

Hazard or Hardship: Crafting Global Norms on the Right to Refuse Unsafe Work. By Jeffrey Hilgert. Ithaca, NY: Cornell University Press/ILR Press, 2013. 224 pp. ISBN 978-0-8014-5189-8, \$45 (Cloth).

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“Workplace health and safety has now become an area of labor and employment relations that is ‘extensively regulated’ with ‘intense legislative activity worldwide’ in recent years” (p. 159). This apt observation by Jeffrey Hilgert can also account for the marginalization of health and safety issues from the agenda of many labor scholars. Health and safety is often associated with technical standards on matters such as safety procedures on cranes or maximum exposure levels to toxic substances. Many scholars acknowledge that health and safety is important to human life, reaching into the heart of the labor rights–human rights intersection. Scholars of international labor law also pointed at the omission of health and safety from the roster of core labor standards in the International Labour Organization’s (ILO) 1998 Declaration on Fundamental Principles and Rights at Work. Few, however, are willing to plunge into the challenge to unveil the human rights dimension of what may seem a highly technical field.

In *Hazard or Hardship*, Hilgert provides a fascinating account of the missing link. This exploration of the link does not commence with a general theory of regulation or human rights, but instead with a very focused and seemingly minute corner of the health and safety field—the right to refuse unsafe work. The author begins the book with details, with stories, with human lives, and workers’ attempts to assert their rights; some were successful, many were not. Why focus on the right to refuse when so many other issues are at stake in the field, from standard setting, to enforcement, compensation, and rehabilitation? The reader is quickly initiated, learning that the right to refuse is a door through which many dilemmas are admitted and woven together in nonconcentric circles. The plot therefore involves multiple themes, ranging from the process of juridification and the substitution of collective bargaining with statutory rights, to the new policy-based regulatory trend in which fixed mandatory standards are replaced by processes in the workplace. The story flows from the individuals’ fight for health and safety to national legislation and adjudication, and to international standards. On the way, the author draws on fundamental concepts that are necessary for understanding governance of work—rights, power, commodification, and citizenship. This book is not for the technicians of health and safety, but rather for those who want to rethink the broader themes of labor governance, international labor law, and human rights.

Hazard or Hardship challenges standard assumptions, of which I would like to highlight three. First, the author devotes attention to the nature and classification of the right to refuse. Although a worker’s refusal is often framed as an individual right, the author points out the need to view it as a form of concerted activity that implies both the individual and the collective dimensions of the freedom (or right) of association. While this may be evident when a group of workers refuse together, the author demonstrates that a human rights perspective must identify that the collective aspect is inherent in each act of refusal, hence a matter of “constructive” concerted activity (pp. 115–17). The fact that it is only the *individual’s* right to refuse that is currently being recognized, to a degree, in international and domestic legal systems, is an intentional atomization and individualization of the right, with the purpose of avoiding the power that is vested in its collective dimension. The author identifies moments in history, particularly in the United States’ early jurisprudence on the topic, that accommodated the collective nature of the right to refuse. It was a short moment, however, which was subtly erased in heaps of legal restrictions. Moreover, in dismissing its collective nature, courts even took measures to avoid it in instances when several workers, together, refused to perform dangerous work.

A second important point that I would like to highlight is the author’s critique of the alleged achievement of making the right to refuse a legal right, which is part of the field of health and safety regulation. The juridified form of the right hardly matches the efficacy of the associational power it replaced. Throughout the book, and particularly in Chapter 4, the author details studies that demonstrate how futile a “right” can be when workers need to go through the perils of claim making. At both the national and the international levels, the “right” requires workers to demonstrate compliance with numerous conditions, most commonly ex-post, often times after their work has been terminated, and sometimes after having

to prove such odd qualifications such as the “managerial consent to refusal,” an oxymoron of sorts. Moreover, the right to refuse is presented as a great achievement to workers, but the analysis of its adoption at the ILO depicts that it can be merely a heuristic device to legitimize management’s sole authority. Granting “rights” seems like a good strategy to co-opt workers and their representatives, while at the same time a few simple conditions can empty it from extending significant protection to the workers who refuse to work under conditions they deem dangerous to their health and safety.

A third point is the exemplary treatment of the way in which law is shaped in a globalized era. Globalization and international institutions are often presented as exogenous constraints on national systems. The political analysis presented in the book develops a more sophisticated framework, which compares three Anglo-Saxon countries, national and international regimes, and also touches on a comparison between distinct international regimes. The process of juridification and the gradual marginalization of the right to associate from the field of health and safety spans legal developments in each of these. Intra-national developments travel across borders and are then used to shape the international order, which in turn shapes national arrangements, continuously.

The book is rich, and my subjective choice of three highlights does not exhaust its strengths. Hilgert provides a harsh critique of political processes and the institutions that are responsible for advancing an equitable, as well as healthy and safe workplace. The author’s choice of the right to refuse as the lens through which to explore the broad terrains of rights and power hints at the radical perspective that underscores the study. The study of refusal is a study of defiance. The reference to citizenship in the opening pages of the book suggests some further analogies to the refusal to perform work. Civil disobedience, or the citizens’ conscientious objection to the social and political order, is the obvious analogy (in the context of political citizenship). Studies have also pointed at other forms of defiance that are tied to citizenship and that also step the thin line between individual and collective dimensions, such as fraudulent practices by welfare recipients seeking to make ends meet (in the context of social citizenship). Refusal to perform dangerous work is a practice that is tied to industrial citizenship. In these three examples, individuals object to the prevailing hierarchy, whether it is the rule of law, the impossible conditions of welfare aid, or the managerial prerogative. Celebrating the rights of those who refuse is in itself a form of rebellious defiance.

The author is like a salmon fish, swimming against the current. At a time when legal rights are presented as a panacea, because of the decline of trade unions, he unmasks them as almost empty shells of justification. As scholars and policymakers are increasingly looking at process-based arrangements substituting for mandatory standards, and celebrating their reflexive quality, Hilgert reveals how such processes can be adapted in a way that circumvents rights altogether. His probing critique takes the reader back to the Marxist critique of commodification and to the importance of collective power for transformative change. When looking into the future, however, the author seeks change in those very same institutions whose vulnerability he exposed. Hoping that the ILO will turn away from political compromises that were negotiated in the past to strengthen the right to refuse dangerous work and re-frame it in the domain of freedom of association, is difficult to imagine at times when the ILO is actually experiencing doubts from within about past compromises on the bread and butter of association—namely, the right to strike. The expectation that the Committee on Economic, Social, and Cultural Rights will strengthen the right to refuse cannot be confirmed by the Committee’s recommendations in related areas, such as the right to work, where the specification of this human right remains broad and compromised as well.

What then are the outcomes of *Hazard or Hardship*? A probing critique? An optimistic view on the potential revival of traditional values associated with labor’s struggle? Or, a dark story in which the very hopeful ideas for reform are merely an indication of the opposing currents’ strength? Whatever lesson each reader takes from the book, its content is a thought-provoking challenge, a mirror to look at what we have learned to accept, and an original academic pitch about how it could be totally different.

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