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**GLOBALISATION, VALUE, RIGHTS,
AND WORK:
POSITIVE OR NEGATIVE
FLEXIBILITY FOR SOUTH AFRICA?**

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I - Introduction

... something fundamental, something transformative, is happening to industrial relations and labour law. We are not quite sure what that something is ...
(Arthurs 1997: 571)

This paper explores “what that something is”, and suggests that a paradigm shift is necessary for constructive thinking about labour relations. The need for this shift is discernable in various discourses about work (for example, Edwards, 1997). What we attempt in this paper is to draw together these various insights to come up with a “positive” programme.

The paradigm shift in question is dictated by globalisation. We argue that globalisation has out-moded certain current institutional structures, such as traditional labour law, and more generally those associated with the old model of the “protector” state in a system of accumulation defined as “segmented work”. The paper starts (Part II) by considering the globalisation phenomenon and the implications that this process has had for a selection of countries. It is possible to see that different institutional forms breed different “species” of flexibility, clearly differing in desirability according to the yardstick of the value system we define. Further, it is apparent that policy factors outside the labour market are critical to success. Next (Part III) we consider South Africa. Left and right seem to agree that there is a tendency to enter a “race to the bottom” in which poorer countries compete by lowering standards. The Left’s response is advocacy of old “protective” structures that seem at odds with the broader processes of globalisation. The Right’s response is passive: that if the process of globalisation dictates that we must lower standards, then lower standards we must. We call these South African responses a “nexus of bewilderment” and argue that they are a type of what Hirst and Thompson (1995) call “the pathology of over-diminished expectations”—

It is essential to persuade reformers of the left and conservatives who care for the fabric of their societies that we are not helpless before uncontrollable global processes (Hirst and Thompson, 1995: 6).

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Part IV, which constitutes the heart of the paper, tries to present the fundamentals of a “positive” policy response to globalisation. Although our proposals are fairly radical, we believe that our methodology is not. As McAdams (1995: 1035) puts it in a related context: “... the theory ... fails not because it employs the economic method, but because it is not sufficiently faithful to that method”². Part V concludes.

II Globalisation and labour—a world of change

The environment: globalisation and the search for openness

Even such advanced countries as Australia and Canada often fall into this dilemma. They think because they are resource rich they can live on their own resources, dipping leisurely into their pot of gold at need ... But ... the resources on which they count ... have become commodities. When there is no value added, none can be collected. If the market for what they produce is healthy, the economy is OK. If it is not, the economy is in deep trouble, and there is nothing they can do about it (Ohmae, 1991: 175).

²McAdams was writing about discrimination:

“A parsimonious theory would explain the data of race-based behaviour with a single preference. Few economists understand this point better than Gary Becker [who] ... wrote persuasively of the need to avoid explaining behaviour by differences in tastes ... Ironically, Becker’s model of race discrimination exemplifies the very failings that his household production function was meant to correct ...” (McAdams, 1995: 1042-3).

Poorly-skilled labour may be characterised as a commodity, and Ohmae's warning is as true for developing countries with abundant cheap labour as it is for any other "resource rich" country. The major problem that developing regions face is how to break the mould of dependence on cheap labour. Even countries that have successfully entered export markets run the risk of becoming export dependent "screwdriver" economies.³

However, the mould *has* been broken, and as we argue in Part IV, development is now "simply" a matter of policy effort. The mould in question was the post-WWII Pax Americana (described by Bowles *et al.*, 1990). For the purposes of comparing it with globalisation, we can call the post-war structure of accumulation "shallow integration". Developed countries (essentially North America and Western Europe) needed to import commodities and (unskilled) labour-intensive goods from poor countries, and to export their own skill-intensive goods to pay for their commodity imports. A set of multilateral agreements (GATT, the IMF and the World Bank, the United Nations) was set up to govern a world in which countries were to be integrated in terms of trade, and to a certain extent, capital flows. However this is as far as integration was to go. In particular, although the UN, ILO and other multilateral agencies defined a set of "universal" standards and rights, it was citizenship and national sovereignty that were to remain sacrosanct. In order to cement the authority of the nation state over its citizens, international mobility, both of capital and labour, was to be restricted and regulated.

The dominant economic models of the time supported and justified this status quo. Keynesian models showed how at any given level of development, national states could use the power derived from restricted capital and labour mobility to maintain a platform of stability and full employment as the basis for reasonably humane societies. Neoclassical models seemed to offer longer term comfort. The Stolper-Samuelson theorem (1941) showed that a regime of free trade in goods, under which the "North" would export capital intensive goods in exchange for labour intensive goods from the "South", would lead to wage convergence for given categories of workers.⁴ This paradigm was complemented by neoclassical growth theory, which predicted that technological diffusion would lead to convergence between rich and poor countries. Development policy for a South country would involve *acceptance of the mould of minimal*

³Wilkinson (1994) shows that the export to GDP ratio is not as good a measure of economic health as is sometimes assumed. Countries like Japan and the USA export well below 10% of GDP. Middle income countries typically export anywhere between 10% and 150% of GDP (the "high" is Hong Kong, where over 60% of exports are simply re-exports with minimal value added). A simple example will illustrate: Costa Rican manufacturing has recently broken into world export markets, but imported inputs typically make up 95% of the value of such exports (Gindling and Berry, 1994). This means that Costa Rica only contributes a very small amount to the production chain, such as assembly of virtually completed kits which are imported from countries (such as the US or Japan) with higher labour costs. Japanese exporters, on the other hand, source most of their inputs domestically. For the same value of exports, a much greater proportion of the value chain is "captured" within Japan's diversified economy.

⁴Thus there would be a tendency towards a single worldwide wage for unskilled workers and (for example) a similar tendency for civil engineers. Neoclassical trade theory does not predict complete factor price equalisation, but this is only because perfectly free trade is not possible. Personal services and goods with very high transport cost to value ratios are "non-tradeable".

effort but maximal discipline. Firstly, the country would have to remove all barriers to trade. Secondly, the country would gradually extend the education of its workforce. Discipline would be required to deal firstly with dissident voices calling for shortcuts to development (in particular Marxists, but also unorthodox Keynesians and purveyors of “indigenous” models of development) and secondly with so-called rent seeking (the dominance of particular over general interests).

Two sets of factors lead to the breaking of this mould and the onset of what is called globalisation, that is, “deeper integration”. These factors are related and inter-causal, and we do not have the space or expertise to discuss them here. However a brief word is necessary to dispel some common myths and set up the rest of the discussion.

Perhaps the most important factor is dissent. We can see this movement at two levels. Firstly, partly in response to the success of shallow integration at raising income, there is an essentially *cultural* movement away from disciplinary productionist values.⁵ This is of essential importance to our discussion. We can envisage:

a post full-employment consumer society as one of the main characteristics of postmodernity ... Consumer behaviour, rather than work or productive activity, has become the cognitive and moral focus of life, the integrated bond of a social formation, in which consumption rather than production is the fulcrum of individual and social existence (Edwards, 1997: 45 quoting Bauman, 1992).

At the second level we can discern dissent at the *political* foundations and *ideological* justifications of the Pax Americana—and levels of dissent appear to be rising in the wake of the neoliberal 1980s and early ‘90s. These cultural and ideological movements are extremely deep seated, and can be construed as post-modern criticisms of the concept of progress itself (Edwards, 1997). At a practical level, American hegemony was challenged and found wanting both internally (the movements of the ‘60s and the scandals of the ‘70s) and externally. The successful external challenges came at the political level (Vietnam, Iran, Angola, Libya, Somalia, and Iraq). Successful economic challenges were mounted by OPEC, and, most significantly for our purposes, countries in East Asia and Northern Europe. These countries realised that the

⁵Old productionist values had a model “disciplined” workers whose work was purely instrumental to earning money for consumption. As early as 1932, Bertrand Russell recognised that the “work ethic” was no longer necessary, given the productive power of the modern economy. “This is the morality of the Slave State, applied in circumstances totally unlike those in which it arose” (Russell, 1932: 10-13). However, it is only since the 1960s that the traditional distinction between work and consumption has begun diminishing. New forms of work allow for direct enjoyment of work. This is most evident in the provision of freeware on the internet. The principle motivation, for example, of David Harris, the creator of Pegasus Mail, was, that “communication had to be regarded as a right, not as a privilege: it seemed to me in 1989, as it still seems to me now, that freedom of speech is useless if nobody can hear you. Giving away Pegasus Mail seemed to be a means by which I could try to make communication more accessible to a much wider range of people who needed it” (Harris, nd). Consumerism also offers people the possibility of choosing out of a diversity and mix of lifestyles. For an excellent discussion of these issues see Edwards (1997).

“mould” would not allow development⁶ (that is moving from one socio-economic level to the next). What is more important is that in their very different ways they acted on this realisation. We pick up this theme in the next subsection.

⁶“The East Asian lesson that might profitably be told to today’s least developed countries and to some of the late industrialisers trying to get back on track, is that in the mid-1960s, after Korea and Taiwan dutifully devalued their real exchange rates and liberalized the imported inputs they needed to manufacture their exports, they still could not compete against Japan, even in their labour-intensive sector, cotton textiles ... in spite of the fact that they had benefited from American aid-financed investments in physical and human infrastructure, and access to the American market, which was much more open than it is” (Amsden, 1994: 632).

