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Self-regulation, Corporate Social Responsibility, and the Business Case: Do they Work in Achieving Workplace Equality and Safety?

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ABSTRACT. The political shift toward an economic liberalism in many developed market economies, emphasizing the importance of the marketplace rather than government intervention in the economy and society (Dorman, Systematic Occupational Health and Safety Management: Perspectives on an International Development, 2000; Tombs, Policy and Practice in Health and Safety 3(1):24–25, 2005; Walters, Policy and Practice in Health and Safety 03(2):3–19, 2005), featured a prominent discourse centered on the need for business flexibility and competitiveness in a global economy (Dorman, 2000; Tombs, 2005). Alongside these developments was an increasing pressure for corporate social responsibility (CSR). The business case for CSR – that corporations would benefit from voluntarily being socially responsible – was increasingly promoted by governments and corporations as part of the justification for self-regulation. The aim of the article is to examine more closely the proposition that self-regulation is effective, with particular reference to the business case for workplace equality and safety. Based on a comprehensive literature review and documentary analysis, it was found that current predominant management discourse and practice focusing on diversity and safety management systems (OHSMS) resonate well with a government and corporate preference for the business case and self-regulation. However, the centrality of individual rather than organizational factors in diversity and OHSMS means that systemic discrimination and inherent workplace hazards are downplayed, making it less likely that employers will initiate structural remedies needed for real change. Thus, reliance on the business case in the argument for self-regulation is problematic. In terms of government policy and management practice, the business case needs to be supplemented by strong, proactive legislation, and worker involvement.

KEY WORDS: self-regulation, globalization, business case, corporate social responsibility, workplace equality, workplace safety

ABBREVIATIONS: AS/NZS: Australian/New Zealand Standard; AWCBC: Association of Workers' Compensation Boards of Canada; BSI: British Standards Institute; CSA: Canadian Standards Association; CSR: Corporate Social Responsibility; IAPA: Industrial Accident Prevention Association; ILO: International Labour Organization; NL: Newfoundland and Labrador; OHS: Occupational Health and Safety; OHSMS: Occupational Health and Safety Management System; PSAC: Public Service Alliance of Canada; RTW: Return to Work; WHSCC: Workplace Health and Safety Compensation Commission

Background

In many developed market economies toward the end of the last century, there was a political shift toward an economic liberalism, emphasizing the importance of the marketplace rather than government intervention in the economy and society (Dorman, 2000; Tombs, 2005; Walters, 2005). A prominent discourse centered on the need for business flexibility and competitiveness in a global economy, partly through deregulation (Dorman, 2000; Tombs, 2005). The production and dissemination of this discourse were seen to facilitate globalization through, among other things, the strong message that "There is No Alternative" to letting market forces determine labor standards (Arthurs, 1997, cited in Nichols and Tucker, 2000, p. 296). In Canada, this discourse of the priority of

markets, competition and globalization is evident in recent economic policy initiatives, such as Advantage Canada (Canada, 2006). The federal government's economic plan "seeks to gain a global competitive advantage in five key areas," one of which proposes "the lowest tax rate on new business investment in the G7" and another of which aims for "Entrepreneurial Advantage: Reducing unnecessary regulation and red tape and increasing competition in the Canadian marketplace" (p. 1). A regional example of the same discourse and policy is illustrated by the Council of Atlantic Premiers, an alliance of Eastern Canada provinces,[1] who announced their initiative in 2007 "… designed to identify how provincial regulations can be streamlined to reduce the burden on business" (p. 1). The Newfoundland and Labrador Minister of Business stated that "[we] have initiated a 3-year red tape reduction program with the goal of reducing the number of regulatory requirements by 25 per cent" (p. 2).

Interestingly enough, in certain policy areas, such as occupational health and safety (OHS), there was already a preference for a degree of self-regulation as a result of a wave of reforms during the 1970s in Britain, Australia, Canada, and several European countries, based largely on an influential British report by Robens in 1972. The central recommendation of this report was that the major regulatory burden should transfer from a government inspectorate to the employer as a general duty holder, within a broad goal setting regulatory framework rather than the traditional set of detailed and prescriptive regulations (Walters, 2005). Today, for example, both Canada and the U.K. feature enabling framework legislation enshrining the notion of internal responsibility so that employers are required to meet their obligations of general and specific duties to provide a safe and healthy workplace, partly by involving the work force or their union representatives (Nichols and Tucker, 2000).

This idea of self-regulation within legislative parameters can be interpreted as a move away from state responsibility and as a form of deregulation (Murray, 2004). "Regulating self-regulation" (Bluff et al., 2004, p. 4) has always meant more emphasis on persuasion, such as collaboration, training and education, than on development or enforcement of any existing regulations (Nichols and Tucker, 2000; Walters, 2005). Criticisms of the self-regulatory approach in general include its inability to take account of relatively new forms of work, such as that associated with the private service sector, outsourcing, work intensification, and the casualization of work; its assumption of common interests in the workplace, which ignores unequal power between capital and labor; and the lack of recognition of the role of criminal law, largely because of this assertion of common interests (Bluff et al., 2004; Bohle and Quinlan, 2000; Walters, 2005).

Alongside a deregulatory tendency ushered in by globalization and economic liberalism and not unconnected with it was a growing pressure on business to behave in a socially responsible manner. In a global economy, "business itself is more pervasive and more powerful," while at the same time the power and scope of government was seen to be diminished, and heightened media activity led to far-reaching criticisms of business (Smith, 2003, p. 55). As well, the move to a goal setting approach to employer responsibilities, with fewer resources allocated to, say, inspection and enforcement in favor of more workplace initiatives, made promotion of a business case for corporate social responsibility (CSR) increasingly attractive for government agencies (Tombs, 2005), in turn, making it easier to justify self-regulation. As Walters noted in relation to OHS, "recent policies on how best to achieve compliance in self-regulatory situations have increasingly emphasized supplementing approaches based around regulatory inspection with a more multidimensional approach that exploits employers' economic self-interest and levers in their business environment." (2005, p. 10).

