

Lawyers and Immigrants,
1870-1940
A Cultural History

Louis Anthes

*On the Occasion of the
100th Memorial Anniversary
Of the Triangle Shirtwaist Fire*

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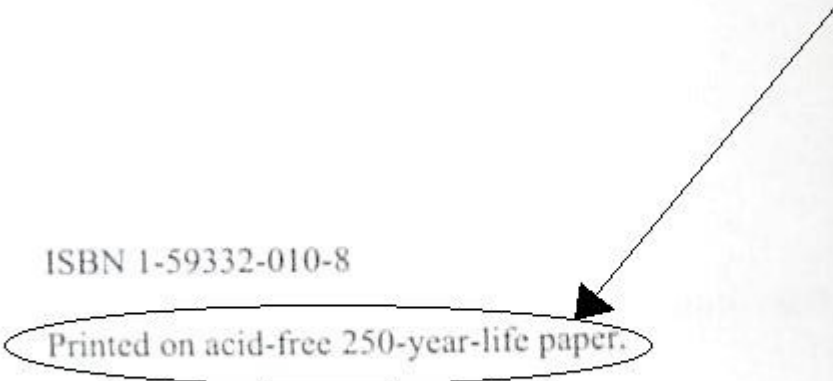


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Theodore Roosevelt installed William Williams at Ellis Island at a time when nearly half of the nation's shipping and two of every three Europeans migrating to the United States arrived in New York City. Reflecting the dynamic increase in the transatlantic trade in goods and labor, the total number of industrial wage earners employed in New York City grew from about a quarter million to over one-half million between 1880 and 1910. Instead of laboring in large factories, most found work in a proliferating number of small workshops, many of which were found in tall buildings. Thus, for those who found jobs, working usually entailed toiling in small factories, frequently clothing concerns perched seventy feet or more above the busy sidewalk.¹

Such working conditions were decidedly dangerous. Four months before New York's worst factory fire – the Triangle Shirtwaist Company fire – city newspapers reported that only a hundred firms out of eleven thousand were fireproof, that most were constructed of wood, and that few offered quick exits. Around the same time, New York City's Fire Chief, Edward Croker, warned that available fire-fighting equipment could reach up only to the seventh floor of any building. To make matters worse, immigrants of different ethnic backgrounds, speaking different languages and practicing different traditions, worked alongside one another in such conditions, and their improvised ways of communicating with one another often broke down during life-threatening emergencies.²

Inevitably then, working in a factory involved self-conscious risk-taking. Indeed, it has been estimated that, from 1907 to 1912, about one in ten of all deaths among men were caused by accidents.³ Not surprisingly, in this expanding, urbanizing, industrializing economy,

work was frequently represented as action taken in the face of self-destruction, and it easily assumed martial overtones. "The industrial carnage of the period," one historian has observed, "was such as to be easily expressed in warfare imagery; it was easy to picture the industrial labor force as a heavily risk-taking army being pushed by its officer-employers into a fearful slaughter." Reformers as a group habitually deployed military language in describing workplace injury. Muckraker William Hard, whose articles on industrial accidents can be credited for giving voice to the movement for workmen's compensation laws, embraced the image of the worker-soldier: "Why shouldn't society, having invented machines which make business one long war, treat the enlisted men at least like enlisted men and, if they are incapacitated, assign them temporarily, or permanently, to the rank and pay of pensioners of peace?" And where the language of soldiering appeared, language about "duty" was sure to follow. Hard specifically understood the advantage of speaking about "duty" when he republished his muckraking essays on workplace injury in a book with the title, *Injured in the Course of Duty*.⁴

Even though union organizers did not readily accept the metaphor of soldiering for working, at the turn of the century they often deployed military rhetoric to define workplace resistance. In an era of Haymarket bombers, the Knights of Labor, and Coxe's Army, working men and women appropriated commonplace military terms such as "picket line" which, according to the Oxford English Dictionary, meant "a small detached body of troops, sent out to watch for the approach of the enemy," typically used in military contexts, such as "Indians broke through the picket line." For instance, the official organ of the International Ladies Garment Workers Union, *Justice*, explained in a brief column, "As to the Duty of Picketing," that "To picket means to be on guard every minute ... to remember that the enemy never sleeps ... to count your divisions ... and with great determination carry on your fight to ultimate victory."⁵ Leaders of the labor movement even resorted to martial metaphors when consciously anti-militarist. For example, George Kirkpatrick, who was the Socialist Party's vice-presidential candidate in the election of 1916, published in 1910 an anti-militarist pamphlet, *War-What For?*. Though portrayed as pacifist, the book was dedicated to the "victims of the civil war in industry," suggesting that the moment was defined by class warfare. Expressing his anti-militarism in vivid language, Kirkpatrick hoped that "every socially gilt-edge coward" who "dares help excite the

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working class for the hell of war ... should be forced to dance on the firing line of the hideous music of the cannon's roar till his own torn carcass decorates a 'great battle' field." He followed this gory image by identifying labor's strategic objective: "for all such self-defense the working class must as soon as possible capture the powers of government."⁶

Competing camps in the struggle over the workplace thus uniformly represented workers as soldiers, although for different armies. In some instances, reformers and union leaders found common ground by relying upon this rhetoric of militarism. One progressive economist explained his approval of labor violence in such terms: "I am not in favor of murder, but give us the labor union with all its murders, its brutality and all its lawlessness rather than a continuation of the evils under which workingmen of today are compelled to labor."⁷ In other words, without law in the workplace, lawlessness elsewhere was inevitable and even excusable. By representing the workplace as a battlefield, both unions and reformers prepared the way for the state to produce a legal armistice.

By the turn of the century, unions, reformers, and corporations invented two different visions of law – one frequently portrayed as *laissez-faire*, involving personal injury litigation, and the other portrayed as reformist, involving an expansive use of state power to compensate workers "injured in the course of duty." For many reformers and labor leaders, the passage of New York State's workmen's compensation laws and other safety laws stood as a victory, since they were "pressed on state legislatures by cross-class coalitions, not by single political actors or groups. Capitalists, state labor federations, social scientists, charity workers, and upper- and middle-class reform organizations all joined hands."⁸ But, the enactment of these laws is also a story about persistent legal habits, since administrative reform of workplace injury law was a victory for many lawyers and manufacturers.⁹ And for labor organizers. As Jonathan Simon has provocatively suggested, "after the 1870s, the most organized portion of the working class was not resisting discipline so much as demanding its intensification. By 1900 the challenge to management was not establishing hierarchical control but securing the social stability required for continuous production."¹⁰

In this story, the lawyers who practiced on the margins of the profession, so-called "ambulance chasers," became objects of scrutiny, much like the lawyers who worked on Ellis Island. As for their clients,

many of whom were immigrants, they were to be "represented" by those who supported administrative reforms on their behalf. The figures of the ambulance chaser and the would-be client could be effectively barred from the workplace because factories operated as disciplinary spaces where unions and management struggled to supervise each other. The passing of workmen's compensation laws satisfied both labor's demand of forcing the state to help injured workers and management's demand of having an efficient workforce.

The campaign for workmen's compensation involved a broader cultural struggle over legal representation. Elaine Scarry has argued in *The Body in Pain* that "the century of unprecedented making and manufacture was also a century of unprecedented speculation about the ethical responsibilities inherent in the act of manufacture, the act of making, the act of creating." In her view, personal injury law should be understood "less as a *legal action* or a form of economic redistribution than as a form of *cultural self-dramatization*." Scarry's perspective helps us to see that, in the early twentieth century, workplace reform was not simply about changing the distribution of economic resources among different classes. Rather, reform necessarily entailed the power to determine the manner in which law helped assimilate labor, and immigrant labor especially, into the imagined national economy.¹¹

"Physical and Financial Strength for the World Struggle"

The story of the reform of workplace injury law begins in the second half of the nineteenth century, when three common-law doctrines defined legal responsibilities between employers and employees concerning workplace injuries. Generally, employers were liable for employees' injuries if they failed to provide a reasonably safe workplace, but they had recourse to three legal defenses that, more often than not, stopped employees from winning personal injury suits: assumption of risk, contributory negligence, and the fellow servant rule. "Assumption of risk" allowed employers to argue that injured employees had contracted for risks of which they were aware or should have reasonably known existed. "Contributory negligence" allowed employers to argue that employees who had been even only slightly responsible for their own injuries should not recover. And the "fellow servant rule" allowed employers to argue that employees injured by a fellow worker could not recover from the employer. These three

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doctrines "were part of the legal fiction of an employment contract in which the worker's presence on the job was held as largely creating a waiver of liability for whatever injury befell him."¹² In other words, employers' and employees' legal duties were ostensibly established by consent. Or, in the language of the law, they were established by the terms of a work contract, and only by contract. Consequently, employees, rather than employers, supposedly assumed the duties of workplace supervision amidst the dangers of explosions, crashes, cave-ins, and fires.¹³

Despite draconian doctrinal pronouncements, late nineteenth-century judges never halted workplace injury litigation for at least three reasons. First, in various states, plaintiffs successfully fought for exceptions to judge-made rules favoring employers. In one Massachusetts case, the state's highest court ruled that where an employee was injured by another employee who occupied a supervisory position, then an employer could not as easily invoke the fellow servant rule. This new doctrine, called the "vice-principal" rule, helped plaintiffs, although it was not adopted everywhere, and where it was, judges often created further exceptions. In addition to judge-made law, several states, mainly located in the mid-west, passed statutes abolishing the fellow-servant rule altogether. And in 1893, Congress passed the Safety Appliance Act, which mandated the use of the latest safety technology in railroads and penalized employers who failed to follow the law by restricting their legal defenses in litigation.¹⁴

Second, in the last third of the nineteenth century, companies were taking steps to develop partial compensation schemes, because workers relentlessly threatened lawsuits. This point is supported by evidence such as premiums that employers paid for lawsuit insurance, which in 1887 exceeded \$200,000, in 1900 exceeded \$7 million, in 1905 exceeded \$15 million, and in 1911 exceeded \$35 million. Insurance statistics suggest that companies prepared themselves for the initial stages of litigation while they settled out of court or prevented a suit from starting. And while appeals courts usually protected corporate defendants from lower-court rulings favorable to plaintiffs, not to mention federal courts in cases where plaintiffs and defendants were from different states, the mere threat of litigation, and the advantage of a lower-court ruling, often gave plaintiffs an edge in negotiating a settlement with a corporate defendant.¹⁵

Third, "an active plaintiff's bar, working on contingency fees, helped raise the value of [litigation]." The 1848 New York Code of

