

Introduction

Injuries and Abstractions

This is a book about injuries and abstractions. First, injuries.

Nettie Blom worked in the laundry of a hotel in Yellowstone Park. On June 30, 1900, Blom was operating a machine called a mangle, which used steam-heated and steam-powered metal rollers to iron flat linens. The wet cloth stuck to her hand for a moment too long, and she was pulled into the machine. Blom's hand was crushed and burnt. When a co-worker managed to free her from the machine, Blom's hand looked like "boiled meat." Three of her co-workers fainted at the sight. Blom suffered terrible pain and lost the use of her hand due to her injuries.¹

We have only partial data on workplace injuries in the twentieth century, but from the data we do have, it is clear that in the United States in this era people suffered injuries at work like Nettie Blom did with appalling frequency. For example, in 1910, US Army Medical Corps physician Major Charles Lynch estimated that the number of deaths due to accidents in mining between 1899 and 1908 totaled 19,775 people. Non-fatal injuries were even more frequent, with more than 5,000 such injuries per year in the years Lynch looked at.² And these are only the figures for mining. Employment was incredibly dangerous in this era, with employees harmed regularly. Historian James Schmidt has characterized the pervasive harm to employees in the economy as "industrial violence."³

¹ *Blom v. Yellowstone Park Association*, 86 Minn. 237 (1902).

² Charles Lynch, "Organization of First Aid Instruction," *The Coal Trade Bulletin*, October 1, 1910.

³ James D. Schmidt, *Industrial Violence and the Legal Origins of Child Labor* (New York: Cambridge University Press, 2010).

The term “violence” is apt because working-class people in this era regularly suffered serious harms to their bodies, their selves, their person, their self-understanding, their lives. Those harms were injustices.

It is hard to specify what exactly an individual loses in an injury. Nettie Blom’s loss? One hand. Five fingers. That phrasing separates Blom from her body part, occludes that Blom lost a part of her person. To put it another way, it wasn’t just a body part, an object, that became trapped in the Yellowstone Park Association’s mangle in 1900. It was Nettie Blom, trapped for minutes that must have felt like an eternity. “I can’t describe the pain,” Blom said.⁴ Trapped in that machine was a human being with a name and a face and a life. The point may feel banal. Of course, every employee injury happens to a human being with a name. Indeed. Every single injury. We often move too quickly away from that fact.

What did Nettie Blom lose? It is hard to say. The body, the person, and the self overlap, and so the body is laden with meaning and feeling. People enduring bodily injury feel corporeal sensation, and they feel emotions that can range across anger, outrage, sadness, shame, humiliation, fear, loss of self-worth – the list goes on. To put it another way, a person who loses a body part in an accident loses whatever that body part and the actions they did with that body part meant to them in the course of their life, and endured whatever their newly injured condition meant to them as well. This kind of loss is as multifaceted as a person is multifaceted. I stress, perhaps belabor, this point about loss’s multitude because law’s accounting for loss became attenuated in the early twentieth century, at least for employee injuries. I develop this argument over the course of this book.

This book is about injuries and abstractions, so I now turn to abstractions.

Over the years I have worked on this project, I have come to find two quotes especially compelling. The literary critic, essayist, and philosopher Walter Benjamin once evoked an angel flying backward, blown by a storm. The angel watched human history unfold and saw it as an ongoing catastrophe, piling up wreckage into a tower of rubble. As I have spent time with the numbers of injuries that have happened, and still happen – there were 4,836 fatal workplace accidents and 2.9 million non-fatal workplace injuries in 2015 in the United States – I have

⁴ *Blom v. Yellowstone Park Association*, 86 Minn. 237 (1902).

come to think of much of that rubble as composed of human beings injured and killed.⁵

Benjamin and his angel provide an image for an aerial view. Ta-Nehisi Coates zooms in. In a discussion on slavery in his book *Between the World and Me*, Coates writes:

[R]espect every human being as singular, and you must extend that same respect into the past. Slavery is not an indefinable mass of flesh. It is a particular, enslaved woman, whose mind is as active as your own, whose range of feeling is as vast as your own; who prefers the way the light falls in one particular spot, who enjoys fishing where the water eddies in a nearby stream, who loves her mother in her own complicated way, thinks her sister talks too loud, has a favorite cousin... You must struggle to truly remember this past in all its nuance, error, and humanity.⁶

We can take Coates's imperative about how to think about slavery as exemplary for how we should think about any large-scale matter of social injustice. In aggregating harms into "indefinable masses" we risk losing some of the truths of those harms. Every harm happens to some specific person who was, in Coates's words, a singular human being. Every person whom Benjamin's angel sees suffering or killed on the earth below is in a certain sense infinite, and so the numbers of the victims are a multitude of infinities. On a large scale, this is a loss so large it defies comprehension. Real human loss defies comprehension at the scale of an individual life as well. Coates's call to keep human singularity in mind while attending to large-scale atrocity is relevant in different ways to different layers of this book, as I hope becomes apparent as the book unfolds. In a sense, this work as a whole is an attempt at a historically

⁵ Walter Benjamin, "Theses on the Philosophy of History," in Benjamin, *Illuminations: Essays and Reflections*, ed. Hannah Arendt (New York: Harcourt, 1968), 253–264, 257–258. It is worth noting both that injuries concentrate downward and that accident figures underreport actual accidents. A recent survey of low-waged employees found that 12 percent of people surveyed suffered serious injury on the job in the last three years, but of those injured, only 8 percent filed a workers' compensation claim, and many experienced illegal retaliation for doing so. Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (New York: National Employment Law Project, 2009), 25. It is worth noting as well that injuries are rampant in the global economy. The International Labour Organization estimates that there are two million employment-derived fatalities annually in the global economy. International Labour Organization, *Safety in Numbers: Pointers for a Global Safety Culture at Work* (Geneva: International Labour Organization, 2003), 1. This means 5,000 such fatalities each day. International Labour Organization, "Work-Related Fatalities Reach 2 Million Annually," www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_007789/lang-en/index.htm, accessed April 14, 2014.

⁶ Ta-Nehisi Coates, *Between the World and Me* (New York: Spiegel & Grau, 2015), 69.

grounded meditation on that singularity-atrocity relationship and on some of the social conditions that predictably generate certain kinds of atrocity.⁷

As may be apparent, some of my concerns are rather abstract, in the sense that they might be called theoretical, as are some of the perspectives I bring to my subject matter. This is, I would argue, more than a matter of my own proclivities. My object of analysis is in important respects abstract as well, or, rather, my object of analysis is to some extent social, and specifically legal, processes or acts of abstraction.

Nettie Blom went to court. She sued her employer over her injuries. Her employer's attorney argued that the Yellowstone Park Association did not owe her any money because of some technical issues of how the doctrine of liability and negligence worked. These arguments worked. Blom lost her case, receiving no money. The abstractions of legal argument served as a shield held by the Park Association attorney, fending off Blom's claims. Kathryn Carlin suffered a similar injury to Blom, losing a hand in a mangle in a laundry and, like Blom, Carlin sued. She won her case in 1906. The abstractions of legal argument played a role here as well, in this instance facilitating the additional abstractions involved in converting Carlin's injuries into dollar amounts. She was awarded \$7,500.⁸

From working on this project I have begun to think about compensation laws as exemplifying a kind of common sense about employee injury. My own personal introduction to this common sense came when a few hundred pounds of lumber fell on me at the factory where I worked during the summer before I moved away to college. An X-ray showed a chip of bone floating in one of my knuckles. Soon after my injury, I made an appointment and met with a lawyer to discuss filing a workers' compensation claim. The lawyer explained to me that my injury was worth a weekly payment for the time it took me to convalesce. The weekly payment was about two-thirds of my pre-injury wage, which meant I would probably get two hundred dollars per week. I felt ambivalent: excited because for me at the time two hundred dollars for a week

⁷ For other works that I consider a similar historical reflection on singularity and atrocity, see Barbara Young Welke, "The Cowboy Suit Tragedy: Spreading Risk, Owning Hazard in the Modern American Consumer Economy," *Journal of American History* 1, no. 1 (June 2014): 97–121, and Barbara Young Welke, "Owning Hazard: A Tragedy," *UC Irvine Law Review* 1, no. 3 (September 2011): 693–771.