In simple terms, the rationale for the business case is that CSR will, either directly or indirectly, result in a corporation's improved financial performance, thus inciting them to voluntarily behave ethically, leading eventually to positive social and environmental change. Indirect benefits claimed by proponents of the business case have included an enhanced corporate image and the reduction of "reputational risk" in consumer, labor, and equity markets, as noted by Smith (2003, p. 60). However, Vogel (2005) pointed out that a firm is more likely to be punished for misdeeds rather than for excellent CSR performance, so that companies are likely to perform within a narrow range around a regulatory norm or,

in a few cases, such as child labor, a civil norm. Moreover, it is clear that embedded in the business case is a focus on instrumental rather than normative motives for CSR, as argued by Vogel (2005) and illustrated by Husted and Salazar (2006), who recommended that firms should find the optimal point for maximal CSR and minimal cost. Cragg (2005) identified the potentially serious consequences of relying on the instrumentality of the business case in a self-regulatory context, when he argued:

> … self-regulation based on voluntary standards of conduct is not simply bound to be ineffective; it is also profoundly deceptive. By advocating self-regulation as an effective alternative to regulation by democratic institutions, corporations are moving the task of setting standards from the public arena, where motivations and principles are subject to public scrutiny and debate, to private control, where the dominant and dominating motivation is governed by private (financial) interest. (p. 15)

Despite this fundamental questioning of the effectiveness of the business case as a vehicle for CSR, much of the business and management literature has been in the form of a rather technical debate as to its validity, with most scholarly work focusing on attempts to model a quantifiable relationship between CSR and firm performance (for example, Griffin and Mahon, 1997; Husted and Salazar, 2006; Orlitzky et al., 2003; Sen and Bhattacharya, 2001; Waddock and Graves, 1997), with inconclusive results (McWilliams et al., 2006).

Aim of article, methodology, and outline

This article aims to add to the existing literature by examining more closely the proposition that self-regulation is effective, with particular reference to the business case for CSR and its assumption that corporations will voluntarily pursue good workplace practices. The chosen method of doing this is to ask the question whether self-regulation with its reliance on the business case has worked to achieve two important labor rights: workplace equality and safety. These two policy areas are relatively neglected in a CSR literature, as it mainly focused in recent years on the environment (as noted by Lockett et al., 2006). Bringing together two separate bodies of literature and exploring the effectiveness of self-regulation in these two different areas is innovative. And, as noted by Silverman (2000), a comparative examination enables stronger theoretical and practical conclusions than considering one issue only. In addition, this article attempts to link modern management ideas and practice with the broader economic, social, and political context, thus extending the debate beyond the firm and building on existing CSR literature. Discourse as used in this article refers to recurrent language use and themes identifiable in ideas, arguments, policies, and texts (see Prasad, 2005). This article is not intended as a theoretical contribution to discourse analysis so much as a consideration of one factor among others that may explain the effectiveness of the business case within the context of self-regulation. The arguments made in this article are based on a review of the relevant literature in both workplace equality and safety to address the aim as outlined above, identifying any similarities or differences in themes and arguments emerging from both areas of interest. Some insights gained from the author's previous research on both equality and safety are also incorporated into the discussion where appropriate. Documentary analysis of government statistical information, union newsletters, and CSR media coverage generated further information.

The article will continue with a brief consideration of the potential effect of CSR envisaged as an integrated package of social responsibilities to provide some context for the sections to follow focusing specifically on workplace equality and safety. Finally, some general parallels between the two CSR areas studied will be highlighted, before assessing the theoretical implications for self-regulation and the business case together with suggesting some ways forward for public policy and for managers. The main argument of this article derived from this analysis is that the business case is flawed because of its instrumentality in the context of a global discourse and economy. Moreover, the centrality of individual rather than organizational factors in the now predominant state and management discourse and practice focusing on diversity and safety management systems (OHSMS) means that systemic discrimination and inherent workplace hazards are downplayed, making it less likely that employers will initiate structural remedies needed for real change.

Thus, reliance on the business case to justify self-regulation for equality and safety is problematic.

The CSR concept: bundling all components together

The idea that corporate responsibility benefits business is not new. While CSR has been widely discussed leading up to and since the turn of the century, paternalistic capitalism with its roots in enlightened self-interest has been evident since the days of the Industrial Revolution in Britain (Smith, 2003). Reframing issues that have a legal face, such as human rights, labor practices, pay and employment equity, workplace health and safety and, increasingly, environmentally sustainable operations, into a broad, integrated "package" of socially responsible behavior called "CSR" is, however, relatively new. At the firm level, bundling all the facets of social responsibility together could arguably make it easier for business to demonstrate its reputation as a good corporate citizen if public attention is highlighted in one or two areas, with others fading into the background. Interestingly, this also facilitates an argument that a business case is effective for the selected issue. First, media coverage and public debate are part of a prioritizing process, whereby, for example, the environmental impact of industry in general and sectors such as oil and gas, mining, and forestry, in particular, leads to a predominant focus on environmental sustainability. Research conducted by the author in the offshore oil industry indicated that the functional integration of health, safety, and the environment was viewed by both management and union representatives as leading to less attention being paid to health and safety, despite the continuing challenge of occupational disease (1999, unpublished research). Kamp and Blansch (2000) also found a tendency to prioritize the environment when merged organizationally with health and safety. Not surprisingly, then, Vogel (2005) pointed out that the business case for environmental responsibility is easier to make than for action on social or labor issues, which rarely add to the profits of a firm. Recent public and political debate fuelled by international research, for example, the Intergovernmental Panel on Climate Change report in 2001 (Watson and the Core Writing Team), will likely reinforce this pattern of favoring corporate environmentalism.