At the same time, the second important force for globalisation, namely technology, is breaking down barriers (see, for example, footnote 5). In economic terms, what we are seeing is the demise of the transaction cost. Astonishingly, transaction costs have only become part of mainstream economics in the last quarter of the 20th Century. The analysis of transaction costs leads to a recognition of what might be called *power diversity*, the importance of small, exclusive groups generating social capital.⁷ Suddenly the real nature of the world became apparent to orthodox economists. But now, just as this process is understood by economists, ancient feudal caste and class systems, everywhere transformed into industrial class systems by the ubiquitous transaction cost, stand to take their final defeat. We explain in Part IV. Before that, we need to consider some concrete evidence. The next subsection does this by setting out a series of country profiles. This is not meant to be authoritative. The purpose is instead to introduce certain systematic national differences in the ways of doing things related to labour.

Leaders, followers and lost sheep

Given that the United States is or has been in some sense the leader, it would seem a good place to start. Gordon *et al.* (1982) have characterised as “segmented work” the bargain by which mainly white male workers suspended the class struggle in exchange for material wealth and security. By the ‘70s this bargain was under threat from increased foreign and domestic competition together with the rising wage premium of unionised workers.⁸ Employers, aided by the Reagan Administration, responded by aggressively demanding concessions from their workers during the depression of the 1980s (Rosenburg and Lapidus, 1999: 78). Cristopherson (1991: 175) explains this decline in the social and political arrangements behind the mass production economy in the United States through the early 1970s. She demonstrates that in the ensuing two decades of increasing globalisation, America grew into a service⁹ economy serving (primarily business) markets throughout the world. From 1973 to 1990, approximately 27 million jobs were added to the US economy of which a quarter were flexible work.

⁷We reserve a meaning for “social capital” that is significantly different from that proposed in Fedderke *et al.* (1999). We mean by social capital the benefits of belonging to networks of primarily social rather than market origin. Thus in India, caste is the most important determinant of social capital (Bremen, 1996); in Japan, business and employment relationships are highly socialised (Deutschmann, 1991; Wilkinson, 1994). In both, the social capital serves to segment the labour market. We distinguish such social capital from human capital, and more originally, from *market capital*. Our “market capital” refers to the *public good* benefits of market infrastructure, and is closely akin to Marshallian external economies. Fedderke *et al.* would say that India and Japan have abundant, “transparent” social capital, but that it is not “rational” in the sense that it is not a public good (ie. is not codified into a universal language).

⁸It is now conventional wisdom that the extremely tight labour markets of the late 1960s coupled with the productivity slowdown lead to the development of a *wage gap*. This had disappeared by the late ‘80s (see Solow, 1997).

Rosenburg and Lapidus (1999: 72) show that in 1997, 56 percent of contingent workers were employed in the services sector in the USA.

“Segmented work” had thus been replaced by “flexible production”¹⁰ as the dominant mode of production. It is important to realise that this phenomenon goes much deeper than “contingent work” as it is normally defined.¹¹ This “New Economy” has to a large extent supported the growth of America as a technological leader.¹² However, the proliferation of flexible workforms begs the question: to what extent were the new workforms voluntary (that is, preferable in terms of worker choice to their standard predecessors)? Rosenberg and Lapidus (1999: 76) demonstrate that the trend in flexibility in America could either be “demand” (employer) driven or “supply” (employee) driven. Supply factors would predominate if *employees* preferred such unstable forms of employment. Clearly this tells a large part of the American story. Carnoy *et al.* (1997: 47), referring to the hi-technology sector, describe individuals who have attained such “desirable” flexibility:

The success of these individuals in these flexible labour markets obviously depends to a certain extent on their skill levels. But it depends even more on their networks of relationships and contacts outside their place of work.

The second sentence strikes a rather jarring note. It suggests that there must be a high *threshold*,

¹⁰See, for example, Sabel and Zeitlin (1997: 22). Sabel and Zeitlin provide an important warning against overdoing what they describe as “grand periodizations”:

“.. even the most apparently tranquil epochs of economic history never have the matter-of-factness that the notion of grand periodization almost inevitably imposes on them. On the other hand it seems odd to think that innumerable overlapping local narratives have no supra-local historically extended analogue.” (1997: 29)

¹¹Thus in the USA, a relatively small proportion of workers are contract or temporary workers compared to other countries (Blank, 1998). However, this is because in the USA it is not necessary for employers to resort to non-standard forms to achieve “negative flexibility”. In America “... a private employer, unless limited by statute, contract or collective bargaining agreement, is free to hire and fire any employee at will... [In addition] very few full-time workers are guaranteed lifetime employment or even long term employment. Therefore the definition of a contingent employee is somewhat arbitrary and the term ‘contingent work’ has taken on a wide variety of meaning” (Rosenberg and Lapidus, 1999: 63). It is not surprising, therefore, that Blank (1998: 269) finds that part time workers are heavily clustered in sales and service occupations, wholesale and retail trade, and in professional services industries. These are industries with variable client demand or demand during non-standard hours — ie. industries in which “valid” reasons exist for using non-standard work. Nevertheless, “[a]lthough most evidence indicates that scheduling demands are the most important reason employers use part-time work, ... employers who do use part-timers pay them differently”.

¹²The growth and dynamism of the high tech sector created opportunities for skilled workers to become “career resilient” (Waterman *et al.* 1996). “Flexible work, new forms of networking and mobility, and contingent employment are among the most prominent features of the new industrial organisation linked to new economic and technological processes” (Carnoy, *et al.* 1997: 28).

not only of skill¹³, but also of “supporting institutions”, before it can be said that “flexibility” is desirable. In America, of course, these supporting institutions are not provided by the public sector (Rosenburg and Lapidus, 1999; Christopherson, 1991).¹⁴ A large share of the workforce falls below the threshold.¹⁵ America is characterised by inequality¹⁶, low and stagnant wages in “unskilled” jobs¹⁷, and, ironically for a country so market orientated, poor labour market access for the most disadvantaged communities.¹⁸ Felstead and Jewson (1999: 2) sum up: ... “[T]he surge of non-standard work is associated with rock-bottom wage rates, coercive management,

¹³We may get some idea of where this skill threshold lies from looking at evidence assessed by Blank (1998). In regressions controlling for a range of personal characteristics including education, part time workers do seem to receive lower total compensation, but the story with wages is not so clear. Men earn lower wages, but this is not the case for women, particularly in professional and managerial jobs (Blank, 1998: 270-1). Similarly, white collar temporary workers earn slightly higher hourly wages than non-temporary workers, but “pink collar” and blue collar workers earn 10% and 34% less (1998: 275-6).

¹⁴“...the European has national health insurance and other protections that the American either buys out of the paycheck or does without” (Freeman, 1996/97).

¹⁵See Blank (1998: 267) for a more detailed breakdown. In the sample of “less skilled workers” (with a high school “degree” or less), workers in “standard” jobs:

- a) earn over 40% more per hour;
- b) receive significantly more fringe benefits;
- c) work significantly more hours;
- d) and are unemployed for significantly fewer hours per year

than similar workers in contingent (temporary and part time) jobs.

¹⁶Some of the inequality indicators are stark. For example, the share of Americans living in poverty rose from 11.2 percent in 1974 to 15.1 percent in 1993. The lowest quintile of American children are now poorer than the lowest quintile of children in 15 other advanced countries (Freeman, 1996/97). Social indicators reflect this. For example, life expectancy (which is strongly influenced by the distribution as well as the level of GDP) is higher in Costa Rica than in the USA (Daniels et al. 1999). In Harlem, male life expectancy is lower even than in Bangladesh.

¹⁷(West) German men in the bottom wage decile appear to earn twice as much their American counterparts (Nickell, 1998: 309), and the difference is growing. Nickell (1998: 298) reports that real wages of bottom decile worker fell by over 1% *per annum* and increased by over 2.5% *per annum* in the 1980s in the USA and Germany respectively. See also Freeman (1996/97); Freeman and Gottschalk (1998).

¹⁸Geographical flexibility is not as great as one would imagine, especially for the marginalised. Holzer (1998: 227) documents the movement of jobs away from inner city, with movement of minorities impeded by residential segregation and transportation problems, as one of the most important problems facing the poor. “Indeed, we might view various *mobility* strategies [original emphasis], designed to raise the supply of minority labour in suburban areas, as complementary with (and even pre-conditions for) effective anti-discrimination efforts targeted at the demand side of the labour market in these areas” (Holzer, 1998: 244).

intensified labour processes, unsocial hours and high rates of job turnover” — in other words, *demand* side factors predominate. In addition to its implications for wage stagnation, “flexibility” has meant that the risk and inconvenience of non-standard or unstable demand patterns has been transferred to employees (see also footnote 11).

America seems to encapsulate within one country the seemingly inevitable duality of globalisation, namely that it is very good for people who want and can cope with freedom, but it is a burden for people who are poor, socially dislocated, and unskilled. For the latter ...

[c]ost-based strategies are likely to lead to a downward spiral of wages, working conditions and labour standards and to reinforce adversarial relations at the workplace ... Nations that lack strong institutions constraining the choice of the low-wage option are particularly vulnerable to this problem. The United States may be suffering from this problem at the moment (Locke *et al.*, 1995: 153-4).

