

**Logical Insanity:
Canadian Governmental Policy and the Case of Asbestos**

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Abstract

Successive Canadian governments have cultivated an image of themselves, both domestically and internationally, as champions of health care and humanitarian work. Over the past thirty years laws, regulations and procedures have been adopted to reduce asbestos use in Canada in order to reduce Canadians' risk of asbestos exposure, given that all types of asbestos are known carcinogens. At the same time, both federal and provincial governments have been complicit in the ongoing export of asbestos, and have actively engaged in efforts to prevent bans on its use. How did these two apparently conflicting government positions arise, and why do they persist? Furthermore, what are the consequences of this anomalous situation for the populations who expect, and depend on, their government to act in their best interest? This paper describes and explains this phenomenon in terms of a Marxist-theoretical, political-economic analysis of "contradictions" in the welfare-capitalist state.

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To my Mom, who told me, “All learnin’ is good learnin’” and
“You don’t know what you can learn.”

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Introduction

Canadian governments, Federal and Provincial, have enacted many laws to reduce the risk of many hazards to their residents. Canada has signed and ratified international agreements that express regard for the wellbeing of its residents and those in other jurisdictions. For all of this, there is a marked contradiction in Canada's chrysotile asbestos policy. The weight of research into the toxicity of asbestos is irrefutable in the findings: any exposure to asbestos is too much. In light of this, Canada's continuing efforts to thwart international regulation and the restriction of asbestos use need to be explained. Investigation into the asbestos industry in Canada reveals a history of cooperation between the various levels of government and the asbestos industry.

Asbestos is a naturally occurring mineral which is present in deposits worldwide. It has been used in commercial and industrial applications for more than a century. Its inherent qualities as an insulator, as a binder in building materials and the variety of forms that it can be processed into, allow for varied and widespread uses. The building, re-building, and innovation which occurred after the conclusion of World War II incorporated asbestos into an assortment of applications which resulted in its worldwide commercial distribution; the applications containing asbestos range from automobile brake pads and children's toys to residential and industrial insulations to roofing panels and concrete structures.

Part of the usefulness of asbestos is due to its fibrous nature. This is also the feature that makes it dangerous to those who are exposed to it. Asbestos fibers are light enough to easily become airborne. Free-floating fibers may then be inhaled and, subsequently, cause a wide variety of detrimental health conditions. This means that it is not just the front-line worker who is at risk, through exposure, but that those who live with the worker may be exposed by fiber

transfer from contaminated clothing, hair and skin. Those who live, play and work in areas downwind of asbestos, be it natural outcrops or processing and manufacturing sites, are at risk. Those who live or work around asbestos contaminated structures and items are also at risk, as are all those who encounter the resultant residue after the processing, manufacturing, construction, renovation, demolition and destruction cycles have run their courses. The medical and scientific studies that have taken place over the last 80 – 90 years have produced the same findings. There is a direct association between asbestos exposure and numerous debilitating, often fatal, health conditions (Lilienfeld 1991; Smith and Wright 1996; Landrigan, Nicholson, Suzuki and LaDou 1999; LaDou, Landrigan, J. C. Bailar III, V.Foa, A. Frank 2001; Egilman, Fehnel and Bohme 2003; LaDou 2004; World Health Organization (WHO) 2006; Bernstein 2007; Mittelstaedt 27 Oct., 2007).

The initial medical investigations into asbestos' impact on human health appear to have been conducted from a position of medical inquiry. This line of inquiry was quickly overtaken by legal concern about the liability of having knowingly exposed workers, and the public, to a hazardous substance. It was at this early stage, in the developing awareness of the hazards of asbestos, that the issue was framed as a business concern and not a health concern. The current push to end the use and distribution of asbestos is framed as a health issue. However, in Canada at least, business issues are the primary concerns of those who legislate on, and regulate the use of, asbestos.

In Canada, successive governments have instituted policies, procedures and programs in efforts to mitigate the asbestos risk to Canadian workers and the Canadian population in general. At the same time governments have aggressively pursued a larger share of the world asbestos market. They have resisted regulation and blocked laws that would impair, impede or reduce

their ability to continue to authorize the use and export of asbestos and the associated products still in production. This is being done despite the Canadian government acknowledging, in 2007, to its largest trading partner (United States of America (USA)) that, “The Government of Canada recognizes that all forms of asbestos fibers, including chrysotile, are carcinogenic” (Appendix A, 4). (Chrysotile asbestos is the last remaining form of asbestos still extracted for export; all mention of asbestos should be taken to mean chrysotile asbestos unless otherwise stated). My investigation leads to the conclusion that, in regard to Canada’s asbestos, health care and business issues are parallel issues which have not yet reached an intersection.

How did these two apparently conflicting government positions arise, and why do they persist? Furthermore, what are the consequence of this anomalous situation for the populations who expect, and depend on, their government to act in their best interest? To answer these questions I adopt an overall Marxist approach to political economy that conceptualizes such “conflicts” and “anomalies” as “contradictions” embedded in and flowing from the incompatible functions the state is called on to perform in a society in the stage of late, welfare capitalism. I contend that, in the case of Canadian asbestos, the “instrumentalist” version of the state’s role in capitalism better explains the facts than does the “structuralist” perspective.

In the following chapters I outline the theoretical perspectives that I apply, describe the actions taken by industry and government regarding asbestos and analyze these actions in terms of the adopted theories. The paper ends with a summary and conclusions. Through my research I show how Marxist political economy and theory of the State explains Canadian government policy and practice regarding asbestos.

Theory and Methodology

In Marxist terms accumulation occurs when the result of the worker's production, the product, generates more revenue, or value, for the owner than the costs incurred in generating that product. The product is the property of the one who paid for its production, the one who owns the means of production. Accumulation, in the Capitalist system, depends on a relatively few people owning the means of production while the relevant masses provide both the market and the manpower for the goods produced.

Following Marx's *Capital*, it is the capitalist system of commodity production that may be used to explain the apparently illogical character of Canada's asbestos policy. All commodities exist only to produce, or reproduce, capital, and human labour under capitalism is a commodity. Once this cycle has been implemented any threat to the ongoing process of accumulation is, by necessity, anti-capitalist. This sets up an oppositional force between those who control the commodities and those who find themselves one of the commodities. This is the division of the populace into the two classes, those who profit from the labour of others and those who must work for them in order to survive. The production is no longer for the consumption of the worker or the property owner. Some workers may be inclined to buy the commodities that they produce, when they are compensated for their labour sufficiently to be able to afford them, while the owner cannot possibly consume all the product he produces. It is only the continual selling of the products, the commodities, through the market that holds the owner's interest. Once the cycle of the theft of surplus-labour value has been initiated the accumulation of capital as profit follows. What then follows is the concerted effort to maintain and expand ownership of the means of production and to maximize the profit. This requires the creation of some mechanism to legitimate the continuing concentration of the means of

production in few hands and to prevent the dispersion of the capital. It follows that demands by the workers, and the public, to be informed of and protected from hazards and to be provided with a safe workplace and living environment, add costs to the price of doing business and are therefore construed as anti-capitalist. Capitalist societies are capitalist by their very definition.

Following Marx, the pursuit of capital, the profit obtained from the labour of workers who receive less in compensation than the value of the goods they produce, is the guiding and driving principle of such societies. Governments are standardly thought to reflect the ideas of the ruling party. From a Marxist perspective, governments reflect the ideas of the ruling class, which is not the same thing. In a capitalist system this means business and commerce concerns are the priority. The ongoing neo-conservative political push prescribes deregulation, less red-tape, allowing the market to set prices and having faith that business and corporate decisions will follow some ethical and moral guidelines.

Marx and Engels asserted that the propertied class gained not just monetarily from the capitalist system but also politically.

“Each step in the development of the bourgeoisie (the propertied class) was accompanied by a corresponding political advance of that class...the bourgeoisie has at last, since the establishment of Modern Industry and of the world-market, conquered for itself, in the modern representative State, exclusive political sway.

The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie” (Marx-Engels 475).

Within Marxist theory two different positions have been developed in efforts to explain how governments act in the interest of capital. These are the instrumentalist view and the structuralist view. The instrumentalist view is that the state is simply an instrument of the capitalist class, as the quote from the *Communist Manifesto* above seems to say. The government is said to use its legal and administrative powers exclusively for the benefit of the capitalist class or particular elements of the capitalist system. The capitalists and the state are seen as forming a homogenous group representing a single ruling class with common interests and backgrounds. The instrumentalist position is particularly associated with the work of Ralph Miliband (1972). Critics of this view have pointed out that, while the legal system is coercive and biased, it appears to be acceptable to, and is seen as just and fair by, many in society. As well, governments have passed, and do pass, laws and regulation that place limits on what business behaviours are acceptable and condoned. A more modern, Neo-Marxist, view recognizes that the situation is more complex. Thus arises the so-called structuralist position associated particularly with the name of Nicos Poulantzas (1972). The state, in fact, attempts to manage capital's interest, the public's interest and the government's own interest all at the same time. The structuralist perspective sees the state as using its legal means, among others, to support and legitimate the structure of the capitalist system as a whole. As much as the capitalist system is an economic force, it must be remembered that it is primarily a social relationship, one that seeks to reproduce capitalist social relations. Inherent in this relation is the conflict between labour and capital. It then becomes apparent that the state cannot avoid serving disparate interests, those of capital, labour and the government's own interest in remaining in government. This means that the "contradiction" posed by the capitalist system is an integral feature of the government itself (Hester and Eglin 1992, 21-22).

