

Bloody Oil

A Critical Discourse Analysis of Safety Crimes in the Alberta Oil and Gas
Industry

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ABSTRACT

This thesis critically examines dominant conceptualizations of safety crimes – offences by corporations that seriously injure and kill workers – within the Alberta oil and gas industry. Using critical discourse analysis, and relying on and Foucaultian and Marxist literatures, the thesis critically examines the extent to which government fatality reports, workplace safety education campaigns and court decisions characterize safety crimes primarily as ‘accidents’ caused by ‘careless’ workers. Two main discourses were found: first, workers were responsabilized, effectively blamed for their own injury and death in the workplace while employers were characterized as largely good and law-abiding; second, serious injury and death was (re)conventionalized as the regrettable but largely unintentional and unavoidable side effect of capitalist production. In the process, the underlying causes of safety crimes, including weak and under-enforced laws and a socio-economic context that prioritizes profits over worker safety, remain untouched.

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CHAPTER 1: INTRODUCTION

In contemporary capitalist society corporate crimes are largely absent from mainstream discussions of crime, particularly media reports that are fixated on traditional street crimes (Bittle, 2012:1; Box, 1983: 1; Reiman, 2004). As Steven Box (1983) notes, “Murder! Rape! Robbery! Assault! Wounding! Theft! Burglary! Arson! Vandalism!” constitute “the major part of ‘our’ crime problem”, mainly due to the perceived harm of these offences and the (erroneous) belief that they could happen to anyone at any time (p. 1). As such, scant attention is paid to crimes of the powerful (Box, 1983); an unfortunate oversight given that a majority of people are more likely to be the victims of corporate crime than any type of street crime (Snider, 1993).

But what is corporate crime and how does it harm us? While the term corporate crime is defined in a variety of ways, in this thesis I rely on the work of corporate crime scholars Steve Tombs and Dave Whyte (2007), who argue that corporate crime refers to: “[i]llegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation” (p. 2). In general, corporate crimes can be separated into two categories based on the harms caused: financial and social corporate crime (Bittle, 2012, p. 43; Snider, 1993, p. 15). Financial corporate crimes consist of offences such as fraud, price fixing, insider trading and bribery, whereas social corporate crimes consist of offences where victim’s health and well-being are impacted, including occupational health and safety crimes (e.g., serious injury and death in the workplace), the manufacturing of dangerous products and various environmental offences (Bittle, 2012, p. 43; Snider, 1993, p. 15).

The nature and extent of the harms produced by corporate crime are often devastating. For instance, the 1984 Union Carbide gas plant disaster in Bhopal, India resulted in approximately 3000 deaths instantly and 100,000 more victims permanently injured after an explosion spewed toxic gas into the atmosphere (Glasbeek, 2002; Snider, 1993). Investigators determined that the plant's owner, UCC India, a subsidiary of the American Union Carbide Corporation (UCC), had failed to upgrade and maintain safety measures that would have prevented the release of toxic gas (Snider, 1993, p. 3). Despite the seriousness of this incident, neither senior executives nor the company have been held to legal account for what happened at Bhopal; the exception being criminal negligence convictions of two UCC India managers, both of whom received two-year prison sentences more than twenty-five years after the explosion (Pearce & Tombs, 2011).

Given the overwhelming harm caused by corporate crimes, why is so little attention paid to them? In part, this disinterest can be traced to the dominant cultural belief that corporate crimes are not "real" crimes (Bittle, 2012; Reiman, 2004; Tombs & Whyte, 2007). Instead, corporate crimes are understood by the general public, and in law, as largely minor offences that are not worthy of criminal justice intervention (Carson, 1979). The label of "real" crimes is reserved for street level crimes, particularly offences such as murder, rape, and assault; crimes of violence that, unlike most corporate crimes, are committed directly by one individual against another (Salmi, 2004).

A particular form of corporate crime that is rarely considered real crime is occupational health and safety offences (hereafter safety crimes). Safety crimes are "violations of law by employers that either do, or have the potential to, cause sudden death or injury as a result of work-related activities" (Tombs & Whyte, 2007, p. 1). Unfortunately, serious injury and death in the workplace is all too common. The Association of Workers'

Compensation Board of Canada (2012) reported that in 2011 there were 919 workplace fatalities and over 249,500 loss-time injuries¹ across the country. In comparison, there were 598 homicides and 241,480 assaults recorded in Canada during the same time (Statistics Canada, 2012).

Regrettably, some forms of employment are particularly dangerous for the health and safety of workers, including the primary resources industry. In 2012, for instance, more than 3,000 oil and gas workers in the province of Alberta either missed work or had work modified due to an injury, while 20 workers lost their lives (Government of Alberta, Jobs, Skills, Training and Labour, 2013).² What is more, the number of fatalities and serious injuries is almost certainly higher when one considers that these statistics fail to include deaths and injuries occurring within industries that directly support and/or supply materials for the oil and gas industry, such as the construction and petrochemical refining industries (Government of Alberta, 2014a; Government of Alberta, 2014b)

As well, many of these injuries and deaths are rarely treated or considered real or violent crimes. For instance, in one case in Alberta an experienced welder was seriously burned when he unintentionally cut through a hydraulic line on a mobile drilling rig, sparking a fire and resulting in second and third degree burns to his entire body. The welder's employer, Beck Drilling, failed to inform the worker of the proximity of the hydraulic hose to the cutting area, as well as the fact that a previous welder had refused the job after realizing the potential dangers of the work (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010, p. 2-3). When the incident was brought to court to

¹ Loss-time injuries are those that cause individuals to miss work. The actual number of loss-time injuries is far more than what is reported in official statistics, as injuries such as burns, strains, chronic diseases, and workers with repeated injuries go unreported (Barnetson, 2010, p. 1).

² In the same year, more than 50,000 Alberta workers missed work or had it modified due to an injury, and 145 lost their lives (Government of Alberta, Jobs, Skills, Training and Labour, 2013).

adjudicate charges under the province's *Occupational Health and Safety Act*, the judge and Crown prosecutor largely blamed the "unfortunate accident" on the welder for carelessly cutting through the hydraulic line. As a result, the company only received a small fine for the incident (*Her Majesty the Queen v. Beck Drilling & Environmental Service*, 2010, p. 2-3). As this study will demonstrate, cases like these reproduce the belief that safety crimes are 'accidents' and that the companies responsible for protecting the health and safety of workers are incapable of committing 'real' or 'violent' crimes.

One reason why safety crimes in the Alberta oil and gas industry are not considered real crimes has much to do with the prominent position that the industry occupies in the province's economy (Alberta Federation of Labour, 2010; Huffington Post, 2012). Operating the third largest crude oil reserves in the world, and with over 114 "active oil sands projects" producing over 1.9 million barrels of crude oil, the oil and gas industry generates over \$3 billion in provincial royalties and accounts for nearly a quarter of Alberta's GDP (Government of Alberta, 2013a; Government of Alberta, 2013b; Government of Alberta, 2012, p. 9). Such economic dominance also creates considerable employment in the province, with an estimated 105,000 people directly employed in the industry, and thousands more employed in supportive roles (Alberta Federation of Labour, 2010; Barnetson, 2013; Government of Alberta, 2013a; Hiemstra, 2006; Shields, 2012). With such economic importance as the backdrop, the state most commonly conceptualizes the industry as an essential social benefit rather than an industry responsible for negligently injuring and killing workers.

Given the serious harms to workers in the Alberta oil and gas industry, and that these incidents are rarely treated as crimes of violence, this thesis critically explores the dominant conceptualization of safety crimes in this industry. I do so by examining three data sources

that pertain to workplace fatalities and injuries in Alberta's oil and gas industry: workplace fatality reports, court judgements and transcripts, and workplace safety awareness campaigns. Fatality reports and court documents provide insight into official conceptualizations of workplace injury and death in the oil and gas industry, while the awareness campaigns provide a more general understanding of workplace safety matters in the province. Specifically, I explore the extent to which these documents characterize safety crimes as "accidents" caused by careless workers as opposed to crimes of violence perpetrated by corporations.

My analysis is informed theoretically by the corporate crime literature that draws from both Foucault and Marx to consider the ways in which language shapes and is shaped by the broader social-political-economic context (Bittle, 2012; Pearce & Tombs, 1998). Specifically, I am interested in understanding the political and economic ideology of neoliberalism and its role in cementing the accident language as the dominant way of understanding safety crimes in Alberta. In doing so I consider the ways in which the accident discourse is a product of the complex relationship between language and the broader social context within which it emerges, as opposed to a conscious manipulation by the state to treat safety crimes as non-serious offences (Bittle, 2012, p. 55; Jessop, 2002b).

Overall, I aim to demonstrate how the discourse of accidents shapes the understanding of safety crimes and its regulation. In the process I challenge the dominant understanding of safety crimes (Asher, 2003; Barnetson, 2010) while also contributing to ongoing discussion and debate about the importance of better regulating workplace health and safety (Bittle, 2012; Pearce & Tombs, 1999; Tombs & Whyte, 2007). As well, I hope to raise awareness concerning the level of harm to workers caused by oil and gas companies in

the province of Alberta, an area of focus and discussion relatively untapped in the criminological and corporate crime literatures.

Research Goal and Questions

My overall goal of identifying the dominant conceptualization of safety crimes in the Alberta oil and gas industry is reflected in my primary research question: *What are the dominant conceptualizations of serious injury and death in the oil sands³ in the province of Alberta?*

Following the lead of other critical corporate crime scholars (Pearce & Tombs, 1998; Slapper & Tombs, 1999; Tombs & Whyte, 2007), I subscribe to the perspective that safety crimes have been constructed and regulated historically as minor, non-violent and non-criminal offences. An examination of the corporate crime and regulatory literature, presented in the next chapter, demonstrates this historical tendency, particularly in that workers have been deemed as careless and therefore primarily (if not at times exclusively) responsible for their own injury and death (Barnetson, 2010; Barnetson & Foster, 2012; Reasons, Ross & Paterson, 1981). These themes are reflected in my two secondary questions: *to what extent do official reports of workplace injuries and fatalities in the Alberta oil sands reinforce or produce the careless worker myth?*; and, *do these reports reinforce and/or reproduce the belief that occupational health and safety offences are non-violent “accidents”?*

As these research questions suggest, this thesis examines the language and dominant understanding associated with safety crimes. My analysis focuses on the language used to describe these offences, the circumstances surrounding them and who is deemed responsible

³ The term “tar sands” could also be used interchangeably with “oil sands”. In recent years, there has been considerable discussion over the politicisation of the terms used to describe the oil industry. I use oil sands without any political or ideological intent, as I believe tar sands is also an accurate description of the oil industry in the province. Coming from Alberta, I simply use oil sands because it is the term most commonly used to describe the oil and gas industry.

for their occurrence. As such, my analysis required a methodology capable of critically interrogating discourses concerning safety crimes in order to identify the knowledge claims that shape our understanding and responses to these offences, which is explored in my methodology chapter.

Outline of Chapters

The thesis begins with a review of the corporate crime literature, examining the evolution of safety crime regulation and how safety crimes have been differentiated from ‘real’ or traditional street crimes. The chapter is split between examining the history of the administrative and criminal branches of safety regulation, with the remainder devoted to highlighting the prevalence of neoliberalism in Alberta and the emerging conceptualization of safety crimes within the corporate crime literature.

Chapter 3 outlines my theoretical foundation, providing a basis for examining why safety crimes have been historically conceptualized as accidents rather than real crimes. I then highlight how language and knowledge claims shape the dominant understanding of particular phenomena (Foucault 1972), and how neoliberalism explains why particular discourses are accepted as the correct way of thinking or knowing (Bittle, 2012; Pearce & Tombs, 1998). The inclusion of state theory in this chapter serves as a reminder of why particular knowledge claims that benefit business are reinforced and reproduced by the state (Bittle, 2012; Jessop, 1990, 1999, 2002; Mahon, 1979).

In Chapter 4, I provide a description of my empirical sources, followed by a discussion of my methodological approach. Grounding my study in critical criminology, particularly in terms of how powerful interests dominate mainstream considerations of crime and its control (Bittle, 2012; Lilly, Cullen & Ball, 2011; Neuman, Wiegand, & Winterdyk,

2004), I rely on critical discourse analysis to examine the state's response to safety crimes in the Alberta oil and gas industry. The chapter concludes with a discussion of how I used critical discourse analysis.

Chapter 5 consists of my observations and analysis of the three empirical sources. Of particular note is how discourses of responsabilization and conventionalization (themes that are outlined in Chapter 3) were found repeatedly within the data. I conclude with an examination of the counter-hegemonic discourses found in the data and the overall conceptualization of safety crimes within the documents.

Chapter 6 offers a discussion of the findings and my conclusions. In addition to outlining the theoretical implications of my research, this chapter explores the structural problems related to the causes of safety crimes and how these were relatively absent within the data.

CHAPTER 2: LITERATURE REVIEW

In this chapter I review the corporate crime, criminological, and regulation literature pertaining to safety crimes. I begin by situating my review of safety crimes within the criminology and corporate crime literatures, followed by a brief section concerning definitional issues relating to corporate crimes and safety crimes. Next, I examine the history of safety crime regulation, highlighting how it has evolved into a class of minor, non-violent offences. Finally, I conclude with a discussion of the major themes observed in the literature which help construct the official conceptualization of safety crimes and which significantly inform this study.

Criminology and Corporate Crime

As noted in the introduction, the social and financial repercussions of corporate crime regularly exceed those of violent street crimes, and yet they remain largely absent from mainstream discussions of crime (Bittle, 2012, p. 1; Box, 1983, p. 1; Reiman, 2004; Slapper & Tombs, 1999, p. 54). Take for example the 2001 Enron scandal, in which company executives fraudulently reported annual profits for years in an attempt to conceal massive debts. These fraudulent acts resulted in the loss of billions of investors' dollars and ultimately forced the company into bankruptcy (Enron scandal at-a-glance, 2002). Stunningly, the total financial loss of all robberies, burglaries, larcenies, and motor vehicle thefts in the US in 2001, roughly \$17.2 billion, was less than one third of the total economic loss caused by Enron's senior executives alone (Dutcher, 2005, p. 1298).

Consider as well the social costs of corporate crime. As Lauren Snider (1993) notes: Corporate crime...causes more deaths in a month than all the mass murderers combined do in a decade. Canadians are killed...by unsafe working conditions;

injured by dangerous products offered for sale before their safety is demonstrated; incapacitated by industrial wastes...and robbed by illegal conspiracies that raise prices and eliminate consumer choice. (p. 1)

Social costs also include those generated from environmental corporate crimes. Since the explosion of industry during the industrial revolution, corporations have been at the forefront of environmental degradation. Whether this is by dumping hazardous waste into rivers and water systems, releasing toxic pollutants into the air, selling poisonous pesticides, or producing massive oil pipeline and tanker leaks (Glasbeek, 2002, p. 135; Tombs & Whyte, 2007, p. 19-21; Global Exchange, 2013), companies have devastated ecosystems the world over. Those unfortunate enough to reside or work near such disasters – rarely are these the individual who reap the great financial rewards from private enterprise – often suffer permanent injuries and illnesses (Glasbeek, 2002, p. 136).

The drastic social and economic costs of corporate crime beg the question of why these offences do not occupy a more prominent focus within criminology. While the perceived lack of violence associated with corporate crime is one reason, as highlighted in the introduction, two other significant factors account for its relative absence in criminology. First, corporate crime does not cohere well with the methodological individualism that dominates much criminological focus. Ray Michalowski (2009, 2010) defines methodological individualism as “the proposition that crime arises from the private conduct of specific persons acting with a conscious design to cause harm to people or property” (Michalowski, 2010, p. 5). Methodological individualism was established early within criminological study, evident in the work of Cesare Lombroso, Cesare Beccaria, and others from the Positivist and Classical Schools who focused on specific “‘abnormalities’ that either propelled individuals into crime, or ensured that they were more predisposed to committing

crime” (Bittle, 2012, p. 41; Tombs & Whyte, 2007, p. 198). Michalowski argues that beginning with these historical roots the criminological gaze has been generally directed towards the violent street level crimes of “identifiable wrongdoers” and away from the “harms, crimes, and social injuries” rooted in organizational deviance (Michalowski, 2009, p. 312; Michalowski, 2010, p. 5).

Second, the corporate offender differs from the traditional criminal – the “opprobrious minority” of society (Carson, 1979). Unlike traditional street criminals, corporate offenders are seen to be part of the socially and morally upstanding class of society, largely due to their economic importance and the fact that their crimes are rooted in legitimate activities (Barnetson, 2010; Carson, 1979). Predictably, this does not mesh well with criminology’s focus on the “nuts, sluts and perverts” of society (Liazos, 1972). This challenge of merging the corporate offender into criminology was revealed by Edwin Sutherland and Paul Tappan’s 1940s debate on what constitutes corporate crime and who constitutes corporate criminals (Slapper & Tombs, 1999, p. 3-8). Sutherland, often referred to as a pioneer of white collar and corporate crime studies, “challenged the stereotypical view of the criminal” by arguing that the crimes of the powerful are as serious as those of traditional street crimes (Slapper & Tombs, 1998, p. 3). Tappan, a black-letter legal academic, countered that corporate crimes are merely technical offences, committed, at worst, by the ethically questionable rather than the intentionally malicious (Slapper & Tombs, 1999, p. 3-8).

Building from Sutherland’s contentions, many critical criminologists have argued since then that dominant definitions of corporate crime largely reflect the ideological underpinnings of capitalism (Bittle, 2012, p. 42-43; Snider, 1993, p. 8-9). For example, since corporations generate massive capital accumulation, which is deemed to be a fundamentally

moral and socially beneficial act within modern society, the state is less likely to criminalize their questionable and illegal acts (Snider, 1993, p. 8-9). As Snider (1993) surmises, with corporations “encouraged by the state to amass as much money and power as possible...criminal laws characteristically focused on acts that the poor and powerless were most likely to commit” (p. 9).

