

Accounting for Human Rights: Doxic Health and Safety Practices – the accounting  
lesson from ICL

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### *Abstract*

This paper is concerned with a specific human right – the right to work in a safe environment. It sets out a case for developing a new form of account of health and safety in any organisational setting. It draws upon the theoretical insights of Pierre Bourdieu taking inspiration from his assertion that in order to understand the “logic” of the worlds we live in we need to immerse ourselves into the particularity of an empirical reality. In this case the paper, analyses a preventable industrial disaster which occurred in Glasgow, Scotland which killed nine people<sup>i</sup> and injured 33 others. From this special case of what is possible, the paper unearths the underlying structures of symbolic violence of the UK State, the Health and Safety Executive and capital with respect to health and safety at work. While dealing with one specific country (Scotland), the analysis can be used to question health and safety regimes and other forms of symbolic violence across the globe.

Bourdieu (1998, p 2) “My entire scientific enterprise is indeed based upon the belief that the deepest logic of the social world can be grasped only if one plunges into the particularity of an empirical reality, historically located and dated, but with the objective of constructing it as a “special case of what is possible,” as Bachelard puts it, that is, as an exemplary case in a finite world of possible configurations.

This paper deals with a very specific human right – the right to work in a safe environment. The scale of the abuse of this human right is profound. While it is impossible to know exactly how many people are killed and injured each year at work, the International Labour Organization reports that 2.2 million workers were killed in 2005 by occupational accidents and work-related diseases, another 270 million suffered non-fatal accidents, and 160 million were hit with occupational diseases.<sup>ii</sup> These deaths and injuries are not confined to the economic south. For example, in Canada, official statistics suggest that there are in the region of one million workplace injuries a year although many work-related deaths do not appear in the official statistics, because they were not accepted as such by Workers Compensation Boards, or resulted from occupational diseases not yet recognized as having roots in the workplace.

Historically the hidden cost of capitalist development has been human lives – the industrial revolution in Victorian Britain saw the death rate increase dramatically. As Marx (1976) highlighted, aspects of the working environment that we would now deem unacceptable such as child labour were core to industrialisation. We see this mirrored today as both a cost in the developing world and a cost of greed among the more developed (Centre for Corporate Accountability, 2008; Smith et al., 2006; Watterson, 2000; Tombs, 1999; Pearce & Tombs, 1998). However, in the so-called developed world we argue that there is an expectation that our employer and the infrastructure ‘regulating’ our society will act in our interest and protect us: we have legal systems and regulatory frameworks of elected agencies to “protect” us. Tragically, as the rise in workplace deaths and injuries continues, this expectation is, at best, problematic. We characterise this expectation in terms of Bourdieu’s concept of *symbolic violence* and argue that this understanding is key to addressing the problem and will aid in our understanding of how accounting could be used to help address health and safety at work issues.

In this paper we will set out a case that if we are to take the notion of accounting for human rights seriously we will need a radically different form of accounting. While it is possible for the abuse of workers’ human rights to take many forms, in this paper, without demeaning all forms of abuse, we concentrate solely on the right to a safe working environment. We draw upon the theoretical insights of Pierre Bourdieu taking inspiration from his assertion that in order to understand the “logic” of the worlds we live in we need to immerse ourselves into the particularity of an empirical reality. In this case we analyse a preventable industrial disaster which occurred in Glasgow, Scotland which killed nine people<sup>iii</sup> and injured 33 others. From this

special case of what is possible, we unearth the underlying structures of symbolic violence of the UK State, the Health and Safety Executive and capital with respect to health and safety at work. While we deal with one specific country (Scotland), our analysis can be used to analyse health and safety regimes and other forms of symbolic violence across the globe.

The industrial disaster occurred on 11 May 2004 at the ICL Plastics plant in Grovepark Mills in Maryhill, Glasgow. This was the worst health and safety incident in Scotland since Piper Alpha in 1988 when 167 lives were lost, and the worst on mainland Scotland since the 1960s. ICL produced plastic goods for everything from the meat trade to hospitals. In addition, it specialised in producing protective equipment for the police, such as riot shields and leg guards. The factory operations involved dangerous gases and chemicals. On 11<sup>th</sup> May 2004, 66 people worked on the premises. The explosion was caused by a corroded pipe which carried liquefied petroleum gas (LPG)<sup>iv</sup> from a tank in the yard into the factory building. The pipe went into the basement of the factory. The pipe leaked LPG into the basement, creating an explosive atmosphere. The explosion occurred somehow (probably when an electric light was switched on) when a worker, Kenneth Murray, went into the basement to collect materials stored there. Kenneth Murray died in the basement of injuries consistent with his having been at the point of the explosion. Blood samples showed that he had inhaled propane gas before the explosion.

On 17<sup>th</sup> August, 2007, ICL Tech Limited and its parent ICL Plastics Limited pled guilty to statutory breaches of Health & Safety Work Act of 1974 (see Crown Office and Procurator Fiscal, 2007). A review of the information available from Company's House records (3 types of filings: un-audited abbreviated accounts, current appointments reports, and 363S annual returns) reveals that ICL Plastics had £897,511 in cash holdings at the end of November, 2003, (for further detail see Beck et al, 2007). Both companies were subsequently fined £200,000 (Crown Office and Procurator Fiscal Service, 2007).

The disaster marked the first joint UK Public Inquiry between the Scottish Government and UK representatives in Westminster. The empirical insights in the paper are drawn from the documentation of the Public Inquiry, and the financial returns of the company lodged at Companies House. The Research Team also took copious notes throughout the ICL trial and used 'action research' methods, based on the participation of a group of seven ICL workers and ex-workers representative of different sections/functions in the plant. Both 'risk mapping' and 'body mapping' exercises were used whereby workers provided unrivalled evidence of working conditions, potential hazards and symptoms of ill-health. In-depth worker interviews provided further invaluable data.

The paper is structured as follows; the next section reviews research on accounting for workers and their human rights before turning to highlight the (mis)use of accounting information in the legal prosecution of ICL for breaches of Health and Safety legislation. Looking through the lens of social domination and symbolic violence offered by Bourdieu we seek to make visible ICL's formal accounts as one of

many tools of symbolic violence inherent in this case. In order to fully appreciate the extent of abuse of the workers' rights to health and safety it is necessary to consider the role of the State and its agents, namely the Health and Safety Executive (HSE), as complicit in the social system of domination in which ICL is only one part. The paper ends with reflections on the accounting lesson from ICL. We argue that by viewing the human right to work in a safe environment through the lens provided by Bourdieu we can craft a radical form of accounting for human rights.

### **Extant accounting for workers and their human rights**

Accounting research on corporate social accounting and accountability has considered the human rights of employees in many guises. A simple distinction can be drawn between the 'rights' of workers to receive information (reporting to employees) and a more inclusive approach on the 'rights' of others to receive information about workers (reporting on employees/ employee-related accounting and reporting).

More traditional approaches to both reporting to and reporting on employees use financial and management reporting frameworks in a hierarchical, functional form to hold owners and managers within the corporation socially accountable to stakeholders (see for example O'Dwyer & Unerman; 2007; Spence & Gray, 2007; Everett; 2003). The historical perspective on accounting for human rights at work varies. Gray et al.'s (1996) comprehensive review of reporting to and on employees in its many guises recognises the practice of what they refer to as employee-related reporting (about employees) was rooted in the 1940s. In the 1970s, perhaps reflecting the doxa of the period, the Accounting Standards Steering Committee's production of the "Corporate Report" (1975) added political legitimacy to the identification of employees as 'special' stakeholders with a right to financial information in the form of specific purpose employee reports including a Value Added Statement. Since then, divergent views have been expressed on the extent to which reporting to workers raises their awareness of important work issues and provides a useful educative role versus the extent to which reporting is used as a tool to discipline workers.

The consideration of accounting to/for workers immediately summons up recognition of the struggle on the economic field between capital and labour over the allocation of surplus value. Taking into account the potential collective bargaining power of employees a number of research studies have considered the potential for employee-related reporting to contribute to trade unions and management decision making in times of disputes over what constitutes fair pay (Cooper & Essex, 1977; Foley & Maunders, 1977; Cooper, 1984; Jackson-Cox et al., 1984; Cooper & Sherer, 1984; McBarnet et al., 1994). One approach, perhaps best exemplified in Pope and Peel (1981) suggests that since accounting information is "neutral", it could play a positive role in thrashing out fair pay settlements. This approach perpetuates the symbolic violence that accounts are neutral and useful for decision making purposes. Other research has highlighted this symbolic violence.

For example Berry et al's (1985) study of the National Coal Board accounts found that they did not form an adequate basis for decisions about pit closures. This research indeed showed that it was likely that pits were being closed for political rather than economic reasons. Therefore, contrasting views exist between the employee as a key stakeholder and more critical challenges that suggest that in a capitalist system of domination, capital will continue to neglect labour in favour of profit (Dey et al., 1994; Cooper, 1995; Dey, 2007; Owen, 2007).

There are increasing trends in experimenting with human asset accounting and "how to put people on the balance sheet" and performance based systems for human resource accounting. This type of accounting has recently coalesced around the question of accounting for intellectual capital. It has been argued that the vast majority of papers in the intellectual capital field are focused on reporting how organisations struggle with accounting for, i.e. measuring and reporting, intellectual capital. To a significant extent, this work is unquestioning of the practices themselves, as well as the thinking that underpins them (Mouritsen & Roslander, 2009).