Procedure forbade "establishing or regulating the costs or fees of attorneys" and declared that "hereafter the measure of such compensation shall be left to the agreement, express or implied, of the parties." Thus, lawyers and clients entered into contracts without any initial exchange of money. The lawyer's fee was "contingent" upon winning or settling the client's suit.¹⁶ Encouraging litigation, contingency fees were identified by elite lawyers as contributing to social problems. Speaking in terms of professional solidarity, Michigan Chief Justice Thomas Cooley commented in a New York law journal in 1881 that such arrangements were "mere ventures," no better than a "lottery ticket," that they brought "the jury system into contempt," and helped create a "feeling of antagonism between aggregated capital on the one side and the community in general on the other." Yet, the contingency arrangement was protected as a matter of contractual freedom between clients and lawyers. Though judges like Cooley criticized the contingency fee for encouraging suits against companies, this particular creation of *laissez-faire* contractualism survived throughout the twentieth century.¹⁷

By 1900, though legal doctrine heavily favored employers, industrial workers found ways to fight or adjust those legal doctrines, institutionalize litigious practices under corporate insurance schemes, and negotiate deals with personal injury lawyers. Even employers complained that "doctrinal complexity and vacillation in the upper courts coupled with jury freedom in the lower courts" had weakened their defenses.¹⁸ Furthermore, Lawrence Friedman has uncovered evidence showing that in California railroads operated hospitals staffed with "railway surgeons" to offer its workers a kind of implicit bargain, namely that "people treated by railroad doctors do not sue."¹⁹

This brief survey of law and legal practice suggests that the arrangements available to litigants seeking compensation were complex and constantly evolving. But, for some observers from the late nineteenth century, this legal world seemed to constitute a formal common law "system."²⁰ One of the groups advocating that view was the Social Reform Club, which was founded in New York City in 1894. For members, who thought of themselves as "men of leisure" aiding organized labor, reform meant searching for models of good government from across the Atlantic.²¹ In particular, they idealized Europe's new workmen's compensation "systems," particularly the German Social Insurance System and the British Workmen's Compensation Act of 1897. These legal arrangements seemed superior

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to common law adjudication, and as bureaucracies staffed by trained professionals, their recreation in the United States effectively confirmed the self-understanding of middle-class reformers, whose identities were based in their own emerging sense of professionalism. But for one legal arrangement to replace another, both needed to be seen as whole systems subject to expert revision.²²

In addition to such organizations as the Social Reform Club, public figures helped advance the cause of workplace safety reforms by identifying the common law as a "system." Crystal Eastman, who in 1910 published her famous research study, *Work-Accidents and the Law*, served as Secretary to the New York Employers' Liability Commission, which drafted a workmen's compensation law for New York, the first in the United States. And in *Everybody's Magazine*, muckraker William Hard published articles on workplace injury law, which were reprinted as *Injured in the Course of Duty* in the same year as Eastman's study. A close analysis of the work of Eastman and Hard reveals some of the shared assumptions and conclusions of those who favored reengineering the common-law "system" regulating workplace injuries.

Born in 1881, Crystal Eastman was raised in a Congregationalist family dedicated to progressive, nondenominational Christianity. One anecdote from her childhood illustrates how she was at once liberated from received conventionalities and attached to certain legal habits of the American middle-class. On one occasion, Eastman's brother, Max, and a childhood friend formed an association known as "The Apostles of Nakedness" to encourage girls like Crystal to remove their stockings for swimming. To help, she recast Max's plea as a "sixteen point brief in support of the stocking proposal." If the "brief" was improvised to persuade her father, it worked, since he defended her decision to swim without stockings in the face of neighbors' objections.²³

When Eastman matured, she enrolled at Vassar College, and upon graduating, she completed a one-year Master's degree program in sociology at Columbia University. After Columbia in 1906, she enrolled at New York University School of Law, and as called for in the school's curriculum, she graduated in a year's time with the equivalent of what later would become the three-year law degree. A college-educated woman with a graduate degree and a professional degree, Eastman may have been exceptional in her day, but, like many other progressive New Yorkers descended from liberal Protestant, middle-class families, Eastman found her vocation in social reform

rooted in the methods of scientific investigation.²⁴ In the fall of 1907, she took an assignment with Paul Kellogg, editor of *The Survey*, to investigate fatalities occurring in Pittsburgh's workplaces.²⁵

Eastman's reflections upon her work in Pittsburgh reveal her evolving view of the relationship between her scientific research and her legal career. A few months into her work she wrote her mother: "This work interests me so much that I am dead sure I want to stop this investigating at Xmas time and get at my profession. ... I want to be really started with a good practice when I am thirty." As her work progressed, she came to realize that her sociological investigations were as fulfilling as practicing law: "Isn't it amusing how this two months' Pittsburgh venture has turned out? I don't mind now at all, it's a big thing I'm doing. Besides, I have thought of myself out of the feeling of *hurry* about law or my 'career.' I'm going to *live*, not hurry."²⁶

Eastman projected these subjective reflections on her career in objective statements prepared for the final report of her Pittsburgh research that she published as *Work-Accidents and the Law*. Clearly sympathetic to workers' injuries and deaths, Eastman dwelled on the professionalism that she witnessed among her subjects: "most railroaders would agree with the brakeman who said to me: ... 'There is a kind of fascination about [getting on a moving train]. You win or lose. It's a gamble. And then, it's not professional to get on at the side. No good railroader does it.'" Eastman's attention to workers' "professionalism" was framed by her Rooseveltian understanding of industrial work as soldiering: "It is the best of American manhood in its youth and strength that we sacrifice daily in the cause of transportation." For Eastman, "risk-taking is a part of the commercial end itself," and without risk-taking on railroads, there can be no railroads: "even with the most perfect equipment, human and mechanical, men will be injured and killed." She explained her assumption about the workplace most clearly with her observation that "extreme caution is as unprofessional among the men in dangerous trades as fear would be in a soldier."²⁷ By interpreting industrial work as a profession, Eastman expressed her objective claims about railroad workers in terms that reflected and affirmed her subjective position as a lawyer-sociologist. And, by identifying professionalism with soldiering, she also incorporated the industrial enterprise into the national enterprise with which she identified: "the railroads serve all, from the humblest to the most exalted, so constantly, so faithfully, that

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they have become to society what the power of motion is to a human being." She continued, "Suddenly deprived of them, the nation would lie nerveless and paralyzed."²⁸

Eastman's references to the nation took the form of bodily metaphors. The railroads figured as the nerves of the nation, without which it would be paralyzed. Her attention to the bodies of workers always required her attention to the body of the nation. The nation and the worker, each became figured in the other. Likewise, the language of risk-taking also seemed to incorporate labor into the nation. Talk of risk-taking, the dominant language of financiers, particularly struck Eastman. The daily carnage of railroad professionals rendered Wall Street verbiage manly, vital, heroic.

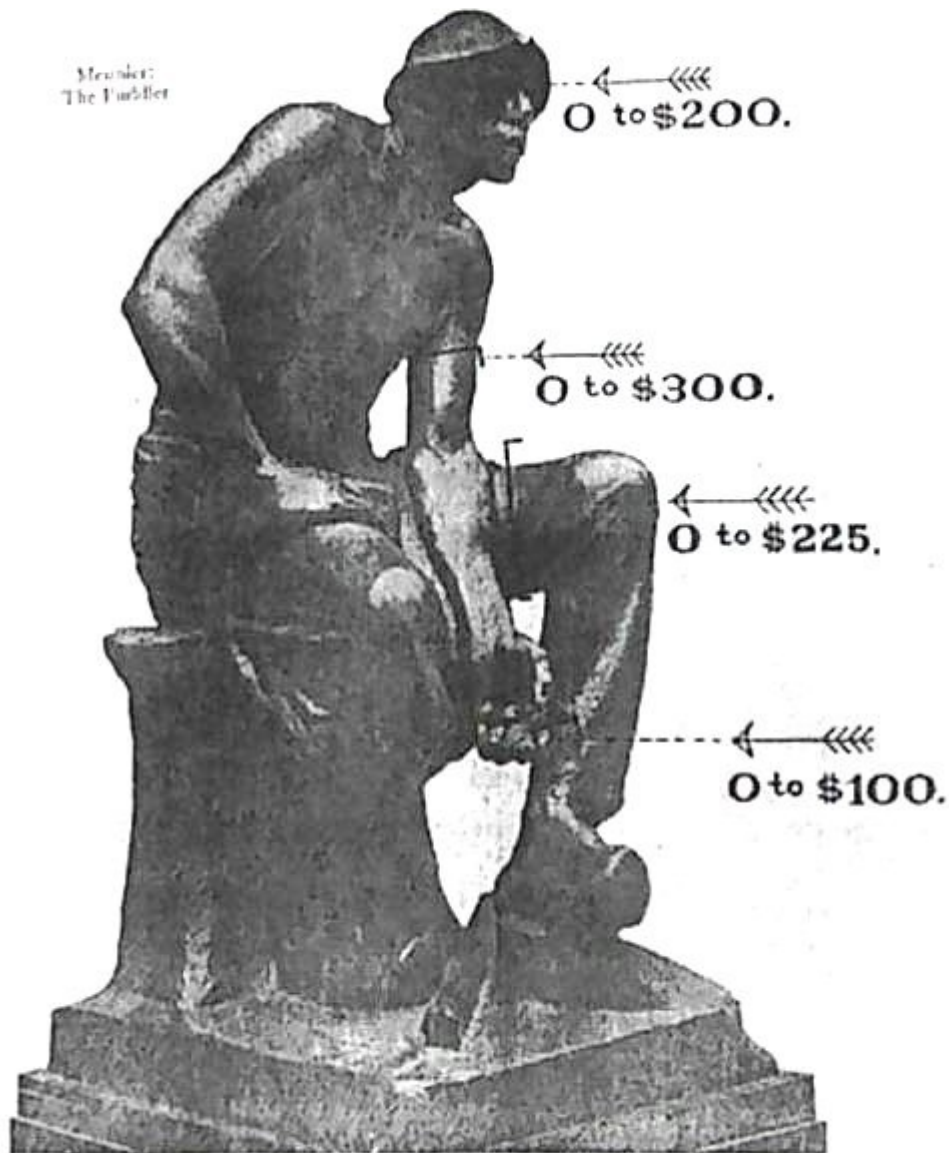
Imagining her identification with her subjects, as professionals engaged in a heroic national enterprise, Eastman analyzed the legal culture in which they worked together. She believed that workplace injury law should "make the lives and limbs of ... employees as important to the employer as the output." To accomplish that goal, though, society must consider the "economic forces that govern the employment of labor, and take into account the high degree of organization, the extreme division of labor, the speed and intensity, which characterize modern industry." By "take into account," Eastman meant recognize, accept, and improve the forces of industrialization. Furthermore, society must recognize that common-law rules governing the workplace were "complicated" and "expensive." She argued that "the economic helplessness of the plaintiff" required bringing suits on a "contingent fee basis." Although "plenty of honest lawyers" operated on this basis, "another class of lawyers – graphically called 'ambulance chasers' – seek out the injured." Ambulance chasers exploited their clients, taking almost half of any settlement as a fee, according to Eastman. To her credit, she did acknowledge that corporations had their own lawyers and claims agents working to negotiate settlements with workers before litigation ensued, but ambulance chasers and corporate agents were essentially the same beast: "The plaintiff's attorney who 'manufactures' a witness to fit his case, is no worse than the defendant's attorney who bribes a witness to disappear. The [law] is an encouragement to dishonesty, and both sides play the game." As a game, the common-law liability system "[causes] long delay" at "considerable expense to employers" and "burdens the state with the cost of much fruitless litigation." It was also "wasteful" and destroyed "good will between employees and employers." The reference to

