LABOUR LEGISLATION IN SOUTH AFRICA 1924 - 1945

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C O N T E N T S

TABLES

FIGURES

ABBREVIATIONS USED IN THE TEXT

ANC	African National Congress
ASSOCOM	Associated Chambers of Commerce
CCI	Cape Chamber of Industries
CFLU	Cape Federation of Labour Unions
CNETU	Council of Non-European Trade Unions
CP	Communist Party
Dept	Department
EO	Employers' Organisation
(SA)FCI	South African Federated Chamber of Industries
IC	Industrial Council
ICA	Industrial Conciliation Act
ICU	Industrial and Commercial Workers' Union
ILO	International Labour Organisation
MPh	Miners Phthisis
SAIRR	South African Institute of Race Relations
SAR & H	South African Railways and Harbours
(SA)TLC	South African Trades and Labour Council
TU	Trade Union
WC(A)	Workmens' Compensation (Act)
WD	Wage Determination

CHAPTER ONE : INTRODUCTION

> "We have class justice in South Africa, running at times on racial lines, but not at all entirely."[1]

This thesis is an attempt at an analysis of labour legislation in South Africa between the years 1924 and 1945. The legislation will be analysed in terms of the motives of the legislature, the forces in favour of and against the particular measures, the form the measures took, the way in which they were implemented, and their effects. The aim of this thesis is to add to an understanding of the South African social formation during these crucial years, as well as to gain an appreciation of the role of legislation in determining the form of capitalist society and South African society in particular.

Legislation can obviously not be viewed apart from the situation in which it operates. Before embarking on the study proper, this first introductory chapter will thus sketch in, in very general terms, the background necessary, both in general and in specifically South African terms, for an appreciation of the material which follows.

Section I of the chapter will deal with the main approaches and paradigms in which analyses of South Africa have up to now been conducted. The strengths and weaknesses of the different approaches will be mentioned, and the outline of the approach to be adopted in this thesis will be briefly set out. Section II will then look at the chief classes, strata and sectors in the South African social formation of 1924 to 1945, utilising the analysis outlined previously. The description will concentrate on those groups, and within the groups, on those aspects, which are important in terms of the legislation to be analysed.

With this background Section III will indicate the importance of the period 1924 to 1945, insofar as the development of these groups was concerned. The major events on the political and economic levels will be described so as to situate the timing of the various legislative measures looked at later. Finally, Section IV will look very briefly at the role of the state and law in capitalist society in general (a subject to be further elaborated in Chapter Two), and in the light of this, as well as the preceding description of the South African social formation, postulate some general hypotheses as to the form

1. Barend van Niekerk in SOUTH AFRICAN OUTLOOK, September 1975, page 141.

and function one can expect of labour legislation in South African between 1924 and 1945.

I

The Choice of Approach

The legislative framework of colour discrimination in South Africa has often been described and explained from an empirical perspective.[1] Work has also been carried out on the legislation affecting workers, the latter naturally including the differential provisions for black and white workers.[2,3] Up until 1970, however, this body of work for the most part either utlised a liberal/dualistic/pluralist approach, or, if in a Marxist tradition, combined a class analysis with one

1. Examples of this type of work are too numerous to list here. The bibliography contains many representative works.

2. Again the examples are too numerous to mention, but the South African Institute of Race Relations has published many of the more empirical works in this respect.

3. Throughout the thesis the word "black" will be taken to refer to African, "coloured" and Indian members of the population. The term "coloured" itself, will be used in spite of the many difficulties, because of the absence of a short and workable alternative. For the present, despite its drawbacks, it does have a commonly understood meaning, and one which has an objective bases, albeit largely ideological and political, in the South African context.

Throughout the study I have also mostly neglected the "coloured" and Indian workers. These groups fall between the white and African groups. Whereas there was no true black bourgeoisie in the period 1924 to 1945, there was a significant petty bourgeoisie, especially among the Indian population, and one which formed a far more important proportion of th particular group than the African petty bourgeoisie among Africans as a whole. Whereas most blacks were workers or peasants, in the case of the "coloured" workers there was a significant number of skilled artisans among them. "Coloured" and Indian workers were also politically and economically "freer" than African workers in respect of such indices as the franchise, residence restrictions, and general freedoms. All these differences had important political and ideological consequences. Workers found it more difficult to unite in view of the prevailing divisive racist ideology. Capital contributed to this division by differential treatment of the various black groups, with differential access to skills, the definition of "employee" in the Industrial Conciliation Act, and the application of the "civilised labour" policy to "coloureds" on occasions, being only a few examples of this policy. I have concentrated on the white and African groups in that here the distinction was clearest and thus the exposition simpler. A full analysis would have to take account of the different positions of all these groups, both politically and in the labour process, and in the different geographical areas of South Africa.

which was basically liberal. The same two general approaches underlay the scanty and often anecdotal historical works about class and colour struggle in South Africa. Both approaches had serious defects which prevented a clear understanding of the interplay of class and colour in the form and development of the society.

In general the liberal writers conceived of the "political" and "economic" spheres as being basically separate from each other. Colour discrimination was a dysfunctional and irrational intrustion of the "political" and ideological into the economic. In the words of one of the chief exponents, there was un "unresolved contradiction between economics and politics."[1] The solution to the "problem" was seen in the removal of this interfering factor. The economic level could then operate on the basis of purely "objective" factors, and a colour blind economy would develop, a solution seen as being more fair, more rational, and more efficient. As these writers accepted capitalism, the "problem", which was only a colour one, would then be removed.

The Marxist approach acknowledged the contradiction that existed between capital and labour, and theoretically also accepted this contradiction as being more fundamental than any white-black one within labour. At times it was also acknowledged that colour prejudice had not impeded capitalist development. Nevertheless, two leading members of the Communist Party claim in their book that "Colour bars ... are being eroded and undermined by industrial expansion and urbanisation."[2] Once again it was hoped that economic development would remove colour discrimination, if not all types of oppression.[3] In the light of subsequent history, however, both the liberal and Marxist analyses have been found to be inadequate, with the continued development of the South Africa economy, together with the retention (and strengthening?) of colour discrimination.

Around 1970 a new current emerged, spearheaded by the writings of Legassick, Wolpe, Bundy, Trapido and Johnstone.[4] This "neo-Marxist"

1. Monica Wilson, quoted in M. Harrison Wright, THE BURDEN OF THE PRESENT, 1977, page 12.

2. H.J. and R.E. Simons, CLASS AND COLOUR IN SOUTH AFRICA, 1969, page 34.

3. F.A. Johnstone, CLASS, RACE AND GOLD, 1976, Conclusion, for an elaboration of this critique.

4. Taffy Adler (ed), A COLLECTION OF WORKING PAPERS, 1977, provides an extensive bibliography of this writing.

current attempted to show that class and colour were inextricably, if"assymetrically" linked in the development of South Africa, and that colour discrimination, far from being dysfunctional, formed the basis of the development of capitalism here. As Johnstone has said, they attempted to produce work with a "Marxist structuralist approach, which sees and explains the system of racial domination as a product of the system of production of which it formed a part, and as determined in its specific form, functions and nature by this system."[1]

These same writers, together with a younger groups of South African scholars, among whom were Kaplan, Davies, Morris, Fransman and Lewis, later further refined this neo-Marxist analysis.[2] The earlier work had concentrated on the analysis of the creation and reproduction of cheap labour power - a capital-labour contradiction. The newer writing extended the sphere of investigation to conflicts within the capital and labour groupings, utilising a periodisation of the state based on Poulantzas' theoretical work, as well as other aspects of his approach.[3] They tried, in effect, to avoid a dogmatic capital/labour antagonism, by allowing for contradictions and differences within these two groups, in order to explain more adequately,and come to grips with, phenomena which could not be reconciled with a doctrinaire and simplistic Marxist analysis. Their reliance on Poulantzas' work provided the theoretical framework with which to conceptualise the articulation of the economic, political and ideological levels of the social formation. An attempt could thus be made to develop a more satisfactory analysis of the inter-relation between class and colour, both of which operated and interreacted on all three of these levels.[4]

1. Johnstone, 1976, page 2.

2. Adler, 1977, again provides a bibliography. Johnstone's later work, exemplified by the article in AFRICA PERSPECTIVE, October, 1978, implicitly recants, and seems to call for a liberal-Marxist amalgam.

3. The approach cannot be gleaned from only 1 of Poulantzas' works, although POLITICAL POWER AND SOCIAL CLASSES (1973) does provide the basic framework. Since then, however, the framework has been corrected and developed in each of his succeeding books. (See bibliography).

4. Harrison Wright's book (1976) is an attempt, by an avowedly neutral outsider, to compare the two approaches - the liberal and the neo-Marxist. While the book provides a useful summary of some of the arguments, and a comprehensive reading list, it is inadequate in that it conflates the two "neo-Marxist" currents, and thus ignored the developments within the second. It also fails to show how the two major trends operate within completely different paradigms. While perhaps neutral in relation to South Africa, the author is not neutral when it comes to choice of paradigm. Clark, Innes and Plaut all criticise the South African Poulantzian approach from within a Marxist perspective. (See bibliography).

This work has be no means been completed, as all the scholars concerned would readily admit. The reliance on Poulantzas provides many difficulties at the purely theoretical level. Marxist analysis of any sort is difficult for most Western students, trained as they are in the dominant neo-classical economic and pluralist political paradigms. Old concepts have to be unlearned and new ones absorbed if the analysis is not to suffer from the contradictions and weaknesses of eclecticism or a mixture of different paradigms. Poulantzas' work provides added difficulties, in that it is a developed subsystem of Marxism. Although Poulantzas claims that his concepts are for the most part implicit in the writings of Marx and Engels themselves, in developing them he invents a whole new range of concepts, as well as assigning very specific meanings to a lot of formerly loosely conceived Marxian concepts. In order to grasp these it is necessary not only to have a thorough Marxist grounding, but also to be able to deal with the thought of Freud, Althusser and Balibar, to all of whom his theory is also heavily indebted.

In applying Poulantzas to South Africa, the difficulties are multiplied. His work is based on the metropolitan countries - the development of capitalism in the United States and Europe. While he would claim that that his basic concepts would be applicable in all capitalist formations, and while developments in the centre would be reflected in developments in the periphery, an elaboration of the exact interrelations in a peripheral country like South Africa still present many difficulties. The outcome is that Poulantzian theory is not only difficult to deal with, but that, if strictly adhered to, it is only other initiates who can understand the work.

Besides this source of theoretical difficulties in the new writings on South Africa,, much of which is still unresolved, there are many other difficulties, both practical and theoretical. The study involves much primary research, which is time-consuming and difficult. For the post-1926 period, and especially for the post-1948 period, much material is not available as yet.[1] But even were this problem to be solved, difficulties would remain. Research in this paradigm tends to be concentrated on the political scene,[2] on what happens in Parliament and the institutions of the state proper, where, as Poulantzas himself

1. Various difficulties such as the fifty year rule on departmental archives restrict access to the material.

2. Poulantzas, 1973, page 246.

acknowledges,

> "the contradictions most directly and acutely reflected ... are those among the dominant classes and fractions and between these and the supporting classes, far more than the contradictions between the power bloc and the working class. The latter contradictions are basically expressed in the bourgeois state 'at a distance.'"[1]

The principal sources are government publications or the organs of established bodies such as political parties, employers associations, or registered trade unions and federations, all of which are considered to be part of the state apparatus. In South Africa, however, the majority of the population, unlike the workers in the metropoles, are for the most part excluded from the state and a study of the principal contradiction is thus absent from official documents to an even greater extent. Written sources are few, especially for Africans, and those that exist were often controlled by organisations or individuals which did not represent either the unskilled workers or peasants, i.e. the majority of the Africans.[2] The majority of the population, illiterate and inarticulate, although not without political standpoints, experience and knowledge, has left no written sources.[3] The present political situation militates against free access to oral evidence, especially for white intellectuals. Thus, although the pre-eminence of class struggle is stressed in all the latest work, and indeed in this thesis, evidence of this struggle is often obtained only by means of its effects, of when its gravity is such that it merits attention in the publications of other organisations. A full and detailed development of a theory of the interrelationship of colour and class in the historical development of South Africa will thus depend on much further research in the future, when, hopefully, access to both official and other sources becomes easier.

Despite these difficulties, some preliminary groundwork has been laid in the Poulantzian tradition. The approach adopted in this thesis will be firmly based in the Marxian framework, with much borrowing from the

1. Nicos Poulantzas, CLASSES IN CONTEMPORARY CAPITALISM, 1976, page 104.

2. The African National Congress, for example, was to a large extent representative of or dominated by an emergent black petty bourgeoisie. The Communist Party often advocated a liberal democratic standpoint more typical of a petty bourgeois movement, rather than a more socialist worker one.

3. E.P. Thompson, THE MAKING OF THE ENGLISH WORKING CLASS, 1968, for the difficulties of studying the history of the "masses". See particularly the Introduction.

Poulantzian writers. The requirements of the system will at all times be related to the economic base of the society. This base was, throughout the period 1924 to 1945, dominated by the capitalist mode of production, the production of commodities for profit under a system of individual ownership of the means of production. Arising out of this form of organisation were classes and fractions of classes, defined by their relation to the means of production.

A major debt to Poulantzas lies in the conception of class struggle arising out of the contradictory relations between classes and fractions, a conception adapted for South Africa by Davies et al. The relation between the economic level on the one hand and the political and ideological on the other, is not a simple one between base and superstructure. "The type of unity which characterised a mode of production is that of a complex whole dominated in the last instance by the economic."[1] Within this unity each instance retains a certain relative autonomy. This interrelated autonomy of the levels is reflected in both social relations and the class struggle through which classes come into being. It is these cross-cutting factors which account for the variety of classes beyong the simple capital/labour dichotomy, and which also allow for a society dominated by the capitalist mode to retain large areas where a pre-capitalist mode is operative, albeit in a distorted form.[2]

In South Africa this conception of cross-cutting factors helps to explain how class and colour interact on all these levels (political, economic and ideological), so that although most capitalists are white, and most urban blacks are workers, it is not true that all whites are capitalist and all blacks workers. The interaction of the precapitalist African mode of production in the "reserves" with the capitalist mode of production, and the splitting effects operative on all three levels on the proletariat help to explain how colour could also be used to maintain and develop these divisions. On the economic level, for example, there were differences in the roles assigned to different members of the working class - supervisory jobs, for example, usually went to whites, as did clerical jobs. White workers were often allocated jobs which placed them closer to a petty bourgeoisie than a proletariat.

1. Poulantzas, 1973, page 14.

2. H. Wolpe, "Capitalism and Cheap Labour Power in South Africa", ECONOMY AND SOCIETY, I,(4), 1972, for an elaboration.

Differential access to education increased the disparities. On the political level, whites were privileged. All whites were enfranchised after 1930, while black workers had no say in the government of the so-called "white" areas, and very little even in the "reserves". On the ideological level, there was, of course, the dominant belief that whites were different from, and superior to, blacks. This ideology was backed up by the effects of the economic and political factors mentioned above, which encouraged the belief that the system worked in the interest of the white workers.

A second reason for the reliance on Poulantzas is his elaboration of the capitalist state and how this state is related to the economic in its very form and function. While other writers, such as Miliband,[1] have shown how the capitalist state is biased, such bias was seen primarily in terms of the bias of the various agents occupying important political roles. Poulantzas' novelty, now followed and elaborated by others,[2] lies in his explicit formulation of the inherent bias in the institution itself, a bias dictated by the role of the state. An adequate analysis of legislation, which forms a substantial part of the state's role, would appear to be dependent upon such a conception.

II

Race and Class in South Africa: 1924 - 1945

a) Capital and its Internal Divisions

One of the basic innovations of the Poulantzian approach, both as undertaken by Poulantzas himself, and by his followers, is the conscious attention given to the different fractions of capital, with their different needs at different times, although all have a stake in the social system as a whole. Kaplan[3] sees mainly a "congruence of interests" between these fractions in South Africa with regard to labour, in that they all desire a labour force as cheaply as possibly, especially prior to 1948. He concentrates his analysis on other matters, such as reallocation of surplus, in specifying the inter-capital differences.

1. Robin Blackburn (ed), IDEOLOGY IN SOCIAL SCIENCE, 1972, pages 238 ff, contains the main body of the Poulantzas-Miliband debate on the subject.

2. Other writers, of slightly differing approaches, are Miliband, Picciotto, Picciotto and Holloway, Plaut, etc. (See bibliography.)

3. D, Kaplan "Capitalist Development in South Africa", in Adler (ed), 1977, page 96.

Davies[1], however, postulates very real differences between these fractions in regard to labour as well, and throughout this study a system of differentiation of capital into its different fractions will be employed.

The actual lines of delimitation present certain difficulties, and Clark, in particular, has criticised the multiplicity and looseness in definition of the overlapping fractions utilised within this approach.[2] The use of fractions has been widely adopted, at times by writers without a firm grounding in Poulantzian theory, and this has added to the confusion. Proponents of the approach acknowledge the difficulty, but stress also that for different problems different divisions and fractions might become significant, and that this in no way invalidates the concept.

For the purpose of this study, capital is chiefly divided along sectoral lines, a division employed by many non-Marxist writers as well[3], and one corresponding with major differences in the method of production, as well as the nature of the product, the labour process, and the labour force, and thus in the needs of capital. It was along these lines that division was usually made when legislation was applied differentially to certain sectors of the economy.

The following fractions of capital are seen as important for the purposes of this thesis:

i) Manufacturing or industrial capital: As a relatively under-researched area, and one in which the main development occurred in the period, this constitutes the main object of study in this thesis. This fraction, characterisable as a chiefly national industrial bourgeoisie, was emerging during the period, with the contribution to the national income increasing from 11,9% in 1920 to 19,9% in 1945.[4] Firstly, this development was reflected in an increased concentration and centralisation of industry. The number of workers per establishment doubled from 19,1

1. R. Davies, "The Political Economy of White Labour in South Africa", in Adler (ed), 1977, page 132 ff.

2. Simon Clarke, "Capital, Fractions of Capital and the State", CAPITAL AND CLASS, V, Summer, 1978, pages 32-77.

3. This division follows, for example, the classification usually employed in official statistics of the government.

4. UNION STATISTICS FOR FIFTY YEARS, page S-3.

in 1924/5 to 38,8 in 1944/5.[1] Gross output per establishment more than trebled, increasing from £9 500 to £32 600 in the same period (or £7 800 to £21 400 if expressed at 1938 price levels.[2] (Both of these indices do not take account of any increase in overlapping ownerships and increased centralisation at that level.)

Secondly, these developments had an effect on the production process itself. Manufacture increasingly gave way to machinofacture, a trend illustrated by the relative growth in importance of machine-based sectors such as engineering. In the former the individual worker (or craftsman) had still to a large extent retained control of production. He worked with tools to create a single, recognisable object, and worked at his own speed. In the latter the workers were a mere appendage to the machine. The individual tools were fused together in one machine, and the whole work process was controlled by the machine, or by capital, rather than by the worker.[3] This change was reflected in the changing composition and nature of the labour force and a corresponding change in attitude of both capital and labour.

These developments were neither smooth nor continuous however. At any specific time there were important divisions and differences between the different individual capitals.[4] The chief division for the purposes of this study, is that between what is rather loosely referred to here as "big" capital, or an emergent monopoly capital, and "small" capital,[5] a division not always easily distinguished in research. "Big" capital was the result of the concentration and centralisation of industry, and often occurred as a result of the switch to machinofacture rather than manufacture. The small firms, utilising little fixed capital, could invest and disinvest fairly easily, and were indeed often forced to do so. This made this sub-fraction a very competitive one, in which the

1. UNION STATISTICS FOR FIFTY YEARS, page L-3, own calculations

2. ibid., pages L-3, H-14, own calculations.

3. Karl Marx, CAPITAL, Vol. I, 1974, pages 352-54; 363-65; H. Braverman, LABOR AND MONOPOLY CAPITAL, 1974, pages 187-195; 195-57.

4. "Capital" is used here in two senses. The first refers to it as a relation, for example in talking of variable or fixed capital, or capital investment. The second way is to refer to a single capitalist, or the class as a whole. The context should make it clear which one of the two is being employed at a certain point.

5. Poulantzas (1976) uses the same concepts. He, however, uses the terms "big" and "medium". reserving "small" to refer to the petty bourgeoisie. "Big" and "small" are used here for the sake of simplicity.

pruning of costs was of prime importance. Big capital, with large fixed capital investment, tended to be more efficient and also more monopolistic, and often advanced demands substantially different to those of their smaller competitors. The division between big and small runs at times on geographical lines, the Rand industries, for example, often being more advanced than those of the coastal areas, and this difference probably accounts for the often conflicting viewpoints of the Federated Chamber of Industries, the national body, and the Cape Chamber of Industries, the local one at the Cape. At other times the division was inter-industrial - steel and engineering, for example, were much more capitalised sectors, and grew at a much faster rate than the furniture industry.[1] In most cases, the division was duplicated within one geographical area and industry - some big firms grew fast and employed advanced methods, whereas smaller firms lacked the capital necessary for such development. It is generally true, however, that it was big capital which most displayed the characteristics of concentration, centralisation and the employment of heavy machinery.

A detailed analysis of the breakdown into small and big capital awaits further research, but allusions to and evidence of the difference are plentiful.[2] The forms and effectiveness of the different legislative measures depended upon, and was affected by, this uneven development of industry. Big capital had different demands from small capital. The difference in the size of establishment and the nature of the workforce resulted in differing attitudes towards labour. In some cases the demands of the two subfractions were diametrically opposed to each other. All this is reflected in both the framing and operation of the various measures.

ii) Commercial Capital: The second major fraction affected by the legislation was commercial and financial capital. This fraction exhibits contradictory features. While it was a well-established sector, it displayed characteristics of an undeveloped one. It consisted for the most part of small establishments, in the form of small retail outlets, and in fact included some strictly petty bourgeois establishments, where the owner and his family constituted the chief, or even sole, workforce. The average number of workers per establishment in those

1. Table 1.1 provides comparative data for the major sectors of the economy.

2. Martin Nicol has interesting evidence in the case of the garment industry. (Ph. D thesis forthcoming).

areas affected by Wage Determination 38 (i.e. only the larger urban centres) in 1934 was only 4,09, as opposed to the 23,8 for manufacturing establishments in 1934/5.[1] The output of commerce nevertheless still contributed between 15,4% (1925) and 14,1% (1945) to the national income throughout the period.[2]

The extended, yet widely dispersed, nature of commerce meant that it was difficult to organise, from the point of view of both capital and workers. Workers, in particular, also suffered additional disabilities in comparison with production workers in industry. The nature of their jobs was such that they did not so easily experience the worker solidarity of those more dependent on each other in the production process. Commercial workers were individual workers rather than forming part of a collective worker. Clerical workers in financial institutions constituted a relatively privileged and educated section of the workforce and were thus often loth, on an ideological level , to ally themselves with ordinary workers. The number of white females to 1 000 white males employed in commerce increased from 382 in 1936 to 586 in 1946, as opposed to a drop from 438 to 329 in the same period in manufacturing,[3] and this increase in female labour also tended to militate against strong worker organisation, and to encourage severe exploitation. Because of these factors, in reaction to labour legislation commercial capital often appeared to side with small industrial capital in its needs and demands, advocating a legal system conducive to an earlier period of competitive capitalism with its accompanying ideology of more complete freedom of the individual (at least in his activities as capitalist).

Even within this fraction, however, there were contradictions. The development of department stores and large bureaucratised financial insitutions in the period brought workers together in larger groupings and thus facilitated organisation. Large-scale organisation, bureaucratisation and mechanisation simplified tasks in this sector as well and necessitated a less skilled/educated type of worker than before.[4]

1. UNION STATISTICS FOR FIFTY YEARS, page L-3; Dept Labour Annual Reports.
2. UNION STATISTICS FOR FIFTY YEARS, page S-3.
3. M.J.M. Prinsloo, BLANKE VROUE-ARBEID IN DIE UNIE VAN SUID-AFRIKA, 1957, page 358.
4. Braverman, 1974.

The changes in concentration and centralisation, together with this disqualification of labour, both facilitated and encouraged organisation. The unity and involvement of workers with each other was still not the same as that within the "collective labourer" of industry. Educational differences and white collar work still presented blocks to effective and militant organisation.

iii). Mining capital: This is perhaps the capital in the South African social formation to which most study has been devoted.[1] From its early beginnings in the late 1880's, this sector was dominated by overseas or indigenous monopoly capital. This capital intervened in a markedly undeveloped economy and set up a system of production which was characteristic of, and peculiar to, the industry, yet also in some ways a grotesque caricature of later inequalities in the rest of the economy. The particular commodity produced, gold, by its nature as money capital, necessitated an ultra-cheap labour force.[2] The existence of a vast reservoir of untapped black labour in rapidly degenerating reserves, and the relative absence of any alternative sphere of employment besides farming, facilitated the attainment of these conditions. The hegemonic mining capital tried to establish a system of production based on a grossly exploited and predominantly black labour force, with a minimum of white skilled workers. In 1935, the middle of the period, for example, this strict white/black dichotomy was expressed in a black:white employment ratio of 89,4:10,6[3], as opposed to the 58:42 in manufacturing.[4] The average wage in mining was £341,1 for whites and £30,5 for blacks per annum, while in manufacturing the white salary was £335,4, the white wage £202,9 and the African wage £41,0.[5] The establishment of such a pattern was not without problems, however, and many workers, particularly the whites, who were chiefly of immigrant origin in the early period, strongly resisted capital. By various means, including legislation, the relations between capital and white labour were more or less established after the 1922 Rand Revolt, however, with white labour coming to be increasingly restricted to a supervisory role rather than a productive one on the mines.

1. Johnstone, 1976, is an excellent example of such a study.
2. M. Williams, "An analysis of South African Capitalism - Neo-Ricardianism or Marxism? BULLETIN OF THE CONFERENCE OF SOCIALIST ECONOMISTS, 1975, IV, 1.
3. UNION STATISTICS FOR FIFTY YEARS, page G-4.
4. ibid., pages G10-12.
5. Industrial Legislation Commission, UG 62-1951, Table 37.

The strength of mining capital, and its economic dominance, ensured that, while no longer politically hegemonic after 1924, its interests were not neglected. Mining for the most part had its own specific legislation, to suit its own peculiar needs (e.g. Mines and Works Acts, Native Labour Regulation Act), and could, under the Mines and Works Act, make further internal regulations of its own "for the maintenance of order and discipline, the prevention of accidents in any mines."[1] As a sector which did not directly compete with the rest of the economy, and because of its independent strength and importance as a basis of the economy, this capital was excluded from much of the "ordinary" industrial legislation.

iv) Agricultural capital: Agricultural capital was, like industrial capital, a "national" capital, and the second partner in the PACT government by means of its representation through the National Party. The sector was undeveloped economically in terms of production. Methods were relatively primitive and labour-intensive, and the capital/labour relation was not the "normal" fully-developed capitalist one, but retained features of an earlier, precapitalist mode.[2] Agricultural capital thus needed a particular type of labour legislation, and was able to obtain it because of its economic and political importance. Despite its backwardness and the relative decline in its importance through the period, agriculture still contributed between 21,6% (1925) and 12,3% (1945)[3] to the national income and retained political power disproportionate to this contribution. This political power was reflected in the various measures passed to protect the interests of the sector - tariff protection, import duties, railway tariffs and subsidisation. With regard to labour legislation, agriculture was excluded from much of the common legislation. Instead they made use of many of the older laws passed at an earlier stage of development, such as the

1. Section 5(1) of Act 12 of 1911. One example of the "special rules" made under this section are those of the New Jagersfontein Company, reported in the Dept Mines Annual Report for 1929 (page 79), viz., (1) "No native shall pollute the surface working with faeces or urine, nor wantonly misuse or foul the latrines", (2) "No natives shall fight or disturb the peace or good order in the Mining area", and (3) "No natives shall gamble or be in possession of playing cards in the Mining area." These are reminiscent of Van Onselen's description of the total control in Southern Rhodesia. (CHIBARO, 1976).

2. M. Morris, "Apartheid, Agriculture and the State", SALDRU Conference on Farm Labour, 1976.

3. UNION STATISTICS FOR FIFTY YEARS, page S-3.

Masters and Servants Acts, as well as new laws designed to tie the labour to the land and control it there, such as the "Native" laws.

v) State Capital : The final area of production is that owned and controlled by the state, where the latter, in its role of maintenance of the conditions of reproduction of the total social capital, took over the capital function. ESCOM was established in 1922 and ISCOR in 1928, and these two bodies played an important role in supplying the increased demand for power and iron and steel connected with the growth of a developed industry. The South African Railways and Harbours operated throughout the period, and employed 92 372 workers in 1925 and 149 880 in 1945.[1] This vast organisation supplied the transport network necessary for effective distribution of the raw materials and products of mining, industry and agriculture. Local authorities, meanwhile, provided other infrastructural facilities in the way of water sanitation, power and transport networks and services.

This section of capital does not feature to any marked degree in this thesis. Firstly, it is excluded completely from much of the common legislation, having rules and regulations of its own, by which it was able to regulate conditions of work and also to regulate conflict.[2] Secondly, this capital was to a large extent free of the constraints and compulsions of private capital, for example in its relative freedom from reliance on internal financing and thus the profit motive. It thus requires analysis different from that based on mere production of commodities for profit, one which takes account of the state functions it fulfils. While this fraction does not form a central area of concern of this these, it was able, nevertheless, to influence the class struggle in important ways.

The state departments employed poor whites, sometimes even as manual workes, and by thus incorporating them in the hierarchy gave them prospects

1. UNION STATISTICS FOR FIFTY YEARS, page G-15.

2. For example, the various Railways and Harbours Acts, the Public Services, Acts, etc. Act 23 of 1925, pertaining to the Railways and Harbours, stated that the Administration could make regulations as to examinations, conditions of employment, such as grade, overtime, medical examinations, misconduct, sick fund, appeals and procedures, etc (section 31 (1)), and that different regulations could be made for different classes of employees. (section 31(2)). By this means the need for wage determinations and agreements was obviated, with total control and full decision-making power being put in the hands of the employer.

of advancement. In this way their class position and views were altered in important ways.[1] The percentage of white employment in South African Railways and Harbours service was much higher than in industry - 51% in 1925, as compared to 36% in industry, and rising to a phenomenal 60% in 1935 to cope with the poor white problem.[2] While the average black (African wage for manufacturing) wage as a percentage of the average white wage was consistently higher in manufacturing than on the railways from the thirties onwards (20,2% compared to 16,9% in 1934/5), the average white wage as a percentage of the average white salary was higher in the poor-white supporting South African Railways and Harbours than in industry (61,8% compared to 60,8% in 1929/30, rising to 87,0% compared to 63,1% in 1944/5).[3] The tariffs- and government-sponsored ISCOR also created a new series of skilled and semi-skilled jobs for whites after 1924.[4] All these differences and opportunities had their effect on the formation of classes.

Capital was thus divided in its needs and demands, as seen above, and did not always present a united front in its views on labour legislation. The particular form and needs of the individual fractions, and their political, economic and/or ideological power, enabled them to influence the form of particular measures. The analysis of labour legislation which follows will reflect this different power, the differing labour forces employed in each sector, as well as the differing needs resulting from the uneven development and differing form of the production process in each sector.

a) Divisions within the Working Class

Labour was divided, not only along the lines of which capital it was employed by, but also along the important lines of skill, colour, age and sex. While skill, age and sex divisions are a universal phenomenon in the working class, the colour element in South Africa, while present to some extent in many other social formations, here presented a highly

1. R. Davies, CAPITAL, THE STATE AND WHITE WAGE-EARNERS, 1977, pages 238. See also Poulantzas, 1965, page 14, for the difference between class position and class determination.

2. UNION STATISTICS FOR FIFTY YEARS, pages G10-12, G-15.

3. Industrial Legislation Commission, UG62-1951, Table 37.

4. Gwendolen M. Carter, THE POLITICS OF INEQUALITY: SOUTH AFRICA SINCE 1948, 1958, page 30.

developed and peculiarly South African phenomenon, which fundamentally affected the shape of the labour force. An understanding of the role colour plays is dependent on seeing the way in which the colour aspect is linked ot, and reflects, the other divisions among the workforce.

The new writings on the working class are based in the economic field on the productive/unproductive labour debate, and the mental-manual division which goes with it.[1] Productive workers, or manual workers, are defined as those involved in the chief contradiction of the mode of production, those who produce surplus value.[2] Non-productive workers, while performing jobs necessary for capitalist production, do not produce surplus. Thus workers in commerce and finance, for example, assist in the circulation, rather than in the production, of value. Within industrial capital also some wage-earners are not productive. These people are employed rather as the subalterns or NCOs of capital, performing functions which capital itself performed in earlier period. They supervise the production process and provide the coordination, organisation and authoritarian command necessary for socialised production under relations embodying non-socialised ownership of the means of production. The new writing classifies all these non-productive workers as members of the petty bourgeoisie, rather than the proletariat, and expects of them the class characteristics consistent with this position.

Wright[3] and Braverman[4], on the other hand, assert that the productive/unproductive question cannot be used as a class boundary, and even

1. The arguments in this debate are by no means agreed upon. Marx's writings on this subject were incomplete, and have been completed by different writers in different ways, with differing interpretations. Useful reading on the subject is found in Carchedi, Braverman, Poulantzas, and, for the South Africa debate, Simson, Wolpe and Davies. (See bibliography).

2. The term "non-productive" is not to be taken as a pejorative one. The writers do not deny that these workers are exploited. What they do deny is that they produce surplus, or indeed value. The term is held to have important theoretical and practical implications in the face of differing labour processes and different experiences.

3. E.O. Wright, "Class Boundaries in Advanced Capitalist Societies" in NEW LEFT REVIEW, 107, page 92.

4. Braverman, 1974. For the sake of simplicity, I have chosen to use the word "worker" to refer to all wage-earners, whether worker or petty bourgeoisie, while not, however, ignoring the differences between these two categories.

Poulantzas admits that different groups of non-productive workers display varying tendencies to ally themselves with the working class proper.[1] The determining factors are to be found not only in the economic role played by the agents and in the different levels in the manual/mental division. Political and ideological factors affect class position and outlook, and for the period 1924 to 1945 in South Africa these factors were such as to make Simson's later categorisation of all white wage-earners as "non-workers" highly questionable.[2] The productive/unproductive division was still, nevertheless, an important one in shaping the colour situation.

In the early mining industry the skilled whites were the obvious candidates for recruitment for supervisory jobs, and the pattern was soon established that only whites could supervise on the mines. By 1906, Grey Coetzee notes, it was already "established practice" to engage unskilled whites for all supervisory occupations.[3] In the 1924 to 1945 period, with the development of a machinofacture-based industry, and the resultant increasing socialisation of labour, the need for workers playing a supervisory and coordinating role increased apace in industry as well. It was white workers who were almost exclusively recruited to fill these petty bourgeois positions, a trend indicated by an increase in the percentage of "economically active" white population which fell into unproductive categories in the censi. This percentage increased from 31,8% in 1921 to 38,5% in 1936 and 42,9% in 1946.[4]

Other economic divisions tended to aggravate the colour divisions among the workers and militate against large sections of the white force allying themselves with the masses of the workers. A "labour aristocracy" is defined as a "particular upper stratum of the working class detached from the rest of the working class by its receipt of certain privileges."[5] In South Africa the highly skilled artisan class, mainly

1. Poulantzas, 1976, passim.

2. H. Simson, "The Myth of the White Working Class in South Africa", AFRICAN REVIEW, IV, (2), 1974, pages 189-202.

3. J.A. Grey Coetzee, INDUSTRIAL RELATIONS IN SOUTH AFRICA, 1976, page 25.

4. This rose to 64% in 1970. The Marxist concept differs from the census definition, and this discrepancy is aggravated by the effects of a movement into services, rather than productive spheres. Davies, (in Adler (ed), 1977, page 189) however, following Poulantzas' use of INSEE statistics, feels that the figures do provide some indication.

5. Davies, in Adler (ed), 1977, page 136.

of overseas origin, and almost exclusively white, displays characteristics typical of such a stratum, whether in the South African context or not.[1] Change for them constitutes a potential threat rather than a promise of better things. With their privileged position they were more apt to regard other workers as competitors than as "comrades', and their organisations, while exceptionally strong, were also exceptionally conservative and reformist. It was these workers, for example, who were the first to get involved in the machinery of the Industrial Conciliation Act (ICA). As the backbone of the Labour Party, it was these workers who in 1924 joined the PACT government and agreed to give up their "social democratic" demands for concessions offered them by national capital.[2] With the development of machinofacture the demand for such skilled artisans declined in some industries, and instead there arose a need for a limited number of skilled operatives, technicians, etc. Here also whites were chiefly employed. By 1932 90% of these operatives were white.[3]

While the top jobs for workers were thus allocated to whites, a more important role in shaping the colour division was perhaps played by those measures taken to ensure that black workers coccupied the lowest positions. African workers, in particular, were confronted by a whole system of laws which sought to dominate, control and disorganise them to such an extent that they were significantly less "free",even in the limited sense of free to sell their labour power, than their fellow workers in other western countries. By keeping them thus politically and economically dominated and disorganised, the rift between the relatively privileged white workers and the blacks was further promoted by the state, and competition between white and black was limited, even where the workers were of the same skill level and occupied the same positions in the labour process.

The policy of domination and control had been implemented long before the 1924-1945 period, and even before the advent of direct capitalist intervention in the form of mining. As in other peripheral formations,

1. E.J. Hobsbawm, LABOURING MEN, 1964, pages 316-343 for suggestive work on the British labour aristocracy.

2. B. Bozzoli, "The Origins, Development and Ideology of Local Manufacturing in South Africa," JOURNAL OF SOUTHERN AFRICAN STUDIES, I (2), April 1975.

3. CCI Annual Report, 1932, page 23.

"the land wars ... were also labour wars."[1] The colonial, and later the indigenous, rulers used land appropriation and restrictions and regressive and discriminatory taxes to deprive Africans of the means of production especially land, and thus force them to sell their labour power to white landowners for wages in order to survive.[2] With the advent of mining, cheap labour became even more important, as it was on this basis that the mines were developed, and on the basis of the latter that the rest of the economy grew.[3] The land, labour and tax acts were developed and amplified to meet the changing needs of the developing economy, so that in the period 1924 to 1945 a host of new laws had been added to the earlier ones, and black workers in every sector of the economy were controlled. The Land Acts[4] and Taxation Acts[5] applied to all Africans and served to deprive them of the means of production and force them to sell their labour power. As IKAKA LABASEBENZI so graphically expressed it,

> "Its (the Tax and Development Act's) chief purpose is to drive us to work for the whites at any payment they may give us. It is like a whip in the hands of the slavedrivers."[6]

The 1939 amendment to the Act made this even more explicit when failure to pay the tax could lead to detention of the offender in a labour camp, from "where his services will be hired out and a portion of the money which he earns will be allocated to the payment of the tax."[7] This amendment clearly was not a means of reducing the number of convictions, as claimed by the government spokesmen, but rather "in reality an instrument for increasing the supply of native workers."[8]

Mining capital, monopolistic and highly organised, and very dependent on ultra-cheap labour, utilised the Native Labour Regulation Act to obtain this labour.[9] This well-organised recruitment system provided

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1. M. Wilson and L. Thompson, THE OXFORD HISTORY OF SOUTH AFRICA, Vol II, 1971, page 435.

2. Bundy, Beinart and Rich are all sources for the South African debate on the land question. (See bibliography).

3. Johnstone, Kaplan, Houghton, De Kiewiet are a few examples of such a claim from different ideological perspectives. (See bibliography).

4. Act 27 of 1913; Act 18 of 1936; Act 17 of 1939.

5. Act 41 of 1925; Act 25 of 1939.

6. IKAKA LABASEBENZI, July 1937.

7. Minister of Finance, quoted by Reedman and Guenault, "Taxation", in E. Hellman, HANDBOOK OF RACE RELATIONS IN SOUTH AFRICA, 1949, pages 293 ff.

8. GUARDIAN, 24 February 1939.

9. Act 15 of 1911.

workers at minimum cost. It cut intra-capital competition in this already highly monopolistic area to a minimum, but controlled the work force in terms of both quality and quantity, and facilitated the ease with which capital could dispense with hurt or sick or old workers, by sending them back to the "reserves" where they would no longer be a drain on capital's resources.

In manufacturing, laws were needed both to deal with the workers already in the urban areas and to retard the influx of further Africans. One of the initial aims of the Urban Areas Act[1] was probably to encourage permanent settled labour, in preference to the more expensive and less dependable "togt" labour, in Natal at any rate.[2] The more general aim was that based on the proposition that "the native shall only be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and minister to the needs of the white man, and should depart therefrom when he ceases so to minister."[3] The percentage of the African population resident in the towns nevertheless still increased from 14% in 1921 to 23,7% in 1946[4]. The Act attempted to limit this influx to that required by industry and to control it once in the towns, thus minimising competition for labour with agricultural capital, minimising labour's freedom of movement, and thus competition between industrial capitalists and with unskilled white labour, and also averting social disruption and mass organisation in the towns. By 1937, this law, commonly referred to as the "pass law", had been so far amended and refined that the Governor-General had an "almost unlimited" discretion to remove an African from an area, for reasons which included the fact that he was "surplus to the labour requirements of the area."[5] Courts of law were "not entitled to interfere with such an order solely on the ground of unreasonableness or of hardship occasioned thereby to the Native concerned, such as would be caused by lack of accommodation, a lack of water at the place

1. Act 21 of 1923.

2. T.R.H. Davenport, "The beginnings of urban segregation in South Africa" Occasional Paper 15, 1971,

3. Transvaal Commission, 1922, quoted in Davenport, 1977, page 13.

4. It is interesting to note that according to Davenport (1971, page 13) it was only with the amendment of 1930 that the Act was effective in controlling the urban influx. This coincides with the beginning of the depression and increasing white unemployment; UNION STATISTICS, page A-10.

5. A.R.F. Hoernle, SOUTH AFRICAN NATIVE POLICY AND THE LIBERAL SPIRIT, 1939, page 9.

to which he is sent, or failure to pay him compensation."[1] By 1944 the Act had been so amended that the Governor-General could regulate conditions of work, conduct of African servants and masters in relation to each other, restriction of the period of contract, etc.

The Act was thus not, as claimed by the Native Affairs Department[2], passed purely to introduce colour segregation, although this was important in view of the danger of cross colour social intimacy perhaps destroying the colour ideology.[3] It has specific aims with regard to labour and labour organisers, and non-workers - chiefs, headmen, certain teachers and students, clergyment and interpreters - the nascent African petty bourgeoisie -were excluded from the requirements of the Act. This Act controlled the numbers, living and working conditions of those African workers in the towns and industries and was thus the one which most affected the workers in this study. IKAKA described it as "one of the worst laws against black person ever made in South Africa," claiming it treated Africans "like a farmer treats his ox team."[4]

For the rural workers there was yet another system of control, implemented mainly through the Native Service Contract Act[5] and the Masters and Servants Act.[6] (The latter did not apply solely to Africans, but was used chiefly for these workers, 17 502 of the 1944 convictions being in respect of Africans, out of a total of 19 643 convictions.[7]) While the Urban Areas Act prevented too great a flow from the farms to the towns, the Trust and Land Act and Native Service Contract Act attempted to regulate the flow and supply of African workers both within and out of the "white" rural areas, by controlling squatting and tenant farming, restricting the "hoarding"of Africans by farmers and restricting movement of workers out of the rural areas, and preventing the

1. Rex v Mabi and Others, TPD 27 September 1935 in SOUTH AFRICAN LAW JOURNAL, LII, 1936, page 125.

2. Native Affairs Dept Annual Report, 1936.

3. Welsh in Wilson and Thompson, 1971, page 435.

4. IKAKA LABASEBENZI, June/July 1937.

5. Act 24 of 1932.

6. Buckland and Wilmot, Bundy, Tredgold, and RACE RELATIONS JOURNAL, IV, p.138, all give information on the scope and aims of these Acts.

7. H.J. Simons, "The Law and its Administration", in Hellman (ed), 1949, page 85.

uncontrolled settlement of natives on European farms."[1,2]

The Masters and Servants Act, a law designed to regulate employer-employee relations in a precapitalist situation, had been passed early in South African history, but in the 1924 to 1945 period it was still useful in the less fully developed and less "free" relations of production in the countryside, where the capitalist mode of production was not yet fully established. Often viewed as outmoded, the Act was still very much used in the period, although its use declined.[3] By converting the breach of contract between master and servant into a crime, the Act served to tie the worker to his employment.[4]

Finally, besides all these specific acts was one not directly relating to labour, yet regulating the way in which the other laws were administered. The Native Administration Act[5] set up a system based on a frightening amount of administrative and arbitrary power placed in the hands of a few individuals whose actions were usually not reviewable by a court of law.[6] In addition to setting up a legal structure and procedure, it also added to already mentioned methods of control by allowing for control by the Governor-General, in his role as "Supreme Chief" of all Africans, of movement, residence, meetings, and generally for "peace, order and good government" among Africans.[7]

1. Official Year Book, 1941, page 427. Emphasis added.

2. See Morris, 1976, for the effects of the Act.

3. 43 000 prosecutions in 1928, 28 500 in 1936 according to C. Bundy, "The Abolition of the Masters and Servants Act", SOUTH AFRICAN LABOUR BULLETIN, II (1), 1975, and Reinaullt Jones in RACE RELATIONS JOURNAL, V, respectively. There were 19 643 convictions in 1944. (Simons, in Hellman, 1949).

4. SAIRR, SURVEY OF RACE RELATIONS IN SOUTH AFRICA, 1974, page 336, contains a full list of all the Masters and Servants Acts.

5. Act 38 of 1927.

6. Chapter Two contains an elaboration on the nature of administrative law. Hoernle, 1939, contains an analysis of this law. For the purposes of research this type of legislation poses specific problems. Qualitative changes can usually be detected only if one painstakingly combs the full government gazettes of the period, as was necessary for the war period. Quantitative changes are more difficult, if not impossible, to detect, except in their effects, as no official notice, besides perhaps departmental directives or memorandums, are necessary to implement them. Thus, for example, Davies' (1977) contention that the late thirties, rather than witnessing the slackening of restriction on African labour, which is how most previous historians interpret the relative paucity of legislation in this area in the period, actually witnessed an administrative tightening up in the interests of white labour, is very hard either to verify or refute. The importance of this legislation is also related to the uneven development of capitalism in South Africa. Law by regulation

The above outline of the "Native" acts is of necessity sketchy. It skims over and often ignores many important clauses, with far-reaching implications. The "Native" laws constitute a subject worthy of a complete and separate - although not unrelated - study of their own. Nevertheless, the overview does given some idea of the many laws and their ambit.

By these means African workers were confined almost exclusively to unskilled and semi-skilled positions. It was in these positions that they competed with the white workers who had not been recruited into supervisory or skilled positions. It is this group of workers who are in some ways the most interesting for an analysis of labour legislation, in that objectively they had the most to gain from colour blind organisation, and in that this fact prompted the passing of a host of measures psecifically designed to prevent such a development, to favour the white workers, and yet not, in so doing, to endanger the appropriation of profit.

The "poor white" problem was one of the chief concerns of the Wages and Economics Commission of 1925.[1] These people had been forced off the land and proletarianised in the process common in the development of all capitalist countries, with the changeover from an agriculture-based economy to one based in the towns. It was not only the blacks who migrated townwards. The percentage of the white population which was urbanised increased from 59,6% in 1921 to 68% in 1936 and 74,5% in 1946,[2] and in the early years at least these migrants were on the whole the "failures of agriculture",[3] unskilled and completely dispossessed of the means of production.

In order to help these people, £1 748 000 from the Revenue Account and

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allowed, to use an example of this law, for "similar but by no means identical" (Davenport, 1977, page 6) solutions to be found in different towns, sectors and industries.

7. The quotes are from the Act itself.

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1. Wages and Economics Commission, 1925,
2. UNION STATISTICS FOR FIFTY YEARS, page A-10.
3. Wages and Economics Commission, 1925, page 180.

£1 038 000 from the Loan Account of the central government were spent in the 1929-30 financial year lone, to provide schemes, employment and social welfare for them.[1] Work was provided in the police, in the defence force, and on the railways, areas where outright colour discrimination rather than the more subtle discrimination of industry was utilised. White workers in these areas received wages which bore a significantly higher relation to those of black workers, compared to that prevailing in industry, i.e. the white black wage ratio in these sectors was significantly greater than that for industry. Tariff schemes, fair wage clauses, and the "civilised labour" policy in general were used to further "uplift" this class.

The latter policy was described by Cresswell, when addressing the Native Conference of 1924,[2] as "the desire of the Government to open up every avenue of employment in which a man can earn a wage that a European and a man who desires to live like a European can live on." It was largely as a result of this policy that the percentageo of whites in the private manufacturing labour force was at a level varying between 36% in 1924/5 and 31% in 1944/5.[3] The semi-skilled category provided an additional outlet for a part of this problem. While affording less control over the labour process than the artisan jobs, the new semi-skilled positions which emerged with machinofacture did afford better wages and conditions than the unskilled jobs. By attempting to channel whites into these jobs, and in some cases even creating extra jobs of this sort[4] to meet the "civilised labour" policy requirements,[5] the state and capital promoted the pre-existing colour-class dichotomy among the workers.

Nevertheless, despite all these measures, a recent estimate puts the percentage of employed whites defined as unskilled at 21,8% in 1936. Davies notes that by 1933 the similarity between the positions of these workers and that of the blacks had the effect that many lower paid manual workers in, for example, the leather and garment industries, were advocating left-wing politics and a common struggle with black

1. Carnegie Commission,

2. T. Karis and G.M. Carter (ed), FROM PROTEST TO CHALLENGE, Vol I, 1972, page 169.

3. In 1934/5, at the height of the policy, the percentage reached 42%. (UNION STATISTICS FOR FIFTY YEARS, pages G10-12).

4. H.J. Laite, THEY BUILT A SYSTEM, c. 1946, page 167.

5. Sadie, quoted in H. Wolpe, "The White Working Class in South Africa," ECONOMY AND SOCIETY, V, (2), 1976.

workers.[1] In the interests of these workers further discrimination was needed in the form of more regular labour legislation.

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The above outline gives some idea of the background against which labour legislation was enacted. A dominant theme to emerge is that of control and restriction, and the organised disorganisation of the African workers, accompanied by systematic promotion of the interests of white workers wherever possible. The African population was controlled in the home and in the workplace, while freedom of movement, residence, employment, association and assembly were severely restricted. By this means they were maintained in the subordinate, dispossessed, and politically and economically dominated position where the majority were unskilled and low-paid workers, while their bargaining and organisatiom power was reduced to even lower levels than that normal in this position. Meanwhile the"state's policies towards white wage-earners over this period have to be seen as intervention which served in the last analysis to advance capitalist interests ... to further divide white from black wage-earners and to ensure that the whites increasingly saw their future within the confines of capitalist society."[2]

It is important to remember, however, that the laws were not imposed on a docile and passive population. An awareness of the struggles and organisation of both black and white is necessary for a full understanding, as this affected both the type of legislation passed and its effectiveness.

Among white workers the beginning of the period coincides with the formation of the first national trade union organisation, the South African Trade Union Council, in 1925, an organisation largely dominated by Labour Party supporters. During the rest of the period the South African Trades and Labour Council on the Rand, and the Cape Federation of Labour Unions in the Cape, were the main centres. While these two organisations had different policies in relation to black workers, both can be explained in terms of a desire to safeguard the interests of the more privileged whites, or that of the white and "coloured" workers.[3]

1. Davies, 1977, page 142.

2. R. Davies & D. Lewis, "Industrial Relations Legislation: One of Capital's Defences", in REVIEW OF AFRICAN POLITICAL ECONOMY, VII, 1976, page 130.

3. K.H. Williams, "The Resolution of the Cape-Transvaal conflict in the Trade Union Movement of South Africa", September 1974.

The thirites saw the introduction of another trend among white workers. The Nationalist-influenced, Christian National unions represented one possible solution to the question of the unskilled whites. During the later thirties and early forties, these unions exercised a growing influence, attempting to draw workers away from the Labour Party and substitute a cultural identity to that of class.[1]

The period was also one of black organisation, both independently of, and allied with, whites. In the twenties large numbers of workers and peasants were organised in the semi-political, semi-industrial mass organisation of the Industrial and Commercial Workers Union (ICU), a strong movement which called forth the full and brutal power of the state under Pirow in the late twenties. By the end of the decade the ICU was a more or less spent force, but black organisation continued. In 1927 the Communists had been expelled from the ICU, but the same year saw the establishment of the first "Communist-inspired African Trade Union".[2] The accelerated development of industrial unionism among Africans in the thirties, as secondary industry developed, and they themselves came to occupy more industrial positions, necessitated a changing pattern of legislature. This developed even further during the Second World War, when, in the absence of a large number of white male workers, Africans took over key positions in industry, and realised their strength in correspondingly militant organisation. The influence of the general black organisation, the African National Congress (ANC), also became more important during this period, with the formation of the Youth League and a growing involvement in mass campaigns.

Both the white and black worker organisations must be seen against the more general developments in the society. The importance of these developments forms the subject matter of the following section.

III

The Importance of the Period 1924 to 1945

The period of study was not chosen arbitrarily. The twenty odd years chosen present a period with marked characteristics which distinguish

1. D. O'Meara, "White Trade Unionism, Political Power and Afrikaner Nationalism, SOUTH AFRICAN LABOUR BULLETIN, I (10), April 1975.
2. Karis and Carter, 1972, page 353.

them from earlier and later periods, and constitute it as a viable and worthwhile object of study.

Poulantzas' classification of the international capitalist system denotes the interwar years as the period of the consolidation of monopoly capital in the metropolitan centres.[1] Every social formation, as a part of the world system, was affected by this international phenomenon, and in South Africa at this stage, due to both internal and external factors, a strong manufacturing sector emerged, after a long period when mining capital, a foreign-dominated capital, had been hegemonic and dominant, and had constituted the major economic sector. The war years are included because of their importance in relation to the development of a relatively independent and balanced economy. The enforced cutting of ties with previous main suppliers of imports placed a strain on the economy, which forced the establishment and development of several sectors previously neglected. The war period is especially important in any analysis of the state, if one accepts Blackburn's contention that the "function of the state (as arbiter and guarantor of the social formation as a whole) is only fully revealed in a period of war or counter-revolution ..."[2]

The period as a whole witnessed the development of private manufacturing from a position where it contributed 10,7% of the National Income to one where it contributed 19,9%, while mining's share dropped from 21,3% to 14,4% and agriculture's the previous basis of domestically controlled production, dropped from 20,9% to 12,3%.[3] The number of manufacturing establishments meanwhile increased from 6 009 to 9 316.[4]

It was not, however, only in terms of output that industry developed. The term "manufacturing" is in fact misleading. The period was one in which industry changed from a manufacture-based process to one in which there was a much greater reliance on machines. Factor production, rather than workshop production, became the norm, particularly in the larger establishments, and this development itself promoted the creation of these bigger establishments. Employment per establishment

1. Poulantzas, 1976, page 45.
2. R. Blackburn (ed), REVOLUTION AND CLASS STRUGGLE, 1977, page 43.
3. UNION STATISTICS FOR FIFTY YEARS, page S-3.
4. ibid., page L-3.

in industry increased in the period from 19,1 workers per factory to 38.8, while real output increased from £7 800 to £21 400.[1] This change affected in important ways both the labour process and organisation of industry, and these, in turn, altered the composition and nature of the labour force with consequent changes in the law which governed the workers.

These developments on the economic level, while distinctive in themselves, were connected with political and ideological factors which distinguish the period 1924 to 1945. As a start, 1924 was chosen as it corresponds with the formation of the PACT government - a pact of national capital within agriculture and industry, in alliance with white workers in the Labour Party. In the early twenties the labour movement had been particularly strong and militant, among both white and black workers, although organised separately in the main. 1924 saw the determined implementation of a policy aimed at taming the controlling this movement, a policy which reached a climax when the National Party, supported by white workers, eventually gained the electoral victory of 1948, at the end of the period. The period begins with the coming to power on the political scene of the Labour Party and with the establishment of a Department of Labour and Social Welfare. The latter, in its own words, "accepted responsibility only for 'races which subscribe to a civlised standard of life' and made its first aim the relief of unemployment among whites."[2] The intervening years were characterised by struggle - a struggle between those forces - economic political and ideological - which served to divide the workforce along skill and colour lines and thus weaken the strength of the worker onslaught as a whole - and between those forces which served to unite workers against capital. Before the period began division was not unknown. Workers in the 1922 strike fought for a "White South Africa, and the development of the struggle from the very beginning of mining production had been coloured by the skilled white workers' fear of competition by blacks. However, the following two decades were different. Firstly, a significant black proletariat emerged in industry, and became more and more involved alongside white workers, in the same labour process. A growing "poor white" problem and consequent increase in unskilled whites aggravated the "problems"

1. UNION STATISTICS FOR FITY YEARS, page L-3, H-14. Calculations of nominal output would give an even greater increase - from £9 500 to £32 600.

2. Simons and Simons, 1969, page 378.

this created. Secondly, in this period the state embarked on a policy, at the political level at least, of allying itself with the white workers against the black. In neither period did colour divisions militate against capitalist development, but the way in which they manifested themselves and were utilised differred significantly in the two periods.

A third factor which adds to the interest of the period is the wide range of changes, economic and political, which it incorporated: several industrial booms, the Great Depression, the Second World War, the presence of the "social democratic" labour party in several governments - all these occurred then.

There were also significant changes on the political scene. 1924 saw the Labour Party and National Party united in order to defeat the ruling South African Party. In the 1929 elections the National Party managed to obtain a majority on its own, without the Labour Party. The Labour Party, seriously weakened, and with only one[1] Member of Parliament, also moved to the right. Madeley had been expelled the year before after meeting with an ICU delegation. Cresswell, one of the more conservative leaders, increasingly dominated policy.

The weakened organisation of white workers, combined with the devastating effects of the Depression, affected the course of legislation. 1924 to 1926 had been years of intense legislative activity in the labour field, with the passing of the ICA, the Wage Act, Mines and Works Amendment Act, and the introduction of the "civilised labour" policy.[2] The following years were quieter. Several laws were amended in 1930 and 1931, but these involved minor changes. At the same time, as a reponse to the increased militancy of blacks in the ICU and ANC (especially in the Western Cape), the repressive and restrictive powers of the state were increased by laws such as the Native Administration Act (1929), the Riotous Assemblies Amendment Act (1930), and the Entertainments Act (1931). Other repressive and restrictive legislation for Africans, meanwhile, was added to every year between 1925 and 1932, culminating in the Native Service Contract Act in 1932.

1. Carter, 1958, pages 448-49. T.R.H. Davenport (SOUTH AFRICA: A MODERN HISTORY, 1977, Table 2) puts the figure at three.

2. See time table in Appendix I.

In 1933 a further change took place on the political scene. To cope with the combined effects of the Depression and the gold standard crisis, a white party coalition of the National Party and South African Party was formed. In 1934 these came together as the United Party, in the Fusion government. The government party now represented mining, industrial and agricultural capital, while the opposition was formed by the breakaway National Party members under Malan and a badly weakened Labour Party, the latter with two Members of Parliament.

After the abandonment of the gold standard the economy once again experienced growth. The growth of industry, in particular, and the changes in the labour force, necessitated changes in legislation. An Industrial Legislation Commission was established in 1934 to investigate the problem and make recommendations. In 1937 the Wage Act and ICA underwent major restructuring as a result of the findings.

In 1939, with the outbreak of war, the government alignments changed once again. A coalition government, from which only the Purified National Party was excluded, was formed, in an attempt to create the necessary support for the war. The early years of the war also witnessed an increase in many of the more welfare oriented laws, in an apparent concession for the support of the Labour Party. 1941, in particular, was a busy year, with fairly substantial amendments to the Miners Phthisis Act, Factories Act, and Workmens' Compensation Act.

The differing effects of all these factors on labour law thus provide useful indications both as to the role of law in an ever-changing society, and to a better understanding of these different periods and phenomena themselves. The importance of understanding the period 1924 to 1945 is also related to our understanding of the present. The period, coming prior to the Nationalist electoral victory of 1948, is important as one in which the basis of present-day South Africa was laid. By analysing both the differences and the continuities between this period and the post-1948 one, as well as the developments through the period, a clearer understanding of the present position in South Africa can be obtained.

IV

The State and Law

No study of the law would be comprehensible without a prior conception of the state in capitalist society.

> "The state and its legal mechanism and ideology cannot be treated as 'neutral' structures, whose class nature derives only from their content and from the character of the class which happens at any one time to control the mechanism. The class character of the state is expressed in the very forms of the state, which themselves derive from the nature of the class relationships which they embody and reinforce."[1]

Marxist theory perceives the state as forming part of the "superstructure" of the society. While the exact forms of linkage and dependence are by no means agreed upon, this superstructural institution is seen by all Marxist analysts as a reflection of the productive forces and relations forming the economic base of society.

Miliband, one of the chief writers, sees this linkage predominantly from an instrumentalist viewpoint. The state is seen as a tool, which those in power utilise so as to serve their own interests. His analysis thus concentrates for the most part on illustrating the role and nature of the various elites who administer the structures. Poulantzas, Hirsch et al., Picciotto and Holloway[2], while displaying significant differences between themselves, all agree that the role and bias of the state go further than this merely personal level of analysis would imply. Although Miliband's analysis is often borne out by facts, this is not seen as a necessary condition by the others, who conceive of the capitalist state as defined both by its forms, and more importantly, its function, rather than merely by the individuals who control it. This function of the state defines the form in such a way that the question of the individual occupying a particular office or position becomes unimportant. The form itself places limits on what can be achieved and tends to favour certain classes within the society. This view also multiplies the number of institutions seen as forming part of the state. The latter is not confined to purely political institutions, such as Parliament and the other governmental bodies. Rather all those institutions fulfilling functions of the state form part of it.

1. Picciotto, ?1977, page 1.
2. See bibliography for full references.

The main function of the state is that of cohesion of the social formation and all that entails. Capitalist society is by its nature ridden by conflict and contradiction. The system of private ownership of the means of production tends to divide the citizens into two classes of owners and non-owners. The production of commodities and the necessity to sell these before profit is realised, introduces competition between the owners and creates a secondary source of conflict. The state's role is to keep the society together by regulating or lessening these conflicts. The law is one means through which this is achieved.