From the structuralist point of view on the role of the state in a capitalist society, to manage the “common affairs of the whole bourgeoisie” the state is required to perform three specific functions for capital. These are 1) to maintain the socio-economic system that permits and encourages the accumulation of capital, 2) to provide the coercive means for countering anti-capitalist forces and 3) to legitimate the capitalist system. The first is accomplished by maintaining the existing business-oriented capital system. Governments are reluctant to introduce or expand social programs that would require businesses to pay more taxes in order for the programs to be adequately funded. There is a concerted effort to reduce the oversight of business - the burden of bureaucracy - leaving business to do what it thinks is best for itself. This stems from the belief that what is good for business is necessarily good for the country and, by implication, good for the populace as a whole. The second is accomplished through the creation of laws, the expansion of the police force and its powers and the appointment of judges to the court to ensure that the government’s view of business and law and order are enforced. The third is accomplished through all of the various governmental agencies that educate, regulate, control and direct successive generations in the capitalist system. This is possible because of the hegemonic control that the state exercises through all of its agencies. Thus the education system is an intrinsic part of the state administrative apparatus in that students are indoctrinated into the capitalist belief system at an early age in order to maintain the existing system and exclude the awareness of other viable systems of socio-economic development.

Carnoy (1984) reiterates Poulantzas’s view that the State acts *on behalf* of the ruling class not *at its behest*. This would mean that the State, while catering to the best interest of the bourgeoisie, attempts to satisfy the wants of the other two social forces, namely the population and the government, at the same time. This view supports the idea that the State demonstrates a

relative independence and autonomy in its decision making (53). This relative autonomy is constrained, nevertheless, by the fact that economic interest, the pursuit of capital, is the primary concern of the capitalist system and, therefore, is the overriding concern of government. Mahon (1948), for example, discusses some of the limitations that constrain and control capitalism. He analyzes this by saying that, "...in any capitalist economy the maintenance of an adequate rate of profit defines the fundamental interests of the entire capitalist class, that is, those economic interests that *cannot* be sacrificed" (10-11, italics in the original). However, there is a definable boundary beyond which capitalist industry is unwilling and unable to accept governmental controls. In the case of Canadian asbestos, we appear to have reached the limit of the government's willingness to further regulate this capitalist venture. Compounding the issue is that the asbestos trade is the Quebec government's venture that they seek to regulate on their own behalf and at their own behest. That is, to be precise, the Quebec government and the Quebec industry are one and the same. Accordingly, the Quebec government must fulfill its primary mandate of legitimating capitalist enterprise. In what follows then, while it is evident that different institutional actors within the Canadian State come to take up different, indeed conflicting, positions on asbestos, the interests of capital predominate. I correspondingly take a "modified instrumentalist" stance on the whole matter.

The topic of asbestos may also be conceived in terms of the theory of "Risk Society," in which hazards and risks are expressed and understood in varying ways. From the public's perspective hazards and risks can be grouped into social or environmental risks and hazards (Lemyre *et al.*, 2006). As well, for the worker and consumer there is an unwarranted assumption that neither the government nor industry will knowingly endanger their lives. The public assumes that both industry and government are active participants in protecting the public. The work

force assumes that the risk and hazard of not having a job is greater than the risks and hazards associated with the job. From Capital's point of view, hazards and risks are assessed on the basis of the accumulation and retention of capital, the ability to generate a profit and avoid any new costs, social stigma or legal sanctions. The assessment of a hazard or risk is conducted by the relevant industry. Where those results end up and what action is taken is directed by what those results actually say. They *may* be forwarded to the government which *may* in turn release them to the public. Industry's and government's goals differ from those of the public. As a result, there is a disjuncture in the flow of information about given hazards or risks, what constitutes 'an acceptable risk or hazard' and who bears the brunt of the hazard or risk. I shall consider Erickson's work, "Neglected and Rejected: A Case Study of the Impact of Social Research on Canadian Drug Policy", which, although it deals with a different material, goes some way towards explaining how asbestos research has been discounted when it contradicts the preferred position of the government.

Power and political economy are closely linked. In their briefest definition, these two terms sum up the ability to achieve one's goal, to get things done. The ability to agitate for the creation of laws exists for 'claims makers'; these are entrepreneurs who perceive some wrong, often a moral wrong, and become sufficiently organized to present their case to the ruling party. In some instances the ruling party itself is the claims maker. The ability to pass laws resides exclusively with the government. If it has not always been so, society today is so diverse that ideas of a universal morality must be set aside. Once the question of morality has been set aside it is possible to see that law creation targets specific groups, in effect, creating 'problem populations.' The application of law thus accomplishes two very different things. It criminalizes certain behaviours and regulates others. This, in turn, serves two purposes. In the first instance,

criminality sets diverse groups into opposition with each other, effectively preventing solidarity within the populace as a whole. In the second, regulation sets the rules through which objectionable actions or behaviours are permitted to continue. Neither of these should be interpreted as being for the benefit of the general public. Government's primary concern is the maintenance of the status quo within the system that is in operation. In Canada this is the capitalist system. Capitalist history shows that it is not a system that benefits everyone equally. It creates a perpetual split between those who own the means of production, the ruling class, and those who do not, the working class. The uneven distribution of the political economy makes it possible to criminalize the working class while merely regulating the ruling class. Thus it is with the asbestos industry.

There are a few associations that may be viewed as deviant in the asbestos discussion and they are not the first ones that we think of. According to Spitzer in "Toward a Marxian Theory of Deviance," any group, or any one, that questions the practices of capitalism runs the risk of becoming a politicized enemy. Questioning the basis and practices of the capitalist system is not seen as socio-economic, health or environmental inquiries but rather as political statements aimed at undermining the existing status quo. From the perspective of capitalists, questioning the system is a deviant practice of problem populations which should, or must, be negatively sanctioned. At the same time, industry goes to great lengths to avoid being labeled as deviant itself as this would shift their identification from that of a legitimate business to that of a problem population.

Jon Frappier (1989) has written on how the USA has historically broken international law in the interest of furthering their economic or political agenda. This is applicable to the WTO ruling that will be discussed later in this paper.

I have found no research that specifically addresses the contradictions and conflicts that arise in governmental statements, policies and procedures to do with the asbestos issue in Canada. I have been able to gain access to tribunal and trade rulings and policy and position statements, scientific studies and peer reviewed papers that pertain to asbestos production, manufacturing, use, export and health impacts. These have been made available through publication, releases of legal rulings, news reports and public and 'leaked' documents. Through close reading, and with the application of these perspectives, some of the contradictions in Canadian governmental policies on asbestos are revealed.

Canadian Governments: Putting on a good face

Canadian governments, at both the federal and provincial level, have been concerned with citizens' health and wellbeing. Successive Canadian governments have historically produced regulations and legislation for the protection of their residents and environment (Sen and Mizzen 2007; Tsuji 1998; Mittelstaedt 24 Jan., 2009). This is demonstrated, for example, by the enactment of seat belt laws, an initiative of the provinces of Ontario and Quebec in 1976, which were subsequently embraced nationwide (Sen and Mizzen, 2007: 316). The toxic metal lead has effectively been reduced to tolerable levels, over the last twenty years, by legislation governing such diverse products as gasoline, paint, solder and shotshells (Tsuji, 1998: 20). In 2009 bisphenol A, an additive in polycarbonate plastics, was banned in Canada. Currently action is being taken to ban diethyl sulphate, previously used in chemical warfare, which is used in pollution control, fabric softeners, fragrances and other consumer goods (Mittelstaedt 24. Jan., 2009). In 1997 Canada was at the forefront of the movement to ban the use of anti-personnel mines or land mines. Known formally as the "Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction," the Ottawa Convention was successful in gaining widespread, if not universal, support (Cameron, 1999: 85). Canada has also ratified the United Nations Declaration of Human Rights and its associated Children's Rights Bill. At the same time, both the Federal and Quebec provincial governments have dismissed authoritative studies on the adverse impacts of asbestos on human health and have actively and aggressively attempted to expand the overseas markets, and Canada's market share, in the asbestos trade.

Asbestos in Canada

While Canada has not banned the domestic use of asbestos, some of its uses and applications have been prohibited since the late 1970s (Appendix A, 4) and efforts are underway to remove it from previous applications producing a *de facto* ban (Maurino 1 Nov. 2008). Stringent use and handling regulations have been implemented, and continue to be modified, regarding the identification, containment and removal of asbestos (OHS Act, Ontario Ministry of Labour). The Manitoba government is currently engaged in locating asbestos, along with PCBs and mercury, in public housing projects. The Calgary municipal government is investigating asbestos contaminated roadways where asbestos was mixed into the asphalt. As reported by the Canadian Press, “In Ottawa workers are removing chrysotile asbestos from the Parliament buildings as part of a \$1 billion renovation project” (Maurino 1 Nov. 2008).

