Medical History, 1999, **43:** 508–513

Comment

Too little, too late? The Home Office and the Asbestos Industry Regulations, 1931: A Reply

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Peter Bartrip's article in this journal, 'Too little, too late? The Home Office and the Asbestos Industry Regulations, 1931',[1] argues that "hitherto studies of the early history of asbestos and occupational health have been dominated by that most beguiling, though misleading, of distractions: hindsight".[2] In doing so, he seeks to challenge what he describes as "the prevailing consensus" amongst scholars. The work of Greenberg[3] and Wikeley[4] is subjected to particular scrutiny; we are therefore grateful to the editors of *Medical History* for the opportunity to respond to these criticisms. However, the space constraints of a note are such that we can highlight only some of the main weaknesses in Bartrip's analysis and conclusions.

First, Bartrip contends that "there are no convincing grounds for the argument that the regulations were established tardily".[5] It is undoubtedly true that the Factory Department moved relatively swiftly from the publication of the Merewether and Price report[6] to the promulgation of regulations.[7] But Greenberg's article—in a rigorous peer-reviewed academic journal[8]—reviews a substantial body of work published in England, France and America between 1898 and 1928, available to all the interested parties during that period, which drew attention to the potential dangers associated with asbestos exposure.

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[1] Peter Bartrip, 'Too little, too late? The Home Office and the Asbestos Industry Regulations, 1931', *Med. Hist.*, 1998, **42**: 421–38.

[2] Ibid., p. 421.

[3] Morris Greenberg, 'Knowledge of the health hazard of asbestos prior to the Merewether and Price report of 1930', *Soc. Hist. Med.*, 1994, **7**: 493–516.

[4] Nick Wikeley, 'The Asbestos Regulations 1931: a licence to kill?', *J. Law Soc.*, 1992, **19**: 365–78; N J Wikeley, *Compensation for industrial disease*, Aldershot, Dartmouth, 1993; Nick Wikeley, 'Turner & Newall: early organizational responses to litigation risk', *J. Law Soc.*, 1997, **24**: 252–75.

[5] Bartrip, op. cit., note 1 above, p. 435.

[6] E R A Merewether and C W Price, *Report on effects of asbestos dust on the lungs and dust suppression in the asbestos industry*, London, HMSO, 1930, p. 17.

[7] Asbestos Industry Regulations 1931, S.I. 1931 No. 1140, London, HMSO.

[8] It is, therefore, hardly appropriate to equate Greenberg's analysis with newspaper reportage which, "by cobbling together various references" (Bartrip, op. cit., note 1 above, p. 422), claims that the hazards were fully appreciated by government at the time.

Secondly, Bartrip concludes that there is little evidence to support the interpretation that the regulators were one-sided in their approach.[9] This is something of a caricature of the argument advanced in the article by Wikeley,[10] in which the drafting of the regulations is considered in a broader context. Bartrip's paper is singularly deficient in terms of its discussion of the regulations themselves, as opposed to the process leading up to them. He neglects to describe either how the regulations created "scheduled areas", beyond which the framework of the 1931 provisions on dust control, medical examinations and compensation was largely inapplicable, or the scope of the exemptions.[11]

Thirdly, we are told that there is no evidence to suggest that the manufacturers were reluctant to introduce dust control measures.[12] Wikeley's earlier work was published before scholars had obtained, as a by-product of litigation in the American courts, access to a micro-filmed selection of documents from the Turner & Newall archive.[13] These documents support the view that the company was concerned throughout to limit the scope of regulatory control.[14] Bartrip's depiction of the company willingly shouldering the burden of regulation also fails to address the long history of its concealment of the dangers associated with asbestos, both in the United Kingdom and overseas.[15] This extended to arrangements for medical examinations: in 1932, Turner & Newall director Robert Turner intimated to a fellow industrialist: "I am in complete agreement with your suggestion that we should endeavour to have the asbestos industry removed from the schedule of dangerous occupations".[16] The endorsement of the regulations by Legge, then a sick man, on behalf of the TUC should be seen in the context of warnings he received that asbestosis affected those outside the scheme and also that asbestos might cause cancer.[17]

Fourthly, and most remarkably, Bartrip claims that "there is clear statistical evidence that the asbestosis mortality rate declined in the years following implementation of the regulations".[18] The reality is that the official statistics seriously under-recorded the incidence of asbestos-related mortality.[19] Bartrip also entirely fails to take account of the latency factor: his comparison of data for 1931 and 1957 is meaningless. Peto and his colleagues have shown how the soaring curve for mesothelioma deaths matches the rising tonnage figures, albeit separated by a latency period of thirty years or more.[20] The evidence suggests

[9] We are informed that this, "at least by implication", is the position of Greenberg and Wikeley: ibid., p. 435.

[10] Wikeley, 'Asbestos Regulations', op. cit., note 4 above.

[11] See Geoffrey Tweedale and Philip Hansen, 'Protecting the workers: the Medical Board and the asbestos industry, 1930s–1960s', *Med. Hist.*, 1998, **42**: 439–57, at p. 444.

[12] Bartrip, op. cit., note 1 above, pp. 429, 430 and 436.

[13] Bartrip appears to have had access to the company's archives proper, which are not publicly accessible. However, he makes limited use of them.