As leader, America may be atypical. It is worthwhile therefore to look at Australia, which while not a world leader in technology, has a similarly ‘relaxed’ institutional labour arrangement and development strategy. In Australia since the early 1990s, a shift from centralised intervention towards decentralised enterprise bargaining arrangements has stimulated the growth of non-standard work (Burgess and Strachan, 1999: 130). This has increased from 33 percent in 1982 to 45 percent in 1996 (Burgess and Strachan, 1999: 125). Again, as in America, these institutional structures, together with relatively high unemployment¹⁹, reduced the power of workers to resist increasing insecurity of jobs and wages.²⁰ As in America, growth of services played into the mix as well, generating a large number of semi-skilled contingent jobs, while a decline in the size of the standard or core workforce across all industries is evident (Burgess and Strachan, 1999: 125). What is interesting about Australia is that it seems to show an incompatibility of neoliberal programmes and a drive to higher value added. While those remaining in the core “protected” sector²¹ tend to be the more highly skilled, especially in terms of tertiary education, the reduction in the size of the core does seem to imply that Australia is associated with a greater proportion of unskilled workers. There is a more subtle and more general lesson. In the *Anglophone* OECD countries, there is probably little wrong with the policy towards the high value-added, skilled end of the labour market. For the top end of the labour market, above the thresholds of human, social, and market capital, the lesson probably *is* that less government is better. Markets work (see the quotation and following discussion on page 6). The problem occurs at the bottom end. The less developed is the country, and the “bigger its bottom”, the more important is this limitation. In fact, failure to embrace or undertake structural adjustment, or to pursue “value”

¹⁹In 1994, unemployment was over 10% (Economist, 1995: 114), by 2000 it was down to 6.7% (Economist, 2000: 116). Presumably one of the factors in this decrease is the rise of “non-standard” work.

As in America, the wages of the lowest decile of workers fell substantially in real terms in the 1980s. This was in marked contrast to (West) Germany and Sweden which both experienced growth of approximately 2% per annum (Nickell, 1998: 298).

The expression is that of Piore (1979: xii), used to explain his theory of a dual labour market. Here, the idea is that the economy is divided between a primary and secondary sector, with jobs in the former based upon a long term, institutionalised commitment, served by a set wage structure. The latter form of employment is very much that observed in the above discussion, with increasing job insecurity, low skills and low pay.

aggressively is a common theme across countries with laissez-faire policies, and is a key factor in the growth of the contingent workforce in Hong Kong, which we survey next.

Hong Kong has for a long time had a “flexible” system of production. Although the state has normally played little role in the direction of economic development (Amsden, 1994: 629), the economy is not, as is sometimes supposed, a model laissez-faire economy. According to Wilkinson (1994: 168) social expenditure accounts for over 50% of total government expenditure. This supports the economic structure of small business by providing a high “social wage” which allows small business to take risks to take advantage of product niches as these niches open.

The dominant form of manufacturing production is thus through a hierarchical subcontracting system of numerous, small-scale, family-centred export-oriented factories. These producers are connected to international markets via ‘buyer-driven’²² commodity chains, also known as the ‘satellite factory system’—*weixing gongchang*. This structure implies a lack of control by small producers over product marketing and strategy. Small firms must respond to demand conditions, and must perform remain flexible. Also synonymous with this approach is the routine nature of tasks performed by flexible workers. Again, skills are low, and women are key players in this peripheral group of employees, drawn in through social conditioning. A bias in favour of sons means that young girls were often sent to work to supplement family income. Furthermore, women “homeworkers” are not protected by labour legislation in these areas (Lui and Chiu, 1999: 173).

The low skills, low cost, flexibility route has important adverse implications for social and economic development. Hong Kong has consistently failed to move “up the value chain”.²³

Large numbers of small firms with little support or direction from the state, then, may have their advantages in terms of rapid response to market change and protectionist measures [imposed by other countries], but their capability in moving to higher value production and up-grading technology is open to question (Wilkinson, 1994: 161).

Two factors could explain this. Firstly, “fear of China” has led to investors taking short term views; secondly there is a sense that, compared to their Taiwanese or South Korean counterparts, Hong Kongese producers have never been *forced* to move up the value chain.

Democracy, even in the limited form experienced in Hong Kong, was the exception rather than the rule in the Asian Tigers. Singapore, Korea, Taiwan, and more recently Malaysia have been

As opposed to ‘producer-driven’ chains, which are associated with capital and technology intensive industries where transnational companies retain centralised control over the production process (Lui and Chiu, 1999: 168). This was the model followed in Japan and Singapore, with emphasis on indigenous and foreign capital respectively (Wilkinson, 1994).

²³Indicators of this is are a) that Hong Kong has the lowest hourly wages of the Asian NICs despite having the highest income per capita; b) the share of value added in exports has been fairly constant at about 20% since the 1960s (Wilkinson, 1994: 160-4).

characterised as “benign dictatorships”. Although superficially democratic, the governments of these countries have not hesitated to sacrifice “human rights” and, in particular, workers’ rights when they seemed to stand in the way of “development”. Taiwan is a model of this, both in terms of its remarkable GNP growth (Wilkinson, 1994: 117), and because most of its success came while the country was under martial law (until 1987). We have seen that in Hong Kong the government played a key role in providing market infrastructure; the role of the Taiwanese government “makes nonsense of any notion that the country has a laissez-faire economy” (Wilkinson, 1994: 132). In the early years, the state assumed responsibility for the development of strategically important capital intensive heavy industry. The role of creating lighter industry was deliberately left to the small business sector which, for our purposes, may be treated as identical to the Hong Kong model.²⁴ Heavy emphasis upon export orientation has generated massive trade surpluses which, coupled with high domestic savings, have ensured the country’s foreign exchange reserves have always looked extremely healthy²⁵. Great emphasis was also placed by the government on education. Primary and secondary education are free and compulsory (Wilkinson, 1994: 130).

Although different from Hong Kong in that the state played a strategic role rather than just a market supporting one, similar structural defects emerged in the Taiwanese system through the early 1990s. Most important for our purpose is the failure of the fragmented small business system to break into the highest valued added activities. This would involve the assumption of technological leadership; the focus until recently has been on “reverse engineering”²⁶. Unlike Hong Kong, which has a ready supply of Chinese immigrants keeping wages down, labour market tightness and creeping democratisation have led to wage increases greater than productivity growth. Policy (as in Singapore and Malaysia) sought to exclude immigration with the explicitly stated intention of forcing firms up the value chain (of course, chauvinism is also at work here²⁷). This, together with the emergence of the low wage producers (China, Indonesia and others) has put some pressure on the Taiwanese economy.²⁸

²⁴In fact, Lui and Chiu (1999) deal with Hong Kongese and Taiwanese systems of labour flexibility together.

²⁵These amounted to over US\$88 billion in 1992, the largest in the world and a matter of grave concern for America (Wilkinson, 1994: 118).

²⁶The term is quite literal. For example, South Korean engineers derived blueprints of microwave ovens from inspection of American and Japanese models. The normal direction of engineering is from blueprint to product.

²⁷Exclusion of immigrants does not seem to be very effective in forcing firms up the value chain, especially when the main reason for the policy is chauvinism and xenophobia. The more frequent result of such policy is the disruption to production (particularly in labour shortage countries like Malaysia and Singapore), the driving of business underground, and the subsequent exploitation of now “illegal” immigrants. See Lucas and Verry (1999) for Malaysia.

²⁸Manufacturing employment declined from 2 635 000 in 1986 to 2 449 000 in 1995. In the same period the number engaged in labour intensive industries fell from 1 469 000 to 1 049 000, a drop of 28.6%. A similar decline occurred in Hong Kong (Lui and Chiu, 1999: 175).

Characteristically, the Taiwanese state responded. Uncharacteristically, its response did not encroach on personal freedoms. The form of the intervention was the massive *Six Year National Development Plan*. This aimed at spending US\$303 billion²⁹ upon infrastructure ranging from education, to ports and transport and communication networks to cement a position as the ‘nerve centre’ of Asia. Essentially the grand plan of the state aimed at getting Taiwan to make the “leap from mimic to innovator” (Wilkinson, 1994: 131), while playing a complementary role to its Asian counterparts. It is interesting to note that Singapore is aiming to become a specialist business service supplier: the “brains of Asia” (Wilkinson, 1994). For both Singapore and Taiwan, high value added production that is able to challenge America and Japan is the goal.

Further insights may be gleaned from the case of Japan. Japan also exhibits awareness of a need to move towards a more democratic, consumerist society, but is finding that the process involves severe social and economic dislocation. Unlike “Chinese” Hong Kong and Taiwan, it has an extremely hierarchical *producer* driven structure of production. As in America, workers with poor human and social capital are trapped into a low wage labour market in which external flexibility is a weapon in the hands of employers. However, the parallel between the two countries between the position of *privileged* workers, and the way that flexibility is achieved, is not so close. In Japan, although the model of the “lifelong worker” appears benign, in reality it represents closure in a system of “segmented work”. Thus, although human capital is extremely important at the entry level (to the extent that there are now “swotting schools” for four and five year olds wanting to get into the best kindergartens), social capital is far more important than in the USA. In Japan, a large proportion of this social capital is enterprise specific. Once in, workers are socialised by a remarkably concerted managerial effort to identify workers with the firm (Deutschman, 1991). Crucially, socialisation is also achieved through a low social wage. Even more so than in America (see footnote 14) the Japanese model is private provision of basic welfare services (Cristopherson, 1991: 171). This is exacerbated by the high Japanese cost of living (see Ohmae, 1991). The very low “social wage” means that the human capital threshold for positive flexibility is extremely high, and there is extreme “fear of the market”. The Japanese system achieves its flexibility to fluctuations in product markets by requiring its “worker-bees” to work long and variable hours (Sugeno, 1994; Christopherson, 1991; Wilkinson, 1994).³⁰ As in the USA, there is a high degree of decentralised bargaining which makes employment and work hours susceptible to fluctuations in product markets (Deutschmann, 1991: 192).