Second, bundling makes it more difficult to identify inconsistencies in a company's record, particularly when one issue is prioritized, and the corporate structure is fragmented. For example, Shell Canada was included in the Canadian *Corporate Knights*' 2007 ranking of "The Best Fifty Corporate Citizens" albeit at number 50 (p. 24). Their success was based primarily on a the pollution performance score, although the editors imply that it was linked to their overall CSR record since "… [these companies] are doing the best job at fulfilling their end of the social contract and managing their specific environmental, social and governance performance when going head-to-head with their sector peers" (p. 19). However, Shell has been criticized for its flawed safety management in the British offshore concerning three offshore oil workers who all died from a massive gas leak in the same utility shaft on the same platform (Brent Bravo), two in 2003 and one in 2005. The company was fined 1.6 million pounds after the first two deaths (OILC, 2006). Reliance on a company's reputation to drive the business case is problematic if inconsistencies are not immediately apparent; indicators available to stakeholders, and especially the public, have to be reliable and transparent. Furthermore, safety improvements in response to this CSR failure only demonstrate a business case after the fact and, more importantly, after lives were lost.

Equality

Reframing equality in the state and the firm

There has been a reframing of equality issues over the last 30 years, somewhat reminiscent of the development of an overarching CSR discourse incorporating previously discrete workplace rights, such that separate equality rights have now become integrated into a more general diversity management discourse. A brief examination of Canadian policy illustrates this shift. The federal government's policy on women's equality in the 1970s, for example, enshrined the concept of equal pay for equal work, subsequently extended to incorporate equal pay for work of equal value under the federal and provincial

human rights codes. Political pressure during the mid- to late 1980s in the face of the evident failure of the complaint-based legislation led to the introduction of proactive pay equity laws in Manitoba, New Brunswick, Nova Scotia, Ontario, and Prince Edward Island. Under this legislation, employers had to systematically compare female- and male-dominated occupations using a gender neutral job evaluation scheme, and adjust wages accordingly. During this era, the Canadian government also introduced proactive employment equity legislation (Canada, 1986), whereby employers had to identify and address barriers to the employment of women, aboriginal peoples, persons with disabilities, and members of visible minorities.

This proactive legislation did not completely fulfill its promise. The globalization discourse in Canada made it easier for governments favoring economic liberalism to withdraw from regulated workplace equality, undermining the original intent of the reforms. For example, Ontario's Pay Equity Act, 1987, has been weakened by successive governments through a steady reduction of funding. By 1997, the budget for the Pay Equity Commission and Tribunal had dropped by 46%. Tribunal appointments were cut as were those in the Pay Equity Legal Clinic, the latter established to assist low-income, non-unionized women gain their rights. During 2003–2006, the budget was reduced by a further 20%, and in 2006 there was no legal clinic, library service, educational officer, or new research and analysis (Equal Pay Coalition, 2007). Moreover, the federal government has fought a lengthy legal battle against the Public Service Alliance of Canada (PSAC), refusing to pay equity adjustments agreed in a 1983 joint job evaluation study conducted in compliance with the Canadian Human Rights Code. Even when the Canadian Human Rights Tribunal awarded approximately $4 billion in retroactive payments and interest in 1998, the Treasury Board appealed through the law courts, although the case was dismissed in 2001.

At present, the federal government is still in dispute with PSAC over taxation of pay equity settlements (PSAC, 2003, 2007). The government's latest step was to introduce legislation early in 2009 that withdrew the right of federal public servants to file an equal pay complaint with the Canadian Human Rights Commission until after collective bargaining has taken place (in the absence of any proactive pay equity laws), at which time their prior right to file a complaint with the support of the union is removed. Any union that assists or encourages its members to file a pay equity complaint will be subjected to a substantial fine (PSAC, 2009). This deregulation represents in part a clear move away from collective, labor rights toward those of the individual. In effect, it marginalizes the importance of systemic discrimination as well as removing the right to equal pay in practice, since no one individual will have the resources to challenge the federal government.

Turning to employment equity, an incoming Conservative government in the province of Ontario immediately repealed the New Democratic Party's Employment Equity Act, 2 years after its introduction in 1993. The proactive legislation had mandated joint implementation with union or employee representatives, but deregulation was rationalized in a political campaign "which relied heavily on the incitement of fears and anxieties during a time of high unemployment and extensive corporate downsizing and layoffs" (Agocs and Burr, 1996, p. 34). Language used in this campaign such as "job quotas" and "reverse discrimination" drew upon the previous U.S. debate over affirmative action, misrepresenting the provincial legislation (Agocs and Burr, 1996), so that a powerful strand of opposition to government intervention was embedded in the equality discourse. Interestingly enough, despite this hostile political climate with regard to equality in Ontario from the early 1990s onward, the federal government revised their Employment Equity Act in 1996 and, among other things, apparently strengthened the Act by establishing an enforcement role for the federal Human Rights Commission and Tribunal. However, examination of the wording of the Act reveals that the regulatory agency's power was considerably circumscribed, reflecting the preference in self-regulatory discourse for non-criminal approaches, since, "… wherever possible, cases of non-compliance be resolved through persuasion and the negotiation of written undertakings … and that directions be issued … and orders made … only as a last resort" (Sect. 22[2], Canada, 1986), and, moreover, without causing "undue hardship" to an employer (Sect. 33[1a]). Even with new teeth, the legislation still lacked bite,

although a new requirement for joint implementation of employment equity plans with unions or employees was encouraging.