In spite of the inclusion of workers' interests in the 1975 "Corporate Report", contemporary financial reports are designed to serve the needs of shareholders and large investors and as such are concerned with the efficient production of profits by employees. Financial reports are therefore, antithetical to accounting for human rights. Moreover, since Charles Medawar's seminal work in 1976 there has been a growing body of work challenging the production of useful accounts by corporate managers. This work sets out a case for the production of reports by alternative commentators (Cooper, 2005b; Gray 2002). Recent research on accountability has looked at how the provision of alternative forms of information could input into accountability relations and systems of accountability (see Milne et al., 2008; Ball, 2007; Owen, 2007; Shenkin & Coulson, 2007; Dey, 2007; Cooper, 2005; Dey, 2003; Everett, 2003; Owen et al., 2000; Gray et al., 1997). These include, for example, conceptualisation and re-presenting internally derived information on which companies are "silent" and external "shadow" accounts reflecting on the performance of the company (see for example, Dey, 2003; Gray 2002; 1997).

The production of shadow accounts and social audits is becoming common among campaigning non-governmental organisations (NGOs) such as War on Want. NGOs have attempted to prise-open the legal organisational form and have questioned the accounting entity and formal units of account as the appropriate accountable entity by taking alternative supply chains and issues approaches. For example, the Friends of the Earth review of the source of finance behind Asia Pulp and Paper's human rights abuse and environmental degradation includes the financing of their subsidiaries, related companies and their supply chain (Matthew & Willem van Gelder, 2002). Other issues based studies include, for example, student finance (Cooper et al, 2005), water footprinting, and accounting for war (Cooper & Catchpole, forthcoming). Much of this research recognises that despite living in "the audit society", human rights violations and abuses continue. New forms of accounting research seek to make them visible.

NGO initiatives have sometimes merged with trends in academic 'activism' in efforts to add legitimacy to 'accounts'. Owen (2007) analyses trends among critical accountants to engage directly with groups such as trade unions as a counter to corporate capture through engagement (see also Neu et al., 2001; Owen et al., 2000; Cooper, 1995). However, in the UK at least, as corporate funding for research increases, the problem of corporate capture is difficult, if not impossible to overcome. Mechanisms for engagement have arguably gone further with Shenkin & Coulson (2007) suggesting that informal, ethnographic methods of information provision may well be better suited to discharging a more social accountability, which necessarily provokes critical reflection on and in everyday life (see also Dey, 2002).

In other research settings, similar notions of a more 'socialising' form of accountability have been applied to the complex sets of relations between corporations, public institutions, community groups, trade unions, and activists, as well as between different sets of workers within organisations (see Richter, 2001, Negri et al., 1999; Munro, 1996 Roberts, 1996; 1991). For example, Roberts (1996) discusses 'reciprocal dependence' and the unavoidability of relying on each other, both in moral and instrumental terms. He not only states that we depend upon the actions of others at work and everyday life but that "both within and beyond organisations there is an urgent need to bring the instrumental and moral dimensions of accountability back into relation with each other" (Gill, 2009, p40). Therefore we have a reciprocal duty to every right that we want fulfilled, as it is 'bound up' with everyone else. In some senses this idea of reciprocal duties is State doxa. Workers "willingly" go along with the legality of employers making money out of their labour and in return labour expects certain legal rights (for example not to be unfairly dismissed, the right to belong to a trade union and that workers will be protected by State health and safety legislation). However, the unequal distributions of the various forms of capital mean that capitals' needs are privileged over labours'.

One of the key challenges in accounting for human rights is the macro-meso-micro level management from universal principles of human rights to particular abstraction in everyday practice and conflicts of interest in social system where the means of abstraction serves to reinforce systems of domination. As Ignatieff (2001) writes "everyone's universalism ultimately anchors itself in a particular commitment...the problem is that particularism conflicts with universalism at the point at which one's commitment to a group leads to countenance of human rights violations toward another group," (p. 9) Neu and Graham (2005)'s, highlight the need to consider the "intersection of accounting and the public interest in a variety of settings" and the "multi-faceted nature of the nexus between accounting technologies, policies, practices, and society" (p. 589)<sup>v</sup>. Within systems of social domination by focusing on the universal we deny the nature of individual difference and ignore the influence of systems of social domination which create and maintain human rights abuse. Accounting for human rights needs to consider at a minimum the illusion of the economic field alongside the dominant role of the State in maintaining economic

capital and financial ‘narratives’ of legitimization that represent the interests of capital and neglect workers.

Overall, research on accounting to/about employees, research on employee accountability and research on human rights, is focussed, in the main, at the macro or broadly theoretical level. This paper attempts to consider these issues from a macro perspective in that it seeks to explore the societal structures at play while also grounding itself at the micro level in the empirical reality of the ICL tragedy. Our purpose is to build on an emerging trend in academic accounting to analyse the scope and potential for political action geared towards social change (for example, Cooper, 2005; Everett, 2002; Neu et al., 2001). As our opening quote recognises, in many ways, Bourdieu strived to strike a balance between developing scholarly research that addressed deeply complex theoretical and methodological issues, and embarking on activities geared solely towards intervening in the public realm.

In order to more fully develop the micro-level function of accounting and its emancipatory potential, the next section considers the role played by ICL’s financial statements after the explosion.

### **Accounting and ICL**

On a micro level some form of accounting information formed the basis of the fine in the ICL criminal case for health and safety violations. On the last day of the Hearing in which ICL pleaded guilty to two Health and Safety charges, the defence QC handed the judge what appeared to be a single sheet of unaudited figures prepared by the company which set out the size of fine which the companies involved could afford to pay without their business interests being affected. On 28<sup>th</sup> August, 2007, Lord Brodie, the sentencing judge, announced that ICL Plastics and ICL Tech would each be fined £200,000<sup>vi</sup> (See Crown Office and Procurator Fiscal, 2007). The, albeit unaudited, abbreviated accounts which had been lodged by the company at Companies House demonstrated the cash holdings were £897,511 (30<sup>th</sup> Nov 2003); £455,187 (30<sup>th</sup> Nov 2004); and £749,950 (30<sup>th</sup> Nov 2005).

Similar to Berry et al’s (1985) findings concerning pit closures, the financial information presented in the case provided very poor information concerning the scale of fines which *should* have been imposed on guilty employers. However, at least the accounts showed that in terms of its cash holdings, the fine could have easily been paid by ICL. In the accounts land and property were valued on a historic cost basis, and had been written down to almost negligible levels. It was estimated that the site at Grovepark Mills, where the explosion occurred, had an insurance value of £2.2m. This information was made available to the Court, yet despite this, Lord Brodie made it clear that “it would be inappropriate for the Crown to present an independent valuation of the accused companies” (Court of Session statement, 27<sup>th</sup> August). The court deemed that sufficient information was available to determine the fine, roughly equal to £44,000 for every life lost in the explosion and without any accounting for those seriously injured. There were several financial



factors which were not included in the conventional financial statements. Following the two-day hearing at the Court of Session, the companies involved received a sum of £420,000 from their insurers, enough to cover both the fine and the associated legal costs. Moreover, the company still owns the land on which the wrecked factory was situated. It has been reported that the cost of clearing the land to the local authority was £1m (as far as the authors are aware, the local authority has made no attempt to recover this cost from ICL). The land is currently worth in the region of £3m. Thus, because of the explosion ICL stand to make in the region of £3m when it sells the land.

The cash holdings of the company were fairly widely reported in the press and knowledge (albeit imperfect) of the cash holdings enabled interested parties to gauge the relative size of the fines. Moreover, financial information about the value of the land on which the factory was situated is also important. Thus financial information, while limited, played a part in the struggle to hold ICL accountable. In general, research has shown that fines are also often very small when taken in comparison with the profits of the companies they seek to penalise (Beck et al., 2007) and do not reflect the gravity of the harm caused.

In terms of representing and upholding the human rights of workers to health and safety at work the formal accounts of the ICL Group of companies certainly proved to be an inadequate basis for establishing the fine. Similarly, in terms of reporting on or to employees little insight is offered as to the financial position of the group or the day to day management of ICL and risk of health and safety.

Looking through the lens of symbolic violence offered by Bourdieu we can further unmask the financial accounts as a tool of symbolic violence. They are misrecognised as vehicles of accountability and misrecognised by the judiciary as a legitimate basis for financial representation of harm. In turn, irrespective of the penalty levied, they serve to maintain the dominance of economic capital at the expense of the health and safety of the workers. However, to fully appreciate the extent of symbolic violence in the case of ICL it is necessary, as Bourdieu, advises to consider the role of the State and its agents complicit in the social system of domination in which ICL is only one part. In so doing, this also provides us with an opportunity to make visible the full extent of information that was available regarding health and safety at ICL in the period leading up to the disaster. Thus in the next section, we turn to the State and the Health and Safety Executive.