"good will" notably recalled Justice Cooley's complaints in the 1880s about how contingency fees fostered "antagonism" between capital and labor.²⁹

By "substituting a compensation system," Eastman argued, an employer could assume accidents as "a limited and regular cost in his business to be reckoned in his selling prices." In lieu of such a "system," it was possible to widen employers' liabilities, but "there would be brighter prospects for the ambulance chaser; hence more activity on his part. There would be more chances of recovery against employers; hence greater temptation to fraud in the claim agent." In general, a workmen's compensation system was a panacea for the failures of the common law: "elimination of waste in distributing the loss, waste not only of time and money, but of good will." Under an administrative legal system, compensation would follow "automatically," calculated rationally and "based in amount upon wages and extent of disability."³⁰

To illustrate both the failure of the current system and the promise that a more efficient system offered, Eastman included in her publication a graphic representation of a sculpture of a male worker with superimposed arrows pointing to the sculpture's various body parts, reproduced below in "Figure 3.1. Valuations Put on Men in Pittsburgh in 1907." Next to each arrow was a range of dollar amounts. The sculpture's eye was labeled "0 to \$200." Its leg, "0 to \$225." Although she likely intended to use the image to make a point about how the current system of compensation placed little value on workers' bodies, it clearly demonstrated that dollars could abstractly represent the human figure and that injured body parts could be valued like commodities. The precise drawing of arrows, the identifications of limbs and organs, the ranges of dollar – all represented an aesthetic expression of the possibilities of administrative law, of an industrialized whole automatically valuing its maimed parts.³¹

Figure 3.1. Valuations Put on Men in Pittsburgh in 1907³²



Most reviewers of Eastman's Pittsburgh study received it warmly. *The New York Times* called it a "comprehensive" attempt to "measure the economic loss society bears by reason of preventable accidents." *The Nation* described Eastman's book as aiding the movement to "substitute for our outworn employers' liability law a more rational method of distributing accident losses." A reviewer for *The Engineering Record* explained that her work offered "definite facts and not mere guesses" and urged that "remedial steps must be taken

promptly by owners of these industries." Another reviewer, writing for *The Economic Bulletin*, praised Eastman's book for showing that "The way out of existing evils [of workplace injuries] is through legislation that will eliminate injustice and waste by a rational distribution of initial burdens." All of these reviews emphasized the need to reduce industrial inefficiency by rationally calculating the costs of accident prevention measures and efficiently administering benefits.³³

While conducting her scientific research in Pittsburgh, Eastman had been urged by a reporter for *Everybody's Magazine* to write popular articles describing her work.³⁴ That reporter, William Hard, wanted to join forces with Eastman, because he already had been publishing articles on workplace injuries. Though Eastman declined, explaining that it would have diverted her from survey work,³⁵ it is unsurprising that the two reformers discovered each other. Like Eastman, Hard was the son of religious parents from upstate New York. Although he never studied law or sociology, he became interested in reform following his move to Chicago, where he involved himself in such institutions as Jane Addams's Hull House.³⁶ And like Eastman, whose discussion of the railroads recalled Theodore Roosevelt's rhetoric, Hard made sense of his own commitment to reform by using the President's image.³⁷ As he explained in his eulogy to Roosevelt, published in the *New Republic* in 1919, Roosevelt "preached universal liability to natural survival. He was preaching personal character. No submission, no character. No limitless loyalty, no manhood. No loss of self in America, no self. No life militant and at risk, no life triumphant and at joy."³⁸ Even more so for Hard than for Eastman, Roosevelt symbolized Americanism based in the "habit of useful self-sacrifice."³⁹

From Hard's perspective, workmen's compensation laws, rather than eliminating the dangers of the workplace, secured the "limitless loyalty" of employees despite those dangers. In conscious recognition of Roosevelt's influence, Hard argued, "both imperfection of machinery and carelessness of human beings, may be diminished by wise laws, but they cannot be eradicated. Accidents must happen. And therefore the compensation for the accident ought to be inevitable and automatic, like the accident itself." Resonating with Eastman's work, Hard argued for an "automatic" compensation system, thus intensifying the industrial system that produced the injuries needing attention. And like Eastman, Hard advocated a program for reform that relied upon a military metaphor for the industrial worker: "Why shouldn't the

industrial soldier," he asked, "meeting his death in forms as terrible as those of any battle-field, die knowing that he will leave, if not glory, at least a few years' food to his family?" Both these reformers thought of factory workers as professional soldiers entitled to industrialized compensation for industrial war.⁴⁰

Perpetuating inefficiencies in the midst of battle, the common-law system earned Hard's enraged contempt. "I am not attacking the courts. ... I am going farther," he belligerently announced. "I am attacking the law itself." In short, "*the deep-down vice of our present system of awarding compensation for accidents is that it depends on litigation.*" Portraying personal injury law as a "lottery," as Justice Cooley had, Hard complained "uncertainty is bad for honest people," because it "raises up a pestilential brood of unscrupulous litigants to plague American employers." There were not only "unscrupulous litigants," but also "The injured workmen's lawyers!" who, at most, "leave the injured workman two thirds of the final verdict," because of contingency fees. Hard concluded that litigation was not appropriate for workers: "Litigation is a rich man's game, like automobiling or yachting." Such rhetoric cast litigation in terms of leisure, placing workers in a position of deference and duty to the leisured. Moreover, according to Hard, "There is a limit to the amount of new wealth which can be produced in the United States in any one year. And therefore there is a limit to the amount of compensation which can be granted in any one year to injured workmen." To keep America's economic engine operating at peak performance, Hard argued, it had to be supervised and taken out of the realm of legal uncertainty.⁴¹ For Hard, current legal practices were the problem, and so new legal practices were to be the solution. Social reform inextricably entailed legal reform, as legal efficiency collapsed into social and industrial efficiency.

When Hard republished his articles as *Injured in the Course of Duty*, he solicited "expert opinions" from several figures, who agreed to write short essays for the book. One employer, Charles Hulburd, explained: "I favor legislation tending to assess accidents upon the employer [because it] would reduce litigation and discourage the bringing of suits for unjust claims, and because I believe that in this way the total cost to the community ... will be less than it is under the present system." United Mine Workers' President John Mitchell concurred, claiming that workmen's compensation laws would "obviate the necessity or possibility of long and expensive litigation."

Lawyer Louis Brandeis, later United States Supreme Court Justice, argued, "the volume of wasteful and demoralizing accident litigation which congests our courts must be reduced." Notably, Brandeis' use of the word "demoralizing" related to the word quasi-military word "morale," which implied a person's sense of duty with regard to a mission. Hard's experts' most persuasive arguments for social progress centered on legal reforms intended to enhance and refine factory routines.⁴²

Other reform groups that had emerged in the 1890s and early 1900s easily appropriated the discourse of industrial efficiency that William Hard and Crystal Eastman helped develop. Quickly taking the lead was the National Civic Federation, which was founded in 1900 and headquartered in New York City.⁴³ Promoting cross-class cooperation by urging "control of big business by government enforced regulation of big business," in 1909 the Federation seized upon the workmen's compensation movement.⁴⁴ Businessmen at first greeted the Federation's efforts with skepticism. For example, Benjamin McFadden, president of the Commercial Envelope and Box Company, was anxious about the Federation's intentions after attending one of its meetings on workmen's compensation laws in 1910: "After being through the courts a number of times with cheap 'ambulance chasers,' and they being so numerous in every locality, I gained the impression that they were working into the National Civic Federation."⁴⁵ Eventually, McFadden and others grew to feel less anxious, mostly because the leaders of the Federation characterized practices of litigation as selfish in contrast to the selflessness of factory work. For example, Federation president August Belmont was quoted by the *New York Times* as pointing out: "[I]t is the first duty of an officer to look after the welfare of his men and to avail himself of every opportunity to preserve the military unit from injury or destruction. There is an analogy between this duty of the military officer toward the soldiers of his command and the obligation of the employer, who bears a similarly responsible relation to the welfare of the wage earners who fill the rank and file of the voluntary armies of industry." Such remarks were intended to reassure businessmen like McFadden of the Federation's commitment to passing enlightened laws bringing factories' rank and file in line, by scientifically managing and systematically protecting would-be litigants in the workplace before they reached the courtroom.⁴⁶

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Notably, reformers' portraits of America's worker-soldiers were often contrasted to portraits of accident-prone immigrants from southern and eastern Europe. For example, Peter Roberts, who in 1912 published a study of "the industrial and social life of southeastern Europeans in America," accepted the idea of industrial work as soldiering: "The evolutions of a disciplined army, under skillful commanders, is as nothing compared with [an industrial plant's] army of producers under captains of industry." According to Roberts, "The foreign-born workers form an essential factor in the thirty-seven million workers of America" but were "awkward in their movements, they are not quick, they respond slowly." Roberts did not advocate immigration restrictions: instead, he encouraged employers to assume a paternalistic relationship to immigrant workers: "if it is a crime to put poison in the hand of a child, is it not also an equal crime to harness an ignorant farmer to an electric rod or a dangerous machine, and let him take his chances?" Similarly, another observer explained: "as a peasant, [the immigrant] has been accustomed to the slow, deliberate, simple processes of an old-fashioned type of agriculture, and being of the unagile type of mind that such a life develops, lacks the power to make the quick adjustments called for in the rush of modern industry."⁴⁷ In the factory, where work was monitored for efficiency, workers' physical movements were coordinated to maximize production, while differences in movements seemed rooted in foreign manners subject to benevolent assimilation.

