Introduction
Why Study the Origins of Workers' Compensation?

Workers' compensation fundamentally changed the nature of workplaces and social insurance in the United States. When introduced by state governments between 1910 and 1920, it became arguably the first widespread social insurance program in U.S. history. Workers' compensation set precedents for government requirements of employment-based social insurance that led to the implementation of unemployment insurance, social security, medicare, and eventually to the entire network of modern social welfare programs in the United States. It was by far the most successful form of labor legislation proposed by the Progressive Movement in the early 1900s. In the legal realm, workers' compensation was the major tort reform of the twentieth century, helping set the stage for the acceptance of no-fault liability rules for automobile accidents and strict liability court rulings for product liability.

Workers' compensation programs are sponsored by state governments to help workers deal with the aftermath of workplace accidents. If an accident arises out of and in the course of employment, the employer is required to pay for nearly all of the medical costs of the accident and to replace up to two-thirds of the workers' lost earnings. Depending on the state, employers can obtain insurance coverage for this responsibility from insurance companies, through state funds, or if solvent enough, through self-insurance. In the 1990s American employers spent approximately 2 to 2.5 percent of their payrolls on costs associated with workers' compensation. The families of accident victims receive over 40 billion dollars in benefits each year, an amount that nearly doubles the payments of benefits to unemployed workers.[1] The programs have been the subject of substantial debate over the past two decades. During the 1980s and early 1990s, workers' compensation costs rose faster than health care costs, and numerous state legislatures have sought various reforms.

Today, workers' compensation is one of a wide range of social welfare programs. The federal government, in various combinations with state and local governments, offers unemployment insurance, social security, aid to families with dependent children, food stamps, medicare, medicaid, supplemental security income, and subsidies for housing and other basic needs. Around 1910 the social welfare landscape was nearly barren in comparison. Help for the poor or those with the ill fortune to incur illness, injury, or unemployment was largely a local responsibility. Various cities and counties, along with charitable organizations, provided some forms of poor relief. State governments provided limited schools and housing for the insane and for disabled children. The federal government provided disability pensions to the aged veterans employed as troops in the Civil War. Workers injured in workplace accidents had some recourse for receiving compensation if they could show that the employer was at fault for the accident. There is also evidence that employers paid higher wages to workers who faced greater risks of accidents or of becoming unemployed, although it is unclear that the higher wages fully covered the expected loss associated with such events. Generally, families took steps to protect themselves against ill fortune by accumulating precautionary savings, by joining mutual societies through fraternal organizations or at work, by purchasing limited amounts of insurance, or by sending women and children to work when bad times hit. Yet these methods offered protection for only a limited period, as families whose breadwinners experienced unemployment or injuries sometimes lost several months of income.

In the early twentieth century, the attitude toward payments to the unfortunate was based on notions of fault and responsibility. There was a general feeling that the vast majority of the poor bore the lion's share of responsibility for their fate. They should receive only a brief helping hand to get them back on their feet. Policymakers feared that generous benefits to the destitute would keep them from assuming responsibility for their own well-being, which in turn would lead to continued reliance on the benefits. For their own good, the unemployed needed to continue seeking work and payments to them would only retard their efforts to search effectively. The elderly poor were generally understood to not have saved enough during their primary earning years, and too much of a handout to this group would encourage current working families to rely on future handouts. The families of workers injured or killed on the job received compensation only if it could be shown that the employer and not the worker or his coworker was at fault.

During the Progressive Era some of these attitudes began to change, as reformers began pressing for governments and employers to accept more responsibility for the ill fortune of the poor. Various employment-based social insurance programs were proposed at the state level, including workers' compensation for the injured, unemployment benefits, sickness insurance, and old-age pension programs. Of these programs, only workers' compensation received widespread support. All but five states adopted workers' compensation between 1910 and 1921. Thus, workers' compensation became the first widespread civilian, employment-based social insurance program. Along with mothers' pension programs, which were established virtually simultaneously, workers' compensation set the stage for the broad network of social programs we have today.[2]

The shift toward workers' compensation established the precedent for governmental aid programs for needy civilians that was not tied to notions of fault. Further, it established the underlying principle that the government should require that employers provide or share in providing for the funds distributed to their workers when injured, unemployed, or retired.