A final approach offering yet another variation is that of Northern European corporatism. Although we refer extensively to Germany in the next section, our main reference here is to Sweden, which appears to be the “purest” example. In Sweden, the system of social democracy

²⁹An indicator of scale is that Taiwanese GNP was US\$180 billion in 1991 (Wilkinson, 1994: 117).

The average yearly working hours per production worker in 1985 were 2168 in Japan, 1924 in the USA, 1952 in Britain and 1643 in France (Deutschmann, 1991: 189). (More recent evidence is that the USA may have overtaken Japan in average hours worked [Freeman, 1996/97]). Attempts to reduce working hours in Japan, as in the US have failed. The National Defense council for victims of *Karoshi* (death by overwork) estimates that actual hours worked is closer to 2 600 for average Japanese males and 3 000 for ‘salarymen’. In addition, there is job related social, study, and small group activities. The conclusion is that “almost all of the active waking hours of working age males are spent working for their companies” (Wilkinson, 1994: 34).

is in contrast to that of Taiwan which, at least until very recently, might most aptly be termed a “social dictatorship”. Both the Asian model and the Northern European³¹ models are corporatist, in the sense that a central government interacts at a summit level with the “social partners” (labour and business). In the Asian model the state coopted the institutions of the social partners to enforce its will.³² Even where Asian systems are opening up to more democratic governance (Taiwan, Japan) there is the sense that “democracy” and “rights” are seen as necessary instruments towards the goal of national growth. In Sweden, by contrast, the corporatism is democratic, and since the ‘30s at least, a culture of rights and egalitarianism has been the central value of Swedish political economy (Angresano, 1996).

At first glance, Sweden appears to exhibit the inflexibility that seems to be the inevitable cost of entrenching a human rights culture. For example, the Security of Employment Act limits the ability of employers to make use of fixed term contracts³³, and the Co-Determination Act gives unions extensive power in corporate decision making (Weigelt, 1991: 204). However, we find that Sweden is a mould-breaker of another sort:

International comparisons have shown that the flexibility and adaptability of the Swedish labour market are relatively unique. Swedish companies invest in long-term functional flexibility so as to be able to adjust to economic and technical developments. Educational measures have been given high priority both by the labour-market parties and by the government (Weigelt, 1991: 205).

The secret to understanding Sweden is to realise that the model of individual rights is based on “...‘the security of wings’, not just that of the ‘mussel shell’ ...”.³⁴ The prevailing institutional environment operates to ensure that the experience is of non-standard work of a positive nature which serves to enhance external mobility in the labour market³⁵. These factors, together with

31It is important to be very clear that there is a fundamental difference between the Germanic and Nordic countries on the one hand and the Latin and Eastern Mediterranean countries on the other. Even these two groupings are far from homogeneous. Simply consulting the back page of the *Economist* magazine, for example, gives the lie to the notion that the “Continent” suffers high unemployment. More careful analysis (using a standardized measure, and ignoring previously communist Eastern Germany) shows that even Germany (which is usually regarded as having high unemployment) in fact normally has *lower* unemployment than the USA (Nickell, 1998: 301). See also Nickell (1997), Solow (1997) and in particular Schwarzpf’s (1997) response to Haveman (1997).

32Thus in Taiwan, Singapore, and Korea, and in a more subtle way in Japan, labour was coopted through a union system that was fostered by the ruling party. In Taiwan, the state used the union structure to channel welfare provision. In Singapore, the state attempted to enforce productivity measures (such as “quality circles”) through the coopted union structure (Wilkinson, 1994: 137).

33In other words, in law and largely in practise, all employees in Sweden are full-time workers with the associated benefits. Most other countries recognise casual and temporary employment contracts as workforms that do not qualify for the same benefits as full-time work.

34The expression is from one of the architects of Swedish social democracy, Gösta Rehn, quoted by Weigelt (1991: 227).

Here it is useful to note the provisions made for training (the Education Leave Act) and parental leave, as

the existence of extensive welfare provision and other social services by the State, serve to raise the social wage and hence discourage the transition towards the unduly long hours and low cost scenario that the market in isolation would perpetuate (as in Australia and the “low end” of the US economy). The focus on external mobility, and the public provision of “market capital” is reminiscent of the “Chinese” (Taiwan and Hong Kong) East Asian model.

However, as noted, Sweden differs markedly from the NICs and Japan in its prioritisation of egalitarian goals. Nowhere is this more apparent than in its explicit focus on the role of women in society. In Germany and Britain, and even more so in Japan, there is a tendency for women:

to leave the labour force at the birth of a child and to start working part time when they return to employment. The social policy regime is one which favours a male breadwinner and mother/housewife family model (Cousins, 1999: 103).

In America, where the male breadwinner model has declined, no compensatory institutions have arisen to support women in the labour market. Women are torn between two lives (Cristopherson, 1991: 175). The same can be said of the UK, where approximately two-thirds of mothers work in low-hours, low-pay, unprotected part-time work (Cousins, 1999: 105). In Sweden, the system has been designed to allow women to participate in both spheres.³⁶ Women have the legal right to reduce daily work from eight to six hours (Cousins, 1999: 103) and, in stark contrast to other countries, 80% of *part time* workers are unionised. Very generous “parental leave” allowances (note the term is not gendered) and the state provision of services supportive of parenting both reduce bias against women. This approach allows Sweden to avoid the inter-generational perpetuation of the low skill trap and the social problems associated with “latchkey children” parenting.³⁷

III South Africa

Corporatism as a model

well as the legislation of the 40 hour work week in the Working Hours Act (Weigelt, 1991: 216).

³⁶Although Sweden has achieved high female labour force participation (similar to the Anglophone countries but much higher than Japan and Germany), there remain persistent gender patterns in employment. The resistance of gender casting to policy makes a fascinating study (see Melkas and Anker, 1999: 344).

³⁷For the USA, Meier (2000) comments:

Virtually all discussions—right or left—about what’s wrong in our otherwise successful society acknowledge the absence of a sense of responsibility for one’s community and of decency in personal relationships. An important cause of this subtler crisis, I submit, is that the closer our youth come to adulthood the less they belong to communities that include responsible adults, and the more stuck they are in peer-only subcultures. We’ve created two parallel cultures, and it’s no wonder the ones on the grown-up side are feeling angry at the way the ones on the other side live and act: apparently foot-loose and fancy-free but in truth often lost, confused, and knit-together for temporary self-protection. The consequences are critical for all our youngsters, but obviously more severe—often disastrous—for those less identified with the larger culture of success.

South African labour law makes a strong presumption in favour of “corporatism”. The type of corporatism envisaged is the Northern European version, which seems to offer the promise of a reconciliation between “workers’ rights” and overall economic success. Trying to copy (or adapt) this model is problematic in itself. As Nelson (1994: 353) points out, “... virtually no developing country approximates the labour organisation and wage negotiation arrangements of the corporatist model ...”.³⁸ One of the most obvious constraints is the sheer fiscal effort required to operate democratic corporatism. Thus, even in Sweden, where delivery, and consequently public perception, of the system is very good, fiscal exhaustion, particularly of private tax-payers in the top brackets and of small businesses, is a major threat to the sustainability of the system. Northern European social democracy is thus vulnerable both to external shocks (as Sweden’s crisis and “casino economy” of the early 1990s indicates) and to the ebb and flow of neoliberal ideology.

In developing countries the difficulties facing democratic corporatism are likely to be insurmountable. Firstly, subsequent to the debt crises, few developing countries in Latin America or Africa have the latitude to make the deep fiscal commitments (see the country studies in the second volume of Horton *et al.*, 1994). Consequently third world corporatism is strikingly superficial. For example, Bremen (1996: 11) estimates that on average only 45% of non-agricultural workers in middle income countries are in the formal sector, and thus capable of being “covered” by corporatist agreements.³⁹ Secondly, and flowing partly from the superficiality of the systems, there is no developing country equivalent of European quality of delivery and hence civic consciousness. The working, business and middle classes are thus much more likely to regard as an intolerable imposition the high contributions required to support corporatist goals.⁴⁰

Nevertheless, Nelson (1994: 353) still regards corporatism as a good heuristic model that “elucidates some of the mechanisms and relations that have helped certain nations channel the self-interest of a sizable and well-organised interest group in ways compatible with broader

³⁸A point that is often missed is that Northern European corporatism operated with levels of union density (about 60% according to Nelson, 1994: 354) and cohesion simply not approached in any developing country. In her survey Nelson cannot find a single example of third world unions covering much more than a third of the workforce. Similarly, unions tend either to be coopted or repressed by government, or fragmented.

³⁹For low income countries the average is only 15% (Bremen, 1996: 11). This translates to well below 10% of the labour force. For detail and corroborating evidence see ILO (1995: 90-92) for Francophone Africa; Bremen (1996) for India; Shaban *et al.* for the Magreb; Amadeo and Camargo (1997) for Brazil.