Firstly, in laying down rules of behaviour, the law provides a predictable milieu, controlled to some extent, within which capitalist production can operate. By legitimising the idea of the legal individual, the individual commodity, and the former as owner of the latter and initiator of exchange, the law provides the framework for a system of expanded reproduction of commodities and capital. By concentrating on the level of distribution, rather than on production, the unequal nature of the system is cloaked by an exterior which makes everything appear fair and equal. By this same positing of individuals the law serves to isolate the workers from each other and discourage common organisation and struggle.[1]

The second major function of the law, related to the last point above, is that with which this thesis is chiefly concerned - the role of the state and law in regulating the class struggle. The state acts to encourage and support the organisation and unity of the bourgeoisie while discouraging such organisation and unity among the workers. At the same time the state takes over certain private spheres in an attempt to minimise areas of struggle. By itself regulating and administering certain areas of conflict, both between capital and labour, and within these two groups, the state decreases the areas in which labour itself can act, keeps regulation within acceptable bounds, and discourages organisation. In this way it safeguards the domination of the bourgeoisie.

The laws analysed in this thesis will be seen to fall squarely within this conception of the state and law. The ICA, the Wage Act, and the Riotous Assemblies Act, for example, control the organisation of the workers and keep it within acceptable bounds and operating along approved channels. Other features of the ICA and Wage Act, as well as the Factories

1. This point is elaborated in Chapter Two.

Act, discourage fierce competition among capitalists. In laying down minimum conditions they minimise cut-throat competition by small capital and enforce a fair amount of standardisation, usually at the level achieved by the more efficient and "progressive" capitalists. In acting thus the state safeguards and strengthens social capital - the sum of capitals, rather than the individual capitalist - and at the same time promotes capital's development.

At the same time that the state encourages unity among capitalists by lessening conflict and competition among them, the law acts to discourage organisation and unity among workers. In the first instance, by positing the individual as subject of the law, it militates against group or class organisation. Specific laws further weaken worker organisation. While the ICA provided for the organisation of workers in trade unions, this will be seen to have been a response to already existing organisation, and an attempt to control it, rather than the introduction of such organisation. In other instances legislation promoted division rather than unity. With the increasing proletarianisation of the population and the increasing competition for jobs among workers, the feelings of solidarity engendered by the experience of socialised labour in production were offset to some extent. The state encouraged this lack of unity by its differential treatment of workers on the bases of sex, age, skill, and particularly colour.

Davies asserts that "the history of South African labour legislation is a history of the enactment of laws specifically designed to benefit white labour at the expense of black."[1] This study will attempt to show, as Davies has done, that any benefit derived by white labour was not in contradiction with the general functions of the capitalist state. Such benefits as white labour received can be shown to be consistentt with the domination by capital of labour, whether black or white. Such discrimination discouraged labour unity. At the same time it encouraged white workers to see the state as their champion and protector. Capital, in order to rule, needed supporters. Preferential treatment of white workers secured an important support for capital, and ideological and political support for the state. South African capitalist development was based on the availability of a cheap labour force. It was thus impossible to make concessions to the whole labour force, as this would

1. Davies, in Adler (ed), 1977, page 133.

have entailed an unacceptable rise in costs. The white labour force was, however, small enough to be won over without jeopardising production, had an earlier militant history which warranted this pacification, and had already the political and economic advantages over the black workers which facilitated differentiation and further favours.

A wide range of instruments were used to effect this maintenance of the split among workers and the lessening of the split within the white group - capitalist and worker - as a whole. A full analysis would necessitate looking, among other things, at the "civilised labour" policy, employment schemes, work colonies, employment policies in government departments, the Railways and industry, the fair labour policy, and customs and tariffs in general. All of these ensured work for whites in times of depression, and ensured that when there was sufficient work for all it was the whites who got the better jobs. Also important, however, were the laws which affected the opportunities open to individuals from different groups. The "native" acts were discussed insofar as they acted to control Africans, in terms of oppo - tunity and freedom, within their position as workers. For the whites, on the other hand, differential educational advantages, the Farmers Assistance Act, the Land Bank, and the Pensions Acts were instituted, all of which helped either to avoid the proletarianisation of otherwise threatened whites, or to better the position of those who were workers.

The second function of the state, that of regulation of formerly private spheres, is illustrated by other laws analysed in this thesis. Worker organisation, agitation and militancy necessitated the laying down of minimum conditions by means of laws such as the ICA, Wage Act, Miners Phthisis Act, Workmens Compensation and Factories Act. The first of these then provided restricted channels for further organisation in the event of further demands arising, while the other acts all attempted to obviate, or minimise, further worker involvement in the setting of standards by handing this job over to state bodies. In this way both the demands of the workers and their solution were controlled.

This thesis, then, will examine industrial legislation in South Africa of 1924 to 1945 against the background sketched in above, in order to examine how the law and the state, in this specific case, fulfilled their functions of reproduction of the system, maintenance of the hegemony of the ruling class, and disorganisation of the workers.

The study proper commences with a further examination of the law itself. The institutions of the law will be examined with a view to establishing in what way the law itself, its framing and administration, function in the development of capitalism and in the struggle between capital and labour. The bias and inequalities inherent in the legal system, as well as the people who occupy the various positions, will be described and analysed.

The following five chapters will then look at particular statutes enacted and in operation through the period - the ICA (Chapter Three), the Wage Act (Chapter Four), the Factories Act (Chapter Five), Riotous Assemblies and related laws (Chapter Six), Workmens Compensation and Miners Phthisis Acts (Chapter Seven). After a brief outline of the ambit of the relevant act, the clauses and provisions relevant in terms of the study will be examined. The forces advocating and opposing the act, the reasons for their attitudes and the effects of the act once promulgated, will all be examined, as will the way in which the act was administered.

The penultimate chapter (Chapter Eight), rather than concentrating on one statute, as the previous chapters will, will focus attention on a period - that of the Second World War. At a time of crisis for the state itself, and one in which law of a significantly different nature was introduced, the period warrants separate and specific attention. War-time developments of the acts analysed earlier will be included in the relevant chapters. This last chapter will focus rather on the additional and extraordinary legislation passed specifically to meet needs generated by the war effort, and briefly, at the effects on labour legislation and administration in general during a period of crisis.

The thesis will not cover the whole gamut of labour legislation in South Africa during the period. Several obvious labour laws will be omitted (for example, the Apprenticeship Act, Work Colonies Act, and Unemployment Benefit Act). Many other laws having a bearing on labour will also be neglected. As production is the basis of human society, most, if not all, law will to some extent affect labour, and it is thus impossible to cover all "labour law" in a study of this nature.

It is hoped, however, that the laws chosen, and the insights they afford, will be adequate in demonstrating the form and function of labour law in South Africa between 1924 and 1945. The final chapter will summarise the findings of the preceding chapter and attempt to draw some conclusions and general trends from these. These, hopefully, will aid the formulation of an analysis of both the historical development and contemporary laws and situation in South Africa.

TABLE 1.1[1]

A: AVERAGE WAGES AND SALARIES FOR THE DIFFERENT COLOUR GROUPS IN DIFFERENT SECTORS 1924 - 1945 (£'s)

Year	Manufacturing					S.A. Railways & Harbours			Mining	
	Salary	Wage				Salary	Wage		Earnings	
	White	White	African	Indian	"Coloured"	White	White	Black	White	Black
1924/5	356,5	220,1	41,8	46,7	68,9	372,4	—	—	299,1	30,4
1929/30	363,7	221,0	44,3	62,0	88,0	357,2	220,6	45,8	300,6	29,1
1934/5	335,4	202,9	41,0	56,4	78,7	329,8	202,8	34,2	341,1	30,5
1935/40	380,8	234,8	47,3	69,7	87,4	356,8	238,7	40,5	391,6	33,4
1944/5	540,1	340,7	91,0	144,6	149,5	378,4	329,2	91,3	478,6	42,5

B: AVERAGE WAGES OF CERTAIN GROUPS AS PERCENTAGES OF THOSE OF OTHER GROUPS 1924 - 1945 (%)

Year	Average white wage as % of average salary		Average black wage as % of white wage			
	Manufacturing	S.A.R and H	African	Indian	"Coloured"	S.A.R.& H.
1924/5	61,7	—	19,0	21,2	31,3	—
1929/30	60,8	61,8	20,0	28,1	40,2	20,7
1934/5	60,5	61,5	20,2	27,8	38,8	16,9
1939/40	61,7	66,9	20,1	29,7	37,2	17,0
1944/5	63,1	87,0	26,7	42,4	43,9	27,7

1. Industrial Legislation Commission, UG 62-1951, Table 37. Any lowering of the white black ratio in the war years is due largely to the impact of the many lower paid white women rather than a structural change in the way white and black were remunerated.

CHAPTER TWO : LAW AND SOUTH AFRICAN SOCIETY 1924 - 1945

> "Law is the warp and woof of social life, and so far from being concerned with narrowly circumscribed areas, is all pervasive. It is not only concerned with the pathology of society, but with its physiology as well."[1]

> "Law in the sense of rules enforced by the State, extends very nearly over the whole range of human activity, and reflects the structure of the society and the relations between the members. An adequate sociological survey of South Africa's legal institutions would therefore include an examination of the way in which they articulate and reinforce the interests of the social classes, or maintain the cultural differences and inequalities in status of the various racial groups, or demonstrate the effects of industrialisation and of a growing urban society, or express changes in the form of government such as appear in the establishment of administrative courts and the delegation of legislative authority to the executive."2

This thesis is a study of labour legislation in South Africa between 1924 and 1945. One method of approaching this topic would be to enumerate all the laws passed in this period and examine them clause by clause. While this would give a detailed and accurate empirical picture of the legal structure affecting workers, it would not constitue any great advance in understanding the law and the functions it serves. What is more apposite and useful is a general understanding of what "law" is, where it originates, and how it in turn affects the society from which it is derived. This is a subject which, until very recently, had been badly neglected both in general western Marxist theories, and in South African studies in particular. This study will go a little way in attempting to redress this imbalance, and for this reason this chapter will be devoted to general remarks about law, its form, function and procedure. The actual structure and functioning of the whole legal system, the very concepts of legal theory themselves, are related to the form of society and give capitalist law its specific nature. As part of the totality of social relations of the society, the law cannot fail to reflect the class nature of that society.

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1. R. Hahlo and Ellison Kahn, THE SOUTH AFRICAN LEGAL SYSTEM AND ITS BACKGROUND, 1968. page 1.

2. H.J. Simons, "The Law and its Administration", in Hellman (ed), HANDBOOK OF RACE RELATIONS IN SOUTH AFRICA, 1949, page 41.

Labour law is only one subdivision of the total law of the society. The legal system as a whole, and not only labour law, however, has inherent bias which prejudices the case of the workers, even when the law does not appear to be directed at the work situation or working people in particular. The forms, functions, and institutions of the law, reflecting their societal base, might give a superficial appearance of upholding freedom, equality and justice, but in doing this they merely hide and true bias, and this concealment is in fact part of the function of the law. In this chapter the bias underlying this free and equal exterior will be examined.

Section I of the chapter will examine the fundamental concepts of the legal system to see in what way these reflect the principles and bases of capitalist society, in the economic, political and ideological spheres. Section II will describe what the law is, how it arises, and relate these two factors more specifically to the South African situation. The various divisions of the law, the nature of the legislature, and the administrative apparatus will be described insofar as they reflect class and colour biases additional to those in Section I. These two sections will form the most substantial critique of the legal system by describing those biases inherent in the form of the system itself.

The following sections will examine the more conjunctural biases, such as those in the nature of the individuals occupying important positions and fulfilling important functions, and that of the institutions themselves. While these are in many cases of a minor nature, when added together they can be seen to have the effect of significantly altering the extent of "justice" in impartiality in the law. The first discussion centres on the incognoscibility of the law - the difficulty for the average person to ascertain just what the law prescribes and proscribes. The discussion which follows then examines, in turn, the different branches of the law with which the alleged offender comes into contact - police, and the magistrate, jury and judge in the courts.

Finally, Section IV repeats the main points to be drawn out from the preceding analysis, an analysis which provides the basis upon which to place further analysis of specific laws and the struggles waged for and against them.

I

Creation of the conditions of capitalist production

> "As long as society is founded upon injustice, the function of laws will be to defend and maintain that injustice."[1]

It is the form of production and the needs of capital which form the structural basis of state and the law. Production occurs in a situation where the majority are dispossessed of ownership of the means of production, while the few gain every more concentrated control and ownership over these same means. The labour power of the many is exchanged in the market for its equivalent in money, and this labour power is then exploited so as to produce value above its own value. This surplus value, embodied in commodities, is then sold on the market by the capitalist, the owner of the means of production, who by this means increases his capital, and can reintroduce the process, expanding it, and increasing his profit in every ensuing cycle.

a) Freedom of contract - the private law

Private law is the system behind which this process operates. Personal law, business law, and contract law in South Africa are all based on the Roman Dutch system[2], a system first developed as a world law in Rome, during an earlier period of commodity production[3], and based on the regulation of things (commodities) rather than people or society. The basis of this bourgeois law is the individual, but the individual in his capacity as owner of commodities. The fundamental tenets are the mutual recognition of all these individuals as owners of private property, and thus private property as a fundamental human right, and a recognition of the freedom of contract, the right to dispose of one's property as one wishes.[4] The law proclaims all, worker and capitalist, as equal before the law. The only difference within this identical and formal social equality is that which each owns, but this, labour power for the former and means of production for the latter - whatever its size or nature - is guaranteed by the law. What remains hidden is the

1. Anatole France, quoted in TEACHERS JOURNAL, L, I, July-August 1978, page 4.

2. J.D. van der Vyver and F.J. van Zyl, INLEIDING TOT DIE REGSWETENSKAP, 1972, page 244.

3. F. Engels, cited in Maureen Cain, "The Main Themes of Marx's and Engels' Sociology of Law", BRITISH JOURNAL OF LAW AND SOCIETY, I (2), 1974, page 142.

4. B. Blanke et al, "On the Current Marxist Discussion on the Analysis of the Bourgeois State", in S. Picciotto and J. Holloway, STATE AND CAPITAL, 1978, page 123.

unequal nature of the exchanges and contracts guaranteed. In legal terms it appears that the capitalist gives the worker the full value of his labour power, and then, in turn, gives him in return for his wages, consumption goods equal to the full value of these wages. The law regulates the distribution process and here all appears free and equal. From the point of view of production, however, this can be seen to be a mere screen. "....what really takes place is this -- the capitalist again and again appropriates without equivalent, a portion of the previously materialised labour of others, and exchanges it for a greater quantity of living labour."[1] The worker receives nothing in return for this surplus labour.

Equality before the law and freedom of contract did not ensure true equality where the weaker party desperately needed something - access to the means of production in order to produce and earn a living - which the other had the power to give or withhold. The law did not guard that which was "just" or "fair", but left it to economic force in the first place, and the contracting parties in the second, to determine the agreement, enforcing any contract as long as there was not external and overt pressure. Once the contract was agreed upon, whether with the help of outright force, or merely by economic pressure, the "right to appropriate is once and for all conferred on the owner of the material.....(O)wnership ...while remaining in legal form an institution of private law implying the total power of doing with the thing what one likes, has in fact become an institution of public law (power of command)."[2] thus allowing the capitalist to extract more value from the labour than that of the labour power for which he had contracted so openly on the market. In South Africa, with diminished freedom of contract for the African workers, with restrictions on movement, employment, residence and association, the contract became even less free, limits being placed both in terms of restrictions on bargaining power and the role played by the "reserves" in depressing the value of labour power below its "normal" level.[3]

1. Karl Marx, CAPITAL, Vol. I, 1974, page 583.

2. W. Friedmann, LEGAL THEORY, 1967, page 370.

3. See Frank Molteno, THE SOUTH AFRICAN RESERVES, Honours Thesis, 1975, for an elaboration of this point.

Hobsbawm compares the twentieth century South African system to that of early nineteenth century Britain. He notes the similar complaints of the employers about the laziness of labour, and the tendency of the workers to work only until a traditional week's living wage has been earned.[1] "Draconic labour discipline" in the form of Masters and Servants Acts, fines, etc.,were used in both cases to force the workers to labour longer. The South African system did, thus, still to an unusually large extent display the use of outright force. The law helped, however, to make classs domination and exploitation opaque to the extent that direct force was not used. While force was important in the case of African workers, in the case of both black and white workers exploitation depended "primarily on the dull compulsion of uncomprehended laws of reproduction."[2] The method used above all, even in the case of African workers, was that of paying labour "so little that it would have to work steadily all through the week in order to make a minimum income."[3]

b) Regulation of capital - public law and administration

Private law does not encompass the whole legal system. Public law relates to the competence of the state to "interfere" within the private sphere, and to its operations as the state, or highest authority. "Safeguarding the rule which expresses the blind operation of economic relations of force goes hand in hand with the direct exercise of the means of force and power of the state for the specific and particular purposes of ensuring the reproduction and self-expansion of capital and the domination of the bourgeoisie."[4] Under simple commodity production, generality, specificity and the non-retroactive nature of the law[5] should be the necessary and sufficient conditions to provide a predictable and manageable framework within which producers can plan and conduct transactions and production. The private law functions here to prevent disruption and breakdown in the system. As production develops, however, so do the complexities and contradictions with the process. The role of private law becomes supplemented by

1. E.J. Hobsbawm, THE AGE OF REVOLUTION, 1962, page 70.
2. S. Picciotto and J. Holloway, 1978, page 24.
3. Hobsbawm, 1962, page 70.
4. Joachim Hirsch, "The State Apparatus and Social Reproduction", in Picciotto and Holloway, 1978, page 65.
5. Franz Neumann, THE DEMOCRATIC AND THE AUTHORITARIAN STATE, 1957, explains the significance of these various characteristics.

public law.

This second type of law, which comprises the bulk of formal legislation, regulates and controls the competition caused by the form of production and enhanced by the isolation induced by the individual nature of private law, between capitalist and capitalist, and between capitalist and workers. Picciotto sees this second category arising as a direct result of the increasing concentration and centralisation of capital,[1] and the fact that in South Africa procedural, witness and administrative law, all parts of public law, are based on English law[2], appears to bear this out. English law presented itself in the form of a law more adapted to a further development of the productive system than the Roman Dutch law, the production of commodities under capital rather than simple commodity production and exchange. The increasing contradictions in the system meant that conflict could no longer be resolved by the maintenance of mere exchange. State intervention was needed to regulate the unplanned struggle between capitals and ensure the continued dominance of capital as whole, but at such a pace that while capital survives and growns stronger, it does not kill the workers. Conversely, laws had to be made to control the workers in situations where they organised to try to overthrow the system. It is in this form that the law functions in its role as the representative of the general social (total) capital (as opposed to the individual capitalist), in the interests of the exploitative system as a whole, rather than the exploitation by the individual.

In later stages these contradictions became so intense that even this legislation was not sufficient. Direct planning of production was required to avert the tendencies of breakdown generated by the contradiction, and to control the inherent anarchy of the system.[3] "The general codes of the liberal form of law become the overblown regulatory systems of the bureaucratic apparatus, which take the form of 'delegated legislation', but in practice become no more than a validation

1. Sol Picciotto, MYTHS OF BOURGEOIS LEGALITY, unpublished typescript,?1977.
2. Van der Vyver and Van Zyl, 1972, page 244.
3. "Anarchy" is used here to denote the unplanned nature of production undertaken by a whole lot of separate and individual entrepreneurs.

for discretionary administrative decision -making."[1] Legislation provides for ever more bureaucratic and administrative control by individual officials and ministers.

c) Political and ideological functions

Thus far the law has been examined insofar as it relates to the capitalist system as a whole, and to the maintenance of the more economic conditions of that system and the reproduction of capital. Related to this, yet separate enough to form another distinctive function, is the role of maintenance of the political and ideological hegemony of the ruling class, and the disorganisation, or the disruption of the organisation, of the working class.

The law establishes the identical formal equality of worker and capitalist. Both have equal rights and duties before the law. A closer investigation dicloses a discrepancy in this position, however even taking into account the fiction of employer and worker as equal individuals. Hahlo and Kahn define a "persona", the legal individual, as "any being or object or aggregate of beings or objects which the law endows with the capacity of acquiring rights and incurring duties."[2] This allows for non-human 'persons'. As Wedderburn points out,[3] the employer is usually, under developed capitalism, a registered company or corporation, a separate persona from the shareholders or directors of the company. Thus already at this level the individual worker is pitted against a legal fiction and the employer as individual is protected. The fact that the company, rather than the capitalist, is the legal persona, does not either mean that the workers, who after all are objectively and materially part of the company, will benefit, or that their interests will even be considered, in matters affecting the company, and in litigation in particular. "....The duty of directors is to consult the best interests of the company, and that, in English law (and in South African - DB) means the interests of the shareholders ... They may take account of the interests of employees not directly, but only indirectly as they reflect upon the interests of their

1. Picciotto, ?1977, page 8.
2. Hahlo and Kahn, 1968, page 103.
3. K.W. Wedderburn, THE WORKER AND THE LAW, 1965, page 27.

shareholders."[1]

Insofar as workers are concerned, the interpellation as individuals serves a useful divisive purpose. With the development of production workers in a single productive unit come ever more to form a collective labourer, rather than to function as individual producers They exist as a group and have power as a group, rather than as individuals. The law recognises workers and their rights on the individual, rather than collective, level, and this serves to isolate and weaken them. Class solidarity and organisation become more difficult when issues and cases are fought on this individual level. When added to this the individuals have differential rights and access to privileges in law based upon their individual status, colour, etc., discouragement of organisation as a body or class is further enhanced.

One of the sources of strength of the law in regard to the maintenance of ideological and political hegemony is the fact that this role is often not perceived by the workers. Domination is exercised not only repressively, but also ideologically, and the most effective hegemony is the "spontaneous consent given by the great mass of the population to the general direction imposed on social life by the dominant fundamental group."[2] Law encourages workers to conduct legal affairs on an individual level and with a limited legalistic perspective which will not challenge the system. This encouragement is engendered by the very structure and concepts of the law, which, however, appear to enforce equality, rather than domination. Perception of this function of the law would allow workers to guard against it. The fact that it is hidden by a seemingly fair and equal exterior militates against such perception.

II

The extent of the law

Most people, when confronted with the question, "What is law?", would immediately think of statute law - direct law-making by Parliament. This, however, constitutes but a small portion of law in society.

> "The rules of law are ... to be found in a bewildering array of sources: the statutes of the Union Parliament,

1. Wedderburn, 1965, page 18.

2. Antonio Gramsci, quoted in Alan Hunt, "Perspectives in the Sociology of Law", in Pat Carlen (ed), THE SOCIOLOGY OF LAW, 1976, page 42.

> provincial councils, and subordinate legislatures, the legislation of the pre-Union colonies and states, the decisions of the Privy Council, the Union Supreme Court, and the pre-Union courts; the statutes and court decisions of the Netherlands during the 17th and 18th centuries, the writings of the Roman-Dutch jurists, the Roman law and the works of continental writers on the Roman law; and the decisions of the English courts..."[1]

Many writers go even further. Gramsci asserts that

> "law will have to be extended to include those activities which are at present classified as 'legally neutral' ... (which) operate wihout sanctions or compulsory obligations but nevertheless exert a collective pressure and obtain objective results in the form of an evolution of customs, ways of thinking, morality, etc."[2]

Such a view would include the rules and regulations of such institutions as the family, church, trade union, factory, which all have lawmaking and sanctioning powers in various degrees.[3] All these provide norms and rules for conducting everyday life and all impose penalties for contravention.

This wider definition of law is important. In relation to factory workers, this can be clearly seen in the distinction between factory rules and societal rules.

> "Two codes of rules and regulations affect the workers: the law upon the statute books and the rules within industry. The first determines their relationship as citizens to all other citizens and to property. The second largely determines the relationship of employer and employee, the terms of employment, the conditions of labour, and the rules and regulations affecting the workers as employees ... The second, except where effective trade unionism exists, is established by the arbitrary or autocratic whim, desire or opinion of the employer, and is based upon the principle that industry and commerce cannot be successfully conducted unless the employer exercises the unqeustioned right to establish such rules, regulations and provisions affecting the employees as self-interest prompts."[4]

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1. Simons, in Hellman, (ed), 1949, page 42.

2. Quintin Hoare and Geoffrey Nowell-Smith, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI, 1973, page 142.

3. Friedmann, 1967, and Van der Vyver and Van Zyl, 1972, are two other sources, of widely different ideological perspectives, which make a similar claim as to the definition of law.

4. CFLU ORGAN, December 1937, page 16.

This other law adds to the inequality of the system. The employer has an "unquestioned right" to lay down rules, and in this domain there is no pretence at democracy. The example also illustrates the role of ideology in the maintenance of hegemony. The rule of the employers is usually accepted without question. The power of ownership is the unquestioned power of command. The second informal system of law thus provides a support for the formal system, and while it is the latter which will be analysed below in detail, the former is important in establishing the ideological and political support for the formal structure.

Who makes the laws?

The basis of formal law in South Africa is the Roman Dutch system, and this section of the law is the so-called "common law". Statute law is brought into being in cases where the objective situation has so changed that old laws are not adequate to deal with the situation, or where new practices and ideas are opposed to those upon which the Roman Dutch law was based.

A statute in the strict sense is a law emanating from the legislature of the country, and in the more extended sense covers the legislation of all public bodies with original legislative capacity - in South Africa Parliament and the provincial councils. These bodies in turn delegate law-making power to local institutions in civic matters such as public health, buses, municipal rates and tariffs, and advertising control, and the whole is thus added to, and has preference in acases of conflict with common law. (The laws of this second group of bodies is subject, unless expressly forbidden in the delegating legislation, to the test of reasonableness in a court of law, although the courts are loth, as will be seen later, to use this power.)

The "normal" form of the bourgeois state is the liberal-democratic one, in which there is universal suffrage in one form or another, and where the state presents itself as a popular class state. Theoretically class domination is presumed to be absent, and all subjects of the nation are equal citizens before the law, with equal ability to influence decision-making and legislation.

In this "normal" form, contrary to all appearances, however, the state

continues to fulfil its function as guarantor of the status quo. Parliamentary democracy does not mean an equal voice for all citizens. Socially, some individuals and groups have more material and non-material power to influence groups, parties and individuals, and indeed society as a whole. The structures and form of the state bureaucracy and hierarchy limit the options possible for the capitalist state, and the ideological domination of the ruling classes further limit the perceived options. Functionally, the "(individual) doctrine of separation of powers, parliament's merely legislative powers, alienate it from the decision-making executive power."[1] Citizens vote once every three or so year to choose their representatives and the latter then have a free hand to do as they wish, as far as the structures will allow them, until the next election.

In South Africa even this parliamentary democracy and universal suffrage did not exist in the period under discussion. Here once again South African resembled England of the previous century rather than the more developed and "normal" bourgeois democratic form. Most blacks were excluded from voting. At the beginning of the period the franchise for the central Parliament and provincial councils was afforded only to those men who were literate and who had an income of £50 per annum, or fixed property to the value of £75. In 1930 this franchise was extended to white women, and in 1931 the income and property qualifications were dropped for white men. Meanwhile, in 1937, those African men (about 10 628 in 1935[2]) who had managed to earn the vote, were also disenfranchised with the passing of the Native Representation Act. Thus whites came to dominate the enfranchised to an ever greater extent. The enfranchisement of white women alone meant that black voters in the Cape decreased from 19,9% of the total voters role in 1929 to 10,9% in 1931.[3] Town Councils and the local institutions were elected by the rate-payers, in effect a property qualification in which few black were qualified.

The property and colour qualifications made this form of democracy a very

1. Shlomo Avineri, THE SOCIAL AND POLITICAL THOUGHT OF KARL MARX, 1968, page 210.

2. E.H. Brookes, "Government and Administration" in Hellman, 1949, page 29.

3. Cheryl Walker, WOMEN IN TWENTIETH CENTURY SOUTH AFRICAN POLITICS, M.A. Thesis, 1978, page 87.

obvious class rule. The right to vote was dependent upon one's position in the rest of society. Blacks, if enfranchised, were those who had money or property and the few privileged anought to have got some education. They were the (aspirant) petty bourgeoisie rather than the unskilled workers and peasants who formed the bulk of the population. The average black man and woman was thus excluded even in the election of representatives who would make, if not execute, legislation. For the average black worker the substitution of one government for another made little difference;

> "....the substitution of one capitalist government for another can bring no benefits to the workers. The Smuts Government was a government of, by and for the industrial capitalist. The Hertzog Government is one of rural capitalist, of big land-owners and farmers, which, true to type, is more thoroughly conservative and more blatantly opposed to working class interests than the more progressive governments of urban exploiters."[1]

The white workers were more privileged in that from the 1930's the franchise was virtually universal. By this means the formerly militant fraction of the working class was appeased and pacified and their support for the regime ensured. But even among white workers the benefits of the franchise were limited. Structural limitations in all liberal democracies were noted above. More mundane considerations further limited activity. DIE WARE REPUBLIKEIN noted the high costs involved in becoming a candidate for the central Parliament, a £50 deposit and another £500 "om stemme te werf en persone na die stembusse aan te ry."[2] Very few whites had even the £50 necessary for the initial deposit. Delimitation of constituencies further aggravated the imbalance. The procedures adopted were seen by the Labour Party as tending to"make the vote of a miner worth less than that of a farmer in the Orange Free State", thus "crippling the industrial workers' vote."[3]

White workers did manage to influence policy and legislation, and did elect representatives - Communist Party and Labour Party - to Parliament.

1. WORKERS HERALD, 12 May 1928.
2. DIE WARE REPUBLIKEIN, 12 October 1941.
3. Henderson, quoted in FORWARD, 16 July 1937.

It remains an open question, however, how far this presence led to concessions to these workers by the state, and how far the con ssions would have been granted even in their absence. McPherson notes the rise of the welfare and regulatory states in Western Europe, but attributes these to the needs of capital rather than the presence of workers in Parliament. The regulatory state arises because "the capitalist economy had turned out to need a lot of regulation and control to keep it on an even keel."[1] The welfare state arises "from the sheer need of governments to allay working class discontents that were dangerous to the stability of the state."[2] Equally, in South Africa, it can be argued that the conciliatory methods and measures adopted towards white labour were an answer to their militancy and importance in the economy and society, and the result of an attempt by capital to divide and weaken the working class as a whole. Inclusion of militants in Parliament served to weaken the onslaught of the workers rather than endanger the system. "The whole parliamentary system is farcical, but it seems to be taboo, and even the most violent revolutionaries, when they become members of Parliament, seem to look upon the system as sacrosanct and make no effort to amend or end it",[3] complained a worker newspaper in South Africa shortly after the PACT election of 1924.

The predominantly white parliament, dominated by those dominant in society, could not fail to act in a colour and class-biased manner. It was only natural that the law makers should act in their own interests and those of the people who put them in power. "As long as there are differences in the conditions of persons, legal differentiation is inevitable, ... such differentiation lest it offend against the postulates of justice, must not be arbitrary, capricious or unreasonabble; it must be based on objectively aacertainable and logically relevant distinctions in the conditions of men."[4] But to a class-biassed legislature, the question of whether a man is a worker or owner is a

1. C.B. McPherson, THE REAL WORLD OF DEMOCRACY, 1972, pages 10-11.
2. ibid., page 11.
3. FORWARD, 13 March 1925.
4. Hahlo and Kahn, 1968, page 34.

"objectively ascertainable and logically relevant" distinction, just as the question of the colour of one's skin is ascertainable and relevant in South Africa. "Justice is compatible with legal systems that discriminate between free men and slaves, between blacks and whites ... between rich and poor, between men and women. For all of these are "class concepts", groups which the legal order may consider as being equal or unequal in relation to each other."[1] Even where no overt or specific differentiation is made in the legislation, bias can and does enter into the question. "To be colour blind in a racist environment is simply to ignore the problem."[2] To be blind to class distinctions has similar effects. Ample evidence of the truth of these assertions is afforded by South African law between 1924 and 1945.

Administrative law

> "Monopolistic capitalism involves the organisation of production on an increasingly large social scale, although still within an essentially capitalist framework. The main contradictions of this phase, summarised by Marx in his analysis of the tendency of the rate of profit to fall and the countertendencies, can no longer be overcome simply by maintaining equivalence of exchange in the sphere of circulation, but increasingly requires the direct planning of production on a social scale. This means that the reproduction of capital increasingly takes place through the mediation of the state ... The general codes of the liberal form of law become the overblown regulatory systems of the bureaucratic apparatus, which take the form of 'delegated legislation' but in practice become no more than a validation for discretionary administrative decision-making."[3]

The period 1924 to 1945 covers the growth of the capitalist system in South Africa, and the consolidation of monopoly capital on a world-scale. It also covers the growth of such administrative type legislation described above, legislation designed to control the anarchy of production and the protests of the workers. This administrative law expanded in South Africa at a greater rate than the more "normal" type of

1. Friedmann, 1967, page 21.
2. K. Cloke, in Lefcourt, (ed). 1971, page 69.
3. Picciotto, ?1977, pages 7-8.

legislation, until a clear-cut distinction between law and administration became more and more relative, with legislative, administrative and judicial functions being combined in the same bodies.[1] The courts were no longer the only interpreters of the law. Parliament framed the statutes, the Governor-General issued regulations, but it was the civil servants who interpreted these regulations and determined to what extent they were to be implemented.

Hahlo and Kahn distinguish this type of law-making from truly delegated legislation, such as that of the provincial councils, or even city councils. They term the former "administrative quasi-legislation", and include in it the pronouncements of government departments and civil servants as to the meaning of ambiguous legislation and directives (for example, the differing interpretations of "civilised labour", which alternatively included and excluded "coloured" workers), and of departmental concessions.[2] The fact that the law could thus be classified into two components did not, however, alter the very real effects of administrative law-making. In effect, this law-making was even stronger than ordinary legislation in that the role of the courts in questioning it was more limited. Although the courts were entitled to rule on the reasonableness of the administration,[3] and although they were disturbed by the extent and growth of government by regulation,[4] they were not inclined to interfere with such delegated authority. Justice Greenberg stated that "the court will not place itself in the position of a supervising official and will not arrogate to itself the latter's right of dictating to the official concerned, not only what he has to do, but how he has to do it, but will allow a great deal of latitude in its scrutiny of his conduct and delay caused by the failure on his part to envisage the problem in its true perspective."[5]

Kentridge, a member of the newly elected PACT government at the beginning

1. Friedmann, 1967, page 438. G. Budlender, in LEXIS, No 1, 1978, provides a contemporary analysis of the spread of such administrative legislation. RACE RELATIONS JOURNAL, VI, page 137 gives the position in regard to Africans for the period covered by the thesis.

2. Hahlo and Kahn, 1968, page 165.

3. Van der Vyver and Van Zyl, 1972, page 101.

4. Cape Law Society Report, in SOUTH AFRICAN LAW JOURNAL, LIII, 1936, page 70.

5. CAPE TIMES, 1 April 1930.

of the period, fully appreciated the normous power this type of attitude placed in the hands of the administrators.

> "He said that he was one of those who advocated 'Jobs for Pals' ... in that ... they contemplated that as and when vacancies occurred in the Civil Service those vacancies, and particularly the important positions, should as far as possible be filled by supporters of the PACT so as to ensure that in the future the policy of the Government should be wholeheartedly given effect to in the administration of the country ... This was imperative, he said, as he believed that the saying, 'You can make the laws, provided you allow me to administer them', is as true today as when it was first uttered."[1]

The filling of posts by people with the right outlook extended from the lowest official - often a 'poor white' recruit - to the highest, the provincial administrator.

> "The National Convention itself ... realised that the Administrators had, of necessity to be of the party complextion of the Government in power ... It is absurd to suppose that the Administrator, who is a sort of petty governor, deriving his authority and glory from the Cabinet, can be regarded merely as an exalted Civil Servant or a glorified policeman..."[2]

The spirit of the administrative law was thus not likely to be any more pro-worker than ordinary Parliamentary legislation. The particular nature of the restraints and biases were different, but their origin was the same.

III

The critique of the law presented above is the fundamental one for an understanding of law in Capitalist society in general, and in the South African social formation in particular. It shows how the law can appear to safeguard freedom and equality and yet operate to ensure class domination and exploitation. The remainder of this chapter will deal chiefly with a subordinate source of inequality. While pointing out further structural and systemic sources of inequality, it will concentrate on an examination of ways in which the "rule of law" is violated, and on how the bias of individual agents and institutions

1. FORWARD, 26 June 1925.
2. FORWARD, 11 December 1924.

upset the neutrality of the law. Such inequalities exist in all class societies, but in a society like South Africa, with its many prejudices and social inequalities, such biases are even more important and numerous than usual. This secondary inequality, in which the law appears as a mere instrument of the ruling class, is always based on the more pervasive inequality whereby relations are reproduced "behind the backs" of the producers. The structure and the social relations these represent are the primary determinants of the form and function of the law. The allocation of individuals to fill the various roles, the social origin of these individuals and the malfunctioning of the law even within the limited objectives and ideals it sets for itself, are merely indices of the inequality of the law, and are derivative of, rather than original sources of, its inequality.

Incognoscibility

One of the biggest problems in regard to law is the question of to what extent it is possible for the individual to be aware of what the law is - that is, the law's cognoscibility. "To the laymen, and indeed to many practitioners, South African law bears that quality of 'incognoscibility' which Bentham attributed to English law. 'It has been said of the Roman Dutch law of today,' one authority has written, 'that its textbooks are antiquated and its weapons rusty.' The reproach is well founded..."[1]

The problem lies in the fact that the system is uncodified, and that the law lies in numerous and difficult sources, often in foreign languages, and sometimes untranslated. An estimate for England puts the necessary bibliographical requirements of an adequate lawyer at one to two thousand personal books and access to a library of about 50 000 volumes.[2] The interpretation of law, once it has been understood in the more literal sense, is also not always straightforward. It would be difficult for a layman to find out all the common law relative to any specific subject or circumstance, but even were he to do so, the understanding and knowledge of how this law would be applied, how the old notions would be adapted and interpreted in order to cope with modern problems not existent

1. Simons, in Hellman, (ed), 1949, page 42.
2. Mavis Hill, JUSTICE IN ENGLAND, 1938, page 76.

at the time the law was made, would still remain. He would also have to ascertain whether these old notions and laws had been superseded by subsequent legislation or not. Extensive legal training and experience are necessary to begin this task, and it is virtually never-ending. Professor G. Wille saw it as a "great advantage" that "it is possible to find every shade of opinion on almost every legal proposition in one or other of the Roman-Dutch authorities."[1] What it means for those subject to the law's provisions is that they can never be sure just what the law says.

The problem of incognoscibility also applies to statute law. Workers not only are differentially involved in the framing of the laws, but are also at a disadvantage in ascertaining what laws have been made and what they in fact mean. All legislation has to be published in some or other official publication - the Government Gazette, the official gazette of the province, or as a municipal bye-law. But the actual interpretation of these laws has to await their coming into operation. Law is made not only by what is enacted, but also by the previous judgments and decisions of judges applying this law. This means that in order to know the law, one would not only have to consult the vast array of different sources in which the original enactments appear, but also to follow the law cases to ascertain how judges have interpreted this.

The rich could afford to know the law. They could either engage a lawyer to do the work for them, or otherwise they were the ones with sufficient education and time to be able to attempt the task themselves. The workers were often illiterate and thus unable to do the necessary research themselves. African workers had an added disadvantage - that of language. All bills and acts were not only published in the stiff and formal language of the lawyer, but were also published in English and Afrikaans.[2] Likewise, when notices of regulations and agreements had to be posted up in the workplace for all to see, this was done in these two languages only. As such the law was "quite incomprehensible to the great majority of Africans."[3]

1. SOUTH AFRICA LAW JOURNAL, LIX, 1942, page 125.
2. Dutch was used prior to 1925.
3. UMTETELI WA BANTU, 7 September 1927, Editorial.

The Police

> "The European public, even that section of it which has reason to look upon the police as an enemy, are fully appreciative of their dual role, as protectors of property against the ordinary criminal and of white superiority against the non-Europeans. The police force is, indeed, the first line of defence and bears the stamp of a quasi-military organisation."[1]

On committing a crime, and sometimes even before this, the first branch of the state with which the offender comes into contact is the police, when either he is arrested or investigations take place. It is thus instructive to look briefly at this organisation.

While in terms of most state services - educational, medical, post office and telephone, utilities, etc. - Africans received less than a proportionate share of state provisions, in the case of the police the Africans were more than adequately attended to. For the country as a whole the Minister of Justice, De Wet, admitted that there was heavier policing in proportion to the population than in any other country.[2] This heavy policing was disproportionately felt by the poorer and darker sections of the population.

It is generally acknowledged that crime usually abounds in slums and poorer areas. Engels saw in crime "the earliest, crudest, and least fruitful form of the workers' revolt against social degradation and poverty."[3] Added to this in the South Africa case, the African workers had their movements and actions circumscribed by a vast array of major legislative and minor technical rules, all aimed at limiting their freedom of movement, residence, employment, association and expression, and thus restricting them in their place in the social structure. The abundance of crime was thus exacerbated. The statistics for 1939 alone, in respect of convictions for trivial offences by Africans, are startling, and evidence of the constant presence of the law-enforcing agents - the police.

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1. Simons, in Hellman (ed), 1949, page 75.
2. INTERNATIONAL, 2 September 1921.
3. Simons, in Hellman (ed), 1949, page 94, quoting from THE CONDITION OF THE ENGLISH WORKING CLASS.

TABLE 2.1[1]

CONVICTIONS OF AFRICANS - 1939

Offence	No.convicted	Offence	No.convicted
Drunkennes	38 271	Native Labour Act	19 459
Liquor possession	69 077	Pass laws	71 052
Location rules	21 584	Urban Areas Act	9 839
Masters and Servants Act	19 712	Taxation	95 716

The ever-present police performed a useful function, even when not apprehending offenders. The presence of these authority figures was a constant reminder of the omnipresence of the state, and the lack of freedom of the population. The African was generally unaware of his own rights and of the limits of the powers of the police. The presence of the police was thus often enough to prevent even that which was legal but might be perceived as a threat to the system. Police supervision could thus play an integral part in the disorganisation of the workers.

The fear of arrest and harrassment for legal actions was not entirely unwarranted. It was not only the workers who were not aware of the limits of the law. The police, too, were not well informed. Black policemen had no formal training besides drill[2] and,"with rare exceptions ... (the policeman) was unable to write or read."[3] Witnesses to the Police Commission actually admitted that within rural areas uneducated Africans were considered to make better policemen.

The white section of the police force was an important avenue to which "poor white" unemployment was channeled, and thus consisted of individuals most threatened by black workers. The average policeman was often uneducated, and prone to a "nazi en Fascistiese gesindheid."[4] Their training was also gravely insufficient. Foot policemen, for example, spent only 140 of their 544 training periods on the study of police regulations and laws.[5] Once in service, the bureaucratic organisation

1. Police Commission, UG 50-1937, page 69.
2. ibid., page 18.
3. ibid., page 14.
4. WARE REPUBLIKEIN, 24 January 1942.
5. Simons, in Hellman (ed), 1949, page 78.

of the force encouraged a marked tendency to measure police efficiency by the number of arrests and convictions, and by the aggregate amount of fines or prison sentences imposed.[1] Innocent people were often apprehended, and because of inability to meet bail requirements and because of the over-conscientiousness of the police, were forced to spend time in jail awaiting trial. Suspects were treated rudely and often assaulted. Illegal pre-trial questioning of the accused and witnessed occurred, without legal aid being offered, and the accused were often advised to plead guilty in the hope of thus receiving lighter sentences. Many other workers chose to plead guilty in the hope that they would thus be enabled to return more quickly to their jobs, and thus not forfeit wages and job. Even before trial, therefore, workers had a greater chance of unfair treatment and prejudice before the law.

The Courts

a) Magistrates

It is probably justifiable to state that magistrates heard most cases involving workers. The lower courts were restricted in terms of crime and punishment in their jurisdiction, hearing all the "less important" civil proceedings and criminal trials.[2] In 1943 94% of prison admissions were for such "less important" convictions, in that sentences of less than six months were imposed.[3] The scope of this thesis concerns mainly criminal cases of contravention of statutes or civil cases where breach of contract between employer and worker were concerned. In the latter case the employer was unlikely to be an African, and the alternative of a Native Commissioner Court was thus also ruled out.

The predominance of lower court hearings made the magistrate's role very important. The accused, if a worker, and especially if black, was not only tried by a man who was not his peer, but also by one who from the outset was inclined to be prejudiced against him and tended to accept the case of the law enforcement agents.

1. Police Commission, UG 50-1937, page 35.
2. Hahlo and Kahn, 1968, page 237.
3. RACE RELATIONS JOURNAL, XII, 1945, page 66.

> "Much of the magistrate's experience is gained before his elevation to the bench, as clerk of the court or as public prosecutor. In these capacities he develops a tendency to view the machinery of justice from the standpoint of the prosecution, and through an intimate association with the police, to acquire a dangerous confidence in their infallibility. To accept the evidence of a police witness against the uncorroborated evidence of the accused is very nearly a principle in the magistrate's courts. The bias, however, is not only acquired through earlier training; it is also a product of the conditions under which the courts function. Overwhelemed in the larger centres by a great mass of petty cases, most of them undefended, the courts are constrained to adopt the most expeditious methods for completing the roll. Unable for want of time to investigate cases thoroughly, they assume tacitly that the police would not have laid a charge if the accused were not guilty of some offence."[1]

Lack of legal advice, and defence, ignorance of the law on the part of the accused, and pure disregard for the humanity of many of the accused, creates a "sausage-machine court .... churning out 'criminals'."

> "Seven minutes for thirteen cases ... Any man with an unbiased spirit will be anxious to know whether real justice can be meted out at the rate of thirty seconds per case. Why, it takes that time for a prisoner to plead or for a witness to take the oath, and it should take the smartest of smart magistrates at least five or ten minutes to write down the records of the shortest case imaginable."[2]

In the country, where the magistrate, by virtue of living in a small, relatively closed, community was more open to public pressure and opinion, the effect was exacerbated. Magistrates who gained a reputation of lenience with regard to workers - usually farm workers - in regard to trials under, for example, the Masters and Servants Act, could find their fellow "dorpenaars" complaining to the relevant Minister. Although there would not, as a rule, be open interference with the judgments, the complaints would not be neglected or forgotten.. They would be recorded in the Departmental files. The man might suffer both social ostracism by his peers, as well as his chances of promotion being jeopardised by these records.

The worker could, of course, have his own counsel to put his side of the case and try to deflect the bias. Procedural complications made self-defence a difficult and rarely successful venture. Where legal help was available, cases could be won. Barend Van Niekerk reports

1. Simons, in Hellman (ed), 1949, page 61.
2. WORKERS HERALD, 6 April 1927.

a case where an African worker was arrested on an ordinary pass offence. His employer "took the matter on appeal to the Supreme Court and had the conviction thrown out by a Full Bench under circumstances in which hundreds of thousands of Africans over the past twenty-five years could have had their cases thrown out. The availability of a competent and vigorous defence, and the willingness to fight the whole way, made all the difference."[1] But the cost of defence was usually prohibitive for a worker. The prosecution's case is paid by the state out of taxpayers' money, but the accused is expected to pay his own defence fees. Most cannot afford this, or have, in the absence of committed lawyers, to make do with inferior lawyers, unless their trade union comes to their aid. For the lawyer "it is the gelt not the guilt that determines in most cases."[2] The "well-heeled type (of lawyer) ... will fight for justice till his last breath or the last cent of his client, whichever event, as the saying goes, comes first. In most cases he will have a second breath soon after the disappearance of the last cent."[3]

b) Juries

Some law reformers see the remedy for the possibility of bias in judgment in a jury system. This system is one where the accused is allegedly judged by a panel of his "peers". In countries other than South Africa the system is, however, still found by many observers to have an inbuilt tendency to bias, in, for example, educational qualifications, the pressure and persuadability of public opinion, and the legal ignorance of the juries.[4] Bankowski notes that juries only too often reflect what they think the judge wants.[5] In South Africa the case is aggravated when juries were used. Juries were employed in a limited number of cases here until 1969, when they were phased out completely. They consisted solely of white males, until 1931 when white female jurors were allowed in certain cases.[6] This in itself was enough to prejudice the case against any black accused, and was added to the

1. Barend van Niekerk, in SOUTH AFRICAN OUTLOOK, 1975, page 141.
2. Robert Lefcourt (ed), LAW AGAINST THE PEOPLE, 1971, page
3. B. van Niekerk, in SOUTH AFRICAN OUTLOOK, 1975, page 141.
4. D.N. Pritt, EMPLOYERS, WORKERS AND TRADE UNIONS, 1970, as well as his other books, and Mavis Hill. 1938, can be consulted for elaboration on this point.
5. C. Mungham and Z. Bankowski, "Legal Profession and Judicial Process", in Carlen (ed), 1976, page 212.
6. Act 20 of 1931.

ordinary disadvantages. "There is little to suggest that the jury would have acted as a 'bulwark of liberty' in South Africa", except perhaps in cases such as that of the 1922 strikers.[1] The Minister of Justice, Tielman Roos, in opening the Native Conference of 1924, himself admitted to "the complaint that a jury in the case of crime against Natives is prone to acquite or convict of a smaller offence than that actually perpetrated."[2]

c) Judges

In the higher courts, too, the individual agents in the state apparatus were not such as to favour the worker. Advocates are not allowed to work for reduced fees without the prior permission of the bar council. Monetary considerations thus excluded most workers from appeal to the higher courts. However, even when the money was obtainable, and the worker dissatisfied enough to feel the extra time, expense and trouble justified, or where the case was serious enough to go immediately to the higher court, the judge presented a barrier to justice with much the same result as in the case of the magistrates of the lower courts.

> "Judges, like magistrates, are exclusively Europeans. They are recruited mainly from the Bar; the few exceptions consist of government law advisers appointed to the Bench. Appointments are often made for political services, as well as juristic distinction. The transition from political action to judicial objectivity is usually rapid and thorough, but years of political partisanship cannot fail to leave an ineradicable impression. Nor can the judge divorce himself from the outlook acquired in practice at the Bar."[3]

A naive conspiracy theory of the law would see society "dominated by an intellectualised version of Freemasonry; a knowing, self-interested and capable elite."[4] Judges and advocates were drawn from one small section of the population. The SOUTH AFRICAN LAW JOURNAL carries life-stories of some of the more important personalities. A

1. John Dugard in Ellison Kahn (ed), SELECT SOUTH AFRICAN LEGAL PROBLEMS, 1974, page 62.

2. Dept Native Affairs, 1924, page 21.

3. Simons, in Hellman (ed), 1949, page 59.

4. Rock, quoted in W.G. Carson, "Symbolic and Instrumental Dimensions of Early Factory Legislation", in R. Hood, CRIME, CRIMINOLOGY AND PUBLIC POLICY, 1974, page 109.

few of these are "rags-to-riches" stories, but most had attended SACS or Bedford School[1] and had the corresponding outlook and way of life. Most appear, by the time of writing, to have achieved a stable position in the middle and upper segments of the population, with the minimum salary for a judge being £2 250 per annum after 1934.[2] They had had a legal training that was thorough, but which excluded a relation of the law to the social sciences. (Even today, with the current popularity of industrial relations type courses in the university, labour law is only one half course, at most, of the 23 courses necessary for the degree of B.A. Ll.B, and this is regarded as a great advance on the earlier legal education.) As such, law education was a formalist one, with law developed into a "skilled craft, a professional technique pursued with less and less regard for the social matter which it was to regulate." [3]

On the level of the social status of the individual incumbents of the positions of power in the legal system, the conspiracy theory thus seems to be supported. But this is obviously too simple a view. It is the system within which they operate that provides the greater bias to their actions.

> "Just as power in a capitalist society is not concentrated in the capitalist as an individual, the law's protection of the middle and upper classes is not exercised directly by individuals. The enforcement of criminal sanctions is dictated by the necessities of the economic and political system in which the profit motive is central."[4]

Judges and magistrates do occasionally adopt positions or reach verdicts favourable to the working man, but against the system which makes the laws, and the system in which they have to judge, and indeed have to spend their whole lives, they are powerless to act consistently in the workers' interest. The structural limitations are against this.

> "... the criminal law, the whole of which is of course instinct with reactionary orthodoxy, forbidding most of the things which some of the poor would naturally

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1. Albie Sachs, JUSTICE IN SOUTH AFRICA, 1973, page 46.
2. Judges Salaries and Pensions (Amendment) Act, No 30 of 1934, clause 1.
3. Friedmann, 1967, page 71.
4. Lefcourt, 1971, page 23.

> tend to do to the annoyance of the rich, and not doing much about the anti-social things which the rich are prone to do."[1]

A legal system which does not view sending people underground to dig for gold, asbestos and mercury as criminal, yet feels that taking food when dying of hunger is against the interests of "society", is not one which operates equally in the interests of all in the society. Judges who ignore the social bias of the law are themselves biased, but this is almost inevitable with the existing social and educational set-up.

> "The habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature, that, when you have to deal with other ideas, you do not give as sound and accurate a judgment as you would wish. This is one of the greatest difficulties at present with labour. Labour says, 'Where are your impartial judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice?' It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your own class."[2]

The bias of the judges is particularly important, because it has relevance not only as far as individual judgments are concerned, but also because judge-made law is an important part of South African law. By the "stare decisis" rule, a court has always to decide according to the ratio or reason of a higher court when this has been taken previously. (The rule of precedent). The law is not definite and all embracing, and there is much scope for judicial law-making. Firstly, there is the factor of human fallibility of the law-makers, their inability to foresee every eventuality. Secondly, "efforts at precision where the circumstances do not permit it may well result in a failure to achieve legislative intention."[3] "Theoretically law is capable of dealing with every concrete situation that may arise, a fiction that must be maintained at all costs if the divisin between judiciary and legislature is not to break down. In fact every system is incomplete in coverage, and the gaps have to be filled in as they

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1. Mavis Hill, 1938, page 83.
2. Lord Justice Scrutton, quoted in Pritt, 1970, page 50.
3. Hahlo and Kahn, 1968, page 179.

are revealed, by judicial law-making."[1] The legislators leave these gaps and must have enough confidence in the judges' support of their basic intentions and prejudices to leave the finer details to the latter.

Judges thus actually had quite a wide range of freedom in interpreting the law, and this interpretation had a marked effect on what the law actually said and did.[2] In South Africa positivism was the ruling principle of interpretation, an approach which "has always flourished when the laws favour the group of which the legal administrators are representative. It enables the courts to take the laws at their face value and to avoid functional enquiries which might disclose the sectional interests advanced by these laws."[3]

In South Africa of the 1930's the judges' interpretation and its role on the form and content of law was even more restricted that is usually the case, even within this positivistic approach. The Appeal Court "appeared to emphasise its subservience to the legislature rather than its independence of the executive." A future Chief Justice (Stratford) stated that Parliament could make any inroad it wished upon the "life, liberty or property of the individual", and the courts would feel bound to abide by this.[4] The judges were thus not the bulwark of liberty they would like to have considered themselves.

IV

Conclusion

Workers were thus at a decided disadvantage before the law. The concepts and form of the law incorporated notions and principles favourable to the continued reproduction of the capitalist system, and the simultaneous disorganisation of the ruled. The actual legal procedure and institutions themselves carried added bias in the form of the social origins of the individuals who controlled them and the complicated procedure, a bias which started with the framing of the legislation itself and ended only with the imposition of punishment.

1. Hahlo and Kahn, 1968, page 304.

2. SOUTH AFRICA LAW JOURNAL, LV, 1938, pages 187-194, gives the principles of interpretation in South Africa, and the leeway and freedom these afford.

3. C. Dugard, Inaugural Lecture, 1971, quoting Mathews, page 11.

4. Sachs, 1973, page 246.

The law often failed to live up to even its own limited ideals and principles.

As shown above, the blame should not be laid on the courts alone, however, or on the agents of these courts. The court only adjudicates the law; first it has to be made and prosecution instituted. "Whenever the legislature attempts to regulate the differences between masters and their workmen, its counsellors are always the masters."[1] The laws and the system are thus biased against the workers from the outset. Such bias is found in all capitalist legal systems, but the South African system has an added bias relevant to the more repressive nature of the regime and the related colour divisions in the population.

Nonetheless, it is not always that the workers' perception of the law is such as to allow them fully to appreciate the reality of the law's inequality. The law is an instrument of ideological domination, as much as of repressive domination. Such is the ideological sway of the ideas of the ruling class that despite the obvious biases in the law, workers often still believed in it. Lawyers and the courts were only too often looked upon as the defenders of the workers, their protectors against injustices. Champion, ICU leader, called the organisation's legal adviser, Mr Cowley, "the greatest gentleman in Durban - and Natal for that matter - ... a man who gives up his livelihood for the protection of an inarticulate people."[2] Trade union and worker struggle was often waged in the courts rather than in the factories or in the streets.

IKAKA LABASEBENZI provides an example of perception unusual in a dominated working class, yet one which gives a better picture of the limitations of the law:

> "There are certain matters in which legal defence is of the utmost importance. But we do not want people to think that they can win their freedom merely by employing lawyers. Even employing the cleverest lawyers in the country would not save one from being arrested and charged under the pass laws. The chief weapon in the hands of the people is mass protest and publicity ... In this way we can secure recognition and win justice and freedom, which can never be brought from the lawyer."[3]

1. Adam Smith, quoted in frontispiece to Pritt, 1970.
2. WORKERS HERALD, 17 May 1927.
3. IKAKA LABASEBENZI, April 1936.

CHAPTER THREE : THE INDUSTRIAL CONCILIATION ACT

> "Legislation providing for the institution and registration of trade unions in South Africa dates back to the early years of this century ... As these laws have in the main been directed at white wage-earners, their fundamental purpose has often been misunderstood. Repeated state interventions, often against the protests of individual capitalists and fractions of capital to confer substantial economic and social benefits on white wage-earners, have fostered the belief that the industrial conciliation system in South Africa is designed to benefit white wage-earners as much as, if not more than, capital. This however is a fiction. The industrial conciliation laws directed at white wage-earners were and are, like all such laws emanating from a capitalist state, fundamentally aimed at defending the political interests of capital, under conditions of class struggle which make the undermining of trade union combination impossible or impractical."[1]

The present chapter deals with the Industrial Conciliation Act of 1924. As one of the pivotal acts of the labour legislation system, this Act is fundamental to an understanding of the system. The attitude and reaction of the South Africa state to worker organisation is one example of the world-wide phenomenon in which, by various forms of recognition and registration, such organisation has been restricted and controlled. The differential treatment of different groups of workers within this measure introduces the particular South African slant, with its emphasis on characteristics of both class and colour. The description and analysis which follow will attempt to illustrate the truth of the assertions made by Davies and Lewis above, by showing the interrelation of these two different aspects of the measure - one unambiguously favouring capital, the other ensuring its interests in a more roundabout way by discrimination between workers.

Section I of the chapter will summarise the history of the Act, in order to demonstrate the necessity for some such measure in 1924, as well as the content of and changes in the Act occurring within the period 1924 to 1945. The following sections will deal with the various provisions of the Act under the headings of

(a) the right to organise (Section II),

(b) the right to collective bargaining (Section III), and

(c) the right to strike (Section IV).

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1. R. Davies and D. Lewis, "Industrial Relations Legislation: One of Capital's Defences", REVIEW OF AFRICAN POLITICAL ECONOMY, VII, 1976, page 58.

The mere adoption of these categories is a statement on the ambit of the Act. All these rights, while very important, are ones which can operate within capitalist society, and indeed assume such a society, with the antagonism between capital and labour. The rights are aimed at a settling or diminution of such antagonism. A second difficulty with such a classification is the overlap between the three. None of them can be discussed in isolation from the others. The right to organise and bargain means nothing if the ultimate weapon of a strike is denied. Similarly, a strike without the backup of organisation, is usually an expression of weakness, a last resort when all other methods of persuasion fail. Despite these difficulties, the structure adoped will, hopefully, illustrate some important aspects of the Act, the intentions of its proponents, and its effects. It is these aspects and insights which will be summarised in the concluding section, Section V.

I

History of the Act

Davies[1] provides a detailed study of the history of the Industrial Conciliation Act (ICA), in which he demonstrates how the Act and all its precursors were a definite response to heightened struggle on the part of white workers, together with the first stirrings of black labour organisation and militancy. He traces the Act back to the 1909 Industrial Disputes Prevention Act[2] of the Transvaal. This Act was passed in the wake of the militant organisation of white workers on the Rand and catered primarily for the mines and local authorities providing essential services, in which it would "aid in the Prevention of Strikes amongst Employees or Lockouts by Employers and ... make Provision for the Settlement of Industrial Disputes by Conciliation after Investigation."[3]

In 1914, after industrial trouble had again erupted on the Rand, another Bill was introduced - the Industrial Disputes and Labour Bureau Bill. Whereas the 1909 Act had provided no special role for trade unions (TUs), any group of more than ten (white) workers being able to utilise the machinery provided, the 1914 measure provided for the forming of TUs

1. R. Davies, CAPITAL, THE STATE AND WHITE WAGE-EARNERS, 1977, pages 107ff.
2. Act 20 of 1909.
3. Preamble to Act 20 of 1909.

according to employer rather than on craft lines (an early attempt to institute company unions?), with the same compulsory conciliation principle contained in the 1909 Act. The bill was passed by the House of Assembly, where it was vigorously opposed by the Labour Party strengthened by recent election victories, as a bill which would only delay settlement of disputes, and therefore act in capital's interests. Characterised by the Member of Parliament, Fawcus, as "hasty, ill-considered and panic-stricken legislation"[1], the bill was rejected by the Senate because of the "vehement" labour protest,[2] as too harsh and precipitate a measure for the few TUs then in existence.

In 1922 the Brace Commission began to operate, concentrating on the mines, in an attempt to devise better conciliation machinery for white workers. Their concern was even more exclusive than the 1914 one in that it was now confined to unionised white workers only. A bill emerged in 1923 based on the Commission's findings, and met with weak protests from the Labour Party and white trade unions, both of which were weakened after their recent defeat in the 1922 Revolt. This bill was eventually rejected by the trade unions, more because of its dubious origins and history than its actual content perhaps, but this was not the end of the principle. In 1924 came the "voluntary"[3] negotiating machinery of the 1924 IC Bill, which was passed by both houses and became Act 11 of that year.[4] This was basically the same act as that first passed by the Smuts government. Although the balance of power on the political scene had changed, the Act actually "represented a rather less conciliatory approach than the earlier system which had operated in the mining industry",[5] and on which it was based. Nevertheless, it was passed "almost without opposition. Most of the Trade Union officials ... and other labour MPs supported the Bill."[6] Simons and Simons assert that the TUs accepted the new Act "gratefully".[7] This reaction can be explained both by the weakness of

1. HAD, 1914, col. 4298, quoted in L.E. De Broize, 1924 - A VICTORY FOR CAPITAL, 1977, page 110.

2. J.A. Grey Coetzee, INDUSTRIAL RELATIONS IN SOUTH AFRICA, 1976, page 13.

3. So-called, although it still had distinct elements of the previous compulsory conciliation of the previous bills.

4. Davies (1977) and De Broize (1977), both give more detailed and analytical histories of the Act.

5. Davies, 1977, page 8.

6. W.H. Andrews, CLASS STRUGGLES IN SOUTH AFRICA, 1941, page 37.

7. H.J. and R.E. Simons, CLASS AND COLOUR IN SOUTH AFRICA, 1969, page 321.

of labour and by the concessions to white, organised labour.