My own university, Wilfrid Laurier University in Waterloo, Ontario, was the subject of an asbestos audit, and subsequent remedial work, in June, 2009. I was able to arrange a meeting with the university ‘Director, Environment/Occupational Health & Safety’. I asked the Director how they became aware that asbestos exposure is a hazard. The answer was, ‘The government, via the handbook on handling asbestos provided by the government’s Occupational Health and Safety office’. I asked how the university identified any of the asbestos concerns on campus. They said that there have historically been asbestos audits of the campus. The audits have been conducted by specialized independent experts who have identified the areas in which asbestos is present. I asked what the recommended procedure was for working in areas where asbestos was present; ‘Do not touch it, wipe it, move it, bump it or break it’. I asked if there was a program in place for the ongoing removal of asbestos from the campus. ‘No, where it is stable we leave it alone. It is only when it has become friable that efforts are made to remove it.’ My last question

was about the procedure for dealing with an area that contained friable asbestos. I was told of a recent incident where an asbestos composite ceiling tile had fallen to the floor. The procedure is to get everyone out of the immediate vicinity and physically seal the area off and then contact the experts. The experts will then enter the area in full-covering body suits with an independent air supply. They will vent the area and undertake to remove the asbestos contamination. With all of these precautions it is curious that the venting is done with a large hose and blower discharging into the immediate outdoors. Helpfully, they do put an orange safety cone by the end of the hose with a warning sign saying, "Danger Asbestos". Amidst these projects to identify and remove asbestos there was an incident in Toronto. A large propane storage facility exploded, destroying the facility and causing extensive damage to nearby residences. Two people died as a result of the explosion. The affected neighbourhood was treated to the sight of Hazardous Material (HazMat) suited people collecting suspected asbestos residue from the area. Residents were assured by attending government officials that, in the words of the Associate Medical Officer of Health Dr. Barbara Yaffe, "I would not be worried because we know that the level of exposure would be exceedingly low...It's not a concern" (City News 13 Aug. 2008). This was said with great assurance even though, "...there is no threshold for the carcinogenic effect of asbestos and that increased cancer risks have been observed in populations exposed to very low levels" (WHO, 2). The Canadian Cancer Society has indicated that it would endorse a ban on asbestos (Mittelstaedt, "Cancer Society" 11 July 2007). We are waiting for Health Canada to release the asbestos-related cancer study it commissioned (CBC News, "Scientists" 26 May 2008). Those findings are not likely to be anything new or anything the government does not already know. In fact, we know that the Canadian government has admitted to the U. S. Senate that asbestos is a carcinogen (Mittelstaedt, "Asbestos Shame" 27 Oct. 2007; Appendix A). The Quebec provincial

government became directly involved in the asbestos industry in the late 1970s by purchasing a controlling interest in one of the provincial asbestos mines (Tanguay 1985). The Quebec provincial government had been dismayed to see profits from asbestos mining leaving the province for overseas head offices.

The Quebec government bought controlling interest in the asbestos concerns, rationalizing that profits could then be retained for Quebecers. It was a vote winner in Quebec and would serve to shape the dynamics of the Quebec government's future position on asbestos. The timing of Quebec's purchase coincided with the start of the decline in the domestic and worldwide demand for asbestos. In 1984, with funding from the industry and both the Federal and Quebec Provincial governments, The Asbestos Institute came into being (chrysotile.com). This was followed closely by the formation of the Mouvement Pro Chrysotile (proamiante.com) funded by the same parties. There has been a concerted effort by all parties, including industry and Federal and Provincial governments, to tout the benefits of asbestos and expand exports into existing and new markets. At the same time there continue to be efforts to withhold, and suppress and discount scientific medical reports on the negative impacts of asbestos (Kazan-Allen 2003; Egilman *et al.* 2003; also CBC News, "Scientists" 26 May, 2008).

The Asbestos Institute is a non-profit organization which has received over \$20 million funding from the Canadian Federal government since its inception. The institute is made up of industry representatives and Federal and Provincial governmental appointees. Its mission statement is to protect the existing asbestos market, to expand the market for asbestos and to provide alternative information and reports to counter the prevailing scientific findings on the hazards of asbestos (chrysotile.com).

Currently, the Quebec government is attempting to distance itself from its asbestos history by re-naming areas and locales to eliminate references to asbestos (Peritz, “Trying” 11 Feb. 2009). At the same time it has, “...refused calls to halt the province’s exports of asbestos” (The Canadian Press, “Quebec” 17 Feb. 2010).

Canadian Asbestos Internationally

Most recently, the Canadian federal government has used political and economic tools to resist efforts to further restrict the international use of chrysotile. Canada argued to the World Trade Organization (WTO) that France could not ban the importation of Canadian asbestos without breaching trade laws (Castleman 2002; Howse and Tuerk 2002). It was Canada's sole dissenting vote at the recent Rotterdam Convention meeting which prevented asbestos from being included on the "Prior Informed Consent" (PIC) list (Musgrave 2008; Attaran, Boyd and Stanbrook 2008). Canada and the asbestos industry promote the 'controlled use' of asbestos by other countries. This means that, "Canada supports the promotion of the controlled use of chrysotile in order to strictly control exposures to chrysotile." This follows the Occupational Health and Safety office and the International Labour Organization's guidelines. As well, "The Canadian chrysotile industry has agreed not to export to companies that do not use chrysotile in a manner that is consistent with Canada's controlled-use approach." This statement and the actual fact of the matter are two different things as "...Canada does not have the legal authority to monitor exposures in other countries although Canada does provide information on how to manage the risks associated with chrysotile in line with the "controlled-use approach.""

Countries are encouraged to implement measures in compliance with the International Labour Organization (ILO) Convention 162 and Recommendation 172 of safety in the Use of Asbestos. The Canadian governmental agency involved then freely admits that, "...it doesn't verify whether buyers follow Canadian-style rules when using asbestos, arguing that seeking such information would violate foreign sovereignty" (Mittelstaedt, "Natural Resources" Oct. 25 2007). The sovereignty issue will be raised again. Over the past 20 years both levels of government, and the asbestos industry, have spent tens of millions of dollars in efforts to produce

data that counters the prevailing medical opinions, maintain their current markets and expand their markets.

Asbestos Knowledge

The first ‘knowledge’ about the effects of asbestos on human health was generated by Anthony Joseph Lanza prior to his employment with the Metropolitan Life Insurance Company (MET) in 1926 (Lilienfeld 1991). It was 50 years before that ‘knowledge’ gained currency and became public knowledge.

In the case of Lanza, his early independent research in the late 1930’s attracted attention from representatives at MET. Lanza’s initial research indicated a direct causal relationship between asbestos exposure and worker’s health. MET, one of the large commercial/industrial insurers hired Lanza in order to do a risk assessment. Tellingly, the risk being assessed was that of MET’s exposure to claims and lawsuits for asbestos exposures. This meant that Lanza had to collect data on the incidence and severity of the health impacts of asbestos. His research was alarming enough to MET that concerted lobbying was undertaken, in the early 1940’s, in an effort to have asbestos related health issues covered by Worker’s Compensation. This would effectively say that asbestos exposure and related health conditions were, are, ‘accidents’, unavoidable and unfortunate but necessary in order for business to continue as it had been. The lobbying was successful. What happened over the next 50 years was that a great deal of corporate time and money went into researching the impacts asbestos has on human health and then hiding, withholding and rewriting the study documents in a continuing effort to deny the impact of asbestos exposure and to protect the interest of the shareholders (Lilienfeld 1991; Egilman *et al.* 2003).

Lilienfeld (1991) undertook a case study that goes back even further into the complicated history of asbestos. He found that as back as the early 1920s the medical community was becoming familiar with lung conditions associated with exposure to asbestos (791). In the late

1920s the question of legal liabilities had already arisen. Lilienfeld tracks a history of decision making that operated with the point of view, "...that economics as well as production factors, must be balanced against the medical factors" (792). In practice, this resulted in the editing, suppression and erasure of reports that linked asbestos to cancers and, therefore, to legal liabilities (793-4). For the workers it meant that warning labels and safety equipment remained scarce or non-existent and that their illnesses, diagnosed by the company doctor, had no relation to asbestos, despite the evidence (795-6). This interference could not continue indefinitely and in the 1970s the truths began to catch up with them through court proceedings and litigation (797; also see Appendix A, 5).

Egilman, Fehnel and Bohme (2003) tracked the misinformation campaign by the Quebec Asbestos Mining Association (QAMA) from the late 1950s to the present through critical evaluation of the published and unpublished studies of researchers at McGill University on behalf of the QAMA. They found that the QAMA had funded a research unit at McGill University for the previous 30 years. This unit was, and is, responsible for putting forward theories which have been used in an attempt to discredit the findings of chrysotile toxicity. These have included the idea that pure chrysotile is harmless. The QAMA researchers propose that the negative health effects are due to contamination either by organic or synthetic oils or by tremolite, another form of asbestos which occurs in proximity to chrysotile, which is also known to have adverse impacts on health. They have suggested that it is possible to avoid the 'oil contamination' through more stringent handling methods and, that it is possible to either avoid the tremolite during extraction or to remove it during processing. Egilman *et al.* (2003) reject these opinions outright. They contend that the idea that all chrysotile shipments could have been contaminated by oils is patently false. Even if that were possible, the health impacts from oil

would be evidenced differently. That tremolite occurs in conjunction with chrysotile means that the one cannot be extracted without the other. To date there is no technology that has proven capable of removing tremolite from chrysotile. The McGill University research group's news releases have caused the legal system to question whether workers who have been exposed to chrysotile are, in fact, suffering due to chrysotile or the contaminants. It is also worth noting that representatives from the research unit have been called to appear, or been paid to attend hearings, as objective analysts on the health impact of chrysotile. Egilman *et al.* (2003) have found flaws and misrepresentations in much of the work produced on behalf of the QAMA. These include evidence that health reports were rewritten to exclude the actual findings from public releases, misestimating dosages, missing data points, attempted corrections, inappropriate conversion factors, manipulation of cohorts to achieve desired ends, misleading conclusions and inadequate case ascertainment.