Essentially, the proactive equality laws were policy acknowledgments that systemic discrimination required government intervention to ensure human rights and social justice. However, in a deregulatory climate where voluntary action is preferable to strong legal frameworks, it is notable that a federal law mandating duties for employers relied heavily on a business case for employment equity as important for success in a competitive world, as shown in this Summary Statement from the revised legislation:

> Many employers have recognized that employment equity is part of a strategic approach to human resource management and have acknowledged that companies must develop policies and practices that take advantage of Canada's increasingly diverse workforce if they wish to be successful in today's competitive environment.

Moreover, weak and under-funded equality legislation provided space for non-legal and management-driven notions, such as diversity management, arguably a diluted "packaging" of what were seen traditionally as legal employment rights. The language above, from a central piece of the Act, reveals a model infused with the language of human resource management, diversity, and its management for corporate advantage. This same theme and approach to equality was evident in the human resource practitioner community (Canadian Institute, 1992; Copeland, 1988) and management theory (Mighty, 1991) in the late 1980s and 1990s (the time of the new legislation), and is still prominent (Gomez-Mejia et al., 2003; Ruby, 2006). Recurrent themes and language used in the idea and management of diversity do not, for the most part, demand structural change to tackle inequalities, such as barriers to employment experienced by workers with disabilities and those of aboriginal ancestry, or job loss and deskilling of women in female-dominated occupations. Instead, employers are encouraged to focus largely on employee attitudes and interpersonal behavior through education and training (Agocs and Burr, 1996), representing, in effect, a shift in discourse toward individualism (Bakan and Kobayashi, 2000). As noted by Agocs and Burr (1996), diversity training is mostly about individual awareness and skill building, in that it:

> … usually includes information on changing demographics, and often about bias, prejudice and stereotypes, but not about discrimination. Typically, training sessions provide experiential and self assessment exercises and role playing. (p. 37)

On a theoretical note, the diversity management discourse, through its emphasis on individual rather than organizational change, enables a minimalist concept of equality to be more easily incorporated into the notion of enlightened management under a broad label of CSR. Indeed, the centrality of the business case in the promotion of diversity management encourages a movement away from normative arguments about social justice or ethics, as employer action is now assumed to be just good strategic management rather than protection of workplace rights.

The Canadian record on equality

The evidence of workplace inequality in Canadian workplaces undermines the business case. Disadvantaged groups identified in the Employment Equity Act are still under-represented in Canadian workplaces, in terms of their employment rates, jobs, and wages. Limited space prohibits a comprehensive review of these indicators of equality, given the variations within each group. In general, however, based on research conducted by Agocs and Burr (1996), the unemployment rates are higher for aboriginal peoples, persons with disabilities, and visible minorities compared to their Canadian counterparts. Their figures also show that any change in occupational segregation has been limited, primarily consisting of increased hiring of white able-bodied women and, to a lesser extent, of racial minority women, in selected job classes The wage gap for all the groups has not significantly decreased over the last 20 years, and, in some cases, any improvement has slowed down in the last decade compared to the previous one. For example, based on full time, full year earnings, women in 2005 earned 70.5% of men's wage, representing a gender wage gap of 29.5; the average wage for women compared to men in the all-earners category was 64%, representing a gap of 36% (Statistics Canada, 2006). Moreover, although the gap for women from 1981 to 1991 was reduced by 6%, it dropped only

2% from 1991 to 2001, despite an increase in women holding university degrees during the latter period (Frenette, 2007). A persistent wage differential is also still in evidence for other disadvantaged groups. The wage gap between aboriginal workers and the Canadian work force as a whole has been estimated overall as $9,400, and the gap increases with earnings level. Both male and female visible minorities in general earn less than other Canadian workers, with Black, Indo-Pakistani, Chinese, and Non-Chinese Oriental men earning from 12% to 19% less than their non-minority counterparts; visible minority women as a group are at slightly less of a disadvantage than visible minority men. People with disabilities earn about 17% less than those workers without disabilities, with the more severely disabled suffering more discriminatory wages (Statistics Canada, 2006).

Flaws in the business case

British scholarly explanations of workplace inequality are broadly similar to those discussed so far in this article: ineffective equality legislation, a tendency toward deregulation, and emphasis on employer initiatives, buttressed by the promotion of a business case (Dickens, 1994, 1999). Space prohibits a detailed consideration of the impact of the business case on all disadvantaged groups, but Dickens' (1994, 1999) assessment of its impact on British women's equality is instructive in the Canadian context. Theoretically, an employer's motivation for action is driven by the prediction of increased economic performance in a competitive labor and product market, by ensuring women's recruitment, retention, and productive role in the firm. While this approach to policy is an improvement over employers not being alerted to workplace inequality at all, there are limits to the business case in practice. Research into U.K. equality initiatives showed that selective, tailored action by different organizations has largely resulted in uneven outcomes; moreover, there is a need to move beyond the individual firm for real labor market change for women (Dickens, 1994, 1999).