Outline of the Act

The full preamble to the ICA of 1924 was "To make provision for the prevention and settlement of disputes between employers and employees by conciliation; for the registration and regulation of TUs and private registry offices and for other incidental purposes."[1]

The Act provided for the establishment and procedure of ICs and conciliation boards, and for the appointment and functions of mediators and arbitrators to settle disputes. Industrial councils were permanent bodies composed of an equal number of elected representatives from both registered TUs and employers organisations (EOs) in a given industry, and were an attempt to institute home rule, and thus peace, in these industries. Conciliation boards, mediators and arbitrators were the various ad hoc means provided for dealing with particular disputes in industries where either no IC existed, or the IC had not been able to avoid or settle the dispute. The various statutory bodies were all given wide powers (subject to ultimate approval by the Minister of Labou before becoming enforceable as law) to lay down wages, hours, and conditions of work. Once a conflict had been declared in an industry, and while it was being dealt with under the IC machinery, all strikes and lockouts were prohibited until the IC, mediator, arbitrator or conciliation board had reported to the Minister.

The 1937 Amendment did not introduce any fundamental changes in direction, when it provided "for the registration and regulation of Trade Unions and Employers Organisations, for the prevention and settlement of disputes between employers and employees, for the regulation of conditions of employment by agreement and arbitration, for the control of private registry offices and for other incidental matters."[2] While significant changes to cope with a changing situation were introduced in 1937, the Act retained its earlier ambit and aims. The changes merely reflected the changing interrelation of skill and colour in a workforce subjected to the simultaneous processes of mechanisation and industrialisation. The 1924 Act, together with its later amendments,

1. Act 11 of 1924.
2. Act 26 of 1937.

in short, an attempt, after the industrial and particularly mining, trouble of 1907, 1914 and 1922, to control the labour movement. To do this it attempted to REGULATE the trade unions, and to PREVENT or SETTLE disputes, so as to ELIMINATE strikes, both in organised industries, and in industries not governed by ICs (for example by arbitration in trades under the Wage Act.) In doing this it controlled and restricted three fundamental areas of worker strenth,

(a) the right to organisation - by the registration of TUs,
(b) the right to bargain - by the prevention and settling of disputes, and
(c) the right to strike - by the attempted elimination of strikes.

II

The right to organise

The ICA did not make provision for TUs. These had existed before. All workers in South Africa had the common law right to combine into organisations to "protect, preserve and further their interests by means of collective bargaining", and these organisations had the status of "voluntary associations".[1] The Act attempted to control and contain the unions already established[2], and to discourage the spread of unionism among the unskilled, black, and as yet largely unorganised workers.

In order to evaluate the effectiveness of the Act in this regard, it is helpful to look at international trade union theory, and then to compare this with the South African experience.

Trade unions outside the South African context have been seen by revolutionary leaders as tending to reformist action and ideology, if not being actually counter-revolutionary. Hyman[3] provides an exposition of the more noteworthy of the theories as to why trade unions tend in this direction in his summary of the thinking of Lenin, Michels and Trotsky on the subject.

Lenin wrote of the dangers of economis and the integration of the unions into the system. Without an explicit revolutionary ideology

1. "...a legal relationship which arises from an agreement among three or more persons to achieve a common objective, primarily other than the making and division of profits." (J. Bloch, LLM Thesis, 1977, pp.17 and 30.)

2. The Hansard debates provide ample evidence of these aims.

3. R. Hyman, MARXISM AND THE SOCIOLOGY OF TRADE UNIONISM, 1971, and INDUSTRIAL RELATIONS: A MARXIST INTRODUCTION, 1975.

a "trade union consciousness" rather than a "class consciousness" would concentrate on bread and butter issues, rather than wider political ones. If these objectives proved attainable within the capitalist system, the TUs were likely to restrict their demands and become integrated into the system as part and parcel of the general economic, political and ideological framework.[1] Organisation on industrial lines would tend to emphasise these economistic and sectoral emphases.

Michels analysed the oligarchic tendency in unions. For the most part it is an impossibility for all TU members to participate in the running of a union's day to day activities. While all can participate in a strike, negotiation and administration require the activities of only a few union leaders and organisers, and this tendency is aggravated the larger and more established the union, and the more complicated the procedure and history of negotiation. As time passes, institutional needs tend to take predominance over workers' needs, and the organisation develops "a profoundly conservative character,"[2] with the emphasis being on conservation and protection of the union itself and the leaders' positions.

Trotsky concentrated on the active and deliberate strategy waged against unions by capital and the state, as opposed to the unintended and structurally determined tendencies analysed by Lenin and Michels. Trostky's thesis was that capital and the state usually attempted to incorporate unions within the system. "Union leaders, having acquired authority over their members, are used to assist capitalism in controlling the workers."[3] As this tendency increases, the unions grow closer and closer to the state itself, becoming part of the state (ideological) apparatus.

Hyman's work examines both the tendencies mentioned above, and the counteracting tendencies which would tend to stave off these trends. In the analysis which follows the general form of the South African social formation and the particular form of the ICA will be assessed insofar as they affected the development of these tendencies and counter-tendencies.

1. Hyman, 1971, pages 11-14.
2. ibid., page 16.
3. ibid., page 18.

As far as incorporation was concerned, the 1914 Commission had realised that,

> "Recognition creates responsibility ... experience proves that organisation in the open, made sober by recognition, is a very different thing from organisation which has to fight against contempt ... Moreover, the (trade union) official is more likely to take the business point of view and examine the situation calmly than the workman who has some personal grievance rankling in his mind."[1]

By providing that non-African trade unions could (and the Act seems to imply that they had to do so under the ICA, and that the Registrar was, in turn, obliged to accept this registration) register under the Act, recognition was officially conferred upon the TUs by the 1924 Act.

Lack of militancy and conservatism were encouraged by the protection afforded by registration. The registered unions were not dislodgeable unless the TU had actually ceased to exist or was dissolved by its members, and it was also protected from competition by other TUs in the same industry.[2] The complicated nature of the Act necessitated the services of a well-organised TU bureaucracy, and oligarchy was encouraged by this bureaucratic trend in the Act. The officials of the TU were often full-time paid officials, often with no factory experience. In many instances, even where they had been workers, the financial situation necessitated an individual having to serve many different unions in order to receive an adequate salary, an extreme example being Rob Stuart, who in the 1930's was secretary of eight of the existing 13 unions in the Cape Federation. At best this meant that workers within one industry did not have the full services of the individual at their disposal. At worst it caused a "trade union imperialism" among the officials.

The form of the Act and the functions bestowed on TUs also meant that officials of the TU were often full-time paid officials and became cut off from the workers. They were more concerned with their duties under the Act - conciliation boards, ICs, and preparation of minutes and financial statements, than with organising workers, as it was the former upon which "existence" was judged, and upon which their jobs depended. To

1. Quoted in Davies, 1977, page 10.

2. Section 4, Act 11 of 1924. The problem of "closed shop" agreements also added to the invulnerability of unions. On this problem see E. Emdon, AN ANALYSIS OF THE CLOSED SHOP, 1978.

safeguard these they often resorted to underhand methods - the manipulation of constitutions and meetings, the threat of expulsion and dismissal for militants, and the use of closed shop and stop order provisions to eliminate competitors.[1] Even where such dubious methods were not employed, official duties took up a large amount of time and effort. Simons and Simons claim that there were four to five hundred on ICs, conciliation boards, Apprenticeship Committees and other statutory bodies.[2] As a result of this many workers tended to lose interests in the unions, and the Van Reenen Commission noted with dismay the apathy and careless attitude of workers towards organisation, and the consequent numerical weakness of the unions.[3] As long as the TUs retained a paper membership and functioning bureaucracy, however, they were adequate for the Act's purpose - self-government which was slowly but surely converted into self-administration.[4]

The viewpoint of the 1914 Commission was thus borne out by experience post 1924. Already in 1929 the Labour Party journal reported that "the average member of a trade union in one of the 'sheltered' trades seems to have lost all class-outlook and to regard himself as a superior sort of individual with no time for agitators."[5] In 1938 the Department of Labour's Annual Report stated that that government had

> "at all times encouraged the trade unions to maintain their membership, as it believes that the higher the degree of organisation among workers, the greater are the prospects of securing general compliance with the terms of agreements and determinations. Moreover, the basic principle underlying the Act is the prevention and settlement of disputes by negotiation and it is plain that the negotiations carried on by non-representative bodies of employers and employees must necessarily prove ineffective."[6]

Management aided the government in this encouragement, and in some cases virtually established the unions themselves.[7] In such a climate oligarchy and incorporation were thus real dangers for many South African unions.

1. Simons and Simons, 1969, page 33.
2. ibid. They give no date for this assertion.
3. Industrial Legislation Commission, UG35-37, page 88.
4. Bloch, 1977, page 54.
5. FORWARD, 11 January 1929.
6. Page 38.
7. Martin Nicol has interesting evidence for this period and later of the manner in which the TU and management worked hand in glove in the Cape garment industry, with management supporting the conservative leaders.

Concessions to the white and skilled - Sectionalism

> "I say it is an unfair thing. It is a Bill which deals with the workers of the whole country and you leave out five sixths of them, and they will be handed over to the tender mercies of the remaining sixth."[1]

The second source of weakness in worker organisation in South Africa was the colour a skill bias of the Act, a bias which encouraged economism and sectionalism. While non-African worker organisation was hamstrung by the ICA in the ways described above and below, African organisation was perceived as such a threat that it was denied even that restricted recognition afforded by the Act. African workers were restricted to their common law right in terms of organisation.

Although in individual areas conditions differed, and the strength of worker organisation could result in ICs being established even in predominantly black sectors such as stevedoring in the Cape, it was in those industries where the percentage of whites was highest that ICs tended to be established in most areas of the Union. Thus printing, with a 70% white labour force in 1924/5,[2] had a national IC even before the ICA came into operation, while transport, at 60%, construction, at 35%, and metal, at 44%, were all highly organised industries under the Act At the other end of the scale were textiles at 21% white labour force, food at 24% and chemicals at 26%. In all these areas ICs were the exception rather than the rule, or, if they existed, comprised only a small section of the sector and were thus internally divided and weakened, both geographically and inter-sectorally.[3]

Although de jure the Act only prohibited African organisation, de facto its ambit was even more restricted. It was skilled, rather than unskilled, workers who were protected, a fact borne out by the correlations between industries covered by Apprenticeship Committees and ICs, as well as by average wage statistics.

Apprenticeship Committees were committees charged with controlling the training of apprentices in scheduled industries, in terms of Act 26

1. HAD, 1914, col. 4299. The quote is from Merriman.

2. UNION STATISTICS FOR FIFTY YEARS, pages G10-12 for these and following statistics.

3. Clothing was an exception, perhaps explained by the comparatively large female labour percentage.

of 1922. The committees consisted of a "equal number of representatives of employers and employees chosen by the organisations, associations or trade unions of employers and employees concerned."[1] These committees not only served to limit black advancement into these jobs (by, for example, education qualifications[2]), but also to restrict the absolute number of workers - either black or white - gaining these qualifications, and thus competing for jobs that were declining relatively in number. In this way they served to "limit the supply and thus to raise the earnings of artisans, rather than to maintain standards of technical performance."[3]

The Van Reenen Commission lists the different industries in which Apprenticeship Committees existed as at the end of 1935.[4] When this list is compared with that in which ICs operated at the same time[5], it is found that of all these industries, it is only in state service (South African Railways and Harbours, and government building and engineering operations), where ICs were statutorily prohibited, in carriage building and dental mechanics work, that ICs did not exist. It thus appears that in this case it was workers who already were highly organised and protected by the Apprenticeship Act who gained extra protection through the ICA.

Figures for 1924 average whitemonthly wages, which give the average wage in general manufacturing as 115s 3d, as opposed to 144s 2d in printing, 123s 9d in engineering and metals, and 135s in building[6], again suggest that it was the already organised and privileged who benefitted from the Act rather than all workers, black or white.

When the Act was passed the bulk of the stronger unions were craft ones, and the trend mentioned above thus seemed the logical one in the light of the government's general policy. The late twenties, however, saw the emergence of two trends immediately obvious in comparison with

1. Section 11 (2)(a).
2. See S.T. van der Horst "Labour", in E.Hellman, "RACE RELATIONS IN SOUTH AFRICA 1949, contains an an analysis of the effects of this law.
3. ibid., page 151.
4. Industrial Legislation Commission, UG35-1937, page 144.
5. ibid., page 97.
6. Official Year Book, 1924, pages 230-32.

the decade 1910 to 1920, viz., (a) the rapid growth of white female labour, and (b) the preponderance of African males in the workforce, both of which groups played a prominent role in the "new unionism" of the following decade.[1] Meanwhile, the development of a machino-facture-based industry also involved the deskilling of a large number of white workers, and the promotion of many other unskiled whites, "coloureds" and Indian workers, and even in some cases Africans, to semi-skilled positions.[2] The increasing importance of this semi-skilled fraction, and the less clear distinction of this fraction in both skill and colour terms, initiated a change in the function of the ICA. Whereas craft-based industry was actually a declining force throughout the period, the number of workers and industries covered by ICs continued to increase, and did so at a faster rate that for WDs. The number of workers falling under ICs increased by 728%, from 17 946 to 148 581 between 1932 and 1945, while those under WDs increased by only 120%, from 73 000 to 160 343 in the same period.[3] (This increase was an underestimate in the case of the ICs, in that in these figures "employees" only are included, and with the increase in the participation rate of African workers in the economy, the significance of the exclusion of non-employees would be greater in the latter period). With this growth in the number of workers covered the Act's field of operation was thus extended to cover areas where class and colour distinctions were not so clear. To protect white, rather than only skilled, workers in this situation the state and capital had to adopt an ambivalent and fluctuating position, a position which corresponded to the different objective conditions in the specific industry and area concerned, both in relation to the labour process and to the strength of labour organisation.

In the first place, the unequal development of official organisation among white and black, skilled and unskilled, had its effect on workers' wages and conditions. "The object of the Union was to work in the interests of those already members."[4] "In many instances representatives of the ICs and of trade unions admitted that they are not catering for

1. Jon Lewis, "The New Unionism", in SOUTH AFRICAN LABOUR BULLETIN, III (5), March/April, 1977, page 299.

2. Dept Labour Annual Reports and Industrial Legislation Commission, UG35-1937, comment extensively on these trends.

3. Dept Labour Annual Reports, own calculations.

4. CAPE TIMES, 4 August 1939. Letter about the South African Typographical Union.

the interests and needs of the less privileged labour groups."[1] Those workers who were unorganised and unrepresented were "exploitable"[2](sic) by those enjoying representation on the ICs. Relatively high wages and good conditions were extracted from the employers for the skilled, while the employers were left free to lay down what conditions they wished for the unskilled or unrepresented, or else forced to concede only minimum demands. Thus Adnrews notes the very satisfactory wages laid down for Grade One workers in the Printing Industry, while those for the lower grades were far less generous.[3] An examination of relative wage levels further bears this out. Table 3.1 gives the weekly wage of unskilled labour as a percentage of skilled as at 1935, December 1938 and August 1950 for different industries. All the industries included, except baking and confectionary in 1935, were covered by ICs. The rates in these sectors must be compared with the Wage Act rate for baking and confectionary (30,27%), and with the even higher overseas rates of 52,9% for Canada and 82% for Sweden in 1938.

TABLE 3.1[4]

UNSKILLED REMUNERATION AS A PERCENTAGE OF SKILLED: 1935, 1938 and 1950

Industry	Area	1935	1938	1950
Baking and Confectionary	Natal	30-27		
	Pretoria		16,5	30,0
	Cape		25,6	42,0
Clothing	Cape		33,3	25,0
	Durban		24,0	25,0
Furniture	Cape		25,9	26,8
	Durban		20,0	26,8
	Witwatersrand		18,0	26,8
Motor	Durban		13,6	21,7
	Witwatersrand		18,0	24,4
	Cape		22,2	31,9

These figures again suggest a "protection" and promotion of the better off workers by the ICA, with either a lower comparative unskilled wage or a higher skilled.

In the courts the same guidelines seemed to be adopted. In Gravenor v.

1. Industrial Legislation Commission, UG 1935-1937, page 47.
2. ibid.
3. Andrews, 1941, page 40.
4. Industrial Legislation Commissions, UG 1935-1937, page 15; UG62-1951, page 49.

the Dunswart Iron Works[1] the court ruled that because a worker was not an artisan, he was not covered by the overtime, leave or any other of the conditions laid down in an agreement. All these applied only to artisans.

The prohibition of African organisation did not put an end to all organisation however. In some cases white and black even organised together, encouraged perhaps by the fact that not all whites were protected to the same extent. In 1928, for example, the Amalgamated Laundry,Cleaners and Dyers Union set an important precedent by being the first white union to affiliate to themselves all 700 Africans employed in the industry, and formerly members of the Native Laundry Workers Union.[2] Many of the Cape unions, in particulary, admitted Africans to their membership, and in 1939 the Minister of Labour said in Parliament that African were not prohibited from joining registered TUs.[3] Many such unions continued to function successfully in terms of the Act with both employers and the state.

In the 1940 report of the Labour Department, however, a slightly different attitude was expressed. It is probably that the growth of the new unionism among the semi-skilled in the machine-based factories precipitated the harsher outlook on the part of the state.

> "During the year a number of applications for registration were received from trade unions whose members consisted mostly of natives, and in one or two instances it was found that registered unions accorded full membership rights to natives, even to the extent of having elected them as office bearers. Natives are excluded from the definition of "employee" contained in Section 1 of the Act and as a trade union (as defined) may only consist of "employees", it follows that natives may not be admitted to membership. There is of course no legal objection to native union' functioning under the aegis of registered unions, but these workers may not, in terms of the existing Act, be members of a registered trade union."[4]

(A corrolary of this was that they could not take part in the collective bargaining machinery). In 1945 this opinion was formalised with the

1. Reported in SOCIAL AND INDUSTRIAL REVIEW, VIII, 1929, pages 339-340.
2. CAPE TIMES, 20 July 1928.
3. HAD, 1939, col. 3077. In its 1924 form the Act did not effectively exclude all African workers, as there were no pass laws as such in the Cape at the time, control being instituted under the Urban Areas Act. The 1937 Act clarified the matter by specifically including this Act. (INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, September, 1936).
4. Labour Department Annual Report, 1940.

Supreme Court decision that the Sweetworkers Union was not a TU in terms of the Act in view of its fifty African members.[1]

In other instances division between white and black were accomplished by other methods. In industries where white and black did not organise together, for example baking and furniture, the Wage Board was called in to set wages and conditions for the unskilled, as it was feared that the absence of such legislation would cause the discharge of white workers and their substitution by cheaper black labour.[2] In other cases the ICs themselves acted in much the same way as the Wage Board. By including in their agreements "suitable provisions to meet the requirements of civilised workers"[3], even insofar as unskilled work was concerned, the ICs encouraged the replacement of black by white labour by eliminating the possibility of undercutting by members of the unregistered TUs in particular industries.

Changes in the legislation in regard to this matter, together with the clamping down on mixed union organisation mentioned above, give an indication of the growing importance of this aspect of protecting the unskilled and semi-skilled whites as the coverage of the Act increased. Before 1930 the Minister of Labour was reported as stating,

> "I do not allow ICs of Europeans to lay down wages for natives on unskilled work who are not represented on such councils. The only exception is that rates of wages laid down by industrial councils shall apply to any person, native or otherwise, employed in these specific occupations."[4]

This proviso was, however, enough to avoid undercutting if the unskilled whites were members of a registered and represented union. The 1930 amendment to the Act explicitly conferred the additional power on the TUs of negotiating conditions for non-"employees", even where these latter workers belonged to their own unions, or were not unionised at all.[5] Thus provision was made for the setting of wages and conditions in all areas where white and black, organised and unorganised, might compete. By 1935 the Department of Labour could report that

1. CAPE TIMES, 21 August and 11 December 1945.
2. SOCIAL AND INDUSTRIAL REVIEW, VII (XXXVIII), page 134. See also Chapter Four on the Wage Act.
3. Official Year Book, 1934/5, page 204.
4. CAPE TIMES, 14 May 1927.
5. Section 7, Act 24 of 1930.

"approximately 3 100 additional European workers were absorbed into industry ... as a result of special provisions having been made for them in Industrial Council agreements ..."[1]

The position was still not sufficiently clear, however, particularly in those areas where the unskilled and semi-skilled whites were not well organised. In 1934 the courts ruled it ultra vires the powers of the Minister to refuse to gazette an IC agreement merely because it did not lay down wages and condtions for the unskilled. The following year another court ruled that it was intra vires for the Minister to extend an agreement to all, including the unskilled, in an industry, even where no unskilled workers were represented on the IC. This was a "matter of mutual interest" to the workers and employers on the IC.[2] The question was an important one, and had to be settled. A Minimum Wage Bill was introduced which provided for the setting of a minimum wage for all industry, and was "designed to replace 30 000 Africans by white workers,"[3] by eliminating cundercutting. The Bill was greeted with much opposition, however, not only from blacks but from most of industry. The Cape Chamber of Industries feared that the bill would cause an influx of rural Africans (The bill did not apply to agriculture).[4] Industry also feared the setting of an overall wage for industry as a whole, in the determination of which they would have no say, and which might thus be against the interests of their particular industry. After a convention had been called of the Federated Chamber of Industries and ASSOCOM to express concern, the 1937 amendment of the ICA and Wage Act coped with the problem from capital's point of view, if not from that of black workers, by allowing the ICs to set wages for the unskilled in the industry, an arrangement which industry preferred in that it allowed the different industries to have differing conditions.[5]

The new Act corrected the position by
(a) allowing for the IC to be registered for the industry, trade, undertaking or occupation, interpreted by the Department to mean all in that

1. Davies, 1977, page 251.
2. Rex v Campbell, TPD 18 October 1935, in SOUTH AFRICAN LAW JOURNAL, LIII, 1936, page 116.
3. UMTETELI WA BANTU, 23 March 1935.
4. Annual Report, 1939.
5. H.J. Laite, THEY BUILT A SYSTEM, (unpublished), c. 1946, page 229.

industry, etc., even if not TU members,

(b) providing that those not covered by the agreement were not covered in the Department's eyes, as the Wage Act stated that a Wage Determination did not apply if there was an agreement in the industry, even if some of the workers were not covered by that agreement, and were not members of the union

(c) providing that the Minister could, under Section 19 (8), include those not in a registered TU, but under the same employer, and

(d) providing that a Labour Department officer could be present at the IC to put forward the case for the unrepresented workers.[1]

The state claimed that the amended Acts dealt adequately with the interests of both black and white workers.

> "(The) question of the union's not being representative of unskilled labourers should not be over-emphasised ... for the members of an Employers Organisation who employ unskilled labourers can surely be regarded as competent to put forward suggestions for wages for them, while the unions in the interests of industrial peace would be acting in full accord with the purpose of the Act referred to in negotiating suitable rates with the organisation."[2]

The Minister claimed that the

> "exclusion of natives from the definition of "employee" under the Industrial Conciliation Act is frequently given an exaggerated importance. In fact the exclusion makes little practical difference, its main effect being merely to close one particular channel of activity to natives, viz. that of statutory trade union activity... All Industrial Councils today recognise the desirability of looking after the interests of the unrepresented workers ..."[3]

In effect, however, the ICA was discriminatory. The correlations noted above in terms of (a) the percentage of white workers in IC industries, (b) the coverage of the ICA and Apprenticeship Act, and (c) the wage levels in IC and other industries, must all to some extent be attributed to the fact that ICs in fact operated there, and were thus an effect, rather than a cause, of IC organisation. However, the opposite direction of causation is also indicated, especially where 1924 data have been

1. Laite, c. 1946, page 229.
2. Dept Labour, Annual Report, 1939, page 5.
3. CFLU memorandum to Industrial Legislation Commission, 1934, page 1.

used. In general, in the early years the ICA appears to have operated in the interests of the highly skilled and white craftsmen. The needs of the rest of the white workers were catered for to a limited extent by the ICA, but mainly by other measures such as the Wage Act and the "civilised labour" policy. The IC machinery served to further cement and promote the privileges of the upper segment of the white workers. Africans were meanwhile almost totally excluded from the Act's advantages by their exclusion from the category of "employee".[1]

Lack of registration could have been advantageous in a situation where it was general, i.e. where no TUs were registered. In that case the TUs might have avoided, to some extent, the dangers of incorporation, bureaucracy and integration to which official organisation is so prone. Industrial TUs,[2] by their very nature, constitute an acceptance of the system, its method of organisation and its divisions, it hierarchy and ideology, and a rejection of revolution in favour of more reformist demands. Registration and collective bargaining machinery further entrench this tendency, by limiting demands and action even further and restricting them to the economistic. As soon as some unions were registered and received state recognition, however, non-registration became disadvantageous.[3] African unions not only had to fight even for the limited gain of union recognition by the employers and the state, but were also explicitly excluded from all official channels of negotiation with management, negotiation which fundamentally affected their work and general conditions of living. Those workers who were recognised meanwhile were tempted to promote only their own sectional interests.

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1. The colour bias of the Industrial Relations system is one of its more notorious traits, and one of the constant features in the history of such legislation. The 1909 Act had defined "employee" to include only a "white person", whether employed in manual, clerical, or supervisory work. By 1914 the definition had attained its later sophistication, although retaining the original meaning, and read as in the 1924 Act to exclude all those whose contract was "regulated by any Native Pass Laws or Regulation or by Act 15 of 1911, or by Law 25 of 1891 of Natal, or by Act No 40 of 1894 of Natal."

2. The non-industrial form of organisation in the ICU was yet one more reason why the state perceived it as such a threat.

3. This becomes debatable when restrictions on registering mixed unions were imposed, but this occurred at the end of our period and so does not affect the argument here.

III

The right to collective bargaining

The ICA, by means of ICs, introduced a measure of home rule into industry, but this was

> "...not Home Rule giving equal status to all partners. The weight of authority and power remain heavily on the side of the employer and it remains at least an open question whether this Act has not been of greater benefit to them than to the organised worker."[1]

The IC consisted of an equal number of representatives of both the EO and the TU. Any employer or EO (there is no mention of registration requirements for the EO) could agree with a registered TU or group of TUs to establish an IC for the industry, and the two sides would then each elect their representatives to sit on the IC, a permanent, registered body, to negotiate on "all matters of mutual interest to them and the prevention and settlement of disputes between them."

In composition the IC was thus formally equal. But the formal equality was an illusion. ICs operated in those industries which were more concentration and centralised, and in which capital was thus bigger, more organised, and more unanimous in its views and demands. Whereas the number of workers per establishment under WDs increased from an average of 3,5 in 1932 to 8,1 in 1945, that in IC industries increased from 7,4 to 16,1.[2] The average IC industry was thus at least twice the size of that under WDs throughout the period, an index of this concentration. Inequality went beyond this, however, for large establishments alone would also have meant an increase in organisational potential for workers. The increased size and complexity of the industrial process and the splitting up of jobs and loss of control by the individual worker also meant that it was more difficult for the workers to have an overall view of the industry from which to bargain effectively. This overall view could only be obtained if the employers supplied the necessary information of their own free will. The Van Reenen Commission reported that they

> "found that there was a strong feeling among some of the unions that the employees' side of a council is always

1. CFLU memorandum to Industrial Legislation Commission, 1934, page 1.
2. Dept Labour, Annual Reports, own calculations.

> at a disadvantage owing to the lack of information which it is essential that they should have for presenting and arguing their case; information such as the position in regard to trade, costs of production, turnover and returns on capital invested ... There is of course a great difference between supplying the Wage Board with detailed information of this description and placing it at the disposal of the employees' side of a council. At the same time there should be a number of general facts about the industry which the employers' side of a council could collect without much trouble and communicate to the employees' side."[1]

The Commission saw the solution to this problem in a "capable, independent chairman", who would ensure that the TUs received more adequate information. But "with a few exceptions the secretaries of councils are also secretaries or officials of either the EOs or the TUs which are parties to the councils". The practice was a

> "dangerous one and is certainly not conducive to a council's functioning as they should. No man can serve two masters, and it is unreasonable to expect any secretary of a council who is in the paid service of an employers organisation or a trade union to have that independent outlook which is so essential when the interests of both employers and employees are at stake. It is easy to conceive of such a secretary being influenced in the performance of his duties as a council official by extraneous considerations."[2]

The demand for an "independent outlook" is obviously a naive one in a situation where the conflict is that between capital and labour. Employer organisation secretaries would have an obvious anti-worker bias. TU secretaries, where these were the secretaries of the IC, often also posed problems for militant trade union demands. The tendency towards integration within the system would encourage such officials to restrict demands to those which were "reasonable", and thus stay within the bounds of the system. Bureaucratism and the need for individual security encouraged the safeguarding of their own position, while operation within the limits of the council meant that the officials very often began to see things from a "business point of view". The very concept and practice of collective bargaining in fact implied an acceptance of the system whereby employers owned the means of production, were entitled to extract surplus value, and the only questions were those of how high the rate of exploitation would be.

1. Industrial Legislation Commission, UG35-1937, page 96.
2. ibid.

The Commission had put its trust in the post of chairman, but this post was alsmost always held by the employer's side, a fact demonstrable by the large percentage of ICs whose postal addresses are found to be the same as those of the relevant EO. The employer had more spare time to attend to IC matters, and as this was not a full-time job, but rather an "extra-mural" activity, this was an important consideration. The employer could afford to take the position, which, although yielding no salary, bestowed powere "more valuable than a salary."[1] It is to be expected that the authority structure of the usual factory, and the accompanying ideology, would also encourage the acceptance of the factory "boss" as the "boss" of the IC. A worker whose livelihood depended on his job would be unlikely to want to argue too strenuously with, or to exercise authority over, the man having the power to dismiss him.

Victimisation was a major problem for workers, and the cause of many strikes. Although the 1930 Act expressly prohibited victimisation and entrenched freedom of association, while instituting heavy penalties for failure to observe these two clauses, the problem remained unsolved. Victimisation was difficult to both find and prove. As Madeley pointed out, "the magistrate ... can never ... demand from a man what is passing through that mental arrangement which is called his mind."[2] The courts made it even more difficult by being loth to convict in such offences. As one judge commented,

> "This statutory shifting of the onus (onto the accused to prove that victimisation was <u>not</u> the cause of dismissal -DB) has cast upon the accused the burden of proving a negative, which is a very difficult thing to do. In my judgment that difficulty facing the accused in this respect is a consideration which must always be kept in mind when deciding whether the accused has discharged the onus."[3]

The very composition of the main statutory body set up by the ICA, together with the prevailing ideology and climate of "public opinion", thus militated against true worker control of the workplace, even on a 50:50 basis with management.

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1. GUARDIAN, 15 April 1943.

2. HAD, 1937, col. 5306.

3. Bassa and Another v. Rex, NPD, 24 February, 1944, in SOUTH AFRICAN LAW JOURNAL, LX, 1944, pages 514-15.

Economism

The ICA introduced "home rule" into strongly organised industries in the belief that workers and employers would, on the whole, prefer self-regulation to regulation by an "outsider". The Wage Board proved the well-founded basis of this belief in the impetus it gave to IC formation. Lucas, chairman of the Board, stated his belief that without the Wage Act there would probably have been very few IC agreements,[1] and the proportionally faster growth of ICs and their coverage in comparison with WDs, bears this out.[2] But the very concept of "home rule" had inadequacies from the worker viewpoint - many of these inadequacies lying in the limitation of the definition of "home".

ICs and TUs were confined to one industry or trade. This limited the struggle primarily to the more economistic issues and suffered, although not to the same degree, from the drawbacks and criticisms levelled against present-day liaison and works committes, which are confined to one factory. The workers suffered by being unable to unite with all their fellow workers. While the employers were also formally bound by this provision, it was not as serious for them as for the workers. The employer's main competitors were those within the same industry, those producing the same goods for the same market, and with the same factor prices and supplies facing them. But for the majority of the workers their competitors - or potential comrades - were the rest of the workforce, both employed and unemployed. Workers were too easily replaced from among the pool of unemployed. Unskilled, semi-skilled and black workers in particular were easily replaced, and more likely to move from one industry to another, having no skill to tie them to an industry, and likewise no skill which the employer would feel constrained to keep within his power rather than let loose on the market. These unskilled workers thus had more in common with workers in other industries and more to gain from seeing that all their conditions were organised together. The general workers union, the ICU, was refused registration in 1926, one of the grounds for refusal being the fact that it was not confined to one industry, but were employed in "almost every conceivable occupation."[3] The CFLU reported in 1938 that

1. SOCIAL AND INDUSTRIAL REVIEW, VII, (XXXVIII), page 134.
2. See above for figures.
3. Simons and Simons, 1969, page 361.

> "Anomalies in the interpretation of various clauses of the ICA continue to harrass the organisers of unskilled workers ... These workers are labourers without any trade distinction to make them different from labourers in other industries. The Federation wishes to organise such unattached labourers ... into a general workers union. However, difficulties are constantly being interposed by the Department. The ICA is intended to organise the workers in a respective industry ..."[1]

A case which illustrates the importance of this question is that of the Building Workers Industrial Union (BWIU).[2] The BWIU had registered under the 1924 Act for all those workers employed in the building industry, irrespective of their craft or occupation. After the 1937 Act was passed, the union applied for an amendment to their constitution to allow artisans, employable, but not employed, in the building industry, to be allowed to belong, by catering for "any persons who belong to a trade commonly associated with the building industry."[3] Such men had in fact been members of the union for years, and the proposed amendment was designed merely to validate their position. The Registrar rejected the amendment, and this was upheld by the Minister, on the grounds that a TU could be registered only for workers in a "particular trade", and that this latter phrase meant a single trade. The registration of such a general union would hinder the attainment of the objects of the ICA as he saw them, and "particularly, it would be prejudicial to the prevention and settlement of disputes between employers and employees and to the regulation of employment by agreement or otherwise."[4] In the courts the BWIU was victorious. The Supreme Court ruled that "particular" must be interpreted as meaning "specified" and not "single", and that the Registrar could thus not legally so restrict the membership of the Union.[5] The Minister was prevented from taking the matter to the Appellate Division on appeal as this was an administrative matter, and not a judicial one, and it was only that latter type which could be contested. The Union had thus won a temporary victory, albeit one based on technical and legal arguments.

1. CFLU Organ, August 1938, page 3.
2. BWIU v Minister of Labour, 1938, TPD in INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, April, 1937.
3. CAPE TIMES, 1 December 1938.
4. ibid., quoting H.G. Lawrence, Minister of Labour.
5. CAPE TIMES, 24 March 1938.

The matter was a serious one, however, and there was immediate talk of amending the ICA the nex year in order to bring it into line with the Department's wishes. The registered TUs, perhaps fearing the competition and friction in recruitment for TU membership among workers eligible for more than one union, and not themselves able to change industry so easily, promised not to take advantage of the loophole in the interim, and to "settle matters by mutual cooperation between trade unions" rather than pressing ahead with the idea of one union.[1,2] Thus nothing was done in the 1939 session about amending the legislation to cover the loophole which the case had uncovered.[3] But in the 1945 Annual Report the Minister of Labour once again expressed misgivings about the

> "... tendency for trade unions which are organised for a number of crafts in a particular industry to apply for extension of registration in respect of similar occupations in other industries and so to extend their sphere of influence frequently in conflict with unions already functioning in these industries. This had led to internecine competition ... and if such competition becomes intensified legislation to control the position may well be required."[4]

In accordance with this preference for sectional organisation of workers, the courts had handed down a judgment against the South African Industrial Union in 1925, in which it was stated that a general workers union could not be registered under the Act.[5] The 1937 amendment changed this position by allowing for federations of industrially organised TUs or EOs, with the objection of "the promotion of the interests of employees

1. SATLC Annual Report, 1939.

2. The confinement of organisation to one trade or industry must be understood as a trend encouraged by the state and industry, rather than a fact. Hyman,(1975) compares the position in Britain, which has an even more complicated mixture of craft, industrial and general organisation, with that in the United States, where the organisation is predominantly industrial, and attributes the United Kingdom mixture to the particular historical development there. The South African situation is somewhere between the two, with the historical debt to the English movement accounting for a lot of the confusion.

3. It appears that there was actually some difficulty experienced, probably in view of the mixed nature of the existing organisations, in framing a suitable amendment.

4. Dept Labour, Annual Report, 1945, page 5.

5. South African Industrial Union v Registrar of Trade Unions, 1925, TPD, 703, quoted in Bloch, 1977, page 37.

or employers."[1] This, however, was not to interfere with the basic idea of home rule. The federation did not cater for the unemployed or for the unskilled worker who was constantly changing his job and industry, as it was still necessary to belong to one of the affiliated organisations before becoming a member of the federation. Even for those who achieved this, the TUs and EOs remained operative primarily in a single industry or trade, and it was only as such that they could function in IC matters or other institutions and procedures pertaining to the Act. The National Joint Council was "informed by the Labour Department that registration as a "federation" in terms of Section 80 of the Industrial Conciliation Act did not confer any statutory right under that Act. For example, a "federation could not function in connection with a conciliation board of an Industrial Council. Section 80(3), however, empowered the Minister to consult any registered federation in connection with any matter concerning or affecting the interests of employees in general."[2]

The "in general" was interpreted strictly, as evidenced by the Andrews case. In 1927 a Conciliation Board was appointed in the commercial trade. The Commercial Employees Association, the relevant TU, elected as their representative to the Board Bill Andrews, general secretary of the TLC, but not a member or official of the union itself. The Supreme Court ruled that Andrews could not represent the union as he was not a member of it.[3]

This restrictive sectional organisation once again tended to favour both the employers and skilled workers, rather than the semi- or unskilled. Employers could cooperate with their main competitors and had more of an industrially specific concern than an overall industrial one. Skilled workers, too, were mainly concerned with conditions in a specific industry, as their mobility between industries was very restricted. It was the unskilled and mobile whose interests coincided across all industries and who thus were prejudiced by this restriction.

1. Section 80 of Act 26 of 1937.

2. NJC Minutes, 2 February 1935 in Simons Manuscripts.

3. Cape Peninsula Commercial Employers Organisation v Cape Peninsula Commercial Employees Association, the Minister of Labour and W.H. Andrews, CPD, 2 and 3 June, 1927, SOCIAL AND INDUSTRIAL REVIEW, VI (XIX), page 76. The CAPE TIMES of 23 June 1927, noted that this practice of representation by an official of a federation was a "well-worn" and generally accepted one overseas.

Enforcement of agreements

The IC's power of collective bargaining extended beyond that of merely drawing up agreements. ICs were also to be used to control the enforcement of the wages and conditions laid down. Another index of the ambit and effectiveness of the Act and the councils is thus provided by the extent to which the agreements arrived at were enforced - the extent of policing and prosecution, and how far those prosecuted were convicted and punished.

ICs were expected to appoint their own inspectors to police the industry, with the state providing additional inspectors only where the staff and funds of the IC proved insufficient. This in itself constituted a difficulty. IC's money came from subscriptions from the affiliated EOs and TUs, and was thus often inadequate. State inspectors, even for those acts such as the Factories Act, where they were the only form of inspection staff provided for, were notoriously insufficient. Where other staff were provided for, one can assume that their performance was even more perfunctory. Thus, in the first place, "... inadequate inspection resulted in a large instance of undetected contraventions."[1]

Even where offenders were caught and prosecuted, conviction was obviously not inevitable. The Act provided for contravention being a "criminal offence". Under common law procedure, the accused is always given the benefit of the doubt when the proof of guilt is not perfectly clear. In many instances lawyers could secure acquittal on these grounds, while the technicality of the Act provided numerous additional possibilities.

Section 75 of the 1937 Act provided that defects and omissions in the framing of agreements and constitution of the various bodies could not secure the innocence of offenders. This had been necessary after a great many employers had been able to escape the law because of minor technical points. Even after 1937, however, lawyers could still find many legal loopholes by means of which acquittal was assured.

> "Council agreements are regarded as subordinate legislation and are therefore subject to a wide field of invalidation. Thus agreements can be declared invalid on the ground that the definitions therein attempt to define an unknown by another unknown,[2] or are too vague or utterly artificial*

1. Industrial Legislation Commission, UG 35-1937, page 82.

2. This, and all further examples marked with an asterisk, were cases which occurred before 1945.

> or that the agreement gives insufficient instruction to those affected by it to enable them to know how to comply with it, or that the agreement improperly discriminates against certain employers.[1]

Incorrect dating of the alleged crime in the indictment was also sufficient to ensure acquittal.[2]

In many cases the defence managed to protect the accused by persuading the court that the matter was one for civil, rather than criminal, charges. It was thus up to the disadvantages person, in effect the worker, to institute and pay for proceedings. In once case it was ruled that non-"employees" (i.e. Africans) could only sue civilly for underpayment, even where the agreement had been extended to them.[3] In another case the employer was acquitted of contravention of the Act because the workers had already recovered arrear wages in a civil case.[4] A third case failed when the court ruled that one could only sue under the ICA or Wage Act if one was underpaid. If one was not paid at all, this was not underpayment, and the only resort was again civil action.[5] A final and important example, is that of Rex v Fletcher Electrical Company[6] in which the court ruled that in an order of repayment "the amount of such difference (between amount paid and amount owed) should be satisfactorily proved, and that the Court is not justified in awarding an amount based on an estimate, even though on the conservative side." In most of these cases it would be sufficient for the court to decide to leave it to the civil courts to have the matter left for good. Few workers had the money necessary to institute civil proceedings. Even if they could get the money, the dangers of losing it, and the small prospect of recovering their arrear wages, made the gamble a large one for small stakes.

The courts appeared reluctant to enforce what they considered to be

1. Bloch, 1977.
2. Rex v African Press, CAPE TIMES, June 1926.
3. Parisian Bakery v Ben, TPD, 29 November 1933, in SOCIAL AND INDUSTRIAL REVIEW, LI, 1934, pages 560-61.
4. Rex v T.J. Rossouw, in SOCIAL AND INDUSTRIAL REVIEW, XXVI, 1928, page 127.
5. Rex v Lurie, TPD, 26 September 1935, in SOUTH AFRICAN LAW JOURNAL, 1935, pages 116-17.
6. TPD, 8 June 1936, in SOUTH AFRICAN LAW JOURNAL, 1936, page 518.

restrictive legislation. The CFLU put the difficulty of conviction in the following terms,

> ".... it is one thing to know that the law is being broken and a somewhat different and more difficult thing to obtain the necessary evidence to satisfy the court in order to obtain a conviction ... most (magistrates and court officials) ... do not appreciate the necessity for making the underpayment of wages a crime and are apparently not acquainted with the economic conditions of present-day industry which make the legislation necessary. Some are unsympathetic to the principle underlying the legislation. A few are even actively hostile and go so far as to voice their antagonism from their seats on the magisterial bench."[1]

While upholding the freedom of the employers, the majority did not perceive that they were, in effect according to him the freedom to ill-treat his employees. The principle of freedom did not ensure equality or equitability.

When prosecution was successful despite all, the paltry nature of the fines imposed again bore witness to this attitude of the judiciary. Laite, Secretary of the Cape Chamber of Industries, admitted that "generally speaking the punishment does not fit the crime."[2] Of the forty-four prosecutions for ICA violations in 1929, one ended in a reprimand, one a caution, seven were fined 10/ each, seven £1 each, one £20, and one £25.[3] Only too often, the CFLU again commented, "... a wage thief proved guilty and fined for the crime, keeps the plunder and keeps out of gaol."[4]

Thus, in the enforcement of agreements, as in its other aspects, the ICA was not a charter of equality between workers and employers. Employers, the chief offenders, were seldom prosecuted. Where they were, the system operated in their favour even then - their access to legal aid, the poverty of the workers and their reliance on their employment, and the prejudice of the judiciary all ensured the lightest punishment possible. The agreements were just what the name implied, - conditions which would be enforced only if the employers, those with

1. CFLU ORGAN, February 1937.
2. Laite, c. 1946, page 181.
3. ibid.
4. CFLU ORGAN, May 1937.

real control over the production process, agreed to abide by them.

Conciliation boards, mediators and arbitration

Not all white workers were afforded even the limited right or opportunity of collective bargaining afforded by the ICA. Workers in agriculture and those employed by the Crown, government, or provincial administration could not form an IC "or like body" in terms of the 1924 Act.[1] In addition, there were specific rules regarding the rights of workers for local authorities and other bodies supplying "essential services". Thus workers "connected with the supply of light, power, water, sanitary, transportation or fire-extinguishing services"[2] were restricted to the more compulsory provisions of the Act and excluded from voluntary bodies, and also denied the right to strike. These exclusions related to the workers' particular place in the political economy, the role played by the institutions for which they worked, and the increased fear of unrest in these particular sectors. Although the ICA as a whole was seen by the original proposers in parliament as a measure to control and thus disorganise labour, rather than to strengthen organisation, in these sectors even the limited encouragement afforded to TUs by the ICA was seen as dangerous.

The restrictions on agricultural and government employed workers were explained by the Minister on the grounds that these two areas had neither the workers nor the employers organised in them, while the Railways were excluded because they had their "own machinery".[3] In the light of the analysis of Chapter One more plausible reasons are apparent. The agricultural employers were certainly not unorganised. They presented a stronger lobby than that which would have been expected from the degree of economic development in this sector alone, and formed part of the ruling PACT alliance. The exclusion here rested rather on the particular objective conditions - different relations of production and the preponderance of cheap, unskilled, black labour. These workers were controlled by legislation which was more repressive and more restrictive than that applied to white workers, and in this way it was hoped to keep them disorganised.

1. Section 2. Minor adjustments were made to this section in 1937.
2. Section 11 (1).
3. HAD, 1924, pages 26-34.

In the case of state institutions and essential industries, the exclusion rested on the role played by these in the maintenance and reproduction of the conditions of existence of capital. This function of the exclusion of essential industries from the machinery is illustrated by an event of the 1930's. Before this time these services had been defined to include "work connected with the supply of light, power, water, sanitary, transportation or fire-extinguishing services",[1] as mentioned above. After a prolonged and serious strike by the tramway workers of the Cape in 1932, the state felt it necessary to amend the ICA. Act 7 of 1933 added to the definition of essential services the road passenger workers, and thus imposed on these militant workers the no strike provisions and the compulsion to use arbitration.[2] Essential services were, in effect, those services and industries necessary to provide the infrastructure upon which the rest of the economy operated. State employment and South African Railways and Harbours were also, in general, concerned with the provision of the infrastructure for the functioning of the rest of the social capital. In these areas, too, the state and capital as a whole preferred arbitration to bargaining. By 1935, of the 89 conciliation boards which had been established since the inception of the Act, 32 were in respect of municipalities.[3]

The boards and arbitrators were perceived by the workers as just as biased against them, if not more so, than the IC machinery. A witness to the Industrial Legislation Commission claimed that the arbitrator was

> "almost invariably a man who either directly represents the interests of the employers, or a professional man perhaps, or a man whose outlook on life, whose whole living, whose whole conception of everything is that of the employer."[4]

Conciliation boards, with their emphasis on avoiding disruption and thus ensuring the continued provision of the infrastructure of the system, were also unlikely to be receptive to the more revolutionary demands of workers, demands which challenged in any way the existence of the system itself.

1. Section 11 (1).
2. CFLU, Annual Report, 1933, page 2.
3. Industrial Legislation Commission, UG 35-1937, page 80.
4. ibid., page 84.

The circumstances for which a conciliation board could be appointed were also restricted, and the establishment of a board was forbidden for "individual matters" unless a matter of principle was involved.[1] This excluded many potential issues, as illustrated by a case quoted in AMBAC of 1945. A Mr Karl Muehlendorf had been dismissed by Rand Steam Laundries after complaining about the new wages for vanmen. He was a member of the Laundry Workers Union and applied for a conciliation board under S64 of the Act on the grounds that his conditions of employment had been altered by the dismissal and that two principles were involved, and it was thus not an "individual matter". The two principles were (1) that he was a spokesman, and it was thus victimisation, and that (2) if he had been dismissed for "neglect", he should have been given a chance to defend himself.

The Minister appointed a board, against which the Employers Organisation appealed. Millin J found in favour of the firm, in that outright dismissal was not an alteration of conditions of employment. It was only on appeal to the Transvaal Provincial Division that Justices Barry, Murray and Ramsbottam found in favour of Muehlendorf.[2]

In another case the court ruled that the phrase "and the matter giving occasion therefore is one upon which a conciliation board may be appointed" meant "in respect of which there is a possibility that a conciliation board may be appointed."[3] This decision meant that every strike in an industry in which there was no IC was a contravention of that section of the ICA until the Minister had refused to appoint a conciliation board.

The right to collective bargaining was thus severely restricted by the ICA. Where such bargaining was instituted, it was only between employers and registered TUs. It suffered from all the drawbacks relating to these unions mentioned in Section II. The demands of the TUs were mostly the sectional ones related to those of the workers concerned, being limited on the industrial, skill and colour levels. Even these

1. Section 4 of Act 11 of 1924. Sampson, Labour Party representative, noted that of the 17 strikes in which he had been involved, 11 had been over individual worker matters i.e. victimisation, piece work, or related issues. (HAD debates on ICA, 1924).

2. AMBAC, September 1945. The second principle was not mentioned.

3. Rex v De Freitas and Others, CPD, 29 June 1936.

demands were faced by the pro-capital bias implicit in the very composition and form of operation of the ICs.

In other areas all collective bargaining was prohibited, on the grounds of the national interest, capital's collective interest, or the specific nature of the labour process and labour force. Here conciliation boards, arbitrators and mediators were the state's method of dealing with unrest where such unrest was perceived as being potentially more explosive than in the ordinary industry or sector.

IV

The right to strike

One of the primary aims of the ICA was "to make provision for the prevention and settlement of disputes between employers and employees by conciliation"[1] and thus to avoid the recurrence of disruptive conflict such as had occurred in the mines and elsewhere in the early part of the century. Strikes, as the most obvious general form and evidence of such conflict, and as the form against which much of the legislation was aimed, provide a useful index both of the ambit and effectiveness of the Act in this respect. Entrenchment of the right to strike is an important aspect of labour legislation, for although a strike is often a sign of weakness - a last resort - the very existence of this last resort, the ability to withhold their labour - is an important and strong weapon of any workers' organisation.

The Act did not outlaw strikes completely. South African common law, unlike English law, knew of no offence of participation in an unlawful assembly, unless there was "geweld" involved, but this was curtailed by the Riotous Assemblies Act of 1914 which provided for the prohibition of such meetings, while the Transvaal and Orange Free State had similar provisions before 1914.[2] Thus the INTERNATIONAL reported in 1921 that "in Johannesburg at least one incautious speaker was fined £100 for saying "Now is the time to strike".[3] The 1924 ICA maintained in theory at least, the right of workers to strike, but so restricted

1. Preamble to Act 11 of 1924.

2. Ellison Kahn, "The Right to Stike in South Africa", SOUTH AFRICAN JOURNAL OF ECONOMICS, II, 1943, page 24.

3. 29 January 1921.

this right that, de facto , strikes became virtually "an impossibility ... in legal form."[1]

The Act attempted to avoid strikes both by providing the machinery for self-rule, which it was hoped would minimise disputes by allowing employers and workers to discuss areas of conflict and, in the event of failure of such machinery and negotiation, or where it was not possible or permissible for some reason, by placing severe restrictions and penalties on the cases in which employees could resort to strikes. Workers would be loth to transgress this law, for they knew that "die staat nie alleen die nodige 'swaardmag' het om reg op 'n effektiewe wye toe te pas nie, maar ook dat die staatsorgane sonder aansien des persoon inderdaad hierdie mag aal toepas waar die funksie van die reg dit vereis."[2] It was without doubt a "funksie van die reg" to prevent industrial disturbance.

In its original 1924 form a strike was defined merely as the "suspension or temporary cessation of work" by any number of workers in order to compel agreement with specific conditions of employment. The declaration of a strike was made illegal (a) when the matter had been handed over to an IC to deal with, or (b) before a conciliation board had reported in the event of such a board being resorted to.[3] No strikes were allowed in essential services.

In 1930 the Act was tightened up. Firstly, strikes were outlawed during the period of effectiveness of an agreement. Secondly, the burden of guilt was extended. Not only those who declared, advocated or incited the strike were now guilty. The guilt of all those who took part in the strike was also expressly provided for, thus also placing a further burden of guilt on all those who encouraged others to strike and thus commit a crime.

The effect of the Act in regard to strikes is difficult to judge, but statistics for the period do provide some clues. Table 3.2 gives the number of strikes, the number of workers involved, the aggregate duration

1. Andrews, 1941 page 37.

2. J.D. van der Vyver and F.J. van Zyl, INLEIDING TOT DIE REGSWETENSKAP, 1972, pages 253-54.

3. Section 12 of Act 11 of 1924.

of individual strikes, and the estimated loss of wages (in £'s) for the five five-year periods between 1921 and 1945. The final column of the table, the quotient of estimated loss of wages by aggregate duration, gives the average daily wage of the average striker.[1]

TABLE 3.2[2]

STRIKE INCIDENCE 1921 - 1945

Period	Number of strikes	Number of workers	Aggregate Duration	Loss of wages	Average Wage
1921-25	46	40 799	1 462 734	£1 952 965	£1,34
1926-30	47	19 684	23 151	10 014	0,43
1931-35	70	16 626	168 386	85 944	0,51
1936-40	116	18 622	47 129	15 190	0,32
1941-45	183	36 939	137 781	45 756	0,33

Individual figures in colour terms are available in each year[3] but are difficult to analyse as they fluctuate widely, often due to one or a few individual strikes involving a large number of workers in the few big factories, and thus inflating certain figures. The average wage in the table does suggest a trend which is consistent with what one would expect with the changing nature of the main focus of the struggle in terms of sexual and colour changes. The general drop from £1,34 in the period 1921 to 1925, £0,43 for the following period, and £0,3 for the last ten years would seem to reflect the growth of the "new unionism", with strikes in the later period being concentrated in the industrial unions, with their higher proportion of both female and black workers. Strikes in the first interval, on the other hand, were concentrated among well-paid craftsmen.

The 1921 to 1925 period was one of violent white worker unrest, concentrated in the privileged white sectors. This is reflected both in the average wage and the aggregate duration of the individual strike - 1 462 734 days. This length of duration reflects the seriousness of the conflict and the ability of better-paid workers to hold out for longer periods. Black participation in this period was meanwhile very low, with blakcs forming only a small part of the industrial labour force.

1926-30 the period immediately following the passing of the Act, saw

1. This last column was calculated by myself.
2. Simons in Hellman, 1949, page 167.
3. UNION STATISTICS FOR FIFTY YEARS page G-18.

a dramatic decrease in all statistics, with less than half the total number of workers involved, less than 1% of the previous loss of wages, and a marked shift from white to black strikes. While white workers had obviously been subdued or otherwise pacified by the ICA, by parliamentary incorporation under the auspices of the Labour Party, and by the wide-ranging "civilised labour" policy, black labour was militant, having been excluded from, and disadvantaged by, the mass of measures implemented by the PACT government.

1921 to 1925, with an increased number of strikes and aggregate duration of the individual strike to 70 and 168 386 days respectively, and an increase in the average wage to £0,51, saw a decrease in the number of workers involved to 16 626, the lowest level yet. These figures, and the increased number of whites involved in the individual years, would seem to suggest that the depression, and decreased bargaining power of the unskilled, together with the demise of the ICU, once again shifted the focus more to the skilled or semi-skilled workers who, in these hard times, also felt the strins on the economy.

Strikes did not reach anywhere near their former level of seriousness, however. The Minister of Labour, in introducing the 1937 Bill, looked back upon the industrial peace of the previous thirteen years with satisfaction, as proof of the Act's effectiveness, and he seems to have been justified in this satisfaction. The skilled workers appeared once again to have been pacified, with the average wage never again reaching its level for the period 1921 to 1925, and the state thus had a loyal ally and useful division in the ranks of labour.

There had, however, been changes in the nature of trade unionism, with an increase in trade unionism among the workers of emergent industry, the semi- and unskilled black and white workers. This trend was a warning against undue optimism on the part of the state. This fact, plus certain decisions such as those mentioned below, which provided or appeared to provide loopholes for striking workers, necessitated changes in the legislation.

In Rex vs Schroeder and Others[1] workers were charged with striking after

1. TPD, 26 February 1934, in SOCIAL AND INDUSTRIAL REVIEW, LI, 1934, page 447.

they had all refused to work on account of the dismissal of a fellow worker. The magistrate ruled that it was not a strike, as the cause had nothing to do with wages, hours or general conditions of work. It was only in the Supreme Court that this decision was overruled.

A more important case was Rex v Macdonald and others.[1] Here the court ruled that the stoppage of work was not a strike as all the workers had terminated their employment at twelve noon in that they had handed in the necessary one hour's notice at eleven o'clock. They were thus no longer employees when they stopped work at twelve, and it could not be construed as a strike. It was this loophole in particular that the 1927 amendment in respect of strikes attempted to cover.

While the 1937 definition of a lockout was so vague that "under this definition the employer could discharge all his employees to evade the Act"[2] the definition of a strike was expanded and elaborated to the "refusal or failure" of employees to continue or resume work, or the "wilful retardation ... or wilful obstruction ... of work or the breach or termination ... of their contracts of employment", if this was as a result of a "dispute regarding conditions of employment or other matters", or if it was "in pursuance of any combination, agreement, or understanding, whether express or not, entered into between them", and where the purpose of the abovementioned action was to "induce or compel" any employer to agree with their demands or with the demands of others."[3]

Despite such changes, however, and despite the resultant tightening up strike figures in the following period increased, particularly in the war years, and particularly among blacks. At a time of inflation, the average wage of those involved dropped from the £0,51 level of 1931 to 1935 to £0,33 and £0,32 respectively in the two subsequent five-year periods. The total number of strikers increased from 16 626 in 1921 to 1935, to 18 622 in 1936 to 1940, and 36 939 in 1941 to 1945. The increasing participation of blacks, women, and other less privileged workers in the workforce, and the increasing organisation and militancy

1. TPD, 3 December 1934, SOUTH AFRICAN LAW JOURNAL, LII, 1935, pages 241-42
2. HAD, 1937, col. 99, Van den Berg quoting TLC memorandum.
3. Section 1 of Act 26 of 1937.

of these groups, in a situation where working and living conditions were not easy, accounted for increases in all the figures except that of average wages.

The Act attempted to minimise strikes, or eliminate them completely, while technically safeguarding the right to strike. The bias of the operation of the Act meant, however, that in many cases disputes could not be "settled" by the machinery of the Act, which favoured capital or skilled workers while often disregarding the demands of the semi-skilled or unskilled, and particularly the blacks. The increase in absolute terms in the strike statistics, and the changing nature of the strikers, is an indication of the nature of the Act - one which helped to pacify the upper segments of the workforce but did little to satisfy the lower strata. The figures for strike occurrence merely provide an indication as to all the shortcoming of the Act previously described.

V

Conclusion

This chapter has examined the changing nature of the ICA in the period 1924 to 1945, and its effect on the political, economic and ideological levels. Overall, the act can be seen to fit in with the framework suggested by Davies and Lewis in the introductory quote to this chapter. The law, while often intervening in the interests of the white workers, and against the black workers, had as the main aim the defence of the political interests of capital.

The Act must be seen as an effective answer by capital and the state to the growing militancy of the white workers in the period prior to 1924, and a partly effective one to the changing nature of the workforce and worker organisation in the later period. In the early period the organisation of the privileged was controlled within acceptable limits by the machinery of the Act, which functioned to emphasise all the conservative and restraining influences of the form of organisation, while minimising their revolutionary potential. As a reaction to particularly militant organisation, however, and in an attempt to divide the workforce, the Act did incorporate some concessions to the workers, at least to the white and skilled among them.

In the later period, with the growth of militancy in the "new unionism" and increasing participation and organisation of females and blacks of the thirties, the ambit of the Act changed and its coverage was extended. The earlier strategies had to be adapted, and this necessity was evidenced by several changes in the 1937 Act - for example the tightening up on strike provisions and the extension of agreements to non-unionised and non-represented - as well as by a change in administration, with a clamping down on mixed organisation. On another level, the change sparked off renewed debate on the form of control to be placed on black trade unions.[1] At this level the Act was not quite so successful, as evidenced by the increased strike statistics, and the eruption of the massive 1946 African mine workers strike.

As well as looking at developments over the years, the chapter also described examples of the operation of the Act - ICs themselves, conciliation boards, mediators, arbitration, and the courts. All these operated in a capitalist framework. In their very structure they were seen to be biased, and the South African situation was seen to bear out the analysis given for the British situation by Hyman in that trade unions usually succumbed to the pressures towards economism, integration and cooptation. On occasion the bias was further amplified in South Africa by the narrow perceptions of the actors involved, with the division afforded by colour distinctions among the workers.

Overall the picture presented is one of an Act aimed fundamentally at the regulation and control of the organisation of workers and their division along racial, skill and industrial lines. The Act was an answer to militant class struggle by the workers. Trade unions were too strong to be eradicated completely. Rather the state and capital attempted to influence and deform them so that they would operate in the interests of capital, rather than the workers by whom and for whom they were originally created. Those workers who had historically proved themselves to be more militant were accorded limited rights to organisation, bargaining and strike. These rights were so restricted, however, both in terms of to whom they were afforded and in terms of the limits of the rights themselves,

1. D. Lewis, "African Trade Unions and the State: 1946 - 1953", 1976.

that they could not question the basic fact of capital's rule of industry and society. Insofar as the state and capital were successful, by this means, in buying off a large section of the white workforce, the title of De Broize's thesis is very apt - "The Industrial Conciliation Act - A Victory for Capital."[1]

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1. De Broize, 1977.

