

Occupational disease as a driving force in the movement for public health and welfare

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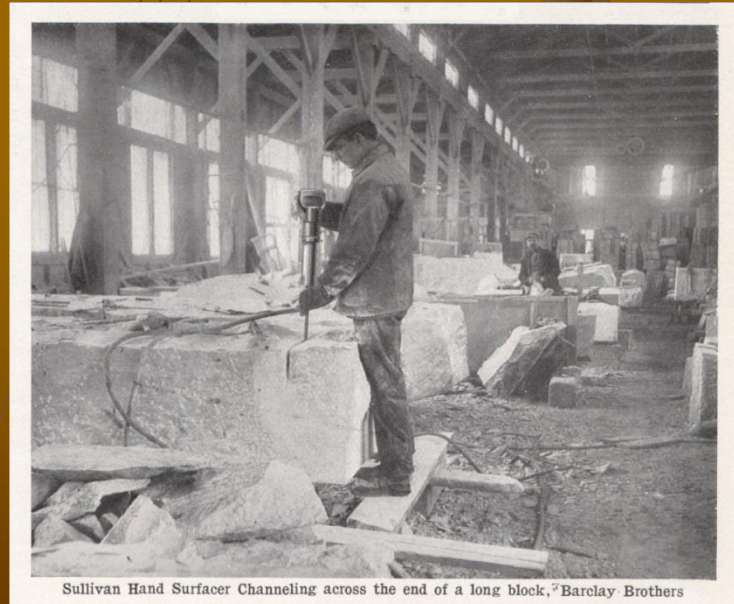
**The Demise of the Grand Bargain – Rutgers Law School
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**Roscoe Pound Institute with Northeastern University and
Rutgers University Schools of Law**

From Mass Production to the
Atomization of Labor: Demise of the
Grand Bargain

From Mass Production to the Atomization of Labor

The struggle for recognition of occupational disease



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The current moment

- Fair Labor Standards Act, Workers Compensation, Jury trial, and public remedies all under assault by mechanisms such as arbitration, contractual bars on class actions , damage caps, etc.

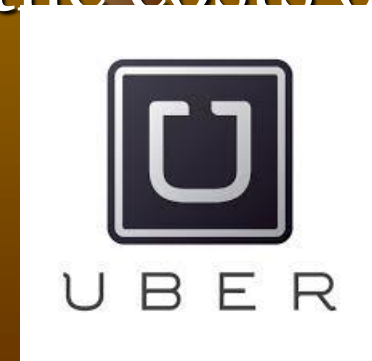


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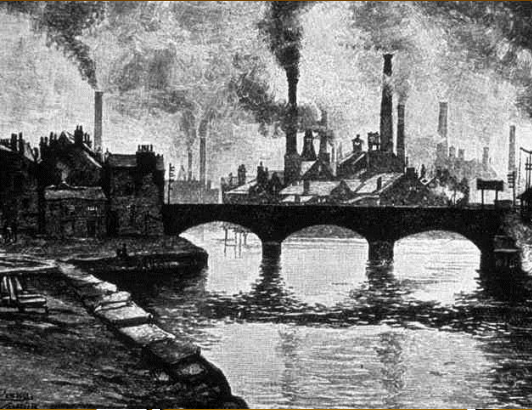
The current moment

- Who is in charge here?
- The network as the employer
- Flex time is not autonomy
- Preserve universality of coverage
- Make employers account for the costs of work-related injury

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Was Jerusalem builded here among these dark satanic mills? – William Blake




- The era of mass production
- Departure from craftsmanship model
- Uniformity of production – systematic control of the workplace
- Assumption of risk, contributory negligence, fellow servant rule
- The atomization of labor

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A public health victory, not just a compromise

- Universality
- Insurance regardless of fault
- Adequate medical benefits
- Reasonable wage replacement
- Preservation of Tort Remedies against:
 - - third parties
 - - employers engaged in aggravated conduct