### **The State doxa and human rights**

At a fundamental level, from its genesis, the modern State had to claim to act for everyone within its geographical boundary's human rights in order to achieve its aim of concentration of the different species of capital into its domain (field). Indeed, Bourdieu (1998, p 41) argues that the State is the *culmination of a process of concentration of different species of capital*<sup>viii</sup>: most notably – the capital of physical force or instruments of coercion (army, police); economic capital; cultural (or better)

informational capital; and symbolic capital (see Bourdieu, 1986). It is this concentration which constitutes the State as the holder of a sort of meta-capital granting power over other species of capital and over their holders. The concentration of the different species of capital<sup>viii</sup> led to the *emergence* of a specific, properly statist capital which enabled the State to exercise power over the different fields and over the different particular species of capital, and especially over the rates of conversion between them (and thereby over the relations of force between their respective holders). In the creation of modern States, there were battles and struggles over which capitals would dominate. For example, in the UK the capital of physical force does not play the same dominant role as it does in other States (for example Israel).

Bourdieu did not see the State as “the dominant field”. To Bourdieu, the construction of the State proceeds apace with the construction of a *field of power*, defined as the space of play within which the holders of capital (of different species) struggle *in particular* for power over the State, that is, over the statist capital granting power over the different species of capital and over their reproduction.<sup>ix</sup>

The modern State’s main function is to bring about, *a theoretical unification*. Taking the vantage point of the whole, of society in its totality, the State claims responsibility for all operations of *totalisation* (especially census-taking and statistics or national accounting) and of *objectivization* (through cartography). The State further contributes to the unification of the cultural market by unifying all codes, linguistic and juridical; through classification systems (especially according to sex and age) inscribed in law; through bureaucratic procedures; and through educational structures and social rituals. In short, the State moulds *mental structures* founded upon the belief (however untrue) that it will protect the human rights of its citizens while at the same time imposing common principles of vision and division.

Thus, the state symbolic system performs three distinct functions: cognition (knowledge), communication (instruments of knowledge/codes), and social differentiation (integration/ structuring structures). As recognised by Swartz (1997, p 89), “for Bourdieu, symbolic power legitimizes economic and political power but does not reduce to them” due to misrecognition and complicity. This reinforces the importance of revealing symbolic power as well as economic power when examining domination and, as Swartz notes (1997, p88), stressing the primacy that legitimating plays in empowering domination. In particular, the active role played by taken for granted assumptions in the maintenance of power relations.

Bourdieu believed that theories of the genesis of the State have failed to consider the importance of the concentration of a symbolic capital of recognised authority within the State as the condition of all other forms of concentration of the different species of capital. Symbolic capital is any property (any form of capital whether physical, economic, cultural or social) when it is perceived by social agents endowed with categories of perception which cause them to know it and to recognise it, to give it value. More precisely, symbolic capital is the form taken by any species of capital whenever it is perceived through categories of perception that are the

product of the embodiment of divisions or of oppositions inscribed in the structure of the distribution of this species of capital (strong/weak, large/small, rich/poor, cultured/uncultured). It follows that the State, which possesses the means of imposition and inculcation of the durable principles of vision and division that conform to its own structure, is the site par excellence of the concentration and exercise of symbolic power.

However, in order to understand the power of the State you need both “structural” explanations as well as “symbolic” ones. The State creates organisational structures.

“Just as economic wealth cannot function as capital until it is linked to an economic apparatus, so cultural competence in its various forms cannot be constituted as cultural capital until it is inserted into the objective relations between the system of economic production and the system producing the producers” (Bourdieu, 1977, p186).

The contemporary symbolic order rests on the imposition upon all agents of structuring structures that owe part of their consistency and resilience to the fact that they are coherent and systematic (at least in appearance) and that they are objectively in agreement with the objective structures of the social world. It is this immediate and tacit agreement that founds the relation of *doxic submission* which attaches us to the established order with all the ties of the unconscious. In a capitalist State, many of the objective structures are centred on serving the needs of the market. Indeed part of the UK doxa is that what is good for business is also good for society. The types of cultural capital which serve the needs of the economic field command higher exchange rates<sup>x</sup>. Symbolic support for the market is differentiated from support (say) for the needy. We unconsciously value profit over loss. In accounting and finance education new health and safety legislation is characterised as a “shock” or “bad”.

In the following section we analyse a field which has been granted State symbolic capital – the Health and Safety Executive. Interestingly, the granting of symbolic power aligned with the construction of objective structures by the State serves to expand and enforce the State’s own position.

## **The HSE**

The HSE is a UK “non-departmental public body” sponsored by the Department for Work and Pensions. As such, it is funded by public money with authority to appoint staff and allocate spending under the governance of a board of directors. It was created on 1 January 1975 by the Health and Safety at Work Act 1974, as part of a programme of regulation dating back to the 1833 Factory Inspectorate (Factories Act 1833). While the Executive Board originally reported to the Health and Safety Commission the two bodies were merged in April 2008. Its role with, few exceptions<sup>xi</sup>, is to enforce health and safety legislation in all workplaces in England, Wales and Scotland. Their State granted symbolic power enables the HSE to enter

workplaces and if necessary take legal action against work activities which it considers to be dangerous. This symbolic power is valued, in part at least, because it is founded on the belief that it is protecting the human rights of workers. Moreover, doxa dictates that if a worker knows that unsafe working practices are taking place, their natural protector is the HSE.

Therefore, in the case of the creation of the Health and Safety Executive, despite what might happen in practice, the State can claim that it has acted in the public interest by the creation of this body (and in some senses absolve its own responsibility for health and safety at work); it can also withdraw its symbolic capital, even going so far as to close the HSE and set up an entirely new body. In this way the State has maintained its power while appearing to disperse it. The State in creating the HSE is fulfilling its function of a “fountain of honour, of office and privilege” (Bourdieu, 1998). It is the State, acting in the manner of a bank of symbolic capital that guarantees all acts of authority.

State doxa makes it rational for a regulatory body to be a public agency, ‘independent’ of the control of private enterprise/ capital, with resources controlled at a restricted arms length by the State. Such an apparent structural position serves to create the legitimate authority of the HSE. But what is the reality? Research has shown the HSE is under resourced, with its scarce resources employed in pursuit of collaboration with management. Indeed, there are currently fewer HSE inspectors in the UK than traffic wardens in central London. Despite a recorded high of 4,545 staff employed by the HSE in 1994 (numbers have fluctuated, but total staff has never surpassed this high point) 593 UK work related deaths were reported in 2004-5. In 2007, workplace deaths rose to 1,500<sup>xii</sup> per year<sup>xiii</sup>. Further, of a reported 4,019 HSE staff on 1<sup>st</sup> April 2004 only 1,483 of those were front line operational inspectors. Arguably, the HSE has never been granted the resources to act as any kind of police force for the UK workplace despite being the lead enforcement agency for health and safety legislation (Toms, 1990). Recent data suggests that UK-wide the HSE is indeed increasingly de-emphasising its role as a health and safety enforcement agency, with a UK-wide fall of enforcement notices from 11,335 in 2003/4 to only 6,383 in 2005/06.<sup>xiv</sup> In effect the cultural capital of HSE inspectors is not seen to be serving the direct interests of capital and therefore command a low exchange rate. Moreover, the actual structure of the HSE is created more to represent the interests of capital than labour. Indeed the *illusio* of the HSE is serving the needs of business. In spite of this, our doxic submission means that there is a tendency to view the HSE as the protector of workers’ human rights.

### **The HSE in Scotland**

There is a specifically Scottish habitus which has impacted on HSE activities in Scotland. Over many years the HSE has recorded significantly higher rates of fatal and major injuries for Scotland as compared to the UK as a whole. For example, between 1996/7 and 2005/6 Scottish employees have averaged 58% higher rates of fatality than the UK overall. Attempts to explain this ‘Scottish anomaly’ have failed

to reach common agreement, however, explanations include weaknesses in the inspection and prosecution of safety offenders. Beck et al (2007) illustrate this point noting at the time of the Stockline disaster the HSE reportedly had only 68 inspectors to police 81,000 workplaces, in a UK-wide context where inspection has been de-prioritised.

This concerning evidence should be set within the specific structure of the legal field in Scotland. This structure has meant that Scotland's inspectorate arguably faces a greater challenge than England. In Scotland, prosecutions for health and safety offences must be made through the Procurator Fiscal office rather than being taken directly to court by HSE staff. Research has shown that the impact of the de-emphasis on enforcement has been aggravated by significantly lower fines issued by Scottish courts than their English counterparts (Beck et al, 2007).

From a historical perspective, it appears that discrepancy in legal enforcement has always existed, particularly between England and Scotland. Marx (1976, p 401) recounts a divergence over the enforcement of a 15 hour factory day. When the home Secretary was overwhelmed by petitions from mill-owners, he instructed inspectors not "to lay information against mill-owners for a breach of the letter of the Act". While the Scottish Inspectorate duly obliged, the English Inspectorate "declared that the Home Secretary had no dictatorial powers enabling him to suspend the laws, and continued their legal proceedings against the 'pro-slavery rebellion'".