CHAPTER FOUR: THE WAGE ACT

In the first quarter of the twentieth century in South Africa there emerged a strong and militant movement among the workers on the mines and in the towns, a movement concentrated within the more privileged sectors of the society, namely the craftsmen and the whites. This movement was, for the most part, effectively curbed and controlled by the ICA, which served to channel and restrict worker demands and militancy in certain directions, and also to separate this organised section of workers from the rest of the working class, both in organisational terms, and in aims and ideas.[1]

However, the rest of the workers, while not organised so strongly at the time, and thus not so much of an immediate threat, were also a force which capital and the state could ignore only at their peril. To ignore the demands of the latter, many of which were justified in terms of bare subsistence needs, even from capital's limited point of view, would be to ignore the development of a potentially more radical and broad-based threat. These workers had thus also to be contained, and laws were passed which imposed extensive controls on this labour, including the shape of the labour market, the conditions of work, and ultimately, if indirectly, upon the opportunity for and structure of organisation.

Chapter One looked briefly at the "Native" laws and saw how they established an all but complete system of control of the African population, particularly as workers. This chapter will look at the Wage Act, which also provided for the control of both white and black labour, and of the capital which employed them.

Section I of the chapter will deal with the history of the Act, giving a brief description of legislation of a similar nature which preceded the 1925 Act. Section II will examine the Act insofar as it affected the different section of the labour force. Empirical evidence of the changing nature of the workforce in terms of both colour and skill will be presented. These changes, as well as the changes in the framing and

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1. See Chapter Three, supra, for a fuller discussion of the ICA.

function of the Act itself which accompanied them, will then be situated against the various forces necessitating them.

Section III will then deal with the effect of the Act on capital-labour relations, as well as inter-capitalist relations. It will be shown how the Act advanced capital's interest as a whole, while within capital it advanced the interests of certain capitalists against those of others. The operation and enforcement of the Act forms the substance of Section IV. The first half will provide illustrations as to how the form of the machinery of the Act encouraged the biases described previously. The second half of the section will deal, as did Section III of Chapter Three in the case of the ICA, with the extent and manner in which the Act was enforced. Court cases which indicate significant aspects of the Act's nature will be cited and discussed. Finally, Section IV will summarise the main conclusions to be drawn from the preceding description of the Act.

I

History of the Act

The Wage Act of 1925 was not the first attempt at control by way of a system of wage determinations made by a wage board. The Regulation of Wages, Apprentices and Improvers Act, No 29 of 1918, had provided for the establishment of a board to regulate the wages of "women and young persons"[1] and to achieve this aim had created boards, appointed for specific trades and areas, consisting of equal number of representatives from capital and labour directly involved under a neutral chairman. This act, limited in terms of trade, sex, as it was in terms of age, had, however, failed to be as effective as was hoped. The absence of a colour bar in the measure tended to encourage the employment of adult "coloured" male labour in place of the controlled white females and juveniles, and thus frustrated the objectives of the legislators, which had been to "protect" white female and juvenile workers.[2] The weakness of organisation among female and juvenile workers

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1. Preamble to Act 29 of 1918.
2. Wages and Economics Commission, 1925, clause 76.

also hampered the effectiveness of the measure. "Employees in the occupations to which this Act was intended to apply are not organised. Any employee who made himself prominent on behalf of his fellow employees 'had reasons to fear the consequences for himself.' This alone is quite sufficient to explain why the Act has failed."[1]

In 1921 a new bill passed successfully through the House of Assembly, allowing for wage boards to lay down minimum wages for all white workers, male and female.[2] (The boards were again to comprise worker and employer representatives). The widespread industrial unrest of the following year prevented the passing of the bill through the Senate[3], and a subsequent bill which eventually replaced it and became law, encompassed significant changes in that (a) it covered all workers regardless of colour, and (b) representation of workers and employers on the board was abolished, except insofar as they sat as assessors in equal numbers.

The new act, No 27 of 1925, provided "for the determination of conditions of labour and of wages and other payments for labour"[4] for all industrial workers - male, female, juvenile and adult, black and white, in industries not governed by IC's, and included one-man businesses excluded from the ICA. A permanent wage board of three members, employed and remunerated by the state, and independent of EO or TU organisations, was established. This board was to investigate and report on wages and conditions in any specified industry and area when directed to do so by the Minister of Labour, or where a "sufficiently representative" group of employers or workers had applied.[5] Based on this investigation, and taking into account the condition of capital in that industry, the board was then to make a recommendation as to the minimum wages and conditions which should apply. After this had been made public and interested bodies and individuals had been allowed a period of a month for representation and complaints, the

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1. Wages and Economics Commission, 1925, page 287.
2. AB 49 of 1921.
3. R.H.Davies,CAPITAL, THE STATE AND WHITE WAGE-EARNERS, 1977 , page 137.
4. Preamble to Act 27 of 1925.
5. Section 3 of Act 27 of 1925.

Minister could then declare this recommendation to be a binding wage determination (WD) for the industry, and contravention of any of its provisions to be a criminal offence.

II

The Act as Part of the Civilised Labour Policy

The Act was clearly part of the PACT government's attempt to appease white workers and to protect them at the expense of the black workers. The Wages and Economics Commission of 1925 had noted the wide wage gap between skilled and unskilled in South Africa. It had remarked that while urban wages, excluding those of labourers, were much higher than in any other comparable country,[1] labourers' wages, i.e. those accruing chiefly to blacks, were lower than overseas.[2] In the skilled trades, where whites were primarily engaged, the workers found it easier to organise and were thus more likely to be covered by TUs and IC agreements. In industries engaged in the "winning of raw materials, where cheap labour is necessary to enable the product to be sold at low rates", blacks were employed, and the position of these workers in the political economy, and the lack of competition with whites, obviated the need in the state's eyes for control. It was in the "general and more unorganised trades, where the white and coloured workers are compelled to compete, that it seems necessary to establish a reasonable standard of living by means of wage legislation" by a wage board.[3]

The Act laid down that the board could only make a recommendation if it could recommend a wage on a "civilised" level, unless given the go-ahead by the minister, and it was only these recommendations which could then become WDs.[4] While the recommendation could discriminate on the basis of age, sex, length and type of experience, discrimination along colour lines was expressly forbidden.[5]

1. Wages and Economics Commission, 1925, clause 28.
2. ibid., clause 29.
3. INDUSTRIAL SOUTH AFRICA, April, 1925.
4. Section 3 of Act 27 of 1925.
5. Section 5 of Act 23 of 1930.

This "civilised" level was the rate upon which workers were deemed able to support themselves on an acceptable level, in practice the standard deemed necessary to support WHITE workers at this "acceptable" level. Where blacks and whites were employed exclusively in different trades or jobs within a trade, the Wage Board could, and Lucas, the first chairman of the board, admitted that it did, "take into consideration in fixing the wage for an occupation, not only whether such occupation was one requiring a degree of skill which should be remunerated above the level of native wages, but also whether one race or another predominated among the employees in that occupation."[1] Where black and white did the same work, however, the setting of a single minimum wage, at a "civilised" level, eliminated the "unfair competition" amongst the various "races" that would have resulted "were the employees of one race permitted to perform given operations at lower rates."[2] Blacks, through various historical and social developments, were accustomed to survive on much less than whites, and their subsistence wage, socially and historically determined, was thus lower than that of whites. Any sound businessman would thus have preferred to employ blacks in a "free" market situation. When there was a minimum wage set at the higher white level, however, the situation changed. In a society with the colour prejudice of South Africa, in the absence of any consequent economic disadvantage, the predominantly white employers preferred, and were encouraged in several additional ways (e.g. tariffs, government contracts, etc) to employ whites. The "colour-blind" Wage Act was thus utilised as an implement in the "civilised labour"policy of the government.

The 1936 Annual Report of the Labour Department illustrates the point:

> "The experience gained since 1934 has shown very clearly the relationship between wage rates and the employment of civilised labour. In industries not subject to wage regulations, or where no special provision has been made in regards to rate of pay, attempts to increase the number of civilised workers met with little success. Indirect pressure, exerted through the protective tariffs under which certain industries have grown up, also proved of little avail."[3]

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1. SOCIAL AND INDUSTRIAL REVIEW, XXIX (VII), 1929, page 202.
2. Dept Labour Annual Report, 1940, page 31.
3. Dept Labour Annual Report, 1936, page 12.

Wage regulation by the wage board often had the desired effect. As early as 1930, Abdurahman, president of the African Peoples Organisation, complained in an address to the conference of this "coloured" organisation, that:

> "This repressive piece of legislation has dealt the severest blow of all to the coloured worker - man and woman, especially to the aged and semi-skilled. It was deliberately designed to hit the coloured man who has not the ability or has not had the opportunity to acquire that amount of skill that entitled him to a full wage.
>
> "...how well it has succeeded will be seen by going about the streets of the Peninsula. Here hundreds of semi-skilled men and women are now swelling the ranks of the unemployed without any hope of employment."[1]

The Cape Federation, on the other hand, with a substantial white membership, noted with satisfaction in 1934 that in positions where "prior to the passing of the Wage Act only the lowest type of employee was willing to accept employment, things have greatly changed for the better."[2] The principle of the rate for the job served to favour white workers rather than providing equality on the labour market.

Changes in Coverage of the Act

The Act's function was not static throughout the period, however. Changing economic and political conditions occasioned amendments, and resulted in blacks being included to an increasing extent. Among the causes were the improvement in the position of male white workers, the partial solution of the "poor white problem", the emergence of a more organised and economically important black proletariat, and the general development of manufacturing industry. Unfortunately, it is only after the 1935 Industrial Legislation Commission officially "recognised" the importance of this colour aspect of labour legislation that any colour breakdown is given in the statistical information on the overall operation of the Act. At this time the functions were already changing, and empirical comparisons of the "before" and "after" position are thus difficult to make, but the trend after 1937 does provide some indication.

After the Industrial Legislation Commission had conducted a full-scale

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1. Report on 29th APO conference in CAPE TIMES, 2 April 1930.
2. Memorandum to Industrial Legislation Commission, page 10.

investigation into the operation and effects of both the ICA and the Wage Act, significant changes were introduced into both the Acts in the light of the shortcomings highlighted by the Commission and the changing structure of the labour force.

Although the Wage Act was more widely cast than the ICA, many workers were still excluded from its ambit. It covered all workers in those spheres where it applied, including Africans, and did not limit itself to the restricted definition of "employee" contained in the ICA. But workers in agricultural work, private domestic service, and to a certain extent those in government employment, were excluded. Few white workers were employed in these occupations, and, where they were, it was in positions for which black workers did not compete. It was in industry, where black and white competition did exist, and in those levels of skill where the competition was at its most intense, that the Act was applied. This bias in the Act's application must be considered in addition to other forms of bias which the tables below illustrate.

The tables below supply important indices of the changes in the nature of the Wage Act, by comparing the statistics for WDs made in 1937 and 1938 with those covering the full period 1937 to 1945. Since the change was gradual - a change in emphasis, rather than a complete reversal - the differences between these two periods should indicate the direction of the trends, despite the lack of earlier comparative data.[1]

Table 4.1 shows changes in the colour composition of workers covered by WDs. In 1935 whites constituted only 42% of the total employment in private industry.[2] In 1945 they constituted 31%[3]. However, in 1937 and 1938 whites comprised 48,5% of workers covered by WDs, as opposed to only 26,7% on average overall for 1937 to 1945. As the Wage Act prohibited colour discrimination, and thus the exclusion of blacks, in those areas covered, these figures suggest that bias

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1. These figures, being only for two years, are not strictly representative, as individual WDs, for industries with exceptional characteristics, might influence the totals. As the WDs were intended to last for only two years, however, a two year stretch should provide a reasonably representative picture.

2. Union Statistics for Fifty Years, pages G10-12.

3. Ibid.

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2. Union Statistics for Fifty Years, pages C10-12.

3. Ibid.

was accomplished rather by the choice of sector and skill covered than by this direct and blatant exclusion. In the early years the sectors and skills chosen were those where whites formed a significant porportion of the workers. Later the focus shifted so as to cover areas where black workers were more important.

TABLE 4.1[1]

COLOUR BREAKDOWN OF WORKERS UNDER WAGE DETERMINATIONS, 1937-1945.

Period	Whites	African	Indian	"Coloured"
1937-38	6 135	4 923	629	993
	48,5%	38,8%	5,0%	7,8%
1937-45	79 680	167 600	16 190	34 166
	26,7%	56,3%	5,5%	11,5%

The change was to some extent an acknowledgment of the number of whites still filling these positions, particularly with the increasing participation of women in the economy - an involvement concentrated in the low-paying and predominantly less skilled industries, such as clothing, food and canning, textiles and the commercial trade, where blacks were also employed on a large scale. The Department of Labour reported that "investigation has shown that there is scope for a considerable increase in the number of civilised persons employed in industry and commerce... The Department has therefore pressed, wherever possible, for the adjustment of the wages paid to semiskilled and unskilled workers, in order to provide suitable openings for civilised persons. The task is not a simple one, as it involves the abandonment of the principle that the remuneration for this class of work in industry should be based on the needs of uncivilised workers."[2]

Even the CFLU admitted that "the present rate of wages paid to unskilled labourers are totally inadequate and the gap between skilled workers and those of unskilled workers far too great.[3]

An attempt to solve these problems by the introduction of a minimum wage

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1. Dept Labour Annual Reports, 1938, Table II; 1945, Table IX.
2. Dept Labour Annual Report, 1934, page 18.
3. CFLU Memorandum to Industrial Legislation Commission, 1934, page 16.

bill for the unskilled had been shelved, after prolonged discussion and debate. It is noteworthy that a combined conference of the SAFCI and Assocom had asserted that the Wage Act was already sufficiently restrictive.[1] Instead of an all-embracing act, the Wage Act and ICA were amended to permit a gradual and industry-specific introduction of minimum wages, as and when acceptable. The ICA was amended to allow ICs, whether representative of the unskilled or not, quite unambiguously to fix minimum wages and conditions of service for the unskilled within their own areas of jurisdiction. The Wage Act was also amended to facilitate the same trend. (See infra for further elaboration on this point). These changes were reflected in the operation of the Board, which became involved "in a totally different set of functions."[2] It is these forces and factors which the shift in the colour coverage of the Act highlighted above reflects. In attempting to upgrade the conditions of the white unskilled, and in response to the increased power and importance of the black workers, the board laid down wages for unskilled grades at a higher level than those previously paid. While this probably caused the displacement of some blacks by white workers, it also served to keep the conditions of those who remained from being too depressed. At the same time the Act was also extended to areas almost exclusively black, where the lack of competition with whites provided more unambiguous benefits for black workers. The increase in the percentage of black workers after 1938 thus also reflects increased investigations into the least skilled areas of work (besides those excluded from the Act completely), namely those of "unskilled labour". Up until this time the only unskilled determination had been for Bloemfontein, where the strength of the ICU had forced the issue as early as 1928. In 1937 the board received a request for an investigation into unskilled labour in all the principal towns.[3] On 9 September 1938 the WD for unskilled labour in eleven industries in the Cape was gazetted, and on 38 October, again prompted by black unrest in the area, a determination was gazetted for Durban.

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1. INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, January, April, May 1935.

2. Davies, 1977 , page 226. This "totally" is perhaps an overstatement. It should be interpreted as a different set of functions in addition to the previous ones, rather than a complete change.

3. Dept Labour Annual Report, 1937, page 60. The source of the request is not stated, but it is probable that it could come from the Institute of Race Relations, black trade unions, or a combination of the two.

Tables 4.2 and 4.3 provide further evidence of the changing nature of the Wage Act.

TABLE 4.2[1]

SKILL BREAKDOWN OF WORKERS UNDER WAGE DETERMINATIONS, 1937 - 1945

Year	Skilled %	Semi-skilled %	Unskilled %
1937-38	57,3	5,5	37,1
1937-45	36,6	18,1	45,3

TABLE 4.3[2]

SKILL AND COLOUR BREAKDOWN OF WORKERS UNDER WAGE DETERMINATIONS, 1937-1945

(A: WDs passed in 1937-38; B: WDs passed 1937-45 inclusive)

Category	White		African		Total	
	A	B	A	B	A	B
Skilled	5 588	62 702	921	3 826	6 896	73 679
	75%	85%	12%	5%	100%	100%
Semi-skilled	327	13 533	306	11 293	664	36 500
	50%	37%	44%	31%	100%	100%
Unskilled	200	1 717	3 696	72 119	4 471	90 952
	4%	2%	82%	79%	100%	100%

Table 4.2 gives the skill breakdown of workers under WDs, while Table 4.3 gives the statistics for both skill and colour divisions. At the beginning of the period there had been much evidence of black and white competition at both the semi- and unskilled levels.[3] The concerted operation of the Act and other measures under the "civilised labour" policy served to ensure that it was only in the semi-skilled group, the smallest group, that whites and blacks competed to an important extent by the time of the Industrial Legislation Commission. The skilled jobs, even in this area of machinofacture rather than craft-dominated industry[4], remained dominated (75%) by whites. The growth of machinofacture meant, however, that the semi-skilled section of the workforce was growing, at the expense of both skilled and unskilled,

1. Dept Labour Annual Reports, 1938, page 69; 1945, page 43.
2. Dept Labour Annual Reports, 1938, Table II; 1945, Table X.
3. Poor White Commission, passim., e.g. page 209.
4. The latter were mainly under ICs, and thus not covered by WDs.

a fact reflected in the 18,1% semi-skilled for 1937-1945, as compared to 5,5% for the same category in 1937-38.

The board continued to see its task as being concerned chiefly with this middle group, the operatives, as opposed to the supervisory and clerical staff, the skilled mechanics, or the unskilled workers,[1] but, as stated above, it also turned its attention increasingly to the black workers, both semi- and unskilled. The shift was to some extent a new interest in black workers, due to their increasing economic, social and political importance, but, to some extent, it was also the effect of a constant policy maintained under changing circumstances, resulting in a different range of workers covered. The percentage semi-skilled workers of the total workers covered by WDs increased from 5,5% to 18,1% for the two periods compared here, while the percentage of unskilled increased from 37,1 to 45,3%.[2] This change was also reflected in the colour composition of the workers covered. While the percentage of whites covered increased for the skilled category from 75% to 85%, in the case of semi-skilled workers it dropped from 50,4% to 37,1%, and for unskilled from 4,4% to 1,9%. Blacks thus predominated in the categories upon which the board came increasingly to concentrate.

In the late twenties and thirties moderate African trade unionism had been at a low ebb and could easily be ignored, while that which was strong was too "revolutionary" in its aims to be tolerated by the state. In the period 1933-36, with the economy recovering from the depression, the number of WDs and workers covered by WDs, both black and white, remained virtually static. The wage board was in no position to push for better conditions while businessmen were seriously "considering a proposal to suspend the Wage Act for twelve months on the grounds that it is adversely affecting the unemployment position."[3] In the late thirties, however, African trade unionism and workers in general again became a force to be reckoned with. Their strength was enhanced by the shortage of black labour occasioned

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1. Dept Labour Annual Report, 1937, page 67.

2. "Unskilled" determinations, as well as coal and timber, are excluded from these statistics, which are thus an understatement of this category.

3. CAPE TIMES, 27 June 1932.

by the gold boom, the expansion of industry, and the good maize harvest, the latter having the "awkward habit of helping maize production not only on the white farms, but in the native reserves as well."[1]

In the light of these developments, the Act was amended in 1937 to facilitate the black workers using its machinery.

In the original Act the Minister had been empowered to authorise the board to make a recommendation even where it could not recommend a "civilised" wage, but this was not the usual procedure. In the new Act, the "civilised" wage clause was removed altogether, and the procedure by which Africans could actually initiate an investigation was facilitated. The initial Act had stated that the board was to conduct an investigation wherever a sufficiently representative group of employers or workers applied. Africans at this stage were in many industries effectively organised in such organisations as the ICU, and it appears that the board was in the early period inundated with requests from African workers. The first investigations of the board were often into workers outside the definition of "employee" in the ICA,[2] and the strength and importance of African organisation was so great that in the case of the Bloemfontein unskilled labour investigation, the wage board actually agreed to postpone one of its sittings for a day to suit the ICU representatives.[3]

At this stage, however, this was not the aim of the state in passing the Act. To forestall the act being used in this way for the "wrong" purposes, a regulation was passed in 1929 stipulating that all those supporting an application for an investigation had to sign it themselves, and this "in practice makes it impossible for any large body of natives to make a successful application within the terms of the Act and the regulations, and since the promulgation of the amended regulation no application from Natives has been received."[4] The 1937

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1. GUARDIAN, 24 September 1936.
2. SOCIAL AND INDUSTRIAL REVIEW, 1926, page 86.
3. WORKERS HERALD, 17 May 1927.
4. Chairman of the Wage Board, quoted in Jon Lewis, "The New Unionism", SOUTH AFRICAN LABOUR BULLETIN, March-April, 1977, page 37.

Act lifted this restriction. With it now being easier for Africans to initiate reports and determinations in their industries, they "increasingly made use of this right until it was abolished in 1957."[1]

In their new thrust the trade unions were supported and aided by the white liberals, in particular the Institute of Race Relations and the Friends of Africa. From 1936 onwards, when the SAIRR granted an initial £200 towards this,[2] Rheinallt Jones, William and Margaret Ballinger, Maurice Webb, A.L. Saffery, J.L. Rollnick and others undertook investigations into the wages and cost of living of black workers, and the effects of industrial legislation, as well as helping with the presentation of evidence to the wage board. The board itself encouraged this "European leadership" whose "presentation of ... and grasp of the issues at stake and of the ebb and flow of the argument is generally more effective than is the case when presentation is in the hands of the less experienced Natives..."[3] The restraining influence of these liberal helpers on the workers' demands made the wage board more amenable and open to their demands, and by the late thirties and forties the trade unions were receiving much help from the Department of Labour itself, even in the enforcement of wage determinations.[4]

The state's policy was now one of encouraging an increase, but a slow one, in African wages. "A sudden increase in pay would be merely demoralising to natives whose actions are determined so much more by custom and tradition than by ordinary economic considerations." But a slow increase in wages would not upset industry, and would ensure that Africans keptdeveloping "new wants ... at an increasing rate, with a corresponding possibility of stimulating their willingness to work."[5] This would help both to avert serious labour unrest, and increase consumption of industry's products.

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1. Jonathan Bloch, THE LEGISLATIVE FRAMEWORK OF COLLECTIVE BARGAINING IN SOUTH AFRICA, 1977 , pages 5-6.

2. SAIRR Annual Report, 1937.

3. McGregor, Chairman of the wage board, quoted in Mark Stein, Honours Thesis, 1976, page 45.

4. Stein, 1976.

5. Industrial Legislation Commission, UG 35-1937, page 44.

The Effect of Skill Division in Wage Determinations

"The distinction between skilled and unskilled labour rests in part on pure illusion,or, to say the least, on distinctions that have long since ceased to be real, and, that survive only by virtue of a traditional convention..."[1]

Thus far it has appeared that skill is an objectively determined and measureable concept. The definition of skill levels in wage determinations was, however, another means which could be manipulated to achieve definite ends, and capital and labour, and different groups within labour, often held conflicting opinions of just how such skills should be defined.

With the development of machinofacture, as opposed to manufacture, a development situated firmly within the period being studied, and one which changed the shape of the labour process and the working population significantly, skill requirements changed substantially. The former craftsmen, with their high levels of skill and control over the labour process, disappeared, to be replaced by a larger group of machine operatives. As machines were applied in ever larger fields the demand for pure manual unskilled labour also decreased, to the advantage of the semi-skilled.[2] Whereas in the craft trades, where the distinctions were relatively clear and where labour aristocrats predominated (an example par excellence of this is printing), ICs and the Apprenticeship Act operated to keep distinctions as clear as possible.[3] It was in the manufacturing industries that the Wage Act

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1. Karl Marx, quoted in Tony Cutler, "The Romance of 'Labour'", ECONOMY AND SOCIETY VII (1), 1978.

2. The concept of deskilling is a difficult one. For a fuller discussion on should look at the whole current labour process debate, e.g. Harry Braverman, LABOUR AND MONOPOLY CAPITAL, 1974, with his contention that all work, with mechanisation, is being deskilled, as opposed to others, the Labour Department among them, who contended, in reply to such claims, that "with the advance of mechanisation, comparatively less unskilled and more skilled and semi-skilled labour will be employed." (1945 Annual Report, page 44). A deskilling trend seems to hold for the period 1924 to 1945 and is supported by the work of such as Davies (1977), although further work is still to be done in individual industries to determine the varying rates and extent of the process.

3. Debate on the Apprenticeship Act at this time shows that even in these Industries skills were being progressively downgraded, with some considering that shorter periods of apprenticeship were necessary to acquire the lesser skill levels. (See Annual Reports of the Dept Labour).

was chiefly applied, and where the more ambiguous and imprecise definition and limits of skill were interpreted in different ways.[1]

The more skilled workers feared job dilution, and thus feared any diminution of the skilled-unskilled division, or an expansion of the semi-skilled group by the "promotion" of the unskilled. They complained that "the introduction of a semi-skilled class will result in a loss of employment or an encroachment upon the recognised sphere of work of any artisan and it will interfere with the training of apprentices."[2] "The effect on the skilled worker of allowing some operations to be done by the semi-skilled worker will be that there will be much less opportunities for the skilled man who is the natural breadwinner in the family to obtain, or retain, employment in the industry."[3] Unskilled workers, meanwhile, urged rising scales of wages for unskilled work, as for other "classes of labour", pointing out, with reason, that there was "no occupation in which experience and practice do not bring increased efficiency and with service, proof of dependability."[4]

Employers, however, opposed this demand and backed skilled white workers in their opposition to an increase in the numbers of semi-skilled workers, or to pay for experience. By keeping the number of workers classified as unskilled as great as possible they could decrease their wage costs. They thus protested against any attempts to increase the number of skilled and semi-skilled, to impose ratios for qualified and unqualified workers, or to impose rising wage levels based on experience or length of service, especially for the unskilled.[5] The wage board admitted that their "classification of labour into semi-skilled and unskilled is misleading. You can have a thousand classifications and then group them together and regard them as one. Much divergence exists in respect of unskilled labour - you have the unskilled street sweeper and the unskilled dock worker; they are separate classes and can not be grouped together."[6] The board nevertheless refused to accede to the demand of the unskilled workers for

1. E.J. Hobsbawm, LABOURING MEN, 1964, provides suggestive English material.
2. Industrial Legislation Commission, UG35-1937, pages 70-71.
3. ibid.
4. Dept Labour Annual Report, 1940, page 29.
5. In the 1933 WD for textiles labourers get no recognition for experience while "all other" categories do get this in terms of increased wages.
6. Industrial Legislation Commission, UG35-1937, page 35.

a recognition of this level of skill in their determinations on the grounds that such regulation would be difficult to enforce, and that "the measure of skill added by experience in an 'unskilled' occupation is necessarily small."[1] Even where recognition was given for time worked, the interpretation of this could go against the unskilled worker. The CAPE TIMES reported a case in 1937[2] where an employer was acquitted of underpayment on paying a machinist a wage which did not take into consideration the time she had worked for him already. The court held that the time worked, during which time she had been employed as a cleaner, should not be taken into consideration in arriving at her wage as a machinist. This, the CAPE TIMES reported, affected about three thousand other textile workers.

The 1937 Act facilitated the discrimination and differentiation which could be achieved by breaking the workforce into smaller groups entitled to different wages, by allowing for the fixing of rates not only between qualified and unqualified, but specifically also between any "classes" of labour. Thus, for example, whereas the WD of 1933 for the textile industry had only 2 categories - "labourers" and "all other employees"[3] - the 1937 determination recognised four distinct levels - supervisory and skilled mechanics, clerical workers, operatives, and unskilled.[4] Other determinations showed similar developments with regard to increased stratification. By fixing these internal proportions and differentiations, the board was able to afford differential protection to the different groups and also to divide the work force. The Van Reenen Commission had noted that "in most cases ... ratios were designed to protect the interests of the qualified employees."[5] Further proportions and systems of differentiation would facilitate this trend. Capital, however, was also to gain from the provision. Increasing stratification and increasing differentiation in wage payments meant a lowering in the overall wage costs, as workers did not receive anything beyond the price for their precise job.

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1. Dept Labour Annual Report, 1940, page 29.
2. CAPE TIMES, 26 February 1937.
3. No 46 of 1933.
4. No 55 of 1937.
5. Industrial Legislation Commission, UG35-1937, page 73.

III

The Effect of the Wage Act on Capital

The last point introduces the question of capital's interest in the Wage Act. One of the aims of the Act quite clearly was the promotion of the white labour policy of the government, as shown above. The concern of the state with white workers, could not, however, be at the expense of the profit rate, and the Act was passed as much, if not more, to aid capital, as to aid the white workers.

It was expressly laid down in the Act[1] that, in making a recommendation, the board was to take into consideration the ability of the industry to carry on its trade under the new conditions, and this in fact was the barrier to its recommending a "civilised" wage in all the recommendations it put forward. The chairman of the wage board issue a "warning to those who hold the view that the primary factor in Wage Determinations is the cost of living or standard of living of the worker. It is suggested that .... the Board is bound to accept paying capacity as the basis of prime importance for its recommendations, aiming at the same time at the attainment of the maximum improvements for the employees."[2]

While the board agreed that wages must be set at a "civilised" level if at all possible, to avoid "serious dislocation" the board "endeavoured to make (the) suffering (of industrialists) as light as possible."[3] With a policy of "festina lente", in order not to hinder the development of industry, they thus allowed up to four and a half years in some instances for industry to adjust to the desired conditions.[4] Davies suggests that the policy of the wage board was in fact one of promoting the efficiency and development of industry,[5] a suggestion corroborated by the Department of Labour itself, when it gave this as at least ONE of the aims of the Act.[6] Davies claims that WDs

1. Act 27 of 1925, Section 3.
2. Dept Labour Annual Report, 1939, page 57, emphasis added.
3. ibid., page 56.
4. SOCIAL AND INDUSTRIAL REVIEW, VI (XXXIII), 1928.
5. Davies, 1977, pages 194ff.
6. SOCIAL AND INDUSTRIAL REVIEW, IV (XIX), 1927.

were based on the actual existing wages of the mechanised industries, and those where white workers predominated. The setting of these standards as minima forced all firms to use methods as efficient as those used by this "bigger" capital if they were to maintain their profit level and not break the law. Thus, the quote by McGregor above, continued to say that "Although the Board must not cripple the industry as a whole, some industrial employers who cannot bear the additional costs imposed by a determination may be eliminated from the industry; this is frequently in the interests of employers, employees and the community as whole."[1]

Insofar as it was effectively applied and enforced (see following section), the Act served to encourage the promotion of efficient industry, and the concentration and centralisation of industry. It served to increase profits, rather than to cut them. From calculations based on production statistics of the main industries falling under the Act, Davies estimates that whereas the index of the mass of surplus value produced by industry as a whole increased by 3,68% between 1926 and 1933, the first eight years of the Act's operation, the index for the major industries in which WDs applied increased by 5,66%.[2] The SOCIAL AND INDUSTRIAL REVIEW for 1929 noted that profits had NOT dropped in the various industries to which WDs had so far been applied.[3]

The CAPE TIMES of the same year noted that sweet and clothing, recently put under WDs, both showed progressive employment returns for the year[4], which, while not providng a direct reflection of the profit trend, does provide some indication of a generally "healthy" business situation and also gives an indication of the general growth of the industries concerned. Analysis of the relative numbers of workers and employers covered by WDs likewise supports the contention that

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1. SOCIAL AND INDUSTRIAL REVIEW, II (II), page 11.

2. Davies, 1977, Table 4. This is obviously only an index of surplus value, which is a category not calculable from crude empirical data or statistics provided in such reports, if at all. The general movement of trends computed of these data should however, give a rough indication of developments.

3. SOCIAL AND INDUSTRIAL REVIEW, VII (XXXVIII), page 138.

4. CAPE TIMES, 11 April 1929.

concentration and centralisation occurred in these industries. Whereas the average number of workers per employer was 3,5 in 1932 (73 000 workers, 21 000 employers), by 1945 it was 8,1 (160 343 workers and 19 835 employers), with a peak in 1941 of 9,3.[1] This growth in the average size of establishment does not reflect the full growth, as with the advent of machinofacture and a higher capital concentration, one can also expect a higher capital/labour ratio, and thus even more concentrated and centralised industry.[2]

The Act was intended to regulate those industries and trades where employers and workers "being unorganised, could not be disciplined through agreements with trade unions"[3], i.e. where the ICA was not able to be applied. Workers organised in trade unions and employers in employer organisations preferred to battle directly with each other and to lay down conditions in this way, especially where the small number who were organised allowed concessions to be granted fairly easily to these workers. (See "employee" definition of ICA). Laite reports that the Wages and Economics Commission of 1925 resulted in five WD recommendations being put forward by the board. After a delegation from the FCI expressed that body's consternation at this interference the recommendations were withdrawn by the Minister, and the industries were given a chance either to form ICs or to be reinvestigated.[4] The Wage Act was generally seen by employers, organised workers, and the government as inferior to the ICA, and the state, in particular, expressed the hope that control by the board would encourage "both parties (to) turn sooner to the ICA rather than be under the influence and compulsion of an outside body".[5] This viewpoint also accorded with

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1. Data from Annual Reports, Dept Labour. Own calculations.

2. The 1960s wage debate (see references below) examined the extent to which legislation, as opposed to "pure economic forces", could cause an increase in wages, especially for black workers. Their concern was chiefly with the play-off, if any, between wage and output increases. The debate is thus interesting, but of limited value in relation to this thesis, due to the restricted, mainly neo-classical analysis and perspective of the writers. The debate is also concerned chiefly with alternatives for the future. Past effects are either not envisaged or not discussed. See J.A. Lombard, 1964; O.P.J. Horwood, 1962; Ian Hume, 1970; L.B. Katzen, 1961; W. Steenkamp, 1961 and 1962; S.P. Viljoen, 1961.

3. Davies, 1977, page 177.

4. Harold Laite, THEY BUILT A SYSTEM, n.d., page 171.

5. SOCIAL AND INDUSTRIAL REVIEW, II (II), 1924, page 114.

the dominant ideology which at this early period was against the large-scale state interference in the economy now prevalent and acceptable.

For labour the ICA, despite its many drawbacks, usually provided "a substantial advance on the rates of pay prescribed under the Wage Act",[1] especially for qualified workers.[2] Organised capital, too, generally preferred self-regulation to interference by an outside body. Protection was thus instituted for all in ICs in that there could be no investigation into an organised trade without the Minister's permission, and in that no WD could be passed in any area where an IC already existed.[3] It was not possible, however, or even advisable from capital's viewpoint, to have ICs in all industries. Some industries consisted of too many small employers, and in these cases organisation was difficult, the pressure of peer public opinion diminished, and thus the effectiveness of self-regulation hampered. Analysis of the numbers of employers and workers covered by ICs and WDs shows that it was precisely in these dispersed trades that WDs, rather than ICs operated.

TABLE 4.4[4]

COMPARISON BETWEEN WAGE ACT AND INDUSTRIAL CONCILIATION ACT

Year	Wage Act			ICA		
	Workers	Employers	Workers / Employers	Workers	Employers	Workers / Employers
1932	73 000	21 000	3,5	17 946	2 464	7,3
1940	139 330	15 109	9,2	91 897	7 872	11,7
1945	160 343	19 835	8,1	148 581	9 242	16,1

While, as can be seen from Table 4.4, the number of workers and employers covered by WDs exceeded those covered by ICs throughout the period for which we have statistics (see columns 1 and 2, 4 and 5), the average number of workers per employer, an index of the size of the establishment, was greater under the ICA than under the Wage Act. (Columns 3 and 6) The Wage Act thus catered for the larger, but more dispersed trades in this period of the development of industry.

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1. Dept Labour Annual Report, 1937, page 60.
2. An exception to this is provided in Martin Nicol, "Riches from Rags", unpublished, 1979.
3. Dept Labour Annual Report, 1932 and 1940.
4. Dept Labour Annual Reports, own calculations.

Because of these effects of the Wage Act in the promotion of concentration and centralisation, the attitude of capital towards the various bills and acts was ambivalent, and depended on the fraction of industrial or commercial capital involved. Agricultural and domestic workers were excluded from the Act, which thus did not affect their employers. These two groups were both chiefly black, where black/white competition did not constitute a problem, and "nationalists were mostly employers of farm labourers and the Labour Party were employers of domestic servants."[1] These groups of employers, both strong in the government of the time, also benefitted in indirect ways from the exclusion of the sectors. Agriculture gained as the employment of white, instead of black, workers in industry meant that their black workers would not be so strongly attracted off the farms to the towns. The white workers gained in the ways described above in Section II. Mining capital was ideologically opposed to the "interference" that the Act constituted, but for itself was largely unconcerned. This fraction appears to have received an assurance that it would be excluded de facto, if not de jure, from the act's provisions. The Board of Control of Alluvial Diamond Diggings, for one, had received a letter from the Labour Ministry in which they were assured that "althought the (Wage) Act did not exclude them, its provisions were not likely to affect them."[2] It is likely that other mining concerns were given similar assurances. It was thus industrial and commercial capital in which the interest and concern in the Act was most significant, as these were the fractions which would be most affected. Within these fractions opinions differed according to the stage of development of the particular trade, or even of the particular individual concern.

An example of this is afforded by the differences within and between industrial capital and commercial capital. The FCI from the beginning urged the new government to put the bill through as soon as possible,[3] and INDUSTRIAL SOUTH AFRICA, the federations's organ, carried an editorial which stated that "the manufacturing industry for many years has advocated the establishment of wage boards."[4] The commercial trade, which consisted for the most part of many small and unconnected

1. WORKERS HERALD, 12 May 1928, page 5.
2. Wages and Economics Commission, 1925.
3. FCI Annual Report, 1924, page 123.
4. INDUSTRIAL SOUTH AFRICA, December 1924.

establishments and where control by the industry itself was thus not feasible, presented a slightly different picture. It was an area where undercutting by the small establishment, operating with family or unorganised and superexploited workers, was a problem for the bigger concerns, who had to keep a larger workforce under control. The spokesmen of commercial capital (probably the larger concerns) thus favoured wage regulation by WD rather than IC,[1] preferring the state to be responsible for regulation and control, and not trusting reliance on their smaller competitors' doubtful concern for the requirements of total social capital. This support did not stop the individuals objecting to the actual terms of the WD eventually applied to them however.[2] The very diversity and disunity within the fraction which meant that wage regulation by WD would be preferred to IC regulation, also meant that agreement on the terms of such regulation was very unlikely. Within industrial capital itself this split between smaller and bigger capital showed in the Cape Chamber of Industry's adopting a contrary position to that of the FCI. The former body, which at this time was dominated by small capital[3], bemoaned the existence of the Wage Act and extolled the superiority of non-regulation for those industries where ICs were not possible.[4]

While the Act thus operated in the interests of capital, it did so differentially. In promoting concentration and centralisation, and the efficient organisation of industry, the Act promoted big capital's interests and speeded up the development of the economy as a whole. It can be seen as state interference in the private sector in the interest of the development of efficient capitalism.

IV

The Operation of the Wage Act

When the Wage Act was first passed it was seen by labour organisations as being an act in their interest, to protect their members. The board was inundated with requests for investigations, even from black

1. Industrial Legislation Commission, UG35-1937, page 83.

2. CAPE TIMES, 28 March 1939, reported 103 objections to the new WD for the commercial distributive trade.

3. Davies, 1977, page 63.

4. Annual Reports, CCI, bear testimony to this.

organisations, and on the publication of the first recommendations "a considerable amount of discussion took place, illustrating the very great interest manifested in these reports and recommendations."[1] Black workers were quickly excluded from the main operation of the Act by the methods mentioned above. White workers, however, continued to view the board as their champion for the longer period, but also, with time, found shortcomings in its operation.

Complaints became particularly evident after the first euphoric years, and with the passing of wage determinations for industries such as garment, liquor and catering, laundry, and commerical distributive, where there were a large number of women,[2] and where even a "civilised" wage level was not at a very high level. The CAPE TIMES[3] reported that the theoretical budget used in computing the wage for female labour, for example, allowed 17s 6d a week for board and lodging, two tubes of toothpaste a year, and stockings at 1s 11d a pair.[4]

The years of the depression during which WDs did not raise wages, and in some cases even cut them, added to the discontent. In 1931 Bill Andrews, secretary of the SATLC, already perceived a change in the policy of the board. In a letter to Creswell, the current Minister of Labour, Andrews noted that "during the last year or so the outcry from employers and the Press has ceased, but on the other hand, the action of the Wage Board... has caused serious misgivings in the minds of workers and their representatives. In fact workers are coming to regard the Wage Board as a wage-cutting machine."[5] Even after the depression, cause for complaint did not disappear. With the changes in the labour process and composition of the workforce, conditions for many unskilled and semi-skilled workers remained very poor. The combined

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1. SOCIAL AND INDUSTRIAL REVIEW, II (XI), page 899.

2. In clothing, for example, the white female ratio in 1933 was 335:665, while the black ratio was 632:368. (Industrial Legislation Commission, UG 35-1937). In the European population as a whole, the percentage of women in commerce was 25,2 in 1926, compared to 15,4 for the economy as a whole.

3. CAPE TIMES, 25 June 1931.

4. The marked neglect of the sexual aspect of labour legislation, both in this chapter, where it is of primary importance with the superexploited and unorganised nature of female labour in general, and throughout the thesis, should not be taken as indicating that this is unimportant. It is rather, BECAUSE of its importance and the lengthy treatment needed, that I have neglected the issue.

5. CAPE TIMES, 31 December 1931.

effects of the growth of factory industries, the increasing proportions of semi- and unskilled, of women and of blacks in the workforce, as well as the exclusion of the Labour Party from the government, provided the economic, political and ideological conditions for discontent to be expressed by a growing mass labour movement. FORWARD, the Labour Party journal, claimed that the wage board was being used to postpone decisions on wage questions rather than to settle them.[1] Eli Weinberg of the Sweet Workers Union, a mixed union, expressed the opinion that the "Wage Board is an instrument to keep the wages of the workers low in order to keep the profits of the employers high."[2] And it was not only the radical leaders who felt this way. They were supported by the workers. Burnside, a Labour Party member, and member of the Cape Garment Workers Union, was applauded for the following speech to the union:

> "With the Wage Board the position is very serious. Here we have a very expensive Board, set up for the specific purpose of seeing that the workers are paid an adequate wage. But the conditions in the clothing industry and bespoke tailoring industry have gone from bad to worse after every investigation by the Board. It has laid down conditions which are not compatible with civilisation and wages which do not allow the workers to live in decency."[3]

The members of the Wage Board seemed to "forget that it was originally constituted not to protect the profits of the employers, but to protect the wages and living standards of the workers."[4]

Many of the shortcomings were generated or exacerbated by the lengthy procedure of the board. Unlike the 1918 Act and the 1921 Bill, the 1925 board was a "neutral" one, rather than one composed of worker and employer representatives. Presentation of the points of view of the two protaganists was provided for, but in effect this conferred an unfair advantage on capital.

In investigating a trade the general procedure was to issue a questionnaire

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1. FORWARD, 22 June 1937.
2. GUARDIAN, 21 July 1939.
3. CAPE TIMES, 7 February 1935.
4. Editorial, GUARDIAN, 29 December 1939.

to all employers in the industry, in which they were required to furnish balance sheets and financial statements. After inspection of both these questionnaires, and a few representative establishments, the board held meetings where interested parties could present evidence.[1]

Capital was at an obvious advantage in this procedure. Balance sheets and financial statements are generally accepted as hiding more than they reveal.[2] This evidence was the first heard by the board, and thus the basis of all future findings. Employers were also well able to afford the legal representation most capable of presenting their case in the sittings of the board, while the workers had to rely on semi- or untrained union officials, or the goodwill of bodies such as the Institute of Race Relations. Technical argument and language, which were likely to be used in the auditor-and lawyer-edited reports of the employers, and unlikely in those of the workers, were also more likely to appeal to the Board members, most of whom had legal backgrounds or some form of technical training.[3]

Although the board was obliged to give the representatives of all representative organisations a hearing, workers were still disadvantaged at this stage, with the bias again against the unskilled and un-organised. Even more than in the case of the ICA there was the serious problem of victimisation. Even where forbidden by the law, it was unlikely to be detected (cept by the workers), or to secure conviction. The first Cape prosecution for this offence only occurred in 1939,[4] when an employer was prosecuted for dismissing three labourers without reasonable cause.[5] In another interesting case an employer, a Mr Bolon, was convicted by a magistrate of dismissing a worker who had given

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1. RACE RELATIONS JOURNAL, VII (I), 1940, page 4.

2. Christopher Hird, YOUR EMPLOYERS PROFITS, 1975, provides a useful explanation of just how some of this camouflage is effected, and how one can begin to decipher it.

3. F.A.W. Lucas, the first chairman, was an advocate. The second board consisted of Botha, a professor of economics, Windsor, a magistrate, and McGregor, the chairman, who was an official of the Department.

4. The CAPE TIMES claimed that this was the first Cape prosecution. The case immediately following in this thesis seems to suggest that it could not have been the FIRST prosecution. The fact that the TIMES was mistaken, however, does suggest that there must have been very few before this date.

5. CAPE TIMES, 17 February 1939.

information to an officer of the public service, and thus victimising him. On appeal evidence was led that the officer was a certain S, who was employed by a competitor of Bolon's, and who had been appointed in a temporary capacity and paid his salary indirectly. As such it was ruled that he was not an officer of the public service, and that Bolon should thus be acquitted of victimisation.[1]

Concern over the reluctance of workers to present evidence in this climate prompted the board to resort to separate sittings for employers and workers, so that the former would not know who of the latter had taken part. However, this position applied only to the offical worker organisations, i.e. the registered trade unions. These organisations could put their case privately, while "unorganised labour, (the trade union representatives) declare, is still able to voice its opinion at the public sittings of the Board."[2] This position was obviously very unsatisfactory for the unregistered, and provided the situation in which the aid of the SAIRR and like organisations could play a very significant role.

In acknowledgement of the growing importance of women, particularly white women, in the labour force, changes were also made in this regard. Additional female members (often also from Race Relations or university economics departments) were appointed to the board in trades where women predominated in the work force. Hansi Pollak, for example, was appointed in the garment-making investigation in 1936, receiving a special welcome from the chairman.[3]

It was, however, not only in the original drafting of recommendations that capital seemed to exert disproportionate influence. Before a recommendation was gazetted as a determination, allowance was made in the Act for complaints and suggestions for improvements. Capital, with its qualified technical advisers gained here, and the final recommendation for the distributive trade in 1939, for example, was even lower than the original report of the board, despite the fact that the board had then stated that the industry was "well able" to stand an increase.[4]

1. Rex v Bolon, CAP 31 March 1933, in SOUTH AFRICAN LAW JOURNAL, 1933, pages 407-408.
2. CAPE TIMES, 11 September 1931
3. CAPE TIMES, 7 May 1936.
4. GUARDIAN, 28 July 1939.

In baking and confectionary the non-civilised wage levels were in several cases reduced to meet the demands and complaints of small capital.[1]

Once a determination was gazetted, there was still a final chance for capital to escape, by applying for exemption for the individual establishment on the grounds that the conditions of work of those particular workers were "substantially not less favourable to them than the conditions of employment prescribed by that determination."[2] In 1943 riots erupted in the Marabastad location of Pretoria. The inhabitants were annoyed that the Municipality was applying for exemption from the unskilled WD on the basis that they were not able to afford such high wages. After fourteen Africans had been killed, a commission was set up to investigate the cause of the riots, and it was revealed that the Municipality was in fact well able to pay. Madeley, then Minister of Labour, and thus the one who would have granted the exemption, gave evidence that before the commission he had fully believed the Municipality, and had been prepared to grant the exemption.[3]

Employers were more likely to receive government gazettes and to possess other legal and relevant knowledge than workers were. They had the time, money and education either to take advantage of the law's provisions themselves, or to hire others to act for them. The lengthy procedure involved in setting up WDs delayed the granting of worker demands and resulted in the eventual WD often being out of date by the time it became law. Only a few examples of the bias of the Act in operation are cited above. They serve to illustrate what undoubtedly occurred, on a smaller or larger scale, in a large number of similar cases.

Enforcement of the Act

Generally IC agreements were better observed than WDs, the determination covering more and smaller employers, with the latter often not being

1. Davies, 1977, page 198.
2. Section 19 (1) (a) of Act 27 of 1925.
3. GUARDIAN, 7 and 14 January 1943.

members of an employer organisation.[1] The latter organisation's "outlook" had a "marked influence on their attitudes towards wage control,"[2] due chiefly to the preponderance of larger capital, who recognised that the various measures operated in their interests and against those of smaller capital, enhancing their competitive position. Among the smaller and less organised capitals of the WDs, self interest and moral suasion by fellow EO members did not exert such an influence, and the wage board thus, to some extent, became the "tribunal of appeal for those delinquents who can not be reached or thwarted in any other way."[3]

The Act provided for inspectors and officers who were to police the determinations, these inspectors being salaried members of the public service, and having powers of entry without previous notice to any establishment, entitled to question and examine workers and employers.[4] The Department maintained, however, that it was not its duty solely to secure enforcement of determinations, but that the trade unions should cooperate in securing observance. The wage inspectors doubled as inspectors for the Board of Trade and Industries,[5] and also had duties to perform under the Workmens Compensation Act.[6] During the first full year of the war, with reduction in staff in the Department, and the imposition of other increased duties, inspections fell by 10 881 in

1. Nothing prevents workers or employers, if otherwise qualified, from forming EOs, or TUs, even if these do not then form an IC. In most Wage Act trades there were, in fact, such organisations, although they did not necessarily cover ALL the workers or employers. The table of IC EO and TU membership below shows the latter always to be significantly higher than the former. This does not, however, negate the previous remarks about IC pressure. (1) IC organisations were formed by the organisations themselves. (2) The IC itself exerted an influence. (3) Not all the employers concerned necessarily belonged to the EO, while with most ICs, closed shop agreements of some sort existed. (See Erica Emdon, AN ANALYSIS OF THE CLOSED SHOP, 1978, Chapter II).

Year	IC workers	TU members	IC employers	EO employers
1932	17 946	76 943	2 464	4 386
1940	91 897	233 780	7 872	9 780
1945	148 581	346 509	9 242	13 860

(Source: Annual Reports, Dept Labour)

2. Industrial Legislation Commission, UG 35-1937, pages 121-22.
3. CFLU Organ, November 1938.
4. Act 27 of 1925, Section 11.
5. CAPE TIMES, 28 October 1933: Ivan Walker, Dept Labour, to SATLC.
6. Dept Labour Annual Report, 1937, page 63.

comparison with the previous year.[1] Weinberg noted that "until his organisation took a hand in matters there had been no prosecutions of unscrupulous employers in the clothing trade. But during the last six months (after he took action), four employers had been prosecuted."[2] Even where the Department did take action, their policy was to secure compliance without recourse to legal action wherever possible, a policy criticised even by the state's own commission as being too easy on offenders. They noted that this policy meant that "the careless employer who does not take the trouble to ensure that he is within the law will not be inclined to act as he does now in the firm belief that he will not be proceeded against so long as he makes the necessary adjustments when an inspection reveals that he out (sic) of compliance with the law."[3] Where recourse was eventually had to the courts, weeks or months would elapse before the case was heard. On appearance in court the boss would be defended by his "clever legal representative" while the "poor illiterate workers is battered about in the witness box."[4] By dint of clever argument the employer would often get off on technical point while in terms of the spirit of the law he was guilty, as illustrated by the few cases which follow.

If it could not be proved that an employer knew a worker did more qualified work than that for which he was paid, the employer could not be found guilty of underpayment.[5] In another case it was held that, whereas it was an offence not to keep a record of wages, this was not so in the case of advances on wages.[6] In yet another case, the first private prosecution under this Act in the Cape, the secretary of Messrs J.W. Jagger & Co (Pty) Ltd was charged with two contraventions of the WD for the Commercial distributive trade after the Attorney General had declined to prosecute. The case was lost in the courts. The magistrate, Mr Corder, found that the wrong person had been brought to court, in that in the summons the prosecution had failed to state that the secretary was the "representative" of the company. Corder went on

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1. Dept Labour Annual Report, 1940, page 26.
2. CAPE TIMES, 15 April 1936.
3. Industrial Legislation Commission, UG 35-1937.
4. CFLU, METHODS MOST FOUL, (?1934), page 5.
5. Rex v Falkson, TPD, 16 November 1931, in SALJ, XLIX, 1923, page 293.
6. Rex v Fabian, CPD, 31 March 1937, in SALJ, LII, 1937, page 30.

to admit that the law did not make it clear how a company should in fact be summonsed to court in such a case.[1] One of the most outrageous findings, perhaps, was that in Rex v Sharp. In this case the employer had underpaid his African workers, been convicted and ordered to pay the underpaid amount into court. This amount was then paid back to the workers by the court, whereupon the employer ordered them to pay it back to him or be sacked. The court ruled that this latter action by the employer was not extortion, and therefore not illegal, as there was no "illegitimate pressure" applied. The employer was merely "bargaining with them in regard to terms of employment in the future."[2]

Although these individual cases are interesting and informative as to how many individual workers could be deprived of what were, to all intents and purposes, their rights under the Act, rulings became even more important when whole determinations became invalidated through some nice legal point raised in an individual court case. Of the fifty-four determinations made up to 31 March 1935, no fewer than thirteen had been declared invalid by the courts.[3] Two of these invalidations were so far-reaching that they invalidated several, if not all, the WDs then in existence and necessiated the passing of the Wage Determinations Validation Acts of 1930 and 1935.[4]

The first instance arose out of a series of cases in which the status of the SOCIAL AND INDUSTRIAL REVIEW was in question. This review was a forerunner to the Department of Labour's Annual Reports, and was published monthly by the Department, on the same day of each month. It was in these publications that the first recommendations of the wage board were published for public scrutiny. The courts ruled in several cases that (a) it was doubtful whether the SOCIAL AND INDUSTRIAL REVIEW was a newspaper, and that this doubt applied specially in the case of special editions in which the wage recommendations were often published, and (b) that as no specific date, but only the month, was printed on the periodical, it could not be determined if the full thirty days necessary for complaints had elapsed before the recommendation became

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1. CAPE TIMES, 6 April 1939, and 8 June 1939.

2. Rex v Sharp, TPD, 1936 in INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, April 1937.

3. Industrial Legislation Commission, UG35-1937, pages 110-11.

4. Act 21 of 1930 and Act 16 of 1935.

a lawful determination.[1] The Validation Act cleared up the confusion by officiall conferring the status of "newspaper" on the REVIEW, and at a later date the recommendations were published in the government gazette rather than in a newspaper.

The second instance concerned the question of the setting of piece-, as opposed to time-rates. In the most pertinent of these cases the Chief Justice ruled in the Appellate Division that the piece-work provisions of WD No 42 were ultra vires. "The Chief Justice said that such an absurd result could never have been contemplated by the Wage Act as 'the remuneration which a piece worker received he receives for his work upon so many pieces or things, irrespective of the time he takes to do the work.' The remuneration which a wage-earner gets is money paid to him for the time he works. You cannot compare one with the other. There is no common denominator. In one case the measure is 'things', in the other 'time'."[2] The invalidation of this rate was then held to be so material to the WD as a whole that the latter itself was invalidated, and affected in the same way the determinations for clothing, bespoke tailoring, hairdressing, textiles, sweet making, furniture, tea, coffee and chicory packing, Bloemfontein unskilled work, laundry, cleaning and dyeing, Durban bakery, glass bevelling and silver, and the Witwatersrand and Hefdelberg Native trades.[3] The Wage Validation Act No 16 of 1935 was then necessary to allow the fixing of minimum remuneration for piece work, and to validate the necessary WDs already possessing such clauses.

Although these were the only two validation acts passed, the problem of whether a technicality rendered a whole determination invalid or not, was also an important one, determining whether it was just the individual who escaped, or whether the board and the workers were put to more trouble and time in securing a completely new determination.

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1. Portuese v Rex, CPD, 11 March 1929, SOCIAL AND INDUSTRIAL REVIEW, November 1979, page 1038; C. Strieter v Rex, TPD, 10 September 1928; ibid., December 1929; Daya Morar v Rex, 14 June 1928, ibid., August 1929, page 745. In HANSARD it was claimed that the Supreme Court had twice rule that it was a newspaper, in June and July 1929, while the previous week the Appeal Court had ruled that it was not. (col.2333,1930) These dates conflict with the cases mentioned above.

2. INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, June 1934. Earlier case which is very similar is Repanis v Rex, OFSPD, 26 August 1932 in SALJ, November 1929, page 1040.

3. HAD, col. 1959, 1935.

The Barone brothers, bakers in Pretoria, were also involved in a court case in this regard. They had been charged under seven counts, five relating to wages, and found guilty by the magistrate. On appeal they contended that the final WD differed from that first published by the Minister as a recommendation, with regard to the area of applicability, and that for this reason the whole WD was ultra vires. This contention was upheld by the court, the judge stating that he did "not think it can be said that .... (they are) setting aside the determination on a trivial or unimportant point." This one judgment rendered the sweet, clothing and baking determinations invalid.[1]

Employers, were however, not the only ones who could be taken to court for breaking the law. Section 8 of Act 27 of 1925 laid down that both parties who agreed to a contract, express or implied, paying less than the rate laid down by a WD, were guilty of an offence and liable to a £100 fine, while the contract was regarded as null and void in law. This was serious not only in that workers were convicted, but in its other effects as well. Firstly, a realisation of this fact discouraged many workers from reporting to the Department, this reporting being one of the more efficient means by which transgression were detected. Secondly, such contracts, despite the fact that "economic stress had forced" the workers to enter the contract or that they had done so through ignorance of their legal rights[2], usually disqualified their title to recovery of the amount underpaid. In terms of the 1925 Act the court could order how much the employer should repay to the worker.[3] In terms of the 1930 amendment[4] and the 1937 Act[5], the employer had to pay the full amount to the court, but the latter would decide how much was to go to the worker. In cases where he had entered the contract, they would be unlikely to award much, if anything. In all these cases "the only chance of an employee who had agreed to work for a smaller wage than the minimum determined by law, to get more than the amount contracted for, was to lay a complaint and to get the state to prosecute and show that he had an equitable right to get

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1. Francesco Barone and Felice Barone v Rex, TPD, 25 April 1927 in SOCIAL AND INDUSTRIAL REVIEW, III, page 607.
2. Industrial Legislation Commission, UG37-1935, page 132.
3. Section 8 of Act 27 of 1925.
4. Section 7 of Act 23 of 1930.
5. Section 21 of Act 44 of 1937.

a greater reward for his labour than he had contracted for."[1] Even when a civil case was within the means of the worker, this was not of much use. Civil proceedings could only be resorted to if the state refused to press charges, or if the amount repaid was not the full difference between the legal minimum and the amount actually paid.[2] If the worker had entered into the contract, as the contract was null and void, the court would be unlikely to uphold his claim. Repayment was also forfeited, even where the worker was not guilty, in those cases where the employer, "having traded in a state of insolvency", declared himself bankrupt.[3] With small proprietors the main culprits, this was not beyond the bounds of possibility!

V

Conclusion

It cannot be denied that individual members of the wage board saw their function as raising the living standards and general conditions of the workers, and helping to create a more just South Africa. Lucas, the first chairman of the board, had a view of change in South Africa which would:

> "not involve violent revolutionary action....is not communism or Nazism or any form of totalitarianism ....will take the monopoly our of'capitalism' and make it harmless (and).....end exploitation..... It will in fact give us a far greater degree of individual liberty and scope for individual initiative and enterprise than we have under our present laws...."

The system would operate on a principle of Roman Dutch law, from which "we have departed very far", i.e. that "no-one should be enriched at the expense of another person."[4]

Individual motives were not paramount, however. The law was designed for specific ends and would in the long run fulfil these, regardless of the individual functionaries and their aims or ideals. To some extent this was because these very aims and ideals were formed within

1. CAPE TIMES, 31 March 1934.
2. Act 44 of 1937, Section 23.
3. CFLU, METHODS MOST FOUL, (?1934), page 5.
4. SOUTH AFRICA AS SHE MIGHT BE, 1945, Foreword.

the situation that was South Africa between 1924 and 1945 (e.g. Lucas' consideration of who filled certain jobs in setting wages, mentioned above). For the rest, the strength of the system managed to subvert an individual's aims. For Lucas, the decisive defeat came in 1936, when he was "resigned" from the board. Mr Fourie, of the Department of Labour, announced that Lucas would not accept re-appointment. Lucas claimed that "the first intimation that (he) had that the Government did not wish (him) to continue as chairman of the Wage Board was Mr Fourie's letter of April 23, 1935, telling (him) that (he) was not to be reappointed."[1] A reference to the forced resignation in Andrews[2] claims that Lucas had managed to "slightly improve conditions in a number of small, poorly paid industries", but that after his resignation "it became simply a government machine to keep wages at the lowest possible level." This supports the suspicion that a conflict between Lucas' ideals and the aims of the new government, with its more blatant anti-labour bias, were at least partly responsible for his dismissal.[3]

Overall, it does not appear that the wage board served to raise wages or better conditions substantially. Minimum wages were usually set below average wages.[4] While this did mean an increase for the lowest paid in some cases, it was a minimal one - one which followed,rather than created, a trend, and served chiefly to advantage labour only in so far as it favoured the better paying and more efficient larger capital. By 1940 "evidence is accumulating that in general the wages of unskilled workers, and often of the semi-skilled also are insufficient for the maintenance of a healthy existence."[5]

Within the labour force the Act did, however, have other effects. It was made quite explicit that the Act was intended to benefit white workers and prevent "unfair" competition by black workers. This

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1. CAPE TIMES, 28 May 1936.

2. W.H. Andrews, CLASS STRUGGLES IN SOUTH AFRICA, 1941, page 38.

3. I have been told by other researchers that it appears that Lucas had also started, or attempted to start, a political party of some sort among workers. At a later date it appears that Steenkamp, also a chairman of the board, suffered the same sort of dismissal for similarly unacceptable pro-worker sentiments.

4. Dept Labour Annual Report, 1939, page 56.

5. Dept Labour Annual Report, 1940, page 31.

function persisted, as shown above, even when the Act began to be applied to increasing numbers of black workers. Together with this change also went an increasing tendency towards stratification and differentiation within the determinations, and thus within the labour force. Both these facts tended to make the Act yet another factor in the increasing division, and thus weakening, of the labour movement.