Owing to factors such as these, corporate crime has been differentiated from traditional understandings of crime and largely excluded from criminological examination. However, despite the minimal focus and discussion of corporate crime within criminology, there is nevertheless an important literature that examines corporate crime, the focus of which is discussed in the following sections.

Corporate and Safety Crimes

In effort to avoid the methodological individualism of much of criminology, I adopt a definition and understanding of corporate crime that includes the organizational and structural weaknesses of corporations (i.e. insufficient OHS policies) as significant causes of safety crimes (Bittle, 2012, p. 45; Tombs & Whyte, 2007, p. 3). As noted in the introduction, this definition is adopted from Tombs and Whyte’s (2007) critical examination of safety crimes, which they define as “[i]llegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation” (p. 2). In addition to considering the corporation’s goals and structure as factors leading to corporate offending, this definition is inclusive of a range of offences by referring to crimes as “illegal acts” rather than criminal or administrative offences (Bittle, 2012, p. 44; Tombs & Whyte, 2007, p. 3). In this respect, the definition avoids the ideological distinction between corporate crimes,

(Tombs & Whyte, 2007) as there is nothing specific about these offences that warrant a separation between administrative, civil and criminal law (Bittle, 2012, p. 44).

The above definition is specifically applicable to safety crimes in important ways. Not only are many safety crimes a product of “deliberate decision making or culpable negligence (of) a legitimate formal organisation”, they also occur in accordance with the culture and goals that benefit the organization. However, safety crimes differ from other corporate crimes in that they are “violations of law by employers that either do, or have the potential to, cause sudden death or injury as a result of work-related activities” (Tombs & Whyte, 2007, p. 1). One example is the 1992 Westray Mine disaster in the province of Nova Scotia, where 26 workers were killed in an explosion following a series of health and safety breaches by the company, Curragh Resources (Bittle, 2012; Glasbeek, 2002). The investigation into this disaster revealed that company managers repeatedly ignored provincial inspectors’ warnings concerning OHS violations (Bittle, 2012, p. 5). While tragic, the case is not unusual in terms of the nature of the safety crime: a corporate culture of negligence, consistent violation of OHS laws, and the subsequent death of workers (Glasbeek, 2002, p. 61, 62).

Noting how safety crimes have been defined and understood is important in understanding how and why they have been regulated, as how crimes are conceptualized “shapes, but does not determine, how the state responds through law” (Bittle, 2012, p. 46). The following section will highlight how the state has responded historically to safety crimes through law.

Safety Crime Regulation

Regulation is one of the foremost areas of discussion within the study of safety crimes. In general, regulation refers to government intervention and limitation into the actions of citizens and businesses, “supported by the threat of sanction” (Stone, 1982 as cited in Simpson, 2002, p. 80). While regulation can include sanctions such as prison sentences or substantial fines, many punishments for these offences are substantially less restrictive, particularly within the context of safety crimes. For instance, Barak Orbach (2012) notes that “[r]egulation often imposes no restrictions, but enables, facilitates, or adjusts activities” (p. 4). This is part of a broader regulatory model of enforcement called compliance which aims not at “punishment per se, but rather to produce business behavior that adheres to rules or standards” (Simpson, 2002, p. 79). Persuasion and education are two such techniques used by the state to produce compliance, with punitive sanctions, such as fines and prison sentences, rarely used and only as a last resort (Bittle, 2012, p. 46; Simpson, 2002, p. 79-80). The following sections will detail the historical evolution of OHS regulation, including compliance based regulation.

Emergence of Safety Regulation

The regulation of occupational health and safety first emerged in England during the industrial revolution. Following rapid development of production technology and massive population shifts from rural to urban settings, workers’ safety and overall quality of life dropped considerably (Slapper & Tombs, 1999, p. 25; Snider, 1993, p. 95; Tombs & Whyte, 2007, p. 110-13). Inadequate safety devices on machines and poorly designed workplaces (i.e. insufficient lighting, heating, and ventilation) routinely threatened the health and safety

of workers; many did not survive while others suffered from permanent injury and disease (Snider, 1993, p. 95).

Tragically entire families, who faced rising household expenses and growing poverty following the shift from rural to urban life, often suffered working in factories in order to make ends meet (Carson, 1979; Snider, 1993; Tombs & Whyte, 2007; Tucker, 2006). Children suffered in particular, facing the same hazards and working conditions as men (i.e. 15 hour days, squalid and unventilated factories, dangerous machinery), but were paid considerably less. Many did not live beyond their teens (Carson, 1979; Tombs & Whyte, 2007, p. 111; Tucker, 2006, p. 60).

Workers and their families fared little better outside the factories. Rapid industrialization caused extensive pollution of the air and water, while cities' sanitation and sewage disposal systems could not keep up with the massive urbanization, poisoning food and creating toxic living conditions (Graebner, 1984, p. 28; Snider, 1993, p. 95). Coupled with the horrific working conditions inside factories, many workers emerged from the industrial revolution "broken and diseased" (Snider, 1993, p. 95).

The declining health and safety of workers also intensified the class disparity between employers and workers, threatening the legitimacy of capitalism (Snider, 1993, p. 95; Tombs & Whyte, 2007). Employers, exposed to none of the dangers and risk of their workers, profited from productive factories, while workers were paid little and faced deteriorating health accompanying such unchecked productivity. In some cities, workers began refusing to work until employers addressed safety concerns (Snider, 1993, p. 95). The carnage of the factory system also highlighted the inherent contradiction of capitalism: by doing little to ensure worker safety, employers slowly killed off their labour force and consumer base, diminishing their ability to sustain long-term profits (Tombs & Whyte, 2007, p. 111, 112).

Inevitably, workers sought monetary restitution for the injuries they suffered (Snider, 1993, p. 95; Tucker, 1995). Eric Tucker (1995) notes this as the first efforts at regulation. However, it was largely unsuccessful, as courts relied upon the premise that the conditions of employment and work were freely and equally established in negotiations between workers and employers, including conditions pertaining to safety (Bittle, 2012, p. 47; Tucker, 1995, p. 246). Courts assumed that employment signified a worker's voluntary agreement to the contract's conditions and the risks involved, making claims of restitution unfounded (Barnetson, 2010, p. 21; Tucker, 1984, p. 218; Tucker, 1995, p. 246).

Litigation also failed due to three common law defences that allowed employers to largely escape accountability (Tucker, 1984, p. 217). The first, "contributory negligence", focused on the level of involvement the worker had in causing their injury, stating the worker assumed full liability if they contributed to their own injury in any degree (Barnetson, 2010, p. 21; Tucker, 1983-84, p. 270; Tucker, 1984, p. 217). The second, "voluntary assumption of risk", stated that if workers were aware, or should have been aware, of workplace hazards, then they assumed the risks and were unable to seek restitution from their employer (Barnetson, 2010, p. 21; Tucker, 1983-84, p. 270; Tucker, 1984, p. 218). The notion of voluntarily assuming risk also shaped the final defence, the "fellow-worker doctrine", stipulating that workers also assumed risks caused by negligent co-workers (Barnetson, 2010, p. 21; Tucker, 1983-84, p. 271; Tucker, 1984, p. 218-19). These defences fuelled the courts' perspective that it was "unjust and improper" for workers to seek restitution for risks that they voluntarily assumed and for which they were appropriately compensated in their wages (Tucker, 1984, p. 218).

Following the failure of litigation, governments turned to state-imposed laws for regulation. However, this was not done for compassionate or humanitarian reasons. Instead,

lawmakers recognized that the factory system could not be trusted to regulate itself, threatening not only worker's lives but also the long-term viability of the capitalist system (Tombs & Whyte, 2007, p. 111-12). The following sections highlight the ensuing phases of workplace safety regulation, with particular emphasis on the ways in which these forms of regulation helped reinforce the idea that injury and death in the workplace are "accidents."

Administrative Regulation

The first forms of state-based OHS regulation emerged during the mid 19th century (Bittle, 2012, p. 47; Tucker, 1995, p. 246-47). Among the first of these new laws were the *English Factory Acts*, passed between 1831-1878 and which restricted the length of the workday, mandated a minimum age of employment, and required adequate ventilation and lighting within factories. What is more, the *Factory Acts* also separated OHS crimes into a separate class of offences from criminal law (Snider, 1993, p. 95, 97; Tombs & Whyte, 2007, p. 110). This separation was marked by the introduction of strict liability offences in the *1844 Factory Act* (Tombs & Whyte, 2007, p. 115; Wells, 2001, p. 8). Prior to the *1844 Act*, OHS crimes were rooted within criminal law, with offenders facing similar rules and punishments as traditional street criminals (e.g. "imprisonment, and flogging, and pillory") (Carson, 1979, p. 41). However, much like initial worker litigation, courts resisted attempts to punish corporate offenders, finding it distasteful to "embark upon a collective criminalisation" of the socially respectable class of society, to which they also belonged (Carson, 1979, p. 48).

The introduction of strict liability offences provided courts with the ability to prosecute offenders without having to prove *mens rea* or the guilty mind of the offender (Tombs & Whyte, 2007, p. 115). Instead, a company's guilt was established simply if their act(s) broke the law, regardless if they did so unintentionally (Tombs & Whyte, 2007; Wells,

2001). In turn, stringent punishments were abandoned for “low-level administrative penalties”, such as reprimands and fines (Tombs & Whyte, 2007, p. 115). As a result, OHS crimes were effectively pushed into administrative law that was enforced by inspectorates and government bodies and dealt with through civil rather than criminal courts (Slapper & Tombs, 1999, p. 16).

Strict liability also ensured that OHS crimes no longer faced the moral condemnation of ‘real’ crimes (Tombs & Whyte, 2007, p. 115). As Tombs and Whyte (2007) note: “if you make the route to establishing liability easier, then it is the instinct of the court to interpret a lower degree of seriousness” (p. 123-24). In other words, if a crime is conceptualized as a minor offence, it is going to be regulated as one. This is noteworthy for my thesis, as it highlights not only the shift in the regulation of safety crimes, but also the language used to justify this transformation.

Canada’s first foray into safety regulations was Ontario’s *1884 Factory Act* (Tucker, 2006, p. 163). Like the English factory laws that inspired it, the Act established regulations concerning the minimum age of employment, lunch breaks, adequate ventilation and sanitation, while also creating a small inspectorate to ensure compliance (Tucker, 2006, p. 163). Initially well received by Ontario workers for transforming “health and safety from a private matter...into a public concern”, few industries outside manufacturing were covered under the Act, leaving many workers unprotected (Tucker, 2006, p. 164).

Another weakness was the newly formed safety inspectorate’s refusal to prosecute offenders. Instead, inspectors argued that their role was to educate and consult companies on OHS matters rather than act as “factory police” (Tucker, 2006, p. 164). Inspectors relied on the companies themselves to conduct “responsible and moral decision making” within business ventures (Tombs & Whyte, 2007, p. 153). As a result, not a single prosecution was

brought against an employer between 1886 and 1889, even as hundreds of workers were killed and many more injured (Tucker, 2006, p. 165).

Partial Self-Regulation

While the nature and scope of workplace safety regulation has changed since the original Factories Acts to include various forms of administrative regulation, there has been a general tendency in law to downplay the seriousness of safety crimes by responding to them as non-criminal “accidents” (Tombs and Whyte 2007; Tucker 1995). For example, within the current mode of OHS regulation, referred to as mandated partial self-regulation, states and businesses share a cooperative regulatory role. This entails the state developing a working relationship with business, but sees the external responsibility system (ERS) – safety laws and regulations enforced by the state – limited in favour of a corporation’s internal responsibility systems (IRS), which combines a company’s safety policies with worker participation in OHS decisions (Barnetson, 2010, p. 45; Tucker, 1983-84, p. 286; Tucker, 1995, p. 247). Industry officials are now mandated by the state to partially regulate the actions of their employers, with the state’s role being to educate employers on safe work practices and enforcing the law in cases where employers fail to follow the rules.

The shift from state-based to mandated partial self-regulation can be linked to the transformations in Western capitalist states during the 1980s from the Keynesian welfare system (KWS) to neoliberal political and economic rationalities (Tombs & Whyte, 2007, p. 158). Emerging after the Second World War, the KWS promoted the idea that crises and economic instability, such as recessions and periods of high unemployment, could be compensated through state intervention in the economy (Fudge & Cossman, 2002, p. 10). This included the creation of social and financial safety nets (e.g. health care, welfare,

unemployment insurance, and old age social security), close monitoring of market conditions and higher corporate tax rates (Fudge & Cossman, 2002).

However, opponents argued that the KWS was largely ineffective in handling economic instability. For example, many economists criticised the system's ability to address rising inflation, oil prices, unemployment, and foreign competition within the US, UK, and Canada during the economic crisis of the early to mid-1970s (Ferguson, 2012, p. 27; Fudge & Cossman, 2002, p. 13). As a result, legislators responded by restricting financial and social safety nets for individuals and re-focusing their energies on trade liberalization, "anti-inflationary monetary policies" and reducing government expenditure and debt (Fudge & Cossman, 2002, p. 13).

As neoliberal discourse and policy started to dominate, addressing the needs of business steadily became the new focus for governments. As a political economic ideology, neoliberalism espouses the belief that markets and regulation run smoothly and effectively when regulations promote rather than hinder business profitability (Jessop, 2002b; Snider, 2000, p. 182; Tombs & Whyte, 2007, p. 158). States helped promote business through restructuring existing state-based regulation in a way that was more likely to support pro-business outcomes (Fudge & Cossman, 2002, p. 19). Referred to as re-regulation, this restructuring witnessed renewed reliance on persuasion, bargaining and even partial self-regulation as methods of OHS enforcement, therein reflecting the neoliberal commitment to minimal state interference in the affairs of business (Fudge & Cossman, 2002; Tucker, 1995, p. 258, 262). In practice, self-regulation allows corporations to make changes and regulate OHS in the most efficient ways that they deem appropriate for their companies. However, critics charge that this approach has weakened the ERS (Tucker, 1995) through a reduction

in workplace investigations by regulators and fewer prosecutions of companies following instances of workplace injuries and/or deaths (Tucker, 2003).

Another consequence of this shift in regulation has been a greater emphasis on workers to ensure their own safety. As noted, the IRS depends on workers actively participating with employers in maintaining workplace safety. One way workers can do this is through involvement in joint health and safety committees (JHSC) within a company (Tucker, 1995, p. 256). Typically made up of equal numbers of worker and employer representatives, JHSCs can make “non-binding recommendations to the employer” in regards to workplace safety (Barnetson, 2010, p. 63). It is within these committees that workers are expected to play a role in workplace safety policy, specifically by “asking questions, making complaints and legally exercising safety rights” – the latter including the right to know about workplace hazards and refuse unsafe work (Gray, 2009, p. 327). However, many JHSCs are poorly organized and managed, resulting in many workers not having an outlet to address safety concerns (Tucker, 1995). As well, with JHSCs generating recommendations that are non-binding, workers ultimately have little influence and agency over their own safety in the workplace (Barnetson, 2010, p. 63).

This emphasis on workers sharing responsibility for safety alongside their employers can be seen as a form of responsabilization, whereby the emphasis is on workers avoiding injury and death rather than employers preventing it (Gray, 2009, p. 329). Proponents argue that shared responsibility ensures a more robust focus on safety by including all parties in decisions around safety issues (Tucker, 1995). However, the reality is that workers do not have the same power and capacity as employers to make workplaces safer (such as installing safety equipment and setting production quotas) (Gray, 2009; Tucker, 1995). This is evident through programs aimed at training workers for risks in the workplace, making sure they are

competent in handling the risks, rather than directly addressing the risks themselves. As a result, the focus is on the competency of workers to avoid safety hazards when an injury or death does occur – such as identifying if workers exercised their right to refuse work – rather than scrutinizing the employer’s actions or the nature of production (Gray, 2009).

Criminal Regulation

While the majority of safety crimes have been separated into a class of offences distinct from criminal law, there have also been attempts to adapt existing criminal laws in response to safety crimes (Tombs & Whyte, 2007, p. 110, 125). The difficulty historically has been applying laws designed and implemented around the actions and culpability of the individual to that of complex organizations (Bittle, 2012, p. 21; Tombs & Whyte, 2007, p. 125). Two reasons account for this challenge. This first is the legal privilege of limited liability.

Introduced in the *English Joint Stock Act of 1844*, limited liability shields shareholders from personal responsibility for any actions of the corporation by limiting their liability to their investment in the enterprise (Glasbeek, 2002, p. 10; Snider, 1993, p. 22). This is effective in generating substantial investment, as investors are more likely to flock to businesses that limit their personal liability (Snider, 1993, p. 22). Unfortunately, limited liability provides shareholders with “little financial incentive to ensure that the managers involved behave legally, ethically, or decently”, as they benefit from profit generated by the company but do not share the accountability (Glasbeek, 2002, p. 129).

The second and related challenge of applying criminal liability is the legal principle of corporate personhood (Glasbeek 2002; Tombs & Whyte, 2007, p. 129-30). Legally, corporations are distinct individuals, enshrined with a number of rights and privileges including the right to exist once created, engage in free speech, “base claims on human

beings' religious or political beliefs” and legally own property and capital (Glasbeek, 2002, p. 6-9). As a separate person, corporations function as an “invisible friend” to shareholders and managers (Glasbeek, 2002, p. 8-11), accepting all personal and financial responsibility for actions committed on its behalf (Tombs & Whyte, 2007, p. 129-30).

Together, limited liability and corporate personhood form what is referred to as the corporate veil: a legal shroud protecting shareholders and senior executives from crimes arising from corporate actions (Glasbeek, 2002, p. 11; Tombs & Whyte, 2007, p. 129). Coupled with the overriding goal of profit maximization, the corporate veil lies at the heart of corporate and safety crime and makes corporations criminogenic: entities inherently predisposed to crime (Glasbeek, 2002, p. 130). In particular, with the corporate veil draped over shareholders, and with the pressure to make profit, safety often takes a back seat to actions that generate profit for the company.