⁴⁰We even find resistance to state-run compulsory saving instruments like pension, unemployment, and medical aid contributions. According to Pessino, for Argentina: “... in general, workers regard most contributions as a tax, because of small payouts ...”. This is both the case for pension funds (1997: 189) and unemployment insurance (1997: 192). For Brazil, the delivery, and hence the resistance and abuse is even worse. Thus for example, Amadeo and Camargo (1997: 207, 219-221) argue that most Brazilian informal sector establishment pay more than double the equivalent of the minimum wage. This implies that they could easily comply with regulations by paying a lower direct wage plus the mandated benefits. However, workers (according to these authors) exhibit a strong preference for work in informal establishments.

national interests.” Closer to home, the ILO argue that:

It is likely that some of the forces tending to weaken unions elsewhere will operate in South Africa, and thus trade union leaders will have to take the opportunity offered by the initial period of reforms to create conditions favouring collective bargaining and collective regulation of labour market developments (Standing *et al.* 1996: 155).

The ILO’s analysis is that unions (and the traditional system as a whole) face a challenge, *but* that there is a window of opportunity to start with a clean slate and develop a “world class” system of labour governance. In this section we make two points. Firstly, like other developing countries faced with similar windows⁴¹, South Africa has failed to take the bold step required to institute true corporatism. European social pacts were struck at a very specific juncture in history and required deep concessions by the social partners.⁴² Secondly, corporatism of the type envisaged for South Africa has never been appropriate for developing countries and is certainly not so now, because it relies too heavily on *legislation* to protect the rights of workers. This latter point *per se* is not novel. The novelty of our argument is that we are equally against neo-liberal “free market” arguments (Rautenbach, 1999)⁴³ and in particular the watered-down “two tiered labour market” approach (eg SAF, 1996; Black and Rankin, 1998). We argue that a theme

41The wave of post-crisis democratisation that affected Latin America from 1979-1994, and Africa after the mid-1980s, seemed to provide the opportunity for newly legitimate regimes to break from the past. In practise the new labour codes often retained the character of the old systems. This is particularly interesting when the colonial powers were continental rather than British. For Latin America see Bronstein (1995). In most of Francophone Africa the labour codes in force until the 1980s were those inherited Belgian and French colonial labour legislation (eg ILO, 1995: 84). These codes aimed to entrench a system under which the protection of workers and of industrial peace was the responsibility of the State. The main peculiarity was the state placement monopoly (ILO, 1995: 85-7). This seems to have borne more than a passing resemblance to apartheid South Africa!

42For the arch-typical West German case, see Rogers and Streeck (1995: 14-17). After WWII business and government were threatened by communism, and were constrained from resorting to authoritarian responses by recent history and the presence of occupying armies. Traditional unions were threatened by radical elements within their ranks and by the council movement. All parties were willing to make very significant and binding concessions, because it was felt that national survival was at stake. The stability of the resulting social pact is evidenced by the fact that German labour codes remain virtually as they were in 1948. Policy stability is a feature of the German polity. Foreign policy, for example, is guided by certain “axioms” (such as the pro-EU stance) that transcend governments of the day. This model is very different from the “breakfast table” foreign policy of the USA (BBC World Service, Agenda, 30 April 2000).

43Rautenbach displays distinct libertarian leanings. We are told that: “The key to understanding the difference [between the lauded USA on the one hand and naughty Japan and Germany on the other] lies in grasping the idea that if the market needs trained people it will find a way to provide it” (1999: 110). However, the argument is mere polemic, and lacks logical or empirical foundation. A more coherent statement of the libertarian view (in the USA context) against labour market intervention is found in Epstein (1995). Provided that “the prohibition against the misuse of public and private force is scrupulously enforced” (1995: 1105-6), “a dominant faction ... could maintain neither its cohesion nor its market share against the prospect of new entry” (1995: 1091); “... social or cultural norms, however embedded, would have failed the task of maintaining segregation, because they could not forestall the threat of entry by outsiders and exit by locals” (1995: 1100). The reader is struck that the core proposition—that in the absence of unwarranted coercion, entry and exit provide robust market discipline—while intuitively appealing, is by neither author at any point subjected to proof.

running through all South African policy is “failure to break the mould” as the East Asian and Nordic countries broke the mould. Neither broader development policy nor labour market policy are designed specifically for South Africa. As a consequence they are not mutually consistent. The underlying problem is that South Africa has never really had a vision of development and is bewildered as to exactly what to do.⁴⁴

A conceptual framework: how (perhaps) South African labour regulation is supposed to work

It is useful to think of labour market governance in terms of three sets of intermediate outcomes. That policy instruments can never target one outcome cleanly leads to sub-optimality, as we shall see. However, both theory and evidence suggest that we can go a long way in our untangling work. The three outcomes are bargaining, cooperation, and minimum standards legislation.

- i. *Bargaining* (over zero sum games) is concerned with issues of interests, that is, the distribution of benefits between the social partners. The system is required to produce in a peaceful and inexpensive way outcomes that do not have major negative externalities.
- ii. *Cooperation* is concerned with issues of potential mutual gain. The system is required to resolve collective action problems.
- iii. *Extension and enforcement* involves a statement of values in the form of minimum standards and the extension of these standards to all. Issues of interest and cooperation may be extended to minority dissenters or to unrepresented parties. The standards are not necessarily promulgated by government. The regulatory body may have national, supra-national, or sub-national scope. It is essential for fairness and compliance that extension is to all parties.

In South Africa, a *statutory* body for bargaining exists at the central level (NEDLAC).⁴⁵

⁴⁴An indicator of this lack of a South African vision is the remarkable conversion of the new political elite (under pressure from the forces of “sound finance”) from radical redistributionist to orthodox “Washington Consensus” policies in the transition period (1990 to 1994). Although as Marais (1998: 150) argues “... [t]he ideological barrage was incessant”, the completeness of the capitulation is suggestive. The lack of vision is reflected in the disjuncture of actual policy: macroeconomic policies have embracing the mould of neo-liberalism, while labour law has been quasi-corporatist. There is a sense that these two policies were constructed in glorious isolation. Strikingly, a similar disjuncture has been identified in Latin America: “It is no exaggeration to say that the labour market has been forgotten ..” (Edwards and Lustig, 1997: 1). This does not imply that labour law and policy has been neglected; simply that the liberalism of macroeconomic policy has been accompanied by a much shallower liberalism in the labour sphere and a continuation of what Bronstein has called “the philosophy of guarantees”. Bronstein (1995: 169) goes so far as to describes the disjuncture as “paradoxical”.

⁴⁵The National Economic Development and Labour Council, established by the NEDLAC Act of 1994. NEDLAC is mandatory in that its structures are dictated by the Act, and would in theory exist even without the cooperation of the social partners. All other forums are voluntary, in the sense that they do not exist unless by agreement between the participating parties. Voluntariness is limited both within and outside the conception of freedom of contract. Firstly, and consistent with the conception of freedom of contract, parties are in some way contractually locked into agreements and *de jure* have recourse to enforcement mechanisms. Secondly, agreements may in certain circumstances be extended to non-parties. This is clearly not consistent with freedom of contract.

NEDLAC consists of various chambers in which the four components of industrial society, namely, government, business, labour, and community, are represented. All legislation pertaining to labour must be approved by NEDLAC, which therefore forms the parameters within which bargaining at the *voluntary* intermediate and enterprise levels must operate.

The Labour Relations Act (LRA) of 1995⁴⁶ stipulates the intermediate and enterprise level structures. At the intermediate level, the Industrial Councils of the old Act have been replaced by Bargaining Councils and (misleadingly named) Statutory Councils.⁴⁷ These structures are *voluntary* in the sense that they only exist when agreed to by a majority of employers and employees. However, once such structures have been established, their agreements may be made binding to non-parties. In 1994, 69 out of 75 Industrial Council agreements were thus extended. Unfortunately more recent data is not available. Enterprise level bargaining is not proscribed, but neither is it encouraged. (Section 23 of the LRA makes provision for binding contracts between employers and unions at enterprise level.)

Workplace Forums are the South African analog of works councils. Workplace Forums are designed to deal with ‘resolutions of conflicts over production, restructuring, the introduction of new technologies and work methods and changes in the organisation of work’⁴⁸, but *not* negotiations on wages or conditions of employment, which are left to *collective* bargaining. It is very clear that Workplace Forums are distinct in conception from enterprise unions. We can see that Workplace Forums are, at this level of conception, designed to deal with issues of *cooperation*, whereas trade unions are primarily concerned with issues of interest. There is evidence (Rogers and Streeck, 1995, Locke *et al.* 1995) that appropriately structured works councils do lead to increasing workplace productivity.

The principle of extension is a cornerstone of the system. Firstly, the Basic Conditions of Employment Act extends basic rights to all South African workers. Secondly, the social clause, adopted in 1996, attempts even more ambitious ‘extension’. It states that ‘...[r]espect for labour standards must be linked to market access in all of South Africa’s bilateral and multilateral trade agreements’⁴⁹ (Monnagotla, 1998: 7). It is surprising therefore that there is a noisy debate about *one* aspect of this: the extension of Bargaining Council and Statutory Council agreements (Moll, 1995; SAF, 1996). As the ILO (Standing *et al.*, 1996) suggests, such criticism is missing the point that extension pervades the whole system. If some firms can achieve competitive

4666 of 1995.