Essentially, inconsistent response was because the business case clearly has ''greater salience for some organizations than others and one should not be surprised to see inaction as well as action'' (Dickens, 1994, p. 11). Based on her research, Dickens identified a number of reasons for this. First, manufacturing companies facing a skills shortage will not necessarily hire women; given the gendered nature of skills; they will likely compete for male labor by increasing men's wages (thus widening the gender wage gap), introducing technological change, or opening apprenticeships to older men. Second, the gender composition of organizations clearly affects the situation. Lower absenteeism rates resulting from more child care would only be cost effective in a female-dominated workforce or where women work in key areas, not in a predominantly male workplace. Third, in a recession, firms will be more likely to reduce or eliminate equality initiatives and pay more attention to restructuring, layoffs, and closedowns. Fourth, business arguments about increased productivity and performance are contingent on a firm's product market and production process; promoting the hiring and training of women will be less persuasive in a company competing on the basis of low cost labor than, say, a firm competing on quality or innovation. Fifth, a cost-benefit analysis may focus on gains in terms of management control or the support of a particular component of the labor process, such as recruiting by word of mouth or on fitting in rather than merit (Dickens, 1994, 1999). Sixth, outsourcing, an increasing trend, is more likely to lead to the decision that equality is a liability rather than a benefit, since a company bidding for a contract will be at a disadvantage against a competitor without such an initiative. Thus, in some cases there is a more convincing business argument for not adopting equality initiatives or, worse, exploiting cheap and unskilled labor, ''in that, discriminatory practices can contribute to the bottom line'' (Dickens, 1994, p. 13).

Complementary strategies

If the business case cannot be relied upon to tackle systemic discrimination, then one complementary route to change is ''legal regulation'' (Dickens, 1999, p. 12). In order to work, this law has to be proactive and buttressed by strong enforcement and political will, together with policies enabling disadvantaged workers' equal participation in the labor market.

This means a shift in discourse and policy toward state rather than self-regulation, but ushers in the possibility of concerted institutional action for legal reform. Further institutional roles are union advocacy to protect legal rights or joint union–management development of policy in organized workplaces, primarily but not limited to, collective bargaining, as in Dickens' advocacy of "social regulation" (1999, p. 14). The labor movement's record on women's equality has been uneven in the past in Britain (Rubery and Fagan, 1995) and in Canada (Kainer, 1998), but research has shown that they have acted as a positive force for change both in the U.K. (Bewley and Fernie, 2003) and in Canada (Hart, 2002a). For example, based on case studies of pay equity bargaining in the Ontario public service and health care in Newfoundland and Labrador, Canada, the most effective unions supplemented their conventional negotiating techniques with gender analysis and pay equity expertise to gain significant wage adjustments for women (Hart, 2002a). Moreover, union engagement enhances the likelihood of moving beyond the business case to an alternative discourse of fairness or ethics, as well as locating the equality debate in mainstream industrial relations rather than seen primarily as a management prerogative, making real organizational change more probable (Dickens, 1999). This article continues by considering the effectiveness of self-regulation and the business case in the area of workplace health and safety.

Safety

Reframing safety in the state and the firm

As in the equality case, OHS policy was affected by pressures for deregulation as part of the globalization discourse. For example, in Newfoundland and Labrador (NL) a 2002 federal-provincial initiative aimed to consolidate offshore oil safety legislation previously fragmented into sections of both provincial and federal law (Canada and NL, 2002, 2003). A comparative analysis of the language and themes concerning existing and proposed rights and obligations revealed a deregulatory thrust, with the effect of weakening of worker participation rights (Hart, 2006). For example, progressive amendments in 2001 to the provincial legislation strengthened the joint union–management OHS committees by requiring the employer to pay for government-approved training of committee members and established clear rules of accountability of the employer to committee recommendations, including a limited window in which to reply in writing and a duty to provide regular updates until their implementation. In the proposed offshore legislation, these mechanisms of committee empowerment were omitted. Also, the traditional and potentially powerful role of the committee to investigate the legal right to refuse unsafe work to decide whether it was reasonable and advise the worker as well as make recommendations to the employer were removed, and a passive role was substituted in the proposed reform, essentially one of only being notified about refusal to work matters. The mandate to develop and promote education for workers was also excluded.

Moreover, the language, tone, and sequencing of the clauses in the offshore legislation were notably different, such as, for example, "*functions* of workplace committee [italics mine]" substituted for the arguably stronger term "*duties* of committees" in the provincial equivalent. The wording of the latter's list of duties stated clearly that the committee "*shall* seek to identify" unhealthy or unsafe aspects of the workplace (the first duty) whereas the new language listed the functions as mostly only "*advisory*". Instead of the provincial requirement that the committee was to recommend the "*enforcement*" of standards (second duty), the only roughly equivalent offshore language referred to "*auditing compliance with OHS requirements*," arguably a much weaker role, referring to quality assurance approaches and possibly internal procedures (it was not clear) instead of a duty to enforce (external) standards (Hart, p. 33). Overall, the analysis pointed to a reframing of OHS, a shift from a traditional industrial relations discourse with a strong role for unions and worker participation to one featuring a new managerialist, or, more specifically, human resource management theme of OHS management systems (OHSMS) as the main route to organizational safety. A corollary to the move away from collective rights of workers was an emphasis on individual rights, largely through an expanded anti-discrimination section on protection of the individual employee who spoke out or filed a complaint. The change from the word "workers" as in the provincial legislation to "the employee" throughout

the offshore document indicated these shifts in discourse as well. Federal-provincial conflict has stalled this regulatory reform but a resolution of it will likely result in its promulgation (Hart, 2006).

Turning now to the business case, even before the self-regulatory shift in the 1970s, economic incentives had been an important component of OHS policy in many industrialized capitalist economies since the beginning of workers' compensation schemes (Dorman, 2000). The push for fewer expensive and cumbersome regulations accompanying globalization opened up space for the increased promotion of the business case (Tombs, 2005). For example, the NL government announced a new workers' compensation policy in 2005, called the Practice Incentive (WHSCC – PRIME, 2007). This allowed employers a 5% refund on their annual assessments if they met certain Practice Criteria (the establishment of OHS and Return to Work [RTW] policies, OHS committees, an injury reporting system, a foundation OHS program, and a foundation RTW program), in turn, becoming eligible for the Experience Incentive. The policy goes one step further than a simple premium based incentive by increasing the likelihood that employers will establish and document certain desirable OHS processes, because they are not eligible for the Experience Incentive otherwise. Significantly, the preamble to the Practice Incentive checklist revealed a clear articulation of the business case as the regulatory mechanism: "Proactive employers realize that safety, quality, cost, productivity and profit all go hand-in hand." (WHSCC – PRIME, Practice Incentive Criteria # 4, p. 1).