⁸ *Carlin v. Kennedy*, 97 Minn. 141 (1906). Adjusted for inflation her award would be about \$200,000 today.

sounded like a reasonable amount of money, especially for a week not working. At the same time, I felt offended that the plant managers, with their higher pay rates, would get more for their broken bones if they were to have similar injuries.

I remarked that it felt a little creepy that my hand had a dollar value. The lawyer laughed and agreed that it was creepy. He told me that there were tables that listed the value of all the different body parts, and added with another laugh that one of the highest value body parts was a testicle. Very much a seventeen-year-old boy, I nodded, saying that I supposed I valued my testicles more than my knuckles. Two hundred dollars for one week no longer seemed like a lot of money. I repeated that it was a creepy idea that my body parts in particular had a dollar value, and that in general there were tables written down with the value of body parts calculated in advance. The lawyer replied that a lot of people got hurt at work and that the injuries and the payments for them were all a regular process.⁹

That meeting with the lawyer is where I first encountered what I now think of as the “tyranny of the table,” but it is both more and less than tyranny.¹⁰ What I mean by the tyranny of the table is that within compensation laws human lives and human suffering have the fixed monetary values ascribed – no more than that, and not subject to discussion. What doesn’t fit into the values of the table? Nearly everything. All of the elements of a human being other than our paychecks.

Experientially my introduction to the tyranny of the table was no big deal. I would occasionally recall this experience in passing in conversation with friends and colleagues (“What’s the worst job you ever had before being a teaching assistant?”) but I largely forgot about it, shrugged it off. Forgetting the unsettling is for many people a habit both easy and productive of ease. It is easier to go about the world with this habit. It was only after I had written most of the dissertation that was the basis for this book that I really thought about this experience in a serious way. Writing the dissertation retroactively highlighted what I had initially, and

⁹ In the end I did not file a compensation claim. My mother was concerned it would make it harder for me to get jobs in the future. She had filed a compensation claim for a back injury while working at a shipping company in the 1970s and believed she had been discriminated against in future jobs as a result. Both of my younger brothers would later go on to be injured in different factory jobs. They too did not file compensation claims.

¹⁰ Tyranny is perhaps an unduly polemical term, but my hope is that by the end readers will agree, or at least have seriously entertained the possibility, that law’s (in)adequacy to workers’ losses is a subject worthy of polemic.

fleetingly, found to be creepy in my personal encounter with employee injury law. One of my goals is for this book to have a similar effect on readers. I hope that when readers finish my book they find our legal handling of employee injury newly unnerving. That is to say, I have attempted in this book to write against the “no big deal” common-sense quality of the tyranny of the table.¹¹ Thus one major goal of this book is to think outside the tyranny of the table. I hope to make both the table itself and the values and norms behind it more apparent to readers and so perhaps less taken for granted in readers’ minds. Ultimately, I question and criticize the tyranny of the table and the system of employee injury law in which it is embedded.

Prior to the tyranny of the table, injured people like Nettie Blom faced what I have come to think of as the tyranny of the trial. Understanding this legal world can shed light on what came afterward. The abstraction-governed legal worlds of the tyrannies of table and trial formed just one domain of the law: employee injury law. That domain existed as one part in a larger machine, an instrument in an ensemble of institutions of domination and control. In the background was the rule of the commodity, creating the problems that fed into both trial and table, composing the concepts and mentalities that animated each and that, in turn, in part, were created by each. Karl Marx called the commodity the cell form of capitalist society, meaning the basic organizational unit or building block.¹² The commodity was a cell in a kind of carceral sense as well, confining people, partially defining the orders given and taken, and the mental universe through which people perceived and understood the society organized by the commodity.