47See Grogan (1997: 200-202) for an explanation of these structures.

48They are legislated the power to deal with shift systems, overtime, strategic business plans, investment decisions, production planning, productivity and quality, product development, retrenchments, guidelines for hiring, firing, promotion, transfer, discipline, training, job grading affirmative action, social benefits, and health and safety (Standing *et al.* 1996: 177).

49It is interesting to contrast the sentiments expressed in the social clause with reality. In April 2000 South Africa and China signed the ‘Pretoria accord’, which effectively contradicted the social clause.

advantage by operating outside the system, the system will surely collapse. If the system is to be retained at all, “closure” is essential.

Flaws relative to this conception: the problem of extension

At the level of NEDLAC, there are important flaws of inclusivity. Although NEDLAC is “quadri-partite” with “community” defined as the fourth social partner, this group (which is presumably to give voice to the unemployed, and is represented primarily by SANCO) only has “co-determination rights” in the so-called Social Chamber (Monnakgotla, 1998: 5). In other Chambers it only has “consultation rights” (that is, the right to be consulted). In other words, labour legislation passing through NEDLAC does not require the approval of this constituency.

COSATU, the dominant union grouping, is also not as inclusive or cohesive as its public profile suggests. Firstly, it is one of three union groupings at NEDLAC. Secondly, its constituent unions hold strongly divergent views, and themselves show signs of incohesion.⁵⁰ Thirdly, only about 40% of workers in South Africa are unionised (Standing *et al.* 1996), of which 1.7 million belong to COSATU (COSATU, 1999). Although there have been attempts to organise contingent workers, these attempts are not by COSATU affiliates, and contingent workers are not represented at NEDLAC.⁵¹

In a similar vein, we can see that business representation is likely to be unrepresentative and biased. In particular, Business South Africa (the dominant business grouping) is unlikely to be regarded as representing anything other than the interests of “white big business”. As of 1996, black business (of all sizes) and small white business was not participating at NEDLAC.

A final criticism of NEDLAC is that it accentuates the dislocation between labour and other policy spheres. This is because NEDLAC only has a “consultative role” in the framing of major policy (Monnakgotla, 1998: 4). Thus, GEAR, the government’s overall policy framework was declared “non-negotiable”. It is notable that it has been difficult to get labour to attend the Macroeconomic Chamber at NEDLAC. Similarly, business and labour have recently been complaining that they have not been adequately consulted over the implementation of the SADC Trade Protocol (Sunday Times, 3 September 2000).

The picture at the intermediate level may be even more misleading. In practise, this middle bargaining layer is more often missing than present in the South African labour market. Thus, under the old LRA, Industrial Councils (ICs) were supposed to bind employers and employees in

⁵⁰Standing *et al.* (1996: 165) describe the following signs of incohesion: weak grass roots, a tendency for competent shop stewards to be promoted by firms, the brain drain into government, and weak linkages between shop stewards and union officials.

⁵¹Bhorat (1998: 2) finds that for a sample of formal sector Western Cape clothing manufacturers, the unwillingness of unions to deal with contingency is more important than wage rigidity. “Employers view autonomy in hiring practices as more important than being able to independently determine the price being paid for these workers ... The form of flexibility that the formal manufacturers desire ... is precisely what the informal clothing producers are practising”. Unions distrust contingency and see it as a managerial assault on workers rights.

a recognisable industry grouping. In practice, the so-called ICs generally did not correspond with ISIC categories, more often being defined by regional or other criteria. Moreover, the coverage of ICs seemed to be small and declining.⁵² The 1995 LRA replaced ICs with Bargaining Councils and Statutory Councils, presumably because “Industrial Council” was becoming a misnomer. It is not clear, however, whether these councils cover a “definable grouping”, and thus how the principle of extension and closure is to work. Consequently it appears that the legislation is susceptible to employers avoiding obligations set by these new councils by “defining themselves” outside the scope of the council. A similar problem clearly exists for “informal” agreements between union and employer groups, such as occurs in the mining industry. Here “non-union” workers are not covered by agreements, and employers can avoid the stipulations of the agreement by hiring “contract workers”. This has been documented by Kenny and Webster (1998). They argue that “core functions”, as well as contingent functions, are being casualised in this fashion.

Perhaps the greatest flaw in the current legislation is the failure to address issues of workplace productivity. By workplace productivity we mean the benefits of cooperation, which is a necessary adjunct to skills development and technological improvement. The current system of arbitration and union sponsored voice is one which relies heavily on the external settlement of internal disputes. One of the externalities associated with collective bargaining in an essentially adversarial setting⁵³ is loss of capacity to *cooperate*. The learning organisation is only possible in a cooperative setting (see Wood, 2000). This is a problem of the system *as a whole*.⁵⁴

There are three sets of problems associated with the *specific* legislation on Workplace Forums, all seemingly stemming from the union distrust of Workplace Forums during the framing of the

52According to Standing *et al.* (1996: 149-153), by 1990, less than 600 000 workers (less than 10% of workers) were covered by IC agreements. However, some dispute this, arguing that about 64% of workers in manufacturing were covered in 1985 and, further, that *informal* sectoral or industry wide bargaining occurs in such important industries as mining and construction (Standing *et al.* 1996: 193). It is clear (as we shall see) that such informal arrangements are likely to have very different outcomes to their formalised counterparts.

53“If the labour law was meant to improve the lives of poor people, it was clearly not working. All around me the misery and poverty of black people was increasing. My own experience was the labour law system was destroying the goodwill, the relationships, the dignity, the very economic fabric with which we wanted to build our nation ... all I saw around me was increasing hostility between workers and managers” (Rautenbach, 1999: 6).

54A valuable comparison is with Chile, in which the model since 1990 has been a strict policy of non-interference in the outcomes of enterprise bargaining. This is a strong departure with the Latin America norm and Chilean tradition. The problem with arbitration is that both parties have an incentive to exaggerate their positions (especially the form of arbitration—seemingly “splitting the difference”—that prevailed in Chile prior to reform). With enterprise bargaining, the idea is that the costs of disputes are internalised so that neither party has any incentive to act opportunistically (Cortázar, 1997). Of course, such contractual autonomy presupposes a balance of industrial power. Cortázar only tangentially addresses the most important mechanism to achieve this balance. Social security, unemployment insurance, training schemes and special employment programs, the viability of the “informal sector”—these all affect the social wage, which appears to be quite high in Chile.

legislation.⁵⁵ Firstly, Workplace Forums in South Africa can only be initiated by a majority union (or coalition of unions). This seems to imply that a non-union plant cannot have a Workplace Forum—the principle of one person one vote does not extend to industrial democracy in South Africa. For the rest, the initiative in the workplace has been handed back to employers. Secondly, Workplace Forums are “voluntary”: just as a union majority can form a forum, it can dissolve one. Nowhere in the legislation is it recorded that employers have a similar right.

The third problem is that unions have the power to decide which issues will be dealt with by Workplace Forums. Unfortunately, when an issue is defined as falling within the scope of the forum, it becomes a co-determination issue, and is therefore no longer an “interest issue”. By forming Workplace Forums, unions would effectively be curtailing their right to strike. Not surprisingly, these structures have not exactly proliferated in the South African industrial landscape.

It is instructive to consider the examples of Sweden and Germany.⁵⁶ Although there are fundamental differences, both models embrace the concept of *extension*; that is, for the system to work, it must be compulsory for all.⁵⁷ In Sweden, where the separation of unionism and councilism does not exist⁵⁸ “co-determination” is legislated for by a government that is essentially interventionist in the labour market (Burlin, 1995; Cousins, 1999: 111). Germany goes a step further by providing works councils with legislated autonomy (although in practise unions and works councils can never be perfectly separated). The German solution is the closest to the theoretical ideal⁵⁹, but the Swedish solution at least encapsulates the principle of closure. Without closure, co-determination is not viable. The post-WWII evidence from Western Europe

⁵⁵ These are documented in Government Gazette no. 16259/1995. Standing *et al.* (1996: 163-5) document a wide range of attitudes to Workplace Forums within the constituent unions of Cosatu, ranging from a “forceful support for a system of co-determination” through to refusal to accept the principle of industrial peace (ie “we are asked to accept that the class struggle no longer exists”) to an almost councilist promotion of workplace issues above broader issues.

⁵⁶ In the UK and USA works councils do not exist in any meaningful sense (see Freeman, 1996/97; Locke *et al.*, 1995). Works councils never flourished in British because unionists never embraced the principle of industrial peace as did their Northern European counterparts.

⁵⁷ In Germany, works councils are compulsory in, and elected by the entire workforce of, establishments with five or more employees (Muller-Jentsch, 1995: 55). In France, and Sweden (as in South Africa) workplace co-determination structures are determined by firm size.

⁵⁸ This was largely because of trade union fears similar to those of South African unions.

⁵⁹ A standard result of economic theory is that optimality can only be achieved if we have separate policy tools for each variable. This is applied by Freeman and Lazear (1995) to the case of works councils. A firm can increase productivity by cooperating with workers. However, this cooperation gives employees power. If they can use this power to influence wages, it is clear that employers will face a maximisation problem the result of which is a less than optimal devolution of power. Moreover, the situation is even worse if one or other party can pull out of the council agreement. Such an arrangement will lead to opportunistic behaviour, a loss of trust, and ultimately abandonment of the council.

shows that, because scope for opportunism always seem to exist, voluntary structures will eventually degenerate and workplace issues will be determined by *Herr im Hause* autonomy⁶⁰ (Rogers and Streeck, 1995).

