. [1969]); Jan Kronlund, P bygget: Arbetssykelogiska studier i byggnadsinstrun (1969); III. Internationales Symposium Arbeitshygiene und Arbeitsschutz im Bauwesen (1972).


243. 29 C.F.R. § 1926.50(b) & (c) (1988).


249. See OECD, Employment Outlook, July 1989, at 139.


253. See, e.g., Robert McLean, Wayne Wending, & Paul Neergard, Compensating Wage

254. Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations 100, 99 (1937 [1776]). “In trades which are known to be very unwholesome, the wages of labour are always remarkably high.” Id. at 110.


257. For speculation as to why such reported cases appeared so late, see BARTRIP & BURMAN, The Wounded Soldiers of Industry at 24–25, 103–105.


262. For a similar approach, see SIDNEY WEBB & BEATRICE WEBB, Industrial Democracy 356–57 (1920 [1897]).


265. [New York State Commission on Employers Liability], Minutes of Evidence 17 (1910).

266. [New York State Comm’n on Employers Liability], Report at 7.

267. “[T]he human being as the bearer of labor performance is not only a factor of production, but, with his wishes and purposes, the starting point and goal of all economic activity in general.” ERICH SCHNEIDER, Einführung in die Wirtschaftstheorie, II. Teil 374 (1967).


270. See Oi, On the Economics of Industrial Safety at 695 n.70 (“A worker could, conceivably, go from plant to plant and examine the posted annual summaries [of injuries required by OSHA] to see which plant had the best industrial safety record last year”).


277. Viscusi, Employment Hazards at 250.


280. See, e.g., Report of the National Commission on State Workmen’s Compensation Laws 18 (1972); Monroe Berkowitz, Workmen’s Compensation Income Benefits: Their Adequacy
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and Equity, in 1 Supplemental Studies for the National Commission on State Workmen’s Compensation Laws 189, 200–204 (1973); Edward Berkowitz, Disabled Policy: America’s Programs for the Handicapped 33–40 (1989 [1987]). Farming occupations accounted for less than 3 percent of employment but 11 percent of fatalities. Toscano & Windau, Fatal Work Injuries, tab. 5 at 44.


286. James Robinson, Hazard Pay in Unsafe Jobs: Theory, Evidence, and Policy Implications, 64 Milbank Q. 650, 663 (1986). See also Jeff Biddle & Gary Zarkin, Worker Preferences and Market Compensation for Job Risk, 70 Rev. Econ. & Statistics 660, tab. 5 at 666 (1988) (compensation required to make union workers indifferent to a 1/100 increase in probability of injury almost six times greater than for nonunion worker). Significantly, the two relatively highly paid unskilled jobs that Wall Street Journal reporters found to be dangerous to safety (token seller in New York City subway system) and health (tunnel patrolman in New York City) were in the public sector and unionized. Monotonous Labor Is Torturous for Some, ‘My Thing’ for Others, WALL ST. J., July 22, 1971, at 1, col. 6.


288. Guido Calabresi, The Costs of Accidents: A Legal and Economic Analysis 207 n.7 (1971 [1970]). For a description of the implementation of unusually strong union safety and health programs at several large employers, see BACOW, BARGAINING FOR JOB SAFETY AND HEALTH at 60–87.

289. Kisner & Fosbroke, Injury Hazards in the Construction Industry at 140–41. The figure for non-construction laborers is estimated because it had to be read off a graph.

290. Toscano & Windau, Fatal Work Injuries, tab. 5 at 44.


295. For early welfare economics recognition of the phenomenon in a different context, see A. Henderson, Consumer’s Surplus and the Compensating Variation, 8 Rev. Econ. Stud. 117 (1941).

Market: Evidence for the United Kingdom and a Reconciliation with Other Studies,
Adaptive Responses to Chemical Labeling: Are Workers Bayesian Decision Makers?
Nonreversible Indifference Curves,
Safety: A Contingent Valuation Study,
Legal Policy and the Endowment Effect,

in other jobs, lacked the concreteness of an internal comparison with the respondent's own current work.

McGarity & Shapiro, Workers at Risk at 273.
Hovenkamp, Marginal Utility and the Coase Theorem at 804.
Legislative Hearings on the Construction Safety, Health, and Education Improvement Act of 1990 at 490.
297. Shelby Gerking, Menno de Haan, & William Schulze, The Marginal Value of Job Safety: A Contingent Valuation Study, 1 J. RISK & UNCERTAINTY 188, 192 (1988). Those who chose to respond to this lengthy and complex mail questionnaire were probably disproportionately high-income persons in low-risk jobs. The fact that almost one-quarter of respondents were willing to assume a riskier job without any monetary inducement suggests that they may have failed to understand the questionnaire. Finally, the questions themselves, which referred to a hypothetical and vague external comparison with the risks attaching to other jobs, lacked the concreteness of an internal comparison with the respondent's own current work.
298. McGarity & Shapiro, Workers at Risk at 273.
300. See, e.g., Alan Marin & George Psacharopolous, The Reward for Risk in the Labor Market: Evidence for the United Kingdom and a Reconciliation with Other Studies, 90 J. POL.
301. Hovenkamp, Marginal Utility and the Coase Theorem at 804.
304. Legislative Hearings on the Construction Safety, Health, and Education Improvement Act of 1990 at 490.
307. For experiments showing that some workers will decline certain kinds of work (such as handling TNT) regardless of the wage premium, see W. Viscusi & Charles O'Connor, Adaptive Responses to Chemical Labeling: Are Workers Bayesian Decision Makers? 74 AM. ECON. REV. 943, 949, 953 (1984).
309. William Hard et al., Injured in the Course of Duty 37, 38 (1910 [1908]).
310. Franklin, Safety Comes to the Mines a Century Late.
311. Anthony Bale, Compensation Crisis at 54.
316. Kapp, Social Costs at 65.
317. [New York State Comm’N], Report at 133.
318. Lebergott, Manpower in Economic Growth at 250–51. Such entrepreneurial calculations appear to be anticipatory corroboration of a much later claim that: "Under capitalism there are no accidents—there is only murder of one class by another." "Capitalism Kills 51 Workers.'
319. A recent revision of the Internal Revenue Code takes the distinction between capital and human capital to its illogical conclusion. Congress included among the intangibles with
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320. KAPP, SOCIAL COSTS at 49–5.

321. 3 MARX, DAS KAPITAL at 87–107. Not among the incentives that capital has in disregarding its workers’ welfare is the "expropriation" of their health. Vicente Navarro, The Labor Process and Health: A Historical Materialist Approach, 12 Int’l J. HEALTH SERVICES 5, 13 (1982). Since the workers’ loss of their health is not accompanied by its centralization on capital’s side because it has been destroyed rather than transferred, such rhetorical flourishes in fact invert Marx’s use of expropriation. 1 KARL MARX, DAS KAPITAL: KRITIK DER POLITISCHEN ÖKONOMIE, in 23 MARX & ENGELS, WERKE 789–91 (1962 [3d ed. 1883]).

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LABOR STATISTICS and CLASS STRUGGLE
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Professor Marc Linder teaches labor law at the University of Iowa. After completing his doctorate in political science at Princeton, he taught at universities in Germany, in Denmark, and Mexico. A graduate of Harvard Law School, for the past decade he has represented migrant farm workers through Texas Rural Legal Aid.

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