¹¹ I want to stress here that I did not write this book on employee injury and the law thereof because of my personal experience of employee injury. (Like many early-career scholars, I considered other subjects.) Rather, even though I had personal experience of injury, it took writing this book to really reflect on that experience. It was not until several years into this project that I realized I had never really thought about employee injury as part of my family history, and that my family had never really talked about these experiences. Both of my parents, my brothers, my partner, several of my grandparents, and I have all been injured at jobs. It is possible that members of my extended family have as well; I don’t know, it’s not something we talk about. I suspect that the unremarkable character of injury is both a cause and an effect of the perception that there are relatively few employee injuries.

¹² Karl Marx, *Capital: A Critique of Political Economy*, vol. 1, trans. Ben Fowkes (New York: Penguin Classics, 1990), 90. The rule of the commodity is in important respects, and perhaps entirely, legally constituted. Marx recognized this at least in part. This is apparent in the most historically and empirically grounded parts of *Capital*, the chapters on the working day, machinery, and so-called primitive accumulation.

This is a book, then, about the relationship between injury, abstraction, and law. One of the book's goals is to map the law's imagination, in two facets, the law's social imagination and its moral imagination. By social imagination I mean the ability of the law to adequately represent structural patterns in society such as the power relationships woven into employment, and whether its orientation to those patterns is to obfuscate them, legitimate them, naturalize them, or render them subject to dispute. By moral imagination I mean the ability of the law to perceive individual human beings with a degree of richness appropriate to the expansive humanity – the singularity, as Coates put it – of each individual human being.

This is also a book about capitalism and the social relationships of class that are inextricably woven into capitalist societies.¹³ The working class is the group of people who live from wages, that is, from the sale of labor power. Employees are subject to what philosopher Elizabeth Anderson calls private government, meaning coercive power that is not subject to accountability and can be arbitrary.¹⁴ These aspects of

¹³ In general, in my view, class is not discussed frequently enough. (See Chad Pearson, "From the Labour Question to the Labour History Question," *Labour/Le Travail* 66, no. 1 (2010): 195–230.) This book is animated by what I understand to be a Marxist conception of class, which is not to say the Marxist conception of class. (I am unconvinced that there is a one single Marxist understanding of class or that there is any content to the term "Marxism" that makes it possible to draw clear lines between who is and is not truly a Marxist. That kind of line drawing seems to me a fool's errand.) I conceptualize class in capitalist society as a variety of forms of subjection to commodification. Focusing analytically on class and commodification can help us think about class, commodification, and justice. Commodities and class relationships and the social world they both come from and constitute are often all at once taken as unavoidably given, overlooked, and depoliticized. For a work that connects capitalism and issues of justice admirably, see Nancy Fraser and Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* (Cambridge: Polity, 2018). There are other valid and useful ways to understand class, such as power and authority (see, for example, the multiple legal historical works of Christopher Tomlins, such as his *Law, Labor, and Ideology in the Early American Republic* [Cambridge: Cambridge University Press, 1993]), class as subjectivity and experience (the most famous version of this approach is E. P. Thompson, *The Making of the English Working Class* [New York: Vintage, 1966]), or class as inequality of wealth (see, for example, David Huyssen, *Progressive Inequality: Rich and Poor in New York, 1890–1920* [Cambridge: Harvard University Press, 2014]). Because capitalism and class are complex and multifaceted, it is good that we have a plurality of analytical approaches available.