Commenting on the effectiveness of the Inspectorate Marx (1976 in Capital vol. 1) further highlights the distance between inspectors and "cotton lords" of the time when he refers to regulation of child employment as "the first rational bridle on the murderous, meaningless caprices of fashion". Yet this rigor belies a subverted strengthening of the State and capitalism through increased labour regulation. As noted by Marx (1976, p 604) as the industrial revolution in Britain advanced it was "helped on artificially by the extension of the Factory Acts to all industries". Despite the claims by owners and managers that the cost of compliance required an unaffordable outlay of economic capital this served only to highlight that the "unlimited exploitation of cheap labour-power is the sole foundation of their ability to compete" and with the "improved method" of production regulated by the Act any initial economic outlay was absorbed (Marx,(1976, p 605). Further, regulation could often be obviated "at the expense of an enlargement of the works under the pressure of a General Act of Parliament" (Marx, 1976; p610, footnote 16). Thus Marx described how Factory Acts, while seeming to serve the public interest, in reality helped the expansion of Capital. Bourdieu presents a theoretical explanation of how this is achieved.

To Bourdieu, the State does not necessarily have to give orders or to exercise physical coercion in order to produce an ordered social world, as long as it is capable of producing embodied cognitive structures that accord with objective structures and thus of ensuring doxic submission to the established order. Doxa is the point of view of the dominant, which presents and imposes itself as a universal point of view

– the point of view of those who dominate by dominating the State and who have constituted their point of view as universal by constituting the State. Thus doxa is the breeding ground for what Bourdieu describes as symbolic violence. In short, symbolic violence occurs where doxa prevents one from questioning “the universal point of view”. In the next section we will expand upon this idea further.

## **Symbolic Violence**

A major contribution of Bourdieu’s work was to develop an account of the symbolic violence that acts to maintain a relationship of social domination. Famous for rethinking dichotomies of social theory, Bourdieu’s account of social violence is distinct in that symbolic violence is achieved without consciousness or constraint. It is grounded in the ‘choices’ people make according to their specific habitus<sup>xv</sup> and their “illusio”, an unconscious commitment to the logic, values and capital of a field. The nature of symbolic violence means it is not recognised or, as Bourdieu elaborates through many examples of language and education, is misrecognised. For example, such misrecognition has become a common basis for social analysis in gender studies where social behaviour is understood as “natural” or socially acceptable behaviour rather than acts or relationships of domination. The acts - words, gestures and intonations – of domination are not recognised as such, they are misrecognised as part of the doxa. Doxa serves to distinguish the thinkable from the unthinkable, reinforced by acts of distinction that obscure domination (Bourdieu, 1990).

Part of their makeup is that acts of symbolic violence are socially established and unconsciously accepted. Within our social relationships and practice, complicity of the dominated is necessary if symbolic domination is to be realized. As highlighted by Bourdieu “the propensity to reduce the search for causes to a search for responsibilities makes it impossible to see that intimidation, - a symbolic violence which is not aware of what it is (to the extent that it implies no act of intimidation) - can only be exerted on a person predisposed (in his habitus) to feel it, whereas others will ignore it”... (Bourdieu, 1991, p 51). Bourdieu’s extensive study of education illustrates how bodies of knowledge perform a reproductive function by communicating values of meanings of the existing social order to students who become predisposed to acceptance. For example, a child with a middle class accent and extended speech patterns may be rewarded by the teacher and so come to be seen as more intelligent. Thus anything said in a middle class accent is seen by the class to be “intelligent”. By making arbitrary cultural connection in a world where divisions and hierarchies are presented as necessary, a form of symbolic violence is enacted (see further Webb et al., 2002, p 118 on cultural arbitrary).

Bourdieu’s theoretical position is not however pessimistic, an escape lies in critical reflexivity and the historical analysis of rational thought – “to rethink the subject-object dichotomies of classical and current social theory” - not just conflict in social relations and practice. “To fight for reason, for the undistorted communication that makes possible the rational exchange of arguments, etc, means fighting very

consciously against all forms of violence, starting with symbolic violence” (Bourdieu, 2008, p 222-3)...recognizing “the methodical historicization of the instruments of rational thought (categories of thought, principles of classification, concepts, etc.) is one of the most powerful means of removing them from history” (Bourdieu, 2008, p 223)

Debate on the robustness of Bourdieu’s ‘theory’ of symbolic violence has centred on the extent to which workers are aware (misrecognise) and complicit in domination, and domination is illegitimate (see for example Bourdieu, 1977; Calhoun et al., 1993 Swartz, 1997). Through his own historical analysis of economic and social struggles, Bourdieu recognises there has been a historic move from overt violence with industrialisation to more symbolic violence<sup>xvi</sup> (Bourdieu, 1977; Swartz, 1997). For Bourdieu, there is an intelligible relation – not a contradiction – between overt and symbolic violence which “coexist in the same social formation and sometimes the same relationship” (Bourdieu, 1977, p 191). It should not be forgotten, for example, that for many slavery was, and in some cases arguably still is, an accepted part of everyday life and as such becomes an act of symbolic violence.

In the formation of symbolic violence there is a transmutation of economic into social capital when violence becomes concealed by a socially recognised authority legitimated by the State and its system of social domination as is the case with the HSE. In the formation of legitimate economic authority “economic power lies not in wealth but in the relationship between wealth and a field of economic relations, the constitution of which is inseparable from the development of a *body of specialized agents*, with specific interests; it is in this relationship that wealth is constituted, in the form of capital” (Bourdieu, 1977, p 184). Bourdieu (1977) states that “Just as economic wealth cannot function as capital until it is linked to an economic apparatus, so cultural competence in its various forms cannot be constituted as cultural capital until it is inserted into the objective relations between the system of economic production and the system producing the producers” (p186).

Bourdieu argues that the use of overt physical coercion or violence to explain the stability of capitalist social relations is incommensurate with the empirically observable realities of everyday life and therefore explanation must be sought in symbolic violence and the manufacture of consent (Calhoun et al., 1993; Garnham, 1993, p 184). Putting acts of violence (our case study of ICL) into context means that it is necessary to analyse the objective mechanisms which help to establish and conceal relations of domination and also requires us to consider changes in capitals in terms of what Bourdieu aptly calls a “comprehensive balance-sheet of symbolic profits” (1977, p181).

The following section sets out a detailed account of the activities of the HSE in its dealings with ICL and its LPG gas installation. We have chosen to concentrate mainly on the LPG pipes since it was a corroded LPG pipe which caused the explosion.

## **The Habitus of health and safety practices at ICL and the Doxic HSE**

### *The History*

The ICL building was a former weaving mill which had been constructed in 1857. As will be seen from our discussions, the working environment of the 21<sup>st</sup> century workers may not have been so far removed from that of their Victorian counterparts. The old mill was situated in a busy residential area and had passed through various hands during the years before it became the home of Industrial Copolymers Ltd Plastics (now ICL Plastics), which was founded on the site in 1961 by chemist Campbell Downie and colleague Ron Cunningham. This building had undergone numerous alterations throughout the decades. It originally had an open pit partly below ground level and an adjoining basement. In 1980 the open pit area was covered by the creation of a freestanding floor. The ground floor of the building was approximately a metre above the external ground level.

The history of the use of LPG at ICL began in 1969, when an LPG tank was installed in a yard outside of the ICL factory building. The LPG gas would be used to fire ovens within the factory premises. The installation was agreed by Campbell Downie (one of the founders of the company). He engaged Grieben Plant Limited to supervise the installation of the pipe. The principal of Grieben Plant was the late Frank Semple, a former marine engineer and Downie's bother-in-law. The tank was connected to an underground pipe running beneath the yard and originally rose above ground (through a 90 degree bend in the pipe) to enter the building through a bricked up window into the open pit area. At this time, the final section of the pipework rose vertically to about 0.45 metres above the original surface of the yard and was clearly visible. Internally, the pipe was also visible in the pit area of the building. However, to counter problems with flooding, the level of the yard was raised in 1973. As a result, the LPG pipework was buried at the place where it entered the building. In 1980 when the inside pit area was covered, the pipe ceased to be visible from inside the premises. (Insert fig 1 about here)

The LPG installation attracted the attention of HSE inspectors. Indeed, the evidence from the Public Inquiry demonstrates that Campbell Downie and other senior staff at ICL's attitude to health and safety provoked serious comment within the HSE<sup>xvii</sup>. The Public Inquiry carefully details occasions where the HSE were given information by ICL which later turned out to be factually incorrect and in all likelihood designed to delay HSE recommendations. For example, in February 1982, the HSE submitted recommendations for improvements to the LPG tank which included the installation of a drench system. In December, 1982, Frank Stott who was the responsible officer for health and safety at ICL Tech<sup>xviii</sup> telephoned the HSE and later wrote confirming that the drenching system had been delivered and was to be installed during the Christmas shutdown period. The Public Inquiry found that this representation cannot have been true. Twenty two years later, at the date of the explosion, no drenching system had been installed. This was not a minor oversight on behalf of a busy mid level manager. The absence of a drench system and the advice of the HSE were known to the senior management at ICL. When the issue of the drenching system was raised six year's later in April 1988, Stott responded to a memo from



Downie (the controlling shareholder) on the significant cost of installing a drench system as follows “... we must try to talk them out of the drench but this will be difficult this time around...” (Gill, 2009, p 87). In a later memo, Stott wrote to Downie that, “..I suspect that we have reached the end of the road in side stepping their requests (since 1982)....” Downie replied “.... I am not unduly concerned with the Factory Inspectors displeasure....” The habitus of ICL was one of stalling on HSE recommendations; meticulous attention to the cost of health and safety implementation and holding the HSE in low regard.

