

Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law. By John Fabian Witt. Cambridge: Harvard University Press, 2004. 311 pp. Index, notes, index, tables. Cloth, \$49.95. ISBN: 0-674-01267-4.

Reviewed by Jennifer Klein

Specifically a case study of workmen's compensation, *Accidental Republic* is also a book about how Americans developed the ideological supports—or their particular forms of ideological support—for the modern welfare state. The welfare state rests on an articulation of the phenomenon of risk and the legitimacy of social pooling of risk through the state. This articulation, John Fabian Witt argues, required a break with some of the essential precepts of American law and the concepts of liberty, independence, and contract that undergirded it. It was not only nineteenth-century economic liberalism that did not condone an interventionist state in matters of commerce, production, and employment. As Witt shows, nineteenth-century free-labor doctrine opposed this notion as well. The principal tenets of free labor shaped workers', employers', and judges' understanding of everything from work relations to the meanings of citizenship and liberty. In the final decades of the nineteenth century, however, the scale and pace of production rapidly transformed the social and economic world in which free-labor expectations had coalesced. “How could the values of free labor thinking be adapted to the problems of risk in a modern wage earning economy?” asks Witt (p. 16). *Accidental Republic* presents a compelling synthesis of intellectual, social, and political history in order to chart the historical struggle that ensued over this question.

Emerging from legal history, *Accidental Republic* offers a broad political narrative that explores how Americans confronted the hazards and insecurities of industrialization. The United States had an extraordinarily high level of industrial accidents in comparison to other industrialized nations; after 1880, workplace injuries seemed to escalate beyond control. Yet the traditional law of torts had no way of dealing with unintentional human injury, especially on a mass scale. American law rested on the expectation that the function of the state was to enforce contracts. Together, ideas about contract and free labor held that two mutually agreeing independent agents entered into

consensual, contractual relations. The price of labor would be reflected in the contract. As an independent and autonomous “citizen,” the worker had the freedom to leave the job if he objected to some dangerous task or conditions. Based on such thinking, a body of legal doctrine had developed by the late nineteenth century that minimized employers’ responsibility for work accidents in the name of free labor (p. 31).

Employment at will, of course, is a story we already know, but Witt adds fascinating new dimensions to the story. Revealing the inadequacy of purely state-centered or institutional histories of social policy, Witt delves into the law of accidents and torts in order to probe the fundamental perceptions and definitions of risk, hazard, fault, remedy, and prevention. Classical tort law rested on the premise that individuals were free to act within a zone of autonomy, “unchargeable with liability for harms to others.” Thus, the law of torts had no place for the faultless victim of harm caused by another’s free exercise of rights; after all, the victim had consented—by “contract”—to bear the risk of the accident. Witt then traces how the rising toll of industrial accidents and personal-injury litigation over the course of three decades began to expose the ineffectiveness of classical tort in a modern economy. As the “carefully constructed architecture of the classical law of torts . . . [lost] its coherence and form” (p. 67), a range of assumptions about the relation between worker and employer had to be reexamined. And intriguingly, by bringing in gendered ideas about the family wage and reproductive labor, Witt too shows how assumptions about household authority, domestic life, and their relation to the wage system became bound up with the upheaval over the law of torts. Readers will find particularly refreshing a chapter on Crystal Eastman’s *Work Accidents and the Law* (1910), which Witt asserts was the most influential study in the famous Pittsburgh Survey. One of Eastman’s most important contributions was her reorganization of debates about work accidents around the image of the “wounded family,” which enabled her to suggest that “industrial accidents . . . undid free labor’s distinction between home and work” (p. 130).

Tort law did not just regulate the boundaries of private rights between persons. It also attempted to establish the proper boundaries between the private sphere and the public sphere, and especially to hold off state intervention in the realm of private action. Since the American Bar elite had used these doctrines to keep the public and private

sphere separate, the destabilizing of tort doctrines opened up thorny new political questions about the role of the state in an industrial economy.

Not content to leave us in the somewhat rarified world of Gilded Age legal theory, Witt turns to social history, tracing how workers responded to the hazards of industrial life by forming cooperative insurance associations. While there are books, such as David Bieto's *From Mutual Aid to Welfare State*, that cover the history of mutual-aid and cooperative-insurance associations, *Accidental Republic* demonstrates how these workers' institutions fit into attempts to adapt free-labor ideology, prevent new managerial control of production, and sustain citizenship as defined by ideals of independence, manliness, and fraternity. Witt tries to show how a range of possible trajectories emerged at the turn of the century. Here, he explores whether workers' cooperative-insurance associations could have established themselves as a highly regulated, quasi-public insurance scheme that was run through the fraternalists—rather like the systems that took shape in Germany and Great Britain. It was not only politics that influenced the ultimate outcome here, but also the reorganization of work and the ascendance of scientific management.

Given that workers' compensation and social insurance are aimed at the protection of the wage worker, it is surprising how rarely work and the workplace figure in histories of the welfare state. Perhaps taking a cue from the exceptions to this norm (the studies by Kathryn Kish Sklar and Eileen Boris), *Accidental Republic* refreshingly shows where and how this social and legal history intersect with management-driven changes in the organization of work, thereby quite logically bringing business history into the story. Drawing on a range of writers, from Taylor-era industrial engineers to historian David Montgomery, Witt takes seriously the changing nature of shop-floor relations, the organization of work, and the professionalization of management. He looks at the new generation of management professionals and efficiency experts who decided that management had to take the initiative in responding to workplace accidents. While this effort would undermine the premises of free-labor doctrine and employment at will by establishing employers' responsibility for workplace accidents, it would also presumably grant greater shop-floor and ideological authority to management. The political dynamics driving firms to take this line of action are missing from Witt's

account, and instead, an efficiency imperative seems to be the determining factor. Nonetheless, *Accidental Republic* does demonstrate that scientific management had ideological implications and consequences that extended well beyond the shop floor, influencing both legal decision making and social-welfare policy.

Bringing together these different histories—of work, management, and law—*Accidental Republic* astutely raises an essential question: could we have devised a concept of risk management and risk protection in the United States that empowered workers, both on the job and within the polity? Was there a social welfare policy option that could have given workers a substantive role in governing the institutions that provided economic security and genuine independence from employers? *Accidental Republic* suggests that democratic control has always been as important as security. Witt's chapter on the passage of workmen's compensation laws takes us inside the compromises that foreclosed some of the possibilities for democratic participation and control.

The final chapter promised to link Progressive Era workmen's compensation reform with the New Deal in order to demonstrate how the industrial-accident crisis shaped the modern welfare state. Although this chapter lists superficial similarities or links between workmen's compensation and New Deal social policy legislation, for the most part the claims asserted here have little evidence. Yet these claims are too important to stand so unsupported. Unlike the previous carefully constructed chapters, this one lacks any real social politics, interaction between the various political players, or unfolding results. It seems more like an accidental chapter.

Still, this brief loss of steam should not deter anyone from reading a very fine book that is consistently engaging to read. The decade-long predominance of historical sociology's neoinstitutionalism has left labor politics, business, and the workings of economic power on the sidelines of state-centered analyses. The welfare state, though, has always been a bundle of political strategies for dealing with industrial capitalism. Case studies like *The Accidental Republic* contribute to the broader project, now underway, of bringing political economy back in.

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