¹⁴ Private government is not unique to capitalism, but it is an important characteristic of employment in capitalist societies. See Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (And Why We Don't Talk about It)* (Princeton: Princeton University Press, 2017).

structural constraint that characterize class and employment relationships in capitalism were largely absent from Nettie Blom and Kathryn Carlin's lawsuits. Capitalism formed the backdrop for, the air in and around, the courts, and yet that social context was largely abstracted away in the legal proceedings.¹⁵ This social context lurks in the background of my understanding of all of the events in this book, more explicitly than it did for the judges in Blom and Carlin's cases, but it is only occasionally foregrounded.

Like everyone in capitalist society, employers face market imperatives.¹⁶ These imperatives coerce even well-meaning employers to practice business in a relatively impersonal manner, relatively indifferent to the well-being of employees and the working class as a whole. "Nothing personal, just

¹⁵ One important part of the social backdrop to these cases was the way in which both paid and unpaid work are organized in capitalist societies. Blom and Carlyn were injured while "at work," in a common meaning of the term "work." They were injured while working for their employers, carrying out their contractually defined roles as sellers of labor power. They rented their time and energy to their employers, getting (a promise of later) money and taking commands. For each woman, on the day of their injury, before they began work they got dressed, probably ate something, and traveled to work. These actions were not carried out for their employers, but were functional for their employers: a hungry, sleepless employee is less usable instrumentally. There was, then, work that occurred off the clock, which was not directly commodified and not under the supervision of the employer yet still governed by imperatives originating from commodification. Food, clothing, and shelter had to be paid for, after all, which compelled Blom and Carlin to have money. For Marxist feminist accounts of the relationship between waged and unwaged activities in capitalism, see Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1990); Mariarosa Dalla Costa and Selma James, *The Power of Women and the Subversion of the Community* (Bristol: Falling Wall Press, 1972); Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* (New York: Autonomedia, 2004); Leopoldina Fortunati, *The Arcane of Reproduction* (New York: Autonomedia, 1995); Nancy Fraser, "Behind Marx's Hidden Abode: For an Expanded Conception of Capitalism," *New Left Review* 86 (March–April 2014): 55–72; Eileen Boris, *Home to Work: Motherhood and the Politics of Industrial Homework in the United States* (Cambridge: Cambridge University Press, 1994); Alice Kessler-Harris, *A Woman's Wage: Historical Meanings and Social Consequences* (Lexington: University Press of Kentucky, 1990); Amy Dru Stanley, *From Bondage to Contract: The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009); Amy Dru Stanley, "Histories of Capitalism and Sex Difference," *Journal of the Early Republic* 36, no. 2 (Summer 2016): 343–350; and Christopher Tomlins, "Subordination, Authority, Law: Subjects in Labor History," *International Labor and Working-Class History*, no. 47 (Spring 1995): 56–90.

¹⁶ Ellen Meiksins-Wood has made this point in multiple works. For a representative example, see "Capitalism's Gravediggers," www.jacobinmag.com/2014/12/capitalisms-gravediggers/, accessed July 13, 2017.

business,” is an apt cliché for much of life in capitalist society.¹⁷ This means in part that the ills of capitalism do not primarily result from individual employers’ attitudes, beliefs, and moral character but rather from pressures woven into capitalist societies. If anything, employers’ moral character is more systemic effect than cause: how one acts becomes who one is.¹⁸

Law and policy can, with difficulty, intervene to mitigate market imperatives and their effects.¹⁹ Beginning in 1910, state legislatures in the United States began to do exactly this in response to the problem of employee injury, intervening by creating what were called workmen’s compensation laws.²⁰ These laws improved the lives of working-class people in important respects. And yet, in other important respects, compensation laws exemplified the tendency toward treating working-class people impersonally and as objects of instrumental use.

The activist and public intellectual Ella Baker once distinguished between making a living and making a life.²¹ While employment is certainly a source of meaning and fulfillment for some people, it is not

¹⁷ See H. H. Gerth and C. Wright Mills, eds., *From Max Weber: Essays in Sociology* (Abingdon: Routledge, 1991), 215. That indifference can lead capitalists to undermine elements of society and the natural environment that their industries or that capitalism as a whole requires to function. Nancy Fraser and Rahel Jaeggi discuss that tendency and the conflicts it generates, which they call boundary struggles. See Fraser and Jaeggi, *Capitalism: A Conversation in Critical Theory*.