We can see that, although similar in conception, South African labour legislation differs in significant ways from Northern European models. It would be tempting to say that the problems could be resolved by simply “plugging the gaps”. However, this would be to miss the point. In South Africa there is a “nexus of bewilderment”—there exists no overarching understanding of what the law as policy should be achieving. Firstly, lawyers are not accustomed to looking at the world as it should be. They are accustomed to looking at facts and treating those (see, for example, Langille, 1998: 1007). This, together with a respect for precedent, and a fear of the unknown, has contributed to the irrational structure of the system. The lawyers’ tendency to see symptoms has made things worse. South Africa’s industrial relations system tries to treat specific problems without attempting to understand their underlying causes. Examples of this are the Employment Equity Act⁶¹ and the Skills Development Act⁶², both essentially stop-gaps to try and treat the *symptoms* of unfairness and poor skills development respectively. However, these simply increase the irrationality and complexity of the system without addressing cause: that the system is inherently flawed in adopting extension based on legislation as its cornerstone.

IV. Riding the tiger: positive and negative flexibility and the redefinition of labour market rights

The demise of the market in theory: closure and the suppression of negative flexibility

The paper so far has been a series of vignettes. We have seen how different countries have variously led, coped with, or failed to cope with globalisation. This section attempts to impose some structure on these observations.

Labour markets seem particularly prone to failure, essentially for two reasons. Firstly, human beings are inherently idiosyncratic, and it is costly for employers to distinguish potentially good workers from “lemons”. This transaction cost leads to a tendency for “markets for lemons” to develop (Akerlof, 1970). In a market for lemons anyone “in the market” is, by virtue or implication, a lemon. The second reason (which flows from the first) is that workers are relatively more risk averse than employers in this environment.⁶³

For our purposes, this informational explanation is important because it illustrates two important

⁶⁰Before WWII, the German model was “the boss is the boss”. Bosses issued orders and workers obeyed. Co-determination only became an important institution in Germany after the war (Rogers and Streeck, 1995).

⁶¹55 of 1998.

⁶²97 of 1998.

⁶³This is because it is much more costly to the individual employee than the employer if the employment relationship is broken.

features of traditional industrial relations. Firstly, the *employment relationship* is emphasised over the *external labour market* because of the failures of the latter. Secondly, the balance of power in the labour market is *inherently skewed in favour of the employer* because of the *worker's reduced exit option and risk aversion*.

This leads to what Ichino (1995) describes as “fear of the market”, and to a distinction between “insiders” and “outsiders” (Lindbeck and Snower, 1988). It seems an inevitable conclusion (one reached, as we have seen, by South African policy-makers) that in an environment in which markets have failed and workers have therefore lost “exit”, the only way to restore equity to the employment relationship is for the state to regulate for “voice”, that is to ensure the protection of workers *within relationships* so as to counteract the inherent power imbalance. Thus, because of the focus on the employment relationship, the ideal worker envisioned by traditional labour law and traditional unionism had a full-time permanent job with rights and benefits protected by law.

We can see that this is neither a “naturally equitable” nor an inherently stable arrangement. On the one hand, employers have power because of the reduced exit option of workers. On the other, workers’ countervailing power is based on an artificial⁶⁴ set of rights, maintained by legislation and the monopoly power unions. This instability is why the corporatism South Africa is trying to achieve requires group democracy based on tripartism (or quadri-partism) with “extension” (see page 16) to achieve “closure”. Without government (the “third social partner”), small shifts in the relative power of labour and capital are likely to destroy the balance.⁶⁵ We can also see that such relations are inherently conflictual.⁶⁶ “Voice”, and with it cooperation, is thus based on an artificial maintenance of industrial peace based in turn on an artificial balance of

64Artificial as in “manufactured” rather than “empty”. The “traditional” response has been to set up a power bloc against employers, which is inherently conflictual (adversarial).

65Thus, in America, the postwar structure of accumulation was much more vulnerable than in Germany (where the state played a larger role in mediating industrial relations). As we have seen, it was a surge of power for *employees* that ended segmented work in the USA. This broke the bipartite contract and paved the way for the successful counterattack of capital.

66The reader might be puzzled by the implication that Northern European industrial relations were inherently *conflictual*. Surely incidence of strikes indicates otherwise? This conundrum is best illustrated by analogy. Throughout the Cold War, not a single nuclear bomb was exploded in anger. This does not imply Mutually Assured Destruction (MAD) was not *inherently* conflictual. Similarly, no one would argue that WWI was an instance of mutual cooperation but ...

All patrols – English and German – are much averse to the death and glory principle: so, on running up against one another ... both pretend they are Levites and the other is a good Samaritan – and pass by on the other side, no word spoken. For either side to bomb the other would be a useless violation of the unwritten laws that govern the relations of combatants permanently living within a hundred yards of each other, who have found out that to provide discomfort for the other is but a round-about way of providing it for themselves (Charles Sorley, quoted by Eksteins, 1990: 154).

power.

This model undoubtedly worked. Indeed, countries with large, highly centralised union movements tended to display good macroeconomic performance (low inflation and low unemployment) in the 1960s and 70s (Nelson, 1994: 349; Freeman, 1988). Part of the deal was that the state could also “help” capital by protecting it against international competition and maintaining aggregate demand.

Doubt

This closure, however, had problems of its own, despite the kind of retrospective utopianism it often attracts:

For three or four decades, beginning in the 1930s and 1940s, it was pretty much taken for granted that democratic states would actively concern themselves with the well-being of their citizens. This concern typically was expressed in three or four related strategies. The state would promote equity in society by redistributing wealth through the tax system; it would provide social benefits to the young and the old, to the poorly housed, the ill and the unemployed; it would keep the economy on an even keel by promoting growth, controlling inflation, creating jobs, and providing infrastructure; and it would regulate predatory business practice. ... It is hard to overstate how completely the right and the neoconservatives managed to shift public and expert opinion during the 1980s (Arthurs, 1997: 572-3).

As we have discussed, the system was (in theory) closed. That is why “extension” of rights was possible: the state embraced, and had power over, capital and labour in the cocoon of the nation state. But Arthurs’ utopianism is based on selective hindsight. It forgets red-baiting, sexism, homophobia, racism. The model individual, ‘the worker’, was hardly attractive either. In fact, what retrospective utopianism forgets is that stability had a price: variation from the stereotype constituted dissent and dissent was not compatible with a system in which order is derived from the management of an unstable equilibrium. The system was closed, and everyone was either a “corrupted” insider or marginalised outsider. If rationalism is the process of engaging with change as progress, then closure is a retreat from rationalism.

Also, a “closed” system is likely to be very vulnerable in an open world such as that which “globalisation” seems to be prescribing. The protector nation state functioned well with a captive audience: then labour’s lack of exit option was at least partially matched by capital’s. As we have seen, the traditional response to negative flexibility has been voice regulation in an environment supervised, in varying degrees, by a regulating “protector state”⁶⁷. The appropriate response would therefore seem to be redoubled protectionism. There is indeed evidence that states and other groupings that feel excluded by the process are tired of waiting for the market and are tempted to go back to their old protectionist ways.

However, globalisation, and the associated accelerated change, seems unavoidable. Reaction is a

⁶⁷ Bronstein (1995) is the author of this apt term.

retreat from rationalism, and is not viable—there does not seem to be any multilateral alternative to national sovereignty as far as the question of extension of rights is concerned. United Nations and particularly ILO declarations are just that: neither organisation has any enforcement mechanism (Langille, 1997). Only in matters of international trade does true multilateralism exist, and even here the spirit, if not always the practice, of the multilateralism is towards openness rather than regulation and closure. But the alternative to resistance seems to be to enter the race to the bottom. This can lead to the development of what Langille (1998: 1011) calls a “... market for labour law in which capital shops”. Seemingly developing countries are doomed to embrace such *negative flexibility*. The artificial balance, which has always been beyond developing countries, seems even less possible. As Bremen (1996: 13). puts it:

Capital is footloose, and that is how it operates most successfully; on the other hand, labour has to obey capital’s whimsical commands and to submit unconditionally to its erratic flows around the global economy.

Resurgence of the viability of the external labour market: fostering positive flexibility

Given this apparent impasse, the economist’s response should be to return to core economic theory. General equilibrium theory suggests that a perfectly competitive market structure is optimal, or “first best”. The market is good. It is quite surprising, then, that in industrial relations discourse the market *per se* is depicted as a cold place, the abode of the “outsider”. Indeed, for a worker, being “in the market” is synonymous with being unemployed. The market is bad. However, there is no contradiction. We can see this by regarding the “traditional labour market” (discussed on page 21) as an manifestation of what in economic jargon is called the “theory of second best”. Economic theory shows how an optimal system or construct supported by several supporting pillars may, if just one pillar is removed, become less appropriate than an alternative model with many pillars missing. In the “market for lemons” story, removing one of the pillars, namely reliable information, means that the “second best” is a system that bears very little resemblance to the first best.