In response to the serious and extensive harms caused by corporations, most western states have attempted to adapt the criminal law to regulate the corporate form. But since corporations have “no body to kick and no soul to damn”, despite being legal individuals (Slapper & Tombs, 1999, p. 26), criminal law strategies have struggled to identify the guilty mind of corporations. Historically, the *mens rea* of a corporation was traced to the “directing minds”⁴ of the company in a process referred to as the identification doctrine (Slapper & Tombs, 1999, p. 30-31; Tombs & Whyte, 2007, p. 130). In Canada, *mens rea* was established from the “directing minds” when three conditions were met: the crime occurred within the “field of operation assigned to the accused”, the crime was not meant to defraud the corporation and the corporation benefitted from the offence (Government of Canada, Department of Justice Canada, 2002).

⁴ Those in senior level and management positions.

While providing a means of merging corporate liability into criminal law, the identification doctrine proved problematic. One issue was actually tracing *mens rea* to those responsible for the crime (Bittle, 2012, p. 21). While directing minds have ultimate authority within the company, they are often not present when the crime occurs and thereby cannot be said to possess the necessary knowledge or intent (Tombs & Whyte, 2007, p. 131). Another problem is that the doctrine downplays the seriousness of corporate crimes by holding corporations accountable while the actual individuals (notably senior management and boards of directors) escape punishment.

In recent years, new forms of corporate criminal liability legislation have addressed, in part, the issues raised by the limitations of the identification doctrine. The UK's *Corporate Manslaughter and Corporate Homicide Act of 2007* is one such example. Rather than establishing corporate *mens rea* from one individual, *mens rea* is established through an aggregate of senior individuals and the "management systems and practices" they employ across the organization (Crown Prosecution Service, 2011; Health & Safety Executive, n.d.; Tombs & Whyte, 2007, p. 133, 139, 142). As a result, corporations are guilty under this law when death arises from negligent management and policy that constitutes a gross breach of the corporation's duty of care (Crown Prosecution Service, 2011). For example, a geological surveying company was convicted in an employee's death after prosecutors discovered that the company's management routinely put employees in dangerous situations by ignoring industry-established safety guidelines on the building of trenches (Crown Prosecutor Service, 2011). However, a problem with the *Corporate Manslaughter and Corporate Homicide Act* is that it is still bound by the corporate veil which shields investors and senior executives from accountability and it allows only the prosecution of the corporation (Tombs & Whyte, 2007, p. 139).

Canada has introduced corporate criminal liability law through Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)* (Bittle, 2012, p. 4). Passed in late 2003, the Act is colloquially referred to as the *Westray Bill* as it marks the federal government's legislative response to the deaths of 26 miners in the 1992 Westray mine disaster (Bittle, 2012, p. 4; Bittle & Snider, 2011, p. 375). The Westray disaster "piqued the government's interest in corporate crime law reform" when no individual was convicted for the workers' deaths, despite widespread negligence in the case (Bittle, 2012, p. 4). The bill marked the first use of the *Criminal Code* to specifically address corporate criminal liability in Canada by amending a number of sections aimed specifically at organizations (Bittle, 2012, p. 4; Archibald, Jull & Roach, 2004; Canadian Centre for Occupational Health and Safety, 2010). *Section 217.1*, for example, establishes that anyone directing, or with the authority to direct, work "is under a legal duty to take reasonable steps to prevent bodily harm to (workers), or any other person, arising from that work or task" (Archibald, Jull & Roach, 2004, p. 388).

The *Westray Bill* also addresses some of the limitations of traditional corporate criminal liability law. First, it attempts to tackle the problem of tracing corporate *mens rea* to the directing members of the corporation (i.e. identification doctrine) by expanding it to include anybody in a significant position to direct work or create and modify corporate policy (Archibald, Jull & Roach, 2004, p. 368; Bittle & Snider, 2006, p. 475; Government of Canada, Department of Justice Canada, 2002). By no longer having to prove fault "in the boardrooms or at the highest levels of a corporation...Bill C-45 significantly expands the net of corporate and organizational liability" (Archibald, Jull & Roach, 2004, p. 368). Second, the creation of *section 217.1* allows the prosecution of any individual within the corporation that is in a position to direct and supervise work, or function as a corporate representative, to

be prosecuted for corporate crimes (Archibald, Jull & Roach, 2004, p. 388; Canadian Centre for Occupational Health and Safety, 2010). One example where both an individual and a corporation have been charged occurred in 2010, when Metron Construction and its owner, Joel Schwartz, were charged with criminal negligence causing death following the deaths of four workers who perished, with a fifth suffering debilitating injuries, after the swing stage scaffold that they were working on collapsed and sent the workers plummeting thirteen floors to the ground (Bittle, 2013, p. 53-54; Bittle, 2012, p. 33; Chevalier, 2012; Edwards & Rush, 2010). The criminal charges were dropped against Schwartz, who pleaded guilty under Ontario's *Occupational Health and Safety Act*, after Metron Construction plead guilty to criminal negligence causing death and fined \$230,000, a punishment that was later increased to \$750,000 upon appeal (Bittle, 2013, p. 53-54; Ontario Federation of Labour, 2013). The case is also noteworthy as corporate *mens rea* was established from a low level manager, specifically the site supervisor, rather than a directing mind⁵ (Bittle, 2012, p. 33; Chevalier, 2012).

Although some view the *Westray Bill* as constituting “a fundamental change, if not a revolution, in corporate criminal liability” (Archibald, Jull & Roach, 2004, p. 388, p. 368), it has had little chance to effect much change. Since its introduction in 2003, the bill has been used rarely and has resulted in less than five convictions or guilty pleas (Bittle, 2012, p. 31-34). The bill's disuse is unfortunate as it includes a number of deterrent based punishments, such as corporate probation and significant fines that offer a potentially effective method of ensuring corporate compliance with the law.

Deterrence theory stipulates that individuals commit crimes after carefully considering the potential costs and benefits of the act (Tombs & Whyte, 2007, p. 169).

⁵ It is noteworthy that Metron Construction is a small company.

Understanding offenders as rational and calculating, proponents of deterrence suggest that punishment should outweigh any potential benefits of the crime. However, a significant problem with deterrence when applied to traditional offenders is that it suggests offenders always act rationally and have prior knowledge of the risks involved with the crime (Slapper & Tombs, 1999; Tombs & Whyte, 2007). This approach ignores issues related to strain, mental illness, intoxication, and other social factors that encourage people to commit crime without considering the risks and consequences of their actions.

While “accepted by most criminologists” as ineffective for street level offenders (Slapper & Tombs, 1999, p. 184), corporate offenders, on the other hand, are “among the most deterrable types of offenders” (Braithwaite & Geis, 1982, p. 301). In particular, unlike street offenders, corporations and their representatives operate on the basis of a cost/benefit analysis before making decisions (Tombs & Whyte, 2007). This is important for a company to stay profitable, as if the risks/costs of a particular endeavour outweigh any potential benefits the company stands to lose rather than gain from the action. For example, criminal and civil investigation into the Ford Pinto, a car which had a tendency to burst into flames when rear-ended, discovered that company executives knew of the dangers posed by the car but decided to keep it on the road after determining that it was cheaper to settle insurance claims and litigation than it was to order a recall (Slapper & Tombs, 1999, p. 142; Tombs & Whyte, 2008, p 170).

With companies and their executives operating on a rational, cost/benefit basis, stringent enforcement of laws such as the *Westray bill* have the potential to deter companies from engaging in reckless and criminal behaviour. However, critics charge that the *Westray bill* will only serve as a deterrent if it is adequately enforced. In particular, consistently applying fines that actually reflect the gravity of the offence, or incarcerating individuals in

cases of extreme negligence, would begin to send the message to both the boardrooms and worksites that the costs of unsafe workplaces outweigh any potential benefit (Tombs & Whyte, 2007, p. 190). Consistent enforcement would also start to address the culture of negligence and irresponsibility that is endemic to much of the corporate realm. Massive fines for companies and incarceration for its ultimate decision-makers would have the effect of undoing the “ample motivation to justify or ignore unsafe working conditions” by removing the ability to secure profit or, in the case of the directing minds, to continue directing business (Bittle, 2012, p. 186, 187, 192; Bittle & Snider, 2006, p. 477; Bittle & Snider, 2011, p. 379).

Neoliberal Regulation in Alberta

Having discussed the history of safety regulation, it would be prudent to discuss its current form in Alberta. Like many western capitalist societies (Bradford, 1999, p. 36; Fudge & Cossman, 2002, p. 13; Jessop, 2002a, p. 454), neoliberalism has a dominant influence in the regulation of safety in the province. Two reasons account for such a dominant neoliberal role in Alberta: the size and dependence on the oil and gas industry and political conservatism (Miller, 2007; Taft, 1997; van Herk, 2001).

Since the discovery of massive oil reserves in 1947, the oil and gas industry has had a massive impact on the political landscape in Alberta. For the past 6 decades, oil has turned one of the poorest Canadian provinces into the richest, funding nearly every government operation at the provincial level (van Herk, 2001). At the same time the province became increasingly dependent on the oil and gas sector its politics steadily became more conservative. The party of the provincial government has not changed since 1971, when the KWS orientated Social Credits lost power to the business-orientated Progressive

Conservatives (van Herk, 2001). This combination of political conservatism and economic dependence on oil and gas, has turned Alberta into “bastion of neoliberalism”, influencing every level of government and regulation in the province (Miller, 2007, p. 225).

At the same time neoliberalism was growing in strength in Alberta, the province experienced a switch (not coincidentally) from a state “interventionist/regulatory” approach to OHS to an approach based on a “partnership” between government and industry (Tucker, 2003, p. 401). This “partnership” consisted of partial self-regulation as the primary approach to OHS matters (Tucker, 2003, p. 401). In Alberta, partial self-regulation amounts to industry-led regulation with government intervention almost entirely limited to investigations of cases of serious injury and death in the workplace. Partial self-regulation is facilitated through the Partners in Injury Reduction (PIR) program, a joint undertaking between government and industry that issues Certificates of Recognition (CORs): accreditations for businesses that qualify to partially self-regulate (Government of Alberta, 2011a; Government of Alberta, 2011b; Tucker, 2003, p. 401-02). COR corporations are subject to “paper reviews of (their)...programs, rather than traditional inspections” by compliance officers, while annual audits of safety management systems are conducted internally, with outside inspection conducted by provincially certified industry groups once every three years (Government of Alberta, 2011a; Tucker, 2003, p. 402). In this respect, CORs have made Alberta OHS regulation closer to pure self-regulation than partial self-regulation, as external oversight is almost entirely governed by industry organizations. For example, nearly all of the three-year audits for Alberta oil and gas COR corporations is conducted by Enform, an industry-funded organization that advocates for improvements to safety systems in “Canada’s upstream oil and gas industry” (Enform, 2014). This switch from state based to

partial self-regulation resulted in a 40% drop in provincial spending on OHS in the 1990s (Tucker, 2003, p. 401).

Alongside the shift from state to partial self-regulation in Alberta, there has also been a substantial decline in the number of successful OHS prosecutions (Tucker, 2003, p. 401). Examining the impact of neoliberalism on the OHS systems of Canadian provinces, Tucker (2003) documents how successful prosecutions in Alberta began to drop off considerably in 1986, specifically when oil prices fell drastically (Tucker, 2003, p. 401). In 1986 there were approximately 50 prosecutions, by 1989 there was less than 10, and in 1995 and 1996 prosecutions for OHS offences were reduced to less than five (Tucker, 2003, p. 401). While a decrease in prosecutions might be chalked up to a decrease in fatalities between 1986 to 1996⁶, it does not account for such a drastic decrease in state intervention. Instead, a mere five prosecutions for 91 fatalities in 1996, down from 50 for 132 deaths in 1986, is more reflective of the province's substantial policy shift towards neoliberal forms of OHS regulation (Alberta Federation of Labour, n.d.; Tucker, 2003, p. 401).

Although successful prosecutions have improved slightly in recent years (Government of Alberta, Human Services, 2013), neoliberal thinking is still integrated into OHS enforcement in the province. This has resulted in an overwhelming reliance upon self-regulation, with little to no use of criminal law. This includes various techniques by the province and business to encourage individual workers to regulate and be responsible for their own safety. One such way is through workplace awareness campaigns comprised of posters, media advertisements, video re-enactments of accidents, and websites which focus

⁶ There was a decline of workplace fatalities from 1986 (132) and 1989 (107) to 1995 (93) and 1996 (91). It is noteworthy that this decline was temporary, jumping back to 120 in 1997 and never going under 100 for the following 7 years-all the while the province utilized the partnership approach (Alberta Federation of Labour, n.d.).

on the carelessness of workers rather than the incompetence of employers, initiatives that are a focus of this study (Government of Alberta, 2008; Government of Alberta, Human Services, 2011a). The Bloody Lucky internet campaign is one such example, as its video re-enactments portray the carelessness of workers as the most significant threat to workplace safety (Government of Alberta, 2008). Despite its form, reliance on self-regulation re-emphasizes the belief that safety crimes are no more than accidents or non-violent offences that are easily preventable if workers simply change their behaviours.

Emerging Conceptualization of Safety Crimes

The literature reveals several reasons why safety crimes have been seen historically as accidents and not crimes of violence. First, unlike those responsible for traditional violent crimes, the individuals who are deemed the degenerative minority in society, safety crime offenders (i.e. corporations and industry) are perceived as legitimate and morally upstanding members of society that seek profits in accordance with the law (Pearce & Tombs, 1991, p. 418; Slapper & Tombs, 1999, p. 170, 174). In other words, corporations and their executives occupy a position of perceived economic importance in society, effectively excusing their transgressions as a “peripheral side-effect of essentially legitimate, productive and socially useful activity” (Slapper & Tombs, 1999, p. 174). Second, safety crimes lack an inherent sense of moral blameworthiness. This is due to the historical, yet ideological, distinction of safety crimes being wrong because they are prohibited rather than intrinsically wrong. Strict liability, the identification doctrine, and the corporate veil all aid in accomplishing this by diminishing both the guilt and responsibility of offenders. Finally, the minimization of victims also aids in differentiating safety crimes from real crime. Safety crime regulation largely reflects the assumption that workers willingly accept the possibility of injury and

death when they agree to an offer of employment (Bittle, 2012; Tucker, 1995). This has been reflected from the early common law defences to present neoliberal-based regulation, particularly that workers are aware of, and contribute to, workplace safety risks. Consequently, workers are treated less as victims and more as responsible parties in the harms that they suffer.

In this study I subscribe to the perspective that a combination of these factors has helped construct the understanding of safety crimes as accidents and accordingly shaped the state's response and regulation of these offences. Tombs and Whyte (2007) argue that the language of accidents is “neutral (and) ‘anaesthetising’”, implying “connotations of the unforeseeable, unknowable and unpreventable” (p. 70, 71-72). In particular, accident language always implies the absence of intentionality and moral blameworthiness concerning an incident. Accidents are not planned, nor do they occur maliciously, rather they simply, albeit undesirably, occur. In this sense, accidents become synonymous with non-violence and, in the process, obscure the fact that many safety crimes constitute indirect forms of violence, or harms that occur through acts of omission or manipulation of the working environment (Salmi, 2004, p. 57). Without a sense of intentionality and immorality, guilt cannot be assigned to involved parties, and safety crimes are chalked up as accidents, downplaying their seriousness and resulting in little public or political outcry to address them with the same effort and tenacity as traditional crimes of violence.

I observed two consistent themes within the literature that helped construct safety crimes as accidents and which inform this study: conventionalization and responsiblization. Developed by Carson (1979) in his examination of Factory Acts, conventionalization refers to the normalization of safety crimes within regulation. In other words, safety crimes are not considered “as really constituting crimes at all”; instead they are rationalized as part of

normal and acceptable business behaviour (Carson, 1979, p. 38). Consequently, Carson (1979) notes that conventionalized crimes are those that are infrequently stigmatized or punished, and, as a result, are “freely resorted to” by offenders, such as businesses whose actions are deemed to be inherently reputable (p. 38).

While many safety crimes were not considered or regulated as serious offences before the Factory Acts, the introduction of strict liability saw the formal normalization of safety crimes in law. This is due to strict liability’s removal of *mens rea*, eliminating the need to establish moral blameworthiness and identify intent (Tombs & Whyte, 2007, p. 123). This is also how conventionalization helps inform accident discourse. By no longer possessing a sense of moral blameworthiness or intentional maliciousness, conventional offences are much more akin to accidents than intentional crimes. As a result, safety crimes lack significant stigmatization and punishment, becoming much easier to be treated as normal and acceptable side-effects (i.e. accidents) of business. This study will explore the extent to which conventionalization is reproduced through the state’s response to injury and death in Alberta’s oil and gas industry.

Responsibilization discourses also inform accident conceptualization in regulation and will be used in my analysis. As the literature highlighted, current forms of OHS regulation have shifted the burden of safety responsibility predominantly from employers to workers, despite workers having little control over their working conditions. Workers are now expected to be competent in rectifying or avoiding harm, rather than employers being expected to remove it. This highlights the belief that the actual cause of workplace injury and death results from the careless actions of the accident prone worker, rather than the negligent employer (Barnetson & Foster, 2012; Gray, 2009). As well, blaming workers for failing to

avoid injury keeps attention centered on what workers did or should have done, obscuring the responsibility of employers for ensuring worker safety.

Summary

In this chapter I have discussed the historical separation of safety crime regulation, concluding with a description of the current state of OHS in Alberta and the emerging conceptualization of safety crimes. As the literature has highlighted, safety crimes have been assimilated into the criminal law, while also differentiated into its own set of offences that make no mention of the harm caused (Tombs & Whyte 2007). Within Alberta, corporations have been able to partially self-regulate, with virtually no use of criminal law to prosecute corporations for injuring and killing workers. Overwhelmingly, the underlying theme throughout most of the literature on safety crime regulation has been that safety crime is not “real crime”. Instead, the emergence of conventionalization and responsabilization has aided in constructing the understanding of safety crimes within regulation as non-violent accidents. Utilizing these themes as indicators of accident language, I intend to examine the extent to which safety regulation in Alberta has been shaped by the accident discourse. The following chapter outlines the theoretical position that I use to contextualize and explain the prevalence of these themes in the data.