Kazan-Allen's research (2003) initially overlaps with Lilienfeld but then continues to document government's and industry's efforts to contain the domestic situation, and expand further into world markets, through the 1990s. She discusses the industry's concerted worldwide propaganda campaign and government officials' complicity (177) and documents the formation of victim support groups, followed by the mobilization of civilian groups, who introduce the victims to the public sphere (182-188). These actions have helped bring the discounted presence of the worker and community to the foreground. Some of these groups self-identify as labour and socialist groups while others are branded as "socialist" or "communist". This serves to set up the opposition between capitalism and the alternatives which reframes the issue from human and environmental health into one of politics.

That the early studies by Lanza did not immediately enter the mainstream consciousness is perhaps understandable, after all he was breaking new ground in a new specialty; there needs to be proof via the ‘scientific method’ of test, test and re-test before ideas gain credibility. However, the evidence seems to indicate that the early findings were never seriously in question. Instead, efforts were made to edit, revise, suppress and fake the completed studies (Egilman *et al.* 2003, Lilienfeld 1991). Of these four options the most innocuous, and possibly the most powerful, is suppression. To have to edit, revise or fake a study indicates that the study must be released to someone. There is then some accountability. Suppression should be taken to mean not publicized, not disseminated, not available to the public. The Canadian government sees value in non-publication or non-dissemination of studies it commissions. In 2006 the Federal government requested that Health Canada form an expert committee to produce a Consensus Statement on the hazards of chrysotile asbestos. The report was duly researched, produced and submitted to the government. More than 2 years after it was presented to the government agency that commissioned it, the report on asbestos related cancers had still not been released (CBC News, “Scientists” 26 May, 2008). Most recently this document, produced by the Chrysotile Asbestos Expert Panel (Chrysotile Asbestos Consensus Statement), at the request of Health Canada, was released on April 22, 2009 after the experts involved threatened to break confidence with the government and release the findings on their own. However, instead of posting this report as a generally accessible electronic report, it has been posted to a government website, a ‘by request only’ site: you have to know what you are asking for in order to get it. (Full disclosure: I did receive a copy of the report within 24 hours of requesting one). It warrants repeating that in 2007 it was stated by government officials that, “The Government of Canada recognizes that all forms of asbestos fibres, including chrysotile, are carcinogenic” (Appendix A, 4).

Interpretation and Analysis

The Historical Development of Capitalism and the State's Role of Population Control

There was a time in which the majority of the people had access to, 'owned', the means of production. Production was 'simple'; the primary occupation was to provide for self and household and this was accomplished through mixed land use. Every household had a garden and raised a variety of animals in communal fields. The means of production was the land which was common property, "the commons". The theft of the commons by the aristocracy meant that the people were 'freed' from laboring on their own behalf. They were now 'free' to exchange their labour for a wage, and someone else's profit. This new system, imposed from the top, was presented as a natural order, a new ideology, which benefitted everyone. It set a new order for the division of labour, those who worked with their hands and bodies and those who worked with their minds; the physical versus the intellectual. This explains and defines the enduring class structure, in Marxist terms the proletariat, the working class, and the bourgeois, the ruling class. This new hierarchy was presented as the natural order of social relations; the way it had always been (or should have been). Rebellion by the workers was able to be curtailed, for the most part, by several means. The first was through the ideology that in this new capitalist system, everyone who worked hard and applied themselves could rise to the level of the next social stratum; this was the illusory carrot. This appealed to some. The second, for those who were reluctant to participate in this new order, was the label of deviant. The third was through the enactment of regulations to pacify public complaints which then served to legitimate the continuing questionable practices. These three points can be encapsulated in the terms accumulation, legitimation and coercion.

The capitalist system is based on accumulation. The point of capital is to increase the property and wealth of those who have it. Governments permit and promote accumulation through their policies on trade and taxation and by the laws they enforce. As governments enact laws and regulations they set the rules under which business is permitted to operate. This serves to legitimate the activities that businesses are involved in. These same acts serve to criminalize those actions which impede or oppose the capitalist system.

With the theft of the commons came the formalization of private property. What had previously been available free to all was now considered to be the property of the Crown. And with that, there were now many things which needed to be protected by law. These, in turn, spawned new categories of deviance. Harvesting fish, animals, plants and trees from now private property, which had previously helped sustain the populace, became a crime against the Crown. For many, it became necessary to leave the land and try to earn a wage. If physical need was not enough to encourage a person into the wage market, there were more coercive ways. Acts were passed against the 'theft of production'. Laws against "idleness" and "vagrancy" were proclaimed; not being involved in wage labour became a crime. Repeat offenders risked whippings, disfigurement and/or possibly death. It is difficult to construe how idleness could be a crime against the Crown. However, it was no coincidence that the creation of these new laws coincided with the rise of capitalism and the beginnings of the Industrial Revolution. The crime of idleness was a crime against the Capitalist System; theft of production. The creation of these new acts and laws accomplished several things. They legitimated the concentration of the means of production into fewer hands. They forced masses of people off the land to be the labour for the factories and foundries. They criminalized those not actively involved in 'gainful' employment. And these all served to legitimate the system by making it 'natural' to engage in

wage labour. This series of actions and events were orchestrated by those with the power, the political economy, to get things done. In the initial instance the aristocracy was the power. They were the ruling party, by heredity, and they were now the propertied ruling class, by theft and it was a 'natural' state of affairs. Then, as now, the protection of private property and those who own it is the number one priority of the law and law enforcement (Glasbeek 152). Marx recognized that it is in Capital's interest to obtain the maximum amount of production for the lowest cost. Short-term, over-worked employees are beneficial to the profit line. Long-term employees incur more cost for the employer insofar as they must be paid higher wages and incur more health care costs. In the 'worst' modern cases they qualify for company-funded retirement. Marx's writing exposes the inhuman logic of capital:

“Capital asks no questions about the length of life of labour-power (the worker). What interests it is purely and simply the maximum of labour-power that can be set in motion in a working day. It attains this by shortening the life of the labour-power, in the same way as a greedy farmer snatches more produce from the soil by robbing it of its fertility” (Capital Vol. 1, 346).

State Strategies of Population Control Relating to Asbestos

Domestic Legal Regulation

As the most extreme examples of the 'short-term worker' became evident, through their deaths, efforts were made to remediate the most detrimental effects of the workplace without adversely impacting the business. Within the asbestos industry many became disabled, debilitated and died from earning their wage. As the human cost of the industry became evident, and the associated liability of the companies loomed, the Worker's Compensation system was

extended to include asbestos related 'injuries'. This served to classify asbestos related injuries as accidents, obscuring the inherently dangerous nature of asbestos. New safety equipment and procedures were instituted in efforts to further protect workers and the companies. Ultimately, Canada instituted the "controlled use" program, which has been rejected by both the WHO and the WTO as unfeasible. An illustration of Canada's picking and choosing of what information Canada is prepared to accept is the following: Canada's government reacted swiftly to the WHO's pandemic warning on the H1N1 virus in 2009 but has yet to acknowledge the WHO's stand on asbestos. All these efforts have been concerned solely with workplace exposures. This situation has continued to the present day. However, the danger is not limited to just the workers but, due to the ease with which asbestos contamination spreads, extends into the community. As the efforts that were made to improve the safety of asbestos have proven inadequate, over an extended period of time, there must be something else at work. A look at the forces behind the creation of laws and regulations will answer much of this.

As the capitalist system developed so did the laws that imposed and perpetuated the system. These were followed by laws that regulated the workplace. Two theories developed as to how these laws came about and to what purpose. Chambliss wrote, in "Criminalization of Conduct", that it was the Crown's efforts to centralize power that created 'crimes against the Crown' (46). The nature of the crimes, and punishments attached to them, makes it unlikely that those who would be subjected to them would have lobbied for them. Chambliss deduced that, "These cases of the criminalization of conduct unequivocally render false and misleading the common sense view that the law is a synthesis of the values, customs, and ideologies of "the people"" (47). In other words, laws are not created by a consensus of the people: "Some laws are clearly passed for specific interests, others emerge out of lobbying by groups representing

substantial portions of the population, yet others, perhaps the majority, are no more than an expression of the views and interests of legislative committees” (48).

Chambliss reviews three positions on how “interests” play out in the criminalization of conduct, namely Friedman’s “radical pluralist” view, the instrumental Marxist view and his own “dialectical” position. According to Friedman’s (1977) radical pluralist view: “What makes law, then, is not “public opinion” in the abstract, but public opinion in the sense of exerted social force” (99). Friedman realized that there is unequal power between groups with competing interests and that some social classes and groups will be more successful at influencing law creation. But Friedman’s theory cannot say which group’s interests will come to prevail. As we have seen, for the Marxist-instrumentalist perspective it is the demands of the capitalist class that compel lawmakers to act on their behalf. Thus, for example, although it is the case that the anti-smoking lobby has been successful in having graphic warnings put on packaging and restrictions put in place where one may smoke, and although the anti-drunk driving lobby has been successful in getting more enforcement on the roads and stronger punishment in the courts, nevertheless the tobacco and alcohol industries themselves have been permitted to continue.