Why did workers' compensation lead the way and not other programs? Many legislative changes are evolutionary rather than revolutionary. Workers' compensation was a much smaller step toward social welfare programs than unemployment insurance or social security would have been. Employers were already required by common law to compensate injured workers when the employer was at fault, while employers bore no legal responsibility to their unemployed or retired workers. Thus, it was easier for employers to swallow the requirement that they compensate their workers for all accidents regardless of fault than it would have been for them to pay unemployment compensation.[3] From the general public's perspective, workers' compensation did not impose a general tax burden outside the employment relationship. Compensation for workplace accidents also was less troubling for those who worried about personal responsibility and the impact of payments on the poor's acceptance of responsibility. The continued mechanization of workplaces raised questions about the assignment of fault for workplace accidents. Many accidents seemed to come from the inherent dangers of work and fault could not easily be assigned to either the worker or employer. If the employer was not at fault under the old system, then the worker and his family bore the brunt of the damage, even though the accident victim might not have been at fault.[4] Payments to accident victims also seemed less likely to cause behavior that led to more accidents, a phenomenon known as "moral hazard," than would payments, say, to workers who were unemployed. Injuries were painful, raising the cost of the accident to the worker well beyond lost earnings and medical expenses. When introduced, the workers' compensation programs also worked to prevent moral hazard by limiting the payments to two-thirds and often much less of lost earnings. Thus, if any social welfare program was likely to be acceptable as a relatively small step in the evolutionary process and a testing ground before further steps were taken, it was workers' compensation. Had workers' compensation not been reasonably satisfactory to employers, workers, insurers, and taxpayers in the 1910s and 1920s, it could easily be argued that unemployment insurance and social security would not have received widespread support. Once unemployment insurance and social security were established, it became easier for the federal government in combination with the states to further develop welfare programs that were not based on employer contributions. Thus, workers' compensation was a key early link in the chain establishing the American welfare state. The programs were truly a prelude to the modern welfare state.

The introduction of workers' compensation involved more than just introducing social insurance. From a legal perspective, the new laws established the leading liability reform of the early twentieth century. The liability rule change is an important issue in modern discussions of the optimal set of liability rules for accidents, whether they occur at work, on the road, in hospitals, or in the use of products. The liability rules, by determining who is responsible for the damage, determine the incentives to prevent accidents for the parties involved in a relationship. At the turn of the century, the liability for workplace accidents was assigned based on fault. In the simplest terms, if the worker could show that the employer's negligence had caused the accident, the worker potentially received his medical costs plus had his lost income replaced. However, if the worker's own negligence caused the accident, the employer was legally required to pay him nothing. Employers could also invoke additional defenses that we will discuss later. The workers' compensation laws shifted the liability to a no-fault rule. Essentially, any worker injured on the job received compensation, although the compensation did not fully replace his lost earnings. This shift in liability helped set precedents for the shifts in liability from fault-based to no-fault systems that we see in many areas today. The courts have implicitly moved away from negligence liability to strict liability for consumer products, while numerous states have adopted various forms of no-fault policies.

The study of the transition from negligence liability to workers' compensation offers an excellent opportunity to compare the actual operations of different types of liability rules. While negligence liability was the basis of the common law treatment of workplace accidents at the turn of the century, the vast majority of accident cases were settled outside the court system. Using the court system was costly enough that there was no guarantee that the payments of damages to injured workers closely followed the strictures of the common law. By examining the de facto compensation system under negligence liability and workers' compensation, we can make more direct comparisons of liability rules in actual settings, rather than focusing on a theoretical comparison of liability rules in a vacuum. Further, the impact of different liability rules are determined in part by the degree to which insurance and labor markets operate smoothly.

We will examine how the change to workers' compensation influenced wages, accident prevention, and insurance purchases with an eye to how employers, workers, and insurers benefited or lost from changes in these systems. The result is a careful empirical comparison of the operations of negligence and no-fault rules in a real-world setting.