*Recommendation 11 – the potential lifesaver*

Between 1975 and 1988 HSE inspections repeatedly expressed concerns about the siting of the LPG tank which was considered to be too close to the factory building. But in 1988, a key event in the history occurred when a specialist inspector visited ICL. The HSE inspector, John Ives (who had experience of inspecting ICL since 1981), attended that visit with Alan Tyldesley<sup>xix</sup> who had recently been recruited as a Specialist Inspector, working with the Field Consultancy Group dealing with fire and explosion. Ives long association with ICL should have meant that he was aware of ICL’s habitus and the necessity for the HSE to threaten legal action against ICL to force them to comply with HSE recommendations.

It became clear during the Ives/Tyldesley visit that the siting of the tank, given its size, did not comply with the separation distances contained in HSE guidance HS(G)34. The Public Inquiry noted that this was “a problem on which Mr Stott had successfully staled for so long” (Gill, 2009, p63). The specialist (Tyldesley) stated that ICL should either try to convert their ovens which used LPG to natural gas, try to rent land further away from the factory to re-site the tank or to acquire smaller tanks. In all Tyldesley made 12 recommendations. For the purposes of this paper, recommendation 11 is the most poignant—

Part of the underground pipework carrying LPG vapour into the building should be excavated. The state of the pipework and any corrosive protective coating should be examined by a competent person and any recommendations made as a result of this inspection should be carried out. A pressure test<sup>xx</sup> of the pipework should also be carried out. (Gill, 2009, p66)

In short, in 1988 a recommendation was made that the pipework should be dug up and checked. If this had happened and the pipes had been correctly protected, it is highly likely that the explosion would never have happened. In the subsequent trial relating to the explosion it was heard that the cost of renewing the pipe would have been £405.

At the Public Inquiry, Tyldesley said that based upon ICL’s lack of action between 1982 and 1988, he felt that co-operation from ICL on his 12 recommendations without legal enforcement action would be unlikely. Thus, his recommendations were intended to form the basis for an Improvement Notice under the Health and Safety at Work Act 1974. Ives, who had 34 years experience in the HSE had attended several LPG training courses but could not recall any discussions of pipelines,

returned to ICL on 1<sup>st</sup> September, 1988, to discuss Tyldesley's report with Stott. The entry on the HSE Report on Visits form recorded that

Mr Stott opened the meeting by announcing that he was transferring his oven from LPG to mains gas which will reduce the need for the LPG store. It appears that a small tank will still be needed for the central heating system. Letter and CV (check visit<sup>xxi</sup>) proposed to ensure that Mr Stott keeps his word. (Gill, 2009, p 68)

Ives later marked the file to cancel the check visit "as negotiations were underway". The Public Inquiry Report stated that in the meeting between Ives and ICL,

Mr Ives went through the recommendations in Mr Tyldesley's report with Mr Stott (an ICL Director) during the meeting. In relation to the pipework, Mr Stott did not think that excavating the pipe was a practical option as it would mean digging up the yard. (Gill, 2009, p 68)

The outcome of the meeting was that Stott was going to discuss the issue with a for-profit company, Calor (its LPG supplier), and would return to the HSE with a new proposal. Thus Stott made two completely contradictory statements during the same meeting. If ICL truly intended to convert to natural gas they had no need to speak to their LPG supplier – they would have had to speak to a natural gas supplier.

#### *Calor and the field of power*

The matter effectively went into abeyance until Mr Stott discussed the matter with Calor. In effect, a specialist HSE inspector's cultural capital (his recommendations) was valued very lowly by everyone concerned (the HSE, ICL and as we shall see later, another private company, Calor). Moreover, in allowing ICL to approach Calor, the symbolic capital of Calor was deemed to be higher than that of an HSE specialist. This was part of the doxic breeding ground for the HSE's symbolic violence.

Stott did contact Calor. He dealt with Mr Coville. Coville and Ives knew each other well. It became evident in the Public Inquiry that it was part of the habitus of the field for companies to contact Calor if they were having difficulties with the HSE. The Public Inquiry stated that "He (Ives) and Mr Coville had had regular contact where persons with LPG installations sought guidance and where they were trying to resolve difficulties regarding such installations. When incidents occurred they would work together to try to improve practices."

Coville (on behalf of Calor) wrote to Ives on 4<sup>th</sup> January 1989 in the following terms-

... On behalf of ICL Technical Plastics Ltd and following my telephone call to you on 23<sup>rd</sup> December 1988, the attached sketch plan outlines suggested suitable remedial action, to be taken by Calor Gas Limited, in order to meet the recommendations made at paragraphs 1, 2, 3, & 4, only of your above-referenced letter... I trust you will consider the above measures to form an acceptable compromise to your recommendations..." (Gill, 2009, p 69)

In fact the Calor proposals were mainly concerned with the installation of a smaller LPG tank and the requirements for a certain distance between the tank and the building. One of Tyldesley's recommendations had been that ICL should replace the 4,000 litre tank with a much smaller one of 250kgs. It seems that Calor were unable to supply tanks of this size, and their counter proposals were concerned with installing a 2,000 litre tank. Calor as a participant on the economic field would be concerned with keeping their clients. If the HSE created too many problems for its clients, they might be tempted to convert to using another source of power. For clients, like ICL, their preference would be to expend as little economic capital as possible converting to a different system.

The Ives/Collville "counter-proposals" were referred to Tyldesley. In a memo dated 17<sup>th</sup> January, 1989, he replied to the counter proposal stating that the LPG installation would be acceptable if ICL could obtain nearby land on which to site the tank. He also stated that he hoped "that appropriate enforcement action will now be taken to ensure that the installation is improved without delay." (Gill, 2009, p 72). Tyldesley was clear that his recommendations had been a package and that it had not been a case where there could be picking and choosing. Indeed, if ICL/Calor had decided to install a smaller tank rather than resite the tank further away from the building, this would involve halting the supply and so would be a convenient time to check the underground pipework. Tyldesley (like the HSE) believed that Coville/Calor as "competent persons" would understand the need to check the pipework.

In the event, Ives "pulled-rank" on Tyldesley. Ives responded to Tyldesley on 20<sup>th</sup> January, 1989. We will include a long quotation since it is important to understand the habitus of the HSE—

I would remind you that enforcement policy in this matter rests with myself and I will take appropriate action as I see fit to deal with this matter. The problem that has arisen is that Calor Gas are telling the occupier and myself that they do not produce tanks for bulk LPG which meet the standards of your original report. In other words if I were to enforce the letter of your report then this site would have to cease using LPG. In those circumstances I deem it better that we try to reach a reasonable compromise and solution rather than rush into enforcement action which will backfire. In view of Calor's claims perhaps you could confirm that it is possible for them to supply tanks of volume no greater than 250kgs.<sup>xxii</sup>

It is clear that doxic submission to the needs of economic capital accumulation by the HSE played a key role in Ives's actions. Ives seemed concerned that ICL would be able to continue using LPG. Again this can be seen as a form of symbolic violence in that the needs of capital are privileged over Health and Safety at work. The HSE's symbolic power derives from its claim to act to protect the Health and Safety of workers and yet it seems that they are able to compromise on this.

However, there was also another factor at play in Ives's actions. Lord Gill at the Public Inquiry (Gill, 2009, p 94) stated that "it is clear from Mr Ives' evidence about the Calor counter-proposal that his decision to accept it was influenced, in part at least, by his fear of the consequences if he should reject it. It was well known to the Inspectorate that Calor had a history of challenging HSE enforcement notices. This is the operation of the field of power. Calor's economic capital and its ability to pay for the cultural capital of the best lawyers made it a much stronger adversary to the HSE than ICL. Gill (Gill, 2009, p 94) then writes " Calor consider themselves to have a constructive relationship with HSE and reject any suggestion that they intimidate HSE when they occasionally seek to assist their customers to resolve any potential enforcement notice issue. I myself make no such suggestion."

Calor had legal representation throughout the public Inquiry. They seemed very keen to assert that their counter-proposals to Tyldesley met with HS(G)34, a claim contested by other witnesses to the Inquiry. Gill wrote that (Gill, 2009, p 99), "In my view, for so long as Calor contractually accepted no responsibility for pipework beyond the vapour off-take valve, it was at least a tenable position for them to say that the buried pipework was a matter for the user alone. But they could not maintain that position when they agreed to advise and represent ICL in its negotiations with HSE."

To Bourdieu, the construction of the State proceeds apace with the construction of a *field of power*, defined as the space of play within which the holders of capital (of different species) struggle *in particular* for power over the State, that is, over the statist capital granting power over the different species of capital and over their reproduction.<sup>xxiii</sup> The threat of legal action against Ives by Calor should be seen as part of the struggle by economic capital to have power over the State<sup>xxiv</sup>.

In 1989 HSE protocol was that all actions and correspondence were directed through a general inspector. This meant that Tyldesley would not have known whether his recommendations were applied or not. In the event, Ives while not pursuing recommendation 11, did pursue the resiting of the tank. This would have meant that ICL would have had to acquire adjacent land.