This situation is echoed in the case of asbestos by the fact that the regulations put into place to compensate for injuries and to improve the workplace safety for the protection of asbestos workers have had the effect of pacifying the workers by demonstrating care and concern for their wellbeing. While these actions did create additional expense for the companies this was a tradeoff. As asbestos had proven to be a dangerous substance the most logical action would have been to outlaw its use. However, this would have entailed writing-off the initial capital investment and would have stopped the cycling and recycling of capital. The fundamental political-economic fact here is that the majority shareholder of the Canadian asbestos industry is

the Quebec government. It has experienced increased costs of production due to the stringent regulation imposed by government. This should be seen as government's response to concerns by the labour force. At the same time, the domestic asbestos market has declined to near zero and the available worldwide market has contracted with a resulting decline in profit. The Quebec government, as capitalist, should be seen to have "sacrificed" various aspects of its business, effectively the loss of the domestic market, in order to maintain a core amount of business and profit through continued exports. It is inarguable that, without continued exports, the asbestos industry in Canada would no longer exist. Given that Canada is a Capitalist country, and that the purpose of capital is continuing profit, closing down the industry would be a deviant practice. Mahon would have to agree that, in this case, the asbestos industry in Canada cannot withstand any further regulation and still be a profitable industry. It then becomes obvious that the enactment of these domestic regulations was in an effort to preserve the industry's exports couched in terms of social responsibility. This is, in other words, the legitimation of continued accumulation via hazardous products.

Manipulation of Scientific Knowledge

Research studies are produced in order to increase knowledge and understanding of a given issue. However, the reports themselves are commodities that are owned and controlled. As Marx put it, "The ideas of the ruling class are in every epoch the ruling ideas: i.e., the class which is the leading material force of society, is at the same time its ruling intellectual force" (Marx – Engels, 172). The one who commissioned and paid for the study owns it. It is then up to the owner to calculate which action generates the most revenue or value - releasing a study or suppressing it. Unfavourable studies, under the control of the owner, are likely to have more value to the owner if they are not available for public scrutiny than if they are released.

This is a tactic that the current Canadian Federal government had used to suppress the report by the Chrysotile Asbestos Expert Panel. This is just one of the strategies that are used to control what is known as knowledge. Erickson details another method used, the rejection of information due to ideological, political or personal beliefs.

Erickson, in “Neglected and Rejected: A Case Study of the Impact of Social Research on Canadian Drug Policy,” looks at how scholarly knowledge was presented to, and then rejected by, governments and parliament investigating possible reform of Canada’s drug laws. While the research itself is interesting, what is important here is that her experience mirrors that of asbestos researchers. She posits several questions and offers some explanation for the official’s responses. “First, what are the interests and needs of the politicians themselves? What can they gain (and lose) by initiating reform...? With public opinion divided on the best course to pursue, change from the status quo is best expressed as a “lose-lose” situation” (274). The Canadian public is generally unaware that asbestos is still exported due to the de facto ban in Canada. This has kept the topic out of main stream consciousness. “Whether the public is, in fact, as opposed to reform as the policy makers seemed to think is a separate issue - one they were not inclined to pursue, relying instead on their perceptions...” As the asbestos industry in Canada only exists in Quebec, the policy perception is that ending the asbestos trade will be costly to the political party that pursues this avenue. Quebec Premier Jean Charest has demonstrated his understanding of the limited political space that he must work within. He recently announced new provincially independent initiatives on sustainable development and the environment and then stated that, “...there is no means available to him to prevent the export of asbestos...” (Robillard, “Charest”). At least Charest appears to be honest in this comment; government cannot stop the trade in asbestos. This confirms my view that the Charset government is acting instrumentally, at

the behest of the asbestos industry. It cannot act differently as it is the industry owner. The closing of the industry would be detrimental economically, which outweighs the political benefit generated by the socially responsible act of closing the industry. “A related point, made in other contexts, has been that politicians are happy to embrace research that supports what they have already decided to do” (Erickson 274). Political life depends on being re-elected or receiving government appointments; failing to follow the ruling party’s line results in ostracism. “A second possible factor is the cultural devaluation of science and expert knowledge and its diminished role in government decision making (274). “Beyond the possible decrease in receptivity to science, what this implies is the decline in, and lack of, mechanisms to transmit social research findings in a useful way for the policy objectives - no agencies, no bureaucratic support structure, and hence no role incumbents, with background and sophistication in grasping and relaying pertinent information to elected representatives” (275). This is reflected in the rejection of scientific study by Canadian politician Stockwell Day and his belief that the Earth is 6000 years old and that man coexisted with dinosaurs. As Erickson states, “There is a paradox here, with Canada's global recognition as a pioneer in health promotion and a reputation for tolerance and compassion (e.g. policies on multi-culturalism, refugees, as well as non-punitive responses to homosexuality and abortion), coexisting with continued insistence on...” (275). And this is how governmental policy is formulated.

The outright rejection of, and disregard for, expert opinions appears to be the default mode of the political world. This has been demonstrated by representatives of both the USA and Canada, in relation to the Kyoto treaty and global warming. Then USA president Mr. George W. Bush, in 2005, justified not signing the treaty as it would “wreck” the USA’s economy. As well, for him, the problem was the USA’s reliance on oil from the Middle-East which represented,

“...a national security problem and an economic security problem” but not an environmental or health problem. He goes on to state, “...his job requires him to listen to the right people. I think that people who look at my government they'll say that old George W. has surrounded himself with some great people. And I have” (Reynolds, BBC E-mail, 30 March 2001; The Associate Press, 30 June 2005). He concedes that he must listen to “the right people”, an inference that everyone else is wrong. More recently former Canadian foreign affairs minister, “Maxime Bernier has taken a public stance against the conventional wisdom on global warming. The prominent Conservative MP has written a letter to La Presse newspaper saying there is no scientific consensus on the matter. He says the issue has been taken over by alarmism - and he applauds the Harper government for taking a go-slow approach. “The debate over climate change, stifled for years by political correctness has finally broken out in the media,” Bernier wrote in a letter published Wednesday” (Bryden, “Bernier” 24 Feb. 2010). This is very similar to what the Canadian Prime minister himself has said. “In 2002, Harper referred to the Kyoto climate change accord as “a socialist scheme to suck money out of wealth-producing nations” and the science behind it as “tentative and contradictory.” In 2006, he again expressed doubts, saying, “We have difficulties in predicting the weather in one week or even tomorrow. Imagine in a few decades” (Bryden, “Harper’s” 24 Feb. 2010). What may have “finally broken out” is a public statement from a representative of the current Canadian government, echoing the Prime Minister, disregarding the scientific research on climate change. If getting government to accept research and opinion is difficult, it appears getting information from the government is just as challenging.

The Office of the Auditor General of Canada (OAG) received a follow-up petition, No. 226, on “Canada’s use and export of chrysotile asbestos”, from David Berliner on 18 December

2007. In it he sought clarification on responses to his previous petition. The petition was forwarded to the relevant federal departments for a response. The relevant departments were: Canadian Economic Development Agency for Quebec Regions, Foreign Affairs and International Trade, Health Canada, Human Resources and Social Development Canada, Natural Resources Canada, Public Works and Government Services Canada. I have reproduced two of the questions and the responses. As the “controlled use” program is the pillar of the asbestos industry’s defense here is question 1.d:

Various authors, journalists and photographers have witnessed blatant violations of asbestos safety standards; for example, the Globe and Mail article “Asbestos Shame”? (especially the pictures by Louie Palu), and an article by Laurie Kazan-Allen reporting on a conference at Capital Hill, in Ottawa in September 2003 (especially Dr. Barry Castleman p 129, Dr. Tushar Kant Joshi p 131). These eyewitnesses recount occupational health violations. If the Canadian government doesn’t recognize the validity of anecdotal and eyewitness evidence, what type of evidence does the Canadian government acknowledge? Has this type of evidence ever been gathered? (Office 3)

The government’s response is dated 4 April 2008:

While the implementation of domestic measures to ensure workplace health and safety is a sovereign responsibility of importing countries, Canada makes efforts to promote the controlled use of chrysotile. Canada provides information on how to manage the risks associated with chrysotile and supports the work of the Chrysotile Institute, which assists other countries in building capacity and expertise to implement controlled use measures for chrysotile. Countries are encouraged to implement measures in compliance with the International Labour Organization (ILO) Convention 162 on Safety in the use of Asbestos. At the same time, it periodically collects

data, based on industry input, on a range of workplace exposures in countries producing and using chrysotile (see response to 1.b) (Office 9).

On to question 1.b and the response:

How can the government of Canada be sure that industry is monitoring buyers (in foreign countries) to ensure asbestos is being used in compliance with Canada's controlled-use approach? Is there an investigation process that the Government of Canada or any other body performs? If yes, please elaborate. If not, why not? Is there an investigation process that foreign countries perform, and submit to the government of Canada? If yes, please elaborate, if not why not? (Office 3)

Response:

The controlled-use approach to chrysotile, adopted and promoted by the federal government since 1979, means that, through enforcement of appropriate regulations to rigorously control exposure at low levels, the risks associated with occupational exposure to chrysotile in mining, milling, product manufacturing, transportation and handling may be no greater than the risk present in other occupational situations. This approach is solidly based on extensive and internationally recognized and peer reviewed scientific studies.