Figures like Eastman, Hard, and Roberts helped create a reform program by which foreign-born workers could overcome their "unagile type of mind" and their "slow, deliberate, simple" manners. Their shared vision of reform linked two different discourses of workplace "inefficiency." On one level, the association between foreigners and improper lawsuits was based on prejudice. In 1929, after a full-scale investigation into ambulance chasing in New York, one lawyer told members of the New York Bar Association that such lawyers "could not speak the King's English correctly. ... These men by character, by background, by environment, by education were unfitted [sic] to be lawyers."⁴⁸ Yet, at the same time, the idea of the impropriety of lawsuits was expressed in racial terms because of the imperative of industrial efficiency. Workmen's compensation laws were designed to protect the army of worker-soldiers. In an important way, these laws resembled the practice of administrative law at federal immigration inspection stations. Like Ellis Island's authorities resisting immigrants

who hired lawyers, reformers fought adversarial legal practices to increase the productivity of the workplace, and in the process, to Americanize it as the country indulged its global ambitions. Or, as Hard explained, whereas litigation was "A weakening of the Human Power of the Nation in International Competition," workers' compensation promised to be an efficient "Saving of Physical and Financial Strength for the World Struggle."⁴⁹

With the forces for reform rallied in support of Eastman's investigative work, New York State took the necessary steps to pass the first state workmen's compensation law. In 1909, New York Governor Charles Evans Hughes appointed Eastman as Secretary to the state commission to investigate reforming workplace injury law. Her brother felt that the commission "practically turned over to her the drafting of a workmen's compensation law for New York state."⁵⁰ Though Max may have been exaggerating slightly, his observation was accurate: Crystal Eastman was elected Secretary to the commission, its only salaried member, and in addition, she had just completed the country's first major professional study of the issue. Without doubt, she was the commission's expert, its driving intellectual force.⁵¹ The year after Eastman was appointed to the New York commission, the same year that her exhaustive study was published, New York State passed into law the Workers Compensation Act of 1910, also named the Wainwright Law.

The law itself was fairly modest, matching the tone of pragmatism that characterized Eastman's Pittsburgh research. It extended compensation to workers only in the most dangerous of trades and compensated them only when an accident was due to an employer's negligence. It also removed the possibility of workers using the state's courtrooms to seek compensation in cases where the injured worker used the new administrative apparatus, as called for by Eastman and Hard.⁵²

New York's workmen's compensation law may seem modest, simply representing a change in governmental methods of regulating industrial accidents from courts to efficiency experts, rather than a redistribution of wealth. In a different context, Theda Skocpol has made a similar point: "Efforts by reformers to persuade U.S. governments to enact European-style workmen's compensation succeeded – up to a point – only after business, workers, and the educated public alike had become severely dissatisfied with America's preexisting governmental methods of dealing with industrial accidents." Such analysis, mainly offered from the perspective of

"state-building," overlooks how such legal reforms energized a deeper battle over legal representation, one in which suing figured in opposition to soldiering. Though the middle and upper classes were not prepared to extend an array of social benefits, under the banners of militarism and nationalism they eagerly instituted new administrative duties in the workplace in exchange for an end to ambulance chasing.⁵³

Eastman won an important legislative victory, but the story of New York's legal reform of workplace injury law did not end there and, in fact, had only begun. On March 24, 1911, New York State's highest court, the Court of Appeals, declared the compensation law "unconstitutional" in *Ives v. South Buffalo Railway Co.* The decision had its origins in a case involving a railroad switchman who was injured and demanded judgment for compensation in accordance with the new law. On review, the New York Court of Appeals voided the legislature's act on the ground that the law "is taking the property of A and giving it to B, and that cannot be done under our Constitutions." Although the law was no more redistributive than the common law "system" it replaced, still it aroused the Court's vigilance in matters of legislative reform. And so with *Ives*, the Court of Appeals legally halted Eastman's efforts. But in an instance of historical coincidence the full import of the *Ives* decision was dramatized one day later when a fire broke out in the Triangle Shirtwaist Company factory, killing 146 people, mostly immigrant women, in twenty minutes.⁵⁴

The worst fire in New York City's history, the disaster revitalized public support for the compensation laws that the Court of Appeals had voided in *Ives*. "[C]oming as it did ... this terrible disaster stood out in bold relief and emphasized very strongly the shortcomings of existing laws, and the laxity of the administration and enforcement of such laws as did exist."⁵⁵ Representing the voice of labor at a rally held in New York City one week following the fire, socialist lawyer Morris Hillquit argued that there was a "close and intimate connection between" the Triangle fire and the "nullification of the Workmen's Compensation Act." Although critical of New York's workmen's compensation law, calling it "timid" and "ludicrously narrow both in scope and amount of compensation,"⁵⁶ Hillquit used it to condemn the *Ives* decision: "Last year the legislature of New York made an attempt to minimize the possibility of [fires like those at the Triangle company] by passing a Workmen's Compensation Act which would make the employers in some trades liable for all injuries to their workers, and thus force them to adopt proper safeguards in their works."⁵⁷

In addition to enraging leaders like Hillquit, the disaster added fuel to reformers' fight for legal reforms. At one rally following the fire, Columbia University economist and reformer E.R.A. Seligman complained that, perhaps with a veiled reference to *Ives*, "we are welting in a chaos of fire protection laws without any responsible centralized authority to enforce them and we have what is in consequence an anarchy of administrative impotence."⁵⁸ August Belmont publicly acknowledged that "the recent [Triangle] fire ... aroused public attention to the dangers and hazards of modern industrial life."⁵⁹ As a single, dramatic event, the Triangle Shirtwaist fire disaster brought together a political coalition that fought for administrative reform of workplace injury laws. In its aftermath, these groups continued the work begun by Crystal Eastman, William Hard, and the National Civic Federation.

"The Democracy of Our Courts Has Been Shaken"

The Triangle fire has had many sympathetic chroniclers yet few analysts. Among the analysts, historian Arthur McEvoy has argued that the fire helped transform, at a broad cultural level, the ideology of legal causation around the turn of the century. According to McEvoy, contemporary interpretations of the disaster portrayed work accidents as resulting from industrial progress, thus predictable from a statistical point of view and so subject to rational, legal administration. But, McEvoy underemphasizes how members of the Social Reform Club, as well as muckrakers Crystal Eastman and William Hard, had developed beforehand new ideas about legal causation, and how their ideas had been disseminated by organizations such as the National Civic Federation. Rather than altering conceptions of causation, the Triangle disaster is historically significant because in its wake labor leaders enthusiastically joined reformers in portraying litigation as inferior to administrative supervision, helping to prepare the way for the administrative state to supervise factory work. In other words, the tragedy must be analyzed in terms of the politics of legal representation, of the on-going process by which soldiering was legally opposed to suing.⁶⁰

At the time, some labor leaders may have been critical of most lawyers, but not all were against lawyering. Lawyer Morris Hillquit, for example, had been consistently critical of workmen's compensation laws, complaining that administrative reform "takes nothing from capital, it gives nothing to labor ... [but] seeks to divert the movement

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of the workers into the shallow channels created by [the Federation].” Eventually though, labor leaders like Hillquit came to advocate workmen’s compensation laws, but only after the Court of Appeals had voided these laws in the name of property rights, and after the owners of the Triangle Company had been tried on charges of criminal homicide following the fire. Unlike reformers who employed social scientists and journalists to promote their particular vision of legal change, organized labor discredited courtroom justice by scrutinizing the Triangle criminal trial.

The trial began on December 5, 1911 and ended three weeks later. In strictly legal terms, the case involved trying Triangle’s owners, Max Blanck and Isaac Harris, for first-degree manslaughter. Assistant District Attorney Charles Bostwick argued that, at the time of the disaster, a door on the factory’s ninth floor had been locked in violation of state labor laws, leading to the death of Margaret Schwartz, a worker whose body had been recovered near the door. Though others had died in Schwartz’s vicinity, the Assistant District Attorney had good reasons to try Blanck and Harris for Schwartz’s death, and her death alone. Bostwick probably reasoned that if he lost the case, his office would try the defendants for the deaths of her co-workers on similar, perhaps lesser, charges.⁶¹

The legal significance of the case, however, was broader than the criminal indictments. If Blanck and Harris had been found guilty of homicide, it would have been harder for them to thwart pending civil suits. As the defendants’ lawyer complained in his closing remarks, “witnesses for the State had an interest in seeing Harris and Blanck convicted, because they had lawsuits pending.” Thus, although technically the case was a criminal action, it had many of the appearances of a personal injury suit. To employ an awkward anachronism for purposes of illustration, we might say that the criminal case against Blanck and Harris simultaneously functioned as a class-action lawsuit, a particular kind of modern civil action in which a court certifies a class of plaintiffs and gives standing to one representative class member, like Margaret Schwartz in this instance. For this reason, the trial operated on two levels: the defendants’ criminal culpability was publicly vetted, but workers and their families acquired the opportunity to lay a foundation for future civil litigation.⁶²

With so much emotionally, financially, and politically at stake for so many different interests, the trial invited constant disruptions. Shortly before Judge C.T. Crain opened the proceedings, a crowd of

women gathered in the corridors of the Criminal Courts building. As the two defendants stepped out of an elevator, the women shrieked "Murderers! Murderers!" in English as well as Yiddish and Italian. A melee between police and the women ensued, and officers briskly shoved Blanck, Harris, and their lawyer, Max Steuer, into a nearby corridor that led into the courtroom, thus ending further confrontation. Newspaper reports were ambivalent in formulating their descriptions of the character of the crowd, observing that the women were "hysterical" and "excited" but also that they had "formed into a line and marched about the corridors." Reports of line formations and marching suggest that many women in the crowd were members of the union that represented Triangle's workers.⁶³ Nonetheless, newspapers dwelled on the crowd's "hysteria" because they were predisposed to imagine women in passive social roles. To a large portion of the reading public, reports of women's "hysteria" seemed to confirm dominant expectations of their lack of self-control and their dependence on men.⁶⁴ The cries of "murderers!," however, unmistakably registered the reality of workplace violence, which was only too familiar to Triangle's workers who knew that both industrial work and factory strikes entailed actively risking life and limb. Labor leader Rose Schneiderman brought out the history of workplace dangers in a speech at a mass rally following the Triangle fire: "This is not the first time girls have been burned alive in the city. Every week I must learn of the untimely death of one of my sister workers. Every year thousands of us are maimed." Triangle's workers did not need Schneiderman's speech to tell them what they knew only too well: that the Triangle factory itself had had five different fires since 1902.⁶⁵

With the protests outside the courtroom, court officers made every effort to spot any appearance of class conflict inside, and they paid particular attention to the (all male) jury. During the selection of the jury, both Steuer and Bostwick screened talesmen by asking them whether they were members of labor unions or whether they read the workers' daily, the *New York Call*. The jury finally chosen consisted almost entirely of local businessmen.⁶⁶ By picking the jury in this manner, the lawyers promoted the message that labor's interests had no place there. Though Triangle's working women did not accept that message, as proven by their protests during the first few days of court, their presence was effectively erased from the courtroom. Except in one crucial respect: Steuer and Bostwick called 155 witnesses most of whom were survivors of the fire. During their testimony, the debate

over reform of workplace safety laws seemed to assume secondary importance to the outcome of the trial. But, by calling so many witnesses, the two lawyers started a marathon of testimony that generated several courtroom disruptions, which eventually were associated with the futility of litigation.