Stott wrote to the HSE on 25<sup>th</sup> January 1989 to say that he could "now confirm that we are in fact in control of the land out with our main factory gate...". The letter also gave other details about relocation of parking and so on. At the end of this letter Stott wrote that the HSE would therefore accept the Calor proposals. The Public Inquiry found that Stott's letter was plainly untruthful and designed to mislead. No ICL company, then or since has had control of the land. Colville visited ICL in December 1989 and drew up a further plan probably as a consequence of being told that ICL had control of the land. In January 1990, Colville spoke to Ives. Ives reported that the new proposal seemed satisfactory. A check visit due in March 1990 never took place. Almost eighteen months later in June 1991, Calor replaced the 2-tonne (4,000 litres) tank with two 1-tonne tanks. At the time of the explosion, some of the Ives/Coville compromise plan had not been completed.

### *The Audit Society and the HSE*

In 1993, the habitus of the HSE changed slightly in that companies were legally obliged to appoint one or more competent persons to carry out risk assessments in the workplace. The next HSE visit to ICL in January 1992, and visits subsequent to this demonstrated the new approach to Health and Safety audit by the HSE. In practical terms this change served to devalue the cultural capital of HSE inspectors further, since the onus of reporting risks was removed from them and was placed on companies. Indeed the new approach is more akin to accounting auditing. The inspector who carried out this visit, Alistair McNab, carried out a “diagnostic inspection” which meant that he “sampled” activities with a view to diagnosing any problems with the management of health and safety. The Public Inquiry stated that the “purpose was not to check every single hazard or risk or activity in the factory, for it was impractical for him to do so and *that was in any event the responsibility of the duty holder (itals added)* (Gill, 2009, p 76). McNab concentrated on the management and on the director roles and was concerned that the company should be ready to audit itself for risk. McNab’s visit was in part to prepare ICL for its obligations to appoint one or more “competent persons” to assist in identifying risks within the workplace and to develop measures to minimise these. These obligations were to become mandatory for employers on 1 January 1993.

Interestingly, at the Public Inquiry, Lord Gill had something to say about HSE guidance on pipes. It seems that HS(G)34 was the vaguest of them all. A witness to the Inquiry, Dr Fulham, told the Inquiry (Gill, 2009, p 95) that “...it reflects the general move towards a risk based approach... where you don’t give such specific detail but where you allowed a competent person to use their judgement...” Given ICL’s habitus (resisting HSE recommendations), which was well known by the HSE, how could one of their senior management be deemed to be a responsible person? This is an example of the symbolic violence involved in the move towards risk based assessments.

McNab’s visit served a dual purpose since it was also deemed to be the “check visit” to follow up on the LPG gas recommendations. McNab added a handwritten addition to his report of the visit “LPG seems to meet 1990 agreement”. In fact the agreement with Calor had not been fully implemented. After 1993, there was no further mention of the LPG installation in the HSE files. Thus it seems that recommendation 11 was effectively filed away and forgotten until the explosion. While, as we set out below, this could be seen as a “one-off” error, it is exemplary of the structure and doxa of the HSE and the way in which it commits symbolic violence.

It is likely that if the workers of the factory were aware of Tyldesley’s recommendations, then the pipe corroding in the ground might not have been forgotten. The social capital of workers only serves to empower worker actions against known adversaries. But in this case, the workers did not have access to the cultural capital of Tyldesley. Indeed the risk assessment at ICL was to be carried out by a full time student without Tyldesley’s cultural capital. What this student had however was social capital.

Andrew Stott (Frank Stott's son) a full-time university student, was asked to carry out a self-evaluation risk assessment by his father (Frank Stott) or William Masterson. The public Inquiry seemed to think that he had made a reasonable attempt at the assessment. However, Andrew had not thought about the buried LPG pipework so the pipe did not form part of the assessment. Frank Stott however, did know about it, Tyldesley's recommendation had been specifically discussed with him by Ives. Andrew Stott's involvement in preparing the draft assessment finished in January 1997. The final form of assessment was dated 16<sup>th</sup> July 1997. Later risk assessments perpetuated the error of not including the buried pipework. The maximisation of profits is part of the illusion of the economic field. This means that leaders of organisations on this field will only be prepared to spend economic capital on Health and Safety if it will bring economic returns to their organisation. Thus when managers assess health and safety risks they are concerned about the risk relating to economic capital. Of course if damage to workers is economically or symbolically costly to companies (perhaps because of disruption to production) then this risk will also be considered.

The issue as to whether or not the error perpetuated by Andrew Stott's risk assessment could have been prevented if had been carried out by someone else is clearly one of conjecture. While not possessing the cultural capital of Tyldesley, many workers at ICL were aware of the risks associated with their work. However, as a non-unionised site they had no organised basis to petition management for information nor to protect them if they attempted to raise health and safety issues with management.

### *The cultural capital of workers*

Workers' testimonies constitute a powerful indictment of the general approach to health and safety management taken by management at ICL. They reveal the routine disregard of health and safety legislation and statutory regulations, including serious breaches of COSHH regulations. There are many graphic examples of this negligence, of which the following complaint following exposure to chemicals is quite typical.

But I was working with this stuff [gold paint supplied by Trimite] one day – I never had any gloves on – and all this paint was getting stuck to my fingers and up my nails and in my hair. I never thought of looking at the actual tin that [this fellow worker] was using and it was only when I seen a skull and crossbow on the tin that I thought, 'There's something wrong with the stuff we are using'. So I took a closer look and I complained to Bill Masterton that I was getting a tingling feeling in my hands. I complained for weeks and weeks. Bill's like this, 'Och, it's just work, go and wash your hands every time you are finished using it. I said 'But I'm still getting the tingling sensation' [after I wash my hands]. So I read the actual thing on it and it says, 'the downside effect of this paint is if it comes into contact with your skin is that you could get a tingling sensation, which is irreversible. Irreversible on the tin! I'm like that 'I've got this and it's irreversible'. So I pointed that out to Bill. I said, 'Look at the back of that tin, you should have told me before I started even

touching that paint that I had to have gloves on, or special gloves, and see the smell of this stuff'. (Beck et al, 2007, p 10)

Presaging the cause of the explosion, workers reported that they were aware of serious problems that had emerged with regard to the gas pipes.

Somebody came in and condemned the gas pipes. For about a week or two we had no gas. The thing is we were led to believe it was the Health and Safety (Executive) because I know for a fact that somebody did complain because they were having odd job men [working on them]...one of the guys actually phoned the Health and Safety and pointed out that they had odd job men working on the gas pipes, shouldn't it be somebody who is CORGI registered working on the gas pipes. I'm not 100% sure if they came in, if they contacted them or what they did, but there was talk they came in around that time as well. (W2) (Beck et al., 2007, p10).

They built the oven themselves...And then they had to get people in for the gas burners and I think that's what it was. I think it was them that noticed that something was wrong. They condemned. They actually cut the gas off. They said, under whatever regulations they work under, that they found dangerous pipes, so they were going to disconnect them. So they disconnected them and left. Then what happened was it was like the two handy men in the place, they were called out. They started working on them to sort the leaks. So it was like a spray they got and what they did was they would put the gas on and they went along the pipes spraying it all and identifying leaks. And then they would fix them. But the pipes were never replaced (W4) (Beck et al., 2007, p10).

Perhaps one of the most telling employee cases which demonstrates the symbolic violence of the HSE is that of Laurence Connolly senior who had been a worker at ICL for 13 years. He left their employment just days before the disaster and had personal experience of inviting the HSE to investigate his concerns for health and safety at ICL. Laurence's relationship with the HSE began when he developed concerns regarding working practices at ICL which he believed were having a serious impact on his son's ill health (Laurence Connolly junior, a co-worker). Laurence pursued his own course of inquiry. He said –"I couldn't find out anything in the work so I started looking on the Internet and I started finding out some bits and pieces myself. And then when I started reading it, it became very frightening because a lot of the problems that Laurence has had and is still having, you could actually read through these data sheets on all these chemicals and it's telling you some of the effects that they can have on you. At the same time, they are telling you that you should be wearing certain types of masks, certain types of gloves, impervious overalls, and all these sort of things. We never got anything like that." (Beck et al., 2007; P114). So Lawrence took his health and safety concerns in the first instance to ICL management as a legitimate authority for health and safety practice but when faced with at best what could be described as a lack of interest by management, Laurence doxically turned to the HSE, as a regulator of health and safety for help. He

made numerous calls to the HSE, many unreturned. Indeed he felt that he was being stone-walled by the HSE.

Paradoxically, during one of their visits to ICL, a senior member of ICL introduced the HSE inspector to Lawrence only for Lawrence to have his identity exposed to ICL management as the person requesting the inspection visit. It is this act that forms a further contradiction in the case. On the HSE's official website<sup>xxv</sup> under "Your employer's responsibilities" the HSE draw attention to the following - "If you think your employer is exposing you to risks or is not carrying out their legal duty in regards to health and safety, and you have pointed this out to them without getting a satisfactory response, you can [contact us](#)<sup>[4]</sup>. **We treat all contacts in strictest confidence**<sup>xxvi</sup>."