Finally, studying the origins of workers' compensation offers an opportunity to learn how politics and economics influence legislation at the state level. Policymakers have increasingly called for a shift in social welfare programs from the federal to the state and local level. They anticipate that the gains from experimentation with different programs and "survival of the fittest" will exceed any losses from uniformity in policies across the country. Workers' compensation is rare among the major social insurance programs in that it was from the beginning legislated at the state level with no federal involvement and has remained a state responsibility ever since. The political strength and the specific interests of employers, workers, insurers, and reformers differed in the various states. The result was substantial variation in the workers' compensation programs with respect to various attributes, including benefit levels, administrative systems, and methods of insurance. In turn, the features of the workers' compensation program influenced the wages paid to workers and likely influenced to some degree employment and the types of industry that developed in each state.

The adoption of workers' compensation is an important case study that offers some insights into what we can anticipate from a focus of policy at the state level. Since the beginning of the Republic, policymakers and scholars have recognized that interest groups are a driving force in our political economic process. With that in mind, we can understand legislation as falling in one of various categories along a continuum. At one extreme, an interest group manages to get the legislature to enact legislation that benefits its special interest at the expense of all other interest groups. At the other extreme is legislation that benefits all of the interest groups. In our numerous conversations with people in the course of writing this book, the vast majority of those with whom we spoke, including many scholars, told us that they believe that workers' compensation was introduced as the result of a major victory scored by workers over their employers. But there seems to be a disconnection between the opinions held by most people and what is found in the scholarly literature. As we show in chapter 1, several scholars have documented that many employers actively supported workers' compensation when it was introduced. In fact, we show that workers, employers, and insurance companies all tended to support the general notion of workers' compensation, although they fought bitterly over the details of the law. Although not every person in each group benefited from the law, we think it clear that the vast majority in each group gained from the new law in each state.

This finding raises some questions about the importance of progressive reformers to the adoption of workers' compensation. Reformers sought a wide range of social insurance programs, including unemployment insurance, sickness insurance, and old-age insurance, yet workers' compensation was the only one that passed because it received widespread support from the economic interest groups. This does not mean that progressives played no role. They contributed to the passage of the general law and had even more impact on specific details of the law in some states. Yet it might well be said that workers' compensation owed less of its success to the progressives than was owed by the progressives themselves to the passage of workers' compensation for their own success.

What explains the general view that workers' compensation was a victory for workers over employers? It may well be that most people base their opinions on their impressions of the current system and have not had the time or inclination to read the scholarly literature. When we talk to employers, they actively complain to us about the costs of workers' compensation programs, which rose faster than health care costs during the 1980s and early 1990s. Workers express some dissatisfaction with benefit levels but seem horrified if we suggest a return to the old negligence liability system. Generally, most people view workers' compensation positively, as a way to force employers to compensate workers for the dangers that they face in the workplace. It is not surprising, therefore, that many people see the origins of workers' compensation as a major victory for workers.

In fact, it is extremely important to understand the origins of workers' compensation and of many of the other forms of legislation and social insurance we have today. As we will see in chapter 8, workers' compensation faces its share of problems today, but many of these problems are different from those that generated the introduction of workers' compensation in the first place. If we understand the origins of workers' compensation, particularly the problems it was meant to resolve, we will be better equipped to overcome today's problems without recreating the problems that brought the program into being in the first place.

Notes

1. U.S. Social Security Administration (1996, 159, 350–51). The government spends approximately $160 billion on public assistance, $23 billion on Aid to Families with Dependent Children, and $22 billion on food stamps.

2. Theda Skocpol (1992) and Jill Quadagno (1988) both emphasize the importance of Civil War disability pensions to veterans as early precursors of modern social insurance. There is a sense in which this is true, because the benefits policies

were increasingly generous over time, covering roughly 18 percent of the U.S. population over age 65 in 1910. In another sense, however, this is just an example of the federal government taking care of former employees. The federal government has often led the way in introducing benefits for its employees.

3. See Skocpol (1992, 296) and Orloff (1993, 239).
4. See Dodd (1936) and Somers and Somers (1954).