For example, in one examination, Triangle worker Kate Gartman testified that she had tried to open the suspicious door as the fire blazed but found it locked, and was saved after being pushed into a crowded elevator. On cross examination, defense attorney Max Steuer "tried to confuse her on certain details" by asking her whether she "was as cool at the fire as she stated she was." Gartman cleverly rebuked him: "I was trying to be as cool as possible. If I were not cool I would have jumped out through a window. Of course, I was not as cool as you are now." Boxed in by Gartman's using his lawyerly strategy against himself, Steuer lamely retorted, "I am not half as cool as you think I am," a reply that provoked "a titter in the courtroom." Using sarcasm, Gartman thus stole a moment on the stand to air the protests of women picketing outside the courtroom.⁶⁷

In the examination of Yetta Loomitz, another witness for the prosecution who appeared particularly nervous (she "jumped to her feet constantly" as she talked), Steuer "savagely cross-examined" her because she seemed vulnerable. But, as the *Call* observed: "Every one in the court room saw that the girl had suffered a nervous collapse from the fire." As Loomitz herself may have realized, the effect of appearing "extremely nervous" while testifying "only intensified the horror of the fire and gave weight rather than detracted from the basic facts of her testimony."⁶⁸

Many workers effectively used the witness stand to attack Blanck and Harris, but a smaller number disrupted the proceedings to protect their jobs in the face of possible employer retaliation. William Harris, a "Negro" according to the *New York Times*, "caused a ripple of laughter" in the courtroom confronting the prosecutor's questions intended to demonstrate that Triangle owners had dispatched him to the District Attorney's office to testify that the door had been unlocked. Harris's testimony caused laughter because it repeatedly evaded the District Attorney's questions. "Who sent you to the District Attorney's Office?" asked Bostwick. Harris replied, "Who me?" "Yes, I mean you," said Bostwick. Harris asked, once again: "And you all axes me who done sent me to de District Attorney's Office?" Continuing in this fashion at length, Harris finally exasperated the judge, who uttered at

one point: "That's no answer, strike it out." And Harris echoed, "Dat's no answer, strike it out." Since the *Times*' purpose in reporting Harris's testimony was to show how unhelpful he was, it is likely Bostwick ended the examination in short order. Editors of the *New York Times* read Harris's testimony as amusing because it seemed unintelligent to them, thus explaining why from among all witnesses (many of whom required translators) only Harris's testimony was printed in dialect. However, a more persuasive reading of his testimony is that he had prudently mocked his interrogator to dodge questions, thus protecting his job with his employers. And if Harris hoped to help the People's case, he also met that goal, since the jury could evaluate whether the defendants had tried to manufacture the testimony of witnesses.⁶⁹

Newspapers thus recorded instances of workers exploiting attorney's examinations by turning them into opportunities for resisting their questions, but the press also documented the cleverness of the two attorneys. The *New York Call* complained that Max Steuer resorted to "twists and loopholes" in examining prosecution witnesses and that his clients had employed detectives "to trail any and every man in whom they saw an unfavorable witness." Furthermore, Bostwick solicited testimony showing that employees who testified that the door was open had received an increase in their wages immediately after the fire. For his part, Steuer tried unsuccessfully to get witnesses to testify that union lawyers had coached workers to say that the suspicious door had been locked.⁷⁰

Eager to win his case, Steuer helped his clients pursue extramural strategies to disrupt Bostwick's efforts and to attack unfriendly witnesses. Because of his own background, Steuer's actions constituted a cultural link in the on-going workmen's compensation reform movement. Born in Bohemia in 1870, he had immigrated to America with his family when he was six, settling in Manhattan's Lower East Side. His parents spoke Yiddish, but Steuer himself "had no glimmering of even the basic factors of any foreign tongue," although he was acquainted with some Yiddish words and phrases. He was educated at City College and then entered law school at Columbia University and did reasonably well, receiving a prize for his scholarly achievements. With recognizably mainstream attitudes towards law – "When the subject came up he liked to refer to law as an exact science" – Steuer graduated with honors in the 1890s from what was then New York's most prestigious law school. Suitably ambitious, he sought a

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clerkship in a law office but could not find one. Then, he unsuccessfully sought a salaried position with the firm of Nadal, Jones & Moulton, which specialized in the corporate defense of personal injury suits. According to his son, "Today, the honor graduate does not have to solicit a position, he is solicited, regardless of race or creed." Though that statement is a slightly ambiguous interpretation of his father's post-graduation predicament, it is the clearest one that exists showing that Steuer could not assume a clerkship or an associate position because he was Jewish. Thwarted from taking the career path that so many of his classmates effortlessly followed, Steuer started a legal practice that was distinctly opposite the one that he had hoped to take at a large law firm, where he would have earned his income defending some of the largest and most powerful corporations in the New York City area. Instead, Steuer's first clients consisted of people who lived and worked in the Lower East Side, people who, when they were not suing one another, usually were suing the clients that kept firms like Nadal, Jones & Moulton profitable.⁷¹

Steuer practiced many different areas of law on the Lower East Side. One case that brought him early notoriety involved the enforcement of a parade permit to allow a funeral procession of an Orthodox rabbi.⁷² Most of his cases, however, were less community-conscious. He often represented clients in personal injury suits against defendants such as the Metropolitan Street Railway Company and the Third Avenue Railroad Company. And he represented real estate owners in property disputes, merchants in commercial transactions, husbands and wives in divorces, and even unions in membership disputes.⁷³ In fact, among the merchants whom Steuer had represented in civil actions were Blanck and Harris, who probably hired him in the Triangle case because of his earlier services.⁷⁴ The notable consistency in the first fifteen years of Steuer's lawyering is that his legal practice realized the imagined community of the Lower East Side – through funerals, contracts, divorces, and personal injury suits.⁷⁵

As a leading lawyer of the Lower East Side, Steuer must have been a troubling figure for many who followed the Triangle trial in the newspapers. On the one hand, his skillful jousts with disruptive witnesses were a sign of his talents, even a source of pride to the community in which he worked. The *New York Call* was especially impressed with Steuer's physical mastery of the courtroom. At one point, the *Call* reported: "The conduct of Steuer yesterday was really a study in gesture. His every motion was studied, and calculated to

impress the jurors and discredit the evidence of the State." At another: "Steuer then began to lead the witness through what might be called a course of legal gymnastics to trap her." Again: "[Steuer's position] made it impossible for the jurors to see the witness' face. And Miss Wiener's face was well worth seeing. She was not only good looking, but honesty was written in it."⁷⁶ But on the other hand, Steuer's skills also betrayed the community, which had just sacrificed the lives of over one hundred women to the factory owned by Blanck and Harris.⁷⁷

Steuer's presence in the trial as a troubling figure meshed with Eastman's and Hard's claims about workplace injury litigation. Insofar as Steuer mirrored common representations of the ambulance chaser – he was an immigrant, had mostly immigrant clients, fought railway and railroad companies in personal injury suits, and was possibly involved in the Triangle owners' efforts to manipulate witnesses – he fit reformers' claims that lawyers were an unreliable means of securing justice for workplace injuries. Again, according to Crystal Eastman, the "common law system" was inefficient because attorneys turned law into a game: "The plaintiff's attorney who 'manufactures' a witness to fit his case, is no worse than the defendant's attorney who bribes a witness to disappear. The [law] is an encouragement to dishonesty, and both sides play the game."⁷⁸ Thus, accusations of pay-offs and witness manipulation against Steuer, and the fact he was working for the defense, dramatized reformers' arguments about personal injury litigation generally.

The Assistant District Attorney's actions also contributed to this process. On the last day of the trial during closing arguments, Bostwick summarized his case, taking the opportunity to characterize as a group the witnesses he had called. Responding in part to Steuer's claims that union lawyers had prepared witnesses, Bostwick asked the jury, "Are all of this army of little workers perjurers?" According to the prosecution, then, the jury was to see the Triangle women as an army who had endured casualties. If only in a passing manner, the District Attorney thus deployed the discursive logics in which worker-soldiers figured in opposition to ambulance chasers.⁷⁹

On the last day of the trial as the jury prepared to deliberate, Judge Crain gave them a controversial instruction about what legal standard to apply to find the defendants guilty: rather than finding Blanck and Harris criminally negligent for failing to know whether the door was locked, the jury would have to find that Blanck and Harris knew in fact that the ninth-floor door had been locked at the time of the fire. With

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that charge, the judge finished his instruction, the jury left to deliberate and returned to the courtroom about eighty minutes later to announce that they had acquitted the two defendants.⁸⁰ Their acquittal outraged most New Yorkers. A *New York Times* editorial remarked: "nothing has been accomplished except a seeming confirmation of the already too widespread distrust of courts and juries." An editorial appearing in the *New York Daily Tribune* concurred: "The monstrous conclusion of the law is that the slaughter was no one's fault, that it couldn't be helped, or perhaps even that, in the fine legal phrase which is big enough to cover a multitude of defects of justice, it was 'an act of God.'" The president of the International Ladies' Garment Workers' Union concluded: "the democracy of our courts has been shaken by this decision, as nothing else could shake it."⁸¹

Leading the way for organized labor's response, the *New York Call* urged that unions "should be relied upon to secure workshop safety denied by laws and courts." The paper demonstrated that "records show indictments are quashed or soon forgotten" by providing an article that catalogued the repeated failures of litigation in securing safer workplaces. Having made the point that litigation was futile, the *Call* reported that Jacob Panken, an attorney for the Ladies Waist and Dress Makers' Union, had sent a letter to New York state's Factory Investigating Commission recommending "the appointment of a corps of voluntary inspectors to be selected by the unions to inspect factory conditions." Presumably, Panken's inspectors would have had legal power, otherwise his making recommendations to a state commission would have been without purpose. By seeking government power for labor, Panken thus portrayed the factory as a space for control while expressing a desire to marginalize lawyers from it.⁸²

Though acquitted, Max Blanck and Isaac Harris endured further legal troubles. In the spring of 1912, Steuer once again appeared in court, in front of Judge Samuel Seabury, defending his clients on new criminal charges. He argued that prosecutors' zeal violated constitutional prohibitions against citizens being tried twice for the same crimes. Judge Seabury created a special jury, and he directed them to find on constitutional grounds that the defendants could not be tried again. The jury found as Seabury directed without deliberating. Months later though, Blanck and Harris faced new problems when state inspectors investigated the Triangle factory and found doors in the factory to be locked: the owners were fined \$20. With the worst behind them, on March 11, 1914, the two factory owners settled the

pending civil litigation involving the Triangle fire, when 23 individual suits were settled at the rate of \$75 per life lost.⁸³