Laurence's account further illustrates a failing by management and the HSE to provide workers with access to official 'accounts' of health and safety and leaving them without the tools to manage risks to their health and safety – a symbolic act of violence. This was not the end to the violence however; Laurence illustrates how the discourse of health and safety was used as a tool for control over the ICL workforce and a means of victimisation. As we describe later (worker and the Irn Bru bottle), the management of ICL would use the discourse of health and safety to control the workers. Eventually when Laurence's position became no longer tenable at ICL after he was exposed by the HSE inspector as a whistle-blower, he left ICL (some three weeks before the disaster). This can be viewed through the lens of Bourdieu as a voluntary alienation from a dominant system. The whole saga also exposes Connolly's relative weakness in the field of power. He has little economic capital (which could be used to mount a legal challenge to the HSE or ICL); moreover, in spite of his knowledge of ICL, he was deemed to have little of the requisite form of cultural capital in the HSE field.

Debate on the robustness of Bourdieu's 'theory' of symbolic violence has centred on the extent to which workers are aware (misrecognise) and complicit in domination, and the extent to which domination is illegitimate (see for example Bourdieu, 1977; Calhoun et al., 1993 Swartz, 1997). This is particularly relevant to our case; disclosure of Laurence's identity by HSE inspectors to ICL management illustrates a conscious recognition of violence (dichotomy between social relation and practice) in which Laurence is no longer complicit in Bourdieu's sense of the word. This is a turning point in the case; from this point Laurence no longer adheres unquestioningly to the relations of order. In this instance violence is arguably no longer symbolic (misrecognised/ complicit) violence it now represents a more elementary form of overt economic violence (irrespective of the inspector's conscious or unconscious motive for action).

#### *The HSE's habitus of self-protection*

While the ICL explosion may be a specific case, it reflects the nomos and habitus of the field in which employers are offered advice, consultation and negotiation before enforcement action is taken. In other words, the work of the HSE is structured



around a 'compliance', rather than a 'strict enforcement', model of regulation (Pearce and Tombs, 1990; Tombs and Whyte, 2007). Except in the case of the most egregious safety offences, enforcement action is invoked only where processes of persuasion, negotiating and bargaining, often over a very protracted period, have proven 'unsuccessful' and even then consequential battles on the juridical field can prolong and hamper HSE recommendations. The HSE habitus means that the law is indeed, the 'last resort' (Hawkins, 2002) when it comes to the discovery, investigation, and response to, health and safety offences. In this way the HSE is protected from doing battle on the juridical field on which it is ill equipped (in terms of its own capitals) to win.

Further, symbolic violence is enacted through the consolidation of the compliance approach by a government agenda that ensures the HSE's acceptance at a corporate level of the need to take into account regulated industries' commercial constraints and the need to balance regulatory goals with the economic 'health' of the nation (Tombs and Whyte, 1998). What arguably adds to violence in this case of ICL – entirely reminiscent of examples from Victorian Britain - is the use of regulation to exert control over labour on one hand, while on the other, systematically sanctioning breaches in regulation by capital. For example, a former worker of ICL noted an instance symbolising such an act of control, "Chemicals could lie all over the place and that wasn't a problem. But if you had a bottle of water or a bottle of Irn Bru on your bench then that was a major health and safety issue" (Beck et al., 2007, p 20). There are therefore important structural and doxic pressures that have acted to construct HSE as a body which must cooperate with and advise industry rather than as a law enforcement agency (Pearce and Tombs, 1998).

While an HSE inspector did not respect the confidentiality of Lawrence Connelly, the authors have had direct experience of HSE's rigorous concern for its own reputation. The HSE insisted that an Independent academic report on the explosion was removed from the Strathclyde University website. After the explosion Tyldesley also posted a statement on his own website but Brechin Tindal Oatts (solicitors) who acted for the HSE at the time told him to remove the web page. During the Public Inquiry Tyldesley said that "... It seems that once the legal processes start, the word "sorry" becomes very difficult to say...."

In summary, the ICL explosion was a preventable disaster. The HSE had the requisite cultural capital to understand the risks involved with buried LPG pipes which entered into enclosed spaces. Rather than simply perceiving the events which led up to the explosion as a series of "mistakes", we argue that by using Bourdieu's scientific method it is possible to discern some of the "logics" of the social world which need to be rectified to prevent similar abuses of our human rights from happening in the future. Paradoxically, an element of the case which demonstrates the powerful *illusio* (drive to make profits) of the economic field is that the concern for economic returns at the expense of health and safety endangered everyone in the company. Indeed Downie's son was injured in the explosion. And the Chief Executive was killed. The next section considers how the theoretical and practical insights derived from the case could be used to develop a new form of Accounting for Human Rights.

## Reflections on the accounting lesson from ICL- How to accounting for human rights

The disaster at ICL acts to highlight the failure of management, regulation and inadequacy of law to police the economic system - an economic system in which symbolic violence is enacted by management, the HSE and the State. To 'account' for human rights we need to consider 'accounts' in their cognitive, communicative and political form - 'accounts' reside in each, formalised, legitimised and reinforced. If safe working environments and not being killed or injured at work are human rights then these rights are being abused by State and capital sanctioned symbolic violence. In order to overturn this violence we need to both understand its complex roots and try to invoke measures which would restore capital inequalities on the field of power.

One way of helping to address this imbalance would be to produce a new form of Health and Safety account. This account should contain several different elements.

Firstly it should contain unabridged HSE reports. Because of the potential for "negotiation and compromise" on the part of the HSE, reports should be shown to management and workers at the same time, before any discussion and negotiation takes place. The cultural capital of workers would be enhanced by HSE reports. There is no question that they would be "too technical." Tyldesley's list of 12 recommendations was clear and could easily be understood by lay-people (like the authors). One can only imagine how things may have been different if recommendation 11 was known by the workforce. When self-evaluations started in 1993, the staff could have insisted that the pipe (and the fact that it hadn't been checked) was listed as a risk factor. As set out above, a director of ICL, KNEW about the risk and for reasons governed by the economic field did not want to incur even the small cost of digging up the yard. Although Stott's son carried out the risk assessment his father never told him about the 12 recommendations. So after 1993, no-one ever thought about the buried pipe. The symbolic violence is that the structures prevented the workforce from taking any responsibility for health and safety.

Under the UK Health and Safety legislation employers must provide workers with information about risks in their workplace, how they are protected and instruction and training on how to deal with risks. Thus, providing workers access to HSE reports as part of a human rights account is in any case consistent with the duty of management to provide health and safety information to workers and a right of workers to receive it<sup>xxvii</sup>. The case of ICL demonstrates how in light of a legitimate authority to act in the public interest and uphold health and safety legislation the HSE and management are complicit in denying workers access to official 'accounts' of health and safety that could begin to provide them with the tools (or a basis to identify the tools) to manage health and safety risks.

While it would certainly be a step forward to provide HSE inspectors' reports as part of a social account we argue that the actual report itself would be enhanced by the creation of a more broadly based team comprising relevant worker representation. Our research suggests that the workers at ICL certainly possess the requisite cultural capital to participate fully in the HSE inspection process. However, on the economic field, non unionised workers possess little of the other forms of capital to enable them to win struggles on the field. One way of addressing this would be to create a properly resourced Scottish Hazards Advice Centre which could provide representatives, and confidential advice to workers in both unionised and unionised organisations. Thus, our second recommendation for the production of the workers' Health and Safety account is that it should be prepared by a group comprising HSE, relevant employees and their Hazards Advice Centre (and/or Trade Union) representative as well as the management of the company.

We have demonstrated State doxa that the State acts for the "good of the whole of society" is flawed, and yet, it still prevails. For example, Lord Gill<sup>xxviii</sup> (Gill, 2009, p 94) stated that the "HSE represents the public interest. It must assess its requirements by reference to safety criteria and to the tests of reasonableness and proportionality. Its requirements must be uninfluenced by any commercial considerations that may affect the judgement of the owners of the site". Yet evidence was revealed that the HSE in effect sanctioned ICL's talks with Calor about Tyldesley's recommendations. With this in mind, in terms of the process of production of HSE reports, potential suppliers and existing suppliers, such as Calor, or other third parties with a potential commercial interest should not be allowed to take part in negotiating "solutions".

Thus, our third recommendation is that no commercial supplier should be involved in the production of the report. However, our final recommendation is that all money spent on health and safety by a company is included in the Health and Safety account, alongside costings for remedying the issues raised in the HSE report. Only comprehensive testing of known process hazards and full communication with workers would have improved HSE's ability to identify the key problems at the plant.

As noted previously, in terms of representing and upholding the rights of workers to health and safety at work the unaudited, abbreviated accounts of the ICL Group of companies have proved to be inadequate. Working within the current socio-economic system, we have set out a case that a new form of accounting for the human rights of workers should be produced by a balanced team comprising of the HSE, a newly formed Scottish Hazard's Advice Centre or Trade Union representative and a member of management. The report should contain both previous expenditure by the company on Health and Safety alongside costings of remedial work which have been highlighted in the report.

We do not believe that any form of accounting for the cost of human lives would serve to protect the health and safety of workers. Nor do we believe that financial accounts should be used as the basis for establishing a financial penalty for breaches in health and safety legislation. A number of accounting based suggestions have

been put forward to try to address this imbalance including forensic accounting to validate a firm's financial position (see also Centre for Corporate Accountability, 2008 & 2002)<sup>xxix</sup>. Alternatively, we argue the function of accounts should not be to proliferate more symbolic violence through the implied valuation of human lives for the purpose of determining financial penalties. We argue workers would rather lose their job than lose their lives. Unsafe factories should be closed.