Indeed, as we can see, the second best institutions in this case are the reverse of the first best. Because the fundamental power imbalance is caused by workers’ reduced “exit option” (remember that workers lose heavily if they exit), and because we cannot restore the exit option, we have to try another solution. Traditional industrial relations did this by making the relationship the focus of policy. If relationships could be stabilised, the balance of power within such relationships could be addressed by various means. Part of this involved the state having jurisdiction over capital. To be subject to regulation, *capital’s* exit option had to be restricted. Thus international capital mobility was regulated (eg Ohmae, 1991; Obsfeld, 1993). The system therefore satisfied the condition of closure.

However, the pillars sustaining the existing second best seem to be crumbling. Essentially, the ability of national states to regulate the behaviour of capital and labour in a stable environment is

diminishing. Capital is “footloose and fancy free”⁶⁸; governments are increasingly restricted in their use of macroeconomic policy to provide the stability the system requires. Change is simply too rapid for the closed system.

At the beginning of the essay, we mentioned that we agree with Hirst and Thompson (1995) in describing “over-diminished expectations” as a pathology. In industrial relations, this “pathology” comes from regarding globalisation as “black rain” simply giving more power to employers to implement negative flexibility. Our analysis has shown that this is a one-sided analysis. Crucially, globalisation is also breaking down barriers.

This gives us the vital hint to solving the puzzle. The principle insight of second best theory is *not* the vulnerability of core propositions to violations of the assumptions; rather it is that the best policy option is always to fix the underlying problem rather than surface manifestations. Only if this is impossible is “second best” invoked. For example, there is a strong sense that in America (and increasingly in other Anglophone countries), labour market policy, and social policy more generally, has since the mid-70s been “around the edges”, and therefore has had little chance of success in solving the core problems of low end negative flexibility.⁶⁹ In an important sense this policy timidity is not so important for a technical leader like the United States, because positive flexibility is already entrenched at the top end. In poorer countries what is probably at stake is economic growth as well as equity, and it is more important that the policy effort is not superficial.⁷⁰

Another important insight (Baumol and Willig, 1981) is that the market structures of first best need not resemble perfect competition closely at all. Thus even if a product market is occupied by only one firm, the structure is still first best, provided that the *market* is *contestable* in the sense that entry is reasonably free. *Possibility* of entry disciplines the incumbent and ensures that it has no economic power.

Can we see a first best solution in the labour market context? Firstly, the idea of a contestable

⁶⁸After Microsoft’s legal setback, reports emerged that it had considered moving to Canada. Whether this was a reminder to the Department of Justice of Microsoft’s exit option, or mere rumour, is not yet clear (June 2 2000 Sapa-DPA).

⁶⁹ Two indicators demonstrate this. Firstly, the scale of government intervention in the labour market is tiny compared to the Northern European social democracies. According to Gottschalk (1998: 78) the USA spent about 0.3% of GDP on active labour market policies in 1990 compared to Sweden which spent 1.7% (Japan spent about 0.1%.) Secondly, since the mid-1970s American active labour market policy never seems to get beyond the “experiment” stage (see the papers in Freeman and Gottschalk, 1998). Given their small scale (and hence low impact on labour market practises), the experiments tend to fail cost-benefit assessments.

⁷⁰If we remember that Sweden in the 1930s (Angresano, 1996) and the NICs in the 1950s were poor countries, this becomes clearer.

relationship may be useful.⁷¹ The dominant institution may still be the relatively durable relationship, but provided there is reasonably free *exit* (note the crucial difference), no party will have economic power over the other.

How is this *positive flexibility* to be achieved? It is instructive to reprise our case studies briefly. It now seems clear that in Sweden, Hong Kong and Taiwan, the fear of the market was less, quite simply because *governments* acted to reduce transactions costs. The massive infrastructural investments undertaken in Taiwan and Singapore constitute an investment in the market itself. Sweden has also made a massive effort in this regard. Apart from the high level of social infrastructure, in Sweden 13% of workers were in “labour market schemes” in 1996 (Cousins, 1999: 114). This suggests the other important component of what we might term “market capital”, namely education and training. All of these countries invest heavily in education and training. These confer “inherent” positive flexibility, because markets for highly skilled people work well, and are adaptable. However, as we saw in the USA and Japan, when the other component of “market capital” (infrastructural investment) is neglected the “threshold” for positive flexibility becomes very high. In other words, positive flexibility is only possible in these societies for people with high levels of personal “capital” (human capital and social capital).

The breaking down of barriers as a result of globalisation plays into the analysis. One of the most important effects of information technology is to lower transaction costs. Seemingly, the effort required by latecomers to achieve positive flexibility is less. Moreover, in his seminal paper, Ichino (1998: 309) provides a new role for labour advocacy, whether by governments or trade unions. Ichino does this by suggesting that labour rights should be defined in terms of the external market rather than “the job”. The “new rights” of labour will be information, training and mobility. In other words, the rights of workers will flow from enhanced exit option rather than “voice” regulation.

How does our analysis hold up against existing bodies of theory? The closest to our analysis are the so called “Wood” model, and the model of intra-industry trade. The Wood model (see Wood and Riddo-Cano, 1999) is most valuable for the light it sheds on the importance of human capital, and the dynamic relationship between human capital (skill) and technology. However, although it has obvious links with endogenous growth theory, it is essentially an extension of orthodox trade theory, and as such does not have explicit analysis of how markets work. The Wood model adds skill to the traditional two-input model. However, it does not analyse what we have called “market capital”. Unsurprisingly, the conclusion is that the development effort required to break

⁷¹The idea of “contestable relationships” with freedom of *exit* seems to turn the Baumol-Willig notion of contestability on its head. However, the fundamental lesson of economic theory is that economic power (and its abuses) exists when exit option is reduced. Thus in product market controlled by a monopoly, power subsists because incumbent *buyers* have no exit option. They cannot break their relationship with monopolist because there is no alternative seller with whom to deal. This power is reduced when exit option is enhanced, by the entry or potential entry of other sellers.

the unskilled mould is massive, and is primarily centred around education.⁷²

Intra-industry trade theory is much closer in spirit to this essay (see Krugman, 1982; 1994). It sees that an increasing share of trade will be in high-value goods produced in imperfectly competitive markets. The imperfect competition is a result of highly differentiated demand patterns that we have associated with consumerism.⁷³ Although the model does not contain an explicit analysis of how developing countries can break into high value added production, important political economy implications can be discerned. If we combine decreasing “comparative advantage” trade⁷⁴ with the insight that intra-industry trade has very limited effects on income distribution, we can see that political opposition to openness will decline, especially if increasing numbers of countries embrace positive flexibility.

V. Conclusion

The laws governing South Africa's industrial relations system have been criticised as being over-interventionist and aspiring to an unattainable set of values. This paper provides substance to this criticism, by showing that the legislation encourages confrontation rather than cooperation, and is subject to widespread evasion and avoidance. While there is scope for improving South African labour law along its current trajectory, this would not, in our analysis, be sufficient to forestall what we have called *negative flexibility* for all but a diminishing core of the unskilled workforce. The burden of protecting workers' rights is simply too great for labour legislation to bear.

The usually corollary to the conclusion that regulation is not working is the advocacy of a full scale retreat towards *laissez-faire*. However, paradoxical as it may seem, deregulation, like over-regulation, is also likely to lead to negative flexibility in the form of the “race to the bottom” (a race nobody can win). Either way, it seems, the outlook for workers in the developing world is bleak. Positive flexibility, it appears, is for the elite, with developing countries and vulnerable people everywhere being made worse off by globalisation.

In this paper we have argued that this pessimism is based on a “nexus of bewilderment”. The root of this bewilderment comes from seeing the “threshold” between positive and negative flexibility as an exogenous factor. Several convergent strand of economic theory and a closer reading of the comparative evidence suggest that state intervention needs to refocus away from “regulation” towards the development of “human capital” and “market capital”. Without these broader policies, labour market policy narrowly defined is doomed to failure. The importance of human capital policies outside the scope of labour market policy has long been recognised. As

⁷²For a South African analysis, see Ismail (1995: 36) and responses.

⁷³Obviously, competition is also restricted by what we have called “power diversity”. However, in an important sense, product differentiation is increasingly driven by consumerist rather than productionist values. See Section 2.

⁷⁴For example, Krugman (1982) argues that the negative implications on American income distribution brought about by free trade with Mexico are small enough to be easily compensated for using other policy tools.

Nickell (1998: 313) points out for the UK and US contexts, "... the training system cannot operate successfully without a schooling system that provides effective preparation".

It is on the development of market capital, however, that the major burden must fall. The experience (with significantly different systems) of the NICs, Germany and Sweden, and the contrasting experience of Japan, suggests that, by investing in market capital (in particular infrastructure), our principle of "extension" of rights can become almost universal. However, such rights will be based on the ability to use the market⁷⁵, not on the "artificial" protection of workers within their jobs. We cannot stress the importance of market capital too strongly. Although pro-market, our message is the reverse of neoliberalism. The time has come for policy effort to break the mould.

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⁷⁵It is no coincidence that the "trade and workers' rights debate" is converging on the definition of a set of "core" rights that is indistinguishable from human rights as more generally defined (see Langille, 1997); or that major trade union movement (including AFL-CIO in the USA) are starting to look more like employment and information agencies than traditional unions (see the AFL homepage at <http://www.aflcio.org/home.htm>, and Ichino, 1998).

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