

The risks of a killing

Compensation culture is a myth
– ask the thousands who will die this year from asbestos

It was the most impressive exercise in democracy the world has ever seen. Hundreds of millions came out to vote. The dollars queued for hours in the rain and sun. The result was indisputable: the candidates with the most money won.

No constituency gained more from the US election than the dollars belonging to a company called WR Grace. On November 3, its shares rose by 14%. By November 5 they were up 26%: the highest they had ever been. It wasn't Bush's victory the stockbrokers were celebrating as much as the defeat of Tom Daschle, the leader of the Democrats in the US Senate.

One of the few courageous things Daschle did was to oppose a law restricting the amount of compensation companies will have to pay to the victims of asbestos. Daschle believed that firms such as WR Grace, which used to manufacture asbestos insulation, should have to pay the full cost of the deaths and injuries they caused. Big business exercised its democratic rights to the tune of \$14m, and the Republican John Thune was duly elected. Now the law will almost certainly be passed, and sufferers from one of the modern world's nastiest diseases – mesothelioma – will be paid roughly half the compensation they were due.

This is almost universally recognised as a Good Thing. Over the past few years, the press in the United States has presented us with the heart-wringing spectacle of bed-ridden multinationals gasping for money. On this side of the Atlantic, where companies that used asbestos are facing a new round of lawsuits, the result was greeted as a defeat for something we call “compensation culture”.

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Compensation culture has usurped political correctness, welfare cheats, single mothers and new age travellers as the right's new bogeyman-in-chief. According to the Confederation of British Industry (CBI), the Conservative party and just about every newspaper columnist in Britain, it threatens very soon to bankrupt the country.

That there is no evidence to support such a claim, is, as always, irrelevant. Despite the legalisation in 2000 of "no win, no fee" lawsuits, the total cost of compensation cases in Britain has remained, in real terms, static since 1989. The two biggest claims-marketing companies – the great beneficiaries of compensation culture – have both gone bust. Last year the number of accident claims fell by 9.5%. The government's Better Regulation Task Force, which at other times has taken the part of big business, bluntly reports that "the compensation culture is a myth".

None of this should surprise us. It is no easier to win a case under the "no win, no fee" system than it was to win a case brought with the help of legal aid. You still have to convince a judge that the other person had a duty of care towards you, that they were at fault and that they should have foreseen the risk. Because awards are made by judges, not juries, there's very little chance of winning one of the vast settlements people seem to secure in the US for bumping into a lamp post or setting fire to their own hair. Under the new system, the claimant's lawyers get stung for all the bills racked up by both sides if he loses. They are not going to take his case to court unless it's pretty certain to succeed.

Of course, there are malingerers who try to play the system, and, of course, private companies and public services have to respond to the frivolous suits they bring. But while the newspapers delight in telling us about people who sue the church for acts of God, they don't report that in the UK such cases almost always fail.

But compensation culture is a convenient bogeyman, because it allows big business to associate its victims – such as the 3,500 people who die every year in Britain as a result of exposure to asbestos – with scroungers and conmen. It also opens a new front in their perpetual war against regulation.

Last week John Sunderland, the president of the CBI, thundered that "Britain's greatness was built on risk-taking". Today, thanks to the compensation culture, we suffer from a "reduction in personal responsibility" and a "collective aversion to risk". We need to learn from China, whose businesses enjoy the same "fearlessness about risk" as Britain's did during the industrial revolution.

What Sunderland has done is deliberately conflate two kinds of risk: the risk to which we expose ourselves, and the risk to which we expose other people. In the heroic age of industrial accidents, the "risk-taking entrepreneurs" might have lost their money if their products did not find a market, but their profits were dependent upon

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the risks of losing limbs, eyes, lungs and lives they imposed on their workforce. China's "fearlessness about risk" means that Chinese bosses are allowed to kill their workers. Sunderland is calling for precisely the "reduction in personal responsibility" he affects to despise. The entrepreneur shall not be held responsible for any of the risks he dumps on other people.

The shadow chancellor, Oliver Letwin, gave an almost identical speech to the Centre for Policy Studies in September. "The call to minimise risk is a call for a cowardly society," he said. "If we are to have a courageous society rather than a cowardly society, we need to abandon the rhetoric of risk minimisation." The shadow chancellor failed to explain why it is courageous to expose your workers to asbestos. Or why it is courageous to lie down meekly and die when your lungs have been trashed by your brave employer.

In opposing our mythical compensation culture, Sunderland and Letwin are creating something much uglier: a risk culture. They are glorifying the risks that the powerful impose on the weak.

The government, to its credit, has refused to join in. On Wednesday, Charles Falconer, the lord chancellor, warned that "schools, hospitals, local authorities are beginning to feel they are more at risk from litigation than they really are ... we can't afford to leave this impression unchecked ... As strongly as we resist spurious claims, we should also robustly defend the rights of people to make genuine claims. Rights and responsibilities would be meaningless if they could not ultimately be enforced."

This seems odd: the government seldom misses a chance to butter up big business and assist the tabloids in their witch-hunts. But there are two interest groups at play here. Falconer is a lawyer. So is the prime minister. And his wife. And the foreign secretary, and the defence secretary, and the transport secretary, and the chief secretary to the Treasury. Had the Democrats taken power in the US, the world would have been run by these people: both Kerry and Edwards are known lawyers. It's unfortunate that our best hope of redress against one set of greedy bastards is to enlist the help of another.

Of course there is another way, and that is to stop big business exposing people to risk in the first place. But the state enforcement of health and safety laws is in the interests of neither businessmen nor lawyers; the money won't vote for it. Without regulation, compensation is often the only protection we have.