The provincial government's policy change can be reasonably interpreted as a move away from legal compliance through inspection and enforcement toward a stronger reliance instead on the business case to motivate employers to change. This conclusion is strengthened by a recent WHSCC announcement of their CEO Leadership Charter for OHS, showing the government's increasing confidence in the business case. Business leaders have to sign an agreement to follow certain OHS principles. And a top commitment for signatories asserted their belief in the business case: "Sound business strategies, processes and good health and safety performance are the foundation of business success" (WHSCC, 2007, p. 1). Another Canadian example is the provincial government in Ontario who has clearly advocated that "competitiveness and safety excellence are complementary and mutually reinforcing" (cited in Nichols and Tucker, 2000, p. 301). The fact that industry is also promoting the business case, this time being explicitly linked with CSR, is evident from a recent Leadership Forum organized by a prominent industry association in Ontario, the Industrial Accident Prevention Association (IAPA). The advertisement for this Forum promised employers that they would "learn how a robust health and safety system contributes to an organization's CSR strategy and how that can translate into a sustainable business strategy" (Rae, 2007, p. 1).

The promotion of a business case in the guise of sound strategic management, rather than just the simple monetary advantage of lower workers' compensation premiums, can be better understood in the context of a firm level shift in OHS discourse. From its origins as a separate technical function staffed by predominantly safety engineers and industrial hygienists, over the last 20 years, OHS has evolved in many large companies to being seen as an integral part of the overall management of the organization. This was mostly due to the influence of total quality management, with its roots in systems theory dominant in management ideas and practice. This development coincided with an increased dominance of industrial and organizational psychologists, in the general context of a shift toward human resource management,[2] in part a recognition of the importance of the human factor but also lending legitimacy to a central focus on the individual worker as the key to improving OHS rather than reducing risk exposure in the workplace (Frick and Wren, 2000; Nichols and Tucker, 2000). All of these factors, in addition to an international trend in developing systematic management of health and safety, driven by a number of disasters in the 1980s and partially inspired by the positive Scandinavian experience of OHSMS in the offshore oil and gas industry, led to an increased emphasis on OHSMS in large corporations (Frick and Wren, 2000). OHSMS are increasingly becoming standardized on an international basis. Some models are available commercially (for example, DuPont, see Wokutch and VanSandt, 2000), but others are in the form of national standards (for example, Australian/New Zealand Standard [AS/NZS], 2001; British Standards

Institute [BSI], 2004; Canadian Standards Association [CSA], 2006), at least one of which – BSI – is often viewed as an international standard. Even so, despite some advantages, research has shown that OHSMS tend to underestimate the importance of organizational factors and occupational health. Also, a managerial discourse, emphasizing "continuous improvement," "quality," and "employee engagement" has centralized the individual behavior model at the expense of innovative, proactive hazard management and, furthermore, marginalized a traditional discourse legitimizing unionized safety representation (Gallagher et al., 2001; Nichols and Tucker, 2000; Tombs, 2005).

This OHSMS development and discourse, identifiable in both the state and the firm, facilitates the promotion of the business case by governments and corporations, in turn buttressing the argument for internal regulation and weaker legislation, a linkage noted by Frick et al. (2000) when they remarked that "self-regulation, or perhaps put more accurately self-organization, can … be seen as the base for voluntary OHSM systems" (p. 6). However, if implementing an OHSMS is the main criterion for assessment in state regulation within a goal setting framework, then this indicator may well overestimate the effectiveness of the business case for health and safety at work in reality. A closer look at the effect of a major assumption underlying OHSMS is instructive. The strong strand of individualism combined with the underestimation of organizational factors will tend to lead management toward safety interventions focusing on employee engagement, such as education and training in risk perception or appropriate attitudes toward personal protection equipment. The corollary of this is that less investment is likely in alleviating exposure to risk arising from hazardous working conditions, especially as tackling these problems are usually costly, as noted by Nichols and Tucker in their research into the impact of OHSMS:

> Worker health and safety activists … found that, while employers accepted some recommendations emanating from JHSCs [joint health and safety committees], those that required significant expenditures or redesign of the production process were often resisted. (p. 298)

It stands to reason that the cost of any safety intervention in a cost-benefit analysis is crucial in the calculation, so that the business case is more convincing to a company if the investment costs less. Corporate action that meets the requirements of an OHSMS can likely demonstrate safety effectiveness to government regulators, enabling them to assert that self-regulation works, even though it may well be that workplace hazards or problematic organizational factors, such as increasingly demanding production targets, have not been remedied. When the marginalization by most OHSMS of worker involvement, which is seen as essential in the literature (for example, Gallagher et al., 2001; Nichols and Tucker, 2000) and the limitations of most conventional auditing practices in detecting fundamental gaps in OHSMS (see Hopkins, 2000) are added to this complexity, it is clear that judging a corporation on its adherence to its own OHSMS is not enough. Echoing the equality discussion, a management discourse and practice with an embedded individualism and narrow view of what is important has encouraged a minimalist concept of safety, making it less likely that structural, long-term changes for the better will be adopted.