The Wage Act thus served as an adjunct of the ICA, for those workers who, being less skilled and less well organised, did not take advantage of the latter, and for the increasing number of workers in the rapidly developing machine-based industry. The Act controlled their conditions, and thus imposed some degree of control upon capital, but, more importantly, it protected capital by dividing the workforce, channelling their demands along controlled, official paths, and thus keeping the demands within acceptable limits.

CHAPTER FIVE : THE FACTORIES ACT

> "Factory legislation, that first conscious and methodical reaction of society against the spontaneously developed form of the progress of production is ..... just as much the necessary product of modern industry as cotton yarn, self-actors, and the electrical telegraph."[1]

In 1918 the first Factories Act was passed in South Africa, and in 1931 this was amended by Act 26 of that year. In 1941 this first basic statute was replaced by a longer, and more far-reaching, piece of legislation, the Factories, Machinery and Building Work Act of 1941.[2] The two acts provided for the "regulation and control of factories, regulation of hours and conditions of work in factories, supervision of the use of machinery, and for precautions against accidents to persons employed..."[3] This chapter attempts to set out the reasons for the passing of the two acts, and to assess their effectiveness in terms of the aims, hopes and needs of the different groups affected. Possible reasons for changes and developments in the legislation between 1918 and 1941 will also be put forward.

Section I of the chapter will discuss the forces necessitating the passing of such legislation and control; why such legislation was, in fac the "necessary product of modern industry"[4], as well as additional reasons for such legislation in the specifically South African context. The following sections, II to VI, will examine the various aspects of the measures - hours of work, "welfare", restrictions on the employment of women and children, colour discrimination, and accident prevention. In the light of the general remarks of Section I, the reasons for such provisions will be discussed, and the effect of the restrictions on employment practices and production in general. Section VII will concentrate on the manner and extent to which enforcement of the Act was effected. This will be related back to the forces supporting legislation and the aims of the state in promulgating it. The penultimate section, Section VIII will examine

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1. Karl Marx, CAPITAL, Vol. 1, 1974, page 451.
2. No 9 of 1918, No 26 of 1931, No 22 of 1941.
3. Preamble to Act 22 of 1941.
4. Marx, 1974, page 451.

those areas excluded from the Act, in the belief that the reasons for these exclusions and the alternative provisions applicable throw some light on the Factories Act itself. Finally, the conclusion will examine the effectiveness of the Act in terms of its overall aims and objectives, in the light of the different areas discussed previously.

I

Reasons for the Passing of the Act

> "Apart from the working class movement that daily grew more threatening, the limiting of factory labour was dictated by the same necessity which spread guano over the English fields. The same blind eagerness for plunder that in the one case exhausted the soil, had, in the other, torn up by the roots the living force of the nation."[1]

The conditions necessitating control in the form of a Factories Act can be directly related to the form of capitalist production. Under this system profit is the motor force of production, and the size of this profit is directly related to the amount of surplus value extracted from the workers. The employer pays to the workers the value of their labour power in the form of a wage. Any value produced by the worker above this value is appropriated by the capitalist, and through several mediations, becomes his profit.

This form of production encourages the employer to extract the maximum amount of labour out of his workers in any given period, in that he can in this way appropriate more surplus value in proportion to the wage, the paid labour. The maximisation entails - besides the more obvious means of cutting wages - an increase in the working day, decrease in holidays and work pauses, as well as a minimisation of all non-labour expenditure which does not contribute to a direct and immediate increase in production - safety equipment, welfare and provision for the health and comfort of the workers. Overwork, accidents and bad conditions might incapacitate a worker, but this does not usually constitute a problem for the individual capitalist. As long as the labour supply is a large one, and the individual

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1. ibid., page 229.

employer's demand, especially in the early days of small-scale manufacture, merely a tiny proportion of the total demand, workers can be easily replaced. There is thus nothing to prompt an employer motivated solely by self-interest to improve the conditions for his workers. From the individual viewpoint such improvements would seem pure charity, and against the logic of production and profit-making.

However, while this attitude might be logical for the individual capitalist, it is counterproductive for social capital, the capitalist class considered as a whole and as represented by the state. Social capital, while striving as individuals to increase profit, has to ensure that the working class continues to reproduce itself in order that it may produce tomorrow. For social capital the labour supply is limited in that it is not possible for all to steal each others' workers, and in that the reserve army, especially the skilled one, is itself limited. Steps have to be taken to curb the worst excesses of the system and to protect the workers' health and productive capabilities in order that not only the individual capitalist, but social capital as a whole, will continue to be able to obtain the labour power necessary for its functioning.

While it was the state, in its role of representative of social capital, which undertook this task of regulation of conditions, individual capitalists were not unaware of the necessity for such regulation. Bigger capital, aware of the needs for controlled exploitation, due to their own larger needs in terms of labour, imposed conditions on itself, even in the absence of state intervention. In many cases this developed into a form of joint capital-state control (in some cases with the cooperation of labour) in the form of ICs and WDs. In these ways control of the more developed industries and sectors was developed. There remained, however, large areas which did not fall within these controlled sectors, and which did not feel the need to control themselves. Here some sort of general regulation became important, to obviate unfair competition by the smaller competitors against the bigger capitals, by the smaller capitals' not incurring extra expenditures and thus being able to offer their goods at lower prices, and - in the interests of industrial peace - to avoid excessive exploitation of labour.

The remarks above apply equally well to all capitalist societies, but the timing and ultimate form of factory legislation obviously depend on the specific conditions of each particular country. In the United Kingdom the first factory legislation was passed in the mid-nineteenth century. In South Africa it was only in the early twentieth century that industry and labour organisation had expanded and developed sufficiently to warrant such legislation.

An early report of the Inspectorate of Factories in South Africa reports that:

> "In the early days, manufacturers have been intent on producing goods and disposing of them without paying very much attention to the conditions under which they were produced. This attitude of mind was encouraged perhaps by the fact that the class of labour employed chiefly was accustomed to live under primitive conditions ... nor did any change give an immediate advantage to the employer by increasing output or efficiency. The result was that employers generally treated with scepticism any attempt by inspectors to introduce improvements."[1]

Already by 1907, however, the bigger and more organised capitals had begun to have a wider perspective. In that year the Manufacturers Association, "the pioneer mouthpiece of South African Industrialism",[2] prepared a draft factories bill to regulate the hours of labour and conditions of service of workers in factories.[3] This bill did not, however, become law. By 1918 Mr H. Warrington Smyth, Secretary for Mines and Industries, "found consistent support for the (Factories) Act from all Manufacturers Associations in the country. He found that employers of the better class were aware that standard legislation of this kind constituted a base for competitors who had less high ideas as to how to treat their employees. An Act of this kind protected the better class of employers."[4]

Factory legislation, as other industrial legislation, however, to the extent that it did benefit workers, conferred differential benefits on the different groups. Black, and particularly African workers, were

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1. Dept Labour Annual Report, 1927, page 14.
2. SOUTH AFRICAN COMMERCIAL AND MANUFACTURERS RECORD, August 1918, page 361.
3. ibid., April 1918, page 146
4. ibid., September 1918, page 420.

available in abundance. The multiplicity of laws affecting them ensured that in their case the reserve army of labour was virtually unlimited. Legislation was passed to limit the urban supply of black labour, rather than to augment it (for example, the Urban Areas Act).

In terms of pure "economic" logic, capital should have provided protection only for white skilled labour, where scarcity was a very real problem. Political and practical problems, however, necessitated that Act's taking the "colour blind" form it did. All white workers, skilled and unskilled, were seen as part of a potential supportative class for capital and the state, and this feeling was particularly strong after the Great War, in which white labour had pledged their full support to the state. It was among whites too, that worker organisation had taken root, and the increased unrest of the latter half of the second decade of the century meant that this, too,was an important factor favouring concessions. While it will be argued below that it was this white group which the legislation was intended to cover, the "colour blind" form of the legislation was, in fact, the way in which this was effected. The most organised and skilled of the whites were generally covered by ICs or WDs, The Inspectorate reported that the "mixture of Races" and "application of the (Factories) Act to Native races generally engaged on a monthly basis with practically no limitation of hours", presented difficulties.[1] It was, however, only in this way that the unskilled whites could be protected from competition by the "more exploitable" African workers.

Factory legislation, while improving the conditions of work for those in factories, was not passed with this as the sole, or even chief, aim. The regulation and control contained in the Act were imposed rather in the interests of capital. In order to survive capitalism had to ensure the continued existence of a healthy, efficient, and relatively peaceful workforce. In order to protect those individual capitalist who took cognisance of this overall need of capital in their establishments, the state, as the representative of the social capital, had to ensure that all were subject to the same restraints. Examination of the different aspects of the Act below provide evidence of the way in which the regulations, even while restricting capital, did not fundamentally affect its functioning and profitability.

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1. Dept Mines and Industries, Annual Report, 1919, page 3.

The discussion below will thus attempt to show how the Factories Act contributed in these two conflicts of interest - that between capital and labour, and that between white and black labour. Additional areas of interest will be other divisions within the work force - e.g. sex and age - and how these were affected by the legislation.

II

Regulation of Hours of Work

Employers were eager to lengthen the working day to the furthest limit. In this way they could increase the value produced by the workers and thus the surplus value appropriated by themselves. There were, however, two limits to this relentless search. Firstly, lengthening the working day would not necessarily increase the amount of goods produced, even for the individual capitalist, in that the average production per hour might decrease under stress. Men have limited capacities and cannot and will not work beyond these limits. Driving them beyond endurance will induce a slowing down and deterioration in their work, and increase, not the value produced, but the hostility towards the employer. Secondly, overwork on a protracted basis would affect the supply of labour in the long run. Even if the effects of overwork were not fatal, the workforce might be so injured by over long hours that its strength and productive capcity would be impaired. Thus, in the interests of capital as a whole, and with a limited labour supply, the drive to produce, or to drive others to produce, had to be held within limits.

The first Factories Act of 1918 instituted a 50 hour week. In 1931 this was reduced to forty-eight hours, and in 1941 to forty-six. What is noteworthy about these restrictions is their paltry nature, and the fact that they lagged considerably behind actual conditions in the more organised industries, and behind worker demand in general.

The Annual Department of Labour Reports repeatedly comment on the discrepancy between conditions under the Factories Act and those in individual industries under the ICs or WDs. In the latter, though progress was slow, worker strength and the more developed organisation and solidarity of capital, often combined to ensure a shorter working day than that laid down by the Act. The highly organised printing

industry already had a 46-hour maximum week in 1920, and by 1945 this had been reduced to 44 hours.[1] Building had a 44-hour week from 1920 through to 1944.[2] In these groups the case for such regulation was stronger. The workers, if more skilled and more militant, had the power necessary to support demands, as well as the power concomitant with increased control over their work conditions connected with IC and TU organisation in general. The employers, usually organised in and employers organisation, realised that even within the limited industrial subdivisions, some of the constraints of social capital were at work. Skilled workers in the industry formed a specialised labour supply which could not be easily supplemented and thus had to be protected. A lack of generality in conditions throughout the industry would allow unfair competition by those who competed in the same product market. The forces favouring regulation were thus stronger and could result in shorter hours.

Other facts also illustrate the paltry nature of the general conditions laid down in the Factories Act. In 1919 the Treaty of Versailles, ratified by the South African government, recommended a 48-hour week, but this was only implemented in South Africa in 1931. In relation to worker demands, the Act seemed to be retrogressive over the period, rather than progressive. Before the Labour Party achieved seats in the government, Madeley had demanded a 36-hour week.[3] In 1937 the CFLU demanded a 40-hour week.[4] When the Factories Bill was debated in parliament in 1941 several MPs received telegrams from the (Transvaal) Garment Workers Union demanding a 44-hour week,[5] and "there was talk here and there of a 40 hour week."[6]

By this latter date Madeley was Minister of Labour, but he could not, and indeed did not, advocate the imposition of his earlier demands. Before accepting his ministerial post, Madeley had been warned that "if he took a seat on the cabinet he would find that these Imperialists

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1. UNION STATISTICS FOR FIFTY YEARS, page G-27.
2. ibid., page G-29.
3. Nationalist Party taunts, HAD cols. 3955-3960, 1941.
4. CFLU ORGAN, April 1937.
5. HAD, col. 4010, 1941.
6. TRADE UNION BULLETIN, WESTERN PROVINCE AND DISTRICT COUNCIL, September 1941.

and these capitalists would prevent him fron doing .... on behalf of the workers of South Africa what he would like to do for them."[1] In 1941 South Africa was in a war situation and the economy was feeling the effects of this. The ordinary supply of labour was depleted due to recruitment. Demand for internal production had increased as a result of diminished imports. Industry was straining to increase production with decreased inputs. Organised capital was thus not prepared to accede to workers' demands. "Almost to a man they feel that in these times when the utmost industrial effort is required there should be no question or reducing working hours .... The problem is not a mere problem of wages, it is a problem of maximum output from the minimum labour force. It is a problem of maximum hours, not of minimum wage and maximum profits."[2] Despite the fact that Madeley headed the Department of Labour, and despite earlier worker demands, the new Factories Bill only legislated for a 46-hour week, and set the overtime rate at one and a quarter times the hourly rate, rather than the one and a third times demanded.[3] The Bill was nevertheless accepted by the official workers organisations.[4]

Even this paltry provision was not effectively instituted. Throughout the war years the Department of Labour reports show increased contravention of the Factories Act provisions in regard to working hours.[5] In a time of crisis for the state and the economy, the emphasis appears to have shifted from long-term to short-term needs. The demand was for an immediate increase in labour, and, with a decreased absolute number of workers, this could only be achieved by increasing, or by not decreasing at the very least, the maximum number of hours worked. The changed composition of the workforce probably also militated against a substantial reduction of hours. Many skilled white workers were absent of active service. The remaining skilled workers were at a premium and had their hours regulated by emergency regulations rather than by the ordinary factory legislation.[6] During the war the participation of blacks and women in the workforce increased

1. HAD, Col. 4012, 1941.
2. INDUSTRY AND TRADE, February 1941.
3. GUARDIAN, 20 and 27 March, 1941; HAD, Col. 3960, 1941.
4. ibid.
5. Dept Labour Annual Report, 1945, page 49.
6. See Chapter Seven.

markedly. These two groups were consistently less successful in gaining concessions from capital and the state in comparison with white male workers. Both the economic and political demands of the war, and the political and ideological demands of a changed labour force thus weakened the forces favouring a shorter working week during the latter years of the period.

Regulation of hours was not, however, related simply to total number of ordinary hours worked per day. Rest pauses and breaks also meant a break in production. The first Factories Act provided a lunch break after five hours' continuous work.[1] But this was found not always to be optimal in terms of production maximisation. "Just as the engineer studies the output of the machinery, endeavours to increase its productive, without injuring the lasting, powers, and endeavours to use it in the most economical way, so the physiologist, regarding man as machine sui generis tries to increase his output without tiring him out and having regard to the greatest economy in working."[2] Surveys and experiments undertaken overseas showed the benefit of rest pauses in the middle of a shift. A report of the Medical Council of the Industrial Research Board of London indicated that the introduction of systematic rest pauses had "invariably resulted in a geniune improvement of output and tended in the case of light repetitive work not only to reduce monotony and so increase contentment of the workers, but also to produce an increase in the output of from 5 to 10%, despite diminution in the working time."[3] Many workers had not eaten breakfast, or had eaten very inadequately, and had travelled long distances to get to work, and thus eaten hours before. The provision of regularised pauses would, it was hoped, cut down on unofficial pauses,and workers' eating and ablutions could be confined to a "non-productive" period.

In South Africa between 1924 and 1945 there were forces at work both for and against such rest pauses. Increased mechanisation in the period would have increased the importance of production line work, and presumably increased the disruption and loss of production engendered

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1. Section 13 of Act 9 of 1918.
2. Article quoted in the Department of Labour Annual Report, 1930, page 15.
3. CAPE TIMES, 3 March 1924.

by one or more workers' being absent for a short period and having to stop the machines. Conservation of the energy and power of machinery also involved different calculations from that involved in the case of workers. The capitalist had bought the machinery itself, and was stuck with it unless he sold it. In the case of labour, however, the capitalist had only bought the power of the workers for a certain period, and thus, as long as other labour was available in the next period, that particular labourer's strength did not have to be conserved. In some factories, steps were thus taken to eliminate pauses rather than introduce new ones. The GUARDIAN reported in 1937 that

> "in one particular factory not very far from the centre of Cape Town ... the lavatories are kept locked until 10.30 a.m., one visit is allowed mornings and afternoons, and if a worker stays away longer than five minutes she is in trouble. Work continues until 6 p.m., but the lavatories are locked at 5 p.m. (Evidently the workers in this factory are supposed to have well organised interiors!) Incidentally, they are not irresponsible young girls, but mature women."[1]

Another GUARDIAN of roughly the same period provides additional examples of several factories its reporters had come across where similar conditions prevailed.[2]

Capital's own journals publicised evidence of the benefits of regularised breaks,[3] both in terms of increased output overall, and in terms of diminished unofficial pauses. But employers remained jealous of every minute for which they felt they had paid. In 1927 tea breaks were still often not granted unless there were female employees, and then only in the mornings.[4] By 1936 UMTETELI could only hope that "before many years elapse the ten minutes rest with a cup of tea, will be the rule in all factories rather than the exception."[5] By the end of the period the provision of rest pauses was still not a legal compulsion on the employers.

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1. GUARDIAN, 19 February 1937.
2. GUARDIAN, 2 July 1937.
3. INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, December 1938, is one example of this.
4. Dept Labour Annual Report, 1927.
5. UMTETELI WA BANTU, 29 February 1936.

III

"Welfare" provisions

The provisions with regard to hours ensured that the workers would not be worked beyond endurance. The welfare provisions of the Act attempted to ensure that conditions in the factories were such that the health and comfort of the workers while at work were not unduly endangered. Provision was thus made in regard to the structure of factories, ventilation and sanitation. In regard to restriction of hours and overtime the regulation was framed in fairly definite terms, and the main opposition from capital came in the form of attempts to minimise the restrictions imposed. Many of the welfare provisions, on the other hand, were rather vague, and here it was the vagueness which constituted the weakness in regard to worker protection, as well as providing difficulties in finding reliable and quantitative evidence on which to base research and evaluation of the Act.

These regulations were in direct opposition to the generally accepted rules of law, which require the law to be "positive" and "certain", so as to allow one to know what is right and what wrong in the eyes of the law. In regard to sanitation, for example, the 1918 Act laid down that the factory should be in a "clean state", with no leakage from drains or privies, and that the latter should be "sufficient" in number, with separate accommodation for the sexes. The factory should also be ventilated "as much as possible", with adequate lighting and drinking water.[1] The annual reports throughout the period under consideration are a series of complaints with regard to the inadequacy of provision with regard to ventilation, lighting, structure and cloakrooms, and the difficultly of enforcement in view of the subjectivity of the measure of adequacy in this regard.

In 1941, probably in part at least as an attempt to overcome these difficulties, the principle of regulation was introduced on a large scale into the Act. The Minister was empowered to make provisions on a wide range of subjects. Act 28 of 1918 had allowed for regulation on nine matters.[2] Clause 52 of the Act of 1941 allowed for regulation

1. Section 29 of Act 28 of 1918.

2. Section 42.

on twenty-two matters, ranging from

> "(a) the measures to be taken to secure cleanliness, safety, and preservation of health, industrial sanitation, ventilation and lighting, in or about factories, and on premises where machinery is used, or building work or excavation work is performed; and the duties of occupiers of factories, users of machinery, builders, excavators, employers and employees in connection therewith"

to

> "(v) generally, all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved."

Section 54 of the Act conferred upon the Minister the additional power to exempt from most clauses of the Act employers or workers in any areas where, in his opinion, "special circumstances" existed, and in so doing to use any method of differentiation or discrimination deemed advisable.

The administrative trend in the legislation was not related solely to the difficulties of vague generalised legislation. Such regulation was a trend evident in much of the legislation of this later period, and corresponded with the needs of a more developed capitalist economy, in which production had to be controlled and regularised to an even greater extent than before.[1] For the workers, the increased bureaucratic administration meant that their control of conditions was diminished. Madeley himself, in 1918, had already objected to the wide powwers conferred upon the Minister and left to regulation. Increased regulation meant that it became more difficult to find out what regulations applied, as these were hidden in numerous separate government gazettes, and usually uncodified. In some cases, in 1978 at least, it appears that workers are actually denied access to some of the documentation on rules and regulations.[2] This ignorance meant that workers could not insist themselves on employers' observing the law, but had, rather, to rely on state officials.

Worker influence on law-making was also diminished by the new form. "One person has been given arbitrary powers over the rest of the provisions of the Act ... not answerable even (to) Parliament or

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1. See Chapter Two, Section II , supra

2. Taffy Adler,"The Prevention of Occupational Diseases and Industrial Accidents in South African Industry", Paper 68, SALDRU-SAMST Conference, University of Cape Town, 1978.

the Courts of law."[1] It was difficult for labour to exert influence in parliament, but there at least provision was made for procedural representation. In the case of a Minister making regulations, there were no formal channels for demands. A memorandum submitted by several trade unions complained that "(o)n a careful examination of the Bill it will be clearly seen that any privileges which many of the provisions of the Bill purport to give to the workers can be taken away arbitrarily at any time without reason or explanation by the Minister."[2] Legislation by regulation might have increased the specificity and coverage of the law, but in increasing its incognoscibility, it decreased the workers' control over the conditions. Here again the Factories Act provided nothing near the protection afforded to workers under IC agreements, where workers had participated in drawing up the conditions, and had their own agents, who, if not able always to enforce regulations, could at least give them a general picture of how far and in what ways the law was being broken. Even WDs, while not drawn up by workers, made the conditions easily ascertainable and thus more easily a focus of labour organisation and demands. The Factories Act was a case of a general, state- imposed set of conditions calculated to avoid excesses and so to avoid the organisational and economic disadvantages which such excesses could cause.

IV

> "(The purpose of the restrictions on employment of women) is to maintain intact the ability of the woman-workers so as to fulfil this function normally, and to help her to carry out the tasks resulting from maternity in succeding years, such as the care of her children, their education, etc. By strictly limiting the hours of work for women, by sparing them night work, which is so exhausting and trying, and by preventing their physical organs from being deformed by carrying too heavy weights or poisoned by dangerous substances, the legislator is really endeavouring to preserve the maternal function and to ensure the well-being of future generations."[3]

One of the aims of the Factories Acts was to ensure the reproduction of the labour force. Women and children thus required extra protection. Women were the producers of the future generations of workers, and

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1. CFLU ORGAN, September 1941, page 10.

2. Memorandum, March 1941.

3. International Labour Organisation, " WOMENS' WORK UNDER LABOUR LAW", 1932, page 18.

children were themselves these workers of the future. Long hard hours for children in their formative years would have long-term deleterious and stunting effects and the harming of women's health might harm their reproductive abilities, and thus their offspring. Restrictions on juvenile employment served to protect future workers during the important developmental years. Restrictions on female employment served to uphold the sexual division of labour and sexism in general, while ensuring the continued reproduction and care of the future workers. Women had other roles to fulfil, besides that of wage-earner. Reproduction of the labour force entailed not only pregnancy and child-bearing, but also housework and care of the children. In addition to the strictly economic reasons for preserving women's and children's health, were the general ideological ones pertaining to woman's role in the family and society, and her weakness, and the specifically South African necessity, in the case of white women, of ensuring the propagation of a "civilised" white race.

The Mines and Works Act of 1911 had placed restrictions on female and juvenile employment on the mines. No females, and no male children below the age of sixteen years, were permitted to work underground, and no child of less than sixteen years was allowed to work for more than eight hours a day or 48 hours a week.[1] The Factories Act of 1918 extended restrictions to factories. The Act prohibitied all children under fourteen years of age (fifteen years from 1941) from working in factories, while those between fourteen and sixteen were subjected to medical tests to ensure that they were fit enough to survive factory conditions. Juvenile workers had hours of work limited to 45 per week in 1931, with restricted overtime, while both juveniles and women were not to work without permission in the hours between 6 p.m. and 6 a.m. and 6 p.m. and 7 a.m. respectively. Juveniles were also not to work in processes exceptionally deleterious to health, e.g. typesetting, metalgrinding, work with lead and mercury, etc.[2] All these were seen as necessary measures to prevent the long hours and contact with dangerous and unhealthy conditions which might have permanently endangered their health and fulfilment of roles as future producers and reproducers.

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1. Act 12 of 1911, Section 8.
2. Act 28 of 1918, Section 20.

Concessions for women went further than those mentioned above. Maternity benefits were granted to certain women with a view to enabling them to carry on their reproductive functions at the same time as their productive function in the factories. Naude, Nationalist MP, noted in Parliament that "It is the poorer class who contributes most to the increase of the population."[1] In the 1924 to 1945 period it was primarily white women who were employed in industry. The protection of their reproductive functions was thus important not only for economic, but also for ideological and political reasons.

The necessity of ensuring that women return to work meant that the benefits were very unsatisfactory, even after gains in 1938, won by a campaign by the Garment Workers Union and Chemical and Allied Workers Union, under the leadership of Ray Alexander. The system entailed support for women in the short period before and after giving birth, when it was impossible for them to work but at the same time avoided giving too much, in order that the women might return to work as soon as possible. Workers pointed out, correctly, that those rich enough not to work would hardly subject their womenfolk to the rigours of the factory, but the granting of benefits remained dependent upon the passing of a means test. Benefits could only be claimed if the husband's and wife's joint income was less than £5 for Europeans, £3 for Africans, and £4 for other workers, per week.[2] If the court deemed it advisable, the father of the child could be served with a court order forcing him to pay back to the state any amount of which he was judged able.[3]

The amounts granted, which were for a four week period prior to delivery and eight weeks postnatally, remained paltry. The law provided for a maximum payment equivalent to the woman's weekly wage, but not exceeding 25s per week.[4] In 1924 a total of £2 036 was granted to 228 women[5]; and in 1939, under the new regulations, this had only increased to £4 962 in respect of 476 applicants. These figures give average amounts of £8,93 and £10,42 per women, or £0,74 and £0,87 per

1. HAD, col. 4197, 1941.
2. GUARDIAN, 22 July 1938.
3. Section 23 of Act 22 of 1941.
4. ibid.
5. Dept Mines and Industries, and Dept Labour, Annual Reports, provide statistics as to the amounts awarded from year to year.

week based on a twelve week period.[1]

Women and juveniles usually receive lower wages than men for equivalent work, or else are restricted to work for which pay is traditionally lower. Table 5.1 below gives the average monthly wages in 1924 for white males and females respectively.

TABLE 5.1[2]

COMPARATIVE AVERAGE WAGES FOR MALE AND FEMALE - 1924

Sex	Printing	General Manufacture	Transport	Trade	Clerical & Government	Domestic
Male	144s 2d	115s 3d	126s 11d	132s 8d	143s 6d	102s 5d
Female	39s 9d	51s 2d	79s 1d	53s 9d	64s	57s 11d

In almost all cases the average female wage was less than half that of the male. Female labour was an important means of lowering the wage bill and thus increasing the rate of profit. This discrimination was, however, not imposed only by the employers. The figures for the printing industry, where the female wage was less than a third that of the males, is an indication that even where strong trade unions and ICs existed, this did not prevent unequal conditions for male and female workers. The ICA and Wage Act, while prohibiting discrimination on colour lines, did not prohibit sexual discrimination and most agreements and determinations took advantage of such differentiation. Although figures are not available for juvenile rates, one would expect much the same pattern to emerge in this regard, as again discrimination was not disallowed, and agreements and determinations usually carried separate juvenile and adult rates.

Despite the restrictions on female and juvenile employment, these sources of labour thus remained such cheap ones that women and juvenils continued to be employed. As far as female employment was concerned, the entire period between 1924 and 1945 saw an increase in employment in both relative and absolute terms. Even in the Depression, white female employment was less adversely affected than white male employment. Between 1936 and 1946 female employment as a percentage of total white

1. Own calculations.
2. Union of South Africa, Offical Year Book, 1924, pages 230-32, 240.

female population increased from 19,4% to 22,7%.[1] Meanwhile white female employment also increased as a percentage of the total work force, from 2,47% in 1936 to 3,03% in 1946,[2] and this increase was concentrated in industry, and in particular in the emerging machine-based industries. In 1931 the employment of women was so important that it was felt necessary to extend the hours during which women over sixteen years of age could be employed, and hours were thus extended to 12 midnight.[3] During the war, when women took the place of many men absent on active service, further concessions and exemptions were granted.[4]

In the early thirties the number of juveniles in employment dropped. The Inspector of Labour put this decline down to the provisions of the 1931 amendment to the Act, the raising of thes schoolgoing age, the restrictions on employment, and the necessity of reaching sixteen years of age and having passed Std VI before being accepted for apprenticeship. Later in the thirties however,the amount of certificates issued (to those between fourteen and sixteen years of age) increased from 197 in 1935[5] to 405 in 1940.[6] (After this the 1941 Act laid down fifteen years as the minimum and thus did away with the need for certification). The employment of juveniles thus appeared to depend not only on restrictions, which did not in any way become less severe over the period, but also on the needs of the economy. The 1930's boom increased the demand for labour, and the change in the production process would also have increased the openings to utilise unskilled child labour.

The restrictions on hours and place of work in terms of female and juvenile employment, and the extra expenditure on such things as separate cloakrooms and eating rooms,[7] all entailed an addition to the employers' costs. In the case of "civilised" juveniles, there were also the

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1. M.J.M. Prinsloo, BLANKE VROUE-ARBEID IN DIE UNIE VAN SUID-AFRIKA, 1957, page 126.

2. ibid.

3. Section 4 of Act 26 of 1931.

4. Dept Labour Annual Reports. (They were not actually published each year during the war).

5. Dept Labour Annual Report, 1935, page 55.

6. Dept Labour Annual Report, 1940, page 55.

7. Section 29 of Act 9 of 1918 stated "Sufficient privy accommodation

problems of parents' "interference" and "unreasonableness".[1] Nevertheless, in many cases the advantages of the cheaper labour outweighed the added cost and trouble. It appears that the effect of the legislation, and probably the intention of the legislators, in the case of the Factories Acts, was not so much to improve the overall position of women and children in the workplace as to protect them from certain forms of exploitation which might adversely affect their fulfilling their roles in society, i.e. reproduction and future production. The Factories Acts did not lay down the principle of equal pay for equla work, a fundamental principle if inequality and unfair discrimination are to be abolished. For the most part women and juveniles did not do equal work to that of males. They were restricted to the semi-skilled work. Even within this category, however, they did not receive the same wages for equal work. Children, and particularly, women, were seen as ideally suited to the unskilled and semi-skilled requirements of machinofacutre. "In contrast with the manufacturing period, the division of labour is thenceforth based, wherever possible, on the employment of women, of children of all ages, and of unskilled labourers, in one word, on cheap labour..."[2] Women and children also lacked the organisational history of male workers.

V

In the previous section the effects of the Factories Act on female and juvenile labour were noted. It was seen that the cheap nature of this labour meant that, despite the restrictions on hours and conditions of work, this labour continued to be employed and continued to be an important means of increasing the rate of exploitation and profit. In a non-racist capitalist situation (or a relatively non-racist one), women form one of the main sources of cheap labour. In a situation where there was also colour discrimination, with black workers also providing an important alternative source of cheap labour, the pros

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shall.... be provided for all persons in the factory and where members of both sexes are employed not being members of the same family, the accommodation shall be entirely separate for each sex, and so as to ensure privacy."

1. Dept Mines and Industries, Annual Report, 1925, page 503.

2. Karl Marx, 1974, page 434.

and cons of, especially white, female labour had to be carefully weighed up. The Van Reenen Commission reported that

> "The requirements of the Factories Act ... were stated to exert an influence on the demand for women ... The danger exists ... that the adoption of the principle ... (of equal pay for equal work) must result in an elimination process in which women, on account of the disabilities referred to above, are more likely to suffer than men. The supply of women in the remaining restricted spheres would thereby be increased with a resultant further depressing influence upon their wage levels ... What has been stated above refers primarily to European male and female workers."[1]

In the 1924 to 1945 period female employment in industry was restricted primarily to whites. By 1945-1946 the white females constituted 7,7% of the total private employment, as opposed to only 0,7% for African women.[2] The extent of African male employment was also increasing over the period, however, the discrepancy between African and white wages being so great that in many cases African male labour was a viable and economic alternative to white female labour. In 1944/5, for example, the average male African wage (£91,0) in manufacturing was just over a quarter that of the average white male (£340,7).[3] Prinsloo noted in 1957 that "die (blanke) vroue arbeid is geleidelik maar sterk besig om die sêkondere nywerheid to ontruim vir die opkomende groep van die arbeid van die nie-blanke rasse van die land,"[4] a process which had already presumably begun in the pre-1945 period. Writers such as Hirsch[5] have, in case studies, suggested that in industries such as textiles, first African men, and then African women (the latter discriminated against on both colour and sex lines), replaced white women in the factories in the later period. How far and how early this was wholly or partially due to restrictions imposed by the Factories Act is a difficult question to answer, and one that will have to await further research. The provisions of the Factories Act did also discourage black employment to some extent, as seen below, and the countervailing effects of the two processes would have to be examined in each case.

1. Industrial Legislation Commission, UG 35-1937, page 24.
2. Prinsloo, 1957, page 143.
3. Industrial Legislation Commission, UG 62-1951, Table 37.
4. Prinsloo, 1957, page 120.
5. Alan Hirsch, "Ducking and Weaving", Honours thesis, 1978.

The Colour Bias of the Act

The 1918 Act did not, in general, contain overtly discriminatory measures. Nevertheless, as with all other labour legislation in South Africa, the operation of the Act affected black and white differentially.

Even before the Factories Act provisions in this regard, it appears that segregation was enforced to some extent in many factories. The 1918 Act did not specify that separate facilities had to be provided for the different "races", yet the 1928 Departmental Report noted that such facilities were indeed provided and had encouraged the employment of workers of a single colour, rather than the establishment of "multi-racial" factories.[1] Duplication of facilities meant increased expenditure, and would be avoided by the employer, who would prefer to stick to the employment of workers of one colour. The introduction of ICs and WDs further increased in the colour discrimination in industry as seen above, encouraging the employment of whites in all jobs, except the least skilled.

Such segregation was not general, however. White and black continued to work together, and sometimes also to wash and eat together, a situation which was inconsistent with the general ideology, both in terms of the breaking down of the divisive colour and sex barriers, and in terms of the protection of white labour and women. With the increasing participation of blacks and white women in the economy in the late 1930's, the extent of the danger appeared magnified. It was feared that black and white would not only work together, but also organise together, and the justifiability of this fear was borne out in the growth of the "new unionism", in which these two groups were prominent.[2]

The 1941 Bill[3] was an attempt to introduce compulsory segregation by legislative means. Section 24(4) stated that "If in the opinion of an inspector, conditions exist in a factory which result in undesirable contact between persons of different races, or sexes, he may, subject

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1. Dept of Mines and Industries, Annual Report, 1928, page 7.

2. Jon Lewis, "The New Unionism", SOUTH AFRICAN LABOUR BULLETIN, III, 5 , March - April, 1977, pages 25-49.

3. No AB 19 of 1941.

to the directions of the Minister, by notice in writing setting forth the said conditions, require the occupier of the factory to take such steps (including any steps specified in the notice) as may be necessary to prevent such contact ..."[1]

This clause of the Bill caused an uproar in the left trade union circles. These workers, often those involved in the "new unionism" unions, were not standing for such measures at this stage. There were reports of official TLC and CFLU support for the Bill as a whole,[2] but many rank and file workers were not in favour of the "Nuremburg Laws" of the section.[3] Protest meetings were held in the Johannesburg City Hall and the Cape Town City Banqueting Hall, the former attended by 4 000 people, and the latter by over 2 000.[4] At the latter meeting, predominantly black, a resolution was passed urging the government to amend the Bill so that "it will emerge from the Senate free from any undemocratic provisions or any provisions which would seek to segregate or separate workers on the grounds of race or colour." A deputation of Sachs, Cohen, Snitcher, and several others referred to later in Parliament as "extreme communists"[5], spoke to the Minister. In Parliament itself, Margaret Ballinger, the Native Representative, objected to what in effect amounted to a "colour bar bill."[6]

There was also support for the Bill, however, not confined to employers wishing to divide the workers along colour lines. The National Party, with its overt colour prejudice, was at that time in the ascendant. National Party leaders had captured several trade unions, and were particularly active in and concerned about trade unions such as the Garment Workers Union where there was evidence of increased black-white cooperation. In Parliament the National Party lobby was a strong and vociferous one.

In the face of the left agitation, Madeley retracted. He announced that

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1. Simons and Simons (CLASS AND COLOUR IN SOUTH AFRICA, 1969, page 534) claim that Sachs, in "a purely technical capacity", drafted this clause.
2. GUARDIAN, 20 and 27 March 1941.
3. GUARDIAN, 13 May 1941.
4. CAPE TIMES, 3 April 1941.
5. HAD, col. 4017, 1941.
6. SOUTH AFRICAN LEFT MONTHLY, 1941.

he had discovered (or been told, as his Afrikaans was not very good), that a large number of discrepancies existed in the Afrikaans version of the Bill. It would be easier to withdraw and redraft the whole thing, rather than to pass the "101 different amendments" necessary to correct it.[1] To satisfy the right, he assured Parliament, however, that the new Bill would introduce no new principles.

The new Bill did not include Clause 24 (4), but Madeley was true to his word. Section 45 (h) provided for regulation by the Minister of the "conditions of work of employees in any factory where in the opinion of the Minister special provisions ... as to the conditions to be observed in order to prevent undesirable contact between employees." Madeley explained that "the objection to (the previous clause) was largely psychological, and I agreed that neither I nor anyone else has the right to upset the sensibilities of anyone, and so far as I was able to do I departed from the phraseology which gave the impression that such discriminations were to be made ... and I provide for it under the regulations."[2]

Both left and right were still dissatisfied. An article in the GUARDIAN[3], and a telegram sent by a group of "coloured" voters to their MP, and thence to the Prime Minister, attest to the fact that the more left workers were not misled ;by the change in phraseology. Meanwhile the amendment came under fire in Parliament from National Party members, who strongly objected - if partly for propaganda reasons - to the removal of the more explicit original clause.

In the long run it was the segregationists who triumphed. At the time of the passing of the Act the National Party cited several instances of white women and African men working - and eating - side by side. Perhaps as a result of the general resistance of workers, and probably also due to employer resistance to increased costs in difficult times, the necessary regulations to separate them were not promulgated immediately. Even where separate facilities were provided, workers did not always use them. In 1941 "some difficulty is still experienced regarding European Females making use of non-European lavatories

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1. HAD, col. 3811, 1941.
2. ibid.
3. GUARDIAN, 6 March 1941.

and cloakrooms, although they have their own."[1] During the war years, with an acute shortage of labour and increased need of black labour, restriction was also not in the interests of capital and the state.

Nevertheless, the regulation was not always necessary. As with other legislation, the regulation was a reflection of a general trend prevalent in industry, rather than a trend-setter in itself. Cases of integration were not all that common, and would be avoided by management wherever economically feasible, even without regulation. Before the passing of the 1941 Act the Department noted "considerable improvement in the proper segregation of races and sexes."[2] When the economy was less hard-pressed for labour than in the war situation, resistance to segregation would be less, at least from the franchised. Employers could obtain sufficient labour of one colour, and thus uphold the divisions in the workforce. White workers would have the threat of competition by the black workers reduced insofar as the costs of employing them were increased by extra expenditure on separate facilities.

The provision of separate facilities was the one area in which the Act actually specified the existence of workers of different colours. Restrictions on hours and conditions of work in the Act applied equally to workers of all colours, as did restrictions on female and juvenile employment. In the latter case, it was the inclusions of blacks which acted against them. Fewer restrictions might have encouraged employers to engage black workers rather than white, even where their wages had to be the same under WDs or ICs. Additional surplus value could have been extracted by forcing these workers to work extra long hours. Inclusion of blacks was thus important from white labour's point of view in eliminating competition. In regard to juvenile employment this generalised application was particularly important. By the time the Act was passed, education was compulsory up to the Std VI level for all white children, while very few black children attended school, especially up to this high level. Prohibition of all juvenile employment prevented black children from being employed, and thus gaining the advantage of experience over white children still at school. Beyond the age of sixteen years, the white children would have the advantage of their education in finding

1. Dept Labour Annual Report, 1940, page 51.
2. Dept Labour Annual Report, 1939, page 67.

employment.[1]

The Factories Act, while theoretically protecting all workers indiscriminately, thus once again acted in white labour's interest. Where separate (but equal?!) facilities had to be provided for workers of all colours, employment was likely to be restricted to one colour group - the white one - the one which could provide both the skilled and unskilled labour necessary. Where maximum hours and conditions were equal,"unfair competition" by black workers was obviated.

VI

Accidents

As can be seen from the preamble to the Act above, another important area covered was accident prevention and recording. As industry progressed and mechanisation advanced, the tendency was for more and more machinery to be employed in more and more factories. This machinery greatly increased the productivity both of the individual worker and of the factory and country as a whole. The new machinery was, however, also larger and more powerful than the tools used earlier, and often brought with it the increased possibility of ever more serious accidents. Obviously there would not be legislation to ban such machinery with its phenomenal productive potential. Rather there were attempts to instigate safety measures and to lessen the suffering of those injured. The latter aspect will be looked at under the Workmens Compensation Act in Chapter Seven. The former was covered by the Factories Act, as a matter "which vitally affected the conservation of human labour as well as economic output."[2]

Employers were not against such regulation. Besides the cost of insurance, accidents also entailed indirect costs. Other workers had to be engaged and trained to replace those injured or killed, and these workers would not immediately be as efficient and productive as the older, experienced workers. When skilled workers were injured, the disruptive effects were often magnified, with many unskilled

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1. Dept Mines and Industries, Annual Report, 1919, page 6.
2. INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, April 1933.

workers temporarily unable to continue production. The accident itself involved an immediate loss of valuable production time, as well as harming morale.[1] The prevention, wherever possible, of accidents was thus a rational step for capital upto a certain point.

Table 5.2 gives the figures for accidents between 1924 and 1945.

TABLE 5.2[2]

ACCIDENTS REPORTED UNDER FACTORIES ACT - 1924-1945

Year	Accidents	Deaths	Gross Output (£1 000's)	Output / Accidents	Real Output / Accidents
1924	256	26	57 304	224	184
1925	254	28	63 766	251	213
1926	339	40	67 219	198	166
1927	318	30	75 642	237	206
1928	378	28	80 648	213	192
1929	376	26	78 425	209	213
1930	407	52			
1931	335	31	N O T	A V A I L A B L E	
1932	319	31	67 332	210	236
1933	334	29	82 448	247	255
1934	391	46	95 373	244	269
1935	574	47	108 412	189	199
1936	624	62	126 036	202	208
1937	720	63	134 142	186	186
1938	683	73	140 587	206	210
1939	879	75	161 671	184	170
1940	969	66	189 849	196	165
1945	2 796	84	334 554	120	78

These figures do not tell nearly the whole story of injury suffered by workers in the production process. The Act required all accidents involving death or absence from work of any worker for more than fourteen days to be reported. The figures thus include only those more serious injuries, and also exclude the dangerous work on the mines, SAR & H, and in construction. Research overseas at this time indicated that 70% of total injuries did not involve more than ten days' disablement. This figure would probably have been aggravated in the South African situation, where workers often could not afford to stay off work for fourteen days, despite the seriousness of their injury,

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1. INDUSTRIAL SOUTH AFRICA, October, 1924.

3. Departmental Annual Reports, and UNION STATISTICS FOR FIFTY YEARS, provided the basic data for this table. Real output was obtained from nominal output by correcting with the wholesale price index. All calculations of averages are my own.

because of either the lack of, or inadequacy of, sick pay and leave. (The Factories Act did not at this stage provide for paid sick leave). With accelerated production over time, minor injuries - cuts, sprains, and hand injuries - would also increase, these being such that they too would not necessitate a fortnight's absence, and so not be included in the statistics. With improved medical knowledge, one can expect the percentage of reported accidents to have decreased over time, with new knowledge necessitating shorter absences. Calculating only on the 70% figures, however, INDUSTRIAL AND COMMERCIAL SOUTH AFRICA estimated in 1933 that "the total number of accidental disablements (in South Africa) would be not less than 1 000 in twelve months."[1] (Compare with the 334 reported for that year).

The statistics show a steady increase in accident occurrence and casualties, despite the fourteen days requirement and the improvement in medical care. This increase was, of course, due in part to the general increase in production over time, but it was also due to the increasing use of machinery. Accidents increased fairly steadily from 256 in 1924 to 2 796 in 1945, while deaths increased from 26 to 84 in the same period. The figures for gross output of manufacturing, enable one to estimate the effect of increased mechanisation. Gross output also shows a fairly constant upward trend, besides the Depression years, from £57 304 000 to £334 554 000. The last two columns give the quotient of output over accidents i.e. the output per accident, in both nominal and real terms. The latter fluctuates, but shows neither a marked upward nor downward trend. But at the same time the productivity of the individual worker was increasing, resulting in increased danger to the individual worker. While output per accident remained constant, the accident rate per individual worker was increasing. In 1925 0,2% of the total workforce was injured. In 1945 the figure was 0,8%.[2] The percentages might appear to be a small proportion of the total workforce, but the increase was fourfold.

Another interesting point emerges when one looks at the breakdown of the accidents according to the industries in which they occurred. The pattern which emerges gives the lie to the common view that accidents

1. April, 1933.

2. Dept Labour Annual Reports, UNION STATISTICS FOR FIFTY YEARS, own calculations.

are due to the ignorance or carelessness of unsophisticated workers, a view put forward by the Department of Labour, among others. While accidents certainly did occur through ignorance and lack of adequate training, instruction and supervision, and while the blame for this usually lay with inadequate provision of training facilities rather than with the worker, the machines had inherent dangers even for the trained and skilled. Indications of this are obtained by examining the breakdown of accidents along (a) industrial lines, (b) sex lines, and (c) colour lines.

(a) In the 1920's and early 1930's the food factories accounted for the largest proportion of accidents in industry.[1] In the 1940's it was the engineering trade that occupied this position. In the food industries, accidents decreased from 28% to 9% of the total accidents for private industry, while output and employment decreased relatively less, from 32% to 22%, and from 28% to 20% respectively. In metal, engineering, electrical and mechanical industry, total accidents increased from 12% of the total in 1926 to 42% in 1945, while the percentage contribution to output increased in the same period from 16,7% to 27,6%, and employment from 18% to 27%.[2] The latter sector thus showed a more than proportionate increase in accidents.

Hobsbawm[3] identifies the electrical and engineering sector as one with a high percentage of labour aristocrats (predominantly skilled), and foor one with a low percentage in early twentieth century Britain, and it is probably that the situation in the period under discussion in South Africa would be similar. With the advance of industry, and with a higher percentage of skill, it appears that accidents did not tend to decrease - if anything they increased.

b) Female workers were generally unskilled. Female-dominated industry had low accident rates, for example, a contribution of between 2% and 4% to the overall statistics for the clothing industry. The Department of Labour noted the low accident rate among women in general in several of its annual reports. Once again the facts suggest that it was not lack of skill that caused accidents.

1. Dept Labour Annual Reports, 1925 and 1931, provide statistics as to the breakdown.
2. See full table at end of chapter. Calculations are my own.
3. E.J. Hobsbawm, LABOURING MEN, 1964, page 286.

c) TABLE 5.3[1]

BREAKDOWN OF ACCIDENTS IN TERMS OF COLOUR

Year	White % of employment	White % of accidents
1925	36	35
1934	42	46
1945	31	31

Table 5.3 shows the participation and accident rate of white workers in industry. Whites were predominantly skilled, while black workers were unskilled. This table therefore also gives some indication of the skill-accident link discussed above. The fact that the participation and accident rates tally very closely suggest that accidents were not noticeably linked to skill level. If ignorance was, in fact, a cause of accidents, the dangers involved in the large and more complicated machinery outweighed the benefits for the skilled of knowledge. Thus, in 1939, 40% of all accidents were found to be due to "working machinery", and of the total accidents only 20% were due to the fault of the injured, while 68% were due to "misadventure or danger inherent in the work."[2]

With this correlation between technological advance and accidents, little could be done if quantity was to remain the main aim of production. Whereas with earlier accidents, those such as occurred in the food industry could often be avoided by improved hygiene and methods, in industries such as the electrical and engineering one the danger was more inherent in the work, and likely to remain so without expensive safety equipment, regulations, and research directed specifically in this direction. While accident prevention was in capital's interest, where this became too expensive, and especially where the labour supply was not a serious limiting factor, a cost benefit analysis would at some point favour more accidents, rather than expensive safety equipment and research.

(The table at the end of the chapter gives a breakdown of percentages for the different industries for employment, output and accidents. As yet there is too little research to extract too much from these tables, besides the general conclusions such as those drawn above from the more

1. Dept Labour Annual Reports, 1925, page 432; 1935, page 41; 1945, page 58.

2. Dept Labour Annual Report, 1939, page 7. The last category is not exclusive with respect to the first two, accounting for the percentages adding up to more than 100%.

obvious industries. Further research on the discrepancies between the different percentages for different categories in the same industry requires further knowledge of the labour process within each industry, and will, in some cases, require a more detailed breakdown of these still rather large sectors and categories.)

VII

Compliance with the provisions of the Act had to rely heavily on the self interest of certain fractions of capital, and the resultant pressure on their competitors, or else on worker pressure, for official machinery for enforcement was ineffective. The Inspectors of the Factories Department were overworked to such an extent that by 1930 they had to give up their surveys of individual industries and individual industrial problems due to lack of time, and concentrate full-time on inspections.[1] The size of the inspection staff increased from ten (chief inspector, four ordinary, and five assistant, inspectors) in 1924, to thirty-five (chief, seventeen ordinary, and seventeen engineering) in 1945.[2] Calculations based on the number of manufacturing establishments in the corresponding years give figures of 600, 323, and 266 establishments per inspector for 1924, 1930 and 1945 respectively.[3] These figures, though decreasing, were still very large, and have to be discounted for the larger size of the establishments in the latter years, and for the increased duties of the inspectors under a new and expanded Act. The need for engineering inspectors, for example, was dictated by new duties for inspectors under the 1941 Act. The figures also show a much slower proportionate decrease for the latter years. While establishments per inspector almost halved in the six years between 1924 and 1930, in the next fifteen years they only decreased from 323 to 266.

The chief failure of enforcement lay, however, not in the numbers of the staff, but in the limited sanctions available to them, and the even more limited way in which they were applied. Carson's work on Britain

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1. Dept Labour Annual Report, 1929, page 8.
2. Dept Labour Annual Reports, 1924 and 1945.
3. Own calculations.

is suggestive in this regard. He lists six major methods of enforcement, which "can be arranged on a continuum running from 'no formal action' at one end, to prosecution at the other,"[1] i.e.

a) No formal action
b) Notification of matters requiring attention
c) Notification of matters urgently requiring attention
d) Indirect threat of prosecution
e) Direct threat of prosecution
f) Prosecution.

The ultimate penalty was prosecution and conviction, but the inspectors preferred, as in most cases of "white collar crime", to use the large "range of administrative alternatives to enforcement through the criminal courts."[2]

The general procedure, both in Britain and South Africa, was that of serving notices on offenders. On discovering a transgression the inspector would probably first discuss it with the owner. If no improvement was forthcoming, a notice would be served officially notifying the offender of what he was accused. Only then, if the offender still proved intransigent, would prosecution and a fine result.

The procedure was even more protracted when the shortcoming was subject to the jurisdiction of a local authority. In these cases, on discovering unsatisfactory conditions, the inspector had first to serve a notice on the local authority concerned. Only if no action was forthcoming from that quarter, could the Factories Department prosecute the occupier charging the local authority for any expenses incurred. The factory reports note the close relation between health and welfare provisions, and services such as waterborne sewerage[3], adequate drainage[4], paving of lanes and yards[5], and bye-laws setting out structural building requirements.[6] These were all either under the jurisdiction of the local authority, or else were services provided by that authority. The

1. W.G. Carsons, "White Collar Crime and the Enforcement of Factory Legislation", BRITISH JOURNAL OF CRIMINOLOGY, 10, 1970, page 391.
2. ibid., page 387.
3. Dept Labour Annual Reports, 1930, page 10; 1932, page 17.
4. Dept Labour Annual Report, 1926, page 430.
5. Dept Labour Annual Report, 1927, page 10.
6. Dept Labour Annual Report, 1926, page 12.

authorities were usually very dependent upon and influenced by big business in the district (cf ownership qualifications for voting roll), and were only likely to provide services, or pass laws, where these were deemed appropriate or necessary by the electorate. In the absence of such bye-laws or services, it was difficult fo the factory owner to provide adequate conditions, and the inspectors could be exptected to "exercise their discretion in the direction of leniency and limit their requirements as far as possible."[1]

There were also uncertainties over where the Wage Board and IC powers began and ended and where the factory inspectors fitted into those industries where such measures existed. It was specified in the Act that where these other measures provided conditions equal to, or superior to, those in the Factories Act, the former should prevail. It was not specified, however, how the inspection systems of the three different measures should interact, especially where the IC or WD covered some, but not all, the areas and workers covered by the Factories Act. The gravity of this confusions was increased where only a portion of the workers were covered by the more specific measure.

The statistics available give very little indication of the total number of violations of requirements of the Factories Act. In 1939 the inspector reported that of eighty-six contraventions in working machinery regulations, only six prosecutions resulted[2], but no figures are given for the other sections of the Act, or even for this section in other years. What the statistics do provide is the number of notices served, prosecutions and convictions, and it is very likely that these represent only a small percentage of those found committing transgressions and merely warned informally. In 1935 4 993 notices were served on municipalities by inspectors, resulting in only 36 fines, 52 prosecutions and 45 convictions. In the same year 139 notices were served directly on occupiers.[3] Calculations for the years 1932 and 1940, in which there were nine and 130 convictions respectively, give average fines of £1 10s[4] and £ 2 18s[5] respectively, while the maximum fine provided

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1. Dept Labour Annual Report, 1932, page 14.
2. Dept Labour Annual Report, 1938, page 87.
3. Dept Labour Annual Report, 1935, pages 49, 50, 57.
4. Dept Labour Annual Report, 1932, page 27.
5. Dept Labour Annual Report, 1940, page 92.

for in the Act was one of £10, or, in the case of a continuing offence, £5 per day.[1] The number of cases reported in the South African Law Journal during the whole period 1924 to 1945 can be counted on the fingers of one hand, of which most concerned the definition of "factory". Cases in the Journal are recorded because of the relevance of their findings and thus do not comprise all cases taken on appeal. One would expect, however, that if there were a substantial number of cases on one subject, the area would have been considered a relevant and important one, and more cases reported. The small number suggests that either the court was never reached, or the fines too paltry to justify the cost to the employer of an appeal. Both possibilities suggest poor enforcement of the Act.

In many cases, it was only direct action by the workers which could secure compliance. At Pattisons, a building firm in Pretoria, for example, two stewards were sacked after pressing for compliance with the Act. It was only after all the artisans in the firm resigned in protest that the company backed down and agreed to comply.[2]

The WD and IC Acts provided certain channels for such worker action and enforcement of conditions. In the case of the Factories Act such channels were not provided. For the most part compliance with the law depended more on the employer's perceiving this to be in his interest than in the efforts and capabilities of the law enforcement agents. In other cases it was only strong organisation, a factor often absent in non-IC or WD industries, which could secure enforcement.

VIII

Coverage of the Act

The Factories Act did not cover all workers. Several large and important sectors were excluded, either in part or totally. At the time of the passing of the second Act, in 1941, it was estimated that 1 800 000 workers would be left uncovered by the new Act, as against a coverage of only 200 000.[3] Even insofar as factory workers were concerned, the

1. Section 35 of Act 28 of 1918.
2. DIE BOUWERKER, February 1942.
3. SOUTH AFRICAN LEFT MONTHLY, I, 2, April 1941.

Department of Labour itself admitted that the definition of "factory" for census purposes was wider than that contained in the Factories Act.[1]

This section will examine the reasons - economic, ideological and political - for the exclusion of several of the more important sectors, and briefly examined the alternative measures operative there. These sectors are (a) mine workers, (b) shops and office workers, and (c) farm workers.

(a) Mine Workers

It has already been noted that legislation on the mines in terms of protection of women and children preceded that of the Factories Act of 1918. This applied to other areas of the Act as well, and was a reflection of the earlier development, and the often more dangerous conditions.

A twelve hour day had originally been the norm on the Rand and De Beers mines, the site of the earliest capitalist production in the country. In 1908 an attempt to substitute an eight hour day was quashed by the mine owners as subverting the principle of free contract. A church deputation on behalf of the workers two years later was also unsuccessful. By 1918, however, the year in which the first Factories Act instituted a fifty hour week for male adult labour in factories, the underground hours for miners were set at forty-eight.[2]

As far as women and children were concerned, the mines were again in advance of industrial establishments. The 1911 Mines and Works Act prohibited all female employment underground and restricted the employment of juveniles in this sector with its tiring and dangerous work.

Statistics on mine accidents are not given in the Factory Inspectorate reports, but information from sources such as the Department of Mines and the Chamber of Mines itself make it clear that the accident rate here was higher than that in industry. Deaths on the mines fluctuated from year to year, with a low point of 440 in 1926 and a high of 723 in 1938 for "coloured" workers[3] and between 28 (in 1945) and 63 (in

1. Dept Labour Annual Report, 1929, page 6.
2. SOCIAL AND INDUSTRIAL REVIEW, II (XI), page 907.
3. This included all blacks.

1939) for white workers. The death rate per thousand workers per annum, perhaps a more meaningful measure, varied between 1,47 (in 1942) and 2,47 (in 1927) for "coloured" and 0,73 (in 1945) and 2,31 (in 1927) for whites.[1] Total deaths in factories meanwhile varied between 26 (1924 and 1929) and 84 (in 1945), giving a death rate of 0,12 per thousand per annum for private industry in 1926.[2] As far as injuries were concerned, there were 632 white and 6 629 "coloured" casualties on the mines in 1927, the first year in which all incapacitation of more than fourteen days duration was reported, whereas the total figure for industry for the same year was 318.[3]

On the mines, as in the factories, casualties were not due to the fault of the workers in the majority of cases. The largest proportion of deaths were caused by falls of ground,[4] a danger more or less inherent in the work, and increased with increasing depth of mining operations.[5] The Mines and Works Act of 1911 was the major legislative measure in this regard, providing, among other things, for the issuing of certificates of competency to workers involved in particularly dangerous or important work. The Department of Mines itself noted that accidents were minimised where employers ensured that "systematic supporting had reached the greatest perfection."[6] Nevertheless, it appears that the protection was not as effective as it might have been. Mining continued to have a substantially higher accident rate than industry, despite the earlier legislation. The majority of the workers were blacks, and thus in plentiful supply. Workmens Compensation rates were so low that the cost for management of this insurance was not an important consideration. Abysmal living conditions for the black workers suggest that it was only where the accident rate seriously affected production, or involved skilled and organised workers, that the mining regulations were effective.

The exclusion of the mines from the other legislation reflected both

1. Chamber of Mines, Annual Reports.

2. UNION STATISTICS FOR FIFTY YEARS, page C-14; Dept Labour Annual Reports, own calculations.

3. Dept Labour Annual Reports.

4. 41% according to Dept Mines, Annual Report, 1924, page 40.

5. Alide Kooy, "Notes on Accidents on South African Mines", Paper 74, SALDRU-SAMST Conference, University of Cape Town, 1978.

6. Dept Mines Annual Report, 1924, page 68.

the importance in the economy and the earlier establishment of this sector. Mining was a particularly dangerous occupation, while both employers and white workers in the sector organised themselves strongly early in South African history. Both factors encouraged the establishment of a system of protection for the workers, and thus indirectly for capital, at an earlier date than the rest of industry. The specific conditions in the industry precluded their being included in the general legislation at a later date when such legislation existed.

(b) Shop and Office Workers

The Factories Act excluded workers in shops and offices, and those in factories employing fewer than three workers. Office workers in factories were also not covered. It was only in 1939, after a long and turbulent parliamentary passage, and a similarly long and turbulent struggle waged by the National Union of Distributive Workers that the Shops and Offices Act[1] was eventually passed, and provided for the regulation of hours, conditions of work, leave, maternity benefits and overtime pay in the sector.

The shop workers, divided as they were into many small groups, and spread over a wide and dispersed geographical area, had a longer battle than the industrial workers. The typical shop was small at this stage, with department stores the exception rather than the rule, and organisation in such establishments, where there was more or less a patron-client relationship between employer and worker, was more difficult than in bigger establishments. Office workers, too, were often in small groups, and not involved in truly cooperative work. Ideology encouraged the latter group to view themselves as part of management rather than of the mass of workers. The shop workers also had problems, however, because of the established position of commercial capital. Commercial capital had established itself in South Africa long before industrial capital, and thus had had a longer time in which to build up ideological beliefs in private property and its accompanying rights and powers. The shopkeeper, it was declared in Parliament, regarded his place of business as his castle, in the same way as the proverbial Englishman did his house,[2] Resistance was

1. Act 41 of 1939.
2. HAD, page 750, 15 June 1939.

thus stronger on ideological, as well as economic grounds.

Prior to 1939 commercial capital had not been totally unfettered, however. Provincial councils had had the power to regulate matters such as seats for females[1], hours of trading and work, inspection, leave, etc.[2] In addition, in the bigger urban centres, where organisation had been easier, workers had won ICs[3] or been placed under WDs.[4] Most of the legislation, however, applied to bigger concerns or larger industrial areas. Section 18 of the 1930 Cape Ordinance, for example, excluded all towns of less than five thousand inhabitants. Those in the smaller towns or rural areas were excluded either wholly or partially from control. Even where legislation applied, it was not often adhered to. In the Transvaal there were only three inspectors for the six thousand establishments and 15 000 people covered[5], while in Cape Town in the 1930's there was only one inspector.[6] The CAPE TIMES described the Cape Ordinance as a "Dead Letter" and stated that "it was a well-known fact that there are very few shops which are observing the law, with the result that flagrant breaches occur almost daily."[7] The 1939 Act attempted to regularise the position by providing one union-wide law, and by extending it to cover all shops and office workers.

Conditions laid down in the Act were similar to those in the Factories Act, sometimes being marginally better, sometimes marginally worse. Thus shop workers gained a forty-six hour week in 1939, two years before workers in factories. On the other hand, Section 19 of the Shops and Offices Act declared that the Minister could exempt any "class of employees" from regulations regarding hours, overtime, leave, records, seats for females, notices, or "any regulation", and that in doing so he could "apply any method of differentiation or of discrimination he may deem advisable." When this law was passed there was little or no complaint about this section while with the Factories Act

1. Shop Assistants Act, No 20 of 1899, Cape of Good Hope, which provided for "Lightening the Labours of Shop Assistants".