CHAPTER 3: THEORY

Having identified conventionalization and responsabilization as dominant discourses that shape accident conceptualization within safety crime regulation, we are faced with an important question: why these themes form the primary way to understand safety crimes? I begin this chapter by turning to Michel Foucault (1972), borrowing, but not purely relying on, his understanding of discourse and its formation. Next, I explore how critical corporate crime scholars have used Foucault to understand the ways in which broader external factors shape and establish dominant knowledge claims. Finally, I discuss my theoretical understanding of the state as a social process where discourses coalesce and converge to form dominant knowledge claims. The inclusion of state theory is done to dispel notions of the state as operating in a conspiratorial manner to benefit business (see Snider, 1993; Tombs & Whyte, 2007).

Discourse, Dominant Knowledge Claims, and the Extra-Discursive

Unlike many criminological and sociological analyses relying on a strict interpretation of Foucault's extensive discussions and insights, I am purely interested in drawing from his understanding of discourses and their external context. In *The Archaeology of Knowledge*, Foucault (1972) defines discourse "as the group of statements that belong to a single system of formation" (p. 38). Discourse is a specific subset of a discursive formation, which is the overall collection of discourses and statements on a particular object or subject (Foucault, 1972, p. 38, 107, 116-17). Stated differently, discursive formations can be seen as a subject (i.e. criminology), one that contains "rules of formation" dictating correct and incorrect statements and who can or cannot make statements adding to the subject, while discourse can be seen as the statements which comment on that subject (Hardy, 2010). For example,

Foucault states that the 19th century discussion of madness was comprised of numerous discourses originating from a variety of subjects, including religion, medicine, and law (Foucault, 1972, p. 31-32). The convergence of these discourses on madness produced the discursive formation (i.e. subject) of psychopathology and in turn formed dominant knowledge claims on madness (Foucault, 1972, p. 31-32).

Foucault's (1972) discussion of madness can be utilized to understand discourse relating to OHS regulation. OHS regulation can be generally understood as a discursive formation that is informed and shaped by discourses of the state, business, employers and workers. Much like the convergence of discourses that lead to the formation of psychopathology and in turn shaped the understanding of madness, converging discourses concerning OHS regulation shapes, yet does not determine, the dominant understanding of safety crimes. Examining the state's discourse is of particular importance as they have final say in the regulation of safety crime and, as such, considerable influence in constructing the ways that we think and respond to these incidents.

While discourse and discursive formations shape the dominant understanding of an object or subject, they are also constantly changing and converging at different points in history (Foucault, 1972). For example, there were considerable changes in the understanding of responsibility and causation of workplace injuries within the varying waves of regulation. As I highlighted in the literature review, the initial understanding that workers were solely responsible for workplace injury and death evolved to the point that employers were also considered (at least partly) responsible parties (Barnetson, 2010; Tucker, 1983-84; Tucker, 1984).

While Foucault is crucial for understanding how the dominant knowledge claims of safety crimes are formed, as well as understanding that these knowledge claims change

through time, we are still left asking why certain discourses and discursive formations are dominant: why certain knowledge claims have legs (Snider, 2000, p. 167). My thesis diverges from more traditional uses of Foucault “that conceptualize discourse as a catalyst of social meaning” (Bittle, 2012, p. 58), by considering the role of external, non-discursive influences in shaping discourse and establishing dominant knowledge claims. Although the role of the extra-discursive is largely ignored by many utilizing a strict interpretation of Foucault, Nick Hardy (2010) notes that even Foucault acknowledges the importance of the extra-discursive in interpreting discourse within *The Archaeology of Knowledge* (p. 71). The extra-discursive can be seen as certain external factors (e.g. ideological, political, economic, technical and social factors) that give discourse its meaning and significance (Bittle, 2012, p. 57; Fairclough, Jessop & Sayer, 2002, p. 3-4; Pearce & Tombs, 1998, p. 143). Hardy (2010) highlights that Foucault’s inclusion of the extra-discursive can be found within his understanding of discursive formations, as the extra-discursive is “actively engaged” in framing the regularities and rules of formations that structure discursive formations (p. 71).

The inclusion of the extra-discursive in the analysis of discourse is where Foucault is “most useful” for my thesis (Pearce & Tombs, 1998, p. 142). As discourse does not emerge within a vacuum (Snider, 2000), the extra-discursive provides discourse its meaning and significance (Fairclough, Jessop & Sayer, 2002, p. 3-4). By examining these extra-discursive factors, we can see what influences discourses to take a particular shape and why certain discourses are accepted as dominant knowledge claims. This is important for understanding why particular discourses constitute the dominant understanding of safety crimes in the oil and gas industry. By way of example, the emergence of neoliberalism as the dominant political economy has influenced the responsabilization discourse, particularly in regards to

the expected personal responsibility of workers and its role in shaping OHS regulation (Gray, 2009).

Several critical corporate crime scholars have also adopted Foucault's concern with the relationship between the discursive and the extra-discursive (Bittle, 2012; Bittle & Snider, 2006; Pearce & Tombs, 1998). Bittle and Snider's (2006) analysis of the development of corporate criminal liability in the *Westray bill*, for example, combines Foucault's understanding of discourse with a political-economic (Gramscian) understanding of neoliberalism (p. 471). In their extensive examination of parliamentary committee hearings held on corporate criminal liability, Bittle and Snider (2006) found that neoliberal ideology underpinned much of the legal discourse on this legislation. For instance, they note considerable discussion was focused on the support of joint responsibility for workplace safety, including the notion of individual responsibility amongst workers (i.e. responsibilization) to ensure safety in workplaces (Bittle & Snider, 2006, p. 482-83). As they indicate, "throughout the Committee hearings...workplace crime was reputedly conceptualized as a failure of workers as (or more so than) management" (Bittle & Snider, 2006, p. 483). As a result, focus on the need for joint responsibility, and the dominance of responsibilization discourse, largely excluded discussion of corporations as criminals (Bittle & Snider, 2006).

Bittle and Snider (2006) also note that neoliberalism's influence on legal discourse eliminated the state's support for a number of measures that did not align with traditional common law ideals. Choosing not to push this "legal envelope", legislators eliminated a number of measures from the bill that challenged the structural causes of corporate crime (Bittle & Snider, 2006, p. 478). Notably, this included dismissal of concepts that hold corporations and their executives liable when it was found that crime was caused by the

corporate structure. Corporate culture is one such notion, described as the common policies, procedures, and attitudes that encourage crime to occur (Bittle & Snider, 2006, p. 477). Ultimately, the notion of corporate culture and other concepts on the structural causes of corporate crime were not included within the *Westray Bill*. Instead, committee members favoured traditional common law features of individual liability, such as the notion the “directing minds”, to establish corporate liability, benefiting companies by making it much more difficult to hold them criminally liable. Bittle and Snider (2006) also note that while much of the discussion within the committee hearings, and ultimately in the *Westray Bill*, is inherently beneficial towards companies, it is not done conspiratorially. Rather they argue that state officials are merely reflecting the values of neoliberalism (Bittle & Snider, 2006, p. 485-86, 490).

Following a similar approach, Bittle (2012) expands upon Bittle and Snider’s (2006) use of Foucault in his critical examination of corporate criminal liability in Canada. Bittle (2012) combines Foucault’s (1972) understanding of discourse, discursive formations, and dominant knowledge claims with an Althusserian/neo-Marxist understanding of “aleatory materialism, the idea that no particular social phenomenon can be reduced to one identifiable and determining cause” (p. 56). Foucault (1972) is used to illustrate “how” particular discursive formations develop into dominant knowledge claims, specifically those related to corporate criminal liability, while neo-Marxism explains “why” these discourses are accepted as ‘truths’ (Bittle, 2012, p. 56).

Utilizing this theoretical framework in his examination of Canadian parliamentary transcripts, interviews with those who have insight into the *Westray Bill* and corporate criminal liability, and other sources on *Westray*, Bittle (2012) notes that several extra-discursive factors have helped to downplay the seriousness of safety crimes in Canada. Bittle

(2012) also highlights that the dominance of economic discourse shaped the *Westray Bill* and corporate criminal liability in Canada. Most notably, this included the “commitment to neo-liberal common sense” (p. 11). For instance, Bittle (2012) notes that a commitment to neoliberalism prevented legislators from instituting too strict of a law, fearing that doing so would impede “corporate capital’s wealth-generating capacity” (p. 145). Combined with “culturally imbedded notions of crime”, neoliberal discourse also aided the belief that corporate and safety crimes are not real crimes (Bittle, 2012, p.11). Within the *Westray Bill’s* development, “Dominant voices argued that crime is about the street level violence that strikes fear in everyone, not about corporations that, but for a rogue few, are comprised of good, law-abiding citizens” (Bittle, 2012, p. 11).

Similarly, Pearce and Tombs (1998) adopt Foucault’s understanding of discourse and the extra-discursive and combine it with a Gramscian consideration of hegemony and neoliberalism in their examination of corporate crime in the chemical industry. Using the Bhopal disaster as their case study, Pearce and Tombs (1998) argue that the extra-discursive is not only important for identifying the cause of workplace fatalities and injuries, but also understanding why they are predominately conceptualized as accidents (Pearce and Tombs, 1998, p. 143). One explanation they give is the change in political economies of the UK and the US, leading to increases in workplace disasters during the 1980s (Pearce & Tombs, 1998, p. 148-51). The presence of highly conservative governments (Thatcher in the UK, Reagan in the US), coupled with economies recovering from the recession of the 1970s, resulted in the dominance of neoliberal discourse that lead to extensive deregulation of safety law in an attempt to stimulate economic growth (Ferguson, 2012; Pearce & Tombs, 1998, p. 148-51). In turn, less state oversight of corporations had the effect of failing to prevent more “accidents” and injuries, while the deregulation of corporations also had the effect of shaping

the belief that corporate crimes are not serious offences. In addition, the neoliberal drive for capital accumulation above all other interests also had the effect of shifting attention away from safety concerns. Pearce and Tombs (1998) argue that these neoliberal effects are evident within the Bhopal disaster, with the drive for maximum profits shifting attention and investment away from safety in the workplace and producing less oversight that was necessary to prevent the disaster.

Building from these researchers, I consider the influence of Alberta's neoliberal dominated political economy in shaping conceptualizations of safety crimes. Specifically, I am interested in the extent that neoliberalism has helped construct the understanding of workplace injury and death as accidents rather than crimes of violence. In this respect, I turn to Bittle's (2012) understanding of the "how" and "why" of discourse and the extra-discursive. For example, extensive responsabilization and conventionalization discourse within the data would potentially explain "how" safety crimes have come to be conceptualized as accidents rather than crimes. As noted in the literature review, these themes do so by emphasizing employers' lack of intent and moral blameworthiness, as well as workers' responsibility to evade risk and danger (Tombs & Whyte, 2007, p. 123; Gray, 2009). Likewise, neoliberalism would help explain "why" accident discourse is adopted as dominant, as both conventionalization and responsabilization reflect many of the tenets of neoliberalism. Specifically, responsabilization reflects neoliberalism's emphasis on individual responsibility, while conventionalization normalizes safety crimes by strengthening neoliberalism's commitment to minimal state regulation of business (Carson, 1979; Gray, 2009).

The State as a Social Relation

In this section, I provide a theoretical understanding of the state and its role within capitalist society. This theorization of the state is done in an effort to dispel notions that the state automatically acts and adopts discourses that benefit business. I begin with a brief discussion of the historical understanding of the state. Next, I define the state as a social relation, highlighting how the state is influenced by the extra-discursive and does not automatically benefit the capitalist class. Finally, I conclude with a discussion of how discourses converge within state institutions to form dominant knowledge claims.

As I demonstrated in the literature review, the state often acts in a way that does not impose significant sanctions or responsibility on business. The creation of a separate class of offences for corporate offenders that uses neither significant punishment, nor demands stringent responsibility and moral culpability, is one such example. Instrumentalist Marxists have argued that the state operating in this way is evidence that it is simply an instrument of the capitalist class to advance their interests (Snider, 1993, p. 50-51). They point to the similarities between state officials and capitalists in regards to education, upbringing, and social circles as evidence to why the state would be used as an instrument, with state officials more likely to adopt policies, regulations, and discourse that also benefit them (Snider, 1993, p. 51).

Although many state officials have similar backgrounds to the capitalist class, and frequently adopt regulations and knowledge claims that often benefit business, it is an oversimplification to argue that the state automatically works in the interests of business. It ignores the fact that the state also enacts laws and policies that put stipulations on how business can generate profit (Bittle, 2012, p. 73; 193). The *Factory Acts* and the *Westray Bill*

are two such examples as they increased responsibilities for business and their executives and put limits on how businesses could operate, thus not automatically serving capital.

Rather than an instrument, the state can be seen as a social relation comprised of an institutional ensemble that is “operationally autonomous” and “institutionally separate” from any other class or group (Bittle, 2012; Jessop, 1990, 1999, 2002a; Mahon, 1979). The autonomy of this institutional ensemble is demonstrated in its two primary, yet contradictory, roles in capitalism: ensuring capital accumulation and maintaining social cohesion (Barnetson, 2010, p. 90; Bittle, 2012, p. 55, 191). The state must promote business and economic interests (i.e. tax breaks, subsidies, and deregulation), but also adopt measures (i.e. regulation) to ensure citizens are not unnecessarily harmed in the pursuit of capital accumulation. For example, prior to the Westray disaster, the company and individuals ultimately responsible for the disaster were subsidized by the state in order to ensure Westray coal mining was affordable (Bittle, 2012, p. 55). However, Bittle (2012) notes that this attempt to ensure capital accumulation stands in considerable contrast to the state’s response in the *Westray Bill*, whereby companies and executives were saddled with new – albeit weak – responsibilities in order to protect workers (p. 55). In short, the balancing of two roles reminds us that there is no “guarantee that the state will either advance or challenge the interests of capital” (Bittle, 2012, p. 55).

While autonomous and not automatically reproducing the interests of capitalists, the actions and policies of the state’s institutional ensemble often benefit the capitalist class. As noted in the previous section, this occurs because the state is influenced by a combination of the discursive and the extra-discursive. As a social relation, whereby the ideas, beliefs, and ideologies of different classes and groups form and take shape (Poulantzas, 1978), the state functions “as a site where different discourses and discursive formations coalesce to animate

particular legal and policy matters” (Bittle, 2012, p. 191). Returning to the Westray example, the *Bill* was shaped by numerous discourses from a variety of individuals, interest groups, and political parties on the viability of corporate criminal liability legislation (Bittle, 2012; Bittle & Snider, 2006). For instance, discourses highlighting the dangers and violence of industry were countered with those underscoring the importance of economic efficiency (Bittle, 2012). Within this convergence, the dominant understanding that “corporate wrongdoing is not a crime” emerged during the bill’s development, shaping the law in such a way that “ruled out any consideration of the structural causes of safety crimes...or the privileged legal status and extensive rights conferred by limited liability”, factors at the very heart of corporate crime (Bittle, 2012, p. 186, 187, 192). The fact that this knowledge claim is reflective of the tenets of neoliberalism helped it become dominant (Bittle, 2012).

In the end, a theoretical understanding of the state clarifies how the discursive and extra-discursive converge to form dominant knowledge claims of particular objects and subjects. Understanding it as a location where discourses converge will be useful during my analysis in reiterating that particular knowledge claims identified within the Alberta government documents appear as a result of the relationship between the discursive and the extra-discursive, rather than as a consequence of conscious manipulation by the capital class.

Summary

In this chapter I have outlined my theoretical lens for examining accident discourse and knowledge claims concerning safety crimes in Alberta’s oil and gas industry. I began by defining discourse and discursive formations by drawing from the work of Foucault. I argued that the convergence of discourses at particular points in time shapes the dominant understanding of an object or subject. Next, I considered the role of the extra-discursive in

shaping and establishing dominant knowledge claims by examining the works of other corporate crime scholars. I then concluded the extra-discursive discussion by suggesting that Alberta's neoliberal political economy has considerable influence on the shape of discourse in relation to safety crime. The chapter concluded with a discussion of the state as separate and autonomous from any particular group (Jessop, 1990, 1999, 2002). I argued that this definition of the state is important in understanding that dominant knowledge claims of the state is a result of the convergence of discourses and discursive formations influenced by the extra-discursive rather than by the conscious manipulation of a particular group. This theoretical lens will be used to direct my analysis of safety crimes in Alberta's oil and gas industry.

CHAPTER 4: METHODOLOGY & EMPIRICAL SOURCES

In this chapter I outline my methodology and empirical sources. The first part of the chapter outlines the three data sources I used in this study. I then discuss my use of critical discourse analysis (henceforth CDA) as my methodology. In particular, CDA helps to deconstruct discourses concerning workplace injury and death in the Alberta oil and gas industry in an effort to identify dominant knowledge claims concerning safety crimes (Lilly, Cullen & Ball, 2011, p. 200, 229). I conclude with a discussion of how I specifically utilized CDA to analyze my empirical sources.

Empirical Sources

The first data source consists of occupational health and safety reports of 15 fatalities in the Alberta oil and gas industry. These reports outline the circumstances of workplace fatalities and include an analysis of their causes (Government of Alberta, Employment and Immigration, 2012a). On average, these reports were roughly 10 pages of written text as well as several pages of pictures of the incident. Investigations by OHS (occupational health and safety) officials begin immediately following an incident and typically take several months to complete. These reports are used by Crown prosecutors in deciding whether or not occupational health and safety charges should be laid in the case, making these reports an important aspect of the state's response to workplace fatalities (Government of Alberta, Employment and Immigration, 2005; Government of Alberta, Employment and Immigration, 2012b). Reports included in this study span incidents occurring over a three year period from January 2007 to November 2009, all of which pertain to incidents in the Mining and Petroleum Development industry sector, which consists of "underground and open pit mining, oil sands mining and processing, operation of oil and gas wells, drilling and

servicing of wells, and related services in the oil fields” (Government of Alberta, Employment and Immigration, 2011). Reports were retrieved from the Alberta Government’s Human Services website and the Alberta Government Library in Edmonton (Government of Alberta, Employment and Immigration, 2012a).