The Canadian record on health and safety

Bearing in mind the long established use of a measure of self-regulation by stressing the business case in Canadian OHS policy, its failure is apparent when the record is examined (Dorman, 2000). This is not to necessarily ignore a regulatory framework weakened, for example, by the assumption that management and employee representatives on OHS committees exercise equal power (Shields and Dickinson, 1994), or by the undermining effect of organizational factors on the right to refuse unsafe work (Harcourt and Harcourt, 2000). Although the lost time injury rate has been in overall decline between 1995 and 2005, the more reliable workplace fatalities rate shows a steady increase during the same decade (AWCBC, 2006). ILO statistics show that when compared with the U.S., Britain, Germany, France, Norway, and Sweden, during 1998–2002, the Canadian workplace fatalities rate was the only one that had increased (from 5.7 per 100,000 employees to 6.1), with all other countries showing some improvement in the trend. Furthermore, the Canadian rate was consistently and significantly higher; for example, in 2002, the rate in the U.S. was

4, France 3.8, Germany 2.92, Norway 1.7, Sweden 1.4, and Britain 0.74 (ILO, 2007).

Flaws in the business case

Reminiscent of the application of the business case to equality is the problem of salience with regard to self-regulation of safety. Some industrial operations are recognized as high risk, such as offshore oil and gas production, and it is likely that they will pay considerable attention to safety management because the consequences of failure could involve extremely costly asset damage and multiple fatalities. Indeed, empirical research has shown that "regulating self-regulation" is most successful in companies "… that have a 'natural interest' in safety matters, due to the high risk in the production process or the social 'visibility' of the company" (Aalders and Wilthagen, 1997). Also, "high reliability organizations" (Hopkins, 2000, citing Weick, Sutcliffe and Obstfeld, p. 139) exist in the high risk, high tech sector, such as modern nuclear plants, naval aircraft carriers, and air traffic control systems, "… where it is not possible to adopt the strategy of learning from mistakes" (Hopkins, 2000, p. 140). As Hopkins noted, the distinguishing characteristic of these organizations is that of "mindfulness" (p. 139), an absence of which he identified as a major contributory factor in a fatal gas plant explosion. On the other hand, it is possible that some high risk corporations could rely on internationally established OHSMS and increasingly sophisticated risk analysis to conclude that the workplace is now more or less safe, shifting attention toward more pressing aspects of CSR, such as the environment (Hart, 1999, unpublished research). As well, organizations traditionally understood as lower risk, such as those in the service sector, may be less vigilant and underestimate potential hazards in, for example, fast food restaurant kitchens, often staffed by predominantly young workers (Brooks and Davis, 1996). Bearing in mind all of these factors, it is likely that cost-benefit analysis will tend toward inconsistent corporate action.

This uneven corporate response is compounded by the methodological difficulty of accurate measurement in any cost-benefit analysis of safety expenditure. First, costing accidents and their prevention are difficult. While the salary of safety personnel can be precisely counted, other costs cannot, such as multiple causalities or the effects of lost corporate image (Panopolous and Booth, 2007). Second, costing health is extremely difficult to calculate. Long latency periods, accurate measurement of work exposure, scientific uncertainty on how individual differences factor into occupational disease, and a lack of awareness in the medical community and society all translate into statistical under-estimating (Dorman, 2000; Panopolous and Booth, 2007; Tombs, 2005). Finally, there is the impossibility of measuring the human cost of accidents, illness, and death to injured workers, their families, and communities (Dorman, 2000).

According to the business case, effective cost-benefit techniques should lead to an economic rationale for CSR action, but the logic of economic incentives in general leading to desired OHS behavior is questionable. Direct monetary or other material rewards for narrowly defined improvements in safety performance, such as reduced lost time or injury rates, have long been integral to workers' compensation assessment and corporate prevention strategies; now, research has shown that most commercially available OHSMS models tend to rely heavily on such short-term, quantifiable indicators for performance evaluation (Frick and Wren, 2000; Gallagher et al., 2001; Hopkins, 2000; Nichols and Tucker, 2000; Wokutch and VanSandt, 2000). The problem is the possibility of undesirable and unintended responses to such incentives. For example, according to Dorman's research (2000), managers have been known to discourage the filing of claims, reduce lost time by requiring workers to report soon after an injury for light duty work, intimidate workers who may report sub-standard safety conditions to government regulators, and alter incident logs. In addition, workers may have an economic interest in not reporting work injuries because their compensation pay is often lower than their regular wage so they may collude with management in not reporting incidents unless they cannot be hidden. The cumulative effect of this short-term, narrow focus is that organizational learning is low: if there is a tendency for under-reporting, then not only some injury-causing incidents but also any near misses will probably not be recorded and investigated. Therefore, hazardous conditions will likely remain. Unfortunately, past experience has shown that zero

or very low injury rates can mask unsafe workplaces, as illustrated by fatal explosions in an underground coal mine in Canada (Richard, 1997) and a gas plant in Australia (Hopkins, 2000).

In the end, contrary to the self-regulation discourse assuming employer and workers' common interest with regard to safety, the business case is flawed in ignoring an inherent tension between production, ultimately profit, and health and safety. For example, management discourse and practice emphasizing the importance of high production targets and the need for new patterns of work to cut costs in a global economy, resulting in such work reorganization as mobile maintenance crews, continuous shift-work or multi-tasking, can legitimize action that meets the production imperative but can undermine health and safety (Hart, 2002b). Moreover, sometimes corporate action to protect worker health and safety requires large capital costs to install equipment that will not necessarily benefit production or profitability, as noted earlier. Clearly, in these calculations there is no business case. This is not a new idea. The authors of the investigative report on the 1982 capsize of the Ocean Ranger semi-submersible oil rig in the Canadian offshore, with 84 fatalities, drew upon it to explain the failure of the evacuation system:

> … [the industry] has faced and overcome the problems associated with exploring for and producing oil and gas under major environmental constraints because, without these solutions, exploration and production could not take place … [they] are deemed essential to the rig's mission and therefore worthy of the latest innovations that technology has to offer. The evacuation system does not meet that same criterion of being essential nor does it elicit the same response. (Canada, 1985, p. 104)

Indeed, in both Canada and Britain, despite advocacy of the business case, a contradiction between profit and safety is recognized by the legal principle of requiring employers to spend money only up to the point of being "reasonably practicable" (Nichols and Tucker, 2000, p. 292). As Panopolous and Booth (2007) argued, the business case is immediately weakened by this caveat. Interestingly, the same argument can be made about the business case for CSR in the area of workplace equality, since the duty to accommodate in Canada and Britain is limited by the legal principle of "undue hardship," beyond which the employer is not expected to act to accommodate (for example, see Canadian Human Rights Commission, 2009).