2. Ordinance 14 of 1930, Cape Province.

3. For example the Commercial Distributive Trade of Kimberley, Tea Rooms and Restaurants, Johannesburg, Hairdressing, Witwatersrand, etc.

4. For example the Commercial Distributive Trade, Witwatersrand, Pretoria, Cape Town, Port Elizabeth; Hairdressing, Bloemfontein, etc.

5. Norman Herd, COUNTER ATTACK, 1974, page 33.

6. ibid., page 55.

7. 7 February 1936.

the similar section attracted much attention.[1] In the main, however, the analysis applied to the Factories Act applies equally well to the Shops and Offices Act. The latter can thus be seen as the logical extension of the Factories Act, and legislation and control of a greater area with the increasing development, concentration and centralisation of capital, both industrial and commercial. The inclusion was later because of the particular nature of the growth in the area, both as regards the size of establishment and organisation of workers, as well as because of the involvement in distributionr rather than production work. But as more and more of the population became absorbed into the proletariat, and the reserve industrial army became increasingly one labour pool, such extension was necessary "to curb the passion of capital for a limitless draining of labour power..."[2]

(c) Farm Workers

In the period under consideration farm workers were generally black and unorganised. There was a developed complex of laws applicable to Africans which ensured a plentiful supply of cheap labour to the rural areas and to farmers in particular. Black workers were not perceived as a potential supportative fraction for the state as were the white workers. All these factors combined to obviate the necessity being felt for protection of these workers to be instituted. Economically, the supply of labour was not a problem. Politically, agricultural capital was very strongly organised, whereas agricultural labour organisation was weak. Ideologically, the protection of black labour was something with which the state rarely even pretended to concern itself.

Objectively, the conditions on farms warranted regulation. Work on farms was often extremely dangerous. In certain seasons hours of work were extremely long. However, the fact that machines were not used was used to justify the exclusion of the sector.

Other sector were also excluded. Construction was excluded until 1941, when the new Act laid down certain "vague" requirements for scaffolding. Railway employees were also excluded, even after other government

1. HAD, col 4045, 1941.
2. Karl Marx, 1974, page 229.

employees were included in 1941. These two areas were both ones in which, objectively, protection of the workers appears to have been an important issue. Rackham[1] writes that in England the largest number of fatal accidents occur in the building industry, and there is nothing to suggest that conditions would be better in South Africa. In 1939 17% of those receiving Workmens Compensation benefits, and 8% of fatalities were government or SAR & H employees[2], while S.A.R.& H employment accounted for only 123 421 (14,6%) of those employed in private industry, mining and the Railways alone.[3]

What the three sectors described above illustrate is the fact that the Factories Act was not imposed only out of consideration for the workers' health and welfare. Several factors interacted to determine whether certain groups of workers would be covered or not, and also on what areas of protection the Acts would concentrate. On the mines the conditions were such that workers were badly in need of protection. The strong organisation of both capital and white workers established an early system of protection, concentrated on certain sections of the work force. In commerce the dangers were less, as was the organisation of the workers. Here, despite the early establishment of the sector, protection only came much later. Farming was also one of the early forms of economic activity. The strong organisation of the employers in this field and the weak position of the workers determined that, despite the dangers, legislation was not enacted to cover the workers. The abundance of black labour also obviated the need for the protection of women and children.

IX

Conclusions

The process of factories legislation in South Africa is found to bear remarkable similarities to that of the United Kingdom, described so convincingly by Marx in CAPITAL. The "economic" causes are the same, as are the types of law passed. The objections of sections of capital are also markedly similar, despite the many years separating the two processes in the different countries. South African development

1. Clara D. Rackham, FACTORY LAW, 1938, page 48.
2. Dept Labour Annual Report, 1939, page 115.
3. UNION STATISTICS FOR FIFTY YEARS, pages G-4, G-6 and G-15.

occurred much later than that of Britain, and factory protection was thus felt necessary at a corresponding later stage. The provisions implemented did not depend on the advance of technical knowledge - otherwise South Africa would have had a Factories Act much earlier. It was only when the need was dictated by the development of production and by the threat of labour that legislation was passed. In Britain it was the fight against the Corn Law, in which capital desired the support of labour, that prompted the passing of the Factories Act. In South Africa the original Act was passed in 1918, in the post World War Two boom, and with the lessons of war fresh in the minds of employers.[1] The first major redrafting of the Act came in 1941, with the fear of worker unrest in World War Two.

a) Legislation in the interest of capital : Carsons[2] notes that for England "there is strong evidence to suggest that reconcilement to the instrumental facets of further legislation may have been greatly facilitated by the competitive advantages which might ensue therefrom." In South Africa the same forces were probably at work to promote the passage of and compliance with the Act. Certain fractions at least, of capital, realised that the legislation was in their favour, rather than (solely) in the interests of labour.

The reactions of capital to factory legislation were mixed, however. Some individuals were totally opposed to control. A letter to the CAPE TIMES, for example, complained:

> "Our Government, our administration and our council are destroying all initiative and effacing individuality, and I may add, enterprise. Many young manufacturing firms have not the capital to meet regulations that are taken from some American or other text-books and they require every encouragement, instead of being pestered by officials who have no experience."[3]

In 1924, the year that this letter appeared, however, the FCI, the recognised representative of capital, passed a resolution at its annual congress asking that the factory division of the Department be "urged to administer the regulations under the Factories Act in

1. Dept Labour Annual Report, 1929, page 5.

2. W.G. Carsons,"Symbolic and Instrumental Dimensions of Early Factory Legislation", in Roger Hood (ed), CRIME CRIMINOLOGY AND PUBLIC POLICY, 1974, page 119.

3. Letter to the Editor, CAPE TIMES, 10 April 1924.

such a manner as to ensure the strictest observance of the provisions of the Factories Act by all manufacturers."[1]

This apparent contradiction can perhaps be resolved by acknowledging the internal divisions in industrial capital, and particularly that between the bigger, more organised, fraction and smaller capital. With increased size and complexity of manufacture, self-interest would dictate an increased interest in hygiene and safety of the work-place on the part of the employer. The larger manufacturers, forced by the production process and its needs to undertake this extra expenditure, would be unwilling to allow that others escape and gain a competitive cost advantage. After 1924, when many larger concerns had the additional restraints of ICs and WDs, such pressure increased.

"... Safety ... both literally - in the case of machines - and figuratively - in the case of industry as a whole - ... is an extra that the employer may decide not to purchase rather than an integral part of the way work is done!"[2] However, complete disregard for workers' safety is impossible if capital as a whole is to survive, for the industrial reserve army is never inexhaustible, and accidents, as has been seen, entail immediate losses for the individual capitalist as well. With the increased size of the production unit and the increased use of machinery, these dangers and needs both increased. Women and children had to be protected so as to safeguard the workforce of the future, for reasons also related to the labour supply. Factory legislation was thus in the interests of social capital - capital as a whole - if not that of the individual capitalist, and the state thus had to step in to protect the workforce where capital individually was not prepared to do so.

The degree of organisation of the workers and employers, the dangers of the work, and the nature of the workforce were all important in determining where measures would be implemented, and what the form of these measures would be. Ultimately, however, while the Factories Acts did afford certain protection to the workers, the protection was not such as to hinder the appropriation of profit, but rather to ensure the continued possibility of such appropriation.

1. FCI Annual Congress Report, page 77.
2. Patrick Kinnersley, THE HAZARDS OF WORK, 1975, page 9.

The Factories Act was, however, very much in the nature of last resort legislation. In the well-organised industries, where capital was more inclined to perceive its communal interests, ICs or WDs existed. In these areas better conditions were laid down, regulations were in clearer terms, and enforcement was more effective. The Factories Act was for those industries not covered by other legislation. Its conditions were paltry, regulations were unclear, and workers, and indeed the state, had little control or power to enforce the legislation.

b) Worker agitation: While it can be argued that factory legislation was logical from the viewpoint of capital, as done above, the effect of labour on the passage of such legislation should not be underestimated. Some overseas observers suggest that in England factory legislation was passed in response to agitation by capital or humanitarian reformers, rather than in response to worker agitation.[1] (In regard to the latter reformers it is even suggested that worker militancy often diminished their zeal[2]). In South Africa indications are that similar forces for a large part were responsible. Labour organs devoted very little space to articles dealing with the Factories Acts, and reports of labour organisation and agitation around the issue are few and far between, especially as far as limitation of hours and conditions is concerned. Much of the impetus appeared to come either from the International Labour Organisation, at whose annual conferences the matter was regularly discussed, or from capital itself.

Nevertheless, the nature of labour action did affect such legislation, although at times only indirectly. Early labour organisation, in both England and South Africa, tended to concentrate on the issues of wages and hours of work within the individual factories and industries, and attempted to win restrictions on this particularistic basis. The first Factories Act was passed in 1918, at a time of heightened and generalised activity in many different industries. At that time there

1. W.G. Carson, 1970; 1974.

2. K. Wedderburn, (THE WORKER AND THE LAW, 1965, page 165), in writing of Plimsoll, one of the great factory reformers in England, notes: "His eventual coolness towards industrially militant organisation may be compared with the distance which always separated most of the factory reformers in Parliament from the TUs." The Hammonds, in writing of Shaftesbury, another reformer, comment on the "hostility ... and great dread of the trade union movement ' the tightest thraldom the worker has ever endured,'" (ibid) which this man had.

were no general limitations on hours of work. The Factories Act can be viewed as an attempt at pacification by the provision of a maximum for all industry, a maximum upon which workers in individual factories and workplaces could then base further demands.

The slow progress in the limitation of hours under the Factories Act can also be understood with this interpretation and in the interrelation between the Act, the ICA, and the Wage Act. After 1925 most white and skilled workers had an alternative means of gaining their demands. The Factories Act, as one now chiefly applicable to unskilled workers, was no longer an area of major importance in the eyes of capital or the state. Organised labour, too, with other provisions, would not be over-concerned about an Act laying down standards inferior to those they had already gained for themselves. It was only in 1941, when worker organisation among the unskilled and unprotected was on the increase, and when the political and ideological compulsion to provide concessions to a wider group of workers had again become important, that the Factories Act underwent a major overhaul.

The Factories Act, although to some extent in the interests of capital, was thus also a concession to workers. Physically, workers generally could, and had, worked more than the 48 or 46 hours laid down as a maximum. When overtime was demanded, and particularly during the war, they would continue to work beyond these limitations. Worker action forced the passing of an Act limiting the hours beyond the objective necessity. The action was primarily aimed at the individual establishment or industry level, but when this indi idual organisation was widespread, the threat of unrest prompted a general measure,which could then serve as a basis for demands by the most militant, while satisfying or at least muting the demands of the less well organised.

c) Differential treatment of sections of the workforce: The Act, in totally excluding certain workers, obviously discriminated against certain sections of the workforce. Thus farm, shop, construction and government workers did not get even the minimal protection encompassed in the Act. Of those workers covered by the Act, protection also acted in a discriminatory manner.

The interrelation between the Factories Act and other legislation -

particularly the Wage Act and ICA - was important in this respect. The Factories Act, as seen above, was for the most part colour-blind. Discrimination was introduced when the Factories Act was used in conjunction with the ICA and Wage Act. The latter forbade the determination of conditions on a standard inferior to that provided by the general Act. In Chapters Three and Four it was seen how the Wage and IC Acts tended to favour the more privileged section of the workforce, despite the fact that they were also allegedly colour blind. It was chiefly for the more privileged workers that conditions more favourable than the Factories Act were provided. Even where conditions under these additional measures were only minimally better, it was probable that there was also more pressure for capital to observe the prescribed regulations. In the case of ICs, for example, the council agents performed inspections and would have notified the Department of any contraventions. The latter itself, which "accepted responsibility only for 'races which subscribe to a civilised standard of life'"[1], would have been more inclined to investigate and act further on complaints affecting such "races". The mere presence of more established, better organised, and more "visible" groups of workers would have increased the pressures for observance.

The imposition of general conditions on all workers favoured the employment of white workers. WDs and ICs forbade discrimination on colour lines in the matter of wages. The Factories Act rendered it difficult to extract surplus labour in other ways from black workers, and operated in a much wider range of industries that merely those under WDs or ICs. Black workers were thus prevented from competing with white workers on the grounds of their cheaper availability, and white employers thus tended to favour white workers. Prohibition of juvenile employment likewise prevented black children from competing with whites on the basis of longer experience. In the case of segregation and the provision of separate facilities, the necessity of providing separate accommodation for white and black increased costs and would be avoided wherever possible by the employer, again usually favouring white employment where some whites were already, of necessity, employed in the skilled positions.

As far as women and children were concerned, the Act appeared to favour them, in providing better conditions of work than for adult males. Again

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1. Simons and Simons,, 1969, page 378.

appearances were illusory. Wage discrimination was not forbidden by either the Factories Act or the Wage and IC Acts, and the latter indeed expressly provided for this. Women and children were a cheap form of labour, and the performance of this function was not interfered with by the Factories Act.

The presence of other measures such as ICA and the Wage Act also explain why worker agitation which did take place concentrated on certain areas - those areas not covered by the other measures. Examples of this were maternity benefits and the provision of separate facilities for the different colour groups. Organised workers, insofar as they were protected by other measures, only showed an interest where their personal interests were concerned, and where they did not enjoy other protection. The orientation of established labour organisations was once again towards particularistic interests rather than a concern for labour as a whole.

The Act thus followed the trend in all South African labour legislation. Workers were differentially treated, and legislation served to entrench the various divisions in the workforce - colour, sex and age.

d) The effect of the conjuncture on legislation: The Factories Act provides an excellent example of the effect of the conjuncture of the form of legislation. The two major acts were passed at the time of the two World Wars, times of increased labour unrest, and with organised labour forming a constituent part of the government. Politically and ideologically there was thus a need for apparent protection of labour's interests.

The 1941 Act illustrates, however, that this function of the Act was limited by economic constraints. In 1941 South Africa had a war economy and was hard pressed in terms of the need for increased production with decreased inputs. The measures imposed were thus often less than had been demanded a long time before (as for example shown with regard to hours of work). In other cases measures which would hamper production were either not passed (segregation regulations) or waived (restrictions on women's hours). Even those measures official on the law books were less strictly enforced than before the war (for example the structural

requirements). Because of the war situation, the established labour organisations meanwhile felt obliged to give their support to the law, or at least to avoid protesting too much. Even Bob Stuart wrote that, as far as he knew, "no effort was made by organised labour to arouse public interest or to educate public opinion."[1]

Worker agitation did affect the Factories Act. Organised presentation of demands within the workplace, in ICs and at wage board sittings, as well as on the wider political front, strengthened the case of those advocating factory reform, and hastened up its implementation, as well as influencing its form. In the case of alternations to maternity benefits, and in the 1941 reframing of the Act, this agitation was particularly evident, at least in some trade union circles. As in England, however, the causes of factory legislation in South Africa were also to be found in the hazards of work and the need to curb these - needs felt by either humanitarian reformers (here we could include factory inspection staff, Department officials, and even perhaps Madeley and some trade union leaders), and, more importantly, employers forced by their advanced methods to observe these conditions themselves.

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1. TRADE UNION BULLETIN, September 1941.

TABLE 5.4[1]

PERCENTAGE CONTRIBUTION OF DIFFERENT SECTORS OF PRIVATE MANUFACTURING TO OUTPUT, EMPLOYMENT AND ACCIDENTS

		OUTPUT			EMPLOYMENT			ACCIDENTS		
Categories		1925/6	1934/5	1944/5	1924/5	1934/5	1944/5	1926	1935	1945
I.	Food, drink, tobacco	32,0	27,1	22,3	28	22	20	28	21	9
II.	Clothing, textiles, laundry	10,0	13,9	16,1	14	20	18	2	4	3
III.	Wood, furniture	7,1	6,3	6,6	8	8	9	26	18	12
IV.	Printing and paper	11,2	9,4	6,4	6	6	4	2	5	3
V.	Chemicals, petrol, explosives	12,3	8,9	9,7	9	7	7	11	7	6
VI.	Non-metallic minerals, stone, clay	7,0	7,8	5,4	12	13	9	8	10	6
VII.	Metals, enginerring, transport, electrical, machinery	16,7	23,5	27,6	18	22	27	12	22	42
VII.	Other	3,7	3,1	5,9	5	2	6	11	13	19

NOTE: The categories in the different sources vary slightly. I have attempted to assimilate categories to obtain similar categories, but the correspondence will not be exact.

"Building" is not included in any of the categories.

"Leather", especially footwear, and "Rubber" are problematical categories. For accidents they are included in "Other", but for output they are included, as far as footwear is concerned, in "Clothing, etc".

The "Other" category for employment and accidents is a residual one. Here the difference in percentages would probably reflect the difference between the classifications rather than a large difference in percentages for output, employment and accidents for a constant categorisation.

1. UNION STATISTICS FOR FIFTY YEARS, pages L-4, G10-12; Dept Labour Annual Reports. The percentage calculations are all my own.

CHAPTER SIX: THE RIOTOUS ASSEMBLIES ACT AND RELATED MEASURES

> "... it may be said that anyone conversant with the inherent psychology of the South African, whether from English or Dutch extraction, knows his passion for freedom and liberty of speech and action. The mere thought of placing him under additional restraint is abhorrent to him."[1]

South African citizens did not have complete freedom of speech and action. Several laws already examined in this thesis were shown to place restrictions on these freedoms. The "Native" laws and Masters and Servants Act curtailed freedom of contract and expression, as well as movement and residence, for African workers, thus seriously limiting their bargaining power.[2] Other restrictions were placed on the South Africans "from English or Dutch extraction", as well as on black workers.

Chapter Four of this thesis examined the ICA and the way in which this law, by regulating worker organisation in those industries where it was most advanced, limited and controlled such organisation and the threats it posed to the state, both in terms of who organised and how they did so. Chapter Five looked at the Wage Act and the way in which this functioned, in industries where workers were not organised, to channel their demands.

Many workers were not covered by these acts, and although they might be covered in some respects by the Factories Act, many demands went beyond those catered for by all three measures, all of which concentrated on the economic sphere. For these reasons it was necessary to pass other, more explicit laws, and it is these more overtly political laws which form the subject matter of this chapter.

The laws were not framed in purely industrial terms and would not normally be included in a study of "industrial law". They are included here because of the wider connotation of "labour law", and in recognition of the fact that the political and economic spheres are not completely separate ones - that worker protest and organisation can extend beyond

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1. SATLC Annual Report, 1938.
2. See above, Chapter One, Section II.

the boundaries of the economic sphere, that this protest and organisation can affect the economic sphere, and that state action and control must thus also be able to act in other spheres. The role of the state in the maintenance of the conditions of production and reproduction of the system entail not only the reproduction of the economic conditions, but also the reproduction of the political hegemony and dominance of capital and the state. This entails political and ideological control as well as control in the workplace.

Section I of this chapter will describe the Riotous Assemblies Act and the more political aspects of the Masters and Servants and "Native" Acts. It will be seen how these were used to discourage and control strikes, meetings, and other concomitants of organisation. Section II will examine the extent of freedom of speech and expression, and how they were restricted by statutes, subordinate legislation and regulation, under the common law, and in sundry other ways. This section will also look at non-statutory restrictions on organisational aspects such as meetings and strikes. In both sections numerous individual cases will be cited as examples of the way in which the different laws were used, against whom, and to what purpose. Finally, Section III will draw some conclusions based on the description and examples of the preceding sections as to the intent and effect of the curtailment of freedoms, and the restrictions on and control of organisation. This will, as always, be looked at in the context of the political economy of South Africa between 1924 and 1945.

I

Riotous Assemblies, Masters and Servants and "Native" Acts

> "It is because of the changing nature (of the strike) that great limitations have been placed upon the use of the strike weapon. When it is no longer employed merely in local differences between employers and employees, but extends through sympathy or force beyond the field in which it is immediately concerned, it constitutes a threat to the general public and to the sovereignty of Parliaments. The first concern of a government is the preservation of its existence..."[1]

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1. Ellison Kahn, "The Right to Strike in South Africa: A Historical Analysis", SOUTH AFRICAN JOURNAL OF ECONOMICS, II, 1943, page 25.

The Riotous Assemblies and Criminal Law Amendment Act[1] is the archetype of political legislation designed to curb strikes and other worker organisation. Originally enacted after the 1914 unrest on the Rand, the law aimed, inter alia, at preventing white workers from applying pressure to blacklegs and scabs in strikes on the goldmines and railways.[2]

Prior to the passing of this measure, the holding of open air gatherings had been legal in the Cape and Natal, except where violence was involved.[3] In the Transvaal and Orange Free State, however, with their earlier mining economic development, and thus earlier large agglomerations of workers, similar legislation had been passed prior to Union. In the Transvaal there was the Resolution of 1851 "Against public disturbances and discussion", Law 6 of 1894 "On the right of meeting and assembling of persons", which made it an offence for more than five or six persons to assemble in any street or public place[4], The Ordinance for Indemnity and Peace Preservation of 1902[5], the Crime Ordinance of 1904[6], and Act 16 of 1908.[7] The Orange Free State, with less economic development, had only one measure, the Indemnity and Peace Preservation Ordinance of 1902.[8]

The 1914 Riotous Assemblies Act, passed at a time when worker organisation was spreading beyond the mines and surrounds, repealed all these measures and replaced them with a countrywide measure, which covered both the holding of meetings and the "removal from the Union of persons convicted of certain offences."[9]

Section 1 of the Act gave the Minister the power to prohibit a public gathering (i.e. a gathering of more than twelve people with a common purpose) in a public place, if he had"reason to apprehend that the public peace would be seriously endangered." If a meeting was banned,

1. No 27 of 1914.
2. Jonathan Bloch, THE LEGISLATIVE FRAMEWORK OF COLLECTIVE BARGAINING IN SOUTH AFRICA, 1977, page 112.
3. Kahn, 1943, page 27.
4. W.H. Andrews, CLASS STRUGGLES IN SOUTH AFRICA, 1941, page 22.
5. Part II, Ordinance 38.
6. Sections 36 and 37, Ordinance 26.
7. Criminal Law Amendment Act, Section 7.
8. Part II.
9. Preamble to Act 27 of 1914.

any police officer above the rank of captain could order the participants to disperse. The same powers were granted where the meeting was not banned, yet where those attending killed or seriously injured any individual, or appeared to want to destroy or damage property. In the event of their not dispersing, the officer was empowered to use force "moderated and proportionate to the circumstances of the case and the object to be attained."[1]

Sections 8 to 11 of the measure can more clearly be seen as a reaction to the 1914 struggle, for use against pickets and to protect scabs. Section 8 made it an offence to "threaten or suggest" violence, to remain in the vicinity of an individual's workplace or home, to hide his tools, clothes or other property, or to follow or jeer at him or his family in order to cause him to break the law. Section 9 made it an offence to threaten such an individual in order to force him to join any organisation, an obvious potential weapon for use against union organisers or TU members attempting to recruit fellow workers, while Section 10 prohibited the encouragement of stoppage on work premises by an individual without the "lawful right" to be there, a serious impediment to union organisers, especially of the unregistered unions after 1924. Section 11 made it an offence to abuse, either verbally or in writing, workers who continued to work, or to "cause information to be sent to any person" in order to prevent an individual from obtaining or retaining his employment, or to force him to refuse to work.

Finally, as the ultimate discouragement of leadership in organisation, anyone who attempted to commit a statutory offence or conspired with others, incited, instigated, or commanded commission of such an offence, was liable to conviction as if he or she were the principle offender under that statute.[2]

For workers in public utility services, and those employed by a local authority or a company supplying light, power, water, or sanitary or transportation services, restrictions were even more severe, due to the more far-reaching consequences of disruption in these sectors, sectors upon which all other branches of capital were dependent for

1. Section 4, Act 27 of 1914.
2. Section 15, Act 27 of 1914.

functioning. In this case it was an offence for workers, either singly or in concert, to break a condition of a contract of employment, knowing, or "having reasonable cause to believe" that the "probable consequence" of this would be to deprive a "large section of the community" of their supply of one of the above services to any "great extent."[1]

The various clauses of the measure described and quoted above express adequately the intent of the legislators. The Act was far-reaching in itself, and its terms were so indefinite and subjective as to make it even more extensive. However, perhaps because of this very lack of clarity, and perhaps because of the hesitation of the state and judiciary in acting too harshly when the offenders were part of the white group, in this early period Simons reports that difficulties were experienced in securing convictions.[2]

By 1930 the situation had changed. It was no longer only white workers who were organising. The ICU had been active since the beginning of the previous decade, and the Communist Party and African National Congress (the latter particularly in the Western Cape) were also active among black workers. An amendment was thus introduced, changing the Act so as to make it a more effective weapon and to bring black organisation - both worker and non-worker - into its ambit more easily.

Section 1 was extended to make it an offence to preside at or convene those meetings where one "had reason to apprehend that feelings of hostility (would be) engendered between Europeans and any others" or against any particular individual. Individuals could be removed from an area if deemed "undesirable inhabitants" by the authorities. The Governor General was empowered to punish "offenders" without trial, and there was no provision for appeal to the courts against his decision.[3]

The Riotous Assemblies Act, thus amended, was used together with the Masters and Servants Act to curtail strikes and all matters ancillary to them, i.e. picketing, blacklisting, intimidation, and the holding

1. Section 12, Act 27 of 1914.
2. RACE RELATIONS JOURNAL,(VI), 2, 1939, page 61.
3. Section 1 (16), Act 19of 1931.

of strike meetings.[1] A few examples serve to illustrate the possibilities in this direction.

In 1924 a baker was requested by the South African Industrial Federation (Baking and Milling Section) to replace two African delivery men by white vanmen. The baker refused and the Federation then placed an advertisement in two newspapers urging TU members to boycott the baker, as he was "using coloured labour for work which other firms employed Europeans to do." The TU members were convicted under Section 1 of Law 13 of 1880 of the Transvaal Republic, the law "voor het reguleeren van de betrekkelijke regten en pligten van Meesters, Bedienden en Leerlingen". The magistrate ruled that "it is actionable intentionally to do that which is calculated in the ordinary course of events to damage and does in fact damage another in that person's property or trade if done without just cause or excuse."[2] In his opinion the TU did not have such cause or excuse.

In the same year, however, the ICA was passed, bestowing official recognition on TUs and further defining the right to strike. The Riotous Assemblies and Masters and Servants Acts were then used against more left-wing organisation, the former being able to be utilised even where workers no longer fell under the Masters and Servants Acts.

After a strike at the African Clothing Factory in 1931, for example, twelve people, including Johnny Gomas, James la Guma and Lazar Bach were arrested and charged with throwing stones at scabs, despite the fact that pickets had police permission.[3] On the occasions of another strike, among tramway workers in Cape Town, Douglas Wolton, a leading Communist Party member, was arrested and charged under both the ICA and the Riotous Assemblies Act.[4]

To control aspects of organisation besides strikes and meetings, the amended Riotous Assemblies Act was used in conjunction with, and extended by, the provision of the Native Administration Act for the rural areas and the Native (Urban Areas) Act for the towns, both of which acts

1. Kahn, 1943, page 31.
2. SOUTH AFRICAN LAW JOURNAL, XLI, 1924, page 408.
3. CAPE TIMES, 2 September 1931 and 15 September 1931.
4. CAPE TIMES, 10 December 1932.

carried clauses which could be used against the growing organisations among blacks.

A resolution of the ICU in 1927 stated that the Native Administration Bill "is anti-British and unjust interference with free speech and the liberty of the subject. We are convinced that Clauses 25 and 26 is (sic) a deliberate attempt to prevent the legitimate TU organisation of the Native workers ..."[1] Section 25 of the Act allowed the administrative prohibition of meetings in the rural areas by the Governor General. Section 29 stated that "any person who utters any words or does any other acts or things whatever with intent to promote any feeling of hostility between Natives and Europeans shall be guilty of an offence ..." Such person, if an African, could be confined to a scheduled area, a non-African national could be kept out of the area, and non-nationals, both black and white, could be detained and deported.

In the towns Section 36 of the Urban Areas Act[2] gave the urban local authority the power to make or adopt regulations for the "conduct, control, supervision and restriction of meetings or assemblies of natives within the urban area" if there was "reasonable ground for believing that the holding of such a meeting (might) provide or tend to a breach of the peace." The pass provisions of the same statute allowed for deportation or other removal of "undesirables."

The enactment of these laws was not merely an empty threat on the part of the legislators. The provisions were used to prosecute, convict, and generally harrass worker organisers, as well as to prohibit or disrupt their meetings.

In the first six months of operation of the Native Administration Act four CP members, Johnny Gomas, Stanley Silwana, Bransby Ndobe and Abdurset Brown, and five ICU members were charged under the hostility clause, the offence of the CP members being protest at police shooting of an African rioter, and disparaging comments about King George, Smuts and Hertzog during the flag debate.[3] Later Kadalie, Sam Malkinson (CP)

1. WORKERS HERALD, 17 May 1927.
2. Construction in Act 25 of 1945, with similar clauses in previous acts.
3. H.J. and R.E. Simons, CLASS AND COLOUR IN SOUTH AFRICA, 1969, page 346.

and Mrs N. Bhola (ANC) were prosecuted under the same clause.[1] Another clause of the same act was used to harrass Champion's ICU at the time of riots in Natal, when the Governor General banned all meetings of Africans without former approval from the magistrate[2], and again in 1945, when Proclamation GN 31 prohibited all gatherings of more than ten Africans in Natal, the Transvaal or the Orange Free State, unless for religious, domestic or official administrative purposes.[2] In 1930, by charging six ANC organisers, Kennon and James Thaele, Vumazonke, J. Oosthuizen, Lester, and Jacob Conscience under the Act, and by prohibiting their addressing any meetings in the "banned" areas (i.e. those in which they were organising) for the duration of their trial, the state effectively weakened this organisation for a crucial period of over three months.[3]

The Urban Areas Act tended to be used on a less individual and larger scale, allowing for the removal of large groups of people, rather than only individuals. Using the administrative procedures allowed by the Act, magistrates "declared that any African who held a (Communist) party card or who worked with the party was 'idle, dissolute or disorderly' and thus subject to two years banishment." Besides the removal of leaders such as Gana Makabeni (CP) to the Transkei, and Nduweni (ICU) to Standerton, this facilitated the removal of more than two hundred other militants to the outlying rural areas within the period of a few months.[4] Ramutla, a CP organiser, was meanwhile declared a "vagrant" because of not being "employed" in an ordinary job, and as a result spent twelve months in a labour camp.[5] (He also served five months at a later date under the hostility clause of the Native Administration Act.[6])

Besides effecting the removal of organisers, the Urban Areas Act also restricted their action while in the towns. In 1944, for example, when the Minister prohibited all meetings in proclaimed areas, he claimed that this would not interfere with TU organisation. He refused, however, to give permission to the African Mine Workers Union to hold

1. Simons and Simons, 1969, page 400

2. Proclamation 252, Simons and Simons, 1969, page 367.

3. CAPE TIMES, 26 June, 23 July, 26 September 1930; WORCESTER STANDARD AND ADVERTISER, 26 July 1930.

4. Simons and Simons, 1969, page 436.

5. ibid., page 459.

6. ibid., Page 468.

a meeting to collect dues. He suggested that they meet ten by ten instead. Unfortunately for the organisation, there were 16 000 members, and dues had to be collected monthly.[1]

The picture that emerges is one of harrassment and discouragement, rather than systematic prohibtion of organisation. Besides the Masters and Servants Act and the Native Service Contract cases, where, because of the strictness of the Acts prosecution was usually successful for the state, the prosecution often lost its cases under the other acts. These acts were used for areas more open to the public eye, often where white organisers were involved, and where it was difficult for the state to restrict "freedom" too blatantly. Instead the aim appears to have been one of discouraging such activity. When Bunting stood for Parliament in the Transkei, for example, he, his wife, and Makabeni, who was his electoral agent, were charged and convicted under Section 29 of the Native Adminstration Act, the hostility clause. On appeal, however, the Supremem Court ruled that it was necessary for the prosecution to prove intent for this crime, and that it was "not easy to declare with any precision what exactly was meant by the expression" (incitement to racial hostility).[2] On the setting aside of the conviction, the state withdrew fourteen similar charges against the three.

It was difficult to prove that the individuals and organisations involved in most cases intended to promote hostility between the different colour groups. Proof of the truth of the statements claimed to be inflammatory was often sufficient to secure acquittal. Prosecution, even without conviction, served a purpose nevertheless. Organisers were removed for some time; court cases involved heavy expenses and a waste of time for workers prosecution usually entailed the forfeiture of wages, or even of their jobs; the possibility of conviction must have frightened away many would-be participants.

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1. CAPE TIMES, 9 November 1944.
2. Simons and Simons, 1969, pages 352, 419.

II

Freedom of Speech and Expression

The Riotous Assemblies and"Native"Acts were not the only weapons to be used to restrict, control and contain worker organisation outside the official channels. General restrictions on speech and expression also affected labour organisation. Other statutes, legislation and authority of subordinate bodies, as well as the common law, were all used at different times.

Press freedom provides a suggestive example of how the ordinary workings of the society favoured the case of capital rather than labour, even in the absence of legislation or rules of any kind, as well as serving as an introduction to areas where regulation was used,

> ".... the Press wing of the Capitalist army was in action daily, nay hourly, firing volleys of mud at the worker leaders in the hope that some of it might stick."[1]

At the time this was written, FORWARD was complaining about the fact that, while during elections the names and addresses of all writers had to appear on articles, letters, etc., during an industrial dispute there was no such law. As the press was almost exclusively financed and controlled by the capitalist class, they could present their opinions as the unbiassed truth, and this was what reached and informed the general public. Radio broadcasts, too, under the control of private capital, expressed the views of the state and its supporters.

The WORCESTER STANDARD AND ADVERTISER was quite explicit about this bias at the time of the ANC "riots". The newspaper stated that it would not do to give too much publicity to the black organisation. "Naturally the more publicity the affair is given, the better pleased the Natives will be - and that is what they are after."[2]

This original, non-legislated bias necessitated freedom of speech and expression if the viewpoint of the non-rulers was to have a chance of

1. FORWARD, 3 July 1925.
2. WORCESTER STANDARD AND ADVERTISER, 19 April 1930.

being heard. However, further restrictions were imposed on freedom of expression.

Section 5 of the Entertainments (Censorship) Act of 1931[1] declared that the Censorship Board should not approve any film which, in its opinion, depicted material that "prejudicially affects the safety of the state, or is calculated to disturb peace, or good order, or to prejudice the general welfare..." Disapproval was conferred on films depicting,"in an offensive manner",

a) scenes related to controversial or international politics[2]

b) scenes representing the antagonistic relations of capital and labour[3]

c) scenes tending to create public alarm[4]

d) scenes calculated to bring any section of the public into ridicule or contempt[5]

e)"pugilistic encounters" or "scenes of intermingling" between whites blacks.[6]

Unfortunately, no list of rejected films is available, but the fact that these clauses were considered necessary, suggests that they would have been used and were contemplated in the framing of the Act.

An amendment to the customs regulations in July, 1934, provided for censorship of reading material, by providing for the prohibition on the importati on of political literature. Among the first publications to fall foul of this law were the COMMUNIST MANIFESTO and LABOUR DEFENCE NEWS.[7] Nonetheless, the Minister responsible was reported as stating that he had no knowledge of a seriously written book that had been banned! He claimed that extra vigilance was needed in South Africa on account of the "mixed population";[8] "....complaints had been made to the authorities that such literature was freely distributed among Natives , and that this type of reading matter incited the readers to overthrow any form of government."[9]

1. Act 28 of 1931.
2. ibid., clause (g).
3. ibid., clause (h).
4. ibid., clause (j).
5. ibid., clause (m).
6. ibid., clauses (q) and (r).
7. Simons and Simons, 1969, page 471.
8. SATLC, Annual Report, 1938, page 21.
9. SATLC, Annual Report, 1939.

Besides statutory provisions, the pre-statute law also could be used to control freedom of expression. Because of the uncodified nature of these measures, a full description or even listing of the measures is impossible, but the following examples give some idea of the flexibility, adaptability, and far-reaching nature of the civil and criminal law in this regard.

In a civil case Cleghorn and Harris, a large retail firm in Cape Town, successfully applied for a temporary interdict prohibiting the further distribution of publications of the National Union of Distributive Workers pamphlet listing the names of firms which did NOT dismiss workers in the face of a new WD, a list from which Cleghorn and Harris had been excluded.[1] Meanwhile, the firm planned a £1 000 damages suit against the union.[2]

In a second civil case £50 damages were awarded against Basner, and in favour of Trigger, the manager of the Mines Police Department, for a comment before the Mines Natives Wages Commission in which Basner alleged that Trigger had spied. The judge ruled that it was not a case of heavy damages as the Chamber of Mines, and not Trigger, was the real target, and secondly, because of Trigger's conduct, which had been highly provocative. The case,however, had cost Basner more than £1 000 in cash and six days in court.[3] In a later case four gold mines were awarded £750 each plus costs, for libel,against the GUARDIAN. This was for comments by the newspaper staff in their evidence to the same commission.

In a criminal case, on the other hand, Johnny Gomas, Minnie Gool, Eddie Roux and Joseph Ngedlane were found guilty of the crime of "laesae majestatis venerationis", for articles published in UMSEBENZI. This law, dating from BC 29, no longer operated in Britain, the home of the monarch whose dignity was apparently at stake.[4] The Cape Supreme Court overturned this ruling, but it was upheld by the Natal Supreme Court, and had to be taken to the Appeal Court in the latter case. Douglas Wolton, mentioned earlier, was convicted under this

1. CAPE TIMES, 2 March 1940.
2. CAPE TIMES, 8 March 1940 and 27 April 1940.
3. GUARDIAN, 4 January, 1 February and 17 May 1945.
4. UMVIKELI THEBE, January, March, May 1936.

same law for an article about the treatment of communists in prison road camps, and he served a four month jail sentence as a result.[1]

Whereas in the case of hostility clause prosecutions a defence of the truth of the statement in question often secured the accused's acquittal,[2] in both the above cases truth was not an adequate defence. Publication of the truth was a punishable offence when the state or an individual capitalist took exception to such publication, and instituted charges.

Non-statutory control also extended to meetings and strikes. In 1935 Johanna Cornelius, two other women, and two men, were charged with "disturbing the public peace by fighting and quarrelling, shouting, swearing, and abusive language."[3] In 1940 Cornelius was again charged, and fined one month or £10, for obstructing the police during a strike at the African Tobacco Company. She stood in front of a busload of "onderkruipers" to try and prevent their strikebreaking, and hit a Captain Van Wyk when he grabbed her by the hair. The magistrate described her as a "betaalde agitator", although she was the UNPAID secretary of the trade union concerned.[4]

In 1944 municipal regulations were used to institute charges against three trade unionists - Waterfield, Pauline Podbrey, and Katie Kagan. It was alleged that the three had contravened municipal regulations by addressing meetings in the city streets without the consent of the Cape Town City Council. The Council later withdrew the case on learning that application had in fact been made, but that they had been referred to the Deputy Commissioner of Police, who had referred them back to the Cape Town City Council.[5]

The ability of workers to strike could also be limited beyond the limits imposed by wage loss or the restrictions in the ICA and Masters and Servants Acts. After a textile strike Bill Andrews and Issy Wolfso secretary of the Textile Workers Union, were to be charged

1. Simons and Simons, 1969, page 446.
2. ibid., page 400.
3. CAPE TIMES, 18 June 1935.
4. DIE WARE REPUBLIKEIN, November 1940.
5. CAPE TIMES, 10 May 1944.

with "wrongfully and unlawfully conducting a charitable institution"[1], because of having set up a strike fund for the workers.[2] (This case was later withdrawn[3]).

The above examples illustrate the extent and diversity of measures which could be and were used. As with the statutory measures, however, part of the effectiveness of the law in this regard lay in the discouragement of worker action which the control entailed. Organisation which the state or capital percieved to be against their interest could provoke either criminal or civil charges being alaid against the organisers. The very diversity and uncodified nature of the range of options open to the prosecutors increased the uncertainties and dangers involved in provoking their anger or fear. The laying of charges, when successful, resulted in fines or prison sentences. Even when not successful, the costs, in terms of money, energy and time, were often heavy, as amply illustrated by the case against Basner described above.

III

Conclusions

The measures described in this chapter were used to control the more "extra-economic" activities of the workers, or the economic organisation which overflowed acceptable boundaries. The extent to which it was applied to different groups of workers, however, depended on three related factors, namely,

a) the extent to which other acceptable methods of posing economic and other demands were provided,

b) the extent to which organisation of the group was seen as constituting a threat to the interests of capital or the state, and

c) the importance attached to the granting of the liberal "freedoms" to the group in terms of ideological hegemony and support for the rulers.

The ICA and Wage Act provided acceptable channels for the demands of

1. The Charitable Institutions Control Ordinance, No 50 of 1926.
2. CAPE TIMES, 26 June 1935.
3. CAPE TIMES, 16 July 1935.

the more privileged strata of the working class. White male workers and artisans in particular, could use these measures to attain limited ends, and were thus, to some extent, saved from the need to use more threatening methods. Access to Parliament provided another channel for more political demands. As a supportative class, and as part of the electorate, the restriction of the freedom of this group were less acceptable, and would have called into question certain important ideological tenets of a "free capitalist system".

Other workers were not protected to the same extent, being covered, if at all, by such general acts as the vastly inferior Factories Act. As less favoured workers they were also more likely to have demands for more fundamental changes. The vast majority of black workers were excluded from the ICA, and often from the Wage Act, while being restricted by the "Native" Acts and the Masters and Servants Acts. Unskilled whites, and particularly females, constituted an intermediary position. They were enfranchised, and potentially capable of falling under the ICA or Wage Act, while exempt from the more restrictive "Native" Acts. The actual composition of the ICs, and the operation of the Wage Act, often served to work against their interests and ignore their demands, however. They were thus also often forced to resort to other, less economistic, and less restrained, action.

The "Native" Acts and Masters and Servants Acts applied chiefly to African workers, or to those attempting to organise them. The other Acts and measures - the Riotous Assemblies and the whole gamut of statutory and non-statutory controls described in Section II - could potentially be used against both black and white. No statistics are provided for prosecution and conviction under these measures, and their very nature makes such empirical evidence impossible. Evidence thus tends to be anecdotal and suggestive, and depends very much on the sources available and utilised, and the contacts and knowledge the various authors and informants have in their possession. It appears, however, that the main use of the measures in the period from 1924 to 1945 was against the unskilled and/or black workers, and their organisations - the CP, the ICU, and, one suspects, the Nationalist Party, although the left sources do not dwell on the latter. Changes and extensions to the statutory measures over the years support this contention in that they appear to correspond to and be aimed at the

growing movement among the unskilled. Skilled workers were more literate and had easier access to publication than unskilled workers. The relative paucity of examples of action against such workers and their organisations is thus probably an understatement of their relative invulnerability rather than an overstatement.

It was where organisation cut across colour lines that hostility clauses could most easily be used. It was in situations where there were no anti-victimisation provisions that the hindering of strikes and organisation was most easily effected, and indeed were most likely to be necessary. It was the poorer workers for whom the costs in terms of both time and money were most prohibitive. Legislation in which white workers had at least a minimal say was unlikely to restrict their freedom to quite the same extent as it restricted that of the unenfranchised.

The majority of laws analysed in this thesis aimed to incorporate at least a section of the workers. While controls were imposed, concessions were also granted. The measures were framed so as to appear to protect workers, rather than working only in the interests of capital. The laws analysed in this chapter were, on the whole, more explicit in their aims and ambit. The protection of labour was not an issue. The aim of the measures was the maintenance of "law and order" - and this meant hindering organisation in all its aspects so as to protect the hegemony of capital.

CHAPTER SEVEN : INDUSTRIAL HEALTH

Production can be a dangerous process. The progress of technology involves the use of ever bigger, more complex, and thus possibly more dangerous machinery. The extraction of raw materials and the manufacture of processed materials can involve processes detrimental to the health of those workers involved. With the passage of time medicine and medical knowledge also advance, but the motor force behind the society is that of the production of commodities, not of social health and well being. It is the former which generates profit, not the latter.

Workers' health continues to suffer because of the way in which production and society are organised. Thus, as seen in Chapter Five, above, on the Factories Act[1], despite advances in technical and medical knowledge, production appears, at least between the years 1924 and 1945, to have become more dangerous for the individual workers. However, workers suffer not only from the hazards of work, but also those "of belonging to the working class, because disease and your position in society are closely linked."[2] Low income and the resultant poor housing, poor nutrition and generally poorer "quality of life" all contribute to a less healthy existence. The state did little to ameliorate the basic form of society. Workers continued to suffer because of lower incomes and poorer living conditions associated with their position. Within the workplace, however, steps were sometimes taken both to minimise dangers and to compensate for injury suffered.

In Chapter Five, on the Factories Act, the measures taken to minimise the dangers inherent in the production process, in the interests of continued production and reproduction, were analysed. In this chapter the measures taken to repair the harm occasioned by the dangers will be examined. These were both social security for the workers, in the form of compensation, and private security for the employers, in the way of compulsory insurance against common law liabilities and protection of the workforce. In addition, it can be seen as part of the mechanism examined in the Factories Act, whereby capital augments its own efficiency.

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1. Page 164, supra.
2. Patrick Kinnersley, THE HAZARDS OF WORK, 1975, page 8.

As examples of this type of legislation, the Workmens Compensation Act, (WCA), and the Miners Phthisis (MPh) Act will be examined. The first WCA was passed in 1914.[1] It was frequently amended: In 1917 (Act 13), 1931 (Act 29), 1934 (Act 59), 1936 (Act 38)[2], 1941 (Act 30) and 1945 (Act 27). The period 1924 to 1945 was thus an important and interesting one in regard to this measure, and illustrates important developments in terms of just what such industrial health legislation involves. Most of these amendments incorporated major changes in the Act. It is thus instructive to study the Act chronologically to see how and why it was altered at different times.

The first MPh Act was introduced in 1911,[3] even earlier than the first WCA, but in this case applied only to the mines. The Act is examined here chiefly for the insights it affords as to the differential treatment of different sectors of the workforce, and different groups within these sectors. This also provides important indications as to the nature of all such concessionary legislation.

Section I of the chapter will describe the changes in the WCA between 1914 and 1945, and examine the forces advocating such changes as well as their effect once put into operation. Section II will look at the problem of colour discrimination in the Act, both in terms of different provisions and the different positions occupied by these groups of workers. Changes in this respect will also be linked with changes in the workforce. Comparison of colour differentiation in this Act with that described later for the MPh Act will illustrate significant differences in the two area. Finally, Section III will examine the actual operation of the WCA to see how the factors described in the previous two section affected the payment of compensation.

Sections IV and V deal with the MPh Act, in order to show the treatment afforded these workers because of the special importance of mining to the economy and the specific forms of organisation there, both in terms of the labour process and in terms of labour organisation. Section IV will give a brief history of the legislation from both the economic and political angles. A description of tuberculosis and silicosis will also be provided in order that the form and effects of the legislation can be appreciated.

1. Act 25 of 1914.
2. A minor amendment relating only to alluvial diggings and ignored here.
3. Act 12 of 1911.

With this background, Section V will then examine the discrimination in the MPh Act, a discrimination shown by differential treatment of the workforce in their jobs, differential scales of compensation, and differential treatment, when illness was discovered, beyond the mere payment of pecuniary compensation.

Finally, Section VI will draw some conclusions from the description of the two measures previously provided as to the general nature of industrial health legislation - the forces advocating it, the forms it took, and to whose advantage it ultimately operated.

I

1914 - The original act

Before the passing of the 1914 Act, a worker's remedy in the event of an accident at work lay in a common law suit against the employer for negligence, with the onus of proof of negligence resting on the worker. Negligence is, however, a very vague concept and "involves the further test of 'reasonable foreseeability', which has been shown up as vague, capricious and subjective when applied to anything more complex than bows and arrows or horses and carts. Some learned judges are able to forsee very little; others, by taking a complex succession of events step by step, are able to forsee almost anything."[1] The difficulty of proving negligence and the high cost of civil litigation rendered the common law right under the Roman-Dutch law minimal. Before Union, the Transvaal[2], Natal[3] and the Cape[4] passed various laws extending this common law right to some extent, but it was only with union that an extensive law, based on the British Act, was passed.[5] Under the common law the liability to pay compensation only existed if blame could be laid directly at the employer's door, the employer NOT being liable for damage "due solely to the fault of the worker, to chance, to force majeure, to some risk inherent in

1. K.W. Wedderburn, THE WORKER AND THE LAW, 1965, page 184.
2. Act 36 of 1907.
3. Act 12 of 1896.
4. Act 40 of 1905.
5. SOCIAL AND INDUSTRIAL REVIEW, II (IX), pages 806ff. The information immediately following also comes from this source.

the work itself and unconnected with any defect either in the installation or the working of the undertaking or in the selection of the worker."[1] The new Act provided for compensation in the case of all accidents "arising out of or in the course of employment"[2], and where the accident was not due to the "serious and wilful misconduct of the employee". This latter "misconduct" was defined as drunkenness[3], contravention of the law, or of a statutory regulation if deliberate or reckless disregard was responsible, or anything else the magistrate might decide.[4]

Under the 1914 law the worker could choose between making a claim under the common law and making one under the new statutory provisions. He could not attempt to get both remedies. In the event of choosing workmens compensation (WC), he had to hand in written notice of the accident to the employer, and the two parties would then try to reach agreement as to what compensation would be paid. If, after two weeks, such a private agreement proved impossible, the dispute would be referred to a magistrate, and the latter would then decide on the "justice" of the case, having due regard to any pension or any other scheme contributed to by the employer.

1917 - Industrial Diseases

The passing of the WCA formed a recognition on capital's part that many, if not most, "accidents" at work were not truly accidental, but rather a danger inherent in production and thus to some extent predictable. "Accident" was merely a convenient name for the occurrence "All that it means is that the employers did not actually plan to maim or kill."[5] But injury did not result only from sudden , catastrophic causes. Long-term exposure to many working situations also impaired the health of the workers and caused or predisposed them to certain illnesses and diseases. In 1917 the Act was extended to provide for compensation also in the case of certain industrial diseases. The schedule of the Act contained a list of diseases accepted as compensatable industrial diseases, together with a

1. OFFICIAL LABOUR GAZETTE, March 1931.
2. Section 1.
3. This was removed by Section 27 of Act 30 of 1941.
4. Section 41 of Act 25 of 1914.
5. Kinnersley, page 194.

schedule of the industries in which each disease was applicable. In the case of these diseases (cyanide rash, lead poisoning and mercury poisoning in certain industries in the 1917 Act), the danger inherent in the ordinary working of capital was recognised.

In the case of unscheduled diseases or scheduled diseases in unscheduled industries, compensation was not payable even if it was proved that the disease arose in or out of the course of employment. The only exception to this would be where the disease was caused by an "accident" rather than the "gradual process" of merely being in constant contact with noxious substances.[1] In the case of scheduled diseases, however, there was a great improvement in the sense that the disease was deemed to arise out of the work situation if a scheduled industry was involved, and this was accepted by a court until a doctor testified, or it was otherwise proved, to the contrary.[2]

The inclusion of a disease in the schedule thus provided an important area of struggle for workers in particular industries, for example those in the food and canning industry for the inclusion of dermatitis. This disease, which is caused by a wide variety of substances commonly used in manufacture, could affect workers in numerous industries and was worst where hygiene and other precautionary measures were afforded scant attention.[3] The disease was recognised by the Department of Labour as early as 1928 as occuring in high proportions among food and canning workers.[4] However, it was only scheduled in 1941.

1934 - Compulsory Insurance

The WCA, in its early form, was not effective even to the extent of providing the meagre compensation provided for. Whereas WC could, theoretically, be claimed by all those covered, the employer would not necessarily be insured, and the inability of small, employers, in particular, to pay the compensation, might not make it worthwhile. As the Workmens Compensation Commissioner reported in 1931: "... the measure placed the onus of paying compensation upon the employer in

1. Dept Labour Annual Report, 1937, page 83.

2. Section 4, Act 13 of 1917.

3. "Occupational Skin Diseases", W96/1, 1949?, a publication of the Workmens Compensation Commissioner, provides a long list of all the substances which can produce dermatitis.

4. SOCIAL AND INDUSTRIAL REVIEW, 1928, page 937.

whose service the workmen is injured, and whilst many employers insure their workmen against this risk, the practice is by no means general, and it is understood that many employers, both in large and small concerns, prefer to carry their own risks. When the financial stability of the employer is beyond question (more likely with bigger concerns - DB) little may be anticipated, but in other circumstances the result of a serious accident to any considerable number of employees may be the insolvency of the employer and the penury of the injured workmen or their dependants."[1] The situation suited neither workers nor those employers who did insure themselves. The latter were usually the owners of larger establishment, who, due to the greater risks incurred by a larger workforce, felt constrained to undertake insurance. In so doing, however, they added to their costs, and thus were at a relative disadvantage in relation to their uninsured competitors.

So unsatisfactory was the WCA deemedto be in the original form, that before the 1924 election one of the six points on which the PACT was formed was the promise of a new WC Bill.[2] By 1930 nothing had as yet been done, however, and the debate surfaced again, with a select committee set up to consider amendments to the Act.[3] Both workers and organised industrial capital recognised the need for compulsory insurance. The workers favoured a state scheme along Canadian/ Australian lines, and it was in this form that the Cresswell Bill[4] was actually drafted. A central fund, into which employers would pay premiums according to the number of workers they employed, was to be established under state ausprices. All claims for WC would be directed to this fund. The TYPO JOURNAL commented on the many "satisfactory features" of this bill from the viewpoint of the worker, the chief among them being that "the whole question of compensation would be removed from the profit-making atmosphere entirely, and the unfortunate workman would consequence, receive a larger amount of justice." [4]

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1. Dept Labour Annual Report, 1932, page 50.
2. HAD, 1934, col 4648.
3. SC 13-1931.
4. Quoted in FORWARD, 25 March 1937.

At this stage, however, organised commerce and industry were opposed to any measure "stamped with pronounced socialistic ideas which eliminate private enterprise."[1] INDUSTRIAL AND COMMERCIAL SOUTH AFRICA, a representative journal for these fractions, reported that,

> "commercial opinion is unanimously opposed to the principle of State insurance ...It is impossible to justify the removal of the highly technical business of insurance from the sphere of many competent and expert corporations and its transfer to three government nominees, none of whom will bear the weight of responsibility involved in commercial competition ... The financial risks arising from control without direct responsibility will become a burden upon the employer instead of being, as under the present system, borne entirely by private insurance companies."[2]

The General Manager of the Sun Insurance Company complained that the new scheme would mean that the companies would "lose an important section of their business"[3], perhaps a more important viewpoint for commercial capital than their purely ideological attachment to the freedom of enterprise.

This attitude is supported by FCI evidence to the Select Committee on the bill. The FCI declared itself in favour of compulsory insurance, but not in favour of a state run scheme.[4]

Mining capital was not as concerned with the outcome of the debate as the other fractions of capital. Mining was more accident prone than other sectors of the economy, but it was also more organised. These two factors - the high accident rate and the concentration of the sector - had encouraged the early establishment of a compensation arrangement satisfactory to capital. As early as 1894 the Rand Mutual Assurance Company was started. By 1914 half of the mines had joined this self-insurance scheme, and by 1931 all were included. Section 83 of the 1931 bill exempted all those insured with "a mutual association which was established prior to the commencement of the Act" against any liability to pay compensation to such workmen under the Act. (It appears that the Rand Company was in fact the only such association then

1. CAPE TIMES, 16 April 1931.
2. May 1931.
3. CAPE TIMES, 25 March 1931.
4. CCI Annual Report, 1932, page 17.

in existence.) As such, the Act would not affect mining materially. Ideologically and politically, however, their interests lay with the other capitalist fractions, and they thus also declared themselves opposed to state interference with private enterprise.[1]

Agricultural capital was also exempted from the Act. Workers in agriculture could not claim compensation unless employed "in connection with any vehicle or machine, driven or worked by mechanical power".[2] Agriculture presented no evidence to the Select Committee. Despite the fact that farm workers, whether on mechanised or non-mechanised farms, were presumably more likely to suffer an accident than clerks in business, who were covered, debate on the question was minimal. The majority of farm workers were black; agricultural interests were strong. It was realised that there would be "a tremendous outcry from the agricultural interests in this country if the farm labourers were included in the Bill."[3]

The dispute over the question of state insurance was a protraced one. Both the Select Committee and a departmental technical committee found in favour of a state scheme, but capital's combined strength was such that the Cresswell Bill was dropped. But the need for compulsory insurance was still felt by strong groups within both capital and labour, and thus, after a second select committee, a new bill was introduced in 1934, this time with provision for insurance by registered private companies.

By this time the positions of the protaganists had changed slightly with regard to their attitude towards insurance. The departmental committee had proved fairly conclusively that a state fund would mean substantial savings for employers, with the same benefits for workers. The FCI, the representative of industrial capital, thus reversed the position they had held in 1931, and favoured a state mutual fund, run by a board under a chairman who was a lawyer, with equal representation

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1. Memorandum to Select Committee, page viii.
2. Section 5 (1) (g).
3. SC 1-1931, comment by Steytler of the Nationalist Party.

of capital and labour.[1] This departure from pure free enterprise was, they felt, justified in terms of the legal compulsion to register.[2] Although capital was generally opposed to state interference, where the arguments in favour of it were strong enough in economic terms, resistance diminished. In this instance the decreases in insurance costs were seen to be significant enough to compensate for the loss of a principle.

Mr Barry, representative of mining capital, also found himself forced to support the state fund, although mining as a whole still remained largely unconcerned about the outcome.[3] Commercial capital was adamant, however; "....the association of Chambers of Commerce considered that the (private) company system should be adopted irrespective of cost."[4] Commerce proper consisted largely of smaller firms, with lower danger rates, and their insurance costs were thus lower than that of industrial capital. Insurance companies were an important part of the commercial (at once time the chairman of an insurance company was actually chairman of the Federated Chambers of Commerce[5]) and were some of the larger firms in this fraction. There were thus strong forces in this group favouring private insurance rather than a state-run scheme.

Despite the fact that both the TUs and the FCI - the latter being responsible for 85% of the premiums - were in favour of a state scheme, the 1934 Act was passed, giving effect to compulsory insurance by private companies. Labour was not strong during this period, and their voice was thus dulled. Without their collaboration, big capital did not yet have the strength to force compulsion and a state scheme. The new government was one in which the South African Party, the party most representative of commercial capital, had triumphed at the expense of labour, and the Act reflected this triumph.

The 1934 Act introduced other changes as well. A WC Commissioner was appointed to supervise the running of the Act. After an accident

1. FCI memorandum to Select Committee.
2. ibid., page 112.
3. SC 15-1934, page 60.
4. HAD, 1934, col. 4632, quote from Select Commission.
5. ibid.

the worker and employer were still, as under the old Act, given two weeks to settle the matter by a private agreement. Where this proved impossible, the matter would be referred to the WC Commissioner, who would attempt to settle it, and only in the event of his failure would the dispute reach the courts. Of the earlier Act it had been stated that it "seemed to breed litigation" and "almost every time a working man has gone to court, whether he has won or lost his case, he is a loser".[1] As with the English law,

> "There may be a dispute as to whether an accident happened at all, or whether if the accident did happen, it arose out of and in the course of the employment, or as to whether the workman is still incapacitated, or, if he has partially recovered, to what extent he is fit for light work, or, if he is fit for light work, whether owing to the state of the labour market he is unable to obtain light work."[2]

Costs and difficulties of litigation greatly diminished the available benefits. The new Act, by obviating the need for court hearings in many cases, was thus of advantage to the workers. The Commissioner was also to receive detailed returns from all the licensed insurance companies and no agreement was binding until approved by him. From all this information he was able to assist in whatever way he could in the limitation of industrial accidents, and to collect statistics.

Until 1934 the worker had been able to choose between a WC claim, which was relatively easy to prove, and a civil claim under the common law. The latter was much more difficult to prove, but could entail much higher benefits.[3] Common law also provided that an employer was responsible for the torts/delicts of his servant, and thus invited the possibility of compensation where a fellow worker was responsible for the accident.[4] The 1934 Act, as a quid pro quo to capital for compulsory insurance (This was the way in which it was seen, although it appears that capital was in any case not opposed to compulsion), removed all right to common law remedies, except where this was granted in addition to WC, in cases where the accident was due to the employer's negligence. Even here, however, the amount was restricted to "pecuniary

1. HAD, 1934, col. 4634.
2. Mavis Hill, JUSTICE IN ENGLAND, 1938, page 157.
3. SC 13-1931.
4. ibid., page 64.

loss ... suffered or ... reasonably ... expected to (be) suffered as a direct result of the accident." In regard to accidents caused by "strangers" (which included those caused by fellow workmen[1]) the employer could claim any compensation payable from the stranger by civil law, and so also avoid this responsibility. If the accident was due to the fault of the employer, it was thus the insurance company which paid out, with the slight possibility of extra from the employer in the case of gross negligence. If the accident was due to the fault of a fellow workman, the latter paid, tne employer again escaping responsibility. If the worker himself was responsible, there was no compensation. In a danger fraught process, accidents could and did happen, and all were liable to make mistakes. When workers made mistakes, they had to pay for them. The 1934 amendment to the Act constituted a great advantage to capital, from which the possibility of substantial claims was now removed, whoever had caused the accident. The compulsory insurance instituted by the Act was thus total insurance, except in the case of negligence. Workers' rights under civil law - rights which were potentially much greater than WC - had been whittled away. In the 1914 Act provision had been made for the worker to choose between WC and a civil claim. The 1934 Act removed all recourse to civil law.

Medical Aid

The Act introduced higher rates of compensation for all workers, but also introduced a totally new concept - that of medical aid. All workers injured at work, whether entitled to other WC benefits or not, were to receive free medical aid on the premises, free transport to a hospital if necessary, and payment, according to a schedule tariff rate, of all medical treatment off the premises, upto an amount of £100, and all this would once again be paid for by the insurance. This medical aid was only an innovation for all those for whom it was not provided already under the Factories or Mines and Works Act, and it is difficult to say how far and for how many workers it did in fact introduce increased benefits. The advantages for capital are however, obvious. Medical aid would ensure that workers returned to work as soon as possible, while saving on the costs of such treatment Those not receiving other WC benefits were mostly those less seriously injured, and thus more likely to be in a position to work again. Money

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1. Lees & Sykes v Dunkerley Bros, 1910, quoted in George S. Frank, THE SOUTH AFRICAN LAW OF WORKMENS COMPENSATION, 1940, page 30.

spent on these men was more in the interests of capital - both individual and social - than money spent on the permanent casualties of production. The logic behind this reasoning was evident, too, in the fact that a permanently disabled, and thus useless (for capital) worker, received less than a temporarily disabled one.[1] Capital was more eager to help those who could later return to "help" them to increase production and profits.