The second source consists of 12 court documents for 11 incidents⁷ where a regulatory charge under the *Alberta Occupational Health and Safety Act* had been laid. Unlike criminal law, crimes of the *Occupational Health and Safety Act* are those that are enforced through administrative bodies (e.g. OHS inspectorate) rather than police agencies. This means that they are commonly deemed to be wrong because they are prohibited and not ‘true’ crimes, and, as such, most often carry low-level fines against companies as opposed to prison sentences for senior management and/or executives (Tombs & Whyte, 2007, p. 93). The majority of court documents consist of written transcripts of the court proceedings, with the remaining comprised of judgements and pre-trial applications. The page length of these documents varied from as small as four pages to as long as 38 pages. Transcripts constitute the majority of court documents given that most companies plead guilty rather than go to trial, resulting in few written judgments. Of the 12 court documents reviewed, five dealt with fatalities while the remaining dealt with cases involving serious injury.

The final source is the Alberta Government’s workplace safety awareness campaigns. These campaigns include: the Bloody Lucky online campaign, workplace safety posters, and a number of Alberta’s Occupational Health and Safety magazines. These sources were chosen to explore further the official responses to workplace injury and death in Alberta. As we shall see, the campaigns highlight the state’s efforts to reduce workplace injury and death

⁷ One incident had two court documents: a pre-trial application brought forth by the defence, and transcript of the court judgement.

by attempting to influence the practices of employees. Although these sources do not specifically or solely focus on the oil and gas industry, they do provide a valuable and overall picture of how the understanding of workplace injury and death is constructed within official government discourse.

The first awareness campaign, Bloody Lucky, is a website targeting young workers. Information is presented through five video enactments showing young workers being seriously injured and/or disfigured while at work (Government of Alberta, 2008). Each video lasts roughly one minute and includes the statement, “Some days are bloodier than others, and they’re always preventable”, followed by information on the injury rates of young workers in the province, details on incidents of workers who were seriously injured at work and questions for workers to ask their supervisors on how to be safe at work (Government of Alberta, 2008). Bloody Lucky was also chosen because it offers insight into the state’s concern for young workers in the oil and gas industry. Of particular note is that, despite young workers constituting a sizable injury rate in the oil and gas industry⁸, they are ignored within the campaign, indicating a lack of awareness or concern for youth workers in the industry.

The second awareness campaign is a series of workplace safety posters produced by the Workers Compensation Board of Alberta and distributed by Human Services Alberta (Government of Alberta, Human Services, 2011b). Like the Bloody Lucky campaign, the posters focus on how workers can avoid injury and death by changing their actions at work. In total, 41 posters were collected from two specific campaigns: 13 for the Heads Up campaign, and 28 for WorkSafe Alberta. Although both poster campaigns focus on safety

⁸ A 2010 report indicated that workers aged 15-24 accounted for roughly 14.5% of lost-time claims and 21.3% of disabling injury rate in the oil and gas industry (Government of Alberta, Human Services, 2010).

tips and information for workers, they differ in how they present this information. The WorkSafe posters present information via statistics on workplace injuries and advice by the Workers Compensation Board on how to avoid injuries, with pictures of injuries serving as a backdrop. In comparison, the Heads Up posters primarily present pictures of injured workers as a way of demonstrating the risks associated with particular types of work.

The final workplace awareness campaign is Alberta's Occupational Health & Safety magazine. Released three times a year, the magazine discusses a variety of health and safety issues in the province, with primary focus on the common hazards faced by workers and the methods that they can use to avoid them. A number of safety posters from the campaigns listed above are often included in the magazines to highlight various safety hazards. The magazine also includes testimonials from workers, employers, OHS inspectors and students on specific workplace safety issues, such as interpersonal violence between coworkers and employers (Cairney, 2010). A total of 9 copies of the magazine released between January 2007 and December 2009 were included in the study, with each magazine approximately 24 pages in length.

All of these empirical sources were collected between the years of 2007 to 2009. This was done for several reasons. First, in the case of the fatality reports and court documents, these years offered the most recent information available. Fatality reports are only published once all investigations and court proceedings into fatality have been completed, following which investigators and crown prosecutors have two years to complete the report. In this sense, collecting data between the years 2007-2009 ensured that the most up to date investigations and court proceedings were available. As such, pre-2007 reports were deemed not to be recent as all reports were completely archived by the time data collection had begun. These years also saw the introduction of a number of new government workplace

campaigns aimed primarily at workers. As a result, including the awareness campaigns released during these years aid in framing the government's understanding and discourse used in the fatality reports and court documents.

Second, 2007-2009 also reflected substantial changes in oil and gas growth and activity in Alberta. In 2007, Alberta oil sand activity and growth reached a multi-year high, while the following two years saw a substantial decline following the 2008 recession and economic crisis (Guilbeault, Dobson & Lemphers, 2013; McMahon, 2013). In this sense, these years represent a time of substantial change in the oil and gas industry, one which also had an important impact on workers in the industry in the form of unrivalled increases in both job opportunities and wages, followed by a substantial decline in these areas. In regards to the effects on workplace safety, both have considerable and often negative impacts. For instance, corporate crime scholars have argued that substantial development and growth of industries can often lead to increased rates of workplace injuries and death (Carson, 1980; Tombs & Whyte, 2007). One such example is the deaths of 167 workers in an explosion on the offshore oil rig Piper Alpha in the United Kingdom in the late 1980s, as the company's safety systems could not keep up with substantial growth and speed in the offshore oil industry (Tombs & Whyte, 2007, p. 19-20). Similarly, substantial decreases in economic growth also present issues regarding workplace safety, as with the lack of profit and growth companies are often unwilling to spend the necessary money to update and maintain safety systems (International Labour Organization, 2013). As well, with declining employment positions, as well as a decline in wages, workers are also willing to take on riskier jobs or work longer hours, both threatening their safety and well-being (International Labour Organization, 2013). As such, including information from years where both economic

growth and decline occurred allowed the possibility of a diverse language on the nature of work and the importance of safety to be included in the data.

Critical Discourse Analysis

For my thesis I utilize critical discourse analysis as my methodology, a subset of discourse analysis. One of the guiding principles of discourse analysis is the understanding that the language and discourse contained within the body of texts⁹ has meaning and significance (i.e. semiosis) (Fairclough, 2013; Fairclough, Jessop & Sayer, 2002; Rogers et al., 2005). The overall goal of discourse analyses is to identify and describe this underlining meaning within texts (Fairclough, 2013; Rogers et al., 2005).

At its core, traditional discourse analysis has very “descriptive goals” (Fairclough, 2013, p. 26), focusing on identifying and describing discourse rather than explaining its underlining meaning (Rogers et al., 2005; van Dijk, 1993). In this respect, many scholars who use discourse analysis ignore the influence that the extra-discursive has on the language and discourse within texts. Unlike traditional discourse analysis, CDA aims not only to describe discourse but also the factors that influence and shape it. Norman Fairclough (1989), one of the pioneers of CDA methodology, describes CDA consisting of “analyzing the relationship between texts, processes, and social conditions, both the immediate conditions of the situational context and the more remote conditions of institutions and social structures” (p. 26).

Primarily, CDA is used to examine how discourse functions as a powerful tool for certain groups in the reproduction of social inequality (Machin & Mayr, 2012; Paltridge, 2006; Widdowson, 1995). As Michael Toolan (1997) describes, discourses are “symbolic

⁹ The particular way language and discourse is communicated (e.g. books, movies, radio, etc).

capital, exploited in ways that benefit some and disadvantage others” (p. 87, 89). Specifically this means that particular discourses will reflect and reproduce certain knowledge claims that cohere with hegemonic beliefs (Pearce & Tombs, 1998). For instance, if the dominant understanding of workplace injuries and fatalities is one that suggests they are accidents or the fault of careless workers, discourses that contradict this and suggest that they are criminal offences can be largely ignored or discarded.

CDA is the preferred methodology for my thesis for two reasons. First, it seeks to identify the factors that shape and direct discourse (Arvast, 2008, p. 58; Fairclough, Jessop & Sayer, 2002, p. 6; Machin & Mayr, 2012, p. 5). This is important in explaining why a particular understanding has been adopted as dominant, as dominant knowledge claims will generally reflect specific beliefs. As discourse is semiotic, and “give(s) meaning to...social phenomena”, identifying these factors is done by considering the broader social-political-economic context from which discourse emerges (Bittle, 2012, p. 35-36; Fairclough, Jessop & Sayer, 2002, p. 3-4, 6). As I discussed in my theory chapter, the emergence and dominance of particular discourses used to describe safety crimes is considered in relation to the influence of Alberta’s neoliberal political economy. Second, by identifying how discourse “orchestrates certain truths”, (Arvast, 2008, p. 58), CDA also helps to identify how certain social structures and inequalities are maintained through such discourse (Fairclough, Jessop & Sayer, 2002, p. 3-4, 6). This highlights the emancipatory role of CDA, providing knowledge of how to right or mitigate hegemonic conditions by examining how they are reproduced through discourse (Fairclough, 2013, p. 7; University of Strathclyde, Humanities & Social Sciences, n.d.). As Fairclough (2013) indicates, unlike traditional discourse analysis, “Critical analysis aims to produce interpretations and expectations of areas of social life which both identify the causes of social wrongs and produce knowledge which (in the

right conditions) contribute to righting or mitigating them” (p. 8). Identifying how particular truths are orientated will be valuable in determining the overall effect of the dominant discourses and knowledge claims concerning workplace safety. Do dominant knowledge claims reinforce and promote the neoliberal political economy? Is blaming the worker and accident discourse the accepted means of describing safety crimes? By identifying the prevalence of such knowledge claims, it is my hope to contribute in countering them.

Coding and Analysis

Analysis and coding was modeled, but not specifically copied, from Fairclough’s suggestive steps for conducting CDA, which focused on identifying the major discourses within the text and interpreting them through the overall influence of social conditions. Before analysis was conducted the data sets were organized into specific analysis groups, generally based off the specific source type. For example, posters were examined with posters and magazines with magazines. Only in the cases where fatality reports and court documents focusing on the same incident (i.e. fatality report on the circumstances of the death and the court documents on the subsequent legal proceedings) were categorized and analyzed together in effort to observe how the state’s understanding of the fatality in the report shaped its response within legal proceedings. Analysis was conducted once the empirical sources were placed into their groups.

As Michael Meyer (2001) states, there is no universal method for conducting CDA; analysis and interpretation depends upon the specific problem being investigated. As the current problem is to identify the dominant and official conceptualization of safety crimes, my analysis was tailored to identify discourses that construct the dominant and official conceptualization of safety crimes. This was accomplished by deconstructing the language

within the empirical sources and comparing it to issues relating to responsabilization and conventionalization. These themes help inform my study and assist in exploring whether the language of accidents and the careless worker myth were prevalent in official discourses regarding safety crimes in the Alberta oil and gas industry.

Analysis began with initial readings aimed at becoming familiar with the specific features of the data. This included familiarizing with writing style, textual organization and structure, as well as the specifics of the incident in the cases of fatality reports and court documents, or focus in the case of the various worker awareness campaigns. Following these initial readings, subsequent analysis was aimed at identifying and interpreting the most prevalent themes and discourses in the data and how they function to produce a particular understanding (Fairclough, 1992; University of Strathclyde, Humanities & Social Sciences, n.d.). These readings were guided by conventionalization and responsabilization, functioning as an analytical lens to which the dominant discourses observed throughout the sources were examined and understood. This was done over several readings, with the major themes and discourse being recorded on a separate sheet along with any quotations, images, or other information that exemplified the theme and discourse.

It is important to note that it is necessary for critical discourse analysts to utilize their particular position to guide and interpret their analysis as it helps “understand, expose, and ultimately resist (the) social inequality” that is being researched (van Dijk, 2001, p. 352). This is unlike traditional discourse analysis which takes a more objective route of simply identifying discourses rather than looking for specific ones. As such, utilizing conventionalization and responsabilization as guiding themes aids in identifying if my position regarding safety crimes as being officially seen and regulated as careless, non-violent accidents rather than real crimes is the dominant knowledge claim concerning safety

crimes of the Alberta oil and gas industry. However, using these themes did not mean that discourses which did not reflect responsabilization and conventionalization were discarded or ignored (see my discussion on counter hegemonic discourses in the following chapter), merely that my specific analytical aim was to identify if the dominant discourses in the data reflected these two themes. These dominant discourses and knowledge claims are highlighted and discussed in the following chapter.

Summary

In this chapter I outlined my empirical sources and methodology. I began by outlining the three empirical sources used for this thesis. The information sources include fatality reports, court documents and a variety of worker awareness campaigns, with each source providing a different perspective into official conceptualizations of safety crimes in Alberta's oil and gas industry. Next, I outlined critical discourse analysis as the specific methodology used to analyze these sources. CDA focuses on how inequality and power is maintained through language, benefiting some groups more than others (Lilly, Cullen & Ball, 2011, p. 200, 203; White, Haines & Eisler, 2009, p. 203-04). CDA also strives to identify the specific factors that shape and direct discourse, explaining why certain discourses and knowledge claims take precedence over others (Fairclough, Jessop & Sayer, 2002, p. 3-4). I concluded with a brief discussion of how I coded the information, as well as how it analyzed the empirical sources via conventionalization and responsabilization.

CHAPTER 5: OBSERVATIONS & ANALYSIS

This chapter reports on my findings and analysis. As noted, critical discourse analysis was used to examine the data, with particular focus on the reproduction of themes relating to responsabilization and conventionalization. As we shall see, responsabilization was the most dominant theme found in the data, a perspective that essentially assigned responsibility for workplace safety largely to the decisions and actions of individual workers. The theme of conventionalization was most dominant in the court documents and awareness campaigns, having the effect of normalizing safety crimes by (re)presenting them as non-serious and non-violent offences. A number of counter-hegemonic discourses were also found in which workplace injury and death was referred to as crimes committed by employers, but these claims paled in comparison to the dominant discourses. I conclude the chapter by summarizing the major themes found and exploring how they shaped official conceptualizations of safety crimes.

Responsibilization

Responsibilization aids in the conceptualization of safety crimes as careless accidents by distributing responsibility for workplace safety to workers, often making them more responsible than employers despite having minimal influence and power over the workplace (Gray, 2009; Tucker, 1995). Workers are expected to “practice individual responsibility” by recognizing the hazards present within the workplace and taking the appropriate steps to avoid them (Gray, 2009). This expectation to avoid injury and death has the effect of promoting neoliberal victim blaming, whereby workers are castigated for failing to avoid their own injury and death (Gray, 2009, p. 330). Gary Gray (2009) notes that, according to neoliberal doctrine, workers are seen as autonomous actors, able to exercise free-choice and

power to change their work environment (Gray, 2009, p. 330). In this respect, responsabilization helps in characterizing safety crimes as the accidents of careless workers who fail to exercise free-choice rather than crimes of violence by employers (Barnetson & Foster, 2012; Gray, 2009). Responsibilization emerged from the data through several distinct forms of victim blaming, including: questioning workers' competency in fatality reports and court documents; and blaming workers for their injuries in awareness campaigns. As we shall see, in the process these knowledge claims effectively concealed employers' responsibility for safety crimes.

Victim Blaming

Victim blaming emerged from the data in several distinct ways. The first was through discussion of workers' actions as the main cause of fatalities. In particular, within fatality reports, workers' actions constituted the main focus of the discussion concerning the workers' death. Such focus precluded discussion of the broader structural causes of workplace fatalities, such as the safety policies of the company or the nature of the work completed. Focusing on workers also suggests that fatalities can be prevented by modifying the actions of workers, rather than the actions of the employer or conditions within the workplace (Barnetson, 2010; Barnetson & Foster, 2012). This aids in cementing responsabilization as a primary way to understand and respond to safety crimes, as it establishes the belief that workers bear responsibility for the majority of workplace incidents, and, therefore, for avoiding them.

One fatality report that focused primarily on the actions of workers as the immediate cause of the incident was a case in which a mining truck driver was crushed after being ejected from her cab when she was rear-ended by another mining truck. The report focused

more on the level of training the driver possessed, and the fact that the victim failed to wear a seatbelt, than on the fact that the primary braking system of the truck failed (Alberta Employment and Immigration, Occupational Health and Safety, 2009b, p. 9-11). While the seatbelt may have prevented the driver from being ejected, the driver's failure to use it did not cause the crash (Alberta Employment and Immigration, Occupational Health and Safety, 2009b, p. 9-11). Listing the seatbelt as one of the primary contributing causes of the fatality, rather than the condition of company owned vehicles and the company's responsibility to maintain them, illustrates the primacy accorded the actions of workers within the reports.

By focusing on the behaviour and actions of individual workers, the fatality reports¹⁰ emphasized incidents as preventable accidents. Chris Wright (1986) made a similar conclusion in his study of deaths in the off-shore oil and gas industry. He found that many of the inquiries made into fatalities suggested that a majority of the incidents would not have occurred if workers were "somewhere (they) should not have been or doing something (they) should not have been doing" (Wright, 1986, p. 270). This also resonates with Gray's (2009) argument that there is a tendency within neoliberal forms of thinking to blame workplace injury and death on the worker for failing to exercise his or her individual agency. Blaming the worker prevents discussion of the broader issues that cause workplace accidents, such as safety policies and the nature of capitalist production.