Canada exports chrysotile and chrysotile-based products to more than 80 countries around the world. While implementation of domestic measures to ensure workplace health and safety is a sovereign responsibility of importing countries, Canada promotes the controlled use of chrysotile. Canada provides information on how to manage the risks associated with chrysotile and supports the work of the Chrysotile Institute.

The Chrysotile Institute, which promotes safe use of chrysotile internationally, provides information to governments, industry, unions, media, and the general public on how to manage the risks associated with the production and handling of chrysotile fibres. Information includes

technical information about regulations, control measures, standards, and best practices.

Countries are encouraged to implement measures in compliance with the International Labour Organization (ILO) Convention 162 on Safety in the Use of Asbestos. The Institute has organized and conducted information and dust control seminars for trade unions, held medical surveillance training programs, provided technical and financial assistance for launching national fibre associations and technology transfer in more than 60 countries around the world. Each initiative helps developing countries and countries with economies in transition meet the worker health and safety requirements of the ILO Convention 162. (Office 8).

These official responses demonstrate the practice of providing a response without answering the question. Martin Lawrence has noted that getting information from our current government is getting more difficult. He has written that the government has become concerned with what documents may have to be released under the Freedom of Information Act. He suggests that there is now an unwritten policy of not recording meetings and discussions so that there are no documents that could be petitioned (“Is this how” 24 Feb. 2010). There is also evidence that Canada’s response to inquiries about asbestos is conditional on who it is talking to. The following two cases provide better answers. They also demonstrate how the health issue has been expunged from Canada’s ‘defense’ of asbestos in the international courts.

Recourse to International Trade Rules

The first case was presented at the UN’s Rotterdam Convention. This association of 126 countries meets every two years. One of the regular discussion points is centred on dangerous products and materials. The debate is on whether there is any evidence to support including any additional product or material on the Prior Informed Consent list (PIC). There are currently 39 substances on the list which includes five other types of asbestos, DDT and other pesticides.

Inclusion on the list means that all 126 member countries agree that a country that imports a PIC

listed material must be given all the information available on the material, prior to it being received by the country. Past experience has shown that when a material is included on the list the world demand, world acceptance, drops dramatically. Canada was able to prevent this from happening to chrysotile. The rules governing the Rotterdam Convention require consensus, meaning a unanimous vote by all 126 countries. This effectively gives each member country veto power, raw power, over any motions proposed. This, in turn, ensures that all member countries have the ability to reject the majority's opinion and maintain their own vested interests. As Canada disagreed with the proposal, the motion was not passed (Musgrave 1).

The other case was more complicated and, even though the Canadian representatives argued it ingeniously, Canada lost. Castleman (2002) provides an inside report in "WTO Confidential: The Case of Asbestos." The government of France was seeking to ban all use of asbestos, in France, due to the health concerns associated with it. While national health policies *may* be a sovereign issue, Canada took the position that this action was a barrier to trade and appealed to the World Trade Organization (WTO). Canada did not dispute the health concerns but argued that asbestos fiber should be compared to fibers of 'like products' for the purpose of trade. This would mean that if France imported 'like product' cellulose fiber, a much safer alternative which does not have the same health impacts as chrysotile, then France's action was to be seen as a trade barrier. The health issue was buried in the discussion of how France's action may contravene the General Agreement on Trade in Services (GATS). After hours of discussion and opinion it was finally decided that the term 'like product' was not applicable to cellulose and asbestos fibers. The reasoning was that asbestos is a proven carcinogen but there was no evidence that cellulose fibers are carcinogenic. France was permitted to enact their ban, by right of sovereignty over public health, and this was not to be construed as a trade action (Howse 286).

One of the conclusions from this was that, "...national autonomy over health policy is *not* preserved under GATS..." and that there *may* be arguments made over national health policies that are perceived to be trade barriers (Pollock and Price 1072, italics mine).

Castleman gives a full account of the WTO meeting which decided on the case. He notes that the serious discussion and decision making is all done in secrecy and meeting notes are withheld from the public. He discusses the unqualified people who came to be at the table and those with a conflict of interest in the case they were hearing. Ultimately, after Canada's appeal of the first unfavourable ruling, "The WTO *rejected* the argument that there is a safe level of exposure to asbestos and that "controlled use" of asbestos is feasible in France" (Castleman 500; emphasis mine). It is now up to other countries to go through the same procedure in order to protect their populations. While the ruling in France's favour must be applauded there are two points of concern. The first is that the ruling was not applicable to any other country. The ruling found that only in France is the "controlled use" program unfeasible. Every other country that wishes to ban the importation of Canadian asbestos will be required to go through the same procedure of WTO hearings. The other point which bears repeating is that; "...national autonomy over health policy is *not* preserved under GATS..." and that there *may* be arguments made over national health policies that are perceived to be trade barriers (Pollock and Price 1072, italics mine). This is confirmation that the WTO's sole concern is the trade of commodities and that *all* goods and services may be viewed as commodities. Canada has 'justified' ongoing asbestos exports by stating that the public's health is the importing country's sovereign issue. This has now been brought into question through Canada's appeal to the WTO. These outcomes are to be expected, are even predictable, under the assumption that the WTO works in the interest of the powerful nations and the corporate interests they represent.

The issue was centred on the trade of commodities. A product or service is a commodity only when there is a market for it. The purpose of trade in commodities is the accumulation of capital. The WTO ruling ensures that there is a continuing market for asbestos, only France was allowed to ban it under this ruling. That the ruling was applicable to only France legitimates Canada's continued export of a known carcinogen. The ruling also opened a new issue in the question of a country's sovereignty on health issues. In effect the WTO has said that it may have the authority to overrule any given governments' health policy in the name of trade. This would be an intrusion on what has historically been the sovereign authority of a country's representative government which has been one of the last defenses against asbestos. This explicitly demonstrates that the WTO believes that it has the power to prevent a given government from implementing any given national health care policy or program if it inhibits trade. This is a threat to usurp power from ruling governments if they do not 'trade fairly'.

Frappier has documented how the legalities of sovereignty have been superseded by the interests of the USA through military, political and economic interference (82-83). These have reduced the ability of other governments to implement their own domestic policy and act on behalf of their own citizens. Given that the USA's view dominates WTO rulings, it is not surprising that the WTO has suggested that trade issues may trump the sovereignty of any given government's health policy. The on-going debates in Canada and the USA over health care indicate that the delivery of health care *may* be 'just business'. The WTO ruling fulfills all three of the functions of accumulation, legitimation and coercion from Marxist theory.

Relying on the Legal Constituting of Corporations as Persons

The enclosing of the commons concentrated production, from land, into a few hands. These enclosures displaced large numbers of people, what may be considered 'surplus

population'. Having been stripped of their own means of production, the land, they had no choice but go to the cities to labour in the quickly expanding factories and foundries of the Industrial Revolution. It is to be noted that the legal protection of private property and a legal prohibition on idleness developed along with the capitalist system. It is from here that we can follow the distinctively coercive nature of the capitalist system, its concern for private property rights and its disdain for social spending.

The conversion of public property and public resources to private property was not a natural process. It had to be legitimated and enforced, again reactively, through the creation and enforcement of laws to safeguard the newly stolen property. A different ideology was introduced which justified the visible and growing split between those who owned property and those who did not. Property rights and the protection of them have come to be the law's and the court's greatest concerns. As Foucault (1995) has said, early forms of law deal with the morality or ethics of a particular behaviour. While this is arguable there is a point that is unarguable. The laws were based on having an identifiable individual who could be publically identified and, subsequently, be punished in public. This indicates how the application of the law and justice requires a *responsible individual* to stand accused in public.

Over time, the corporation was granted legal standing as a 'person' in order for it to legally own and trade property. This set up an amazing contrivance. Law was created to publicly identify and punish the individual responsible for any given crime. Given that a corporation is no more than, and no less than, the legal articles required for the creation of a corporation, there is no 'person' to stand in the docket in cases wrong-doing. Why did the laws get written in such a way as to grant the corporation the legal status of 'person' but failed to put mechanisms into

place to identify and punish this ‘person’? Marxist theory offers an explanation of the role of the State and its function for capital.

Recalling that the Corporation of Canada is itself a legal “person”, Ewin’s article on “The Moral Status of the Corporation” may be useful at this point. Ewin states that:

“Corporations are moral persons to the extent that they have rights and duties, but their moral personality is severely limited. As artificial persons, they lack the emotional make-up that allows natural persons to show virtues and vices. That fact, taken with the representative function of management, places significant limitations on what constitutes ethical behavior by management. A common misunderstanding of those limitations can lead ethical managers to behave unethically and can lead the public to have improper expectations of corporations”.

He goes on to explain that, “...corporations can act only through representatives and can do only what representatives can do. What representatives can do is work in terms of rights and duties” (749). This means that there is a defined space for representatives to act within, so that in breaching that space a representative risks having their employment terminated. “What matters with rights and duties is simply that the job be done with the requirements met...” (751). Personal values, virtues and vices, are removed from the corporate world. “...the corporation, unlike its representatives, does not *care* about its interests, and possession of a virtue is a matter of what one cares about” (emphasis in the original). He goes further, “There might be no problem about whether corporations can *behave* justly or unjustly, but there is a real problem about whether they can *possess the virtue* of justice” (emphasis in the original) (752). This may be seen to lead to the circumstances of this paper: “If those who act for the corporation have the duty of furthering its interests, and if that means they have the duty of producing the greatest possible return to shareholders, then they are in breach of their duty, and are therein acting

unjustly, if they fail to make the best possible return to the shareholders that they can” (753). From this perspective there is no moral or ethical guidance within the corporate structure. Asbestos is just another commodity regardless of its toxicity and persistence. The end, the reproduction of capital, justifies the means, the continued export of asbestos to those markets still open and the pursuit of new markets.