1941 - State Scheme

Labour had been very unhappy about the 1934 Act. Despite the increased benefits, many members of the Labour Party preferred to vote against the Bill because of the many unsatisfactory provisions. Within two years of the Act's being passed industrial capital was also voicing its strong disapproval. Despite compulsory insurance "many employers contravene the provision of this section by failing to obtain the necessary policies of insurance or indemnity - .... prosecution does not seem to have the desired effect ... in one case the ... employer actually gained by paying the fine instead of the insurance premium."[2] Organised industry and the law-abiding firms, the two often coinciding, thus felt themselves threatened. The more important complaint, however, was that about the high premiums. The insurance company scheme had not proved to be such a bulwark of private enterprise and competition as had been hoped. There were, it is true, 57 different companies registered, but most of these were organised in such a tight "ring", as the tariff companies, that competition was minimal. In 1940 there were only five insurance companies which were not part of this ring, and one of these was the fledgling Mutual Insurance Company run by industrial capital.[3]

The tariff companies were those insurance companies which had banded together on the issue of WC to agree on common rates and tariffs and thus reduce competition between themselves. These companies had promised at the outset to work on a 65:35 ratio.[4] The original interpretation of this was that the companies were to claim 35% of all

1. HAD, 1941, col. 6799.

2. Dept. Labour Annual Report, 1934, page 103.

3. Dept. Labour Annual Report, pages 74-75. The Mutual Insurance Company is discussed further below.

4. Dept. Labour Annual Report, 1935.

premiums paid by the employers for themselves, the remaining 65% to be distributed in the form of claims and of refunds to the insured in the case of over-insurance. This, after refunds, gave an effective benefits:expense ratio of 54,3:45,7.[1] In the face of complaints at the high rates, it was agreed to include the refund money in the calculation, with 65% of gross premiums to be paid out, and 35% to be retained for "administration".[2] (Any interest earned on the fairly large amounts involved accrued to the insurance companies and was not included in any of these calculations.)

In Parliament it was disputed that this ratio was adhered to.[3] The confusion could have arisen out of a different interpretation of the ratio in Parliament, where the concept seem to be that of (interest and premium): benefits, a ratio given as 58,5:41,5. This point was, however, not picked up by the insurance companies, and the allegation that the companies did not stick to the agreement is thus very plausible.

Whatever the case, industry was not satisfied. The Rand Mutual Association had a claims:expenses ratio of 91:9. A state scheme had been calculated as costing 20 to 25% less than private companies,[4] and overseas experience bore this claim out. With the political situation still the same as in 1934 the agitation for change failed. The 1936 complaints met with a proposal that the companies be given three years grace in which to prove themselves. Meanwhile the FCI and the building industry employers set up their own mutual associations. This was a difficult procedure in view of the geographical and economic extent of these sectors at this stage, but was one seen as preferable to the expense of private insurance. Thus in 1937 the Federated Employers Mutual Assurance Company was formed in the building industry, and in the following year the Chamber of Industries Mutual Insurance Company was registered and began business, the primary object being to "afford members of the constituent organs of the SAFCI the utmost relief from heavy premium charges by way of rebates from available

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1. ibid., page 82.
2. ibid., page 88. "Paid Out" here means compensation paid.
3. HAD, 1941, col. 6783.
4. FORWARD, 25 March 1937.

profits."[1] (This company was registered as a private company, and not under the Act, although the reason for this is not clear.) After the formation of these companies the complaints from capital were heard no longer. Many were once again in favour of free enterprise insurance,[2] so long as they were insured cheaply themselves. The ratio of the Mutual Company was not given anywhere, even to the WC Commissioner, but industry was probably more prepared to trust its own people in running the scheme, rather than allowing control to pass into the state's hands. The Federated Employers Mutual Assurance Company appeared to make very satisfactory progress. In 1941 it was reported that since its inception a total premium income of £225 000 had been received. Of this, refunds in excess of £83 000 had been made, in the form of reduced premiums, rebates, etc.[3]

By 1941 the political situation had changed. A new coalition government had been formed to help gain support for the war, and the Labour Party formed part of this government. There was still a fairly strong opposition to a state scheme from, for example, the Associated Chambers of Commerce of South Africa[4], but the political interests of capital as a whole favoured a scheme of pacification of the worker, and the latter was still strongly in favour of a state scheme. Despite the fact that the insurance companies, with the increased pressure, felt "justified in proposing to alter the 65:35 ratio to 75:25"[5], it was too late. The political pressure was too strong. Mr Pocock, South African Party Member of Parliament, and a "shining light of the Pretoria Chamber of Commerce"[6], "made it very clear that the only reason why the opposition to the State Insurance scheme has not been even more intense is that they hope the Bill will act as a bribe to workers to support the government's war effort."[7]

In terms of the new Act all accidents were to be reported to the WC

1. CCI Annual Report, 1938, pages 10-11.
2. HAD, 1941, col. 6805. Mr Hooper.
3. SOUTH AFRICAN BUILDER , May 1941.
4. CAPE TIMES, 16 April 1941
5. WC Insurers Association of South Africa, "Supplementary memorandum" CAPE TIMES files, Public Library.
6. HAD, 1934, col. 4624.
7. CAPE TIMES, 24 April 1941.

Commissioner. Private agreements as to compensation between worker and employer were disallowed, and the Commissioner would investigate all accidents and adjudicate what compensation should be paid. Compensation would be paid out of a state fund to which all employers would contribute on the basis of their wage budgets, with a rebate or surtax related to their accident rate.

The 1941 Act had two aims. The first was the institution of a state scheme and the second was that of increased benefits. The second was envisaged as linked to the first. Employers were not to pay any more for these increases. Rather, the new system would allow the increase for the time being, on the same premium basis. Compensation rates, though raised, were thus no reason for capital to oppose the Act.

Exemptions from the Act remained substantially the same - agricultural and domestic workers were still excluded, as were mutual associations registered prior to April 1940 (in effect only the Rand Mutual and the Building Association). These fractions of capital had obviously "again proved too strong for the Minister".[1] A new exemption however, was that of all employers with less than five workers. Although not exempt from the compulsion to pay compensation, these employers were not obliged to register with the WC Commissioner. The reasons for this were not spelled out, although the cost of administration was hinted at.[2] As these employers constituted 75% of the total and employed 16% of the white workers alone, and as they were the ones least likely to be able to pay insurance, exemption of these was a substantial one.[3] A possible reasons, additional to the administrative one, is the generally disorganised nature of workers in smaller concerns, and thus the decreased danger to the state of unrest and dissatisfaction among them.

II

The changes in the provisions of the WCA through the period have been described and discussed. In Section III these changes will be examined insofar as they affected benefits received under the Act. In this

1. HAD, 1941, col. 6795. Schoeman about Chamber of Mines.
2. HAD, 1931, Borlase.
3. HAD, 1941, col. 6801 for figures.

section it is necessary to digress to examine another aspect of the Act. In outlining the provisions an important area has been omitted - that of colour discrimination and differentiation.

The 1914 Act had excluded from compensation all those worker whose contracts of labour were governed by the Native Labour Regulation Act of 1911. This latter Act had provided for compensation, but at levels described as "meagre and scandalous" by the WORKERS HERALD.[1] The table below compares the provisions under the measure and the WCA of 1914.

TABLE 7.1[2]

COMPENSATION PROVISIONS UNDER WCA of 1914 and NATIVE LABOUR REGULATION ACT OF 1911

Degree of disablement	WCA	Native Labour Reg Act
Partial disablement	Up to 50% x w (pdl)	£1 - £20
Permanent total	Up to 3 years w or £750	£30 - £50
Death (to widow)	Up to 2 years w	£10

(In the above, and all following tables the following abbreviations are utilised: w = wage; pdl - periodical payment; p.m. = per month; p.a. = per annum; lump = lump sum payment.)

Table 7.2, calculated on the average black wage for 1924/5 of £41,8 p.a.,[3] gives the comparative benefits under the Act with the above scales.

TABLE 7.2[4]

COMPENSATION UNDER WCA of 1914 and NATIVE LABOUR REGULATION ACT OF 1911
COMPARATIVE BENEFITS BASED ON AVERAGE BLACK WAGE FOR 1924/5

Degree of disablement	WCA	Native Labour Reg Act
Partial disablement	£20,9 p.a.	£1 - £20 once only
Permanent total	£125,4 once only	£ 30 - £50 once only
Death	£83,6 once only	£10 once only.

The complaints of the WORKERS HERALD were quite clearly justified. The benefits under the Native Labour Regulation Act were "meagre and scandalous." In all cases a black worker received less than would a

1. 15 February 1926.
2. Information from the compensation clauses of the two acts.
3. Industrial Legislation Commission, UG 62- 1951, Table 37.
4. Calculated from Table 7.1 and wage of £41,8 per annum.

comparable white worker.

In 1934 the Native Labour Regulation Africans were included in the main Act, but discrimination was retained in that they were dealt with in separate sections of the Act. This laid down different rates and different conditions for African workers injured at work.

If an African worker was temporarily disabled, yet received food, quarters and medical aid from the employer, the amount payable was reduced by his not being eligible for compensation for the first six months of disablement, and only receiving up to 25% of the benefits for the rest of the period[1], whereas the other workers would only be disqualified for the first few days of disablement, and then whether or not receiving such food and quarters. This clause was found to "cause much dissatisfaction, hardship and many anomalies."[2] Because of the migrant labour system and the paternal and restrictive attitude towards African workers, many men were housed in compounds or some other form of company housing. Even those usually providing their own food and lodging were often forced to submit to hospital treatment at a hospital nominated by the employer. Married men with families were thus the main sufferers. The employer had only to pay for accommodation for the worker, and saved on the worker's wages. Meanwhile the rest of the family lost their breadwinner.[3]

Further discrimination existed in practice, both prior to and after 1934. A few examples illustrate this. In the case of African compensation, it was the Native Affairs Department which administered the system. This department was less au fait technically with the workings of the Act[4] and also associated in the minds of the ppopulation with far less pleasant tasks of administration. The GUARDIAN complained of the fact that Africans, in filling out application forms for WC, had to state their poll tax receipt number on the claim, and that in the absence of this they would be declared delinquent, and not receive compensation.[5]

1. Section 69.
2. Dept Native Affairs, 1937, page 66.
3. Dept Labour Annual Report, 1936, pages 75-6 for further details.
4. SC 15-1934, page 97.
5. 4 June 1937.

It was only in a trial in 1948[1] that the Appeal Court overturned a lower judge's decisions and declared that colour or "culture" did not, or should not, affect the assessment of pain or suffering, for this "could not be determined by whether the injured person was rich or poor, and certainly not by reference to his race." Prior to this most cases, or many cases, were determined by this criterion.

With regard to medical aid, however, Africans were different even in the eyes of the explicit legislation. Different rates were provided for them, for example in the medical tariffs schedule[2], where it was stated that "fees and charges in respect of services rendered to Native workmen shall, where not specifically provided for, be 50% of the fees or charges herein prescribed." The WC Commissioner admitted that "especially in Native cases, the amount payable by the employer is far too small, and frequently does not cover the costs of the necessary treatment."[3]

As far as diseases were concerned, the same diseases were usually scheduled for black and white alike. In the case of hookworm, however, the position was overtly on a colour bias. Management on the mines had "known for many years" that a high percentage of the African labour on the mines suffered from this disease. It appeared, however, to be restricted to these workers. After renewed investigations in 1926, cases were found among the white miners in two of the deeper mines, and immediate steps were then taken to eradicate the disease.[4] The mines began to pay compensation shortly afterwards of their own accord[5], and in 1934 this compensation became obligatory under the WCA for "workmen other than Asiatics or Natives."[6] For Africans and Indians, however, it was not deemed necessary, for as Barry of the Gold Producers Committee explained, it was "... not a disease ... (for these workers) ... it is an ordinary parasite which does not harm them at all whereas it injures the Europeans."[7]

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1. Radebe v Hough, 1949, 819 SA 380 at 385, quoted in Albie Sachs, JUSTICE IN SOUTH AFRICA, 1973, page 150.
2. Government Gazette Extraordinary, 15 December, 1937.
3. Dept Labour Annual Report, 1936, page 55.
4. Dept Mines Annual Report, 1927.
5. SC 13-1931, page vi.
6. Schedule to Act 59 of 1934.
7. SC 13-1931, page 4. In view of the fact that most Africans were housed by the mines, it is noteworthy that bad latrines were responsible for the spread of the disease. (Dept Mines Annual Report, 1927, page 107)

As far as ordinary compensation for accidents was concerned, the situation was not quite so simple. The tables below compare the compensation payable to Africans and non-Africans in terms of the 1934 Act. As before the provisions of the Acts are first given, and then calculations on both scales based on the average African wage at the time, namely £41 p.a. or £3,42 p.m.

TABLE 7.3[1]

COMPENSATION PROVISIONS FOR AFRICANS AND NON-AFRICANS UNDER WCA 1934

Degree of disablement	Wage group	Africans	Non-Africans
Total permanent	£0 - £5 £5 - £10 £10 - £13/6/8 Above £13/6/8	£75 lump £75 - £150 £150 - £225 Graduated	½ x w less than £20 ½ x w between £20 and £33/6/8
Temporary total		60% pdl	60% pdl where w less than £20 35% between £20 and £33/6/8
Death		Upto 80% of total perm Upto £375 Upto 18 months (In both these cases the smallest of the alternatives applied)	Upto two years upto £500

TABLE 7.4[2]

COMPENSATION FOR AFRICANS AND NON-AFRICANS BASED ON AVERAGE AFRICAN WAGE

Degree of disablement	African	Non-African
Total permanent	£75	£1,71 p.m.
Temporary total	£2,05 p.m.	£2,05 p.m.
Death	Upto £60	Upto £82

The two tables on the following page give similar information as regards the 1941 Act, this time taking the average wage at £47,3 p.a., or £3,94 per month.

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1. Industrial Legislation Commission, UG 62 - 1951 , Table 37. Schedule to Act 59 of 1934.

2. Own calculations based on above table.

TABLE 7.5[1]

COMPENSATION PROVISIONS FOR AFRICANS AND NON-AFRICANS UNDER WCA 1941

Degree of disablement	Africans	Non-Africans
Total permanent	Minimum of £150 30 x w less than £20	55% x w pdl
Temporary	66,6% upto £13/6/8	66,6%
Death	"Equitable" in WC Commissioner's eyes, but not more than 80% x lump	Monthly as for total permanent

TABLE 7.6[2]

COMPENSATION FOR AFRICANS AND NON-AFRICANS BASED ON AVERAGE AFRICAN WAGE

Degree of disablement	Africans	Non-Africans
Total permanent	£150	£2,17 pdl
Temporary	£2,62 pdl	£2,62 pdl
Death	£120	£2,17 pdl

From the tables above it appears that the ordinary compensation for Africans was, if anything, more favourable than that for non-Africans earning similar wages. The African did receive a lump sum in some cases where the non-African received a pension, for example for total permanent disablement. Such a lump sum was often desired by non-Africans in preference to their pensions, and was more sensible for Africans in view of the difficulty in the "homelands" of receiving smaller amounts regularly. Thus even this can not be seen as a real disadvantage.

The seemingly reverse discrimination is however misleading. Non-Africans did not receive the same wages as Africans, and thus would not receive the amounts calculated above. The former's average wage was £18,3 per month, compared to the £3,42 used in the calculations for 1934 above, and this fact was implicit in the different maximum cut off points for the two groups, of £13/6/8 for Africans and £33/6/8 for non-Africans in 1934. While the payments were progressive, the poor workers suffered more, obtaining merely a fraction of their already subsistence level wages. While most workers, white and black fell within the ambit of the Act (Compare average wages in Table 1.1 of Chapter One, above), it

1. Industrial Legislation Commission, UG 62 - 1951, Table 37. Schedule to Act 30 of 1941.

2. Own calculations based on above table.

did not afford much aid to the poorer ones. In 1937 the GUARDIAN[1] noticed the large numbers of workers receiving less than £8 per month, a fact borne out by the average annual wage in manufacturing of &78,7 for "coloured" workers and £41,0 for Africans[2]. As the Act provided for workers to receive 60% of the first £8 of their wages, if a worker recieved £6 at this time, the WC payable would be £3.12, "far from sufficient to allow them to maintain themselves and their possible dependents."[3] In 1929 even the government's SOCIAL AND INDUSTRIAL REVIEW[4] recognised the "inadequacy of the material assistance given ... as the majority of people require their full wage to live on when in good health."[5]

The GUARDIAN also claimed that these workers were those who suffered most injury and disablement. This is not borne out by the accident figures, which show a proportionate number of accidents to employment among whites, but the death figures do show a black bias. This suggests that it was perhaps the inadequacy of the black reporting of accidents that disguised the fact for accidents, while deaths could not be so easily hidden.[6] The WC Commissioner noted in 1948 that "die getal sterfgetalle onder naturelle is meer as vier keer so groot as die van alle ander rasse, hoewel die getal ongevalle wat aangemeld is, ongeveer dieselfde is. Dit sou gevaarlik wees om enige gevolgtrekkings uit hierdie feit te maak."[7] The only apparent conclusions which can be drawn from this is the fact that it arises from the fourteen day proviso for accident reportage mentioned in the Factories Act, the ignorance of the law by the African workers, and their sense of futility with regard to claim compensation. Another possible contributory cause for the proportionately higher death rate is the worse medical attention afforded them.

1. 5 March 1937.
2. £6,7 and £3,4 p.m. respectively. (Industrial Legislation Commission, UG 62-1951, Table 37).
3. FORWARD, 5 March 1937.
4. July, Vol VIII.
5. In 1938-39, the first year in which such a study was undertaken in South Africa the Batson survey showed 50% of all black Cape Town households below the PDL. This measure errs, if anything, on the low side, as admitted by Batson himself. (AN INTERIM REPORT, 1942, page 13)
6. See, however, Chapter Five, pp.164ff, above.
7. Dept Labour Annual Report, 1949, (English not available in library), page 86.

Despite the higher proportions of deaths of Africans and the relatively favourable compensation rates, the outcome of the discrimination inherent in the social system as a whole and WC practice in particular was a situation where, in 1936, of the total workers receiving compensation 41% were African. Yet these men and women received only 21,5% of the total compensation paid out.[1] Both the FCI and the white TUs must have been aware of this intrinsic nature of the discrimination. Both - with the Mine Workers Union included in the latter - declared themselves in favour of the removal of outright colour discrimination in the Act.[2] Although the removal of overt racial discrimination provided both negative and positive effects from the viewpoint of the African, social inequality would maintain the differentials whatever the changes envisaged.

III

The WCA underwent major changes in the period under discussion, as seen in Section I. It is instructive to look at how these changes in the mechanics of the Act affected the payment of compensation, the ostensible reasons for its promulgation in the first instance.

The changes in the Act incorporated fairly substantial increases in the rates of compensation provided. The provisions are complicated and not easy to compare. From Table 7.7, which gives the compensation for non-Africans for the 1914, 1934 and 1941 Acts, some idea of the increases can be gained, nonetheless. Thus compensation for temporary disablement increased from a periodic payment of 50% of the wage to 66,6%; compensation for permanent disablement from a lump sum of three times the wage or £750, or periodic payment of 55% of the wage, and compensation for death from a lump sum upto twice the annual wage to compensation as if total permanent disablement had occurred.

The actual amounts paid out in compensation are also difficult to compare. Prior to 1934 there was no WC Commissioner and no statistics were collected. One thus can not compare the 1914 Act with the later ones. In 1945 a new Act was passed instituting increased benefits, and one can

1. Dept Labour Annual Report, 1936. Own calculations.
2. HAD, 1941, cols. 6825, 6850.

TABLE 7.7[1]

WC COMPENSATION UNDER THE ACTS OF 1914, 1934 and 1941 - NON-AFRICAN RATES

Degree of Disablement	1914	1934	1941
Temporary	50% x w, pdl, for a year at most	60% x w under £20 35% x w between £20 & £33/6/8, pdl, for upto 6 months (Reduced pensions obtainable after the first 6 months)	66,6% x w under £20 37,5£ x w between £20 & £33/6/8 pdl, for upto 6 months
Permanent (100%)	Lump sum, upto 3 x annual w, or upto £750	50% x w under £20 plus 25% x w between £20 & £33/6/8, pdl	55% x w under £20 plus 27,5% x w between £20 & £33/6/8 pdl
Permanent partial	3 x annual deficiency in w, or upto £375	% of total permanent if between 40% and 100% 16 x w less than £20 plus 6 x w between £20 & £33/6/8 if less than 40%, lump sum	% of total permanent if between 25% and 100% 10 x w less than £20 plus 6 x w between £20 & £33/6/8 if less than 25%, lump sum
Death (if widow but no children) Cut Off Point	Upto 2 x annual w, lump sum	Upto 2 x annual w or upto £500, lump sum, smaller of options £400 p.a., i.e £33/6/8 p.m.	Monthly pension as if totally and permanently disabled £750 p.a., i.e. £62/10 p.m.

1. Table compiled from schedules of the relevant acts.

thus not compare the period under discussion with the post-1945 period as this is not a ceteris paribus situation. There are only statistics from 1936 to 1945 for comparison.

The amounts paid out in this period increase up until 1939 and then take a dive, which becomes even sharper with the introduction of the 1941 Act, with its increased rates. This is despite the increased cost of living at this time and the increased amounts which would be expected, and despite the fact that because of the illegality of private agreements, all compensation was included. Table 7.8 gives the total amount paid out in WC, both for medical aid and ordinary compensation. from 1936 to 1945, the total number of workers receiving benefits, and, calculated from these two amounts, the average compensation going to each workers. It shows a decrease in total compensation only from 1939 onwards. However, despite a constant increase in the number of workers receiving benefits, the average compensation did not show even a significant initial rise, and by 1945 was less than half of what it was in 1936. (£5,79 compared to £11,32).

TABLE 7.8[1]

COMPENSATION PAYMENTS UNDER WCA BETWEEN 1936 AND 1945.

Year	Total Compensation	No of Workers	Average compensation
1936	£669 953	58 579	£11,44
1937	£780 331	68 908	£11,32
1938	£832 652	77 016	£10,81
1939	£906 308	81 892	£11,07
1940	£881 857	94 988	£ 9,28
1945	£694 600	119 883	£ 5,79

The decrease could be explained by a number of factors. The statistics under the new scheme are not strictly comparable, due to different reporting methods. The novelty and disorganisation involved in a new scheme, the exclusion of the mines in the overall average, due to the fact that they were still covered by the mutual association, whereas they had previously significantly increased the average, the increased percentage of African, and thus lower paid, workers who were compensated (53% in 1945 compared to 39,7% in 1938[2]) - all these help to explain

1. Dept Labour Annual Reports, own calculations.
2. ibid.

a decrease in the average compensation. An increasing concentration on medical aid rather than true workmens compensation, sensible from capital's point of view, would also lower the average. But these are all conjectures, and account mainly for the initial rise (from £10,81 to £11,32) in the average compensation and the subsequent fall (to £5,79) but are not adequate to account for the extent of this, nor the drop in total compensation. The report of the WC Commissioner itself offers no explanation, and does not even remark on the decrease. The Department of Labour does however note that during the war years "die populêre aantrekkingskrag wat (die nuwe Wet) wel gehad het, is deur die dramatieser eise van die oorlog oorskadu".[1] Despite the increase in accidents during the war, from 683 with 73 dead and 731 injured in 1938[2], to 2 796 with 84 dead and 2 803 injured in 1945[3], the staff of the WC Commissioner was cut down during the period. By 1945 the WC Commissioner was complaining that at one stage they were 15 000 cases in arrears with the processing of claims.[4]

Thus, while the war, as shown, encouraged the passing of a new, more liberal act, it also had the effect of hampering the operation of the Act. The second tendency more than counterbalanced the first, and the workers suffered overall.

The introduction of a state scheme was yet another step in the setting up of an administrative legal process rather than a judicial one, a process observed in regard to other legislation in the period. The WC Commissioner adjudicated on all matters, and recourse to the courts for appeal could only be had on very limited grounds, i.e.

a) on questions of interpretation of the law,

b) on the question of whether the accident was due to the misconduct of the worker,

c) on the question whether the award was "unreasonably" large or small,

d) on the question of additional compensation for negligence on the employer's part.

The powers of the Minister and WC Commissioner were such that it was

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1. Dept Labour Annual Report, 1949, page 84.
2. Dept Labour Annual Report, 1938, page 87.
3. Dept Labour Annual Report, 1945, page 58.
4. Dept Labour Annual Report, 1945, page 67.

suggested by the opposition in Parliament that a more simple wording for the wordy Act, and one which would have embodied the same principles and procedure, would have been,

> "A Workmens Compensation and a Commissioner shall be appointed by the Union Government, who shall have discretion, which shall be final, to control and dictate on matters relating to Workmens Compensation in respect of accidents or industrial diseases."[1]

This was not at all how labour had envisaged a state scheme. Their preference, as well as that of the FCI in 1934, had been rather that of a state mutual fund run by a board under a chairman who was a lawyer, and with equal representation of capital and labour. State-run, for them, meant a type of self-government - with the emphasis on removal from the private sphere, rather than the institution of state authoritarianism and bureaucracy.

The avoidance of litigation, and a supposedly paternalistic WC Commissioner, both aims of the new state Act, did not mean that all injured workers received compensation. The WC Commissioner continued to act on the principles established by the courts prior to 1941, and screened all cases thoroughly to see that they fell "within the four corners of the Law"[2]. The WCA provided compensation for all"accidents arising out of or in the course of employment". Mavis Hill reports that these "ten words in the Workmens Compensation Act have been the subject of many hundreds of reported cases in about one-third of a century."[3] Although she wrote about the English situation, it would apply in South Africa, as "where a Union Act is passed in substantially the same terms as an Imperial Statute, and the latter has been authoritatively construed by a Court of Appeal in England, the South African Courts will incline to adopt that construction."[4] South African courts would, on the whole, accept principles of interpretation laid down in English courts. The various judgments quoted below are unrelated and chosen rather arbitrarily. They do, however, provide some idea of the greyness of the definition of "accident".

1. HAD, 1941, col. 6810.
2. Dept Labour Annual Report, 1945, page 68.
3. Hill, 1938, page 79.
4. H. Lawrence, in Introduction to Frank, 1940, page 2.

> "It is quite hopeless to attempt to reconcile the decisions in the various cases in which the meaning of the words 'arising out of and in the course of employment' had been considered."[1]

> "(These) words must mean ... in the course of the work the man is employed to do and what is incident to it - in other words, in the course of his service. (They) do not mean 'during the currency of the time of engagement'."[2]

> "All matters reasonably incidental to a man's employment should be considered to be part of it."[3]

> "It is not enough for the applicant to say: The accident would not have happened if I had not been engaged in this employment, or if I had not been in that particular place. The applicant must go further and say: The accident arose because of something I was doing in the course of my employment and because I was exposed by the nature of my employment to some peculiar danger."[4]

> "If there be no direct evidence as to how an accident happened and the facts proved leave it equally possible that it did not arise out of the employment, the burden is not discharged."[5]

The last case, in particular, illuminates the very restrictive interpretation often given by the courts:

> "....but we are all agreed that an accident has to be something of an exceptional nature, something which cannot be traced merely to the cumulative work of a dangerous process or place of work going on for years."[6]

This greyness of interpretation allowed capital, with the help of clever legal argument, to escape much of its responsibility prior to 1941. But the 1941 Act did not make it any easier for labour. Table 7.9 gives the statistics for 1945. In this year there were 119 883 claims accepted, while 327 were rejected. The reasons for repudiation were such as to suggest that arguments similar to those used prior to 1941 still held strong sway, only now the grounds for appeal, always limited for the indigent worker, were even more restricted by statute. Of those that were rejected, the largest numbers were rejected for reasons usually advanced in the courts prior to 1941,

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1. Sullivan, in Hutchinson v Irish Electrical Company, 1935, 28 BWCC, Supp., in Frank, 1940, page 141.
2. Lord Finlay, in Frank, 1940, page 6.
3. Slesser LJ, in Frank, 1940, page 7.
4. Cozens-Hardy, in Frank, 1940, page 6.
5. Collins MR, in Dept Labour Annual Report, 1939, page 83.
6. Kennedy LJ, in Dept Labour Annual Report, 1939, page 85.

the accident not having arisen out of the employment (32,7%), non-satisfactory evidence of the accident (27,8%), and the accident not having been the cause of the disablement.(18,7%).

TABLE 7.9[1]

Reason for rejection	No. rejected	Percentage
Unsatisfactory evidence of accident	91	29
Medical evidence didn't support claim	26	8
Accident not cause of diablement	61	19
Accident not arisen out of employment	107	34
Farm worker	8	3
Wage more than £750 per annum	2	0
Serious or wilful misconduct	5	2
Miscellaneous	17	5
N = 317. Percentages corrected to nearest whole number.		

The workers would probably only succeed if they could show that they things they were doing at the time of the accident were "natural to the worker, are not or will not be objected to by the employer, and do not to any significant extent interfere with the performance of the worker's duty."[2] With this limited interpretation, even the time which a worker took off to go to the cloakroom might not be covered.

IV

Miners Phthisis

Miners Phthisis differs from WC in that MPh is an industrial disease, while TB is a socio-economic disease, and neither of them are accidents as such. Any and every worker working the unhealthy atmosphere underground is likely to contract the diseases, merely through being there.

The seriousness of the state of affairs with regard to MPh on the mines was recognised very early in South African history. An investigation of the possibility of some sort of regulation was conducted as early

1. Dept Labour Annual Report, 1945, page 70. Own calculations.
2. Kinnersly, 1975, page 276.

as 1902[1], with the first ineffective mining regulations being passed in 1905.[2] The second commission was in 1910, and reported that the adult death rate on the mines was six times that of the ordinary population. The following year, after a third commission, the first MPh legislation of the form of our period was passed.

The MPh Act[3] provided for the compensation - both in money terms for all workers, and in alternative opportunities for white workers - of silicotic and tuberculous workers and their families. A permanent Miners Phthisis Board was set up, whose job it was to assess claims, institute legal proceedings, and investigate, set up schemes, and help in any other way it could to find employment for those workers and their dependants. Parallel to this board was a Medical Bureau, whose job it was periodically to examine all miners, to present evidence to the board, and to assist in the research and compilation of statistics and a schedule of approved medical practitioners.

All workers, both "miners" (white) and "Natives", were to be examined before commencing work on the mines, and then periodically throughout their employment, for the detection of silicosis and/or TB. On detection of either of these illnesses, the worker would either be restricted in his employment to certain jobs, or debarred from the mines altogether. According to the seriousness and nature of the disease, he would be awarded monetary compensation calculated on his prior earnings, and on the death of any miner diagnosed as resulting from silicosis, compensation would be paid out to the dependants. The money for the compensation was to be obtained from a fund contributed to by all employers on scheduled mines, calculated on the basis of 30% proportionate to earnings on that mine, 50% proportionate to the silicosis rate, and 20% proportionate to tax paid.

As with WC however, the extraction of the precious metals was more precious to the country than the "cream of South Africa's population, reduced by phthisis to a hopeless physical wrecks" by work on the mines.[4]

1. HAD, 1925, col. 1496.
2. Commission on Occupational Health, 1976, page 5.
3. The 1925 Act forms the basis for this description.
4. FORWARD, 8 October 1937, quoting Van Den Berg.

A mining engineer recently confessed that ventilation directly affected the silicosis rate. The extent of ventilation provided, however, is a cost-benefit calculation. Costs of ventilation have to be weighed up against the increased benefits to the health of workers.[1] One can thus not see MPh " as simply the inevitable and lamentably unavoidable result of metalliferous mining in hard quartzite rock of the type found on ... the Rand".[2] The prevalence of MPh is a function of changes in the production process and thus of the prevalence of dust.

Nevertheless, MPh legislation and the various bodies set up did take steps to try and alleviate the danger inherent in the work, but the MPh legislation itself was basically one of provision for procedure after injury rather than curative or preventive. The 50% calculation on the silicosis rate of the individual mine, and pure self-interest, did encourage the mine owner to improve the conditions on the mine as much as was possible given the profit restraint. The dust content of underground air did drop from 4,9 mg/m^3 in 1915 to 1,1 mg/m^3 in 1924 and 0,8 in 1935, but the absolute annual number of silicotic cases continued to rise.[3] The graphs which follow show the rate per thousand for the different diseases and different colour groups. Absolute employment was, however, increasing all the time, and so was the absolute number of sufferers. As Munnik said in the 1925 debates in Parliament, "Our legislation on this matter savours very much of closing the stable door after the horse has been stolen."[4]

The Diseases[5]

Silicosis, i.e. MPh without TB, is a disease of the lungs caused by breathing in minute particles of silica dust, the latter being almost the sole constituent of quartz and similar rocks and the Witwatersrand mines containing a very high percentage of free silica.[6] This dust, of which the smallest particles are the most noxious, is caused mainly through drilling, the three main sources, in order of descending

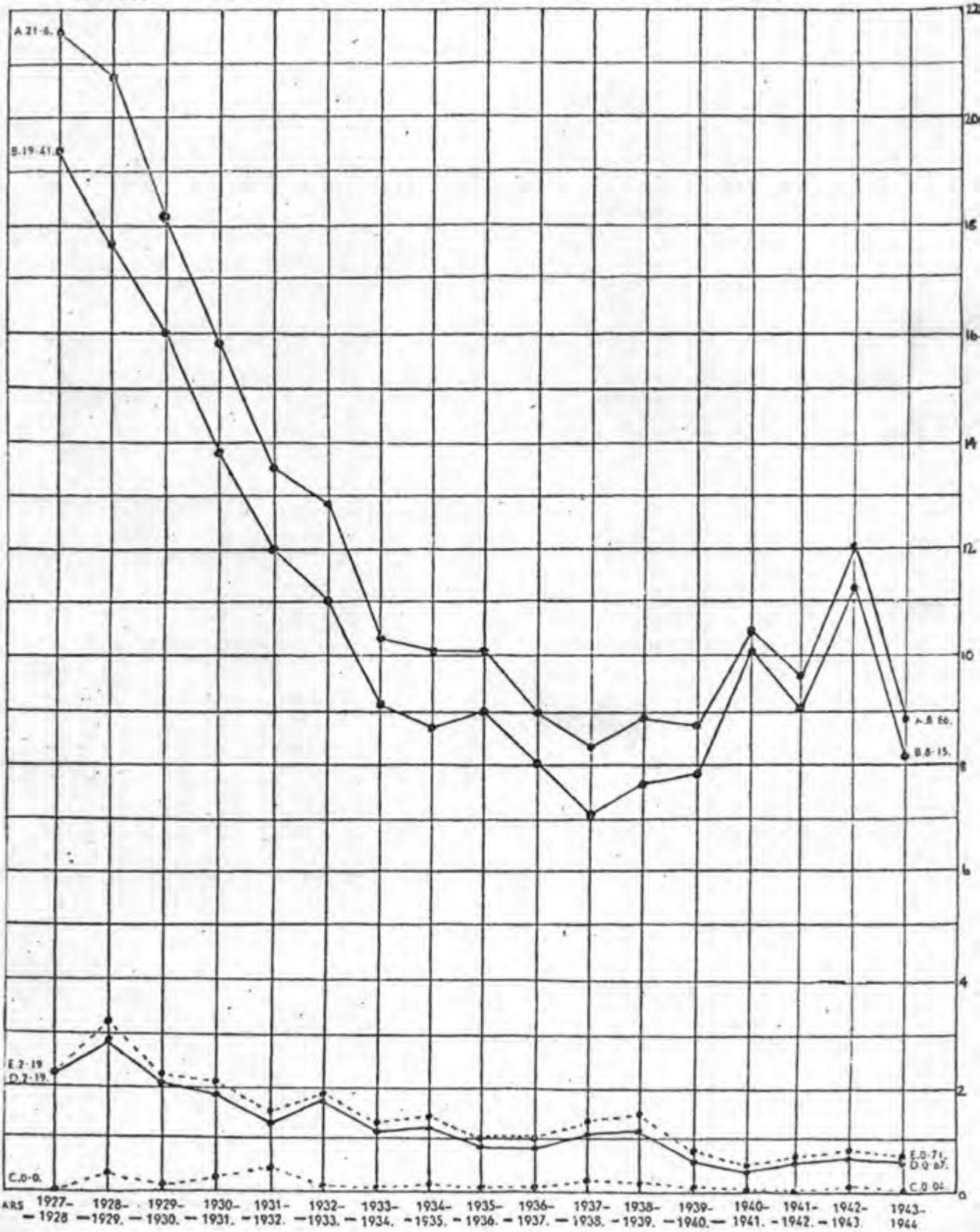
1. Private informant.
2. G. Burke & P. Richardson, "The Migration of Miners Phthisis between Cornwall and the Transvaal", History Workshop, 1978, page 7.
3. MPH Prevention Committee, 1937, page 67; MPh Medical Board Report, 1924, UG 46-1925.
4. HAD, 1925, col. 1467.
5. E. Katz, "A General Overview of Silicosis," History Workshop, 1978.
6. MPh Prevention Committee, 1937, page 32.

FIG. 1.

INCIDENCE OF THE THREE COMPENSATABLE DISEASES AMONGST EUROPEAN MINERS ON THE SCHEDULED MINES OF THE WITWATERSRAND.

1927–1928 to 1943–1944. (In rates per 1,000 per annum).

Source: Miners Phthisis Medical Bureau Report, UG 15-1946, page 17.

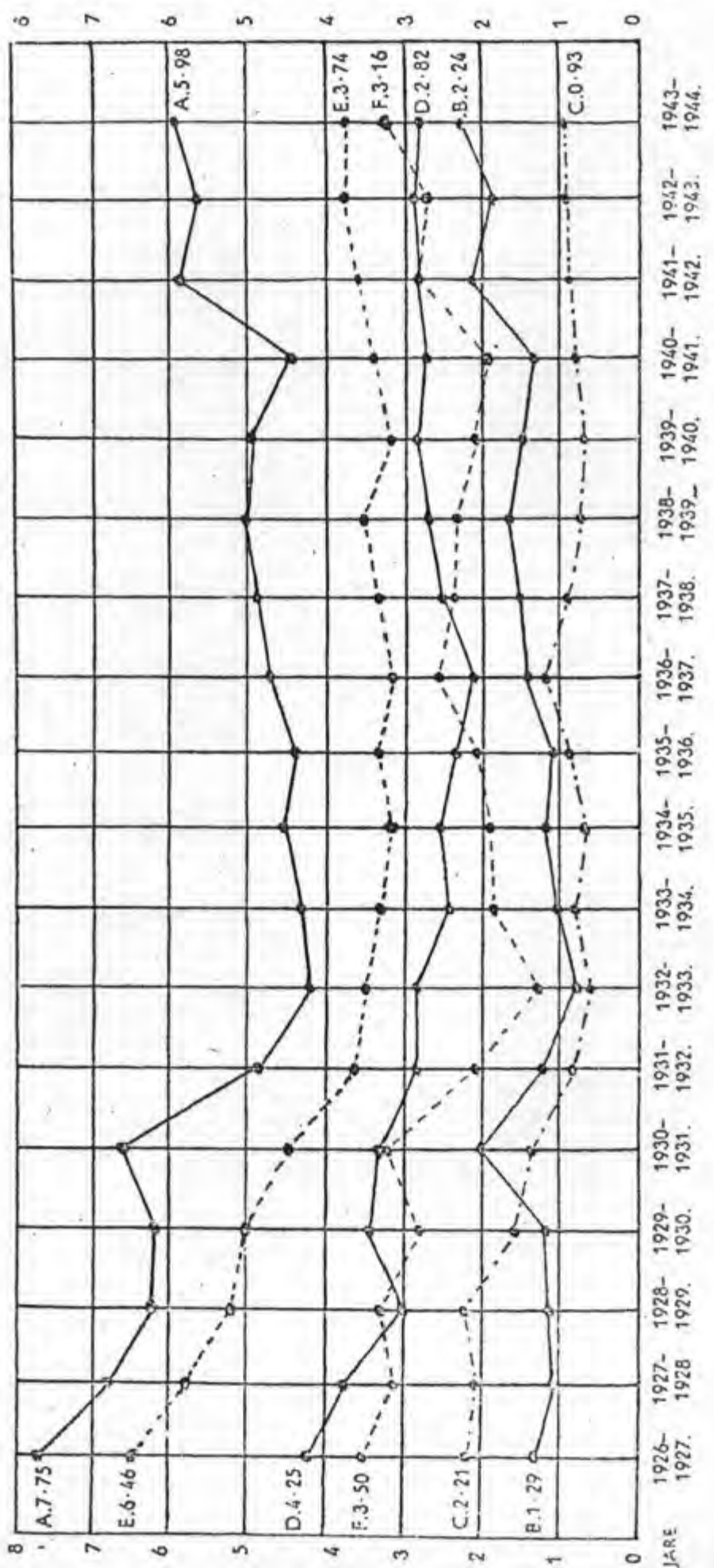


Graph A.—All Compensatable Diseases B + C + D.
" B.—Silicosis without Tuberculosis.
" C.—Tuberculosis with Silicosis.
" D.—Tuberculosis without Silicosis.
" E.—Tuberculosis in Both Forms C + D.

FIG. 2.

INCIDENCE OF THE THREE COMPENSATABLE DISEASES AMONGST NATIVE MINE LABOURERS ON THE SCHEDULED MINES OF THE WITWATERSRAND.

1926–1927 to 1943–1944. (In rates per 1,000 per annum).



Graph A.—All Compensatable Diseases B + C + D.
" B.—Silicosis without Tuberculosis.
" C.—Tuberculosis with Silicosis.
" D.—Tuberculosis without Silicosis.
" E.—Tuberculosis in Both Forms C + D.
" F.—Silicosis in Both Forms B + C.

Source: Miners Phthisis Medical Bureau Report, UG 15-1946, page 31.

importance, being blasting, impact and fraction, and evaporation. All of these, necessary in the wet drilling process most "efficient" on the Rand, contribute to the dust content, and affect the different workers according chiefly to their jobs,(and thus proximity to these processes),and to their prior health and thus general living conditions.

The lungs are capable of ridding themselves of such dust until the quantity becomes too great. Thus after a few years, or with improved conditions, nineteen to twenty years[1], the lungs can no longer cope, they become inflamed, with resultant scar tissue and fibrous nodules. This then permanently affects the lungs' functioning. The worker proceeds through stages, from a situation where there is not necessarily a decreased ability to work but radiographically the disease is detectable, to a stage where he is able to work at reduced capacity, and finally a stage where he is unable to work at all.

The link between silicosis and TB is so close that MPh legislation covers both diseases. Silicosis is not contagious and is contracted from the air breathed in, but TB is contagious and is more prevalent where the individual is more susceptible due to lungs weakened by other respiratory diseases. In all stages of silicosis TB both accelerates the deterioration process and is itself more likely to be contracted due to the weakened resistance of the worker and the cold and wet conditions under which he works. Thus the MPh Medical Board reported that "it is ... well understood that while preventive measures against "Miners Phthisis" must be constantly directed to the production, dissemination and inhalation of dust, they must also be no less constantly directed to the prevention, so far as may be possible of the production, dissemination and transmission of tuberculous infection amongst European and Native mine workers."[2] Table 7.10 below shows that TB greatly increased the dangers of the disease.

TABLE 7.10[3]

RATE OF DEATH WITHIN THREE YEARS OF DIAGNOSIS OF DISEASE/S

96/1 000	of simple silicotics
350/1 000	of simple tuberculotics
691/1 000	of tuberculotics and silicotics.

1. J. Gustav Freedman, in MINEWORKER, October 1937.
2. Report, 1927, page 39.
3. MPh Medical Board, 1924, page 12.

Inadequate changing houses, inferior housing and compounds, all increased the risk of infection with TB, and the seriousness of both diseases.[1]

Silicosis was individually probably the most important and widespread of all strictly occupation diseases.[2] Apart from mine workers, groups such as quarrymen , tunnel workers and masons, all those working with sandstone, granite, slate or flint, were at risk. It was, however, only on the mines, and even then only on certain scheduled mines, that MPh legislation applied, while silicosis only became a scheduled industrial disease under WC in 1941, and then only for excavation work.[3] This can be explained by the nature of the mine work force, their place in the social formation, and the importance of the mining industry in the economy as a whole.

Conditions on the mines

Numerous analysés of early mining have been attempted. What is stressed in the work of such as Davies[4] and Johnstone[5] is the position of the white miners in this sector, a position which developed earlier and in a more exaggerated manner than in industry, but which laid the basis for the latter's developmental pattern. The white artisan was outnumbered by about 9:1 by the African workers, as opposed to a much lower ratio in the rest of industry.[6] In the former the whites also came more and more to play a supervisory and coordinating role, rather than a productive one, both because of the smaller proportion and for reasons such as the nature of the commodity concerned and the need for a cheap labour force in the face of a set product price.

1. Burke and Richardson, 1978, page 13.

2. MPh Medical Board, 1935, page 9. Kinnersley (1975, page 133) is of the opinion that dermatitis is the commonest industrial disease. This discrepancy could be due to changes over time, or in different areas, or to the fact that the classification of someone as suffering from dermatitis has a subjective element which is not easily verifiable. Kinnersley (page 139) provides additional information on silicosis.

3. Act 30 of 1941, Schedule.

4. R. Davies, CAPITAL, THE STATE AND WHITE WAGE-EARNERS, 1977.

5. F.A. Johnstone, CLASS, RACE AND GOLD, 1976.

6. 54:36 in 1934/5; 58:42 in 1934/45, respectively in private industry. Chapter One, above, provides more detailed information on the different colour compositions of the sectors.

The white workers thus developed into what Poulantzas has termed the "new petty bourgeoisie".[1] As such they were one of the groups most susceptible to be bribed into supporting capital and thus a group laying an important and influential role in such organisations as the Labour Party.[2]

Burke and Richardson compare the progress of MPh and related legislation in Cornwall and on the Rand. They explain the passing of legislation in 1911 in the latter areas by factors such as
a) the alliance of Het Volk with the Labour Party,
b) the militancy of the white miners,
c) a decrease in the white:black ratio, which, with the discriminatory measures, meant a decrease in relative cost,
d) the deskilling of whites, which meant that there were less white rock drillers at risk,
e) the threat that the labour force would become a wasting asset.[3]

All these factors point to the specific place of the whites in the mining workforce, and explain the form of the early and subsequent legislation.

V

Discrimination

Within MPh legislation the differing remedies taken with regard to the different groups illustrate their different positions within the work situation and the social formation as a whole. The officials, all white, were estimated to have an advantage in respect of silicosis liability of about 10 to 15%[4], and in 1937 it was reported that "the European miner ... is not so much exposed to machine dust as was his predecessor. The actual drilling is now done by Natives under the supervision of the European miner."[5] Nevertheless, the legislation benefitted the whites more than the blacks.

1. Davies, 1977, for elaboration.
2. D. O'Meara, "White Trade Unionism, Political Power and Afrikaner Nationalism", SOUTH AFRICAN LABOUR BULLETIN, I, 10, April, 1975.
3. Burke and Richardson, 1978, page 17.
4. MPh Medical Bureau, 1935, page 3.
5. MPh Prevention Committee, "The Prevention of Silicosis on the Mines of the Witwatersrand", June 1937, page 4.

The legislation with regard to white miners seemed, together with the obvious management objective of lowering the illness rate, and thus preserving their skilled workforce, to have been aimed at a genuine attempt to compensate the workers in some measure for their lot. The compensation came in the way of monetary benefits - pension and lump sum payments - and in the way of schemes to provide alternative employment for the maimed workers and their dependants. (The latter obviously also aided capital by reducing the compensation necessary). With regard to African workers, however, the aim was more that of excluding the sick or sending them off to the reserves upon discovery, thus both avoiding the payment of compensation and avoiding the spreading of infection.

The discriminatory aim was facilitated and reinforced by the higher proportion of TB, as well as, or rather than, pure silicosis among Africans. A situation where white and black miners suffered in the same proportions from compensatable TB and silicosis would have given figures of 1,00 in all columns in Table 7.11 below. Figures above 1,00 show relatively severe incidence of the particular disease among blacks. The actual figures in the table thus show that TB was relatively more prominent among black than white workers, while simple silicosis was less prominent.

TABLE 7.11[1]

RELATIVE INCIDENCE OF DIFFERENT DISEASES AMONG WHITE AND BLACK WORKERS

Disease	1916/7 rate	1923/4 rate
Simple silicosis	0,009	0,017
Simple TB	2,22	3,64
TB and silicosis	0,2	1,06

In 1928 the MPh Medical Bureau admitted that there were 1 200 cases of active TB among African workers on the mines[2], and a report to the Mine Managers of the same year reported that "83% of compensatable diseases in Natives are tuberculous; and more than half of the total are cases of active simple TB."[3]

1. MPh Medical Bureau, 1924, page 28. The figures are inaccurate because of discriminatory testing procedures, but are intended more to convey an impression of a trend than to give an exact picture.

2. MPh Medical Bureau, 1928, page 42.

3. Gustav Freedman, in MINEWORKER, October 1937.

Table 7.10 above showed that TB greately increased the dangers of the disease, but the operative word in regard to Africans remained elimination from the workforce, rather than compensation or curing. The Act[1] provided for quarterly examination of all African workers at the Witwatersrand Native Labour Association, whereas othere workers were only examined every six months, and by the MPh Medical Board. The African examination was confined to a stethoscopic and weight check sufficient to detect TB in the late stages, that stage when it was most communicable and thus most deleterious for the industry. The procedure adoped is graphicaaly described in the WORKERS HERALD of 1927,

> "...Natives are periodically weighed, and when found to lose weight they are sent to the WNLA Hospital for examination. In many cases it is found that the Native is just beginning or has gone well on the road to, phthisis. He is then marked as a TB patient and repatriated without any compensation;unless both lungs are affected, we understand, no compensation is given... nothing but a single ticket to the sure grave that awaits them at their homes."[2]

The MPh Medical Board itself admitted that "it is the policy of the Native Labour Association to repatriate from the mines all cases of compensatable disease who are in a fit condition to proceed to their homes."[3]

For white miners, however, the "conditions of admission of miners to underground works are ... more severe than the admission to the British army."[4] Non-Africans had a full radiographic examination. According to the Minister of Mines, only one third of the men who applied for underground work at the Bureau passed the tests.[5] The exams were so effective and the sophistication of the test so improved that the incidence of disease among these miners dropped considerably. For Africans, however, the empirical picture was allegedly so poor and unclear that the Minister of Mines, although agreeing in principle to the question of pension payments to African MPh sufferers, did not feel free to introduce them because of the "lack of African life

1. Section 44 of Act 35 of 1925.
2. 12 January 1927.
3. MPh Medical Board, 1926, page 13.
4. HAD, 1925, col. 1454.
5. FORWARD, 8 October 1937.

tables on which to base actuarial calculations."[1] By 1924 the MPh Medical Bureau had formed and collected radiographic records of only 13 963 blacks, as opposed to 50 098 whites, despite the high black-white ratio in the workforce.[2](It is not clear whethere these blacks included Africans, as the latter were tested at the Witwatersrand Native Labour Association Hospital).

Meanwhile the blame for the incidence of TB among the black could not be removed from the mine owners. It is true that TB is not, in the strict sense, an occupational disease. "The principal cause of the high incidence of TB is the rapid introduction of the non-European at a time when housing and nutrition are hopelessly inadequate. Overcrowding in grossly unhygienic slums favours the spread of infection, and chronic malnutrition provides the soil upon which infection flourishes."[3] It is thus a socio-economic disease. But the African workers were all contract workers and thus housed and fed by the mines. In such a situation the disease can surely be called an occupational disease, and placed firmly at the feet of the capital which provided the accommodation.

Compensation

The 1925 Act, at first reading,does not appear to be too discriminatory in the compensation provided. African and non-African workers in the ante-primary and primary stages of the disease received lump sums calculated on the same basis. (These stages correspond roughly to those mentioned earlier, with the added provision that silicosis and TB together were regarded as secondary, whereas TB alone was regarded, as from 1925, as primary, as long as contracted within twelve months of working on the mines). It was only in the secondary stage that Africans still received a lump sum, while non-Africans received a monthly pension[4], but this was excusable on the grounds of the difficulty of the African, far off in the reserves, receiving such periodical payments.

1. S. van der Horst in Ellen Hellman (ed), HANDBOOK ON RACE RELATIONS IN SOUTH AFRICA, 1949, page 146. The two graphs above show the much faster decrease in white, as opposed to black, disease occurrence.
2. MPh Medical Bureau, 1924, page 1.
3. Gale in Hellman, 1949, page 41.
4. Sections 22, 35; Schedules I, III, Act 35 of 1925.

There were, however, several factors rendering even the seemingly non-discriminatory provisions definitely biassed.

1. The schedules were all based on wages. The average black wage was just over one tenth the size of the white wage, and the value of board and lodgings and all ex gratia payments to African workers were excluded in the calculation of wages.[1] These two factors combined would have had a marked effect on the compensation paid.

As a lower paid white worker complained, in a letter to the editor of FORWARD,

> "Do you consider it right that the man who receives the smallest wages should also get the least phthisis compensation? Surely the man who was lucky enough to become an official or get a job with much bigger pay, than the daily paid man, has had a better chance to save something for the time when he will be laid off with phthisis. My idea of a Phthisis Bill is that every man as soon as he reaches a certain stage of the disease should be paid a small pension, and everyone paid the same amount according to the stage of the disease ..."[2]

In this regard the black worker had much more room for complaint than even the lowest paid white.

2. One must remember that in the first two stages of the disease the worker was able to continue to work, even if at reduced capacity as long as TB was not present He did thus not have to rely entirely on the lump sum payment. The 1925 Act listed among the functions of the MPh Board assistance in finding employment for diseased miners and their families and in setting up schemes for the same purpose,[3] for the "advantage of early retirement" had been found to be "not very pronounced" (for the miners) in the case of simple silicosis sufferers.[4] This job was taken seriously. From October 1916 to August 1929 alone, 3 875 individuals were placed in employment. (The 6 119 jobs necessary for this purpose do not reflect favourably either on turnover or on the continued health and capacity of the workers).[5] The work categories of banksmen, motor attendants, motor

1. Average African wage was £30,4 in 1924/5, compared to £229,1 for whites. (Industrial Legislation Commission, UG 62- 1951, Table 37.)
2. 13 March 1925.
3. Section 4, Act 35 of 1925.
4. MPh Medical Bureau 1924, pages 14, 21.
5. OFFICAL LABOUR GAZETTE, September, 1930.

trolley drivers, meter house attendants, general (unskilled) surface workers, preparation and cartage of mining timber, caretakers of single quarters, recreation hall and swim pool attendants, sorting stations when apart from crushers, ore loading and transport, jumpermen or drill sorts, surface sandfilling, reduction works assistant (unskilled), secretarial and time office work, firemen, stationery engine drivers, surface pump stations, compound guards, and watchmen, were all reserved for silicotics, giving a total of a thousand jobs in all if all became vacant. Whites could be appointed to these jobs, while Africans, as mentioned earlier, would get an "immediate discharge"[1] as soon as TB was detected, and would be repatriated to the jobless reserves, so that their subsistence became instead a burden on the reserve's resources. (The high proportion of African workers contracting TB before silicosis also acted against, them, as they would be repatriated as soon as the TB was first detected, while only receiving benefits if they managed to remain undetected until both lungs were affected, or they had both MPh and TB. Benefits for TB alone were only applicable if TB was diagnosed in Africans less than six months from the time of finishing work.[2])

Even for those medically entitled to compensation there were difficulties. Most Africans employed on the mines were contract, i.e. migrant, workers. It was difficult, if not impossible, to find medical practitioners in the reserves conversant with the mine diseases and listed in the Government Gazette as legally capable of issuing certificates and conducting examinations for MPh.[3] A workers would thus return to the reserves after his, say nine months' work, and have been certified healthy on leaving. Although legally entitled to claim benefits if TB became detectable within six months, or twelve months if silicosis was also present, the absence of medical practitioners would make such detection, medically certified as required by the Board, unlikely, and would thus render compensation impossible.

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1. Section 44 of Act 35 of 1925.
2. Section 35 of Act 35 of 1925.
3. Section 12 of Act 35 of 1925.

VI

Conclusions

Section I of this chapter looked at the changes in the WC law upto the end of the period under discussion. From unlimited liability under common law, the position was gradually changed to provide compensation for "all" accidents at work, for industrial diseases, for compulsory insurance for all employers and medical aid, and finally, for a state-administered scheme. As the scale of production increased, and thus the danger of large-scale accidents and large-scale liability for employers, the system of WC became institutionalised and rationalised to protect both sides - capital and labour - in a certain and predictable way.

As in the case of all labour legislation, benefits and concessions for workers were granted grudgingly, and only as a result of strong organisation and demands on the part of workers. Where capital was forced to concede to these demands, however, the concessions were so adapted as to disadvantage it as little as possible, and in some cases positive benefits were actually derived. Thus, over time,compulsory insurance, a state-run scheme, and medical aid were introduced, as capital came to realise that these forms minimised the necessary costs and maximised the benefits of the compensation.

Section II looked at the colour discrimination in the Act. The African workers were generally the unskilled workers. The pool of available African labour was also much larger than the white pool. Black workers were organised effectively much later in South African history. As such it was felt not to be as important to compensate them and insure their speedy return to the workplace as in the case of the scarcer (white) skilled workers. In the period 1924 to1945, however, the black workers gained in skill and organisation, and their loss consequently became more serious. Similarly, in WC legislation one finds a position developing where outright colour discrimination, as where Africans were covered by the Native Labour Regulation Act rather than the WCA, disappeared. Instead the discrimination inherent in the system and in the marketplace where their lower wages were decided, was allowed to determine the degree of discrimination.

Section III looked at the effects on compensation of the changes in the law. For the limited period for which statistics are available, the position did not appear to become more favourable for workers. A larger number of them received compensation, but then more also suffered in accidents. If anything, the individual worker's position deteriorated over the years. WC was intended more to ensure a speedy return of the worker to the workplace than to compensate him for the dangers of his work.

Davies[1] sees the WCA as being a concession to the white working class - legislation passed in a time of labour unrest (1914 Rand strikes) to cement their support for capital and the power bloc. The analysis of the Act presented above suggests that the concession was not a great one. The legislation was indeed passed at times of crisis - 1914, promised in 1924 with the PACT, 1934 after the Depression, and 1941 in the middle of the war. White workers did benefit more than black. But the latter benefit was a benefit inherent in the workplace. All workers benefitted little in comparison with the dangers they were exposed to. In Canada, where a similar law operated, it was estimated that only 6% of all accidents were serious enough to warrant WC claims.[2] And for those who did get compensation, this was not adequate. Cresswell described the position convincingly,

> "... put yourself in the position of a man who is suffering from a 20% disablement. He is looking for work in competition with three or four able-bodied men. It is not 20% of 30% he loses, but his chances of employment are diminished to a far greater extent."[3]

Compensation was nevertheless calculated only on the basis of 20% of that applicable for total disability.

For capital the scheme was rational. Firstly, the danger of common law litigation with its much higher potential damages was removed. Against this danger many larger employers might, in any event, have felt compelled to insure themselves. Secondly, as promised by the Minister, the new state scheme eventually developed did not mean increased premiums for capital. Rather they got more for their money. The 1944 Summary Report of the Department of Labour reported a £10,18

1. Davies, 1977, page 30.
2. Dept Labour Annual Report, 1949, page 84.
3. HAD, 1934, col. 4623.

administration cost for every £80 paid out in compensation, a figure expected to rise to £15 with the planned decentralisation and extra service, especially in the way of speedier payments, to workers. This ratio was maintained as a maximum in 1945.[1] This was a great improvement for capital on the private insurance companies' rates. Thirdly, and perhaps, most importantly, the legislation assisted in keeping the workforce fit, protected and producing. Industrial protection schemes were initiated and discussed under the impetus of the law; those partially injured were given the medical attention and monetary assistance necessary to help ensure their return to the workplace as soon as possible. As such, the legislation, with its medical aid and temporary disablement provisions, and its superior provisions for the skilled, more highly paid and scarcer workers, was a logical adjunct to the Factories Act and the increasing number of industrial accidents concomitant with expanding production.

Sections IV and V examined the MPh Act insofar as it provided additional and differential compensation for TB and silicosis contacted on the mines. The main point to emerge was the different aims in respect of the African and white workers which, it was suggested, can be understood by their respective place in the labour process and the social formation as a whole. MPh was an explosive issue among white mineworkers. "Few Bills in the history of Parliament have caused such a stir."[2] The stir was provoked each time MPh was discussed. In 1925 Kentridge addressed a meeting of silicotic sufferers at the Johannesburg Trades Hall, where they were told that the only way to achieve anything was to organise.[3] The following week a group of three to four hundred gathered in an attempt to implement his advice. In 1936 a new bill proposed by Duncan, Minister of Mines, had to be dropped after the miners objected. Hofmeyr and Duncan met with the South African Mine Workers Union and the Chamber of Mines in an attempt to keep the matter "outside the political arena" by offering a negotiated settlement.[4] The white miners were an important group among the enfranchised workers and MPh legislation was always passed at the

1. Dept Labour Annual Report, 1949, page 84.
2. SUNDAY TIMES political correspondent, quoted in AMBAC, May 1945..
3. FORWARD, 12 June 1925; 19 June 1925.
4. FORWARD, 19 November 1937.

time of an election in an apparent attempt to pacify these supporters of the dominant classes. As such, the compensation in South Africa was of a level that exceeded that paid anywhere in the British Empire.[1]

For black workers, however, the position was not so favourable. The Act discriminated against them, as did the various bodies set up under it. General conditions of service also placed them at a disadvantage in relation to the diseases. When Africans were affected they were usually dismissed rather than compensated. The Act displayed a bias which corresponded closely with the place of the white workers in the mining workforce in the society at large, and to their degree of organisation.