Another way victim blaming was present within the fatality reports was through discussion of workers' competency. Workers' competency refers to the amount of training workers obtained, as well as the years of experience they have in their particular position. Focusing on these two factors placed a significant level of responsibility on workers to

¹⁰ In Alberta, Occupational Health and Safety Officers are the authors of reports. They are employed under Alberta's Human Services Ministry which governs occupational health and safety in the province (Government of Alberta, Alberta Learning Information Service, 2014).

ensure workplace safety by establishing their ability to avoid being injured or killed on the job. However, the problem with placing so much responsibility upon workers is that, in reality, they have little or no power to ensure workplace safety in comparison to employers (Barnetson, 2010, p. 15; Barnetson & Foster, 2012, p. 136; Tucker, 1995). It also assumes that there is a shared goal in the workplace when it comes to safety, ignoring the historical struggle between workers and employers in trying to balance profit maximization with matters of safety (Barnetson, 2010).

Workers' training and experience were listed in several ways within the fatality reports. This included: the amount of time they were employed with the company; other oil and gas related positions; training courses completed and certificates possessed; and if the worker specifically did not possess any previous oil and gas experience. For example, following a case where a worker was struck in the back of the head and killed by pipe tubing, the worker was described in the following manner:

The Derrickman...had worked for Concord Well Servicing for 9 months as a Floorhand...On the day of the incident he was performing the duties of a Derrickman¹¹. Prior to the incident he had worked as a Derrickman for three shifts. He had no previous experience with the oil and gas industry prior to joining Concord Well Servicing. While employed at Concord Well servicing he had received training in First Aid, WHIMIS, H2S Alive, TDG...and had been Fit Tested for respiratory equipment. (Alberta Employment and Immigration, Occupational Health and Safety, 2008, p. 3).

¹¹ Individual at the top of the oil derrick that guides drill pipe into the well.

A victim of another incident was described in a similar fashion after being killed when a slack drill line was pulled taut and struck him in the head:

The Floorhand...had been working for Precision Drilling for approximately 2 years and 2 months. He received training in First Aid, WHIMIS, H2S Alive, Rig Site Orientation, Target Zero Observation/Communication and the company safety handbook. He was promoted to the position of Floorhand about 3 days before the incident. He had operated the catwalk/pipe arm (*the triggered equipment that caused the fatality*) controls on previous occasions. (Alberta Employment and Immigration, Occupational Health and Safety, 2009c, p. 3).

In both descriptions, focusing on training and work experience resulted in the workers being described in terms of their ability to carry out their job; competency becoming their primary identity. This had the effect of framing the reports around whether or not workers were competent or incompetent at the time the incident occurred, not whether the company was competent in undertaking and/or directing this type of work.

While workers were described in terms of their competency, employers were described in relation to their business operations and production/extraction capabilities. Not only was this a much more vague characterization, less relevant to the incident reported, it also made no mention of the responsibility and competency of employers for occupational health and safety. For example:

Precision Drilling employs approximately 4600 workers (and) is Canada's largest drilling contractor with a fleet of over 240 single, double, triple rigs and coiled tubing units. The drilling rigs have been used to drill for coal bed methane, natural gas, conventional oil, heavy oil, and in situ oil sands to depths of 6,700 metres. (Alberta Employment and Immigration, Occupational Health and Safety, 2009c, p. 3)

As well, a large oil and gas employer was described in a similar manner when one of their contracted workers was killed when a pipe spools crushed the worker's head:

EnCana Corporation, the Owner and the prime Contractor of the facility, operates the Foster Creek plant which produces oil...by means of a technology called steam assisted gravity drainage (SAGD). SAGD is a thermal method for recovering heavy oil. The process uses twin horizontal wells drilled and extended into the base of a reservoir with a horizontal steam injector placed directly above the horizontal production well. (Alberta Employment and Immigration. (Alberta Employment and Immigration, Occupational Health and Safety, 2007a, p. 4)

Another large oil and gas company was also described in this manner in case of a worker being killed after he was struck by tubing:

Penn West Energy Trust is a conventional oil and natural gas producing trust, based in Calgary, Alberta. Penn West Energy Trust employs approximately 850 workers. (Alberta Employment and Immigration, Occupational Health and Safety, 2008, p. 3)

In all of the quotes above, the companies were described in general and factual terms, a striking comparison to the victim blaming discourse used to describe the workers. It is noteworthy that employers' responsibility and competency in providing a safe workplace was not also considered, as it raises the question of why workers are much more scrutinized in regards to safety. In a way, workers face a catch-22 in comparison to employers who are described in more general or descriptive terms: if a worker is well-trained and experienced, they have no excuse for not being able to avoid harm; if they are un-trained or inexperienced, then their carelessness is simply and quickly used as an explanation for what occurred. Either

way, workers were responsabilized while employers are characterized in much less culpable terms.

Placing so much focus on workers' competency also ignored employers' responsibility to protect workers, including providing adequate training and education. For example, one fatality report revealed that OHS officers specifically requested documents that proved "workers are competent to safely deal with slack drill line conditions", but made no specific request for documents that showed employers practiced proper safety procedures for slack drill line work, or that they provided adequate training and education to their workers (Alberta Employment and Immigration, Occupational Health and Safety, 2009c, p. 8). Instead, officers only requested that the employers "prepare a report outlining the circumstances and preventative measures" of the incident (Alberta Employment and Immigration, Occupational Health and Safety, 2009c, p. 8). While "preventative measures" could be interpreted as including the safety measures and policies used by the employer, the specific requests to prove workers' competency is indicative of the onus for safety being placed primarily on workers. Overall, only two fatality reports included discussion of employer competency.

Focus on workers' competency was also observed in several court transcripts. In one case where a welder was seriously burned after he unintentionally cut through a hydraulic hose, the Crown, defence, and judge all expressed their surprise that the worker could allow himself to get hurt after having twenty five years of welding experience (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010). As the judge surmised:

You would think though, in the circumstances of this case, with 25 years' experience as a welder, before he lit that torch he would have been looking around to see what he

was dealing with. One would think that he would have done that. (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010, p. 6-7)

Focusing on the welder's experience effectively drew attention away from questions regarding the employer's negligence, despite that another welder had warned the employer about the danger of the hydraulic hose after refusing the job. As the Crown prosecutor described, "In the circumstances, the crown describes the degree of negligence as moderate, given his level of experience" (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010, p. 6-7). Blame and stigma for the incident was leveled primarily at the worker, with no direct discussion of the employer's competency in ensuring a safe workplace (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010).

Victim Blaming and Safety Awareness Campaigns

Victim blaming was most prevalent within the safety posters and Bloody Lucky videos, with both campaigns showcasing unsafe and careless workers. Many of the posters did this by displaying the careless action of workers, characterized as a common occurrence in the workplace. For example, Work Safe Alberta¹² released three poster campaigns, with each containing four specific posters focused and organized around excuses made by workers for not using a particular piece of safety equipment. Each poster provided an example of what injury might result from failing to wear the equipment. One poster listed the excuse "I don't need to wear eye protection...they look goofy", and then showed the worker using a machine to cut a piece of stone without a pair of safety goggles. This was accompanied by an image of the worker holding a bloody cloth to his eye, with a caption next to a pair of goggles and

¹² "(A)n initiative to reduce work-related injuries, illnesses and fatalities" started by the Alberta Government (Government of Alberta, Jobs, Skills, Training and Labour, 2014).

face shield stating, “Wear them-your future will look much brighter” (Government of Alberta, Human Services, 2011b). Most of the posters followed the same formula: workers were instructed to act or behave in a particular way in order to avoid injury.

Other posters demonstrated victim-blaming in a manner that goes well beyond worker carelessness: describing workers as being blatantly ignorant. For example, one poster simply states, “Admit it, you don’t know dick”, followed by an explanation that a worker’s first six months on the job are their most dangerous. This discourse, in not so subtle a way, implied that because workers “don’t know dick” they are therefore more likely to be the cause of serious injury or death in the workplace. The assumption that workers’ ignorance and inexperience is at the root of their injuries is something that has been seen time and time again throughout the history of workplace safety regulation (Barnetson & Foster, 2012; Reasons, Ross, Paterson, 1981, p. 137; Tombs & Whyte, 2007, p. 74). For example, a number of American automobile and chemical companies in the 1920s exploited workers’ ignorance and inexperience over the toxicity of leaded gasoline, blaming them for the poisoning they suffered and in turn deflecting focus away from the chemical’s negative health effects (Barnetson, 2010, p. 31). Similarly, Reasons, Ross and Paterson (1981) noted that Alberta government officials in the late 1970s and early 80s believed that roughly 70-80% of workplace deaths were the result of workers’ inexperience and carelessness (p. 137), further emphasizing the belief workers are to blame for their own injuries and fatalities.

Similar to the posters, Bloody Lucky videos also reflected responsabilization by showing workers being injured. One video showed a young worker slicing his finger while chopping vegetables in a restaurant kitchen (Government of Alberta, 2008). While chopping, the worker is also berated by his supervisor to keep up with increasing food orders. The video ends with the worker bleeding profusely while frantically searching for a first-aid kit.

Although the video demonstrated a number of safety failures that should have been addressed by the employer (e.g. proper supervision, a non-abusive work environment, clearly displayed first-aid kits, etc.), the focus is primarily on the worker, portraying him as careless and, therefore, at fault. This focus was underscored by a list of actions he should have followed to avoid injury, including: “Having adequate training on how to do your job safely...Ensuring your work has full first aid supplies that are accessible at all times...learn(ing) where your first aid kit is...asking your boss” questions before conducting work, and refusing work “[i]f you feel danger is around the corner” (Government of Alberta, 2008). No mention is made of the employer’s responsibility to ensure a safe workplace. As well, the assumption that workers will refuse work if they feel danger is around the corner is only realistic in workplaces where workers are empowered to do so, such as in workplaces with strong union representation and effective JHSCs (Barnetson, 2010, p. 68). This is unrealistic for many in Alberta, as the province has one of the lowest union densities and weakest worker participation rights in the country (Tucker, 2003, p. 419). The video also overlooked that asking for help in such an environment would also largely be ineffective, as the worker was subjected to verbal abuse and pressure by his supervisor.

A video showing a shoe saleswoman being seriously injured after falling off a step ladder also ignored her employer’s responsibility for ensuring safety (Government of Alberta, 2008). The video presented the worker as careless and unfocused by showing her climb a step ladder in high-heels and becoming annoyed with a customer for interrupting her phone call. No mention was made that the employer provided a step ladder that was grossly inadequate for retrieving boxes stacked dangerously high and out of reach, nor to the possibility that the employer compelled the worker to wear high heels as a means of showcasing the store’s products. As well, the video also exemplified Bloody Lucky’s

tendency to show occupations that do not frequently see serious injury and death, or at least in such a specific/unconventional way. This draws attention away from industries, such as oil and gas construction, where serious injuries and deaths do occur much more frequently.

The overarching message presented in these two campaigns was that workers, particularly young workers, cause their own injuries. This is consistent with both traditional and neoliberal victim-blaming ideologies. In regards to the former, the worker awareness campaigns attribute blame by suggesting that workers were careless for causing the incident in the first place (Gray, 2009, p. 330). The posters depicted the latter by faulting workers for failing to exercise personal responsibility by wearing safety gear to lessen their risks in the workplace. And while these awareness campaigns do not directly discuss the oil and gas industry (a glaring limitation as the oil and gas industry is one of the more dangerous industries in Alberta), they do provide a general understanding of how the Alberta Government views OHS issues. *Bloody lucky*, for example, highlighted the Alberta Government's views on young workers, many of whom work in the oil and gas industry.

Creative Sentencing

Responsibilization also emerged from many of the court transcripts, particularly as it relates to descriptions regarding the sentencing of employers for OHS offences. For instance, a majority of employers were punished under *S. 41.1* of the Alberta *OHS Act*, a law that allows for the use of “creative sentencing” when employers plead guilty to an occupational health and safety offence. Judges can issue a creative sentence in the form of a fine to the company and require that these monies be used to fund workplace safety education campaigns (Flakstad, 2009, p. 9). Recipients can include charitable organizations, schools, training centres, or other institutions aimed at improving the health and safety of workers.

Creative sentencing provides “a unique opportunity to confirm (businesses) remain a good corporate citizen(s)” by ultimately acknowledging their failures of safety and taking responsibility for it by pleading guilty (Caruk, 2008, p. 13). Brian Caruk (2008), a regulatory Crown Prosecutor, suggests that this in turn allows some good to come out of the incident. From his perspective it allows a victim’s family the “chance to move on with their lives” and find “peace of mind” and it provides an opportunity to improve safety in the workplace (p. 13). However, the problem with many of the creative sentences is that they focus on how workers can improve safety by modifying their own behaviour, rather than changing the workplace and/or the company’s safety policy and/or practices.

The responsabilization of creative sentencing is reflected in the ultimate recipient of the fines. For example, creative sentencing was used when an employer failed to act upon warnings from OHS officers to place safety barriers around a rotating pump jack, resulting in the death of a worker who was caught in the machine and crushed (*Her Majesty the Queen v. Bonterra Energy Corp*, 2011). In this case attention was placed on the fact that workers failed to recognize and address the rotating pump jack as a potential hazard as part of their hazard assessment, which are forms completed by workers before any work is started on a job site (*Her Majesty the Queen v. Bonterra Energy Corp*, 2011). Consequently, two organizations tasked with creating a provincial program aimed at training workers on conducting effective hazard assessments were funded by the creative sentence. Of significance is that inadequate hazard assessments of workers are seen as a primary cause of the fatality, but that the employer’s failure to adhere and respond to repeated warnings by OHS to build safety barriers around pump-jacks was not. In other words, once again the focus was modifying the actions of the workers rather than trying to find a safer way of producing oil.

One of the recipient organizations, Alberta Workers Health Centre, also received money to develop and fund a school program that instructs teenagers on the importance of workplace health and safety. The judge described the program as offering a more “innovative and attractive” alternative than traditional worker awareness programs where “workers sleep through half of them and don’t get all the information they should be getting, and they end up unfortunately hurting themselves in the long run” (Alberta Employment and Immigration, Occupational Health and Safety, 2009a, p. 16, L. 14-22). Yet again we can see that workers are blamed for not taking “individual responsibility” for their safety (Gray, 2009, p. 330).

In another case, the Alberta Workers Health Centre received an additional \$60,000 in funding from creative sentencing to expand their hazard assessment training program by creating an interactive video tool which:

Allow(s) workers to assess their own behaviour in relation to taking risks, motivate the worker to identify risk behaviour and show the worker how to effectively assess hazards which are present at a work site when the work process has changed or when the work is changed. (Her Majesty the Queen v. Finning International Ltd., 2012, p. 2, L. 2-9)

In this instance workers were responsabilized in two ways. First, blame was placed on the workers for injuries and fatalities, as they are the ones who are deemed to have taken a number of risks; second, it asked workers to assess their own actions in the face of new hazards in working conditions – conditions which are created and controlled by employers.

While producing a safer worker is admirable and certainly appropriate to effectively improve workplace safety and reduce risk, we should also consider the nature of the work and the conditions within which it occurs (Tombs & Whyte, 2007). Certainly dealing with and proactively responding to worker competency is one such condition that needs to be

dealt with, but responsabilizing workers ignores the “broader structural factors of crimes”, namely that safety crimes are also a product of a system that maintains dangerous workplaces (Bittle, 2012, p. 135). The pressures of profitability that are ingrained in the extraction of oil and gas, a goal that often takes precedence over matters of health and safety, as well as a corporate veil that shields shareholders and senior executives from responsibility are two such ways that safety crimes constitute a structural problematic (Glasbeek, 2002; Tombs & Whyte, 2007). Tombs and Whyte (2007) note that focusing on the worker diverts “attention from the fact that risks are built into the very system of capitalist production” (p. 76).

Concealing Employer Responsibility

The prevalence of victim-blaming has concealed the employers’ role and responsibility for workplace injuries and fatalities. Examining safety crimes in Canada, Reasons, Ross and Paterson (1981) note that blaming the worker leaves little incentive for investigations to focus on the structural problems caused by employers, such as inadequate safety policies or the very nature of production in the their workplace (p. 139, 142). The authors highlight that this is one of the reasons why early safety investigations relied upon the language of “accident proneness” when describing the cause of the incident, as it directs attention away from factors pertaining to the employer (Reasons, Ross & Paterson, 1981, p. 139). Slapper and Tombs (1999) adopt a similar position, arguing that “[t]he language of ‘accidents’ is one which focuses upon specific events, abstracting them from a more comprehensible context” (Slapper & Tombs, 1999, p. 95).

A reason why an employer’s role in a workplace incident is concealed in OHS investigations has to do with the very nature of the investigation. As the fatality reports

revealed, OHS officers typically only determine the causes and failures at the individual level that led to the fatality. As such, little to no consideration is paid to determining responsibility for the incidents. Tombs and Whyte (2007) note this as a common occurrence within many OHS enforcement agencies, stating that the “inspection mindset is not one that is geared towards the detection of ‘crime’ or ‘criminals’” as “[r]arely do inspectors seek to gather evidence or information upon which future prosecution might be based” (p. 149). As a result, very little focus is on the faults of the employer to begin with, therein creating the conditions for blaming the worker/victim.

Creative sentencing has a similar effect. Very few of the initiatives proposed within creative sentencing directly address the shortcomings of employers, not only reducing the responsibilities of the offending parties, but also their burden of guilt and stigma for the offence (Reasons, Ross & Paterson, 1981, p. 139, 142). The same is also true for much of the safety awareness campaigns. With the exception of two posters, one that appealed to companies’ bottom line by indicating that the province’s most profitable companies “are also top performers in safety”, all of the awareness campaigns were directly aimed at workers’ actions and responsibilities.

Conventionalization

Dominant notions of conventionalization also emerged from the data. To review, conventionalization refers to the normalization of safety crimes in terms of how they are conceptualized and regulated. In other words, the actions of employers are not considered “as really constituting crimes at all”, and are instead open “to widely accepted rationalizations and justifications” that they are normal and acceptable behaviours or accidents (Carson, 1979, p. 38, 41). As a result, conventionalized crimes are often and readily committed by

offenders with little fear of serious reprisals, as these acts are seen as largely unworthy of state intervention (Carson, 1979, p. 41).