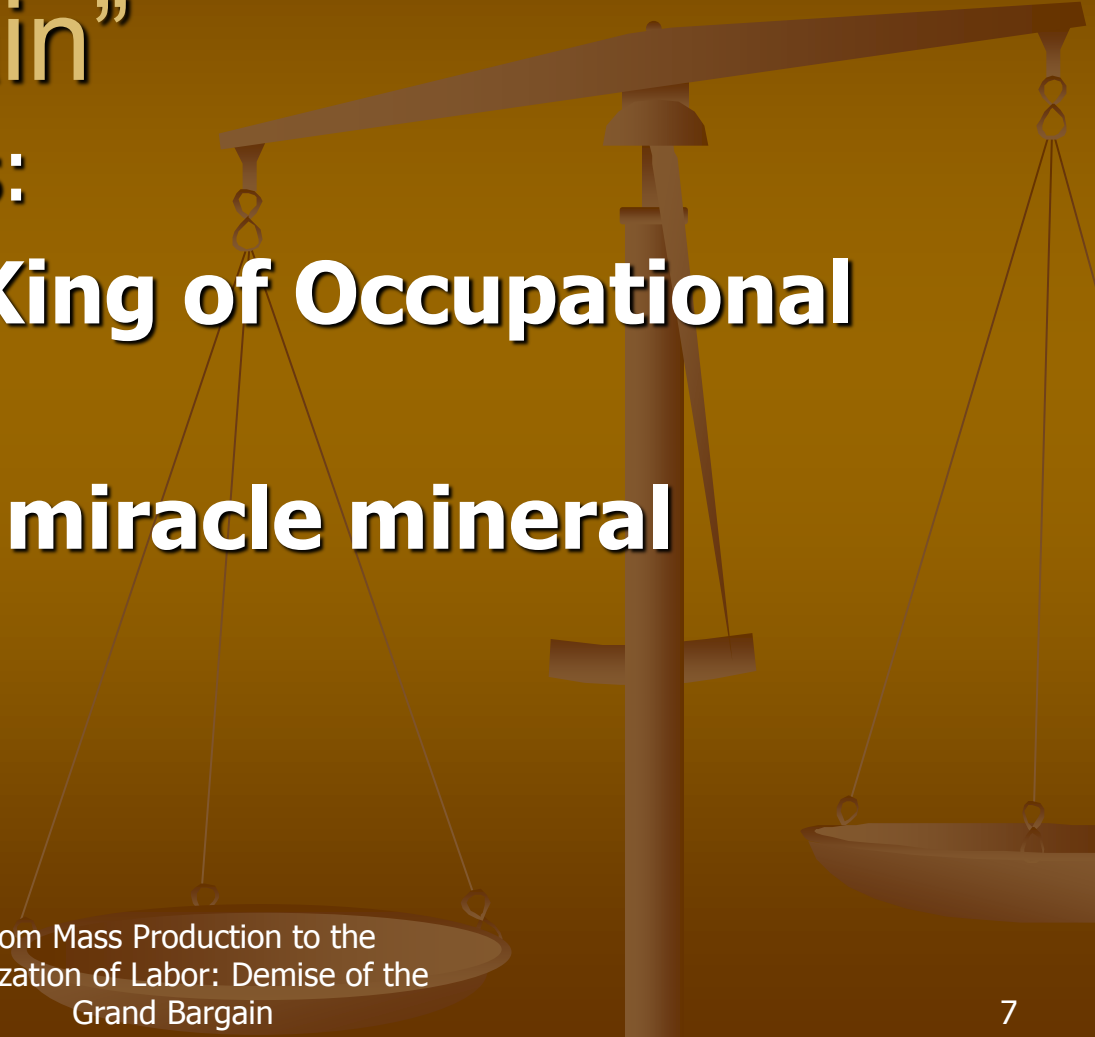


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Deadly dust

Workplace epidemics after the “grand bargain”

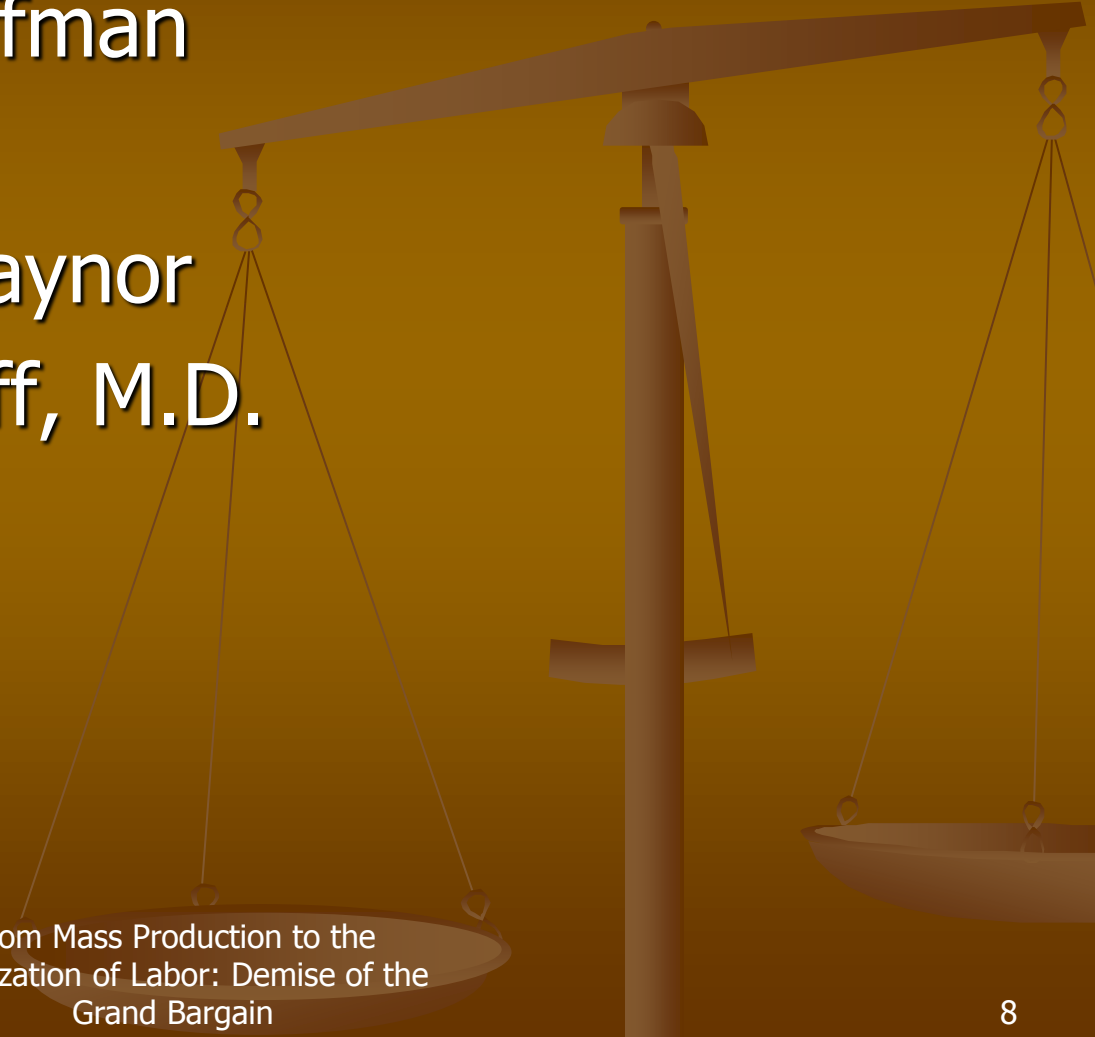
- **Pneumoconiosis:**
- **Silicosis: the King of Occupational Diseases**
- **Asbestos: the miracle mineral**