¹⁸ Jean-Paul Sartre put this as “existence precedes essence.” See Jean-Paul Sartre, *Existentialism Is a Humanism* (New Haven: Yale University Press, 2007), 20–23. Martin Glaberman makes a similar point, writing that “consciousness is the result of activity.” Glaberman stresses the important point that it is specifically collective activity – social rather than individual existence – that constitutes consciousness. Martin Glaberman, “Work and Working-Class Consciousness,” in *Punching Out and Other Writings*, ed. Staughton Lynd (Chicago: Charles H. Kerr, 2002), 121–132, 129.

¹⁹ As I type this, the difficulties of mitigating, let alone averting, catastrophic climate change attest to the power of these imperatives and the difficulty of working against them. See Bill McKibben, “Global Warming’s Terrifying New Math,” *Rolling Stone*, July 19, 2012.

²⁰ The laws were called workmen’s compensation laws when they were created. For the most part that is what I call them in this book as well. I do so to underline the sexism of the law, but not to express approval of it. That compensation laws were focused on wage-earning men reflected aspects of the social vision behind the laws. That social vision imagined waged work as something only men did and imagined traditionally feminized activities as not work. Alice Kessler-Harris’s *In Pursuit of Equity* analyzes how “these gendered habits of mind” shaped social policy in the United States in the twentieth century. Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (Oxford: Oxford University Press, 2001), 18. Jeanne Boydston’s *Home and Work* examines how traditionally feminized activities such as housework came to be treated much of the time as not actually work.

²¹ Quoted in Barbara Ransby, *Ella Baker and the Black Freedom Movement* (Chapel Hill: University of North Carolina Press, 2003), 261.

equally so for everyone. Furthermore, having money is compulsory, because a living is something one earns rather than being entitled to, which makes employment compulsory for most people as well. This means that, as legal historian Robert Steinfeld has put it, employees “perform often disagreeable tasks for their employers over extended periods of time under the implicit threat that an employer will deny them their principal means of livelihood.”²² And the primary purpose behind the enterprises in which most people work is not to provide either fulfillment (a life) or income (a living), but for the institution to persist and to profit. Employees are those who are used, economic instruments deployed, employed.²³

The tyranny of the table is of a piece with this social order, a kind of grid that rhetorically and sometimes literally segments persons into parts, and values those parts not in terms of making a life – humanity in its multiplicity and to some extent ineffability – but in terms of making a living: earnings, clear, knowable, simple. Or, rather, simplified, reduced. It is as economic objects, instruments for others’ use, that people are valued under compensation laws. This book is intended to dramatize this instrumentalization of working-class people in capitalist society, especially at some of their most vulnerable moments in the aftermath of injuries that resulted from systematically produced industrial violence. This instrumentalization occurs both in the form of relative indifference to their well-being and in the form of efforts to secure that well-being for instrumental reasons rather than because working-class people are human beings who deserve to be treated with respect and dignity.

Some of what I have said is clearly normative in character, as is some of what follows in this book. Historical interpretation cannot avoid normative presuppositions. Interpretations of the American Revolution, for example, as expanding, or failing to expand, human freedom make sense only because the people who make and read those interpretations have in mind some notions of freedom, and a non-normative notion of freedom is impossible. If my book appears normative in some additional way, more than or differently than is common among historians, I would argue that this is not in fact because the book is normative in some qualitatively

²² Robert Steinfeld, “Coercion/Consent in Labour” (speech at the COMPAS Annual Conference: Theorizing Key Migration Debates, St. Anne’s College, University of Oxford, 2008).

²³ See Christopher Tomlins, “‘Those Who Are Used’: A Commentary on the Employee: A Political History, by Jean-Christian Vinel,” UC Berkeley Public Law Research Paper No. 2546331.