Meanwhile, the shock of the acquittal energized the workplace reform movement. In Richard B. Morris's estimation, "Had Steuer lost his case, it is doubtful whether the social consequences of the Triangle fire would have been as far-reaching." Most important, the verdict made the work of New York State's Factory Investigating Commission seem more urgent. Called into existence in the face of protesters' demands after the fire, the commission was legally established by the state on June 30, 1911 and was staffed by several prominent politicians, including Robert Wagner, its Chair, as well as Alfred Smith, Samuel Gompers, Mary Dreier, and Frances Perkins. Its main mission, which chief counsel Abram Elkus announced at its first meeting on October 14, 1911, was to remind the public that "It is the duty of the state to safeguard the worker not only against ... the accidents which are extraordinary but also against the incidents which are the ordinary occurrences of industrial life." The language of "duty" was no longer simply deployed to create piecemeal administrative remedies: the Factory Investigating Commission adopted it as a constitutive metaphor for reforms aimed at safeguarding workers in "the ordinary occurrences of industrial life."⁸⁴

For its part, the Triangle fire trial "preserved the momentum of the progressive effort until the commission finally released its first report." Having been given sweeping powers to investigate fire hazards and general working conditions in the state, New York's Factory Investigating Commission disposed of the need for unions to dispatch "volunteer inspectors" to factories, since its own members inspected first-hand more than 3,500 factories throughout New York state from 1912 until 1915. During this flurry of activity, the commission repeatedly recommended that the state legislature establish new administrative bodies to supervise the workplace, and in 1912 it helped to secure an amendment to the New York constitution that permitted enforcement of a new workmen's compensation law. The Commission also lobbied successfully for other statutes concerning safety regulations, working hours, and child labor, all of which survived the Court of Appeals. Frances Perkins, Commission member and eventually Secretary of Labor for President Franklin Roosevelt, appropriately summarized the Commission's efforts: "The extent to which the legislation in New York marked a change in American

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political attitudes and policies toward social responsibility can scarcely be overrated."⁸⁵

Conclusions

With the passage of New York's second workmen's compensation law in 1913, a reform coalition came together in an unprecedented political movement. In the process, reformers consistently portrayed personal injury litigation as the remnant of a laissez-faire common-law system that exploited workers. By contrast, they heralded workmen's compensation laws in the name of social progress. Despite the triumphalist rhetoric of reformers, the enactment of these reforms fundamentally manifested persistent habits. Administrative reform of workplace injury law represented a victory for professionalism, which itself was rooted in the discourse of "duty" promoted by such figures as Theodore Roosevelt. As one manager of an insurance company put it in 1911: "If the various States did their duty wholly and fully in this matter, there would be a power over all the people, the employers, their representatives in the factories, the foreman and superintendent, and the work people themselves, and that is what is wanted."⁸⁶ What the reform movement accomplished towards that end was that it mobilized professionalism against "ambulance chasing." And twenty years later, in the middle of another battle against such lawyers, proposals would again emerge for laws mirroring similar to workmen's compensation laws to halt the explosion of litigation involving automobile accidents.⁸⁷

If in New York in the early twentieth century it seemed the state's imperative to recognize workers as good soldiers, and not litigants, then what avenues for cultural resistance remained? One area of investigation is, of course, the very administrative system that was enacted after the Triangle fire. In New York State, the workmen's compensation law created a commission that was given specific judicial powers to review discrete cases. But, since the "general principle of administration by a commission is that the commission shall pass upon all question of dispute" without common law review, administrators tried to keep lawyers away from claimants, since "ordinarily a claimant would not need an attorney to represent him in proceedings before the commission, for those proceedings are free from any formalities." Without further research into this subject, we can only speculate that the operation of the mechanisms of power in

administrative hearings probably mirrored the legal practices that appeared on Ellis Island.⁸⁸

Nonetheless, administrative reforms still eluded places such as city roads, sidewalks, and streetcars. Indeed, it is there that ambulance chasing thrived; it is also there that millions of men and women who could not otherwise afford an attorney agreed to contingency fee arrangements that made personal injury suits possible. Many of these plaintiffs, perhaps most of them, were the sons and daughters of European immigrants or were immigrants themselves. Consequently, ambulance chasing potentially defied the trajectory of legal thought and practice in two ways: it perpetuated litigious social relations in the face of a dominant reform movement that emphasized efficient, administrative arrangements; and, it disrupted the movement's nationalist, racialist overtones that the Rooseveltian discourse of the "worker-soldier" emphatically communicated.

¹ See generally, Frederick Binder and David Reimers, *All the Nations under Heaven: An Ethnic and Racial History of New York City* (New York: Columbia University Press, 1995), 93-95; David Hammack, *Power and Society: Greater New York at the Turn of the Century* (New York: Russell Sage Foundation, 1982), 31-41; and Leon Stein, *The Triangle Fire* (Philadelphia: J.B. Lippincott Co., 1962), 28-29.

This chapter focuses attention on the politics of the era's workplaces, while the following chapter examines aspects of everyday life pertaining to public places. On the historians' debate over the politics of the workplace versus the politics of working-class culture in broad perspective, see Herbert Gutman, *Work, Culture, and Society in Industrializing America: Essays in American Working-Class and Social History* (New York: Knopf, 1976), and David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925* (Cambridge: Cambridge University Press, 1987). I have divided the subject matter of this chapter and the following one because struggles over the workplace involved different political strategies than struggles over other areas of everyday life, as historians have demonstrated over the course of the past two decades. On the social history of public amusements and working-class culture, see Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986), and Roy Rosenzweig, *Eight Hours for What We Will: Workers and Leisure in an Industrial City, 1870-1920* (Cambridge: Cambridge University Press, 1983). On the home, see Jeanne

Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1990), and Reva Siegel, "Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880," *Yale Law Journal* 103 (1994): 1073-1217. On the consumer economy, see Elizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (New York: Cambridge University Press, 1990).

² Eric Behrens, "The Triangle Shirtwaist Fire of 1911: A Lesson in Legislative Manipulation," *Texas Law Review* 64 (1983): 364.

³ Anthony Bale, "America's First Compensation Crisis: Conflict over the Value and Meaning of Workplace Injuries under the Employers' Liability System," in *Dying for Work: Workers' Safety and Health in Twentieth-Century America* (Bloomington: Indiana University Press, 1987), 37.

⁴ *Ibid.*, 43; William Hard, et al., *Injured in the Course of Duty: Being an Exposition and Some Conclusions on the Subject of Industrial Accidents, How They Happen, How They Are Paid For, and How They Ought to Be Paid For* (New York: The Ridgway Co., 1910), 69.

⁵ "As to the Duty of Picketing," *Justice* 1 (22 February 1919): 1.

⁶ George Kirkpatrick, *War—What For?* (West La Fayette, Ohio: the author, 1910), excerpts reprinted in Philip Foner, *Militarism and Organized Labor, 1900-1914* (Minneapolis: MEP Publications, 1987), 70-83.

⁷ John Gray, *Chicago Record Herald*, 1903, as quoted in Robert Asher, "Workmen's Compensation in the United States, 1880-1935," Ph.D. diss., University of Minnesota, 1971, 60.

⁸ Julian Go, "Inventing Industrial Accidents and Their Insurance: Discourse and Workers' Compensation in the United States, 1880s-1910s," *Social Science History* 20 (1996): 402.

⁹ On the history of workmen's compensation laws, see Asher, "Workmen's Compensation in the United States"; Lawrence M. Friedman and Jack Ladinsky, "Social Change and the Law of Industrial Accidents," *Columbia Law Review* 67 (1967): 50; Bale, "America's First Compensation Crisis"; Behrens, "The Triangle Shirtwaist Fire of 1911"; Arthur F. McEvoy, "The Triangle Shirtwaist Factory Fire of 1911: Social Change, Industrial Accidents, and the Evolution of Common-Sense Causality," *Law and Social Inquiry* 20 (1995): 621-651; James Weinstein, "Big Business and the Origins of Workmen's Compensation," *Labor History* 8 (1967): 156-174; Jonathan Simon, "For the Government of Its Servants: Law and Disciplinary Power in the Work Place, 1870-1906," *Studies in Law, Politics, and Society* 13 (1993):

105-136; Go, "Inventing Industrial Accidents and Their Insurance," 401-438; John Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910," *Yale Law Journal* 107 (1998): 1467-1502; and Prive Fishback and Shawn Kantor, *A Prelude to the Welfare State: The Origins of Workers' Compensation* (Chicago: University of Chicago Press, 2000).

¹⁰ Simon, "For the Government of Its Servants," 130. Simon's arguments, which echo in this chapter, are grounded in a close reading of the work of Michel Foucault whose social theory has led Simon to interpret workmen's compensation laws as part of the ongoing proliferation of disciplinary practices in every aspect of modern, everyday life. See Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977). This chapter extends Simon's analysis by focusing on those practices which reformers and union leaders represented as obstructing legal change, namely ambulance chasing. But it also differs from his analysis, because whereas he sees little difference between litigation and legislation in intensifying the discipline of the workplace, I see that the two became opposed to one another, thus contributing to the marginalization of litigation in the reform of workplace injury law.

¹¹ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 304. The discussion herein regarding "labor" as the object of regulation reflects recent theoretical work that shows how capitalism operates through "the domination of people by abstract, quasi-independent structures of social relations, mediated by commodity-determined labor" rather than a contradiction between the spheres of production and distribution which leads to the domination and control of "the many and their labor by the few." See Moishe Postone, *Time, Labor, and Social Domination: A Reinterpretation of Marx's Critical Theory* (Cambridge: University of Cambridge Press, 1993), 123-185.

¹² Bale, "America's First Compensation Crisis," 36.

¹³ Of course, owners and managers of railroads, mines, and mills acknowledged that wages often misrepresented the duties of industrial labor. For instance, the United States Steel Corporation instituted a policy of placing workers' pay in envelopes stamped by "sermonettes" which warned: "You are responsible for the safety of others as well as yourself." See Crystal Eastman, *Work-Accidents and the Law* (New York: Charities Publications Committee, 1910), 262. These "sermonettes" tried to recast wages they enveloped as the equal of risk-taking, but they only proved that wages alone misrepresented industrial labor and its risks. In other words, "sermonettes" abstractly

symbolized employers fighting personal injury law suits, which, above all else, rejected the definition of wage-work as merely self-calculating risk-taking.