Complementary strategies

From the discussion so far, the business case may be useful in motivating employers to tackle short-term and easily measured improvements in OHS. However, if it is to work at all, then more effective accounting and measurement techniques have to be developed (Panopolous and Booth, 2007). However, as with its limitations in achieving equality, other approaches are needed to ensure real change. Recommended complementary routes (Dorman, 2000; Nichols and Tucker, 2000; Tombs, 2005) are similar to Dickens' "legal" and "social" regulation for equality. First, based on international research (cited in Tombs, 2005) and reminiscent of the equality discussion, the legal framework and its enforcement have to be strengthened. In Canada, the Criminal Code was amended in 2003 to include a new crime of OHS criminal negligence following the Westray coalmine tragedy and concerted lobbying by unions and other advocates (Keith, 2004). A critique of this new law is beyond the scope of this article, but, although undoubtedly a step in the right direction, there are nevertheless some concerns, including a shift away from "corporate" to "organizational" liability, with serious implications for unions, and that all members of an organization, including individual employees, may be found criminally liable. Other legal reform could include empowering joint OHS committees by giving them the right to co-determination of policy and practice. Also, consolidation of legislation, in principle a good method of tackling regulatory duplication and ambiguity, should avoid a parallel tendency to weaken or deregulate, as happened in the offshore case noted earlier.

A second route is worker participation, recognized as beneficial in many studies (cited by Tombs, 2005, p. 8; Dorman, 2000; Nichols and Tucker, 2000; Walters, 2003). Workers obtain the most powerful channel of influence when safety representatives are backed by unions, who can provide valuable expertise and training (Hart, 2002b;

Walters, 2003). Historically, Canadian unions successfully lobbied for protective legislation and labor standards; in general, their early record is better with regard to workplace health and safety than for equality. Recent examples have been campaigns for workers' compensation for asbestos-related cancers (USWA, 2004) and mining dust exposure (Walsh, 2007). Even in the face of economic restructuring, globalization, and a free market discourse, Canadian unions are still largely protected by existing collective bargaining legislation. Echoing the earlier text on equality, unionized worker participation is more likely to build back in the moral imperative and the conviction that workplace health and safety is a matter of social justice.

Conclusions

Bearing in mind the above analysis, the business case is weak for both equality and OHS and so its use by government, regulatory agencies, and corporations to justify self-regulation is limited. Its major flaws derive from its salience and instrumentality, linked with the nature and priorities of cost-benefit analysis in a global market economy. In general, the adverse impacts of globalization and marginalization of important organizational factors were found to be common across the two areas. Shifting management discourse and practice with a predominant focus on diversity management and OHSMS, rather than on state protection of the legal right to workplace equality and safety, resonate well with a government and corporate preference for self-regulation and the business case. In both equality and safety discourse and practice, it is arguably less onerous for employers and governments to demonstrate the success of internal regulation and, by extension, the business case and further deregulation. This is largely because there has been a significant shift in favor of individual behavioral rather than organizational explanations of workplace outcomes, so that systemic discrimination is marginalized in the prominent discourse and practice, as are inherent workplace hazards. This makes it less likely that employers will tackle the more difficult, and often more costly remedies needed for real and long-term change. As the standard of judgement incorporated into the business case is instrumental and not based on any higher, moral concept of what constitutes social justice, and higher compliance standards are unlikely in a deregulatory context, a company could argue that it was socially responsible based on its investment in better education and training without moving to the structural level at all. While employee engagement is important both for equality and safety, assuming on the basis of a limited level of remedy that the business case is effective is clearly questionable.

The firm level reinforcement of individual agency to the neglect of structure arguably reflects the strong thread of individualism evident in the free market discourse of globalization at the state level in many countries. Also, as a prominent strand in the globalization discourse in state and corporation, the instrumentality of the business case reinforces a non-normative, market-based calculation of social responsibility, and helps to justify a minimalist approach to managing equality and safety programs. However, it is important to recognize that, to a certain extent, individuals and, more importantly, institutions can positively or negatively affect the outcome, enabling or constraining change. Bearing all of this in mind, and without underestimating the differences between the various areas of social responsibility, there are significant policy implications for CSR in general. For government, it is suggested that the business case be supplemented by effective proactive laws, ideally requiring worker participation with union backing where appropriate and the power of co-determination. For corporations, employee and community involvement needs to be part of CSR management. Even in the best case scenario, arguably the environment, international research (see Tombs, 2005) shows that self-regulation is not enough and that greater action in environmental management is driven primarily by compliance with regulation and that stakeholder engagement is essential.

Notes

[1] The provinces comprising this Council are New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.

[2] Nichols and Tucker (2000) note, as an indicator of this shift to human resource management, an extract from a 1997 British Health and Safety Executive (HSE) booklet asserting that "… the best health and safety

policies do not separate health and safety and human resource management, because they acknowledge that people are the key resource,'' cited p. 290.

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