The conventionalization of safety crimes historically occurred after they were established as strict liability offences. As noted in the literature review, strict liability removed the need to prove *mens rea* and intent, with offenders found guilty simply for committing the offence (Tombs & Whyte, 2007). While the goal of strict liability was to make the criminalization of safety crimes easier, it had the effect of normalizing them by portraying them as matters of technical oversight as opposed to acts of culpable omission or commission, with most safety crimes appearing minor and non-violent, and offenders as non-deviant (Carson 1979). The effects of conventionalization were found throughout much of the court documents.

Eliminating Intent

Although the safety crimes found in the court transcripts were strict liability offences, many defence counsels still made concerted efforts to describe their clients' lack of intent. This had the effect of further downplaying the seriousness of safety crimes by eliciting themes that portray these offences as not real crimes. In one case against Syncrude, Canada's largest producer of synthetic crude oil, a worker was killed when a large mass of ice he was trying to clear from a production facility dislodged and crushed him (Her Majesty the Queen v. Syncrude Canada Ltd., 2011). When describing Syncrude's actions and responsibility in the case, the defence made the following claim¹³:

¹³ While the discourse of the defence would not normally be considered in identifying the state's conceptualization of safety crimes, given that the statements were made in regards of a joint-submission, the crown had to accept the defence's opinion in order for them to be part of the larger submission.

I submit that it's important to remember that the context of this type of public welfare offence is important. The offence committed by Syncrude is not a criminal offence, *it's not an offence of intention*, it's a regulatory offence, and let's be clear, *no one intended any harm to happen to* (the victim). (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 27, emphasis added)

By emphasizing that safety crimes are not criminal offences (i.e. "public welfare" and "regulatory offence"), the defence not only downplayed intent but, in the process, the wrongdoing and culpability on the part of the offender. Without a sense of either, it is easier to characterize Syncrude's actions as an accidental "side-effect of essentially legitimate, productive and socially useful activity" (Slapper & Tombs, 1999, p. 174), rather than a real and violent crime (Salmi, 2004).

Intent was also downplayed in the previously described case of the welder burned in an explosion. The defence noted that the incident was:

one of those things, as in many of these OH and S cases, Sir, where there's a combination of different factors, any one of which doesn't show up on that day at that moment and the accident doesn't occur. But, on this day, the -- it's the -- the perfect storm, and the hose happens to be just in behind that particular piece that he's cutting. He doesn't notice it, they don't hear that the earlier welder had refused to do the work because of that failing and, as a result, it's -- it's led us to where we are today. (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010, p. 10)

By describing the incident as a "perfect storm" of unpredictable mishaps, the defence argued that the incident was accidental, thereby eliminating the offender's intent and minimizing their negligence. An exchange between the Crown and the judge also presented the incident as accidental. In this exchange the Crown informs the judge that the company did not tell the

victim of the dangers posed by the hydraulic line, as was discovered by a previous worker. The judge responds by stating “Mr Shaw [the victim] started the work and this unfortunate accident happened. Okay, I get the picture” (Her Majesty the Queen v. Beck Drilling & Environmental Service, 2010, p, 6). By declaring the incident as an “unfortunate accident”, the judge also accepted that the company did not possess any form of intent or negligence in the matter.

Reputable Offenders

It is commonplace for corporate actors to claim that there are ‘good’ and ‘bad’ corporations (Bakan, 2004, p. 1; Bardach & Kagan, 1982; Bittle, 2012, p. 11). The problem, however, as many corporate crime scholars have noted, is that companies of all shapes and sizes have been found guilty of seriously injuring and killing workers (Snider, 1993, p. 3-6; Tombs & Whyte, 2007, p. 174-175). In reviewing the data it was evident that many organizations were characterized as reputable organizations, regardless of the seriousness of the offence and its consequences. Most of the parties involved in the court cases accomplished this through describing corporations as diligent when it came to safety, making considerable effort to protect workers and align their policies with regulatory law. Returning to the pump jack example, statements from the Crown and defence praised the company, Bonterra, for its diligence toward safety, despite the company failing to build adequate barriers around pump jacks. For example, the Crown stated:

it’s (our) position...that we’re dealing with a very pro-social employer, as is often the case in these situations where the employer has taken considerable steps to ensure their workers’ health and safety, but perhaps has failed to go just, you know, one-one

step far enough, and-and a tragic death will ensue. (Her Majesty the Queen v. Bonterra Energy Corp., 2011, p. 11)

The Crown's characterized the employer as safety-orientated, doing nearly everything possible to ensure workers' safety. This constructed the company as not only reputable but also morally blameless for the incident, as they made considerable efforts to prevent injury and death. As a side note, describing the offenders as reputable and dedicated to safety stands in stark contrast to the level of blame and victim blaming aimed at workers within the same documents. As well, just because a company has been characterized as a good, reputable company devoted to safety, does not mean that it is committed to safety, or operates safely on a daily basis. Critics argue that it is easy for a corporation to look like a good and reputable company on paper, when inspectors rarely view the day-to-day operations of the worksite, typically only responding "after corporations have committed the least responsible, reckless and socially damaging acts" (Tombs & Whyte, 2007, p. 157)

The Syncrude case followed a similar premise, as both the Crown and defence promoted the company's commitment to safety. The Crown did so by applauding Syncrude for quickly accepting responsibility for the incident, taking steps to reach out to the victim's family and immediately addressing lapses in safety policy and procedures (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 25). The defence echoed similar sentiments, describing Syncrude as an "extraordinary company...one that has made extraordinary efforts towards improving safety within the oil sands in this province and in this country" (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 29). The defence argued that these attempts at improving worker safety is evidence of Syncrude's lack of intent and culpability, as they were "on the right path...had the right intentions...(but were) unfortunately not quick enough" (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 27). The judge also

emphasized the reputable nature of Syncrude, describing it as a “responsible” company with an “excellent safety record outside of this particular incident” (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 31). The judge also lessened Syncrude’s moral culpability, and the seriousness of the crime, by reiterating safety crimes are “not a criminal matter” (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 31).

Characterizing companies as reputable organizations devoted to safety reinforces the role of neoliberalism in shaping safety crime discourse. As the primary driver of the neoliberal market economy, the corporation has been lionized as an inherent good that “contributes to society’s overall well-being” by producing wealth and job opportunities (Bittle, 2012, p. 118). As Tombs and Whyte (2007) suggest, “if it has been *historically* jarred to think of businesses and business people as offenders, this has become even more the case under the dominance of neoliberalism, where the legitimacy (of the corporation) has been significantly augmented” (p. 68, emphasis original). In essence, emphasizing the corporation as an inherent social good is essential in supporting and promoting neoliberalism as the dominant political rationality.

As well, the language used in the Syncrude case also ignored that the driving force of any limited liability corporation is maximum profitability (Tombs & Whyte, 2007, p. 157). In other words, profitability often takes precedence over any and all other issues faced by a corporation, including matters relating to safety (Bittle, 2012; Tombs & Whyte, 2007). As such, by describing Syncrude as good and reputable in their commitment to safety, not intending to harm anyone, the defence and Crown avoided contemplating the profit-making equation and its role in facilitating safety crimes.

The awareness campaigns also included messages emphasizing corporations as reputable entities. This was primarily accomplished by underscoring companies as

knowledgeable, receptive and responsible for ensuring safety. Consequently, many of the campaigns included messages encouraging workers to take safety concerns to their employer. While these messages also emphasized the responsabilization of workers, primarily through disciplining workers to take safety concerns into their own hands, they also had the effect of normalizing safety crimes. By telling workers to report safety issues/crimes to the parties largely responsible for the offence, the campaigns' message highlights the offences as something not serious enough to warrant alerting authorities. It also stands in contrast to traditional logic of calling the authorities when responding to crimes. For example, one poster campaign encouraged workers to "Ask your employer about their safety procedures and standards", not letting their "Fear of...looking stupid...losing my job...saying 'I don't know how'" silence them from demanding a safe and secure workplace.

In another example a worker awareness pamphlet sponsored by the Workers Compensation Board of Alberta, the Government of Alberta, and various industry funded groups also emphasized that employers are inherently good organizations that are capable and devoted to workplace safety. Like the previous example, the pamphlet encouraged workers to speak to their employers, reassuring them they are committed to safety. The pamphlet did this by providing a step-by-step guide of what to do when injured on the job, the rights workers have, and suggestions of what they should do when they are hired. This message largely assumes that employers have effective safety policies in place and that they have the same level of concern for safety as their workers (Barnetson, 2010). For instance, the final page of the pamphlet contains a list of things to keep in mind in order to work safely (including being honest with the employer as they "want you to succeed"), as well as a list of questions to "ask your boss" regarding safety. The Bloody Lucky campaign included a similar approach. Both on the homepage, as well as the videos, the website encouraged

workers to ask their employers five questions before beginning any type of work, including: “how can I get injured doing my job”, “what safety procedures do I need to follow”, and “do I need any safety gear”. The information concluded by reminding workers to speak to their employers if they feel unsafe at work.

Several fatality reports also included language that presented corporations as inherently good and reputable. This was specifically demonstrated by OHS officers’ praising corporations for responding quickly to their directives to address lapses in safety that lead to the fatalities. While such praise indicates the officers’ belief that corporations are good and moral, a problem with praising the company is that it assumes such measures have actually been integrated into the company’s policies and procedures. Gray (2006) notes that many employers establish their workplaces as Potemkin Villages when inspected: “an impressive façade...designed to hide an undesirable fact or condition” (p. 875-876). With many inspections scheduled in advance, employers simply make their workplaces appear safe prior to the arrival of inspectors, but have incorporated little to no changes to safety in policy or daily practices. In a participant observation study of an industrial factory, Gray (2006) notes that he saw a drastic change in safety prior to scheduled inspections “the workplace was clean (no oils or spills on the floor), all machines were properly safe guarded, lock-out procedures were in place, workers wearing protective equipment, and all safety rules were being followed nearly to perfection” (p. 885-86). While all employers may not build their workplaces as Potemkin Villages, the absence of consistent external regulation within an increasingly neoliberal self-regulating workplace makes it hard to determine whether such measures are actually integrated into a company’s safety systems.

Conventionalization also occupied a small theme in several of the OHS magazines. Many safety crimes were presented as minor offences, often referred to as “unlawful

conduct”, “contraventions”, and “infractions” of the *OHS Act*. Such labels do not reflect the intrinsic seriousness or consequences that “contraventions” of the *OHS Act* can include. As well, the titles have the effect of downplaying the seriousness of the crime, presenting them as a simple breach of conduct that can be rectified through fines rather than more substantial punishments. For instance, in an article on the merits of creative sentencing, a Crown prosecutor suggested that one of the primary goals of sentencing is to “denounce unlawful conduct” (Flakstad, 2009, p. 9). While true, “unlawful conduct” as opposed to a crime presents safety crimes akin to a breach of protocol, something that causes little to no harm, rather than a serious and harmful offence. The prosecutor further minimized the seriousness of safety crimes by calling for creative sentencing fines rather than significant punishments, as he felt the fines can “operate to protect other lives and to restore, in some way, the community that is affected” (Flakstad, 2009, p. 9).

However, considerable research has shown that fines are largely ineffective in creating any substantial change in safety behaviour (Slapper & Tombs, 1999; Snider, 1987; Tombs & Whyte, 2007). While creative sentencing does allocate some money towards safety initiatives within the affected community, much of the fine is targeted at corporations as a form of punishment. Although many reasons account for why fines are ineffective against corporate offenders, two are particularly relevant for this study. First, most of the guilty oil and gas companies are so large that the fines they receive represent an insignificant deterrent when it comes to safety policy and corporate behaviour. As Tombs and Whyte (2007) note, corporations are effectively able to absorb the costs with little to no impact on their operations (p. 176-77). Second, fines are directed at the corporation itself, rather than individuals responsible. Once again, this means those who direct and organize the

corporation are faced with few risks or pressures to change operations in order to ensure the safety of workers.

Another example is an article written by the president of the Canadian Association of Oilwell Drilling Contractors (CAODC) praising oil and gas companies for their devotion to safety and worker training. Taking exception to a finding in a previous magazine that the oil industry experiences “high turnover, few training options and high injury rates”, the president outlined new safety initiatives funded by the oil and gas industry, and points to recent decreases in injury rates as evidence of the industry’s focus on safety and training (Herring, 2008, p. 2). He also minimized the finding by claiming that risks to worker safety are inherent “to the nature of service rig work” (Herring, 2008, p. 2). In this regard, he essentially argues that employer lapses of safety (i.e. safety crimes) are inherent to an industry that is defined by “a brisk pace of activity, heavy equipment and harsh weather conditions”, but do not constitute crimes (Herring, 2008, p. 2). As Tucker (1995) notes, the perception that the risk of injury or death is an inherent factor within the workplace importantly shapes how these incidents are dealt with (p. 246). In essence, the president’s remarks excuse safety crimes, normalizing them as a side effect of the inherent risks of productive activity. As well, the accuracy of the president’s remarks should also be taken with a degree of scepticism, given that much of his information is based on self-reporting and the biased position he is in to promote the oil and gas industry. It has also been an unfortunate trend that employers and lobbyists underreport or withhold information on the dangers of work (Barnetson, 2010, p. 51). Two examples include information withheld on the threat of cancer within the asbestos industry and from workers exposed to radium poisoning in the production of glow-in-the-dark watches (Barnetson, 2010).

Counter-Hegemonic Discourse

Not all discourses in the data reinforced the themes of responsabilization and conventionalization as the dominant way to understand safety crimes. There were some instances of counter hegemonic perspectives of workplace injuries and deaths as crimes, and employers as offenders. However, it is important to note two factors in relation to the counter-hegemonic discourses found in the data. First, while these discourses did characterize safety crimes as wrong-doing rather than simply an accident or a normal side-effect of business (Carson, 1979), these claims were made within the context of proceedings dealing with non-criminal regulatory offences. In this sense, with the offences not being dealt with in the criminal realm, any counter-hegemonic discourses were limited by the dominant frame of safety crimes as non-violent offences that are best dealt with through compliance-based forms of regulation (Tombs & Whyte, 2007). In this sense there was no suggestion that these were violent crimes that warranted a criminal law response. Second, counter-hegemonic discourses were limited when compared to the dominance of responsabilization and conventionalization. Once again, discourses characterizing safety crimes as serious and costly were limited, while discourses describing them as a criminal offence were largely absent.

Despite these limitations there were some instances of counter-hegemonic understandings of safety crimes. The first instance was four victim impact statements from the family members of the victims of the previously mentioned Syncrude incident (*Her Majesty the Queen v. Syncrude Canada Ltd.*, 2011). In their own words, the victim's father, mother, wife, and daughter outlined the psychological and emotional trauma each has suffered following the victim's death (*Her Majesty the Queen v. Syncrude Canada Ltd.*, 2011). For example, the victim's mother stated: "Our sorrow is profound and unrelenting. I

have to take anti-anxiety medication to help me sleep at night and antidepressant medication to help me get through each day” (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 14). The victim’s wife echoed similar sentiments, telling the court her children carry much “anger and resentment”, and that there “are no more happy occasions anymore, just empty ones” (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 17).

Alongside the feelings of sadness and despair over the loss of their loved ones, the family members also expressed frustration and anger over the fatality. This was primarily aimed at both the company for their failure to prevent the incident. The mother expressed her frustration “because the cause of his death was preventable”, and questioned “Why was he working alone? Was he—was he suffering long? How long was he lying there, unnoticed? Was he unconscious? (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 15). Likewise, the victim’s daughter addressed the company, “You took the greatest man away from my family and I will never be able to get over it” (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 18).

Unlike much of the dominant discourse, the victim impact statements are one of the few instances where workers were presented as victims and employers as offenders. Gone is language blaming workers for failing to avoid injury, and employers as excellent safety providers. The statements were also one of the few occasions where the costs of safety crimes were realized. Nowhere else in the data is the impact of safety crimes described on such a personal level, with family members providing such detailed insight into their pain and trauma. Similarly, the mother’s questions concerning her son’s death also offered one of the few criticisms of a company’s policies and procedures. Little discourse was found in the rest of the data that directly challenged a company’s procedures, in this case the company’s directive on workers operating alone, with such a central concern on the worker.

The magazines also included examples of counter-hegemonic discourses. In particular, each magazine included two sections that listed recent convictions and guilty pleas of the OHS Act (which included summarizing the circumstances of the safety crime, the section of the OHS Act that was breached, and the punishment handed out), and editorials by crown prosecutors on any changes to OHS laws, warnings to potential offenders and summaries of significant OHS cases. These sections included some of the few instances that presented companies as offenders and their actions as wrongdoing. For example, in one editorial the crown prosecutor warned employers against contracting multiple parties within collective business ventures as a means of limiting their responsibility for workplace safety (Alberta Employment and Immigration, 2008, p. 16). In a sense, the prosecutor acknowledged that employers commit safety crimes by attempting to lessen their responsibility for them by contracting-out services.

While the sections include counter-hegemonic discourse, their effects were limited. This is namely due to the sections of the magazine that reflect the ideological understanding that safety crimes are strict liability offences rather than criminal ones, and thereby possess little moral culpability and do not require significant punishments. So while the discourse is counter-hegemonic by presenting the companies as offenders and their actions as crimes, these comments are constrained by the fact these offences are not considered real and serious (i.e. criminal offences), reinforcing the notion that safety crimes are a separate and less culpable class of offences.