¹⁴ *Haley v. Case*, 142 Mass. 316 (1886); Safety Appliance Act, 27 Stat. 531 (1893). See Friedman and Ladinsky, "Social Change and the Law of Industrial Accidents," 59-65, and Simon, "For the Government of its Servants," p. 128. It should be noted that New York's highest courts were notoriously conservative and vigorously policed the pro-defendant legal regime. In New York before 1900, of 30 industrial injury cases going for the plaintiff, 28 were reversed by appeals courts, while trial verdicts for defendants that were appealed were all upheld. See Bale, "America's First Compensation Crisis," 38.

¹⁵ See generally Bale, "America's First Compensation Crisis"; Friedman and Ladinsky, "Social Change and the Law of Industrial Accidents." For the role federal courts played in protecting corporate defendants, see Edward A. Purcell, Jr., *Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America, 1870-1958* (New York: Oxford University Press, 1992).

¹⁶ Indeed, the cheap cost of litigating led some labor unions to establish "a legal department of their own which perform[ed] the same service [as private lawyering]." See Eastman, *Work-Accidents and the Law*, 192.

¹⁷ Bale, "America's First Compensation Crisis," 38. For Judge Cooley's remarks, see Thomas Cooley, "The Contingent Fee Business," *Albany Law Journal* 24 (1881): 26. For an overview history of the system of lawyer's compensation and the "contingency fee," see Peter Karsten, "Enabling the Poor to Have Their Day in Court: The Sanctioning of Contingency Fee Contracts, a History to 1940" and Stephan Landsman, "The History of Contingency and the Contingency of History," *DePaul Law Review* 47 (1998): 231-265. See also Randolph E. Bergstrom, *Courting Danger: Injury and Law in New York City, 1870-1910* (Ithaca: Cornell University Press, 1992), 87-92.

¹⁸ Friedman and Ladinsky, "Social Change and Law of Industrial Accidents," 274.

¹⁹ Lawrence Friedman, "Civil Wrongs: Personal Injury Litigation in the Late 19th Century," *American Bar Foundation Research Journal* (1987): 372-73.

²⁰ On the relationship between discourses and practices of "system" in this period, see JoAnne Yates, *Control Through Communication: The Rise of System in American Management* (Baltimore: Johns Hopkins University Press, 1989). See also, Alfred D. Chandler, *Strategy and Structure: Chapters in the*

History of the American Industrial Enterprise (Cambridge: MIT Press, 1962) and *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Belknap Press of Harvard University Press, 1977).

²¹ On the American reception of late nineteenth-century European political reforms, see Daniel Rodgers, *American Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press of Harvard University Press, 1998); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992); James Kloppenberg, *Uncertain Victory: Social Democracy and Progressivism in European and American Thought, 1870-1920* (New York: Oxford University Press, 1986).

²² Irwin Yellowitz, *Labor and the Progressive Movement in New York State, 1897-1916* (Ithaca: Cornell University Press, 1965), 51, 107-110; J.E. Rhodes, *Workmen's Compensation* (New York: Macmillan Co., 1917), 89. In invoking the word "reformers," I seek to avoid reproducing the debates over the origins and character of the progressive movement. The classic account of progressivism belongs to Richard Hofstadter, who argued that it represented a reform movement dominated by rural, protestant members of the middle-class growing anxious about their social status in the face of industrialism. See Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Knopf, 1955). For the past forty years, historians have challenged Hofstadter's account. J. Joseph Huthmacher, in "Urban Liberalism and the Age of Reform," *Mississippi Valley Historical Review* 44 (September 1962): 231-241, has shown that progressivism included working-class members too. See also David Thelen, "Social Tension and the Origins of Progressivism," *Journal of American History* 56 (1969): 323-341. At present, historians avoid describing progressivism in terms of unitary ideological frameworks. See Daniel T. Rodgers, "In Search of Progressivism," *Reviews in American History* 10 (December 1982): 113-132. Instead, attention has been drawn to showing the relationship between ideology and institutional practice.

²³ This biographical summary is taken mostly from Sylvia A. Law, "Crystal Eastman: NYU Law Graduate," *New York University Law Review* 66 (1991): 1963-1994. In addition, selections of Eastman's writings and a portrait of her life can be found in Blanche Wiesen Cook, ed., *Crystal Eastman On Women and Revolution* (New York: Oxford University Press, 1978). My discussion of Eastman focuses on her work as an advocate for reforming workplace injury law; therefore, I do not examine her work as a leading feminist, suffragist, anti-militarist, and civil libertarian. Although I realize that

a full treatment of Eastman's life would include these activities, I want to avoid reading what she later became into what she had been earlier. For more discussion on Eastman's later activism, see Sylvia Law, "Crystal Eastman," *Pace Law Review* 12 (1992): 529-541 and "Crystal Eastman: Organizer for Women's Rights, Peace and Civil Liberties in the 1910s," *Valparaiso University Law Review* 28 (1994): 1305-1326.

²⁴ See generally, Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill & Wang, 1967); Hofstadter, *The Age of Reform*.

²⁵ Law, "Crystal Eastman: NYU Law Graduate," 1984.

²⁶ *Ibid.*, 1985-86.

²⁷ Eastman, *Work-Accidents and the Law*, 18-32, 94.

²⁸ *Ibid.*, 17, 106. Did Eastman, in an unintended way, reproduce the identification of the railroads with the national interest as was dramatized during the Pullman strike of 1894? In that event, labor unrest was conducted in particularly legal terms, as struggles over the labor injunction led President Grover Cleveland to call for military force during the crisis. On labor and the judicial injunction in this period, see Christopher Tomlins, *The State and the Unions: Labor Relations, Law and the Organized Labor Movement in America, 1880-1960* (New York: Cambridge University Press, 1985); William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991).

²⁹ Eastman, *Work-Accidents and the Law*, 190-191, 194-195.

³⁰ *Ibid.*, 218-219.

³¹ Indeed, it embodied an image of the law offered by Justice Oliver Wendell Holmes: "It is conceivable that some day in certain cases we may find ourselves imitating, on a higher plane, the tariff for life and limb which we see in the *Leges Barbarorum* [Law of Barbarians]." Oliver Wendell Holmes, "The Path of the Law," *Harvard Law Review* 10 (1897): 457.

³² Eastman, *Work-Accidents and the Law*, facing page 126.

³³ Review of *Injured in the Course of Duty*, by William Hard, *The New York Times*, 6 August 1910, p. 15; Review, *The Nation* 91 (1910): 318; Review, *Engineering Record* 62 (1910): 503; Review, *Economic Bulletin* 3 (1910): 273. Sylvia Law has confirmed these observations: "Her supporting arguments were remarkably similar to those offered decades later in support of no-fault automobile insurance." See Law, "Crystal Eastman: NYU Law Graduate," 1990.

³⁴ Upton Sinclair described *Everybody's Magazine* in the following way: "Its publishers ... were advertising men who had bought a broken-down

magazine ... and had made the discovery that there was a fortune to be made by the simple process of letting the people have the truth." See Upton Sinclair, *Brass Check: A Study of American Journalism* (Pasadena, California: the author, 1920), 35.

³⁵ Law, "Crystal Eastman: NYU Law Graduate," 1985, n. 153.

³⁶ *The New York Times*, 1 February 1962, p. 31, c. 1.

³⁷ In his articles on workplace injury, Hard quoted Roosevelt: "When the employer, the agent of the public on his own responsibility and for his own profit, in the business of serving the public, starts in motion agencies which create risks for others, he should take all the ordinary and extraordinary risks involved, and, though the burden will at the moment be his, it will ultimately be assumed, as it ought to be, by the general public." See Hard, *Injured in the Course of Duty*, 69.

³⁸ William Hard, *The New Republic* 17 (25 January 1919): 364.

³⁹ See chapter 1.

⁴⁰ Hard, *Injured in the Course of Duty*, 37-69.

⁴¹ *Ibid.* (emphasis appears in the original). Hard's argument that lawyers "took" as much as one-third of clients' awards helped portray ambulance chasers as parasites. While workers rarely recovered the full amount of damages in litigation, workmen's compensation laws did not necessarily mean that injured workers would receive an indemnity. In instances of non-fatal, non-permanent injuries, workers were entitled to an administrative hearing and medical treatment from a state-approved doctor, and possibly lost wages, but little else.

⁴² *Ibid.*, 109-121.

⁴³ The Federation had mostly businessmen as members, but it also admitted lawyers like Elihu Root, and politicians like Republican Boss Mark Hanna, who was the Federation's first president. It even wooed labor leaders like John Mitchell, who received "advice on his stock investments from the Federation's business men." See Gordon M. Jensen, "The National Civic Federation: American Business in an Age of Social Change and Social Reform, 1900-1910," Ph.D. diss., Princeton University, 1956, 23-24, 60, 140.

⁴⁴ *Ibid.*, introduction, 3. Indeed, the National Association of Manufacturers reported in 1910 that 95% of its 25,000 members favored "automatic" compensation for industrial accidents. See Weinstein, "Big Business and the Origins of Workmen's Compensation," 161, 169.

⁴⁵ Letter from Benjamin McFadden to August Belmont, 11 July 1910, Box 92, Papers of the National Civic Federation, New York Public Library (hereafter, "NCF-NYPL").

⁴⁶ *The New York Times*, 23 December 1910, p. 2, c.5. Manufacturers employed military metaphors to describe social relations in the work place because many were predisposed to associate business with war. *Harper's Weekly* featured an article, "War and Business," published three years before the world war, in which readers learned that "a manufacturing firm easily grows into a world-power in its line and possesses itself of all the secrets and the methods of statecraft. ... [P]utting this and that together, mingling facts of commerce and world politics, the great manufacturing concern finds itself easily able to foresee war." *Harper's Weekly* 50 (9 December 1911): 12-13.

⁴⁷ Peter Roberts, *The New Immigration: A Study of the Industrial and Social Life of Southeastern Europeans in America* (New York: The Macmillan Co., 1912; New York: Arno Press, 1970), 78-92; Kate H. Claghorn, *The Immigrant's Day in Court* (New York: Harper & Brothers, 1923), 19.

⁴⁸ Isidor J. Kresel, "Ambulance Chasing, Its Evils and Remedies Therefor" (1929), as quoted in Jerold Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 49. In another example, ambulance chasers and immigrants became culturally linked by way of social darwinism. Appearing in a lawyers' periodical journal in 1902, one short poem written explained how "trilobites" had evolved into "trolleybites" or "chasers of the ambulance." See L. G. Smith, "The Evolution of the Ambulance Chaser," *The Green Bag* 14 (1902): 263-64.

⁴⁹ Hard, *Injured in the Course of Duty*. Quotes appear at the bottom of the fourth and fifth pages following the title page.

⁵⁰ Max Eastman, *Enjoyment of Living* (New York: Harper, 1948), 319.