In *Wealth by Stealth* Glasbeek explains how it is that corporations are so rarely found guilty on criminal charges. Aside from the problem of identifying the responsible individual of any given illegal action, Glasbeek states that there is a structural bias in our prevailing “belief system” (capitalism):

“...that underpins our political economy. This belief system does not envisage that the corporation, as capitalism’s primary vehicle... is to be subjected to a regime of law designed to regulate non-capitalists. Because this rationale cannot be acknowledged in a political setting that claims to be devoted to the legal equality of all individuals, a great deal of effort has gone into the development of an ideological support system for a separate regime of legal regulation of capitalists...” (145).

In effect this means that we have a two-tier legal system that allows corporations to avoid criminal proceedings in most cases. This is compounded by the fact that prosecutors may choose not to file either civil or criminal charges against a given company for any given violation (147). In the extreme cases where charges are filed for corporate wrong-doing there is at least one ‘escape clause’ that is on offer. The use of plea-bargaining may be used to bring proceedings to a quick and non-criminal end. The \$30 million fraud case against Amway Corporation is a prime example. In that case the corporate heads were identifiable but the *corporation*, as the legal proceedings was about to begin, pled guilty. Prosecutors then dropped the charges against the

individuals and the corporation paid a fine. This allowed the responsible individuals to go free, much to the chagrin of the presiding judge (148). Following from this, there is little likelihood that the heads of the corporations, that deal with asbestos, risk being found criminally responsible for distributing a lethal substance. There is very little chance of *any* individual being held responsible.

In another case the presiding justice himself went to great lengths to try and avoid the criminalization of behaviour that resulted in multiple deaths. Snider, in “Poisoned Water, Environmental Regulation, and Crime: Constituting the Nonculpable Subject in Walkerton, Ontario,” followed the proceedings of a public inquiry into the contamination of municipal water which killed 7 people and poisoned 2,300 others. As the forum was a public inquiry the likelihood of criminal proceedings arising from the findings was minimal. The Honourable Dennis O’Connor presided. At the inquiry the responsible individuals Stan Koebel and his brother Frank, who was his supervisor, were identified. The evidence showed that Stan Koebel had been faking the results of water quality tests for years. It also showed that, at the time of the contamination, he had neglected to maintain the chlorinating equipment and turbidity monitors in some wells. It seemed that they had a responsible individual who could be identified and punished. However, O’Connor did not see it that way. As the hearings progressed it became evident to him that Mr. S. Koebel was the victim of a failing system of oversight. Deficiencies in Mr. S. Koebel’s work had been noted by inspectors but he was never forced to correct them. In fact, he received follow-up letters from the inspectors thanking him for attending to their concerns when, in actuality, he had made no remedial efforts. O’Connor investigated the structural failures in the regulation of public water systems after austerity measures were implemented by the Harris government. These measures reduced the oversight and changed the

rules regarding mandatory reporting of water contamination to the health officials. O'Connor found that the 'guiding mind' that was responsible for the incident was not the Koebel brothers but was in fact the Ontario provincial government. While the Kobels had acted improperly and deficiently, those who oversaw them were aware of the problems and had failed to ensure that corrective measures were taken. Ultimately, the Kobels were the only ones charged with criminal offenses. These offences included public endangerment, forgery and breach of trust. In this instance, the laying of charges was an exception to the rule that information arising at public inquiries should not be used for criminal prosecution. However, the presiding justice demonstrated that he did not feel that the person who physically performed the improper acts was necessarily to be held responsible for them. He laid most of the blame on the policy of the government at that time. The pursuit of the 'guiding mind' in policy decisions in corporations or governments tends to dissolve in the intricate meshing departments, policies and responsibilities.

The application of law is, most often, concerned with the individual who commits wrongdoing (Foucault 1995). The structure of the corporation has made it difficult to identify the responsible individual for any given action. Thus, individuals working on behalf of the corporations dealing in asbestos are able to work with the knowledge that they are not likely to be personally responsible for other peoples' asbestos related deaths. The Canadian government recognizes this in their letter to the US Senate in that the sale of asbestos to *individuals* is prohibited (Appendix A, 3).

A different case, also involving preventable deaths, did not even make it to the judiciary. The investigation of listeria contamination at Maple Leaf Food's Toronto meat packing plant, in August 2008, is the case in point. It was revealed that the company was responsible for quality testing of their products, and positive listeria tests were duly noted, but they were not required to

notify government ‘inspectors’ of their findings. The government inspectors, it was found, performed only record keeping not on-the-floor inspections (Canadian Food Inspection Agency). This followed all of the official government protocols of the time. As a result more than 20 people died. The company voluntarily offered cash settlements in a total of \$27 million to make amends. Maple Leaf Foods was not subjected to any legal actions which could have resulted in criminal convictions. In this case, all of the rules and regulations set by the government had been followed. The result was death and serious illness. No one was held responsible. The current export of Canadian asbestos follows all the rules and guidelines set by the government and we know this will result in deaths and serious illness and it is legally sanctioned by the government.

Another illustrative law suit is currently in the Alberta courts. Syncrude Canada Ltd. has been charged with breaches of both federal and provincial laws. The particulars are that Syncrude employees failed to install devices designed to scare migratory ducks away from one of the company’s toxic tailing ponds. This resulted in the deaths of some 1,600 ducks. The lawyer, Mr. Robert White, who represents the company, has gone on the record as saying, “There’s no question that the settling basin [the tailings pond] and its contents was the reason that these birds died. And *there is no question at all that the settling basin is Syncrude’s responsibility, and [the company] is morally culpable. But they are not guilty of criminal offences*” (VanderKlippe, “The oil sand”; emphasis mine). Here we have the legal representative of the corporation admitting that his employer is responsible for what happened. At the same time he emphasises that it is a moral failing but moral failings are not criminal offences. This fits with the asbestos industry’s stand that only legalities are taken into account as a lack of morals or ethics is not yet a criminal offence. While in the Syncrude case it is the company lawyer who is making these statements Glasbeek would have to agree with him.

Glasbeek has an explanation of how this outcome is possible, even likely: “Criminal law is reserved for the intentional violation of those values that constitute our social fabric, those values that reflect our shared morality” (149). I have previously noted that our ‘shared social fabric’ and restraining laws originated with the ruling class, the capitalists, for their benefit and protection. Woven through the fabric of the ideology is belief that the market activities of a corporation should be accorded special consideration:

“We take it to be true that when the investing classes engage in market activities through the corporate vehicle, their focus, like that of the corporation’s, is single-minded: to make money. Any harm inflicted is an unintended effect of otherwise laudable activity, namely, trying to be productive in order to make a profit. Productive activity for profit is good, even though all productive activity entails some risk. It is regrettable when the risks materialize...Criminal law should be saved to punish conduct that cannot lay claim to being productive, in the market sense, even if it is owners of wealth who are engaged in such illegalities” (Glasbeek 153).

Given that the intent of the asbestos industry is the accumulation of capital, the negative health impacts, on those who come into contact with asbestos, represent an ‘acceptable risk’ for the corporation even though negative health impacts are the direct result of the inherent nature of the substance. The intent was to supply a fibre as an additive to cement, to strengthen it, and as a fireproofing and insulating material. For these purposes, asbestos is an efficient substance. It is, however, “regrettable” that those who are exposed to friable asbestos are at risk of asbestos related diseases. It may be morally and ethically wrong to pedal and profit from toxic materials but it is profitable, not a crime. Those who have been, are, and will be affected by asbestos may have a different view of whether the risk is acceptable and what constitutes a crime.

A great deal of argument has gone into preventing businesses from being labeled deviant by the criminal justice system. While early law described and punished immoral behaviour in

terms of what one did, e.g. not working was a crime, the law as applied to the workings of corporations is concerned with intent. The previously mentioned cases show that the intent to profit from a given action exonerates the business from the regrettable and unintended impacts that may occur. That these impacts are unavoidable when the business is asbestos has been ignored. The fact that the asbestos industry continues to distribute a dangerous product in the pursuit of capital supersedes all other concerns in the capitalist legal system.

The capitalist system finds it much easier to label its opponents as deviant. Spitzer saw that the labeling of deviant problem populations occurs when a population (which may be a population of one) disturbs, hinders or calls into question integral features of capitalist society, specifically;

- 1) “capitalist modes of appropriating the product of human labour (e.g. when the poor “steal” from the rich)
- 2) the social conditions under which capitalist production takes place (e.g. those who refuse or are unable to perform wage labour)
- 3) patterns of distribution and consumption in capitalist society (e.g. those who use drugs for escape and transcendence rather than sociability and adjustment)
- 4) the process of socialization for productive and non-productive roles (e.g. youth who refuse to be schooled or those who deny the validity of “family life”)
- 5) the ideology which supports the functioning of capitalist society (e.g. proponents of alternative social organization)” (1975, 642).