A few fatality reports also presented workplace deaths as crimes. This was evident in cases where employers' actions/inactions were listed as direct and contributory causes of the fatality. For example, in a case where a welder was crushed between oil pipes, inspectors noted that "No written plans or provisions were made by Bonnyville Welding Ltd. to restrain

the piping so that it could not spring back or tip over” (Alberta Employment and Immigration, Occupational Health and Safety, 2007a, p. 7). By noting that Bonnyville Welding failed to adequately plan on how to move the heavy materials, the OHS officers concluded that they breached OHS law. They go on to note that both Bonnyville Welding and the owner of the job site, EnCana, reported that the “pipe spool as being tack welded...it was noted as not being tack welded upon inspection” (p. 8). This was listed as a serious breach of OHS law, as employers deliberately lied about details that directly caused the fatality. Unfortunately, like the magazines, no discussion is made concerning the potential criminal negligence associated with these offences.

Additionally, one fatality report included a unique section that specifically listed what breaches of the *OHS Act* inspectors found. This was in contrast to the rest of the fatality reports that made no specific mention of the deaths as crimes. In this case, inspectors actually identified and listed the crimes that the companies committed. However, the language used was sanitized in that it emphasized the non-violent nature of the act (e.g. allowing unsafe work to be done with job specific tools, failing to ensure that hazard assessments are completed prior to work, and failing to secure equipment and tools). The final charge marked the direct cause of the fatality, as the worker was killed after being impaled by tools ejected from pipe tubing being pressurized. Although only found in one fatality report¹⁴, providing a section for inspectors to directly identify infractions allowed for the incorporation of some counter-hegemonic perspectives related to whether or not the event constitutes a crime, standing in contrast to the dominant understanding that workplace fatalities are accidents.

¹⁴ It was discontinued by Alberta Human Services (formerly Alberta Employment and Immigration) in 2007.

While the above highlights the counter-hegemonic discourses observed in the data, their influence pales in comparison to the themes of conventionalization and responsabilization. This finding is largely due to the minimal attention devoted to presenting safety crimes as serious offences. For example, the magazine sections occupied little more than half a page and were often pushed to the end of the magazine. Although the amount of text devoted to a topic does not necessarily reflect its strength and influence, the fact that so little space was devoted to a counter-hegemonic perspective does imply that it is generally considered a topic that is not worthy of additional coverage.

Additionally, the language of the counter-hegemonic discourse was also considerably weak. Other than what was found in the victim impact statements, language that described safety crimes as serious and costly was noticeably absent. Instead, descriptions of safety crimes relied on titles describing the incident rather than its violent and harmful consequences. For example, every crime listed in the Applicable Legislation section was described in regards to its breach of law rather than the harm caused (e.g. failing to conduct hazard assessment, failing to secure equipment and materials) (Alberta Employment and Immigration, Occupational Health and Safety, 2007b). As well, no mention was made of the criminality involved in the offences.

Summary and Conclusion

Overall, this chapter revealed that safety crimes of the Alberta oil and gas industry are not understood as “real” crimes. Instead, the dominance of responsabilization and conventionalization discourses contributed to the overarching conceptualization of these offences as accidents, particularly the idea that workers were careless and corporations morally blameless.

The perception that workers are careless emerged from the extensive responsabilization discourse found in the data, particularly in terms of the victim-blaming discourse in the court transcripts and awareness campaigns. This finding is consistent with the trends of the current wave of regulation, whereby the state's regulatory role is reduced in accordance with neoliberal policies that expect workers to adopt a much larger role in maintaining workplace safety, making them equal to, if not more responsible than employers for maintaining and ensuring safety in the workplace (Gray, 2009; Tucker, 1995). Within this context, workers are expected to avoid harm and risk in the workplace, rather than employers being mandated to remove risks. Workers who fail to act prudently run the risk of facing victim-blaming discourses that label them as careless and that reinforce the perception that injury and death stems from their inability to avoid harm (Gray, 2009).

With responsabilization functioning as a dominant knowledge claim, and workers conceptualized as careless, there was a relative absence of explanations that responsabilized employers. This is consistent with what was discussed in my theory chapter, whereby particular discourses and dominant knowledge claims reflect the presence of certain extra-discursive factors (Bittle, 2012; Bittle & Snider, 2006). Since neoliberal political economic ideology is dominant in the province, particularly in shaping workplace safety regulation, discourse and knowledge claims that reflect this way of thinking are more likely to be accepted than those that challenge it. This helps to explain why more focus is paid to the worker as a significant cause of accidents over that of the employer; why inadequate company policy and procedure is not considered a direct cause within many of the fatality reports; why creative sentences are focused on worker training and modifying the behaviour of workers; and, finally, why there is a relative absence of awareness campaigns that are aimed at employers and their decisions and actions. To reverse course and proceed in a

manner that would place attention on the employer, the employer's actions, the nature of the work undertaken or the conditions of the workplace as created by the employer, would challenge the basis of the dominant discourse and knowledge claims that fixate on the decisions and actions of workers.

Conventionalization was also present in the data, but to a lesser degree. Offenders were presented as good and safety-orientated companies, with their actions being characterized largely as "regulatory" or "public welfare" offences (Her Majesty the Queen v. Syncrude Canada Ltd., 2011, p. 27). This had the effect of reducing the perceived seriousness of the offences, in turn reducing the moral blame of offenders. Much like discourse on the carelessness of the worker, focusing both on how crimes were merely non-serious "regulatory" offences, and how offenders are morally blameless for committing them, had the effect of shifting attention away from the failings and crimes of their employer and back to the worker (Tombs & Whyte, 2007). In this respect, conventionalization further cemented the dominance of responsibilized knowledge claims.

By emphasizing companies as legitimate and upstanding, lacking intent and moral blame, attention is shifted away from companies and their actions, and towards victims. This is also due to the influence of neoliberalism within the workplace where workers are considered equal parties in safety as employers (Gray, 2009). In this environment, if companies are not being blamed, then the only other party left to point to is the worker. The concluding chapter will further explore the issues of responsibilization and conventionalization by situating these knowledge claims within the theoretical concerns of the study.

CHAPTER 6: CONCLUSION

As the previous chapter demonstrated, safety crimes in the Alberta oil and gas industry have been reproduced in official terms as accidents rather than crimes worthy of criminal justice intervention (Tombs & Whyte, 2007). This chapter reviews the study's findings and their theoretical implications. It concludes with a brief discussion of ways to overcome the dominant discourses used to characterize serious injury and death in the workplace.

Summary

This study outlined the dominant conceptualizations of safety crimes in Alberta's oil and gas industry. Three questions guided my research; questions which helped me explore the extent to which dominant conceptualizations of safety crimes reproduce the careless worker myth and the historic belief that safety crimes are non-violent accidents. Following an examination and review of the literature, two primary themes were identified to help answer these questions: responsabilization and conventionalization. When applied to the three data sources (i.e., fatality reports, court documents, and worker awareness campaigns), these themes helped reveal that safety crimes in Alberta's oil sands do, indeed, reinforce dominant myths and stereotypes about the root causes of workplace injury and death.

Of the two themes that were the focus of this study, responsabilization was the most prevalent discourse in terms of influencing and shaping dominant understandings of safety crimes. One of the more prevalent responsabilization knowledge claims was the belief that workers are inherently careless, failing to exercise personal responsibility and common sense in order to avoid injury and death. As we saw, there was considerable discussion of the carelessness of workers and their competency to carry out work-related tasks safely. As seen in the court transcripts and fatality reports, government officials closely scrutinized the

credentials, skills, and abilities of the workers after an injury or death, but failed to equally interrogate the actions and decisions of employers.

By labelling workers as careless and blaming them for workplace incidents, we saw that employers were largely able to escape blame and responsibility for safety crimes. This was also evident in the conventionalization discourse, whereby employers were described as morally good and reputable, their actions as unintentional/accidental and the offence as minor. When blame was shifted away from employers and onto workers, we were provided insight into a number of tendencies within government discourse, such as why awareness campaigns have been directed at the habits of workers, rather than corporate policies and procedures, and why corporations have faced minimal attention from government inspectors or criminal justice officials. With the government assumption that employers are inherently good and moral, and that workplace incidents arise from the carelessness of workers, the reason to regulate corporations is questioned. Why strongly regulate and condemn businesses when the workers are primarily at fault?

As well, shifting blame and focus onto workers conceals many of the underlying causes of safety crimes. First, there is little incentive for companies to seriously address lapses in safety, resulting in further instances of injury and death. Essentially, if companies are reassured that they are effective safety regulators (Bonterra and Syncrude were described as “pro-social” and “extraordinary”), face little to no criminal accountability for their actions and workers are described as careless, then companies have little reason to seriously or fundamentally address lapses in working conditions or policies/procedures that lead to worker injury and death. Second, the structural issues and causes of safety crimes are also concealed when the focus is on workers. In particular, focusing on the carelessness of workers and describing employers as reputable prevents discussion of factors such as

whether or not the workplace itself is unsafe, or that the very nature of production creates unnecessary risks and harm for workers. As Tombs and Whyte (2007) note, “[i]f focus on the aftermath of an incident were not to be upon workers but shifted to employers...such attention may logically lead to either cost implications, to redress the lack of investment in plant or people, or have legal ramifications” (Tombs & Whyte, 2007, p. 76).

In addition, the lack of significant enforcement and punishment directed at employers also did little to address underlying causes of safety crimes. Given the dominant conceptualization of safety crimes, there is little incentive on the part of the state to undertake criminal investigations into the actions of employers (i.e., the belief that corporations are not criminals provides a significant ideological barrier to treating serious injury and death in the workplace as potentially criminal). As we saw, fines and victim surcharges were the only punishments used by courts, providing questionable deterrence against future crimes. This lack of deterrence-based enforcement is interesting to note given the inherent health and safety risk in the oil and gas industry, as well as the fact that the oil and gas industry has one of the highest fatality rates in the province (Alberta Federation of Labour, 2010; Government of Alberta, Jobs, Skills, Training and Labour, 2013). Of particular note is that the *Westray Bill* has never been enforced in Alberta. Although true for most provinces, with Ontario and Quebec being the only two provinces where there have been corporate criminal negligence convictions, the failure of the Alberta government to even consider *Westray Bill* charges is significant in that it reinforces the ideological belief that safety crimes are not serious offences that warrant a criminal justice response. The lack of criminal justice intervention against corporate executives and supervisors is also unfortunate given the potential effectiveness of deterrence when applied to corporate executives rather than just the corporation. As noted in the literature review, this potential

deterrent effect is due to executives differing from traditional street criminals in that the former make rational choices based on a cost-benefit analysis, stand to lose reputation and personal wealth as a result of criminal prosecution and are not committed to a (traditional) life of crime (Slapper & Tombs, 1999, p. 184; Tombs & Whyte, 2007, p. 169-173). Consequently, without threat of liability and stigmatization, these individuals have little incentive to address safety concerns in the workplace.

Having spent much of this thesis identifying the dominant themes and conceptualizations of safety crimes in the Alberta oil and gas industry, we are still left with the question why? Why has workplace injury and death been repeatedly conceptualized as the accidents of careless workers rather than crimes of violence? Of particular interest for this thesis is the influence that the convergence between the discursive and the extra-discursive has in terms of shaping dominant knowledge claims (Fairclough, Jessop, & Sayer, 2002, p. 3-4). In this respect, we can see the dominance of responsabilization discourses cohere well with the shift from a Keynesian to neoliberalism political economy, particularly in terms of the neoliberal commitments to individual responsibility and minimal state intervention in the private realm (Bittle, 2012; Tombs & Whyte, 2007). One way that neoliberalism was reflected within responsabilization discourse is in the careless worker narrative. Blaming workers for safety crimes is reflective of neoliberalism's emphasis on individuals responsibility – charging workers for being primarily responsible for ensuring their own safety in the workplace.

In turn, the dominance of the careless worker narrative also encourages and emphasizes the neoliberal notion of minimal state intervention in the private realm. If workers are seen as responsible for ensuring their safety in the workplace, then they are to blame for workplace injury and fatalities, not employers. Consequently, there is little need

for extensive state regulation, as employers have committed little to no wrongdoing. Conventionalization also reflected neoliberalism's emphasis on promoting limited state regulation by minimizing the employer's intent (i.e. strict liability) and guilt. As a result, this helps justify the use of partial self-regulation, as why would there be a need for extensive state regulation if the crime occurred unintentionally, the offender is inherently good and the worker is careless?

The Alberta government's implementation and reliance on partial self-regulation is also indicative of the influence of neoliberalism. The use of partial self-regulation followed the adoption of neoliberalism, reflecting the belief that regulation is conducted effectively when companies and workers self-regulate (Snider, 2000, p. 182; Tombs & Whyte, 2007, p. 158). As the fatality reports and court documents revealed, much of the formal regulation is reactive in nature, with the state potentially (although not always) charging companies with infractions of the OHS Act (e.g. failure to provide adequate safety measures) in instances of serious injury or death of a worker. This is indicative of the current wave of partial self-regulation, as the state intervenes only when a significant safety breach has occurred, relying upon both workers and a corporation's IRS to ensure safety. For example, in the two incidents of workers being crushed (one by a rotating pump-jack, the other by a mass of ice), inspectors/regulators were well aware of, and warned the companies about significant safety concerns prior to the incidents happening, but did not charge either company for breaking the law (Her Majesty the Queen v. Bonterra Energy Corp, 2011; Her Majesty the Queen v. Syncrude Canada Ltd., 2011). In fact, the state made little to no effort to ensure the warning about addressing the safety concerns were heeded (i.e. building protective barriers and updating policies) until after workers were killed.

In addition, the overall presence of discourses promoting the corporation as a quintessential good for Alberta is also indicative of the influence of neoliberalism. Lionizing corporations has become a common ideological trend within neoliberal political economies, under the (incorrect) assumption that corporations' financial and employment contributions to society are an "unequivocal good" (Bittle, 2012, p. 118; Snider, 2000). With corporations and their actions seen as inherently good, it becomes difficult to characterize corporations and their executives as potential criminals.

With the abundance of discourse and knowledge claims that lionize companies, conceptualize workers as careless and treat safety crimes as accidents, it would be easy to conclude that the Alberta government consciously manipulates the law as part of its ideological commitment to neoliberal political and economic reasoning. However, when we consider the theoretical understanding of the state as an institutional ensemble, autonomous from any other class or group (Bittle, 2012, p. 191; Jessop, 1990, 1999, 2002; Mahon, 1979), we find that it is too simple to adopt a conspiratorial view that state officials are consciously manipulating discourse to benefit industry (Bittle, 2012; Bittle & Snider, 2006). Instead, the state should be seen as a location where different discourses converge under the influence of particular extra-discursive factors¹⁵ to establish dominant knowledge claims (Bittle, 2012, p. 191; Jessop, 1990, 1999, 2002; Mahon, 1979). While it was evident that the dominant knowledge claims that emerged from the Alberta state do uniquely benefit industry, it was not a result of the state's inherent predisposition to reach this conclusion. If this were so, then we would see no regulation whatsoever – including fines or partial self-regulation. Rather,

¹⁵ While this thesis has focused on neoliberalism being the primary extra-discursive factor shaping the regulation and conceptualization of safety crimes, it is certainly not the only one. Political, economic, cultural, technical, and even religious factors all can shape discourse and understanding (Bittle, 2012, p. 59; Tombs & Whyte, 1998, p. 143).

the discourse and actions of the state would merely reflect the dominant knowledge claims of the corporate status quo. For example, the instance of the judge questioning why a welder with 25 years of experience would allow himself to conduct work in a dangerous environment does not mean that the court agrees with business for the sake of supporting business and its interests, but rather that judicial (and other state-related) decision-making operates in a discursive and ideological environment that focuses on the worker rather than the employer. The same can be said for the workplace awareness campaigns. The state did not commission posters, videos, and advertisements with the intent of directly benefiting industry, but instead aligned the campaigns' message with the dominant knowledge claims and ideology of workers responsibility for regulating their own 'careless' actions.

Bob Barnetson and Jason Foster (2012) elaborate on this as well in their study of the Bloody Lucky campaign, highlighting the belief that Alberta's former Minister of Employment and Immigration, who commissioned the project, did so because he believed that workers were inherently careless and therefore the campaign should be directed at rectifying careless habits when workers are young (p. 142). Although industry does benefit from this focus of discourse, the state did not develop the program expressly for that reason. Instead, it merely acted upon and reproduced the dominant and historic knowledge claims regarding safety crimes.

Concluding Remarks

Overall, this thesis has revealed the importance of thinking critically about the ways in which we conceptualize safety crimes. In this respect, the findings echo those of other critical corporate crime scholars who advocate for challenging the accident discourse as it relates to workplace injury and death. A major concern for this thesis is therefore that safety crimes

should be understood and treated as crimes of violence more often than is currently the case. While this claim is not a new one (see Bittle, 2012; Snider, 2000; Tombs & Whyte, 2007), it is important that we keep interrogating and discussing the reproduction of the accident discourse so that it can be challenged and, hopefully and ultimately, transformed. As well, it is important to reiterate that this struggle also entails challenging and addressing the structural issues within our legal system that allow corporate crimes, and safety crimes in particular, to continue to be viewed and regulated as minor offences or careless accidents. Namely, this includes responding with criminal law and sanctions, where appropriate, rather than responding through administrative law and strict liability offences, including charging and convicting corporate executives in positions of power.

At the same time, however, the goal of naming safety crimes as a form of violent crime will mean nothing unless the state addresses the structural reality that investors and corporate directors enjoy relative impunity for injuring and killing workers (Glasbeek, 2002). As such, efforts must be directed towards preventing investors and corporate directors from hiding behind the limited liability of corporation. Until then, safety crimes will continue to be understood and responded to as little more than regrettable but largely unavoidable accidents.

APPENDIX

Abbreviations List

- CAODC: Canadian Association of Oilwell Drilling Contractors
- CDA: Critical Discourse Analysis
- COR: Certificate of Recognition
- ERS: External Responsibility System
- GDP: Gross Domestic Product
- IRS: Internal Responsibility System
- JHSC: Joint Health and Safety Committees
- KWS: Keynesian Welfare System
- OHS: Occupational Health and Safety
- PIR: Partners in Injury Reduction
- UCC: Union Carbide Corporation

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