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Heroes of public health

- Frederick L. Hoffman
- Francis Perkins
- Judge Roger Traynor
- Irving J. Selikoff, M.D.



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The Era of Mass Tort Claims - Asbestos

**THIRD PARTY MASS
PRODUCT LIABILITY
LITIGATION INVIGORATED
TORT**

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Accomplishments of plaintiffs' lawyers via third party litigation

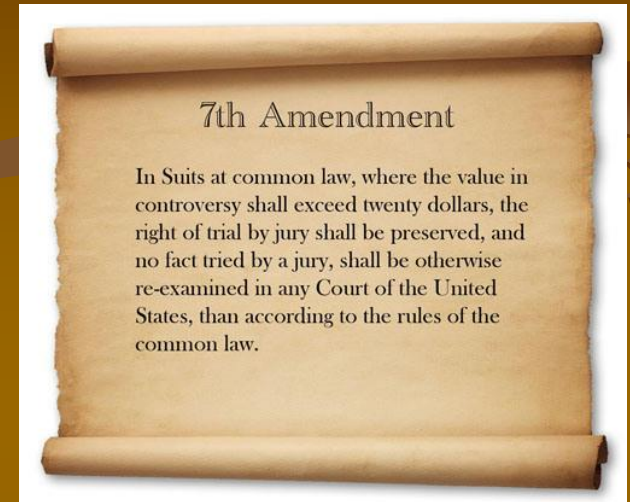
- Bringing to light the conduct of asbestos product manufacturers – Borel v. Fibreboard (1974), spurring development of OSHA rule



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Accomplishments of plaintiffs' lawyers

- Preserved the jury system



- Built a cadre of lawyers sufficiently well financed to undertake large scale self-financed litigation

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Accomplishments of plaintiffs' lawyers

- Equitable adjustments in statutes of limitation
- Establishing adequate standards for proof of causation; in light of synergy of causes, latency of manifestation, and absence of direct knowledge of biological mechanism of injury

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Sir Bradford-Hill: Criteria for Causation

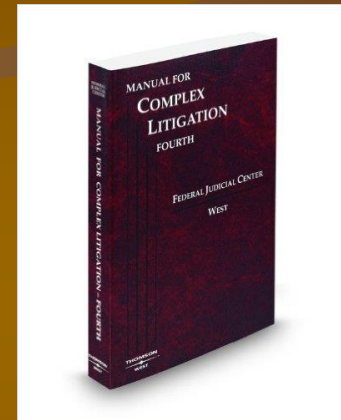
1. CONSISTENCY AND UNBIASEDNESS OF FINDINGS - Yes (not 100%)
2. STRENGTH OF ASSOCIATION - ? / Yes (RR ~ 2 to 3)
3. TEMPORAL SEQUENCE - Yes
4. BIOLOGICAL GRADIENT (DOSE-RESPONSE RELATIONSHIP) - ? (not relevant to infections)
5. SPECIFICITY - No (not 100% other putative autoimmune diseases also associated with EBV)
6. COHERENCE WITH BIOLOGICAL BACKGROUND AND PREVIOUS KNOWLEDGE - Yes
7. BIOLOGICAL PLAUSABILITY - Yes
8. REASONING BY ANALOGY - Yes
9. EXPERIMENTAL EVIDENCE - ?

Is EBV the cause of MS?

Bradford-Hill A. The environment and disease: association or causation? Proc Royal Soc Med 1966; 58:295.

Accomplishments of plaintiffs' lawyers

- Vastly increasing competence of judges and lawyers by successful use of epidemiological evidence



- Development of MDL aggregate litigation - drug and medical device cases
- Preservation of class action remedy

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