This is exemplified by the case of Mr. Tommy Douglas. Tommy Douglas was instrumental in the creation of national, socialist, healthcare in Canada. Canadian public opinion polls have

chosen him as “The Greatest Canadian” (CBC.ca). There have been recent revelations that the Royal Canadian Mounted Police and Canadian security agencies spied on him throughout his career. His offence was that he disturbed, hindered and called into question “5) the ideology which supports the functioning of capitalist society”. Thirty years after his death, these agencies refuse to declassify his file on the basis of ‘national security’ (Bryden, “CSIS”; Caplan, “Standing”). As the current debates in Canada and the USA indicate, health care is big business. National health care programs are socialist by their very nature, the antithesis of capitalism. Mr. Douglas championed the working class and national health care and was declared a national security risk. While I am not aware of any secret investigations against the opponents of the asbestos trade, the Canadian Cancer Society, the World Health Organization and the Canadian Medical Association may now be seen as anti-capitalist, in the capitalist system’s view and, could expect to be targeted for negative sanctions.

Conclusions

The political economy of Canada is that of late, welfare capitalism. Accordingly, Canadian governments find themselves in the conflicted position of having to mediate between the diametrically opposed forces of labour and capital. As well, the government seeks to serve its own interest of remaining in power and being seen as just and fair to the population it ostensibly serves. Given that the capitalist system is neither just nor fair it leaves the government acting from a position of inherent contradiction.

Over the past thirty years laws, regulations and procedures have been adopted to reduce asbestos use in Canada in order to reduce Canadians' risk of asbestos exposure, given that all types of asbestos are known carcinogens. This is the government's effort to appease, and appeal to, the forces of labour by enacting strong regulations on workplace exposure to asbestos and restrictions on its use. At the same time, both federal and provincial governments have been complicit in the ongoing export of asbestos, and have actively engaged in efforts to prevent bans on its use. This is how the governments have acted to appease, and appeal to, the capitalist forces through the authorization of the continued marketing of a lethal substance to the rest of the world. These two apparently conflicting government positions arose, and persist due to the very nature of the capitalist system and the reproduction of the social relations of capital. Due to the Canadian government's legal maneuverings in the asbestos trade dispute there are now some questions surrounding a country's sovereign right to even set its own health policy.

What are the consequences of this anomalous situation for the populations who expect, and depend on, their government to act in their best interest? That governments are involved in a complex juggling act of competing interests cannot be denied. What needs to be recognized is that capitalist governments cannot act wholly on behalf of their populations and disregard the

wants of capital. Neither can they be seen to bend solely to the wants and needs of capital and ignore their populations. On top of this, governments desire to be seen as fair and equitable when, in actuality, the structure of the capitalist system they are working within is not fair or equitable. In the case of asbestos, the Quebec government has made as many concessions as possible while still maintaining a viable industry. Any further restriction on asbestos use and export will effectively end the Canadian industry as a whole. As a result, the public should not expect to see the Canadian governments acting any differently in the future. As long as the Capitalist system is the socio-economic system followed in Canada, the public's best interest will perpetually be in opposition to Capital's and governments face the impossibility of satisfying both. Canada's asbestos policy exposes the logical insanity which is intrinsic in governmental decision making.

Appendix A



**Economic and Trade Policy Section / Affaires économiques et politique commerciale
Canadian Embassy / Ambassade du Canada
501 Pennsylvania Ave., N.W.
Washington, D.C. 20001-2114**

FACSIMILE / TÉLÉCOPIE

Date: 30 July 2007

To/à: The Honorable Patty Murray

Fax no: (202) 224-0238

Ref/réf: S 742: Ban Asbestos in America Act of 2007

Please see attached document.

Many thanks,

Pages: 5

**Monique Frison
First Secretary
Economic and Trade Policy
Canadian Embassy
Tel. (202) 448-6548
Fax (202) 682-7795**

Embassy of Canada



Ambassade du Canada

501 Pennsylvania Avenue, NW
Washington D.C. 20001

July 30, 2007

The Honorable Barbara Boxer
Chair
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington DC 20510

Dear Senator Boxer,

Canada notes with interest the mark-up of S 742, the Ban Asbestos in America Act of 2007, by the Environment and Public Works Committee, scheduled for August 1, 2007. Attached please find a number of observations regarding Canada's policy on asbestos use and the distinction between amphibole and chrysotile asbestos.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Claude Carrière', with a long horizontal flourish extending to the right.

Claude Carrière
Chargé d'Affaires, a.i.

Cc: The Honorable James M. Inhofe, Ranking Member, Senate Environment and Public Works Committee
The Honorable Patty Murray, Chair, Subcommittee on Employment and Workplace Safety
The Honorable Johnny Isakson, Ranking Member, Subcommittee on Employment and Workplace Safety

Canada

Government of Canada comments
to the
US Senate Committee on Environment and Public Works

Regarding the mark-up of S 742 (The Ban Asbestos in America Act of 2007) by the Environment and Public Works Committee, schedule for August 1, 2007, Canada welcomes the deliberations of the Committee on this important subject. Canada would like to take the opportunity to share a number of observations with the Committee. These comments principally focus on Canada's *Safe Use Principle* for minerals and metals, on Canada's controlled use approach and on our views with regards to asbestos, in particular the important distinction between amphibole asbestos and chrysotile asbestos.

The Minerals and Metals Policy of the Government of Canada

The *Safe Use Principle* promoted by the Government of Canada in its Minerals and Metals Policy (1996) is important in the context of the sustainable development of natural resources. This principle is an extension of life-cycle management and incorporates risk assessment and risk management principles. The *Safe Use Principle*, in building on the Toxic Substances Management Policy of the Government of Canada, recognizes that:

- minerals, metals and their products can be produced, used, re-used, recycled and returned to the environment in a manner that is consistent with sustainable development;
- society enjoys important benefits from the use of these natural resources, in conjunction with their sound management;
- certain mineral- and metal-containing products may pose risks to human health or the environment and, as a consequence, need to be managed throughout their entire life cycle;
- naturally occurring inorganic substances, such as minerals and metals, behave differently than synthetic organic chemicals and, as a consequence, require different risk-management approaches; and,
- minerals and metals, in and of themselves, are not candidate for bans, phase-outs or virtual elimination.

The Minerals and Metals Policy of the Government of Canada, and its integrated *Safe Use Principle*, conforms to World Trade Organisation (WTO) principles such as not creating unnecessary barriers to trade or market access and basing regulations on sound science supported by an appropriate risk assessment that accounts for the prevailing conditions in the country of interest.

For more information on Canada's Minerals and Metals Policy, please see http://www.nrcan.gc.ca/mms/policy/policy_e.htm

The Canadian perspective on asbestos-related illnesses, and in particular, the important distinction between amphibole asbestos and chrysotile asbestos

The Government of Canada recognizes that all forms of asbestos fibres, including chrysotile, are carcinogenic. The main health risks associated with all forms of asbestos are primarily occupational, and relate to the inhalation of fibres that may lodge in the lungs in the course of mining, manufacturing and construction and renovation activities. However, contrary to amphibole asbestos, scientific studies show that chrysotile is a less potent carcinogen and less persistent in the lungs than the other forms of asbestos, and consequently poses a lower health risk.

Further, the Government of Canada recognizes that asbestos-related illnesses being observed now are occurring as a result of uncontrolled exposures associated with past practices and uses that are now unacceptable. It is well-known that there is a latency period between heavy dose exposures to asbestos fibres and the development of health effects. The illnesses we are currently seeing in countries that have intensively used asbestos fibres, predominantly the amphibole asbestos category, are linked in large part to past high-level exposures and to inappropriate uses, such as sprayed insulation and high temperature insulation products for pipes to prevent heat losses. In both cases, it was generally amphibole asbestos that was used. These uses were discontinued in the late 1970s.

The Government of Canada follows a controlled use approach to strictly control exposure to chrysotile through federal, provincial and territorial workplace exposure limits and bans on some categories of consumer and workplace products under Canada's *Hazardous Products Act*.

The Government of Canada is of the view that the occupational health risks of chrysotile can be managed if regulations, programs and practices are in place to limit exposure to airborne fibres and that the risks would be no greater than posed by other occupational activities. Low levels of exposure pose low risks.

The Government of Canada also believes that where exposures and subsequent risks cannot be properly controlled, the specific use should be discontinued or prohibited. Consistent with its Minerals and Metals Policy, Canada targets its intervention at the product and use levels instead of the substance itself.

All forms of asbestos are regulated extensively in Canada. Canada's Department of Health has encouraged provincial occupational health authorities to adopt stringent workplace exposure limits for asbestos. The sale of friable products that were formerly available in Canada, i.e., products that release asbestos fibres under normal use, and the sale of pure asbestos to individuals have been banned under the *Hazardous Products Act*. In addition, emissions of asbestos into the environment from mining and milling operations are limited under the *Canadian Environmental Protection Act*.

Today's strict workplace standards, combined with the ban of most uses of amphibole asbestos have reduced worker exposure levels to 1/10 to 1/1000 of the levels that existed in the past.

Today, chrysotile represents nearly one-hundred percent of the world consumption of asbestos as amphibole asbestos has essentially disappeared from the market and over 98% of world's the

consumption of chrysotile is utilized in chryso-cement or friction products where the fibres are encapsulated and, in that form, do not pose a risk to human health.

In conclusion, Canada would like to thank the Environment and Public Works Committee for the opportunity to share our experience with the controlled use of chrysotile.

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