## **Conclusion**

In terms of our case analysis we are conscious of Bourdieu's warning that "any socially recognized formulation contains within it an intrinsic power to reinforce dispositions symbolically...One is entitled to undertake to give an "account of accounts", so long as one does not put forward one's contribution to the science of pre-scientific representation of the social world as if it were a science of the social world" (Bourdieu, 1977; 21). Only by constructing objective structures are we able to pose the question of mechanisms through which the relationship is established between structure and practice. With this in mind our views are offered as a starting point for debate both in terms of engagement on Bourdieu's account of symbolic violence and its use in examining human rights and the Stockline disaster.

Viewing workers human rights to health and safety through the lens provided by Bourdieu we need to radically begin to rethink the historical methodisation of accounting for human rights. Arguably, despite State policy and rhetoric to the contrary little appears to have changed with regard to the doxic symbolic violence since workplace regulation began in Victorian Britain – capitalism is benign in terms of social responsibility but isn't the same as 100 years ago – we assume this in part because of the misrecognition of violence, including that proliferated by the new HSE. The HSE is an inherent part of the system of structured domination and a symbolic mechanism of its reinforcement by the State.

Our suggestions for change are not a panacea; they will not prevent those playing on the economic field buying the best lawyers nor from moving to States with less stringent laws. Are we contributing to symbolic violence by arguing for worker access to the HSE reports? Recognising and making transparent the HSE 'accounts' are just the beginning of a quest for social change. In effect we are proposing a very slight levelling of the economic (playing) field.

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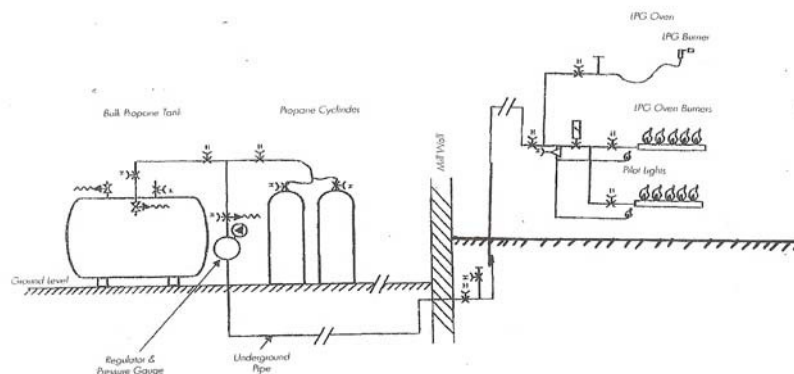
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Figure 1 (adapted from Gill, 2009, p22)



<sup>i</sup> Among the dead were Tracey McErlane, 27, a receptionist from Possilpark, Glasgow, who left behind a seven-month-old son, Ryan; Ann Trench, 34, a computer operator from Colston, who was to due to end 15 years of service with ICL with her last shift; Margaret Brownlie, 49, from Strathaven; Peter Ferguson, 52, from Renfrewshire; Annette Rosina Doyle 24, of Crowhill St., Glasgow; Thomas McAulay, 41, from Glasgow; Kenneth Murray, 45; Timothy Smith, 31 and the chief executive of the company, Stewart McColl, 60, whose daughter, Sheena, had her leg amputated after she was crushed by falling masonry.

<sup>ii</sup> [http://www.peoplesvoice.ca/articleprint16/01\)\\_DEATH\\_IN\\_THE\\_WORKPLACE\\_\\_A\\_GLOBAL\\_EPIDEMIC.html](http://www.peoplesvoice.ca/articleprint16/01)_DEATH_IN_THE_WORKPLACE__A_GLOBAL_EPIDEMIC.html)

<sup>iii</sup> Among the dead were Tracey McErlane, 27, a receptionist from Possilpark, Glasgow, who left behind a seven-month-old son, Ryan; Ann Trench, 34, a computer operator from Colston, who was to due to end 15 years of service with ICL with her last shift; Margaret Brownlie, 49, from Strathaven; Peter Ferguson, 52, from Renfrewshire; Annette Rosina Doyle 24, of Crowhill St., Glasgow; Thomas McAulay, 41, from Glasgow; Kenneth Murray, 45; Timothy Smith, 31 and the chief executive of the company, Stewart McColl, 60, whose daughter, Sheena, had her leg amputated after she was crushed by falling masonry.

<sup>iv</sup> Also called GPL, LP Gas, or autogas

<sup>v</sup> The degree to which accounting academics, under the banner of *public intellectuals*, are able to play a mediating role in social structures and institutions, has been analysed previously and to considerable depth in the accounting literature (see, for example, Neu and Graham, 2005; Lehman, 2001; Neu et al., 2001; Sikka and Willmott, 2005; Sikka et al., 1995; Sikka et al, 1991, 1989; Willmott et al., 1993).

<sup>vi</sup> This fine could be compared to a fine of £121.5m imposed by the OFT and \$300m (£150m) by the US department of justice in 2007 on British Airways for colluding over the setting of fuel-surcharges for cargo and long-haul passenger flights.

<sup>vii</sup> Perhaps one of the best examples of this is the capital of physical force. Before the creation of modern States, most countries had various aristocrats/clans/tribes each with their own armies. The modern State required control over all military force. Indeed, all forms of capital of physical force have been ceded to the State.

<sup>viii</sup> This proceeds hand in hand with the construction of the corresponding fields

<sup>ix</sup> Bourdieu argues that their reproduction take place particularly through the school system

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- <sup>x</sup> On the juridical field, corporate lawyers command significantly higher salaries than family lawyers (Bourdieu, 1987)
- <sup>xi</sup> Except those regulated by Local Authorities and since April 2006 excluding the Railway Inspectorate now regulated separately by the Office of Rail Regulation.
- <sup>xii</sup> [http://www.unitetheunion.com/news\\_\\_events/2008\\_archived\\_press\\_releases/amicus\\_demands\\_action\\_over\\_inc.aspx](http://www.unitetheunion.com/news__events/2008_archived_press_releases/amicus_demands_action_over_inc.aspx)
- <sup>xiii</sup> This figure is a gross underestimate. Many work related deaths, especially cancers are not linked to the specific occupations which caused them.
- <sup>xiv</sup> Health and Safety Commission (2006) Health and Safety Statistics 2005/06  
<http://www.hse.gov.uk/statistics/overall/hssh0506.pdf>
- <sup>xv</sup> Habitus is the internalised schemes of thoughts and action which an actor develops according to her positioning in the field.
- <sup>xvi</sup> Collins (2003; 116) argues Bourdieu's focus on dichotomy could be improved by the recognition of contradiction, in particular to resolve the tension with respect to language between social structural determination of verbal interaction – determinism – and a social creativity – constructivism.
- <sup>xvii</sup> For example, on 1<sup>st</sup> October 1975, an HSE Inspector noted that "Conditions in the factory have deteriorated considerably..." In a letter to the procurator fiscal, proposing prosecution in light of ICLs failure to comply with Improvement Notices, Mr Downie was described as having an irresponsible attitude in connection with fire matters.
- <sup>xviii</sup> Frank Stott was the responsible officer for health and safety at ICL Tech until his resignation in 1998, thereafter responsibility lay with Peter Marshall until 2000 and then with Stewart McColl.
- <sup>xix</sup> <http://explosionconsultancy.co.uk/>
- <sup>xx</sup> A pressure test would show whether or not the pipework was leaking but would not determine the condition of the pipe.
- <sup>xxi</sup> This was marked for November 1988
- <sup>xxii</sup> Telephone enquiries to other gas suppliers indicated that tanks of 200kg and 600kg were available elsewhere (although perhaps not from Calor).
- <sup>xxiii</sup> Bourdieu argues that their reproduction take place particularly through the school system
- <sup>xxiv</sup> In effect the LPG industry is self regulating.
- <sup>xxv</sup> Further emphasis is added by a link to a section on "Whistleblowing" quoting –"the law provides them with protection if they 'blow the whistle' on their employer."  
<http://www.hse.gov.uk/workers/whistleblowing.htm>
- <sup>xxvi</sup> <http://www.hse.gov.uk/workers/employers.htm>
- <sup>xxvii</sup> The HSE acknowledges this when quoting under "Releasing information to employees" – "Employers have a responsibility to provide information to all workers that will enable them to participate fully and effectively in any consultation about their health and safety."  
<http://www.hse.gov.uk/workers/releasing.htm>
- <sup>xxviii</sup> Arguably, the Public Inquiry and Gill's report serves to both legitimise the giving of HSE 'accounts' and arguably 'consolidate the account' of health and safety at ICL. As analysis of the Public Inquiry is beyond the scope of this paper and will be addressed elsewhere.
- <sup>xxix</sup> A disparity exists between England and Scotland, English court require forensic accounting as standard practice for calculating fines if information is unaudited or lack transparency but no such investigation is required in Scotland. An alternative penalty proposed in the case of large public companies is "equity fines" (see Hoyle, 2008; Beck et al, 2007).