⁵¹ Law, "Crystal Eastman: NYU Law Graduate," 1990-91.

⁵² Workers Compensation Act, ch. 674, § 219-4, 1910 N.Y. Laws 1945: "no claim of an attorney at law for any contingent interest in any recovery under this article for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery."

⁵³ Skocpol, *Protecting Soldiers and Mothers*, 286.

⁵⁴ *Ives v. South Buffalo Ry.*, 201 N.Y. 271, 296 (1911).

⁵⁵ Rhodes, *Workmen's Compensation*, 230.

⁵⁶ Not all labor unions supported the movement for workmen's compensation. The Chicago Federation of Labor attacked it as did the Detroit Federation of Labor. Most criticisms from labor centered on the paternalism

that such laws represented. Samuel Gompers and the leadership of the American Federation of Labor spoke against such reforms in the name of labor volunteerism, until they switched positions in 1909. See Go, "Inventing Industrial Accidents and Their Insurance," 419.

⁵⁷ Morris Hillquit, "Speech at Meeting which Protested American Troops at Mexican Border, Nullification of Workers Compensation Act, and Triangle Shirtwaist Fire," (3 April 1911), Morris Hillquit Papers, State Historical Society of Wisconsin (microfilm).

⁵⁸ See generally the collection of articles about the *Ives* decision, "The Court of Appeals Decision," *The Survey* 26 (29 April 1911): 185-96. For Seligman's remarks, see *The New York Times*, 3 April 1911, p. 3, c. 3.

⁵⁹ August Belmont, "Address Delivered at a Meeting of the Women's Welfare Department," 5 May 1911, Box 91, NCF-NYPL.

⁶⁰ See generally Stein's, *The Triangle Fire*. Several accounts of the tragedy are presented in biographical essays. See Deborah Cannarella, "Touched by Flames: Sarah Sorenson, 1888-1992," *Piecework* (September/October 1993): 46-47; Salvatore LaGumina, "Reflections of an Italian-American Worker," *Journal of Ethnic Studies* 3 (1975): 65-77; Bonnie Mitelman, "Rose Schneiderman and the Triangle Fire," *American History Illustrated* 16 (1981): 38-47. The only scholarly monograph on the disaster is Frances Jensen's "The Triangle Fire and the Limits of Progressivism," Ph.D. diss., University of Massachusetts at Amherst, 1996. For the most bold interpretation of the significance of the fire, see McEvoy, "Evolution of Common Sense Causality."

⁶¹ There are no extant documents from the trial, and so I have relied extensively on contemporary newspaper accounts for my analysis here. For a good narrative of the criminal trial, see Stein, *The Triangle Fire*, 177-203. Evidence supporting the argument that Bostwick was prepared to retry the defendants for the same crimes related to circumstances of another worker's death, see *The New York Sun*, 29 December 1911, p. 6, c. 3. It was reported there that, following acquittal of Harris and Blanck, Bostwick planned to re-indict the defendants notwithstanding questions about double jeopardy.

⁶² *The New York Call*, 28 December 1911, p. 2, c. 2.

⁶³ See generally, for 5 December 1911, *The New York Evening Post*, p. 2., c. 5, and for 6 December 1911, see *The New York Call*, p.1, c.3, and p. 3, c. 6-7, *The New York Times*, p. 24, c.1, *The New York Sun*, p. 16, c.3, and *The New York Daily Tribune*, p. 14, c. 1.

⁶⁴ For a classic exposition of the relationship between women and the public/private distinction, see Michelle Z. Rosaldo, "Woman, Culture, and Society: A Theoretical Overview," in *Woman, Culture, and Society*, ed. M.Z. Rosaldo and Louise Lamphere (Stanford: Stanford University Press, 1974), 17-42. For a thorough-going criticism of Rosaldo's examination of relationship between gender and politics, see Joan Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988). See also Mary Ryan, *Women in Public: Between Banners and Ballots, 1825-1880* (Baltimore: Johns Hopkins University Press, 1990).

⁶⁵ Rose Schneiderman, *All for One*, 103. Owner Isaac Harris testified at the trial that his factory had had five fires. Harris explained: "Only two [of them] were big enough to collect insurance on. One was in April, 1902, and we got about \$20,000. The other was in November, the same year, and the damage was about \$12,000. The others were about three years ago." *The New York Daily Tribune*, 23 December 1911, p. 14, c. 4.

⁶⁶ For a list of the jurymen, see *The New York Daily Tribune*, 28 December 1911, p. 1, c. 3, and *The New York Call*, 28 December 1911, p. 1, c. 7. They were: Leo Abraham, real estate; Anton Scheuerman, "cigar dealer," according to the *Call*, and "billiards," according to the *Daily Tribune*; William Ryan, salesman; Harry Roeder, painter; Morris Baum, salesman; Charles Vetter, buyer; Abraham Wechsler, secretary; Joseph Jacobson, salesman; William Akerstrom, clerk; Arlington Boyce, bookkeeper; Victor Steinman, shirts; H. Houston Hierst, decorator. For reports that the *Call* was being used to test potential jurors, see *The New York Call*, 6 December 1911, p. 3., c. 6-7.

⁶⁷ *The New York Call*, 19 December 1911, p. 2, c. 1; *The New York Evening Post*, 18 December 1911, p. 16, c.1.

⁶⁸ *The New York Call*, 12 December 1911, p. 1, c. 4.

⁶⁹ *The New York Times*, 21 December 1911, p. 20, c. 1.

⁷⁰ *The New York Call*, 9 December 1911, p. 1, c. 6; 22 December 1911, p. 2, cc. 1-2.

⁷¹ Aron Steuer, *Max D. Steuer: Trial Lawyer* (New York: Random House, 1950), 3-39.

⁷² *Ibid.*

⁷³ It is impossible to reconstruct completely Steuer's early litigation experience. The evidence I have gathered for the modest claims offered here resulted from using Lexis-Nexis by specifying his name in the "counsel" segment while searching the files of New York's state and federal cases from 1890-1912. For examples of his work as a personal injury attorney, see

Lieberman v. Third Avenue Railway Co., 54 N.Y.S. 574 (1898); *Jacobson v. Metropolitan Street Railway Co.*, 66 N.Y.S. 473 (1900); *Lee v. Third Avenue Railway Co.*, 72 N.Y.S. 1114 (1901); *Buesing v. Metropolitan Street Railway Co.*, 72 N.Y.S. 1096 (1901); *Lamm v. Metropolitan Street Railway Co.*, 94 N.Y.S. 584 (1905); *Kalisher v. Browning King & Co.*, 116 N.Y.S. 856 (1909) (concerning workplace injury, rather than railway or railroad injury). For examples of other case work, see *Kreshover v. Berger*, 116 N.Y.S. 20 (1909) (real estate); *Lefkowitz v. Reich*, 98 N.Y.S. 695 (1906) (contracts); *Hein v. Hein*, 132 N.Y.S. 111 (1911) (divorce); *Lee v. Nevins*, 123 N.Y.S. 1151 (1910) (union membership dispute).

⁷⁴ *Wimpfheimer v. Harris*, 114 N.Y.S. 441 (1909) (commercial dispute); *Moore v. Blanck*, 129 N.Y.S. 1105 (1911) (contract dispute involving a gambling debt).

⁷⁵ For an excellent institutional history of Jewish life in the Lower East Side, see Daniel Soyer, *Jewish Immigrant Associations and American Identity in New York, 1880-1939* (Cambridge: Harvard University Press, 1997). Steuer's lawyering shows, however, that the Lower East Side community persisted not merely because of social organizations consciously mobilized for the community, such as mutual-aid societies, but also because of the very controversies that erupted in courts of law. Indeed, much of what is now remembered with nostalgia was then regarded as the stuff of social work. See Hasia Diner, *Lower East Side Memories: A Jewish Place in America* (Princeton: Princeton University Press, 2000).

⁷⁶ *The New York Call*, 27 December 1911, p. 1, c. 7; 16 December 1911, p. 1, c. 7; 13 December 1911, p. 1, c. 3.

⁷⁷ In one incident that added to his fame as a trial attorney, Steuer attacked the credibility of a key witness for the state, Kate Alterman, by having her repeat her testimony several times to show that her account of Margaret Schwartz's death was nearly verbatim each time she testified. See Stein, *The Triangle Fire*, 191-196; Steuer, *Max D. Steuer*, 108-09.

⁷⁸ See above note 29.

⁷⁹ *The New York Call*, 28 December 1911, p. 2, c. 2.

⁸⁰ For newspaper reports from 28 December 1911, see *The New York Call*, p. 1, c. 7; *The New York Times*, p. 1, c. 3; *The New York Sun*, p. 1, c. 7; *The New York Daily Tribune*, p. 1, c. 3.

⁸¹ *The New York Times*, 29 December 1911, p. 10, c. 4; *The New York Daily Tribune*, 28 December 1911, p. 6, c. 2; *The New York Call*, 29 December 1911, p. 1, c. 6.

⁸² *The New York Call*, 28 December 1911, p. 2, cc. 1-4. Note that the language of "a corp of voluntary inspectors" not only demonstrated that labor leaders considered factories to be disciplinary spaces for self-supervision; the language also echoed National Civic Federation president August Belmont, who spoke of workers as "the voluntary armies of industry." See above note 45.

⁸³ Stein, *The Triangle Fire*, 204-207.

⁸⁴ Richard B. Morris, *Fair Trial: Fourteen Who Stood Accused from Anne Hutchinson to Alger Hiss* (New York: Knopf, 1952), 382.

⁸⁵ See McEvoy, "Evolution of Common-Sense Causality," 646, and Behrens, "A Lesson in Legislative Manipulation," 369-373. For the constitutional amendment, see 1912 N.Y. Laws 1382; for the new workmen's compensation law, see ch. 816, 1913 N.Y. 2277. Frances Perkins is quoted in Bill Severn, *Frances Perkins: A Member of the Cabinet* (New York: Hawthorn Books, 1976), 48.

⁸⁶ Letter from C.H. Franklin to O.H. Eidlitz, Chairman of Finance Committee, National Civic Federation, 1 December 1911, Box 91, NCF-NYPL.

⁸⁷ "There were ... proposals to implement a workers' compensation style system, under which automobile accident cases would be reviewed by an administrative board instead of a jury, and damage awards would be paid out at a standard, pre-determined rate." Kenneth De Ville, "New York City Attorneys and Ambulance Chasing in the 1920s," *The Historian* 59 (1997): 303. See also, Bernard Shientag, "Motor Vehicle Accidents and the Law," *Bulletin, New York State Bar Association* 1 (1929): 134-47.

⁸⁸ Rhodes, *Workmen's Compensation*, 180-200. In this section titled "the administration of compensation laws," Rhodes chose New York to illustrate the administration of a compensation law.