[14] See also, for discussion of the company's opposition to research, Morris Greenberg, 'Professor Matthew Stewart: asbestosis research 1929–1934', *Am. J. Ind. Med.*, 1997, **32**: 562–9.

[15] See, e.g., Barry I Castleman, *Asbestos: medical and legal aspects*, 4th ed., Englewood Cliffs, Aspen Law & Business, 1996.

[16] R Turner to K MacLellan, Glasgow Asbestos Co., letter dated 3 November 1932, Chase Manhattan Bank microfilm: reel 10/frame 1617.

[17] N J Wikeley, 'Asbestos and cancer: an early warning to the British TUC', *Am. J. Ind. Med.*, 1992, **22**: 449–54, and Morris Greenberg, 'Reginald Tage: a UK asbestos prophet—a postscript', *Am. J. Ind. Med.*, 1993, **24**: 521–4 (neither of which is referred to by Bartrip).

[18] Bartrip, op. cit., note 1 above, p. 437.

[19] Geoffrey Tweedale, *Magic mineral to killer dust: Turner & Newall and the asbestos hazard* (forthcoming, Oxford University Press, 2000).

[20] J Peto, J T Hodgson, F E Matthews and J R Jones, 'Continuing increase in Mesothelioma mortality in Britain', *Lancet*, 1995, **345**: 535–9. See also J Peto, A Decarli, C La Vecchia, F Levi and E Negri, 'The European mesothelioma epidemic', *Br. J. Cancer*, 1999, **79**: 666–72.

not so much that the Factory Inspectorate was satisfied with the performance of the asbestos industry in complying with the 1931 regulations[21] but rather that its own enforcement of those rules was woefully deficient. For example, there was a long history of failures in dust control measures at J W Roberts, a wholly-owned subsidiary of Turner & Newall,[22] and at the Hebden Bridge factory of its chief domestic competitor, Cape Asbestos Co. Ltd.[23]

Moreover, if asbestos was not seen as uniquely dangerous, why did the 1931 Regulations require that even for some ancillary jobs more than eight hours' exposure to asbestos in a week was sufficient to bring workers within the scope of the dust control and medical scheme?[24] And, if it was so unexceptional, why were the regulations enacted so swiftly after the Merewether and Price report, as against the delays in dealing with the causes of other occupational diseases? The wider context must include consideration of the complete failure by government for many years thereafter to tackle the dangers associated with asbestos spraying, first identified by Donald Hunter in the early 1930s, as well as the industrial and military demand for asbestos as a cheap and effective insulation material. It is also entirely erroneous to suggest, as Bartrip does, that the asbestos industry is "virtually extinct";[25] the current debate on a ban on asbestos in the European Union is a matter of intense controversy with the Canadian government, which is pursuing the matter in the World Trade Organisation.

Ultimately, the reality is that if there were any substance and merit to Bartrip's arguments, then they would have been deployed by the asbestos industry to defend itself. Over the last decade or more, considerable sums have been paid out by asbestos companies or their insurers in damages, resulting in substantial losses on the Lloyd's market. This would not have happened if the asbestos companies had not been negligent. Even in 1950, Turner & Newall appreciated that it had no realistic defence to claims based on breaches of statutory duty under the 1931 Regulations.[26] In 1995, the accumulated evidence presented by Chase Manhattan Bank in the New York District Court was so damning that the Turner & Newall defence team did not even seek to contest the company's past failures in dust control (and instead directed their attack, successfully in the event, against Chase's own actions and reputation).[27] The 1931 Regulations, whatever their manifold deficiencies, set out a series of legal requirements to prevent "the escape of asbestos dust into the air of any room in which persons work". It is the authors' contention that it was industry's failure to meet those rules which has been the source of its problems rather than, as Bartrip claims, the work of scholars who have allegedly exaggerated the asbestos hazard retrospectively with "beguiling hindsight".

[21] Bartrip, op. cit., note 1 above, p. 438.

[22] N J Wikeley, 'Measurement of asbestos dust levels in British asbestos factories in the 1930s', *Am. J. Ind. Med.*, 1993, **24**: 509–20. See also Margereson *v.* J W Roberts Ltd. and Hancock *v.* J W Roberts Ltd. (1996, unreported, Court of Appeal), and Jenny Steele and Nick Wikeley, 'Dust on the streets and liability for environmental cancers', *Mod. Law Rev.*, 1997, **60**: 265–76.

[23] See the report of the Ombudsman's investigation: Case No. C.253/V, Parliamentary Commissioner for Administration, *3rd Report of the Parliamentary Commissioner for Administration*, HC 259, Session 1975–76, London, HMSO, pp. 189–211.

[24] On 7 October 1932, Robert Turner circulated within the company the text of a letter received from one of H M Inspector of Factories, which noted that "The medical opinion is, I understand, that there might be considerable risk if there was exposure to a high concentration of dust for eight hours per week" (Chase Manhattan microfilm: reel 10/frame 1645).

[25] Bartrip, op. cit., note 1 above, p. 421.

[26] Nick Wikeley, 'Turner & Newall: early organizational responses to litigation risk', *J. Law Soc.*, 1997, **24**: 252–75.

[27] Chase Manhattan Bank *v.* T & N plc (unreported, U.S. District Court, Southern District of New York, 1995).