However, even the white workers were not part of the dominant class. The compensation was good, but not adequate in terms of the diminished life expectancy and life enjoyment of the sufferers. Demands such as

a) that workers be represented on the MPh Board[2], or

b) that all men, after seven years, be entitled to retire with £750, (This demand was based on the 8½ year average life of a mine worker), or

c) that compensation be applied when a miner left South Africa, and not only while he remained in the country, in analogy with dividends which could travel freely world wide,

could all not be accepted. The aim of the legislation was to conserve the strength and health and support of these skilled workers so that they could continue to work, and to do this under a fimrly controlled scheme. It was not primarily to ensure a better life for the workers. As FORWARD reported in 1937,

> "On various occasions the Government has told the world that the number of phthisis sufferers is decreasing so rapidly that it is almost negligible, but the moment they are asked for a pension for all miners phthisis sufferers, the burden immediately becomes so heavy that, according to the Minister of Mines, to grant the demands would make the industry bankrupt."[3]

During the existence of the gold mines up until 1924 £850 million worth of gold had been produced, while compensation paid was £7 100 000. This constituted only about 4% of the distributed dividends of £177 000 000,

1. HAD, 1925, col. 1471.
2. GUARDIAN, 12 January 1939.
3. 19 March 1937.

which, in turn, are only a portion of the surplus value expropriated from these workers together with their health.[1]

Both WC and MPh legislation were introduced as a response to the dangers of the workplace and the resultant demands of the workers. The existence of both measures on the mines, and different conditions for black and white workers in the Acts are effects of the differing political, social and economic positions of these groups within the society. Though forced to introduce such legislation, capital was, however, quick to adapt it so as to derive the maximum benefit. Concessions were granted only when and where strictly necessary, and were not allowed to interfere with the continuance of production. At the same time the concessions were utilised in the struggle for concentration and centralisation of capital, and in the political struggle in which capital attempted to win the support of a section of the working class.

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1. Figures from HAD, 1925, col. 1458.

CHAPTER EIGHT : WORLD WAR II

With the outbreak of World War II the South African social formation entered a period of economic, political and ideological crisis, in which the "whole power of the state, reinforced by appeals to the workers' patriotism"[1], was needed to ensure stability. As such additional labour legislation of a qualitatively different order was introduced, and the "ordinary" labour legislation was amended or added to. These differences justify a separate analysis being made of this period, to examine the ways in which the crisis affected labour legislation. The examination can obviously not be a complete one - such a task would entail a much longer study of its own - yet an analysis of labour legislation between 1924 and 1945 would be incomplete if it did not take cognisance of a definite qualitative difference in this legislation caused by the outbreak and waging of war.

Section I of the chapter will provide the political and economic background to this period. Section II will describe new labour legislation introduced during the war, as well as the ways in which the already existing labour legislation was adapted to meet the new demands. Section III will concentrate on the development of organisation over the period, as well as the measures taken to control it.

In contrast to the earlier sections, which will concentrate primarily on the more repressive role of the state, Section IV will turn to measures involving amore conciliatory role, and attempt to explain the reasons for these. Finally, Section V will compare the war-time developments with those in the United Kingdom, and formulate some conclusions from the preceding description and analysis, both as to the effect of a crisis on labour legislation in general, and as to the specific effects occuring in the South African social formation.

I

Background to the period

On the political scene the war brought major changes, which affected the course of legislation. Parliament split by 87 votes to 67 on the war issue. The former Smuts-Hertzog coalition was broken and Smuts,

1. D.N. Pritt, EMPLOYERS, WORKERS AND TRADE UNIONS, 1970, page 62.

the leader of the successful pro-war faction, became Prime Minister. The new regime, characterised by Simons and Simons as an "alliance between the British mine owners and Afrikaner landlords"[1], was supported by the Dominion Party and by the bulk of the Labour Party, with the most vocal party political opposition being that of the Malanites in the "Purified National Party".

The majority of white, or at least skilled, workers supported the war effort. The Labour Party was represented in the government and the important post of Minister of Labour went to their man, Walter Madeley. At its 1940 Conference the SATLC passed a vote in support of the propagation of the war.[2] The Communist Party originally opposed the war, seeing it as an inter-capitalist and inter-imperialist squabble. After Russia's entry into the war, however, as in almost all the Allied countries, the Communist International's directives were followed, and the policy changed to one of support for the war effort as a whole, and the formation of a "United Front", although criticism of South Africa's internal, "bread and butter" issues continued.[3]

The effects on black workers, as in the case of the less skilled and privileged whites, were more contradictory. The blacks began to interpret the anti-discriminatory propaganda of their oppressors with respect to German racism in relation to their own situation. The new government was, it has been claimed, even more racist than the pre-war one,[4] and the contradiction thus became more blatant. While many blacks supported the war effort and even enlisted, while the ANC was forced to support the same side as the government, and while workers were thus encouraged by many of their organisations to support the effort and enlist, other blacks continued to oppose the war and demand that domestic struggle come first.[5] Government policy, in its differential treatment of black and white, both in the armed forces and in the labour force, did little to diminish this conflict.

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1. H.J. and R.E. Simons, CLASS AND COLOUR IN SOUTH AFRICA, 1969, page 468.
2. SATLC Annual Report, 1940.
3. Cheryl Walker, Masters Thesis, 1978, pages 120, 125.
4. Simons and Simons, 1969, page 489.
5. Farieda Khan, Honours Thesis, 1976, on the attitudes of the Non-European Unity Movement and related black organisations.

The economic effects of the war are described in the Department of Labour's Annual Report for 1945.[1] The demand for goods and services, especially those of a military nature, rose phenomenally. The national economy was forced to cope almost singlehanded with this demand because of the substantial reduction in available imports. These pressures greatly stimulated the economy. National income increased from £395 600 000 in 1939 to £666 300 000 in 1945[2], while the increased internal production of heavy machinery and other previously imported goods prevented the usual uneven development syndrome, where peripheral countries have economies which are almost totally based on primary production or light industry, and dependent on the metropole for the products of heavy industry.[3] However, increased pressure also produced considerable inflation and increased the attempts by capital to cut down on all "unnecessary" costs.

The recruitment of a large number of workers into the armed forces, together with the increase in production, also affected the labour force. The 1945 Report of the Department of Labour comments on the "two noteworthy features of wartime employment", namely
a) "a notable shift of population from rural to urban areas", and
b) "the employment fo women in war production and especially in the so-called 'heavy industries' on a scale unprecedented in our experience."[4]
In a situation where white labour was scarce, black workers flocked to the towns and began to fill some of the more skilled positions which had been closed to them in earlier times. The percentage of Africans in urban areas increased from 18,4% in 1936 to 23,7% in 1946[5], and many of these newcomers joined the industrial workforce. White women, likewise, began to be employed in new areas where men had previously worked. The war thus witnessed an expansion of industrial activity and organisation among these less-privileged workers. African trade union membership, for example, increased from about 37 000 to 100 000 between 1939 and 1945.[6] The state attempted both to protect and

1. Page 30.
2. UNION STATISTICS FOR FIFTY YEARS, page S-3.
3. The literature on this subject is too vast to be quoted here.
4. Page 2.
5. UNION STATISTICS FOR FIFTY YEARS, page A-10.
6. I. Davies, quoted in Walker, 1978, page 157. This figure is definitely on the very conservative side, as evidenced by a figure of 158 600 for the Council of Non-European Trade Unions alone given in R. Barge et al, THE CASE FOR AFRICAN TRADE UNIONS, 1977, page 4.

and safeguard the interests of the absent white male workers and to keep industrial peace, to "ensure that the Home Front should not be disturbed by industrial unrest in times of war."[1]

II

Labour control measures during the war

The existing labour legislation regulating wages and conditions of service, and the WCA, Miners Phthisis and Factories Acts, were not rescinded during the war. They were superceded or extended by proclamations and regulations under the War Measures Act.[2]

This Act, passed ".... to indemnify the government and persons acting under its authority, in respects of acts done in good faith in defence of the Union, the maintenance of public order and the prosecution of the war..."[3], empowered the Governor-General, members of the Executive Committee of the Union or provinces, Defence force officers, employees of the government, or any person "acting by the direction or with the consent of" any of the above, to make regulations and do certain acts, and precluded any legal action, civil or criminal, against any such individual "by reason of any act in good faith advised, commanded or done by him ... with intent to provide for the defence of the union, to maintain public order, and to ensure the effective prosecution of the war..."[4] The way was thus open for full-scale regulation and control of any and every field of the economy and society where the authorities considered this necessary.

Under this Act measures were introduced which limited the small degree of control over their conditions thus far won by workers. War Measure 6 of 1941 provided for a Controller of Industrial Man Power, a post to which Ivan Walker, a Labourite, was appointed. In terms of Section 5 of this measure, the Controller was empowered "to take such action as he deems necessary to ensure that the resources of any controlled industry (resources include labour - DB) are used in the manner calculated

1. CAPE TIMES, 22 June 1940, quoting Ivan Walker.
2. No 13 of 1940, plus amendments.
3. Preamble to Act 13 of 1940.
4. Section 3, Act 13 of 1940. Emphasis added.

to yield the best results in the interests of the defence of the Union or the efficient prosecution of the war, or for the maintenance of supplies and services essential to the life of the community." To achieve these ends he could, among other controls, prohibit individuals from performing work of a specific type in a controlled industry,[1] force them to do such work,[2] prohibit the engagement, resignation or discharge of a specified worker or class of employee,[3] lay down hours of work, wages, etc.,[4] determine disputes,[5] terminate or suspend the employment of an individual in any particular establishment,[6] transfer an individual from one industry or establishment to another,[7] terminate or suspend a contract,[8] and, finally, "with the approval of the Minister, do any act which in the opinion of the Minister is necessary for the purpose of carrying out his duties under these regulations."[9]

A much later amendment allowed the Controller to "prohibit or require the performance of any act ... by any person who ... could be employed in a controlled ... or similar industry, or by any class of such persons ... and to control and determine all matters relating to the occupation and employment, suspensions, resignation, discharge, transfer and working conditions of such persons."[10] In making any of the above regulations, the Controller was, as from 1941, entitled to differentiate between areas, classes of establishment, workers or employers on any basis he deemed advisable.[11]

Control under these measures was instituted early in the war. On 19 March 1941 the Government Gazette carried a notice declaring the engineering industry a controlled industry,[12] and on 29 August building was declared controlled.[13] Later the same year the stevedoring industry

1. Clause 5(e), Act 13 of 1940.
2. ibid., clause 5(d).
3. ibid., clause 5(f).
4. ibid., clause 5(h).
5. ibid., clause 5(i).
6. ibid., clause 5(j).
7. ibid., clause 5(k).
8. ibid., clause 5(l).
9. ibid., clause 5(n).
10. Government Gazette, 17 March 1944, clause 6(a)(iv).
11. Government Gazette, 10 July 1941.
12. Government Notice 1226.
13. Government Notice 403.

was controlled,[1] as was the boot and shoe trade in September.[2] Control measures within these industries were then passed regularly, varying from delimitation of minimum and maximum ordinary and overtime hours,[3] restriction of further employment of certain classes of workers,[4] restriction on the size of construction to be undertaken,[5] to full scale wage awards along the lines of a wage determination.[6] In 1944 "some 40 000 employees were covered by awards under the War Measures."[7]

Most of these measures were passed to further the war effort in the strict sense. Engineering and building, in particular, were presumably key industries in a war economy, and the boot and shoe trade was also connected with the war effort. It appears, however, that the measures were also used for labour control and repression with no direct relation to the war. The declaration of stevedoring in August was occasioned by a major wage strike among the togt labourers at Durban docks.[8] The government notice placed the stevedoring industry of the country as a whole under control, but only laid down wages and conditions for Durban, where the strike had occurred. After a further strike in June 1942, involving 4 000 workers,[9] yet another measure was passed, again only for this city, and specifying increased wages and overtime pay. Stevedores in Cape Town continued meanwhile to be governed by an IC, while Port Elizabeth and East London docks remained uncontrolled. The Department of Labour itself admitted that stevedoring "was declared a controlled industry in August 1941 in order to enable the Controller to deal with a strike in Durban."[10] Documented unrest in engineering and building[11] suggest that stevedoring was not the only industry where control was used in this way to put an end to "labour unrest" rather than in direct propagation of the war effort.

1. Government Notice 1162.
2. 24 September 1941.
3. E.g. Government Notice 859 for engineering.
4. E.g. Government Notice 981 for engineering.
5. E.g. Government Notice 969 for building.
6. E.g. Government Notice 1163 for togt labour in Durban.
7. Dept Labour, Summarised Report, 1944, page 2.
8. GUARDIAN, 28 August 1941 for full description.
9. GUARDIAN, 18 June 1942.
10. Dept Labour, Summarised Report, 1944, page 2.
11. OFFICIAL YEAR BOOK, 1941; I.L. Walker and B. Weinbren, 2000 CASUALTIES, 1961, page 372.

Department of Labour Reports appeared in abridged form or not at all for the major part of the war, and empirical evidence is thus difficult to find. In 1945, however, the only war year for which such information is available, of the total white workers involved in strikes (in all industries, not only the controlled ones), 135 were in the building industry, 482 in leather, 140 in footwear, 153 in baking and confectionery, 10 in furniture and six in fishing.[1] The concentration of these incidents in those industries which were controlled suggests once again that control, even when connected with the war effort, was not unconnected with straightforward control and suppression of labour unrest and orgnisation.

While allegedly passed to control both labour and capital, it appears that the war measures were used more to restrict labour than to restrict capital, a bias illustrated by the case of the Walker award.

In 1943 a dispute had developed between Clark, a building employer, and his employees. Walker was appointed as arbitrator and his award was published on 10 April, 1944. Protests resulted on both sides. The important objection from the employer's side was that the award declared that profits in excess of 5½% should go into a wage stabilisation fund. In the Supreme Court it was held " ... that the powers of the arbitrator were confined to making an award only in respect of such matters as formed the subject of the dispute..." He could lay down rates of wages but he could not lawfully fix a limit on annual profits.[2] Even the establishment Amalgamated Engineering Union stated, after this verdict, that it was "self-evident ... that the national energies of this country have been directed towards the old established selfish paths of private money-making."[3]

While control of manpower thus granted increased powers to the state in relation to labour, other labour legislation was shown to be even more weak and ineffective than usual in controlling capital. The Department of Labour's Annual Report for 1939[4] affirmed that it was

1. Dept Labour, Annual Report, 1945, page 24.

2. Thomas Clark & Sons (Pty) Ltd v Minister of Justice and Minister of Labour, TPD, 1944, in SOUTH AFRICAN LAW JOURNAL, LXI, 1945, page 249; Walker and Weinbren, 1961, page 188.

3. Walker and Weinbren, 1961, page 205.

4. Dept Labour Annual Report, 1939, page 2.

"of the greatest importance that there should be no thought of curtailing departmental activities under the wage regulating measures which have brought about the present very satisfactory relations between employers and employees", and in 1944 there were 463 000 workers under WDs and 156 701 under IC measures.[1] The original war measure instituting control of manpower forbade the Minister from regulating those workers under ICs, as a step which would conflict too openly with the policy of self-government for responsible industry. Yet these pre-war measures were not adequate. The CAPE TIMES reported in 1942[2] that a suggestion that industrial legislation should be brought up to date had received strong support from both workers and employers. "It is contended", it was reported, "that the existing machinery is too slow and tends to hamper negotiations because of the time taken to arrive at a settlement." In 1944 the powers of the Controller were extended to those workers under ICs[3], either because of this slowness of the machinery or because of an increase in worker militancy. In 1945 alone, 43 conciliation boards, usually considered to be measures of last resort, still had to be appointed to deal with unresolved disputes.[4]

In other areas of labour legislation there were also inadequacies and reason for complaint. When there was a clash between the building restrictions and the Factories Act, the Minister of Labour instructed the Divisional Inspectors "to avoid, wherever possible, compelling manufacturers to undertake structural alterations under present conditions."[5] Increased exemptions under the Factories Act were granted in respect of night and female work,[6] as were exemptions from the Wage Act.[7] Analysis of the various Acts in previous chapters show that almost without exception the war years were slack ones in respect of observance and enforcement of labour legislation. The 1944 Report of the Department of Labour stated that "(e)nforcement of legislation has been difficult owing to the shortage of qualified industrial inspectors."[8] In a crisis the operation of the new and old legislation

1. Dept Labour, Summarised Report, 1944, page 2.
2. 20 October, 1942.
3. Government Notice, 17 March, 1944.
4. Dept Labour Annual Report, 1945, page 20.
5. Walker and Weinbren, 1961, page 4.
6. Dept Labour, Annual Reports, e.g. 1940, page 55.
7. Dept Labour Annual Report, 1945, page 27.
8. Dept Labour, Summarised Report, 1944, page 2.

tended more to control labour than capital.

III

Worker organisation during the war

Table 8.1 provides the colour breakdown of mandays lost in strikes in the years 1938 to 1945.

TABLE 8.1[1]

COLOUR BREAKDOWN OF STRIKES 1938 - 1945

Year	Total mandays lost	White mandays lost	White as % of total
1938	4 070	479	11,8
1939	4 246	17	0,4
1940	6 475	3 068	47,4
1941	23 199	7 197	31,0
1942	49 547	14 368	29,0
1943	47 719	28 738	60,2
1944	62 709	1 210	1,9
1945	91 180	6 039	6,6

The war years saw a marked tendency towards increased and more intensive organisation, an organisation which was concentrated among the unprivileged workers. While whites continued to constitute a a significant proportion of the mandays lost, there appears to have been a shift in the incidence among white workers from the skilled to the semi- and unskilled, and also towards the women. In Chapter Three it was seen that the average wage of a striker decreased from £0,51 per day in the 1931-5 period, to £0,32 in the 1941-5 period, despite the inflation in the later period.[2] The increased ability of relatively well-paid workers to hold out for longer periods would also inflate percentages of mandays lost as in the table above. While the absence of full departmental reports for these years makes conclusive evidence a problem, both these factors suggest the trend towards the less privileged workers described above, with strikes concentrated among the unskilled and female workers, where the upsurge in organisation

1. UNION STATISTICS FOR FITY YEARS, page G-18, own calculations.
2. CHAPTER THREE, Table 3.2.

was most most evident.

To deal with potential strikes, "where considerations of national importance made it essential to adopt more speedy methods"[1] than hereto force, completely new measures were passed, which amplified and/or replaced the previous industrial bargaining procedures and which were used in all industries, whether connected with the war effort or not.[2]

War Measure 9 of 1942[3] empowered the Minister to appoint an aribtrator for any industry and area where he though a dispute existed which could affect the outcome of the war or the life of the community. The arbitrator would then consult representative organisations of both employers and workers and make an award which could cover all the matters normally covered by other wage regulating measures. No strikes or lockouts were allowed from the time of appointment of the arbitrator until the end of the award.

War Measure 145[4] of the same year applied to all "employees", defined here as all those not defined as employees in the ICA[5] i.e. mostly African workers. Here, yet again, the Minister could appoint an arbitrator if he felt a dispute existed. In this case, however, the law stated that "no employee or other person shall initiate or take part in a strike or in the continuation of a strike,"[6] whether arbitration was being employed in that industry at the time or not, i.e. it prohibited strikes at all times.

Despite the enormous increase in strike incidence evidenced by the table above, the Department reported that "recourse (to Measures 9 and 145) had undoubtedly averted a considerable number of potential strikes,"[7] an assertion which suggests that the preconditions of even higher strike figures existed in the latter years of the war. Measure 145,

1. Dept Labour, Annual Report, 1945, page 2.
2. E.g., the Rand pressing industry, where a measure was applied by Government Notice 897 of 1945.
3. Government Notice 21 of 1942.
4. Government Notice 318 of 1942.
5. Section 2.
6. Section 5.
7. Dept Labour Annual Report, 1945, page 2.

for black rather than white workers, was, however, a more obviously repressive and effective instrument. While only one award was made in terms of the former, as against seven under the latter,[1] it was the strike clause which was more important, allowing for easier prosecution of any and every striking African worker. (It is interesting to note that, unlike most other war measures, Measure 145 was not discarded at the end of the war, but remained in force, and was later incorporated into Act 48 of 1953.)

Both measures were ineffecitve in controlling the spread of strikes, despite the fact that about half of the delegates at the TLC conference had voted in favour of the measure.[2] "Prosecution did not deter the workers".[3] "Despite the prohibition of strikes under the measures, stoppages of work occurred in various trades and industries, more particularly amongst Native employees."[4] In some cases the sheer numbers of workers involved defeated the state. In 1944, for example, a case against about six hundred striking African coal workers had to be dropped. The case was unmanageable as there was no place for all the accused to sit, and it had taken one and a half hours merely to ascertain that all the accused were present. In the end only Koza and Matau, the leaders, were charged.[5]

In overall terms, strikes increased over the war period. The number of mandays lost in 1944 and 1945 exceeded that for any previous year in the period 1924 - 1945, despite the increased inflation[6], while the number of mandays lost in 1942 and 1943[7] was exceeded only in 1934.[8]

Trade union membership also increased during the war. Membership of registered trade unions increased from 179 412 in 1939 to 346 509 in 1945[9] and the TLC noted that the increase was concentrated among the semi-skilled, rather than the skilled.[10] Figures for unregistered

1. Dept Labour, Summarised Report, 1944, page 2.
2. TLC Annual Report, 1943.
3. Dept Labour Annual Report, 1945, page 19.
4. ibid.
5. GUARDIAN, 29 June 1944.
6. 62 709 and 91 180 respectively for 1944 and 1945.
7. 49 547 and 47 719 respectively for 1942 and 1943.
8. UNION STATISTICS FOR FIFTY YEARS, page G-18.
9. Dept Labour Annual Reports.
10. TLC Annual Report, 1941.

trade unions are usually estimates, but it is likely that the increase here was proportionately greater, with the growing organisation, for example, of the CNETU, which had a membership of 158 600 in 119 different trade unions by 1944.[1]

Control of organisation was thus also extended during the war beyond that described in Chapter Seven, where the restrictionso on freedom of speech, assembly, movement and affiliation in times of peace were examined. Freedom of expression was controlled by Section 10 of Proclamation 201 of 1939, which forbade the printing, publishing, or expression at a meeting of anything
a) to subvert the government's or legislature's authority,
b) to incite (part of) the public to resist/oppose officials,
c) to engender or aggravate intersectional feelings of hostility, or
d) to cause public panic or alarm.
War Measure 55 of 1942[2] allowed the seizure or banning of any book or publication and all future editions and continuations of such publication, even under another name. Meetings were controlled by Section 10 of Proclamation 201 of 1939, which empowered the Minister to prohibit any meeting, indoor or out, of more than twenty people, for any purpose other than religious, funeral, statutory, or any auction, game,theatre or wedding. To deal with individuals, emergency regulations provided for internment without trial.

These measures were not used exclusively, or even chiefly, against the left. National Party, Ossewa-Brandwag and Stormjaer members, suspected of ties with Nazi Germnay, were seen as a major threat, and were so ruthlessly suppressed that the SATLC was able to report that the Emergency Regulations had had a "sobering effect on Afrikaner organisation."[3] The left did not escape, however, despite restricting themselves to less violent means of protest than the sabotage undertaken by members of the Ossewa-Brandwag. Several Communist Party labour leaders and other leftist sympathisers - the Joffe brothers, Fritz Fellner, Latti, Max Gordon, E.J. Brown, and Burford, the latter two more leftist members of the Labour Party[4] - were interned as being "people of dangerous

1. Barge et al, 1977, page 4.
2. Government Notice 1390.
3. Dept Labour Annual Report, 1939.
4. Simons and Simons, 1969, page 533.

character."[1] The Communist Party members were released in September 1941, when the Party changed its stance towards the war, but others remained incarcerated.[2] Seedat, a radical Indian leader, went to jail in April 1941, for subversion[2], while Dadoo, another Communist Party leader, was charged and convicted in July 1940, also under Emergency Regulations, for the publication of a leaflet reading as follows:

> "You are being asked to support the war for freedom, justice and democracy. Do you enjoy the fruits of freedom, justice and democracy? What you do enjoy is pass and poll-tax laws, segregation, white labour policy, low wages, high rents, poverty, unemployment, and vicious colour-bar laws."[3]

He was also jailed in January 1941, for statements in the Benoni location, which the court deemed "calculated to incite the public to oppose the government."[4]

DIE WARE REPUBLIKEIN, the Communist Party publication in Afrikaans, became the first newspaper to be censored in February 1941.

IV

Concession to the working class

Legislation during the war was not all directly and overtly anti-worker, however. It was necessary to win the support of labour if war and its accompanying hardships were to be endured. This was particularly so in the case of white workers, who once again had representation in the government.

There were several different ways in which the interests of the more privileged workers were further safeguarded during the war. In controlled industries a Labour Control Board was established with equal representation of organised employers and workers (i.e. registered TUs), and this board assisted in the investigation, if not in the determination,

1. E. Roux, TIME LONGER THAN ROPE, 1972, page 318.
2. HAD, 1940, page 972.
3. Simons and Simons, 1969, page 532.
4. Roux, 1972, pages 316-17.

of the measures passed.[1] When under the Emergency Labour regulations provision was made for the "dilution" of skilled labour, discussion was again conducted with employers and workers from organised industry before these regulations were gazetted. In the interests of the skilled workers, it was agreed that unemployed artisans from other industries were to be considered first when there was a shortage in any industry, and it was only when the negligible level of unemployment among such skilled workers rendered this safeguard unnecessary that the employment of women was to be allowed, and then only for the duration of the war.[2] Emergency regulations passed early in the war laid down that employers had to re-employ all workers on military service in their previous jobs for at least two months after demobilisation[3], and post-war competition for skilled workers was minimised by an agreement that the demobilisation of COTT (Central Organisation for Technical Training - an emergency technical training scheme in the army) trainees would be strictly controlled, and by the exclusion of all blacks from training centres for skilled and semi-skilled in the engineering, electrical and motor industries.[4] In the Defence Department, building contracts were contracted on a civilised labour basis.[5] In 1942 the Unemployment Benefit Act was extended so as to cover all industries, and not only those contained in the original schedule.[6] The differential treatment of black and white by Measures 145 and 9 has already been noted above.

These protective measures had the desired effect on an important section of the organised workers. The CFLU ORGAN stated in March 1941, that "We have consented to legislation recently which we must realise now can act as a boomerang in the future. We particularly refer to the establishment of the Control Office for Labour, whose functions are to marshall the labour force of this country systematically. We are in agreement with this..."[7] The SATLC reported that a "more lenient

1. See Government Gazette Extraordinary of 13 February 1941, clause 4.
2. Gazetted July, 1941; Dept Labour, Summarised Report, 1941, page 3.
3. GUARDIAN, 3 January 1941.
4. Simons and Simons, 1969, page 534.
5. Dept Labour Annual Report, 1940.
6. Act 17 of 1942.
7. SATLC Annual Report, 1943.

aspect on the implications of these War Measures is ... mainly due to the fact that some of our affiliated unions have experienced certain benefits therefrom during the last twelve months."[1] As noted above, even the Communist Party, though claiming in July 1940[2] that the Labour Party was supporting the class enemies of the workers in a capitalist imperialist war, afterwards while criticising minor measures and matters, supported the war effort as a whole. The labour aristocrats were won over by concessions for the most part. They complained about minor matters, but had no "serious complaints" about the Control of Manpower,[3] which was, after all, under one of their own men, Ivan Walker. Andrews reported that "it is interesting to note that in the debate on the attitude of the TLC to the war at the 1940 Conference, it was the delegates from unions in the newer industries who generally spoke and voted against the policy of unconditional support of the government's war policy."[4] These were, on the whole, the semi-skilled operatives in the machine-based industries.

The mass of the workers, even though not a supportative class on the political scene, also had to be pacified, however. Increasing ubanisation and politicisation caused an upsurge in organisation among the black workers, which was reflected in trade union and strike figures. Black workers were also playing a much more important and substantial role in the workforce.

On the one hand these developments brought forth repressive measures such as War Measure 145. The upsurge in organisation, on the other hand, also fired the black trade union debate, a debate which was a major topic of discussion among politicians, industrialists and workers at the time, and which envisaged the registration, either administrative, or legislative, of black trade unionism, rather than the mere exclusion of African workers from the ICA, as a more effective means of control.[5]

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1. SATLC Annual Report, 1941
2. WARE REPUBLIKEIN, July 1940.
3. SATLC Annual Report, 1941.
4. W.H. Andrews, CLASS STRUGGLES IN SOUTH AFRICA, 1941, page 47.
5. D. Lewis, AFRICAN TRADE UNIONS AND THE STATE, 1976.

Concessions were actually granted in certain areas where protest and organisation were particularly militant and threatening. In August 1943, and again in November 1944, the people of Alexandra township staged bus boycotts to protest against rising bus fares. In the former case the forty to sixty thousand people walked the 18 miles daily for nine days, and in the second for seven weeks.[1] Pass campaigns and conferences[2], such as the Communist Party and ANC Women's Anti-Pass Campaign in March 1944,[3] and squatter unrest in 1944[4] also occasioned government action. The militancy of the black workers and the economy's need of them occasioned relatively conciliatory measures. The bus boycotts were successful in securing War Measure 89 of 7 November 1944, which empowered the Minister of Native Affairs to order employers, including the government, to pay any rise in public transport fees occurring after 30 September, 1944, in certain areas, while during the war pass laws were applied far more leninetly than at any period before or since, except perhaps the Sharpeville period.

The cola (cost of living allowance), together with price control, was a more extensive and material concession. Inflation was rampant during the war, and it was recognised that "generally speaking, the advance of wage levels does not keep pace with the price trends."[5] By 1941 most organised workers already had colas provided for in their ICs[6], and the CCI itself advocated that a cola for all workers become generalised in all industries.[7] War Measure 71 of 1941[8] introduced a cola for all workers earning under 74s per week, except those employed by the state in domestic work or in farming, while War Measure 27 of 1941 initiated price control under which the maximum price for everything from baby wool to heavy steel equipment was subsequently controlled, on a very detailed specific product basis.

The allowances were regularly amended as the Consumer Price Index rose,

1. Simons and Simons, 1969, page 547.
2. Roux, 1972, page 328.
3. Walker, 1978, page 108.
4. Simons and Simons, 1969, page 547.
5. Dept Labour Annual Report, 1945, page 30.
6. CCI Annual Report, 1941, page 31.
7. ibid.
8. 31 July 1941.

although the GUARDIAN pointed out in 1941 that whereas at that stage the cola consisted of a six to ten per cent increase in wages, inflation was running at 15% or more.[1] It was thus an improvement of many workers position, but had many inadequacies. The control of the steel price illustrates the fact that price control was not only introduced in the workers' interests. Steel was an input for industry, and control was intended also to lower capital's costs. As such it was logical that wages, another major cost for capital, should not be allowed to increase at too rapid a rate.

The extent of the measures was also limited. The original measure applied only in the nine major urban centres[2], i.e. the bigger centres where worker protest would be more disruptive than elsewhere. Worker militancy again effected an improvement. Demonstrations and deputations were organised by local "food committees" in many African areas.[3] Later amendments extended the allow .ce to include areas omitted before, until, by War Measure 49 of 18 June 1948, all workers, everywhere in the Union, in establishments of ten or more workers, were covered. However, War Measures 43 of 1942 excluded African mine labourers, while agricultural workers were excluded by the original measures, No 71 of 1941. The Gold Producers Committee did not consider it necessary to give a cola "because the families are in rural areas." Farmers claimed that as payment in kind was the general method of remuneration in agricultural enterprises, inflation did not affect their workers. In the case of domestic workers, the "Minister of Labour ... pointed out that it would be difficult for the government to include (them), as the whole workaday population (i.e. the labour aristocracy who employed them) would be up against them."[4]

The justification for the exclusion of domestic workers was obviously political. The justifications advanced in the case of the mine and agricultural workers were fallacious. The Institute of Race Relations noted that the cost of goods in the rural areas was higher than in the

1. 7 August 1941.
2. Section 7, War Measure 71 of 1941.
3. Walker, 1978, page 110.
4. SATLC Annual Report, 1941.

towns and that actually very little was produced on the black land.[1] Agricultural labour was at all times very badly paid, even in comparison with black labour in the rest of the economy. The cola was a concessions to workers, in that it raised the costs of capital, and it was thus granted on as limited a scale as possible. The level of the allowance was kept down, while its coverage excluded the exclusively black employment sectors, and, in the beginning, excluded also other areas where organisation was not so militant or threatening.

V

Comparison with the Position in England and some Conclusions

War-time developments in South Africa show markedly similar characteristics to those in England in many important respects.[2] There, too, a new parliamentary coalition was established after the outbreak of war, with Labour leaders Attlee and Greenwood in the War Cabinet, and Bevin, another from among Labour's ranks, as Minister of Labour. There, too, conscription caused a serious shortage of labour, which was concentrated among the skilled labourers, and which was partially offset by the training of unskilled workers, labour dilution, and the employment of women in traditionally male work.

Emergency legislation in South Africa was also based on that of England. The War Measures Act was similar to the Emergency Powers (Defence) Act. In March 1941 an "Essential Work Order" imposed positive, as well as negative, controls on English labour, and the National Arbitration Tribunal rendered strikes illegal by Order 1305.

Despite the similarities, however, there were important differences between the two countries. In the first place, England was more directly threatened by the war. This both increased the strains on the economy and increased the morale of the workers. South Africa, as a peripheral country both politically and economically, differed from England. The isolation from the metropole and the strain on the economy provided the boost necessary to establish a significant increase

1. RACE RELATIONS JOURNAL, X, page 70.

2. See Henry Pelling, A HISTORY OF BRITISH TRADE UNIONISM, 1963. The information which follows comes chiefly from this source.

in both the size of, and the nature of, industrial production. Distance from the war front and internal splits among the white group as to which side to support decreased support for the government among the working population in comparison with England.

The second important difference was the composition of the population, and the workforce in particular. In South Africa the war years witnessed an increased participation of black workers in industry. Whereas both skilled and unskilled male workers were recruited in England, in South Africa it was mainly whites who were recruited, and the effect of shortage was thus even more concentrated among the skilled. Dilution of labour, training of unskilled workers, employment of women, all these were added to the normal process of deskilling which accompanies the development of machinofacture, and black men and white women came to be employed more and more in positions which threatened those of the white males. Both women and black men displayed an awareness of their increased importance to the economy, an awareness reflected by an upsurge in organisation. The state showed its awareness of the differences by its differential treatment of the two groups, at the same time as it was forced to make certain concessions to black workers.

In both England and South Africa the Labour Party, and the Communist Party after 1941, cooperated in the war effort. In the economic sphere England had its equivalent to the South Africa Labour Control Board in its Joint Consultative Committee. Due to the factors mentioned above, however, the control of the organisation of the workforce was not the same in the two countries. In England fewer working days were lost in 1940 than at any time in the previous twenty-five years. In the latter years of the war unofficial strikes increased, and in 1944 more working days were lost than in any year since 1932. In South Africa the trend was accentuated. In 1939 and 1940 the South African strike levels in terms of days lost (4 246 and 6 475 respectively) were low, but they had been even lower earlier in the period 1924 to 1940. From 1941 onwards the number of days lost increased phenomenally as seen above, and reached higher levels than ever before. South African labour did not appear to be as committed to the war effort as its English counterpart.

Poulantzas[1] describes the exceptional state, a state exemplified by that of the fascist state, but which has a wider application for all those social formations experiencing severe crisis. He describes the changes in these states in the relationship between the ideological and repressive state apparatuses, and the blurring of the distinction between the "public" and "private" spheres, until all institutions appear to belong to the state. With this development, there is also a greater reliance on arbitrariness in the law, with far fewer limitations being placed on a nationalist leader's and government's powers.

South Africa during the crisis of the war years exhibited many of these features, as indeed did England. The powers conferred by the War Measures Act of 1940 allowed the government far-ranging powers to regulate all aspects of society, powers which were not questionable by ordinary process of law. Measures introduced under this Act extended the state's control over areas previously regarded as private. Even legislation not enacted under this Act came to have a more administrative and arbitrary form, amendments to the Factories and WC Acts in 1941, for example, both providing for much more regulation by the Minister than previously. All these laws attempted to extend the ability of the state to preserve the status quo, by control of the conditions of production in an uncertain time.

Such control had to rely to a certain extent on ideological dominance as well as mere repression. In a crisis situation the subjects of the state must be convinced to accept the role of the state as guarantor of the national integrity of the nation, and must be prepared to suffer some hardships for the sake of this national integrity. If this is not so, there is the danger of the major contradictions of the society coming to the force and interrupting the fight against internal forces.

In South Africa such ideological indoctrination was present to some extent. The established white labour organisations supported the war, and the state granted positive, as well as negative, controls to ensure this support. The less privileged workers, even within these organisations, were not as unambivalent in their support. An important

1. Nicos Poulantzas, FASCISM AND DICTATORSHIP, 1974, pages 254ff; 314ff.

section of white workers supported the National Party and Ossewa-Brandwag, and saw salvation in the establishment of a National Socialist Republic, which they hoped would protect white workers, both skilled and unskilled, against both the capitalist and the black workers. Many black workers, while sympathetic to the sentiments of the Allies, did not find these sentiments reflected in the state's and society's treatment of them as workers. These two groups, and their conflicting demands, were to prove important in the changes in the political economy of South Africa in the late 1940's. Within a year of the war's end, black worker demands erupted and surfaced in the massive mine workers strike of 1946. While the Labour Party in Britain triumphed in the 1945 General Election, in South Africa it was the National Party which triumphed just three years later.

CHAPTER NINE : SUMMARY AND CONCLUSIONS

This thesis has examined labour legislation in South Africa in the first two decades of the establishment of monopoly capitalism, i.e. 1924 to 1945. The study attempted to develop analyses both of labour law in this stage of capitalism in general, and of such law in the stage of the South African social formation in particular. This final chapter will summarise the most important findings of each of the previous chapters (Section I), and will then draw some general conclusions on the basis of these (Section II). The various laws analysed will be seen to have several common features which justify their being considered as one entity for the purposes of this thesis and serve to illuminate the role of South African labour legislation between 1924 and 1945.

I

Summary

Chapter One of the thesis set out the conceptual framework to be employed, as well as the socio-political setting of South Africa in the period under consideration. The important class and societal groups were described, with special attention being paid to the factors affecting labour legislation, for example the sectoral breakdown of capital and the various groupings in a skill and colour breakdown of the labour force. The main political and economic developments of the period were then sketched in so as to provide a setting for the timing of the various legislative measures.

The study proper then commenced with an examination of the law. The institutions of the law were examined with a view to establishing in what was the law itself, its categories, framing and administration, functioned in the development of capitalism and in the struggle between capital and labour. The bias and inequalities inherent in the legal system, traditionally conceived of as being neutral and impartial, were described, as evidenced both in the characteristics common to all capitalist societies, and in the peculiar form adopted by these institutions in South Africa. The form of the law itself, in positing single individuals, the legal persona, rather than the collective force of labour, tended to isolate workers in their struggle and diminish

their strength.

The following five chapters then looked at particular statutes enacted and in operation through the period - the Industrial Conciliation Act (Chapter Three), the Wage Act (Chapter Four), the Factories Act (Chapter Five), the Riotous Assemblies Act and related political measures (Chapter Six), and industrial health legislation in the form of the Workmens Compensation and Miners Phthisis Acts (Chapter Seven). After a brief outline of the ambit of the relevant act, the clauses and provisions relevant in terms of the study were examined. The forces advocating and opposing the Act, the reasons for their attitudes, and the effects of the Act once promulgated were examined, as was the way in which the Act was administered.

The chapter on the ICA discussed the measure as a response to the militant, skilled, white worker organisation of the first two decades of the century, and to the emergence of black organisation. Various forms of regulation and registration of trade unionism have been adopted in most capitalist countries to control such organisation and to take advantage of the various conservative tendencies to which it is prone. In South Africa regulation was seen to have definite biases in terms of skill and colour. Registration and collective bargaining were restricted to the more privileged sections of the workforce. These workers were enabled to win limited gains from capital in the form of better wages and working conditions and protection from competition by other workers. In return, however, capital won two important gains. Firstly, the workforce was divided and the majority were excluded from most rights under the Act. Secondly, those unions which were registered were subject to fairly strict control in such respects as strikes, and were also restricted to organisation along industrial lines. The limited channels, together with the knowledge that they were privileged, tended to confine their demands to levels acceptable to capital.

The Wage Act was a necessary adjunct of the ICA. While the latter provided channels for the determination of wages and conditions for the more privileged workers, the former provided chiefly for the semi-skilled and unskilled. This group's importance was increasing in the thirties with the advent of machinofacture and the increased unionisation of black men and white women. The Act was necessary to satisfy or

divert some of their demands.

At the same time, at least in the early years, the Wage Act was part of the "civilised labour" policy of the PACT government. Black wages were traditionally lower than those of similarly qualified or unqualified blacks. In the absence of restraints capital would thus have been inclined to employ the cheaper blacks, rather than whites. By setting wages at "civilised", or white, levels, the Wage Board was able to avoid this possiblity, encourage white employment, and thus satisfy government supporters. Like the ICA, the Wage Act, by operating on industrial lines, served to encourage organisation along economistic lines rather than for more political demands.

The chapter on the Factories Act discussed the provisions of this measure in regard to hours of work, "welfare", colour discrimination, and accidents, as well as those for women and children. The conditions of the Factories Act were, on the whole, inferior to those laid down by ICs and the Wage Board, and often merely reflected the existent conditions in industry. Those workers with stronger political and ideological links with capital were covered by the other two acts and worker agitation in these groups was channelled in the directions suggested there. The general conditions for the rest of industry were not perceived as being too important, and served as a lowest common denominator. As with the other two acts, however, they did serve a purpose from the point of view of the development of capital as a whole. The larger enterprises tended, because of the larger capital investment and larger workforces, to be more "progressive" in terms of worker benefits. The setting of conditions at levels prevalent in these factories tended to squeeze out the smaller, less profitable capitals, and thus accelerate the concentration and centralisation of capital.

The section on women and children illustrated a second important aspect of the Act. The whole Act was aimed at protecting the workforce, in order to ensure its reproduction and continued availability. Restrictions on hours of work, "welfare" provisions and safety equipment all served this aim. In the case of women and children, however, this became even more important. These two groups constituted the source of reproduction and the future producers of the society. As such, while protection still did not interfere unduly with production and

exploitation, in this case the provisions were stricter and more effective.

Chapter Six elaborated on the restrictions placed on worker agitation and organisation by the ICA by looking at other, more overtly "political" measures. The Riotous Assemblies Act, in particular, was seen to place severe restrictions on the freedom of assembly and the right to strike. Several of the "Native" Acts and the Masters and Servants Act further restricted these rights by prohibiting free speech and assembly and providing for the removal of "undesirables". The chapter concluded with a look at several more general remedies used to control organisation. Institutions such as the press were seen to display bias without any explicit law being necessary to achieve this. Municipal, provincial and local regulation were all used at various times against the workers' organisations, as were both civil and criminal branches of the national law. The chapter was of necessity sketchy in such a broad area, but the various cases cited are suggestive as to the large range of weapons available to those opposed to effective or threatening labour organisation.

Chapter Seven dealt with both Workmens' Compensation and Miners Phthisis, two circumstances covered by acts passed to compensate workers for some of the ill effects suffered as a result of exposure to danger in the production process. Workmens Compensation legislation provided for monetary compensation for those injured in industrial accidents, and for those who contracted industrial diseases. The Miners Phthisis Act provided for alternative employment and/or monetary compensation for those affected by silicosis or tuberculosis while working on the mines.

Comparison of the two measures illustrated important points of difference between the situation in industry, the chief area of application for Workmens Compensation, and the mines, the area for Miners Phthisis. The latter legislation was introduced much earlier than the former, reflecting the advanced state of organisation on the mines in the first two decades of the century, as well as the severe incidence of phthisis. Differential application as between whites and blacks in the case of Miners Phthisis compensation illustrates the differing roles of the two sections of the workforce here, as well as their different political and organisational strengths. The whites were

predominantly skilled, well organised, politically privileged and few in number. Blacks were unskilled, closely controlled in a compound situation, and constituted the bulk of the labour force. The Act was thus highly discriminatory, reflecting these differences. Whites were subjected to strict medical tests, relatively well compensated, and provided with alternative jobs wherever possible. Africans were much more summarily checked, and dispatched to the "reserves" as soon as disease was detected. Scales of compensation were also different.

In the case of Workmens' Compensation the prevailing wage rates constituted the main source of discrimination. At some stages black rates were actually higher than white. The lower earnings of the blacks, as well as their ignorance of the law, nonetheless ensured that actual levels of compensation greatly favoured whites. This alternate form of discrimination nevertheless reflected a less strictly colour-divided workforce.

The Workmens' Compensation Act and the debate on the form of insurance illustrate another point with respect to labour legislation in general. Capital, while in principle opposed to state intervention in the economy, was prepared to advocate this where it introduced the possibility of large-scale savings, for example in the form of state insurance. Workmens' Compensation was only introduced after a strong and concerted demand on the part of labour. When forced to introduce it, however, capital quickly ensured that the form of legislation was such as to impose least constraints. Compensation was aimed at those workers potentially capable of further work in industry. Compensation to the totally disabled was less than that for the partially or temporarily disabled, despite the former's greater suffering. The form of insurance was also speedily changed into that entailing the least cost. While Workmens' Compensation was ostensibly in the workers' interests, as with all industrial legislation, the form of compensation did not disregard the needs of capital.

In all the acts analysed in the above chapters, the methods and effectiveness of implementation and enforcement were considered as an important part of such legislation. In most cases such enforcement was seen to be lacking. State officials were badly overworked and unable to fulfil

their policing duties. Employers were more likely to be able to put across their point of view effectively, both in the informal situation of routine inspection and in the event of the matter reaching the formal procedure in a court of law. In the latter case, particularly, the ability to employ legal advisers opened up many possibilities of unpunished law avoidance and evasion. In most cases it was only strong worker organisation and action that could secure a fair degree of compliance with the various measures. In many cases strikes were the most effective last resort in forcing compliance, and the restrictions on this right mentioned above greatly diminished the general effectiveneness of all organisation.

The penultimate chapter, rather than concentrating on one statute, as the previous chapters had done, focussed attention on a period - that of the Second World War. As a time of crisis for the state itself, and one in which law of a significantly different nature was introduced, the period warranted separate and specific attention. War-time developments of the acts analysed earlier were included in the relevant chapters. This chapter focussed rather on the additional and extraordinary legislation passed specifically with regard to the war effort, and, briefly, at the effects on labour legislation and administration in general during a period of crisis for the state.

Law of this period was characterised by a high degree of state "interference" and regulation. Both capital, and particularly labour, were controlled as to place, nature, hours, conditions and wages of work. Organisation was subjected to even stronger controls than normal, with restrictions on strikes, freedom of speech, assembly and expression being even further increased. The development of large-scale industry was seen in the course of analysis of other measures to lead to an increased trend to administrative regulation, the state in this way regulating capital and ensuring its reproduction. The war period was a crisis characterised by a situation of short supply and large demand. This called forth an even greater administrative and bureaucratic bias in legislation, with control passing ever more beyond the individual entrepreneur or even the elected legislature.

What Chapter Eight also demonstrated in stark form was the attitude of most of the official labour organisations to the state and law.

Throughout the period 1924 to 1945 the established white organisations tended to see the state in the form of a protector, and demands were thus restricted to particular issues and complaints, rather than a more generalised attack on the system. There were, however, more militant and far-reaching demands from the less privileged, such as the white female workers and blacks. During the war the ideology current was such as to strengthen the support of labour, with even the Communist Party supporting the government's war effort after 1941. Severe hardships in material conditions nevertheless introduced an opposing trend, and while the war effort was supported by the official organisation, the statistics for worker organisation and strikes showed an increase. Among blacks, in particular, both worker and general organisation showed a marked increase, which was reflected in the passing of new and amended legislation of both a restrictive and concessionary nature at an accelerated rate.

II

Conclusions

Law and the state have, as their main function, the establishment and maintenance of the general conditions for the reproduction of capital and the maintenance of the hegemony of the power bloc and the domination of capital. In terms of labour legislation this means that the law must ensure the reproduction of the labour force, necessary for capital reproduction, as well as control of labour's strength, in order that political and economic stability may be maintained. This latter aim entails the control and/or discouragement of effective worker organisation.

The chapter by chapter summary presented above illustrates the overall aims of labour legislation in South Africa. These aims are generally divisible under the two headings of (1) maintenance of the general conditions of production, and (2) maintenance of the hegemony of the ruling class.

1. General Conditions

(a) Social versus individual capital : The interests of the individual capitalist were not always identical with those of social capital, i.e. capital as a whole. While the former was satisfied if he could continue expanding his capital in the immediate future, the latter had to ensure that the separate, uncoordinated, and to some extent chaotic individual processes did not deplete resources or in other ways affect the future viability of capital as a whole. Something, or someone, had to ensure the continued availability of all the inputs and conditions necessary for production. The state, as representative of the total social capital, was called upon to play this role and ensure that viable and profitably production possibilities continued to exist and that the form of the labour force was also maintained in that shape most conducive to capital's interests. Several of the laws analysed in this thesis can be seen to perform such a function.

The Factories Act safeguarded the reproduction of the labour force, by protecting women and children, and thus the future producers, by limiting hours and thus conserving the energy and health of the present producers, and by protection of health in the way of "welfare" and accident control. Workmens Compensation and Miners Phthisis legislation also played their part in protecting the workers. With the threat of these acts and sanctions, individual capital itself was encouraged to take steps to minimise depletion of the workforce by accidents and disease.

In the case of the main source of labour - the African population - the law concentrated on supply rather than demand. The "Native" laws sought to ensure the availability of this resource at all times. Restrictions on movement, residence, place of work and contract all acted to divide the labour market, not only along colour lines, but also on sectoral lines, to ensure tha labour was available when and where needed, in sufficient numbers so as not to extract a scarcity payment, and yet not in such large numbers as to be a drain on welfare and community services, or so as to provide a political threat. Workmens' Compensation, Miners Phthisis and Factories legislation provide a certain, if unequal, amount of protection for those African workers who were employed.

(b) Big versus small capital : The discrepancy between the immediate interests of individual capital and those of social capital was compounded by a divergence between the interests of smaller and bigger capital. Big capital was sometimes forced, by the very size of its production, and the large capital (both variable and invariable) employed, to implement measures to provide better wages and conditions, to preserve the workforce, and to insure themselves against their greater liabilities. Larger groups of workers also, of course, tended to be stronger and easier to unite, and thus more able to enforce their demands. Insofar as these measures entailed extra costs for these capitals, the smaller employers had an unfair advantage over the bigger ones, an advantage bigger capital was loth to concede. This division of interests explains the sometimes contradictory sentiments expressed by capital. In acts such as the Factories Act, Wage Act, ICA and Workmens Compensation Act, big capital was in favour of all employers being forced to incur expenses which they were in any event forced to make. Small capital, meanwhile, complained about incursions into their freedom, incursions which gravely limited their competitiveness. Where such laws were imposed, they encouraged the processes of concentration and centralisation of capital. Larger, more "progressive" employers were encouraged, while the smaller ones struggled and often disappeared or were taken over.

(c) Predictability : With the development of the scale of capitalist production, the need for planning and coordination became greater. Predictability or foreseeability (prevision[1]) was necessary for the individual capitalist to survive. The increase in the size and scale of production meant that disruptions, too, tended to be larger and more disequilibrating. Widespread crisis conditions, such as the war, exacerbated the lack of certainty. It is in this light that one can understand the many measures of control instituted during the war, and that one must understand the increased administrative and bureaucratic power vested in the hands of cabinet ministers and other government officials in later versions of the Workmens' Compensation and Factories Acts, as well as the "Native" Acts. Both corresponded to increased possibilities of chaos and an increasing need of certainty and a certain amount of planning.

1. Nicos A. Poulantzas, NATURE DES CHOSES ET DROIT:ESSAI SUR LA DIALECTIQUE DU FAIT ET DE LA VALEUR, 1965. In this early work, his doctoral thesis, Poulantzas writes at length on the need for and importance of this "prevision".

2. Hegemony

(a) Cooptation : In 1928 General Hertzog stated that "(t)he cooperation of Labour in the Government has removed the menace of Bolshevism and Communism which, in view of a large native population, would have been a disaster to South Africa."[1] In the following seventeen years labour legislation constituted a further link in the cooptation of white workers and the subsequent weakening of a combined labour onslaught. In doing this, the historically created situation of an almost completely dominated, dispossessed and impoverished black population was exploited to the full, in that it was this group which was more heavily exploited so as to provide benefits for the more privileged white workers, and in that it was the group which capital and the state most feared.

Within production itself, the ICA and Wage Act, by fixing a wage and outlawing discrimination on the basis of colour, removed the danger of undercutting by blacks. The Apprenticeship Act and differential education acted to encourage the restriction of skills to the white workers and safeguarded the scarcity value of those workers who were qualified, while also ensuring that they alone filled the new positions of supervisor and coordinators of the labour process. The necessity for separate facilities for white and black in terms of the Factories Act, and the extra costs this entailed, encouraged the formation of all-white factories. Capital was thus encouraged by "economic" factors as well as by such means as exhortation, to favour white labour.

Discrimination between white and black went further, however. Most concessions granted to labour tended to favour the whites, whether explicitly or implicitly. In some cases the discrimination was based on differential access to external state insitutions such as education (for example, the Apprenticeship Act), in other the discrimination stipulated different treatment for white and black (ICA and Miners Phthisis), while in others still discrimination operated purely on the basis of the different places occupied in the labour process and their accompanying wages and positions (Workmens' Compensation and Wage Acts).

During the period studied the form of the labour force changed. Blacks

1. S.P. Bunting, IMPERIALISM AND SOUTH AFRICA, 1928, page 41.

were absorbed into the workforce in increasing numbers and came to occupy higher positions. The form of discrimination in labour legislation changed accordingly. The 1937 amendments to the Wage and Industrial Conciliation Acts both relate to the changing emphasis of these measures, with a greater coverage of black workers while still not threatening the white workers' comparative privileges. The 1941 changes to the Factories and Workmens' Compensation Acts also incorporated important changes in the respective treatment of white and black. Protection of white workers at the expense of black was a continuing theme, but one which necessitated changing methods in a changing society. The sectionalism of the white workers explains the striking similarities between the demands of organised capital and labour, evidenced in much of the available material. Organised capital wanted controlled production. Organised white labour wanted concessions and better conditions within a system where they were relatively privileged and to which they had been discouraged from envisaging any radical alternative. To the state "legislation for white workers is an insurance against industrial trouble."[1]

(b) Control: The state had not only to divide the workforce, and thus weaken its collective strength, but also to control the manifestations of this strength. Many of the laws encompassed this aim, and the periods of great legislative activity thus demonstrate a "clumping" in periods where labour unrest was most feared, with laws passed both to pacify workers and to control those who would not submit to pacification. These periods, for example 1924, 1937 and 1941, were all periods of accelerated economic growth, and thus increased demand for labour and increased worker strength. Other factors also increased the need for control. 1924 and 1941 were times of crisis for the state in that the former followed the near-revolutionary 1922 strike on the Rand and 1941 was in the war period, when the National Party, Communist Party, and to some extent the Labour Party - all parties with labour followings - were still ambivalent about their attitude towards the war effort.

Official recognition and regulation of trade unions is accepted as a method of controlling and strait-jacketing the organisation of workers, while preserving the illusion of democracy. This tactic

1. Bunting, 1928, page 41, quoting Roos.

was employed in the ICA of South Africa and effectively channelled the demands and actions of workers in these industries. In the less organised industries, where there was no easily coopted labour aristocracy and where the workforce was potentially more militant, other less ambiguous measures were introduced. Wage determinations provided a formal channel for determination of wages and conditions and by instituting firmer external control, subdued conflict. For areas where a still greater threat was perceived, there was no pretence at democracy. Stronger control, bordering on outright illegalisation of many forms of struggle, was instituted, in the form of Masters and Servants Acts for Africans, exclusion of African and farm workers from the provisions of the ICA, and the latter from the Wage Act, and Measures 9 and 145 during the war.

Worker demand did not only relate directly to the workplace. For the wider and more "political" and "social" demands, the law employed the Riotous Assemblies Act, Native Administration Act and other minor instruments such as municipal and provincial bye-laws, to control and punish those felt to threaten the status quo. These measures were by their nature both ambiguous and potentially far-reaching. They could thus be applied when and where needed, while not interfering with that organisation perceived as socially acceptable to capital.

(c) Diversion of struggle : This thesis has looked at the function of labour law in South Africa. It is thus rather odd to emphasise the non-centrality of the law in society. It was, however, precisely this non-centrality that was the basis of one of the important functions of the law - diversion of the class struggle.

The state and law were of, by and for the capitalist class, as illustrated in Chapter Two. By creating allied and supportative classes and through the mirage of the law's impartiality, the impression was created, however, that the state and law could be used by all as an instrument to effect change, and that the effectiveness of this instrument depended only upon those in whose hands it lay. The belief in the power of the law acted to channel labour activities and organisation to these tightly controlled and restricted avenues, thus diverting and weakening worker strength. White workers concentrated on winning parliamentary seats and cabinet posts, and in forming

coalitions with the other parties. Some black groups, for example the ANC and African Peoples Organisation aimed at winning the vote so that they too could play this role, and concentrated the main thrust of their activities in this direction. Both groups believed, when in trouble, that the law could often save them by finding the "truth". In this regard it was the strength of the law in ideological terms, i.e. the belief in the all-powerfulness of the law, which played a role in the class struggle. This trust was misplaced. Even where concessions were won and laws implemented, they were administered leniently where employers were affected and strictly in the case of workers. The state, even when allegedly one with worker representatives in charge of the apparatuses, usually only aided workers when this was not against the interests of capital.

* * * * * *

This thesis, in dealing with labour legislation in South African between 1924 and 1945, was an attempt to add to an understanding of the social formation in this period. South Africa was seen to be a society with a firm capitalist basis, where the primary contradiction was one between labour and capital. The interests of capital and those of the mass of the workers were diametrically opposed. Profits could not ultimately increase except at the expense of wages, and these were the chief considerations in the control of the labour process. The primary conclusions to be drawn from the thesis is that though small concessions were won by workers, and production was, by the end of the period, generally more "civilised" in the way it treated workers than it had been in 1924, the changes in the law - both concessions and otherwise - were ultimately not such as to jeopardise production and reproduction of the system.

A simplistic two-class analysis is not adequate, however. Firstly, there were important divisions in capital. Different fractions of capital desired different measures, their demands being based on such factors as the sector in which they operated, and the size and nature of their production processes. Even more important, however, were the divisions in the working class. Here class, in its strictly economic form of the place occupied in production, was seen to interact with colour, to form a complex interplay on all three levels of the

society - economic, political and ideological. The law served to maintain and strengthen the divisions created by factors such as differential enfranchisement and differential access to better jobs, creating a significant white petty-bourgeoisie and a subordinate black working class proper. The purely "economic" factors connected with the introduction of machinofacture tended, to some extent, to break down this barrier, but the law served to maintain the divisions, and thus preserve the split within the working class and the support of a large section of the white workers for capital and the state.

The law cannot be seen purely as an instrument of repression. Worker organisation and militancy necessitated the passing of laws conceding benefits to large groups of workers. Yet while workers sometimes gained, in the long run capital did not lose. The law successfully fulfilled its functions of reproduction of the general conditions of production and maintenance of hegemony of the power bloc at all times. When forced to make concessions, capital was quick to turn these concessions to its own advantage.

APPENDIX I : TIME SCALE OF LAWS AND IMPORTANT POLITICAL AND ECONOMIC EVENTS

Year	Laws Passed[1]	No	Important Events
1924	Apprenticeship (Am)	15	PACT government - LP and NP
	Industrial Conciliation*	32	Hertzog Prime Minister
	Miners Phthisis*	35	SA Association of Employees Organisations founded
1925	Miners Phthisis (Cons)*	35	Wages and Economics Commission
	Native Tax and Development	41	
	Wage Act*	27	
1926	Masters and Servants (Am)	26	Civilised Labour Policy started
	Native Affairs (Am)	27	Hertzog Bills introduced
	Native Tax and Development(Am)	28	
	Mines and Works	25	
1927	Native Administration	38	ISCOR created
	Native Affairs (Am)	15	
	Work Colonies	20	
1928	Liquor Act	30	Non-European Trade Union Federation founded
1929	Native Administration (Am)	9	Depression
			LP split - Madeley out of cabinet
1930	Apprenticeship (Am)	22	Depression
	Industrial Conciliation (Am)*	24	White women enfranchised
	Miners Phthisis (Am)*	38	
	Native (Urban Areas) (Am)	25	
	Riotous Assemblies (Am)	19	
	Wage Determination Validation*	21	
	Wage (Am)*	23	
1931	Factories (Am)*	26	White franchise qualifications abolished
	Native Tax and Development(Am)	34	Depression
	Workmens Compensation (Am)*	29	Trades and Labour Council formed
	Entertainments (Censorship)*	28	
1932	Native Service Contract	24	Depression
			Off gold standard
1933	Immigration (Am)	19	Fusion Government - United Party
	Industrial Conciliation (Am)	7	

1. Laws dealt with in some detail in the thesis are marked with an asterisk.

1934	Liquor (Am)	41	Post-depression boom
	Miners Phthisis*	60	
	Workmens' Compensation*	59	
	Entertainments (Censorship) (Am)*	6	
1935	Wage Determination Validation	16	Industrial Legislation Commission
1936	Miners Phthisis (Am)*	23	All Africans off roll - separate representation
	Native Trust and Land	18	
	Workmens' Compensation (Am)*	38	
1937	Industrial Conciliation (Am)*	36	
	Wage (Am)*	44	
	Unemployment Benefit	25	
1938	Miners Phthisis (Am)*	6	
	Representation of Natives (Am)	23	
1939	Native Administration (Am)	9	Second World War
	Native Taxation (Am)	25	Coalition Government - LP represented
	Native Trust and Land (Am)	17	Smuts Prime Minister
	Shops and Offices*	41	
1940	War Measures*	13	Second World War
	War Measures (Am)*	32	
1941	Miners Phthisis (Am)*	24	Second World War
	Factories, Machinery & Building Work*	22	
	Workmens' Compensation*	30	
	War Measures (Am)*	32	
1942	Native Administration (Am)	42	Second World War
	Unemployment Benefit (Am)	17	
	Wage (Am)*	22	
1943	Native Administration (Am)	21	Second World War
1944	Apprenticeship	37	Second World War
	Native Law (Am)	36	
	Soldier & War Worker Employment	40	
1945	Native (Urban Areas) (Cons)	25	Second World War
	Native (Urban Areas) (Am)	43	
	Workmens' Compensation*	27	

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